

*Administrative Capacity Building
in Prospective and New EU Member States*

Reference Guide for

HORIZONTAL INTEGRATION

Edited by

Peter Goldschmidt

Marta Daruřová

Tóni Niculescu

Anton Stemberger

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IN PROSPECTIVE AND NEW EU MEMBER STATES*

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HORIZONTAL INTEGRATION

Published by NISPAcee



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Published by NISPAcee

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PREFACE

NISPAcee, with support from UNDP Bratislava Regional Centre, launched the project “Building Advisory Capacities in Central and Eastern European States” in 2001. The project aimed at fostering the successful implementation of ongoing public administration reforms in the region through the development of the indigenous advisory capacities available for assisting and influencing governments of targeted countries in their policy making. Within the framework of this project a pool of trainers from the NISPAcee region were trained, and the training programme “How to be Better Policy Advisors” designed and tested within several pilot training courses, and manuals published in English and Russian languages for advisors and trainers. The training programme and the manuals provide a basis for academic and training institutions in the region to start developing their own courses and integrate the advisory programme into their curricula. Several institutions from the region, with the support of NISPAcee and its trainers, have already started this process.

This Guide represents the result of a second phase of the Building Advisory Capacities project, which started in 2003 and in addition to UNDP has been supported by the Social Transformation Programme (Matra) of the Netherlands Ministry of Foreign Affairs. This part of the project aimed to develop advisory capacities for providing policy advice to governments in European Union (EU) accession countries for their administrative capacity building in view of EU integration. The Guide and the model training programme for advisors were developed and tested during one pilot training course “How to be a Better Policy Advisor for EU Integration” implemented under the project.

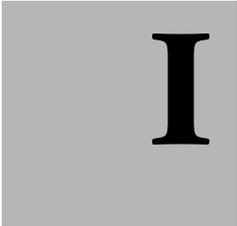
The authors faced a difficult challenge, as most of the countries originally targeted by the project became new members of the EU during the implementation of the project. This had to be reflected in the text of the publication and the training programme. Therefore the Guide and the training course are addressed to advisors/trainers for decision- and policymakers within the public administrations of new Member States of the EU and of prospective members of the EU. The authors decided to focus on improving co-ordination and efficiency in policy making and implementation at the central government level as the most pressing requirement for successful integration. The Guide deals with horizontal integration features accompanying EU accession and integration processes, argues for systematic reforms of PA mechanisms and institutions as opposed to series of singular decisions on implementation of *acquis communautaire*, and outlines the need for the development of coherent policies at national and EU levels. The Guide should serve directly policy advisors and academic and training institutions in the region as well further the development of their advisory programmes.

We believe the overall project results will provide useful tools for improvement of advisory capacities in the region, as envisaged by the project. It has not been an easy task, but we are persuaded that it is extremely necessary for the overall

success of ongoing administrative reforms in the targeted countries. Therefore, we would like to extend our gratitude to UNDP Bratislava Regional Centre for its close cooperation and support to the whole project. And we would like to thank the Matra programme for its financial support to the second phase of the project, plus all the involved experts - mainly editors Peter Goldschmidt, Marta Daruľová, Tóni Niculescu and Anton Stemberger, authors of texts, trainers and trainees for their participation in the development of the Guide and training programme. In addition, we would like to thank to the European Institute of Public Administration - EIPA Maastricht and EIPA Antenna Luxembourg for cooperation of their experts and to reviewers of the Guide such as Tony Verheijen, The World Bank, Nicolas Dubois, SIGMA/OECD, Miroslaw Grochowski, University of Warsaw, and our current and former partners at UNDP/BRC – Marcia Kran, Adolfo Sanchez, Dan Dionisie, Anastázia Kozáková – for all their valuable comments and advice. Finally, please let me thank my colleague Elena Žáková, the NISPAcee Project Manager, for her strong commitment to seeing the entire project through to a successful conclusion.

Eudmila Gajdošová
NISPAcee Executive Director

Bratislava, December 2005



I

Introduction

**Purpose and Beneficiaries of the
Guide**

Context of Public Administration

Accession Criteria

What to Find in the Guide

I INTRODUCTION

I.1 PURPOSE AND BENEFICIARIES OF THE GUIDE

This Guide is mainly addressed to advisors/trainers for decision- and policymakers within the public administrations (hereinafter PA) of new Member States (hereinafter MS) of the European Union and of the prospective members (hereinafter PrM)¹ at the central governmental level. The Guide should serve as a guide for improving co-ordination and efficiency in policy making and implementation. The Guide could also be a source of inspiration and guidance with regard to identification of methodologies and tools for needs assessment, benchmarking, change and quality management, action planning, interoperability, and co-operation within government institutions.

The Guide focuses on horizontal integration features accompanying EU accession and integration processes. In strategic management, horizontal integration is a theory of ownership and control defining a strategy used by an entity that seeks to sell one type of **product** in numerous **markets**. The Guide argues that horizontal integration within the PA in an EU context requires the implementation of common principles and standards for administrative procedures governing the European Administrative Space alongside the co-ordination efforts carried out by the central administration's bodies.

The Guide further argues that systemic reforms of PA mechanisms and institutions imply much more than a series of singular decisions on implementation of *acquis communautaire*. The Guide outlines the need for horizontal co-ordination at national level (actions agreed between ministries) as well as at EU level (policy objectives agreed among MS), which enable the development of coherent policies.

I.2 CONTEXT OF PUBLIC ADMINISTRATION

PA has to deliver services (and, in some cases, goods or capital) in a transparent, democratic, effective, and efficient manner in order to satisfy the public needs. In general, PA in new MS and PrM is characterised by traditional bureaucratic procedures (e.g. rigid centralised organisational structure, broad scope of activity, attachment to routine and repetitive activities). The current organisational structure of PrM often reflects formations applied prior to 1989, which more often than not limits general management's capacity to perform strategic tasks, which, in turn makes it difficult to react to new and diverse social needs. As a

1 We understand the term prospective members broadly – including (as at December 2005) the current acceding countries, but also candidate countries and potential future candidate countries, i.e. Bulgaria and Romania; Croatia, Turkey, and Macedonia; Albania, Bosnia and Herzegovina, Serbia and Montenegro. These are covered by the SIGMA activities.

result, PA activities are more likely to ameliorate problems than to solve them. This highlights the necessity of adjustment, not only to comply with European guidelines but also to raise public acceptance of PA.

In order to help the countries in transition in their public administration reform efforts, the European Union and OECD set up a joint initiative, SIGMA (Support for Improvement in Governance and Management in Central and Eastern European Countries), principally financed by the EU². One of the SIGMA's projects aimed at assessing the countries' public administration capacities and civil service development. The findings have provided an important input for the European Commission in preparing the regular progress reports on countries preparing for EU membership.

SIGMA³ Papers 23 and 26 and the European Commission's annual assessments stress the same common features of virtually all PA systems in the region:

- ✓ lack of concepts of the state's tasks in economic/social transformation processes;
- ✓ 'leftover' elements from the previous system: even if functions are transferred, administrative structures are kept;
- ✓ administrative systems lack transparency and coherence;
- ✓ dominance of 'vertical approach' combined with underdeveloped political/administrative co-ordination,
- ✓ problems in party coalition management;
- ✓ overlaps and gaps in functions;
- ✓ focus on mechanical/technical work with limited attention for strategic thinking or policy development.

A fundamental change in the approach to reform the PA systems has emerged through the concept of '*Good Governance*'⁴ which implies:

- move from partial approaches to holistic ones;

2 SIGMA works in the following areas: Design and Implementation of Reform Programmes; Legal Framework, Civil Service and Justice; External Audit and Financial Control; Public Expenditure Management; Policy-making and Co-ordination Capacities, including Regulatory Management; and Public Procurement.

3 <http://europa.eu.int/comm/enlargement/pas/phare/programmes/multi-bene/sigma.htm>

4 Good Governance implies not only that the governance process is conducted based on democratic principles, but also that it respects the principles of effectiveness and efficiency. This means that societal problems should be addressed timely and with a minimum use of available resources. Good Governance is therefore a combination of democratic and effective governance. Systems of public administration are one of the key factors that determine what type of governance system develops in a state. Ideally PA should be a bridge between politics and society, effectively channeling societal inputs into policy options, delivering public goods and services fairly and effectively and providing the necessary regulatory framework for economic activities. The development of a system of Good Governance requires that systems of PA are open, democratic, effective, and efficient.

- shift from across-the-board staff/structure reductions to a mixture of seeking efficiency gains while investing in building capacities;
- balancing internal reforms with changing relations to the public.

There are no formal administrative standards adopted by the EU. Nonetheless the European Constitution mentions the right of citizens to benefit from good administration.⁵ In fact, good practices and methods to develop and/or improve PA management are discussed at different European forums⁶. Moreover, initiatives such as e-Government Awards or the CAF Observatory are driven by the Commission and the MS⁷. The discussions carried out on these topics amid the enlarged EU may lead to setting up such standards in the future.

Since strategic management tools are not common in the region targeted by this Guide, the institutional capacity in these countries to apply appropriate instruments is limited. However, the spectrum of challenges faced by the new MS and the PrM administrations is far reaching, its most significant factors being related to:

- (i) **Scale** – complex, absorbing too many costly resources;
- (ii) **Activity** – wide scope of activity, broad services delivered by the third sector, and
- (iii) **Mode of operation** – ineffective, inefficient, and inflexible.

Central agencies often see strategy as a formal requirement, which does not bring significant functional changes. Poor integration of co-ordinative strategies into existing sector or regional-specific strategies creates obstacles in the institutionalisation and in monitoring activities:

- ✓ *Incessant games and baggles between executive and legislative bodies* have led to self-serving structures focused on routine administrative tasks
- ✓ *inefficient mechanisms for strategy monitoring and updating*, complicated by
- ✓ *lack of determination in implementing the strategic documents*, doubled by
- ✓ *lack of continuity/stability at even lower levels of management within the public administration*

5 Article II-101 of Part II The Charter of Fundamental Rights of the Union of the Treaty establishing a Constitution for Europe (http://europa.eu.int/constitution/index_en.htm), signed by the leaders of 25 EU MS in Rome on October 29, 2004. It should be noted, though, that this provision concerns the good administration performed by the EU institutions.

6 For example, within the European Union Public Administration Network (EUPAN), there are a number of different forums in which officials from the EU MS meet. These forums include informal meetings of ministers and directors generals responsible for PA in the MS as well as informal or ad hoc working groups with senior officials representing the national schools of PA or the ministries responsible for PA. These meetings aim at developing good practices in various fields, e.g. innovative public services, bench-marking, better regulation and e-government.

7 To learn more about these initiatives, visit e.g. the website of the European Institute of Public Administration, www.eipa.nl

The **organisational culture** is longing for stability, leaving little room for management capacity to develop and to successfully introduce organisational change. Another factor affecting the efficiency of public administration units' performance is the lack of efficient **internal communication** (both horizontal and vertical), lowering the PA's capacity to respond in due time. Together, these factors tend to lead to the so-called "syndrome of acquired inefficiency" i.e. in a stable environment the official is very efficient but fails to properly deliver under changing external conditions.

Information technology is an area where the situation is quickly improving. This includes the computerisation of some standard processes and functions, such as issuing documents, centralising payments or patient records. Unfortunately, the process is often implemented without defining a strategy for using IT, considerably restricting the related benefits. Moreover, databases are frequently not linked with registers (e.g. real estate owners, taxpayers, and recipients of social benefits) and/or there may be problems with complying with personal data protection provisions.

In the area of **human resources** (hereinafter HR) **management**, central offices have different levels of development, in some cases relatively high, but the majority rarely use proper principles, procedures and tools. Personnel is still administered rather than managed, as offices and the lack of systemic solutions in HR policy maintain a low level of standardisation and prepare the ground to carry out irregular activities. HR management requires immediate changes such as: recruitment procedures, training/education, promotion, and motivational systems.

Systems of periodic personnel **evaluations** are not formally/systematically linked to performance observance. In addition, there is often an absence of policy with regard to HR development (i.e. insufficient analyses of training needs, lack of annual training plans, and inconsistent evaluations), and reluctance towards introducing such tools can be observed. This unwillingness is determined by fear of internal know-how competition and may thus prevent the staff from receiving training and/or implementing what they have learned at the training. Officials generally possess the necessary qualifications, but there is a lack of know-how, skills and habits regarding **teamwork**.

There is a considerable need to prepare central and regional public administration for applying **project management instruments**. In connection with preparation for EU accession, various institutions and organisations have implemented numerous training and advisory projects. But the trainees are often selected randomly and/or officials, who have received training, leave for more attractive positions outside of PA. For these reasons, despite a broad approach, these activities have not resulted in an adequate group of officials and decision-makers. For the same reason PA is rarely prepared for the implementation of

new tasks to be imposed after accession. This results in a lack of reliable data on informational and training needs.

The situation in the area of **ethics** and **prevention of corruption** varies. Many central government bodies have already introduced a number of procedures and mechanisms designed to prevent corruption although often recognised as “wishful thinking”, unnecessary or of no importance. Therefore, the quality and application of ethics management are causing serious concerns. Co-ordination bodies designed to strengthen ethical attitudes of PA (i.e. training and advice) need to be developed. E.g., the code of ethics for civil servants developed in Poland⁸ fails to define its application mechanisms.

The authors of this Guide would like to remind, that the citizens – through taxes, custom duties and other levies and fees – pay government to deliver various services and ensure at least a certain minimum redistribution of wealth. It thus ensues the public must have a justified expectation that these functions are performed efficiently and fairly. Therefore, PA in new MS and PrM needs to be reformed for the respective countries’ and peoples’ sake – not just in order to satisfy criteria set up in Brussels.

I.3 ACCESSION CRITERIA

When the countries of Central and Eastern Europe expressed their wish to “return to Europe” and become members of the EU, the EU welcomed their interest. Hence the Copenhagen European Council in June 1993 made the historic promise that „the countries in Central and Eastern Europe that so desire shall become members of the Union. Accession will take place as soon as a country is able to assume the obligations of membership by satisfying the economic and political conditions“.

Five *criteria* for EU accession were defined at the Copenhagen European Council. Apart from the fundamental criteria of membership as set by Article 6(1)⁹ of the Treaty on European Union, a set of requirements had to be taken into account by the Commission when drafting its provisional opinion on accession of applicant countries in accordance with the procedural requirements.¹⁰

8 See: <http://www.uw.lodz.pl/index.php3?str=362>

9 Article 6(1) TEU: “The Union is founded on the principle of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.”

10 Article 49 TEU: „Any European State which respects the principles set out in Article 6(1) may apply to become a member of the Union.”

The *Copenhagen Criteria*:

1. The stability of institutions guaranteeing democracy, the rule of law, respect for human rights, protection of minorities,
2. A functioning market economy, as well as the capacity to cope with competitive pressures and market forces in the single market of the Union,
3. The ability to assume the rights and obligations arising from Community law,
4. Adherence to the aims of political, economic and monetary union,
5. The capacity of the EU to absorb new members without losing the momentum of European integration.

Later European Councils set additional criteria, thus

The *Madrid Criterion*:

6. The acceding countries have to strengthen their administrative capacity.

The *Feira Criterion*:

7. The effective incorporation and enforcement of the EC law shall determine the negotiation speed.

Four of the Copenhagen criteria are aimed at the applicant countries, while the fifth regards the Union itself. The third criterion is generally understood as adoption of *acquis communautaire*¹¹, which is vital as it can effectively function only in a political environment similar to the one existing in the old MS. The same would apply to the economic environment: Since the legislation of internal market forms the core of the *acquis*, it presumes a certain type of economic system for its efficient implementation, namely the market economy. A lot of attention is thus focused on the issue of the *acquis* adoption.

However, in December 1995 the Madrid European Council concluded that the adoption of the *acquis* would not suffice. In order to accede, applicant countries

11 which, applied and implemented as it exists at the time of accession, include:

- „content, principles, political objectives of EU Treaties,
- legislation adopted, case law, declarations and resolutions of the EU,
- communications, positions, declarations, conclusions and other acts in the framework of CFSP,
- common actions, positions, conventions (excl. Europol), resolutions etc. in the framework of the JHA (control of external borders, asylum and immigration, fight against organised crime, terrorism, drug trafficking, Schengen acquis,
- international agreements concluded by the EU and those concluded by the MS among themselves in the field of Community activities”. (From lecture materials prepared by Rita Beuter, EIPA, „From Rome to Amsterdam”. History of the European Union, September 1999)

have to strengthen their administrative capacity – an essential prerequisite of membership. Since then this requirement has been reiterated in various forms and in stricter terms in every EU official document dealing with the issue of enlargement.¹²

The Feira European Council in June 2000 emphasized: „The Progress in negotiations depends on the incorporation by the candidate States of the *acquis* in their national legislation and especially on their capacity to effectively implement and enforce it.” This statement is perceived as the seventh criterion to be met by the applicant countries.

Implementation of the *acquis* in an administrative domain is, of course, a matter of capacity and resources within the relevant sector — but not only that. The general horizontal governance systems of a candidate country must also meet the requirements of EU membership, since they are crucial for the reliable functioning of the entire administration, including the areas of the *acquis*. Successful implementation and enforcement is clearly dependent on horizontal governance structures and systems, such as procedures for administrative actions and mechanisms to ensure that the performance of civil servants is in line with EU standards¹³.

I.4 WHAT TO FIND IN THE GUIDE

It is of vital interest to the European PA to implement coherent procedures of co-ordination to ensure a sound PA performance, to fulfil public needs and strengthen the European integration. To reach this aim the Guide describes general principles, present standing, new trends and various management and assessment tools for PA. It also provides case studies and practical examples of success stories and failures to illustrate the points made. Nonetheless the “helicopter view” of this book does not intend to give a conclusive picture, but to stimulate the reader to evaluate, measure and indicate areas of improvement.

The Guide tries to cover horizontal policy management and implementation necessities. It should be noted that the Guide might be seen as putting more emphasis on policy management than the European Commission does in its review of candidate countries’ accession preparations. However, the fact is that horizontal policy co-ordination is a pre-requisite to achieve effective policy and law implementation.

Of particular use for trainers and advisors, the Guide introduces a matrix as a possible way to visualise and analyse horizontal management and control functions. However the Guide cannot provide a single model of horizontal PA

12 Nicolaidis, P: Enlargement of the European Union and Effective Implementation of its Rules. EIPA, Maastricht 2000, 86 p.

13 SIGMA paper no 27, p.6

co-ordination due to the complexity of the subject and respect for different PA cultures from one country to another. Rather the Guide should be seen as guideline to assess and improve PA performance in horizontal co-ordination.

The performance in core areas of PA is evaluated in quantitative and qualitative terms. Based on specific requests of their clients, trainers and advisors can fill in relevant data (e.g. issues, problems of PA) in specially designed schemes using the empty matrix tables.

Moreover the Guide provides, out of the various management and control tools, which overlap and confront PA activities, six horizontal areas considered as cornerstones for assessing co-ordination policies. Special emphasis is also put on key vertical issues/problems for administrative decision makers.

The horizontal areas, identified by SIGMA, are:

1. Policy-making and co-ordination machinery,
2. Civil service,
3. Financial management,
4. Public procurement,
5. Internal financial control, and
6. External audit.

The matrix-analysis may be particularly useful, if it is combined with the simultaneous fulfillment of SIGMA principles:

1. Reliability and predictability,
2. Proportionality
3. Timeliness
4. Openness and transparency,
5. Accountability,
6. Efficiency (ratio between resources and results – input/output ratio) and effectiveness (achieving goals).

The aforementioned areas and principles are elaborated in *Chapter 2*, which explains the way PA is or should be managed in MS and PrM. Advisors and trainers can use this part in the introductions to their reports or analyses and trainings. Western PA mechanisms/practices are presented here together with relevant principles and benchmarking tools used in MS, such as the *SIGMA Baseline Assessments*, *Common Assessment Framework*, and *Commission Scoreboards*.

Co-ordination of sectoral issues requires a holistic approach, and thus an assessment of the European integration process is necessary. Co-ordination at European level generates new demands for the prospective members, other than

the challenges posed by the negotiations for accession. Therefore *Chapter 3* provides examples of shortcomings related to accession driven policy-making in new MS and PrM (e.g. little experience, legal instability, absence of administrative reliability, lack of institutional sustainability, no comprehensive implementation). This should not only illustrate that horizontal policy co-ordination is of utmost importance to succeed in the European decision-making process, it also shows the changing function of governmental units and emphasises the need for improving the ethical dimension already in the pre-accession phase.

Chapter 4 describes legal aspects of EU integration. In the course of EU integration (including pre-accession) new MS (and PrM) have to establish new laws, procedures institutions to implement EC rules. Therefore, this Chapter analyses questions related to appropriate implementation of law and the consequences of non- or insufficient implementation. The Chapter also provides methods to identify so-called Implementation Gaps and examples of Implementation Guidelines helping to ensure correct implementation. Lastly a short overview of the different judicial procedures and the role of the European Court of Justice in the European integration process will be provided.

In *Chapter 5*, the Guide deals with key vertical issues/problems of horizontal policy co-ordination, helping to complete the vertical aspects of the matrix. These issues include:

- a) Human resources and knowledge,
- b) Information flow, and
- c) Culture.

At the end of the Guide there are a few concluding remarks in *Chapter 6* and glossary (*Chapter 7*) of terms with a list of abbreviations and a bibliography are provided to facilitate the reader's search for additional information on specific topics.

II

Need for Horizontality

Core Areas of Horizontal Co-ordination

Quality Management Tools

Benchmarking Tools for the Public Sector

Functional Review

II NEED FOR HORIZONTALITY

This chapter introduces the core areas for horizontal integration, which are particularly important in view of the Madrid criterion (see I.3 above). To fulfil the Madrid criterion, guidelines and indicators for the assessment of administrative capacities are needed. However horizontal administrative capacity within the EU has never been systematically evaluated,¹⁴ and the PrM assessment by the European Commission was also criticised as not being transparent.

The joint OECD and European Union initiative SIGMA was therefore asked to develop basic criteria for horizontal administrative capacity. SIGMA distinguished between the principles of PA and Administrative Principles based on the classic Weberian concept of bureaucracy practiced in most of today's western PA:

- ✓ Formal and unambiguous hierarchical structure of power and authority,
- ✓ Clear separation of personal property from official property,
- ✓ Recruitment and promotion based on merit,
- ✓ Division of labour and specialisation,
- ✓ Management according to general, formal and stable rules, and
- ✓ Management based on official documents/files.

Division of labour, the binding nature of law, hierarchy and professionalism of the staff are this system's most important **strengths**, whilst some of its main **weaknesses** are poor co-ordination, over-regulation and declining staff motivation. The Weberian concept of bureaucracy is at the core of continental European administrative traditions, while Anglo-Saxon and Scandinavian PA have developed a different traditional heritage.

The PA principles (see "European Administrative Space" box), addressing the competencies of the EU concerning the MS administrative structures/procedures also known as **non-formalised *acquis***, are limited. Although convergence has occurred, in some areas differentiation remains a major characteristic of European administrative systems. Hence some of the principles defined by SIGMA are fairly new even for "old" MS, and thus far from representing common standards. Especially the degree of openness and transparency of PA is still a matter of negotiation within the EU.

Therefore, the general principles as well as the detailed baselines introduced later in this chapter cannot be identified as common EU norms but rather as guidelines marking outcomes of administrative reforms desired by the European Commission.

¹⁴ For a discussion of administrative capacity assessment in the enlargement process see Dimitrova 2002, Verheijen 2000 and 2002.

SIGMA “EUROPEAN ADMINISTRATIVE SPACE”

Reliability and predictability refer to the concept of legal certainty or juridical security meant to eliminate arbitrariness in the conduct of public affairs. PA has to act according to the rule of law and administrative decisions have to be impartial and general, guided by no other consideration than law (non-discrimination principle). PA is subordinated to a hierarchy of legal rules enforced by independent courts and binding regulatory decisions of government. Public authorities can only decide on matters for which they are legally authorized (legal competence). Nevertheless, a certain degree of discretion is left to the decision-maker, as law cannot foresee details for every case that the representative of an administrative authority might be confronted with. When making use of this discretion, public authorities are guided by principles elaborated by courts (these are still open to interpretation in practice) such as “to act in good faith, pursue the public interest in a reasonable way, to follow fair procedures, to uphold the requirement of equal treatment and to respect the notion of proportionality.” (SIGMA 1999a: 10).

Proportionality means that administrative action should be proportional to the end pursued by law, avoiding abuse of administrative powers. Procedural fairness requires correct and impartial application of the law, and attention to social values (e.g. respect of the individual and protection of personal dignity). The latter is to be ensured by acquainting an applicant with the facts leading to a certain decision and granting the opportunity to state his/her interests in an adequate procedure.

Timeliness of administrative actions – expressed in binding limits for decision taking – is a further procedural element strengthening the principles of reliability and predictability.

Openness and transparency ensure that PA is open to outside inspection and assessment. Anyone affected by an administrative action/decision should know its underlying reasons. Only exceptional matters (such as protection of national security or personal data) should be kept secret or confidential. Procedural applications of the principles are, for instance, subscription of administrative actions by the competent authority, access to public registers, identification of agents of authority (decision making officials) to the public, disclosure of civil servants’ earnings from private activities. Another feature of this principle is the procedural requirement of a statement of reasons for administrative actions/decisions. Public authorities have to provide reasons (facts and evidence, legal justification) for their decisions, thus enabling anyone interested to prepare an appeal against the decision.

Accountability is often used with reference to both responsibility and answerability. The principle of accountability as defined by SIGMA implies

that “*any administrative body should be answerable for its actions to other administrative, legislative or juridical authorities*” (SIGMA 1999a: 12) and that no authority should be exempt from inspection or review by the respective institutions. These institutions can be courts, superior administrative bodies, Ombudsman, audit boards or parliamentary committees. Accountability is assured through a complex array of formal procedures. Examples are the obligation to report to superior authorities or parliamentary committees or the accountability to audit boards

Efficiency is about maintaining an appropriate ratio between resources and results (input/output). **Effectiveness** looks at the performance of PA in achieving goals and acts up to the responsibilities set by law and government (outcomes). A conflict might arise between the rule of law principle and the requirement for due procedures on one hand and the micro-economic efficiency requirement on the other. The extensive use of formal procedures may be cost-intensive and slow down administrative performance. A possible solution, according to SIGMA, is contracting-out of activities to the private sector and leaving the responsibility to act according to the laws on public procurement and control the contract for PA.

II.1 CORE AREAS OF HORIZONTAL CO-ORDINATION

SIGMA has identified six **core areas of PA** and developed a set of guidelines for public administration reform, the so-called SIGMA Baselines:

1. Co-ordination and Policy-making system
2. Civil service
3. Public expenditure management
4. Public procurement
5. Internal financial control and
6. External audits

These core areas reflect not only the interests of the European Commission in the accession process, they are crucial for the PrM and new MS in order to participate in the European integration process and ensure the smooth functioning within the political and economic framework of the EU.

Policy-making co-ordination is vital for MS to achieve coherent national positions and succeed in the European decision-making system. During the accession process, national co-ordination of EU policy is of the utmost important not only to present the national interests but also to provide identifiable and reliable institutions as negotiation partners. The implementation of a professional

and impartial civil service is the cornerstone to putting the common European administrative principles into practice and to organise the effective implementation of the *acquis communautaire*.

The areas of public expenditure management and financial control are of special interest to the EU Commission and the MS with regard to the distribution of resources from structural and agricultural funds. Common standards in public expenditure management ensure a level playing field for all countries in the internal market area, and thus sound financial control.

From 1999 onwards, SIGMA assessed the administrative capacity of the ten PrM on the basis of its Baseline Assessment Indicators (see box “Baseline Assessment Indicators”). The remarks on administrative capacity in the *Progress Reports* from 1999 onwards rely to a large extent on these assessment reports, but do not refer to SIGMA explicitly.¹⁵ In 2002 and 2003, SIGMA published assessments in the areas civil service, external audit and public procurement. In addition to that, SIGMA prepared a Consolidated Public Procurement Report on eight acceding countries in 2003. From 2002 onwards assessments on all core areas are also available for Albania, Bosnia and Herzegovina, Macedonia, Montenegro, Serbia and Kosovo.¹⁶

It has to be noted, that some of the Baseline Indicators are easily quantifiable, while others require more qualitative estimation. The latter makes it possible to contest the results/information given by the report on interpretative grounds and the scope of discretion given by the assessment tool itself. The consistent and careful examination of core capacity profiles could help to avoid such problems.

15 See Verheijen 2000 and 2002.

16 All assessment reports can be found on www.sigmaweb.org.

SIGMA BASELINE ASSESSMENT INDICATORS¹⁷

The criteria can be subdivided into: (a) **legal framework**, (b) **co-ordination procedures and structures**, and (c) **development capacity**, assessing each of the six core capacities, as follows:

Policy-Making and Co-ordination:

- ✓ Coherence of the policy-making framework
- ✓ Inter-ministerial consultation mechanisms + Agenda Planning
- ✓ Dispute resolution mechanisms + Central co-ordination capacity
- ✓ General strategic capacity + Co-ordination of EU affairs
- ✓ Involvement of the Council of Ministers in budget decisions + Impact assessment

Civil Service:

- ✓ Legal status of civil servants + Legality, responsibility and accountability of public servants
- ✓ Impartiality and integrity of public servants
- ✓ Efficiency in management of public servants and in control of staffing
- ✓ Professionalism, stability of public servants
- ✓ Development of civil service capacities in the area of European integration

Public Expenditure Management Systems:

- ✓ Sound budgeting principles in the Constitution, Organic Budget Law and/or related laws
- ✓ Balance between executive and legislative powers
- ✓ Definition of state budget scope and efficient arrangements for transfers to extra-budgetary funds
- ✓ Medium term expenditure framework
- ✓ A logical, sequential and transparent budget process, set out in clearly-defined rules
- ✓ Effective arrangements for the budget management of public investments

¹⁷ Based on Verheijen (2000) and the SIGMA Assessments 2003 (www.sigmaxweb.org)

- ✓ Effective monitoring mechanisms for budget implementation
- ✓ EU-compatible common classification for accounting and reporting
- ✓ Capacities for upgrading the public expenditure management system

Public Procurement:

- ✓ Inclusion of a defined set of principles in public procurement legislation
- ✓ Clear legal basis and adequate capacities for the central procurement organisation
- ✓ Effective mechanisms of procurement implementation and training
- ✓ Presence of control and complaints review procedures
- ✓ Capacity for upgrading the public procurement system

Internal Financial Control:

- ✓ Coherent, comprehensive statutory base defining the systems, principles and functioning of financial control
- ✓ Management control systems and procedures
- ✓ Functional independent internal audit/inspectorate mechanism
- ✓ Systems to prevent and take actions against irregularities, recovering damages
- ✓ Capacity to upgrade financial control systems

External Audit:

- ✓ Statutory authority for the SAI to audit public and statutory funds and resources, including EU funds
- ✓ Meeting requirements set out in INTOSAI auditing standards
- ✓ Necessary operational and functional independence
- ✓ Reporting: regularity, fairness, timeliness, proper counterpart in the parliament
- ✓ Awareness of EU-accession process requirements
- ✓ Capacity to upgrade quality of external audit

II.1.1 CO-ORDINATION AND POLICY-MAKING CAPACITIES IN MEMBER STATES

All governments need intra-governmental co-ordination at the national level in order to “be more efficient, to have fewer conflicting and redundant programmes, and to utilize scarce public resources more rationally in achieving their policy goals”.¹⁸ Good co-ordination helps to build policies that do not contradict or double one another and ensures the proper implementation of decisions. Among other organisations within the core executive, ministries of finance should play a central role in the co-ordination machinery, making governmental policies economically efficient and budgetary sustainable.

Co-ordination can be defined as a top-down central control function (hierarchical co-ordination) or it can be seen as a more deliberate process of cooperation among individuals or organisations (self-co-ordination or negotiations). **Hierarchical co-ordination** or co-ordination embedded in a rigid authority structure may be effective but can prove harmful amid conflicting interests. Negative outcomes may occur when players refuse to cooperate or act differently than expected during the implementation of a decision.

A further distinction of co-ordination concepts is to be made between positive and negative co-ordination. **Negative co-ordination** requires players to “avoid inflicting damages to the protected interests of other players involved”.¹⁹ Negative co-ordination is the most frequent practice: the unit responsible for finding a solution for a certain problem concentrates on avoiding other units/areas to be touched negatively by the respective solution. In the legislative process, inter-ministerial co-ordination via circular and co-signature is a typical instrument of negative co-ordination. Negative co-ordination usually has a conservative bias as players agree upon the lowest common denominator.

Positive co-ordination involves players co-operating towards producing a common good. The individual actor’s preferences are integrated and the result of co-ordination is an innovative agreement. Positive co-ordination may be a very complex, costly and time-consuming procedure, as the interest of various players has to be stated and it has to be checked, which alternative solutions are best suited to meet the present constellation. On the other hand, such systems may be streamlined, introducing a high degree of automation at all levels and ensuring early notification of new initiatives and early identification of potentially conflicting interests (e.g. Denmark, Finland, Austria).

Instruments of co-ordination can be concentrated at the centre of government or the right/obligation to initiate a co-ordination process can be decentralised. What is important is that changes in the configuration of departments should

18 Kassim et al. 2000: 1

19 Scharpf 1997: 112

overcome particular attitudes and ease positive co-ordination through special committees for inter-ministerial co-ordination. As structures and mechanisms within the co-ordination systems of MS show significant differences, there is no model available yet. Nevertheless, the knowledge of existing co-ordination arrangements helps administrators from new MS states to develop their own arrangements.²⁰

Similar features to PA co-ordination systems in MS include support for heads of government by specialist expertise and organisational units (sometimes European secretariats allocated to the Prime Minister).²¹ Furthermore, foreign affairs ministers are playing a key role in co-ordinating European policies, while specially devised mechanisms and committees are assuring interdepartmental co-ordination, organisational and procedural adjustments in line ministries. Ministers for European affairs exist in many MS but are not necessarily central to the co-ordination efforts.

The pressure to **develop capacities for policy-making** and effective co-ordination capacities increases after accession, especially when trying to exert influence within the EU decision-making process. As national positions presented in EU-institutions have to be coherent, it is of great advantage to show a unified position in Brussels and to other countries' representatives. Furthermore, membership requires the preparation of the six-month presidency of the European Council and a profound understanding of complex Intergovernmental Conferences negotiations.

The SIGMA Baseline Indicators require a **coherent policy-making framework** set out in law or other formalised rules of procedure and understood/accepted by all players involved. Arrangements for inter-ministerial consultation on policy proposals prior to submitting proposals to the national Council of Ministers are needed in order to find solutions to possible disputes or competing interests. A mid-term planning of the government agenda and strategic legislative programmes should be developed.

Central co-ordination capacity should lead to an effective administrative body ensuring the enforcement of co-ordination arrangements, providing statistical support to the Council of Ministers and monitoring the implementation of decisions. Central strategic capacity should be provided by a Prime Minister's Office or an Office of the Council of Ministers. For co-ordination of European

20 For a comprehensive study on national arrangements for co-ordination of EU polices in member states see Kassim et al 2000: 237.

21 In France and the UK far-reaching conceptions aim to reach common position, while in Germany and Greece conceptions are limited to certain policies and less ambitious objectives. Ambitious countries set up centralised co-ordination systems with organisations of comprehensive coverage and the capacity to impose decisions through closely integrated procedures. States with a less pronounced co-ordination strategy have decentralised systems ensuring that appropriate units deal with the issues on the agenda, and that information is properly disseminated. The degree of organisation varies in sector/issue and policy-making efforts.

affairs, the Baseline Indicators foresees collective ministerial strategic supervision, inter-ministerial working arrangements, progress monitoring, administrative unit supporting these arrangements, and an adequate EU integration capacity in ministries in question.

The Council of Ministers is not only to be involved in budgetary decisions but mechanisms should be in place to fix an overall accepted limit on governmental spending, as well as limits for every administrative body to ensure sound functioning and avoid inter-ministerial disputes. Policy proposals must include **impact assessment** on budgetary cost, economic impact, social and environmental impact, efficiency and practicability. So far, European Commission assessments of policy co-ordination and policy-making in the PrM tend to describe the institutional framework and the co-ordination mechanisms, assessing the policy efficiency regarding each requirement. However, given the complex web of co-ordination and policy-making, no statements are given whether the Baselines have been met or not.

The degree of horizontal integration and the effectiveness of co-ordinating efforts can be measured by **methods of benchmarking** (see Chapter II.2). This implies comparison of one organisation with another to identify best practices. The **SIGMA Baselines** offer such benchmarking instruments for common legal and procedural standards.²² The **Metcalfe's Co-ordination Scale** looks at co-ordination instruments and mechanisms, while the **EC Scoreboards** enable the so-called **Open Method of Co-ordination**, which focuses on outcomes as a measurement for co-ordinated action. However, all these tools can also be used to identify weaknesses within any organisation or country (the matrix evaluation scheme identifies certain elements of these tools presented in Chapter II.2).

II.1.2 CIVIL SERVICE

The **existence of a professional and neutral civil service** is a precondition for the successful establishment of the "European Administrative Space".²³ Out of this reason, civil service has been identified as one of the core areas requiring special attention. Civil servants must be subject to legal principles to ensure professional stability (merit-based recruitment, regulated system of career advancement), and impartiality (legal provisions prohibiting civil servants from getting involved in decisions affecting matters in which they have a personal interest). An adequate salary, disclosed and well-regulated income scheme and disciplinary provisions against bribery help foster a regimen that helps deter corruption.

The *Baseline* on civil service requires an appropriate **legal basis defining the status, rights and duties of public servants**. They should be bound to the principles of legality of actions, responsibility to their superiors under public law,

22 SIGMA 1999b

23 See box at the beginning of Chapter 2

and to accountability mechanisms. **Impartiality and integrity** of public servants should be ensured by legal measures such as disciplinary remedies for corruption and legally defined salary structures.

Independence of party influence should be a guidepost for civil servants. Efficient personnel management and control of staffing requires the establishment of cross-government systems for staff management, motivational management practices, of control and public access to the figures of employees' salaries. Maintaining professionalism and stability of civil servants demands open and competitive selection based on merit and transparent criteria as well as appropriate conditions of career opportunities. For the development of civil service capacities in the area of European integration, adequate staff should be assigned. Integration units require a high level of qualification and stability and special training programmes valid, of course, for the entire civil service. In the assessment reports made before, the main requirements are broken down into more detailed questions. The legal basis and management systems of the civil service are described and assessed with reference to the questions of how far they are put into practice and whether civil servants work according to the requirements.

In this context, it should be noted that, in return for this independence and security, the civil service and the civil servants have an obligation to be fair and loyal to any legally elected government and follow legal instructions from these politicians.

II.1.3 PUBLIC PROCUREMENT

The SIGMA Baseline Indicators also establish principles for **public procurement legislation**. The legislation schedule should include the establishment of a Public Procurement Office and decision-making authorities at different levels of government. Also a comprehensive definition of entities, sources of public funds and public procurement rules should be given. Proposals for secondary legislation should also be included in this legislative process.

A **Public Procurement Office** located in either a ministry or under the authority of the Prime Minister or the Council of Ministers should be established. Effective systems of staff recruitment and training for proper implementation of procurement procedures are required, including control and complaints review procedures. The capacity for upgrading the public procurement system should be visible.

Public procurement systems should be protected against waste, abuse, fraud and corruption. Many mechanisms can help anticipate and resolve these problems, such as the conflict of interest provisions in the legislation, written records of the procurement process made accessible to public, specialised training for procurement officials, codes of ethics, internal or management control systems. The EU, as well as the WTO, requires countries to establish impartial, professional and

open remedial procedures to help address complaints through an effective and efficient complaints review mechanism and supervise the procurement process.

Detailed public procurement reports ought to go even beyond the requirements defined in the Baseline. Analyses of the legal and institutional framework as well as practice include a record on strengths and weaknesses as well as recommendations on the issue in question. For several SIGMA countries, a consolidated report was prepared and assessment reports are available for certain West Balkan countries.²⁴

Issues	Area: Public procurement
Resources / knowledge	The ability to efficiently plan governmental purchase of goods and services from the private sector The implementation of procurement law The financial efforts in order to establish system of public procurement (e.g. staff training)
Information flow	Dissemination of information (and data systems) concerning public procurement (as a basic condition in order to accomplish the key principles of public procurement: competition and transparency)
Culture	Scale of negative phenomena in the field of public procurement (like corruption) Fulfilment of fundamental common standards (transparency, open and fair competition) Executing the legal provisions concerning public procurements regulated by national legislation as well as those created by international standards Adhering best practice models implemented in the established Member States

One of the solutions adopted to improve the above situation was to obtain EC support to strengthen **institution-building** efforts through a PHARE component, which included *twinning* arrangements. Twinning overcame the lack of funds in hiring consultants to design and assist co-ordination processes. Yet, improvements in management systems and practice in PA units often proved ineffective from the perspective of the system as a whole.

II.1.4 PUBLIC EXPENDITURE MANAGEMENT

Common European standards in public expenditure management are of special interest as well to the EU Commission (and of course in general to the European Community). That is because they ensure the effective administration of the *acquis communautaire* in the budgetary area and secure convergence within the single market area (inside and outside the European Monetary Union). With regard to the PrM, the Commission puts special emphasis on this field to secure community interests in connection with Structural and

24 For the consolidated report see OECD/SIGMA 2003.

Cohesion Funds. Community expectations concern management questions as well as budget discipline²⁵.

According to the SIGMA Baseline Indicators, **principles of budget legislation** should be laid down either in the constitution or in a formally adopted Budget Law and/or related laws. These provisions have to contain a clear and comprehensive definition of public money and clearly identify the different budgetary institutions and their respective competencies.

A definition of the relationship between Parliament and the Executive in budgetary matters, rules and procedures on intergovernmental fiscal relations, provisions on the comprehensiveness of the budget, a definition of the different budgetary institutions, a legal basis for formulation and execution of the budget and a definition of the role of the Ministry of Finance must be given and the balance between legislative and executive powers has to be worked out.

The mechanisms of **budget control** should cover all revenues and expenditures with efficient arrangements made for transfers to extra-budgetary funds. A medium-term expenditure framework should be set up. Budget management of public investments concerns the preparation of adequate instruments such as multi-annual planning or co-financing procedures through pre-accession programmes.

In the **budgetary process**, the sequence of steps and the tasks of the Ministry of Finance should be well defined. The Ministry of Finance, Parliament and the Council of Ministers should monitor budget execution. A common classification for accounting and reporting, compatible with concepts related to the disbursement of EU funds, should be implemented. In short, all aspects of funds management must be laid out in binding legislation, and no PA authorities should be able to receive or make payments without this being clearly authorised in relevant legislation.

Assessment reports exist for Romania, Bulgaria and the West Balkans. They analyse the legal framework for public expenditure management and progress achieved in recent years.

II.1.5 INTERNAL FINANCIAL CONTROL

Special concerns of financial control are noticed if EU resources, mainly from Structural Funds but also customs and agricultural levies, are involved. The Treaty itself does not outline any predetermined model of financial control but establishes general obligations on the Member States to cope with EC law.²⁶ However, requirements are set out in EU directives and regulations

²⁵ For more details see SIGMA 2001

²⁶ Treaty of the European Communities, Art. 10, for other Treaty provisions see SIGMA 1999b

on management procedures and control mechanisms to deal with EU funds and resources.²⁷

The Baseline Indicators on financial control require a **coherent** and **comprehensive statutory basis** which defines the system, principles and methodology of financial control as well as the relevant management and control systems. An effective independent **internal audit** and inspection mechanism/system should prevent and take action against financial irregularities, enable recovery of losses, suggest indicators to assess the capacity for upgrading financial control and ensure the effectiveness of the systems in place.

II.1.6 EXTERNAL AUDITS

External audit has to be conducted by an independent organisation. Such organisations, referred to as **Supreme Audit Institutions** (hereinafter SAI), are responsible for auditing all governmental entities. However, they differ in functions and powers. According to the **external audit** baseline, the SAI should be given authority to audit all public and statutory funds and resources within their respective institutions, including those of the EU. The audit should cover all types of irregularities and performance set out in *auditing standards*. The SAI should be operationally and functionally independent. Its reports are to be prepared in a fair, factual and timely manner and be considered by Parliament and Government. Auditing standards should be compatible with EU needs, and the SAI should show appropriate awareness of the EU accession process requirements. The capacity to upgrade the external audit system should be evident.

The Commission's assessment reports for PrM analyse the legal framework and practice of external audit, and they indicate the degree of achievement reached in the assessed country.

II.2 QUALITY MANAGEMENT TOOLS

Quality management tools promote quality management in any PA organisation. The most influential for the public sector are the Common Assessment Framework (see Chapter II.3.1) and the European Foundation for Quality Management Model (see Chapter II.3.2), which offer a set of criteria/methodology to denote where an organisation stands by either self- or external assessment. Both of these tools can help public sector organisations identify their internal and external strengths and weaknesses.

Originally, the private sector adopted the concept of **total quality management**. Later on, the public sector started to apply and benefit from these assessment concepts/programs in order to improve the quality of delivering government services.

²⁷ For a detailed record see SIGMA 1999b and SIGMA 2001.

Quality assessment instruments focus on quality at the organisational level. The quality of service delivery is measured by input-output functions within a framework of more specific quality measurement instruments, focusing on:

- ✓ Processes and results (e.g. Management Excellence Models),
- ✓ Processes (e.g. ISO 9000),
- ✓ People management (e.g. Investors in People),
- ✓ Customer results (e.g. Citizen Charters), and
- ✓ Outcomes on society and governance mechanisms (e.g. Governance Excellence Models).

The following is an illustration of one of the aforementioned general instruments.

II.2.1 THE ISO 9000

This set of international quality management system standards/guidelines represents the **minimum level of quality** any customer should expect. Nonetheless, they have earned a global reputation as the basis for establishing quality management systems.

The ISO 9001, 9002 and 9003 standards have been used extensively as the basis for independent (third party) system quality certification, taking into account business and process improvement, as well as customer satisfaction. The ISO 9000 approach creates a sense of discipline. An ISO 9000 certificate proves that a given **process or procedure** (determined by the certified organisation) has been followed based on a relevant document-based infrastructure.

It ignores critical indicators such as business results and issues concerning people and society. It is a 'snapshot' at one point in time only showing conformity of an organisation with well-defined but limited information. ISO 9000 certification is prescriptive, providing an overview of quality requirements with regard to processes, procedures and a protocol to meet these demands. It should be noted that the ISO certification does not review or provide any guarantee of the correctness or quality of the output of the organisation such as decisions, legislation or delivery of public services.

ISO 9000 standards are constantly revised and adapted, and an increased focus of ISO 9001:2000 on customers, processes and stakeholders should accelerate the convergence towards organisational excellence (i.e. basic requirements that organisations must meet), its substance being quality assurance.

II.3 BENCHMARKING TOOLS FOR THE PUBLIC SECTOR

II.3.1 COMMON ASSESSMENT FRAMEWORK

The Common Assessment Framework (hereinafter CAF) was developed as an aid for all kinds of public sector organisations across the EU to understand and use quality management techniques. Its aim is to enable organisations and employees to learn from the experiences of other organisations, and to encourage benchmarking activities between public sector organisations to strengthen and support quality development. The CAF was set up in the late 1990s by the MS in order to define a measurement for ‘*best practice*’ by PA organisations, aiding them in identifying their strengths and work on their weaknesses by means of a single quality assessment and management system. CAF-guidelines were approved in 2001 and supervised by the Innovative Public Service Group of the EU.²⁸ However this freely available and simple tool for **self-assessment** is not mandatory. In some countries, mainly local government bodies use CAF, whereas in others it is used as a widespread benchmarking tool mainly within central government administrations.

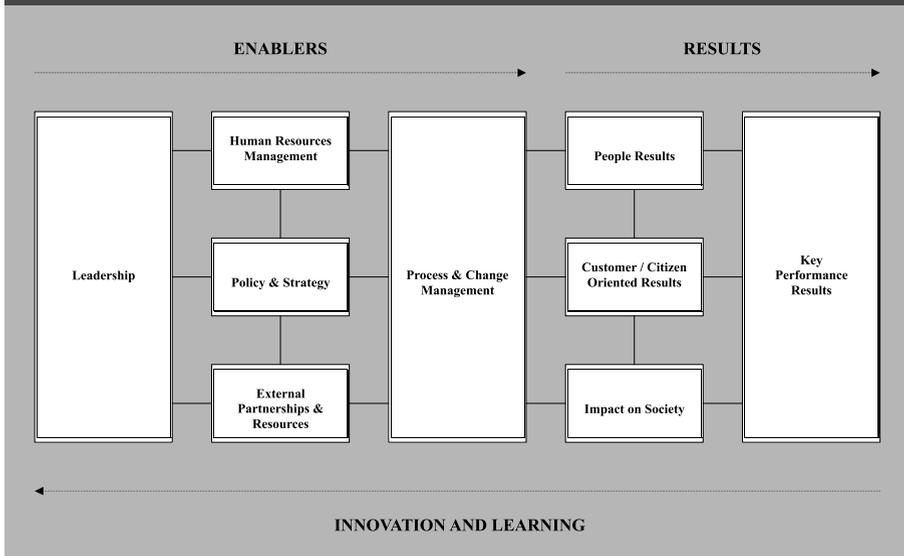
CAF is a simplified version of the EFQM (*see Chapter II.3.2*) and has three **main goals**:

1. to serve as practical and user friendly tool for PA organisations willing to improve the quality of the services by undertaking a self-assessment (regarding human resources management, meeting legal requirements and the public’s expectations),
2. to ‘bridge’ across various quality management models/methodologies and enable comparisons between PA in the various MS, and
3. to introduce benchmarking studies among public sector organisations.

The CAF provides a self-assessment framework in form of a **questionnaire**. Any ad hoc group of employees can conduct a critical assessment of their organisation guided by the CAF structure of nine ‘boxes’ (criteria or aspects of the organisation), as follows:

²⁸ Further information on how to conduct a self-assessment by means of CAF is accessible on the websites of the European Institute of Public Administration (EIPA) (www.eipa.nl) or at the sites of the German University for Administrative Sciences Speyer (www.caf-netzwerk.de); CAF **contact points** have been established in many new MS, where the CAF guidelines have been translated into the local language (*see EIPA’s website*).

THE CAF MODEL



Criteria outlined above concern ‘enablers’ (e.g. leadership, policy and strategy, human resources management, process management) and ‘results’ (i.e. customer/citizen-oriented results, people/employees results, impact on society, and key performance results). Each of the matters is subdivided by a list of relevant criteria (see box below).

In relation to each criterion, five alternative assessments are listed. Since the responses are always different with respect to the *enablers* and the *results*, two different panels are used. In both cases, the possible ‘multiple choice’ set of responses has six degrees:

Score	Enablers	Results
1	<ul style="list-style-type: none"> No approach considered, no plan 	<ul style="list-style-type: none"> No results measured
2	<ul style="list-style-type: none"> Approach is planned 	<ul style="list-style-type: none"> Key results measured, negative or stable trends
3	<ul style="list-style-type: none"> Approach is planned and implemented 	<ul style="list-style-type: none"> Results show modest progress
4	<ul style="list-style-type: none"> Approach is planned, implemented and reviewed 	<ul style="list-style-type: none"> Results show substantial progress
5	<ul style="list-style-type: none"> The implementation is reviewed on the basis of benchmarking data and the plan is adjusted accordingly 	<ul style="list-style-type: none"> Excellent results achieved, positive comparisons to planned targets made
6	<ul style="list-style-type: none"> The adjusted plan is implemented and fully integrated into the organisation 	<ul style="list-style-type: none"> Excellent results achieved, positive comparisons to planned targets and positive benchmarks to relevant organisations made

Each innovation and subsequently each level should be scored from 0 (very good) to 5 (failed), which is then averaged by the 'box' and subsequently totalled for the organisation. This scoring system has two objectives. **Internally**, it identifies where the institution stands and, later, it identifies progress in organisational and human resource development towards improved output (both in terms of quantity and quality). **Externally**, it permits basic comparison between the results from different organisations, both for overall and individual boxes. There should also be room to verbalise reasons for the choices made, each of the nine criteria (see below) being first defined and key implications made explicit before the assessment is conducted.

CAF-CRITERIA²⁹

- Criterion 1: **Leadership*** (develop/communicate a clear vision, mission and values; develop/implement a management system, motivate/support people in the organisation and act as a role model)
- Criterion 2: **Strategy and Planning*** (gather relating information for present and future needs of stakeholders, develop, review, update and implement them sufficiently).
- Criterion 3: **Human Resources Management*** (plan, manage and improve human resources, identify, develop and use competencies of the employees and align individuals and teams with organisational targets/goals; involve employees by developing dialogue and empowerment).
- Criterion 4: **Partnerships and resources*** (develop/implement key partnership relations, especially with political stakeholder, customer/citizens, and develop/implement knowledge management on finances, technology, buildings and other assets).
- Criterion 5: **Procedures and innovation management*** (identify, modernise and/or improve current procedures, develop, design and manage new services and products by involving politicians, customer and the public).
- Criterion 6: **Customer/citizen-oriented results*** (satisfaction with service delivery and involvement).
- Criterion 7: **People (employees) results*** (motivation, satisfaction and involvement).
- Criterion 8: **Society results*** (societal and environmental performance).
- Criterion 9: **Key performance results*** (non-financial and financial).

²⁹ Source: www.caf-netzwerk.de

The basic design of CAF meets two principles, if the assessors act frankly and accurately: **relevance** to and suitability for the specific features of PA organisations, and **compatibility** with main organisational models in use, both in PA and in the private sector. Any tool developed for use in organisations has its natural **limitations**. To get the CAF off the ground, an adaptation to the national context is inevitable (e.g. translation of the forms, development of a standardized set of indicators, making a simpler version or special guidelines for individual types of administrations). The results of self-assessments conducted by organisations will remain confidential and, therefore, it is impossible to get access to the results. Whereas organisations can check their own performance with the average of other organisations, it is yet not possible to check one's own performance with other organisations in the same sector.³⁰

In essence, the CAF is a low cost self-assessment tool. Its results can be used to prepare organisational and human resource development plans. CAF can be supplemented by more intricate schemes (like ISO) to establish standard quality norms and processes for the work and procedures of public sector organisations. After implementing ISO 9000 procedures, they can adopt the EFQM Excellence Model at a later stage. See more below in Chapter II.3.2.

CAF IMPLEMENTATION IN NEW MEMBER STATES³¹

Under socialism, PA was geared towards output in terms of quantity, and subsequently quality standards in the public sector are uncommon in many new MS. The approach that quality is crucial for public service improvement and public governance was introduced in the course of Europeanisation. Thus concepts known from the private sector such as customer satisfaction, fitness for purpose and conformance to technical norms became relevant for civil servants too. Quality in public services means respect for norms and procedures (as opposed to arbitrary decision-making), effectiveness (doing the right things, on time, and management by objectives), and better governance mechanisms.

These principles are not just beneficial to PA but to the community as a whole. Improved quality is particularly relevant for new MS, where PA still needs to catch up on standards in order to improve conditions for investments, which, in return, lead to economic and social development. New MS are – just like the old ones – at varying levels with regard to implementation of CAF.

30 The European Institute of Public Administration (EIPA) provides a database including organisations which have used the Common Assessment Framework. It is also possible to submit results of assessments and learn about other organisations who used the CAF (<http://www.eipa.nl/CAF/CAFmenu.htm>).

31 Based on C. Engel/ S. Fitzpatrick: "Study on the use of the Common Assessment Framework (CAF) in European Public Administrations", EIPA, November 2003. See also article "Report on the State of Affairs of the Common Assessment Framework (CAF) after 5 Years" by Patrick Staes and Nick Thijs, Eipascope No. 2005/3, pp. 41.

Studies on resources, both human and financial, allocated to CAF exercises in 2003 show the following: Slovakia is at the forefront in putting substantial resources into CAF (together with Belgium, Denmark, the Netherlands and Italy). Poland and the Czech Republic devoted a limited amount of specific resources to CAF (together with Austria, Greece, Portugal, and Spain). Meanwhile Estonia, Romania, and Slovenia made little or no specific resources available for the CAF (together with Cyprus, Finland, Ireland, Luxembourg, Malta, Spain, and Great Britain). In the CAF frequency-of-use chart of all European countries, new MS do rather well. For example Estonia, Hungary, Poland and Slovakia use it more than average with 11 to 25 CAF implementations per country.

Most often, CAF is used to promote pilot projects, to organise national quality awards or contests. In these countries, the tools and/or activities implemented include advice to individual organisations, databases (good practice), quality conferences and special training. The specific institution for dissemination and promotion of CAF in new MS lies often within the Ministry of Finance as the place holding the highest competency for matters of internal audit.

Organisations properly using CAF are considered 'good practice' organisations, being able to participate in award schemes or having been identified as excellent organisations in such schemes. To achieve this, an element of external verification and internal follow-up can be included.

II.3.2 EUROPEAN FOUNDATION FOR QUALITY MANAGEMENT EXCELLENCE MODEL

The **European Foundation for Quality Management** (hereinafter EFQM) was founded on private initiative with the endorsement of the European Commission. It is a practical tool to help organisations establish an appropriate management system by measuring where they are on the path to excellence, helping them to understand gaps and, subsequently, stimulating solutions.

The impetus for the EFQM network³² – with more than 800 members in 38 countries – was the need to find a common language to share good practices and to develop both individual and organisational learning in a **European framework for quality improvement**. The EFQM Excellence Model has a holistic approach and is future-oriented. It aims at improving management practices in organisations and to achieve results based on a range of fundamental concepts such as results orientation, customer focus, leadership and constancy of purpose, management by processes and facts, people development and involvement, partnership de-

32 www.efqm.org

velopment, corporate social responsibility, continuous learning, innovation and improvement.

Key factors of the EFQM for governments include:

- ✓ Impact of legislation on centralization/decentralization of PA;
- ✓ Supervisory/control function organized by the state or delegated to special bodies;
- ✓ Exchange of good practices within the public sector;
- ✓ Evaluation of results/outcomes;
- ✓ Innovations particularly in the organisations and processes.

The EFQM-model is a non-prescriptive framework based on nine criteria with five ‘enablers’ and four ‘results’. The enabling criteria cover what the organisation does, and the results cover what the organisation achieves – ‘Enablers’ cause ‘Results’. Moreover the EFQM framework contains the elements: results-approach-deployment-assessment and review. It can be used as a scoring matrix. In addition to that the given information can be evaluated, validated, and enhanced – by sector or holistically – in order to develop strategic plans, conduct external/internal audits, improve public procurement, verify approaches and so forth.

Compared to the CAF (see II.3.1), the **advantage** of the EFQM is that it is performed by external consultants/auditors, which guarantees objectivity. On the other hand, it may reduce the sense of ownership among the employees. One of the main **disadvantages** of this model is its high cost.

II.3.3 THE OPEN METHOD OF CO-ORDINATION (COMMISSION SCOREBOARDS)

As part of the Lisbon Strategy, the European Council in March 2000 established the Open Method of Co-ordination (hereinafter OMC), which sets the goal for the EU in the next decade “to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion”. The OMC is seen as a means of spreading good practices and achieving greater convergence between PA towards the Community goals. It does not aim to harmonise procedures, but to co-ordinate MS policy outcomes and benchmarking. OMC instruments are:

- ✓ Guidelines combined with timetables,
- ✓ Quantitative and qualitative indicators and benchmarks (*scoreboards*),
- ✓ Translating European guidelines into national and regional policies, and
- ✓ Periodic monitoring, evaluation and peer review.

By focusing on outcomes rather than procedures, OMC provides indirect measurements of administrative performance. OMC is qualified as a ‘new mode’

of governance, which reduces the role of laws, views problem solving as a process of mutual co-operation, and emphasises participation and respect for diversity and the subsidiarity. Despite its imperfect implementation, it has a high potential for policy learning. The OMC is employed in policy areas such as employment (European Employment Strategy), macro-economic policy, social inclusion, internal market, European research area, state aid and enterprise policy.

THE EUROPEAN EMPLOYMENT STRATEGY AS EXAMPLE FOR OMC-IMPLEMENTATION³³

- ✓ Luxembourg European Council of November 1997 initiated the European Employment Strategy (Luxembourg Process) with a set of common objectives/targets for employment policy and co-ordination instruments.
- ✓ Yearly European Council agreement on a series of *Employment Guidelines* setting out common priorities for Member States' employment policies.
- ✓ Every Member State draws up an annual *National Action Plan* (NAP) that describes how these Guidelines are put into practice.
- ✓ A set of indicators to assess the performance and efforts by MS: 40 *key indicators* (e.g. employment and unemployment rate, labour market transition types, long-term unemployed rate and activation, transparency of job vacancies); plus 26 *additional context indicators* (such as GDP growth, job satisfaction, unit labour costs, working time and overtime work)
- ✓ Commission and Council examine each National Action Plan presenting a *Joint Employment Report*, which includes a new proposal to revise the Employment Guidelines accordingly. The Council may issue country-specific *Recommendations* upon the Commission's proposal.

33 Based on http://europa.eu.int/comm/employment_social/employment_strategy/index_en.htm

II.3.4 METCALFE CO-ORDINATION SCALE

Metcalf's scale is a benchmarking tool measuring/comparing administrative horizontal co-ordination capacity³⁴. It identifies the weaknesses at a certain stage of a reform process offering appropriate solutions and addressing inter-organisational co-ordination processes among ministries within a national government, as follows:³⁵

9. Government strategy
8. Establishing central priorities
7. Setting limits on ministerial action
6. Arbitration of policy differences
5. Search for agreement among ministries
4. Avoiding divergences among ministries
3. Consultation with other ministries
2. Communication to other ministries (information exchange)
1. Independent decision making by ministries

1. Independent decision making by ministries (in their own policy domain).
2. Communication to other ministries (information exchange): ministries keep each other up-to-date about emerging issues and action plans; reliable information channels are a must.
3. Consultation with other ministries: communication is two-way rather than one-way as ministries respond to the information they receive.
4. Avoiding divergence among ministries: co-ordinating processes ensure that government speaks with one voice and divergences are hidden from outsiders (processes of negative co-ordination take place).
5. Search for agreement among ministries: co-ordination includes consensus seeking among ministries (committees, working groups), ministries work together in a process of positive co-ordination.
6. Arbitration of policy differences: central machinery for conflict arbitration is established (this implies also negative co-ordination).
7. Setting limits on ministerial action: centre of government takes an active

34 Also known as the 'Guttman scale': A general procedure to determine whether or not the responses of subjects to a set of items form a scale. If the items form a scale, only a limited number of response patterns are possible, and relative non-occurrence of deviant patterns allows the recovery of the order of the individuals and category boundaries of the items from the observed data. It is one-dimensional (the components are added from bottom-up), consisting of qualitatively/non-quantitatively different levels (level 4 is not twice as high as level 2) and cumulative – higher level functions – depend on the existence and reliability of the lower ones. Metcalfe suggests visualising it as a flight of steps, as the lower levels support the higher levels.

35 Source: Metcalfe 1994

steering role by setting parameters for organisations, defining what they should not do rather than what they should do.

8. Establishing central priorities: truly positive co-ordination is achieved; centre of government sets common priorities as a framework for action based on effective functioning of the subordinate co-ordination mechanisms.
9. Government strategy: This level marks a limiting case unlikely to be attainable in practice: it is assumed that government constitutes a totally unified policy-making system.

Effective co-ordination on higher levels depends upon the functioning of the subordinate co-ordination mechanisms. Only if the capacities for co-ordination without a co-ordinator have been adequately developed, does it become relevant to consider the need for central capacities. Metcalfe's approach contradicts top-down strategies which prescribe superimposition of central controls.³⁶

II.4 FUNCTIONAL REVIEW

Fundamental to PA reform is the gradual move towards more sophisticated administrative structures. One key reform tool in this respect is the **Functional Review** (hereinafter FR), which provides decision-makers with comparative benchmarks.

The FR aim is to assist governments to achieve the objective that public institutions both collectively and individually perform all (and only) necessary tasks. Therefore FR has four chief **objectives**:

- a) to eliminate redundant functions,
- b) to reduce overlaps between and within institutions,
- c) to add missing functions, and
- d) to rationalize the distribution of functions.

These objectives are carried out through three **types** of reviews:

1. Vertical (of one institution),
2. System (of more common functions across institutions), and
3. Horizontal (on the distribution of functions between institutions).

The FR can help to identify no longer required functions performed by individual bodies in the state administration as well as deficits in the accountability system. The comprehensive picture provided in this way can subsequently form

³⁶ Note that Metcalfe's scale of co-ordination may be difficult to apply in new MS and PrM, where bottom-up initiatives are generally not happening or even encouraged. This is also the case in many South European MS (e.g. France and Italy), whereas in Anglo-Saxon and Nordic countries Metcalfe's approach is more likely to work.

the basis for the drafting/adoption of framework legislation on the organisation of the PA. Furthermore it can help to find the basis for redistribution of resources.

Weak horizontal management systems dominate state administrations in new MS and PrM. This area requires a change in management and co-ordination practices as part of an entrenched political and administrative culture. FR compiles causes in order to point out the deficits in horizontal management systems. System and horizontal reviews show the scope for rationalization of functions and investments in capacity building.

FR is not a panacea for all ailments of PA. Nonetheless, running a comprehensive FR looking at horizontal management systems, policy processes, the organisation of several policy sectors and the division of labour between the sectors could contribute to identification of measures needed for quality administration.

III

Accession Driven Policy-making and Co-ordination

Preliminaries

Policy-making and Co-ordination

**Changing Functions of
Governmental Units**

Co-ordination among Governments

Financial Management

**Ethics – As Challenge in
Co-ordination and Evaluation**

III ACCESSION DRIVEN POLICY-MAKING AND CO-ORDINATION

III.1 PRELIMINARIES

In the following, we have selected central government activities requiring institutional development actions, focusing on the lack of horizontal cooperation and exchange of information among different units of governments.

Governmental co-ordination shortcomings are due to a lack of policy making (general objectives) and a lack of identification of operating problems. By analysing these issues, we hope to improve negotiation capacities within government bodies (intra-co-ordination) and to open the governments for input from other players (extra co-ordination).

The broadest and most compelling challenge to government co-ordination may be summarised as the gap between the need to modernise the state on the one hand and the need to build the ability of efficient co-ordinated functioning of the state as a whole on the other hand. Then we can examine the interaction with PA in other MS and with supranational or international administrations. The first part of this Chapter looks at government proceedings, as well as duties related to EU membership. The second part presents the shaping of government co-ordination systems in new member states. We are discerning between the political and managerial activities within government (intra-co-ordination), and outside government (extra-co-ordination). Finally, we suggest further development measures to deal with co-ordination, especially with respect to policy-making and co-ordination machinery, as these are major problems faced by PA.

III.2 POLICY-MAKING AND CO-ORDINATION

The European integration process continuously introduces new tasks to governments in both old and new MS and in PrM. However the need to improve and strengthen PA is imperative irrespective of the application for EU membership. Although issues related to policy making and co-ordination are not formal subjects of negotiations, the European Commission monitors the progress in creating and improving institutions. That is because PrM as well as MS have to assign appropriate structures with new tasks and duties according to the undertaken obligations (e.g. PrM are supposed to set up institutions responsible for the implementation of structural policies). Thus, accession to and membership of the EU affects, among others, the following PA domains:

- ✓ jurisdiction and institutional structures,
- ✓ regional and structural policies (e.g. territorial entities),
- ✓ capacity for using external assistance,
- ✓ environmental protection, spatial economy and public utilities.

The most significant consequence of EU accession for PA on both central and sub-state level is the complexity of institutional functioning regarding both the decision making and the implementation/monitoring (e.g. tasks and competence in financing, public procurement, monitoring programs).

All these processes and institutions require new ways of functioning and responsibilities for the PA, as well as new players involved (i.e. opening PA for input from other public agencies/authorities and broad consultation with citizens and citizens group participation). Furthermore, in addition to approximation of national policies and laws to those of the EU, accession to and membership of the EU requires the introduction of budgetary changes and horizontal negotiations within government.

POLICY FAILURES IN LITHUANIA

Policy failure can be defined in both programming and political terms. Programming success or failure of a policy can be determined according to the extent to which original objectives have been achieved or if the original promises have been delivered. The assessment of the policy performance in programming terms is often constrained by the absence of precise objectives supported by measurable/quantifiable targets as well as the vague nature of political commitments. Although Lithuania introduced a strategic management framework (under which every manager/decision maker should develop a strategic plan and programmes containing objectives), there is a lack of adequate targets against which policy performance can be assessed.

Policy-making can be driven by a **hidden agenda**, hiding real intentions of the programming process. For instance, during the privatisation of Lithuanian Telecom the government sought to maximise its revenues. Very favourable conditions in the privatisation deal, which were awarded in return to the high price of sale, allowed for a private owner to recover its investments by increasing the prices of fixed network services. The regulation of fixed network communication services was unsuccessful due to lax regulatory and institutional framework.

However, most often policy failures are assessed in political terms. The land reform, where the Lithuanian authorities failed to restore the rights of citizens to their property by establishing a functioning land market, probably constitutes one of the most severe examples of its kind. Indication of this is the high number of complaints and court judgements (including the Constitutional Court), frequent adjustments to primary/secondary legislation governing the country's land reform, high number of cases involving fraud and corruption allegations, high intensity and negative tone of media coverage, etc.

Policy shortcomings have various domestic reasons. For example, low level of political maturity with high degree of political confrontation between left-wing parties (protecting the interests of tenants) and right-wing parties (protecting the interests of owners) in the legislature prevented political parties from reaching a broad consensus concerning land reform goals. Later shifts in the parliamentary majority produced U-turns during the implementation of this policy, disrupting earlier reform efforts.

However, in some cases the EU political system itself can be the source of policy failures. Lithuania should implement the Common Agricultural Policy (hereinafter CAP), even though the latter had failed at the EU level by producing surpluses of agricultural products, raising food prices for consumers, etc. Effective implementation of EU policies at the domestic

level is constrained by the so-called 'moving target' problem. For instance, Lithuania's preparation to implement the CAP was delayed by the introduction of a single area payment for EU farmers, irrespective of their production level. Yet, although new MS will not apply the system until 2005 or 2007, Lithuania had to introduce it before its accession in May 2004.

Policy failures are often attributed to the lack of financial and human resources. In its Regular Reports, even the European Commission focuses mainly on the budget, number of staff and their qualifications. Institutional structures, however, have received little attention during the pre-accession stage in Lithuania. For instance, Lithuania's preparation to manage CAP suffers not only from the insufficient level of staff at the National Paying Agency, but also from the inadequate institutional set-up. The system consists of numerous institutions, some of which are not under the responsibility of the Ministry of Agriculture or the National Paying Agency.

Much-needed changes are constrained by the lack of strategic leadership at ministerial/governmental level, which are unable to overcome departmental interests. For instance, in the environment sector the establishment of an Environmental Protection Agency (hereinafter EPA) should have rationalised the institutional structure for the implementation and enforcement of EU environmental policies. Its establishment was delayed and only a few institutions were integrated into the structure of the EPA.

III.2.1 INSTITUTIONAL SUPPORT FOR CO-ORDINATION

EU membership requires not only the absorption of community standards and legislation but also the capacity to assert influence in Brussels. It is therefore important to create efficient mechanisms within PA, setting up a network of contact points/persons ready to react in due time to initiatives and requests from the European Commission, other EU institutions or other EU MS.

PrM are adapting institutions to match the accession requirements. The lack of clear rules and strong involvement of line ministries in the negotiations are limiting the number of stakeholders involved and may reduce the opportunities for interest groups in presenting their interests before the relevant authorities. This may have two consequences: First, it reduces the government's ability to formulate and defend what may be considered its national interest. Second, it reduces the likelihood of speedy and correct implementation of adopted EU policies and legislation by the parties left out in the initial decision-making process, which might therefore feel not obliged to adopt and/or apply the measure in question at the national level.

Many shortcomings in the accession process are rooted in the tradition of centralised states. Since central governments have a dominant position in co-ordination prerogatives, vertical as well as horizontal links and lines of command are often weak, blocking effective sharing of information and consultation. At the end of the day, EU membership obliges governments to involve all the relevant players in the decision-making process, as well as in the implementation phase, by means of collaboration and interoperability.

III.2.2 HORIZONTAL CO-ORDINATION OF CENTRAL ADMINISTRATION

In new MS and PrM, the decision-making mechanisms at the central level appear inappropriate to achieve coherent and co-ordinated responses to EU membership requirements. In order to take full advantage of the new set of opportunities resulting from EU membership, MS have to introduce and develop clear responsibilities and tasks for the central administration. This includes revised co-ordination structures to act within the EU administrative systems, reacting both to new demands and to opportunities. Some of the new MS and PrM have responded with institutional designs matching negotiation needs during the pre-accession period, the most important ones including:

- ✓ Strengthened position of the Prime Minister (e.g. Poland, Hungary, and Romania),
- ✓ Reorganisation of the chancelleries/Prime Minister's office, and
- ✓ Restructuring of the foreign ministries.

As a result, a number of new institutions and tasks have been subordinated to the Prime Minister's and the foreign minister's offices. Still, the comprehensive transformation of the structural design in the central administration and agencies remains in an initial stage. Although stronger involvement of line ministries in the EU-related decision-making process has been initiated in PrM and new MS, the institutional framework of co-ordination mechanisms at the level of central government could be further developed and streamlined in order to increase effective implementation at the national level of policies and laws adopted at the EU level.

It should be stressed here that a strong involvement of the prime and/or foreign ministers in the negotiation process is not necessarily a restrictive development as long as the involvement is used to ensure horizontal co-ordination within government and strengthen consultation with political and citizen interest groups.

Considering the institutional balance between key players of the national EU decision-making process (i.e. Prime Minister, foreign minister, and subordinate/separate EU offices), the adaptation process is still in the making. No

total reorganisation is taking place. Rather only the most essential adjustments are being introduced in order to become fully fledged members of the EU.

Ideally, once they become part of the EU decision-making process, new MS should adjust their PA to include a broader spectrum of institutional players. As far as the structural dimension is concerned, it is likely that the institutional stability of mechanisms and procedures in new MS will lead to increasingly effective EU policy-making systems. When linked with appropriate HR skills and personnel policies, such structural stability can become a key factor in overcoming typical newcomer problems in dealing with different socio-political realities of the enlarged EU.

In this context, it should be noted that some PrM introduced constitutional changes allowing for the government to adopt laws which approximate national legislation to that of the EU in order to accelerate the fulfilment of the accession criteria (e.g. Romania and Slovakia). This approach may, however, reduce the effective implementation of approximated laws for several reasons: Firstly, it may reduce the perceived need for horizontal co-ordination and external consultations. Secondly, it may reduce the role of parliament or circumvent parliament altogether, and thus reduce the opposition's (who might come into government at a later election) willingness to respect/implement such laws in the future. Thirdly, it may even have the opposite effect than the intended one in that the European Commission may consider implementation measures adopted this way as insufficient since:

- a) rules adopted by one government can be changed by the next government without or with only limited involvement of the national parliamentary system;
- b) rules thus adopted do not have the degree of legal authority that the Commission requires.

III.2.3 INTRA-GOVERNMENTAL CO-ORDINATION

PA co-ordination in the process of integration is not only important for acquiring EU membership, it is also essential for functioning within the Union. Thus the processes of policy co-ordination should be grouped in three stages:

- ✓ period of association and accession negotiations,
- ✓ interim period between proceeding immediate accession, and finally,
- ✓ membership.

Critical in this process is the co-ordination of various governmental efforts and interests into one cohesive policy. The need for reliable, transparent, accountable and efficient co-ordination has led to the establishment of institutional structures supporting the institutions responsible for determining national positions and formulating negotiation mandates. However, the institutional capacity to fulfil

these tasks is limited which, in turn, limits the negotiators' understanding of and efficiently representing national interests.

Normally, a negotiation process being so comprehensive as the EU accession is should lead to improvements in the functioning of governments, especially with regard to efficiency, information flow and financial planning. In many new MS, the strengthening of the role of Prime Ministers and their chancelleries played an important role in co-ordinating efforts.

However, the changes appear not to have overcome the vertical hierarchical chain of command within or the autonomy of various units and agencies inside government. Administrations did not succeed in overcoming narrow particular interests. Numerous shared or poorly defined governmental or intra-governmental responsibilities with unclear lines of communication and consultation processes have led to non-transparent decision-making processes and, thus, to a lack of accountability.

INTER-DEPARTMENTAL COMMITTEES IN ROMANIA

Intra-governmental co-ordination (IC) in Romania seems to be an atypical case, even though one may at times find similarities with Italy regarding the high number of inter-ministerial committees. The lack of IC became a source of institutional instability due to frequent changes of agencies and institutions in charge of different ministries or directly under Government. The creation of new institutions, inter-ministerial committees, councils (without disbanding those that have failed in their mission), continuous overlapping in duties by frequent fragmentation of decision-making structures and improvised efforts at securing the coherence of public policies were also problematic. IC became more consistent in 1998 with the establishment of the Department for the Reform of Central Public Administration, which took over the prerogatives of the former Reform Council. The beginning of accession negotiations decided in Helsinki in 1999 brought to the fore the Ministry of European Integration, seen as a pivotal point in inter-sector co-ordination. This ministry survived the change of political power in 2000, without however showing any signs of working to achieve its original mission, because, in the meantime, two additional structures – The Ministry of External Affairs and the Government General Secretariat – received similar mandates, i.e. the coherent co-ordination of public policies. Adding to this is the excessive executive fragmentation of the Government in a high number of ministries (27 ministries at the beginning of 2001, compared to an average figure of 15.8 in Central and Eastern European countries¹), supplemented by nine agencies directly subordinated to the Prime Minister (PM). Worth noting, too, is that there were some

1,300 public officials protected from dismissal by Act 188 of 1999. Also, the older inter-ministry commissions, which amounted to little more than their names (as they had been designed to satisfy the demands of parties in the parliamentary coalitions), engendered conflicts regarding competencies, ambiguities, and the low efficacy of co-ordination structures. “Who reports to whom” became a political game, which enjoyed the constant attention of the media. As the dysfunctions were acknowledged, the “face-saving” solution was found in Act 90/2001, which enabled the government to establish inter-ministerial councils, commissions, and committees in order to work up, integrate, correlate, and monitor its policies. In other words, the existing fragmentation was augmented to the point where any hope of coherence vanished from sight.

The consequences of this approach were plainly visible in the design of the National Development Plan (NDP) for 2002-2005. The acquis communautaire on state aid was completely ignored in the drafting of policies for various sectors at the regional level, while the Competition Council was treated as if non-existent². For example, the decreasing use of pesticides and nutrients was interpreted in one NDP chapter as a serious political deficiency, only to be assessed three chapters later as a good step for the environment and public health. Not a single line was devoted to the relationship between transportation and greenhouse gas emission, while industrial restructuring was merely mentioned in a list of measures without any additional clarifications. The lack of communication and especially of bottom-up reporting (from the individual ministries’ inter-ministerial commissions to the co-ordinating ministries) led to similar deficiencies in the recently published Romania’s Strategy on Energy³.

The government was restructured in 2003 and the Higher Council for Public Administration Reform, Public Policy Co-ordination and Structural Adjustment was established to ensure the correlation of public administration reform and policies at the level of all ministries and other authorities. The Public Policy Unit (PPU) under the Government General Secretariat was charged with streamlining communication and co-ordinating the activities of inter-ministerial councils, commissions, and committees. The intention was good but it did not take into account the historical accumulation of inter-ministerial committees. On this occasion, the PM was surprised⁴ to learn (on March 10, 2004) that the figure of inter-ministerial committees, supposedly co-ordinated by the PPU and tasked with providing the information necessary for achieving consistent public policies, was over 100. The Government General Secretariat made a new and final attempt to streamline intra-governmental co-ordination, based on a solution identified in direct, systematic meetings with the State Secretaries in the individual

ministries and with an eye to the debates on the agenda of Government meetings dealing with inter-sector decisions. At the time being, one awaits the resuscitation of the PPU and clearer mechanisms of intra-governmental co-ordination.

- 1 Early Warning Report, Romania no.1 / 2001, pp.28-36, Academic Society Bucharest, Romania
- 2 Comments on National Development Programme. An ex-ante evaluation. ENLARGE/ELD(2002) 95110, Brussels 2002
- 3 USAID/Romania, Democracy and Government Assessment of Romania, Report, 22 September 2001
- 4 PM's speech in a Plenary Parliamentarian Assembly for approval of Government's structure, 10 March 2004

III.2.4 CONVERGENCE AND STRUCTURAL ADJUSTMENT

Government co-ordination implies long-term convergence of political systems, which requires a two-pronged approach within new MS and PrM:

- ✓ Nominal convergence (harmonisation of the national legal system to the *acquis communautaire*).
- ✓ Structural adjustment (central, regional and local administrations' capacity in building the structures needed for participating in and benefiting from EU co-operation).

Since the integration process proceeds simultaneously along these two dimensions, PA has to integrate the proper sequencing of measures. Otherwise, non-co-ordination of these activities limits both the state's involvement in the integration policies and the benefits of law and economic harmonisation.

The principle of subsidiarity leaves it to the MS to establish and regulate their PA systems, the scope of the PA's activities, and jurisdiction issues. Yet EU membership is far-reaching with respect to government operation and public service (e.g. public procurement or environmental protection). MS and PrM are subject to parallel divergent processes, integration and decentralisation, putting their government under the severe pressure of transferring certain powers to international organisations while at the same time delegating jurisdiction and autonomy to regional and local structures, closer to the citizen. The latter motivates civic participation as it implies organisational efficiency, flexibility and responsibility.

Co-ordination calls into question the **role of central governments**. While decentralisation minimizes central management command/control, co-ordination of various layers of government requires setting common values, vision/mission,

and criteria on which lower levels can rely. In the short run, the government loses control over the day-to-day delivery of public services, while at the same time being held responsible by the EU as well as by the citizens to ensure that the delivery of services takes place in a correct, fair and timely manner.

In the long run, however, governments are not only implementing and influencing the EU legislation, they are also subject to fundamental changes. Governments lacking efficient co-ordination mechanisms may be seen as unable to integrate, and thus to represent, the concerns of various interest groups, civic initiatives, social movements, etc.

All in all, effective participation in Brussels depends upon:

- ✓ the capability within a reasonable time to formulate clear policies, including the ability and willingness to consult with and include the interests of non-governmental parties in the formulation of national interests,
- ✓ the mechanisms of negotiations leading to striking a deal, and
- ✓ the ability to promote common interests among different factions/levels of government through a formalised line of communication.

Government efficiency depends also on its capacity to cope with possible conflicts between:

- ✓ Politics and professional administration/ elected officials and professional staff,
- ✓ Departments and various units inside government, and
- ✓ Formal processes versus informal procedures.

When tackling these conflicts, new MS have to increase their managerial and administrative capacities. Since PA in these countries tends to be highly politicised, and it is common that senior administrative posts are highly political rather than administrative, it is tempting to explore PA modernization as a political process rather than a technocratic one.

Yet, analysing the PA modernisation process as a pure managerial problem provides an interesting perspective: In coping with new responsibilities, government and public agencies hire more specialised staff with in-depth knowledge of particular aspects. Traditional hierarchical structures consider improvement solely through increasing the scale and adding more resources into existing institutional structures.

The fact is, however, that policy implementation and problem solving in individual cases are becoming increasingly complex, as solutions in one area require taking into account concerns in another. For example, when deciding upon an environmental protection measure (e.g. prohibiting the use of certain chemicals in fertilisers), law-makers must also consider the needs of the agricultural sector

(e.g. support to use other types of fertilisers or to introduce ecological farming). In other words, a growing number of problems cannot be handled in a single department or even sector; they require an interdepartmental and inter-institutional team of specialists working together. This applies also to routine tasks, which are managed in a top-down traditional chain of command.

Accession efforts proved that PA organisations have to act both hierarchically and non-hierarchically in order to solve all problems. Adopting customer-oriented services represents one of the biggest challenges in building new functional forms of government. This may become a driving factor in facilitating co-ordination inside government. Likewise, self-evaluation of institutional capacity of PA units countrywide may significantly speed up the process of knowledge management and performance improvements. For the moment, there is no political pressure and no credible tools in supporting such initiatives.

It appears that the majority of governmental agencies throughout PrM and new MS have limited institutional capacity in creating a generic model of modern PA management practice. Models of intra- and extra-co-ordination (i.e. with sub-national level government and non-governmental interest groups) partly exist and may become a point of reference for planning/implementing managerial improvements in the future.

Implementing future managerial improvements cannot be underestimated in the new MS where there is an inefficient, hierarchical system of internal communication and therefore virtually no institutional knowledge in PA building. This needs a partnership approach within organizations and the ability to share information with others adding to the development of new management cultures.

III.2.5 INSTITUTIONAL CO-ORDINATION FOR PRE-ACCESSION AND STRUCTURAL FUNDS

The accession negotiations provided a financial allocation of almost €22 billion for the new MS for the period 2004 – 2006. Preparations for utilisation of these Structural and Cohesion Funds were constrained by, *inter alia*:

- ✓ delays in the alignment and implementation of public procurement rules,
- ✓ delays in fully and properly defining the institutional setting for the management,
- ✓ confusion related to financial management and control of the funds,
- ✓ lack of accounting systems, and
- ✓ insufficient preparation of eligible projects.

The management of pre-accession instruments (PHARE, ISPA and SAPARD) and the enormous efforts undertaken by the prospective members to meet the difficult and complex requirements need to be maintained or even further strengthened. In addition, PA at all levels of government in the new (as well as the old) MS must prepare for the new procedures and requirements expected to be introduced in connection with the ongoing reform of the Structural Funds.

Within the framework of co-ordination of the pre-accession instruments, central public administrations were expected to co-operate and co-ordinate implementation of these funds by central and local government authorities and bodies. This required sharing of information, collaboration and empowerment of different governmental agencies and other stakeholders. The decision-making process related to the project selection, implementation and monitoring was highly centralised and assigned basically to designated units within the central administration.

The reason for this was often that central government authorities were afraid of losing influence if they delegated these powers to sub-national governmental bodies. While this reaction was perhaps understandable during the pre-accession phase, once EU membership has been achieved new MS cannot keep these powers for the implementation of, for example, the Structural Funds. This is because the EU regulations on the management of such funds require that fund allocation, project selection, project implementation, and payment and post-financial control functions be allocated to different authorities.

IDP EXPERIENCE IN POLAND

Experiences of the World Bank-funded *Institutional Development Programme* (hereinafter IDP) in Poland shows that only a systematic approach could improve public management. In other words, a profound diagnosis of the entire management system (including e.g. development potential and organisational set-up) can indicate areas of improvement. IDP methodology combines various analyses of the management systems at the national level in order to identify patterns to improve the legal framework for good public management. IDP has pointed out the following **weaknesses**:

1. There is a need for an evaluation methodology for the PA units (diagnosis of status of institutional development),
2. The tools supporting planning of systemic management improvements is limited to a narrow set of technical tasks and not covered by governmental policies,
3. The set of tools supporting implementation of the co-ordination management improvements is not complementary.

The implementation of Instruments for Structural Policies for Pre-Accession (ISPA, for further information http://europa.eu.int/comm/regional_policy/funds/ispa/ispa_en.htm) measures was slow due to delays in tendering and contracting phases, low quality of monitoring reports, and bad management of the implementing agencies.

Nonetheless, IDP found that PA preparation for efficient utilisation of EU Structural Funds based on utilisation of pre-accession funds was promising and recommended that relevant capacity is developed through:

- ✓ Promoting strong leadership, involving all management levels, and
- ✓ Increasing operational and corporate structure awareness and accountability.

In new MS, the governments have not been involved with detailed management systems apart from formulating a general framework for the financing and control systems. The question of the relationship between the elected bodies and public servants has remained unanswered. However, preparation for participation in the structural policies can strengthen the role of co-ordination in policy making. Therefore new MS were included in the National Development Plans 2004 – 2006 strategic planning in order to progress in this area. Thereinafter the responsible units/departments have produced an operational plan for a given strategic direction (i.e. a document that translated the strategies into concrete actions). Central government strategic planning presupposes the following to improve the horizontal co-ordination system:

- ✓ Building a coherent and consistent vision for the development of PA,
- ✓ Translating the vision into a set of principles of public policy and strategies integrated with the objectives of the government's socio-economic policy,
- ✓ Building capacity to improve soft aspects of co-ordination, raising ethical standards.

As for its co-ordination with the external environment, the government needs to:

- ✓ Be 'open' to input from functional units of PA from other states (especially new MS),
- ✓ Increase participation of managers in strategic decision-making,
- ✓ Co-ordination as a tool for improved quality of service,
- ✓ Enhanced cooperation with state players in an all-inclusive way.

III.3 CHANGING FUNCTIONS OF GOVERNMENTAL UNITS

As set out above, the environment within which governments operate is continuously changing, and the governments have to adapt to new roles and new types of responsibilities. For example, central government is becoming **decreasingly** involved with the day-to-day implementation of legislation and **increasingly** responsible for developing common policies and common frameworks for developing and implementing coherent and long term sustainable solutions. And to achieve this, central government must work and co-ordinate with all involved parties, both intra-government (i.e. horizontally) and extra-government (i.e. vertically with sub-national PA and non-governmental interest groups). In other words, central government's role is changing from an omnipotent maker and implementer of laws to a moderator and facilitator of socio-economic development, as well as a leader and organizer of public services delivery.

This process was recently launched in the new MS. Insufficient institutional capacity for management and functional improvements remains the primary obstacle in many new MS and PrM, where government co-ordination lacks a wider perspective. One of the missing elements in this context is inefficient exchange of information between policy makers and parliamentarians on the one hand, and on the other hand the authorities, which have to apply and enforce the law and the citizens who are subject to the law.

Lack of efficient sharing of information puts an extra burden on formulation of an integrated and coherent development policy. Having access to information and to give information to non-state players, such as interest groups and sub-state authorities, can be valuable for the state in question, particularly since they represent wider public interests in practical actions undertaken by public authorities.

The process of modernisation requires a significant number of costly and, at times, painful changes for society. In public statements, politicians in many of the EU Member States (both old and new) have a tendency to hold the EU, or "Brussels", responsible for the changes and their consequences. Preferable would have been instead to explain the real reason behind the changes and the hoped-for objectives in the medium to long term. Targeted information toward different interest groups and their local or nationwide representations and including them in the policy formulation and decision-making processes could give credibility to, and a sense of participation in, the integration process.

This, in turn, may contribute to a better understanding of the new MS interests, concerns and negotiation positions and give the citizens a sense of real participation. Another advantage will be that once a decision has been taken (whether at the EU or national level), the parties affected by the measure in question will be more ready to implement the measure in a correct and timely manner for the simple reason that they have been involved in the decision-making process.

Failures by governments to communicate with external players constitute an important problem also in the intra-governmental co-ordination. Without input from those directly affected by a given measure (e.g. those who have to implement the measure) or from those with relevant expertise (e.g. interest groups), the central government runs a risk of adopting unrealistic negotiation positions/policies/laws. The central government could alleviate this problem by establishing regular processes and procedures for exchanging information with relevant external players. For example, this could be through meetings and conferences, where both the state bodies as well as non-state parties impacted could give useful input that could facilitate the development of holistic and realistic political and legislative solutions. Interest groups may also be encouraged to prepare analysis, reports and proposals, which, although not legally binding, nonetheless could have political significance. Through such a process, the external players (and thus also at least part of the public) would be able to exert some influence on (and thereby also feel ownership of) the process of integration and the negotiation positions promoted by the government.

Information sharing and involvement in the national (EU) decision-making process may also help to organise a system of support for rank-and-file co-operation at the local and regional level (e.g. preparing/disseminating best practices models, including educational activities).

It may be concluded that creating efficient mechanisms of dialogue and public participation through information sharing and exchange may contribute to securing support from local and regional leaders as well as to increasing the public support for the integration process. The process may be analysed at two levels, namely stimulating public participation and smoothing the way for EU enlargement. Non-governmental organisations and economic self-government may be valuable allies in such activities, which, by disclosing their own interests and preferences, may influence the actions of public authorities.

The weakest point of government co-ordination is the (lacking) flow of information. It frequently happens that governmental units in one sector are not adequately informed about initiatives in other sectors of government that might have an influence on the other sector. This has also been observed between units within the same sector, and even within the same organisation. The lack of information is not only a horizontal issue. It is also a vertical issue. It is not unusual that government units do not receive – in some cases, they do not want to receive – feedback from the recipients of their activities or services, and thus they are not informed of such things as the impact of their activities or the needs of their clients.

What the democratic system needs in order to function correctly is institutional and social infrastructures, which bridge the gap between the government and the governed. In democratic countries, structures enabling an exchange of information and views between government on the one hand and civil society,

industry and labour organisations and political parties on the other bridge this gap.

The above can be illustrated by the below matrix.

AREA: Policy-making		
Issues	Problems, Barriers	Solutions, Processes
Resources / knowledge	<p>Highly qualified official and politicians with:</p> <ul style="list-style-type: none"> • Highly specialised expertise, but no or only little knowledge of real effect on the ground of initiatives, and/or • Highly specialised expertise in one area (e.g. agriculture), but no or only little knowledge of initiatives in other fields (e.g. environment or transport), which may impact on or be affected by the first mentioned initiative 	<p>Establishment of easily accessible, low cost knowledge resource, which can provide relevant and specific input/suggestions with short notice. Methods can include committees or written consultations.</p>
Information flow	<ul style="list-style-type: none"> • High level of legislative or decision-making activity at the EU level, causing many documents coming from EU in non-national languages (typically English, French or German) and with tight reaction deadlines • Responsible officials travelling a lot, and when home busy with reading documents and preparing reports/proposals for instructions upwards in own hierarchy 	<p>Establishment of standard consultation procedures, which can be activated by back-office support (e.g. junior experts or secretarial staff) either automatically or with little instruction by main the expert (or manager or politician). Procedures can include identification of interested/affected parties (e.g. other ministries, enforcement agencies, industrial organisations and/or other non-governmental interest groups) and inclusion hereof into an automatic mailing list.</p>
Culture	<ul style="list-style-type: none"> • No back-office function, i.e. colleagues dedicated to support responsible official • The expert and/or his manager or leader are "kings" in their field and fear competition • Lack of appreciation for teamwork, fear of "trouble" in others are involved, giving (unwanted) comments and suggestion 	<ul style="list-style-type: none"> • Establishment of teams responsible for certain dossiers • Reward team-working and communication skills

III.4 CO-ORDINATION AMONG GOVERNMENTS

Former candidate countries (today's new MS) failed to co-ordinate their negotiation efforts as a group. This does not mean, however, that horizontal co-ordination did not take place at all. High profile meetings of central governments and/or principal negotiators were organized within the frame of the Visegrad 4 Group and the Baltic States. These meetings enabled the participants to share expectations, experience and views.

But, the minor results of these meetings reflect not only the different interests of the PrM. They also reflect weakness of their institutional ability to strengthen consultation mechanisms. At the end of the day, this lack of commonality prevented PrM/new MS from improving their negotiation position and/or obtaining concessions and/or compromises in Brussels.

Insufficient co-ordination procedures coupled with a lack of common institutional ground also marked the accession negotiation process and sometimes led the negotiation teams at civil servant level and ministers and ambassadors at the political level to contradict each other.

As for the future, new MS and PrM need to develop open methods of co-ordination among leading institutions. Thus sharing opinions and formulating common positions, which represent their collective interests, will increase the possibility e.g. to benefit from EU membership. To this end, it should be considered to establish inter-institutional networks that can identify and resolve potentially conflicting interests. If not clearing up all disagreements such common structures may at least facilitate finding compromises.

III.5 FINANCIAL MANAGEMENT

There is no measurable, predictable and ultimately fair reallocation of public funds. However, financial management reflects in part the PA weaknesses presented above. An important assumption of the co-ordination development is the ability of government units to formulate their own financial needs through annual and multi-annual budgetary plans. An improved financial management through task budgeting and a multi-year investment plan require financial tools aimed at identifying major financial obligations and investment priorities. In other words, financial plans have to be developed within a strategic decision-making programme. Financial management includes identifying financial needs, procedures and skills, which can be acquired through the following:

- ✓ Setting up committees and taskforces,
- ✓ Conducting financial and budgetary analysis (task budgeting),
- ✓ Defining co-ordination goals,
- ✓ Identifying development goals,
- ✓ Prioritising implementation,
- ✓ Estimating costs of task implementation, and
- ✓ Implementation timing.

In PrM, financial and organisational aspects are usually dealt with separately. As a result, the planned tasks are under-funded as the process lacks financial forecasting/planning co-ordination. Failure of information flow in the area of financial management occurs primarily at the stage of implementation of project

management systems, during the preparation of a development strategy and of operational plans for the strategy. But rational methods and apolitical thinking pave the way for innovation. For example, if a unit adopts applicable technical expenditure projections, the practice becomes part of the budget process and promotes analytically driven assumptions. Recommendations for future activities in this area include:

- ✓ Mechanisms for financial partnership in common project implementation,
- ✓ Cooperation with neighbouring government units in preparing joint projects,
- ✓ Initiating international cooperation for joint project implementation.

Issues	Core area: Public expenditure and financial management
Resources / knowledge	The degree of efficiency of public expenditure management The impact of public expenditures and financial management on intra-governmental co-ordination on the national level The domains of responsibility among units of administration: the organisation of public expenditure and financial management (planning and executing the national budget)
Information flow	The flow of reliable information in order to predict the impact of the EU budget on the national budgets of the Member States The communication between Commission and administration units of the Member States The process of negotiation on amount of expenditures and their structure also in the light of benefits from the Structural Funds The information flow between ministry of finance and other ministries as necessary condition for successful planning of public expenditures
Culture	The procedures adjustments in order to fulfil the common EU standards in the field of public spending management The implementation of comparable and transparent procedures concerning public expenditures

Issues	Core area: Internal financial control
Resources / knowledge	Administrative staff qualifications and the awareness of the rules, mechanisms and instruments of internal financial control (within an organisation) The awareness of the general obligations of Member States and other requirements set out in EU directives and regulations on processes of management and control of EU funds and resources
Information flow	The flow of information concerning the procedures (instruments, mechanisms etc.) as well as results of the internal financial control The information on the division of the competencies and responsibilities between financial control and audit services at EU institutions as well as at the national level
Culture	The patterns of internal financial control systems: centralised (dominated by one office controlling all public expenditures) vs. de-centralised (autonomous audit units established within the ministries or external public agencies)

III.6 ETHICS – AS CHALLENGE IN CO-ORDINATION AND EVALUATION

PA in most new MS and PrM is perceived as corrupt and inefficient, and this perception may be supported to some extent by the fact that they do not have central agencies responsible for co-ordinating, managing and periodically reviewing policies on ethics and values within the PA. Main corruption **concerns** relate to:

- ✓ Unclear relations between politics and business,
- ✓ Inappropriate use of official functions,
- ✓ Misuse of public property, and
- ✓ Conflict of interests.

Problems have surfaced in relation to the **distribution of European subsidies**, increased interactions between the public and private sectors, growing number of partnerships related to major privatisation processes, workforce and budget shortages. Irregularities also originate from the quick but un-co-ordinated streamlining of regulatory requirements coming from Brussels.

Various studies of the management of ethic infrastructure throughout Europe indicated **shortages** in mechanisms ensuring consistency and integrity of government measures relating to ethics such as:

- ✓ Analysis of system weaknesses and trends,
- ✓ To-do-list of prevention measures in central governments units/agencies,
- ✓ Designation of agencies responsible for supervising ethics-related measures (e.g. ensuring consistency of laws and regulations), and
- ✓ Fixing of consequences (e.g. demotion, loss of position, fines) for proven unethical behaviour.

While a number of guidelines and recommendations have been adopted at both the international and European level, only a few of the new MS and PrM appear to have considered or adopted national policies which would enable systematic evaluation of shortcomings and advice for executive and legislative branches. An ethics infrastructure normally consists of a statement of values and standards of conduct. Furthermore, tools to promote and raise awareness of values, control of wrongdoing, and management/evaluation of ethics programs should be contained therein. This framework should also include statutory documents describing policies.

There is an urgent need to promote and encourage a common ethical culture throughout PA, including enforcement measures. The most pressing requirement is to determine the most vulnerable agencies linked to the state treasury, distribution of public funds and privatisation.

SAPARD MISMANAGEMENT IN ROMANIA

One of the pre-accession financial tools, **SAPARD** (Special Accession Programme for Agriculture and Rural Development), is focused on financing initiatives in the given areas, meant also as a preparation for the use of EU Structural Funds. In Romania the programme was perceived by groups of interests within local communities with political backup only as a new revenue source. This is backed by the following facts:

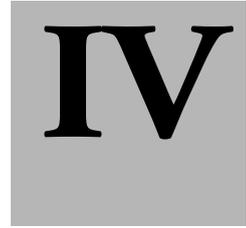
The implementing institution, Sapard Agency, was set up and authorized with a huge delay, since two ministries, Ministry of European Integration and Ministry of Public Finances competed during two years for its co-ordination. During this period also **conflicts of interests** were signalled. These instances included nepotism (e.g. evaluating spouse's project, consultancy within the same family), or political influence (i.e. tender offers favouring projects designed by the ones elected at the local level or by public officials or their close relatives holding shares in the project in question).

Only a portion of the available European money was spent, and the unspent 2000 – 2003 money, totalling €539.659 million, was added to the €150 million of 2004.

We shall highlight three major causes of these failures. **The first** explanation would be the **lack of professionalism** of the employees within the territorial agencies. These people were hastily trained, and selected using dubious criteria.

The second explanation is the absence of a national **information campaign** concerning the programme. The difficult access to relevant information, the intricacy of the language used in the specific documentation, as well as the lack of advertising represented significant flaws that led to failure. The lack of **communication among various Government departments and ministries** involved in the process also contributed to mismanagement of the Sapard Programme. Neither the Ministry of Agriculture, nor the Ministry of Environment or other relevant ministries supported the campaign. Furthermore, **communication** among the various departments was deprived of an **understanding** of regional development, framework or objectives. The responsible officials insufficiently know the contents of the SAPARD programme. This explains why the information has no national coverage and is limited only to 'informed' persons.

The third major cause was the issue of co-funding. Project winners are mostly applying the principle 'first we win then we see what we do'. They usually do not have money for advance payments, they wait and delay. Without invoices, EU funds are not released and the projects are postponed beyond the deadline stipulated. Statistics are merciless, and they underline the weak absorption of SAPARD funds by Romania.



Implementation Issues

Introduction

Implementation Guidelines

**The Role of the European Court of
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Conclusions

IV IMPLEMENTATION ISSUES

IV.1 INTRODUCTION

The implementation of EC law and policies by MS is a crucial element in achieving the goal of the overall Community project. The factor of administrative and implementation capacity has been frequently mentioned in accession negotiations and a portion of technical assistance programmes is devoted to building and/or strengthening administrative capacities/institutions.

The EC policy cycle can be followed through **four or rather five** main stages:

- ✓ preparation,
- ✓ decision or adoption,
- ✓ implementation,
- ✓ enforcement and/or control,
- ✓ feedback leading to preparation of a new or amending an existing policy.

The EC policy instruments are prepared by the Commission, in close cooperation with MS and consultation with the “organised civil society”, i.e. social partners, interest groups, associations of industries etc. The decisions on regular secondary legislation are then taken by the Council or the Council together with the European Parliament (in the so-called co-decision procedure, which today is the most frequent procedure).

The implementation stage in certain cases³⁷ is the responsibility of the Commission, but – as a rule – the Member States are responsible for implementation of EC law. The Treaty on European Community (hereinafter TEC) defines in Article 10 a general obligation for Member States to “*take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the Community’s tasks. They shall abstain from any measure which could jeopardize the attainment of the objectives of the Treaty.*”

However, this general obligation does not provide MS with clear criteria or benchmarks to develop and demonstrate effective implementation capacity. Moreover, the Community competencies are rather rudimentary in the field of administrative structures and procedures. Consequently, there is a lack of

³⁷ When the Council delegates the power of implementation on the Commission according to Article 202 TEC.

formal rules on the meaning of the concept of effective implementation and/or enforcement capacity.³⁸

The fourth stage, control, is a joint responsibility of the Community and Member States, namely the European Court of Justice and national courts as the most natural organs for individuals to solve problems related to EC law. To monitor the implementation and collect the feedback is again in the hands of the Commission that can then start another cycle.

38 Nicolaides, P: Enlargement of the EU and Effective Implementation of Community Rules: An Integration-Based Approach (paper). EIPA, 3. Dec. 1999, 34 p at p.1. The author defines (p.5) the implementation process in the following way: The implementation process, as opposed to the formulation process, of Community Acts, and in particular directives, consists of four stages: transposition, application, compliance and enforcement.

REGULATORY IMPACT ASSESSMENT³⁹ / A CHECKLIST TO ENSURE GOOD QUALITY EUROPEAN LEGISLATION⁴⁰

The Commission's impact assessments for Community measures will cover the EU. However PA in MS should also analyse the possible consequences of such measures in more detail through a Regulatory Impact Assessment (RIA). RIA should be prepared before a new European measure is adopted. Although developed for UK-specific demands, this checklist can be of general use. The cornerstones of RIA prepared for national legislation to implement an EC measure are:

Early Preparation	<p>Involve ministers and departmental lawyers at the outset. Discuss with your Departmental Regulatory Impact contact (who will contact the Cabinet Office Regulatory Impact Unit, CO-RIU).</p> <p>Keep in regular and close touch with the Commission and other stakeholders.</p> <p>Start thinking about the impact (costs and benefits) and the implementation of the proposal.</p> <p>Co-ordinate across government (Departments, Devolved Administrations, relevant agencies and UK Representation in Brussels).</p> <p>Ensure you have all the resources and tools to do the job, including training and guidance from your departmental EU Division.</p> <p>Ask the European Commission for an impact assessment. Be prepared to contribute UK data, if requested.</p>
Assessing the Proposal	<p>Examine the emerging draft proposal carefully. Consult lawyers early on.</p> <p>Develop a partnership with industry (including SMEs) and other groups likely to be affected. Consider your lobbying strategy and encourage them to do the same.</p> <p>Consult formally on negotiating options (using partial RIA)</p> <p>Look out for the results of Commission consultations. Consider carefully the Commission's impact assessment.</p>
Negotiating EC Legislation	<p>Agree on clear, realistic priorities. Agree upon regulatory impact with CO-RIU when clearing position with Cabinet Committees.</p> <p>Use robust arguments based on consultation. Always bear in mind the practicalities of implementing the proposal.</p> <p>Avoid ambiguities and fudging the issue to get agreement.</p> <p>Work with other MS (and European Parliament) to secure goals.</p> <p>When handling directives, put together a project plan for transposition.</p>
Implementing EC Legislation	<p>Refocus RIA to consider options for implementation.</p> <p>Consult formally on implementation options (based on refocused partial RIA).</p> <p>Set out a full range of options for ministers, with associated risks, using the Transposition Checklist as a guide.</p> <p>Avoid over or under implementation.</p> <p>Ensure that legislation presented to Parliament is accompanied by a Transposition Note</p>
Monitoring and Reviewing EC Legislation	<p>Remember to monitor the new legislation.</p> <p>A candidate for simplification or, in time, review?</p>

39 A Regulatory Impact Assessment (RIA) is a tool which informs policy decisions. It is an assessment of the impact of policy options in terms of the costs, benefits and risks of a proposal. The impact assessment considers the costs on business, charities or the voluntary sector, including the costs and benefits on consumers, the environment and the public sector.

40 Better Policy Making: p. 86

IV.2 IMPLEMENTATION GUIDELINES

The European Community pillar of the EU uses three binding **types of legislation** that are defined in Article 249 TEC, which must be implemented in MS. They are **regulations, directives and decisions**:

Regulations shall be directly applicable in all MS and there is no need to introduce them into the national legal system. It is enough that they are published in the Official Journal of the EU and in this way they become part of domestic legal systems. Having said this, MS may have to adopt new or adapt existing national legislation to ensure effective enforcement of the regulation, e.g. determining the relevant authority or authorities which shall apply/enforce the rules set out in the regulation in question.

A **directive** shall be binding – as to the result to be achieved – upon each MS that it is addressed to but shall leave to the national legislatures (respectively the competent authority) the choice of form and methods. This means that the national legislatures need to transpose a directive (i.e. to write the directive into national law), including the appointment of appropriate authorities, and give them appropriate powers to enforce the transposed directive.

A **decision** shall be binding in its entirety upon those to whom it is addressed and should be simply implemented. Apart from the legislative acts, also the European Court of Justice (hereinafter ECJ) decisions or judgments need to be complied with in all MS (i.e. legislation in MS should be in line with the findings of the Court even if a case does not directly concern it).

The provisions of a directive are often a compromise among several interests sought in harmonizing the statutes of all MS. Therefore the outcome of this time consuming and complicated procedure may still be unclear in specific aspects. In addition to this, the directives leave room for MS to act and the implementation in MS may differ from one country to another. However, the aim of the directive should be achieved properly in all MS. Directives specify a transposition period, i.e. a time limit by which the MS are obliged to adopt transposition measures and ensure proper implementation. MS are also required to inform the Commission on the transposition and how it was done, including what measures were used.⁴¹

A broad interpretation of Article 249 TEC could suggest that each MS has to devote adequate resources to ensure – de jure and de facto – that the objectives of the directives are achieved and the tasks specified in regulations are car-

⁴¹ The Commission as the Guardian of Treaties collects data on transposition and monitors implementation. Each year it draws a report on monitoring of the application of Community law.

ried out. However, there are **no guidelines** or Commission communication on which administrative and implementation capacities are needed or what correct implementation means. Therefore, a case-by-case assessment is necessary and a source in this respect is ECJ case law, not only on the implementation in terms of transposition into national law, but also on the legal implementation (i.e. actual application and enforcement of the contents of the directive).

UK TRANSPOSITION GUIDE⁴² / CHECKLIST FOR THE TRANSPOSITION OF EUROPEAN LEGISLATION

The Government's policy for the transposition of EC measures into UK law is to seek the best policy solution consistent with propriety, including legal propriety. Such a solution is not necessarily the least risky. In every instance of transposition of European legislation, officials (administrators and lawyers among them) should ensure that they have at least covered the points in the checklist below.

- ✓ Consult *Better Policy Making: A Guide to Regulatory Impact Assessment* and guidance on *Implementing Community Law*, both prepared by the Cabinet Office.
- ✓ Invite ministers, at the outset of the transposition process, to articulate clear policy goals for the transposition (of which minimizing burdens should be one).
- ✓ Describe to ministers the available options for transposition. Do not close off options before consideration by ministers.
- ✓ For each option, describe and assess any risks related to the achievement of the policy goals – including the legal risks. Assess both the likelihood and the magnitude of any potentially adverse outcome.
- ✓ Obtain legal advice on whether each option will achieve the results required by the directive and analyse the advice thoroughly with your lawyers. Clearly identify for ministers any doubts about the validity of any aspect of each option or any areas of uncertainty of interpretation in the directive itself.

In relation to legal risk:

- ✓ Set out your appreciation of the likelihood of a legal challenge being mounted, including by whom (i.e. who might have the desire and be in a position to do so) and in what manner (e.g. infraction proceedings, judicial review).
- ✓ Set out the likely timescale of such a challenge (e.g. when it might arise, how long it might take for the outcome to be known and how much time there would be for any adjustment to the regime necessary to comply with an adverse ruling).

42 Transposition Guide: p.19

- ✓ Give your assessment of the likely consequences of the challenge process (e.g. uncertainty during the challenge process, impact on business and Government, and the need to change systems to comply with an adverse ruling).
- ✓ Indicate who would be the defendant in such a challenge, and, if different, who would bear the final liability (e.g. the Government, public-controlled organisation, a firm, or an individual).
- ✓ Indicate the chances of success and specify what an adverse outcome might entail (e.g. invalidity of the UK legislation, claim for damages, financial penalty under Article 228/EC).
- ✓ Consult external stakeholders at appropriate stages.

EFFICIENT IMPLEMENTATION IN THE NETHERLANDS⁴³

The case law of the ECJ says, among other things, that the implementing measures must be clear, binding, and capable of making the individuals know their rights.

In accordance with the Dutch constitutional law, the transposition of directives is done following the usual legislative procedure (i.e. as a general rule through the adoption of statutory law, or a Royal Decree or a Ministerial Decree). This is based on statutory law and adopted by the Government and the Ministry concerned, respectively. It needs not be approved by Parliament. It appears that Dutch authorities have never considered the national case law to be a sufficient method of transposing directives.

To facilitate the process of transposition, certain special measures at both the legislative and the administrative level have been introduced, and detailed Legislative Instructions were written. Preparatory work for new legislation actually starts as soon as the EC Commission presents its proposal to the Council and Parliament (an impact assessment should be prepared by the Ministry responsible for the transposition of the directive) and the actual work starts immediately after the common position of the Council is published.

The procedure works rather well when just one Ministry is responsible. If two or more ministries are involved, however, it might prove to be somewhat slower, especially if the directive concerned leaves scope for a national policy upon which the Ministries do not necessarily agree. The implementation of many directives that deal with environment, food and health is typically confronted with this problem. For instance, although the Ministry for Environment strives for a better environment, its interpreta-

43 Donner et al : 1998

tion of a Community measure can conflict with the economic interests of the ministries of agriculture and economic affairs.

In situations when a directive is fully covered by existing national legislation, no legislative action of an MS may be needed. More frequently, a directive is only partly covered by existing national legislation. In such cases, the Explanatory Memorandum accompanying the implementing legislation must include a **table of transposition** or **concordance** clarifying to what extent existing national legislation (as well as implementing legislation itself) covers the directive. The tables of concordance deal with an EC directive provision by provision and require that a corresponding provision in (draft) national law be entered. The aim is to ensure that all directive provisions are (correctly) reflected in national law, in one specific implementing measure or covering more laws.

Tables of concordance – entries:

- ✓ Article (of EC Act)
- ✓ EU obligation (text of the provision)
- ✓ Existing national law (article of the relevant law or regulation or draft measure)
- ✓ Text of the transposing measure
- ✓ Fully in accord? (Yes or No)
- ✓ Administrative structure (responsible for implementation)
- ✓ Present stage of the legislative procedure

TABLES OF CONCORDANCE									
Draft law ... 2004,									
That amends Act No. 140/1998 Coll. on medicinal products and health care aids, on amendment of Act No. 455/1991 Coll. on self-employment activities as amended and on amendment of Act of the National Council of the Slovak Republic No. 220/1996 Coll. on advertising									
Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use									
1	2	3	4	5	6	7	8	9	10
Article	Text	Transposition method	Number	Article	Text	Concordance	Administrative structure	Note	or
A: 6	<p>TITLE III PLACING ON THE MARKET CHAPTER I Marketing authorization Article 6</p> <p>1. No medicinal product may be placed on the market of a Member State unless a marketing authorization has been issued by the competent authorities of that Member State in accordance with this directive or an authorization has been granted in accordance with Regulation (EEC) No 2309/93.2309/93.</p> <p>2. The authorisation referred to in paragraph 1 shall also be required for radionuclide generators, radionuclide kits, radionuclide precursor radiopharmaceuticals and industrially prepared radiopharmaceuticals.</p>	N		§ 20	<p>§ 20</p> <p>Marketing authorization of a medicinal product</p>				
						(1) Mass-produced medicinal products may be introduced to the market only if a marketing authorization (hereinafter "registration of a medicinal product") has been issued by			
						a) state institute, in case of medicinal products for human use, b) Institute of State Control of Veterinary Biopreparations and Medicinal Products in Nitra (hereinafter „Institute of veterinary medicinal products control“), in case of veterinary medicinal products, c) agency, in case of medicinal products listed in Annex 1.	F		
						§ 1 Initial Provision			
				Decree Ministry of Health SR 518/98		The group of mass-produced medicinal products that are subject to registration, comprises the following specific groups of mass-produced medicinal products:	F		
				§ 1		a) immunobiological drugs, b) radioactive drugs, c) drugs derived from human blood and human plasma, d) homeopathic drugs, e) drugs produced by high technology methods	F		

IMPACT ASSESSMENT IN LITHUANIA

The use of Regulatory Impact Assessment (RIA) is the method of collecting and analysing information on the potential positive/negative consequences of a regulatory legal norm. This method has throughout the last decade become the best practice in most OECD and EU countries.

The assessment aims at structuring thinking about possible consequences (both positive and negative) of a draft legal norm for economy, state budget, environment, consumers, firms, and other groups in the society that can be affected by the legal act. The use of RIA helps to avoid unexpected consequences of particular legal norms and public policies, to co-ordinate better the activities of the public administration institutions and to achieve better the aims of public policies. It helps to save resources (both budgetary and expenses of consumers and companies) and to strengthen the credibility and transparency of democratically elected governments. The use of RIA came to the attention of policy makers in Lithuania (and most other Central and Eastern European countries) during the process of EU integration. The programs financed by the EU, such as SIGMA, have been advocating the use of the RIA already in mid 1990s. Although there have been some cases of using the RIA to assess the impact of some policies (e.g. environmental policies' impact assessed by the World Bank), the main push came with the invitation to start accession negotiations.

The need to evaluate the potential consequences of EU regulations and directives in order to prepare well-grounded negotiating positions acted as the main incentive to start using the RIA more widely.

Therefore, institutionally, the European Committee under the Government of Lithuania promoted the use of the RIA, which was responsible for co-ordinating the accession negotiations and implementation of EU norms. In 1999-2000, the methodology for using RIA was prepared and the first comprehensive case studies were undertaken with external expertise (the main one being on the impact of the Low Voltage Directive).

At the same time, the RIA was undertaken by questioning PA institutions about the potential impact of EU norms, thus areas for deep RIA studies were identified. Later, RIA was introduced through several parallel activities: commissioning detailed studies of the RIA on the most costly EU norms (the implementation of which could require transition periods); over 20 studies have been conducted during the negotiations period, finalising the RIA methodology and administrative procedures for its use, not only for EU related legal norms but also for all draft legal regulations, training public administration employees to use RIA, preparing the legal basis for the extension of RIA to all new legal norms, using the results of the RIA

studies in the accession negotiations and for informing the general public on the effects of EU membership.

These processes are to be continued also beyond accession. However, although in February 2003 the Government decided to gradually introduce the impact assessment procedures (regulatory and fiscal) for all draft legal norms, the actual assessment is still very rare. This has several reasons: past legacies of focusing on the adoption of legislation rather than thinking about its potential impact, lack of resources and expertise, lack of political leadership to actually impose an appropriate conduct of impact assessment.

Although EU accession is likely to further strengthen the incentives for using the impact assessment of draft laws, it seems that it will take considerable political and administrative efforts to make it a daily practice of good PA culture in new MS and PrM.

IV.2.1 IMPLEMENTATION GAPS

An implementation gap⁴⁴ is the difference between the set of legal norms and the capacity to implement and enforce them according to EU standards. Whether old or new MS or PrM, all administrations suffer from implementation gaps to one degree or another. Furthermore, errors in implementation occur even in the most developed systems. There are several **reasons** for implementation gaps:

- ✓ **Lacking administrative capacities and culture:** As popular saying goes “it takes a year to pass a law, five years to change institutions and fifty years to change administrative culture”. Even if this timeframe is not precise, clearly it takes more time to build up necessary institutional capacities than to design and adopt legal framework.
- ✓ **Lacking financial resources:** Budgetary means may not be sufficient to support the design and strengthening of implementation systems.
- ✓ **Lacking comprehensive legal framework:** Adopted legislation must be supported by secondary legal acts, procedures and enforcement mechanisms before having real effect/impact.
- ✓ **Lacking co-ordination:** Traditionally, emphasis has been placed on sectoral rather than horizontal capacities; however, the latter is necessary to assure decision-making coherence and smooth implementation. Unfortunately, EU assistance design/implementation strategies reinforced to some degree the gap between sectoral and horizontal capacities.

44 OECD SIGMA Paper No 26 “Sustainable Institutions for the EU Membership”
www.sigmaxweb.org

- ✓ **Lacking co-operation of players:** Enforcement of the *acquis* relies on co-operation between public and private sectors, for which neither side in the candidate countries is sufficiently prepared.

However, as in any system, the difficulties faced by its integral parts affect the system as a whole. Understanding of the crucial importance of administrative capacities has led the representatives of member and accession states to include in the draft of the European Constitution a clause⁴⁵ on administrative capacity development as an opportunity for all MS to develop their capacities.

While sectoral capacity gaps are relatively easy to identify, horizontal co-ordination capacity gaps are less concrete and, consequently, more difficult to identify and subsequently to cover. Besides that, traditionally, line ministries in most PrM are strong and relatively autonomous institutions. Therefore, introduction and strengthening of horizontal mechanisms might be seen as interference, which may give rise to implementation difficulties.

45 Art I 33 and the following; <http://europa.eu.int/constitution/>

IMPLEMENTATION GAPS

A number of institution-building actions must be implemented in order to bridge an implementation gap. The following checklist may help to identify what actions are necessary in a specific situation:

aspect	Objective	Tools
Legal	To assess and ensure that: <ul style="list-style-type: none"> Existing legal framework and internal rules and regulations are adequate considering implementation challenges. 	<ul style="list-style-type: none"> Legislation review including laws, secondary legislation, instructions, regulations, procedures, bylaws, etc; define strategic sectors/policy, area, organisational plans, etc.
Functional	To assess and ensure: <ul style="list-style-type: none"> Rational functional alignment; Clear division of responsibilities; Clear departmental performance evaluation system; Co-ordination (in the sense of involvement of appropriate governmental and non-governmental organisations) 	<ul style="list-style-type: none"> Self-assessment and/or Functional review, Structural reorganization; Setting performance targets for the departments, etc.
Human	To assess and ensure that: <ul style="list-style-type: none"> Human capital (in terms of qualifications and experience) is adequately developed as compared to the objectives and strategic goals of the organisation; Personnel management systems and methods are help in resolving human resource related issues; Public sector organisation is an attractive and competitive employer in a labour market. 	<ul style="list-style-type: none"> staff prognosis; Professional development needs assessments Training and development planning Individual performance appraisal system; Development of motivation system; Creation/improvement/ maintenance of organisational image in labour market, etc.
Infrastructure	To assess and ensure that: <ul style="list-style-type: none"> Organisation is sufficiently supplied with technologies and equipment; Comfortable working conditions are created and maintained. 	<ul style="list-style-type: none"> Revision; Planning infrastructure development, etc.
Financial	To assess and ensure that: <ul style="list-style-type: none"> Organisation has sufficient funds at its disposal for the implementation of its functions and strategic plans; Organisation has secured sufficient funds for the implementation of institution building measures. 	<ul style="list-style-type: none"> Feasibility studies; Financial plans and prognoses, etc.

IV.3 THE ROLE OF THE EUROPEAN COURT OF JUSTICE

The judicial control and enforcement of all matters related to the European Communities (i.e. the *First Pillar of the Union*) together with law application throughout the EU is done by its judicial branch – the European Court of Justice as well as by national courts. Just like national judges become also EU judges, the national courts become Community courts.

The main task of the ECJ is to ensure uniform interpretation and application of Community law. To achieve uniformity there must be a single and final authority on the meaning of EC law and the Court has played an important role in shaping the legal and political structure of the Community. Since the EC Treaty is a framework treaty, the interpretation of its provisions is very important. It was the ECJ that has defined the EC legal system as an independent system based on principles of direct effect and supremacy, further extended to liability of the state for damages in case of non or wrong implementation of EC law. It is also the system where the national judges become European judges in the sense that they must apply the EC law.

In the field of administrative law the ECJ has defined a large number of principles by making reference to the general legal principles of administrative law common to the MS, as an ongoing process. Particularly important principles set forth in the jurisprudence of the European Court of Justice, which all MS must in turn apply domestically when applying EC law, among other things, are: *the principle of administration through law; the principles of proportionality, legal certainty, protection of legitimate expectations, non-discrimination, the right to a hearing in administrative decision-making procedures, interim relief, fair conditions for access of individuals to administrative courts, non-contractual liability of the public administration*⁴⁶.

It should be underlined here that in cases brought to the attention of the Commission by an individual complainant, and started by the Commission, the decision by the European Court of Justice has no impact on his/her rights, since the Court does not resolve individual cases (see IV.3.1.). It only obliges the MS to comply with Community law. It is, therefore, in the complainant's interest to make use of any remedy available at the national level, which as a rule enables him/her to assert his/her rights more directly and more personally (see IV.3.2.). When damage has been suffered, only national courts can award reparation from the MS concerned.⁴⁷

The ECJ decisions as a source of EC law are binding for MS and guide their behaviour especially in the practical implementation of EC policies and policy

46 SIGMA paper no 27, p.8

47 Europa.eu.int/comm./internal_market

decisions. The most frequent actions through which the Court can pronounce its opinions are so-called infringement procedures (see IV.3.1) and preliminary rulings (see IV.3.2).

MEANS LEFT TO THE MEMBER STATES

One of the areas of EC legislative activity is consumer protection (e.g. Directive 93/13/EEC – *Unfair terms in consumer contracts*) aimed at protecting consumer interests throughout the Union. One method to achieve this target is the implementation of regulations and administrative provisions of the MS regarding unfair terms in contracts concluded between seller/supplier and a consumer. Another method is to improve the information provided to the consumer on the applicable rules of law. The expression *unfair term* is defined and an indicative and condensed list of such terms is annexed. The directive was adopted in 1993 and was to be transposed into national law by the end of 1994.

In Case C-144/99, the Commission brought an action against the Netherlands for incomplete transposition of Directive 93/13 into national law claiming that it was insufficient in terms of method, form chosen, and in terms of its effects. The Netherlands defended itself by referring to previous case law of the Court, that specific implementation measures were not needed, if the national legal system already was able to ensure the aims of a directive. Moreover, the Netherlands argued that it had introduced a principle to interpret national legislation in conformity with the EC law. This would also apply to the directive in question if a case were to be submitted to a national court. Therefore, the protection of individuals is ensured. However, the Court concluded that this was still not providing a sufficient degree of clarity and precision needed for the sake of legal certainty. This applies especially in cases of special rights accorded to citizens (consumers) for their protection. For these reasons, the ECJ held that the Netherlands had failed to fulfil its obligations under this directive.

In another case, C-478/99, related to the same directive, the Commission considered that Sweden failed to fulfil its obligations, as it did not reproduce the list of unfair terms into the national legislation. Sweden however claimed that it had taken all necessary steps to make the directive fully effective, and the list of unfair terms was included in the commentary, i.e. the statement of reasons for adopting the implementing law. Since it is the legal tradition of Nordic countries, including Sweden, to take into consideration preparatory work during court proceedings, the list of unfair terms would be applicable. Moreover, most of the unfair terms were already held by Swedish courts as unfair by referring to the list. Sweden also showed that the members of concerned public were informed of the list of unfair contract terms in various ways. Another argument was that the annex itself did not confer rights

to citizens; hence it should be sufficient if implemented in other ways than by a provision in a statutory act. The Court concluded that the full effect of the directive can be ensured in a precise and clear legal framework even without publishing the Annex in the national legislation. The Court found that the Commission did not manage to prove that Sweden failed to adopt sufficient implementation measures and dismissed the case.

Conclusion: The Court takes into consideration the national legal system, which determines the implementation of Community provisions and its methods. Subsequently, the Court mainly assesses whether the EC measure is being given full effect.

IV.3.1 INFRINGEMENT PROCEDURE

Under the Treaties, the Commission is responsible for ensuring that Community law is correctly applied. The Commission can start so-called infringement proceedings under Article 226 EC⁴⁸ against a Member State, which in the eyes of the Commission violates Community law, in particular the principle of free movement of goods. Such violations occur when the MS in question has not transposed at all – or transposed incorrectly – the result that a directive is incorrectly applied. The Commission can try to bring the infringement to an end through negotiations with the MS in question, but – if necessary – is also entitled to bring the case to the ECJ.

The Commission learns of such violations, for example, through notifications received from MS, which report on transposition of directives. The Commission can learn of problems also through media or special reports, as well as from complaints that anybody from a Member State including any company or private person can submit. Such complaints can cover any state measure (law, regulation or administrative action) or administrative practice which the complainant considers incompatible with Community law.

Then the Commission may decide to follow the case or not. It allows the MS to present its views regarding the facts and the initial legal assessment of them as formulated by the Commission in a letter of formal notice. It is followed by a reasoned opinion (if no reply or the observations presented by the MS cannot be considered satisfactory), which expresses the Commission's view that an infringement exists and asks the MS to remove it within the stated time limit. However, the Commission may still try to negotiate with the MS. But

48 Article 226: "If the Commission considers that a Member State has failed to fulfil an obligation under this Treaty, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations. If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice."

at the end of the day, the Commission has the power to refer the case to the Court of Justice.

When the ECJ concludes that a MS has violated EC law, the MS has an obligation to comply with the judgement and bring the situation in compliance with the EC law. The Commission monitors also this obligation of MS and remains in contact with them to see whether and how they acted. If there is no action on the side of the MS and no promising progress, the Commission can start Article 228 TEC⁴⁹ proceedings that involve a fine for a Member State for non-compliance with the judgement.

IV.3.2 PRELIMINARY RULING

Individual or legal persons may lodge a claim against national (including regional and local) authorities with the national courts which – at least partially – contains interpretation question/s of the Community law and/or questions regarding the national implementation of Community provisions. If the national judge/s is/are not able to solve the interpretation question based on the given Community legal framework, the national court/judge has to refer the question/s to the ECJ as the final authority to interpret Community Law.

After the Court has registered the questions, the case is also brought to the attention of the MS and the Commission, which are both invited to express their opinion. The MS and the Commission can adopt party status in the preliminary ruling procedure. Following the oral hearing, the Advocate General provides the Court with his interpretation of Community law on the case in question. While the ECJ judges are not obliged to follow the Advocate General's advice, it is worth mentioning that the Court in the majority of cases follows the opinion of the Advocate General in deciding upon the case.

In its decision the ECJ thus analyses all the treaty provisions, secondary legislation and national implementation measures in respect to their conformity with the entire Community law. In addition to that it provides conditions

49 Article 228:

“1. If the Court of Justice finds that a Member State has failed to fulfil an obligation under this Treaty, the State shall be required to take the necessary measures to comply with the judgement of the Court of Justice.

2. If the Commission considers that the Member State concerned has not taken such measures, it shall, after giving that State the opportunity to submit its observations, issue a reasoned opinion specifying the points on which the Member State concerned has not complied with the judgment of the Court of Justice. If the Member State concerned fails to take the necessary measures to comply with the Court's judgment within the time limit laid down by the Commission, the latter may bring the case before the Court of Justice. In so doing it shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances. If the Court of Justice finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it.

This procedure shall be without prejudice to Article 227.”

or criteria that should be applied for the case in question. However, the Court does not decide upon the claim itself, it provides the national court sufficient answers on their questions to interpret Community law.

Once the ECJ has ruled the national court is obliged to apply the given interpretation. This procedure represents around 70% of the cases brought to the ECJ and the decisions are the source of common interpretative principles.

EC LAW IMPLEMENTATION/DECENTRALISATION (SPAIN AND UK)⁵⁰

Ensuring effective and complete implementation of EC obligations is more difficult in those MS where power is shared or devolved to one or more sub-national bodies. Spain and UK are examples of countries with regionalized internal structures delegating competencies to sub-national levels and with regional governments set up alongside the institutions of the unitary state. The competencies of regional governments in Spain include, for example, urbanisation, housing, public works, forestry, environmental protection management, cultural affairs, social welfare, commercial ports and airports. The state retains the competencies in immigration, defence, and the armed forces, the monetary system and international relations. There are two ways in which the State and the Autonomous Communities may share power in Spain. First the state may hold legislative power over a particular matter and the autonomous communities have executive power, or the state makes the basic legislation and the Autonomous Communities complement it through so-called developing legislation. As a result, both the State and the Autonomous Communities may transpose directives depending on their internal constitutional powers. The power to transpose EC law is not discretionary for either the State or the autonomous communities; it's a constitutional obligation.

In September 2001 the ECJ held that the Spanish government was in breach of Directive 96/62/EC on ambient air quality assessment and management. In particular, Spain had failed to designate competent authorities and bodies for the implementation of the directive as required by Article 3. Spain argued that, as environmental protection is a shared responsibility under the state and communities, it had complied, as the communities had made the necessary designations. The Court found that many of the provisions made by the Communities contained insufficient detail compared to what was required by the directive and Madrid was ordered to pay costs.

According to the Advocate General in cases 68/81 – 73/81, the implementation by legislative measures of a regional nature is acceptable by the Community; just as it is the state that is ultimately responsible for effec-

50 Ross-Robertson/ Crespo: 2003, p. 7-65.

tive and complete implementation. And at the same time, according to the established case law, the state cannot plead the internal circumstances in defence of failure to implement.

The implementation of EC obligations can be a source of conflict between central and decentralized/regionalized/devolved administrations. Firstly, because the regions are not involved in adopting the respective EU legislation, secondly, since the regional interests may differ from the interests of the country as a whole. For example, fishing and forestry play a significantly larger role in the Scottish economy than in the UK economy in general. Hence, changes in the Union's common fisheries policy have a much greater impact on Scotland than they do on the UK as a whole.

The result is that a sub-national government may not be that keen to implement an EC law, and yet, according to the ECJ it is the MS that is responsible. Hence, there needs to be some mechanism for the State to force sub-national governments to implement or comply with EC obligations. At the very least, there should be something to make sub-national authorities take responsibility for the consequences, financial or otherwise, of a failure to do so. The best would be to involve sub-national governments in the development of these obligations.

IV.4 SELECTED ECJ CASE LAW ON IMPLEMENTATION

The main goal of the Community has been the establishment and functioning of the common market, characterised by the Four Freedoms⁵¹. The ECJ has consistently worked towards a broad interpretation of the Freedoms and a narrow interpretation of exceptions, while at the same time stressing the principles of non-discrimination and proportionality.

In the following we look at a few ECJ cases that can help to define what "proper implementation" of directives means:

IV.4.1 NON-IMPLEMENTATION OF A DIRECTIVE

Where MS do not implement a Community directive at all or do not do so within the transposition period, there are two points to be mentioned:

51 Free movement of Goods, Services, Capital and Persons

i. Circumstances cannot be used as an argument

According to the ECJ case law, an MS may not use *provisions, practices or circumstances existing in its internal legal system* in order to justify a failure to comply with the obligations and time limits laid down in Community directives (C-259/94 Commission v Greece). For example, an MS cannot argue that it could not comply because the Parliament was dissolved and new elections were called (C-147/94, Commission v Spain), or that central government has delegated the legislative or implementation powers, e.g., to the regional authorities. The Court does not distinguish between the national bodies and levels – it is ultimately the (federal) State that is responsible for ensuring the implementation. Finally, MS cannot avoid a ruling against it, if amendments are made to national legislation after the expiry of the period given by Commission in the reasoned opinion (C-433/93 Commission v Germany)

ii. Member States cannot rely on the effect of directives

directives are addressed to the MS. However, the Court has held *that Community Directives must be implemented by appropriate implementation measures taken by the Member State* (C 433/93 Commission v Germany). However, the Court further stated that *in specific circumstances, in particular where a Member State has failed to take the implementing measures required or has adopted measures which do not conform to a Directive*, [the Court may recognize] *the right of persons affected thereby to rely in law on a Directive against a defaulting MS* (C 102/79 Commission v Belgium).

On the one hand, this means that an MS is obliged to adopt necessary implementing measures and cannot just conclude that the directives may have certain effects. On the other hand it means that the MS cannot rely on the fact that the directive (although addressed to the MS) has no direct effect if not implemented.

In another case concerning the appropriate implementation measures the ECJ clarified that **transposition of a directive is not always needed** as long as the implementation of the directive fulfils certain conditions.⁵² Thus **implementing measures are not indispensable, but national authorities must ensure full application of a directive** (C 144/99 Commission v Netherlands, see box above).

52 “*In particular the existence of general principles of constitutional or administrative law may render implementation by specific legislation superfluous, provided however that those principles guarantee that the national authorities will in fact apply the Directive fully and that, where the Directive is intended to create rights for individuals, the legal position arising from those principles is sufficiently precise and clear and the persons concerned are made fully aware of their rights and, where appropriate, afforded the possibility of relying on them before the national courts. That last condition is of particular importance where the Directive in question is intended to accord rights to nationals of other member states because those nationals are not normally aware of such principles*” (Case 29/84 Commission v Germany, paragraph 23, on implementation of a directive related to freedom of establishment and provision of services by nurses).

If the MS decides for alternative ways a directive, e.g. either by a collective agreement, or via case law, it must make sure that all aspects of proper implementation are given. In other words, **individuals must** not only be able to go to national courts and seek sufficient legal protection (either in administrative procedure or case law), they must also be made **aware of the legal situation**, and this in a way that the MS satisfies the requirement of legal certainty.

It follows from the ECJ decisions that MS do not have to adopt new laws implementing a directive and may rely on the general principles of constitutional or administrative law or a general legal context. However they must ensure that a specific legal framework in the area exists that provides for full application of any given directive. Therefore, it is doubtful whether implementation will be deemed as “sufficient”, if the implementation relies only on case law or voluntary implementation by management and labour or on a declaration from a certain enterprise. The full application requires an effective system of protection and legal remedies, especially when the rights are accorded to individuals, including the nationals of other MS.

IV.4.2 THE NECESSITY TO PROVIDE ADEQUATE REMEDIES

Although the MS is given a broad discretion as regards the implementation of a directive, the discretion is not without limits. Next to the Commission as “Guardian of the Treaties”, individuals must also be given **adequate legal remedies** to ensure the effectiveness of the Community directive, respectively of the national legislation implementing the directive. If discrimination or other violation of Community law is considered, the national court must interpret domestic legislation in conformity with the directive’s requirement to provide a real and effective remedy.⁵³

In the following case (C-14/83 Von Colson and Kamann v Land Nordrhein-Westfalen), the ECJ illustrated what is meant by “effective remedy”: Ms Von Colson applied for a job as social worker in a German prison. The job was however given to a male applicant, and Ms Von Colson started a court case against the prison administration saying that she was discriminated against on the grounds of her gender. As a remedy, she required to be appointed to a job or compensation in the form of six months salary. However the German law implementing the Equal Treatment Directive did not deal with directly effective remedies. ECJ then called on the national court to supplement the domestic legislature’s task by reading the national legislation in conformity with the directive’s requirement to provide a real and effective remedy.

In a later case the Court developed a **liability of state doctrine** according to which MS *are required to make good for damage caused to individuals through*

53 Craig, Paul – Búrca, Gráinne de: EU Law. Texts, Cases and Materials² 1998, p 199.

failure to transpose a Directive, provided that three conditions are fulfilled. First the purpose of the Directive must be to grant rights to individuals. Second, it must be possible to identify the content of those rights on the basis of the provisions of the Directive. Finally, there must be a causal link between the breach of the State's obligation and the damage suffered (C-6/90 and C-9/90 Francovich and Bonifaci v Italy).

IV.5 CONCLUSIONS

The duty to implement follows from the Treaty, which specifically mentions only the MS. However, the Court has extended this obligation also to the administrative and judicial bodies of the MS, and also to the enforcement.

From the ECJ case law, for example, it follows that:

- ✓ specific implementing measures are not absolutely necessary if the national legal system already secures the aims pursued by the directive;
- ✓ however, it is essential for national law to guarantee that the national authorities effectively apply a directive/regulation in full and that the legal position under national law is sufficiently precise and clear. As well, individuals must be made fully aware of their rights and, where appropriate, may rely on them before the national courts;
- ✓ the latter condition above is of particular importance where the directive in question is intended to give rights to nationals of other MS;
- ✓ the implementation measures have to be of certain strength, and cannot be changed at will, i.e. a legal framework must be established that provides for remedies in cases of breach of Community law in similar ways as national law does for national law infringements, damages etc.

Still the question persists: how to improve implementation within MS? The answer is partially in information – the information from states to the Commission on how EC law and programmes are practiced in the MS, and the information flow within the EU national co-ordination systems between decision/policy-makers going to meetings in Brussels. This also includes national practitioners dealing with the implementation and legislation itself as well as information for individuals so that they know their rights under EC law. The correct and timely implementation of EC law will certainly be a challenge for new MS and countries acceding to the EU. Effective communication and co-ordination of EU affairs on the national level, as well as participation of civil society in the whole process,

may help. The better the participation in the preparatory phase of the EU policy cycle, the more effectively an MS can act in the implementation phase⁵⁴.

To sum up, PrM are in a crucial phase of reforming their decision-making and their co-ordination structures. The scale of this endeavour is huge and implies a great deal of effort, especially in re-formulating and implementing new EU-related policies.

One of the major challenges rests in integrating line ministries and central government agencies. In the pre-accession stage, policies have been decided upon at the top level of the administration. Such an attitude was justified but is no longer possible while acting as an MS. Involvement in the EU decision-making process will be part of daily activities at almost every tier of PA, where it should be transferred as soon as possible.

PA within the EU has the ability to handle information, negotiate different interests and present them to the public in a concise way. This performance is only possible provided that it is applied to general policymaking and implementation. Currently, **although formalized structures do exist in new MS, no PA has developed appropriate horizontal communication, policy analysis, or interest representation capacities.**

Senior civil servants and politicians have to understand the new EU driven processes. They must adapt the broad policies of the EU to local needs and conditions. The PA in new MS is often 'locked-in' and lacking the managerial skills needed to implement co-ordination in a systematic way.

Although to a smaller extent, the problems described above (internal diversity, complexity, and lack of clear solutions) have characterized older MS too. The ten new MS have lower levels of co-ordination within government. As a result, EU enlargement increases the differences among MS, making the co-ordination of public policies even more difficult.

54 A new directive might state that an activity must be licensed but, depending on the risk involved, it might be appropriate to issue a ten-year licence rather than an annual one. This would significantly reduce the administrative burden on the industry while still achieving the directive's objective. Thinking about the practicalities early enough allows an MS to negotiate a degree of flexibility into the wording of a directive or regulation to help it fit with existing national mechanisms, and reduce the costs of implementation to both the public and private sectors. It is a requirement of Community law that EC legislation should be implemented in an effective, timely and proportionate manner. Where directives are concerned, the Government's policy is to transpose so as to achieve the objectives of the European measure on time and in accordance with other policy goals, including minimizing the burdens on business. The *impact assessment* should cover all the options for implementation, highlighting any risks attached, including the consequences of legal challenge, and the potential economic and other impacts.



Roadmap for Horizontal Co-ordination

Introduction

Human Resources and Knowledge

Flow of Information

Culture

V ROADMAP FOR HORIZONTAL CO-ORDINATION

V.1 INTRODUCTION

There are two important principles underlying the European Union namely: **solidarity** and **subsidiarity**.⁵⁵ As regards the former, it is further possible to distinguish between “*static solidarity*” which is linked to the **distribution** of income and wealth, and “*dynamic solidarity*”, which is linked to the **production** of income and wealth.

A practical example of European static solidarity could be the **Structural Funds**, which assist the MS, *inter alia*, in infrastructure projects, which indirectly impact upon the production possibilities. Structural funds and the respective infrastructure projects make it possible to establish production capacities in different parts of a country and enable the transportation of goods and people to and from such production facilities. However, such “static” measures are not enough. To ensure sustainable economic development, the EU also requires application of the principle of “dynamic” solidarity in terms of horizontal co-ordination at the governmental level to build an enabling environment for economic growth, employment, investment and innovation.

In its Lisbon Strategy, the EU has set out the aim to become the most competitive economy in the world. One of the crucial tasks for PA in this respect is a well-designed and conducted **innovation policy**.⁵⁶ This demands an inter-ministerial approach to co-ordinate sectoral policies such as fiscal, research, education, transport and environmental policies.

For new MS it is important to clarify and further develop the concept of “strategy of integration”. The concept is differentiated as to its ‘horizontal’ and ‘vertical’ dimensions. This allows both independent analyses of functional integration within sectors, and functional and political integration across and among sectors.

55 Subsidiarity should be interpreted on two dimensions, vertical and horizontal. Vertical subsidiarity deals with the distribution of powers among different levels of government and sovereignty: the EU, national states, regions and municipalities. In turn horizontal subsidiarity deals with the responsibility and freedom of human beings as well as social and economic powers. In other words, it has to do with the relations between state, society and market.

56 Claire Nauwelaers and Alasdair Reid, Learning Innovation Policy in a Market-based Context: Process, Issues and Challenges for EU Candidate Countries, *Journal of International Relations and Development* 5 (December 2002).

PUBLIC SERVICE AND ADMINISTRATIVE FRAMEWORK ASSESSMENT 2003⁵⁷

The annual assessment of public service and administration in the 2003 candidate countries could be summarised as follows:

- ✓ Civil services have not yet reached required levels of professionalism and the legal base is still incomplete
- ✓ Recruitment and promotion are not merit driven
- ✓ Salary levels and salary determination systems create risks of abuse
- ✓ Performance payment has been introduced into an unprepared managerial culture
- ✓ A sustained effort, involving International Financial Institutions and the EU is needed to raise salaries for main functions
- ✓ Efforts to reform senior administrative levels have put past progress at risk
- ✓ Non-pay motivational systems are under-developed and the constraints on corrupt behaviour are not complete
- ✓ Central capacities are not able to manage the overall evolution of the civil service and set common standards
- ✓ The incentives for civil servants do not encourage accountability
- ✓ Structural accountability has been weakened, but past errors are slowly being corrected
- ✓ Legal certainty is compromised by the poor quality of substantive law
- ✓ Effective general regulation of administrative procedures is delayed
- ✓ Administrative justice has not modernised
- ✓ Reform leadership at the professional level is weakened by diffuse responsibilities

Overall, the assessments indicate that while the candidate countries continue to make progress towards better aligning their systems of public administration with EU Member States norms and practices, there is still a lot to be done. On balance, it would appear that candidate countries must make further reform efforts to be able fully comply with the heavy demands of EU membership. Membership will place a considerable extra burden on each country and will undoubtedly require a very substantial effort from – and a major commitment of resources by – practically every sector of public administration. In turn, this will detract resources from other activities including implementing and sustaining needed reforms.

57 OECD SIGMA Public Service and the Administrative Framework Assessment 2003, www.sig-maweb.org

V.2 HUMAN RESOURCES AND KNOWLEDGE

A cornerstone in every management analysis is an assessment of the organisation's available human resources (hereinafter HR) and their knowledge and Know-how. HR influences to a great extent the quality of PA. The level of education, skill, experience and training – or, in other words, the quality of the staff – has an important impact on the administration's work. Not even the best regulations/provisions are able to ensure personnel's ability to carry out daily tasks efficiently. A crucial factor in terms of PA quality is **personnel management**. This includes decision-making and coherent implementation of actions in order to ensure the availability of the necessary staff – in terms of both quality and quantity – in the right place at the right time, and to ensure rational utilisation of such resources to fulfil the organisation's tasks and objectives. The main elements of HR management are:

- ✓ Staff recruitment systems,
- ✓ Personnel evaluation/promotion mechanisms, and
- ✓ Training.

Hence, improvements of the professional staff's knowledge and training policies have to be coherent. Adequate co-ordination tools should be defined/included in one document. The human factor is often underestimated and therefore seen as the weakest element of the administration chain. A transparent HR management policy may lead to an efficient, effective and responsive PA. In co-ordinating policy the approach to improve/develop personnel should equally include the **transfer of technical knowledge** as well as **to create awareness and understanding of the organisation's mission**, and of being at the service of the public. Each of these factors strengthens the positive image of civil service, contributes to re-building its ethos, without which the smooth implementation of the PA's responsibilities – mainly through daily contacts with citizens – would not be possible.

The results of an analysis of a practical case is given in the below matrix. A new MS has a long border with an old MS. Up until the date of accession the new MS had had numerous custom officials at each border crossing between the two countries. As of the date of accession to the EU, there will no longer be a need for all of these customs officers, since the new MS on that day will become part of the Customs Union, which is an integral part of the Common Market among the EU MS, and which prohibits customs duties or other levies to be charged for goods crossing internal EU borders.

The question arises what to do with the new unneeded customs officers? The fact is that the customs officers in question have a number of highly useful skills: They are used to having to learn new rules; they are skilled in inspecting/surveying; they are used to working outdoors; they are used to working with people;

and they are used to and good at working with numbers. It would be a waste to simply make the unneeded customs officers redundant.

If the minister or permanent secretary responsible for customs issues were a good manager with good co-ordination skills, they would consult with colleagues from other ministries. Through this, they would learn that, e.g., the ministry of agriculture needs to develop a new corps of inspectors to measure fields, count livestock and measure corn, fruit or other harvests in order to meet various EU requirements in the field of agriculture. The question then is, whether the now unneeded customs officers could help to fulfil this need?

AREA: Agriculture		
Issues	Problems, Processes, Barriers	Solutions
Resources / knowledge	<ul style="list-style-type: none"> No HR currently available in Ministry of Agriculture Hundreds of customs officers without work Customs officers know nothing about EU agricultural rules Customs officers are used to working outdoors, working with figures, etc. 	<p>The least expensive solution for the new MS would be to transfer customs officers to Ministry of Agriculture and to train them in the new field and tasks they will have to do.</p> <p>This will require co-ordination between ministry for customs, ministry responsible for PA and civil servants, ministry of finance and ministry of agriculture. This will ensure the transfer of people from one field to another, and that transferred officers do not lose income and receive appropriate training, and that budget allocations are made between ministries of customs and agriculture.</p>
Information flow	<ul style="list-style-type: none"> Rules and requirements flowing from EU agricultural policy and law are easily accessible Willingness from ministry of agriculture to disseminate information about EU rules 	
Culture	<ul style="list-style-type: none"> In the considered tasks within the Ministry of Agriculture, the new personnel should be able to work with farmers. Agriculture officials working in the field are used to working independently and without strict procedures, and regularly exchanging views and experiences with other colleagues Customs officers are used to discussing with and potentially making arrests. They are used to working strictly with clear rules and procedures within a strongly hierarchical structure 	

V.3 FLOW OF INFORMATION

The **flow of information** is a key issue for the effective performance of each organisational structure. At present, new technologies are transforming and intensifying social relations at all levels, from local to the international communication spheres.

The digital revolution and communication technologies have strongly influenced modern administrative systems throughout Europe. To benefit from the advantages of the new technology, **information management** must be introduced.

The quality and speed of information transmission is becoming one of the most important indicators of effective governance and economic competitiveness, determining the pace of social development.

A *sine qua non* with regard to the flow of information is common access to basic techniques of communication, as well as open access to information. Experiences from EU MS, which early on introduced openness and new technologies as fundamental principles governing the work of government and PA, show that transparency in the PA creates significant new opportunities, e.g. in terms of e-governance or e-procurement. Thus the following consequences may occur:

1. Increase in the number of participants in the decision-making process (quantitative change in matters of governance);
2. Increase in social differentiation, closely connected to the creation of other players (professional, cultural or religious groups) contributing to the increase in mobility of social groups and heterogeneity of community structures (qualitative change in matters of governance);
3. Increase in the number of communication channels and, as a consequence, enhanced citizen participation in control of government and in the decision-making processes.⁵⁸

The information technologies strengthen the position of those players who are in charge of information resources up to the moment of publication (whether electronically or on paper), and advanced technology enforces the position and powers of information managers within the process of decision-making. While this could be perceived as a technocratic elitism (i.e. experts' supervising information resources), in fact this scenario brings about organisational pluralism: While some may be technical experts, they depend on others to provide and/or use the information to be put into the various media. This ensures that none of the players are able to monopolise the decision-making process.⁵⁹ Thus, information exchange and co-ordination become very important and fundamental requirements.

58 Pawlowska 1995, p. 34.

59 Danziger/Dutton/Kling/Kraemer 1982, pp. 13-18.

In the mid-1990s, European countries developed **common principles** dealing with democratic processes in an **information society**. These principles assume a need for a fundamental technological shift in the areas of government, administration and decision-making processes. Among the pillars of this technological shift are the following:

1. Information sharing across government (collecting/storing common info);
2. Delivering Government information electronically to citizens/companies/customers;
3. Locating government information electronically, to stimulate the development of effective mechanisms improving accessibility for citizens/companies/customers.

V.4 CULTURE

If culture – understood as informal practices and patterns of actions – is not coherent with the respective regulations, even a high degree of administrative regulations (legal and procedural) can prove insufficient.

Predominant administrative cultures can be identified with the Weberian model of administration. PA of MS and PrM are strongly hierarchical and procedural, and the administrative systems of the post-communist countries are more procedure-oriented than result-oriented. This is illustrated by the unwillingness to undergo substantial changes and the desire to maintain the *status quo*. Moreover, this tendency of policy managerial positions throughout the PA, leading to frequent changes of decision-makers and, thus, of policies, generally leads to a lack of a clear vision and direction which in turn prevents development of clear strategies and action plans. Therefore PA typically reacts to present problems (ex post) and do not pro-actively take action to prevent problems (ex ante).

The technological changes in communication are not a guarantee for circulation of information. Administrative actions in the new MS and PrM can be characterised by so-called ‘legal acts inflation’ (e.g. duplicating regulations, multiplication of similar matter directives, recommendations and mutually incoherent procedures). A typical example of ineffective communication is the ‘red tape document’ i.e. a never-ending inflow of inter-office documentation leading civil servants to believe that in order to perform any sort of administrative action they need adequate supporting documents or written orders from their supervisors.

Another general tendency within administrations in the new MS and PrM is that policy thinking is driven by special units/departments rather than horizontally. Therefore, PA in these countries tends to promote specific interests rather than combining and co-ordinating broader interests into a single coherent policy/vision. If public interest in itself is not transparent and coherent – leaving

plenty of room for informal division – illegal outside influence is much easier to hide, allowing increased possibilities for corruption.

‘Cultural’ problems also encompass standards and moral norms, which may be transformed into values largely accepted in a given society. This becomes evident in the area of developing ethical attitudes and activities of public officials, which sets up social norms, patterns of actions, and introduces mechanisms/criteria of implementation and evaluation. In particular, it deals with the area of ethics and corruption prevention and encompasses such elements as standards of ethical behaviour, catalogues of ethical principles and values (e.g. ethical codes of conduct), detailed procedures of conduct, etc. However, despite being equipped with ethical codes of conduct and adequate procedures, if there is no ethical leadership from the side of policy-makers, PA civil servants and other PA staff may forget about their ‘moral compass’, which in turn may lead to a distortion of the civil service ethos. Public servants perceiving their position merely as an opportunity to pursue personal interests rather than the public interest will enjoy less and less public trust. At the end of the day public servants have to treat each citizen as a client and not as a potential enemy.

Issues	Core area: Civil Service
Resources / knowledge	The degree of the implementation of a professional and impartial civil service The quality of CS training and qualifications The knowledge about CS law and CS ethics codes and procedures The implementation of a civil service law and transparent procedures, principles and values regarding professional competence and political neutrality/loyalty, career system, etc.
Information flow	Accessibility to documents (legal acts, procedures descriptions, codes etc.) devoted to CS functioning Dissemination of documents on CS among administration staff
Culture	The influence of communist politico-administrative system legacy on present CS The scale of negative phenomena (e.g. corruption, politicisation, etc.) and their impact on the functioning of CS The patterns and manifestations of CS: coherence vs. fragmentation (different patterns at various levels and ministries) The practical implementation of common and transparent standards for personnel recruitment and management across national public administrations

VI

A Few Concluding Remarks

VI A FEW CONCLUDING REMARKS

1. Public administration should serve public needs by delivering services in a reliable, transparent, accountable, effective and efficient way. The PA systems in new MS and PrM still carry the burden of the pre-1989 structures marked by centralisation, hierarchy and lack of transparency. The steps to reform PA in these countries and overcome the historic burden include the establishment of ethic standards to prevent corruption, improvement of internal communication, utilisation of information technology, a transparent and performance-oriented human resources management.
2. The accession of 10 countries to the EU in 2004 and the prospect of accession for others also outline the need for changes. Countries need to reform their PA in order to get access to European funds and to represent their people's interest in the European integration process. However there were and are no formal administrative standards adopted by the EU. Good practices and methods to develop and/or improve PA management are discussed at different European forums, which may eventually lead to setting up of such standards in the future.
3. Although there are no established standards, a PA can be evaluated with the help of several methods such as functional review, CAF, or EFQM. Specifically for co-ordination issues, the Metcalfe co-ordination scale or European Commission's scoreboards for open co-ordination method are useful. This Guide offers a matrix as a way to visualise some issues of horizontal policy co-ordination, namely human resources and knowledge; information flow; and culture.
4. When discussing the need of horizontal co-ordination, we can distinguish nowadays three levels. The first is the national level in order to co-ordinate sectoral policies. The second is the EU level. MS policy-making co-ordination is needed on this level to gain a coherent position and thus succeed in the European negotiation procedures. And third, horizontal co-ordination is obligatory when it comes to national implementation of the Community legislation.
5. A cornerstone of the European integration process is the implementation of EU law in a sufficient manner and within reasonable time. However, MS enjoy broad discretion in choosing the exact modalities of implementation. In addition, neither European Commission nor any other EU body has issued particular guidelines for a correct implementation of Community law. But the discretion is not endless. Therefore the European Court of Justice is a very important source to define proper implementation.
6. At the end of the day, the integration can only take place if there is a common understanding of the necessity of policy co-ordination and the rule of law. Therefore it is of utmost importance for the PA to understand itself not

only as provider of public goods and services but as a national enterprise measuring its success – *inter alia* – on citizens' satisfaction in the delivery of public services. This includes its co-ordination abilities to aggregate and represent the public interest.

GLOSSARY

- Acquis Communautaire* (pp. 11, 16, 17, 23, 26, 33, 56, 57, 81) = The total body of EU law including values, practices, principles, and political objectives of EU Treaties, case law, declarations and resolutions of the EU, communications, positions, declarations, conclusions etc.
- Accession* (pp. 11, 14-19, 25, 28, 30, 35, 49-56, 59-61, 68, 71, 79, 92, 97) = The 1993 Copenhagen European Council promised „the countries in Central and Eastern Europe that so desire shall become members of the Union. Accession will take place as soon as a country is able to assume the obligations of membership by satisfying the economic and political conditions“.
- Acceding countries* (pp. 11, 16, 26) = As at December 2005 it is Bulgaria and Romania, i.e. the countries that signed an EU accession treaty.
- Auditing standards* (pp. 28, 35) = Auditing Standards do not have mandatory application but they reflect a ‘best practices’ consensus among Supreme Audit Institutions, each of which must judge the extent to which the standards are compatible with the achievement of its mandate.
- Administrative Framework Assessment* (p. 96) = OECD SIGMA Public Service and the Administrative Framework Assessment 2003, consolidated report, www.sigmaxweb.org
- Administrative law principles* (pp. 83, 89) = SIGMA paper no 27, s.8
- Baseline Assessment Indicators* (pp. 26-27) = Benchmarking tool for reforming PA in compliance with European standards, used especially during the accession process
- Candidate countries* (pp. 11, 17, 64, 81, 95, 96) = As at 2005 Turkey, Croatia and Macedonia are considered candidate countries, i.e. the countries that started or are going to start the EU accession negotiations.
- Common Assessment Framework* (pp. 35-40) = Developed in the late 1990s (new CAF-guidelines were approved in 2001) within the EU as a benchmarking instrument for PA institutions. The CAF method of QM is free of charge for any organisation inside and outside the EU. All necessary information to conduct a self-assessment by means of CAF is freely accessible on the websites of either the European Institute of Public Administration (EIPA) (www.eipa.nl) or at the sites of the German University for Administrative Sciences Speyer (www.caf-netzwerk.de), where ‘CAF veterans’ share experiences in benchmarking and identify possible partner organisations.
- Core areas of public administration* (pp. 25-26, 31) = SIGMA policy-making and co-ordination system: civil service, financial management, public procurement, internal financial control, and external audit.

- European Administrative Space* (pp. 24, 31) = Metaphor based on the fact that there are a number of administrative law principles created by EU MS and endorsed with an EU-wide enforceability mainly by virtue of the jurisprudence of the European Court of Justice. They serve as yardsticks to assess the ability of administrative systems to converge.
- European Employment Strategy* (p. 43) = Strategy meant to lead the implementation of the employment and labour market objectives of the Lisbon Strategy (http://europa.eu.int/comm/employment_social/employment_strategy/index_en.htm)
- ECJ jurisprudence* (p. 83) = The European Court of Justice is the ultimate instance for Community law interpretation. The Court provides his opinion in infringement procedures and preliminary rulings to guarantee the unified interpretation of Community law (www.curia.eu.int).
- Functional review* (pp. 45, 82) = See *Rebuilding state structures: methods and approaches*", in www.undp.sk;
- Governance Excellence Models* (p. 36) = Quality measurement instrument – Outcomes on society and governance mechanisms, <http://ccig.massey.ac.nz>.
- Human Resources Management* (pp. 14, 35-40, 97-99) = the personnel management of civil servants and other administrative staff to enhance knowledge and performance.
- Impact Assessment* (pp. 27, 31, 73, 79) = an estimation of the possible consequences of policy and regulatory proposals
- Implementation Gaps* (pp. 80-82) = difference between the set of legal norms and the capacity to implement and enforce them according to EU standards
- Institutional Development Programme* (p. 60) = IDP was implemented in Poland between 2001 and 2004 and dealt with detailed in-house analysis of public management systems.
- Internal and external audits / Auditing Standards* (pp. 28, 35) = INTOSAI Auditing Standards do not have mandatory application but reflect a 'best practices' consensus among Supreme Audit Institutions.
- Instrument for Structural Policies for Pre-Accession* (pp. 60-61) = ISPA is one of the three financial instruments (with PHARE and SAPARD) to assist the candidate countries in the preparation for accession (http://europa.eu.int/comm/regional_policy/funds/ispa/ispa_en.htm)
- Lisbon Strategy* (pp. 42, 95) = The ten-year strategy set by the European Council in March 2000, in Lisbon, to make the EU the world's most dynamic and competitive economy. (http://europa.eu.int/comm/lisbon_strategy/index_en.html)

- Management Excellence Models* (pp. 36, 41) = Benchmarking tool established by private institutions endorsed by the EU Commission. The EFQM Excellence Model was introduced at the beginning of 1992 as the framework for assessing applications for the European Quality Award. www.efqm.org
- Metcalfe Co-ordination Scale* (pp. 44-45) = Benchmarking tool to measure and compare administrative horizontal co-ordination capacity.
- New Member States* (pp. 46, 49, 52-53, 59-61, 63, 67, 80, 91-2, 100) = The ten countries who joined the EU on May the 1st, 2004: Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia.
- Open method of co-ordination - Commission Scoreboards* (pp. 18, 31, 42) = Co-ordination method set up in March 2000 by the European Council as a means for spreading best practices and convergence towards EU goals. (For a list of scoreboards see http://europa.eu.int/comm/lisbon_strategy/score/index_en.html)
- Principles of public administration* see *European Administrative Space*
- Prospective members* (pp. 11, 19, 60) = We understand the term prospective members broadly, encompassing the acceding countries, candidate countries, as well as potential future candidate countries, i.e. Albania, Bosnia and Herzegovina, Serbia and Montenegro (as at December 2005).
- Public Procurement* (pp. 18, 25, 28, 32-33) = is the acquisition of goods or services at the best possible total cost of ownership, in the right quantity, at the right time, in the right place for the direct benefit or use of the public-controlled organisations.
- Quality Management Tools* (p. 35) = Standard instruments promoting quality management in PA focusing on processes and results. See www.efqm.org, www.iso.ch, www.iipuk.co.uk, www.moderniseringsprogram.dk,
- SAPARD* (pp. 60, 68) = Special Accession Programme for Agriculture & Rural Development, one of the three financial instruments (with PHARE and ISPA) to assist the candidate countries in the preparation for accession (<http://europa.eu.int/comm/enlargement/pas/sapard.htm>)
- SIGMA* (pp. 12, 18, 23-30) = Support for Improvement in Governance and Management in Central and Eastern European Countries – a joint initiative of the OECD and the European Union (www.sigmaweb.org)
- Transposition Guide* (pp. 73, 75) = A guideline developed by the British Government to transpose EU legislation
www.cabinet-office.gov.uk/regulation/docs/europe/pdf/tpguide.pdf
- Twinning* (p. 33) = Institution Building instrument in which Beneficiary Countries chose an MS as partner for a project <http://europa.eu.int/comm/enlargement/pas/twinning/pdf/manual.pdf>)

LIST OF ABBREVIATIONS

CS	Civil Service
CAF	Common Assessment Framework
CAP	Common Agricultural Policy
CO-RIU	Cabinet Office – Regulatory Impact Unit
EC	European Community
ECJ	European Court of Justice
EFQM	European Foundation for Quality Management
EPA	Environmental Protection Agency
EU	European Union
FR	Functional Review
HR	Human Resources
IDP	Institutional Development Programme
IC	Interdepartmental Committee
ISO	International Standards Organisation
ISPA	Instrument for Structural Polices for Pre-Accession
MS	Member State
NDP	National Development Plan
OECD	Organisation for Economic Cooperation and Development
OMC	Open Method of Co-ordination
PA	Public Administration
PHARE	Poland and Hungary Assistance for Restructuring of the Economy
PM	Prime Minister
PPU	Public Policy Unit
PrM	Prospective Members
RIA	Regulatory Impact Assessment
SAPARD	Special Accession Programme for Agriculture and Development
SIGMA	Support for Improvement in Governance and Management in Central and Eastern European Countries
SME	Small and Medium-size Entreprises
TEC	Treaty on European Community
TEU	Treaty on European Union
WTO	World Trade Organisation

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