SIGMA

SIGMA – Support for Improvement in Governance and Management in Central and Eastern European Countries – is a joint initiative of the OECD and the European Union. The initiative supports public administration reform efforts in thirteen countries in transition, and is principally financed by the EU Phare Programme. The Organisation for Economic Co-operation and Development is an intergovernmental organisation of 29 democracies with advanced market economies. Phare provides grant financing to support its partner countries in Central and Eastern Europe to the stage where they are ready to assume the obligations of membership of the European Union.

Phare and SIGMA serve the same countries: Albania, Bosnia-Herzegovina, Bulgaria, the Czech Republic, Estonia, the former Yugoslav Republic of Macedonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia.

Established in 1992, SIGMA works within the OECD's Public Management Service, which provides information and expert analysis on public management to policy-makers and facilitates contact and exchange of experience amongst public sector managers. SIGMA offers beneficiary countries access to a network of experienced public administrators, comparative information, and technical knowledge connected with the Public Management Service.

SIGMA aims to:

- assist beneficiary countries in their search for good governance to improve administrative efficiency and promote adherence of public sector staff to democratic values, ethics and respect of the rule of law;
- help build up indigenous capacities at the central governmental level to face the challenges of internationalisation and of European Union integration plans; and
- support initiatives of the European Union and other donors to assist beneficiary countries in public administration reform and contribute to co-ordination of donor activities.

Throughout its work, the initiative places a high priority on facilitating co-operation among governments. This practice includes providing logistical support to the formation of networks of public administration practitioners in Central and Eastern Europe, and between these practitioners and their counterparts in other democracies.

SIGMA works in five technical areas: Public Administration Development Strategies; Policy-Making, Co-ordination and Regulation; Budgeting and Resource Allocation; Public Service Management; Financial Control and Audit. In addition, an Information Services Unit disseminates published and on-line materials on public management topics.

ON THE AGENDA

Upcoming Programmes

13-15 April 2000, Budapest, Hungary. 8th NISPAcee Conference, "Ten Years of Transition: Prospects and Challenges of the Future for Public Administration".
Contact: Viera Wallnerova, NISPAcee, Bratislava, Slovakia
Tel/fax: (421.7) 642.85.557,
(421.7) 642.85.357; e-mail: viera@nispa.sk;
website: http://www.nispa.sk/. In English.

4-6 May 2000, Wigry, Poland. "Ethics in the Public Administration. Prospects and Challenges for the Future for Local Governments".
Contact: Patrycja Suwaj, Project Manager, School of Public Administration in Bialystok (WSAP), Poland.
Tel: (48.604) 96.67.48; e-mail: patsuvaj@friko7.onet.pl or wsap@falco.man.bialystok.pl . In English and Polish.

10-12 May 2000, Lisbon, Portugal. "First Quality Conference for Public Administrations in the EU: Sharing Best Practices".
Contact: Ana Neves, Lisbon Congress Centre, Portugal.
Tel: (351.21) 360.1408; fax: (351.21) 363.9450;
e-mail: anan@aip.pt. In English.

15-26 May 2000, London, UK. "When Citizens Complain: The Role of the Ombudsman in Improving Public Services".
Two-week international study programme organised by Public Administration International, London, UK.
Tel: (44.20) 7242.3007; fax: (44.20) 7242.2007;
e-mail: pai@public-admin.co.uk;
website: http://www.public-admin.co.uk/pai. In English.

3-14 July 2000, Florence, Italy. "Good Governance and Administration in Europe's Integrated Market". 11th Session on the Law of the European Union.
Contact: Academy of European Law of the European University Institute, Florence. Tel/fax: (39.055) 468.5523;
e-mail: ciomei@datacomm.iue.it;
website: http://www.iue.it. In English.

14-19 July 2000, Tallinn, Estonia, NISPAcee Summer School 2000: Ethics and Responsibility.
Contact: NISPAcee, Bratislava, Slovakia.
Tel/fax: (421.7) 642 85 557; e-mail: viera@nispa.sk;
website: http://www.nispa.sk/news/events.html. In English.

Please note that not all of the programmes included in this calendar are open to every public administration practitioner or the general public. Details are provided directly by the organiser, who may be contacted for further information. If your organisation is planning an event, please send details to SIGMA (address on page 2). A more complete calendar of events may be found at: http://www.oecd.org/puma/sigmaweb.

SIGMA

PMF

Public Management Forum

A Bimonthly Newsletter for Public Administration Practitioners in Central and Eastern Europe

Building Robust National Institutions

European Parliament and the Enlargement Process

Finland Trains Public Servants for the Duties of Membership

European Courts Expand Citizens' Judicial Protection

Forum Focus

EU Ombudsman Tackles Poor Administration

Vol.VI - N°1- 2000

Phare

OECD OCDE

Administrative Capacities for EU Membership

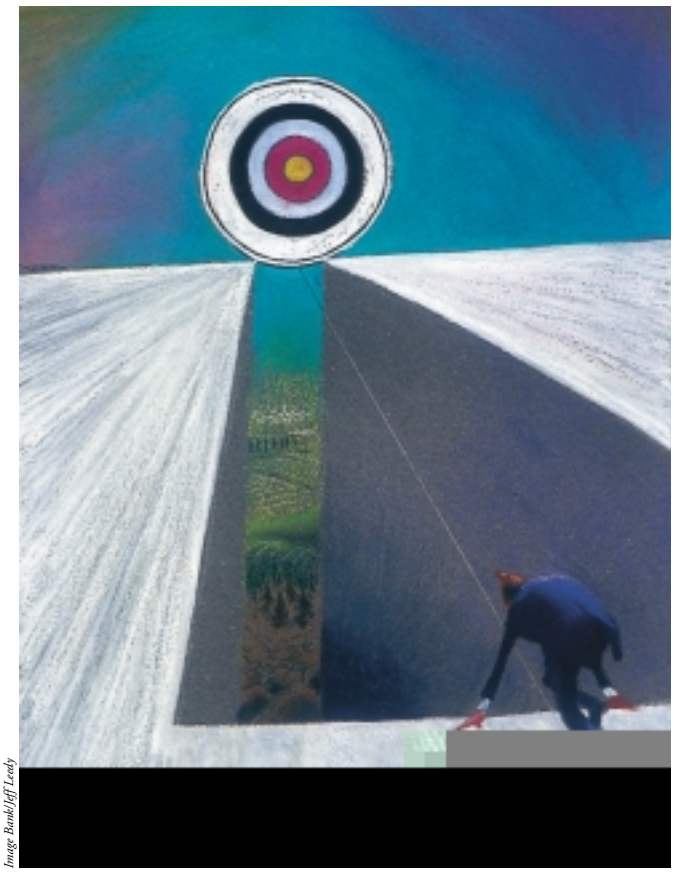

Image Bank/Jeff Leedy

Accession is a project with a clear end – membership of the European Union. But, as the Copenhagen criteria (in summary: democracy, the rule of law, a market economy, capacity to resist competitive pressures and capacity to take on the obligations of membership) remind us, membership carries obligations as well as benefits. Membership requires permanent, continuous, intense, high-level involvement of national governments and administrations in the ongoing work of the Union. Accession focuses energy around an event; membership is for the long-term. If countries focus all their energy on the event, they may fail in their preparations to become effective Members.

"Being" Versus "Becoming"

At the **policy** level, EU accession is mainly the work of special task forces, working on pre-determined tasks within pre-agreed programmes to specific deadlines. Membership demands daily involvement of policy bodies of elected and un-elected officials in a fast changing policy environment characterised by complicated policy networks and trade-offs. This is the essence of life in the Union.

At the **implementation** level, accession requires preparation of systems to apply the *acquis communautaire*, the body of European legislation. Membership means effective implementation and enforcement in daily life, as well as the regular updating of systems to incorporate new rules and jurisprudence of the European Court of Justice.

Building Sustainable Institutions

During the accession phase, candidate countries are guided by the need to meet given requirements such as adoption of the *acquis communautaire.* While this is difficult, prospective Member States confront the even heavier task of ensuring that

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PMF
Public Management Forum

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Σ

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PMF's Uncertain Future

The European Commission's Phare Programme is the principal contributor to SIGMA. The current Convention between the European Commission and the OECD regulating SIGMA's operations will come to an end in December 2000. Negotiations are underway on the nature and geographic reach of SIGMA's support to good governance from 2001 onwards, and on programme financing. It is now clear that financial support to SIGMA for EU candidate countries will be significantly lower and will not include financing *for Public Management Forum*. We are currently discussing continued collaboration with other Comission Programmes. The OECD does not have sufficient resources to fund *PMF*; so, unless new funding is found, *PMF* will cease to publish in the coming months.

SIGMA launched *Public Management Forum* in the spring of 1995 in response to requests from central and eastern European countries for information on public administration developments in other countries, especially those in the region and in Western Europe. The ensuing five years have witnessed considerable change in these countries, which has increased the demand for information. A key aim in creating this newsletter was to stimulate an exchange of experiences among public servants in Central and Eastern Europe, and between these individuals and their counterparts in other democracies. Such an exchange has been critical to the building of vibrant networks linking professionals across borders, and to encouraging European integration. The newsletter's readership now exceeds 10,000.

Based on the feedback we have received, *PMF* has succeeded in its aim. The newsletter has shed light on a variety of strategies and tools that are being used to strengthen core management systems of governance, and on the priorities that different countries have taken in approaching this major endeavour. Government reformers have drawn upon the articles, contacts, conferences and publications cited in *PMF* to take their work forward. Opinion formers in and outside of public institutions have through this newsletter become more aware of the inseparable link between a professional public administration and the consolidation of democracy, the rule of law, and free markets.

As European integration has evolved and intensified, *PMF* has adapted, bringing into focus the expectations of the European Commission and EU Member States for the candidate countries. Recent issues of PMF have set forth the standards of administration that new Members will have to uphold in order to be reliable partners in the Union. The newsletter has also highlighted the critical role of institution building in the economic and democratic renewal of South Eastern Europe and continues to do so.

I wanted to take this opportunity to inform you as a regular reader of *PMF* of a situation that is likely to affect the newsletter. SIGMA is now actively looking for new funding, especially from multilateral insitutions and major bilateral donors, to preserve *PMF* in some form. We would welcome ideas from readers on PMF's contribution up to now and how it might be continued.

Bob Bonwitt, Head, SIGMA Programme

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Administrative Capacities for EU Membership

the new arrangements are sustainable, including in budgetary terms. The capacity to implement the *acquis* and ensure the necessary judicial protections and enforcement systems must continue to function according to the standards of the current Members even when the pressure of accession has been removed.

The "European Construction" advances partly through the multitude of contacts between national and European officials. Participating in these networks is a heavy drain on stretched national administrations, but it is a vital mechanism, helping to anchor membership and providing an important channel for the creation of the "European Administrative Space". Although accession requires the involvement of a wide policy community, membership requires even greater strength in depth.

If a new Member State lacks capacity to comply with the rules, other Members may be put at risk. It may also be costly for the Union as it may generate additional burdens on the control institutions, such as the European Courts of Justice and Auditors. A Member with inadequate administrative capacities may be subject to fines or compensation requirements. But the real cost to the new Member will be opportunity losses from ineffective participation. The importance of ensuring reliable administrative capacities cannot be underestimated.

This issue of *PMF* addresses areas in which candidate countries need to develop their administrative and judicial capacities, and highlights some of the expectations of pivotal European institutions.

Implementing European Policy at the National Level

As a general rule, and with few exceptions, the European institutions do not implement the EC Treaties and the *acquis*. Indeed, the tasks of implementation and enforcement lie with the national administrations of Member States in accordance with the principles of "structural subsidiarity" and "loyal and effective co-operation".

The European Court of Justice (ECJ) has had a major influence in defining European notions of "public administration" and "public sector". It also has established standards for managing public services, set common principles for public administration within the Union, and contributed to greater intervention by European institutions into the economies of Member States.

On page 4, the President of the European Court of Justice, Gil Carlos Rodríguez Iglesias, describes developments in European law over the years, and underlines the key role of Member State courts in shaping the EC legal order. He also draws attention to the dependence of a well-functioning EC legal system on the strength, effectiveness, and co-operation of national courts and the ECJ. The gradual development of the supranational legal order of the European Union has led to enhanced protection of the rights of European citizens and strengthening of the powers of the judiciary in the Member States. The ECJ plays a key role in these developments.

Robust Institutions for EU Membership

On page 6, Elmar Brok, Chairman of the European Parliament's Foreign Affairs Committee, stresses the need for national institutions to function effectively in order to manage membership. The European Parliament will give its consent to each and every admission to the EU based on factors including whether the institutional reforms undertaken by candidate countries are sustainable and of sufficient quality.

The European Commission's 1999 Regular Reports on progress towards accession by candidate countries clearly show that there remain important gaps to be filled for countries to be able to meet these criteria. Shortcomings identified in the reports point to the need for candidate countries to clearly embed the rule of law and legal certainty of official decisions in administrative law, to provide adequate enforcement by an independent judiciary, and to strengthen their accountability systems.

The rule of law calls for public administration to operate on a firm legal basis, respectful of citizens, and accountable in its actions. Curbing maladministration in European institutions and ensuring that these institutions are accountable to the citizens of the Union are key roles of the European Ombudsman, Jacob Söderman. In Forum Focus (page 8), Söderman describes efforts to forge a "fundamental right to good administration" at the EU level.

On page 12, Juhanni Turunen, Permanent Under-Secretary in the Finish Ministry of Finance, describes his country's extensive training of civil servants to prepare them both for EU membership in general, and for the demanding task of hosting the EU Presidency. Turunen's article addresses such issues as sequencing and content of training and suggests what lessons can be learned by aspiring Members.

If a new Member State lacks capacity to comply with the rules, other Members may be put at risk. It may also be costly for the Union as it may generate additional burdens on the control institutions, such as the European Courts of Justice and Auditors. A Member with inadequate administrative capacities may be subject to fines or compensation requirements. But the real cost to the new Member will be opportunity losses from ineffective participation.

Europe's Future at Stake

Insufficient administrative and judicial capacities in new Member States could impede progress of the "European Construction". It is because of the serious consequences of incomplete development of administrative capacities that we dedicate this issue of *PMF* to EU perspectives on what candidate countries can anticipate as they move towards accession. Representatives of some key EU institutions responsible for supervising application of the *acquis* have kindly volunteered to share their reflections on this important concern. In the next issue, we will look at what aspiring EU Member States are doing to develop these capacities to support membership, and what they see as the greatest priorities and challenges in the process. Ongoing efforts to reform structures and processes within the European Commission aim to make the Commission more efficient and to prepare it for enlarged membership. ■

For more on institution building for EU accession, see SIGMA Paper 26: Sustainable Institutions for European Membership, *1998, and* SIGMA Paper 27: European Principles for Public Administration, *1999.*

Judicial Protection of the Citizen under European Law

by Gil Carlos Rodríguez Iglesias

Courtesy photo

Gil Carlos Rodríguez Iglesias

European Community law has contributed to a steady expansion of judicial protection of Member States' citizens. Upon accession, EU candidate countries will be expected to contribute to uniform and effective functioning of the Community legal system by, among other things, ensuring that their national courts are strong and effective.

The success of European integration has largely been due to the respect given to the rule of law. One of the most striking features of the process of integration has been the important role played by the European Communities and the Court of Justice in particular, in the widening and strengthening of the judicial protection of the rights of the citizen.

Under Article 220 of the EC Treaty, the Court of Justice of the European Communities (ECJ) is specifically entrusted with ensuring that in the interpretation and application of the Treaty the law is observed. The ECJ exercises its jurisdiction by means of a number of judicial procedures provided for in the Treaty:

- the procedure for finding that a Member State has failed, either by omission or by commission, to fulfil its obligations under Community law;
- the action for annulment, whereby legislation and decisions adopted by the Community institutions can be challenged; and
- the preliminary reference procedure, whereby national courts can refer questions of validity and interpretation of particular provisions of Community legislation to the Court.

The ECJ shares the function of ensuring that Community law is observed with the Court of First Instance (the Community court set up in 1989) and, above all, with the courts in the Member States. Since such decentralisation could risk jeopardising the uniform interpretation of Community legislation as a result of the differing interpretations given by the courts in the different states, the purpose of the preliminary reference procedure established by the Community Treaties is precisely to ensure the uniform interpretation of Community law.

These preliminary ruling proceedings constitute a step in the main action before the national court or tribunal. The system is based on a strict separation of tasks between the national court — which is entrusted with settling the dispute between the parties and applying Community law to the case before it — and the Court of Justice, whose task is restricted to interpreting Community law or, where appropriate, reviewing the validity of a piece of Community legislation or a decision taken by one of its institutions.

Three Fundamental Principles

The central role played by the national judge in the application of Community law is a direct result of the identification and development by the European Court of Justice of certain fundamental principles. These are the principles of **direct effect**, **supremacy**, and **state liability** for loss or damage suffered as a consequence of a breach of Community law.

The principle of **direct effect**, identified in the *Van Gend en Loos* judgement in 1963, provides that individuals may rely directly on rights conferred upon them by Community law in national legal proceedings. They may do this without any need for specific national legislation, provided that the Community law texts at issue are sufficiently precise and unconditional.

The principle of direct effect constitutes the expression of the concept of Community law as a legal order whose subjects are not only states, but also individuals who hold their own legal rights and obligations created directly by the Community legal order. These are rights that the national courts and tribunals must protect. This concept has proven decisive in subsequent development of the Community legal system.

Similarly, it is up to the national judge to ensure the respect of the principle of **supremacy** of Community law. According to the doctrine of supremacy, all national judges have to apply Community law in its entirety, and are therefore under an obligation to disregard any conflicting provision of national law, whether adopted before or after the Community provision, in order to protect the rights conferred on individuals by Community law.

Finally, the national judge is responsible for applying the principle of **state liability** for breach of Community law provisions that has caused loss or damage to individuals. In accordance with this principle, individuals who have suffered loss further to a Member State's failure to comply with Community law may claim damages in the national court provided three conditions are fulfilled. These conditions are that: the Community provision at issue was intended to confer rights upon individuals; the breach committed by the state was "sufficiently serious"; and there is a direct causal link between the breach and the loss suffered. It is the national court's task to ascertain whether these three conditions are fulfilled.

Common Principles Across Member States

Apart from these three principles, which are specific to Community law, the general principles of law common to the laws of the Member States are also one of the main tools of judicial development of Commu-

nity law, and are applied throughout Community law. Indeed, the use of general principles common to the laws of the Member States in Community law is a very important expression of the convergence and interaction between different legal systems. In this respect, comparative law plays an important part in the process of judgement making at the Court.

Effective judicial protection at the national level constitutes the basis for the principles of direct effect, supremacy and state liability. The national courts are an integral part of the Community legal order. So much so, that in cases in national courts involving Community law, national procedural rules apply. This is so because it is understood that in order to ensure the protection of the rights that citizens derive from the direct effect of Community law, the procedural conditions cannot be less favourable than those relating to similar actions of a domestic nature and cannot make the exercise of those rights excessively difficult.

But Community law has limited the scope of national procedural autonomy progressively so as to accommodate the requirements deriving from the principle of effective judicial protection. One consequence has been that any administrative decision adopted by national authorities, and which applies Community law, has to be reviewable and subject to judicial control. This right to a judicial remedy is a fundamental principle inherent to Community law. This includes the right to receive the reasons from the national authority for every administrative decision upon which the effectiveness of judicial control depends.

The most illustrative example of the application of the principle of effective judicial protection is in the context of interim measures proceedings. In the *Factortame I* judgement of 1990, the Court recognised that under Community law the national courts had to have jurisdiction to grant interim relief from the effects of a rule of national law which was allegedly contrary to Community law (pending a ruling on the corresponding preliminary question on the interpretation of the Community law rule from the Court) even though they did not have that jurisdiction under national law.

Moreover, in the *Zückerfabrik* judgement of 1991, the ECJ recognised that national courts may order the provisional suspension of the effect of a piece of domestic legislation adopted in application of a Community rule where the validity of the Community law rule is in doubt (provided the question on the validity of that rule was referred to the Court by the national court).

The most interesting aspect of the case law on interim relief is that it has resulted in empowering national judges to grant relief that they would not necessarily have had jurisdiction to do under national law, and even requires them to grant relief under Community law that they would not be allowed to do under national law.

The Court's boldest developments of Community law principles have come about as the result of the initiatives of the national courts…
The challenge for the future lies in the accession of the new Member States. The uniform and effective functioning of the Community legal system very much depends on the strength, effectiveness and co-operation of all of the national courts in those countries.

Contribution of National Courts

The Court's boldest developments of Community law principles have come about as the result of the initiatives of the national courts. In identifying the relevant issues and referring them to the Court and often suggesting explicitly or implicitly the manner in which the questions raised should be answered, the national courts have played a major role in the shaping and the development of the Community legal order.

The challenge for the future lies in the accession of the new Member States. The uniform and effective functioning of the Community legal system very much depends on the strength, effectiveness and co-operation of all of the national courts in those countries.

Since Community law has proved to be a factor in the expansion of judicial protection and also in enlargement of the powers of the judiciary in the Member States, a higher degree of judicial review of state action has been a necessary corollary of the submission of sovereignty to the rule of law. This is probably the most outstanding feature of the European Community legal order and is one that is bound to have an impact on the role of the ordinary domestic courts in the countries that accede to the Union. ■

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erans in a United Europe

of accession and the part which has to be covered *after* accession. We are not negotiating *if* EU regulations on environmental protection, health policy or competition will be valid in the candidate countries in the future, but rather *when* they will enter into force. The whole impact of change as a consequence of accession will not be felt at the formal accession date, but only when transitory agreements and adjustments expire. This means that the candidate countries will have to prepare themselves well in the years to come, while keeping in mind the possibility that the duration of the transitory agreements can be shortened if the approximation of economic and social development of a candidate to the current Member States allows this.

Fixing those transitory deadlines requires a highly complicated balance of interests. There have already been some differences about the extent of transitory agreements. For instance, in agriculture, which has already proven to be one of the most delicate areas of the negotiations, some of the candidate countries have requested long-term exceptions from EU veterinary and hygiene standards. Conversely, some candidate countries would like to have the right of free movement of their citizens enter into force immediately after accession. Governments of some current Member States already argue that it is not reasonable to claim all the rights of membership at once, while demanding very long transitory agreements regarding the duties. It is very likely that similar debates will go on for a long time.

Gaining Public Support

So what obligations and implications will EU membership impose on the candidates? Gaining membership will be a challenging feat for some. Effective participation for the mutual benefit of newcomers and veterans once they have been accepted as full-fledged Members will be not be easy for *any* of them. The candidate countries will therefore have to continue to excise the remnants of communism in the political and economic sense, even though economic, administrative and institutional reforms have already led to, or will lead to, more unemployment and a decline in living standards in the beginning. Shortcomings before these reforms take effect will have to be corrected in co-operation with the EU in the context of the accession partnerships and drawing upon aid provided by the EU. Another important task confronting the candidate countries is to maintain their peoples' support for accession.

European Parliament

European Parliament, Strasbourg.

Recent polls have shown a decline in approval in some countries, due to the previously mentioned hardships connected with the overhaul of the whole political and economic system of a state. Since the approval of the citizens is a fundamental democratic requirement of EU membership, the governments of the concerned countries should undertake every effort to convince their citizens of the benefits that membership in a community of peace, freedom, welfare and values will bring to them in the long run.

Enlargement is a costly and lengthy undertaking that requires sacrifices on both sides, but securing peace and stability in Europe on a long-term basis may require investments before they pay off.
Membership in the EU or at least the prospect of membership within reach is the best way to support political stability, which alone can breed a favourable climate for steady growth. ■

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The EU Ombudsman and Good Administration

by Jacob Söderman

European Parliament

Jacob Söderman

Modern systems of administrative law embody the principle that the administration exists to serve citizens. The Maastricht Treaty created the office of the European Ombudsman to uphold this principle by making inquiries about possbile instances of maladministration in the activities of Community institutions and bodies. Upon accession, the national ombudsman offices of new Members States will become linked to the European Ombudsman through a liaison network. Citizens of countries joining the EU will be able to address complaints about maladministration in European institutions and bodies to the European Ombudsman.

The office of European Ombudsman was established by the Maastricht Treaty, as part of the creation of the citizenship of the Union. Citizenship implies that the Union institutions and bodies should be accountable to citizens, both through elected representatives and through mechanisms of legal and administrative supervision similar to those which exist at national level to control public authorities.

The European Ombudsman is required by law to perform his duties with complete independence and impartiality. Any European citizen, any non-citizen living in a Member State and any business, association or other body with a registered office in the Union may complain either directly, or through a Member of the European Parliament.

Launching Inquiries

The European Ombudsman's mandate is to make inquiries about possible instances of maladministration in the activities of Community institutions and bodies. The only exceptions are the Court of Justice and the Court of First Instance acting in their judicial role. The role of the European Ombudsman in ensuring good administration by Community institutions and bodies is particularly important, because citizens have only limited possibilities to bring proceedings directly in the Community courts.

Since the office became operational in September 1995, the European Ombudsman has received over 5000 complaints and new complaints are currently arriving at the rate of over 130 per month. Most of the complaints against Community institutions and bodies concern: lack or refusal of information; undue administrative delay or delayed payment; recruitment procedures including competitions; contractual disputes; and the Commission's actions or omissions in dealing with infringements of Community law by Member States. The main institutions which have been the subject of inquiries are the Commission (665 cases); the European Parliament (91 cases); the Council (34 cases) and the Court of Auditors (six cases).

As well as dealing with complaints, the European Ombudsman has the power to launch inquiries on his own initiative. This power is used sparingly, usually where a pattern of complaints indicates that there may be a general problem. Important initiatives include those on access to documents, recruitment to Community institutions, procedures for dealing with complaints from citizens about infringements of Community law, and late payment by the European Commission. Details of these and other activities can be found in the *Annual Reports,* which are available on the Ombudsman's official website: http://www.europarl.ep.ec/ombudsman.

Co-operation with Member State ombudsmen

About 70% of the complaints sent to the European Ombudsman are outside the mandate. Usually this is because they are against national, regional or municipal administrations in the Member States, which are responsible for implementing many aspects of Community law and policy. Individual rights under Community and Union law should of course be respected by public authorities at all levels of the Union and such complaints could often be dealt with effectively by an ombudsman in the Member State concerned.

Twelve of the fifteen Member States of the European Union have a national ombudsman. Germany and Luxembourg have Parliamentary Committees on Petitions that perform an analogous role. Italy has not yet succeeded in establishing a national ombudsman, although numerous proposals for legislation have been put forward. Ombudsmen also exist at regional and municipal level in many Member States. For example, there are ombudsmen in the Spanish *autonomías,* the Italian regions and in some of the German *Länder.*

All the national offices are linked to the European Ombudsman through a liaison network, which ensures that complaints can, if necessary, be transferred to the body competent to deal with them. Liaison network seminars, to inform about Community and Union law, have been held every year since 1996. Similar events were organised for regional ombudsmen in October 1997 and April 2000.

The European Ombudsman publishes a regular "liaison letter" providing information about significant new legal developments,

and his website links to the websites of national ombudsmen and similar bodies. The liaison network also allows the national offices to address queries about Community law to the European Ombudsman.
The European Ombudsman has also initiated co-operation with national ombudsmen and similar bodies in the states that are candidates to join the European Union. A seminar on "Ombudsmen and the Law of the European Union", organised jointly with the Slovenian Human Rights ombudsman, was held in Ljubljana 6-8 in June 1999. The papers presented at the seminar and the final report are available at http://www.varuh-rs.si/cgi/teksti-eng.cgi?eu99semi.
The Treaty of Amsterdam reinforced the idea of citizenship with an explicit statement of the constitutional principles on which the Union is founded: liberty, democracy, respect for human rights and fundamental freedoms and the rule of law. It is important for the candidate states to recognise the contribution which ombudsmen and similar bodies can make to implementing these principles, respect for which is an explicit Treaty condition for membership of the Union (see Articles 6 and 49).

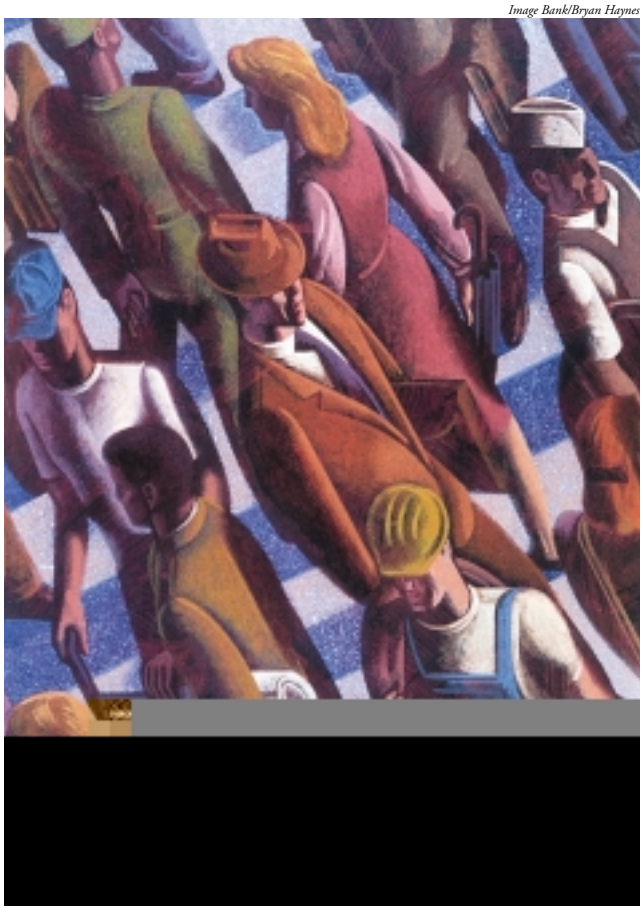
Good and Bad Administration

In every democracy, public administration is subject to the rule of law. Modern systems of administrative law also embody the principle that the administration exists to serve citizens, not vice versa. In national systems of administration, this principle is expressed in different ways, such as service-mindedness, citizen-friendliness, the citizen as customer and the concept of public service.
The mandate of many ombudsmen, including the European Ombudsman, is to deal with "maladministration." Since this term is not defined by any Community or Union text, the European Ombudsman proposed the following definition after consultation with the national ombudsmen of the Member States:
Maladministration occurs when a public body fails to act in accordance with a rule or principle which is binding upon it.
This definition is broad enough to include within the ombudsman's review respect for fundamental rights, principles of administrative law and good administration. In 1997, the European Parliament adopted a Resolution welcoming the definition.
To protect the rights of citizens effectively, it is important to explain clearly the requirements of good administration. This can help both to prevent maladministration and to identify and correct it promptly when it does occur. In July 1999, following an inquiry launched on its own initiative, the European Ombudsman proposed a Code of Good Administrative Behaviour for Community institutions and bodies. This is available on his website in all the official Community languages.
The Code includes fundamental principles of European administrative law, such as legality, the right to a hearing, proportionality and protection of legitimate expectations. The Ombudsman intends to submit a "Special Report to the European Parliament" on the response by the Community institutions and bodies to the proposed Code. If it considers it appropriate, the European Parliament could use its powers to pursue the adoption of a European law on good administrative behaviour.

Towards a Fundamental Right to Good Administration

In June 1999, the Cologne European Council decided to move towards the adoption of a Charter of Fundamental Rights for the European Union, including fundamental rights and freedoms as guaranteed by the European Convention on Human Rights, the special rights of citizens of the Union as well as economic and social rights as contained in the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers.

Image Bank/Bryan Haynes



The Tampere European Council in October 1999 agreed on the composition, method of work and practical arrangements for the body which is to draft the Charter. The European Ombudsman is one of the institutions that must be consulted during the drafting process. The Ombudsman's has proposed that the Charter include the citizen's right to good administrative treatment. If this proposal is adopted, it could have a broad impact on all existing and future Member States, helping to make the 21st century the "century of good administration". ■

Jacob Söderman was re-elected European Ombudsman by the European Parliament in October 1999. For further information about the office of the European Ombudsman, contact Ian Harden, Head, Legal Department, European Ombudsman in Strasbourg, France at tel: (33.3) 88.17.23.84; e-mail: iharden@europarl.eu.int. For more details on ombudsman offices around Europe, see the Council of Europe publication, The Administration and You: a Handbook, *1996. For discussion of the concept of* "EU citizenship", *see the Ombudsman's presentation to the 1998 FIDE Congress on "The Citizen, the Administration and Community Law" at http://www.euro-ombudsman.eu.int/FIDE/EN/Default.htm.*

A Capable Centre of Government Supports European Aspirations

by Simon James

Photo/Arne Wemberg

Simon James

A strong policy-making system is a necessary precondition for accession to the EU. It is not by chance that the aspiring EU Member States making the most progress towards meeting the Copenhagen criteria have the best policy-making systems of the candidate countries. Weak policy capacities will make it difficult for a country to fulfil and maintain the obligations of membership after accession.

The quality of a country's policy-making system affects its ability to meet the obligations of European integration. Preparation for accession and membership need to be underpinned by mechanisms that:

- create polices that are not deficient in law or substance, are economically efficient, and which do not contradict one another;
- create policies that are sustainable in budgetary terms; and
- lay the foundations for operating effectively within the EU.

Weak mechanisms for policy-making will obstruct the progress of a candidate country towards accession to the EU. The adoption of the *acquis communautaire* will be delayed, because laws will not be drafted or adopted in time. Actual implementation of the *acquis* may be defective if its impact has not been accurately estimated at the policy-making stage. And if a candidate country does not analyse the practical impact of implementing the *acquis*, negotiations may be disrupted and delayed, for example because the country cannot estimate whether temporary derogations are needed.

In short, a strong policy-making system is a necessary precondition of accession to the EU. It is no coincidence that the candidate countries making the best progress towards meeting the Copenhagen criteria have the best policy-making systems among EU applicants and that those making the least progress have the weakest policy-making systems. And, self-evidently, weak policy capacities will make it difficult for a country to fulfil the obligations of membership once it becomes a member of the EU.

In the ten candidate countries with which it works, SIGMA has identified three major weaknesses: weak policy preparation within ministries; poor policy co-ordination between ministries; and insufficient capacity for policy advice and strategic analysis.

Formulating Options

First, policy preparation within ministries is often weak. There is no tradition in ministries in engaging in policy analysis; the normal approach is to proceed directly to legal drafting. Little or no attention is paid to identifying different courses of action and identifying their consequences. At best this leads to suboptimal policy making; at worst, it leads to legislation that proves unworkable when it is implemented.

There should be a prior stage of identifying the efficiency and practicability of different options, and assessing the budgetary, economic, social and environmental consequences of the option adopted. While many countries have some law or decree requiring such impact analysis, the only area in which it seems universally to be observed is the need for the ministry of finance to comment on budgetary consequences. However, finance ministry officials often lack the time or analytical expertise to provide proper budgetary appraisal, and often the broader economic impacts are not examined.

In non-financial areas, although there are often legal requirements to assess social, environmental and other impacts, these are rarely complied with, partly for lack of time and skills, but mostly because there is no tradition of policy analysis within ministries and, perhaps in some countries, a reluctance to accept responsibility for the advice offered. If such assessments are carried out, they are usually shallow and weak. There is rarely any capacity at the centre of government to check that draft laws submitted to the council of ministers have been subject to satisfactory assessments of their likely impact.

These failings have serious implications for European integration. If a country cannot assess the impact of implementing the *acquis communautaire*, it cannot demonstrate that it can implement the *acquis*, nor can it identify areas where it may be necessary to request temporary derogations.

Acting Together

A second weakness lies in the policy co-ordination between ministries. There is a need for ministries to work together in the early stages of policy development, and for officials to resolve minor issues in contention, rather than push such issues up to the level of ministers.

Most countries have a law setting out a clear procedure for preparing draft laws, which in particular requires the ministry initiating the proposal to consult other ministries with an interest in the proposal - especially the ministries of finance and justice. But only in one or two countries does this work satisfactorily in practice.

One principal cause of this lies, again, in the habit of moving immediately to drafting a legal text, rather than first analysing the policy options. Ministries rarely start by circulating a "concept paper" outlining their intentions in general terms in order to discover the likely reactions of other ministries, so that these reactions can be incorporated in the draft law. Instead, an individual ministry typically writes and

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circulates a legal text. This is inefficient, because the initiating ministry is naturally then reluctant to accept substantial changes suggested by other ministries.

Another major obstacle to good co-operation is the state of relations between officials of different ministries. Often these are very formal; there is reluctance to compromise or to use informal contact to resolve difficulties. Information is not shared, sometimes by omission, sometimes deliberately. Consultation between ministries often occurs at a late stage, and is sometimes minimalist. There is little or no concept of active joint working or pro-active co-operation between ministries.

Consequently, quite minor disputes are frequently referred up to ministers for resolution. Most countries have effective ministerial mechanisms for these purposes. These include committees of ministers - either formal or informal - which "screen" proposals before they go to the council of ministers; informal meetings of the council of ministers, held before or after the formal meeting; conciliation through meetings between the parties that make up the governing coalition; or in some countries a special role for deputy prime ministers in resolving disputes between their colleagues. Generally, these mechanisms work quite well. But they are overloaded because they have to compensate for inadequate co-ordination at civil service level. Often ministers find themselves resolving minor issues that should have been settled between civil servants. This distracts ministers from their main task of considering major strategic issues. It would be desirable for disputes to be resolved at a lower level, which in turn would require ministers to delegate to their professional staff a greater discretion to discuss and negotiate on behalf of their ministers.

Bolstering Capacity to Plan and Advise

In most countries, the policy advice and strategic analysis capacity of the centre of government needs to be strengthened. The government office supporting meetings of the council of ministers is usually confined to a secretarial role. It plays little part in ensuring that proposals are internally consistent, sufficiently thought through, with adequate resources, and are congruent with other proposals and with the government's overall strategy. Given the general weakness of policy making within and between ministries, this lack is particularly serious.

Ideally there should be a small group of advisers with, between them, expertise in certain key strategic areas, such as economics, European integration, social policy, the environment, etc. Their functions would be:

- to review and advise on the proposals being put forward by ministries, commenting on them from the strategic angle - how the proposals fits into the overall government strategy - as well as making any more general comments on the substance of the policy; and
- to help in the planning of longer-term strategy. Often proposals are considered in isolation, and are not related to the overall objectives of the government. Spending proposals are sometimes considered in isolation, and not in the context of the overall budget. Conversely, problems that emerge unexpectedly, if not already covered by the government programme, can lie neglected until they turn into a crisis. A group with a good knowledge of overall policy development could help the government identify policy areas which need attention and help bring overall coherence to the government's policies.

A number of countries do have such a capacity, but based within the prime minister's office (PMO) and usually serving him alone. This has disadvantages: the council of ministers as a whole needs some source of advice on the adequacy of proposals put to it. Staff in the PMO is often diverted into daily crisis management, and when the government changes, this staff changes, too, erasing the centre of government's institutional memory.

Correcting these three types of shortcomings may seem like a modest endeavour. But it could make a substantial difference to the quality of government in candidate countries, and consequently to their ability to meet the obligations of European integration. ■

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Finland Shows Importance of Training in EU Preparations

by Juhani Turunen

Before Finland acceded to the European Union in 1995, the country was well prepared both "mentally" and materially for the new challenges of membership. In a referendum held in the autumn of 1994, the Finnish people voted overwhelmingly to join the EU, and have remained supporters of membership ever since. The Government and civil servants clearly showed their commitment in the successful operation and good results of the Finnish Presidency during the second half of 1999. Preparations for this prominent role, like preparations for membership itself, began well in advance and included a large training component.

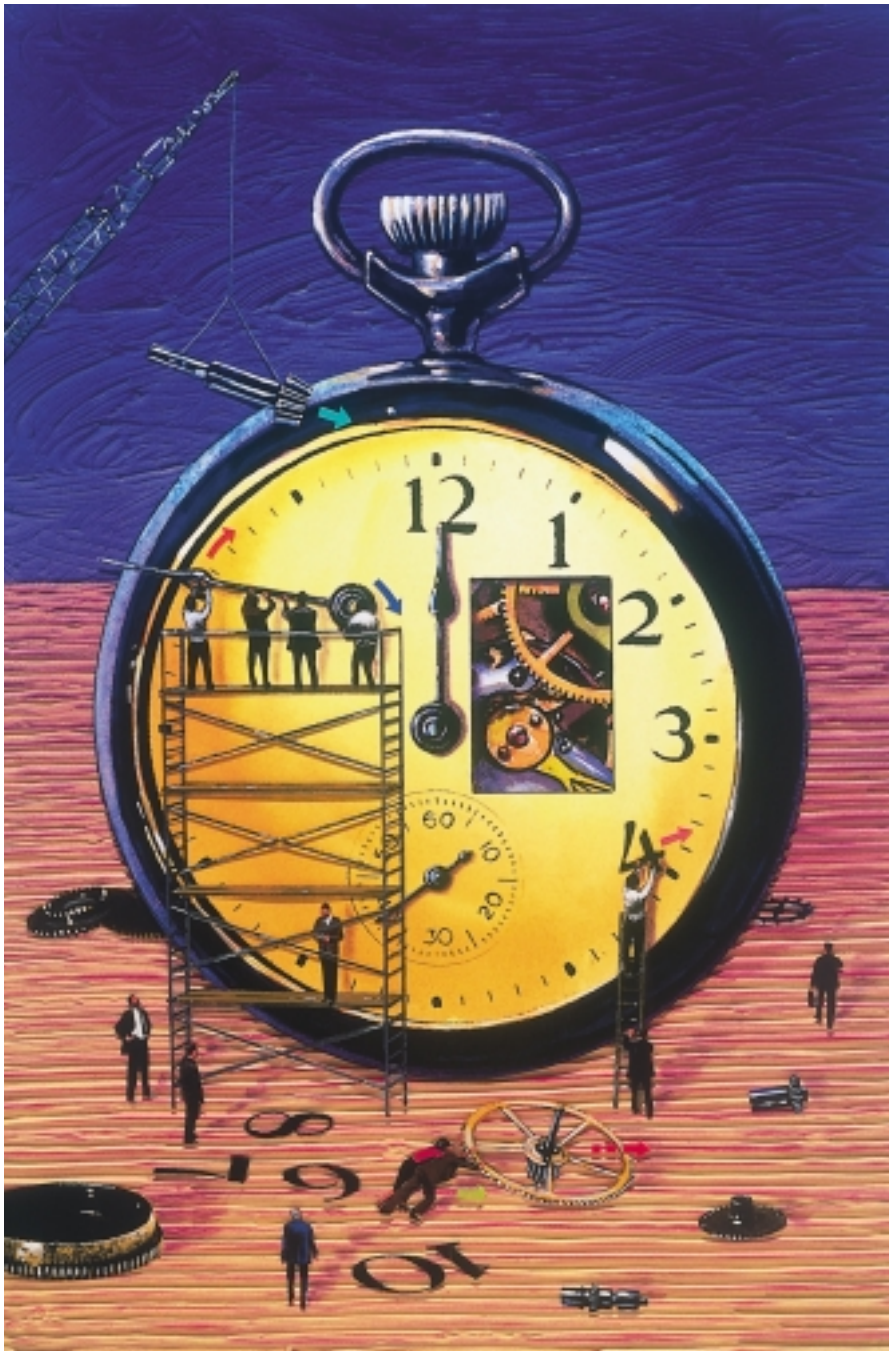

Image Bank/Michael Murphy

Training for Integration

Finland took the first steps to prepare its public administration and to train civil servants for European integration in 1993, some two years before accession. In order to guarantee effective planning and funding of the training programme, the Ministry of Finance assumed responsibility for co-ordinating and co-financing training activities with the ministries.

The purpose of relying on centralised training for integration was to ensure the development of a few key areas of competence, such as familiarity with EU decision making, administrative structures of other Member States, as well as negotiation, communication and language skills. Responsibility for implementing training rested with the ministries and agencies, as well as with officials themselves, to whom discretionary financing was provided.

The aim of the training process was to ensure a broad range of integration expertise in the administration. It was also necessary to establish networks between the administration and other sectors of society in order to exchange experiences. The third element was to open channels of co-operation with the other Member States.

The Ministry of Finance paid for training in three different ways. It commissioned and financed some courses, provided discretionary subsidies to branches of the administration to organise courses, and offered training stipends to individuals (see below). The courses covered subjects such as the procedures of EU institutions, the decision-making process, and committee work (and how to influence it). In addition, management-training programmes provided opportunities to highlight the EU viewpoint of a Member State. Officials going abroad to acquire practical experience or to study

were able to receive grants from centralised training funds.

The training process initially involved a wide range of civil servants and aimed to provide them with a broad picture of integration issues. Subsequently, training was focused more on those who had to deal on a daily basis with these issues, and went deeper into the subject matter. Target groups included those working primarily at the managerial level, experts, and candidates for the EU recruitment process. Among the targets were "Euro-trainees", young multilingual professionals with an academic degree. After an intensive training period that included a working period, many of them continued in the Finnish public administration or were recruited by the EU institutions or the private sector.

When Finland began its EU training process in 1993, the country was in the middle of a very deep economic recession. The budget rigour excluded any possibility for an extensive increase of personnel. The main strategy of coping with the new challenges was to improve the competencies and knowledge of existing personnel, and to restructure the resources according to the coming new tasks. This has caused an extensive increase of workload in some areas, but also improved organisation and methods of working. The strength and the dynamism of the Finnish public administration in the EU context is based on skills and the strong commitment of civil servants to carry out their new tasks, and on the ability of civil servants to combine the "EU dimension" with their daily domestic responsibilities.

Training for the Presidency

Planning for the Finnish Presidency began almost four years in advance – in the autumn of 1995. Secretaries-general at the various ministries drafted a new training strategy, which was subsequently approved by the Government. As explained below, the ministries prepared their own training plans, including the selection of target groups, on the basis of this strategy.

The broad aim of this particular type of training was to develop and support those with duties related to the Finnish Presidency to ensure that they were contributing as effectively as possible to attaining objectives set for the Presidency.

The Ministry of Finance was given responsibility for strategic management of training and for arranging funding. Each ministry was responsible for selecting its own trainees, and for planning and implementing the training. The main target groups identified for training included:

- ministers and their key advisors;
- chairpersons of the council of ministers working groups, and their deputies and advisors;
- Finland's national representatives in EU working groups and their deputies;
- officials heavily involved in preparing and co-ordinating EU matters; and
- officials at Finland's Permanent Representation to the EU and, selectively, from the entire Foreign Service.

Finland's experience within the European Union, including the great responsibility of holding the Presidency, suggests that candidate countries must invest early and heavily in targeted training and planning to act effectively as EU Members.

Presidency training focused on:

- negotiating techniques;
- language and communication skills;
- knowledge about EU matters;
- workings and procedures of the EU juridical and administrative machinery; and
- other Member States and their cultures.

This training was an extensive project in terms of both costs and number of training days. The positive effects of the project have extended beyond the Presidency and will be felt far into the future. A detailed assessment of the value of the investment in training showed that civil servants were very active in preparing the Finnish Presidency. They took part in different training programmes, developed their language skills, and expressed great satisfaction with the training results.

Lessons Learned

The experiences and outcomes of the recently concluded Finnish Presidency clearly demonstrate the advantages of thorough preparations and effective training. The situation confronting Finland at the beginning of its Presidency was extremely complicated in view of the resigning Commission and a new Parliament. These circumstances made it an extraordinary challenge for the Presidency to "run the business" of the European Union. Nevertheless, a satisfactory solution was reached on most of the issues placed on the Finnish Presidency's agenda.

This was possible because advance preparations ensured:

- a clear definition of the Presidency role;
- ambitious yet realistic goal-setting, and commitment to fulfilling the goals established;
- awareness of the political status and responsibilities of the Presidency;
- long-term planning of the managerial tasks of the Presidency;
- graining of key persons;
- good knowledge of the organisation and the people in different EU institutions and in the Member States;
- good co-operation between different actors, and a common understanding of the roles and responsibilities of different institutions; and
- acknowledgement of the framework of the Presidency and recognition of the freedom to act within this framework.

Finland's experience within the European Union, including the great responsibility of holding the Presidency, suggests that candidate countries must invest early and heavily in targeted training and planning to act effectively as EU Members. ■

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Essays on Integration

Author J.H.H. Weiler is Jean Monnet Chair at Harvard University, and Co-Director of the European University Institute's Academy of European Law. He has written numerous essays on law, politics and the process of European integration over the past fifteen years. This volume assembles these essays to tell an engaging story of the evolution of "Europe's constitution". Weiler writes in a style that is accessible to the general reader interested in European integration, not only to public law specialists. Indeed, he succeeds in demystifying legal discourse.

He gives considerable attention to constitutionalism in a non-unitary ("federal") system, including the relationship between the Community (and Union), the Member States and the individual. The author asserts that the Community and European integration cannot be explained as simply a design of which the Member States remain masters and beneficiaries; he writes that this may have been what they intended, but that their creation has in many respects "ensnared them". Weiler also observes that the strengthening of the Community has not always meant the weakening of the Member States. On the contrary, he reports, it often has led to the strengthening of national governments or at least the executive branch thereof.

Weiler observes that while citizens have in some ways been empowered by Community law (e.g. as a legal consumer), they have at the same time been *disempowered* as political citizens. He examines these and other complex relationships in general terms, as well as in different contexts such as human rights, and the Community and Union as an actor in the international arena. Weiler also explores possible values and ideals that the Union structures and processes may represent.

In his preface, the author helpfully suggests to those pressed for time that they con-U

Inbox: A Compendium of Recent Publications and Articles

Note: All publications below are available in English unless otherwise noted.

COCHRANE, Janice. "Values and Ethics in the Day-to-Day Functioning of the Public Service of Canada," *Business and Professional Ethics Journal,* Vol. 17, Nos. 1 and 2, 1999, pp 183-190.

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THE PHILIP MORRIS INSTITUTE FOR PUBLIC POLICY RESEARCH. *Should the EU be Redesigned?,* January 1999, 123 pages. To order: PMI, rue Joseph II, 168, 1000 Brussels, Belgium; tel: (32.2) 732.11.56; fax: (32.2) 732.13.07; e-mail: admin@pmi-inst.org. Also in French, German, Italian and Spanish.

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