J C E R

JOURNAL OF CONTEMPORARY EUROPEAN RESEARCH

# JCER-UACES Student Forum Research Article Competition Winner

## The European Union, Financial Crises and the Regulation of Hedge Funds: A Policy Cul-de-Sac or a Policy Window?

**By: David Lutton**



**PUBLISHED BY:**

UACES Student Forum & UACES

ARTICLES:



RESEARCH NOTES:



JCER REPORT



J C E R

VOLUME 4 • ISSUE 3 • NOV 2008

JCER JOURNAL OF CONTEMPORARY EUROPEAN RESEARCH
UACES STUDENT FORUM UACES

# JCER | Journal of Contemporary European Research

November 2008



UACES

# Contents

# Contributors

**Anatole Abaquesne De Parfouru**
*PhD Candidate*
School of Law
University College Dublin
Email: Zebullon77@hotmail.com

**Stelios Andreadakis**
*PhD Candidate*
Faculty of Law
University of Leicester
Email: sa195@le.ac.uk

**Svetlozar Andreev**
*M García-Pelayo Fellow*
Centre for Political and Constitutional Studies (CEPC), Madrid
Email: andreev@eui.eu

**Laura Cashman**
*CRCEES Postdoctoral Fellow*
Dept. of Central & East European Studies
University of Glasgow
Email: cashman_laura@hotmail.com

**Rob Cryer**
*Prof. of International & Criminal Law*
University of Birmingham
Email: r.cryer@bham.ac.uk

**Chad Damro**
*Senior Lecturer in EU Politics & International Relations*
University of Edinburgh
Email: chad.damro@ed.ac.uk

**Iain Hardie**
*Lecturer of Politics*
University of Edinburgh
Email: iain.hardie@ed.ac.uk

**Tamara Hervey**
*Prof. of Law*
University of Sheffield
Email: t.hervey@sheffield.ac.uk

**Angela Joyce**
*European Studies Editor, Intute*
Institute for Learning & Research Technology
University of Bristol
Email: angela.joyce@bristol.ac.uk

**David Lutton**
*PhD Candidate*
Dept. of Government
University of Strathclyde
Email: david.lutton@strath.ac.uk

**Donald MacKenzie**
*Prof. of Sociology*
University of Edinburgh
Email: d.mackenzie@ed.ac.uk

**Rebecca Sanders**
*PhD Candidate*
School of Law
University of Sheffield
Email: r.sanders@sheffield.ac.uk

**Hakan Samur**
*Researcher*
University of Dicle, Turkey
Email: hsamur@hotmail.com

**Bal Sokhi-Bulley**
*PhD Candidate*
School of Law
University of Nottingham
Email: llxbs4@nottingham.ac.uk

# The European Union, Financial Crises and the Regulation of Hedge Funds: A Policy Cul-de-Sac or a Policy Window?

David Lutton

**Abstract**

A series of financial crises involving hedge funds has created a general perception that action needs to be taken. A number of key member states and political actors favour tighter regulation. Traditional bureaucratic theory suggests that the European Commission would seek to maximise this 'policy window', and yet there remains no single unified European Union (EU) regulatory framework specifically targeting hedge funds. The nature of the regulatory regime, which has generally demanded a 'light touch' approach, means there are strict limits the EU's ability to act. From an EU perspective, hedge fund regulation appears to be a policy cul-de-sac. However, the relationship between hedge funds and financial crisis is complex and less straightforward than is often portrayed. Hedge fund regulation cannot, however, be considered in isolation but should be viewed in the context of a wider programme to integrate European financial services markets. Viewed from this perspective, EU regulation is in fact changing the landscape of the hedge fund industry through a process of negative integration.

FINANCIAL MARKETS ARE CURRENTLY IN THE GRIP OF A GLOBAL CREDIT CRUNCH. A downturn in the American housing market created the US sub-prime debacle which in turn has reverberated across highly integrated global markets to become what some commentators argue is the worst financial crisis in seventy years (Lomax 2008: 5). Never far from the eye of a financial storm is the hedge fund industry. The sub-prime debacle is the latest in a series of financial crises involving hedge funds, the cumulative affect of which has been to create a general perception, in the minds of the public and politicians, that something needs to be done and that this 'unregulated' industry deserves more attention from regulators and policy makers. Yet there is no single unified EU regulatory framework specifically targeting hedge funds (Gottlieb 2007: 6).

In the context of active support for regulation from key member states and organised interests, some EU action in this area might reasonably have been anticipated. Majone (1996: 74) argues that the Commission has played a considerable role in European integration by creating demand for EU regulation through policy entrepreneurship. Yet, despite support for action the European Commission has continued to rule out any specific EU legislation in the area of hedge funds. Public choice theory suggests that bureaucracies will always seek to maximise the size of their agency. This holds true for

This article won the *JCER-UACES Student Forum Annual Research Article Competition 2008*. The author would like to extend his to thanks Andrew Ashworth for reviewing this article. Andrew has recently retired as managing director of Abacus Financial Services Limited on the Isle of Man. He currently holds non-executive directorships on the boards of a number of hedge funds.

ISSN 1815-347X online – Lutton, D. (2008). 'The European Union, Financial Crises and the Regulation of Hedge Funds: A Policy Cul-de-Sac or a Policy Window?', *Journal of Contemporary European Research*, Vol. 4, No. 3, pp. 167-178. Available: http://www.jcer.net/ojs.index.php/jcer/article/view/130/104

the Commission, which given the limited opportunities for budgetary expansion, seeks to expand the quantitative scope of its competencies (Majone 1996: p.64). Majone (2006) describes this as *integration by stealth*. Control of the policy agenda, and absence of clear accountability standards, has allowed the Commission to pursue objectives of political integration and self-aggrandisement whilst appearing to solve policy problems (Majone 2006: 613). From this perspective the case of hedge fund regulation at the EU level presents an interesting puzzle; why is the Commission not capitalising on the 'policy window' offered by public concern to strengthen its position through an enhanced regulatory role?

The current policy debate is reminiscent of Downs' (1972) issue attention cycle. The continued presence of hedge funds across a series of financial crises has created public alarm. This 'alarmed discovery' has been followed by 'euphoric enthusiasm' that regulation is the solution. The 'costs of significant progress' have become increasingly apparent as the issue of hedge-fund regulation has progressed through the issue-attention cycle (Downs 1972: p39-40). In this paper, I seek to develop the debate on the regulation of hedge funds and the role of the EU by placing it in an historical, institutional and theoretical context. I also explore the question; is hedge fund regulation a policy window or policy cul-de-sac? In order to do this I consider the regulatory context in which hedge funds currently operate, and demonstrate that there are limitations on the capacity of EU institutions to regulate in this area, which at first glance might explain the lack of action at the EU level. However, I argue that hedge fund regulation cannot be considered in isolation, but rather should be viewed in the context of a wider programme to integrate European financial services markets. Viewed from this perspective, EU regulation is in fact changing the landscape of the hedge fund industry through a process of negative integration. Drawing on Majone's (2006) theory of *integration by stealth* (Majone 2006: p.613), I argue that the consequences of continued negative integration in the EU securities regime (rather than financial crises) may drive future pressure for regulatory action on hedge funds.

**Financial crises: 'alarmed discovery'**

The current policy debate on hedge funds recalls Downs' issue attention cycle in particular stage two; "alarmed discovery and euphoric enthusiasm" (Downs 1972: p.39-40). An issue reaches stage two of the cycle when, as a result of some dramatic series of events, the public suddenly becomes aware of, and alarmed by, the 'evils' of a particular problem. Downs argues that this alarmed discovery is invariably accompanied by 'euphoric enthusiasm' about society's ability to solve the problem or do something effective within a relatively short time period (Downs 1972: 39-40). In the case of hedge funds, 'alarmed discovery' has been driven by two factors; firstly the large movement of capital into the industry in recent years alongside a wider investor base (Gottlieb 2007: 5) and secondly the continued presence of hedge funds across a series of financial crises. Both factors have contributed to a sense of public alarm about hedge funds, and 'enthusiasm' for regulation as a solution to the problem. The deputy governor of the Bank of England said in a speech in May 2007: "If we face a financial crisis in the next few years we are almost bound to find some hedge funds at or near the centre of it…" (Gieve 2008: 6).

There is no comprehensive, uniform and universally accepted definition of a hedge fund or a hedge fund manager (CEC 2006b: 10). Hedge funds aim to provide investors with an 'alpha' return. Alpha is the rate of return above the level that would have been achieved by investing in traditional investment strategies such as stocks and shares. The ability of hedge funds to achieve alpha over time is not universally accepted (Gieve 2008: 4), but they have been successful in delivering average returns comparable with investing in stocks and shares without the volatility (Gieve 2008: 3). Although hedge funds date back to the 1940s, it was during the 1990s that the phenomenal growth of the industry was witnessed. The Bank of England reports the global assets under

management to have grown from $200 billion in 1998 to $1.25 trillion in 2006 (Gieve 2008: 3). By 2007 the industry had breached the $2 trillion mark (Intelligence 2007; Thomas 2007).

The success of hedge funds is in their ability to unpack traditional investments, like equities and bonds, into their component parts and to then sell them separately, or in new bundles, to appeal to particular investors (Gieve 2008: 3). As the industry has matured, investment strategies have become increasingly complex, often relying on statistical models, or 'black-boxes', which analyse inefficiencies in commodity markets in order to take multiple long-short (see later) positions, known as arbitrage. Banks have responded by setting up their own internal hedge funds or by adding hedge funds to their range of investments; thus blurring the distinction between traditional asset management and alternative investment. The major financial institutions have also emerged as key service providers to the hedge fund industry, providing credit lines in the form of leverage and back office services. In this way they have benefited hugely in terms of fees, interest and the trading income generated by hedge funds (Gieve 2008: 3). The growing size of the market and its interconnectedness with mainstream institutions created cause for concern about this unregulated industry. This concern was heightened by the presence of hedge funds in a series of financial crises throughout the 1990s that were widely reported in the media.

The first and most infamous financial crisis involving hedge funds was the ejection of sterling from the European Exchange Rate Mechanism (ERM) in 1992. Hedge fund manager, George Soros, was reported to have profited $1 billion by short selling sterling (Kaletsky 1992). The 'long-short' strategy is the most common hedge fund strategy and provides the origin of the word 'hedge'. The hedge is a 'bet' against the security going up (long selling) and down (short selling). Soros 'bet' against the UK government being able to keep sterling within the ERM (Kaletsky 1992). Hedge funds were again linked to a national currency crisis in 1997 when fund managers were accused of deliberately causing a sell-off of Malaysian currency. The then Prime Minister, Mahathir Mohamad, called hedge funds "unscrupulous profiteers" involved in an "unnecessary, unproductive and immoral" trade (Vines 1997). Less than a year after the Asia financial crisis a high profile US hedge fund, Long-term Capital Management (LTCM), collapsed and shocked the financial world because it revealed the extent to which mainstream financial institutions were exposed to hedge funds (Sunday Business Post 1998: 8). When LTCM collapsed it was borrowing $200 billion on an original capital base of $5 billion (Rees-Mogg 1998). LTCM highlighted the risk that the collapse of a highly leveraged hedge fund could bring down with it a major financial institution, and spread a crisis within the global banking system (Sunday Business Post 1998: 8).

The sub-prime debacle is the latest 'drama' and has further fuelled public alarm that hedge funds are intrinsically threatening to the economy. The roots of the sub-prime crisis lay in a change in the way the major banks treated debt on their balance sheets. Driven by a boom in house prices through the late 1990s and early 2000s, banks shifted from a 'lend and hold' to an 'originate and distribute model' which resulted in sub-prime mortgages being "sliced, diced, recombined and sold on" (Gieve 2008: 3). Hedge funds, always at the forefront of financial innovation, traded sub-prime loans as securities on the structured credit market and as a result became embroiled in the crisis. The crisis began to unfold in 2006 with a downturn in the US housing market which was further compounded by rising interest rates. An increase in the number of mortgage defaults forced lenders to make provisions for bad debts and by the summer of 2007, fearing the scale and location of losses arising from sub-prime mortgages, there was effectively an investor strike from global securitisation markets (Gieve 2008: 3). With little transparency between the original underlying loan and the end investors, when the system began to unwind panic spread quickly because of the complexity and opaque nature of the loans. Two hedge funds run by the investment bank, Bear Sterns, collapsed as a direct result of the sub-prime crisis, creating pressure for action on

hedge fund regulation (Tett 2007: 13). In the summer of 2007 French President Sarkozy wrote to the German Chancellor, Angela Merkel, urging the German government to use its G8 presidency to improve the transparency of hedge funds (Atkins and Hollinger 2007b: 4). The Chairman of Barclays Capital meanwhile urged politician's to act on "a completely unregulated sector standing apart from banks, which does not have the necessary transparency" (Kramb and Larsen 2007: p.22) .

Although much of the current debate centres on the role of hedge funds in financial crises, the activities of some private equity firms have also raised concern. Some hedge funds trade in equity investments in companies not listed on a public stock exchange. Hedge funds and private equity funds are two components of the continuum of investor appetite and liquidity obligations. Private equity funds have long been the target of trade union groups, who accuse them of having no vested interest in the long term development of their acquisitions. In fact, some in the industry argue that the private equity debate has led to the public examination of hedge funds.[1] In the UK, the General Workers Union (GMB) has led a campaign against the private equity fund that owns the Automobile Association (AA), accusing it of eroding workers pay and conditions and asset stripping to increase profits (Mawson 2006). In 2005 a senior member of the German Social Democratic party accused hedge funds of "routing the economy – browbeating management, stripping assets and axing jobs" after a group of hedge funds and a private equity fund blocked the German company, Deutsche Börse, from buying the London Stock Exchange (Jenkins 2005: 8). The present German coalition government has continued to be the most outspoken of the EU member states on hedge funds and used its presidency of the European Council and the G8 in 2007 to put forward proposals for an international register of hedge funds, greater transparency of their dealings and a code of conduct (Benoit and Atkins 2007).

As has become evident of late, there are considerable grounds for concern in relation to the threat posed by hedge fund activities to financial stability. Their continued presence within the vicinity of each crisis is a recurring phenomenon, and has also allowed hedge funds to be used as something of a scapegoat for national politicians trying to explain domestic failures within a highly complex international financial system. There has been mounting pressure for EU action on hedge funds around the areas of transparency and the potential posed by hedge funds to cause financial instability. Support for policy initiatives specifically dealing with hedge funds has come from a range of actors including national governments (mainly Germany and the Netherlands and to a lesser extend France) (Atkins and Hollinger 2007a: ; EurActiv 2007b), the socialist grouping in the European Parliament (PSE 2007), Trade Unions (Mawson 2006) and the European Central Bank. However, despite growing 'public alarm', the causal relationship between hedge funds and financial crises is not straightforward. Hedge funds are at, or near, the centre of financial crises because by their nature they are designed to exploit opportunities created by market failures and inefficiencies. Therefore their presence, and even role, in a financial crisis is arguably unremarkable. The sub-prime crisis and its consequences on global markets is, arguably, the result of a loss of trust in the whole style of modern finance with its complex dispersion of risk, but not in hedge funds specifically. Although Soros profited from the UK's ejection from the ERM, he did not cause it and in the case of the Asian financial crisis, hedge funds were later exonerated by the International Monetary Fund (IMF), who concluded that whilst some funds may have determined the timing of the crisis they were not themselves the cause and, in fact, played only a "relatively limited" role (Atkinson 1997: 16). In summary, the 'public alarm' created by financial crisis and the growth of the industry opened a 'policy window' for action, but the causal relationship between hedge funds, financial crisis and financial instability is more complex than is often portrayed.

[1] Comments by Andrew Ashworth, senior executive in hedge fund industry – see acknowledgements

**Hedge funds: The regulatory environment**

Hedge funds operate in a highly integrated global financial market and trade in transnational capital, which crosses national and regional boundaries. In fact, most hedge funds are actually domiciled outside the authority of EU institutions in offshore markets like the Bahamas and the Cayman Islands in the Caribbean and the Isle of Man and Channel Islands in Europe (PSE 2007: 10). The offshore markets have developed their own regulatory rules governing hedge funds but these are generally light-touch in style offering the funds certain types of additional flexibility, but most have adopted a consistent approach to regulation in terms of money laundering, risk and transparency. Importantly, the offshore markets offer hedge funds tax minimization and tax exemption strategies (Morgan and Knights 1997: 34). The existence of these offshore markets considerably complicates the creation of any new regulatory system as they have emerged and developed precisely to avoid regulation (Morgan and Knights 1997: 34). Although hedge funds are domiciled in one jurisdiction they are normally managed from another (CEC 2006b: 14). The USA dominates the fund management industry, with 53 per cent of the all hedge funds having a fund manager located there, but the EU industry has grown consistently throughout the 1990s, and now manages 27 per cent of global assets (Gottlieb 2007: 2). Hedge fund managers are subject to a patchwork of national regulatory regimes which oversee registration and limit access to retail markets but they operate in a light-touch regulatory environment compared to traditional financial markets such as the stock exchange or investment vehicles like pension funds, where rules on transparency, valuation and disclosure are strictly laid down (CEC 2006b: 16).

The light-touch nature of hedge fund regulation can be attributed to two factors. Firstly, hedge funds have expanded and grown without attracting much attention from regulators because they target 'sophisticated investors'. There is no commonly held definition of a sophisticated investor but it is generally held to mean institutional or high net-worth individuals (HNWI) who are sufficiently resourced and experienced to assess their own risk. Ordinary investors are generally excluded by high minimum investment levels, and restrictions on the funds ability to market into what is known as the 'retail' market. For this reason hedge fund investors do not require the same level of investor protection afforded to traditional investment vehicles where ordinary members of the public make up the bulk of the investor base, such as pension funds. Secondly, the light-touch regulatory context is underpinned by a belief that regulatory light zones are necessary to ensure the continued competitiveness of the EU financial services sector (Gottlieb 2007; Wymeersch 2005). Wymeersch (2005: 993) argues that most financial innovation takes place outside of strictly regulated areas and cites hedge funds as an example. Many have argued that a light-touch regulatory zone ensures entrepreneurial hedge fund managers are not stifled by excessive regulation and bureaucracy.

As highlighted above, traditional approaches to the study of bureaucracies would suggest that the Commission would exploit the 'policy window' created by public alarm over hedge fund regulation. In the context of active support for regulation from key member states and important interests, some EU action in this area might reasonably have been anticipated. Examination of the regulatory environment within which hedge funds operate, however, reveals that there is limited scope for EU institutions to regulate in this area. Firstly, the majority of hedge funds are not subject to EU authority. Secondly, hedge fund managers are already subject to national regulation and supervision. Thirdly, there is no consumer or public protection imperative, because hedge funds are targeted at sophisticated investors. Finally there is recognition that a 'hands-off' regulatory approach is required to ensure the continued competitiveness and financial innovation in EU financial services market. So, although public alarm has opened a 'policy window', the regulatory context provides limited

scope for EU institutions to solve this policy problem. Indeed the (lack of) EU response would seem to confirm this.
EU regulation specifically targeting hedge funds was addressed in the 'Green Paper on the Enhancement of the EU Framework for Investment Funds' (2005) in which the Commission asked, "[a]re there particular risks (from an investor protection or market stability perspective) associated with the activities of either private equity or hedge funds which might warrant particular attention?" (CEC 2005: 9). The question can be viewed as a policy response to public alarm about hedge funds, but the White Paper, 'Enhancing the Single Market Framework for Investment Funds', concluded that there was "currently no regulatory gaps which call for EU-level intervention to regulate hedge funds…" (CEC 2006a). This position was underlined at a conference of financiers in London when DG Internal Markets Commissioner, Charlie McCreevy, announced that the Commission would not regulate hedge funds (EurActiv 2007a). The Commission has also recognised that given the nature of global capital mobility, any EU legislation would be meaningless without global agreement (EurActiv 2007a). Commissioner McCreevy has defended hedge funds in the face of the sub-prime crisis, and continued to rule out regulation (Buck 2007: 8), arguing that hedge funds promote financial innovation which is good for the European economy (Reuters 2007).

The German government managed to keep the issue on the debating table using its 2007 presidency of the G7. After drafting legislation governing the disclosure of shareholdings as a direct result of the role hedge funds in the Deutsche Börse affair, Chancellor Schroder introduced the issue of hedge fund regulation at the G8 summit in Scotland 2005 (BBC 2005). In 2006 Germany underlined this commitment and announced that it would use its 2007 presidency to put hedge fund regulation on the agenda (Benoit 2006), and at the G7 meeting in Essen, ministers announced, "Given the strong growth of the hedge fund industry and the instruments they trade, we need to be vigilant" and asked the Financial Stability Forum (FSF) to update its 2000 report in advance of the G8 Heiligendamm Summit in Germany (Declaration 2007 ; Treasury 2007: 3). In June 2007 the FSF published a report, which stated that the relationship between hedge funds and prime brokers and other counter parties (banks and financial institutions) had "…become central to the robustness of the financial system", and concluded there was a risk that a hedge fund, perhaps through forced liquidation, might cause a sharp deterioration in market liquidity and prices that could bring down one or more of its counterparties (FSF 2007: p.1). In the summit declaration G8 ministers warned the industry to review existing practices particularly in the area of valuations, risk and disclosures. (Declaration 2007: 3). The industry responded with the establishment of the Hedge Fund Working Group (HFWG) set up in June 2007 and chaired by Sir Andrew Large (former deputy governor of the Bank of England). The HFWG brought together 14, mainly London based, fund managers with a remit to "review best practice and to examine the application of industry-wide standards where appropriate" (HFWG 2007). The HFWG published its report in January 2008 and recommended voluntary guidelines on best practice for hedge fund managers. The report set out five areas of concern, which included disclosure to investors and counterparties, valuation and risk management (EuroWeek 2008b). Although the recommendations of the HFWG have been generally welcomed, their relevance is questionable. Not a single firm beyond the original 14 signatories has signed up to the compliance standards since their launch (Evans 2008: 2).

Despite the recent deepening of financial turbulence, no further policy initiatives that specifically target hedge fund regulation have emerged from the Commission. There continues, however, to be opposition to, and pressure on, the Commission's position from within the European Parliament (EP). Poul Nyrup Rasmussen, MEP and president of the Party of European Socialists accused Commissioner McCreevy of being "the only player in Europe who doesn't believe that private equity and hedge funds should not be subject to tougher transparency rules" (Gow 2007). In June 2008 the EP's Legal Affairs Committee unanimously adopted a report by German MEP, Klaus-Heiner Lehne, which called on the Commission to bring forward legislation on the transparency of

institutional investors, requiring companies to disclose their investment policies and associated risks (European Report 2008). It is worth noting that such a formal call for legislation must be approved within a plenary session of the EP by an absolute majority.

The Commission has made a 'non-decision' (Bachrach and Baratz 1963) on the regulation of hedge funds, but perhaps this is unsurprising given the complex causal relationship between hedge funds and financial instability, and the limited authority of EU institutions in the global regulatory context within which hedge funds operate. In Downs' (1972) terms, the 'costs of significant progress' have become increasingly apparent as the issue of hedge-fund regulation has progressed through the issue-attention cycle. At first sight, it appears that EU policymaking is marginal to the debate about hedge fund regulation. Rather than a 'policy window', hedge fund regulation has apparently proven to be a 'policy cul-de-sac'. However, I argue that the policy response of the Commission on hedge fund regulation should not be viewed in isolation. Instead, the Commission response should be analysed within the wider and longer-term programme to integrate European financial services markets. The financial services sector is functionally divided into three segments - banking, insurance and securities – with hedge funds falling within the later. From this perspective EU institutions are far from irrelevant and are in fact changing the regulatory landscape for hedge funds. In order to understand the legislative response to the hedge fund debate it is necessary to shift the research lens. A narrow focus on the Commission's response to the 'public alarm' and on regulation, or 'positive' integration, only explains half of the story. The research lens should be drawn back to view hedge fund regulation in the context of a wider policy regime in financial services. This provides a new perspective on the issue.

## The Commission and the EU financial services regime: between positive and negative integration

The Commission through its agenda setting role has acted as a powerful policy entrepreneur with the result that a coherent policy regime has emerged in financial services policy (Quaglia 2007: 8). Initially, the Commission attempted to harmonise the diverse national systems into a single unitary framework, but in the early phase of financial services integration it struggled to make any significant advances (Story and Walter 1997: 26). The landmark ruling by the European Court of Justice on the Cassis de Dijon case in 1979 established the principle of mutual recognition and offered the Commission a new policy approach; rather than attempting to harmonise diverse systems into a unitary framework, harmonisation now came to mean the establishment of common standards (Story and Walter 1997: 16). The Single European Act (1987) boosted the new approach with a treaty basis and committed member states to work progressively towards a single market in financial services. However, divergent national rules on licensing, market access and prudential measures persisted into the early nineties and remained effective barriers to a fully integrated market (Hager 2007: 14). Monetary union and the introduction of the Euro provided a new stimulus (Grahl *et al.* 2005: 1005) and in 1999 the Commission put forward the Financial Services Action Plan (FSAP) which contained 43 measures to be implemented by 2005. It took a European Council initiative to ensure the FSAP was completed on schedule. The European Council appointed a 'Council of Wise Men' to explore how best to adapt securities regulation and co-operation between national regulators in an effort to overcome the difficulties experienced during earlier attempts to integrate European securities' markets (Visscher *et al.* 2007: p.5). The Council's committee, chaired by Alexandre Lamfalussy, former President of the European Monetary Institute, resulted in the Lamfalussy process which created a four level system to improve the legislative process (Visscher *et al*. 2007: 5).

Over the last fifty years financial services policy has evolved into a coherent policy regime. European financial regulation has become increasingly centralised, with rulemaking and policy formulation the result of either EU legislation, or secondary rules drawn up by the committees within the Lamfalussy agreement (Wymeersch 2005: 1009). The policy regime that has emerged is characterised by minimum standards, mutual recognition, removal of barriers to free trade and rule making through the Lamfalussy process. The effectiveness of the regime is illustrated by its ability to deliver the completion of the FSAP largely within the deadline. In spite of formidable technical difficulties and significant conflicts of interest amongst the financial sectors of member states, a very ambitious legislative programme was completed (Grahl *et al.* 2005: 1018). The key element of the regime for hedge fund regulation is the framework to facilitate negative integration; in other words the impetus to remove barriers to the development of an integrated market. However, financial service integration is also characterised by asymmetry; between 'supervision' which deals with monitoring of financial actors and remains very much a national effort, and the application of rules which are increasingly concentrated at the EU level. This is consistent with the nature of regulation in the EU. Wymeersch (2005: 988) argues that it is necessary to think about EU regulation in terms of these two distinct concepts; supervision and regulation, or rule making. Whereas in the US regulators tend to carry out both functions, in the EU they are clearly distinguished. Whilst 'regulation' or rule making is increasingly centralised at the EU level, 'supervision' is decentralised. National regulators are the primary agents in the implementation of the rules and the supervision of the market. Majone (2006: 622) argues that this asymmetric treatment of positive and negative has been a long-standing feature of European integration and is evidenced in the disproportionate use of negative integration over positive in the completion of the common market.

It is in the context of the asymmetrical regulatory framework in financial services that the Commission's policy response on hedge funds needs to be understood. The Commission's capacity to act, given the regulatory context of hedge funds, is limited and in the context of the wider financial services policy regime positive integration, which involves the creation of supranational regulation and perhaps supranational supervisory institutions, is at odds with the policy approach that has emerged. On the other hand the logic of negative integration that seeks to remove barriers to the development of an integrated EU market is, in practice, changing the landscape of the hedge fund industry.

Alongside the question of regulatory action to address investor protection and market stability issues the Green Paper on the Enhancement of the EU Framework for Investment Funds (2005) also asks;

> To what extent do problems of regulatory fragmentation give rise to market access problems which might call for a common EU approach to… b). hedge funds…? (CEC 2005: 9)

The Green Paper sought to explore whether a single market framework should be created for non-harmonised investment products (CEC 2006c: 12). Although there is no EU legislation which specifically covers hedge funds, amendments to the original 1985, 'Undertakings for Collective Investments in Transferable Securities Directive (UCITS), have reduced the line of difference between traditional investment funds (such as pension funds) and hedge funds (Pallesi 2007: 104). UCITS funds are generally aimed at the retail market (or general public) and as such they carry a greater degree of regulation. Products, which are considered eligible under UCITS, are called harmonised products and are afforded a EU passport, which means they can be marketed across borders. All other investment vehicles such as hedge funds and private equity funds are non-harmonised products and cannot be cross-border marketed. Continued innovation and technological development in financial services means there is a gap between the Directive and market reality, (CEC 2006c: p.4) with the result that products that cannot comply with UCITS are being marketed as retail products at a national level

(CEC 2006c: 2). Revisions to the UCITS (UCITS II & III) have dealt with this issue by reducing the line of difference between eligible investment funds and non-harmonised products such as hedge funds (Pallesi 2007: 104). The White Paper, 'Enhancing the Single Market Framework for Investment Funds' (2007), recognises that non-harmonised funds are aimed at 'sophisticated investors' and therefore concludes that there is a case for removing cross border barriers to sales and marketing for these products as well as barriers to the private placement of these funds (CEC 2006c: 13). In effect this would mean certain hedge funds would become eligible funds under UCITS and form part of an UCITS fund diversified portfolio and benefit from the ability to be marketed across the EU.

The Commission's legislative action on hedge fund regulation is entirely consistent with the 'regulatory' policy regime in financial services; the primary concern is to remove barriers that impede the development of a fully integrated European financial services market. The proposal to look at removing barriers to the marketing of non-harmonised products for professional investors is wholly consistent with a programme of negative integration, which can be traced all the way through financial services legislation. The consequences of the Commission's actions could have a profound effect not just on the industry but on EU citizens. If certain hedge funds become eligible to form part of an UCITS fund diversified portfolio and benefit from the ability to be marketed across the EU, this is likely to accelerate a trend toward 'retailisation'. As the hedge fund market has developed it has become more 'institutionalised'. Hedge funds are now no longer just the reserve of HNWI but increasingly capture a larger share of institutional investment from banks and pension funds. In the last ten years the EU pension fund industry has increased its exposure to hedge funds and is now heavily invested in the sector (Gottlieb 2007: 2). Negative EU integration in the hedge fund sector could have the consequence that more and more ordinary investors will be exposed to hedge funds through their pensions and investments, but supervision will be subject to a patchwork of regulatory regimes, and it has been shown that the EU's ability to drive positive integration in this field is limited.

## Conclusion

This article has sought to place the current debate on the regulation of hedge funds and the role of the EU in a historical, institutional and theoretical context. There is considerable popular feeling that hedge funds constitute a threat to financial stability and that they need to be regulated in some way. The current policy debate recalls Downs' issue attention cycle; there has been an alarmed discovery created by the role of hedge funds in a series of financial crises with sub-prime being the latest, and a 'euphoric enthusiasm' that regulation is the solution. Extensive theoretical work, particularly by Majone (1996 & 2006), demonstrates that the Commission will always seek to expand it competencies by acting as a policy entrepreneur. Ostensibly, hedge fund regulation presents an ideal 'policy window' to the Commission to act. Yet even in the face of worsening financial turbulence the Commission has defended its 'non-decision' in this area. Despite continued calls for action within the EP, no new initiatives to directly regulate hedge funds have emerged from the Commission. It would appear that hedge fund regulation is a 'policy cul-de-sac' as far as the Commission is concerned.

However, this paper demonstrates that in this policy area things are not as straightforward as they first appear. The relationship between hedge funds and financial crises is complex and less causal than is often portrayed; there is consensus that something needs to be done, but not always consensus on what. From an EU perspective, there are strict limits on its ability to act, not least as a result of the international nature of the regulatory environment and the conflict between key actors, but also because the regulatory regime has traditionally demanded a 'light-touch' approach. However, while there is little evidence of EU action in terms of

regulation or so-called positive integration, a wider view, which places hedge fund regulation in the longer-term programme of financial services integration, reveals that the Commission is far from inactive in relation to the environment in which hedge funds operate. The logic of negative integration that seeks to remove barriers to the development of an integrated EU market is in practice changing the landscape of the hedge fund industry. It is short-sighted to consider regulation to be simply supervision; it is both rule making and supervision. European financial regulation has become increasingly centralised with rulemaking and policy formulation the result of EU legislation.

This process has significant implications for the type of investors exposed to hedge-fund activities. Hedge funds are no longer the sole preserve of 'high net worth individuals' and 'sophisticated investors', rather 'ordinary investors' are increasingly exposed through their pensions and investments. In this way, the rationale for the 'light touch' regime comes into question. The ability of the Commission to drive positive integration in this field may be limited as, in Downs' (1972) terms, "the cost of significant progress" in terms of positive integration have been revealed. However, the Commission may yet find itself at the centre of a regulatory nexus in relation to hedge-funds – responding to a regulatory vacuum resulting from the process of negative integration or to a new 'policy window' in relation to the regulation of hedge-funds.

***

**Bibliography**


Atkins, R. and Hollinger, P. (2007). 'Sarkozy calls for greater scrutiny of markets'. *Financial Times*, 17th August 2007, p. 4.

Atkinson, M. (1997). 'IMF's warning for West'. *The Guardian*, 22nd December 1997, p.16.

Bachrach, P., and Baratz, M.S. (1963), 'Decisions and nondecisions: An analytical framework'. *American Political Science Review 62,* pp. 632-642.

BBC. (2005). 'Snow backs extra hedge fund rules'. Available at: http://news.co.uk/1/hi/business/4101334.stm

Benoit, B. (2006). 'Hedge fund transparency put on G8 agenda' FT.com*, 17th October 2006*. Available at: http://us.ft.com/ftgateway/superpage.ft?news_id=fto101720061310261252

Benoit, B. and Atkins, R. (2007). 'Germany's hedge fund plan wins G7 support'. FT.com, 11th February 2007, Available at: http://us.ft.com/ftgateway/superpage.ft?news_id=fto021120071135464206

Buck, Tobias. (2007). 'McCreevy hits out at rating agencies'. *Financial Times*, 6th September 2007, p.8.

CEC (2005). *Green paper on the enhancement of the EU framework for investment funds* (COM(2005) 314 final). Brussels.

CEC (2006a). 'Frequently Asked Questions (FAQs) on the White Paper on enhancing the Single Market framework for investment funds.' Available at: http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/06/431&format=HTML&aged=0&language=EN&guiLanguage=en.

CEC (2006b). *Report of the Alternative Investment Expert Group: Managing, Servicing and Marketing Hedge Funds in Europe*. (IP/06/915 ). City: European Commission Internal Market and Services DG.

CEC (2006c). *White Paper on Enhancing the Single Market Framework for Investment Funds*. (IP/06/1569 ). Brussels.

Declaration, G8 Summit. (2007).Growth and Responsibility in the world economy. G8 Summit 2007: Heiligendamm. Available at: http://www.whitehouse.gov/g8/2007/g8agenda.pdf.

Downs, A. (1972). 'Up and Down with Ecology - the issue-attention cycle'. *Public Interest,* 28, p.p.38-59.

EurActiv. (2007a).'McCreevy defends decision not regulate hedge funds'. Available at: http://euractiv.com/en/financial-services/mccreevy-defends-decision-regulate-hedge-funds/article-161896
EurActiv. (2007b). 'Merkel and Sarkozy seek EU action on financial-market transparency'. Available at: http://euractiv.com/en/financial-service/merkel-sarkozy-seek-eu-action-financial-market-transparency/article-166606
Euroweek (ed.) (2008). 'HFWG sets out best practice guidelines for hedge funds'. *EuroWeek,* 25th January 2008.
European Report (ed.) (2008). 'Financial Services: MEPs call for transparency on hedge funds and private equity'. *European Report*, 30th June 2008.
Evans, Simon. (2008). 'Hedge funds managers shy away from signing compliance code'. *Business and Money*, 8th June 2008.
FSF (2007).Update of the FSF report on highly leveraged institutions. Financial Stability Forum. Available at: http://www.fsforum.org/publications/r_0705.pdf?noframes=1
Gieve, J. (2008). *The return of the credit cycle: old lessons in new markets*. Euromoney Bond Investors Congress. 27th February 2008. Conference Speech
Gottlieb, C. (2007). *ECMI Policy Brief: Hedge Funds: Heading for a regulatory hard landing?* (No. 5/April 2007). Brussels: European Capital Markets Institute.
Gow, D. (2007).Is this upbeat feeling in Brussels warranted? Available at: http://www.guardian.co.uk/business/2007/jun/06/davidgowoneurope.europe
Grahl, J., Teague, P. and Om. (2005). 'Problems of financial integration in the EU.' *Journal of European Public Policy 12*(6), pp.1005-1021.
Hager, S.B. (2007). *Hedge Fund Power and the Limits to Regulation in the European Union*. Nordic International Studies Association (NISA) conference "Power, Vision and Order in World Politics". 24th-25th May 2007.
HFWG (2007). Leading hedge fund managers announce industry review of best practice. Hedge Fund Working Group. Available at: http://hfwg.webalistic.co.uk/sites/10085/files/hfwg_press_release.pdf
Intelligence, Hedge Fund. (2007).Global hedge fund assets surge past $2 trillion. Hedge Fund Intelligence. Available at: www.euromoneyplc.com/images/covers/HedgeFund%20Intelligence%20Global%20Review%202007/Press%20release.doc
Jenkins, Patrick. (2005). 'Eichel and Snow "seek hedge fund clarity"'. *Financial Times*, 17th June 2005, p.8.
Kaletsky, A. (1992). 'How Mr Soros made a billion by betting against the pound'. *The Times*, 26th October 1992.
Kramb, D. and Larsen P.T.. (2007). 'Barcap call for greater hedge fund transparency'. *Financial Times*, 11th October 2007, p. 22
Lomax, R. (2008). *The State of the Economy*. Institute of Economic Affairs 25th Anniversary Conference. 26th February 2008.
Majone, G. (2006). 'The common sense of European integration.' *Journal of European Public Policy 13*(5), pp. 607-626.
Majone, G. (1996). *Regulating Europe*. London: Routledge.
Mawson, J. (2006). 'Six AA officers face siege in battle over "asset stripping"'. *Sunday Express*, 26th February 2006.
Morgan, G. and Knights, D. (1997). *Regulation and Deregulation in European Financial Services*. London: MacMillan.
Pallesi, N. (2007).Application of Tax Treaties to Investment Funds. Available at: www.javeriana.edu.co/facultades/C_Juridicas/pub_rev/documents/3_pallesi_002.pdf
PSE. (2007). *Hedge Funds and Private Equity - A Critical Analysis - Executive Summary* Brussels: Socialist Group in the European Parliament.
Quaglia, L. (2007). 'The politics of financial services regulation and supervision reform in the European Union'. *European Journal of Political Research* 46(2):269-290.
Rees-Mogg, W. (1998). 'Why a hedge fund withered away'. *The Times*, 4th October 1998.
Reuters. (2007). 'EU's McCreevy says hedge funds good for market.' Available at http://www.reuters.com/article/mergersNews/idUSL2037549320070220

Story, J. and Ingo W. (1997). *Political economy of financial integration in Europe: The battle of the systems*. 1st Edition. Cambridge: MIT Press.

Sunday Business Post (ed.) (1998) 'Lessons aplenty in LTCM collapse: The fragility of our financial system in general - and of hedge funds in particular - has been exposed'. *Sunday Business Post*, 4th October 1998, p. 8.

Tett, Gillian. (2007). 'Regulators start rethinking their rules on banks'. *Financial Times*, 2oth September 2007, p.13.

Thomas, D. (30/09/2007). 'Hedge fund assets soar to almost $2,500bn'. *FT.com*, 30th September 2007. Available at: http://us.ft.com/ftgateway/superpage.ft?news_id=fto093020071732005965

Treasury, US Department of the. (2007).Statement by G-7 Finance Ministers and Central Bank Governors, Essen, Germany. Press Release: US Department of the Treasury. Available at: http://www.ustreas.gov/press/releases/hp256.htm

Vaaler, P.M and Burkhard N.S. (2005). 'Home Country Governance Quality and the "Bonding" Hypothesis', in S. Vachani (ed.) Transformations in Global Governance: Implications for Multinationals & Other Stakeholders. London: Edward Elgar Publishers.

Vines, Stephen. (1997). 'Unscrupulous' Soros fires a broadside at Mahathir the 'menance'; The war of words between Malaysian Prime Minister Mahathir Mohamad and currency speculator George Soros plumbed new depths this weekend as both men defend their corners at the gathering of the World Bank and International Monetary Fund'. *The Independent*, 22nd September 1997, p.18.

de Visscher, C., Maiscocq, O. and Varone, F. (2007).The Lamfalussy Reform in the EU Securities Markets: Fiduciary Relationships, Policy Effectiveness and Balance of Power NEWGOV - New Modes of Goverance Project. Available at: http://www.eu-newgov.org/database/DELIV/D07D07a_Lamfalussy_Reform_in_the_EU_Securities_Markets.pdf.

Wymeersch, E. (2005). 'The future of financial regulation and supervision in Europe.' *Common Market Law Review 42*(4), pp. 987-1010.

***

# The EU and Climate Change Policy: Law, Politics and Prominence at Different Levels

Chad Damro, Iain Hardie & Donald MacKenzie

**Abstract**

The European Union (EU) is a prominent player in the politics of climate change, operating as an authoritative regional actor that influences policy-making at the national and international levels. The EU's climate change policies are thus subjected to multiple pressures that arise from the domestic politics of its twenty-seven individual member states and the international politics of non-EU states with which it negotiates. Facing these multiple pressures, how and why could such a non-traditional actor develop into a prominent player at different levels of climate change policy-making? This article argues that the EU's rise to prominence can be understood by tracking a number of historical-legal institutional developments at the domestic and international levels. The article also provides a preliminary investigation of the EU emissions trading scheme, a new institutional mechanism that illustrates the policy pressures arising from different levels.

WHILE THE EUROPEAN UNION (EU) IS A PROMINENT PLAYER IN THE POLITICS OF climate change, it is neither a state nor an international organisation in the traditional sense.[1] Rather, it operates as a proactive and authoritative regional actor that can influence policy-making in significant ways at the national and international levels. The EU's legal and political capacity to promulgate domestic climate change legislation and to play a significant role in international environmental politics arises from the fact that its twenty-seven member states have pooled sovereignty in environmental policy-making. Its unique nature and position also means that EU policy-making is subject to multiple pressures from both the national and international levels, a situation that potentially complicates social scientific efforts to explain the causes of initiatives and outcomes in EU climate change policy.

Despite its complex, internal institutional design, the EU's impact is directly apparent at the national and regional levels. The EU has and continues to play a significant role in designing European climate change legislation as well as encouraging and interacting with national climate change activity within its Member States. Its European Climate Change Programme (ECCP) in 2000, began a process of screening measures in the fields of energy, transport and industry. According to the European Commission, since the launch of the ECCP, the EU has put in place more than thirty initiatives to counter climate change (2006: 1). Table 1 lists the key initiatives that have resulted from this programme.

[1] For simplicity, this study refers to the "EU" when discussing the Union's climate change policies. The term "EC" will be used in this article only when necessary for legal clarity and when citing secondary sources.

ISSN 1815 347X Online –Damro, C., Hardie, I and MacKenzie, D. (2008), 'The EU and Climate Change Policy: Law, Politics and Prominence at Different Levels', *Journal of Contemporary European Research*, Vol. 4, No. 3, pp.179-192. Available: http://www.jcer.net/ojs.index.php/jcer/article/view/110/103

**Table 1: The European Climate Change Programme—Key Measures as of 2006[2]**

| Measure | Reduction potential (Mt $Co_2$-eq.) EU-15, 2010 | Entry into Force | Starting to Deliver |
|---|---|---|---|
| EU emission trading scheme | - | 2003 | 2005 |
| Link JI/CDM to emission trading | - | 2004 | 2005/2008 |
| Directive on promotion of electricity from renewable energy sources | 100-125 | 2001 | 2003 |
| Directive on promotion of CHP | 65 | 2004 | 2006 |
| Directive on energy performance of buildings | 35-45 | 2003 | 2006 |
| Directive on promotion of transport biofuels | 35-40 | 2003 | 2005 |
| Landfill directive | 40 | 1999 | 2000 |
| ACEA/JAMA/KAMA voluntary commitment | 75-80 | 1998 | 1999 |
| Energy labelling directives | 20 | 1992 | 1993 |
| Biomass action plan | - | 2005 | 2006 |

**Source**: Jos Delbeke (2006: 6).

At the international level, the EU has been a prominent player in climate change politics via the process initiated by the 1992 United Nations Framework Convention on Climate Change (UNFCCC).[3] The UNFCCC provided a non-binding framework for further international negotiations on climate change and provided a venue in which the EU could actively participate despite its non-traditional nature. The subsequent negotiations occurred as the regular, so-called Conferences of the Parties (COPs). Following the 1997 COP-3 that resulted in the signing of the Kyoto Protocol, the EU played a prominent role as an advocate for the ratification of the agreement.[4] The EU was rewarded for its efforts in 2005 when enough countries ratified the Protocol for it to enter into force. Although its position has shifted and activity has fluctuated during these lengthy negotiations, the Union is now often described as a 'leader' or

[2] Delbeke also notes important, climate change related developments in voluntary commitments from auto manufacturers to improve $CO_2$ efficiency, an energy labelling system for consumers, methane reduction initiatives for landfills, fluorinated gas substitution regulation, work on energy services and energy using products, and consumer incentives for $CO_2$ friendly automobiles (2006: 5-7). For more on the EU's climate change policies, see http://europa.eu/scadplus/leg/en/s15012.htm. Oberthür and Tänzler (2007: 255) also list many EU climate change policies and individual, national policies by Member States.

[3] The UNFCCC was agreed at the 1992 UN Conference on Environment and Development in Rio de Janeiro and entered into force in March 1994.

[4] At COP-7, held in Marrakech, Morocco, from 29 October to 9 November 2001, the Parties adopted the Marrakech Accords, a comprehensive set of detailed rules for implementing the Protocol. The EU and its Member States ratified the Marrakech Agreement in 2002.

'frontrunner' in international environmental politics.[5] While the academic debates over 'leadership' are outside the analytical focus of this article, the EU does operate as a prominent actor in the ongoing negotiations over the types of arrangements that will follow the expiration of Kyoto in 2012. As a party to the Kyoto Protocol, the EU has participated prominently in important and intensive interactions with non-members and international organisations. According to Oberthür, "the commitments entered into under the climate change regime have affected the rules of other international institutions and EU legal instruments" (2006: 56-58), resulting in various types of institutional interaction across different levels. More generally, the EU remains an active and prominent protagonist for changes in global environmental governance, especially through the United Nations and its associated bodies (Vogler 2005).

Given its domestic and international activity, the EU provides an interesting case in which multiple causes interact across national, regional and international levels of analysis. This climate change activity at different levels begs the following question: *How and why has a non-traditional, regional actor such as the EU become a prominent player in climate change politics at both the national and international levels?* This question is particularly intriguing considering that, at its origins in 1957, the Union had no authority over domestic environmental policy generally, much less specific authority to engage in international climate change negotiations.

It is worth emphasising at the outset that this article does not intend to test the comparative influence of multiple pressures from different levels. Rather, the article asserts that the conditions for the EU's rise to prominence in this policy area can be understood by tracking a number of historical-legal institutional developments that have occurred at the domestic and international levels. While these changes have created opportunities for the EU to engage in multilateral climate change politics, the shifting authority from the Member States to the EU institutions has also increased internal policy-making complexity. The following study of the institutional developments should provide a basis for further analyses of EU climate change policy that incorporate more systematically the role of various actors at different levels.[6]

The article proceeds in the following manner. The next section describes the historical and legal establishment of the EU's authority to engage in environmental policy-making within the Union. The third section explores the ways in which the EU acquired its ability to engage in international environmental politics. The fourth section investigates the EU's emissions trading scheme, a climate change mechanism that illustrates the institutional complexity of the Union as well as the political interaction that occurs between domestic and international levels. The final section provides a summary of the findings and suggests different directions for further research that may help to illuminate the politics of EU climate change policies and policy-making.

## Internal Institutional Developments and EU Environmental Policy-Making

Environmental policy, much less the specifics of climate change, did not appear in the original 1957 Treaty of Rome that established the European Economic Community.[7] While this might seem a surprising oversight today, it is understandable in historical terms. In the 1950s, environmental policy was not a highly salient political issue for an organisation that was focusing on economic efforts to help recover from the

[5] For work on the EU as a 'leader' in international environmental politics, see Schreurs and Tiberghien (2007), Damro (2006), Skodvin and Andresen (2006), Wettestad (2005), Zito (2005), Vig and Faure (2004), Christiansen and Wettestad (2003), Hovi *et al.* (2003), Andresen and Agrawala (2002), Gupta and Ringius (2001), Gupta and Grubb (2000).

[6] See, for example, efforts investigating the subnational/national level in individual EU Member States (Harris 2007, Compston and Bailey 2008, Fisher 2004, Vig and Faure 2004) and their interaction at the EU level (Damro and MacKenzie 2008, Delreux 2006, Janning 2005, Barket *et al.* 2001).

[7] For a useful history and introduction to EU environmental policy, see Lenschow (2005).

devastating effects of war. These early regional efforts targeted economic integration, not environmental protection. But how could the EU have developed such a formidable role in environmental policy today given these humble origins? A number of internal developments, which will be identified below in chronological order, helped to establish the EU's influence in environmental policy and contributed to its ability to engage in international climate change negotiations.

The first major development was a legal decision by the European Court of Justice. The 1971 ERTA Decision was not an environment-specific ruling; it addressed cross-border transportation policy issues within the Union.[8] Nevertheless, the language in the ruling provided an opening for the Commission to argue for external competence in environmental policy and extended the EU's "external competence in one vast stroke" across multiple policy areas (Macrory and Hession 1996: 123). According to the decision, when the European Community has the right (that is, acquires legal competence) to legislate internally, it also has the right to act externally in matters that might affect that internal legislation. As a result, the EU typically "first legislates and then exercises external jurisdiction. The Court's case law did not, however, clarify whether the Commission or the Council Presidency would represent the Community in international fora…Furthermore, the Court's decision did not change the international status of the Community's member-states" (Sbragia 1998a: 287-88).

Not long after the ERTA decision, the EU issued its first Environmental Action Programme (EAP). These non-binding EAPs set out the framework and strategies and priorities for EU environmental policy-making. The first was issued in 1973. During the early 1970s, the Commission began including environmental cooperation with third parties in its EAPs. The Commission linked competence over environmental policy with its competence in trade policy by arguing that implementation of international environmental agreements could affect EU competitiveness. Consequently, during the 1970s, the EU became party to a number of multilateral environmental agreements. The 5th EAP (1993) included climate change as a 'theme'. The most recent 6th EAP (a decision of the European Parliament and Council) runs from 2002-2012, and includes four priority areas: climate change, nature and biodiversity, environment and health, and natural resources and waste. The EU's environmental policy generally conforms to its EAPs, which helps to give it internal coherence and consistency.

In 1981, the Commission established the Directorate-General XI, which would become the DG Environment of today. It represents a serious effort at institutionalising environmental policy and reflects "an institutional acknowledgment of the growing importance of environmental protection within the Community's policy portfolio. It has also provided the main channel for environmental groups trying to pressure the Commission toward 'greener' proposals, with the result that it has often been treated with suspicion by those within the Commission concerned with economic development and market liberalization" (Sbragia 1998b: 170). DG Environment now provides a home for the coordination of EU environmental policy, including the Union's international relations.

The first inclusion of environmental policy in the primary legislation of the EU came with the 1986 Single European Act (SEA). The SEA incorporated environmental policy into the EU's treaty structure, giving it an explicit legal basis from which to make policy. Before the SEA, "the Commission primarily based [environmental] legislation under Treaty Article 100 (harmonizing national regulations that inhibit common market trade) or Article 235 (permitting the pursuit of Community objectives in the course of operating the common market where the Treaty has not provided the necessary powers). Accordingly, an important rationale for Community environmental activity was protecting the common market from national environmental legislation that acts as trade (non-tariff) barriers" (Zito 2005: 367). The SEA also gave the EU a legal basis for

[8] Case 22/70 Re the European Road Transport Agreement: *EC Commission v. EC Council* 1971 ELR 60-79.

negotiating international environmental agreements in Article 130r (5), which states that "within their respective spheres of competence, the Community and the Member States shall cooperate with third countries and with the relevant international organizations" (Sbragia 1998a: 289).

In 1990, the EU took another internal institutional stride when the Council approved the creation of the European Environment Agency (EEA). The key role of the EEA is that of information provider and analyst. While it is not directly involved in international decision-making, it does interact with international partners, including European Economic Area member countries (Iceland, Norway, Leichtenstein), accession countries, international organisations (e.g., UNEP, WHO, OECD), and the Balkan countries.[9] Much of the public information the EEA provides covers developments in the science and policy of climate change at both national and international levels.

In 1992, the EU experienced another significant internal development with implications for climate change and international negotiations. The Maastricht Treaty granted the EU competence to conclude international environmental agreements, which then are binding on the Union's institutions and its Member States. The Treaty also "included a new objective for Community action: Community policy on the environment should contribute to 'promoting measures at international level to deal with regional or worldwide environmental problems'" (Sbragia 1998a: 290).

These internal developments helped to establish environmental policy within the EU and increased the authority of the supranational European Commission. As Zito argues, "The EU's ability to act in its own right as an environmental actor is a by-product of the historical evolution of complex institutional forces. Just as the EU was expanding its environmental policy scope, it was also enhancing enormously its international profile" (2005: 367). It is to the EU's international profile that the article now turns.

## International Developments and EU Activity in Multilateral Climate Change Policy-Making

As a result of the internal developments noted in the previous section, the EU has established itself as a prominent environmental actor at the national and regional level. However, it also had to establish an external legal competence for it to become a prominent international actor in this policy area. By doing so, it could move forward to engage more actively in international environmental politics.

The EU's legal competence in international environmental politics is known as shared (or mixed) competence.[10] Legal competence is important as it determines which institutions have the authority to act internationally on behalf of the EU. The EU's system of shared competence determines who will represent the Union at international negotiations, sign and ratify agreements reached at the negotiations, and implement domestic measures necessary to meet commitments under such agreements.[11] In theory, the Commission speaks for the EU when areas under the Union's exclusive competence are being discussed and the Member State holding the Presidency speaks

[9] It is noteworthy that while Turkey is not a member of the EU, it is a member of the EEA.
[10] This differs greatly from areas traditionally guided by exclusive competence, like trade policy. For useful discussions of shared competence, see Delreux (2006), Vogler (1999) and Macrory and Hession (1996). While the 1957 Treaty of Rome gave express external competences to the European Economic Communities in only two policy areas (trade and association agreements with third states), today, under the Treaty of Nice, the EU's express external competence includes financial and monetary policy, external trade policy, research policy, environmental policy, development cooperation and association agreements (Delreux 2006: 234).
[11] For discussions of the practicalities of EU representation in negotiations and signing, see Delreux (2006) and Macrory and Hession (1996). For recent work on implementation and enforcement, see Hovi *et al.* (2007).

for the EU when areas of shared competence are being considered. Despite this legal distinction, the Commission can be asked to represent the EU when areas of mixed competence are being discussed (Sbragia 1998a: 293: 295). The Commission may also be involved in negotiations more informally: "No matter who negotiates on behalf of the EU, intensive coordination between the different European actors during international environmental negotiations and conferences is part of the day-to-day practice. These on the spot coordination meetings take place at the location of the international negotiations, mostly every morning and every evening during the international negotiations" (Delreux 2006: 244).

While the system of shared competence has become standard operating procedure within the EU, it can create the potential for confusion at international negotiations (Sbragia 1998a: 294; Macrory and Hession 1996: 113). For example, multilateral environmental negotiations often take years, but the Union's Presidency lasts only six months, which can produce a puzzling series of interlocutors.[12] Likewise, because environmental negotiations often touch upon other policy areas, the institution legally charged with representing the Union can change back and forth.[13] Under such conditions, third parties may wonder with whom they are actually negotiating, especially if different EU representatives and institutions speak across time on the different policy areas being discussed. This potential for confusion can also weaken the EU's credibility in the minds of some third party negotiators when it comes to implementation and enforcement commitments.

But how did the EU get to this complex institutional arrangement for external representation? The answer is that "The path towards external recognition has often been a struggle" (Delreux 2006: 233); the internal developments mentioned above played a role, but international developments were also necessary to complete the Union's transformation. The success of the EU's transformation is reflected in the fact that it has signed over sixty multilateral environmental agreements.[14] But to do so, it has had to acquire recognition from third-party negotiators and negotiating forums.

The United Nations (UN) is the primary forum in which international climate change negotiations occur. Representation in international negotiations often requires membership in the associated organisation or at least recognition by negotiating partners (Jupille and Caporaso 1998). The EU's first strides in acquiring third-party recognition occurred with the passing of a 1974 UN General Assembly Resolution that granted the EU only permanent observer status, including participation rights, in the General Assembly and the Economic and Social Council.[15] While the resolution recognised the EU's rights to participate in these important UN institutions, it did not address a role for the Union in multilateral environmental negotiations that might take place outside of those institutions.

In 1979, the EU was granted the status of Regional Economic Integration Organisation (REIO), which allowed the Union to participate in multilateral environmental negotiations.[16] As a REIO, the EU can be party to a convention even if none of its

[12] See European Commission (2001: 27). In contrast, scholars have also argued that the EU's variable representation is no longer a significant obstacle for third party negotiators (Vogler 1999).
[13] Negotiations over environmental policy can touch upon industrial policy, consumer policy, overseas economic development policy, science and research policy, agricultural policy, marine/fisheries policy, technology policy, fiscal policy, energy policy, transport policy and humanitarian assistance policy.
[14] According to some measures, the EU is signatory to hundreds of multilateral environmental agreements, including multiple renewals of pre-existing ones.
[15] UNGA Resolution 3208 (XXIX), 11 October 1974. According to this arrangement, the EC (represented by the European Commission) and not the EU, formally possesses permanent observer status.
[16] At the domestic level, Sbragia (1998a: 289) points out that "The link between the Community and other international bodies was explicitly recognized by the European Council held in Stuttgart in June 1983. The Council stated it saw the necessity to take coordinated and effective initiatives both within the Community and internationally, particularly within the ECE, in combating pollution (Johnson and Corcelle 1995: 22)".

Member States are party to the convention. Where REIO status does not apply, participation rights have been negotiated on a case-by-case basis; EU participation, therefore, still has to be negotiated and approved on an ad hoc basis for different multilateral environmental negotiations. Specifically in climate change negotiations, Article 22 of the Climate Change Convention "provides for ratification of the Convention by states and 'Regional Economic Integration Organizations'" (Macrory and Hession 1996: 112).[17] This legal measure ultimately allowed the EU to sign onto and ratify the Kyoto Protocol in May 2002, making it the only regional organisation to do so.

Following from the UN's 1974 resolution and its REIO status, the EU also maintains active institutional relations (as an observer) within the UN system of governance via two of its key bodies for dealing with environmental issues: the UN Environment Programme and the Commission on Sustainable Development. Although it does not possess full participatory rights, the EU is a major financial donor and has become a prominent advocate of numerous proposals to re-organise global environmental governance (Damro 2006; Vogler 2005; European Commission 2004).

The EU's ability to engage in multilateral environmental negotiations is also apparent in its ability to attain objectives and to manage lengthy UN negotiations on climate change. For example, one need only investigate the UNFCCC's Kyoto Process (1992-present). These long negotiations were pushed forward by the EU despite the withdrawal of the world's largest greenhouse gas emitter—the United States of America. The prominence of the EU's role certainly fluctuated during this process (Grubb and Yamin 2001). Nevertheless, the EU seems to have demonstrated the ability to act as a prominent player by encouraging enough countries to ratify the Protocol for it to come into force in February 2005. The EU also may have learned the skill of issue linkage when it seemed to convince Russia to ratify the Protocol in exchange for the Union's support of Russia's WTO membership bid (Damro 2006).

Much of the EU's success in the UNFCCC's Kyoto Process is due to the ability of its Member States to understand and operate within its complex institutional framework and system of shared competence. At the same time, the EU's decisions and behaviour are also clearly influenced by international factors and the need for recognition by third parties. These institutional arrangements and pressures from the national and international levels can create feedback that results in new institutional developments at the regional European level, as will be highlighted in the next section.

## The EU Emissions Trading Scheme

Given the various institutional factors affecting the EU's role in climate change policy at different levels, it seems sensible to explore an empirical case in which the Union has played a prominent role. The establishment of the EU's internal Emissions Trading Scheme (ETS) demonstrates how the Union can operate as an authoritative regional point of interaction between the national and international levels. At the national level, the ETS has become a 'flagship' for EU climate change policy (Delbeke 2006: 7) and now covers roughly half of the EU's $CO_2$ emissions. At the international level, it represents a case in which the EU changed its position and now seems to be engaging as a prominent player. Despite these positive outcomes, the EU's creation of the world's largest and most comprehensive (European Commission 2006: 1) emissions trading scheme faced high set-up costs. Add to this the international uncertainty surrounding

[17] In accordance with the Decision of the Council OJ L33 07/2/94 p11 Conclusion of the Framework Convention on Climate Change, "The Community acceded to the UN Framework Convention on Climate Change with the Members States and has therefore arrived at a full participatory role in the future developments of the Convention, including the Conferences of Parties" (Macrory and Hession 1996: 112).

the Kyoto Protocol at the time the EU began working on its ETS, and the Union's decision to move forward with the initiative seems particularly puzzling and risky.

The decision to create a new market for carbon trading reveals the complicated causality that can occur across different levels when the EU engages in climate change policy. Many factors from the national, regional (EU) and international levels certainly had an impact on the decision to move forward with emissions trading. A number of studies have problematised and tried to disentangle these multiple causes. While this is not the place to provide a comprehensive review of the relevant literature, it is worth noting briefly a few studies for their efforts to disentangle these multiple causes.

First, studies have explored the EU's motivations for adopting the idea of emissions trading after initially resisting it in the international negotiations. Damro and Luaces-Mendez (2003) argue that the EU adopted the idea of emissions trading as part of a process of policy learning that drew from US experiences with similar domestic schemes.[18] Cass (2005) argues that the EU's advocacy for emissions trading is best understood as the result of shifting 'frames' of debate that allowed the Union to overcome norms that had previously prevented its support for such a market-based mechanism. Second, other studies have focused their analyses on the reasons why the EU issued its 2003 directive establishing the ETS. Wettestad (2005) tends to emphasise the central role played by the European Commission while Oberthür and Tänzler (2007) and Oberthür (2006) tend to emphasise the causal role of international regimes. The sum total of these scholarly efforts suggests that explanations of emissions trading and the ETS need to consider a significant causal role for domestic *and* international factors.[19] Likewise, future analyses of multiple factors will be necessary to explain the impact that the EU's ETS will (or will not) have on global efforts to create an international emissions trading system.

Keeping with the analytical theme of this article, it is worth trying to identify important institutional and other pressures from different levels that might help to explain the rise and operation of the ETS. At its most basic level, the EU's ETS arose from the UNFCCC process and the resulting Kyoto commitments. Early in the negotiations, the EU resisted the market-based instrument of emissions trading in favour of more command-and-control regulatory and taxation schemes.[20] By contrast, the USA was the primary driver of the new instrument, based on its previous experience with similar domestic trading systems.[21] These differing positions were a point of contention from the outset of the negotiations. As Sbragia points out, as early as "1992 EU Finance Ministers insisted that any EU carbon tax be implemented only on condition that the USA and Japan acted in kind. Japan agreed on condition that the USA enact some kind of carbon tax. The Clinton administration refused" (1998a: 299). Despite this early stalemate, the EU's gradual adoption of the idea of emissions trading allowed for compromise and created an opportunity for progress in the negotiations.

But what could have triggered the EU's change of position? Some of the change can certainly be attributed to an international process of policy learning. For example, one Brussels policy-maker noted direct policy learning on this issue through transatlantic visits by Commission officials to observe US trading schemes in action.[22] This claim is supported by the Commission's statement that "The ETS's 'cap and trade' system was inspired by a United States model introduced in the 1990s to curb acid rain" (European

[18] For a study that emphasises 'ossification' as the opposite of policy learning within the context of climate change, see Depledge (2006).
[19] For an analysis of climate change politics that challenges the necessity of investigating domestic politics, see Grundig (2006).
[20] An early Commission predilection for carbon taxes is apparent in the fact that Carlo Ripa de Meana, the then-Environment Commissioner, refused to go to the 1992 Rio Summit because of the lack of commitment to carbon taxes by the Council of Ministers (Sbragia with Damro 1999: 61).
[21] Oberthür and Tänzler (2007: 264), Christiansen and Wettestad (2003), Damro and Mendez (2003).
[22] Expert Interview, Copenhagen, Denmark, 14 March 2007.

Commission 2006: 2). Domestic politics and institutional obstacles also played a role. In the early 1990s, the Commission realised that it would face a difficult, if not impossible, battle with its Member States over a carbon and/or energy tax. Crucially, both fiscal instruments and energy policy require unanimity (as opposed to qualified majority) in the Council of Ministers. Since the Commission would be unlikely to convince all Member States in the Council to agree to an EU carbon/energy tax, the proposal faded (Braun 2008).[23] The combination, therefore, of international policy learning and the domestic politics and institutional constraints of taxation highlight the pressures coming from different levels. Indeed, as one Brussels insider noted of the cross-level pressures, "So, we saw that the tax was failing on the one hand and we saw that emissions trading was pushed by the United States, so the two were coinciding and so we changed approach".[24]

As the EU was gradually changing its position, the US was gradually reducing its commitment to the Kyoto Process—for example, President Clinton decided not to send the Protocol to a Senate that publicly opposed ratification, and President Bush effectively withdrew from the process in March 2001. As a result, the EU became the most prominent advocate for emissions trading within the Kyoto framework (Schreurs and Tiberghien 2007: 20; Wettestad 2005: 17). Cass adds that "Once the United States became disassociated with the trading proposals, the European Union was able to enter the void with greater credibility with the European public and environmental NGOs and play a more innovative role in the development of the trading mechanism" (Wettestad 2005: 40).

As this international role and commitment evolved, the EU then began to push for the creation of its own domestic, Europe-wide ETS—a costly new policy initiative that would create an entire new market as a potential complement to any future international emissions trading scheme. Despite the costs, the EU moved forward very rapidly with the establishment of this new policy instrument. As Oberthür and Tänzler (2007: 266) note, "the discussions on setting up an EU-wide system of GHG emissions trading advanced at a high speed after the European Commission first declared in 1998 that 'the Community could set up its own internal trading scheme by 2005'".[25]

The speed with which the EU created its ETS is particularly noteworthy because the Union lacked previous experience with such a market-based mechanism (Wettestad 2005). The fundamentals, however, of emissions trading are rather straight-forward. The European Commission (2006: 1) itself provides a concise description of how the ETS is intended to operate:

> …large emitters of greenhouse gases receive an annual allotment from their national governments specifying the amount of $CO_2$ they may release into the atmosphere each year. Emitters may sell any 'surplus' allowances or credits to EU-based companies that need help to meet their targets. Emitters exceeding their allowances may also choose to invest in ways to reduce their emissions. By providing a financial incentive to curb $CO_2$ emissions—essentially putting a price on carbon emissions—the ETS is helping to change the mindset of European business.

[23] According to one insider, the UK offered strong resistance to the tax and was supported to varying degrees at different times by Spain, Ireland, Germany and Greece (Expert Interview, Copenhagen, Denmark, 14 March 2007).
[24] Expert Interview, Copenhagen, Denmark, 13 March 2007.
[25] Oberthür and Tänzler (2007: 266) also identify the following rapid timeline for important institutional developments related to the ETS: "In October 2001, the Commission presented a proposal for an EC Directive on an EU-wide emissions trading scheme (European Commission 2001a: 581). EU environment ministers agreed on the rules for the EU-wide trading scheme in December 2002 (European Council 2002) and the resulting EU directive entered into force in October 2003 (European Council 2003a). The EU started a pilot phase of the scheme in 2005, which is to be followed by a full-blown system that will become operational in 2008 (from the beginning of the 2008-12 Kyoto Protocol commitment period)".

As the Commission began organising its regional ETS, it also had to contend with budding national emissions trading schemes in Member States such as the UK and Denmark. Without proper coordination, these national schemes could develop into instruments that were incompatible with the EU-level ETS. Such national schemes could also create advantages for certain Member States. As Zito (2005: 371) argues, "The Netherlands and the UK have been seeking to develop their ideas on this system in order to gain some first mover advantage and 'upload' their ideas within the larger EU debate and prevent disruption to their domestic systems (Jordan *et al.* 2005)". The UK national scheme provides a useful example regarding the potential for incompatibility. In particular, the British began developing a voluntary scheme, while the EU supported a mandatory scheme. This incompatibility helped to encourage the rapid development of the EU's ETS. As one Brussels insider notes

> We wanted to signal very early on that we were developing our own scheme and that our scheme was different in its approach. And to be frank, in 2001, when we made the proposal, the UK was already keen on emissions trading. They had, however, their own vision of how trading would work. It was a voluntary approach, driven by financial incentives, in which electricity generators would not be covered directly, but users of electricity would be made responsible for the emissions arising from electricity generation. The UK had difficulty in persuading other Member States of the merits of their scheme, particularly in terms of its complexity. It took a good twelve months of negotiation for the UK to reconsider its position. The Commission was anxious to ensure a complete dovetailing and compatibility with the Kyoto Protocol, which basically made the country where emissions occurred accountable, irrespective of where electricity might be consumed. And the UK's 'indirect' emissions approach was different.[26]

While the creation and operation of the ETS is often cited by the Commission as a success (European Commission 2006), its record has been somewhat mixed thus far. The ETS began operating in a pilot Phase I on 1 January 2005. The Member State governments granted emissions permits (allowances) for three years until 2007 to factories and power stations, mainly for free. On 15 May 2006, the carbon market crashed: while the market to trade $CO_2$ had almost doubled in a year, more than two-thirds of it vanished in three weeks after the May crash. The price of a permit to release a tonne of carbon dioxide plunged 72% to €8.60 in three weeks after a series of Member State and Commission reports showed that a surplus had accumulated. This crash reveals a potential implementation problem for the EU, which could undermine its credibility and prospects for prominence at the national and international levels. The future of the EU carbon market is, however, relatively bright. It is now clear that the initial allocations made during the pilot phase were over-estimated, which resulted in allowances of many more $CO_2$ permits than were needed. This problem should be remedied now that emissions have been audited more accurately. As a result, national allocations should be more realistic, which will reduce (but not eliminate) the likelihood of future crashes.

With more accurate allocations reducing the likelihood of another crash, the most important issue for the ETS may be the way in which National Allocation Plans (NAPs) are formulated and approved. These NAPs were recently submitted to the ETS second phase process.[27] During the initial preparation of the ETS, a formal division of labour was established in which the Commission took responsibility for creating the market mechanism and the Member States took responsibility for the allocations.[28] This arrangement still allows for a considerable role of the Commission—Member States formulate their individual NAPs, which are then sent to Brussels for the Commission to evaluate and suggest changes before final approval. The Commission uses two criteria for evaluating the NAPs: 1) compatibility with the EU's internal burden-sharing agreement and Kyoto commitments, and 2) national need. The NAPs, however, remain a contentious issue among the Union's environmental "leaders and laggards"

[26] Expert Interview, Copenhagen, Denmark 14 March 2007.
[27] For more on the NAPs process, see http://ec.europa.eu/environment/climat/pdf/m06_452_en.pdf.
[28] Expert Interview, Denmark, Copenhagen, 14 March 2007.

(Lenschow 2005: 313-314), and many Member States disagree with the Commission decisions. Indeed, on 1 August 2007, Latvia became the sixth Member State to contest emissions levels and take the Commission to court over specific calculations.[29]

**Conclusions: Obstacles and Opportunities at Different Levels**

At first glance, the EU's unique nature might seem to create insurmountable obstacles for any significant role in future climate change policy. It is true that the EU does face a number of domestic obstacles—due to the complex institutional arrangements that pool sovereignty among twenty-seven Member States—that are not faced by individual states and international organisations. In addition, the ad hoc nature of its participation from one international negotiation to the next may be somewhat problematic and its system of shared legal competence can be confusing for third parties.

Despite these obstacles, the EU's position as an authoritative regional point of national and international interaction also provides it with significant opportunities to influence climate change policy at multiple levels. Indeed, it seems to have established itself as a prominent actor in national, regional and international climate change policy-making. Through a number of historical-legal institutional developments, it has overcome obstacles to domestic and international activity in environmental politics. The domestic obstacles have been overcome to a large extent by ECJ decisions, Commission initiatives (like EAPs), new institutions (such as DG Environment and the EEA) and important Treaty changes. Overall, the EU's institutions now seem to operate fairly smoothly according to its own internal procedures and routine monitoring mechanisms. Many international obstacles to its activity have also largely been overcome. It is now recognised by third-party negotiators and very active in global environmental governance. It has received UN recognition, participates in UN negotiations, and has demonstrated an ability to be effective in lengthy UN negotiations.

The EU still faces multiple pressures from different levels that will influence its future role in climate change policy-making. Further studies that investigate both levels will need to take into consideration the various political actors—including individual Member States, regional organisations, international organisations, and non-state actors (e.g., NGOs, political parties, firms, environmentalists, labour, consumers, scientific communities)—and the legal and institutional constraints under which they make decisions.

In the future, much of the EU's domestic and international prominence in this policy area may hinge on the operation of its ETS. At the domestic level, the EU needs to resolve disagreements over the process through which NAPs are decided. But if the EU's internal market for emissions trading enjoys success, it may encourage more innovative solutions to address climate change. Most importantly, in the long-term, this market could also create sufficient incentives to deliver the promised domestic emissions reductions. At the international level, the successful implementation of a fully-functioning ETS should create a first-mover advantage in this lucrative financial service and increase the EU's credibility as a prominent player in the ongoing climate change negotiations. These multiple factors could, therefore, continue to push the EU toward a sustained prominent role in climate change policy.

The year 2012 is fast becoming a crucial juncture by which time a much clearer picture should be available regarding the EU's role and effectiveness in domestic and international climate change politics. At the domestic level, the EU's 6th EAP expires in 2012. The 7th EAP will have to take into consideration a number of important climate

[29] The other Member States include Poland, Czech, Slovakia, Hungary, Estonia. See Mahony (2007).

change developments and growing pressures from different levels that have emerged over the last ten years. The Kyoto Protocol also expires in 2012, a deadline that is currently driving international negotiations over what type of system will follow. Developing countries may also start reducing greenhouse gas emissions in 2012—this is particularly important because non-participation by developing countries is currently one of the US's greatest problems with the Kyoto Protocol. Of course, by 2012, the US will have elected a new Administration that could decide to return fully to the negotiating table and challenge EU prominence. This convergence of multiple events suggests that the ongoing European and international negotiations are extremely important for determining the shape of climate change policies to come. We need only watch carefully for the answers as 2012 approaches.

***

**Bibliography**

Andresen, S., and Agrawala, S. (2002). 'Leaders, Pushers and Laggards in the Making of the Climate Regime', *Global Environmental Change* 12, pp. 41-51.

Barker, T., Kram, T., Oberthür, S. and Voogt, M. (2001). 'The Role of EU Internal Policies in Implementing Greenhouse Gas Mitigation Options to Achieve Kyoto Targets', *International Environmental Agreements: Politics, Law and Economics* 1, pp.243-265.

Braun, M. (2008, forthcoming). 'The Evolution of Emissions Trading in the European Union: The Role of Policy Networks, Knowledge and Policy Entrepreneurs', *Accounting, Organizations and Society*.

Cass, L. (2005). 'Norm Entrapment and Preference Change: The Evolution of the European Union Position on International Emissions Trading', *Global Environmental Politics* 5 (2), pp.38-60.

Christiansen, A.C., and Wettestad, J. (2003). 'The EU as a Frontrunner on Greenhouse Gas Emissions Trading: How did it Happen and will the EU succeed?', *Climate Policy* 3 (1), pp.3-18.

Compston, H. and Bailey, I. (eds.), (forthcoming 2008), *Turning Down the Heat: The Politics of Climate Policy in Affluent Democracies*. Houndmills, Basingstoke: Palgrave.

Damro, C. (2006). 'The EU and International Environmental Politics: The Challenges of Shared Competence', in K.V. Laatikainen and K.E. Smith (eds.), *Intersecting Multilateralisms: The European Union at the United Nations*,. London: Palgrave. pp. 175-192.

Damro, C. and MacKenzie, D. (2008, forthcoming). 'Climate Policy and the EU Context', in H. Compston and I. Bailey (eds.), *Turning Down the Heat: Climate Policy in Affluent Democracies*. Houndmills, Basingstoke: Palgrave.

Damro, C. and Mendez, P.L. (2003). 'Emissions Trading at Kyoto: From EU Resistance to Union Innovation', *Environmental Politics,* 12 (2), pp.71-94.

Delbeke, J. (ed.) (2006). *EU Environmental Law: The EU Greenhouse Gas Emissions Trading Scheme*, EU Energy Law, Vol. IV, Leuven, Belgium: Claeys & Casteels.

Delreux, T. (2006). 'The European Union in international environmental negotiations: a legal perspective on the internal decision-making process', *International Environmental Agreements,* 6, pp.231–248.

Depledge, J. (2006). 'The Opposite of Learning: Ossification in the Climate Change Regime', *Global Environmental Politics* 6 (1), pp.1-22.

European Commission (2006). 'Countering Climate Change', *EU Insight*, Special EU Advertising Supplement, Delegation of the European Commission to the USA, October.

European Commission (2004). 'Global efforts for the environment: Commission and UNEP to reinforce co-operation,' Press Release, IP/04/1115, Brussels, 20 September.

European Commission (2001). 'Strengthening Europe's Contribution to World Governance', Report of Working Group 5, White Paper on Governance (May), Brussels, Belgium.

Fisher, D.R. (2004). *National Governance and the Global Climate Change Regime*, Rowman & Littlefield Publishers, Inc.

Grubb, M., Yamin, F. (2001). 'Climatic Collapse at The Hague: What Happened, Why, and Where to Go from Here?', *International Affairs*, 77 (2), pp.261-76.

Grubb, M., Vrolijk, C. and Brack, D. (1999). *The Kyoto Protocol: A Guide and Assessment*, London: The Royal Institute of International Affairs and Earthscan.

Grundig, F. (2006). 'Patterns of International cooperation and the Explanatory Power of Relative Gains: An Analysis of Cooperation on Global Climate Change, Ozone Depletion, and International Trade', *International Studies Quarterly,* 50, pp.781-801.

Gupta, J. and Grubb, M. (eds.) (2000). *Climate Change and European Leadership. A Sustainable Role For Europe*?, Dordrecht: Kluwer Academic Publishers.

Gupta, J. and Ringius, L. (2001). 'The EU's Climate Leadership: Reconciling Ambition and Reality', *International Environmental Agreements: Politics, Law and Economics*, 1, pp.281-299.

Harris, P. (ed.) (2007). *Europe and Global Climate Change*, Cheltanham, UK: Edward Elgar.

Hovi, J., Bang, G. and Bretteville Froyn, C. (2007). 'Enforcing the Kyoto Protocol: Can Punitive Consequence Restore Compliance?', *Review of International Studies*, 33 (3), pp.435-449.

Hovi, J., Skodvin, T. and Andresen, S. (2003). 'The Persistence of the Kyoto Protocol: Why Other Annex I Countries Move on Without the United States', *Global Environmental Politics,* 3 (4), pp.1-23.

Janning, J. (2005). 'Leadership Coalitions and Change: The Role of States in the European Union', *International Affairs*, 81 (4), pp.821-33.

Jupille, J. and Caporaso, J.A. (1998). 'States, Agency, and Rules: The European Union in Global Environmental Politics', in C. Rhodes (ed.), *The European Union in the World Community*. London: Lynne Rienner Publishers. pp.213-229.

Lenschow, A. (2005). 'Environmental Policy', in H. Wallace, W. Wallace and Pollack, M.A. (eds.), *Policy-Making in the European Union*, 5th edition. Oxford: Oxford University Press. pp.305-328.

Macrory, R. and Hession, M. (1996). 'The European Community and Climate Change: The Role of Law and Legal Competence', in T. O'Riordan and J. Jäger (es.), *Politics of Climate Change: A European Perspective*. London: Routledge. pp.106-154.

Mahony, H. (2007). 'Latvia becomes sixth country to fight EU emissions caps', EUObserver, 1 August 2007. Available at: http://euobserver.com/?aid=24557, last accessed 29 September 2008.

Oberthür, S. (2006). 'The Climate Change Regime: Interactions with ICAO, IMO, and the EU Burden-Sharing Agreement', in S. Oberthür and T. Gehring (eds.), *Institutional Interaction in Global Environmental Governance*. Cambridge, MA: MIT Press. pp.53-77.

Oberthür, S. and Gehring, T. (eds.) (2006). *Institutional Interaction in Global Environmental Governance*. Cambridge, MA: MIT Press.

Oberthür, S. and Ott, H.E. (1999).*The Kyoto Protocol: International Climate Policy for the 21st Century*. Berlin: Springer.

Oberthür, S. and Tänzler, D. (2007). 'Climate Policy in the EU: International Regimes and Policy Diffusion', Harris, P.G. (ed.), *Europe and Global Climate Change*. Cheltanham: Edward Elgar. pp.255-278.

Sbragia, A.M. (1998a). 'Institution-Building from Below and Above: The European Community in Global Environmental Politics', in W. Sandholtz. and A. Stone Sweet (eds.), *European Integration and Supranational Governance*. Oxford: Oxford University Press. pp.283-303.

Sbragia, A.M. (1998b). 'Environmental Policy', in D. Dinan (ed.), *Encyclopedia of the European Union*. Boulder, CO: Lynne Rienner Publishers. pp.170-174.

Sbragia, A.M. and Damro, C. (1999). 'The Changing Role of the European Union in International Environmental Politics: Institution Building and the Politics of Climate Change,' *Environment and Planning C, Government Policy*. 17, pp.53-68.

Scheipers, S. and Sicurelli, D. (2007). 'Normative Power Europe: A Credible Eutopia?', *Journal of Common Market Studies,* 45 (2), pp.435-457.

Schreurs, M.A., and Tiberghien, Y (2007). 'Multi-Level Reinforcement: Explaining European Union Leadership in Climate Change Mitigation', *Global Environmental Politics.* 7 (4), pp.19-46.

Skodvin, T. and Andresen, S. (2006). 'Leadership Revisited', *Global Environmental Politics.* 6 (3), pp.13-27.

Vig, N. and Faure, M. (eds.) (2004). *Green Giants? Environmental Policies of the U.S. and the E.U.* Cambridge, MA: MIT Press.

Vogler, J. (2005). 'Europe and Global Environmental Governance', *International Affairs* 81(4), pp.835-850.

Vogler, J. (1999). 'The EU as an Actor in International Environmental Politics', *Environmental Politics* 8 (3).

Wettestad, J. (2005). 'The Making of the 2003 EU Emissions Trading Directive: An Ultra-Quick Process due to Entrepreneurial Proficiency?' *Global Environmental Politics.* 5 (1), pp.1-23.

Zito, A. (2005). 'The European Union as an Environmental Leader in a Global Environment', *Globalizations.* 2 (3), pp.363-375.

***

# "Put Your Own House In Order First": Local Perceptions of EU Influence on Romani Integration Policies in the Czech Republic

Laura Cashman

**Abstract**

This article examines the influence of the European Union (EU) on the development and implementation of Romani integration policy in the Czech Republic from the perspective of those responsible for policy delivery. Based on analysis of key policy documents and research conducted in the Czech Republic, this article first examines how Romani integration became a more important issue during membership negotiations and then discusses how the criticism of the European Commission's Regular Reports was received by those responsible for implementing pro-Romani policies. Finally, the paper assesses how the status of full EU membership has impacted on integration policy. The article concludes that while funding for Romani integration projects has benefitted some groups, the overall impression of the EU is of a remote institution, quick to criticise and unwilling to practise what it preaches.

ROMA HAVE BEEN LIVING IN EUROPE FOR AT LEAST SIX HUNDRED YEARS AND WHILE there is significant diversity between Romani communities[1] across Europe, they share a common history of exclusion, discrimination and persecution (Barany 2002; Fraser 1995). With the accession of Bulgaria and Romania to the EU in 2007, the population of Romani citizens in the European Union (EU) could be as high as ten million, although the best estimates range between three and six million (DG Employment and Social Affairs 2004: 6). As a result, the question of how to integrate Romani communities has become a higher priority within EU institutions. In 1998 the Reflection Group on the Long-Term Implications of EU Enlargement highlighted the particular needs of Romani citizens and recommended "direct EU involvement where a minority issue transcends the borders of member-states" (Amato and Batt 1998: 1). The need for EU involvement

[1] This paper refers to Romani *communities* and Roma rather than *the* Romani *community* in acknowledgement of the heterogeneity of Romani communities in the Czech Republic and in Europe more generally. Roma vary widely from those who still adhere to customs and traditions to those who have little knowledge of their Romani heritage. Roma also differ in terms of socio-economic status; a growing middle class of well-educated Roma exists but EU and Czech policy is currently concerned with Roma who live in the worst housing conditions, who do not have any educational qualifications and who struggle to find employment. This is not to imply, however, that this socio-economic group represents all members of Romani communities or that the Romani identity is inevitably linked to deprivation and anti-social behaviour.

I would like to thank everyone who provided feedback on the paper: Eamonn Butler and Aidan McGarry, the anonymous reviewers and those who attended the presentations of earlier versions of this paper at the BASEES and PSA conferences in 2007.

Cashman, L. (2008). '"Put Your Own House In Order First": Local Perceptions of EU Influence on Romani Integration Policies in the Czech Republic', *Journal of Contemporary European Research*, Vol. 4, No. 3, pp. 193-208. Available: http://www.jcer.net/ojs.index.php/jcer/article/view/112/105

in protecting Romani rights has not lessened in the intervening years. Indeed, in many ways the plight of Roma has actually worsened since the 1990s (Ringold *et al.* 2005: 9 – 10).

This paper explores how the EU has influenced policies to support the integration of Romani communities, using the Czech Republic as a case study of an EU applicant state. Very little reliable statistical data is available about Roma but it is generally accepted that there are approximately 250,000 – 300,000 Roma living in the Czech Republic, i.e. almost three per cent of the population.[2] They live in urban and rural settlements all over the country, but the largest concentrations of Romani inhabitants are to be found in the industrial cities of northern Bohemia and northern Moravia. Any Roma still living a nomadic lifestyle following the assimilation policies of Empress Maria Theresa in the 18th century and the extermination policy of the Nazi regime were finally forcibly settled during the communist period (Guy 1975: 214). The communist assimilation policies were successful in the sense that illiteracy rates among Roma fell significantly (Ulč 1988: 318) and by 1981 75 per cent of working age Romani men and women were employed, mainly as unskilled labourers in heavy industry (Kostelancik 1989: 315). With the fall of communism in 1989 and the subsequent economic reforms, many Roma suffered as they lost their low-skilled jobs and social welfare benefits were reduced or withdrawn (Barany 2002: 172 – 176). The Ministry of Labour and Social Affairs (MLSA) does not keep precise statistics on how many Roma are unemployed, considering this to be a breach of the regulations on collecting data about citizens according to their ethnicity. However, in 2003 the MLSA estimated that Roma made up almost a third of all those registered as unemployed, despite the fact that Roma account for only about 3 per cent of the population (MLSA 2003a: 1.2).

This paper first examines how Romani integration became a more important issue during membership negotiations. This is apparent from the increased interest paid to the issue in the Regular Reports published by the European Commission on the readiness of the Czech Republic for membership, the sudden increase in momentum with regard to developing a Czech national integration strategy, and statements made by politicians and in official reports linking EU membership to finding a solution to the problem of Romani social exclusion. The main part of the paper discusses how officials and practitioners at the local level perceived the influence of EU pressure on the situation locally. Finally, the paper reflects on the implications of achieving EU membership for the Romani integration project. Much published research has focused on the influence of the EU accession negotiations on the development of Romani integration policy (Guglielmo and Waters 2005; Guy 2001; Kovats 2001; Ram 2003; Vermeersch 2004). Recently, Spirova and Budd (2008) published a study which used survey data to measure how the socio-economic status of Roma changed during the accession process. Drawing on qualitative empirical data, this paper adds a further dimension to the literature by analysing the perspectives of individuals responsible for policy delivery at the local level.

## Romani policy and the EU accession negotiations

A body of literature is gradually emerging which examines the impact of the 1993 Copenhagen Criteria for EU membership (specifically the demand for "respect for, and protection of minorities") on the development of minority and Romani integration policies in Central and Eastern Europe (CEE) (Hughes and Sasse 2003; Johns 2003; Kelley

[2] According to the 1991 census when "Romani" was included as a nationality category for the first time, 32,903 people identified themselves as such (Guy 2001: 315). Ten years later, the 2001 census recorded a Romani population of only 11,716 (CSO 2001). In spite of this, it is generally accepted that the true figure lies between 250,000 and 300,000 (Liégeois and Gheorghe 1995). Reasons for the reluctance of Roma to register themselves include fears about how the information will be used and misunderstandings about the difference between the categories of nationality and citizenship.

2004; Ram 2003; Spirova and Budd 2008). However, as these authors also acknowledge, the EU was not the only international organisation to put pressure on CEE states to improve their treatment of national and ethnic minorities. The OSCE and Council of Europe were particularly influential in the 1990s, highlighting cases of minority rights abuses in CEE such as, for example, the problems Czech Roma had in obtaining citizenship in the new Czech Republic (Council of Europe 1996; OSCE/CSCE 1993). Further, Vermeersch (2004: 8) argues that the plight of Roma in the candidate countries was not a high priority for the Commission when the Copenhagen Criteria were developed in 1993, because unlike national minorities with territorial claims, "they were not perceived as a potential threat to European stability". This changed over the course of the 1990s as non-governmental organisations (NGOs) highlighted the problems facing Roma and the numbers of asylum seekers arriving in EU member states grew (Ram 2003; Klímová 2004).

The key development in the mid-1990s, which caught the attention of the international media and pushed the interests of Roma of CEE much higher up the political agenda, was the dramatic rise in the numbers of Roma seeking asylum in Western states. As grounds for asylum, they cited fear of physical attacks by skinheads and the general failure of the authorities to protect them from discrimination. It is difficult to establish exactly how many Roma travelled abroad to claim asylum as most states record claims based on the nationality of the individual rather than their ethnicity but Guy (2004: 190) estimates that about 1,500 Roma applied for asylum in the UK in 1997, accounting for about 4 per cent of all asylum seekers that year. Klímová (2004: 16) cites the reports of EU governments estimating that from 1997 to 2000 between 85 and 99 per cent of asylum claims made by Czech citizens were made by Roma. The tactic of applying for asylum has been analysed in depth by many scholars (see Castle-Kaňerová 2003; Guy 2004; Klímová 2004; Matras 2000) and the reasons why Roma chose the asylum process as a means to migrate to the West will not be discussed here. Instead, the focus is on the impact this "wave" of asylum seekers from the Czech Republic had on EU membership negotiations and how it acted as a motivational factor in the acceleration of the development of pro-Romani policies. For example, Uherek (2004: 87) reports that in 1997 about 1,500 Roma Czech Roma sought asylum in Canada, prompting the Canadian authorities to re-introduce visas for all Czech citizens. Matras (2000: 47) argues that the asylum seekers forced the international community to pay more attention to the plight of Central and East European Roma which led to more pressure being exerted on governments to take action to stem the flow of would-be refugees. An examination of the resolutions passed by Czech governments from the early 1990s until EU membership was achieved in 2004 provides evidence of a sharp increase in activity in 1997. Between 1991 and 1996, successive Czech governments passed 12 resolutions concerning Romani communities. In the following six years, between 1997 and 2003, 86 resolutions were passed (Council for Romani Community Affairs 2005a). This sudden increase in momentum in developing pro-Romani policy is certainly linked to the pressure coming from states that were dealing with the asylum claims of Czech Roma, as well as the opening of EU accession negotiations.

Based on the evidence of the Regular Reports published annually by the Commission between 1997 and 2002, it is clear that Romani integration became a higher priority over time. The first commentary published by the Commission, in 1997 indicated that the Czech Republic fulfilled the Copenhagen Criteria regarding treatment of minorities. However, the Opinion also commented on particular problems facing Roma, noting the inadequacy of police protection from attacks by skinheads, discrimination in the spheres of housing and employment and the unfair terms of the Citizenship Law (European Commission 1997: 16). The 1998 Regular Report criticised the widespread discrimination against Roma in society, particularly regarding access to social services. Significantly, the rise in the numbers of asylum seekers was also noted (European Commission 1998: 10 - 11). The Reports all comment on the high-profile issues of the day, including the controversy over the wall in Ústí nad Labem in 1999 (European Commission 1999: 16) and the European Roma Rights Centre (ERRC) court case citing

discrimination in the education system in 2000 (European Commission 2000: 26). Problems with social exclusion and discrimination were highlighted in the 2001 and 2002 Reports and the 2003 Report again called for comprehensive anti-discrimination legislation (European Commission 2003: 35). The general conclusion of each Report was that although the Copenhagen Criteria had been fulfilled, the Commission wished for more to be done to improve the integration of Romani communities.

In January 1997, Pavel Bratinka, President of the Council for National Minorities, commissioned the *Report on the situation of the Romani community in the Czech Republic* (hereafter the Bratinka Report). It was approved on 29 October 1997, days before the collapse of Klaus' ODS government (Government Resolution 1997b) and its adoption was welcomed in the 1998 Regular Report (European Commission 1998: 10). Based on the experiences of state and local government officials and NGO representatives working with Roma, the Bratinka Report described the problems facing Romani communities, particularly the socio-economic problems and the discrimination against Roma in Czech society (Government of the Czech Republic 1997: 3.I.1). Importantly, it acknowledged that the criticisms of international institutions regarding the failure of the Czech government to address the problems of Romani communities were justified (Government of the Czech Republic 1997: 3.ii).

The Inter-ministerial Commission for Romani Community Affairs was established in September 1997 to improve the representation of Roma at the state level and to make policy proposals to improve the integration of Romani communities (Government Resolution 1997a). In 2001, the Commission was transformed into a permanent advisory body – the Council for Romani Community Affairs (Government Resolution 2001). 14 members represent the state administration – these are mostly deputy ministers – and 14 members are appointed on a regional basis to ensure fair representation of Roma from across the country (Council for Romani Community Affairs 2003: 2.2.3). The main achievement of the Council for Romani Community Affairs has been the development of the *Concept of Government Policy Towards Members of the Romani Community Designed to Facilitate their Social Integration* (hereafter the 2000 Concept). Approved on 14 June 2000, the 2000 Concept sets as its goal, the integration of Romani communities within twenty years (Government Resolution 2000).

It can certainly be argued that pressure from the European Commission had a positive effect on the development of Romani integration policy at the state level. Vermeersch (2004: 13) argues that the controversy of the Romani asylum seekers in 1997 was exploited by civil servants to raise the profile of the Bratinka Report, which was published while the Civic Democrats (ODS) were still in power. From 1998 the new Social Democrat (ČSSD) minority government used the proposals of the Bratinka Report as a starting point to find new ways to approach Romani integration. The continuity of policy pursued by the two main political parties, who generally take very different stances on the main electoral issues, is further evidence that EU pressure was taken very seriously.

Officials often stated publicly that the question of Romani integration was an important factor in the accession negotiations. In 1998 Rals Dreyer, acting head of the EU mission in the Czech Republic announced: "Romani rights have become one of the most important issues of EU accession negotiations" (cited in Barany 2002: 27). On a state visit to Latvia in November 1999, Prime Minister Zeman noted that the way his government handled Romani policy could influence the Czech Republic's accession to the EU (*Lidové noviny* 1999). President Václav Havel also claimed in 1999 that the ability of Czechs and Roma to integrate had a direct influence on the reputation of the country in Europe. If "co-existence" could not be achieved then the state could "forget about integrating into Europe and into the European Community" (cited in O'Nions 1999: 7). The Bratinka Report and the 2000 Concept refer to the criticism from international institutions (Government of the Czech Republic 1997:3.ii; 2000: 12.4) and

the 2005 Updated version of the Concept specifically links membership of the EU with the development of its Romani policy:

> In connection with the entry of the Czech Republic into EU, the government has undertaken to make use of all new and available means helping social inclusion of members of Roma communities. (Council for Romani Community Affairs 2005b: 1.12)

The case of how much influence the EU exerted on the development of Romani integration policy should not be overstated, however. Vermeersch (2004: 14) cites the example of the Act on the Rights of Members of National Minorities, passed in 2001. The EU had not requested such a law but the government decided to introduce it. On the other hand, the Regular Reports repeatedly highlight the need for comprehensive anti-discrimination legislation (European Commission 2001; 2003) but this legislation has still not been ratified, as will be discussed below. It is also difficult to distinguish differences between the impact of EU pressure as opposed to the activities of NGOs. One significant example is the case brought against the Czech Republic to the European Court of Human Rights (ECHR) in 2000 by Romani families with the support of the international advocacy NGO the European Roma Rights Centre (ERRC). They claimed that educational psychologists were placing disproportionate numbers of Romani children in remedial special schools. Even before the ECHR Grand Chamber found in favour of the families in 2007, the guidelines about assessing children with special educational needs were tightened up and in 2004 remedial special schools were abolished as part of wider education reforms (Education Act 2004).

## Romani policy at the local level

Having established that EU pressure had an impact on the development of Romani policy at the state level, this article will now turn to the question of how EU influence was perceived locally. Guy (1975; 2001) argues that the likelihood of any pro-Romani reforms succeeding in the Czech Republic is determined by the degree to which the proposals are supported by local authorities. This resonates with Lipsky's (1980) theory of the influence of "street-level bureaucrats" on how policies are delivered. Given the decentralisation of political power to the municipal level in the Czech Republic, responsibility for the implementation of Romani policy rests to a large extent with local authorities. The state authorities develop the policy framework but the measures have to be implemented by officials in the municipalities. Furthermore, where municipal authorities have specific competencies according to the constitution, they are not bound by government resolutions and cannot be instructed to implement particular programmes or policies. The management of primary schools is an example of such a competence. This issue has been acknowledged in the Updates to the 2000 Concept and proposed solutions to the problem include offering municipalities more financial support in return for implementing integration strategies and improving cooperation and communication with organisations such as the Union of Cities and Municipalities and the Association of Regions (Council for Romani Community Affairs 2005b: 12).

The discussion in this section is based on the findings of research examining the development and implementation of a range of policies to support the social inclusion of Romani communities at the local level in the Czech Republic.[3] Research consisted of an extensive review of the key legislation and policy documents produced by the Council for Romani Community Affairs and the Ministries of Education and of Labour and Social Affairs followed by fieldwork conducted in České Budějovice and Ostrava, over a period of four months between October 2004 and May 2005. This was followed up by visits to both cities in October/November 2007. In total, approximately 100 people – local Romani Advisors, municipal and regional officials in the departments of

[3] Research conducted in the period 2004 – 2005 was funded by the ESRC (PTA-030-2002-01172) and a *Europe-Asia Studies* scholarship.

education, social welfare and employment, representatives of NGOs supporting Romani communities, school principals, teaching assistants, social workers and field social assistants – were interviewed.[4]

The decision to select Ostrava and České Budějovice as fieldwork sites was based on the premise that the significant differences between the two cities in terms of the size of the Romani populations and the experiences of economic transition in the 1990s would allow for an interesting comparative analysis. Ostrava, capital of the Moravia-Silesia Region, is the third largest city in the Czech Republic with a population of 320,000, of which approximately 20,000-30,000 are estimated to be Roma. České Budějovice, capital of the South Bohemia Region is an average sized Czech city with a population of approximately 90,000 and a proportionally smaller Romani population of 2,500.[5]

Ostrava has traditionally been a key industrial centre with significant coal and steel enterprises. In the communist period many migrants were attracted to the city, including many Roma from rural Slovakia. However, the economic transition in the 1990s had an extremely negative impact on the city and as subsidies for heavy industry were withdrawn, unemployment levels increased alarmingly, peaking at 18.4 per cent in 2004 (Czech Statistics Office 2008a). In 2005 when the first stage of research was conducted, the unemployment rate in Ostrava was one of the highest in the country at 15.3 per cent (MLSA 2006). In 2007 this had fallen to 9.4 per cent but it is still among the highest rates in the country (Czech Statistics Office 2008b). České Budějovice on the other hand, is one of the success stories of the transition period, largely thanks to the diverse nature of the industries in the region. In 2005 the unemployment rate was 3.9 per cent (MLSA 2006). The rate was 3.8 per cent in 2007 (Czech Statistics Office 2008b).

Ostrava is an interesting case study because many of the policies now being promoted as part of the Czech integration strategy were first piloted by NGOs in the city. The first preparatory classes and teaching assistants were introduced in Ostrava schools and the municipal authorities employed the first field social assistants in the country. However, Ostrava gained notoriety when a group of Romani schoolchildren and their parents took the city's education services to the ECHR in Strasbourg in 2000. With the assistance of the ERRC, an international Romani Rights NGO, they argued that the city's schools and educational psychologists deliberately discriminated against Romani children. They claimed that they were denied education in mainstream schools because biased officials and poor testing procedures caused a disproportionate number of Romani pupils to be misdiagnosed with learning difficulties and placed in remedial special schools. The families initially lost the case but appealed the decision to the Grand Chamber of the ECHR, which found in their favour on 14 November 2007 (ERRC 2008).

Given the size of the city and the smaller proportion of Romani inhabitants, České Budějovice does not have a high profile in terms of Romani issues. However, this does not mean that Romani social exclusion is less of a problem in the city. High numbers of Romani pupils attended the local remedial special school and the lack of qualifications and skills among adults mean many adult Roma are unemployed despite the generally low level of unemployment in the city. Spatial exclusion is a growing problem as non-Roma increasingly move away from areas with a high concentration of Romani residents. Therefore, although the small size of the city's Romani population should mean that integration would be easier, this has not proved to be the case thus far.

[4] To protect their anonymity, respondents will be referred to only by the position they held at the time of interview and the city where they worked.

[5] Census data on Roma is notoriously unreliable and these estimates were provided by officials responsible for Romani affairs in both cities.

There were marked differences in how national Romani policy has been implemented in both cities and these will be described briefly here. Education programmes to support Romani pupils have been more effective in schools in Ostrava than in České Budějovice. Preparatory classes were cancelled in České Budějovice because not enough parents were enrolling their children. In Ostrava, however, poor attendance rates did not deter the principals who believed that the programme was useful and worth persevering with (Cashman 2008: 167 – 168). The employment of Romani Teaching Assistants (TAs) in primary schools had been very successful in Ostrava and the principals of the schools where they worked were very happy with the contribution they made to lessons. However, in the school year 2004/05 only one school in České Budějovice employed a Romani TA. Other principals claimed that they would be willing to employ Roma but no suitably qualified candidates were available. In 2007 there were no Romani TAs working in České Budějovice.[6]

The policies to create employment opportunities for Roma in the private sector were more successful in České Budějovice, where as a result of the generally low unemployment rate, Roma had less competition for placement opportunities. In Ostrava, in 2005, where unemployment was high among non-Roma as well as among Roma, the training schemes were less successful and it was more difficult to find employers willing to take on unqualified Roma as trainees. However, the significant fall in the general unemployment rate in 2007 meant that opportunities were gradually opening up for Romani job seekers (Employment Office Representative 2 2005; 2007). Romani Field Social Assistants (FSAs) were employed in Ostrava to work directly in communities with large Romani populations. They worked with long-term unemployed Roma and encouraged them to find employment. There were no FSAs working in České Budějovice in 2004 but in 2007 the municipal authorities employed two Field Social Assistants.

**Perceptions of EU influence on integration policy**

When respondents were asked about the influence the EU had on Romani integration policy, the main themes which emerged were their annoyance that they were being criticised by officials from states where the living conditions of Roma were little better than in the Czech Republic and their appreciation for the funding and exchange opportunities which they had used to learn more about how minority issues were dealt with in other parts of the EU. Opinions differed on the question of whether EU membership had really had much influence on Romani policy at the local level. These themes will be explored in more detail in this section.

The most common reaction to the question of how EU influence was perceived was irritation that the way Roma were treated in the Czech Republic was being criticised by commentators and EU officials who did not fully understand the local context. Many respondents, especially those in positions of authority believed that these critics were not in full possession of the facts because they only heard the version of the story presented by NGOs who had their own agenda to pursue. They also thought that some issues had been blown out of proportion by the media. For example school principals and educational psychologists were angered by the claims of discrimination in the education system. (These claims were later upheld by the Grand Chamber of the ECHR.) NGO representatives on the other hand tended to be more measured in their responses. While they welcomed international interest in their problems, they acknowledged that when criticism was perceived as 'foreign' interference it could actually make their work with local authorities more difficult. Furthermore, many respondents were annoyed that the way Roma in the Czech Republic lived was under

[6] Interviews conducted by the author with principals of primary schools and local education officials in České Budějovice in October and November 2004 and November 2007 and in Ostrava, March to May 2005 and October 2007.

attack, when the situation was not much better in many of the 'old' EU member states. They cited the problems with finding suitable halting sites[7] for Travellers in West European states and they argued that even if many Romani children were educated in special schools at least they were literate, which was often not the case for Romani and Gypsy-Traveller children in 'old' EU member states. They also complained that it was unfair for EU officials to always criticise their policies without offering alternative policy solutions. The views of an education official in České Budějovice and an educational psychologist working in the Moravia-Silesia Region were representative of the majority of respondents:

> It is true that when Minister [Eduard] Zeman was Minister for Education [1998 – 2002], EU organs examined the Czech special education system in quite a significant way and we often received warnings that we discriminated against children. I would like to point out that some countries in Western and South-Western Europe create reservations for Romani citizens where they camp. The children can't read or write, which doesn't happen in the Czech Republic. It would be worth remembering the Czech proverb "put your own house in order first". (South Bohemia Regional Education Official 2004)

> I wish people would criticise and then show us how to do things better but only to criticise and offer no suggestions isn't right. We have been doing our best for 40 years. (Educational Psychologist 2005)

These criticisms of the EU resonate with wider literature noting the double standards which existed between what was expected of states applying to join the EU compared to existing members (Johns 2003; Pridham 2008). Ram (2003) argued that the anti-Romani prejudices which existed in member states weakened the authority of the Commission when it demanded more rights for minorities in applicant states. She uses the checkpoints established by British officials at Prague's Ruzyně airport in 2001 to prevent Romani asylum seekers from boarding flights to Britain to illustrate her point (Ram 2003: 48). Riedel (2001: 1266) noted a growing frustration within applicant states as they saw the EU "moving the goalposts" in terms of what was expected. She argues this led to cynicism and the belief that the applicant states would never enter the EU because they could never fulfil all the demands placed upon them. This cynicism was reflected in many of the comments made by respondents who resented the criticism made by the European Commission and other international organisations and NGOs. It should be noted that when the Regular Reports were compiled, they were based on a wide range of reports and research conducted by experts who were very familiar with the circumstances in each state. However, this sensitive reporting was lost on local officials who did not read the reports but instead got the gist of their content from the national media.

However, the EU was not viewed in a completely negative light; officials, principals and NGO representatives all welcomed the new funding opportunities that membership brought. Between 1993 and 2001 the EU donated €8,127,600 through Phare programmes for Roma in the Czech Republic to fund education and training, anti-discrimination programmes, Romani publications and other cultural projects (DG Enlargement Information Unit 2003: 21). NGOs and schools in both cities had used EU funding for programmes to support Romani integration. Two principals (one from Ostrava and one from České Budějovice) had participated in exchange programmes to the Netherlands and they talked about policies which they thought might be adapted to benefit pupils in their schools. However, they were unsure that any real solutions had been found which they could apply with ease (Principal 3 2004; Principal 7 2005). One official in Ostrava's municipal education department rejected the idea that a 'one-size-fits-all' EU policy would be of any use:

> I have the feeling that the Romani question will be resolved in each state according to their traditions and I think maybe in Hungary they will deal with it one way and in Poland they will

[7] These are permanent campsites provided by municipal authorities for Travellers who still live a nomadic lifestyle.

> do something different and here also. I don't think the EU could give us some universal guidelines to resolve this problem. They want us to solve it but how? (Municipal Education Official 2005)

More recent interviews (2007) focused on the use of EU structural funds to aid Romani integration. These had been used to good effect in Ostrava, where Roma were finding more opportunities for employment as investment was made in infrastructure development. However, the process of applying for funding for specific pro-Romani projects was seen as arduous and complicated by too much red tape. This problem had already been identified when Phare funds were being distributed and has not yet been fully resolved (DG Enlargement 2004: 7). A worrying development reported by officials was that schools and NGOs felt they were competing against each other for funding and were reluctant to share know-how or resources with one another. This resulted in many applications not being as good as they could be but officials were unsure how to overcome this problem (Employment Office Representative 2 2007; NGO representative 12 2007; Romani Advisor 2007).

While the EU cannot directly influence the education or social welfare policies which are the main elements of the Romani integration strategy, it could be expected that the pressure to improve Romani social inclusion would filter down to local authorities via the state institutions. Indeed, analysis of the comments of respondents in both cities regarding the influence of the EU revealed an interesting pattern – perceptions of EU influence reflected attitudes to Romani integration policy as a whole. In České Budějovice, where pro-Romani policies were not high on the agenda and where few reforms had been successfully implemented, the officials felt as if criticism from Brussels had little impact. A senior member of the municipal council stated:

> It didn't have any influence because we were dealing with these problems without Brussels. It's true that thanks to Brussels there are more possibilities now how to deal with it, but we've been resolving these problems for many years. It had no influence on whether or not we would join the EU. (Municipal Councillor 2004)

On the other hand, officials in Ostrava, where the local administration had been more proactive when it came to implementing policies and developing new initiatives to support Roma, viewed the influence of the EU differently. A senior official in the regional education department based in that city thought that the reform process had been accelerated because of EU pressure:

> I think for us in education it was accelerated or the emphasis on that was increased, that fewer children should end up in special schools and more than that, that they should be integrated, so the process was accelerated, the problems were emphasised. I think it would have happened without Brussels, but more slowly, I think this speeded it up. (Regional Education Official 2005)

The statements of these officials indicate that their interpretation of EU pressure matched their general level of enthusiasm for the integration project. However, they also reflected the power struggles taking place between the different tiers of government and administration. The officials saw that pressure was exerted on the central government to implement changes but at the local level they felt further removed from Brussels. In České Budějovice, Romani integration was not a priority and the municipal authorities were resisting pressure from the central government to devote more attention to the local Roma community (Cashman 2008: 169). Therefore, they also ignored criticism from Brussels. In Ostrava, where the problems of the Romani community were too great to ignore, officials were already working with NGOS to find ways to improve the integration of local Romani communities. Therefore, these officials welcomed EU interest and the pressure placed on the central government to invest more in pro-Romani programmes, as they hoped it would assist them in implementing their policies.

**How influential has membership been?**

The Czech Republic joined the EU in May 2004 and four years on we can begin to reflect on how membership has impacted on integration policy. Guglielmo (2004: 42) has noted that once the membership of CEE candidates was confirmed in May 2004, monitoring of their minority policies would cease, given that "membership, paradoxically, requires less minority protection than candidacy". One Romani official interviewed in October 2004 worried that as membership had been achieved all the fuss would die down and the initiatives developed to ensure accession would be gradually forgotten:

> Now the latest information we have – now we are members of the EU – we hear that they are planning to dissolve the Council [of Romani Affairs], to get rid of the function of Romani advisors, that advisors should no longer exist. All the activists are afraid that they will lose their jobs. Organisations which cover us, who helped, they ran seminars, meetings, training, all of that will go down the plughole if they cancel it. (South Bohemia Regional Coordinator for Romani Affairs 2004)

Thus far such fears have not been realised. The ČSSD-led coalition government from 2002 to 2006 did not make any significant changes to Roma policy following EU accession. The ODS minority government of 2006[8] did reduce the staff of the secretariat of the Council for Romani Community Affairs from five to four as part of a drive to reduce government bureaucracy (Litomiský 2006). However, as noted above there is cross-party agreement that Romani policies must be supported and the ODS, Christian Democrat and Green Party coalition government has continued to fund new Romani integration initiatives. The most important of these is the development of a new government agency for social inclusion in Romani localities (Government of the Czech Republic 2008).

Despite some positive developments, hopes that EU membership would secure further rights for Roma through the introduction of anti-discrimination legislation have not been realised (Guglielmo 2004; Mirga 2005). The Race Equality Directive (Directive 2000/43/EC), which implements the principle of equal treatment between persons in all spheres of life irrespective of racial or ethnic origin, was adopted on 29 June 2000. Prospective EU member states, including the Czech Republic, were required to adapt their legislation to comply with the requirements of the Directive, which was due to come into force immediately after membership was finalised in May 2004. However, in June 2008 the Czech Republic still had not fully implemented the Directive. Czech legislation dealing with discrimination is very complex because there is no single act covering all aspects of defining, prohibiting and prosecuting discriminatory acts in all spheres of life. This is a problem to which successive Czech governments have sought a solution. In February 2002, the *Report on Possible Measures to Combat Discrimination* which addressed the question of how best to implement both the Race Equality and General Framework Directives[9] was approved by parliament. This report proposed introducing a general law forbidding all forms of discrimination, which would apply to all matters under civil law (Government of the Czech Republic 2002: 30). In December 2005, almost three years after the report was published, the Chamber of Deputies (lower house of parliament) passed an anti-discrimination bill complying with all the conditions laid out in the EU directives and covering race along with an exhaustive list of other possible grounds for discrimination including age, gender, disability, religion,

[8] The complicated stalemate which arose after the June 2006 national elections resulted in an ODS minority government being in power for a brief period from 4 September to 3 October 2006. The ODS minority government failed to win a vote of confidence in October 2006 and on 19 January 2007 a fragile coalition government of ODS, the Christian Democrats and the Green Party was finally approved by Parliament.

[9] The General Framework Directive (Directive 2000/78/EC), establishing a general framework for equal treatment in *employment and occupation* addressed discrimination based on disability, age, religious belief and sexual preference (but not race or ethnicity), was adopted in November 2000 and is the other main element of EU anti-discrimination legislation.

and sexual orientation (Pravec 2005). However, the bill was rejected by the Senate and returned to the Chamber of Deputies in January 2006 because senators considered the wording of the bill to be too vague (*Hospodářské noviny* 2006). Facing increased pressure from the European Commission, a renegotiated bill was passed by the Chamber of Deputies on 19 March 2008 and by the Senate on 30 April 2008 but was then vetoed by Czech President Václav Klaus "as superfluous and counterproductive" on 16 May 2008 (*iDnes.cz* 2008). The bill will be returned to the Chamber of Deputies, where a simple majority of members can vote to overturn the veto.

Any assessment of how EU membership has affected Romani integration policy in the Czech Republic must conclude that the results thus far are mixed. There is cross party agreement that socially excluded Roma require state support and this is available to regions and municipalities interested in accessing it. However, on issues such as anti-discrimination legislation differences emerge, with some politicians on the right, and indeed the president, viewing the creation of a new law as unnecessary. The delays with this bill reflect the failure of successive weak governments with small majorities to pass legislation. The Commission has not yet invoked the formal infringement proceedings which could be applied should the legislation be further delayed although the government is aware of this threat and for this reason it is expected that the legislation will be passed at its next reading in the Chamber of Deputies.

## Conclusion

This article has examined the influence of the EU on the development of policies and programmes to support the integration of Romani communities. It is not by chance that the development of pro-Romani policies gained momentum during the accession negotiations and this has been acknowledged by politicians and in the key policy documents relating to Romani integration. However, the implementation of the integration strategy is the responsibility of local authorities at the regional and municipal levels and here it would appear that commentary and criticism from the EU had less impact. While some respondents had benefited from EU funding for particular projects and exchange programmes, the overall impression of the EU is of a remote institution which is quick to criticise and unwilling to practise what it preaches. The remoteness of the EU from ordinary citizens is well documented. Therefore, it should not come as a surprise that the situation is no different when it comes to ensuring the implementation of policies to support Romani communities. Until the EU itself takes steps to introduce EU-wide support for Romani rights and other minority rights, the integration of Romani communities in the Czech Republic will remain dependant on national policy, and in turn, on how that policy is interpreted at the local level. However, it must also be acknowledged that unless new strategies developed at the EU level are recognised as practical and useful to local authorities, they are unlikely to be effective. At the very least the Commission should continue to apply pressure to the Czech government to ensure that comprehensive anti-discrimination legislation is finally passed.

***

## References

Act on the Rights of Members of National Minorities (2001). Code of Laws No.273/2001 Coll., Part 104, Page 6461. Available at: http://www.mvcr.cz/sbirka/2001/sb104-01.pdf, last accessed 22 October 2006.

Amato, G. and Batt, J. (1998). *Minority rights and EU enlargement to the east. Report of the first meeting of the Reflection Group on the Long-term Implications of EU*

*Enlargement: The nature of the new border*. European University Institute, RSC Policy Paper 98/5.

Barany, Z. B. (2002). *The East European Gypsies: Regime change, marginality and ethno-politics*. Cambridge: Cambridge University Press.

Cashman, L. (2008). 'Implementing national Romani policy at the local level: Experiences of the preparatory class programme in two Czech cities', in M. Flynn, J. Oldfield and R. Kay (eds) *Trans-National Issues, Local Concerns: Insights from Russia, Central and Eastern Europe and the UK*. Lanham, MD: University Press of America, pp. 159 - 176.

Castle-Kaňerová (2003). 'Round and round the roundabout: Czech Roma and the vicious circle of asylum seeking', *Nationalities Papers*, 31(1), pp. 13 – 25.

Council of Europe (1996). *Report of the experts of the Council of Europe on the citizenship laws of the Czech Republic and Slovakia and their implementation and replies of the Governments of the Czech Republic and Slovakia*. Strasbourg: Council of Europe/ Directorate Of Legal Affairs COE.M.7/96 RE 1996; DIR/JUR (96) 4. Available at: http://www.coe.int/T/E/Cultural_Cooperation/Youth/5._Information_services/Resources_by_topic/CITIZENSHIP.asp, last accessed 20 October 2005.

Council for Romani Community Affairs (2005a). *Usnesení vlády ČR k romským komunitám 1990 – dodnes*. Prague: Council of the Government of the Czech Republic for Romani Community Affairs. Available at: http://wtd.vlada.cz/vrk/vrk.htm, last accessed 20 October 2005.

Council for Romani Community Affairs (2005b). *The Romani integration policy concept, approved by the Government of the Czech Republic 4 May 2005*. Available at: http://wtd.vlada.cz/urad/urad_postaveni.htm, last accessed 19 November 2005.

Council for Romani Community Affairs (2003). *Informace o plnění usnesení vlády, týkajících se integrace romských komunit a aktivního postupu státní správy při uskutečnění opatření přijatých těmito usneseními ke dni 31. prosinci 2002*. Available at: http://wtd.vlada.cz/urad/urad_postaveni.htm, last accessed 7 August 2003.

Czech Statistics Office (CSO) (2001). *Obyvatelstvo podle národnosti a krajů k 1.3.2001*. Available at: http://www.czso.cz/csu/2002edicniplan.nsf/publ/180F9F1A8EB21F52C1256D4F003545E1/$File/2906.XLS, last accessed 22 June 2007.

Czech Statistics Office (CSO) (2008a). *Míra registrované nezaměstnanosti k 31.12.2007* (U060201). Personal communication with Martina Oboraková at the Czech Statistics Office, 18 June 2008.

Czech Statistics Office (CSO) (2008b). *Nezaměstnanost podle krajů a okresů k 31.10.2007*. Available at: http://www.czso.cz/xc/edicniplan.nsf/t/0F0031D872/$File/3102q4g3.pdf, last accessed 18 June 2008.

DG Employment and Social Affairs (2004). *The situation of Roma in an enlarged European Union*. Brussels: European Commission. Available at: http://ec.europa.eu/employment_social/publications/2005/ke6204389_en.pdf, last accessed 17 March 2007.

DG Enlargement Information Unit (2003). *European Union support for Roma communities in Central and Eastern Europe*. Brussels: Enlargement Information Unit. Available at: http://ec.europa.eu/comm/enlargement/docs/pdf/brochure_roma_oct2003_en.pdf, last accessed 11 April 2006.

DG Enlargement (2004). *From Pre-Accession to Accession: Review of the European Union Phare assistance to Roma minorities. Interim evaluation of Phare support allocated in 1999-2002 and implemented until November 2003*. Report ZZ/MIN/03082. Brussels: European Commission Directorate-General Enlargement, Directorate E – Evaluation Unit. Available at: http://ec.europa.eu/enlargement/pdf/financial_assistance/Phare/revised_minorities_thematic_raw_161204_en.pdf, last accessed 15 September 2008.

Directive 2000/43/EC (29 June 2000) implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] O.J. L180/22. Available at:

http://europa.eu.int/eurlex/pri/en/oj/dat/2000/l_180/l_18020000719en00220026.pdf, last accessed 22 October 2006.

Directive 2000/78/EC (27 November 2000) establishing a general framework for equal treatment in employment and occupation [2000] O.J. L303/16. Available at: http://ec.europa.eu/employment_social/news/2001/jul/directive78ec_en.pdf, last accessed 22 October 2006).

Education Act (2004) *Zákon ze dne 24 září 2004 o předškolním, základním, středním, vyšším odborném a jiném vzdělávání (školský zákon),* Code of Laws No.561/2004 Coll., Part 190, Page 10262. Available at: http://www.mvcr.cz/sbirka/2004/sb190-04.pdf, last accessed 22 October 2006.

Educational Psychologist (2005). Interview by author, Ostrava, 21 March.

Employment Office Representative 2 (2005). Interview by author. 12 April, Ostrava

Employment Office Representative 2 (2007). Interview by author. 24 October, Ostrava

European Commission (1997). *Agenda 2000 – Commission's opinion on the Czech Republic's application for membership of the European Union*. Available at: http://europa.eu.int/comm/enlargement/dwn/opinions/czech/cz-op-en.pdf, last accessed 17 October 2005.

European Commission (1998). *Regular report from the Commission on the Czech Republic's progress towards Accession*. Available at: http://europa.eu.int/comm/enlargement/report_11_98/pdf/en/czech_en.pdf, last accessed 17 October 2005.

European Commission (1999). *1999 Regular report from the Commission on the Czech Republic's progress towards accession*. Available at: http://europa.eu.int/comm/enlargement/report_10_99/pdf/en/czech_en.pdf, last accessed 17 October 2005.

European Commission (2000). *2000 Regular report from the Commission on the Czech Republic's progress towards accession*. Available at: http://europa.eu.int/comm/enlargement/report_11_00/pdf/en/czech_en.pdf, last accessed 17 October 2005.

European Commission (2001). *2001 Regular report on the Czech Republic's progress towards accession*. Available at: http://ec.europa.eu/enlargement/archives/pdf/key_documents/2001/cz_en.pdf last accessed 21 March 2007.

European Commission (2002). *2002 Regular report on the Czech Republic's progress towards accession*. Available at: http://europa.eu.int/comm/enlargement/report2002/cz_en.pdf, last accessed 17 October 2005.

European Commission (2003). *2003 Comprehensive monitoring report on the Czech Republic's preparations for membership*. Available at: http://ec.europa.eu/enlargement/archives/pdf/key_documents/2003/cmr_cz_final_en.pdf, last accessed 21 March 2007.

European Roma Rights Centre (ERRC) (2008). *Ostrava Case: D.H. and others v. The Czech Republic*, Budapest: ERRC. Available at: http://www.errc.org/cikk.php?cikk=2945&archiv=1, last accessed 14 May 2008.

Fraser, A. (1995). *The Gypsies,* 2nd edn, Oxford: Blackwell Publishing.

Government of the Czech Republic (1997). *Report on the situation of the Romani community in the Czech Republic*. Available at: http://www.vlada.cz/1250/eng/vrk/rady/cinnost/romove/cast1.htm, last accessed 27 June 2002.

Government of the Czech Republic (2000). *Koncepce politiky vlády vůči příslušníkům romské komunity, napomáhající jejich integraci do společnosti*. Available at: http://www.vlada.cz/ASC/vrk/komise/krp/dokumenty/koncepce.pdf, last accessed 15 August 2002.

Government of the Czech Republic (2002). *Zpráva o možnostech opatření k odstranění diskriminace*. Available at: http://wtd.vlada.cz/files/rvk/rlp/dokumenty/zprava_o_moznostech_opatreni.pdf, last accessed 13 February 2004.

Government of the Czech Republic (2008). *Agentura pro sociální začleňování v romských lokalitách zahajuje činnost v 12 obcích a mikroregionech ČR.* Available at: http://www.vlada.cz/scripts/detail.php?id=30989, last accessed, 18 June 2008.

Government Resolution (1997a). *Usnesení vlády České republiky ze dne 17. září 1997 č. 581 o zřízení Meziresortní komise pro záležitosti romské komunity*. Available at: http://racek.vlada.cz/usneseni/usneseni_webtest.nsf/WebGovRes/6E6DA81118A87108C12571B6006AE71A?OpenDocument, last accessed 23 October 2006.

Government Resolution (1997b). *Usnesení vlády České republiky ze dne 29. října 1997 č. 686 + P ke Zprávě o situaci romské komunity v České republice a k současné situaci v romské komunitě.* Available at: http://racek.vlada.cz/usneseni/usneseni_webtest.nsf/WebGovRes/4AB277D7C79B9F38C12571B6006D1F2C?OpenDocument, last accessed 23 october 2006.

Government Resolution (2000). *Usnesení vlády České republiky ze dne14. června 2000 č. 599 + P ke Koncepci politiky vlády vůčí příslušníkům romské komunity, napomáhající jejich integraci do společnosti.* Available at: http://racek.vlada.cz/usneseni/usneseni_webtest.nsf/WebGovRes/48711C471EFA593BC12571B6006C3E82?OpenDocument, last accessed 23 October 2006.

Government Resolution (2001). *Usnesení vlády České republiky ze dne 3. ledna 2001 č. 14 + P k Rozboru poradních a pracovních orgánů vlády a návrhu na jejich systémové řešení*. Available at: http://racek.vlada.cz/usneseni/usneseni_webtest.nsf/WebGovRes/6BED6D39289B0F96C12571B6006BC2D7?OpenDocument, last accessed 23 October 2006.

Government Resolution (2002). *Usnesení vlády České republiky k informaci o plnění usnesení vlády, týkajících se integrace romských komunit a aktivního postupu státní správy při uskutečnění opatření přijatých těmito usneseními k dni 31. prosinci 2001 a k návrhu Koncepce romské integrace.* Available at: http://wtd.vlada.cz/urad/urad_postaveni.htm, last accessed 7 August 2003.

Guglielmo, R. (2004). 'Minority rights and EU enlargement: Normative overstretch or effective conditionality?', in G. N. Toggenburg (ed.), *Minority protection and the European Union: the way forward,* Budapest: OSI/LGI, pp. 59 – 84.

Guglielmo, R. and Waters, T.W. (2005). 'Migrating towards minority status: Shifting European policy towards Roma', *Journal of Common Market Studies,* 43(4), pp. 763 – 786.

Guy, W. (1975). 'Ways of Looking at Roms: The Case of Czechoslovakia', in F. Rehfisch, (ed.), *Gypsies, Tinkers and other Travellers.* London: Academic Press, pp. 201 – 229.

Guy, W. (2001). 'The Czech Lands and Slovakia: Another false dawn?', in W. Guy (ed.), *Between past and future: The Roma of Central and Eastern Europe.* Hatfield: University of Hertfordshire Press, pp.285 – 332.

Guy, W. (2004). 'Asylum in Perspective: Roma migration to the UK', in W. Guy, Z. Uherek and R.Weinerová (eds), *Roma migration in Europe: Case Studies*. Münster: Lit Verlag, pp. 165 – 210.

*Hospodářské noviny* (2006). Senátoři ODS pozastavili antidiskriminační zákon, 27 January: 3.

Hughes, J. and Sasse, G. (2003). 'Monitoring the monitors: EU enlargement conditionality and minority protection in the CEECs', *Journal of Ethnopolitics and Minority Issues in Europe*, 1. Available at: http://www.ecmi.de/jemie/download/Focus1-2003_Hughes_Sasse.pdf, last accessed 18 June 2008.

*iDnes* (2008). 'Klaus vetoval antidiskriminační zákon, který žádá EU. Je podle něj zbytečný' 16 May. Available at: http://zpravy.idnes.cz/klaus-vetoval-antidiskriminacni-zakon-ktery-zada-eu-je-podle-nej-zbytecny-15s-/domaci.asp?c=A080516_112215_domaci_jba, last accessed 16 May 2008.

Johns, M. (2003). '"Do as I say, not as I do": The European Union, Eastern Europe and minority rights', *East European Politics and Societies,* 17(4), pp. 682 – 699.

Kelley, J. (2004). 'International actors on the domestic scene: Membership conditionality and socialisation by international actors', *International Organisation*, 58, pp. 425 – 457.

Klímová, I. (2004). 'The current academic debate on the political aspects of Romani migrations and asylum seeking', in W. Guy, Z. Uherek and R. Weinerová (eds) *Roma migration in Europe: Case Studies.* Münster: Lit Verlag, pp. 11 – 50.

Kostelancik, D. J. (1989). 'The Gypsies of Czechoslovakia: Political and ideological considerations in the development of policy', *Studies in Comparative Communism,* 22 (4), pp. 307 – 321.

Kovats, M. (2001). 'The emergence of European Roma policy', in W. Guy (ed.) *Between past and future: The Roma of Central and Eastern Europe.* Hatfield: University of Hertfordshire Press, pp. 333 – 350.

Kovats, M. (2003). 'The politics of Roma identity: between nationalism and destitution', *Open Democracy.* Available at: http://www.opendemocracy.net/node/1399/pdf, last accessed 22 April 2007.

*Lidové noviny* (1999). 'Špidla: Označení "R" není diskriminace', 2 November: 2.

Liégeois, J-P. and Gheorghe, N. (1995). *Roma/Gypsies: A European minority.* London: Minority Rights Group.

Lipsky, M. (1980). *Street-level bureaucracy: dilemmas of the individual in public services.* New York: Russell Sage Foundation.

Litomiský, J. (2006). 'Lidská práva? Místo tří ředitelů je jeden', *Lidové noviny,* 4 October.

Matras, Y. (2000). 'Romani migrations in the Post-Communist Era: The historical and political significance', *Cambridge Review of International Affairs,* 13(2), pp. 32 – 50.

Ministry of Labour and Social Affairs (MLSA) (2003a). *Joint memorandum on social inclusion of the Czech Republic.* Brussels: European Commission and MLSA. Available at: http://www.mpsv.cz/files/clanky/5150/memo.pdf, last accessed 9 February 2004.

Ministry of Labour and Social Affairs (MLSA) (2006). *Information on unemployment in the Czech Republic - May 2005*. Available at: http://www.mpsv.cz/files/clanky/1656/Unemployment_may2005.pdf, last accessed 14 march 2006.

Mirga, A. (2005). *Making the EU's anti-discrimination policy instruments work for Romani communities in the enlarged European Union*. Princeton: Project on Ethnic Relations. Available at: www.per-usa.org/Reports/Andrzej%20Mirga%20_2.PDF, last accessed 17 March 2007.

Mirga, A. and Gheorghe, N. (1997). *The Roma in the twenty-first century: A policy paper*. Princeton: Project on Ethnic Relations. Available at: http://www.per-usa.org/21st_c.htm, last accessed 4 October 2003.

Municipal Councillor (2004). Interview by author, 19 November, České Budějovice.

Municipal Education Official (2005). Interview by author, 5 April, Ostrava.

Municipal Social Affairs Official (2005). Interview by author, 26 April, Ostrava.

NGO representative 12 (2007). Interview by author, 24 October, Ostrava.

O'Nions, H. (1999). 'Bonafide or Bogus: Roma asylum seekers from the Czech Republic', *Web Journal of Current Legal Issues,* 3 Available at: http://webjcli.ncl.ac.uk/1999/issue3/onions3.html, last accessed 24 April 2002.

OSCE/CSCE (1993). *Roma (Gypsies) in the CSCE Region: Report of the High Commissioner on National Minorities*. Prague: OSCE/CSCE Available at: http://www.osce.org/documents/hcnm/1993/09/3473_en.pdf, last accessed 12 April 2008.

Pravec, J. (2005). 'Lidé snaději vysoudí peníze za diskriminaci', *Hospodářské noviny,* 8 December.

Pridham, G. (2008). 'Status Quo Bias or Institutionalisation for Reversibility?: The EU's Political Conditionality, Post-Accession Tendencies and Democratic Consolidation in Slovakia', *Europe-Asia Studies*, 60(3), pp. 423 – 454.

Principal 3 (2004). Interview by author, 12 October, České Budějovice.

Principal 7 (2005). Interview by author, 17 March, Ostrava.

Ram, M. (2003). 'Democratization through European integration: The case of minority rights in the Czech Republic and Romania', *Studies in Comparative International Development,* 38(2), pp. 28 – 56.

Riedel, S. (2001). 'Minderheitenpolitik im Prozess der EU-Erweiterung, Dynamisierung ethnischer Konflikte durch positive Diskriminierung', *Osteuropa,* 11(12), pp. 1262 – 1285.

Ringold, D., Orenstein, M.A. and Wilkens, E. (2005). *Roma in an expanding Europe: Breaking the poverty cycle*. Washington D.C.: The World Bank.

Romani Advisor (2007). Interview by author, 7 November, České Budějovice.

Sdružení Dženo (2002). *Romové a volby 2002*. Available at: http://www.dzeno.cz/volby/otazky_seznam.htm, last accessed 27 June 2002.

South Bohemia Regional Coordinator for Romani Affairs (2004), Interview by author, 6 October, České Budějovice.

South Bohemia Regional Education Official (2004). Interview by author, 11 October, České Budějovice.

Spirova, M. and Budd, D. (2008). 'The EU accession process and the Roma minorities in new and soon-to-be member states', *Comparative European Politics,* 6, pp. 81 – 101.

Ulč, O. (1988). 'Gypsies in Czechoslovakia: A case of unfinished integration', *Eastern European Politics and Societies,* 2(2), pp. 306 – 332.

Vermeersch, P. (2004). 'Minority policy in Central Europe: Exploring the impact of the EU's enlargement strategy', *The Global Review of Ethnopolitics,* 3(2), pp. 3 – 19.

***

# Legitimating the Union: Dilemmas of Citizens' and National Elites' Inclusion in a Multilevel Europe

Svetlozar Andreev

**Abstract**

It is often claimed that the EU suffers from a range of, occasionally, difficult-to-identify legitimacy problems. This is mainly because of its complex internal structure and way of functioning – i.e. between various levels of governance and centres of decision-making authority. This paper focuses on the role of citizens and national elites in granting support for the EU. The *bottom-up* approaches of legitimisation are thus explored. Special attention is paid to the participatory opportunities for citizens and national elites in multilevel governance.

THE ADVOCATES IF THE EUROPEAN UNION (EU) PROJECT HAVE CLEARLY BEEN ON THE defensive lately. The successive rejections of the Draft European Constitution (in Spring 2005) and the Lisbon Treaty (13 June 2008) came as major shocks for many, thus turning the relatively positive expectations of the early 2000s for 'more Europe and better functioning institutions' into feelings of gloom and paralysis. With remarkable ease, relatively ill-organised and loosely-fashioned coalitions of populists, nationalists and social protectionists in France, the Netherlands and Ireland managed to invalidate some of the most hard-negotiated international treaties guaranteeing the further progress of European integration. In all three cases, the response of member state elites and Brussels officials could be said to have been inadequate. What was proposed was to temporarily ignore the negative outcomes, and (1) to engage in diplomatic negotiations and analysis of the respective referendum results, (2) to improve the communication strategy regarding the benefits of adopting a particular European treaty, and (3) to persuade the leaders of the anti-EU camp to abandon their adamant opposition to supranational reforms by offering concessions at the domestic level. However, as time has passed, the prospect of reaching a compromise on the constitutional setup in Europe has become even slimmer, because public opinion and, occasionally, that of the political elites in certain member states, like the UK, the Netherlands, Poland and the Czech Republic – to name just a few of the most difficult cases – has shifted towards greater euroscepticism and opposition to the 'deepening' of European integration. As a result, the sanctioning of any major supranational decision – e.g. from enlargement to the adoption the Euro – via referendum has become increasingly difficult. This is because the electorate has firstly, become more politicised about European issues, and secondly been influenced by an increasing number of domestic politicians who have successfully utilised the 'blame the EU and 'Brussels' tactic for unpopular decisions made at home (see Beyers and Trondal 2003).

In spite of the growing feeling that time is running out for crucial reforms at the supranational level, the actual state of affairs has been fairly well-know to European scholars for at least two decades, if not longer. It has been dubbed a "crisis of legitimacy" or "legitimacy deficit" (Wallace 1993, Weiler 1993, Scharpf 1998, Héritier

ISSN 1815 347X Online – Andreev, S. (2008), 'Legitimating the Union: Dilemmas of Citizens' and National Elites' Inclusion in a Multilevel Europe.', *Journal of Contemporary European Research*, Vol. 4, No. 3, pp.209-223. Available: http://www.jcer.net/ojs.index.php/jcer/article/view/70/106

1999, Lord 1998 and 2000). The main symptoms of such a predicament, which has supposedly been plaguing the EU system of governance are the growing gap between the European elites and citizens, on the one hand, and the EU institutions and national political bodies, on the other. The reasons for the persistence of this complicated situation have been rampant too. Firstly, the "permissive consensus"[1] about supranational decision-making and institutional innovation, granted on mainly utilitarian grounds by the member states' populations, has steadily been waning since the mid-1980s (Neunreither 1994; Panebianco 1996; Scharpf 1999). Secondly, the increasing EU intervention in and Europeanisation of various policy areas (Olson 2001, Featherstone and Radaelli 2003, Bulmer 2007), some of which used to be the exclusive domain of the nation-state (e.g. foreign policy, social protection, migration policy, education and culture), has created a widespread sense of apprehension among domestic leaders and ordinary citizens that the process of regional integration might "redefine the political boundaries in Europe" (Weiler 1993: 18). Thirdly, the deepening of European integration has not been able to successfully protect the member state economies and societies from some of the negative effects of globalisation. On the contrary, instead of being "rescued" by the EU project (Milward 1992), the nations state has occasionally become further exposed to various external pressures, eventually leading to a profound transformation of the domestic socioeconomic and political systems (Mény *et al.* 1996; Scharpf 1997 and 1999; Hix 1999). Fourthly, the ever-increasing legal activism of the European institutions and the establishment of different and sometimes new cross-national standards have led to strong resistance on the part of entrenched domestic interests and defenders of national constitutions (Joerges 2006). Parallel to this, there has been an introduction of concepts, relatively unfamiliar to member state public administrations, such as *subsidiarity*, *proportionality, equal treatment, mainstreaming* and *benchmarking*. This has spurred a debate about the capacity of domestic institutions and elites to effectively protect citizens' interests against the frequent encroachments by the EU "from above" and "outside" the member states (Wessels 1996; Streeck 2000; Eriksen 2001; Bartolini 2005). Fifthly, and certainly affecting public opinion most directly, the alleged inefficiency and lack of accountability of certain European officials, often resulting in allegations about widespread corruption at the heart of the EU, has led people to prefer their domestic 'crooks' to the 'difficult to control and replace' supranational ones. The resignation of the Santer Commission in 1999 and the most recent media revelations about the illicit use by some MEPs of annual funds for travel and personal assistants have definitely enhanced such perceptions. As a result of these scandals, the reputation of EU institutions has been severely damaged, while the advancement of the European integration project has been rendered much more difficult by the increasingly staunch resistance on the part of domestic elites and groups of citizens.

This paper claims that the crisis of legitimacy in the EU has substantially deepened during the 2000s and is no longer been restricted to the supranational level of governance, but has increasingly spread to all levels of governance. Moreover, the proponents of European integration have been faced by a wider set of opposing elites, ranging from social movements to organised business interests and trade unions to national politicians. These groups are often extremely well organised and have significant international experience too. Therefore, EU leaders trying to solve the series of legitimacy problems mentioned above have had to simultaneously face (1) more complex and sometimes worse structural conditions and (2) many more and better-qualified opponents than in the past. If the first part of the 'legitimacy conundrum' has been the result of EU multilevel governance (MLG) activities and globalisation, factors that in and by themselves have been quite difficult to coordinate and control, then the second part of the equation – featuring real European actors – presents an opportunity

[1] Ronald Inglehart defines *permissive consensus* as a situation where "there is a favourably prevailing attitude towards the subject, but it was of low salience as a policy issue, leaving national decision-makers to take steps favourable to integration if they wished but also leaving them a wide liberty of choice" (cited in Hodges 1972: 334).

to address the legitimacy deficit. The research presented in this article focuses on the role of citizens and national political elites in granting support for European integration. Specifically, the *bottom-up aspects* of EU legitimisation are explored, while emphasis is placed on the modes of representation and participation of these two groups of actors.

The article is structured in the following way: first, the concept of legitimacy and different modes of legitimisation are described in detail; second, the role of citizens in EU governance is analysed in terms of different participatory opportunities and means of keeping decision-makers accountable; thirdly, the impact of the crisis of national democracy on European institutions and policies is critically evaluated; and finally, conclusions are drawn regarding the future of European integration in light of the present intricate legitimacy crisis.

## Legitimacy and Modes of Legitimisation in the EU

Academics studying legitimacy problems in diverse social contexts, largely disagree about what legitimacy is and how to define this concept. They, nevertheless, concur that it has something to do with *public support* for political decisions, personalities and institutions (Blondel 1995: 62; Lord 2000: 1). Certain scholars posit that legitimacy can only be achieved if there is both *attitudinal* and *behavioural support* by 'the ruled' for 'the rulers' and their policies (Linz and Stepan 1996: 3). Conversely, no regime, even the most autocratic ones, can survive without the support, implicit or explicit, of its citizens. That is why, the majority of regimes around the world try to capitalise upon societal support by creating adequate institutional structures, as well as by promoting active relations with the representatives of civil society and the media. It should be emphasised however, that the rule of law plays an important part in this process; in particular *constitutional rule*, provides a means of establishing and formalising different channels of support (O'Donnell *et al*. 2004).

The backing, granted by both individuals and organisations, may vary substantially, depending on the circumstances. Hence, it should not be perceived as a clear-cut and fixed point, but more as a *continuum*. Authors, working on legitimacy issues, point out that support may also be *general* (for the overall political system) or *specific* (for individual policies) (Easton 1965: 311-1; Blondel 1995). At the same time, governmental decisions could be perceived as legitimate for what they achieve (*substantive legitimacy*) and for how they do it (*procedural legitimacy*) (Weber 1946) Thus, legitimacy implies the existence of a trade-off between efficiency and policy stability, on the one hand, and normative justice and political style, on the other (Lipset 1983; Diamond and Lipset 1994).

In terms of definition, Seymour Martin Lipset (1984: 88) presumes that "legitimacy involves the capacity of the system to engender and maintain the belief that the existing political institutions are the most appropriate ones for the society". Philippe Schmitter (2001: 2), on his part, conceptualises legitimacy as "a shared expectation among actors in an arrangement of asymmetric power, such that the actions of those who rule are accepted voluntarily by those who are ruled because the latter are convinced that the actions of the former conform to the pre-established norms. Put simply, legitimacy converts power into authority – Macht into Herrschaft – and, thereby, simultaneously establishes an obligation to obey and a right to rule".

Alongside the complicated question of defining what legitimacy actually is, political scientists have also reflected upon the possible ways of assuring legitimacy for a governing authority. Arguably, the process of *legitimation* is somewhat different from the concept of legitimacy, which is the *object* of this act. In his classical work "The Theory of Social and Economic Organisation", Max Weber identifies three ways of legitimation (or "three pure types of legitimate authority"): rational, traditional and

charismatic (Weber 1964: 328). In more recent times, Fritz Scharpf (1997) has proclaimed that legitimacy can be secured either on the input or output side of government: *input legitimacy*, implying democratic selection of office holders, public consultation and electoral approval political programmes, while *output legitimacy*, referring to the necessity of directly attending to the public needs and, thus, ensuring that policy follows the public preferences and attitudes.

The legitimation of policies and decisions at the supranational ('European') level seems to present a certain amount of difference from the way legitimacy has been achieved at the state or sub-national level. For instance, students of European integration have concluded that political identity, loyalty and affiliation do not usually operate in the same way at various levels of governance (Wallace 1993: 100). According to Ernst Haas' neo-functionalist vision of Europe, the pursuit of different shared sectional benefits promotes a "patchwork quilt of support" across many and diverse societal interests and policy areas (Haas 1958: 16). Based on the classical writings of Leo Lindberg, Stein Scheingold and Karl Deutsch, Stefania Panebianco (1996) distinguishes theoretically between *utilitarian* and *affective support*[2] for the EU among the member states' citizens. At the same time, she provides empirical evidence regarding the fact that the first usually predominates (Panebianco 1996: 5). A parallel track of research has been concerned with the importance of law, both national and international. For instance, the American scholar Joseph Weiler refers to "formal" or *constitutional* legitimisation of the EU, since, in his mind, the creation of all European institutions has been sanctioned by law (Weiler 1993: 19 and 1999b). Both Daniela Obradovic and Fritz Scharpf agree that the single use of the law and the implementation of constitutional reforms are not sufficient to provide enough legitimacy for the European political and governance system, but their role should nevertheless be taken into serious consideration (Obradovic 1996: 197;, Scharpf 1994: 220). Finally, Markus Höreth (1998:30) concludes that the legitimisation of European governance presents a multidimensional and complex problem in and by itself, that's why international law helps structure this process.

Scholars, working on the legitimacy problems in the EU, have identified at least *four main types of legitimisation* (Scharpf 1994 and 1999b; Höreth 1998 and 2001; Weiler 1999):

1) *Output legitimacy*: support, granted on the basis of improved efficiency in provision of goods and services, as well as an increased European problem-solving capacity - *government for the people*;
2) *Input legitimacy:* Direct legitimation through the elected European Parliament; citizens' participation and consultation; better transparency in taking decisions - *government by the people*;
3) *"Borrowed" legitimacy*: Indirect legitimation through the Member States and their democratic representatives operating at different levels - *government of the people*;
4) *Constitutional legitimacy:* Formal legitimation through European and international law - *government by the 'rule of law'*.

The research on democratic legitimacy in the EU has overall concluded that supranational authorities have traditionally relied on the first and third types of legitimisation (Scharpf 1994 and 1999; Wessels and Diedrichs 1997; Höreth 1998;

[2] *Utilitarian support* "for the supranational institutions is support for integration which stems from a recognition of common interests and positive, mutual benefits that will result" (Lindberg and Scheingold 1970, cited in Panebianco 1996: 5). *Affective support* is "emotional support which may exist between peoples, and which may also comprise a sense of common identity" (Deutsch, cited in Panebianco 1996: 5).

Moravcsik 2002). On the one hand, the technocratic and utilitarian side of the functioning of the Brussels bureaucracy, i.e. by being able to redistribute various resources and allocate political and social values across various levels of governance (Majone 1996 and 2001), has always been seen as an important reason for the existence of the EU. On the other hand, the democratic "rule of law" within the member states and the expanding scope of Community law, achieved through a series of formal revisions of the European treaties and the legal activism of the European Court of Justice (ECJ), have been considered instrumental for the supranational institutions to "borrow" legitimacy from the member states' democratic experience (Obradovic 1996; Joerges 2006). The recent practice of both types of legitimisation has incited a debate about the 'sufficiency' of using output and borrowed legitimacy for assuring support for EU institutions and policies. There have not only been some scholars (Majone 1998; Moravcsik 2002 and 2004; Crombez 2003), but also EU officials, who have declared that the EU is sufficiently legitimated by referring to the member states as a source of popular support. For instance, in the *White Paper on Governance* (2001), attention is drawn to the fact that "[t]he Union is built on the rule of law; it can draw on the Chapter of Fundamental Rights, and it has a double democratic mandate through a Parliament representing EU citizens and a Council representing the elected governments of the Member States" (European Commission 2001a: 7). Moreover, the aforementioned social scientists have pointed out to the limited capacity of the European institutions to effectively influence member states representatives during decision-making and to control national administrations during implementation. A different group of scholars has mostly focused on the limited role of the European and national parliaments within the EU system of governance (Neunreither 1994; Hix 2008). It has been pointed out that the European citizens directly elect the European Parliament (EP) indeed, but the latter has been the only such EU institution. At the same time, elections for the EP have not been extremely popular among national politicians and member state populations, while its legislative and decision-making powers remain relatively weak, albeit growing (Blondel *et al.* 1998; Rittberger 2005). The political role of national parliaments in multilevel Europe has not been clarified either (Magnette 2000; Follesdal and Hix 2005), especially after the Irish debacle with the ratification of the Lisbon treaty.

Parallel to this, things have recently changed much more radically and faster with respect to various formal and informal requirements for governing the Union as a network of policy actors (Eising 2007; Zielonka 2007). The increasing Europeanisation of different policy areas since Maastricht and the separation of national and supranational spheres of activity has left both domestic leaders and civil society groups demanding more transparency and accountability from the European elites. Under such circumstances, it has become increasingly obvious that the growing body of unsatisfied and underrepresented European citizens should somehow be given more say in European matters (i.e. *'input legitimacy'*). As Frank Schimmelfennig (1996: 2) has concluded, "[t]he more power over issues of core state sovereignty and redistribution was transferred to the European level, the more the Community was in need of its own sources of direct popular support". Accordingly, different forms of input legitimacy for the citizens and interest groups have been conceived (Warleigh 1998; Bellamy and Warleigh 2001). For instance, European citizenship was formally created in the early 1990s, while the debate initiated by the *White Paper on Governance* in Europe has mainly been concerned with the role of "civil society" (Eriksen 2001; Höreth 2001). Regarding the fourth type of legitimisation, '*Constitutional Legitimacy*', the treaty drafting and revision process has been quite dynamic since the early 2000s (*vide* the work of the Convention on the Future of Europe and the recent Lisbon Treaty reform). However, it repeatedly stalled when popular referenda were called or when the leaders of selected member states failed to grant their unconditional support. Hence, the practical realisation of this type of legitimisation has not only been dependent upon the opinion of supranational elites, but also upon the backing of different national and sub-national actors, most notably various civic leaders and local politicians.

**Active Civic Participation – Expectations and Pitfalls**

Although citizens have traditionally not been at the centre of European political decision making (Neunreither 1995), both ruling elites and academics have recognised their occasionally important role throughout the history of European integration. This perception was further reinforced during the 1990s with the adoption of the TEU and the instauration of a formal European citizenship (Pinheiro 1993; European Commission 2001b; Bellamy and Warleigh 2001). Two important steps towards the practical implementation of such citizenship were the stipulation of the rights of the European citizens in the Maastricht Treaty (TEU 1992, arts. 8a-e) and the creation of various transparency and accountability mechanism by the EU administration (Shaw 1997; Héritier 1999). The necessity to increasingly consult citizens, in order to improve and legitimate most of the decisions taken at the supranational level, gradually evolved towards a more direct involvement of civic and professional organisations in the preparation and implementation of these decisions (Armstrong 2002). For example, the Economic and Social Committee and the Committee of the Regions, were promoted as official *consultative bodies* with distinct purposes, and there was a move towards the informal engagement of various lobby groups in the work of different expert committees in Brussels (Andersen and Eliassen 1998). During the early 2000s, the Convention on the Future of Europe, composed of representatives from all current and future member states, as well as from the EU institutions, had set up as an ambitious goal for itself to draw a proposal for a "constitution for the European citizens" (Laeken Declaration 2001). The successive inclusion of civic and special interest groups in the Convention on the Charter of Fundamental Rights (December 1999 - October 2000) and the Convention on the Future of Europe (February 2002 - June 2003) was considered a symbolic act of great public relation importance, which legitimated both legal documents to a larger extent.

What motivated the supranational elites to pay better attention to citizens' interests? The answer could be found in some key political and social events during the 1990s, which managed to impact EU stability and threatened to derail possible enlargement and the deepening of the EU institutions and policy process. To start with, Danish voters initially rejected the Maastricht Treaty (2 June 1992), while the referenda in France and Ireland barely managed to pass the necessary majority mark. The completion of the internal market and especially the adoption of the Euro were also met with great suspicion by certain member states (Weiler 1993; Magnette 2000). Towards the late 1990s, some EU institutions (i.e. Eurostat and the European Commission) got involved in high-profile corruption scandals that shook the supranational administration. During the same period, the European Ombudsman and EP started to receive a large number of petitions from concerned European citizens and interest groups. Accordingly, both institutions, together with the European Court of Auditors, began to take their controlling functions very seriously. They sent more requests for clarification to the relevant EU bodies than ever before in the past. Parallel to this, OLAF (the EU anticorruption agency) was profoundly reorganised and boosted its activities to cover all Community-related activities. Finally, the ECJ began to interpret the provisions of European citizenship (Shaw 1998), while continuing to exert control on both member states and supranational institutions regarding potential infringements of the treaties (Sandholtz and Stone Sweet 1998).

As a result of these important political and structural developments, EU representatives launched a public discussion about the possibility of an emerging legitimacy crisis in Europe (European Parliament 1996; European Commission 2001a and 2001b). Although there was no formal consensus about the exact dimensions and consequences of such a predicament, an agreement was reached that something had to be done to prevent it, particularly in light of the processes concerning the introduction of the Euro and future accession of new member states (Lebessis and Paterson 1999; Laeken Declaration 2001). One of the principal proposals was to include representatives of civil society in EU decision-making, thus attempting to close the

confidence gap between the European elites and citizens. A key measure, underpinning this process, was the promotion of "active civic participation" in various EU initiatives (Lebessis and Paterson 1997 and 1999). The dialogue with supranational civil society was duly intensified, while various networks of European interest groups and social movements (the so-called *stakeholders*) were simultaneously coordinated and sponsored by Brussels (Héritier 1999; Eising 2007). Moreover, during the second half of the 1990s, individual EU bodies and the Commission in particular proposed that civic groups should also contribute to the preparatory and implementation phases of different European projects by investing their own resources and specific expertise (Smismans 1999; De Schutter 2002). Since then, the trend has clearly been from *consultation* towards *direct participation* of such groups. Ultimately, the involvement of 'active citizens' in EU decision-making was perceived, albeit sometimes quite vaguely, as an important factor enhancing the "general level of civic consciousness and participation" (Magnette 2003). It was presumed that this latter process could lead to the creation of more coherent supranational communication and public spaces, thus eventually contributing to the formation of a common European identity and even of a *European demos* (Habermas 1992 and 1998; Weiler 1999, Jolly 2007).

Despite the increased activism by EU representatives, three chief problems were identified in relation to the possible participation of European citizens and interest groups. Firstly, the lack of resources and opportunity structures for participation of various societal organisations at the supranational level was singled out as particularly critical (Nentwitch 1996 and 1998; Eising 2007). Secondly, the customary definition of European "civil society" was misleadingly used to denote large transnational businesses and lobbyists, while a relatively small number of truly European civic organisations or groups of individuals were admitted as stakeholders in EU decision-making (Andersen and Eliassen 1998; Kohler-Koh 1997 and 2000). Thirdly, the thinness of the concept of supranational citizenship and lack of European identity led to a clear deficit in political participation of both individuals and parties at the supranational level (Mair 1995; Magnette 2003).

In order to fully understand the difficulties facing 'active civic participation' in Europe, it is worth trying to expand a little bit more upon this set of issues. Regarding the limited participatory opportunities for ordinary citizens and grass-root organisations in a multilevel Europe, the problem has been a dual one – of both rights and resources. For instance, civic groups and individuals have rarely had access to supranational deliberations (i.e. in the work of the Conventions or during everyday decision-making at Community level) because they had to register with the respective European institutions in advance. At the same time, they have been discriminated against, at least compared to influential trade union or employers confederations that have traditionally been the 'privileged partners' of decision-makers in Brussels or Strasbourg. The same goes for the contrast with large domestic business and regional associations, which have preferred to directly lobby member state representatives, thus precluding ordinary people and small societal groups from having a consequential impact over the final ruling of EU leaders. A related problem has been that of resources. Not only have grass-root organisations been sidelined during EU decision-making, but they have also not been able to benefit from the same amount of financial and conceptual resources as their much larger counterparts (Kohler-Koch 2000). Hence, the notion of "civil society", as used by the European bureaucracy and political elites, has been one of the most contested (Smismans 1999; De Schutter 2002).

Apart from being predominantly coordinated and sponsored *from above* (i.e. the EU Commission), the already-described civic participation has been seen as quite *elitist* too (Magnette 2003). The primary reason for this has not so much been the privileged access granted to big international organisations and lobbyists in Brussels, but the *unaccountable* way the representatives of these organisations have been relating to their members and the general European public before, during and after participation at the supranational level. The presumable lack of connection between civil society

elites and their followers has been singled out as an additional key factor for the missed opportunity for developing a true European public sphere and political parties (Dehousse 1995; Héritier 1999).

Ultimately, the problems of active civic participation have also been linked to the evolution of the concept of *European citizenship* and the acquiring of supranational identity. Above all, it should be pointed out that more than a decade and half since its creation the practical meaning of being a citizen of Europe has not really been understood, by citizen or politician alike. Numerous studies, especially after the 1997 Amsterdam Intergovernmental Conference (IGC), which modified the TEU, demonstrated that the progress in developing a true European citizenship has been "frozen" by EU politicians (Bellamy and Warleigh 2001; Warleigh 1998; Wiener 1998). No apparent progress has been made during the 2000s either, despite the legal activism of ECJ on some key European citizenship cases. Furthermore, the development of common European identity has not advanced very much either (Jolly 2007). Some scholars, who had previously argued that this process would stabilise and legitimate the EU system of governance from below, have had to eventually admit that the emergence of a European *demos* is highly unlikely in the foreseeable future (Weiler 1999, Chryssouchoou 2001, Ehin 2008). At the same time, it was estimated that various means of legitimisation – alongside input legitimacy via its identity component – had to simultaneously be combined in order to effectively support the credentials of the EU as a "composite democracy" (Héritier 2003).

**The Crisis of National Democracy and its Impact upon the Attitude of Domestic Elites towards Europe**

Ever since the completion of the Internal Market during the early 1990s and the adoption of the Maastricht treaty, the EU has been described as a "polity in formation" (Sbragia 1992). Due to the ongoing institutional reforms and policy scope expansion (including both internal and foreign policy aspects), the political setup within the Union has become ever more complex. The ambitious programme of adopting both the Euro and enlarging the EU to the East and South has also added to the practical complication of this process. In such conditions, the role of policy experts and lawyers has allegedly become more important, while that of politicians – especially national and sub-national ones – has been on a decline (Majone 2001). That is why, some scholars have been quick to proclaim that the new governance in Europe has been predominantly technocratic and, hence, less accountable (Obradovic 1996; Eriksen 2001). The research on multilevel governance has generally been supportive of this thesis (Scharpf 1994; Hooghe and Marks 2005), because it has been proven that, since the creation of the EU, power has increasingly been dispersed between various centres of authority and the opaqueness within parts of the system has increased (Dehousse 1998; Schmitter 2000). An added problem, identified by scholars of European integration has been that not all relevant policy concerns of the electorate and domestic politicians have effectively been met by the development of supranational governance (Crombez 2003; Moravcsik 2004; Ehin 2008), thus the 'still functioning till now' output and 'borrowed types of legitimacy' have apparently stalled. Moreover, the permissive consensus and delegation of authority by the wider European public could no longer be applied indiscriminately (Pollack 2000). Rather, as the experience with the blocked ratification of the Draft European Constitution and Lisbon Treaty demonstrated, even though consensus might have existed among European elites at the supranational level, the opinion of previously ignored and isolated internationally domestic leaders and constituencies should also have been taken into considerations preferably in advance (Lord 2004).

The above dynamic developments have led to the rapid growth of some unfortunate practices involving domestic elites, particularly at the national and sub-national level of governance. Notably, the "switching of burden" and "blame-shifting" by member state

politicians to the EU, the latter being used as a scapegoat for some possible failures at home or at international arena (Eriksen and Fossum 2000; Beyers and Trondal 2003), have been on the rise lately. It is interesting to note, that in virtually all these cases, domestic leaders have proposed no solution about how to address the emerging problems in Europe or how to punish, for that matter, the supranational authorities for their supposed wrongdoings. Despite the fact that a good part of all this could be epitomised as sheer populism and empty rhetoric, it has been highly profitable for political elites at home. Recently, the trend has been that not only do opposition groups within the member states and eurosceptics argue against the EU, but increasingly people in power, who participate in decision-making at the supranational level, are also beginning to adopt a 'blame Brussels' rhetoric, thus using the momentum of public discontent for their own purposes as well.

Such a lack of resilience by national elites to the 'temptations' of populism, which simultaneously undermines European integration, has led some social scientists to pay closer attention to the possible crisis of national democracy and link this problem to the weakened legitimacy of the EU. First and foremost, it should be pointed out that the EU is a complex governance structure, composed of twenty-seven different states. For good or ill, all current member states are relatively well-functioning democratic regimes, with their own political systems and traditions. Nonetheless, sometimes people tend to unintentionally draw conclusions about the features of European democracy by using the same standards, which are applicable at the national level (Banchoff and Smith 1999). Such 'isomorphism' between the quality of the political regime in the member states and in the EU is vastly misleading for those looking for a legitimacy deficit at the European level. Secondly, it is not irrelevant to know what changes occur with democracy at the national and sub-national level, because numerous veto players might emerge from below and determine the final outcome during supranational deliberations (Tsebelis 2002; Scharpf 2006). This issue has become quite pertinent with the inclusion of many fledgling democracies from Central and Eastern Europe during the latest wave of enlargement. Problems of migration, terrorism and regional separatism have also catalysed different transformation processes within the old member states, occasionally leading to radical changes of the parties in power and the political system as a whole. Thirdly, and probably less directly related to the crisis of national democracy, but by analysing the EU-member state relationship from a different angle, it is possible to observe how the image of various international organisations has been suffering, leading to their detachment from the problems of the people in a post-Cold War world. During the last two decades, major *international organisations* have often been criticised of extreme neo-liberalism and lack of accountability. The violent protests, organised against the meetings of the World Trade Organisation (WTO), G8 and International Monetary Fund (IMF) during the early 2000s, led people to believe that there has been a growing discontent with, at least, some of the policies of these international organisations. The EU, which is certainly been a combination of a supranational polity and international organisation, has occasionally been unintentionally associated with the problems of globalisation and blamed by the European public for them. At the same time, the demonstrations of powerful sectoral groups, such as agriculturalists, fishermen, lorry drivers and environmentalists, in front of the European institutions have captured media attention, thus further deligimating the EU as a presumably insensitive and remote from the real problems international organisation. It comes as no surprise that various protectionists and eurosceptics have often used this incorrect perception, in order to claim more power for the member states and less supranational authority.

However, domestic democracy has been experiencing its own serious problems as well. "Symptoms of morbidity" of the political system (Schmitter 2003), such as an overall disapproval of the performance of the political institutions, low voter turnout in elections and falling party membership have been on the rise around the world. Contestation and litigation against the legal procedures at the national and sub-national level have been widespread too. Furthermore, the increased awareness

among national leaders about the effects of European integration on member state political systems has rendered these elites oversensitive towards any reform at the supranational level. Because of the unexpected and occasionally undesirable events taking place as a result of EU interventionism, domestic elites increasingly started to pay attention to the weakness of national democracy too (Mény *et al*. 1996). Overall, there has been increasing evidence that *domestic politics* in both established and new democracies have been suffering from some form of "a general crisis of legitimacy," accompanied by the rise of extremist and populist tendencies in society (Mény and Surel 2000).

In sum, it could be presumed that, during the last decade or so, the functioning of the EU has been influenced by and, in a certain way, *embedded* in the domestic and, partly, in the international environment. Because a great number of political problems, attributed to the EU, have been present both at the national and global level, the image of this latter organisation as an efficient and democratic polity has been suffering as well. In other words, the EU has often been forced to operate at and mediate between different levels of governance – national, sub-national and global – and, as a consequence, be unjustly blamed by the citizens and various elite groups for being unaccountable and illegitimate.

## Conclusion

Seymour Martin Lipset (1984: 89) once famously stated with respect to the rapidly evolving nature of the modern state that "the crisis of legitimacy is a crisis of change". This statement seems quite appropriate nowadays with respect to the ongoing transformation of the governance system of the EU. Despite the successful completion of the Internal Market, the adoption of the Euro and the enlargement of the Union towards twelve new member states, the more the EU has changed, the more opposition it has provoked both at the national and at the supranational level.

Some people claim that the EU has been suffering from a range of occasionally difficult-to-identify legitimacy problems. This has mainly been because of its complex institutional structure and way of functioning. Moreover, the possible ways of addressing the alleged democratic deficit or of solving some of the legitimacy problems in the EU have predominantly centred on the *top-down* and traditional institutionalist approaches, which try to remedy the structural imbalances at the supranational level. The discussions of both academics and practitioners have not always paid proper attention to citizens and national elites, hence there has been an acute need to cover the *bottom-up* dimension of legitimisation in much greater detail, in order to account for the variety of legitimacy problems arising in a particular context.

This article has addressed some of the *bottom-up* aspects of legitimacy, namely the role of citizens and national elites. By analysing the different modes of legitimation within the complex multilevel structure of the EU, it has been proven that the traditional output and borrowed legitimacy types could not be applied single-handedly, but need to be supplemented with input and constitutional ways of legitimation. Since the latter mode is often contingent upon popular and national elites support, the actual research has mainly focused on different input types of legitimacy.

In spite of the major advances made by the EU institutions to include civic and interest groups in supranational decision-making, there have been persistent problems that have prevented European elites from closing the legitimacy gap with the member state populations. The limited participatory opportunities, lack of resources, biased selection of civil society and interest groups partners, and a poorly developed concept of European citizenship have been some of the problems singled out in this article. Moreover, the slow progress in consolidating a meaningful European identity could be cited as an additional impeding factor towards greater bottom-up participation.

This article has also paid attention to the crisis of national democracies as influencing the legitimacy deficit at all levels of governance within the EU. The 'morbidity' of the political system at home has incited national politicians and elites to seek compensation at the supranational level. Taking into account its own legitimacy problems and limited possibility to act in certain areas, the EU has not been able to respond adequately to demands from below. As a result, it has become an easy target for national populists and eurosceptics. Finally, the crisis in the global system of governance, involving some of the most influential international organisations, has unintentionally affected the EU as well. The latter position has been a difficult one – embedded between many and disparate levels of governance. The EU has been trying to accommodate the interests of various players at the same time, while simultaneously protecting itself from the suspicions of being too technocratic and unaccountable.

***

**References**

Andersen, Svein S. and Eliassen, Kjell A. (eds.) (1998). 'EU Lobbying – Towards Political Segmentation in the European Union?', in P-H. Clays, C. Gobin, I. Smets and P. Winand (eds.) *Lobbying, Pluralism and European Integration* Brussels: European Interuniversity Press, pp. 167-82.

Armstrong, K.A. (2002). 'Rediscovering Civil Society: The European Union and the White Paper on Governance', *European Law Journal*, 8 (1), pp. 102-132.

Banchoff, Thomas and Smith, Mitchel P. (1999). *Legitimacy and the European Union*, London: Routledge.

Bartolini, S. (2005). Restructuring Europe. Centre Formation, System Building, and Political Structuring between the Nation State and the European Union. Oxford University Press,

Bellamy, R. and Warleigh, A. (1998). 'From Ethics of Integration to an Ethics of Participation: Citizenship and the Future of the European Union', *Millennium*, 27, pp. 447-70.

Bellamy, R. and Warleigh, A. (eds.) (2001). *Citizenship and Governance in the European Union*. London: Continuum.

Beyers, J. and Trondal, J. (2003). 'How Nation-States 'Hit' Europe – Ambiguity and Representation in the European Union', EioP Working Paper, 7 (5). Available at: http://eiop.or.at/eiop/pdf/2003-005.pdf.

Blondel, J. (1995). *Comparative Government. An Introduction*. London: Prentice Hall.

Blondel, J., Sinnott, R. and Svensson, P. (1998). *People Parliament and the European Union. Participation, Democracy and Legitimacy*. Oxford: Clarendon Press.

Bulmer, S. (2007). 'Theorizing Europeanization', in Paolo Graziano and Martin P. Vink (eds.) *Europeanization: New Research Agendas*. London: Palgrave/Macmillan, pp. 46-58.

Chryssouchoou, D. N. (2001). *Theorizing European Integration*. London: Sage.

Crombez, C. (2003). 'The Democratic Deficit of the European Union. Much Ado about Nothing?, in *European Union Politics*, 4 (1), pp. 101-120.

De Schutter, O. (2002). 'Europe in Search of Its Civil Society, *European Law Journal*, 8 (2), pp. 198-217.

Dehousse, R. (1995). 'Institutional reform in the European Community: Are there Alternatives to the Majoritarian Avenue?', EUI Working Paper, RSC 95/4, Florence 1995.

Dehousse, R. (1998). 'European Institutional Architecture after Amsterdam: Parliamentary System of Regulatory Structure?', EUI Working Paper, RSC 98/11, Florence.

Diamond, L. and Lipset, S.M. (1994). 'Legitimacy', entry in the *Encyclopaedia of Democracy*, pp. 747-51.

Easton, D. (1965). *A System Analysis of Political Life* . New York: Wiley, pp. 311-319.

Ehin, P. (2008). 'Competing Models of EU Legitimacy: the Test of Popular Expectations', *JCMS*, 46 (3), pp. 619-640.
Eising, R. (2007). 'Interest Groups and Social Movements', in P. Graziano and M. P. Vink (eds.), *Europeanization: New Research Agendas.* London: Palgrave/Macmillan, pp. 167-181.
Eriksen, E. (2001) 'Democratic or Technocratic Governance?', Jean Monnet Working Paper No. 6/01, Harvard Law School European Union Program.
Eriksen, E. and Fossum, J. (eds.) (2000). *Democracy in the European Union - Integration through Deliberation?* London: Routledge.
European Commission (2001a). *European Governance: a White Paper*, COM (2001) 428 final.
European Commission (2001b). *Report of Working Group on Consultation and Participation of Civil Society*. Rapporteur: M. Kroeger.
European Parliament (1996). *Summary Report on the Public Hearing "The Intergovernmental Conference 1996: The European Parliament – A Heaven for the Concerns of the Citizens"*, A4-0068/96 of 3 and 27 March 1996.
Featherstone, K. and Radaelli, C. (eds.) (2003). *The Politics of Europeanization*. Oxford: Oxford University Press.
Follesdal, A. and Hix, S. (2005). 'Why There is a Democratic Deficit in the EU: a Response to Majone and Moravcsik', *European Governance Paper*, No. C-05-02, CONNEX/NEWGOV research network.
Haas, E, B. (1958). *The Uniting Europe. Political, Social and Economical Forces. 1950-1957*. Stanford: Stanford University Press, 1958.
Habermas, J. (1992). 'Citizenship and National Identity: Some Reflections on the Future of Europe', *Praxis International*, 12, pp. 1-19.
Habermas, J. (1998). 'The European Nation-State: On the Past and Future of Sovereignty and Citizenship', in: *Political Culture*, 10 (2), pp.197-416.
Héritier, A. (1999). 'Elements of Democratic Legitimation in Europe: An Alternative Perspective', *Journal of European Public Policy*, 6 (2), pp. 269-82.
Héritier, A. (2003). 'Composite Democracy in Europe: the Role of Transparency and Access of Information', *Journal of European Public Policy*, 10 (5), pp. 814-833.
Hix, S.(1999). *The Political System of the European Union*. London: Macmillan.
Hix, S. (2008). *What's Wrong with the European Union and How to Fix it*. Cambridge: Polity Press.
Hodges, M. (ed.) (1972). *European Integration*. Harmondworth: Penguin.
Hooghe, L. and Marks, G. (2005). 'The Neofunctionalists were (almost) Right: Politicization and European Integration', *Constitutionalism Web-Papers*, ConWEB No. 5/ 2005.
Höreth, M. (1998) 'The Trilemma of Legitimacy – Multilevel Governance in the EU and the Problem of Democracy', *ZEI Discussion Papers*, Vol. C, No. 11, Bonn, Germany;
Höreth, M. (2001).'The European Commission's White Paper on Governance: A 'Tool-Kit' for Closing the Legitimacy Gap of EU Policy-Making', *ZEI Discussion Papers*, Vol. C, No. 94, Bonn, Germany.
Joerges, C.(2006).'"Deliberative Political Processes" Revisited: What Have We Learnt about the Legitimacy of Supranational Decision-Making', *Journal of Common Market Studies*, 44 (4), pp. 779-802.
Jolly, M. (2007). *The European Union and the People*. Oxford: Oxford University Press.
Kohler-Koch, B. (2000). '"Framing": the Bottleneck of Constructing Legitimate Institutions', *Journal of European Public Policy*, 7 (4), pp. 513-31.
Laeken Declaration (2001) 'Laeken Declaration on the Future of the European Union', 15 December 2001, SN 300/01 ADD1.
Lebessis, N. and Paterson, J. (1997). 'Evolution of Governance: What Lessons for the Commission? A First Assessment', Brussels: European Commission, Forward Studies Unit Working Paper.
Lebessis, N. and Paterson, J. (1999). 'Improving the Effectiveness and Legitimacy of EU Governance: a Possible Reform Agenda for the Commission', Brussels: European Commission, Forward Studies Unit Working Paper;

Lindberg, L.N. and Scheingold, S.A. (1970). *Europe's Would-be Polity. Patterns of Change in the European Community*. Englewood Cliffs, New Jersey: Prentice Hall.
Linz, J. and Stepan, A. (eds.) (1996). *Problems of Democratic Transition and Consolidation: Southern Europe, Latin America and Post-Communist Europe*. Baltimore, MD: Johns Hopkins University Press.
Lipset, S. M. (ed.) (1983). *Political Man: The Social Bases of Politics*. Aldershot: Gover, 1983.
Lipset, S.M. (1984) 'Social Conflict, Legitimacy, and Democracy', reprinted in William Connolly (ed.) *Legitimacy and the State*. Oxford: Basil Blackwell, pp. 88-103; originally published in S.M. Lipset (ed.) *Political Man: The Social Bases of Politics*. Baltimore, MD: Johns Hopkins University Press, 1981.
Lord, C. (1998) *Democracy in the EU*. (Sheffield: UACES, Sheffield Academic Press.
Lord, C. (2000). 'Legitimacy, Democracy and the EU: When Abstract Questions Become Practice Policy Problems', *Policy Paper* 03/00, ESRC Programme "One Europe or Several?.
Lord, C. (2004). *A Democratic Audit of the European Union*. Houndmills: Palgrave Macmillan.
Magnette, P. (2000) 'Towards 'Accountable Independence'? Parliamentary Controls of the European Central Bank and the Rise of a New Democratic Model', *European Law Journal*, 6 (4), pp. 326-40.
Magnette, P. (2003). 'European Governance and Civic Participation: Beyond Elitist Citizenship?', *Political Studies* 51, pp. 144-160.
Mair, P. (1995). 'Political Parties, Popular Legitimacy and Public Privilege', *Western European Politics* (18) 3, pp. 40-57.
Majone, G. (1996. 'Regulatory Legitimacy', in G. Majone (ed.) *Regulating Europe*. London: Routledge, pp. 284-301.
Majone, G. (1998). 'Europe's "Democratic Deficit": The Question of Standards', *European Law Journal*, 4 (1), pp. 5-28.
Majone, G. (2001). 'Nonmajoritarian Institutions and the Limits of Democratic Governance: A Political Transaction-Cost Approach', *Journal of Institutional and Theoretical Economics* 157 (1), pp. 57-78.
Mény Y., Muller, P. and Quermonne, Jean-Louis (eds.) (1996) 'Introduction', in *Adjusting to Europe: The impact of the European Union on National Institutions and Policies*. London: Routledge. pp. 1-22.
Mény, Ives and Surel, Ives (2000)**.** *Par le people, et pour le peuple: le populisme et les démocraties*. Paris: Fayard.
Milward, A. (1992). *The European Rescue of the Nation State*. London: Routledge.
Moravcsik, A. (2002). 'In Defence of the "Democratic Deficit": Reassessing Legitimacy in the European Union, *Journal of Common Market Studies*, 40 (4), pp. 603-24.
Moravcsik, A. (2004). 'Is there a "Democratic Deficit" in World Politics? A Framework for Analysis', *Government and Opposition*, 39 (2), pp. 336-63.
Nentwich, M. (1996). 'Opportunity Structures for Citizens' Participation: The Case of the European Union', *European Integration Papers Online* (1996), No. 1, available at: http://eiop.or.at/eiop/texte/1996-001a.htm.
Nentwich, M. (1998). 'Opportunity Structures for Citizens' Participation: The Case of the European Union', in M. Nentwich and A. Weale. (eds.), *Political Theory and the European Union: Legitimacy, Constitutional Choice and Citizenship*. London: Routledge.
Neunreither, K. (1994). 'The Democratic Deficit of the European Union: Towards Closer Cooperation between the European Parliament and the National Parliaments', *Government and Opposition*, 29 (3), pp. 299-314.
Neunreither, K. (1995) 'Citizens and the Exercise of Power in the European Union: Towards a New Social Contract?', in A. Rosas and E. Antola (eds.), *A Citizens' Europe: In Search of a New Order*. London: Sage
Obradovic, D. (1996).'Policy Legitimacy and the European Union', *Journal of Common Market Studies* 34 (1996), pp. 191-221.
O'Donnell, G, Vargas Cullell, J., and Iazzetta, O. M. (2004). *The Quality of Democracy: Theory and Applications*. Notre Dame: University of Notre Dame Press.

Olson, J. P. (2001) 'The Many Faces of Europeanisation', *ARENA Working Papers WP 01/2*, 2001, pp. 1-47;available at: http://www.arena.uio.no/publications/wp02_2.htm.

Panebianco, S. (1996). 'European Citizenship and European Identity: from the Treaty of Maastricht to Public Opinion Attitudes', *Jean Monnet Working Papers in Comparative and International Politics*, University of Catania, Italy, (December 1996), Jean Monnet Working Paper, 03/96, available at: http://aei.pitt.edu/384/01/jmwp03.htm.

Pinheiro, J. (1993). *Communication to the Commission*, 28 July 1993. SEC (93) 1246/3.

Polack, M.A. (2000). Contribution to ECSA Review Forum on "Democracy and Constitutionalism in the European Union", *ECSA Review* (13:2), Spring 2000, pp. 2-7.

Rittberger, B. (2005). *Building Europe's Parliament. Democratic Representation Beyond the Nation-State*. Oxford: Oxford University Press.

Sandholtz, W. and Stone Sweet, A. (eds.) (1998). *European Integration and Supranational Governance*. Oxford: Oxford University Press.

Sbragia, A. M. (1992). "Thinking about the European Future: The Uses of Comparison", in A. Sbragia (ed.) *Euro-Politics: Institutions and Policymaking in the 'New' European Community*. Washington, DC: The Brookings Institution, pp. 257-291.

Scharpf, F. (1994). 'Community and Autonomy: Multilevel Policy-Making in the European Union', *Journal of European Public Policy* 1, pp. 219-42.

Scharpf, F. (1997). 'Economic Integration, Democracy and the Welfare State', *Journal of European Public Policy*, 4 (1), pp. 18-36.

Scharpf, F. (1998). 'Interdependence and Democratic Legitimation', *MPIfG Working Paper* 98/2, Bonn, Germany.

Scharpf, F. (1999). *Governing in Europe. Democratic and Efficient?* Oxford: Oxford University Press.

Scharpf, F. (2006). 'The Joint-Decision Trap Revisited, *Journal of Common Market Studies,* 44 (4), pp. 845-64.

Schimmelfennig, F. (1996). 'Legitimate Rule in the European Union. The Academic Debate', Tübingen University *Working Papers in International Politics and Peace Studies*, No. 27, Tübingen, Germany.

Schmitter, P.C. (2000). *How to Democratize the European Union…and Why Bother?* Lanham: Rowman & Littlefield.

Schmitter, P.C. (2001) 'What is There to Legitimize in the European Union…and how Might This be Accomplished?', Jean Monnet Working Paper No. 6/01, Harvard Law School European Union Program.

Schmitter, P. C. (2003). 'Democracy in Europe and Europe's Democratization', *Journal of Democracy*, 14 (4), pp. 71-85.

Shaw, J. (1997). 'Citizenship of the Union: Towards Postnational Membership?', Harvard Jean Monnet Working Paper, No. 6/97.

Shaw, J. (1998). 'The Interpretation of European Union Citizenship', *Modern Law Review* 61, pp.293-317.

Smismans, S. (1999). 'An Economic and Social Committee for the Citizen, a Citizen for the Economic and Social Committee?', *European Public Law*, 5 (4), pp. 569-73.

Streeck, W. (2000)' "Competitive Solidarity: Rethinking the "European Social Model"', in *Kontingenz und Krise: Institutionenpolitik in kapitalistischen und postsozialistischen Gesellschaften*, Karl Hinrichs *et al.* (eds.). (Frankfurt/M., Campus), pp. 245–261.

TEU (1992). "Treaty on European Union", *Official Journal* C 191, 29 July 1992.

Tsebelis, G. (2002). *Veto Players. How Political Institutions Work*. Princeton: Princeton University Press.

Wallace, H. (1993). 'Deepening and Widening: Problems of Legitimacy for the EC', in Soledad Garcia (ed.) *European Identity and the Search for Legitimacy* (London: Pinter), pp. 95-105.

Warleigh, A. (1998). 'Frozen: Citizenship and European Unification', *Critical Review of International Social and Political Philosophy*, 4 (1),pp.113-51.

Weber, M. (1946). *From Max Weber: Essays in Sociology*, translated by Hans H. Gerth and C. Wright Mills. New York: Oxford University Press.

Weber, M. (1964). *The Theory of Social and Economic Organization*, translated by A.M. Henderson and Talcott Parsons (ed.), London: The Free Press, 1964 (first edition: 1947).

Weiler, J. (1993). 'After Maastricht: Community Legitimacy in Post-1992 Europe', in William J. Adams (ed.) *Singular Europe. Economy and Polity of the European Community after 1992*, Michigan: Univ. of Michigan Press, pp. 11-41.

Weiler, J. (1999) 'To be a European Citizen: Eros and Civilization', in J. Weiler *The Constitution for Europe*. Cambridge: Cambridge University Press.

Wessels, W. (1996) 'The Modern West European State and the European Union: Democratic Erosion or a New Kind of Polity?', in Svein S. Andersen and Kjell A. Eliassen (eds.) *The European Union: How Democratic Is It?* London: SAGE Publications, pp. 57-69.

Wessels, W. and Diedrichs, U. (1997). 'A New Kind of Legitimacy for a New Kind of Parliament – The Evolution of the European Parliament', European Integration online Papers (EIoP), 1 (6), available at: http://eiop.or.at/eiop/pdf/1997-006.pdf.

Wiener, A. (1998). *A European Citizenship*. Boulder: Westview Press.

Zielonka, J. (2007)' 'Plurilateral Governance in the Enlarged European Union', *Journal of Common Market Studies,* 45 (1), pp. 187-209.

***

# Clearing the Way for Civil Society in South-eastern Anatolia: The Importance of Trust and Discourse

Hakan Samur

**Abstract**

This article discusses one of the problems that must be resolved urgently in order to enable the development of civil society in the South-eastern Anatolian Region. This is a region that will likely become the future eastern border area of the European Union (EU) and is currently Turkey's most troubled region due to its political, economic and social conditions. Despite the fact that a suitable legal-institutional environment was established during the EU membership process especially after 2001, one of the most significant obstacles that prevents civil society in the Region from showing the effort to benefit from this environment is the fact that due to from long-standing conflicts and oppressive policies, it has not been possible to establish an environment of trust between the state and civil society. First and foremost among the most crucial tools that must be reviewed and considered to establish such an environment of trust is the discourse employed by the politico-bureaucratic elite.

IN THIS STUDY, THE CIVIL SOCIETY PHENOMENON WILL BE ANALYSED IN A SMALL geographic area, Turkey's South-eastern Anatolian Region. In this introductory section the characteristics and increasing regional, continental and global importance of civil society as well as the specific perspective of the study will be explicated.

Although civil society is generally defined as collective associations, movements or networks distinct from the state, markets or the private arena (family), in which people participate on a volunteer basis and enjoy great autonomy, it is not entirely clear what these specific structures actually entail (Newton 1999: 10; Wagner 2006). While there is consensus regarding the fact that the market (organisations of production and distribution) and family are not within the realm of civil society, different approaches exist in relation to the status of, for instance, political parties. Some (Deth 1997: 1; Newton 1999: 10) include political parties within the circle of civil society, whereas Cohen and Arato (1997) argue that since political parties aim to gain control of and manage state power directly, they must be considered as part of political society. However, Cohen and Arato (1997) also state that civil society is the most significant source that nourishes political society, that the mobility of civil society plays a complementary role to party systems (within the context of rights and freedoms, and democratization), and that the political role of civil society should not be to directly control the administration in power but to the generation of influence. Thus, even if political parties are considered to be a part of civil society or political society in general, it would not be erroneous to say that in such cases, they execute the functions of civil

I would like to thank the Scientific and Technological Research Council of Turkey for supporting the research study I conducted at the University of Manchester, which also provided the groundwork for this paper. I also would like to thank the Jean Monnet Centre of Excellence in Manchester and Professor Stefan Berger for providing me the opportunity of working at the University of Manchester. Finally, I would like to thank two anonymous reviewers for their useful comments and Eamonn Butler for his assistance.

ISSN 1815-347X online – Samur, H. (2008). 'Clearing the Way for Civil Society in South-eastern Anatolia: The Importance of Trust and Discourse', *Journal of Contemporary European Research*, Vol. 4, No. 3, pp. 224-239. Available: http://www.jcer.net/ojs.index.php/jcer/article/view/101/107

society. As will be explained below, when the conditions of the target region of the present study are taken into consideration, it becomes necessary to judge especially electoral participation as being in line with the functions of civil society.

Civil society may take on organisational and non-organisational forms. Structures founded based on principles of volunteerism or non-profit, and also called volunteer organisations or non-governmental organisations, constitute the organisational form of civil society. Various activities (demonstrations, campaigns, boycotts, mass meetings) that overlap with the functions that will be delineated below and realized mostly under the leadership of one of these organised structures constitute its non-organisational form. The functions (roles) of civil society may be classified as below:

*Distributive Function (Economic and Social Roles)*: Especially in cases where the state is inadequate, civil society organisations perform economic and social functions in line with their founding aims by providing either healthcare, food and welfare services, as well as educational and cultural services to its members, the society at large (or even internationally) (Edwards 2004).

*Representative Function*: Civil society organisations are assumed to be the representative as well as the articulated forms of interests and orientations in society. In other words, they reflect the interests and demands of society in general (Deth 1997: 2).

*Mediating Function*: In reflecting these interests and demands, they undertake numerous activities so as to influence governmental organisations, and enable communication between these organisations and social interests (Deth 1997: 2; Newton: 1999).

*Political Function*: This is one of its most crucial functions. While civil society acts as a societal control mechanism to prevent the misuse of power by the state and political organisations, and ensure transparency, it also generates alternative projects and recommendations for these organisations as well (Hall 1995; Moyser and Parry 1997: 25; Edwards 2004). This function is not necessarily against government and state; it can also be open to collaborative efforts (Norton 1995).

Civil society is widely considered to be one of the most important factors in the basis of the development of Western European societies in the existing literature. In this respect, there are many who credit civil society for the developmental path that has led the Western part of the continent to a different and ultimately more desirable economic and political structure compared to its Eastern part (Chirot 1989; Hall 1995: 4; Bideleux and Jeffries 1998). Paradoxically, the pioneering impact of civil society organisations on regime changes in Eastern European nations has played a large role in the revival of the civil society concept from the 1990s onwards (Agh 1998; Cohen and Arato 1997; Edwards 2004). In these nations, civil society is deemed significant not only because of its role in the regime change, but also of its role during the extensive economic and political transformation processes these nations underwent in the post-Communist era. This is rooted in the fact that civil society has enjoyed a critical role in terms of input and output during these transformation processes. In other words, while the existing civil society of the time played a role in the success and content of the transformation process in the new environment formed by democratization and the introduction of the market economy, civil society acquired new status and quality. The roles attributed to civil society have been more visible in some nations, and vaguer in others.

The European Union (EU) has also had an effect on the rising role of civil society. In parallel with increasing deepening efforts and an "ever closer Union" attitude since the mid-1980s, increased dialogue between EU citizens and civil society groups in the Union has over time become more and more important. As a result of the changes that emerged in Central and Eastern Europe and the membership applications by these

countries to join the EU, the importance and role of civil society had been voiced with increasing frequency, particularly since the late 1990s when programs geared toward civil society have become a main focal point (COM 2001; Smismans 2005). Ultimately, the trend of civil society organisations expanding beyond national borders has not been specific only to the EU; it can be observed at a global level. While there were only 176 NGOs with international characteristics in 1909, this figure reached 28,900 by 1993 (Hulme and Edwards 1997: 4).

In this study, the situation of civil society in the South-eastern Anatolian Region will be discussed on the basis of a matter that must be given due importance to enable civil society to develop and ensure that benefits expected from the crucial democratic-legal reforms enacted within the context EU harmonisation are realized; namely, trust. It is argued that for the political environment in the Region to normalize, for dialogue and democratic channels to function, and for civil society to flourish within the context of its fundamental principles, first, an environment of trust needs to be established between the state and society. Primary among the methods to achieve this end is to determine the content of the discourse between policy makers/implementers and the public. In the first section below, a summary of information will be provided on the overall characteristics and socio-economic and political profile of the Region. It will also provide an overview of the current status of civil society. Later, the issue of trust and the impact of discourse on trust will be elaborated in the following two sections.

The fact that a specific geographic area has been examined should not be perceived as though the subject matter and subsequent analyses will hold meaning only for this region. The necessity but scarcity of studies on societal structures and processes (Delanty and Rumford 2005: 1), or the importance of conducting studies on a "micro-sociological level" in relation to the status of societal actors, such as civil society organisations, in the context of the Europeanisation process (Bulmer and Lequesne 2002: 29) is apparent. The concept of Europeanisation can be used to refer to different things in the existing literature; in this study, it is used to express the process of change in the domestic structures of member or candidate states within the context of EU norms and practices. The aforementioned change is a phenomenon that comprises not only legal-procedural aspects, but also normative ones (informal rules, styles, "ways of doing things", shared beliefs, etc) (Radaelli 2003: 30).

Since a systemic transformation within the context of a new political and economic approach is not the case here, it would be wrong to consider the process of change in South-eastern Anatolia in the same category as that evidenced in Central and Eastern Europe. However, it should be noted that if the economic and especially the political conditions in our focal region, South-eastern Anatolia, are to change during the Europeanisation process, and considering the output level hoped to be achieved, it would not be wrong to call this process an instance of "semi-transformation". In addition, due to the political and economic conditions, the South-eastern Anatolian Region has become Turkey's 'weakest link' and thus, in terms of civil society, is both an interesting and critical case for Turkey and for the EU, of which Turkey is a candidate country.

## The South-eastern Anatolian Region and the current status of civil society in the Region

### *The socio-economic and political environment of the Region*

Known as 'South-Eastern Anatolia' in Turkey's geographical zoning system, the region in question covers the Euphrates and Tigris Basins and the surrounding area and stretches over nine provinces. The Region also covers three Eurostat regions as set out

by Eurostat's zoning system, NUTS (Nomenclature of Territorial Units for Statistics):[1] These regions are TRC1 (provinces of Gaziantep, Adıyaman, and Kilis), TRC2 (provinces of Şanlıurfa and Diyarbakır) and TRC3 (provinces of Mardin, Batman, Şırnak and Siirt). The total population of the region by the end of 2007 was 2,336,657 and it covered a land area of 76,506 km$^2$.

The World Alliance for Citizen Participation (CIVICUS) determined eight conditions that could affect the activities of civil society (TUSEV and CIVICUS 2006: 68): widespread poverty; armed conflict; ethnic and/or religious tension; a large economic crisis; the proportion of the population impacted by natural disasters; disparate socio-economic conditions; widespread adult illiteracy; and inadequate infrastructure for information technology. It is not within the scope of this study to examine the South-eastern Anatolian region in detail in terms of each of these conditions, however, the general information provided below on the socio-economic and political conditions of the region will clearly show that perhaps with the exception of natural disasters, civil society is striving to find a developmental path in a rather unfavourable environment in terms of all the other conditions.

Regarding socio-economic development, it is observed that the provinces in the region are not at an inspiring level, and with the exception of Gaziantep, situated in the western part of the Anatolian region, all other provinces have a negative development index and are very much behind the 81 provinces in Turkey (see Table 1). While Turkey's GDP per capita was €5,300 in 2001 and already much lower than the over €20,000 average of the EU-25 (Eurostat 2007), according to the Turkish Board of Statistics which provided data for that same year (TUIK 2001), the per capita income for the region in 2001 was only $3,389 (€2,800). Although more current and precise data for the Anatolian region does not exist, considering that the Eurostat data for the EU-25 was €23,400 and €7,200 for Turkey in 2005, a significant change in the Region would seem highly unlikely.

**Table 1:** *Provinces in the Region by socio-economic development*

| Province | Socio-economic development index* | Socio-economic development ranking (among 81 provinces) |
|---|---|---|
| Adıyaman | -0.77647 | 65 |
| Batman | -0.90456 | 70 |
| Diyarbakır | -0.66993 | 63 |
| Gaziantep | 0.46175 | 20 |
| Kilis | -0.41175 | 54 |
| Mardin | -0.98944 | 72 |
| Siirt | -1.00644 | 73 |
| Şanlıurfa | -0.83158 | 68 |
| Şırnak | -1.13979 | 78 |

* This index was calculated based on 58 different indicators, including demographics, employment, education, health, industry, agriculture, construction, finance, infrastructure, etc.
**Source:** Dincer, B. *et al.* (2003). İllerin ve Bölgelerin Sosyo-Ekonomik Gelişmişlik Sıralaması Araştırması-2003. [Study on the Socio-economic Development Ranking of Provinces and Regions-2003] Ankara: State Planning Organisation (Pub No: 2671), p. 55.

A study conducted by the Turkish Board of Statistics based on Eurostat criteria showed that while the poverty line rate was 23.8 for Turkey in 2003, this rate was 35.09 per cent in TRC1 (Gaziantep, Adıyaman, and Kilis), 64.33 per cent in TRC2 (Şanlıurfa and Diyarbakır), and 82.37 per cent in TRC3 (Mardin, Batman, Şırnak, and Siirt) (Dansuk et al.

[1] See: http://ec.europa.eu/eurostat/ramon/nuts/codelist_en.cfm?list=cec, last accessed 5 March 2008.

2006). One out of every four inhabitants in the region is illiterate (26.8 per cent), and this rate reaches as high as 40 per cent among women (TUSIAD 2006: 75).

Regarding the political environment, starting from the establishment of Turkish Republic, the state tended to ignore the existence of Kurdish ethnicity until very recently and pursued an assimilation policy. This approach created continuous tension within the region. This was particularly so, when during the first period of Martial Law and then during the Declaration of a State of Emergency in the region from 1980 to 2002, oppressive policies of the state that ignored problems or legitimate demands within the context of human rights not only resulted in no favourable outcomes, but also brought to the fore divisive groups that approved of terrorist acts. This situation greatly intensified in the 1990s, especially after radical Kurdish groups carried out terrorist acts under the umbrella of the Kurdistan Workers' Party (PKK - Partiya Karkerên Kurdistan*)* from the mid-1980s onwards, and the state responded by using almost only military methods as a means to resolve the issue. The armed conflict has to date claimed at least 35,000 lives (Freedom House 2007: 12), and hundreds of thousands of people, including religious-cultural minorities, have been either forcibly displaced or had to relocate by choice due to the events that transpired. Thus, a large proportion of the public was treated as potential criminals as a result of the situation in the Anatolian region, which was also described by top-level military officials of the time as a "low intensity war".

It must be noted here that since 2001, Turkey has embarked on a series of crucial reforms designed to aid its EU accession process. In the space of a few years, Turkey has ratified legal regulations that have enabled important harmonisation changes; something which had always been postponed previously. In this new period, the law and human rights have a much higher profile and a number of social and cultural rights, that had been denied in the 1990s, now took on greater significance within people's everyday life; for example, broadcasts in a mother tongue and the freedom to learn this language, improved regulations made in the area of freedom of thought, and changes made to the Anti-Terror Law, etc. Called the most important reforms of the history of the Turkish Republic (Aktar 2003; UPSAM 2006; ESI 2007), and earning favourable reviews not only in the region or nationally but also among EU circles, these reforms brought noteworthy and positive changes in terms of the advancement of civil society. For NGOs, which until recently (1) were strictly monitored and under observation by both the police and other state authorities, (2) functioned despite excessive bureaucratic difficulties and (3) had to obtain special permission in order to establish international contacts and run international projects, these reforms not only lifted restrictions in relation to organisational freedoms and civil rights to a large extent, but also brought new approaches to human rights and social policies, helping the establishment of an environment conducive to dialogue for the resolution of problems (TUSEV-CIVICUS 2006).

Another development that has gained pace from 2001 onwards is EU's support of civil society in Turkey. In addition to an extensive Civil Society Development Programme, the civil society organisations in the Anatolian region have been benefiting from various programmes geared toward the country at large, including the European Initiative for Democracy and Human Rights, and Education and Youth Programmes. In addition, programmes geared specifically toward the region and aiming mainly to benefit civil society organisations such as the Cultural Heritage Development Programme of the GAP, Development Programme of the GAP Region and GAP Entrepreneur Support Centre, were all initiated after 2001.

*Current size of civil society and the legal environment*

As can be expected, in the shadow of the negative socio-economic and political indicators, civil society was also rather restricted especially until 2001. Figures for non-

profit and volunteer associations are presented in Table 2. Although the population in the Anatolian region is over 2,300,000, there are only 2,792 volunteer organisations overall and total membership amounts to 149,174. These figures, however, do not reflect the real situation because, according to the Law of Associations, a volunteer association can be founded by a gathering of at least seven people. Therefore, a lot of associations are founded through nominal membership of close friends and relatives. Also it should be noted that most of the associations have been launched after 2001 demonstrating the impact of Europeanisation process. For example, in Diyarbakır, the foundation date of 67 per cent of those 512 associations has been after 2001.[2]

**Table 2:** *The number of and membership to volunteer organisations in the South-East Anatolia*

| Province | Number of Active Associations | Within-Country Percentage | Number of Members* |
|---|---|---|---|
| Adıyaman | 349 | 0.44% | 14.269 |
| Batman | 150 | 0.19% | 8.365 |
| Diyarbakır | 512 | 0.65% | 23.276 |
| Gaziantep | 774 | 0.99% | 61.028 |
| Kilis | 88 | 0.11% | 3.120 |
| Mardin | 184 | 0.23% | 7.661 |
| Siirt | 162 | 0.20% | 4.819 |
| Şanlıurfa | 505 | 0.64% | 24.219 |
| Şırnak | 68 | 0.08% | 2.417 |
| TOTAL | 2792 | 0.35% | 149.174 |

*Data gathered through electronic correspondence with the Ministry of Home Affairs.
**Source:** http://dernekler.icisleri.gov.tr/Dernekler/Kurum/IllereGoreDernekSayisi.aspx, last accessed 13 March 2008.

Civil society has problems not only in terms of quantity, but as can be expected, of quality as well. The results of an extensive study conducted with NGOs in the region (İçduygu and Dane: 2005) revealed that NGOs were financially weak, inadequate in respect of expertise and organisation, somewhat partisan in character, some groups were alienated from society and had no structure to represent them (for instance, homosexuals). All NGOs also experienced mistrust in their relations with the state, were ineffective in terms of influencing policies (political function) and much less effective in rural areas. Furthermore, the levels of participation by women were low.

At this point, we might also briefly look at electoral participation, which functions as civil society in terms of revealing public reaction and the public's desire to influence political processes. An assessment that also included Southern Italy and some Central and Eastern European regions found that the South-eastern Anatolian region was among those that had the lowest electoral participation in the EU (OECD 2007: 130). Even at the most recent general elections that took place on 22 July 2007, at a time when political tensions in the country were high and voter turnout reached the second highest level ever (84.6 per cent), electoral participation remained five to fifteen points below this figure in the various provinces across the Anatolian region. Electoral participation was at a much lower level in previous elections.[3] Considering the political and economic problems in the region, one would expect much higher voter turnout as

[2] Data collected from Diyarbakır Governorship, Directorate of Associations.
[3] Results obtained from the web site of the Supreme Electoral Board. http://ysk.gov.tr/ysk/index.html (last accessed 10. 03. 2008).

a means to indicate their reactions to offered solutions. On the contrary, however, boycotting the election due to anger toward the state and the belief that 'nothing will change' is also a possibility. Still, it must be said that a weak civil society and civic passivity are also important factors that lie at the basis of low levels of electoral participation.

As a result of the inadequacy of civil society and an oppressive legal-political environment, acts of terrorism and violence have dominated the region, as the previously mentioned figures show. Consequently, even non-organisational forms of civil society activities (public protests and demonstrations) have not fully been utilized. The legal changes, and the specific support provided to the region by the EU have in recent years opened the way to improvements in the societal structure of and civil society in the Anatolian region. However, these improvements took root after 2001, in the optimistic environment generated by EU harmonisation reforms and expectations that the reforms would be ongoing. In addition, as of the present, these improvements have unfortunately not been comparable to the astounding speed of the changes experienced in the legal context that is recognized even by NGOs themselves, and not transformed to regional peace and complete renewal of state-civil society relations. The fact that suspicions remain concerning the development of civil society in the region despite the strengthening of the legal-democratic environment, means the root of the problem lies elsewhere. Therefore, it is possible to suggest that trust, the sense of feeling safe in relation to others, is the key concept in terms of the source and resolution of the problem.

**Developing an Environment of Trust**

Whiteley and Seyd (1997) distinguish between 'social trust' (social capital), which describes reciprocal and horizontal cooperation and relationships between individuals in a given society, and 'political trust' (political capital), which refers to individuals' vertical positions and thoughts concerning the political system. What is meant by the 'political system' here is not the administration in office at any specific time, but a wider understanding of regime. The more a political system is trusted, the more influential and legitimate a status that political system will enjoy. Political trust and social trust are closely related. Whiteley and Seyd point out only one aspect of this relationship. To them, political trust is actually a vertical version of social trust, and social activities (social trust) can generate political trust. The opposite is also probable; political trust is a significant factor in the generation of effective social trust within the boundaries of functional and democratic rules.

What is most lacking in the region, or rather, the matter which needs to be given priority in order to open the way for civil society development, are strategies to promote political trust. An important civil society representative[4] confirmed that significant changes were made to allow civil society to conduct activities more easily, adding that the one thing that has not changed is the trust issue in state-society relations that continues to have a negative impact. He claimed that as long as the trust issue is not resolved, all other changes become meaningless, and compared the present situation with the 1990s to clarify the current state of events. In 1994, he had led various civil society activities, under very difficult conditions, to protest the foundation of an oil prospecting company whose environmental standards were in violation of the law. However, due to the existing lack of trust in the region, only about 100 people took part in the environmental protests. He argued that were he to repeat the same activities now, he would work in much easier conditions, but due to the

[4] Interview with Lezgin Yalçın, who has worked at noteworthy civil society organisations in the Region and is currently the Regional Office Coordinator of the EU-funded Civil Society Development Centre (10 July 2008).

continued lack of trust, he suspected he would not be able to find even 100 people to participate this time.

As the President of the Diyarbakır Bar Association, another noteworthy civil society organisation, said, "The Kurds are going through a very critical process; their bond with this Republic is a weak one, they don't feel as though they fully belong. The state needs to strengthen this sense of belonging among its citizens of Kurdish origin. This emotion is weak among Kurds, hence the tendency to consider violence as a legitimate means" (Yenisafak Daily 2008). As seen, a weak sense of belonging is by no means an absolute and unchangeable characteristic, but rather expresses a sense of hurt by a large group of people toward the attitude and policies of the state.

Also the results of a research conducted among the religious minority group of Syriacs that had to migrate to other European countries due to the difficult conditions of the previous decades reveal the lack of trust prevalent in the region[5]. During the post-2000 period, another important development has taken place in the Anatolian region as a result of the acceleration of the Europeanisation process: Several thousands of Syriacs have begun to return to their former lands indefinitely or for long-term stays. This was particularly noticeable in 2002-2003, when the EU reforms gained most pace and the conflict in the South-eastern Anatolian region began to show a decreasing trend,. In 2004 and 2005 (considering that preparations for return migration would take some time), the rate of return migration reached high levels. However, when compared with the fact that the Syriac Disapora population from this region remains more than 100,000, then the amount of return migration still seems very low. In fact, according to the opinions of some Syriac authorities[6] (see also Boyacı 2004), more and more Syriacs want to return to their lands but concerns resulting from (1) the fact that problems in enforcement continue despite the legal reforms and (2) worries regarding the continuity of the reform process, prevent them from returning.

There are, in fact, more blatant examples for explaining the lack of trust in the Anatolian region. Through the adopted reforms, the present administration of Turkey has been to date the most active administration in terms of the Europeanisation of the nation and the Anatolian region. However, Prime Minister R. Tayyip Erdoğan has protested against the publicly-elected Mayor of Diyarbakır, and has refused to shake his hand under any circumstance, on the grounds that the Mayor does not acknowledge the PKK as a terrorist organisation. In turn, the Mayor is distant to the state representatives in the province. This lack of trust between leading, top-level administrators inevitably reflects on other administrators and officials within the same institutions, as well as on their relations with the public.

An environment where conflicts and lack of trust dominate not only prevents the emergence of civil initiatives and wide-scale citizen participation, but also causes those that do emerge to become extremely politicized and partisan in character due to reactive impulses. This situation is different from the political function that civil society is meant to play, and may be described as deviation from it. Independent of founding objectives or activity areas, political reasons and partisan ideas dominate among the NGOs in question (İçduygu and Dane 2005: 23). This is actually not a situation that is peculiar to civil society organisations or their members, nor is it necessarily intentional. People feel pressure that their activities will be interfered with and develop a sense of mistrust, which inevitably causes each and every undertaken activity to be laden with the weight of political problems. The words of a top-level member of the local governing body summarize this point rather ironically (cited in Bumin 2008): "No

[5] The research conducted in June 2008 covers a 20-question survey administered to 58 Syriacs residing in Midyat and attached villages and interviews with Syriac authorities and writers. The results of the research will be published in the next months.
[6] Interview with Yakup Gabriel, the President of the Midyat Syriac Association (07 June 2008).

matter what issue we address, even say 'organic farming,' the discussion will without a doubt come around to the Kurdish problem".

There were many Kurdish people among those who immigrated to various European countries, most of all to Germany, from Turkey from the 1960s onwards. This group of people, who initially went as migrant workers but included more asylum seekers especially after 1980, had begun to form their own civil organisations even from the 1960s onwards, thanks to the suitable legal and political environment in their host countries (Blatte 2006). In Germany alone, where about 600,000 Kurds reside, there are close to 200 Kurdish NGOs and participation rates are quite high (Vatan Daily 2007). The fact that civil organisations and activities noted here as being non-existent in the Anatolian region were in fact taking place in other European countries as early as the 1960s, serves as an indicator of the inadequacy of the legal and democratic environment within Turkey. More importantly, in the 1960s and 1970s, the people who mostly came together for economic and social solidarity and cohesion and were generally unaware of their ethnic and cultural identities, gained a sense of ethnic and cultural awareness in these groups (Lucassen 2005). With the increase of anti-democratic and militarist methods in the region, especially in the aftermath of the 1980 military coup, an organised Diaspora emerged that fulfilled the political function we stated was lacking in regional NGOs. Emerging as a reaction to the mentioned erroneous domestic policies and actually aiming to prevent them, this political function ended up becoming radically nationalist in tone. Not only did the civil organisations of Kurds in European countries incorporate this political function, they organised activities across Europe and even established offices in major urban centres such as Brussels, and also began to lobby European institutions (Blatte 2006), achieving something that this article has noted was lacking in the Anatolian region.

Consequently, what needs to be done is to establish the necessary democratic-legal grounds and an environment of trust so that existing or to-be-formed civil society organisations can freely carry out the functions stated above. Since great leaps have been taken to establish the legal-democratic grounds via the rapidly enacted reforms as part of the EU membership process, the problem appears to be one of implementation based on the limited environment of trust. Therefore, approaches that will enhance a feeling of trust and communication between the state and the residents of the region must be given priority. Meanwhile, national and regional NGOs have confirmed that problems related to the legal-democratic structure have indeed been overcome. The process of change has been extremely well met by regional and national NGOs, and the most favourable aspects of the process are seen to be the legal framework changes geared toward civil society, and the fact that it has helped the construction of an environment that promotes democratic values (TUSEV and CIVICUS 2006: 18).

In the following section the matter of trust will be elaborated upon. There will also be a discussion about a parameter which is significant in terms of developing political and social trust and that has been observed so far to be neglected by the political-bureaucratic elite. Correct steps taken on the basis of this parameter will boost the impact of post-2001 changes, hasten normative transformation, and empower civil society.

**The road that leads to trust: discourse**

One of the most critical aspects of efforts to boost political trust, actually the starting point of the whole process, is determining which discourse to employ. Explanations in relation to discourse will be based on Schmidt's (2000) distinction between two aspects of discourse. Schmidt differentiates between the discourse used to ascertain a common language and framework among policy elites and to persuade this group of elites of the justification for these changes (coordinative discourse), and the discourse

necessary to persuade the wider public and ensure vital policy changes achieve success especially at the paradigmatic level (communicative discourse). In terms of the region, where conflict abounds and a sense of belonging is weak, dwelling on both discourses will be imperative.

*Coordinative discourse*

While Schmidt describes coordinative discourse as the discourse used among policy makers, it could also be appropriate to include central and regional policy enforcers in executive positions in this definition. This decision was based on the two major benefits expected of coordinative discourse already mentioned above, namely a common language and persuasion of justifications that become crucial especially when changes to delicate issues such as democratization and the expansion of human rights is in question. Under these circumstances, the political elite, civil servants and other public officials that work either centrally or in the region as state representatives will have to be re-trained, and it will be necessary to determine a new coordinative discourse geared toward them. In this paper, coordinative discourse will be employed not only to explicate a specific policy or legal changes, but also to help the parties it addresses to comprehend that a change has occurred in the understanding of the state and citizen that they have held perhaps throughout their professional lives.

Only after the envisioned mentality has been internalised will professional behaviour patterns and habits change more easily. Although noteworthy institutional-legal changes have been made since 2001, it is possible to state that the problems encountered in practice, and the complaints expressed sometimes as if nothing has changed, largely stem from the fact that the coordinative discourse has not yet been given serious importance. Despite the other previous legal changes toward democratization (for example, the new Law of Associations (TUSEV-CIVICUS 2006: 75), enacted in 2004, shows that the legal attitude of the state toward civil society has significantly altered), a study conducted among Regional NGO representatives, found that frequent state interference in NGO work was still a widespread complaint (İçduygu and Dane 2005: 20). This may occur because public authorities continue to view associations with their perspectives and habits of old. Since in the 1990s public officials were always suspicious of the smallest grouping and gathering, and acted on the belief that there may be other underlying reasons for the gathering. Therefore, the legal-bureaucratic order bestowed them with extensive powers to deal with such groups, an outcome that was basically inevitable. Although the legal-bureaucratic order has undergone significant changes in recent years, the fact that problems are still ongoing stems from an environment of mistrust and in terms of public authorities, lack of education. The fact that police forces interfered with a women's festival in Diyarbakır, based on the idea that "political slogans may be voiced" is but one example of continued old habits (İçduygu and Dane 2005: 20). The representatives of civil society organisations in the Anatolian region also note that public officials have yet to reach desired levels in terms of adapting to new rules and of changing behavioural patterns.[7]

Actually, before the regional-local elite and bureaucrats adapt to the shifting structure through coordinative discourse, it will be necessary to make a much more important policy change that will contribute to the same outcome. For decades now, as a longstanding (and unwritten) public administration rule that still continues, South-eastern Anatolia has been seen as a deprived region, one people are often banished to as punishment, and public officials who do not perform well or are deemed undesirable by the centrally-located political-bureaucratic elite still continue to be appointed to posts here. If this situation is to change, it is imperative that skilled and

[7] Interviews with Lezgin Yalçın (see footnote 4) and Yılmaz Akıncı, working as a manager in Diyarbakır Industrialists' and Businessmen's Association (11 July 2008).

dynamic individuals be assigned to posts in the region, both in terms of their personal transformation, and in building bridges of trust with the civil community.

*Communicative Discourse*

For the legal reforms enacted as part of the EU membership process to succeed, merely persuading the political-bureaucratic elite and training them will not be sufficient; the persuasion, support and dynamism of the public at large is also necessary. What is meant by support here is to ensure (civil) society views change in a positive light, whereas dynamism is meant to express that the changes are not only promoted by but that participation actually ensues. In this circumstance, communicative discourse via its two dimensions functions to realise persuasion, support and participation of the public.

In other words, communicative discourse, via its technical-material dimension, aims to increase levels of knowledge concerning the realized changes and the opportunities provided to them as part of the EU process. Via its normative dimension, it should aim to directly boost political trust, as described above, and raise public support and develop collaborative efforts. A closer look at these two dimensions will help to better explain why communicative discourse must be accorded significance in the region:

- *Levels of Knowledge Must Be Raised*

  Low levels of knowledge obviously hinder public participation in civil organisations. A significant portion of the public, including educated individuals, lacks the legal and technical knowledge and equipment concerning civil organising and activity planning, and thus is indifferent to it all (İçduygu and Dane 2005: 18). These people are also unaware of the reforms enacted as part of the EU process, and the EU programs that are geared toward them. Existing NGOs have stated that they lacked sufficient information on EU programs, and even if this were not the case that they lacked the capacity to actually develop a project and apply to these programs, adding the need for regional support centres that would help NGOs in these matters (TUSEV-CIVICUS 2006).

  Although it is not specifically about NGOs, the following example may help reflect the status of the group of educated people in society: According to the findings of a questionnaire (Samur 2007) administered among seniors at Dicle University in Diyarbakir, where close to 90 per cent of the respondents were originally from the Eastern and South-eastern Anatolian regions, only about 6 per cent of the respondents said they were sufficiently informed about training and similar programs of the EU geared specifically toward them. On the other hand, a large proportion of these respondents, most of whom will graduate in the coming year and join the potential workforce, endorsed Turkey's EU membership due to high economic and educational expectations. In other words, while the respondents had expectations, they were unaware of the tools within their reach that could meet these expectations.

  Of the 13 EU Documentation Centres in Turkey, none is situated in the Anatolian region. With the exception of a centre established at Gaziantep University, which actually is virtually inactive, nearly all academic centres working on European studies are found in universities in the western part of Turkey. The two EU Information Bureaus founded under the auspices of the Chambers of Commerce in Gaziantep and Diyarbakır, constitute the only places in the region to access information.

  Many of the Central and Eastern European countries that recently became EU members began to implement their own Communication Strategies in addition to the programs envisioned for them by the EU (for instance Hungary in 1995, the

Czech Republic in 1999, and Bulgaria in 2002). These strategies aimed to increase public awareness about the EU, and also to inform civil society and other target groups about the reforms being enacted in the country and available EU programs. As yet, such an extensive and systematic program does not exist in Turkey.

Under these circumstances, for NGOs to object to public officials' unfounded intrusion with their work that remain from earlier times, does not seem possible. In this regard, lack of knowledge simply serves to the continuation of old behavioural patterns and distrustful relations.

- *Boosting Support and Dynamism:*

A reality that emerged from the 1970s onwards within the context of the EU's own development adventure is that in democratic systems, the role that the public at large will play must be taken into consideration if significant changes are to be realised (Sinnot 1995). This point is a vital one, if problems of trust and legitimacy are to be overcome and the transformation process is to be effective. Therefore, communicative discourse, which enables communication between the ruling class and the general public, is not a concept restricted to merely conveying information. As Checkel (1999: 552) argues, it is actually a process of diffusion of new changes through societal mobilisation including non-state actors and policy networks, and through social learning, where agents, particularly elite decision-makers, adopt prescriptions to constitute 'a set of shared intersubjective understandings' that make behavioural claims.

First of all, communicative discourse must be able to eradicate any uncertainties. To ensure that the positive atmosphere brought on by the reforms continues and an environment that promotes democratic dialogue becomes permanent. Civil society must also be convinced that the reforms are not transient and the achieved rights are safeguarded. Only then will it be possible to garner support. As mentioned before, the return migration of Syriacs has remained limited in the post-2000 period due to people's doubt about the sustainability of changing process.

It is especially important that top-level state officials stand behind their policies and promises with the discourse that they employ, in order to assuage any uncertainties and help civil society gain courage. Residents of the Anatolian region have suffered the most from terrorism, violence and oppression, yet as the potential participants of civil society, the fact that they expect determination and sincerity with regard to democracy and human rights, is very understandable. An example of this is an incident that occurred in November 2004. At this time, an event that previously used to occur much more frequently happened; it was announced that a father and his 12-year-old son had been killed by security forces, on the grounds that they were terrorists, armed, and resisting arrest. Leaving aside the allegations of both parties and various groups, Prime Minister R. Tayyip Erdoğan made a statement that differed from the attitudes of other high-level politicians to date, saying, "No matter what, my conscience will not allow me to call a 12-year-old child a terrorist"; the people of the Anatolian region considered this to be a positive and promising development, and thought this new discourse was a sign that from then on, everything would be different. This incident truly did come across as a change in the official discourse of the state; however, steps that would firmly endorse this new communicative discourse, expressed only in this single sentence, were neither taken during the investigation of this incident, nor in subsequent policies, and thus the opportunity to collaborate with civil society within this context did not become permanent.

Communicative discourses must be extensive, in terms of both geography and demography. It was mentioned above that an already weak civil society was almost non-existent in rural areas. Consequently, change makes itself felt in rural areas

much more slowly. On the other hand, it was also noted that women's education levels were low, and women stayed away from civil society activities. It is imperative that the political elite include rural folk and women in their work to ascertain the context of the discourse that has been envisioned as the first step toward extensive policies geared toward changing structural problems.

Communicative discourse must also be interactive. Extensive public discussions must be encouraged and the views of relevant stakeholders must be sought during the process of policy formulation (Schmidt 2000). Reciprocal communication and transparency must continue during the policy implementation phase, and any complaints must be taken into consideration. As a priority, the views of NGOs, which are in fact the articulated form of societal tendencies and opinions, must also be sought during this process. Through an interactive process such as this, civil society groups will see that they are considered stakeholders, which will in turn contribute to the development of feelings of trust. This may, perhaps, be one of the reasons why the rapid reforms enacted after 2001 have not been able to take root as quickly, at least in the Anatolian region. Officials of DOGUNSIFED, which is an umbrella civil organisation of numerous businessmen's associations in the region, have complained that decision-makers and implementers of the reforms and the EU harmonisation process have not once sought the opinions of relevant groups.[8] A representative of another civil society organisation confirmed this when he said, "public authorities tend to underestimate the role of civil society organisations and to consider them problem-generating bodies, not problem-solving."[9]

## Conclusion

The role played by civil society in democratic-liberal transformation processes has become more apparent in the last two decades, and boosted its importance. Based on this point, in this study, certain statements were made about the path civil society development may follow in the South-eastern Anatolian region; a region which in the future may constitute the eastern end of the EU and currently is Turkey's most troubled region due to its political, economic and social conditions.

The South-eastern Anatolian region is currently experiencing a transitory phase, where the longstanding environment of conflict and violence is relatively diminished, and democratic methods, at least, are given a wider space in problem resolution. This is a transitory period that Turkey as a nation is also going through, the most significant reason for it being the reform process that gained speed after 2001 as part of EU membership efforts. In addition to these reforms, as a result of EU programs that provide financial-technical support, crucial opportunities for the development of civil society in the South-eastern Anatolian region have become possible.

As this article has tried to demonstrate, in order for these opportunities to bear fruit and the reforms to achieve success, the first and most important thing that needs to be done is to establish social peace and an environment of trust between state and civil society. One important point for the establishment of such an environment is, above all, dependent on the credibility of public authorities and the political elite, and the extent to which they convince the public that some things have indeed changed. Whether they are convincing or not depends, above all, on the extent to which the communication style and discourse employed by political-bureaucratic actors can also adapt to change, in a way that is inclusive of regional concerns.

---

[8] Information obtained from electronic correspondence and during meetings held with representatives of DOGUNSIFED (Federation of Eastern and South-eastern Industrialists' and Businessmen's Associations).

[9] Interview with Lezgin Yalçın (see footnote 4).

Another point is to raise people's level of knowledge. Following the path of the Central and Eastern European countries, Turkey should launch a comprehensive Communication Programme to raise people's awareness of and support for the EU. This programme would naturally include legal-institutional reforms. If such a program were to be implemented, it would be necessary to take regional disparities into consideration and employ selective tools to educate the public and raise awareness. If citizens and civil society organisations, as well as political-bureaucratic actors, know their rights and responsibilities in the new period, then it will be easier to establish and develop the environment of communication and trust.

Although general structure and effectiveness of civil society in the region is weak, there are a couple of prominent and dynamic civil society organisations founded in recent years which basically benefit from the Europeanisation process and EU funds (Society Volunteers Foundation, Civil Society Development Centre, GAP Entrepreneur Support and Guidance Centre, etc.). These organisations should function as leading figures and take responsibility for the development of civil society understanding without waiting for the change of the mentality of public authorities. In this regard, it would not be so wrong to consider the simultaneous input-output roles played by NGOs in Central and Eastern European countries in terms of their impact on the transformation process, as an example for the leading organisations in South-eastern Anatolia. This dual role comes to the fore especially in terms of the political function of civil society. By undertaking monitoring and advisory tasks relevant to their activity areas, these NGOs will be able to prevent the difficulties and violations that may occur in the implementation of the crucial reforms enacted as part of the EU membership process. As reforms are implemented and violations diminish, these and other NGOs will find it easier to pursue their work and also make it possible for new NGOs to form. Subsequently, members of an NGO concerned with organic farming will be able to focus on their own work, rather than spend their energy on problems at a macro level. The option of filing a lawsuit with the European Human Rights Court, and the close monitoring of the EU Commission, will also empowers civil society.

Although simplifying the issue along the lines of trust and discourse may present certain risks in terms of fully revealing the truth of the matter, at one point it becomes inevitable when discussing a topic that is so multi-dimensional in character and mostly comprising of parameters that do not lend themselves to measurement. As was said at the beginning, micro-analyses and research studies that complement and modify one another are imperative in terms of understanding the civil society phenomenon and the processes of change, that are gradually becoming more critical both in Turkey and in the EU. Thus, this study, which is considered a significant cross-section of an extensive research study that is presently ongoing, must be supported with further research on issues that have been observed as being neglected in Turkey and especially in the Anatolian region.

***

**References**

Bideleux, R. and Jeffries, I. (1998). *A History of Eastern Europe*. London: Routledge.

Blatte, A. (2006). 'The Kurdish Movement: Ethnic Mobilization and Europeanization', in H. Kleinschmit (ed.), *Migration, Regional Integration and Human Security*. Burlington: Ashgate.

Boyacı, S. (2004). '2004'e Girerken'. Available at: http://suryaniler.com/konuk-yazarlar.asp?id=320, last accessed 12 June 2008.

Bulmer, S. and C. Lequesne (2002). *New Perspectives on EU-Member State Relationships*. Available at: http://www.ceri-sciences-po.org/publica/question/qdr4.pdf, last accessed 20 March 2008.

Bumin, K. (2008). 'Diyarbakır'dan zor sorularla döndüm', *Yenişafak Daily*. 12 March 2008.

Checkel, J. T. (1999). 'Social Construction and Integration', *Journal of European Public Policy* 6 (4), pp. 545-560.
Chirot, D. (1989). 'Causes and Consequences of Backwardness', in D. Chirot (ed.), *the Origins of Backwardness in Eastern Europe*. Berkeley: University of California Press.
Cohen J. L. and A. Arato (1997). *Civil Society and Political Theory*. 4th ed., Massachusetts: MIT Press.
COM (Commission of the European Communities) (2001). *European Governance-A White Paper*. Available at: http://ec.europa.eu/governance/white_paper/index_en.htm, last accessed 16 March 2008.
Dansuk, E., M. Özmen and G. Erdoğan (2006). *Poverty and Social Stratification at the Regional Levels in Turkey*. Available at: http://www.eizg.hr/AdminLite/FCKeditor/UserFiles/File/EIZ%202006%20Conference%20Proceedings-Dansuk-Ozmen-Erdogan.pdf, last accessed 15 February 2008.
Delanty, G. and C. Rumford (2005). *Rethinking Europe: Social Theory and the Implications of Europeanization*. London: Routledge.
Deth, J. W. (1997). 'Introduction: Social Involvement and Democratic Politics', in J. W. Deth (ed.), *Private Groups and Public Life*. London: Routledge.
Edwards, M. (2004). *Civil Society*. Oxford: Blackwell.
ESI (European Stability Initiative) (2007). *Sex and Power in Turkey: Feminism, Islam and the Maturing of Turkish Democracy*. Available at: http://www.esiweb.org/pdf/esi_document_id_90.pdf, last accessed 18 February 2008.
Eurostat. (2007). *Europe in Figures 2006/200*. Available at: http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-CD-06-001/EN/KS-CD-06-001-EN.PDF, last accessed 12 March 2008.
Freedomhouse (2007). *Country Report-Turkey*. Available at: http://www.freedomhouse.org/uploads/ccr/country-7291-8.pdf, last accessed 15 February 2008.
Hall, J. A. (1995). 'In Search of Civil Society', in J. A. Hall (ed.), *Civil Society: Theory, History, Comparison*. Cambridge: Polity Press.
Hulme, D. and M. Edwards (1997). 'NGOs, States and Donors: An Overview', in D. Hulme and M. Edwards (eds.), *NGOs, States and Donors : Too Close for Comfort?*. London: Macmillan and Save the Children Fund.
İçduygu, A. and M. Dane (2005). *Report: Türkiye'de Bölgesel Düzeyde Sivil Toplum Degerlendirmesi*. İstanbul: TUSEV and CIVICUS.
Lucassen, L. (2005). *The Immigrant Threat*. Chicago: University of Illinois Press.
Moyser, G. and G. Parry (1997). 'Voluntary Associations and Democratic Participation in Britain', in J. W. Deth (ed.), *Private Groups and Public Life*. London: Routledge.
Newton, K. (1999). 'Social Capital and Democracy in Modern Europe', in J. W. Deth *et al.* (eds.), *Social Capital and European Democracy*. London: Routledge.
Norton, R. A. (1995). 'Introduction', in R. A. Norton (ed.), *Civil Society in the Middle East*. New York: E. J. Brill.
Ntvmsnbc, 'Metinler', 2 December 2004. Available at: http://www.ntvmsnbc.com/news/298947.asp, last accessed 19 February 2008.
OECD (2007). Regions at a Glance. Paris: OECD Publishing.
Radaelli, C. 2003. 'The Europeanization of Public Policy', in K. Featherstone and C. Radaelli (eds.), The Politics of Europeanization. Oxford: Oxford University Press.
Schmidt, V. A. (2000). 'Democracy and Discourse in an Integrated Europe and Globalising World', *European Law Journal* 6 (3), pp. 277-300.
Smismans, S. (2005). 'European Civil Society: Institutional Interests and the Complexity of a Multi-level Policy', in S. Rossteutscher (ed.), *Democracy and the Role of Associations : Political, Organisational and Social Contexts*. London: Routledge.
Sönmez, M. (2007). *Doğu-Guneydoğu'nun Artan Yoksulluğu ve Çözüm: Barış*. Available at: http://eski.bianet.org/static/dogu2.pdf, last accessed 12 January 2008.
TÜİK (Turkish Statistical Institute) (2001).Report available at: *http://www.tuik.gov.tr/BolgeselIstatistik/tabloOlustur.do*, last accessed 07 January 2008.

TUSEV (The Third Sector Foundation of Turkey) and CIVICUS (World Alliance for Citizen Participation) (2006). *Türkiye'de Sivil Toplum: Bir Değişim Süreci/Uluslararası Sivil Toplum Endeksi Projesi Türkiye Ülke Raporu*. İstanbul: TUSEV

UPSAM (International Politics and Strategy Research Centre) (2006). *Report: AB Yolunda Türkiye*. Available at: http://www.doratasarim.com/upsam/node/249, last accessed 05 February 2008.

Vatan Daily (2007). 'PKK'nın yıllık bütçesi ne kadar?', 2 November 2007.

Wagner, P. (2006). 'Introduction', in P. Wagner (ed.), *the Languages of Civil Society*, Oxford: Berghahn Books.

Whiteley, P. F. and P. Seyd (1997). 'Political Capital Formation Among British Party Members', in J. W. Deth (ed.), *Private Groups and Public Life,* London: Routledge.

Yenisafak Daily (2008). 'Interview with Sezgin Tanrıkulu', 23 February 2008.

***

# Legal Research Methodologies in European Union and International Law: Research Notes (Part 3)

Tamara Hervey, Rob Cryer & Bal Sokhi-Bulley

| | |
|---|---|
| **Project** | Collaborative Doctoral Training Project (ID 06/160/S1) |
| **Dates** | 1 October 2006 – 30 September 2008 |
| **Project Leaders** | **Tamara Hervey** (Professor of Law, University of Sheffield)<br>**Rob Cryer** (Professor of International & Criminal Law, University of Birmingham)<br>**Bal Sokhi-Bulley** (Lecturer in Law, Queen's University Belfast & PhD Candidate, University of Nottingham) |
| **Funding** | Arts and Humanities Research Council (AHRC) |

## Introduction

This final research notes article reflects on the project at its completion. We have developed the materials (as discussed in our previous research notes articles)[1], 'road tested' them at two workshops, held in Nottingham (June 2007) and Sheffield (June 2008), and considered the feedback from participants and our experience of the project as a whole.

## The second workshop

The first workshop was described in our early research notes article (Hervey *et al.* 2008). This workshop modified the programme, taking into account feedback and experience from the first workshop. Again, the workshop consisted of three different types of sessions: whole-group sessions; small group activities; and paper presentation panels.

In the whole group sessions, we dropped the 'Thinking Hats' exercise, and instead developed an opening 'Roundtable Session'. In this session, two members of academic staff (Rob Cryer, Emilie Cloatre), at different stages in their careers, and a PhD student (Bal Sokhi-Bulley) talked about their own research from the point of view of the themes of the workshop. This was in response to several participants at the previous workshop who asked for presentations from the project coordinators on using different methodologies/approaches in their own research projects:

> "It would have been interesting to have a panel discussion by several academics about the significance of theory etc and the place it should take in research from their *own* perspective; people seemed to have different views on this".

ISSN 1815 347X Online – Hervey, T, Cryer, R. & Sokhi-Bulley, B. (2008). 'Legal Research Methodologies in European Union and International Law: Research Notes (Part 3), *Journal of Contemporary European Research*, Vol. 4, No. 3, pp.240-243. Available: http://www.jcer.net/ojs.index.php/jcer/article/view/136/108.

We were surprised by how keen students were to receive more overt 'teaching', having set up the project so as to break down the 'them' and 'us' barriers between staff and students. Interestingly, and perhaps because of this, no one highlighted the Roundtable Session as either a particularly beneficial element of the workshop (or, to be fair, one that was not useful) in the workshop feedback. However, the Roundtable did prompt interesting discussion and questions from the audience and seemed to be an effective starting or warm-up session. Participants commented that it was a good introduction to the themes of the workshop and to the organisers themselves.

We also had two plenary sessions at which the small groups fed back their work to the workshop as a whole. These enhanced the feeling of the workshop as cohesive, but were not appreciated by all participants, some of whom found the large group not very conducive to productive learning.

In the instructions for the paper presentation panels (the most 'traditional' part of the workshop), we encouraged students to make an oral presentation based on the methodology or approach of their PhD. Students were asked to try to explain their thesis in the light of one or more of the categories used in our list of approaches in the Workshop Preparatory Materials (for a further explanation, see our earlier research notes 'Part 2' article; Hervey et al. 2008), or if the list does not anticipate a particular project, to use (and explain) their own categorisation. We specifically asked students to think about the following (these are the kinds of questions that may appear, in various guises, in viva voce examinations, or when work is presented at conferences):

- Why did you reject other approaches?
- Can you articulate the theoretical bases on which you began with your research (even if you were not aware of them at the time)?
- How do you think about (international or EU) law in your project? What research questions did this lead to, or what research questions meant that you found this approach the most helpful?
- What data do you use?
- What are you actually doing or going to do?

We also suggested that students might like to 'play' briefly with ideas about what their research would look like with a different approach. The idea was to encourage students to make use of the workshop preparation; and to encourage an appreciation for the value of all of these approaches for the disciplines of EU and international law.

Predictably, in feedback for both workshops, the presentations were the aspect that students appreciated the most. Students were impressed with how effectively the workshop helped them to prepare a PhD manuscript that will meet the requisite academic standards and to defend it in a *viva voce* examination.

> "My presentation helped me to focus and build a strong basis for my theory chapter".
>
> "[The most useful aspect of the workshop was] presenting to a discussant and establishing that my thesis addresses all the theoretical concerns raised for the purposes of a viva".

We asked three of the participants whose work is in EU law to write up their presentations for publication in JCER, and to reflect on how the workshop helped them to take forward their research. These reflections, which show some of the richness of approaches and substantive areas being considered by PhD students in EU law, follow this article.

As in the first workshop, the most innovative aspect of the workshop was the small group activities, facilitated by members of staff, but very much based on collaborative learning through completing various tasks, some of which were more light-hearted

than others. The most light-hearted, the quiz, had very low take-up this time, perhaps because more of the participants already knew each other, so were happy to use that time in unstructured networking, and did not need a further task at that stage of the workshop. We retained the Venn Diagrams exercise (described in detail in our earlier research notes article), and the statements debate, but significantly expanded the time available for each exercise. We also significantly increased the amount of time spent in small groups discussing the preparatory materials, and the questions on each reading, concerning its approach, research question, data, method and the benefits and drawbacks of this type of approach (see our earlier research notes article). Again we thought these exercises were highly effective in terms of observable learning on the part of the participants.

**The feedback**

As with the first workshop, the feedback demonstrated that the participants felt that they had increased their understandings of legal research methodologies in their discipline.

> "The workshop … supported and encouraged me to reflect on my theoretical approach to my work and to learn from others' experience".

> "Each session was both fun and informative and has given me ideas on how to strengthen and sharpen my research".

In some cases, this was from what students felt was a very low base.

> "I came to this workshop without having a clear idea of legal research methodologies. After 2 days of the workshop, it highlights that theory is necessary in carrying out practical research".

> "Honestly speaking, I've not known that all such approaches to the research exist. Now I am familiar with them and I know that on the basis of what approach you use depends your outcome".

Again, this view was echoed in feedback from academic staff.

> "I certainly gained from the workshop – it has helped me to reflect more on my own methodologies/theoretical approaches".

> "Most beneficial: helping to (re)think my place on the theoretical spectrum. Great workshop. I wish I'd had such an opportunity as a student".

As we noted in our previous research notes article, one of the biggest challenges for the project was how to make the workshop useful for researchers at different stages of their careers. We tried hard to address this challenge in the second workshop, by being more explicit in the workshop materials and instructions about the different constituencies of participants, and what different participants might expect to get from the workshop. Although having the 'Roundtable Session' meant that in some ways we highlighted that some participants have more experience than others, we continued to insist that everyone, at whatever stage in their research career, can learn through reflection on theory and methodology and its practical application in real research projects. As with the first workshop, we worked very hard to create an atmosphere that was friendly, non-threatening and informal (as well as hard working, energetic and fun). Again, this seems to have been appreciated by the participants:

> "As last year, the organisers were successful in getting that 'we are all here to learn' message across to the participants".

Overall, the feedback as a whole was very positive, with many comments suggesting no need for future amendments:

"The workshop met my expectations to the maximum effect. Well-organised, engaging and with clear aims and objectives".

"The workshop exceeded my expectations".

"The workshop more than met my expectations. I think that it built well on the basis of last year's workshop and has become more useful as a result".

"It was a great learning experience".

"I did not expect to learn so much about theory, generally, my work in particular, and other people's work. I cannot think of anything that should have been different".

"All great. No need for change".

"All [the workshop was] useful in different ways. Thank you".

## The future?

The workshops were attended by 69 students, 16 early career scholars, and 17 more established scholars. Although the AHRC funding is now finished, the partner institutions are currently exploring how they will continue to offer the workshop in future years. The workshop materials are freely available, for anyone who wishes to use them in their own institution, in whatever form, at http://www.sheffield.ac.uk/law/research/clic/research/projects/res_methodology. Please acknowledge the AHRC if you do so!

## Student Contributions

To end this JCER Research Notes series, three additional contributions written by student participants (Rebecca Sanders, Stelios Andreadakis and Anatole Abaquesne De Parfouru) from the final workshop are included (see pages 205-217 of this publication). The three students are at various stages of their PhD research and each piece is intended to introduce the student's PhD topic and some of the methodological issues which the workshop has encouraged each of them to address.

***

## Bibliography

Hervey, T., Cryer, R. & Sokhi-Bulley, B. (2007). 'Legal Research Methodologies in European Union and International Law: Research Notes (Part 1)', *Journal of Contemporary European Research*, 3 (2), pp.161-165.

Hervey, T., Cryer, R. & Sokhi-Bulley, B. (2008). 'Legal Research Methodologies in European Union and International Law: Research Notes (Part 2)', *Journal of Contemporary European Research*, 4 (1), pp.48-51

***

# Research Notes: The Integration of European Mortgage Laws

Rebecca Sanders

THE INTEGRATION OF EUROPEAN MORTGAGE CREDIT MARKETS REPRESENTS PART OF an ongoing attempt to create a single market for retail financial services within the European Union (EU). The aim of this process is to eliminate disparities between Member States in lending practices so as to create favourable conditions to both borrowers and lenders, thereby creating a single market for mortgages products. My thesis seeks to explain why the Commission thinks it would be beneficial to integrate mortgage law across the EU Member States; and how this process is being undertaken. To this end, the thesis considers the interface between law and policy, through using various governance methodologies or frameworks.

Within the current financial climate, the regulation of mortgages is increasingly significant. The impact of the failure of the American sub-prime lending market has had global repercussions, not limited solely to financial services markets but to the economy in general. This indicates a need for strong and stable mortgage markets in order to provide for economic strength and growth. Although the process of integration within Europe pre-dates the collapse of the American market, this will certainly have impacted upon the way in which any EU-level measures are ultimately undertaken and furthermore makes the process more economically significant.

The integration of mortgage laws is a newly developing area. At the same time, it is representative of the Europeanization of policy areas, which is becoming increasingly prevalent as a result of the evolution of the single market (Bulmer & Radaelli 2004). This specific area of law will therefore increase general understanding of the functioning of the internal market.

**Why does the Commission think it would be beneficial to integrate mortgage law?**

The Commission has identified disparities between national laws as potentially restricting the level of cross-border mortgage activity within the EU. These disparities effectively create restrictions upon cross-border services provision, freedom of establishment and free movement of capital. The Commission suggests that integrating the mortgage credit markets of the Member States will create a more favourable environment for both lenders and consumers (See EC 2007a, 2007b).

Furthermore, studies carried out on behalf of the Commission (London Economics 2005; Mercer Oliver Wyman 2003) indicate a potential growth in gross domestic product based upon projections of increased cross border mortgage activity. This aim

---

This article has been written by a student participant of the 'Legal Research Methodologies in European Union and International Law' workshop series as detailed in the three Research Notes articles by Hervey *et al.* (2007, 2008a & 2008b). The article introduces the student's PhD project and details some of the methodological research issues which the AHRC funded workshops have helped the student to address.

Sanders, R. (2008). 'Research Notes: The Integration of European Mortgage Laws', *Journal of Contemporary European Research*, Vol. 4, No. 3, pp.244-247. Available: http://www.jcer.net/ojs.index.php/jcer/article/view/138/109.

was originally formulated, in particular through the strengthening of sub-prime markets, in order to create an internal mortgage market capable of competing within the global economy, and in particular, to compete with the American mortgage market (London Economics 2005).

Analysis of the Commission policy documents provides insight both into why this policy was originally formulated and also whether lessons can be learned from the collapse of the American sub-prime lending market. Implicit within the process of integration of EU mortgage law is the notion that the actions of the Commission are central to the development of European law.

**How is this process taking place?**
*A rational choice institutional analysis of the policy network*

My main aim is to examine how the Commission is planning to integrate mortgage laws across the EU. This will require an examination of both law and policy.

The process of integrating mortgage laws across the EU is currently being undertaken through a policy network instigated by the Commission, consisting of bodies of actors with shared interests in the process. The network both identifies policy objectives and determines methods to achieve these. It largely comprises representatives from national consumer groups, mortgage industry representatives and financial service authority members. An extensive consultation process with these stakeholders identified a broad range of potential policy objectives. The process aimed to identify areas of policy which may require regulation for the benefit of both primary and secondary mortgage markets.[1] The process also focused upon how these objectives may best be achieved.

Through analysis of the responses of stakeholders within the network, the Commission has identified the best type of governance for each of the policies in order for successful implementation. This has resulted in a range of policy options within a continuum covering a wide variety of types of governance. The options considered range from doing nothing and leaving it to market forces, through non-binding, 'soft law' methods (e.g. scoreboards as used in OMC, guidelines, industry self-regulation) to traditional EU legislation (e.g. enforcement of existing EU legislation or new legislation) (EC 2007a, 2007b).

Although studies of policy networks are a useful tool for understanding or describing the actions of a network within a particular sector, the exploration of policy networks can potentially be somewhat limited (Rhodes 1986; Peterson 2003). In this study policy networks analysis will be used to explain the way that policy has developed within the particular sector of mortgage laws. Further insight can however be gained as to why certain policy decisions are made through the application of an actor-based methodological approach. This provides a useful analytical tool to understand the behaviours and decisions of the policy network. Rational choice institutionalism will be used as an actor-based approach which is consistent with policy network analysis. The operation of rules is significant to both types of analysis.

Within institutionalism, the operation of rules can be seen to determine the balance of power between participants, the actions taken and the outcomes determined (Ostrom 1986). Similarly, the policy network is constrained by a series of 'rules of the game', which determine the way in which members are capable of interacting and influencing policy decisions. This term is traditionally used to refer to the factors which constrain

[1] The regulation of primary mortgage markets concerns transactions between industry and consumers. Secondary mortgage markets concern the bundling and sale of mortgages as between financial institutions, in a process of securitisation.

the internal interactions within a network, including such factors as consensus, fairness and secrecy. It can also be used to refer to external constraints upon the limits of power of the network, "the right to govern", (Rhodes 1986). Within the context of the EU the concept of institutionalism can be extended to include the constraints of internal market law and its use as a resource (Armstrong & Bulmer 1998).

By applying an institutionalist framework to the actions of the policy network, these rules can be seen as an institution (Blom-Hansen 1997). The network is viewed as operating within a set of rules governing the way in which policy outcomes are determined through combining the observation of the operative rules with an actor based model of integration theory. This approach is one which has been advocated as useful for providing greater analytical insight into the operation of policy networks (Blom-Hansen 1997) and will therefore provide greater insight into how policy decisions are made, given the diversity of members within the network and the often competing aims of actors.

*The relationship between policy and law*

Traditionally, policy network studies and new institutionalist approaches focus on the political interactions taking place. Thus policy networks can be characterised as pressure groups aiming to bring about change. Similarly new institutionalist approaches are studies pertaining to the non-neutrality of institutions, which are capable of impacting upon the ability of groups to contribute to the development of policy (Blom-Hansen 1997). This study will go beyond these insights to consider the relationship and interactions between law and policy in the field of European mortgage integration.

EU internal market law can be seen as a starting point within the integration process. Disparities between national laws have potentially detrimental effects upon the operation of the Treaty's 'fundamental freedoms'. Thus, it is the objective of removing legal barriers to the internal market and the opportunity to do so, based on the powers given in the Treaty to create and sustain the internal market that has enabled the Commission to act. It is therefore clear that law also falls within the 'rules of the game' which regulate the activities of the policy network and institutions. The EU legislature may not act beyond its competences. Hard law is available where a Treaty basis permits it. Non-binding measures may be permitted where hard law is not. Any policy must be consistent with the already existing legal framework of the Capital Requirements Directive and the Data Protection Directive.

Law can also be seen as an end point to the policy development process. The range of options available as methods of achieving policy objectives comprises both binding and non-binding approaches. A traditional method of achieving integration is through the adoption of binding laws, typically directives. Yet, the non-binding approaches under consideration can also be broadly categorised as law, representative of the shift towards a 'soft law'-based 'new governance' approach to regulation.

Law is therefore both a resource and a potential outcome within the development of an integrated EU mortgage market. In order to understand the significance of the law within the study, a doctrinal analysis of the rules on EU internal market law and existing specific measures on related subjects will be undertaken.

The AHRC Workshop helped me to continue to grapple with the challenges of my interdisciplinary project. As legal scholars, we need to integrate the insights of doctrinal analysis into studies of EU integration that use political science approaches. I hope my thesis will contribute to this general debate, in a new emerging area of EU law and policy. The feedback I received helped me to clarify my aims and to ensure that my approach is consistent with my objectives. Finally, my participation in the workshop

made me realise that although I tend take a doctrinal approach, the application of alternative methodologies to my work can help me to gain valuable insight.

***

**Bibliography**

Armstrong, K., Bulmer, S. (1998). *The Governance of the Single European Market*. Manchester: Manchester University Press.

Blom-Hansen, J. (1997) A 'New Institutional' Perspective on Policy Networks, *Public Administration*, 75 (4), pp. 669-693.

Bulmer S. J, Radaelli, C.M. (2004) 'The Europeanisation of National Policy?', *Queen's Papers on Europeanisation*; 1/2004, Queen's University Belfast.

Directive 1995/46 on the protection of individuals with regard to the processing of personal data and on the free movement of such data OJ [1995] L281/31

Directive 2006/48 EC relating to the take up and pursuit of the business of credit institutions OJ [2006] L177/1

Directive 2006/49 EC on the capital adequacy of investment firms and credit institutions OJ [2006] L177/201

EC (2007a). White Paper on the Integration of Mortgage Credit Markets, COM (07) 807, final. Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0807:FIN:EN:PDF

EC (2007b). White Paper on the Integration of Mortgage Credit Markets, Summary of the Impact Assessment, COM (07) 807, 1684, final. Available at: http://europapoort.eerstekamer.nl/9345000/1/j9vvgy6i0ydh7th/vgbwr4k8ocw2/f=/vhqtlwt3j6su.pdf

Hervey, T., Cryer, R. & Sokhi-Bulley, B. (2007). 'Legal Research Methodologies in European Union and International Law: Research Notes (Part 1)', *Journal of Contemporary European Research*, 3 (2), pp.161-165.

Hervey, T., Cryer, R. & Sokhi-Bulley, B. (2008a). 'Legal Research Methodologies in European Union and International Law: Research Notes (Part 2)', *Journal of Contemporary European Research*, 4 (1), pp.48-51

Hervey, T., Cryer, R. & Sokhi-Bulley, B. (2008b). 'Legal Research Methodologies in European Union and International Law: Research Notes (Part 3)', *Journal of Contemporary European Research*, 4 (3), pp.200-204.

London Economics (2005) *The costs and benefits of Integration of EU mortgage markets*, Report for European Commission DG-Internal Market and Services.

Mercer Oliver Wyman (2003) *Study on the Financial Integration of European Mortgage Markets*, Report for the European Mortgage Federation.

Ostrom, E. (1986), 'An Agenda for the study of institutions', *Public Choice,* 48, pp.3-25.

Peterson, J. (2003) *Policy Networks*. Vienna: Institute for Advanced Studies. p4.

Rhodes, R.A.W. (1986) *The National World of Local Government*. London: Allen & Unwin. pp.391-392.

***

# Research Notes: International Relations Theories, Article 95EC Legal Basis and the Delimitation of Competences Between the EU and the Member States

Anatole Abaquesne De Parfouru

THE QUESTION OF THE DIVISION OF COMPETENCES BETWEEN THE EUROPEAN UNION (EU) and its Member States has been a major point of focus of reform proposals for the EU legal order in recent years. The importance of this issue was stressed in the Nice and Laeken Declarations,[1] in the light of seemingly contradictory claims of 'competence creep' on the one hand, and criticisms of Union inaction in policy fields in which it has very limited competence on the other hand. Clarifying the delimitation of powers was the subject of much attention in the debate preceding the adoption of the 2004 Constitutional Treaty, abandoned as a result of the French and Dutch referenda of 2005.[2] It contained a number of innovations in this respect, such as the formal abolition of the Pillar structure, the categorization of Union powers, or the use of national parliaments to monitor the application of the principle of subsidiarity. Most of these reforms have been integrated in the Treaty of Lisbon, signed last December, but the future of which is uncertain as a result of its rejection in the Irish referendum of June.[3]

As it now stands,[4] my research project endeavours to analyse the delimitation of powers between the Union and the Member States through the lens of the Article 95EC

[1] Declarations Adopted by the Nice Intergovernmental Conference, para.23 (5) (Declaration on the future of the Union); and Declaration on the Future of the European Union, Annex to the Laeken European Council Presidency Conclusions, SN 300/1/01 REV 1.
[2] Treaty establishing a Constitution for Europe, O.J. 2004 C310/1.
[3] Treaty of Lisbon amending the Treaty on the European Union and the Treaty establishing the European Community (renamed Treaty on the Functioning of the European Union (TFEU)), O.J. 2007 C 306/1. See Articles 2 to 6 TFEU and the Protocol on the Application of the Principles of Subsidiarity and Proportionality.
[4] The research originally undertaken was much broader in scope, examining the division of competences between the EU and its Member States, without the framework of the Article 95EC legal basis. One part was to be devoted to the classification of Union powers and the analysis of the legal bases, while the other part would have examined the judicial and political framework enforcing the delimitation of powers (G. de Búrca & B. de Witte, 'The Delimitation of Powers Between the EU and its Member States', in Arnull & Wincott (eds.), *Accountability and Legitimacy in the European Union* (Oxford: OUP, 2002), pp.205-6), as well as the principles of subsidiarity and proportionality.

This article has been written by a student participant of the 'Legal Research Methodologies in European Union and International Law' workshop series as detailed in the three Research Notes articles by Hervey *et al.* (2007, 2008a & 2008b). The article introduces the student's PhD project and details some of the methodological research issues which the AHRC funded workshops have helped the student to address.

Abaquesne De Parfouru, A. (2008). 'Research Notes: International Relations Theories, Article 95EC Legal Basis and the Delimitation of Competencies Between the EU and the Member States', *Journal of Contemporary European Research*, Vol. 4, No. 3, pp.248-252. Available: http://www.jcer.net/ojs.index.php/jcer/article/view/137/110.

legal basis. It focuses on four major aspects.

**Article 95EC and other policy fields: Use or abuse of Article 95EC?**
*Extension of Community powers through Article 95EC?*

Article 95EC – Article 114TFEU if and when the Treaty of Lisbon enters into force – constitutes a general internal market legal basis. It has been used by the Union legislator to adopt secondary EC legislation that has included both internal market and "non-market" objectives, and arguably even legislation that predominantly concerns "non-market" goals.[5] Article 95EC provides for the adoption of measures for the approximation of laws, having as their object the establishment and functioning of the internal market.[6] However, as De Witte notes, "internal market legislation is always *also* 'about something else'".[7] My research project examines the legislation adopted under Article 95EC in order to determine whether the Union legislator has 'abused' this legal basis in adopting secondary legislation with a primary purpose other than its stated internal market objective. It also examines the role of the Court in sanctioning, or failing to sanction any abuse of this provision by the Community legislator. This brings us to the question raised by the *kompetenz-kompetenz* debate: "whether the Community possesses [and whether it should possess] the autonomy to define the limits of its own competences".[8]

The use of Article 95EC may affect the delimitation of powers between the Union and its Member States in two distinct ways. "Inner limit" situations arise where the EC legislation could arguably have been adopted under another specific legal basis providing for a different legislative procedure,[9] a different voting method in Council, or a limited form of harmonization.[10] Article 95EC refers to the Article 251EC co-decision procedure (whereby the European Parliament acts as co-legislator and a qualified majority vote (QMV) applies in Council), and so supranationalism is favoured over intergovernmentalism when the EC legislator adopts measures under this legal basis. It should be noted that the occurrence of this type of situation is likely to decrease if and when the Treaty of Lisbon enters into force, as the latter Treaty provides that QMV and the co-decision procedure – to become the 'ordinary legislative procedure' (OLP) – will be generalized.[11] "Outer limit" situations arise where, had the Community measure not been adopted under Article 95EC, it would not have been adopted at all, as a result of express exclusions of harmonization in the Treaty: the measure is either validly based on Article 95EC or it is *ultra vires*.[12]

International relations (IR) theories provide useful tools when analysing the relationship between Article 95EC and other policy fields. Neo-functionalism constitutes a

[5] B. de Witte, 'Non-Market Values in Internal Market Legislation', in N. Nic Shuibhne, *Regulating the Internal Market* (Cheltenham: Edward Elgar, 2006); S. Weatherill, 'Supply of and Demand for Internal Market Regulations: Strategies, Preferences and Interpretation', in N. Nic Shuibhne, *Regulating the Internal Market* (Cheltenham: Edward Elgar, 2006).
[6] Article 95(1)EC.
[7] B. de Witte, 'Non-Market Values in Internal Market Legislation', above note 5, p.76.
[8] P. Craig & G. de Bùrca, *EU Law: Text, Cases and Materials* (Oxford: OUP, 2003), p.284. See also Weiler, *The Constitution of Europe* (Cambridge: CUP, 2000), p.311.
[9] The 'horizontal' division of powers thus affects the 'vertical' division of competences.
[10] A. Knook, 'Guns and Tobacco. The Effect of Interstate Trade Case Law on the Vertical Division of Powers', (2004) 11 *MJ* 347, p.357.
[11] New Article 16(3)TEU as inserted by the Lisbon Treaty, and Article 294TFEU.
[12] A. Knook, 'Guns and Tobacco', above note 10, p.357. See also: K. Bradley, 'The European Court and the legal basis of Community legislation', (1988) 13 *ELRev* 379; S. Crosby, 'The New Tobacco Control Directive: An Illiberal and Illegal Disdain for the Law' (2002) 27 *ELRev* 177; T. Hervey, 'Community and national competence in health after *Tobacco Advertising*' (2001) 38 *CMLRev* 1421; T. Hervey, 'Up in Smoke? Community (Anti) Tobacco Law and Policy' (2001) 26 *ELRev* 101; T. Hervey, 'The Legal Basis of European Community Public Health Policy', in McKee, Mossialos & Beaten (eds.), *The Impact of EU Law on Health Care Systems* (Brussels: P.I.E.- Peter Lang, 2002); D. Wyatt, 'Community Competence to Regulate the Internal Market', University of Oxford Faculty of Law Legal Studies Research Paper Series, Working Paper N°9/2007, July 2007.

particularly interesting perspective, with its concept of 'functional spillover', whereby "if there [is] integration in one sphere it [will …] create pressure for integration in another field".[13] Economics is another discipline that constitutes a useful lens, when analysing the case-law on the boundaries of the Article 95EC legal basis, as is exemplified by Tridimas and Tridimas in their "economic efficiency" analysis of the first *Tobacco Advertising* ruling.[14]

Another IR theory, multi-level governance – whereby "decision-making competences 'are shared by actors at different levels rather than monopolized by state executives'" – ,[15] comes into play when analysing the principles of conferral, proportionality and subsidiarity, and, to a certain extent, when considering the role envisaged by both the Constitutional and Lisbon Treaties for national parliaments in monitoring the application of the principle of subsidiarity.[16]

**Types of harmonization adopted under Article 95EC**

A second part of this research project examines the types of harmonization adopted under Article 95EC: 'total'/ 'full' harmonization, minimum harmonization, 'new approach to technical harmonization', etc. Articles 95(4)-(9)EC provide scope for 'more stringent national measures',[17] and constitute an example of sharing of decision-making power between the supranational and the national levels, and accordingly an example of multi-level governance. Similarly, the 'new approach to technical harmonization' can be analysed from either a multi-level governance or a 'new governance' approach. This section also examines types of pre-emption applied by the Court and the Community legislator, which are best analysed from a federalist perspective.[18] Thus, once again IR theories provide an indispensable tool for the analysis of the delimitation of powers between the Union and its Member States.

---

[13] P. Craig, 'The Nature of the Community: Integration, Democracy, and Legitimacy', in P. Craig & G. de Búrca (eds.), *The Evolution of EU Law* (Oxford: OUP, 1999), p.3. See also E. Haas, *The Uniting of Europe* (London: Stevens & Sons, 1958) and A. Burley & W. Mattli, 'Europe Before the Court: A Political Theory of Legal Integration' (1993) 47 *International Organization* 41, referred to by G. de Búrca, 'Rethinking Law in Neofunctionalist Theory' (2005) 12 *Journal of European Public Policy* 310, pp.315-6; and S. George, *Politics and Policy in the European Union* (Oxford: OUP, 1996), pp.37-8;

[14] G. Tridimas & T. Tridimas 'The European Court of Justice and the Annulment of the Tobacco Advertising Directive: Friend of National Sovereignty or Foe of Public Health?' (2002) *European Journal of Law and Economics* 171, pp.175-7.

[15] P. Craig, 'The Nature of the Community: Integration, Democracy, and Legitimacy', above note 13, p.17, quoting G. Marks, L. Hooghe & K. Blank, 'European Integration from the 1980s: State-Centric v. Multiple Level Governance', (1996) 34 *JCMS* 341, p.346.

[16] See The Protocol on the Application of the Principles of Proportionality and Subsidiarity, annexed to the Lisbon Treaty, in particular Article 7(3), added to the provisions of the Protocol from the Constitutional Treaty. See in particular: G. Barrett, '"The King is Dead, Long Live the King": The Recasting by the Treaty of Lisbon of the Provisions of the Constitutional Treaty Concerning National Parliaments' (2008) 33 *ELRev* 66.

[17] Recent cases, like the first *Tobacco Advertising* ruling, suggest that Article 95EC legislation may not allow 'stricter national rules' outside the framework of the Articles 95(4)-(9)EC derogation procedure, in other terms that Article 95EC measures may not include 'minimum harmonization clauses'. In effect, the 2000 *Tobacco Advertising* case seems to indicate that, for a measure to be validly adopted under the Article 95EC legal basis, it should include a 'free movement clause'. See S. Weatherill, 'Supply of and Demand for Internal Market Regulations: Strategies, Preferences and Interpretation', above note 5, p.47. See also M. Dougan, 'Minimum Harmonization and the Internal Market' (2000) 37 *CMLRev* 853, pp.878-84.

[18] See in particular: R. Schütze, 'Supremacy without Pre-emption? The very slowly emergent doctrine of Community pre-emption' (2006) 43 *CMLRev* 1023. See also: E. Cross, 'Pre-emption of Member State Law in the European Economic Community: a framework for analysis' (1992) 29 *CMLRev* 447; M. Walbroeck, 'The Emergent Doctrine of Community Pre-emption – Consent and Re-delegation', in Sandalow & Stein, *Courts and Free Markets: Perspectives from the US and Europe, Volume 2* (Oxford: Clarendon Press, 1982); S. Weatherill, 'Beyond Pre-emption? Shared Competence and Constitutional Change in the European Community', in O'Keeffe & Twomey (eds.), *Legal Issues of the Maastricht Treaty* (Wiley Chancery Law, 1994); S. Weatherill, 'Pre-emption, Harmonisation and the Distribution of

**Articles 95(4)-(9)EC derogations**

Another aspect of the research undertaken focuses on the derogation procedure in Articles 95(4)-(9)EC, referred to above, whereby Member States can "maintain" or "introduce" national provisions notwithstanding the existence of an Article 95(1)EC harmonization measure. We have noted that this constitutes an instance of multi-level governance, whereby "decision-making competences are 'shared by actors at different levels'", the supranational and the national levels.[19] The proportionality assessment undertaken by the Commission under Article 95(6) provides a basis for deciding whether the national measures should be authorized, and thus whether the Member State is entitled to share decision-making power with the supranational level.[20] However, the strict line adopted by both the Commission and the Court in relation to such Articles 95(4) and (5) derogation requests testifies of the unwillingness of Union institutions to surrender their supranational decision-making powers.[21] This is further demonstrated by the Commission's application of Article 95(5) criteria to Article 95(4) situations – where the Member State wishes to "maintain" existing national provisions rather than "introduce" new ones.[22]

**The relationship between the Community's 'deregulatory' competence and its 'regulatory' power under Article 95EC**

A final aspect of this research project will consider the relationship between the 'deregulatory' provisions of the EC Treaty and the 'regulatory' powers under Article 95EC (and 94EC). For example, Knook notes the "cross-pollination effect" between Articles 28EC and 95EC, in other words, "when the ECJ holds a Member State measure *prima facie* to fall within the scope of Article 28, but justified under Article 30, it allocates the competence to regulate on the subject matter to the Community level – *inter alia* under Article 95".[23] Once again, this can be analysed as an instance of neo-functionalism, with its logic of 'functional spillover'.[24] This brings us back to the *kompetenz-kompetenz* debate considered above, that is the issue of "whether the Community [the Court, but also the Community legislator when 'abusing' the Article 95EC legal basis] possesses the autonomy to define the limits of its own competences", and, most importantly, whether it *should* possess such an autonomy.[25]

Lawyers are snobbish by nature. Or are they really? It is generally assumed that academics – and not only lawyers, but also political scientists, sociologists, economists, historians, etc – are straight-jacketed by their own disciplines, and by the concepts and methodologies that their discipline entails. The paper by Hunt and Shaw, entitled 'Fairy Tale of Luxembourg? Reflections on Law and Legal Scholarship in European Integration',[26] tends to demonstrate the contrary, by highlighting the recent evolution of EU legal scholarship away from the traditional positivist approach.[27] Not only does

---

Competence to Regulate the Internal Market', in C. Barnard & J. Scott, *The Law of the Single European Market: Unpacking the Premises* (Oxford: Hart, 2002).

[19] P. Craig, 'The Nature of the Community: Integration, Democracy, and Legitimacy', above note 13, p.17, quoting G. Marks, L. Hooghe & K. Blank, 'European Integration from the 1980s: State-Centric v. Multiple Level Governance', (1996) 34 *JCMS* 341, p.346.

[20] R. Verheyen, 'Article 95 EC Treaty in Practice: The European Commission Decisions on Creosote, Sulphite, Nitrates and Nitrites' (2000) 9 *RECIEL* 71, p.73.

[21] *Ibid.*, pp.74-5.

[22] *Ibid.*, pp.72 and 74.

[23] A. Knook, 'Guns and Tobacco', above note 10, pp.374-5. This research project will consider *inter alia* to what extent the Community legislator has used this opportunity provided by the Court.

[24] P. Craig, 'The Nature of the Community: Integration, Democracy, and Legitimacy', above note 13, p.3.

[25] P. Craig & G. de Bùrca, *EU Law: Text, Cases and Materials*, above note 8, p.284.

[26] J. Hunt and J. Shaw, 'Fairy Tale of Luxembourg? Reflections on Law and Legal Scholarship in European Integration', in A. Warleigh-Lack (ed.), *Reflections on European Integration: 50 Years of the Treaty of Rome* (forthcoming).

[27] *Ibid.*, p.8.

EU legal scholarship take its "methodological approaches and theoretical assumptions […] from other sub-disciplines in law", international law, public and private law,[28] but the *sui generis* nature of Union law has also led legal academics to consider the EU's "interactions with national level constitutional orders", issues of morality, "effectiveness and legitimacy", political science/international relations theories, such as supranationalism, intergovernmentalism, neofunctionalism and multi-level governance, as well as 'new governance' theories.[29] Moreover, the cross-policy nature of EU law forces legal academics into the realms of individual policy fields – such as social policy, public health, environmental protection, or foreign policy (CFSP) –, as well as economics and social science.[30] Going in the sense of this evolution of legal scholarship, the purpose of the workshop on Legal Research Methodologies in European Union and International Law, held at the University of Sheffield on 27-28th June, was to introduce or re-introduce various cross-disciplinary theoretical and methodological approaches to lawyers, thereby broadening their perspective.[31] Theories allow us to rationalize and challenge our assumptions. In particular, examination of political science theories – which focus on political and societal actors, on "causal mechanisms", on the "dynamics of political and social change", on the "linkages and interdependencies between different policy fields and between different actors", and on the locus of "political loyalties and expectations" –[32] enable legal scholars to take a necessary step back to analyse decision-making in the EU. In a recent article, De Búrca reaches the conclusion that, in the same way that law provides an essential tool to the political scientist,[33] "law is a complex social phenomenon, and an understanding of its place in the process of European integration requires the kind of explanatory theory which political scientists […] have striven to develop and which legal scholarship has rarely seriously addressed".[34] IR theories therefore constitute an indispensable analytical framework to question the direction taken by the EU.

***

**Bibliography**

Hervey, T., Cryer, R. & Sokhi-Bulley, B. (2007). 'Legal Research Methodologies in European Union and International Law: Research Notes (Part 1)', *Journal of Contemporary European Research*, 3 (2), pp.161-165.

Hervey, T., Cryer, R. & Sokhi-Bulley, B. (2008a). 'Legal Research Methodologies in European Union and International Law: Research Notes (Part 2)', *Journal of Contemporary European Research*, 4 (1), pp.48-51

Hervey, T., Cryer, R. & Sokhi-Bulley, B. (2008b). 'Legal Research Methodologies in European Union and International Law: Research Notes (Part 3)', *Journal of Contemporary European Research*, 4 (3), pp.200-204.

***

[28] *Ibid.*, p.6.
[29] *Ibid.*, pp.5, 7 and 8 respectively.
[30] *Ibid.*, pp.5 and 7 respectively.
[31] AHRC Collaborative Doctoral Training Project ID 06/ 160/ S 1 Oct 2006 – 30 Sept 2008. These workshops were organized by Tamara Hervey, Robert Cryer and Bal Sokhi-Bulley,
[32] G. de Búrca, 'Rethinking Law in Neofunctionalist Theory', above note 13, pp.314, 317 and 316 respectively.
[33] *Ibid.*, pp.319-21.
[34] *Ibid.*, p.323.

# Research Notes: Regulatory or Non-Regulatory Corporate Governance: A Dilemma Between Statute and Codes of Best Practice

Stelios Andreadakis

CORPORATE GOVERNANCE IS AT THE CENTRE OF MY RESEARCH AND, MORE specifically, the regulation of corporate governance on both sides of the Atlantic (USA and EU). My main research question concerns the future of corporate governance regulation in Europe, following the wave of high-publicity scandals and the introduction of Sarbanes-Oxley Act (known as SoX) in the USA.[1]

Corporate Governance has been a favourite and much discussed topic in business conversations during the last 10 years. A widely used definition, which has successfully stood the test of time, is that 'corporate governance is usually understood as the system by which companies are directed and controlled'.[2] To be a bit more analytical, the corporate governance structure specifies 'the distribution of rights and responsibilities among different participants in the corporation, such as, the board, managers, shareholders and other stakeholders, and spells out the rules and procedures for making decisions on corporate affairs'.[3]

With these definitions in mind, the question which needs to be addressed is, 'how all of these objectives will be achieved?' and, more specifically, 'who will regulate the conduct of all the actors in the game of corporate governance?'

*Self-regulation*

The first approach that was adopted is self-regulation. It is inspired by a broad- minded trend for economic liberalism and profit maximization, which emerged in the vast majority of developed countries, mainly in Europe, during the last part of the 20th century. The creation of a self-regulated market environment was based on codes of conduct, codes of best practice, governance guidelines and reports. Such codes and

[1] Also known as the Public Company Accounting Reform and Investor Protection Act of 2002 (Pub.L. 107-204, 116 Stat. 745, enacted 2002-07-30) The full text is available at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_bills&docid=f:h3763enr.txt.pdf.
[2] Report of the Committee on the Financial Aspects of Corporate Governance-Cadbury Code (December 1992), section 2.5. Available at: http://www.cg.org.cn/theory/zlyz/cadbury.pdf.
[3] Available at: http://www.usoecd.org/us-mission-oecd-corporate-governance.html.

This article has been written by a student participant of the 'Legal Research Methodologies in European Union and International Law' workshop series as detailed in the three Research Notes articles by Hervey *et al.* (2007, 2008a & 2008b). The article introduces the student's PhD project and details some of the methodological research issues which the AHRC funded workshops have helped the student to address.

Andreadakis, S. (2008). 'Research Notes: Regulatory or Non-Regulatory Governance: A Dilemma Between Statute and Codes of Best Practice', *Journal of Contemporary European Research*, Vol. 4, No. 3, pp.253-256. Available: http://www.jcer.net/ojs.index.php/jcer/article/view/139/111.

guidelines were basically a set of best practice recommendations regarding the behaviour and structure of a company. The aforementioned rules of conduct were non-binding, as compliance was purely voluntary, not mandated by law and were accompanied by a 'comply or explain' safety valve. 'Comply or explain' basically indicates a requirement for obligatory disclosure of the level of compliance. According to this theory, all the necessary sanctions will be imposed by the market itself (market discipline). The self-regulatory corporate environment looked as if it was the perfect solution. Certainly, it was not a faultless system, but it was a modern, ambitious approach for the 21st century. It was the most liberal version of regulation after complete deregulation.

*Regulatory Shift*

In 2001 something unexpected happened and the ideal corporate environment was destroyed on 16 October 2001. This is the date of the Enron scandal, the so-called 'point zero'.[4] This suddenly precipitated a chain reaction of scandals, which shook the ground underneath the feet of the perceived powerful economic empire of the United States of America. The following domino effect of other company collapses, scandals, and investigations indelibly marked the corporate map of the world. WorldCom, Sunbeam, Waste Management, Xerox, Qwest, Global Crossing, Tyco, Adelphia, Parmalat, and Ahold are only some of the names that have monopolized the headlines of the newspapers.

Following these unforeseen developments, it became obvious that the self-regulatory framework was not sufficient enough to protect companies, investors and employees. In the USA, there was a general feeling of failure. The media played a significant role in the creation and the endorsement of such an atmosphere and there was an expectation that the government and the President would solve the problem and declare the episode 'a bad dream'. In Europe, the scandals did not receive as much attention and did not have the same impact. European countries did not feel any threat and there were no voices crying for immediate changes and reforms. The post-scandals era found the USA and Europe in diametrically different positions. Circumstances were clearly dissimilar and that was reflected by their response to the scandals. The USA converted the state of panic into a crusade to restore investors' confidence against fraud. The EU, by contrast, after a period of silence, started to organize its defence against future corporate scandals, preferring not to make crucial decisions under pressure. In simple technical terms, there is the SoX, on one hand, and the more modest European initiatives, such as the Action Plan, on the other hand.

**Sarbanes-Oxley Act**

The Public Company Accounting Reform and Investor Protection Act of 2002 represents 'the most far-reaching reforms of American business practices since the time of Franklin D. Roosevelt in the 1930s'. This new legislation is wide-ranging. It established new and enhanced standards for all U.S. public companies and accounting firms and it embodies the government's efforts to improve corporate disclosure and reporting, to protect investors and enhance their confidence and to increase the transparency and accuracy of financial statements. The agreement among the academic community is still far from unanimous on the evaluation of the Act. The main source of criticism has been the relatively high compliance cost, especially for the

[4] The Enron scandal was a financial scandal that was revealed in late 2001 in the United States. Enron Corporation, an energy giant, collapsed after it was revealed that Enron and its accounting firm, Arthur Andersen, had used irregular accounting methods. The company filed for bankruptcy on December 2, 2001, after the systematic use of irregular accounting procedures in order to conceal its real financial condition. Since then Enron has become the synonym of corporate fraud and mismanagement.

medium and small-sized companies. Nobody can deny that SoX is indeed a landmark piece of legislation and a decisive step in the right direction, as it provides a strong shield against corporate fraud and mismanagement. It may fall short or it may not be as effective as its creators had in mind, but it has sent an unmistakably clear signal that this should never happen again.

## European Response

The first thing to note about the European reaction to the corporate scandals is that it has been quite slow to formulate. The main reason for this period of silence and inactivity was the perception that such situations were not likely to arise in Europe. However, after Parmalat scandal[5] in 2003 and other European corporate scandals it became apparent that Europe had no immunity and the trauma experienced in the USA could easily cross the Atlantic. At this point, judging from the American experience, a more drastic reaction was expected; perhaps even a Sarbanes-Oxley-like regulatory response. Surprisingly, that never came about and still has not come. The reason is that the European Union has different structures and, thus, is not comparable with the USA. The EU, unlike USA, is not a federal state; it consists of 27 member states, 27 separate countries with varying histories, cultures, traditions, languages and religions. The decision-making process is time-consuming, especially when unexpected events happen and put additional pressure on the Member States.

At the end of 2001, the Commission set up a High Level Group of Company Law Experts to develop an action plan in the area of company law. The Group's recommendations were published in 2003 under the title 'Modernizing Company Law and Enhancing Corporate Governance in the European Union – A Plan to Move Forward'.[6] The primary aim of this Action Plan is to protect investors from fraud and malpractice and also to ensure that those who lead companies in Europe behave more responsibly, by increasing transparency and disclosure requirements. The Commission has made it clear that the Action Plan is not set in stone and that it is open to ideas both about what should be done and how action should be taken forward. Keeping the content of the Action Plan under review and ensuring individual measures conform to the Better Regulation are both essential to enhance confidence in EU capital markets.

## The Day After Tomorrow

If the US Sarbanes-Oxley Act and the EU Action Plan represent the next day of corporate governance after the black period of scandals, collapses, insecurity and panic, what will or should happen the day after tomorrow? This question, which is my main research question, appears to be more pertinent to the EU since the US has invested so much in SoX.

However, it is extremely difficult to give a definite answer, in the sense that there are new developments almost every day. The EU has undergone a phase of balancing and evaluating the options. Nevertheless, time for action has come. Skepticism can turn against the EU like a boomerang. If, for example, a new scandal is revealed in Europe, it could ruin the existing state of calmness. It would be ideal if there was a pan-European solution, but it is almost impossible to develop a 'one-size-fits-all' solution. Currently, a

[5] Parmalat is a multinational Italian company, specialized in dairy products and food. At the end of 2003, Parmalat was involved in one of the biggest corporate scandals in history and was declared officially insolvent. Calisto Tanzi, its founder, was charged with money laundering and financial fraud, after the disclosure that there was a 4 billion Euro hole in the company's accounts. The Parmalat scandal has been characterized as the European version of Enron.

[6] European Commission, 'Modernising Company Law and Enhancing Corporate Governance in the European Union - A Plan to Move Forward', COM (2003) 284 final of 21 May 2003. Available at: http://ec.europa.eu/internal_market/company/docs/modern/governance-consult-responses_en.pdf

combination of harmonizing a few essential rules with closer coordination between national codes seems to be the Commission's choice, given the fact that the creation of a European Corporate Governance Code has been rejected for the time being.[7]

After my presentation in the AHRC Workshop, I was advised to stop the data-gathering element of my research and conclude with an answer that will reflect my findings. That was really helpful, as I realised that a PhD is not a newspaper article to reproduce the news of the day, but a research project that focuses on a contemporary issue and deals with it from a certain perspective. As far as my thesis is concerned, I am not writing about the history of corporate governance, so there is no need to be descriptive. I have chosen a comparative analysis between the American and the European regulatory environment, which will help me identify what is the best regulatory solution for companies worldwide. The AHRC Workshop also came at a good time, because it helped me to familiarise myself with legal theories and we were shown ways to frame our research in a more theoretical context. Personally, I had no background on legal theory, but, in fact, there is a great variety of theories, some of which I at first could not imagine could be linked with legal research (like Marxism or feminism). I was advised to use one specific theory – communicative; or alternatively a combination, such as positivism with law and economics. It has been a fascinating experience to learn of and use legal tools in order to help shape my research questions and I am sure that as I take my research forward the knowledge I have learned from the AHRC workshop will be evident.

***

**Bibliography**

Hervey, T., Cryer, R. & Sokhi-Bulley, B. (2007). 'Legal Research Methodologies in European Union and International Law: Research Notes (Part 1)', *Journal of Contemporary European Research*, 3 (2), pp.161-165.

Hervey, T., Cryer, R. & Sokhi-Bulley, B. (2008a). 'Legal Research Methodologies in European Union and International Law: Research Notes (Part 2)', *Journal of Contemporary European Research*, 4 (1), pp.48-51

Hervey, T., Cryer, R. & Sokhi-Bulley, B. (2008b). 'Legal Research Methodologies in European Union and International Law: Research Notes (Part 3)', *Journal of Contemporary European Research*, 4 (3), pp.200-204.

[7] Final Report of the High Level Group of Company Law Experts on a Modern Regulatory Framework for Company Law in Europe, (2002), pg. 72. Available at: http://ec.europa.eu/internal_market/company/docs/modern/report_en.pdf

## JCER Report

# Usage of Online European Union Information Resources 2008

Angela Joyce

**Abstract**

In recent years there has been an explosion of online European Union information resources available to researchers. However, little research into how researchers are accessing and using these resources has been carried out.. The aim of the research which informs this report was to take the first step to begin to rectify this issue. An online survey was conducted, using University of Bristol's BOS software to which 145 people replied. The survey found that researchers considered themselves proficient at using online services. Surprisingly only 46.4% used them every day though. The Europa website was the most used but also paradoxically the most criticised for problems with search, navigation and transparency. Journals were the next most popular type of resource. Other top services included search engines, news sites and email lists. Web 2.0 has yet to be taken up widely by our sample of researchers, with few individuals having or using blogs or social networking software. The report also highlights that while some researchers are happy with EU online services, many are concerned about poor navigation and the design of websites, bias of information and the increasing abundance of passwords necessary to access multiple information resources.

FOR RESEARCHERS OF THE EUROPEAN UNION (EU) ACCESSING ONLINE RESOURCES IS an increasingly common activity. In recent years there has been an explosion in availability of online EU information resources. To help understand how researchers are reacting to this expansion of electronic material, a short research project was conducted during June and July 2008. This project examined how often researchers accessed EU online materials, if they still used paper resources, and which types of resource were most popular – whether journals, gateways, social-networking software, the official Europa website or others. Their views about current provision were sought, including what they liked about services and what they found problematic. They were also asked how online provision could be improved and what their general views were on EU online materials.

The Internet has become an important part of research across most subjects in academia**.** As such, there is considerable scope for new research on the usage of online resources, both free and subscription-based, to be undertaken. As the amount of information available online increases and, despite efforts by some organisations to present information in more structured ways, it can still be confusing and impossible to identify all information sources. New services are appearing constantly, technology is moving forward and as such it is possible to infer that user behaviour is evolving. An initial literature search across various databases and free services found that little research on online usage of EU resources has been carried out, however, various general surveys (non EU specific) have been undertaken and these are discussed in the 'Literature Review' section of this report.

ISSN 1815 347X Online –Joyce, A. (2008), 'Usage of Online European Union Information Resources 2008', *Journal of Contemporary European Research*, Vol. 4, No. 3, pp.257-266. Available: http://www.jcer.net/ojs.index.php/jcer/article/view/140/112.

## Methodology

The research for this project was mainly limited to EU researchers *based* in the UK, although this is clearly not such a simple concept nowadays, with increasing mobility of staff. It also specifically focused on EU online services *available* in or from the UK.

First, a brief review of the current provision of EU online services was carried out. Many of the services or resources identified were familiar to the author of this report, thanks to her role as European Studies editor of Intute.[1] This review was supplemented by a literature search which aimed to identify whether any recent research on the usage of online EU materials existed.

Secondly, an online survey was conducted during June and July 2008. A message advertising the survey was sent to several email lists, including those belonging to UACES, WESLINE, the European Information Association and LIS-SOCIALSCIENCE. The potential target audience was over 1,000 people (although it is necessary to recognise that some individuals may subscribe to more than one of these lists).

The survey began with a series of basic questions about the researchers and their favourite websites. It then probed further and examined their website preferences and why. Open questions were asked about problems accessing information or why certain websites were attractive. Participants were also asked how online services could be improved and for any general comments they may have about the provision and trends of online EU information services and resources. To obtain additional qualitative information, a number of email interviews were undertaken.

## Current Provision of EU online services

There is a huge range of EU related online services currently available and this is growing fast. As well as official services such as the Europa website and individual government websites, there are many independent services provided by think-tanks, non-governmental organisations and news agencies. Commercial activities from major publishers, such as journals subscription services, are also growing. Another attempt to make access to Internet resources easier are gateways or directories, such as Intute, or the European Information webpage provided by Exeter University.[2]

Web 2.0[3] has seen the growth of social-networking type services, such as blogs, wikis and services such as MySpace, Bebo and Facebook (social software utilities which which allow people with connect online each other). A search on Facebook found over 500 EU related groups and numerous academic European Union groups. The European Information Association[4] also provides current awareness services and a blog to keep information professionals and researchers up to date with official EU publications. There are various serious political blogs which report on European Union policy and news, including Margot Wallström's[5] and some by respected journalists such

[1] Intute is a free online service providing access to the very best web resources for education and research across numerous disciplines and subject areas, from social science, arts and humanities to life sciences, engineering and technology., . All material is evaluated and selected by a network of subject specialists. See http://www.intute.ac.uk for more details.

[2] See: http://library.exeter.ac.uk/internet/eurostudies.html

[3] Web 2.0 is a term that describes the "changing trends in the use of World Wide Web technology and web design that aims to enhance creativity, secure information sharing, collaboration and functionality of the web. Web 2.0 concepts have led to the development and evolution of web-based communities and its hosted services, such as social-networking sites, video sharing sites, wikis, blogs, and folksonomies" (Wikipedia definition – available at: http://en.wikipedia.org/wiki/Web_2.0#cite_note-10, last accessed 25 October 2008.

[4] See http://www.eia.org.uk/.

[5] See http://blogs.ec.europa.eu/wallstrom/.

as Mark Mardell at the BBC.[6] The European Union also provides a video service via YouTube called EUTube which is aimed at the dissemination of information about the EU to the wider public.[7]

Search engines such as Google are increasingly popular, yielding vast numbers of hits for searches such as "European Union" – over 149 million in October 2008; although, of course, one has to sift through the results which can be very mixed in relevance and currency. It should be noted that no systematic research was done on Google performance for this article, but anecdotal evidence from researchers known to the author indicates that some use Google as a possible starting point in their research.

## Literature Review

A number of databases and websites were searched for material on EU online materials and usage. However, no recent research, specifically on usage of online EU resources by academics and researchers, was identified. The only research slightly similar to this was Marcella *et al.'s* (1999) article, 'The information needs of United Kingdom Members of the European Parliament (MEPs)'. Of course, since 1999, information usage and the World Wide Web have evolved greatly and today's situation is very different from that of almost ten years ago. Nevertheless, there were some similarities to be found between 1999 and the current situation: for example, MEPs found the Europa website not very user-friendly (Marcella 1999: 175), a criticism still levelled at it today. One interesting finding highlighted by Marcella *et al.* (1999: 174-175) was that the MEPs preferred informal networks for finding EU information, rather than official ones.

Various *general* studies of online user behaviour have been published recently. The report, *Information behaviour of the researcher of the future* (UCL 2008) gives a fascinating insight into how the Internet is being used, although it concentrates on the 'Google generation' of younger people (typically 18-25 year olds); while this article looks at all ages but in a specific subject area.

The Research Information Network published the report *Researchers' Use of Academic Libraries and their Services* (RIN 2007). The RIN report was based on a large scale, research project which sampled 2,250 researchers and 300 librarians The emphasis of the research differed from that of this report because 'a significant part of…[the RIN]…study focuses on the roles librarians play in support of the research process' as opposed to that of academic researchers.

Another interesting research development is The Driver project, founded in 2007; this is an international partnership working on 'a project to build a large-scale public infrastructure for research information across Europe'.[8] Currently thirteen international partners are working together on the project (headed by the University of Athens) with the aim to build a knowledge base or depository of European research. However, the project is still in the early stages of its development and it is too early to identify any interesting findings yet.

## Findings from the Online survey

145 people responded to the online survey, which ran from 23 June to 21 July 2008. Although this fell considerably short of the 1,000 or so subscribers to the mailing lists contacted, it was still felt that this was a large enough sample to yield some worthwhile initial results indicative of the usage of EU online resources. It was also recognised that

[6] See http://www.bbc.co.uk/blogs/thereporters/markmardell/.
[7] See http://www.youtube.com/EUtube.
[8] See http://www.driver-repository.eu/.

these results would go some way towards helping to formulate a more in-depth analysis for future research on this topic. The twelve questions and responses are summarised below:

1. **Do you ever use the Internet/online resources to find information about the European Union?**

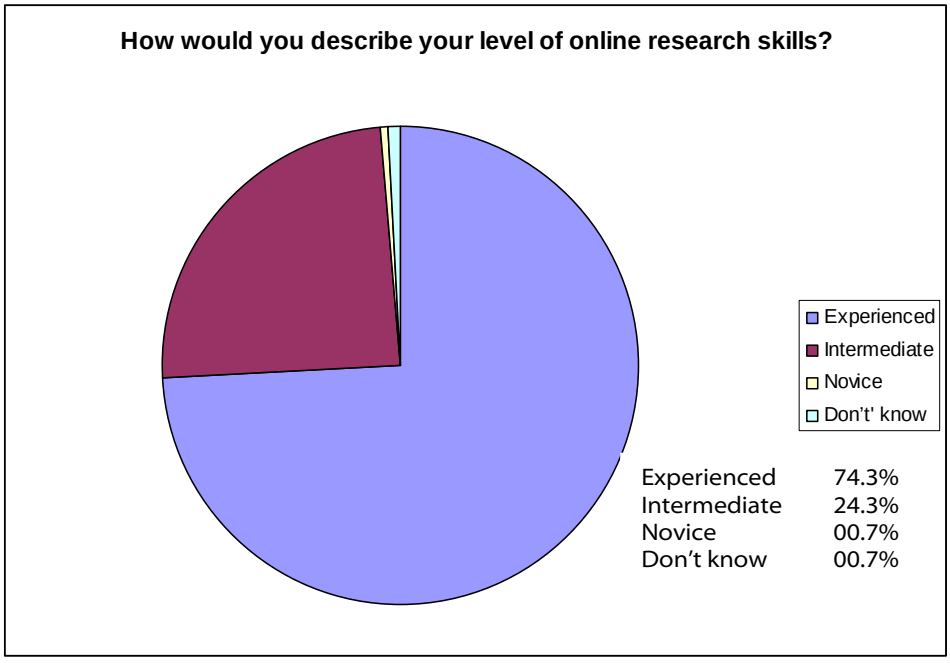
   97% of respondents said 'Yes'.

   Any saying 'No' did not need to continue with the survey.

2. **What is your main academic area of interest? (free text open question)**

   Not surprisingly, there were a wide variety of replies, covering European politics; European law; EU cohesion policy; EU competition policy on state aid; Europe and Africa; gender mainstreaming; citizenship; Russian foreign policy; media; national identity and culture; and science and technological studies. Several librarians and other support staff also replied.

3. **How would you describe your level of online research skills?**




   The vast majority - 74.3% - considered themselves 'experienced' 24.3% said they were 'intermediate' and only .7% each were 'novices' or 'don't knows'.

4. **I use online EU information (daily, weekly, monthly or less often)**

   Nearly half (46.4%) used EU online sources every day, but many (36.4%) used them weekly and a substantial number (14.2%) even less often. This was unexpected because it was assumed that most researchers would access online resources on a regular basis. There are specific findings on the usage of paper-based resources in question 11.

**5. The online services I use most for finding EU information are:**

The main Europa website was by far the most used, with 95% of respondents listing it in their response. Other formal services provided by the EU scored comparably lower usage with only 9% mentioning services such as EurLex, ESDS and the FP7 site as useful places to find information. Journals were the second most popular at 77%. Other top services included search engines (i.e. Google), news sites and email lists. Specific Web 2.0 services such as newsfeeds, blogs and social-networking software showed low usage.

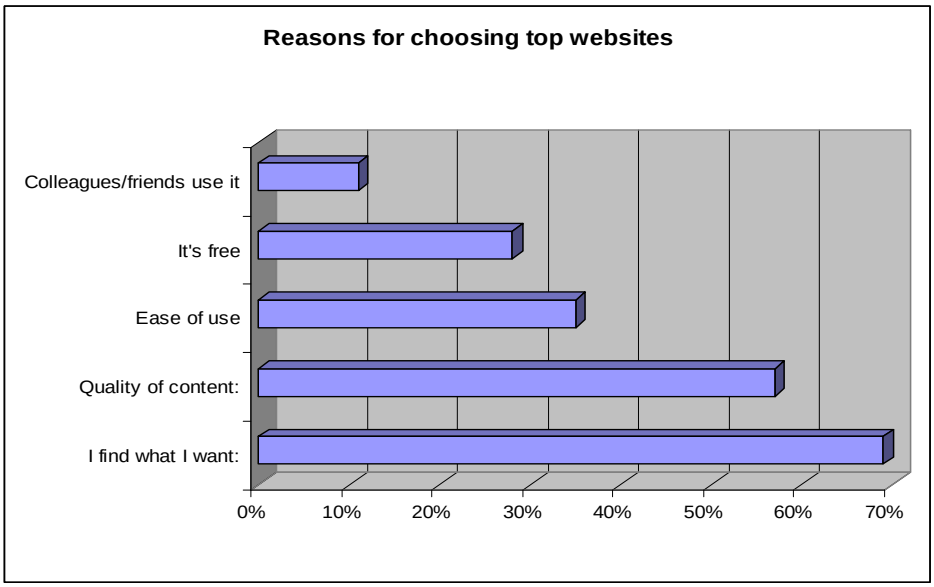
**6. My top 5 EU websites are:**

Europa was most popular, cited by 40% of respondents as their number one site. EurLex, EUObserver and EurActiv were next in popularity, but there was no clear fifth website that was shared amongst the respondents.

Other well-known websites were listed, e.g. BBC News and FT.com. The UACES website was also mentioned. Less well-known sites, probably reflecting the specialist nature of many European researchers' work, included foreign language newspapers, organisations and think-tanks. .

**Reasons for this choice**

Users could choose one or more answer. Judging by the comments, most users seemed prepared to persist with any difficulties using sites, in order to get the content they needed. Europa was a typical example of a website where this is the case. Quality was also important to users. Peer pressure from friends or colleagues was least important. Other reasons included the regular update of current information, the opportunity to network, availability of resources not easily found elsewhere and coverage of a good range of overlapping issues such as law, political science and economics.




| | |
|---|---|
| I find what I want: | 69% |
| Quality of content: | 57% |
| Ease of use | 35% |
| It's free: | 28% |
| Colleagues/friends use it | 11% |

**7. Do you have your own website for work?**

Just under half answered Yes, although in retrospect the question was too vague and it is not clear whether they meant a departmental website or one they had set up just for themselves.

| | |
|---|---|
| Yes | 43.1% |
| No | 56.9% |

**8. Do you have your own blog for work?**

Few respondents had set up their own blogs; the survey did not ask for reasons why.

| | |
|---|---|
| Yes | 05.8% |
| No | 94.2% |

**9. What are the main issues you have in using services providing EU information online? (free text open question)**

Only 27of the 145 respondents answered this question.

48% of respondents found 'no issues' or were generally happy with EU services. Barriers such as a foreign language or lack of IT skills were not a problem for most of the respondents.

However 55% complained that websites were often complex and hard to navigate. 23% forgot passwords. Others were prevented from using services as their institution did not have a subscription.

Some interesting comments came up in the 'Other reasons' option: There was much criticism of Europa, especially its search function. It was suggested that information on Europa was 'often fragmented, contradictory or not updated.' On the other hand, some researchers *were* happy with it. The FP7 site was found to be too complicated; one person said that by the time they had worked out how to make a research submission, the deadline had passed.

Additional remarks made in the 'Other reasons' option included concern that the quality of content on some websites was 'poor' or access to information was found to be unnecessarily lengthy and complex. The problem of information disappearing from the Web was also mentioned (e.g. when sites or webpages are removed or moved to a new address) and the issue of costly individual subscriptions was also touched upon.

**10. How do you think online EU information services could be improved? (open question)**

103 people replied to this question.

The most common comment by far was that the search facility on Europa should be improved. Several people said they used Google instead of Europa as an easier way in to search the Europa website content. A few researchers suggested merging databases such as EUR-Lex, Prelex and OEIL but did not say why. Others thought that the actual *structure* and *culture* of the EU ('byzantine' and 'bureaucratic') led to its websites being too complicated and not

transparent enough. In addition, EU terminology, abbreviations and reference numbers were often found unhelpful.

Respondents also wanted better navigation for online services in general. Other improvements for general services included 'increased openness', more simple interfaces and more use of RSS [newsfeed] technology. Furthermore, there was a call for information to be updated more regularly.

**11. Roughly what percentage of your time do you spend using paper-based services, rather than online ones? Why is this? (free text open question)**

125 out 145 replied to this question.

The majority replied that they spent 5% or less using paper based services. Reasons for using online resources included availability and speed of access. Sometimes the choice was beyond researchers' control. One person remarked that they would use books if they had more time, and someone else was at a university without *'a well endowed library'* so they were forced to use Internet resources. Environmental reasons were also mentioned – that online resources were more environmentally friendly. Furthermore, it was suggested that online resources were easier to search and could be accessed remotely.

However, paper-based resources were not completely out of favour, with a surprising 41% of respondents saying that they used them 20% or more of the time. Reasons varied: The fact that computers were harder on the eyes was mentioned. Someone said 'I like old-fashioned books and newspapers.' Portability was also an issue: '*you can read it on the train, bus, while waiting, not only at work in front of a screen.*' Some could not find more historical information online. One said *'20 percent. But I would use them more if I spent more time at the library, which is better organised than any EU-related website.'* Another said *'50% the collection of EU documentation I manage is a hybrid collection - Also the number of books relating to the EU which are being published on a weekly basis is considerable.'*

**12. Do you have any other general comments about how you access and use online EU information? (free text open question)**

79 people replied. 28 made actual comments. 51 had no comment.

This question was purposely made open to get as much feedback as possible, however, some respondents found that this was too vague and would have preferred additional direction.

Comments ranged from the very satisfied, *'Access has never been better,'* to the fairly happy, *'Generally good. More a case of knowing how to navigate than the material not being there'*, to the despairing, *'It's a pain.'*

Critical comments mainly concerned difficulties in retrieving information or navigating websites. They also mentioned the tardiness or failure of email helpdesks to reply to questions.

Several people commented on the biased nature of EU information, either from official sources or from journalists. Someone wrote *'there are too few authoritative independent (i.e. not part of the EU institutions) sites.'* Another said *'there should be more info about the problems of the EU, usually it is too idealized.' 'It is also important to know how much information is NOT put onto the official EU*

*websites. Because there is so much, one tends to think that it is all up there, and it isn't.'*

Eur-Lex and other law resources were criticised for links not opening and more information on developments in case law was wanted.

Some respondents questioned the concept of 'EU information' used in this survey, saying that *'it is more often about research related to the EU than typical info about the institutions etc'*.

One researcher thought were was a need for a more Web 2.0 approach in presenting EU information, for example more wikis and better use of metadata.

## Conclusions

The most striking finding was the high usage of the Europa website, contrasting with negative comments on its usability. This suggests that while Europa is welcomed as an official or authoritative resource, it is not meeting expectations.

The EU researchers surveyed varied in many ways, being involved in quite diverse research areas. Some appeared happy with the provision of EU resources, although the majority did appear to have complaints. Poor search function, bad navigation and confusing websites were all mentioned. The issue of objectivity in EU information was also brought up.

Despite all the publicity, Web 2.0 has so far failed to be adopted *en masse* by researchers; at least not by this survey sample. However, a number of researchers did recommend its exploitation to make services more effective. There is huge scope for Web 2.0 to enhance the researcher's experience of online EU resources. For example, if users could choose which bits of content they wanted to use from huge EU websites, they could then import them as newsfeeds or tagged records. This is something which Intute offers through its Integration service.[9] This would give researchers more control over the information they view. There are other valuable current awareness services such as the International Bibliography of the Social Sciences (IBSS) blog, which for example recently featured information on national identities in Spain (IBSS 2008).

Intute as an organisation is very interested in user behaviour and take-up of new Web 2.0 type technologies, and how this can be applied to make the Internet more accessible for users. The findings of this research may feed back into Intute's work on usability and outreach as well as possible, additional in-depth research on this subject.

## Personal Reflections

Writing the article led to some reflections on the actual learning process of conducting some research:

This was the first piece of primary research ever conducted by the author on this subject, and was therefore a learning experience too. One or two exasperated comments received from participants certainly gave useful feedback about survey design (e.g. make all questions optional!). Designing the online survey was challenging. More detailed questions could have been asked, such as those in the RIN report (RIN, 2007) – for example, additional questions about types of resources or how researchers collaborate across disciplines, could have been asked. More information on researchers' own websites and blogs could also have been asked for, or why some researchers do

[9] See http://www.intute.ac.uk/integration/

not have a blog. However, it was also important to recognise that researchers are busy and they may have been put off by a longer survey. One person the author spoke to, who had done the survey, said he thought the questions were good and '*to the point*' but other email respondents were highly critical about the choice of questions and found the research 'flawed.'

The timing of the research could have been better planned, particularly as the UK higher education 'summer term' was ending and many researchers were not available. So possibly more replies to the survey would have been obtained if it had been done during one of the standard term time periods.

It may be worth repeating some of this research at some point in the near future, using this piece of research as a pilot project. This would allow for a more in-depth analysis, and provide an opportunity to see if there are any differences in user behaviour, e.g. in top websites or if Europa has improved its interface. It would be good to extend the research too, for example looking in more *detail* at types of service used and the nature of access problems.

While it is recognised that this is only a small piece of initial research on EU online information and its users, it nevertheless raises some interesting findings which could be passed on to information providers such as Europa, in order to bring about possible improvements to Europa and other services. This final quote from one researcher sums up the Europa situation nicely: *'My main comments are that it is still quite impenetrable to the ordinary person, and this works to keep alienation of the EU from the people. When I see people using EU information, they try and avoid the Europa website and generally Google search for it first, as Europa is a bit of a maze.'*

***

**Bibliography**

UCL (ed.) (2008). 'Information behaviour of the researcher of the future: A CIBER briefing paper'. London: UCL. Available at: http://www.bl.uk/news/pdf/googlegen.pdf, last accessed 25 October 2008.

IBSS (ed.) (2008) *'Viva España'*. IBSS blog. Available at http://ibssblog.wordpress.com/, last accessed 25 October 2008.

Marcella, R., Carcary, I. and Baxter, G. (1999). 'The information needs of United Kingdom Members of the European Parliament (MEPs)'.,*Library Management,* 20 (3), pp. 168-178.

Olivieri, R., (2006). 'New masters, new rules', *Information Services and Use*, 26 (2), pp. 159-163.

*RIN (ed.) (2007). Researchers' Use of Academic Libraries and their Services.* Available at http://www.rin.ac.uk/files/libraries-report-2007.pdf, last accessed 25 October 2005

Wiliams, P. and Rowland, I. (2007). Information Behaviour of the Researcher of the Future: A British Library/JISC Study – The Literature on Young People and their Information Behaviour. Available at: http://www.jisc.ac.uk/media/documents/programmes/reppres/ggworkpackageii.pdf, last accessed 25 October 2008.

**Online resources**

BOS (Bristol Online Surveys) available at: http://www.survey.bris.ac.uk/

D-Lib magazine available at: http://www.dlib.org/

DRIVER available at: http://www.driver-repository.eu/
EurActiv available at: http://www.euractiv.com/en/HomePage

Europa website available at: http://europa.eu/

Google Scholar available at: http://scholar.google.co.uk/

IBSS available at http://www.lse.ac.uk/collections/IBSS/

Intute:EuroStudies available at : http://www.intute.ac.uk/socialsciences/eurostudies/

Intute Integration service available at: http://www.intute.ac.uk/integration/

Intute Repository Search available at: http://www.intute.ac.uk/irs/

Journal of Contemporary European Research available at:
http://www.jcer.net/ojs/index.php/jcer/index

LISA (Library and information science abstracts) available at:
http://www.cilip.org.uk/publications/lisa

Margot Wallström's blog available at: http://blogs.ec.europa.eu/wallstrom/

SuperBook project available at: http://www.ucl.ac.uk/slais/research/ciber/superbook/

Wiley InterScience available at: http://www3.interscience.wiley.com/cgi-bin/home

***