

Seminar at the Dutch Permanent Representation

on

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Intervention by Alexander Schaub

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*“The interaction of officials of the European institutions
and officials from the Member States”*

Ladies and Gentlemen,

Thank you for the invitation to this seminar. I am here to participate in a discussion on the interaction of officials of the European institutions and officials from the Member States' administrations. I welcome this initiative on your part very much.

Introduction

The obvious question to start with is: How do Member States' and European Union officials *interact* at present? Enough? In the right way? And more important even: To which extent do we *cooperate* to achieve common objectives?

A real dialogue is engaged in many areas. However, is it not also still possible to live a science fiction type experience in Brussels ? I am referring to the kind of situation where Member States' officials fly in from their different planets in order to meet on a platform in outer space (this is not a comment on the architecture of the Centre Borschette).

The delegates from the 15 planets also meet the green-faced strangers from the 16th even more distant planet. These guys want to meddle with how things are done on the 15 other planets, in areas that range from agriculture to financial services, from telecommunications to the quality of bathing water. To justify their meddling, the green-faced ones normally invoke an ancient interplanetary codex that is ominously called "The Treaties". Not many people on the delegate's home planets have ever heard of that ...

Let me stop here to say it very clearly: This type of experience should definitely belong to the realm of science fiction stories that have been overtaken by the development of reality. We should smile because it is so quaintly old-fashioned, not because we recognise the situation.

What we are talking about is an issue for the Member States, including the future new Member States. It is also an issue for the European institutions. The latter have achieved something extraordinary in uniting officials with 15 national backgrounds to work as colleagues in one civil service. I am confident that we will also integrate, without major frictions, the new officials from the accession countries. However, this European civil service must not confine itself to a "planet" of its own.

How can we achieve real interaction and ensure that the "interplanetary" experiences are sidelined ? In the rest of my intervention, I would like to try and shed some light on this issue from three different angles:

First, interaction of Member States' and European officials goes to the heart of the reflection about better governance in the European Union.

First part: The link with the Governance debate

Let me highlight three issues that play an important role in the debate about improving European Governance.

A - Make European policies more efficient and effective

We must ensure effective policies that work in practice and deliver what citizens can rightfully expect. The contribution of Member States' officials in this respect is absolutely essential. It is Member States' administrations that implement the vast majority of Community law, i.e. they make Europe happen in practice for the citizens.

This is not going to change. On the contrary, we see a strong tendency on the side of the European institutions to concentrate on their core business in order to better focus their action and thus improve effectiveness.

For the Commission, a major strand of its 'core business' is the setting and initiating of policy. The proposals of the Commission will be the better adapted to realities if it can rely on more and better input from those concerned. In the follow-up of the White Paper on Governance we have therefore issued a communication on how to improve our consultation practices. I believe that Member States' officials have an important role to play in this respect, for example by informing the Commission on difficulties in the implementation of European legislation at an early stage.

B - Bring European policies closer to the citizens

A second major issue in the debate on European governance is how to bring European policies closer to the citizens. I already mentioned a moment ago that it is Member States' officials that implement the majority of European policies. I believe that an effort should be made to raise the awareness of Member States' officials for the 'European quality' of their work. This would be passed on to the citizens in multiple ways.

I could imagine for example that, in some cases at least, the interaction between national officials and European officials in the different stages of the legislative process could still be further enhanced. In the Council very often a close working relationship emerges. Should it not be kept more alive in the phase of drafting national legislation that transposes directives, for example ? In this phase, the national team, when drafting guidelines, implementing instructions or the like, can also see to it that important messages learned from the Council process (eg why certain solutions were retained, how things work in other Member States) are handed through the chain to the officials ultimately in contact with the citizens.

C - Handling the balance of uniformity and diversity in the Union

This brings me to the third major issue I wanted to mention and which is of course linked with the two others. I am referring to the balance of uniformity and diversity in

the Union. As an overall political topic, this is one of the guiding questions before the Convention when it discusses the division of powers. It is impossible to exhaust this topic here. Just let me mention a few aspects that concern the implementation side of European policies.

Citizens, while often perceiving European legislation as too detailed, also tend to resent unequal treatment from one Member State to another as injustice and rightly so, where European policies should be implemented without discrimination in the Union. For undertakings, adapting themselves to diverging administrative practices simply translates as additional costs.

How can we solve this dilemma without creating more regulation or new layers of bureaucracy ? One way forward that is today explored in various areas is the setting-up of networks between the European and Member States' administrations. Depending on the subject-matter, a network needs more or less of a formal structure. In all cases, it has the potential of furthering the understanding between Member States' and European officials, enhance coherence in the implementation of European policies *and* it provides an excellent opportunity to rapidly integrate the administrations of the future new Member States.

Second part: Modernisation as a reform initiative in the Union

As Competition Directorate General, we have given a lot of thought to the topics mentioned before when designing a proposal for a new implementing system for Articles 81 and 82, the fundamental competition rules of the EC Treaty.

In this area, reflection on reform started out from the current implementing system that dates back to 1962. This system is highly centralised. The application of Article 81(3) is reserved to the Commission, in practice it is mainly the Commission that implements Articles 81 and 82. In other words: the old system is of the interplanetary type with the Commission assuming the role of the sun.

Under the Commission proposal for a new implementing Regulation that is currently discussed in the Council, national enforcers will also be empowered to fully apply the EC competition rules. At the same time we will set up a network composed of officials of the Commission and the competition authorities of the Member States.

As such, implementation of EC law by national administrations and national courts is nothing new. In this case however, it represents an express choice after four decades of centralised enforcement. We believe that such decentralisation or sharing of responsibility has the following advantages:

- application of the competition rules closer to the citizens and the marketplace;
- more potential to ensure respect of the competition rules;
- more level playing field for the undertakings concerned in the internal market through the application of one set of rules;
- sensible work-sharing and a new quality of close cooperation in the network.

The reform proposal is an expression of our profound confidence in national authorities and in their openness to participate in a project that should be an example of a real quantum leap for the governance in the competition field.

We also hope that it will bring about a change in perception on the part of the Member States' case handlers: Applying the rules of the EC Treaty as daily work should enhance the perception of the EC competition rules as 'the law of the land'. Working together in the network should raise their awareness of participating in the work to protect competition in the internal market.

Third part: Some observations about Member States' officials' characteristics in interacting with the European institutions

This brings me to the last chapter of my intervention. I am supposed to say something about idiosyncrasies of national officials, and in particular officials from the Netherlands in their interaction with the institutions. I will give it a try and I am confident that you will correct my impressions.

The *first* point I would like to raise is the apparently high degree of openness of Dutch administrations to recruit officials that do not have a Dutch passport. For example at the moment there is a national expert from the NMA working in my DG who has a Spanish passport. She is by far not the only example I know of. It seems that you seek to incorporate first-hand experience from other Member States.

A *second* point that strikes me is the pragmatism of my Dutch interlocutors. Common solutions agreed at the European level often require a change in the practices that national officials have been used to. I do not have the impression that Dutch officials are given to defending their old ways as a matter of principle, but are ready to embrace new solutions.

New solutions are also devised at national level and sometimes it can be useful to discuss in advance how one or the other of available alternatives will fit into the European environment. A *third* point that clearly comes to my mind with regard to cooperation with officials from the Netherlands is that they come and speak with us in such cases. This is very appreciated.

However, - this is my *last* point - I cannot help the impression that Dutch officials are not particularly in awe of the Community institutions. It seems to me that the Commission, for one, is neither perceived as an incarnation of the god of European integration, to be worshipped on one's knees, nor as the devil that threatens national powers and sovereignty and against which you must beware. It is a place where people work on tasks that concern the Union as a whole, people that sometimes do a good job and sometimes less. You can phone them to ask a question and you speak your opinion if you disagree.

On the whole, to sum up on this chapter, I would not mind if some of the Dutch 'idiosyncrasies' rubbed off to the other Member States' officials. I will stop here because I can see that you would like to react. Thank you for your attention and please correct me if I am wrong!