

Law Department

**Law and Public Management:
Network Management**

**Droit et gestion publique:
la gestion des réseaux**

Part II/II^e partie

ALEXANDRA GEORGE, PEDRO MACHADO
and
JACQUES ZILLER (eds)

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**Law and Public Management:
Network Management**

**Droit et gestion publique:
la gestion des réseaux**

*Workshop held at the European University Institute
Atelier organisé à l'Institut universitaire européen
11-12 May/mai 2001*

Part II/ II^e partie

Edited by/Sous la direction de:
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and JACQUES ZILLER

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I – INTRODUCTION

Jacques Ziller

This is the second paper¹ originating from the inaugural workshop on Law and Public Management held on 11-12 May 2001 in Florence. Having “started to talk” by clarifying the definitions of concepts, methods and roles of law and lawyers on one side, and public managers and organisational theorists on the other, it was necessary to focus on a more specific issue.

Among a number of other themes, network management was selected for 2001 for two main reasons.

The first is that word “network” has become increasingly fashionable among lawyers when talking about the transformation of the state, Europeanisation and integration. But my feeling, which is confirmed by the literature survey undertaken by Pedro Machado, was that we (lawyers) gave even less attention than political scientists to the content of the concept. We used the term in a very undifferentiated way as soon as we wanted to express that the classical type of hierarchies – *Kelsenian* (for sources of Law) or *Weberian* (for administrative structures) – were no longer explaining reality. My impression was that, because organisational theory has long given a lot of attention to what constitutes networks and how they operate, a dialogue between law and public management could help to clarify and shape an operational concept of networks.

The second reason was that European integration is certainly one of the fields in which the word “network” is being most heavily employed, in order to explain the very specific relationships between EU and member states’ institutions and administrations. This is particularly striking whenever lawyers start studying the newly emerging European agencies.

Loïc Azoulay and Edoardo Chiti, two recent recipients of EUI doctorates, summarised and updated some of the most interesting elements of their PhD dissertations in order to start the discussion. Transcriptions of their presentations are published herein.

¹ See *LAW AND PUBLIC MANAGEMENT – STARTING TO TALK*, EUI Working Papers, November 2001.

The discussions that followed these presentations have been summarised and rearranged by Pedro Machado, Alexandra George and myself to give some order and clarity to a very lively set of dialogues, interruptions, questions and answers. Prof. Les Metcalfe played a prominent role in this dynamic exchange of ideas; as the only representative of the science of public management, he faced a number of interested – but sometimes quite critical – lawyers. The editing process has put some order and clarity into a very lively set of dialogues, interruptions, questions and answers. They have been edited in order to avoid repetition, and have sometimes lost some of their liveliness as a result. It has also become impossible to quote the authors of every single statement : *scripta manent*, but *verba volent*! My apologies to any participant who feels that something important has been lost in the process.

As a Working document of the EUI Law Department, this text does not have the editorial ambitions² of a book or an article in a referred journal, it should be only taken as a testimony of work in progress.

² I deliberately decided to leave some references uncompleted in order to accelerate the publishing process and not to excessively burden the participants to the Workshop after the event had taken place.

II – THE CONCEPT OF “NETWORK” IN LEGAL LITERATURE – A SURVEY³

Pedro Machado

Surprisingly or not, the use of the concept of *network* among lawyers is rather uncommon. Lawyers primarily tend to view networks as being related to policy-making or public management, and thus a concept much more suited to political science or public management than law. Notwithstanding the infrequent use of this concept by law, when lawyers do deal with the concept of network, they tend to use it from two different perspectives.

On the one hand, they look at the concept from a *macro-level* perspective under which it serves as a conceptual tool to explain the evolving supranational legal order in the European integration context.⁴ On the other hand, another group of lawyers deal with the concept of “network” from a *micro-level* perspective. From this viewpoint, network becomes an analytical tool for explaining the emerging European administration, most notably the institutional and procedural legal models upon which the novel European agencies rest. The legal scholars who support this approach tend to be distributed among three different sub-groups:

³ The present section is a mere survey of the opinions resulting from the literature the author has dealt with while preparing the workshop. Therefore, with the exception of the conclusive remarks, it cannot be considered as either an expression of the author's personal views and opinions on the subject or an original academic work.

⁴ See **Ladeur, K.-H.** (1997) ‘Towards a Legal Theory of Supranationality - The Viability of the Network Concept’, *European Law Journal* 3(1): 33-54. See also **Pitschas, R.** (1994) ‘Europäische Integration als Netzwerkkoordination komplexer Staatsaufgaben’, *Staatswissenschaften und Staatspraxis*: 502; **Treiber, H.** (1994) ‘Von der Programm(entwicklungs)- Forschung zur Netzwerkanalyse. Ein Literaturbericht’, in W. Hoffmann-Riem and E. Schmidt-Aßmann (eds) *Innovation und Flexibilität des Verwaltungshandelns*, Baden-Baden: Nomos, 381-400; **Azoulay, L.** (2000) *Les Garanties Procédurales en Droit Communautaire*, Ph.D Thesis, Florence: Law Department/European University Institute, 497-500.

1. Regulation by networks;⁵
2. Agencies as part of a network including both national and European regulatory authorities;⁶ and
3. The 'European Environment Information and Observation Network' (EIONET).⁷

1. Macro-level perspectives: "network" as a concept to describe the evolving supranational order

The basic assumption from which the first group of lawyers starts when adopting the concept of network is that supranational legal orders imbue public decision-making with increasing complexity and uncertainty, thus diluting the unitary legal and economic legal order typical of modern States. As pointed out by Ladeur, a 'denationalised' supranational order cannot simply be created by following the same 'rationalising' model at a higher level of abstraction. This is because the principles characterising the rationality of the nation-state have themselves been subject to a process of erosion.

Equally, lawyers resorting to the concept of network as an analytical tool to describe the evolving (European) supranational legal prefer the idea of "network" to the diffuse term 'globalisation', ascribing to the latter an absence of any analytical or theoretical value. As these developments are not merely restricted to the territorial extension of the market, but instead also refer to fundamental changes in production processes and modes of commercial dealing, "network" serves to explain and ground new and pressing forms of co-operative decision-making that transcend the classical division between public and private interests.

⁵ See Dehousse, R. (1997) 'Regulation by networks in the European Community: the role of European Agencies', *Journal of European Public Policy* 4(2): 246-261.

⁶ See Chiti, E. (2000) 'The Emergence of a Community Administration: The Case of European Agencies', *Common Market Law Review* 37: 309-343, esp. 320-324; De Schutter, O., Lebessis, N. and Paterson, J. (eds) (2001) *Governance in the European Union*, Luxembourg: European Commission

⁷ See Chiti, E. (2000) 'The Emergence of a Community Administration: The Case of European Agencies', *Common Market Law Review* 37: 309-343, esp. 324-328. See also Ladeur, K.-H. (1996) *The European Environment Agency and Prospects for a European Network of Environmental Administrations*, Florence: European University Institute, 12-14.

Under this approach, Ladeur claims that the supranational legal order contrasts starkly with the forms of corporatist interest-balancing developed under the social or welfare state. The interest-balancing tendency in the supranational decision-making process lies in 'micro-pluralism', that is, the creation of public-private networks to cope with heterogeneous and complex regulatory concerns and the rising conditions of scientific uncertainty (such as regional technological developments with global effects, evaluation on the basis of incomplete knowledge, and so on). Decision-making at the supranational level therefore tends to rest on knowledge developed and created on the basis of the process of ongoing co-operative agreement among all levels of undertakings, expertise and administrative decision-makers inside the network. In other words, the paradigm of supranational decision-making does not fit into the classical dichotomy of general rules, and the application to particular cases of the commands established within those rules.

When utilising the concept of "network" from this macro-level perspective, lawyers tend to emphasise its contrast with the classical representation of precisely defined interests. As stressed by Azoulay, networks demand innovative forms of (procedural) *participation* under which the parties' intervention is not intended to represent personal or corporatist interests, even though the parties are perfectly well identified in the network. Particular networks are made possible by the permanent ability to question the legitimacy of the participation of the parties. This allows networks to transcend a limited and closed circle of participants, and to allow relevant parties to bring pertinent knowledge and concerns to the network. Yet, if the risk of the network's internal decision-making procedure being *captured* by the most powerful parties seems to be mitigated by the open and heterarchical character of the network, a significant risk of *exclusion* still exists due to the different levels of knowledge possessed by the units intervening in the network.

Against this theoretical backdrop, law must increasingly adapt itself to the creation of multi-level and overlapping networks. The legal framework to be adopted must therefore provide normative grounds for the association of public and private actors in such networks in order to prevent their exclusion due to inaccessible levels of knowledge. Simultaneously, the co-operative procedure that underpins the network's decision-making process must be shaped according to a legal framework that enables the knowledge brought into the procedure by the actors engaged in the network to transform into the decisions that are the outcome of the procedure (instead of being premised on the application of general norms to particular cases). This would allow for an open and informal process of negotiation between the participants.

From this legal macro-perspective, networks amount to co-operative forms of decision-making that allow for new knowledge to be generated in light of the dominant conditions of complexity and uncertainty posed by the European integration process. By encompassing both public and private actors within a heterarchical structure, networks differ just because they are based on co-ordinating different actors with differing capacities and expectations. In their functional capacity, networks become entrusted with the role of a 'stimulator and stabiliser' of knowledge in the presence of emerging and unforeseeable risks.

Networks can thus be described as a set of relatively stable, non-hierarchical and interdependent relationships between a variety of corporate actors. Five essential features underpin such an approach towards the concept of networks. Edoardo Chiti has noted these in his synthesis of the concept in political studies:

- the concept of a network usually refers to an organisational structure including both public and private bodies;
- it indicates forms of co-operation with low levels of institutionalisation;
- emphasis is put on the on the relevance of the 'links' between the various bodies;
- networks are conceptualised as sets of rules – mostly informal – regulating interaction between the subjects, limiting their options and providing them with specific opportunities;
- networks allow for a mutual learning process because they permit an efficient division of labour and the exchange of information and other resources, and also stabilise expectations and enhance reputation on its actors.

It must be stressed that, when using the concept of "network" from this macro-perspective, legal scholars like Ladeur claim that it is useful when applied to the European integration process; the European Union should be regarded as an avant-garde body which, through its experiments with self-organised and flexible public-private decision-making networks, might function as a testing ground for the much needed modernisation of the 'state' in the light of rapidly changing social and economic conditions. A notable resemblance to some approaches that describe the European integration process as an attempt to rescue the nation-state might immediately come to mind. It is therefore interesting to analyse how the resort to a concept of "network" by legal scholars may correspond with an attempt to radically

change some of the paradigms upon which decision-making in the nation-state, and particularly in the welfare state, was tailored.

2. Network as a concept to describe the emergence of a European administration

a) REGULATION BY NETWORKS

The use of the concept of “network” in the EU regulatory fields began with a diagnosis of the shortcomings of the harmonisation model. Dehousse, in particular, claims that the single market programme revealed the existence of a new kind of ‘regulatory gap’: although the EC’s competencies expanded into new fields of social regulation, the institutional constraints under which it was operating meant its achievements were often sub-optimal.

The existence of regulatory gaps and the reluctance of Member States to accept any substantial alteration of the balance of power in favour of the Community suggests that it is impossible to significantly depart from the system of decentralised implementation that has characterised the EC from the outset. The crucial question is thus how to reconcile the structure required to achieve the degree of uniformity necessary in a common market with preservation of the existing system of decentralised implementation. Theoretically, it must be ensured that the actors involved in the implementation process all behave consistently. This demands that those actors share information by exchanging comparable data and also by basing their actions on common definitions of a given problem and on the responses it calls for. The adoption of similar procedures as the basis for implementation actions should also be considered to be a condition for overcoming the regulatory gaps in the EU context. If these premises are established, it is not only a common reaction that becomes possible; confidence-building among national administrations also becomes achievable. In brief, the establishment of networks involving national and transnational actors is the appropriate form in which to develop common solutions to the problems emerging in the implementation phase.

By bringing together various groups of national experts and officials, comitology already represents a first step towards the construction of this kind of network. Many of the committees – which were initially created to monitor the decisions made by the Commission when it was given regulatory powers to implement Community legislation – have become suitable arenas for

(controversial) discussions between national officials and independent experts who seek common solutions. Confronting experiences certainly helps to understand the nature of the problems. It also overcomes prejudices and reluctant attitudes typical of those actors who view their actions as being limited to the national context.

Yet, as noted by Dehousse, the *ad hoc* nature of most committees (without common rules) is clearly insufficient to induce a true 'community of views', let alone a 'community of action'. Without knowing their rights and duties on the basis of a pre-existing legal framework, the actors involved in the network may behave carelessly as the non-contextual notion of their obligations and functions tends to diminish the level of accountability or, worse, to render them unaccountable. Equally importantly, the network must itself be given some stability, and this generally implies the creation of a structure. A stable structure will provide the necessary means by which to manage interaction between network actors.

As Dehousse stresses, the creation of the European agencies corresponds with the aim of stabilising partnerships among national administrations. By engaging national actors in networks operated by the European agencies, the implementation process is developed within a stable framework. This framework has common rules that elucidate the rights and duties of the participants. The response to the functional need to both insulate the Member States' actors from their national contexts, and ensure a common framework for the implementation process, has been attempted through the establishment of networks dominantly co-ordinated by the European agencies. The creation of a permanent technical and administrative secretariat represents an improvement in the stability of transnational partnerships, and (limited) additional resources have been granted in order to create the stability needed for the setting-up of more ambitious and longer-term programmes, particularly in policy areas in which the scientific role plays an important part.

As Dehousse further concludes, it is hardly surprising that a significant part of agencies' energies are directed towards the establishment of pan-European networks with the aim of uniting the various actors in a policy area; this seems only natural in light of their role in promoting greater uniformity of action in national and Community policies. In summary, these networks are given the function of not only providing the agencies with the information they need, but also of ensuring horizontal cross-fertilisation between national administrations.

b) AGENCIES AS PART OF A NETWORK INCLUDING NATIONAL AND EU REGULATORY AUTHORITIES

From this second perspective, agencies are themselves part of vast networks that combine national and EU regulatory authorities in the decision-making process. This is because the new European agencies have not been designed to operate in isolation, or to replace national regulators, but rather to act in the context of networks including national agencies as well as international organisations. As de Schutter *et al.* note, national and EU representatives and experts sit on the management boards and scientific committees of the new agencies. These committees formulate the scientific opinion of the agency and may perform other important functions.

The European Agency for the Evaluation of Medicinal Products (EMA) is one example of a European agency placed in a network with a supranational decision-making process. This agency provides the Commission with pertinent scientific information in the domain of the EC regime for pharmaceuticals. Its two scientific committees – the Committee for Proprietary Medicinal Products (CPMP), and the Committee for Veterinary Medicinal Products (CVMP) – are entrusted with preparation of the EMA opinions concerning issues it is asked to address (particularly in the arbitration of disputes between pharmaceutical firms and national authorities). Both committees consist of two members nominated by each Member State, so the Commission lacks representation on either of the committees. Each committee has also each created a number of permanent and *ad hoc* working groups.

The absence of Commission representatives clearly emphasises the functional independence of these committees *vis a vis* the Commission. This functional independence is not to be prejudiced by having committee members appointed by their national regulatory authorities.⁸ Indeed, it would be wrong to assume that, through their power of appointment, the national governments effectively control the pharmaceutical authorisation process at the EC level. By working together in a transnational network, the members of both committees are concerned with building an international reputation for good scientific work. The degree to which they reflect the views of the national governments is irrelevant.

⁸ Council Regulation 2309/93, OJ 1993, L 214/1.

⁹ Council Regulation 2309/93, OJ 1993, L 214/1.

Reverting again to the work of de Schutter *et al.*, this change in the incentive structures of regulators operating in a transnational network deserves to be emphasised by a sociological distinction between 'cosmopolitans' and 'locals'. Cosmopolitans are likely to adopt an international reference-group orientation; locals tend to have a national or sub-national (such as an organisational) orientation. Local experts therefore tend to be more submissive than cosmopolitan experts to the institutional and hierarchical structures in which they operate, as the latter can appeal to the standards and criteria of an international body of scientific peers. Using this terminology, it may be said that the EMEA is pioneering the transformation of national regulators from 'locals' to 'cosmopolitans'. It does this by providing a stable institutional focus at the European level and important links to extra-European regulatory bodies, such as the US Food and Drugs Administration.

The concept of network is therefore used to explain the dynamics and links established in a new form of co-operative decision-making at the EC level, with the case of the EMEA as a centre of scientific expertise providing an instructive example. By amassing national experts in its committees to provide the EMEA with the best scientific expertise within its field competencies, the agency becomes part of the broad network under which the EC regime for pharmaceuticals is placed. The EMEA is frequently labelled as a "centre of scientific expertise". However, from a legal point of view, the concept of *network* assists an understanding that, when providing its opinion to the Commission, the EMEA is a network comprising the national experts of its two committees. It is the placement of these experts in such a network that insulates them from eventual national prejudices or reluctances, and that thus ensures the quality and independence of the EMEA's scientific advice in the EC's pharmaceutical decision-making procedure. Capacity-building and reputation are ultimately both achieved through the network in which the EMEA is placed.

c) 'EUROPEAN ENVIRONMENT INFORMATION AND OBSERVATION NETWORK': A NETWORK CO-ORDINATED BY AN AGENCY

The European Environment Information and Observation Network ("EIONET") is an example of the incorporation of such a concept in European legislation. The establishment of the EIONET and the European Environment Agency ("EEA") responds to the need to turn a mass of fragmented data and data sources into a coherent information system. In contrast to the composition of the EMEA's Scientific Committee, the EEA's equivalent organ (assisting its Management Board and the Executive Director on any scientific matter concerning the EEA's

activities) comprises members designated by the Management Board. These members are selected due to their particular qualifications in the environmental field. This might already indict that environmental actors will be represented in the EEA procedure according to their expertise and concern towards the diffuse interests associated with environmental protection, rather than on the grounds of interests they claim to represent.

Having established a stable structure allowing for the production and management of environmental information, Council Regulation 1210/90¹⁰ is (as noted above) an innovative piece of legislation as it expressly incorporates the concept of *network*. Aggregating a myriad of partners, the EEA's EIONET is an active interface between 'information-producers' and 'information-users': data are collected and organised with a view to delivering high quality information to policy-makers and to the public. EIONET thus supports the development and implementation of environmental policies in the EU and national context. Underlying the selection and organisation of the environmental data included in the network is the idea of making the best environmental information available to relevant and/or concerned actors.

The EEA is entrusted with the task of co-ordinating the production of information within the EIONET. But co-ordination must not be confused with the exercise of hierarchical powers over the other bodies involved in the EIONET. The network has a heterarchical structure and, in the absence of a hierarchy inside the network, the only co-ordination instruments to which the EEA may resort are the annual and multi-annual Work Programmes. It is through these that the 'information production' task is stabilised under structured EIONET programmes and projects.

The most striking feature of the administration for environmental information is its unitary nature. The EC legislature has not distributed the relevant tasks among the various bodies, but has provided that information production should be performed by a 'network'. Although it does not define the term, the establishing Regulation refers to the 'network' as the bodies responsible for the collection and production of information as a whole. This is sharply different from the trademark and pharmaceuticals administrations, in which the relevant tasks are distributed among a number of variously inter-related bodies. In the environmental sector, the tasks are allocated to a unitary institution consisting of single units, that pre-dates

¹⁰ Council Regulation 1210/90, OJ 1990, L 120/1 and amending Regulation 938/99, OJ 1999, L 117/1.

the units themselves. They can thus even be substituted or cancelled without preventing the network from carrying out its action. It is remarkable that the establishing Regulation's only statement about the internal organisation of the network is its conferral of a co-ordination role on EEA; the role of other actors in the EIONET is not specified. This implicitly attributes the role of internal organiser of the network to the EEA.

Integrating different and structurally-separated actors in the network is an issue that confronts lawyers. The subjects inside the EIONET possess different efficiencies and expectations, and it is thus crucial that such a network is based upon a legal framework that allows for efficient co-ordination. Yet, the legal answer tends to be quite simplistic. It relies primarily on the assumption that unity is a property of the system; the integration between the single components is therefore assumed rather than achieved through their legal interdependence. Moreover, the law leaves wide scope for the EIONET's internal functioning; the co-ordination of the single units acting in its realm becomes a matter of self-organisation within the network.

As Chiti stresses, the EIONET's legal framework obliges a focus on the relationships developed between its different partners inside the network. It might thus be possible to recognise a dual level in the EIONET architecture:

- The first level concerns the function of information production. Under the establishing Regulation, this activity is articulated in three stages: data collection, data processing, and the production of information with specific qualities. As the distribution of the tasks among the various members is not regulated, the network is internally organised by the EEA. This occurs essentially through the annual Work Programme, which sets general objectives and targets, and identifies the single programmes and projects aimed at implementing the information function. The EEA becomes the EIONET's synergetic centre because it is given room to decide upon the criteria and forms of collaboration between the actors engaged in the network.
- The second level regards the exchange of information. The EIONET tends to rest on a much more informal basis at this level, without any institutional or hierarchical constraints being established towards the exchange of data and knowledge between its single units. The EEA's role as a central co-ordinator vanishes, and with it goes the sole level at which there is a model of a network without a centre.

Thus the EIONET definitely stands as an example of a heterarchical, open and somewhat informal network, established under a reasonably clear legal framework that has inclusively adopted the term *network* (even without defining it). A component of mutual learning is not excluded from such a network, even if its primarily legal objective is to allow knowledge to be presented by the environmental actors operating inside the network, and then filtered, processed and stored by the EEA. It would be useful to test, through empirical studies, the hypothesis of risking exclusion in such a network.

3. Conclusion

Lawyers do not always accept the network concept as an adequate basis for the analysis and interpretation of the systems managed and co-ordinated by the European agencies. Chiti, for instance, considers it to have a more descriptive than truly theoretical value. Even admitting its diffuse explicatory power, Chiti considers it to be lacking a genuine legal relevance because it has been used mainly to define 'European governance'. Indeed, a sense of vacuity may arise when one notices how the legal literature dealing with *network* resorts to this concept under a micro-level perspective. From a legal perspective, the way in which European agencies use the concept of network to make decisions seems to be dealt with without being structured by a precise theoretical notion of what is being discussed. It is thus used in a rather loose manner, as may be proven by the resort to this technique in the legislation establishing the EIONET.

For others, like Ladeur, *network* captures the demands and challenges posed by supranational decision-making and, in particular, by administrative decision-making at the European level. The complexity and uncertainty necessarily associated with the supranational decision-making process render it appropriate, from a legal point of view, to resort to the network concept to underpin analytically and theoretically new forms of decision-making based upon heterarchical co-ordination and linkage between private actors and institutions. From this perspective, a network must not be reduced to a set of negotiated relationships among the public and private actors involved in networking. According to Ladeur:

'(t)he interest in using the concept lies in the complementarity and interdependence of the components and a synergy effect, which produces new options which are accessible through the network, and are not the mere products of actors bargaining with each other.'

The decisive features become the production of information and, consequently, innovation inside the network.

Alexandra George, Pedro Machado & Jacques Ziller (eds.)

It may ultimately be argued that, beyond the use of the concept of *network* from a macro-level perspective, one may notice an implicit claim for a shift towards a new paradigm of decision-making, highlighted by the integration process at European level. From this perspective, the existing or prevailing paradigm of decision-making (grounded in the application of pre-determined general criteria and procedures) would be proven to be exhausted when confronted with the complex and uncertain features associated with the economic and social problems of the supranational decision-making process. It would thus require a shift towards a new paradigm of decision-making, structured upon a heterarchical and acentric network model.

III – LA REGULATION JURIDIQUE D'UNE ADMINISTRATION EN RESEAU : LE CAS DE LA COMMUNAUTE EUROPEENNE

Loïc Azoulay

Il ne s'agira pas d'une étude sous la forme d'un exposé démonstratif et suivi, parce que l'organisateur du séminaire nous a laissé la possibilité d'une intervention libre, qui permet de dégager des hypothèses et de poser une série de points et de questions.

1). Le « réseau » (*network*) est une catégorie étrangère au juriste, du moins au juriste formé au droit continental européen. Les idées que cette notion véhicule paraissent d'abord très éloignées des catégories qui nous sont communes. On peut même aller jusqu'à dire qu'elles sont contraires à la tradition politico-juridique européenne aboutissant à l'*Etat de droit* (volonté, représentation, exécution). Pour définir la notion de réseau, on peut en effet partir de deux idées simples:

a) - Du côté de la théorie du management ou des sciences de l'organisation : l'idée d'une organisation plurielle, complexe et décentralisée, c'est-à-dire de processus de délégation, de coordination et de négociation agréant tout un ensemble d'entités et d'organisations autonomes ;

b) - Du côté des sciences cognitives ou de l'intelligence artificielle : l'idée d'une interaction orientée vers la résolution d'un problème particulier (*problem-solving*), c'est-à-dire de processus d'apprentissage, de mise en valeur de compétences multiples et de performance.

Comment dès lors traiter en juriste une notion qui appartient d'abord aux sciences de la biologie et de la cognition avant de passer massivement dans les sciences sociales, économiques, politiques, managériales et administratives ?

2). Penser le réseau est pourtant aujourd'hui une nécessité. La croissance de la régulation du risque (*risk regulation*) a favorisé, au niveau national, communautaire et international, l'émergence de nouvelles formes institutionnelles organisées en réseau. Elles ont bouleversé la vision classique d'un système institutionnel et juridique centralisé et hiérarchisé. Au niveau européen, les idées de réseau sont au centre de la "doctrine" de la "nouvelle Commission". Il n'est que de lire les nombreux travaux sur la réforme de la Commission pour s'en convaincre. A un

niveau très général, mais non moins important, nous sentons, plus ou moins obscurément, que « la pensée du réseau » est la pensée du présent. Là réside une partie de la condition contemporaine. Il semble qu'on ne puisse réfléchir à l'ordre politique, social et juridique de nos sociétés complexes contemporaines sans prendre quelque chose de cette pensée. Il y a peut-être aussi un effet de mode, mais c'est secondaire. Il y a d'abord une nécessité de l'époque, qui fait primer le multiple sur l'unité, le réseau sur la hiérarchie, le processus sur la substance... Il y a une « pensée du réseau », et elle est « dominante ».

3). Il est donc légitime de se demander jusqu'à quel point ces idées, qui valent inconditionnellement pour tous les réformateurs inspirés par les pratiques et la doctrine du management, ont une valeur juridique : *dans quelle mesure le droit leur fait une place et où sont les points à partir desquels le droit ne peut plus suivre*. La question n'est pas simplement celle de la référence à la notion de « réseau » dans les textes juridiques (voir sur ce point aussi l'intervention de P. Machado). La question est : comment intégrer la pensée du réseau mais sans se résigner à une pensée servile du droit, sans réduire le droit à une certaine représentation des rapports sociaux, cette représentation fut-elle dominante ? Comment intégrer la logique du réseau sans pour autant abandonner une référence à l'idée d'intégration sociale qui se trouve derrière celle d'Etat de droit ? Autrement dit, comment reformuler une idée de légitimité ou d'Etat de droit qui ne soit pas un simple attachement à des concepts formels, à des traditions archaïques et à des schémas dépassés, incapables de rendre compte et de contrôler les évolutions actuelles ?

4). Le cas du système de la Communauté européenne semble topique en ce qu'il paraît servir de « laboratoire » pour des changements qui ont lieu aussi bien au niveau national qu'au niveau international. Est-ce que le juge communautaire a su prendre en compte la nécessité de voir émerger de nouvelles formes d'organisation en réseau ? Sans entrer dans la technicité juridique, on peut apporter un début de réponse en évoquant une question qui est au centre de l'idée de réseau : la délégation.

La délégation est une nécessité pour toute action en réseau. Mais l'équilibre institutionnel classique interdit en principe toute délégation de pouvoir. Le principe en a été posé dans l'arrêt *Meroni* du 13 juin 1958. Or, confrontée à la nécessité de prendre en compte l'importance de nouveaux mécanismes institutionnels, la Cour de justice, au lieu de s'en tenir à une approche strictement constitutionnelle, va adopter une approche fonctionnelle, l'appliquant aussi bien aux cas des agences, des comités ou des organes de normalisation. Ce qui est important ici, c'est que ces différents organes ne s'analysent pas comme des délégations directes faites par le

Conseil. Deux éléments ressortent de l'analyse menée par la Cour : i) il s'agit d'organes exécutifs qui dépendent de la Commission ; ii) ces organes mettent en œuvre une coopération entre la Communauté et les administrations nationales. Dans cette mesure, il ne s'agit ni d'*organes constitutionnellement indépendants*, ni d'*entités intégrées dans une organisation centrale* ; on se trouve ici avec des structures administratives et coopératives. Grâce à ce type de raisonnement, la Cour *fait le lien* entre des organisations que le droit formel ou l'équilibre classique auraient tendance à traiter comme des entités autonomes. Il est certain qu'en ce point décisif la Cour a fait appel à des raisonnements de science administrative ou de sciences organisationnelles (pour une référence explicite, voir les conclusions de l'avocat général La Pergola dans l'affaire *Commission/Lisrestal*, C-32/95 P, Rec. [1996] p. I-5380, note 20).

5). Sur cette base s'est largement développé un nouveau mode de gouvernement qui échappe à la conception classique de l'équilibre institutionnel. Dans la vision classique de la construction communautaire, il y a une division claire du travail entre le niveau communautaire qui est d'ordre essentiellement législatif et le niveau national qui se confine à l'application administrative des textes communautaires. Par rapport à cette conception, on peut évoquer trois genres de déplacements. Tous ces déplacements peuvent être ramenés à une même évolution : la logique du réseau combinant principe d'*innovation* et principe de *subsidiarité*.

- L'achèvement du Marché intérieur fait surgir un niveau intermédiaire qui n'est ni strictement législatif ni strictement exécutif mais les deux à la fois. Ce niveau prend place dans des contextes complexes et incertains où l'information est rare et où il est impossible de tout anticiper au stade législatif. Des ajustements sont sans cesse nécessaires et ils impliquent de nouvelles procédures et de nouvelles décisions d'où les enjeux politiques et de principe ne sont pas exclus. C. Joerges a forgé le terme d'"Administration politique" pour rendre compte des mécanismes institutionnels nouveaux qui se mettent en place dans la Communauté surtout à partir des années 90 dans tous les domaines de la gestion du risque (santé, sécurité, environnement, protection des consommateurs).
- L'organisation administrative classique est close, compartimentée et hiérarchisée. La « nouvelle Commission » apporte des éléments d'innovation. Elle n'insiste pas tant sur « l'économisation des ressources » et « la marchandisation de l'administration », thème longtemps cher aux théories du management public. Elle préfère insister sur « la mobilisation des ressources » et « la procéduralisation de l'administration », c'est-à-dire l'autonomie, la

mobilité et la flexibilité. A une organisation fondée sur l'autarcie et la hiérarchie, elle entend bien substituer une structure « réticulaire » et « hétérarchique ».

- La nouvelle administration communautaire ne procède ni par la politique « intergouvernementale », ni par la technique « supranationale ». Ces deux écoles ont en commun de se fonder sur les relations bilatérales et politiques entre la Communauté et les Etats (membres ou tiers). Or, ces relations sont aujourd'hui débordées par l'instauration de formes complexes de *partenariat*. Il y a une multiplication des connexions entre les différentes autorités compétentes, qu'elles soient communautaires ou nationales, publiques ou privées, scientifiques ou politiques : d'où le terme forgé par les politistes anglosaxons de « système multiniveaux ». Il ne s'agit pas du tout d'évacuer le rôle des Etats et de la « haute politique », mais de montrer l'intensité de nouveaux niveaux d'intégration de nature administrative, dans lequel l'Etat conserve sa place, mais suivant des modalités entièrement nouvelles.

6). Parvenu à ce point, il est permis de se demander si l'on a avancé par rapport au problème qui nous occupait. Comment tenir compte de l'analyse en réseau et pourtant maintenir un principe d'unification qui ne soit pas du type classique « Etat de droit » ou « représentation » ? Comment concevoir une intégration juste en dehors du cadre de la représentation ? Comment associer à nouveau, au sein de systèmes complexes (en réseau), autonomie individuelle et bien commun ? En termes plus simples : existe-t-il des garanties juridiques capables d'encadrer la « réticularisation de l'action » et la « multiplication des connexions » sans en réduire l'expression ?

7). La pensée du réseau a ses propres réponses à ces questions. Ces réponses sont connues. Il faut créer la *confiance mutuelle* (*trust*) entre les différents partenaires du réseau, sans pour autant « rigidifier » leurs relations. Un recours excessif au formalisme du droit et à la voie contentieuse est exclu. Le droit est générateur de rigidité alors qu'il faut privilégier la *flexibilité* et l'*efficacité*. On n'entend pas cependant sacrifier l'*équité*. Mais l'autocontrôle est toujours préféré à tout contrôle extérieur de type judiciaire. C'est pourquoi il est loisible de susciter la *formation spontanée de règles de conduite destinées à développer la loyauté des participants*. D'où l'ascension du principe de transparence, du principe d'impartialité ou de l'obligation de loyauté qui s'observe dans tous les domaines d'émergence des formes réticulaires d'organisation (aussi publics que privés).

8). Ces réponses sont-elles convaincantes ? En partie seulement. Pour faire face à cette situation, la Cour de justice a essayé de développer des garanties nouvelles. Elles se ramènent essentiellement à des garanties de procédure. C'est un moyen de concilier l'exigence de garanties formelles et le maintien du souci fondamental d'efficacité et de flexibilité. Ces garanties peuvent être rangées sous le principe général de «bonne administration». Elles sont approuvées et même apparemment intégrées par la Commission (voir l'intervention de A. Gil Ibañez).

Reste que ces avancées sont timides. Et, surtout, elles sont ambiguës. Dans l'un des jugements jugés comme les plus audacieux sur ce plan, la Cour fait bien voir cette ambiguïté. Dans le fameux arrêt *Technische Universität München* du 21 novembre 1991 (C-269/90), la Cour ne s'en tient pas, comme on l'avance souvent, à une consécration remarquable des garanties procédurales. Elle combine en fait deux types de raisonnements :

i) Dans les cas où la Commission dispose d'un large pouvoir d'appréciation ou d'un avis d'experts, il est vrai qu'elle doit respecter un ensemble de garanties de procédure (droit d'être entendu, principe d'impartialité, obligation de motivation). Telle est à première vue la signification la plus générale de cette jurisprudence. Mais ce n'est pas tout. En l'espèce, le raisonnement de la Cour est autrement subtil et complexe.

ii) S'il faut entendre l'intéressé en l'espèce, c'est surtout qu'il est le mieux informé. Il est le mieux placé pour aider la Commission à résoudre le problème posé par une matière complexe. Il ne s'agit pas tant d'une *partie à protéger*, mais d'une *source d'information*. La situation juridique ainsi créée n'entre pas dans la catégorie judiciaire classique de l'*audi alteram partem*. Elle serait plutôt régie par la formule médiévale régissant le droit des corporations : *Quod omnes tangit*. La formule suggère l'idée d'une participation d'associés sélectionnés à la résolution de questions particulières. Elle rejoint, de loin en loin, l'idée contemporaine du « bon management ».

On peut généraliser la formule. Le décideur a une responsabilité pour établir des relations de partenariat, mobiliser les meilleures compétences et favoriser les consensus. Pareille formule est très éloignée de l'idée d'intégration qui est au centre de l'Etat de droit.

9). A en rester là, on retire l'impression que la recherche du consensus est toujours plus forte que le souci de l'intégration. Il y a un privilège de la coordination efficace sur le souci de justice des acteurs. Dans ce cadre, la

participation est toujours liée à une compétence. La *reconnaissance* dans le réseau reste fondée sur la *connaissance* et la capacité d'apprendre. Il en résulte que si l'ouverture à de nouveaux partenaires n'est jamais exclue, elle reste pourtant limitée à des « citoyens actifs et éclairés ». Ainsi s'instaure un genre de dialogue entre « experts » s'informant réciproquement. On reste en tout cas sur la base de consensus acquis par l'expertise.

Tel est le schéma complet de ce qu'il convenait de développer : dans l'émergence de nouvelles formes en réseau, il apparaît que la dimension « cognitive » est toujours plus forte que la dimension « intégrative ». Or, cette évolution porte en elle de multiples risques. Il existe d'abord des risques *d'exclusion* pour ceux qui n'ont pas les moyens « cognitifs » de participer. Les soi-disant « ignorants » sont généralement ignorés. Des études empiriques menées au sein des organisations en réseau qui se développent au niveau communautaire ont pu le montrer. A cela s'ajoutent des risques de *dilution des responsabilités* découlant de la multiplication des contacts et des sources de compétence. Ceux-ci sont apparus clairement lors des crises sanitaires récentes qui ont éclaté en Europe.

Cette situation explique que toutes les questions se concentrent aujourd'hui sur l'idée de *responsabilité* dans les réseaux (voir l'intervention de L. Metcalfe). On assiste ainsi à un raffinement des théories politiques et managériales qui insistent sur la notion de responsabilité, laquelle est généralement définie par l'idée d'imputation.

10). Il faut essayer de repartir de là. Il ne s'agit pas de favoriser une inflation de la responsabilité en termes de réparation et de peine (tentation également contemporaine). Mais il faut trouver de nouveaux dispositifs ou de nouvelles formes d'encadrement des pratiques réticulaires. Dans cette situation, les moyens conceptuels du droit sont à redécouvrir. Ni la forme représentative du système politique, ni la forme technique du système économique ne suffisent pour rendre compte de ces évolutions. Pour le comprendre, il faudrait, d'une part, s'engager vers de nouvelles études de cas et, de l'autre, approfondir l'analyse théorique des notions fondamentales (réseau, responsabilité, intégration, innovation...).

Dans ce contexte émergent d'innovation et de consensus, il faut la peine d'invoquer une antique radicalité entendue en Grèce : « Il faut connaître que le conflit est commun, que *la discorde est le droit*, et que toutes choses naissent et meurent selon discorde et nécessité » (Héraclite, Fragment 80).



IV – EUROPEAN AGENCIES: A LEGAL FORM FOR NETWORK MANAGEMENT?

Edoardo Chiti

I would like to begin with some introductory remarks. First, despite the many and varied stimuli in relation to the theme of networks and European agencies in yesterday's discussion, I will focus on certain specific aspects only. In particular, I will concentrate on those aspects connected with network functioning. Second, I will not provide any summary or description of what European agencies are; you all know them very well and Pedro Machado has provided a very clear picture of this emerging Community administration. Finally, following literally Professor Ziller's instructions, I will only make a number of statements that should introduce the discussion.

I) The systems managed or coordinated by the European agencies are a unitary phenomenon from an organizational point of view. They vary considerably as to the functions they perform and the complexity of their systems (from simple cases, exemplified by the trade mark administration, to very complex ones, exemplified by the environmental information system). All of them can be described as examples of network administrations, in the sense that they are all administrative systems providing a functional integration of structurally separated bodies (that is, bodies belonging to different legal orders and having different legal nature).

II) These structurally fragmented and functionally integrated systems respond to a coherent legal design, in the sense that the functional integration is thought to be an objective to be achieved essentially through the same legal pattern.

In particular, the inter-dependence or inter-connection between the various offices of each system is realized through a combination of two legal instruments. First, the establishment of a European agency, which can be seen as a composite administration (in the sense that it puts together national and supranational public authorities, and institutionally acts as the co-ordinator of the network). Second, the establishment of a wide web of legally formalized organizational relationships, especially through the codification of administrative procedures.

As for the structure of the European agencies, these bodies are administrations characterized by a mixed composition, in the sense that their internal structure is such that all their internal offices (mainly, the committee and the management

board) are designed as instances of coordination between national and supranational authorities (the Commission and the competent national authorities).

- As a consequence of this, the European agencies are not at all – as repeatedly stated in the Commission's rhetoric – a form of externalisation of duties from the Commission to autonomous bodies. They should rather be regarded as highly institutionalised forms of co-operation between national and supranational authorities. (Moreover, we could give a more accurate reading and deconstruct this coordination function: there is coordination between national and supranational public bodies, but also coordination between public interests and private interests, and coordination between politics and administration.)
- This mixed composition also allows us to define, at least at a general level, the role of the agency within the administrative system. The European agency, in particular, operates as the coordinator of the network, although this role is obviously performed using a wide number of techniques – mainly procedural arrangements – that it would be useless to describe here.
- For what concerns the attributions or tasks of the European agencies, We can assert that they vary from case to case, but a common functional core can be found in coordination. In fact, the various procedures envisaged by the relevant regulations require that the European agency intervenes in all relevant proceedings and performs functions previously fragmented among a number of bodies.
- With respect to the web of legally formalised organizational relationships, it should be noted that these relationships have very different nature, although relationships of reciprocal auxiliary tend to prevail.

They are almost always procedural in character; that is, they are provided by procedural rules. (A remarkable exception is the EIONET, in which the relationships are not established by the procedures.)

They can be considered to be the true foundational structure of the organizational system: the administrative system can actually function because a European agency is established, but also – and above all – because a variety of legal relationships between the various bodies are envisaged by the Community legislation.

As a whole, the system should be considered to be the functional integration between the various bodies that results from the combination of these two elements

(the establishment of the European agency and of this wide range of organizational relationships).

III) The legal structure that I have referred to does not itself ensure that the system will operate rationally and coherently. To put it differently, the legal structure does not fully explain the rise and maintenance of order within the administrative system. In fact, a dispersion of elements within the system is observable. This is a tendency towards a state of disorder, which escapes the formalizing and structuring capacities of law.

First, the systems coordinated or managed by the European agencies seem to be unified by the object of the administrative action. Yet, a second look shows that the "object" cannot be considered to be the unifying factor of the administrative system, because it fragments into a multiplicity of elements. Thus, to provide an example, the theme of environmental protection, which is the administrative action regarding environmental information, can be constructed within a variety of theoretical models, of which the correction of the market and the maintenance of an ecological equilibrium between living beings are only the two most obvious instances. In addition to this, the conception of environmental protection varies greatly according to the perspective of the actor. The EIONET assembles consumers, private bodies (such as laboratories), the public offices responsible for the management of emergencies, the public bodies responsible for industry, and so on; and they unavoidably design environmental protection in different ways. What I am trying to suggest, therefore, is that the organizational and procedural system (at least in my case-studies) is not the instrument for translating an object into empirical action, but a space in which this object gets fragmented and lost in a plurality of themes. Thus, law distributes the various tasks concerning the achievement of a certain goal among a plurality of offices, aimed at the, but the real interaction between these offices cannot be fully structured by law.

Second, the systems coordinated or managed by the European agencies are a perfect example of how a number of different points of view – the technical point of view, the political point of view, and so on – can be combined in the same legal procedure. The procedures of the pharmaceutical sectors are very clear and telling. Nevertheless, a more accurate analysis shows that the perspectives are much more complex than those identified in the procedures, and that the systems cannot be considered to be a unitary (though complex) pattern of interpretation and evaluation of facts. For example, the point of view varies according to the institutional position of the office: it is not the same if information is provided by a public hospital, a private hospital, a prison, a court or a police station. The point of view

varies also according to the position held in the information chain: sender or recipient of information, sender of aggregated data or of data to be aggregated, recipient of empirical observations or of general/theoretical hypotheses, and so on. This confirms my statement concerning the object of the administrative action, in the sense that the administrative system proves to be a space of dispersion and fragmentation. Law provides a formal chain between different bodies. However, their real interaction follows a different path.

Third, the systems coordinated or managed by the European agencies seem to be unitary, at least in the sense that the administrative action assumes or creates a number of harmonized notions and an overall conceptual architecture. For example, in the environmental information chain, the various bodies of the EIONET have to harmonize the different notions involved in performing administrative action (for example, what is meant by "water quality"). But this is simply not possible, because notions of this kind cannot be unitary. For example, the notion of "pollution" varies according to whether the office making reference to it is an observer, a polluter, an office using probabilistic patterns or empirical models, and so on. Moreover, notions are, by definition, continuously re-written in the information chains (because they are formalized, because they are put into the context of other notions, and the like). Thus, I would like to underline that, the organizational and procedural system is not the instrument to build a conceptual framework – a deductive conceptual architecture – but a space of dispersion. The legal provisions provide a totally different kind of order, the formal order, of combination within structured procedures.

IV) One cannot avoid analysing this level of the organizational phenomenon. If it is just ignored, a crucial dimension of these network systems will be missed. (We cannot say that this level is not interesting from the legal perspective because the legal structure of the system – European agency, plus a number of legal relationships – depends on this level).

V) The fifth statement consists of a set of questions: if, at this level of analysis, the system gets fragmented, is this dispersion and fragmentation irreversible? And, therefore, although they are rather sophisticated from a legal point of view, can the systems function in reality? Or, in certain conditions, can they become regular and generate a kind of order?

I do not have an answer to these questions. Perhaps one could say that this is precisely what macro-management (to use Professor Metcalfe's expression) is about.

I would like to refer briefly to Professor Metcalfe's work in this field, and particularly to two excellent papers: the first presented at the Robert Schuman Centre last year and entitled "European Governance and the Structural Inefficiency of Capitalism", the second on the European Agency for Pharmaceuticals. I would not like to make a poor summary of the ideas expressed in those articles, but it seems that the central idea is that pluralistic systems are problematic and certain management capacities (macro-management) are required in order to ensure effective integration (order) in these systems.

I will not develop this point because it has already been discussed during this workshop. From my perspective, it is particularly interesting that Professor Metcalfe's research (based on empirical evidence) shows that, although management may be very difficult, these polycentric (turbulent) systems are not inherently destined to disintegrate. They can work effectively if certain management capacities are available and correctly used. So, perhaps the solution to the kind of problems I see is precisely macro-management.

There is no doubt that there is a functional complementarity between law and management, in the sense that the legislative framework I have described and the organizational processes that we can shortly define as public management operate in the same direction. That is the direction of the stability, integration, and order of the network. But perhaps the combination of the kinds of (legal and management) techniques is not able to ensure the stability that is necessary to the proper functioning of the system. I would prefer to leave this to the discussion.

VI) I have thus far addressed the dynamics of the networks in functional, operational terms. But there is also a conceptual, theoretical dimension in the issue. How can we define networks in conceptual terms? Can we refer to the legal concepts of "contract" or "association"? Can we say that the notion of "networks" has an explicatory power, even in legal terms?

The problem is that one should be able to develop a conceptual framework that explains complex systems whose order is the combination of a) a legislative framework, b) a number of management processes, and also – provided we can argue this convincingly c) a discursive practice. I do not think it is an exaggeration to say that, at the end of the day, our problem (and challenge) is the development of an administrative theory in multi-dimensional systems (a theory of fragmentation?).

This is certainly not a task to be solved this morning. But I think it is important to stress that the complementarity between public law and public

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management (as well as other related disciplines) is not just an operational complementarity that discusses how to get a network to operate effectively. It is also a theoretical complementarity that concerns the notion of this kind of polycentric system.

V – DISCUSSION

Edited by Pedro Machado, Alexandra George and Jacques Ziller

Understanding what networks are

When talking about networks, there are at least 3 variables that might be concerned:

i) To what extend, when thinking about network, is it important to know whether one is dealing with the reason for establishing the network, the binding nature of the network, the existence of a voluntary or mandated by legal obligation, etc.?

ii) Another variable is that of incentives. If the network is of a mandatory nature, the incentive structures might be very different in different areas. The structure of incentives affects the co-ordination problem. To what extent must mandatory network elements share power, to what extent is being together a constraint on the development of power? This is crucial to understanding the co-ordination.

iii) Finally, the variable regarding the geography of networks. It is not just a centre-periphery relation, but also a question of power and responsibility allocation. There is an implicit assumption that the geography of the network was distributed in terms of power, or an implicit centre. Power can be allocated unevenly between the nodes of the network, in which case it is much more difficult to set up the incentive structure correctly.

Governance framework

Reverting to the case of network management, the crucial question becomes: how it can be designed in order to achieve the desired results? More precisely, how can leverage be achieved within a network? It is necessary to understand the dynamics of the system and to identify the leverage. But to accomplish such a goal, it would be necessary to hold a strategic position within the network that will allow one to find leverage and use it.

Talking about public management as a network means looking at organisations that can provide services. Because of this possibility, public managers centre their questions on the kind of governance framework within which their organisation or network can operate. How would the rules of the game be defined for the service provider (assuming a government organisation is providing the services)? From a public management point of view, *operational governance* must be ensured. More precisely, rules must be established that allow assessment of whether the organisation is doing what it should (that is, an audit). But an important public management distinction must be taken into account. The adoption of the 'rules of the game' is linked to the *strategic function*. Separate from this is the *regulatory function*, which refers to the governance process itself (not the operations).

For instance, the European Agency for the Evaluation of Medicinal Products (EMA) is part of the system of regulating the pharmaceuticals industry. It does not perform the whole task because national agencies become involved in the regulatory function. Although it has a relationship with the drug companies, the professional autonomy of the agency is safeguarded. The EMA does not make decisions; it tests drugs and gives advice to the Commission about whether or not they are safe. The Commission is free to accept or disregard the advice provided by the agency. If the Commission refuses the advice, it is obliged to establish a committee to evaluate the drug (which will probably involve the same people as the agency committee). So the regulatory system has its 'rules of the game', without any derogation from the legislative acts in force regulating pharmaceuticals.

It is commonly assumed that networks are related to the absence of rigid hierarchies. If a feature of networks is the flexibility and informality of their processes, public management addresses the crucial question of responsibility. It is essential to define reciprocal responsibilities. To put it differently, the responsibilities of the different organisations involved in a network must be defined. A legislative framework explaining the roles and responsibilities is therefore strongly needed. Otherwise, the management deficit will persist at the EU level, especially as it has been possible to talk about legal competencies without saying what they require in terms of capacity.

The other crucial issue that is severely neglected in the EU is the design of accountability. It is vital that the organisations involved in networks achieve the objectives described in, for example, the working plans, and that they simultaneously provide constant information about the activities to either an external (supervisory) organisation or to concerned outside actors. Part of the

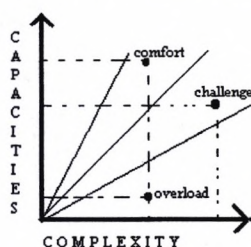
effectiveness of the accountability system of an organisation like the European Agency for the Evaluation of Medicinal Products is that it receives constant feedback from the doctors who are prescribing drugs, as well as from patients.

This said, where is the complementarity between public law and public management? Provided that lawyers transcend their classical role of establishing an authoritative hierarchical framework, they have a fundamental role in designing the accountability framework within the network, while public managers have a fundamental role in the development of the network.

Managing capacities

Managing capacities are widely distributed in networks, and it is rare that one can claim that an organisation is managing a network. It is more a case of a centre/periphery, but without being established in a hierarchical framework. The problem is ensuring adequate performance in such an organisational framework. If there is correspondence between capacities and complexity, good performance tends to be ensured (*Les Metcalfe*).

One gets into an area of *challenge* if there is something new and different, and any organisation therefore has to make an effort to maintain its standard of performance. The only way in which to return to equilibrium is to build capacities.



Comfort is the stage at which the network can cope without difficulty with the fulfilment of the tasks that justified its creation and design. At the extreme, *overload* arises when the network faces severe stress.

A well functioning network minimises the co-ordination load. In order to achieve this aim, one should try to divide the labour between the organisations involved so as to minimise the amount of interdependence. Each has its own job and they should avoid interfering with each other as much as possible. There are

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areas of overlap and interdependence that can be sorted out through communication; there are information flows throughout the network without a centre. And to ensure this, diverse organisational tools are brought into the network (such as the definition of *working programmes*, which defines what is going to happen). Thus, co-ordination is a dispersed function. There is not simply one locus of organisation. If any organisation in a network attempts to assume power or organise control, it will be strongly opposed.

VI – WORKSHOP PROGRAMME

The titles are not related to papers, they are only an indication as to the direction in which statements are supposed to lead the workshop's participants; timing is only indicative, as the biggest part of the workshop should be devoted to discussion.

FRIDAY, 11 MAY

Welcome and Introduction, Prof. Jacques Ziller, EUI/Florence

SESSION 1 : Law and Public Management: Getting to Talk to Each other

Introductory statements:

Law Conservatism and Innovation: a Management Perspective, *Prof. Les Metcalfe, EIPA/Maastricht*

Public Management from a Lawyer's Point of View : an United States' Perspective, *Prof. Peter Strauss, Columbia Law School/New York*

Discussion

SESSION 2 : EU Law and Public Management

Introductory statements:

European Administrative Law and Public Management: mutual exclusion or mutual learning? *Dr. Alberto Gil Ibañez, Jean Monnet Fellow EUI/Florence*

La régulation juridique d'une administration en réseau : le cas de la Communauté européenne, *Dr. Loïc Azoulay, Université de St. Etienne/St. Etienne*

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SESSION 3 : Law and Network Management

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Pedro Machado, EUI/Florence

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SESSION 4 : Managing Networks in the European Union

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Edoardo Chiti, Università di Lecce/Lecce

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VII – LIST OF PARTICIPANTS

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