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PRINCIPAL PAPER

I

Challenges, demands and responsibilities of public managers today and the role of the Supreme Audit Institutions (SAIs)

THEME IA - *Challenges and demands faced by public managers today*

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1. Introduction

This paper aims to identify points for discussion under theme 1A of the VIIIth EUROSAI Congress: Challenges and demands faced by public managers today.

The paper's topics are presented in chapters which provide a structure for the country papers. Each chapter presents the topics and formulates additional questions to guide Supreme Audit Institutions (SAIs) when writing their own country papers. Chapter two will provide background information on the main challenges indentified in this paper. Chapter three will describe the dilemma caused by these challenges. We have called this dilemma 'the conflict', to provoke and stimulate discussion. Consequently, chapter four will look at the values involved in this conflict. These values are the conditions that have to be taken into account when solving the dilemma. Finally, chapter five will introduce the tools needed to reach a sustainable solution.

This principal paper should be seen as a basic paper that introduces the theme and invites all EUROSAI members to write a country paper. The country papers provide the background information to carry out a comparative analysis, which will lead to the publication of a discussion paper. This discussion paper, together with the underlying country papers, will be the starting point for the discussion of theme 1A at the VIIIth EUROSAI Congress in Lisbon.

The aim of the discussion in Lisbon is to share experiences in order to increase knowledge and understanding of the context in which we carry out our work as SAIs.

2. Background to theme 1A

The idea presented in this paper, i.e. to judge a challenge on its merits and not just on rules and procedures, asks for a fundamentally different approach by civil servants and auditors alike. An important factor in achieving this other approach is a transformation of the culture of civil service, government and control structures. Civil servants may need to learn (again) to question their observations, to question the policy and to question the existing laws, rules and procedures.

This paper is not trying to give answers to a particular problem; its aim is rather to do the opposite by raising more, sometimes even provocative, questions. The real challenge for civil servants today is not a financial crisis or an ageing population. The test is how to respond to these challenges in a rapidly changing society, which expects problems to have been solved yesterday rather than today.

Over centuries, the perception of law and justice and at the same time law and justice itself has continually changed. This process of continual change of law concerns the society as a whole as well as each individual who reflects the perception through its relations with society and its values and norms. This process also incorporates supervisory bodies like courts, executive governmental agencies and also SAIs. These supervisory bodies provide for the law in terms of regularity to be concisely implemented and followed in various circumstances. The key question is whether these supervisory bodies can respond to the challenges of a developing society that demands adequate actions in order to protect its ethics, values, and norms.

Nowadays, legal norms can hardly respond adequately and on time to the social challenges we face. Legal norms lagging behind means that they may become less respected and not well understood. Presumably, these norms can consequently also be perceived as loose and "less legal", of which the – often difficult - harmonisation process of national legislation with the European Union Acquis Communautaire is an example. This is also the reason that formal legal positivism cannot be an exclusive guide to the supervisory bodies. Additionally, legislation can also be a product of agreements and lobbying of various interest groups (as well as capital) that sometimes does not reflect the expectations of the society or does not satisfy the needs of the community. Therefore the supervisory bodies find themselves in two minds: whether to follow the old principle "dura lex sed lex" (the law is harsh, but it is the law) or to rethink the legality concept, beyond a formalistic perspective. Is it still wise to defend the legal norm and compare it with the current situation even though the norm sometimes is not sufficient or possibly even counterproductive? We are faced with the question whether legal norms, justice and

regularity have the same meaning. These are just some of the issues that, even though they can not be solved immediately, are nonetheless very important for the future, mainly for the functioning of supervisory bodies.

From the previous it follows that justice can be blind when we equate it to the legal norm. This makes it all the more necessary to open her eyes. For this purpose we as public managers need to explain the law according to its purpose, within context and based on principles and objectives, instead of isolating it from the rest of the legal norms related to society.

3. Facing the challenge is solving the conflict

3.1. Rapid changes and slow rules

We are living in a rapidly developing society. The internet has connected the world, and enables news and information to be provided on demand. These rapid developments require a government that is able to cope with them. A classical reaction of central governments to questions and challenges of society is to create new rules and procedures and to appoint new responsibilities. The challenge for governments and public managers is that reality often does not correspond to the rules designed to meet the expectations and needs of society. Rules are fixed and challenges are rapidly changing. Fixed rules do not meet present challenges, but this does not mean that rules are obsolete.

> **Example: Crisis in the banking world**
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> An example of rapid changes demanding a quick response from the government was the crisis in the banking world. A sudden downfall in trust in the creditworthiness of some banks led to major problems in the banking business. National governments had to act fast to prevent bigger problems. The national governments would not have been able to act so fast if they had followed the rules.

The real challenge for governments and public managers is to deal with a question or challenge from its own merits and not from the rules. The rules are still important, but if a challenge can be met using methods not fitting within the rules, this does not mean that the solution was wrong, rather that the rules have to be discussed and possibly adjusted.

Example: The ash cloud of the Eyjafjallajökull volcano
Take for example the volcanic ash cloud from the Eyjafjallajökull volcano in Iceland which erupted in April 2010. Rules were in place to regulate when planes should be grounded in cases of emergency like volcanic ashes. However when the situation changed, there was confusion on how to proceed. There was no system in place to adapt to the new situation. Furthermore, the focus was on national states, whereas the problem was international, but also commercial (to mention another point of view).

3.2. The conflict

When allocating public funds we can detect the conflict, which is mainly a conflict between formal rule-based principles and other principles like economic ones. There can be circumstances where other interests are "sacrificed" in order to satisfy the formal procedure.

3.2.1 Legal drift

When a new rule is introduced we may assume that the intention of the lawmaker to cover a certain problem is good. The rule more or less covers the problem in society. Nevertheless, with changing circumstances the law may increasingly drift away from its mission, i.e. the problem it was supposed to solve. The introduction

of new developments in the policy field may cause a considerate mismatch of the law with the reality.

The State is limited in allocating public funds mainly by formal procedures but also in order to protect the equality between those who cooperate with the State. Nevertheless the allocation of public funds must follow not only the principle of formal rules but also that of other principles, thus a conflict may arise.
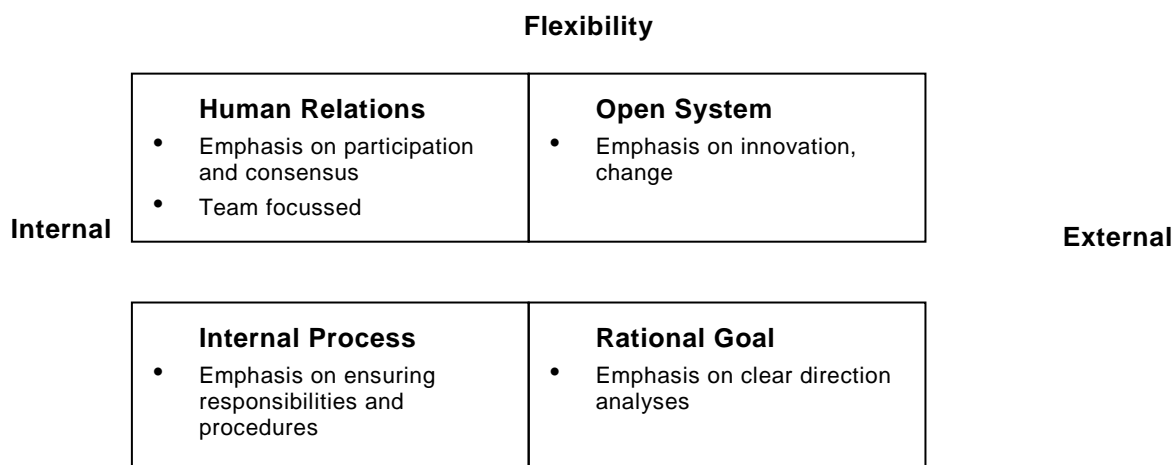

Example: Public procurement implementation

When implementing public procurement, contracting authorities especially understand this conflict. In some cases, due to formal reasons, an offer must be rejected. The offer might for example not be regular due to a missing non-essential document. This missing document does not negatively impact on the good performance of the work but has only been requested by the contracting authority for administrative reasons. The particular offer is most appropriate according to tender documentation criteria. However, such an offer must still be rejected in order to abide with the formality principle in terms of the practice of control institutions, though a decision in favour of this offer would be in accordance with the basic principles of economics.

3.2.2 Rules do not reflect the complexity of reality

In general, governments are shifting from internal oriented, control focussed bureaucracies to more flexible and open systems among other things because of the accessibility of information and developments in information technology. Another factor causing this shift is the rapidly growing group of better informed civilians, which of course also derives from those technical developments. The figure below shows the four quadrants of the competing values framework. At the moment most

governments are in a migratory process from bottom left, an internal process model, to top right, an open systems model, to face the complexity of society.

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Flexibility

Human Relations • Emphasis on participation and consensus • Team focussed	**Open System** • Emphasis on innovation, change
Internal Process • Emphasis on ensuring responsibilities and procedures	**Rational Goal** • Emphasis on clear direction analyses

Internal   **External**

Control

Source: Robert E. Quinn, 1988

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Often the classic governmental response to a challenge is to focus on the internal process; i.e. to develop more rules and to determine who is responsible, instead of being responsive to face the challenge.

3.3. Questions for country papers

It is the question whether the described challenge and the conflict resulting from it are being recognized by the members of EUROSAI or not. Therefore the members are kindly asked to answer the following questions in their country papers.

1. Please describe the challenge of rapid changes in society in your country. Can you give an example of a quick response by your government, either based on formal rules or otherwise?

2. How does your government recognise the problem of rapid changes and long lasting procedures to new and proper legislation? Can you give an example?
3. To which extent are new rules a solution to these challenges?
4. If applicable can you describe your government's position in the within the model (Quinn) described above?

4. Facing the challenges: under what conditions?

There are several important values for public managers when they face challenges. These values are, so to say, the conditions to be taken into account. These conditions are described in this chapter. The question for the EUROSAI members is to what extent values are being taken into account when public managers handle the challenges they face.

4.1. Transparency

Transparency means that relevant information is freely available and directly accessible for stakeholders. Decisions are preferably made, applied and preserved by agreed procedures. Governmental agencies taking and also executing these decisions are, at least in theory, better equipped to be transparent because they have access to the information covering the whole process and therefore control to which extent they are accountable. In other words, they decide how much information they are willing to share.

In case of new policy developments it can be difficult for a governmental agency to introduce new rules by using existing procedures, especially in advance. The complexity of the situation may compel the decision maker to experiment, or to take little steps and adjust the rules on the way. This may lead to the threat that parliament is inadequately informed and therefore lacks the influence on the policy that it should have.
Also when other parties, such as private parties, are involved in the execution of the policy, its complexity increases and responsibility for the policy diffuses. In such a

situation the government often depends on the goodwill of the private party to provide openness.

4.2. Integrity

Fraud and corruption, and ways to prevent and address them, are issues of current importance in every country. A number of countries have chosen to combat fraud by means of a rule-based strategy. They detect fraud and take repressive measures. Other countries prefer a more principle-based approach to fraud and concentrate on preventing its occurrence. Prevention policy places different demands on management. Public managers must actively propagate integrity policy and set the right example themselves, for example by protocols for politicians and public managers.

4.3. Sustainability

A sustainable economy and a sustainable society are essential to combat the global crisis. Climate change, food and energy security, public finances, the economy, the environment: fundamental change is needed in all these areas. The current generation no longer can afford to think that later generations will solve the problems that are being created now.

The current economic crisis has weakened the financial strength of European countries at a time when substantial investments are needed to ensure necessary sustainable solutions. On top of that, there is the danger of little international coordination. To ensure a sustainable economy and a sustainable environment national measures must be consistent with international measures and businesses spread all over Europe need to compete in an international level playing field.

States must be capable of:
- developing and adhering to long-term visions, preferably in cooperation with other states;
- structurally aligning policy to sustainability in economy and environment;

- reaching agreements with businesses, citizens and NGOs regarding their responsibility for sustainability in economy and environment;
- developing new indicators for sustainable development; national income and economic growth are now inadequate as key indicators of sustainable prosperity.

4.4. Responsibilities

In the political arena sometimes political decisions nowadays are taken lacking a legal basis, for example in spatial planning. It may also be that there is a combined action in the decision making procedure between public and private parties. To complicate matters further, there often is also an international dimension. This means that ministers, responsible for a certain policy area, are less able to take full responsibility for these decisions. However, the level of democratic control should be maintained and the national parliament must be able to execute their democratic task. This has consequences for the responsibilities of the public manager. The public manager must be equipped with the necessary knowledge and responsibilities which enables him to prevent his minister from making decisions which are wrong and irreversible or in any case supports his minister to fulfil his responsibility.

4.5. Questions for country papers

5. What is your opinion on the described values: transparency, ethics (integrity and sustainability) and responsibilities? Are there other conditions to be taken into account?
6. To what extent do the conditions apply to the situation in your country?
7. To what extent are these conditions taken into account when decisions are made?

5. Tools to face the challenges

5.1. Education

The role of education could be essential. A cultural change in an organisation as big as the civil service might not succeed without changes in the education system. Over the recent years much more attention has been paid to lifelong learning and training at work to keep skills up to date and to equip staff with new skills. All this is done to ensure that staff is up to speed with new developments. However, one might also want to consider changing education at an earlier level, e.g. while at university or even earlier at secondary or primary school. The challenge of judging a policy on its own merits and not just on the rules demands a different mindset, a different cultural approach.

Questions:

8. Do you think education can contribute to facing the challenges of public managers?
9. In what way could the education system be changed to ensure that civil servants, both those who are already part of the workforce and those who will join in the near future, meet these challenges?
10. Does your SAI have specific demands in this context?

5.2. Legal framework

> **Example: Obsolete rules**
>
> A group of Members of Parliament in France has put a bill on the table to remove an obsolete law. Women in Paris are not allowed to wear trousers, according to a rule set by the Paris police chief that came into force in 1799. In 1892 the law was relaxed to allow women to wear trousers while horse-riding and in 1909 a similar exception was made for women riding or holding a bicycle. In 1969 the Paris council requested the police chief to

cancel the rule, however the police chief thought it better to maintain as: "It is unwise to change texts which foreseen or unforeseen variations in fashion can return to the fore." In 2003 another attempt was made to ban the rule, however the then minister for gender equality responded: "Disuse is sometimes more efficient than (state) intervention in adapting the law to changing mores." Interesting to note is that policewomen in Paris are obliged to wear trousers, therefore all of them are, in fact, breaking the law, one way or another.

One of the issues that education needs to pay more attention to is the present legal framework. This framework needs to be questioned. It is impossible to capture every behavioural act, be it by a citizen, a company or the government, in a legal framework. The law is always one step behind. Therefore a certain set of laws or rules, basically formulated, is necessary. Within the law, however, there should be room for interpretation, to be able to judge a case on its own merits.

Of course, this provokes a new challenge, namely how to ensure that everybody is equal before the law. Equality before the law is also not possible, however, in the current system. At the same time, with extremely detailed laws this is equally impossible, as there is always a loophole to be found. After all, the law does not change, but the circumstances in which it is upheld do.

Questions:

11. How can the legal framework cope with the rapidly changing society?

12. Please state examples from your country in which the legal framework slows down the policy, or equally important, 'accelerates' policy development?

5.3. Institutional framework

When approaching a policy from its own merits it becomes clear that the usual framework of governance no longer applies. Instead of this institutional framework, public management should become much more flexible, so it can more easily adapt to sudden changes. It needs to be shaped and reshaped according to the upcoming needs of society.

Furthermore, managers within the civil service need to be responsible for their policy area, which includes giving them more freedom and responsibility including a set budget. As has been argued above, only a basic set of rules needs to be set up front, the rest is carried out by interpretation of the relevant legislation. Managers need to learn to trust. Of course this does not mean that accountability is no longer necessary. Accountability is still essential in a system based on trust, however the focus of accountability changes from rule-based to principle-based.

Example: Flexible ministries

In 2006 the Dutch government introduced a new department for Youth and Families. This department aimed to include policy areas from the fields of education, social affairs, health, justice and home affairs. The intention of the department was to create a programme department, ready to deal with a limited group of citizens. The idea was that the new department could respond to challenges in society much more rapidly as it would have an integrated view of the problems. Unfortunately, the old structure was also maintained alongside the newly created department. This made the new department more of an overarching coordinator without any real responsibility, as it would be constantly challenged by the other relevant departments, who still had their specific expertise. It was however a first, small step towards a more flexible government, that can respond more rapidly to problems emerging from society.

Question:

13. What is your experience with more flexible 'programme-oriented' ministries?

5.4. Responsiveness and participation

Society needs to be aware of the functioning, responsibilities and accountability of government. There needs to be a clear picture in society of what people can expect of their government and civil servants. At the same time the public manager also needs to be aware of the wishes of society. This requires a participatory and responsive government. Participation and responsiveness are two of the eight characteristics of good governance[1] declared by the United Nations which become ever more important.

Example: Informing the public
The public is the most important force when reporting on the way the government operates, since the public is deciding on the electoral outcome.
The media play a key role in informing the public, therefore SAI Slovenia organises press conferences when issuing more important audit reports, and the head of the SAI is always ready to respond to questions of journalists.

Questions:

14. What is the experience in your country:
    a. To what extent is society aware of the tasks that the government can and can not perform?
    b. How does your SAI promote awareness of the tasks of government?

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[1] The other six principles of good governance are: 'Transparent', 'Accountable', 'Effective and Efficient', 'Equitable and Inclusive', 'Consensus oriented' and 'following the Rule of Law'.

15. Do you have examples of a principle-based intervention of your government which has been carried out in a responsive and participatory manner?