

Fitting policy tools to context and motivation

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*This is an extract from **Experience – some reflections on how training can help develop administrative capacity** which I wrote for the EC project in Bulgaria in 2008. The table on the last page is my main claim to originality¹.*

17.1 Why do programmes fail?

One of the assumptions which seem to lie behind the basic design of this project is that any problems in implementation and enforcement are caused by the poor understanding of state officials of the relevant technical parts of the *acquis*. And that training is, therefore, the answer. Clearly, however, that is only part of the story. Failure to achieve the intentions of specific parts, for example, of the Directives on water standards² is generally caused by lack of financial resources to invest in the necessary infrastructure. And failures in implementation can and do come from such factors as –

- Lack of political will
- Poor management systems
- The centre flooding regional and local officials (“street bureaucrats”) with so many instructions as to create serious “job overload”

The box below sets out the preconditions for effective implementation and enforcement of any new policy.

Box 5; what do officials need for effective implementation³?

- Clear statement of political priorities
- Supported by the budgetary structure
- A communications system which ensures that those responsible at regional and local level for implementation and enforcement are aware of the priority *acquis* obligations
- A middle (regional) management system which identifies roles and tasks which give guidance on and support for these new obligations
- Formal and informal systems of training to reinforce this – and which help officials develop the relevant skills for achieving compliance
- Coherent enforcement systems which work

This does give us a checklist of a sort. It is reasonable to suggest that the absence of these features will lead to poor implementation. That’s why we suggested the introduction of compliance strategies in section 2.4 below.

¹ After I drafted this, the NAO produced the very useful **The Use of sanctions and rewards in the public sector** - <http://web.nao.org.uk/search/search.aspx?Schema=&terms=sanctions+rewards>

² few of the older member states, for example, have yet achieved the standards of the Bathing Water Directive – with the scale of sewage investment requirement being one of the main reasons.

³ Some 30 years ago, the issue of implementation failure began to develop a large literature – and one of the classic articles on the subject set out preconditions for good implementation – “Why is implementation so difficult?” Gunn, Lewis *Management Services in Government*, issue 33 (1978). For a review and practical application, see “Implementation Failure or policy-making? How do we theorise the implementation of the EU environmental legislation?” A. Jordan (google) and “Whatever happened to policy implementation?” P and L de Leon in *Journal of Public Administration Research and Theory* (2002)

17.2 Focussing on results – and performance

Component 7 of the project very clearly states that we should “specify **good practice and cases** relevant for implementation of *acquis*”. This, therefore, requires us to look first at good practice in implementation – and the implications for training methods as a consequence of that analysis.

The *acquis* is the body of Community Law. It is very detailed⁴ but serves some basic social objectives – relating to the security and mobility of citizens; and their market power. Both OECD and EU have been doing a lot of thinking about regulations and inspection in the past decade⁵ – from a concern both to reduce burden of these systems on business and to make sure that these systems actually achieve the intended results – which relate to the safety and wellbeing of the population. All too often in the past the application of laws was pursued mechanistically – and with little consideration of whether they were achieving their intended results.

Nowadays much more emphasis is placed on the importance of state bodies focussing on results – by monitoring and feedback so that ineffective policies are identified and adjusted. The recently approved Bulgarian Operational Programme on Administrative Capacity put this very nicely – “Administrative structures should define few but achievable goals - addressing real problems.”⁶ Some countries have proved more radical than others in pursuing this agenda.

17.3 An example

The UK in particular has carried out a range of very critical assessments⁷ which have revealed poor practices by state bodies eg

- Too heavy a load on both businesses and local government from inspections from too many control and audit bodies
- Unnecessary visits to low-level risk areas
- Badly designed forms
- Poor quality inspection

As a result structures and procedures have been simplified⁸ – and a more strategic approach taken to regulations - based on proper risk-assessment. It is interesting, for example, to see how the UK Health and Safety Executive has developed its strategic tools since 2003.⁹

And EU member states are beginning to develop compliance strategies as basic tools of implementing European Community obligations.

The clearest statement we know of these issues is contained in the Hampton report we have already mentioned - which presented the box below as “a tool for thinking about compliance”.

This constitutes what might be called a “marketing” approach to compliance – as distinct from the legal approach. The **legal approach** makes certain questionable assumptions about the behaviour of legal subjects – namely that they know about the law and are disposed to implement it faithfully.

The **marketing approach** starts with the subject whose compliance is needed and uses the 11 factors as a checklist which the state body and its officials can use (a) first to understand better the factors which reduce the chances of compliant behaviour (eg how well is the legislation understood?); and then (b) to adjust their implementation or action programme to focus on those factors (eg leaflets).

⁴ 80,000 pages (of English text) at the last count

⁵ For a good overview, see “How context matters – regulatory quality in the European Union” by C Radaelli

⁶ Section 5.1 (page 35) of English version of document approved in October 2007

⁷ See, for example, Reducing administrative burdens – effective inspection and enforcement (HM Treasury March 2005). More often known as the Hampton Report

⁸ This is one of the objectives of the “impact assessment” discussed in section 5.3 of the OP on Admin Capacity

⁹ It now has an Enforcement Concordat and Simplification Plan

Box 6; A checklist for developing a compliance strategy

Aspects of spontaneous compliance

- Knowledge of the regulation
- Costs of compliance; benefits of non-compliance
- Degree of popular and business acceptance of the regulation
- Natural obedience of subject
- Extent of informal monitoring

Aspects of monitoring

- Probability of report through informal channels
- probability of inspection
- Probability of detection
- Selectivity of the inspector

Aspects of sanctions

- Chance of sanctions
- Severity of sanctions

On the basis of this understanding a strategy is developed to maximise the chances of compliance in that particular context¹⁰.

17.4 Compliance as the key concept

The *acquis* – as transposed into national legislation – requires the legal subjects (physical and legal persons) of a member state to adapt their behaviour to the requirements of that new legal framework. The project's first Discussion Paper¹¹ made the point that *the ultimate objective of the system of implementation and enforcement is the compliance of subjects with the specific *acquis* requirements*. Specific state bodies are charged with the responsibility for ensuring effective implementation. The task of the officials of these “implementing agencies” is at least to

- Ensure that relevant subjects are aware of their new legal obligations – and rights
- Measure the compliance of subjects with these obligations – and the extent of activation of rights
- Take appropriate action in the case of non-compliance

Once transposition has taken place, effective implementation and enforcement of new *acquis* obligations requires implementing agencies to do three things¹² –

- To employ sufficient **staff** to perform tasks which reflect a **clear policy framework** (effective management)
- To ensure that these officials understand the new legal requirements; are **able to use the tools which help subjects understand and comply with the new requirements**; and to monitor for compliance in a reliable way (training)
- To establish **workable enforcement procedures** and **systems** in case of non-compliance. These can be judicial or non-judicial. The non-judicial require negotiation and other skills

17.5 The limits of legal and administrative tools

It is here that state officials need to understand the limits of the traditional tools of legal regulations which public bodies have used over the past century. Governments face well-educated citizens whose

¹⁰ In risk assessment, this is known as the “table of eleven” – and is the basis, for example, of the Netherlands Compliance strategy in the Ministry of Environment (van der Schaarf).

¹¹ Annex 1 of First Progress paper

¹² We were encouraged in this argument by a paper - claiming to be the first attempt to define the basic components of **effective implementation capacity** - Enlargement of the EU and effective implementation of community rules by Phedon Nicolaides (EIPA 1999)

attitudes and behaviour they try to change – eg with anti-discrimination and equal opportunities policies and laws. Increasingly, therefore, governments are drawn to consider more sophisticated tools and programmes.

If we wish to change people’s behaviour, we should look at all options – and, where behaviour patterns of non-compliers are strong, we often need to use a battery of tools. What is it that is most likely to make target groups change their behaviour? Simple instructions? Threats? Incentives? Explanations and understanding? Involvement in the decision-making? Moral exhortation? Or a combination?

Many people tell us that the only effective mechanism is that of the command - whether in the form of laws or injunctions from the boss (line 5.2 in the table). Other people would argue that *rational arguments* (eg in training sessions) or *leaders* make a difference – and can inspire those in the organisation to change (points 1 and 2 in the table).

Table 13; Tools in the change process¹³

Motivating Factor	Example of instrument	Particular mechanism
1. Understanding	1.1 Training 1.2 Campaigns 1.3 Counting and comparing – producing league tables	Rational persuasion Appeal to common sense Questioning when one’s organisation compares badly
2. Commitment	2.1 Leadership 2.2 Consultation and cooperation 2.3 Training	Legitimisation; inspiration Shared vision Pride in behaving professionally
3. Personal Benefit	3.1 Pay increase and bonus 3.2 Promotion 3.3 Good publicity 3.4 Winning an award	Financial calculation ambition Reputation; Psychological
4. Personal Cost	4.1 Named as poor performer 4.2 Demotion 4.3 “Report cards” on organisations ¹⁴	Psychological (Shame) Monetary Pride
5. Obligation	5.1 Law 5.2 Orders and Action plans 5.3 Family ties	Courts Obedience to Managerial authority Social pressure
6. Peer influence	6.1 peer review 6.2 bribery 6.2 Quality circles	Pressure from colleagues to do behave the same way as them
7. Social influence	7.1 Opinion surveys 7.2 Public demonstrations	Feedback from public about service quality

In the field of European Law, the threat of financial penalties is assumed to be the ultimate sanction – but, in recent years, the European Commission has moved away from a reliance on such crude tools and has been encouraging persuasion (social marketing) and alternative forms of conflict resolution. And governments trying to improve the performance of state bodies have also made increasing use of “league tables”. This involves audit bodies, for example, collecting and publishing comparative information about the performance of individual schools and hospitals in an attempt to persuade senior managers to address the problems of poor performance (1.3 in table). This can also act as a market-type force - bringing the force of public opinion against the organisation (4.3 in table).

¹³ Source; this table appeared in an earlier form in the book Toward a Civil Service model for Azerbaijan in the 21st Century by R Shabanov and R. Young (Takis 2004, Baku)

¹⁴ “report cards” measuring citizen satisfaction with public services have become popular in many countries – both developing and developed.