JOINT DOCUMENT OF EUPAN ON THE ADMINISTRATIVE COOPERATION IN THE LISBON TREATY
1. Introduction

On December 1st, 2009, the Lisbon Treaty entered into force, thus ending several years of negotiation about institutional issues. With the Lisbon Treaty now in effect, it is up to the Spanish Presidency to take the lead in applying it and putting it into practice.

The Lisbon Treaty amends the current European Union and European Community Treaties, without replacing them. It provides the Union with the necessary legal framework and tools to meet future challenges and to respond to citizens' demands. The Treaty of The European Union keeps its original name, while the Treaty establishing the European Community becomes the Treaty on the Functioning of the European Union.

The most favourable results for the Citizens as well as for the Member States are the following:

- **A more democratic and transparent Europe**, with a strengthened role for the European and national parliaments, more opportunities for citizens to have their voices heard and a clearer sense of who does what at European and national level.

- **A Europe of rights and values, freedom, solidarity and security**, promoting the Union's values, introducing the Chart of Fundamental Rights into European primary law, providing with new solidarity mechanisms and ensuring better protection for European citizens.

- **Europe as an actor on the global stage.** This objective will be achieved by bringing together Europe's external policy tools, both when developing and deciding new policies. The Treaty of Lisbon gives Europe a clear voice in relations with its partners worldwide. It harnesses Europe's economic, humanitarian, political and diplomatic strengths to promote European interests and values worldwide, while respecting the particular interests of the Member States in Foreign Affairs.

- **A more efficient Europe**, with simplified working methods and voting rules, streamlined and modern institutions for a EU of 27 members and an improved ability to act in areas of major priority for today's European Union.

With regard to the above mentioned, one of the main goals is the **improvement of the life of Europeans**: the Treaty of Lisbon improves the EU's ability to respond to their needs and problems.

It also concerns to some extent other areas including energy policy, public health, civil protection, climate change, services of general interest, research, space, territorial cohesion, commercial policy, humanitarian aid, sport, tourism and **administrative cooperation**.
When it comes to the legal application, it is a basic principle of the Union that implementation and execution of Union laws are the task of the Member States (except where otherwise provided in the Treaty). Consequently, there is a corresponding duty of the Member States to ensure that the administration and execution is effectively done and legally correct.

On this background and in the perspective of an enlarged European Union of more than 27 member States, it would be desirable to encourage the efforts of the Union and the Member States in order to achieve a fruitful way of cooperation.

Therefore, the Spanish Presidency opened a debate, presenting a preliminary draft about the impact of the Lisbon Treaty on the administrative cooperation that was sent to the three European Public Administration Network’s (EUPAN from now on) working groups (HRWG, eGov and IPSG), in order to collect their point of view about the topic.

The present joint document reflects the input given by the Member States, in the EUPAN network framework, related to the topic.

Within this framework, the main objectives of this document have been the following:

- To try to clarify the meaning and scope of the articles of the Treaty on the Functioning of the European Union related to the administrative cooperation, specifically by focusing on the TFEU articles 6 and 197.
- To involve all the Member States in this task.
- To offer to the European Commission a joint position of the EUPAN network on this issue.
- To establish the foundations for future developments of administrative cooperation.

2. Relevant Articles of the Consolidated version of the Treaty on the European Union (TEU) and the Treaty on the Functioning of the European Union (TFU).

**TEU Article 4**

1. *In accordance with Article 5, competences not conferred upon the Union in the Treaties remain with the Member States.*

2. *The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State.*
3. Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.

The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.

The Member States shall facilitate the achievement of the Union’s tasks and refrain from any measure which could jeopardise the attainment of the Union’s objectives.

**TFEU Article 6**

The Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States. The areas of such action shall, at European level, be:

(a) protection and improvement of human health;
(b) industry;
(c) culture;
(d) tourism;
(e) education, vocational training, youth and sport;
(f) civil protection;
(g) administrative cooperation.

**TFEU Article 197**

1. Effective implementation of Union law by the Member States, which is essential for the proper functioning of the Union, shall be regarded as a matter of common interest.

2. The Union may support the efforts of Member States to improve their administrative capacity to implement Union law. Such action may include facilitating the exchange of information and of civil servants as well as supporting training schemes. No Member State shall be obliged to avail itself of such support. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish the necessary measures to this end, excluding any harmonisation of the laws and regulations of the Member States.

3. This Article shall be without prejudice to the obligations of the Member States to implement Union law or to the prerogatives and duties of the Commission. It shall also be without prejudice to other provisions of the Treaties providing for administrative cooperation among the Member States and between them and the Union.
These articles are placed in the Treaty in Part one-Principles (article 6) and Part three-Union Policies and Internal Actions-Title XXIV (article 197).

3. A view on the administrative cooperation

According to the Webster’s Unabridged International Dictionary of the English Language, when referring to cooperation, we have in mind “to work or labour with mutual efforts to promote the same end”.

Strictly, administrative cooperation implies, at least two autonomous Administrations working together to fulfil the same purpose: in this case, to ensure the effective implementation of the Union law.

Nevertheless, the Administration’s autonomy requires a clear identification of the respective powers and competences.

The administrative cooperation issue has been dealt as a European objective since the preparation of the “Project on a Treaty establishing a Constitution for Europe”, presented in Rome on July 2003 by European Convention chaired by Valéry Giscard D’Estaing.

The initial proposal for a new article on Public Administration was launched in the 21 working document of the European Convention’s Working Group V.

The aim of the proposed article intended to provide with a formal framework for European actions aiming at supporting Member States administrative capacity to implement EU law, further strengthening cooperation among Public Administrations across the EU, and at stimulating exchanges and common activities on issues of common concern in the field of public administration, including common training and development activities. The aim was to provide a formal framework, to make such actions more sustainable and enduring, as well as more transparent and public.

After the “Project on a Treaty establishing a Constitution for Europe’s” presentation, an Inter-Governmental Conference (IGC) was set up in order to finalise the Project. It is possible to review through all the different texts prepared by the IGC the fact that Administrative cooperation is always kept as a specific article. Its wording is also quite similar to the one finally adopted in the present text.

Something similar happens to the articles on administrative cooperation drawn up in 2007 on the Project of reform of the Treaty on European Union and the Treaty of European Community.

In parallel to the above mentioned issues, it has been increasingly recognised by the Member States that a high quality public administration is an essential element for
achievement of the strategic goals which the European Union has set itself in the context of the Lisbon strategy and will set in the new EU 2020 strategy.

Moreover, given the multiple links and networks that characterise Europe, the enhancement of good governance in the Union can no longer be assured by one single State on its own, or at individual level. The need of a global approach involving all levels and all actors is clear.

Increasing interdependence between Member States has been accompanied by increasing mutual dependence between public administrations for implementation of the European Union policies. In this sense the capacities of one are the concerns of all.

In this framework, the European Union has no powers regarding the basic organisation and principles of the public administrations from the Member States, which are competence of the Member States in accordance with the principle of organisational and procedural autonomy. Implementation and execution of Union laws and policies are tasks of the Member States.

However, while implementation and execution of European Union laws and policies are tasks of the Public Administrations of the Member States, the European Union has a legitimate interest in the capacities and quality of national Public Administration.

Furthermore, there are already many existing activities and projects on vertical administrative cooperation, which have been in place before the current legal basis (i.e. the Lisbon Treaty) entered into force.

Examples of such administrative cooperation between MS and the EC on sectoral projects include:

- networks for co-operation in the area of goods (RAPEX - Rapid Alert System for non-food consumer products; RASFF - Rapid Alert System for Food and Feed);
- networks for cooperation in consumer policy, between consumer protection authorities (Consumer Protection Cooperation network);
- networks and tools for co-operation in the area of taxation and customs (NCTS – New Computerised Transit System; VIES - VAT Information Exchange System; TARIC – Integrated Community Tariff);
- networks in the 'social area' – facilitating the free movement of workers, posting of workers, and the transferability of pension and social security rights;
- networks for cooperation between regulatory and supervisory authorities in regulated sectors (EESSI - Electronic Exchange of Social Security Information; MISSOC -Mutual Information System on Social Protection);
- networks in the competition area (European Competition network).
the SOLVIT network for the resolution of cross-frontier problems arising in the Internal Market.

- the EU Pilot network to respond to citizens' enquiries and complaints on the application of EU law.

On horizontal actions, it is worth mentioning the recently established project "Erasmus for officials", a short-term traineeship programme for national officials.

4. The administrative cooperation in the TFEU

The implementation of the article raises some essential questions on the scope of administrative cooperation.

Together with article 6, TFEU 197 provides a legal basis, which allows the Union to support the efforts of Member States to improve their administrative capacity to implement Union law. As a basis for supporting, coordinating or supplementing actions of the Member States, it excludes any kind of harmonisation of the laws and regulations of the Member States. In addition, this support shall be without prejudice to the obligations of the Member States to implement Union law or to the prerogatives and duties of the Commission.

Administrative cooperation lies under a voluntary basis. The Treaty states that “No Member State shall be obliged to avail itself of such support “. Administrative issues are left to the Member States (“Competences not conferred upon the Union in the Treaties remain with the Member States”).

4.1 TFEU Article 197.1

“1. Effective implementation of Union law by the Member States, which is essential for the proper functioning of the Union, shall be regarded as a matter of common interest”.

Effective implementation is a direct consequence of the duty of sincere cooperation (TEU article 4.3), in the sense that the good implementation of European Union legislation is important to all Member States. Each and every Member State has an obligation to the European Union to provide for the effective implementation of European legislation.

Nevertheless it seems that this is not the concern of Member States only. Effective implementation is taken into account by:

- The European Commission, when it takes an initiative,
- The Council and Parliament, during the decision making process,
- The European Court of Justice, whenever there is a disagreement.

Furthermore, National Parliaments may give also their opinion in the framework of the procedure for subsidiary control.

4.2 TFEU Article 197.2

“2. The Union may support the efforts of Member States to improve their administrative capacity to implement Union law. (…)”.

Consequently, the Union may lead certain activities to improve the Member State’s performance for effective implementation. In that sense, the Treaty states: “The Union may support the efforts of Member States to improve their administrative capacity to implement Union law”.

The support of the Union is directed to reinforce and enhance administrative capacity of Member States. The actions to be developed on the basis of this article, whose purpose is the effective implementation of EU law, could be equally addressed to all the Member States, or individually addressed to any number among them.

“2. (…) Such action may include facilitating the exchange of information and of civil servants as well as supporting training schemes”.

As far as the possible support areas are concerned, the Treaty mentions the examples of “facilitating the exchange of information and of civil servants as well as supporting training schemes”. As it is said below, these are not the only support areas, but relevant fields for action. However, the only objective of Union action has to be the support of the efforts of the Member States to improve their administrative capacity to implement Union law.

“2. (…) No Member State shall be obliged to avail itself of such support. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish the necessary measures to this end, excluding any harmonisation of the laws and regulations of the Member States”.

Some concerns were expressed during the process of receiving inputs over the reference in article 197 to "regulations" (acts of general application, binding in their entirety and directly applicable in all Member States) as instruments to regulate the administrative cooperation. An analysis of EU Law and MS practical experience allows us to conclude that a distinction should be made between the instruments as such and its substance:

- The Treaty clearly designates the regulation as the only instrument to be employed if/when measures are adopted on the basis of article 197. In other words, a Directive or a Decision could not be used on this legal basis. But at the same time, this article
guarantees the voluntary aspect of MS cooperation ('opt-in' clause). Furthermore, art. 197 excludes any harmonisation of the laws and regulations of the Member States, i.e. the material administrative laws of the Member States.

- The mere indication of "regulations" as the legal instruments to be adopted on the basis of this article does not transform the substance of article 197 (i.e. support measures in the administration cooperation field) into compulsory measures for all the Member States, since, again, article 197 is very clear in stating that "no MS shall be obliged to avail itself of such support": While supporting the objectives of the European Union is an obligation for Member States, accepting support from the Union to enhance administrative capacity to implement EU law is optional. Thus, any regulations that may be adopted for a project or programme on administrative cooperation would apply only to those MS choosing (or 'opting-in') to enter that particular form of administrative cooperation.

- In case any Member State wishes to avail itself to the support actions prescribed by regulations adopted on the basis of article 197, then these regulations would be binding for this MS in the rules it prescribes, just like any other Regulation.

Therefore, the conclusion could be that there is no contradiction between the use of regulation as a legal instrument designated by article 197 and the nature of the competence granted to the EU in respect of administrative cooperation. Clear limitations are established by article 197 in respect of this competence: no Member State shall be obliged to avail itself of the support of the Union; any harmonisation of the laws and regulations of the Member States is excluded; the actions the Union could undertake in this field include facilitating exchange of information, of civil servants, and supporting training schemes.

To sum up, a sort of "Open method of coordination" is envisaged here. The only purpose of any regulations can be to support the efforts of the Member States to improve their administrative capacity for implementing Union law.

5. Next steps

Within this framework, EUPAN should also envisage the most practical way to shape the future relationship with the European Commission in the administrative cooperation area.

According to the EUPAN handbook, "EUPAN is an informal network of the Directors General responsible for Public Administration in the Member States of the European Union, the European Commission and observer countries".

Related to the administrative cooperation issue, it is clear that no formal action based on the Treaty can take place within EUPAN. Formal actions may take place in the Council, European Parliament,…etc.
Nevertheless, EUPAN’s mission according to the EUPAN handbook is “to improve the performance, competitiveness and quality of European public administrations by developing new tools and methods, in the field of public administration, based on the exchange of views, experiences and good practices among EU Member States, the European Commission, observer countries and other organisations”.

Within this framework EUPAN can, as a privileged forum of MS, identify what actions would be the most needed and useful for Member States to enhance administrative cooperation.

It could be considered as a “matter of common interest” to open a discussion on the possibilities of administrative cooperation together between Member States and the Commission in order to reinforce, within the EUPAN competences, some aspects of common interest for all of us.

To achieve this goal, different ways of work can be envisaged. Member States have expressed their interest in working in this field.

Once the scenario has been set in this document, the EUPAN network can deepen its evaluations of the different possible ways of work according to the possibilities the EUPAN handbook offers in order to analyse possible next steps of administrative cooperation.

6. Conclusions

As has already been stated, increasing interdependence between Member States has been accompanied by increasing mutual dependence between public administrations for the implementation of EU policies.

EUPAN is a forum for voluntary and informal cooperation between Member States and also between them and the European Commission. Its activities cover the exchange of information, experiences and best practices on various Public Administration issues. EUPAN can contribute to administrative cooperation, as it is defined in Article 197 of the TFEU.

Nevertheless, article 197 TFUE can be considered as a residual basis provided by the Treaties (not replacing but complementing the other existing articles in different sectors). In this sense, the Lisbon Treaty entering into force will not bring fundamental changes: the new legal basis of Article 197 may be of use (horizontally) when other (sectoral) legal bases are lacking.

As a privileged informal Member States forum, EUPAN has relevant competence and experience to search for topics and procedures to be channelled by the Member States to the European Commission with a view to improved administrative cooperation.

10/06/10