The Regulation of Rule-Following. Imitation and Soft Regulation in the European Union

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The Regulation of Rule-Following.

Imitation and Soft Regulation in the European Union

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To Anders:
you may not have been able to
change the world
but at least you changed my
world

(Jason Falkner)
I started working on this book in spring 2003 and now, six years later, I am putting down its final words. Looking back today, I see that when I started I had absolutely no clue as to what it would be like to do research and write a dissertation. But had I known, I am pretty sure I would have dived in anyway, because demanding as doctoral studies have been, they have also been immensely rewarding! I have learnt and grown so much in these six years that I have a hard time imagining what I would do if I couldn’t do research. So my first thank you goes to my supervisor, Bengt Jacobsson, who introduced me to research and academia in the first place. If you hadn’t asked I know I would never have dared to approach the field. Thank you also for letting me find out for myself what I wanted, and for supporting every choice I made. My other two supervisors, Sven Modell and Anders Ivarsson Westerberg, of course also deserve thanks: Sven for your thorough readings and valuable literature suggestions, and Anders for your pertinent as well as concrete comments and for helping me get this book finished.

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Chapter 1.
Changing Forms of Regulation

On the first of May 2004 the European Union proudly and solemnly welcomed ten new states¹ as members. The EU describes this enlargement as a historic moment, and as something of a success story wherein the former Soviet republics and satellite states were transformed into modern European states in an unexpectedly short period of time. Between the break-up of the Soviet Union and EU accession only fifteen years passed, and these years saw tremendous developments and changes in the Central and East European (CEE) states. Political, economic, and administrative transformations of substantial magnitude preceded EU membership, and the EU sees itself as partially responsible for both the speed and the direction of the change processes. As put by the European Commission:

The pull of the EU has helped to transform Central and Eastern Europe into modern, well-functioning democracies. More recently it has inspired far-reaching reforms in the candidate and potential candidate countries². /…/ Enlargement is a carefully managed process which helps the transformation of the countries involved, extending peace, stability, prosperity, democracy, human rights and the rule of law across Europe.³

These are big words, and words that call for elaboration. Whether the pull of the EU is as strong, and predominantly positive, as they indicate, or not, they all the same beg the questions of how this pull works, and of how the Union “helped” the candidate countries transform.

In the early 1990s the EU made the possibility of CEE membership conditional. The states that wanted to become members should be so when they were able to live up to three criteria – the so-called Copenhagen Criteria – regarding democracy, market economy, and compliance with EU rules. To realise membership, a candidate country had to be a stable democracy, function as a market economy, and adopt the *acquis communautaire*⁴. To “adopt

¹ Estonia, Latvia, Lithuania, Poland, Hungary, Slovenia, Slovakia, the Czech Republic, Cyprus, and Malta.
² “Candidate country” is the EU term for a state whose membership application has been submitted and accepted by the European Council.
³ http://ec.europa.eu/enlargement/index_en.htm, 2007-03-02
⁴ *Acquis communautaire* is a French term meaning, essentially, "the EU as it is" – in other words, the rights and obligations that EU countries share. The acquis includes all the EU's
the acquis” means to incorporate and act according to the “common rules, standards and policies which make up the body of EU law”\(^5\), and even though the goals of democracy and market economy are particularly tough to reach, to adopt the acquis is definitely no child’s play either. For one thing the acquis consists of more than 300,000 legal documents, of varying legal standing and dealing with issues ranging from nutrition and the fight against fraud to the free movement of workers and the information society. And the so-called legal transposition – when national legislation is harmonised with the acquis – is only the first step. Administrative structures and activities also need to be created to make sure that the rules are followed. How, then, did the Central and East European states, with their turbulent political development, weak as well as immature public administrations, and Soviet juridical heritage, manage to incorporate and implement this massive amount of European regulation in only a few years? Part of the answer to this question is found in *Twinning*, and Twinning provides the empirical stuff of this thesis.

Twinning is what is known as a pre-accession instrument, and it is the European Union’s most commonly used tool to assist the candidate countries in adopting, implementing, and enforcing the full acquis. The EU did not just make very challenging demands, it also offered to support the would-be members in their efforts to comply. Enormous amounts of financial, technical, and human resources were devoted to candidate country assistance, and Twinning was one important building block in the assistance effort. Twinning consists of long-term, and close, co-operation between civil servants from member states and candidate countries in relation to administrative developments. Twinning projects are presented as involving member states guiding, and candidate countries learning about, the changes needed in the candidates’ public administrations in order to adjust them to EU rules. The idea is that by assisting their candidate country colleagues in planning, organising, and performing the adjustments needed in relation to the administration’s daily operations the member state civil servants can provide valuable insights and practical support when the candidates take on the obligations of membership. In other words, the candidate countries are guided, and simultaneously watched over, by the member states in their rule-following. In addition, Twinning projects are framed within a strictly regulated procedure – developed by the European Commission and formalised in the Twin-

treaties and laws, declarations and resolutions, international agreements on EU affairs and the judgments given by the Court of Justice. It also includes action that EU governments take together in the area of justice and home affairs and on the Common Foreign and Security Policy. “Accepting the acquis” therefore means taking the EU as you find it. (http://europa.eu/abc/eurojargon/index_en.htm, 2009-03-09)

ning Manual\(^6\) – specifying in detail the structure, participants, responsibilities, and expected outcomes. And to further tighten the frame, the EU made it clear that candidate country participation in Twinning projects was highly desirable and, in practice, more or less compulsory. Consequently, Twinning regulates the candidates’ rule-following: it represents *rules on how to follow rules*, and it symbolises a specific way to influence behaviour.

In this way Twinning is an expression of the regulatory expansion that has been noted in modern society (e.g. Ayres and Braithwaite 1992; Ahme and Brunsson 2004; Jordana and Levi-Faur 2004; Djelic and Sahlin-Andersson 2006). More and more areas of social life are becoming subject to various kinds of rules, and this evolution has even awarded present times the epithet “the golden era of regulation” (Levi-Faur and Jordana 2005). On the same note, modern society has been classified as a “society of rules” (Fernler and Helgesson 2006). Previous talk about de-regulation has rather turned into a discussion about re-regulation, as rules are certainly not vanishing but are taking on different shapes (Djelic and Sahlin-Andersson 2006). New kinds of rules are emerging and new ways to regulate are being developed by new types of regulators. When thinking of rules and regulation it is common to make the association with legal rules and hard law, i.e. authoritative rules backed up by sanctions. But one of the more conspicuous developments within “the golden era of regulation” is the rise of so-called soft rules and soft regulation. Soft rules are not legally binding, and are not backed by legal sanctions, but still they hold the power to influence their regulatees.

I argue that Twinning is a form of soft regulation, and since it deals with states it potentially has *the power to regulate states*. This ability of soft regulation to influence states has been noted in earlier studies (e.g. Jacobsson K. 2004; Jacobsson 2006; Mörth 2006; Nordström 2008) and is noteworthy for two reasons. First of all because states have traditionally been regarded as the rule makers *par excellence*, due to their sovereignty and authoritative power over their territories. Secondly, this same state sovereignty is highly institutionalised in Western society (McNeely 1995; Meyer et al 1997), turning the state into one of the most empowered actor categories of the modern world. And why should such powerful actors – forceful regulators themselves – submit to someone else’s rules? And to soft, non-legally binding, ones at that! But states do submit to soft rules and allow themselves to be influenced by soft regulation. How can this be? And wherein lies the power of soft regulation? These are the overarching questions motivating this study, and in order to answer them soft regulation needs to be placed within the broader context of transforming and evolving regulation in general.

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\(^6\) The official name for the Twinning Manual is *Preparing Candidate Countries for Accession to the EU. Institution Building – A Reference Manual of “Twinning” Projects*, Revised Version February 2002
1.1 Towards Softer Forms of Regulation

The study of rules and regulation has a strong tradition within the discipline of business administration and management. Organisation is about goals, division of work, co-ordination and control, and in each of these elements rules and regulation – in all their varied shapes and forms – play important roles. As put by March et al (2000:8): “Rules are ubiquitous in human behaviour, but they are particularly conspicuous in formal organizations and are often seen as the prototypical instruments of organizing”. Rules routinise organisational activities and define authority relations; they specify connections between organisational sub-units and determine decision-making structures; they delineate organisational identities and boundaries and steer interaction with other organisations (ibid). Without rules there is no organisation, which places the comprehension of rules and regulation at the core of organisation studies. Many of the important theoretical discussions about regulation, its organisation and evolution, are also developing in connection with business administration and organisation studies (e.g. Brunsson and Jacobsson 2000; Tamm Hallström 2000; Ahrne and Brunsson 2004; Djelic and Sahlin-Andersson 2006). Hence, to understand the role of rules and regulation is an important task, and one that seems to grow in relevance as the reach and attractiveness of regulation is increasing (Ahrne and Brunsson 2004; Jordana and Levi-Faur 2004; Djelic and Sahlin-Andersson 2006). But regulation is not only increasing; it is also transforming and as such it can be connected to processes of governance.

Governance is a growing research topic within social sciences. It is also an empirical phenomenon presented as a way to regulate that is non-hierarchical and therefore frequently contrasted with the idea of government (Rosenau and Cziempel 1992; Boström et al 2004; Jacobsson and Sundström 2006). Whereas government is associated with the Westphalian state and its authority, with hard law, and with public actors as rule-makers, governance is connected to network structures seemingly lacking an authoritative centre, to softer kinds of regulation, such as standards and recommendations, and to the inclusion of non-public actors in the rule-making process (cf. Mörth 2006). Furthermore, governance is conceptualised as being based in voluntariness, equality, and trust rather than in coercive powers and authority (Jacobsson and Sundström 2006). The rule-makers, the rules, and the forms and mechanisms for influence and steering involved in governance are quite different from those of government, meaning that they cannot be understood in the same way. However, governance is not just about rule-making and regulation; it also includes the organising, discursive, and monitoring activities that envelop the rules (Djelic and Sahlin-Andersson 2006a). Expanding governance entails more, and varied, types of rules but it also contains increased monitoring (Nordström 2008), auditing (Dahl 2007), and evaluating (cf. Furubo et al 2002) practices. Regulation – in the sense of producing
various types of rules – organisation, monitoring, and auditing have been framed as different *modes of governance* (Djelic and Sahlin-Andersson 2006a) that interlock to support and reinforce each other. Conversely, it can be argued that even though rules of course regulate, so do organisation, monitoring, and auditing (cf. Jacobsson and Sahlin-Andersson 2002). To create an organisation is a way of getting others to follow rules, i.e. of regulating, because membership means accepting the organisational rules (ibid; Ahrne and Brunsson 2006). Along similar lines, monitoring practices have been demonstrated to hold the regulative power to influence states’ internal political struggles (Nordström 2008), while the audit of states has been shown to construct transforming states that eagerly accept and adopt external assessments (Dahl 2007). In this sense rule-making, organisation, monitoring, and auditing can therefore also be conceptualised as *modes of regulation*, making the distinction between governance and regulation ambiguous.

Twinning represents rules on how to follow rules, but these rules are organised in a certain way and connected to specific monitoring procedures (as will be outlined in Chapter 2). The core of the Twinning instrument is made up of rules, i.e. the acquis communautaire and the Twinning Manual, but these rules are enveloped in discursive and monitoring activities connected to the organisation of the European Union in general, and to the enlargement context in particular. Accordingly, I have chosen *regulation* as the main concept for understanding Twinning, and I have chosen to apply it in a broad sense. Rules are indeed central to regulation but the context within which they function, and its organisation and dominant discourses, are also essential. Hence, in this thesis regulation is used as an umbrella concept to denote ways to influence and steer behaviour, and these ways are currently changing, evolving, and increasing in number.

When it comes to authoritative rule-making, i.e. government, this is essentially based in the power of the rule-maker to enforce rule-following, which, in its turn, is frequently based in the authority to penalise breaches. Most of us abide by the majority of national laws most of the time, and, if we do not, the judiciary system has the legal authority to prosecute and sentence. The authority to regulate and rule is institutionalised when it comes to states, but most regulators do not have recourse to this authority and yet their rules influence behaviour. This is where soft rules and soft regulation become important. Common examples of soft rules are recommendations, standards, codes of conduct, and incentive programmes (Knill and Lenschow 2004; Jacobsson and Sundström 2006), and they all have the ability to affect behaviour despite their not being backed by authoritative power. Because soft rules are not coupled to coercion and legal sanctions compliance with them is essentially voluntary, but seemingly attractive to many regulatees. In addition, soft regulation is increasing in popularity (Brunsson and Jacobsson 2000), to the extent that authoritative rule-makers, e.g. states and treaty-based international organisations, are also employing it. For instance the
European Union has developed a number of soft regulatory instruments, such as the Open Method of Co-ordination, the self-regulatory model, and – of course – Twinning.

As the use of soft regulation has increased, so has the scientific study of it. Because soft regulation is situated at the crossroads of various scientific disciplines it has been approached from a number of angles. Political scientists, organisation theorists, and legal scholars have become interested in the topic and a variety of understandings have been proposed (for a discussion, see Mörth 2004a). Nevertheless, the constitution and workings of soft regulation remain poorly understood. Whereas many studies focus on the efficiency or democratic legitimacy of soft regulation (e.g. Knill and Lenschow 2004; Büchs 2007), or on defining, or drawing the line between, soft rules and hard law (e.g. Sztucki 1990; Goldstein et al 2000), the regulative processes involved have not been studied to the same extent. In order to understand the power of soft regulation, more studies of how, and why, soft rules influence their regulatees are needed.

Twinning is a part of the expansion of soft regulation and is therefore based on the regulative processes set in motion by soft kinds of rules. Accordingly, theories of soft regulation can be used to understand Twinning, and conversely insights from Twinning can contribute to the understanding of soft regulation in general. Because if regulation is not based on authoritative power and coercion, what is it that compels regulatees to follow the rules? And – once again, since soft regulation holds the ability to regulate even states – wherein lies the power of soft regulation? The prerequisites for this power, and the vantage points for my understanding of states as rule-followers, will be outlined below.

1.2 States as Rule-Followers

It has already been noted that the sovereign state is one of the fundamental institutions of Western society (McNeely 1995; Meyer et al 1997). From this

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7 The Open Method of Co-ordination (OMC) is an EU governance method (Büchs 2007) that can be applied to policy areas not covered by the Community Method (i.e. falling outside the First Pillar). It has foremost been used in relation to various aspects of social policy and it builds on goal-setting, sharing of experience and knowledge, and learning. The objective of the OMC is to spread best practice and achieve convergence towards EU goals, and it is structured as follows: 1) common guidelines established at the EU level, 2) which are to be translated into national and regional policy by setting specific targets and adopting measures; along with 3) the establishment of quantitative and qualitative indicators and benchmarks as a means of comparing best practice and 4) periodic monitoring, evaluation, and peer review (Jacobsson K. 2004:83). The self-regulatory model, in its turn, is based on private actors issuing concrete standards without any state involvement whatsoever. “Typically, an industrial association (as opposed to government or firm) sets rules and standards (codes of conduct) for the conduct of associated firms /.../. The level of control shifts from EU to the industry level” (Knill and Lenschow 2004:221).
perspective states constitute a particular category of empowered actors with certain traits and abilities. But it is also possible to treat states as organisations (Meyer et al 1997; Ahrene 1998; Jacobsson 2006). Viewing states as organisations means that theories of organisation can be applied to understand them, and this application brings special insights. Many theories of the state see states as separate, coherent, and self-sufficient actors with fixed goals and preferences (e.g. Hobbes 2004/1651; Waltz 1979). This is not how I understand states. Quite the opposite approach is provided by sociological new institutionalism, which has inspired many of the contemporary studies of soft regulation (e.g. Jacobsson 2006; Dahl 2007; Nordström 2008). One of the fundamental vantage points of sociological new institutionalism is the embeddedness of organisations in institutional environments (see Meyer and Rowan 1977; DiMaggio and Powell 1983; Powell and DiMaggio 1991). From this perspective an organisation such as a business firm or a state is not primarily a solitary and stable unit that interacts with its surroundings – consisting primarily of other organisations – in a rational, resource-maximising, and efficiency-seeking way. Instead organisations are viewed as “greatly conditioned by their institutional environments” (Powell and DiMaggio 1991a:47) and, consequently, as “dramatic enactments of the rationalized myths pervading modern societies” (ibid). This means that any organisation will incorporate externally defined so-called rationalised institutional elements – expressed in the form of e.g. behavioural patterns, work models, and solutions to common problems – into its structure, and thus come to reflect the ideas and ideals of its environment. According to the classical argument, this incorporation may be the result of coercive, mimetic, or normative pressures\(^8\) (DiMaggio and Powell 1983).

Applied directly to states, and more specifically to the Central and East European ones in the enlargement context, the Copenhagen Criteria were, in a very real sense, able to condition the behaviour of the candidate countries. Through the formulation of these criteria the dimensions of political, economic and public administrative development in the CEE states certainly came under the spotlight, both domestically and internationally. By accepting and acknowledging the importance of the criteria the candidates took part in their enactment. Among other things the political criterion demands the constitution of a parliament and an election system, the economic criterion necessitates laws governing unfair practices, and the administrative

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\(^8\) According to DiMaggio and Powell \textit{coercion} entails “both formal and informal pressures exerted on organizations by other organizations upon which they are dependent and by cultural expectations in the society in which organizations function” (DiMaggio and Powell 1983:150). \textit{Mimesis}, i.e. imitation, occurs when “technologies are poorly understood /.../, when goals are ambiguous, or when the environment creates symbolic uncertainty” (DiMaggio and Powell 1983:151). \textit{Normative} pressure, finally, “primarily stems from professionalization” (DiMaggio and Powell 1983:152) and entails the definition and spread of conditions and methods of work, as well as “a cognitive base and legitimation for /.../ occupational autonomy” (ibid)
criterion requires the creation of an able public administration. All of these issues were accepted and provided by the candidates, and they all constitute institutionalised organisational elements in modern Western society. It is not easy to decide if the candidates’ acceptance of these elements was a result of their regarding them as desirable, of their doing what all other members did, or of their feeling forced to create them. Coercive, mimetic, and normative pressures most likely interacted, as is normally the case. However, the development can also be grasped in the concept of regulation: the criteria were conditions that functioned as rules for candidate country behaviour, and these rules contained coercive, mimetic, and normative elements. Accordingly, through their adaptation the candidate countries simply followed the rules of the European Union.

Because the institution of the sovereign state is so strong and pervasive, and because states constitute the main actor in many theories of international relations (e.g. Waltz 1979) and intergovernmental theories of European integration (Moravcsik 1993; for an overview, see Eilstrup-Sangiovanni 2006), the image of states as also being regulated represents a challenge to traditional perceptions and understandings. But this is not to say that states are powerless or passive in relation to external regulation; rather their role is changing as they become increasingly embedded in webs of rules and regulation (Jacobsson 2006). In relation to the regulation of states, international governmental organisations, like the European Union, play a salient role, and they seem to be growing in numbers. As organisations, one of their most important tasks consists in creating rules for their members, but as their members are sovereign states this task is complex. The history of the European Union testifies to its constant balancing of its right and responsibility to regulate and the sovereignty of its members. The EU is arguably one of the more powerful international organisations but its members hold an even stronger institutionalised power, meaning that coercive regulation is frequently not an option. And yet the rules of the EU, and of other international organisations, clearly affect their members (cf. Mény et al 1996; Finnemore 1996; Jacobsson et al 2001; Vifell 2006). The international organisations do not have the authority to make their member states act in desired ways, yet the members seem to do just that. Without the ability to coerce member states into compliance, other regulative processes can be expected to apply in relation to the rule-making of international organisations. In order to grasp the ongoing evolution of regulation it is essential to understand what these processes are and how they work. Pieces of such an understanding will be provided by this thesis, departing from the ideas and practices of Twinning. But how, then, has Twinning been approached?
1.3 Twinning Viewed as Imitation

In the introduction to this chapter Twinning was conceptualised as rules on how to follow rules, and throughout the thesis I will argue, and demonstrate, that Twinning represents a particular kind of regulation. Above, Twinning was classified as a kind of soft regulation and, as will become clear, it does have regulative powers and give rise to quite noticeable results. However, and very importantly, Twinning is never presented as regulation. The official EU documentation emphasises that Twinning is about issues such as help, assistance, secondment, development, and expertise⁹, and none of the persons interviewed for this thesis perceived Twinning projects as involving regulative elements. Instead, it was the aspects of co-operation, knowledge-sharing, and learning that were brought forward as characteristic of Twinning. In addition, everybody – civil servants from the Commission, the member states, and the candidate countries alike – seemed very content with Twinning, to the point that it took me a while to realise that there is more to it than assistance. The core of Twinning is rules and Twinning regulates the candidate countries but, as will be argued below, its structure and procedures resemble imitation with the member states as models and the candidate countries as imitators.

Given the vastness of the acquis as well as the extreme importance attached to its implementation, the task of adopting it seems quite overwhelming. All the more so, one would imagine, to a young state with weak administrative traditions and insufficient human, financial, and technical resources. In addition, and as will be discussed in Chapter 2, the acquis is very complex as it assembles a number of different kinds of legal acts that are sometimes rather broad and vague, and sometimes very thorough and detailed. It has grown over the years and has always been developed in relation to the conditions and wishes of the states who have been members at the time, i.e. West European states after World War II. Adopting the acquis was not easy for any of the states becoming members along the way, but it represented an extreme challenge to the CEE states simply because they frequently lacked even the most basic of prerequisites. The CEE states had belonged to a different context, with different evolving priorities and preferences and many of the issues regulated by the acquis were totally new to them. Caught between the serious demands and the uncertainty regarding how to meet them, their turning towards more experienced states for ideas and inspiration – i.e. towards imitation – seems likely.

In line with the above, Twinning picks up on the prerequisites for imitation already existing in the context of EU enlargement. On the one hand we have the candidate countries that are newcomers to the EU context and must adopt the acquis in order to become members. On the other hand we have the

⁹ Twinning in Action, the European Commission, Enlargement Directorate General, 2001
experienced rule-followers, i.e. the old member states, that know the rules and how to follow them in the appropriate way. The candidate country public administrations are then supposed to work closely together with their member state equivalents for at least one year. The member state officials are expected to assist and support their candidate country counterparts in developing their structures and systems, using the member state solutions as a reference point. Clearly, this set-up would encourage imitation on the part of the candidates, using the member states as models. Accordingly, I have chosen to rely on imitation as a simile for the set-up of Twinning, and to provide a structure for analysing Twinning as soft regulation.

1.4 Aim of the Study

So far I have argued that regulation is increasing, and that new kinds of rules and regulative instruments are emerging, in contemporary society. These new types of regulation are frequently soft rather than hard, on account of their issuers either not being able or not wanting to apply coercive pressures. In addition, this soft regulation bears on all kinds of organisations, including states. I have also implied that Twinning brings all of these tendencies together, hence promising to yield insights into the regulative processes involved in soft regulation.

As the scientific interest in regulation and related issues has grown, so has the number of studies conducted in the area (e.g. Jordana and Levi-Faur 2004; Mörth 2004; Djelic and Sahlin-Andersson 2006). Many organisations and their novel regulative practices have been analysed, but the EU and its soft kinds of regulation have attracted particular attention (Knill and Lenschow 2004; Jacobsson K. 2004; Büchs 2007). Quite a few of these new types of soft regulation are innovative in that they draw on a number of regulative elements, thus affecting the rule-followers and the rule-following in different and unpredictable ways. Accordingly, investigation of their set-up and workings is needed in order to further the general understanding of evolving regulation. Some such new kinds of regulation, like Twinning, are not even presented as regulation, indicating that soft regulation can be concealed and making it all the more important to study how it functions. And, again, the power of soft regulation is intriguing because it manages to influence authoritative and sovereign states.

Bringing together the issues of the regulation of states and evolving regulation, the aim of the thesis is to contribute to the understanding of soft regulation and its regulative power. Because Twinning – as a rich and illustrative example of soft regulation directed towards states – provides the regulative practice under study, the main question to be explored in the thesis is: How is regulation through Twinning constructed? And because the set-up of Twinning seems to encourage imitation, a twin question is: What does it
imply to follow rules through imitation? In order to answer these questions a number of more specific empirical questions have been formulated: How is Twinning organised? What are the contents of Twinning? What are the respective roles of member states and candidate countries in Twinning? And, finally, what comes out of Twinning?

Through a systematic exploration of Twinning in general, and a detailed investigation of three individual Twinning projects, Twinning has been studied at the micro level. By contrasting accounts of practical experiences with official EU presentations I have come to an initiated understanding of what Twinning is and how it regulates. In the coming chapters the choices made, the tools used, and the paths taken in order to reach this understanding will be accounted for.

1.5 Outline of the Thesis

Having introduced soft regulation and its power to regulate states as the main area of interest to this study, I give a thorough presentation of Twinning in Chapter 2. Here, the initiation, evolution, and expansion of Twinning are described, together with its official purpose, prescribed procedure, and concrete practice. This gives an answer to the question of how Twinning is organised. Chapter 3 then outlines my methodological approach and the methods used when putting together and trying to make sense of both the empirical and the theoretical material of the thesis. The chapter is rather detailed because I believe that methodological reflections are important, and deserve more attention than they normally receive in dissertations written within the social sciences. By accounting for my methodological perspective, and for the choices it has presented me with, I hope to make the study and its conclusions both better motivated and more transparent.

The issues of rules, regulation, and imitation are outlined in Chapter 4, where my theoretical framework for comprehending Twinning is presented. Here, basic assumptions about rules and rule-following are spelled out in an elaborate discussion of changing forms of regulation in general, and soft regulation in particular. One section is then devoted to the regulatory power of international organisations. The EU, which is the regulator under investigation, is an international organisation and therefore regulates in specific ways and under specific circumstances. These circumstances are essential to the Union’s ability to regulate and to its use of soft regulation. Furthermore, a connection is made between regulation and imitation. Imitation is cast as a plausible response to the increasing amounts of regulation facing the actors of modern society. Imitation is also a seemingly suitable description for the set-up of Twinning. Accordingly, the essential theoretical elements of the mimetic process are outlined and then explicitly connected to Twinning.
Chapters 5 to 7 constitute the empirical part of the thesis. They provide systematic accounts of three cases of Twinning: the Tax Project, the Statistics Project, and the Judiciary Project. These projects represent different kinds and degrees of EU regulation, all within the framework of Twinning. Chapter 5 presents the Tax Project, which dealt with an area that is regulated with hard directives, namely indirect taxation. Chapter 6 outlines the Statistics Project, which dealt with an area that is primarily regulated by soft rules, namely the production of national statistics. Chapter 7 tells the story of the Judiciary Project, which dealt with an area that is not regulated at all by the EU, namely equal access to justice.

An analysis of Twinning as organised imitation is then performed in Chapter 8. The chapter considers the questions of how regulation is constructed through Twinning and of what it implies to follow rules through imitation. The Twinnings studied are related and compared to each other, using the elements of the mimetic process as a structuring device. A number of common themes and specificities are highlighted and discussed as a first step towards sorting out the power of soft regulation. This sorting out then continues in Chapter 9 where, drawing on insights from Twinning, I outline three elements involved in, and contributing to the regulative power of, soft regulation. Chapter 10, finally, summarises the main findings of the thesis and indicates paths for further research in the area of soft regulation. In addition, it outlines a few more general implications for the use of soft rules by international organisations.
Chapter 2.
Twinning – Context, Organisation, and Patterns

This chapter will answer the questions of what Twinning is and what ideas sustain it. A general background presentation of Twinning is provided in relation to the particular context of the European Union’s 2004 eastern enlargement. Further, the structure, or organisation, of Twinning is outlined together with the way it was intended to be applied to the realisation of projects. The description is in two parts. The first is a detached presentation of Twinning, i.e. the picture drawn in official documentation and by civil servants not directly involved in actual project realisation (e.g. from the European Commission in Brussels and within member state ministries of foreign affairs). Secondly, interviews with a large number of Swedish, Lithuanian, and Polish state officials are used to give depth to the official version of the story. In other words, presentations from official EU documentation are supplemented by quotations from civil servants involved in actual projects in order to contrast, or compare, intentions with practice. The idea is to introduce the actors, procedures, activities, evolving practices, and potentially problematic areas of Twinning in general. Let us first turn to the basic outline and conditions of the EU accession process.

2.1 Background: The Enlargement and the Phare Programme

The starting pistol for the EU accession process went off in 1993 when the European Union’s then 15 member states agreed on the requirements for membership, i.e. the Copenhagen Criteria, at the Copenhagen Summit. These criteria – the political, the economic, and the administrative – would then form the basis for various support programmes and accession instruments that the European Commission instigated with a view to assisting the candidate countries in their accession process.10

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10 For an extensive overview of the different steps of the accession process and of how they relate to each other, see Dahl 2007.
To ensure that candidates would be able to live up to the Copenhagen Criteria, and in an attempt to facilitate the Central and East European (CEE) states’ conversion to democracy and market economy, the EU prepared a number of agreements and programmes. These consisted of, on the one hand, trade agreements, loans and grants, and, on the other, instruments for “transfer of knowledge”, and both branches were organised within the framework of what were known as reinforced co-operation strategies. Each candidate country established an Accession Partnership with the European Union. This document set out the key priority areas of the acquis in which the country in question lacked administrative capacity and had to adjust its systems as a preparation for membership. The Partnership also included an account of the financial support provided by the Union – and channelled through its different pre-accession programmes – to facilitate this work. The Accession Partnership was supplemented by the National Programme for the Adoption of the Acquis (NPAA) which constituted a detailed one-year plan for the candidate country’s commitments as regards the fulfilment of the administrative Copenhagen Criterion by assuming and implementing the acquis. Every year the candidate country and the Commission jointly drew up a new programme, and progress towards the administrative goal was continuously checked and reported. One of the main foci of the NPAA was to determine which administration-reinforcing activities were to be performed during the following year, and this is where Twinning, as part of the Phare programme\(^{11}\), entered the scene.

The European Communities instigated the Phare Programme in December 1989 with the purpose of supporting Poland and Hungary after their break with the Soviet regime, and in 1998 the programme went through a major reform. A decentralised and more generally oriented assistance programme with a clear focus on accession emerged. Phare’s two main tasks can be summarised as:

- to develop the human and administrative capacity required for the approximation of laws and the implementation of EU rules within a democratic civil society; and
- to invest in infrastructure and enterprises with the aim of respecting EU norms, decreasing structural imbalances and enhancing the ability to cope with competitive market pressure.\(^{12}\)

\(^{11}\) The EU offered a range of support programmes to its candidate countries: SAPARD was focused on assistance within the areas of agriculture and regional/rural support, ISPA was directed towards work in the environmental and transport sectors, while Phare was concerned with assisting in the creation of state organisations and in the strengthening of the “regulating infrastructure needed for the candidates to be able to adopt the acquis” (http://europa.eu.int/comm/enlargement, 2003-08-11)

\(^{12}\) PLS RAMBØLL Management & Eureval-C3E, May 2003:8-9
Starting with these aims, the Phare Programme’s two main lines of business come into view: investment and the creation of administrative state organisations. Phare’s budget was divided between these two with 70% being allocated to investment projects for the development of industry and infrastructure, while 30% went towards reinforcing state administration and central state organisations. To illustrate the scope of Phare a closer look at the programme’s budget is enlightening: between 1998 and 2006 1.084,9 M€\textsuperscript{13} were allocated to Twinning projects, the average project cost amounting to 0,91 M€.

In the Phare-financed activities designed to reinforce the candidate countries’ state organisations as well as administrative and judicial capacity, Twinning was the instrument most frequently employed. Some basic figures and general patterns in relation to Twinning will now be presented before turning to an outline of the instrument as such.

2.2 Basic Figures and General Patterns\textsuperscript{14}

Twinning as an instrument for building administrative organisations was conceived in the course of the reform of the Phare programme in 1998. At that time the conception that the support hitherto provided by private sector consultants in the area of administrative reinforcement was inadequate, was widespread within the Union. It was decided that member state civil servants were the ones best suited for the mission of transferring the relevant knowledge and competence, and so the Twinning instrument was designed. It was an entirely new method of working and its framework grew and developed from a few basic ideas. When introduced to the member state ministers for foreign affairs, Twinning was not a complete concept but rather a set of thoughts on how best to aid the candidates in their effort to reach an adequate administrative level. A structure of general guidelines for Twinning was agreed upon and a document (the Framework Agreement) was designed to ensure the member states’ political commitment to the cause. The first couple of rounds of Twinning can be described as having followed a trial and error pattern. Along the way Twinning has evolved as an instrument and flaws and mistakes have been corrected. Problems and deficiencies in the original design have been rectified and Twinning has been continuously


\textsuperscript{14}This section is mainly based on interviews with one of the Twinning instrument’s original initiators (Interview 4.1), and with two representatives of the Swedish Ministry for Foreign Affairs (Interviews 4.15 and 4.16). The statistics are taken from the Twinning Coordination Team’s power point presentation “Twinning Institution Building Programme” (Spring / Summer 2005) and the document “Sector Overview. Twinning Projects under PHARE 1998-2004”
modified in accordance with the changing needs of the candidates. Despite the need for frequent modifications, the consensus of opinion among the Union and its member states seems to be that Twinning as an instrument for reinforcing administrative structures is here to stay. Within the EU it is widely regarded as a well established and both effective and valuable tool.

From a hesitant start, the scope of Twinning gradually increased. In 1998, 103 projects were initiated whereas the number in 2004 was 117, with a peak in 2002 when 195 projects were commenced. By the end of 2004, 1030 projects had been conceived, 539 of which had been completed and had had their final reports approved. The candidates most extensively involved in Twinning activities were Romania (179 projects), Poland (171), and Bulgaria (122). The majority of Twinning projects were carried out in the four originally focused sectors of justice and home affairs (227 projects), public finance and internal market (226), agriculture and fisheries (163), and environment (111). After its introduction in 1999, the field of consensus and social affairs also attracted a considerable amount of attention, resulting in 101 projects.

The member state most active in Twinning is without question Germany. Between 1998 and 2003 Germany submitted 478 Twinning offers (see section 2.5), which accounts for 18% of the bulk of all member states’ project proposals. But Germany was not only an energetic producer of proposals, it also won a great many projects. Out of the 1030 projects initiated, Germany was involved in 278, and has a success rate (i.e. the ratio between projects won and offers submitted) of 60% (to be compared to the most successful member state, Ireland, which has a success rate of 66%). Germany was also by far the most popular Twinning partner among the candidates: for nine of the thirteen candidate countries involved in Twinning, Germany is the member state with which they have co-operated the most. In addition, Germany is one of the member states that were active across the whole range of activity sectors (as opposed to for instance Ireland, which concentrated its Twinning efforts on the sector of regional development).

The general pattern was indeed that the largest member states were the most active. Germany (278 projects), France (180), the UK (169), and Spain (123) topped the list whereas Portugal, with only three projects won, held the bottom place. Luxemburg has not signed the Framework Agreement, and has consequently not participated in any Twinning projects at all. Of the smaller member states the Netherlands (119 projects), Sweden (84), and Austria (79) showed the greatest interest in Twinning.

As far as patterns in the member states’ participation goes, it was common for neighbouring nations to co-operate, but the size of the partners was seemingly also influential. Although Poland has been a popular Twinning

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15 Malta, Cyprus, Estonia, Latvia, Lithuania, Poland, Hungary, the Czech Republic, Slovakia, Slovenia, Bulgaria, Romania, and Turkey.
partner for many member states (presumably because of the size-related power Poland has been granted within the Union upon membership), the compatibility of administrative size and structure between member state and candidate country has, in time, proved to be important. It is reasonable to think that for instance France had an easier time giving advice to Poland than Sweden, since Sweden, for obvious reasons, might lack relevant experience from running a public administration as large as the Polish one. Having discussed the scope and evolution of Twinning, we shall now look at its purpose and the conditions in which it is practised.

2.3 The Ideas behind, and Reasons for, Twinning

Twinning is one of many pre-accession initiatives organised by the European Commission. The instrument thus belongs to a certain context and derives importance and meaning from this context. The three empirical conditions of the vastness of EU law, the importance attached to implementing the regulations, and the administrative situation in the Central and East European states, create complexity around the accession process. Twinning was designed to as far as possible reduce this complexity. According to the European Commission’s reference manual on Twinning projects, Twinning is “an initiative of the European Commission to assist [candidate countries] in acquiring the independent capacity to adopt, implement and enforce the full acquis /…/ before accession to the European Union”\(^\text{16}\). More specifically this translates into building or strengthening administrative organisation, which, in its turn, can be interpreted as “developing the structures and systems, human resources and management skills needed to implement the acquis”\(^\text{17}\).

Hence, Twinning is firmly grounded in, and finds its primary justification within, the acquis communautaire, and although this might seem quite straightforward it in fact presents a huge challenge to aspiring member states.

Upon joining the EU, states agree to follow the rules of the organisation, i.e. the acquis communautaire, which is a huge body of legal text comprising more than 300,000 documents. Furthermore, the acquis is made up of a number of different kinds of legal acts, such as treaties, international agreements, secondary legislation, consolidated legislation, preparatory material, case law, and parliamentary questions\(^\text{18}\). The treaties constitute the EU’s primary legislation, and can be compared to constitutional law at the national level. International agreements are agreements allowing the EU to develop

\(^{16}\) Preparing Candidate Countries for Accession to the EU. Institution Building – A Reference Manual on ‘Twinning’ Projects, Revised Version February 2002:11

\(^{17}\) Twinning in Action, October 2001:5

its economic, social, and political relations with the rest of the world. The *secondary legislation* can be defined as the “totality of the legislative instruments adopted by the European institutions pursuant to the provisions of the treaties”\(^{19}\). It comprises the EU’s binding legal instruments (regulations, directives, and decisions) as well as non-binding instruments (resolutions and opinions), together with a number of additional legal tools. The *consolidated legislation*, in its turn, is composed of treaties and secondary legislation complemented by amendments and corrections subsequently made to them. The *preparatory material* comprises all the documents issued by the EU institutions in connection with legislative procedures. *Case law* is defined as “all the decisions handed down by bodies exercising judicial powers”\(^{20}\), i.e. the Court of Justice and the Court of First Instance of the European Communities. The Court has been assigned the mission of ensuring that EU law is respected in the interpretation and implementation of the founding treaties, and as such it has a very important role to play. Through its interpretations of Community legislation the Court has “contributed to developing the substantial rules within as good as all areas of EU co-operation” (Tallberg 2001:166, my translation). The *parliamentary questions*, finally, are questions posed by the members of parliament, and published in the Official Journal of the European Union, intended to keep a check on the activities of the European Commission and the European Council. All of the above are rules that the EU’s member states are required to follow.

It goes without saying that the adoption and implementation of all this regulation are demanding processes, particularly to young states such as the CEE countries. It is the complexity of the situation that justifies Twinning in the first place. The Commission emphasises that the basis for, and the fundamental idea behind, the Twinning instrument is transfer of knowledge, which is why various forms of technical assistance or other more material support missions fall outside the scope of this method of working. Twinning is, in addition, meant to deal with the sectors being “the prerogative of public service” (Interview 2.1), hereby in most cases excluding input from private sector officials. Instead, Twinning projects are described as built around the candidate country’s defined needs, the participating member state’s experience from working with EU administration, and the parts of the acquis relevant to the project at hand. Twinning projects are said to be demand-driven, but it can be argued that the demand in question derives from EU requirements just as much as from candidate country deficiencies.

Nearly all of the important areas of the acquis are covered by the Twinning programme and can be subject to various projects. Twinning projects make heavy demands on both member and candidate states, and in order to facilitate the understanding of the absolute core of the instrument, the Com-

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\(^{19}\) ibid

\(^{20}\) ibid
mission has decided upon a number of basic principles intended to guide the process. These principles are:

- The candidate countries choose their member state co-operation partners autonomously and freely;
- Twinning projects must yield a concrete, operational result in terms of the candidate country meeting a requirement in connection with Community rules;
- The signatories of Twinning covenants commit themselves to the result, and not only to the means to achieve them. At the end of the project a new or adapted system must function under the sole responsibility and means of the candidate country;
- Twinning is not a one-way delivery of technical assistance from a member state to a candidate country. It is a joint project covering a process, in which each partner takes on responsibilities; the candidate country commits itself to undertaking and funding reforms, the member state to providing assistance to the process for the duration of the project;
- To underpin the credibility of their commitment, the Twinning partners draft a detailed work plan, before starting work. It may be adopted in the course of its implementation, but it must fix clear benchmarks to allow for close monitoring of progress towards the final result.

The typical Twinning project is centred on activities such as conferences, lectures, seminars, and practically oriented workshops involving civil servants from affected candidate country ministries and/or authorities. The result most commonly produced appears to be documents in one form or the other. On the one hand there are the rather obvious amendments and rewritings of laws and legal acts in order to harmonise them with the Community acquis. This might seem a fairly straightforward task but, as it happens, most candidates need assistance both in understanding the meaning of the acquis and in realising when (and how) the national law contradicts it. On the other hand there is the question of creating awareness and comprehension of the changes made, and then of course the ensuing transformation needed in practice. The documentation generated in this area often consists of evaluations of the current situation, recommendations for improvements in administrative procedures or for the organisation of new administrative units, different kinds of manuals, and training programmes for civil servants.

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21 Preparing Candidate Countries for Accession to the EU. Institution Building – A Reference Manual on ‘Twinning’ Projects, Revised Version February 2002:9
It is worth stressing that, as a way of ensuring the candidates’ commitment to the administrative changes inherent in the ideas behind Twinning, the European Union only finances the work put in by the participating member state. The candidate country must carry all its own costs for personnel, equipment, facilities etc. It is now time to look at the various actors involved and the procedures leading up to the realisation of a project.

2.4 The Main Actors Involved in Twinning

The Twinning process involves a number of actors, activities, phases, and procedures. In addition, it is constantly changing as it is adapted to new or altered circumstances. One significant example of this would be the large accession, in 2004, of ten candidate countries, which entailed a variety of alterations, re-organisations, and re-labellings in relation to Twinning.\(^{22}\) I will start here by providing a brief description of the Twinning actors and their functions, and then a more detailed picture of the Twinning procedure. The actors involved in Twinning can be grouped as shown below:

![Twinning components diagram](image)

Figure 1: The Twinning components (adapted from Twinning. Building Europe Together, 2006:10)

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\(^{22}\) For the sake of simplicity I have chosen to use the original set-up as base line in this presentation and to only describe the organisational changes to the Twinning instrument where motivated by substantially increased understandings. The terms, procedures, actors, and phases presented in the following thus all pertain to Twinning as it was realised before the 2004 enlargement.
The European Commission holds the overarching responsibility for Twinning projects and carries a number of responsibilities. It performs priority-setting, co-ordinating, supervising, controlling, approving, supporting, and budgetary functions. In a sense, the Commission constitutes the focal point from which a Twinning project develops and “[t]he different services of the Commission act as a facilitator and guardian of fair, transparent and consistent application of the Twinning rules and procedures”\(^{23}\). When performing these tasks, the Commission’s Delegations to the candidate countries are of particular importance. It is the Delegations’ mission to establish and sustain a functioning dialogue between the candidate country government and the EU, to apply each country’s Europe Agreement, and to oversee the implementation, on the spot, of the EU-financed support programmes.

Both of the participating states are then required to appoint project leaders (PL). The PL shoulders the overall administrative and financial responsibility for a Twinning project; s/he is to function as the guarantor for the successful realisation of the project and therefore her/his position and status within the national administration are signs of commitment to Twinning projects. The member state project leader continues to work in her/his home administration but devotes some of her/his time to conceiving, supervising, and co-ordinating the overall thrust of the project\(^{24}\). The candidate country project leader, on the other hand, is formally the person who is ultimately responsible for the implementation of the covenant (see below). Preferably s/he should be able to make things happen, to engage and motivate the relevant staff and to secure the commitment needed to actually induce changes.

On the next, and more practice-related, level, we find the pre-accession advisor (PAA) who functions as the operative manager of Twinning projects. S/he co-ordinates and organises the implementation of the Twinning activities specified in the covenant and mediates between the candidate country administration and the member state civil servants. Normally, the PAA has a number of candidate country counterparts, known as component co-ordinators, responsible for the various parts of the project. At the level of day-to-day tasks and activities we then find the member state short-term experts (STE) and the candidate country working group participants. These are the civil servants bringing Twinning projects to life; the STEs manage the short-term missions (see below for examples) that the candidate country civil servants participate in and finalise.

I will now consider what these actors do. What is it that goes on in Twinning projects and how do they evolve?

\(^{23}\) Twinning. Building Europe Together, 2006:13

\(^{24}\) Preparing Candidate Countries for Accession to the EU. Institution Building – A Reference Manual on ‘Twinning’ Projects, Revised Version February 2002
2.5 The Twinning Procedure – from Fiche to Completed Project

When, for instance, Latvia, as a result of a Twinning project carried out in co-operation with the Swedish Agency for Economic and Regional Growth (NUTEK), is able to present a national industrial policy, this is the end of a long, complicated, and sometimes quite unpredictable process. To go from an identified need to practically functioning systems and structures is a demanding and cumbersome task. In order to facilitate the work needed, and to ensure the observance of the aforementioned basic principles of Twinning, the European Commission has developed a strictly regulated procedure for the realisation of Twinning projects. The projects touch upon areas that are important for the future functioning of the enlarged Union and enormous amounts of both financial and human resources have been committed to them. The processes at work are complex and challenging, and in order for the Commission to be able to take in and ultimately influence their development, procedures and regulations have been deemed a must. Hence, each part of the Twinning process is subject to thorough planning. An elaborate presentation of what is to be accomplished, and how, is required. Detailed manuals for the different steps involved in the process, and for the outline of related documents, have been constructed in an attempt to guide the general direction of Twinning projects.

In the following sections the evolution of the typical Twinning project – i.e. birth, approval, and realisation – will be outlined. In order to illuminate some of the obstacles and difficulties inherent in both the procedure and the Twinning instrument as such, official descriptions found in EU documents will be supplemented with interview quotes. This structure will point to the discrepancy between the official version of Twinning and its practice.

The Formulation of a Fiche

Based on the Commission’s annual Regular Reports a national programme is established for each candidate country. Within the framework of this programme the candidate country will then together with the European Commission – through the various country teams of the directorate general (DG) for enlargement and the Commission’s Delegations – identify the adminis-
trative areas within which it will need assistance from, and co-operation with, old member states. The Commission approves a budget frame for the intended bulk of the Twinning projects, and upon endorsement by the Phare Management Committee it is then the task of the candidate country to formulate individual project descriptions, or project fiches. A fiche is supposed to consist of a description of the candidate country’s needs, i.e. what is it that the country needs assistance with. Or, more precisely, what administrative organisation, procedure, methodology, system, routine etc is it that needs to be developed or reinforced. The European Commission is also involved in this phase since “The Commission will work with the [candidate country] to try to ensure that these fiches are as detailed as possible in order to assist the [member state] in properly defining their proposals”.

That Twinning projects should be demand-driven, i.e. initiated by the candidate countries, is described as important in the official documentation, which means that the identification of needs, in the shape of project fiches, is a decisive element in the Twinning process. Interviews with involved civil servants point to some specific and problematic aspects of this Twinning phase.

… it starts with a fiche and the fiche describes what [the candidate country] wants this project to accomplish. Our fiche [i.e. the fiche we received] consisted of perhaps… five lines describing what was supposed to be done. And it was partly things that are inflicted on the candidate country, by the EU, the Commission. It is not at all certain that there is a real desire to deal with this in the candidate country.

Interview 2.3 (member state)

… and then fiches are to be formulated. And it is the candidate country that is supposed to do that, they get assistance from the Commission and maybe from other countries as well. But if you don’t have the slightest idea how a VAT system works, how are you then supposed to be able to formulate a project?

Interview 2.16 (member state)

My experience says that the fiche shouldn’t be very detailed… when we are developing a fiche it takes about one or two years before we can start to implement the Twinning. This is too long to wait for this assistance so they start to implement and to organise all themselves, without the Twinning. If the fiche isn’t very detailed we can for example use this assistance and this project to further develop the model [we have started to work on]

Interview 2.34 (candidate country)

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28 The Phare Management Committee is made up of representatives from all member states and it has both monitoring, governing, and – in relation to Twinning – approving functions.

29 Preparing Candidate Countries for Accession to the EU. Institution Building – A Reference Manual on ‘Twinning’ Projects, Revised Version February 2002:21
The first quote is illustrative because it highlights a number of problematic aspects. It tells of the tension between EU requirements and candidate country desires, and also points to its possible negative results in terms of resistance and of member states not obtaining enough information. The second quote rather speaks about candidate countries’ inexperience and their not knowing what is required or needed from them, which might lead to uncertainty and hesitancy on their part. The third quote describes the long time lags frequently involved in projects. It highlights the fact that candidates might attempt to act in spite of the “pacifying tendencies” seemingly built into Twinning through its cumbersome decision procedures, and points to their willingness to sometimes progress faster than the EU procedures can manage.

Twinning Offers

When the fiches have been formulated they are sent out to all member states. In every member state a national contact point (NCP) has been established that will receive the fiches and then distribute them to the relevant authority or ministry. The NCP functions as a link between the Commission and the national authorities/ministries and its basic task is that of co-ordination. The member state authorities interested in participating in a Twinning project are then to respond to the fiche by submitting a project offer. Clearly defined guidelines for the contents and form of the offer have been elaborated by the Commission; in the Twinning Manual it is written that “the proposal should be detailed enough to respond adequately to the project fiche but should not be a fully elaborated project”

Normally the member state authorities have about 6 to 8 weeks in which to prepare an offer, which will then be sent, via the NCP, to the Commission for registration and to the candidate country for evaluation.

In view of the size of many Twinning projects, and bearing in mind the limited human resources the member states can spare for participation in this kind of work, the Commission encourages several member states to get together and co-operate in one project. In addition, doing this is said to reduce the risk of a candidate copying the systems or solutions of one particular member state. Several member states can thus jointly prepare an offer by establishing a Twinning consortium. In this case, one member state will take the main responsibility and become leading partner, while the other(s) will function as junior partner(s). The candidate country also has the opportunity to suggest the combination of several offers into one. The reasons for, and practical organisation of, these co-operative efforts might vary from project to project, but it is common for the involved member states to share the

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30 Preparing Candidate Countries for Accession to the EU. Institution Building – A Reference Manual on ‘Twinning’ Projects, Revised Version February 2002:22
project components between themselves so that each country handles its particular components, as described below.

In the Hungarian project /…/ the British have handled the customs part and [we] have managed another part. Well, you can sort of see in the covenant that we take care of these parts and the British deal with these other parts.

Interview 2.4 (member state)

We had only two offers, from France and from Sweden. But neither France nor Sweden offered to realise this project from A to Z, the full content of the project. We had information that Sweden can help us realise the first part concerning legislation and France said that they can help us prepare a training system.

Interview 2.28 (candidate country)

In a sense, this practice can be seen as a watering down of the idea of candidates becoming exposed to multiple models and solutions because each part can then be considered to constitute a separate process. Accordingly, instead of encountering French and Swedish approaches to legislation and training, the Polish administration, in this case, ended up with only one model for each part of the Twinning.

The Candidate Country Selection of a Twinning Partner

At the end of the application period, all member states who have submitted a complete offer are called to a meeting in the candidate country. During this meeting – sometimes referred to as a “beauty contest” or a “sales show” – the member states present, and try to sell, their proposal to the representatives from the candidate country. It is the candidate’s responsibility to form an opinion on each of the proposed projects and then choose the one most suitable to its needs. In this regard the Commission strongly emphasises that the choice of Twinning partner is intended to rest completely in the hands of the candidate country. In the Twinning Manual it is stated that the candidate country “will make its choice based on objective criteria”31, and the aim is of course to find a good match between supply and demand. Following the prescriptions of the Twinning Manual, candidate countries are to use “objective criteria” when selecting their partner and it is of course interesting to take a closer look at what this might mean. On the topic of choosing a suitable Twinning partner along rational lines, the two quotes below are illuminating:

31 Preparing Candidate Countries for Accession to the EU. Institution Building – A Reference Manual on ‘Twinning’ Projects, Revised Version February 2002:25
There are two main rules of the European Commission, *equal opportunity* and *transparency*. And for the equal opportunity there is the presentation of Twinning offers of course and then all the offers should be evaluated. And then for the sake of transparency the evaluation should be put on paper, in a kind of evaluation form

Interview 2.35 (candidate country)

After the presentation they have two weeks to decide, to write their opinion, who is the winner and who is the loser and explain everything in detail. There is a special form, you need to show the best sides of this offer, the worst sides, and then make a selection but a motivated selection. It is not simply I decide, my friends presented their… these things are happening very sensitively.

Interview 2.32 (candidate country)

A lot of emphasis is thus placed on candidates making an objective evaluation and judgement of each offer – or at least on them *presenting* their choice in such terms – and in order to encourage this kind of reasoning, special evaluation sheets have been developed in every candidate country. They may differ in appearance but the general idea seems to be the same – to provide an initiated and relevant assessment of Twinning offers. The Polish sheet, for example, has two main parts: A) assessment of institution/EU member state and PAA; and B) assessment of a package of services (i.e. of the contents and methodology proposed as well as of the intended short-term experts). To provide an idea of the structure of this seemingly important document, I have assembled the most important (according to their weighting in the final assessment) elements to be evaluated in the table below:

<table>
<thead>
<tr>
<th>Criterion</th>
<th>Maximum Grade</th>
<th>Obtained Grade</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessment of earlier bilateral cooperation</td>
<td>35</td>
<td></td>
</tr>
<tr>
<td>PAA’s position in public administration</td>
<td>25</td>
<td></td>
</tr>
<tr>
<td>PAA’s practical experience/ability to implement acquis in a given field</td>
<td>25</td>
<td></td>
</tr>
<tr>
<td>PAA’s knowledge of foreign languages</td>
<td>25</td>
<td></td>
</tr>
<tr>
<td>Consistency of contents and methodology with Polish needs</td>
<td>40</td>
<td></td>
</tr>
<tr>
<td>STEs’ experience/knowledge, qualifications relevant for the project</td>
<td>50</td>
<td></td>
</tr>
<tr>
<td>STEs’ earlier experience in Poland or other Central and Eastern European Countries/ knowledge of the Polish context relevant to the project</td>
<td>50</td>
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Table 1: Elements from the Polish evaluation sheet for Twinning offers

It is clear that previous experience as well as the personal characteristics of the member state civil servants are considered to influence the quality of
Twinning. Judging by these criteria the task of assessing, and then grading, Twinning offers is not easy. When asked, basically all interviewees name selection criteria very much in line with the above, but other factors – such as lobbying activities, political pressure, economic considerations, and general opinions – also seem to have an influence. Accordingly, the selections can hardly be described as “objective”.

… so we had something like five or six competitors [i.e. other member states having submitted offers], I’m not entirely sure. But they chose us, maybe because we looked nice! And among other things we had the Ministry of Foreign Affairs with us and /…/ an ambassador who ran around and lobbied at the [candidate country] ministry before this meeting in [the capital], and perhaps this might have had an influence on the [candidate country] choice.

Interview 2.6 (member state)

But then there has been purely political pressure /…/ we were doing our first project in [the candidate country], and then there was a sort of continuation on that project and a fiche was circulated and the [candidate country officials] wanted us to submit an offer. And we said that we can’t do it, we have too much now. And at the same time they [the candidate country counterpart] received signals that their central administration wanted them to choose the Spanish offer, the Spanish had been on the [candidate country] like crazy!

Interview 2.4 (member state)

Nordic countries have a good reputation in [the candidate country], maybe because Sweden and Denmark are friendly towards also choosing the investment into [the candidate country].

Interview 2.24 (candidate country)

We had enough of Scandinavian influence, we decided to get some other expertise.

Interview 2.21 (candidate country)

All of the above aspects are thus capable of influencing the candidate’s choice of Twinning partner, provided of course that more than one offer has been submitted. It is not uncommon for project fiches only to receive one offer (they may even not receive any at all), and then the candidate does not really have a choice but is more or less forced to accept (provided that the offer fulfils the formal EU requirements). One explanation for the scarcity of Twinning offers might be found in the following recollection, which illustrates the rather common candidate country behaviour of contacting and encouraging member states before the fiches are sent out. If word gets around that for instance Hungary has asked Austria to submit an offer, it might discourage other members from participating in the competition. In addition, the quote points to the common pattern of neighbouring states cooperating in Twinnings:
In the beginning it was, we would like to encourage Finland to present offers for our Twinning about border guard, for the management of our border guard. And they were very kind, they answered us two times that they are very honoured but they are not a big country, in terms of population, and they are mostly involved in supporting, in giving help to the Baltic countries.

Interview 2.36 (candidate country)

Even if only one offer has been produced, a presentation meeting must be organised in the candidate country. The selection procedure and the actual presentation of offers have been criticised by a number of Swedish civil servants. Their argument seems to be that they do not have much experience of this kind of activity, nor do they particularly wish to acquire such experience. They do not appear to view the selling of ideas and practices to external parties as belonging to their core tasks. From the perspective of the candidate country the presentation is however highly justified – as it might considerably facilitate assessment, selection, and future co-operation – as illustrated by the quotation below. Rather than basing its choice on documents the candidate has the opportunity to form an opinion drawing on more varied cues and impressions, as well as to discuss and clarify uncertainties.

We expect that they [the member state civil servants participating in the presentation meeting] will provide the presentation and they will clarify their intentions, their vision of the project implementation /.../ During the presentation all sides can become familiar with each other, the [candidate country] beneficiary could ask questions as regards… some qualifications needed.

Interview 2.35 (candidate country)

When the candidate country has found and selected its Twinning partner(s), the more practical work can begin.

Preparing the Covenant

Once the Twinning partners have found each other it is time to draft a detailed plan for the project, known as a Twinning covenant. The covenant constitutes an agreement or contract between member state and candidate country and it contains detailed information on the project objectives, the underlying acquis communautaire, the various project components and their constituting activities, the Commission’s terms for approving the project, the participating member state civil servants (including CVs), the intended work schedule, and the project budget. Moreover, the covenant is put together according to a standard contract template provided by the Commission. The participating candidate country and member state share the responsibility for drawing up the covenant, and the idea is that repeated meetings and discussions between civil servant representatives will result in a viable project plan. According to the Twinning Manual “[i]t is important that the work...
schedule reflects a clear strategy, linked to measurable benchmarks, in pursuit of the targeted results” 32. Such “targeted results”, or objectives, can be for instance “Labour Protection System in the Slovak Republic brought in line with EU standards” (SR/IB/SO/01) or “… to ensure effective financial control of state institutions in line with the objectives of the EC Accession Partnership and the NPAA, and to introduce Performance Control and Internal Audit at regional and local administration levels in selected municipalities in the target regions” (LI00/IB-FI-05). The results are then to be broken down into clearly defined and measurable activities that can be ticked off during the course of a project.

The writing of the covenant is frequently described as the most demanding and time-consuming phase in the Twinning life cycle. The Commission has issued an extremely extensive manual for the creation of this particular document and it often takes as long as a year for the Twinning partners to agree on the concrete contents and structure of the covenant. Because the covenant in a sense describes an uncertain future, strategies for handling this uncertainty and the Commission’s demands for plans and accountability seem to have emerged around the practice of utilising vague and imprecise definitions and formulations. As illustrated by the following descriptions, this vagueness opens up for subsequent concretisations and interpretations based on the actual situation rather than on anticipations and forecasts:

The problem here was that /…/ they [the candidate country officials] really didn’t know what they wanted /…/ The covenant looked like this, it was written in a rather general tone. And then we said to ourselves that they don’t know what they want /…/ and then Henry went to [the candidate country] and his task was to dig out what they really wanted. And once he knew that, it was time to organise the seminars.

Interview 2.6 (member state)

… well, it said [in the covenant] that we were supposed to provide training and what we did was really consultations, we called it training by consulta-

tion [konsultnära träning]. It’s all about looking to the covenant, and without deviating from it of course and saying that we will do something else, that’s absolutely not possible! But rather to see and figure out what we can do within the frame of what it actually says.

Interview 2.8 (member state)

The need to adopt such strategies springs from the fact that the covenant is in many ways regarded as sacrosanct. Its importance derives from the commitments made in it to actually achieving the stated goals – once an activity is listed in the covenant, it is mandatory to realise it or the EU will not approve (and subsequently finance) the member state input. It is possible to make

32 Preparing Candidate Countries for Accession to the EU. Institution Building – A Reference Manual on ‘Twinning’ Projects, Revised Version February 2002:25
amendments to the covenant but this is rather complicated and the basic idea is that the specified activities must be realised regardless of what happens in the candidate country administration during the realisation of the project. That situations and circumstances have a tendency to change frequently seems to complicate the implementation of covenants, as testified by the following statements.

You are pretty tied up by this covenant. I mean, we had to follow it and I didn’t always think that this was the best way to go. Because it was old, there were some delays in this project and so the covenant was somewhat obsolete when we got started. So maybe it would have needed some modernisation…

Interview 2.10 (member state)

… the important thing is that you realise the activities listed in the covenant but I think that in some cases it would be motivated to say that halt this process here… I mean that we should have the possibility to say that we won’t do this mission because our co-operation partner /…/ really hasn’t done what it’s supposed to.

Interview 2.8 (member state)

Given the importance attached to the covenant, a prerequisite for a realistic and achievable document appears to be extensive communication and discussions between the Twinning partners. In order to assist the member state in gaining insights in, and understandings of, the organisation of the candidate country’s administration, the Commission finances study visits and fact-finding missions for member state project leaders and PAAs. The idea is thus that the member state and the candidate country will work together to draw up a functioning covenant, taking into account both member state experiences and candidate country prerequisites. However, this co-operative effort does not always seem to function very well; the general pattern appears to consist of the member state being in charge and the candidate country staying rather passive. The remarks below point rather clearly to the member state having the “upper hand” when writing the covenant. What they illustrate is, firstly, that the member states can dismiss candidate country proposals rather casually with reference to superior knowledge/experience, and that the member state might well propose a fixed model for project realisation, which is not open to negotiation. The candidate country input in the writing of the covenant is hence decreased in favour of member state ideas.

… [the candidate country project leader] tried to get a lot of things into the covenant and we [the member state] tried to stop him 100 times. It won’t work! “But if we do like this then?” It won’t work! And then finally I made him realise it /…/ so it turned out all right in the end, the covenant.

Interview 2.4 (member state)
I wrote this particular covenant, well not just me, there were two of us. We had [extensive contacts with the candidate country] but these were not complicated matters. It only dealt with individual activities and such because this scheme that we were offering, it was something that we knew and it was nothing new, so to speak. This kind of missions, we had realised them before [in the candidate country] so they recognised this pattern.

Interview 2.18 (member state)

In contrast to these member state descriptions of the candidate country civil servants as rather passive, a few candidate country perceptions of the work of putting together the covenant will be presented. It is clear that either candidate country involvement varies from project to project, or the participants interpret the situation in diametrically opposed ways. The interviews illustrate that discussions and negotiations can occur if allowed, and that also the member states might lack activity and engagement.

Because sometimes, I don’t know... the Twinning partners [the member states] have their ideas which in general fit to our needs. But sometimes when we start to talk about the details they have some kind of... other direction than ours so we try to find the way together.

Interview 2.34 (candidate country)

We are not only working on the content of the covenant but we are also working on exchanging information. In the beginning we sent to our partner much information. I mean legal documents, pictures of the structure of the institution, competency and so on. We expect that [the member state civil servants] will read it so that as they start the preparations of lectures and workshops and so on, they will have some knowledge about [the candidate country], about the situation in [the candidate country]. Sometimes we find that not everybody read it, but you know...

Interview 2.36 (candidate country)

When member state and candidate country have finally agreed on content, work schedule, and division of work, the covenant is sent to the Commission for revision and approval, and then, finally, the practical implementation of a Twinning project can commence.

Project Realisation

The typical Twinning project lasts between 12 and 24 months and during this time the participating member state is required to provide a pre-accession advisor (PAA) to be stationed in the candidate country. The PAA is responsible for organising the planned Twinning activities. In many ways s/he will acquire a dual identity and become something of an intermediary between the candidate country civil servants and the short-term civil servant experts from the member state. Such experts will lead the activities listed in the covenant – e.g. lectures, seminars, workshops, discussions, study visits –
whereas the actual work is supposed to be carried out by candidate country working groups. In this process the PAA, and particularly the member state experts, are expected to function as overseers and advisors to the candidate country civil servants. It is important to note that Twinning activities commonly run parallel to the candidate country civil servants’ regular work, meaning that Twinning adds to their workload. This addition seems on some occasions to have hindered the realisation of Twinning activities, as exemplified by the first quotation below, which describes a lack of candidate country engagement and its negative effects. In addition, and as illustrated by the second and third quotations, the multi-institutional character of many Twinnings provides further problems for administrations building on a highly departmentalised structure entailing a reluctance to co-operate “across the borders”.

[reading from the covenant] “a [candidate country] working group will be established” it says, but it was their responsibility to establish such a group, we couldn’t do that. And there we had some difficulties concerning component number 1 /…/ So it was kind of tricky that we didn’t have, that these working groups weren’t established. It took enormous amounts of time. And in fact we had to nag a lot.

Interview 2.10 (member state)

… and for me it was difficult to manage these parts because for each part… different departments were involved and you know, it was difficult to organise meetings, to organise seminars, to find the right person in this department who will truly be responsible for it. And I can say that it was… it was almost a fight between us, sometimes we had to ask our Minister to ask them or to order them to be serious, to participate in this project.

Interview 2.28 (candidate country)

[The Police and the prosecutors] it is very important, they should co-operate these two groups of people. These two institutions should co-operate with each other in order not to duplicate activities; to inform each other what they found out you know. And in my opinion it is not very good in the case of our country and it [Twinning] is the occasion for prosecutors and policemen to meet, to discuss, also to introduce their personal contacts.

Interview 2.36 (candidate country)

In other cases the engagement and commitment seem to have functioned well, implying the need for member state civil servants to try and comprehend and adjust to the candidate country civil servants’ situation and the often conflicting demands facing them. That this comprehension does not always develop is illustrated by the second and very telling comment below by a candidate country Twinning co-ordinator. The first quotation shows that relations between member state and candidate country are not necessarily smooth, and that there are a number of potential causes of conflict. In particular, degree of commitment to the Twinning and efforts put in seem to con-
stitute common grounds for irritation. It is important to note that the problems might occur with both candidate country and member state.

But this commitment, of course it depends on how torn they are [between tasks], how much thought they can devote to the project /.../ The idea was that we would realise two or three seminars and then they [the candidate country participants] would put together training programmes and then they would train others. But we changed our minds and included the putting together of programmes in the actual seminar so that we were present. We didn’t really trust… they go in different directions and then they are supposed to put something together collectively. So we adjusted [to the circumstances] in order to get results.

Interview 2.18 (member state)

… the Twinning advisor [the PAA], it’s very different people. If you write [in the covenant] that they are supposed to do this they say ‘I’ve done it, pay me money and I’ll have a holiday’. It’s very rude of course. But if you write very precisely what should be achieved, in what terms it should be achieved, in what quantity it should be achieved, it’s very useful for the [candidate country] side in order to press the Twinning advisor.

Interview 2.31 (candidate country)

Concerning the activities realised in Twinning projects, the candidate countries’ attitudes and behaviour towards the member state solutions, and the subsequent relating of these models to candidate country practice, a number of interesting aspects deserve elucidation. The nature of the co-operation taking place is telling because it reflects the different roles that members and candidates play. The two quotes below demonstrate the superiority of the member state in relation to the candidate where the former is entitled to guide the development of the latter, mostly on account of its experience.

… we attempt to narrow this gap, assist in narrowing this gap in order to arrive at some kind of EU standard. There isn’t really any EU standard but it’s kind of like what a normal EU member state can accomplish. And in my case these gaps existed primarily in the areas of VAT and excise, there were gaps in the legislation and there were gaps in knowledge and applications

Interview 2.27 (member state)

… our Twinnings were usually focused on developing some kind of procedure or structure or organisation for special procedures, customs procedures or special tasks for example like excise or the common agricultural policy or something like this. And the mission looks like that first the short-term experts come to [the candidate country] and see what we have, they are doing some kind of gap analysis. That we have, I don’t know not enough people dealing with a particular issue and from their experience it seems like more people should be allocated to such kind of work or tasks. /.../ And then they pursue some kind of report that shows that we have some gaps in this and this area, what they discover. They prepare some recommendations.

Interview 2.34 (candidate country)
Turning next to what comes out of these co-operative efforts, and to the issue of how the candidates make use of the assistance provided by member states, a division can be made between the two areas of legislation and organisation. Below, two interviewees describe the ways in which candidates might use the member state support and opinions when it comes to legal harmonisation. Evidently candidates manage member state input differently, ranging from rather passive duplication to active modification and adjustment.

In some cases [the candidate country officials] thought that this was very interesting and maybe they could… it probably happened that they actually more or less copied [the member state solution for implementation]

Interview 2.22 (member state)

Regarding legislation you can only listen, you can take something or not but you make the decision and it’s your legislation that you have to implement, to amend and so on /…/ Of course in some ways we chose our own way and not what [the member state] recommended us, because we knew that that would be better.

Interview 2.24 (candidate country)

In addition to the work on legal issues, ensuing implementation and application of laws is also dealt with in Twinning projects. Rather extensive and far-reaching organisational changes may be initiated in Twinnings and even though it is difficult to say that a particular Twinning project caused this or that important change, the realisation of projects certainly seems to speed up the change processes. The next set of quotations are intended to illustrate the kinds of organisational changes to which Twinning projects give rise, and we see that they range from the development of administrative units, via training programmes, to the formulation of organisational purposes. In other words, the changes can be either very tangible or rather related to ideas and understandings.

And then we have Dutch experts and British experts who show us what it looks like in their administration and they were just recommending us to create in the central organisation, in the head quarter, a central unit which would be dealing with CAP [Common Agricultural Policy] procedures. And we just have this decision by the head of the customs service, yeah we should do it because it’s really very important. And right now we have such a structure, such a division.

Interview 2.34 (candidate country)

So [the PAA] she proposed that we should have trainers in all 16 regions /…/ they were trained by the [member state] experts, how to train, communication and management as well. And these trainers exist even today and we have,
now maybe we have 100 trainers. /…/ It was a [member state] suggestion [to organise the training programme in this way], I think it is very similar to the [member state’s] tax system.

Interview 2.28 (candidate country)

Fishermen Organisations have existed for a long time in [the candidate country] and their purpose was to represent their members. Now there is an EU regulation requiring so-called Producer Organisations so now some Fishermen Organisations are being transformed into Producer Organisations.

Interview 2.30 (candidate country)

The Results of Twinning Projects

In finalising this section on the organisation of the Twinning process a few words will be said on the results and perceptions of Twinning projects. The above-described administrative changes are of course examples of results, but it is important to note that these concrete expressions are often the final outcome of comprehensive preparations and planning. It is in fact often the results of planning efforts that constitute the physical remnants of Twinnings. As previously mentioned, the concrete results of the Twinning activities often come in the shape of various kinds of documents. Rewritings and amendments to national legislation constitute one kind of result, while the raising of awareness for intended changes in order to also alter practice is another. In this second category, planning documents, strategy and implementation plans concerning administrative procedures, the organisation of new units, and the production of manuals and training programmes are common. In order for these documents to have an effect, the engagement and interest of the managing or political levels are quite necessary. The commitment of both politicians and the civil servants who will work with the changes in practice is needed, and sometimes hard to obtain. This balance, and the problems that might arise in relation to it, is described as follows by a PAA:

And the problem was that the ones who had written the fiche were not directly… they sort of sat in a “side cart”. They weren’t directly involved in any of the issue areas but rather belonged to a kind of administrative unit working with development aid. And that’s why we encountered some mistakes and problems initially. /…/ They [the authors of the fiche] haven’t talked to the [Ministry of] Finance so to speak, they just merrily wrote the fiche. And then you are tied down [by the guaranteed results of the covenant]

Interview 2.13 (member state)

In this case the anchoring of the Twinning project within the important practical units seems to have been deficient, and this kind of problem does not appear to be uncommon. One interviewed candidate country co-ordinator
from the Ministry of the Interior said that the authorities or services often think that their procedures are fine but she, as a person more immersed in the EU context, sees that things remain to be done (Interview 2.36). Despite the possible problems of weak anchoring and reluctant reformers, many of the interviewees speak of the effects that Twinnings have on the perceptions and attitudes of participants. A few quotes by candidate country civil servants will be used to illustrate these changes.

You don’t really deeply accept the values that are put into the acquis communautaire and so on, I mean they are not in the traditions /…/ You start using those phrases, and of course they are fashionable and so on, but with time they sink in and become much more natural.

Interview 2.23 (candidate country)

Yes we are new [members of the EU], we are newcomers but we are learning from others, from old countries, how to play this game and we become, day by day, more demanding, stronger in our positions. Of course we cannot be in the same way like old countries but we have good potential to do it… like they do.

Interview 2.19 (candidate country)

Of course the most important is to achieve the formal benchmarks and to achieve the objectives, this is most important. Because it is measurable as you said, and we can verify it. But the other side is that we talked about, there is a broader… a sense of, maybe it will be very strange to say, but a kind of feeling that we are in a common Europe /…/ we can feel that we are the same, we are acting within the same Europe

Interview 2.35 (candidate country)

Accordingly, the changes are of different kinds. They might, as in the first quote, relate to changed practices that can, eventually, also lead to changed attitudes. Or the changes can rather be related to self-perceptions and the ensuing increase in assertiveness, as in the second quote. The third quote rather indicates a kind of change related to a new identification and sense of belonging. What comes out of Twinning project hence ranges from the very concrete to the very ideational. Both activities and identities are affected.

Following this description of the outline and characteristics of the realisation of Twinning projects a few words will be said on what happens at the end of a project. Since “[t]he sole reason and justification for Twinning is the achievement of a practical result”33, making sure that this is actually done should be a vital part of the process. It is certainly true that the European Commission puts a lot of emphasis on reports – quarterly and annual as well as final reports are demanded – but other than these documents there has not been any thorough systematic evaluation of the long-lasting effects.

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33 Preparing Candidate Countries for Accession to the EU. Institution Building – A Reference Manual on ’Twinning’ Projects, Revised Version February 2002
of Twinning. A number of reports by consultancies (e.g. Birker et al 2000\textsuperscript{34}; PLS RAMBØLL Management & Eureval-C3E, 2003\textsuperscript{35};) and researchers (cf. Papadimitriou and Phinnemore 2004; Tulmets 2005a, 2005b; Bågenholm 2006) have been produced but no conclusive judgement has been passed. However, the fact that the European Union has expanded the area of application for Twinning to include programmes other than Phare – e.g. CARDS, Tacis, and MEDA\textsuperscript{36} – indicates that the instrument is deemed effective in some sense. In addition, the perceptions and experiences of both member states and candidate countries seem to be predominantly positive. There are problems, for sure, but during my interviews I did not encounter anyone who felt that the negative effects of Twinning outweighed the positive ones.

To summarise this general description of the Twinning instrument, a number of themes will be briefly commented upon. The ideas behind Twinning, the procedure and intended development of concrete projects, the potential clashes between ideals and practice, as well as some basic figures concerning reach and scope, have been referred to. Regarding the justification for project initiation it appears that despite the EU’s emphasis on projects being firmly grounded in the acquis communautaire, this ideal may prove difficult to uphold in practice. First, the concrete significance of the acquis is not always comprehended by the candidates formulating fiches, meaning that the connection between abstract rules and concrete project may be vague or even non-existent. Second, the wish to become a member of the Union does not always coincide with the will to change, resulting in fuzzy or inexact fiches as a kind of avoidance strategy. In relation to the content of Twinnings, it frequently concerns member state legislation and organisational structures or procedures – such as the set-up of administrative units or the instigation of training programmes – but also such fundamental issues as organisational purpose may be involved.

The relations forming between member state and candidate country are seemingly complex, varied, and rather difficult to characterise. It is clear that while the European Commission intends the relations to be based on objectivity and actual expertise, other aspects, such as familiarity and politics, can also be influential. In addition, the allegedly equal and co-operative prerequisites for Twinning are not always present, as the member state frequently seems to take the lead and steer the project development. Certain signs of candidate country reluctance, or even resistance, have also been described. In many instances the division of work, or role distribution, seems to be un-

\textsuperscript{34} Report on an Assessment of the Twinning Instrument under Phare
\textsuperscript{36} The CARDS Programme covers the Western Balkans, the MEDA Programme concerns the area of the Southern Mediterranean and the Near Middle East, the Tacis Programme deals with Eastern Europe and Central Asia.
clear, opening the way to problems and tensions. The outcomes of Twinning, finally, can be described as both concrete and elusive. Very tangible organisational set-ups or work methodologies can come out of projects, and so can altered attitudes, perceptions, and understandings. Twinning therefore has the potential ability to influence on a number of levels.

This chapter has given a general presentation of Twinning and stated some general conclusions to be drawn from project practice. But what do these conclusions mean in relation to rules and regulation? And how has Twinning been studied and understood? In the next chapter I describe my methodological perspective and the way I have compiled the thesis. The theoretical perspective taken and the theoretical tools used to make sense of the empirical material will then be outlined in Chapter 4.
Chapter 3.
Reflections on Methodology and Research Process

In this chapter I set out first to present my conception of the constitution of reality and the foundations of scientific knowledge, and second to give an account of how I went about conducting the study that resulted in this book. The first part of the chapter discusses ontological and epistemological questions, while the second describes the methods used to create and interpret the empirical material of the thesis. Opinions vary as regards the necessity of dwelling on the more philosophical issues of reality and knowledge in a thesis such as this, but I have chosen to present my views in some detail. In order to answer the question of how science can maintain a legitimate claim to “better” knowledge than the commonsense of “ordinary people”, a first step consists of active and conscious reflection upon why we use the tools we use and what influence this usage might have on what we see when looking at our material. Depending on the researcher’s outlook on reality and on the characteristics of knowledge production, different things are registered while observing a certain phenomenon, and in an attempt to elucidate what I see when I look at the practices of Twinning, the first part of this chapter is devoted to ontological and epistemological reflections.

3.1 What World Are We Talking About?

My take on reality is essentially social constructivist. Since the many versions of social constructivism\(^ {37}\) appear to have come to represent the norm and accepted research approach within the disciplines of business administration and management this is perhaps not surprising, but a proper unraveling of certain standpoints and a discussion of concepts is still necessary. All the more so since the variation in interpretation and employment of the social constructivist perspective is so great (Alvesson and Sköldberg 2008). Therefore this section will begin with a brief account of what social constructivism entails for me, especially in relation to this study. Below, social

\(^{37}\) The terms “social constructivism” and “social constructionism” will be used interchangeably.
constructivism is placed within a broader context of philosophical thought traditions and is subsequently concretised to apply to the topic of emerging soft regulation.

The Great Divide – Realism versus Relativism?

The list of philosophers and thinkers providing us with their views of the world is long and contains impressive names. From early scientists Descartes, Locke and Hume, via Kant and Comte, Popper and Kuhn, and on to more recent thinkers such as Foucault and Habermas, a number of ideational developments can be traced (cp. Laughlin 1995). The sheer number of alternatives and the struggles between them is astounding, and bears testimony to the complexity of the subject. In the endeavour to come to terms with reality and the ways in which it can be reached, it is indeed easy to go astray. Pulling one thread may draw out a tangle of consequences, demanding additional elucidation and investigation. I do not pretend to master the ideational heritages of these philosophers and/or scientists, but the rough outlines of two main, and to some extent competing, camps can be distinguished. And from the perhaps exaggerated simplification of a dividing line between Comte’s positivism and Kant’s idealism (Laughlin 1995) – or in more general terms: realism contra relativism – I know where I place myself.

The division between realism and relativism seems simple enough, but appearances are deceptive. Fuelled by talk of “the science wars” (cf. Hacking 1999; Barlebo Wenneberg 2000; Fuchs 2001) and related concepts, the idea that one must make a choice, that it is basically a question of either/or, is conveyed. *Either* one believes in a real world objectively existing independently of human perception, in the primacy of selfless scientific objectivity, and in the possibility of discovering the Truth (cp. Searle 1998; Hacking 1999). *Or* one adheres to the idea that reality does not exist before its human discovery, that it consists exclusively of text and discourse, or that truth merely equals the descriptions and assertions of certain acknowledged authorities (cp. Barlebo Wenneberg 2000; Seldén 2005). *Either* one agrees with Searle’s (1998:10) “default positions”, and consequently assumes a real, objective world that can be reached directly via human perception, that language is neutral and corresponds to real objects, and that causality is generally unproblematic to establish. *Or* one camps with the post-modernists, assuming “A completely atomised, centreless ontology about a reality that changes with the speed of light and does not allow itself to be categorised and comprehended” (Seldén 2005:257, my translation).

Scratching the surface, and moving closer to the various scientific practices, causes a quite different picture to emerge. There are not many (if any) clear-cut, black or white options but rather a number of shades of grey. To speak with Fuchs (2001:72): “Polarization has done much to simplify the opposition between constructivism [also relativism and antifoundationalism]
and realism; there are really many shades of each, and all sorts of positions on truth between the extremes”. This same, somewhat conciliatory, idea also appears to be the dominating one among many of today’s philosophers of science and theorists. Hacking (1999:6) writes that “You might be a social constructionist about brotherhood and fraternity, but maintain that youth homelessness is real enough”, whereas Barlebo Wenneberg (2000) claims that it is fully possible to take a social constructivist perspective on the social aspects of reality while maintaining a realist standpoint when it comes to nature. Further testimony to the possibility of combining realist and relativist notions can be found in the increasing interest in the methodological strand of critical realism, where a realist ontology is coupled with a relativist epistemology to produce a multi-dimensional outlook on the world we study (cf. Danermark et al. 2003; Seldén 2005). In my opinion there are intriguing elements and compelling arguments to be found within all thought traditions. I cannot completely discard the notion of a reality or a world existing outside, and beyond, the human mind. At the same time, it is quite impossible to imagine such a world without the language to denote it. There is a truth to every philosophical outlook on reality, so I propose to assemble the parts that seem the most compelling – as well as fruitful and practically relevant – to this study, as described below.

A Natural World and a Social Reality

In agreement with Searle (1998), Hacking (1999), Barlebo Wenneberg (2000), Danermark et al (2003), and probably a great many other thinkers, it can be argued that there is a natural world that exists quite independently of human beings and their activities. On the other hand, this world is only accessible to us through our perceptions and the socially constructed – in the sense of produced through an interpretative process (Alvesson and Sköldberg 1994) – meanings and significances attached to them. There are no neutral, value-free observations of an objective natural environment; the objects and subjects that we perceive and the way they make sense to us are all influenced by the social context in which they appear. Or, in the words of Czarniawska-Joerges (1989:5):

…reality exists independently of human perception, but it is not “out there”, behind a wall of “human distortion” that must be overcome, but “in here”, where the human perception is a part of it, a maker of it, and the only tool for its cognition.

To use Barlebo Wenneberg’s (2000) terminology, my position is that I find social constructivism appealing and useful as a critical perspective, as a sociological theory, and as a theory of knowledge, but not as an ontological standpoint in relation to the physical, natural world. However, the reality that
has been studied in this thesis is profoundly social, and thus in various ways constructed in, and through, social relations.

In their phenomenological approach to reality, Berger and Luckmann (2003/1979) take “the ordinary man/woman” and his or her everyday world as the starting point for a sociology of knowledge. This stance is reasonable, because what is the use of empirical, qualitative studies if one does not listen to the perceptions, experiences, and interpretations of the individuals or organisations studied? The area of interest from such a perspective would be “what people ‘know’ to be ‘real’ in their everyday life without or before all theories” (ibid:24, my translation). This vantage point is insightful; most people are not researchers and scientists, and to try and understand how such “ordinary people” perceive their worlds tells us something important about the reality they live in (as opposed to the academic one which has its own particularities and limitations).

The point of departure for this study is the reality of Twinning as experienced and understood by the people directly involved in Twinning activities, and I believe that this reality can best be understood via a social constructivist approach. To concretise, in Twinning the enlargement of the European Union provides the context to which the candidate countries are being introduced, and the practice of following EU rules constitutes the reality that they are to internalise. Contextualising the argument of Alvesson and Sköldberg (2008:82-91) on the basic tenets of social constructivism, it is possible to view the EU and its member states as having constructed the regulative reality in which they exist, but it is a reality that then continues to re-create the Union as well as its members. By means of socialisation – i.e. the social and societal influence through which actors internalise social norms and knowledge – candidate countries are immersed in the rule-following practice of the European Union, and Twinning seemingly plays a vital role in this process. Twinning displays strong socialising capabilities, and hence contains ample opportunity for influencing both perceptions and practice when it comes to rules and their observance. This is why it is both interesting and important to study the reality of Twinning if one wants to understand the workings of soft regulation. To summarise, this thesis deals with the social construction of regulation, and seeks to contribute to a general understanding of how this construction is realised and with what outcomes.

Having outlined the socially constructed reality of the study, I shall now discuss how this reality has been reached, or in other words, my epistemological position.
3.2 The Nature of Knowledge, or How to Connect to Reality

It is my opinion that a social dimension is present and significant in any kind of knowledge production, including the scientific one. Like the adherents of Barnes and Bloor’s Strong Programme in the Sociology of Knowledge and the actor-network theory of Latour and Callon, I believe that scientific discoveries are not exclusively pre-determined by the constitution of reality, but may be influenced by the social context in which they occur and solidify as facts. I am not alone in this perception, as the notion of the historical and contextual boundedness of (scientific) knowledge is seemingly a recurrent theme in philosophical and theoretical thinking (cf. Feyerabend 1993/1975; Laughlin 1995; Kuhn 1996/1962; Danermark et al. 2003). It is also strongly connected to ontological assumptions. In the sections below, I set out my understanding of knowledge and knowledge production in general, and of how this understanding has influenced the present study.

In outlining my epistemological position, I proceed from a number of critical realist assumptions regarding science and scientific activities. According to this strand of thought, it is paramount to make a clear distinction between knowledge and reality. The idea is that these two dimensions together constitute the objects of science but that they will always be separated by an ontological rift since there is no direct link between them (Danermark et al 2003). It is thus not possible to tap directly into the reality we wish to understand; the only way to reach it is through the sets of theories that, at any given time, constitute the scientific knowledge within a certain scientific field. Employing such theories, the aim of practical scientific activities is to deepen the knowledge of reality – theories provide the “raw material” that is turned by the scientific process into increased awareness and understandings (ibid). As a consequence of this perspective, scientific facts are always theory-dependent, but the important thing to note is that they are not theory-determined. Scientific facts are “the result of a relation between a theoretically informed practice and an independent reality” (Seldén 2005:76-77, my translation); they are constituted by the encounter between theory and reality and neither of these dimensions can fully determine the outcome of their connection. Accordingly, the empirical accounts of this thesis, the analyses of them, as well as the results presented have been constructed by me and consist of a combination of theoretical assumptions and input from the reality of Twinning, as described by its practitioners.

As Seldén (2005) notes, science is a social enterprise. The context within which scientific activities occur, i.e. their social organisation and the knowledge history on which they build, clearly has an impact on the individual researcher’s ability to produce good theory (ibid). Through education within a certain scientific field all researchers are exposed to socialisation into ways of thinking and perceiving the world, as well as to earlier theories on which
to draw. In consequence “scientific knowledge production is always conditioned by previously produced and relevant theory” (Seldén 2005: 74, my translation). The conditions set by previous theory are enabling in the sense that they indicate what might explain the phenomenon under investigation, but they are simultaneously constraining since they direct – and perhaps obscure – the researcher’s perceptions of reality (ibid). The great number of terms designating the effect of theory on perceptions – from Popper’s (in Miller (ed) 1985) theory-ladenness of observation to Gadamer’s (1980) pre-understanding – indicate that the idea has been around for a long time and has been acknowledged by large parts of the scientific community. Hence, it is reasonable to assume that the picture I draw of Twinning is neither neutral nor complete, but rather influenced by my theoretical points of departure as presented in Chapter 4.

To summarise, my position is that we do observe a world that exists independently of our theories, but what we see while observing will always be dependent upon the theories through which we perceive it. Theories will most likely never equal the truth; the best we can hope for is, to paraphrase Popper (in Miller 1985), an approximation to truth. But it is a truth that for the social sciences might not be fixed but rather evolving as a consequence of the human capacity for learning and self-alteration as well as through more unintended effects of new experiences (Danermark et al. 2003). My view on scientific knowledge and knowledge production can therefore be found at the crossroads of the fallibility of knowledge and the social dimension involved in its development and gradual solidification. Consequently, the contributions of this thesis are based in fallible theories on regulation and imitation, they draw heavily on input from the practice of Twinning as presented by its practitioners, and they are greatly marked by my interpretative efforts to create a link between theory and empirical data. They do not represent the truth of what Twinning signifies, but they provide new insights into an intriguing empirical field and add dimensions and further understandings to the theoretical field of soft regulation. I will now discuss how I went about fashioning these contributions.

3.3 Research Process and Research Design

In this section the methods used to create the empirical material of the thesis, as well as the ways in which this material has been treated and analysed, will be presented. The methodology employed and the methods used to generate empirical data will be depicted. I consider a thorough account in this

Methodology can be defined as “a general approach to studying a research topic. It establishes how one will go about studying any phenomenon. .../ Like theories, methodologies cannot be true or false, only more or less useful” (Silverman 1993:2).
respect warranted, as providing an opportunity to get away from “success stories” and critically examine what took place during the research process (cf. Clark and Michailova 2004a). Reflection on methodological issues is important because it helps us “understand, in the broadest possible terms, not the products of scientific inquiry but the process itself” (Kaplan quoted in Clark and Michailova 2004a:5). They thus speak about the scientific practice rather than about the ideals, and the discrepancy between the two dimensions reveals the tendency to assess the research process in terms of the norms of rationality that dominate Western societies (ibid). If possible, I would like to contribute to a more reflective stance by displaying the mistakes, irregularities, and illogical aspects of my own research process. Hence this is not an account of what I would have done if I had known at the outset where I would finally land, but of how I struggled, hesitated, and re-iterated in my attempts to understand Twinning. On a general note it can be stated that the evolution of the study has followed a (research) path of abduction (Alveson and Sköldberg 1994), where I have very much oscillated between the empirical and theoretical fields. Equipped with a broad interest in emerging and evolving transnational regulation I ventured into the reality of Twinning and then “took it from there”, as described in the sections to come.

The Initiation and the Pilot Study

Where do ideas for dissertations come from? However rational we wish to be about the topics we choose, I think that I am probably not the only one who has just stumbled upon my empirical field. I first came across the concept of Twinning in connection with my engagement in the research project “Baltic Sea States within a New Europe – Institutional Change from a Multi-Disciplinary Perspective”39. At that time I hardly knew anything about the instrument or its purpose, organisation, and (intended) results. All the same, there was something in the project description’s very brief mention of Twinning that caught my attention. On the general subject of states as organisations embedded in regulatory environments, and more particularly on the creation of exchanges and networks between the Baltic States and various other organisations, the project description (Jacobsson 2002:3, my translation) reads:

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39 The project is financed by the Foundation for Baltic and East European Studies. The project is, as the title indicates, multidisciplinary and incorporates researchers from the disciplines of business administration, political science and sociology. The common theoretical theme is Europeanisation, understood as the ways in which the European Union can affect the organisation and functioning of its member states’ national administration and public organisations.
In relation to the EU, many of these exchanges take place within so-called “twinning-projects”, i.e. a bilateral exchange with another EU country (Denmark and Lithuania, for instance, are involved in one such exchange concerning employment policy). These kinds of processes can be seen as processes of socialisation where representatives of the potential members of the Union “learn” both what to do and who to be.

This was all, but I was immediately intrigued by the idea of candidate countries “learning” from someone more experienced about appropriate behaviours and identities. It is easy enough to observe that exchanges occur and to connect them – on a theoretical level – to socialisation processes, but what takes place within these exchanges it not always as straightforward to establish, and this was what attracted me in the first place. I wanted to know more about the practical reality behind the general and all-embracing statements about change and transformation in relation to the EU’s new member states so often presented in official reports. I wanted to move beyond the somewhat sweeping, and often quantitative, assessments of legal transposition studies. I wanted to come closer to the administrative practice involved in these change processes, and I wanted to contribute to a more micro-centred version of the enlargement story and its consequences. And I believed that a study of Twinning would provide me with some answers as to the regulatory implications of an extending Union.

Since my main theoretical interest lies within the field of regulation, and because public administrations constitute the part of society that most directly receives and has to deal with the rules of the EU, this is where I had to start. A story of Twinning is a story of a meeting between a set of rules and their implementing body, but also involving a tutor, or advisor, on the appropriate way of putting theory into practice. Twinning can be understood as a mediating process between abstract rules and concrete practice, and one of the basic assumptions underlying the study is that something interesting happens within this mediation. A first step towards understanding, more precisely, what this is was taken by carrying out a pilot study, which was done over a period of some months in the spring of 2003. After a thorough reading of the EU’s official documentation on the subject of Twinning a number of interviews were held with Swedish civil servants, presently or previously engaged in various Twinning projects. Approximately 20 civil servants from different ministries – notably finance, industry, and foreign affairs – and public authorities – ranging from the Swedish Board for Accreditation and Conformity Assessment (SWEDAC) to the Swedish Work Environment Authority and the Swedish National Financial Management Author-

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40 E.g. general information on the Commission’s web page, information brochures, and the very detailed and comprehensive Twinning Manual.
ity (ESV) – were interviewed on their experiences from, and opinions about, Twinning. The interviewees ranged in position from project leaders and heads of international units to co-ordinators, “ordinary” civil servants who had participated as short-term experts, and pre-accession advisors.

This pilot study produced two main results: 1) an empirical, and largely descriptive, report on the procedure, actors, and evolution of the Twinning instrument; and 2) the empirically grounded idea that Twinning is connected theoretically to processes of organisational imitation. The next step in the research process thus consisted of a deeper study of the theoretical concept of imitation, or mimesis, and related notions, before I entered the empirical field for the second time in December 2004.

In line with Alvesson and Sköldberg’s (1994) reasoning, the above-described behaviour fits neatly with the so-called abductive research approach. The starting point for such an approach is the establishment of certain empirical regularities (surface structures) the explanations/motivations for which can then be sought in theory (deep structures). When theoretically grounded understandings of empirical phenomena have thus been anchored, they can be applied to new cases to see how solid these understandings really are. In the case of this study, my work on the pilot study (the results of which were accounted for in Chapter 2) yielded a pattern that led me to believe that Twinning could be understood as a certain kind of mimesis. From this surface structure I moved on to theory and dug deep into the field of imitation literature, hence broadening my perspective and my knowledge base. I then went back to the empirical field to further ground my theoretical ideas, only to discover that they were not enough to capture the significance of Twinning on their own. While imitation may elucidate the structure of Twinning projects, it cannot further our understanding of why Twinning exists or what it means. Imitation needed to be complemented by a broader social perspective and after having tested a number of those – such as Europeanisation and various diffusion theories – I finally settled for regulation.

By comparison with the traditional research approaches of deduction and induction, abduction involves a more pronounced element of understanding (Alvesson and Sköldberg 1994). In addition, abduction allows for the continuous extension and development of the empirical field of application for the study, as well as for constant adaptations and refinements to the theory em-

41 Representatives of the following organisations were interviewed: the European Commission, the Swedish Ministry for Foreign Affairs, the Swedish Ministry of Justice, the Swedish Ministry of Enterprise, Energy and Communications, the Swedish Ministry of Finance, the Swedish Work Environment Authority, the Swedish Agency for Economic and Regional Growth, the Swedish National Financial Management Authority, the Swedish Patent and Registration Office, the Swedish International Development Cooperation Agency, the Swedish Board of Agriculture, the Swedish Board for Accreditation and Conformity Assessment, the Swedish Competition Authority, and Mapsec.

ployed to understand data (ibid). Accordingly, through abduction empirical material and theory are allowed to inform and cross-fertilise each other in a potentially very fruitful exchange process. The key issue has been to investigate what meaning and significance a certain phenomenon – i.e. Twinning – acquires when viewed from a theoretical perspective grounded in new institutionalist assumptions, and in the end I arrived at the decision that regulation could provide a viable bridge. Below, the construction of the empirical material supporting this decision will be presented.

Opting for a Case Study Design

Traditionally, surveys and case studies are defined as the two main non-experimental research strategies available to researchers within the social sciences (Merriam 1994). Whereas surveys are described as involving the study of a small number of variables in relation to many units, case studies are characterised by an intense investigation of numerous variables working on the studied phenomenon or process (ibid). Technically speaking either of those strategies could have been chosen, but some means of knowledge production disqualify themselves when taking the connection between ontology and methodology seriously. Since I am more interested in gaining a deeper understanding of the meanings a phenomenon acquires socially in a particular context than in counting instances or occurrences and measuring degrees, the qualitative case study strategy was the most appropriate alternative.

There are numerous definitions of what constitutes a case study. According to George and Bennett (2004:5), the case study approach entails “the detailed examination of an aspect of a historical episode to develop or test historical explanations that may be generalized to other events”. I believe this definition to be too narrow, as it emphasises explanations and generalisability to the exclusion of understandings and idiosyncratic dynamics. This perspective on case studies is heavily influenced by realist (perhaps even positivist?) perceptions of reality, and thus does not capture the essence of what I have wanted to study. Eisenhardt (1989:534), on the other hand, writes that “The case study is a research strategy which focuses on understanding the dynamics present within single settings”, and thus propagates a rather inclusive description of what the strategy implies. Dynamics and single settings appear at the heart of case studies, but some elements still need to be specified in order for the definition to be truly meaningful. In this respect Merriam (1994) provides some useful insights, as she defines the case study in the following way:

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43 This does not mean that I am opposed on principle to generalisations. Rather, I support the idea of *theoretical* generalisations – rather than generalisations to populations – derived from case studies, where the generation of theoretical statements based on empirical findings is the goal (cf. Bryman and Bell 2005).
The case study is thus an investigation of a specific phenomenon, e.g. a programme, an episode, a person, a process, an institution, or a social group. This delimited or defined system is selected because it is important and interesting or because it constitutes some kind of hypothesis. Adelman, Jenkins and Kemmis (1983) express it in the way that this phenomenon constitutes an example of a more comprehensive group of episodes, persons, or processes. (p. 24, my translation)

Along these lines Twinning, i.e. “the phenomenon under study”, provides an example of the more comprehensive processes of new, and soft, regulation, and it can be studied in numerous ways. The basic form for the case study is a detailed and thorough study of a single case, paying attention to the complexity and specific nature that the particular case presents (Bryman and Bell 2005). The purpose of a case study is to thoroughly elucidate the selected case (ibid), and the focus is rather directed towards insights, discovery, and interpretation than towards the testing of pre-defined hypotheses (Merriam 1994). The point of departure is a broad and inclusive view on the case, and the idea is to assemble as rich and widely ranging a material as possible (Patel and Davidson 1994). This picture presents the “classical” case study, whose “ultimate goals are generally to provide a rich description of the social scene, to describe the context in which events occur, and to reveal /.../ the deep structure of social behaviour” (Dyer and Wilkins 1991:615). This can be achieved in a number of ways, and using a variety of different methods. After acquiring a general feel for the phenomenon from the pilot study described earlier I chose to further investigate the case of Twinning by probing more deeply into a small number of concrete projects.

Even though this study has not exactly followed the methodological steps defined by Yin (2003) in relation to multiple-case designs, it can all the same by categorised as containing more than one case, or perhaps rather “sub-cases” or “cases within the case”. Within the general case of Twinning a number of Twinning projects have been singled out for further investigation in order to provide as deep an understanding as possible of the phenomenon under study. By selecting projects as dissimilar as possible – as described below – it was ensured that each one contributed additional pieces to the general puzzle of the significance of Twinning. According to a number of researchers (e.g. Yin 2003; Eisenhardt 1989), the multiple-case design is becoming increasingly popular as a research strategy. Its popularity and usefulness are mirrored in the great number of dissertations produced within the various disciplines of the social sciences applying it (e.g. Jacobsson 1984; Erlingsdóttir 1999; Tamm Hallström 2000; Vifell 2006; Tomson 2008), and I am thus not alone in opting for this approach. It has been argued that the multiple-case study design can produce more compelling and robust results (Yin 2003), since it is based in a logic of comparison which allows for a better understanding of social phenomena (Bryman and Bell 2003). Even though such an assumption can be questioned (mainly along the lines of
depth versus width, cf. Dyer and Wilkins 1991), I have chosen to apply the multiple-case design for two reasons.

First of all, Twinning is a rather recent, as well as a particular, phenomenon. It was deliberately created to solve a specific problem (viz. the candidate countries’ administrative shortcomings as evaluated by the EU) and therefore needed to be explored with a minimum of pre-determined assumptions and with eyes open to the unexpected. In this explorative approach, where I wanted to learn as much as possible about Twinning and where access to data was sometimes restricted, I looked for information and clues as broadly as possible. Even though the pilot study provided some basic patterns, it also demonstrated that idiosyncrasies played an important part in each individual project. Accordingly, I came to the conclusion that to investigate more than one Twinning would increase my understanding considerably.

Secondly, my intention has always been for this study to yield a theoretical contribution. In this vein, a multiple-case approach has certain advantages since contradictory, paradoxical, or ambiguous material from various cases might force the researcher to take the analysis further. In the words of Eisenhardt (1989:546), “attempts to reconcile evidence across cases, types of data, and different investigators, and between cases and literature, increase the likelihood of creative reframing into a new theoretical vision”. Also, my experiences from the pilot study and my first field trip to Vilnius convinced me that the work required in order to organise one thorough, in-depth case study of a single Twinning project would neither satisfy my purpose nor pay off in terms of time and data quality. The admittedly less detailed but hopefully more nuanced and varied study of a small number of different Twinnings was therefore chosen.

Finding Twinning Projects for Deeper Study

All in all, approximately 15 different Twinning projects have been studied in varying depth. Some of them have only been investigated as to general direction and overall experiences of the member state or candidate country, whereas others have been looked at in more detail. Chapter 2 presented general patterns, perceptions, opinions, and developments emerging from the mainly exploratory and synthetically oriented investigation of the bulk of the studied Twinnings. Three individual projects – the Tax Project, the Statistics Project, and the Judiciary Project – were selected for further investigation and analysis, and they provide the empirical backbone of the thesis. Material from the pilot study and from interviews relating to Twinning in more general terms and in connection to other projects has been used to provide a broad picture of the Twinning instrument, its developments, and its characteristics. As to the choice of the Twinning projects that constitute the actual case studies, it was not strategically or theoretically determined beforehand but rather
evolved as my study began to reveal what was feasible, interesting, and useful to do. The main principle guiding my work has been to find out, and learn, as much as possible about Twinning and therefore I strove to vary my material as far as possible.

Arising from my affiliation to the research project “Baltic Sea States within a New Europe” the initial idea was to study Twinning in the three Baltic States of Estonia, Latvia and Lithuania, and largely by coincidence I started out in Lithuania. I began by looking into three Twinnings jointly implemented by the Lithuanian and Swedish public administrations. Out of these projects only the Tax Project was deemed to have yielded enough and qualitatively sufficient data to justify its constituting a stand-alone case. During the interpretation and analysis of this case I realised that since the Baltic States are in many ways more similar than dissimilar in terms of public administration, it would be wise rather to bring other candidate countries into the study. In what might perhaps be termed a “least likely case selection” I then moved on to find other projects as dissimilar as possible from the Tax Project in order to be able to draw on potentially very varied empirical sources. In the endeavour to maximise the differences Poland was selected, mainly along the lines of administrative variation. Poland and Lithuania belonged to different application groups (Poland applied for membership in the first wave while Lithuania had a somewhat “belated start”) and this might be taken as a sign of Poland being deemed – nationally as well as by the EU – prepared (e.g. in political and administrative development) to commence membership negotiations at an earlier date than was Lithuania. Also, in terms of administrative structure Lithuania had formed an integrated part of the USSR while Poland had constituted an independent state, which had consequences for the administrative situation of the two countries at the time of the collapse of the Soviet Union. In addition, the Polish administration is much, much bigger than the Lithuanian one, meaning that their starting points in relation to administrative evolution and reform were quite different.

However, I also looked for regulative variation when finding suitable cases. Whereas the Lithuanian Twinning belongs to the policy area of taxation which is heavily regulated on the EU level – I wanted to find a Polish project drawing on other kinds of acquis. After numerous attempts at establishing contacts in Poland, I finally found a Franco-Polish project within the area of freedom, security and justice, which traditionally has not been subject to much Community-wide legislation. However, at the same time a Twinning between Poland and Sweden dealing with statistics was found. Both access and amount of information were extremely generous, and I

44 The projects were selected from Sida’s compilation of Twinning projects with Swedish participation, and the choice was mainly based on the criteria of still being operative, or only recently finalised.
found it impossible to refrain from exploring this project. It turned out to be very interesting indeed, and added many valuable insights to the understanding of what Twinning is all about. In the end I decided to include all three projects, i.e. the Tax Project, the Statistics Project, and the Judiciary Project, mainly because they illustrated different aspects of Twinning. They display variation within a general pattern and thus contribute complementary pieces to the empirical puzzle.

To summarise, flexibility was given priority over the genuinely theoretical sampling advocated by many methodologists (cf. Eisenhardt 1989; Yin 2003). This choice is justified because my intention has not primarily been to compare the Twinnings along predefined dimensions, but to let the cases speak for themselves and illustrate different aspects of project realisation. The next section will tell more specifically how I went about the task of making the projects speak. It will describe the methods used to construct the empirical material.

3.4 Methods: What Interviews and Documents Tell Us

In accordance with my ontological and epistemological position, I do not consider empirical data to exist, objectively and on its own, in a stable setting where it can simply be collected and then synthesised in an uncomplicated fashion. Rather, data is produced or generated by a process in which the researcher is also actively involved. In other words, data consists of “constructions of empirical states of things, marked by a consistent interpretative effort” (Alvesson and Sköldberg 1994:336, my translation). The empirical material that is indispensable to this thesis has thus been continuously interpreted and shaped by me. Also, the phenomena that are being studied are always socially defined (Silverman 1993), and it is thus imperative to bear in mind that “participants in social life actively produce a context for what they do” (ibid:8). It is within this context that the accounts/stories/descriptions make sense to the actors involved, and therefore it must not be neglected as a factor influencing the contents, and shape, of data. Consequently, that the empirical material of this study has been produced within a certain context and under certain circumstances, and has then been interpreted by me, has clearly had effects on the stories presented in Chapters 2 and 5 to 7. I shall next discuss both the material and the ways in which these effects have been managed. But first I will say a few words on the subject of the organisation of my fieldwork, as it provides the frame within which the first phase of my data generation was conducted.
Contextualising the Field Trips

Two field trips were made in connection with this study. The first one was to Vilnius in December 2004 and the second one, to Warsaw, took place in October 2005. The two aspects of location and timing will be commented on, since they might have had an influence on the content of the empirical material. First of all, by exclusively focusing on the capitals of Lithuania and Poland I had access primarily to the central – as opposed to the local – public administrations. Because the local authorities are also involved in Twinning activities I have missed out on their perspectives and experiences, and this may have distorted my understanding in some ways. However, in all the projects studied the beneficiary institution, i.e. the organisation mainly responsible for organising the activities and the “focal point” of the Twinning, was part of the central administration and located in the capital. Even though the local branches took part in the projects, most of the attention and efforts were directed towards the central organisations I studied. It was thus reasonable to focus on these central organisations, even if it should still be pointed out that this may have led to interesting insights being neglected.

On the issue of timing it is important to note that out of the three projects included in the thesis, two were ongoing at the time of my field trips while the remaining one had been finalised before I arrived on the scene. The Judiciary Project thus builds on hindsight whereas the Tax Project and the Statistics Project deal with ongoing realities. This fact may have had an influence on the accounts given by the interviewees since the human memory has its shortcomings. However, as I have not aspired to map out the evolution of the projects studied in any comprehensive way, but rather to investigate the interviewees’ perceptions and understandings of what is meaningful and important in Twinning, a certain time lag does not constitute a big problem. A factor that might prove more problematic is instead the exact moment of my field trips. When I conducted my interviews in Vilnius, Lithuania had been a member of the European Union for approximately seven months; by the time of my visit to Warsaw, Poland had already been a member for one and a half years. The duration of membership probably had an impact on Lithuanian and Polish attitudes towards, and behaviours within, Twinning projects since Twinning was foremost designed to be a pre-accession instrument. This means that the internal logic of implementation may have changed after accession.

Summarising the potential effects of location and timing, it is not possible to determine exactly in what ways they have influenced the outcome of the study. They constitute the background against which empirical data was set and envelop its creation, and it is therefore important to be aware of them. Had these contextual conditions been different I might have ended up with an at least partially different understanding of the evolution of Twinnings. Accordingly, I do not pretend to provide the only conceivable picture of the
implementation of Twinning, but rather one that is genuinely based on reflective and interpretative efforts, taking into account as far as possible the regulative context within which projects evolve.

Interviews – Access, Realisation, and Characteristics

Two primary sources of data have been used in my study of Twinning: interviews and documents. Including the ones conducted in the pilot study, approximately 50 interviews have been performed, the majority of which have taken the form of face-to-face interaction while a smaller number have been conducted over the telephone. The interviews have generally lasted between one and two hours, and each interview has been recorded and transcribed verbatim, resulting in some 500-600 pages of interview material. As already noted, not all of these interviews have concerned the projects providing the case studies of the thesis; some relate to other projects or to more general Twinning issues. The material assembled through these interviews has been important in enhancing my personal understanding of Twinning as a phenomenon, and even though it does not directly relate to the projects analysed it has certainly provided a broader perspective. Accordingly, it has been used to improve and nuance my interpretations, and also to balance the empirical accounts (cf. Alvesson and Skölberg 1994). In addition, it represents the basis for the general introduction to Twinning given in Chapter 2.

For the remaining interviews, and for all of the projects except the Judiciary Project (where Sweden was not the participating member state), the general procedure was the same. I would start out by contacting the Swedish project leader and request an interview, which was on every occasion agreed to and given. This first interview would give me a general overview of the project and would also result in a list of Lithuanian or Polish civil servants deemed interesting for me to talk to. Several of the Swedish officials even offered to contact their Lithuanian or Polish counterparts on my behalf, to prepare them for my e-mail or phone call. I think that my being able to use the Swedish civil servants as a reference facilitated my access to the respective fields45, and perhaps also convinced some of the Lithuanians and Poles to actually meet me. When I got in touch with the intended interviewees, everyone was most accommodating and no one declined me a meeting. Normally we would meet in the interviewee’s workplace, and for the interviews conducted with Polish and Lithuanian officials the language used was English. All interviewees were promised anonymity in the sense that no names would be used in the thesis, and on most occasions I did not offer – and was never asked for – any kind of feedback on how I use and interpret

45 See for instance Clark and Michailova (2004) on the importance of “inside tracks” in facilitating organisational access in transforming societies. On the instances when I did not have Swedish officials to refer to, the establishment of a first contact proved much more difficult.
the material. Hence, I have had the final say in the presentation of data. The civil servants interviewed in relation to each project are specified in the table below:

<table>
<thead>
<tr>
<th>Project</th>
<th>Positions and Roles</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Tax Project</td>
<td>Lithuanian project leader; PAA; PAA’s assistant; chief specialist at the Unit of International Programmes and Projects; Twinning co-ordinator at the Ministry of Finance; official from the EC Delegation; tax official</td>
</tr>
<tr>
<td>The Statistics Project</td>
<td>Swedish project leader; Polish project co-ordinator; PAA; PAA’s assistant</td>
</tr>
<tr>
<td>The Judiciary Project</td>
<td>Polish project leader; PAA; official from the EC Delegation; head of Community Programs Unit at the Ministry of Justice</td>
</tr>
</tbody>
</table>

Table 2: The civil servants interviewed in relation to each case.

The number of interviews performed was far greater in Lithuania than in Poland, but I would say that the quality and richness of the material are at least as good for the Polish cases. This is so because the interviews were conducted at different stages of the research process and thus had somewhat differing characteristics. In Vilnius the interviews had a more structured character, based on my then conception of what would be important and interesting in Twinning. However, in the course of time and as my research ideas matured, the interview technique became more unstructured, giving more and more room for the interviewees to talk and bring up the features and issues important to them. In Warsaw I would, using a rather “loose” interview guide, let the interviewees tell me in their own words about the development of the Twinnings. In this way they were free to bring up events or elements that they thought meaningful, and my job basically consisted of asking follow-up questions. Whether conducted in Lithuania or in Poland all interviews essentially evolved around two themes – the **concrete development of projects** within the formalised and seemingly static Twinning frame, and the ways in which the candidate countries **make use of the member states’ expertise** – in relation to which more specific topics were dealt with. Examples of such topics would be: why was the project initiated and by whom? On what grounds was the Twinning partner chosen? What activities were performed, how, and with what results? What characterised the Twinning co-operation and what did the member state and the candidate country bring to the table respectively? How did the candidate country administration receive and handle the knowledge and experience of member states? How did the partners perceive, and relate to, each other?

These questions are of a rather general, sometimes even abstract, character and they were not formulated in such a way during actual interviews. In accordance with the idea behind qualitative interviews, emphasis was instead placed on the interviewees’ perceptions and understandings of concrete events and activities (Bryman and Bell 2005). These events had either been
specified by me à priori departing from official documentation or emerged spontaneously during the course of the interview. Broadly speaking, the nature of the interviews can be described as falling somewhere between the techniques of conversation and dialogue (Gustavsson 2004). This means that the aim of the interviews was to try and get at the subjective realities of, and the socially constructed typifications of importance for, the interviewees while simultaneously recognising that the interpretations, perspectives, and assumptions that I myself brought into the encounter had a continuous effect on the course and contents of the interviews. But interviews do not provide the only kind of empirical data used in this thesis – various types of written material have also contributed to the case studies.

Documents as a Complement to Interviews

In addition to interviews, documents have also been used in the creation of empirical accounts of the studied Twinnings. In all three cases the final reports of the projects have been used, sometimes supplemented by the intermediate reports required by the Commission. The documents have basically filled two functions. First of all, they have often provided the starting point for the understanding of the individual Twinnings that I would form before every interview. Also later, at the time when the empirical chapters of the dissertation were to be written (as a rule, several months after the interviews had been performed) the reports proved useful again, since they could clarify details and fill in gaps. Because Twinning projects are complex and deal with politically important matters, and because the logic of the interview situation was often far from linear, the reports could many times bring order to, or clarify, the chronology underlying the realisation of the projects. In addition, they would, on several occasions, help me structure and understand the interview material by illuminating some of the more technical aspects of the specific topics, policy areas, or parts of the acquis motivating the Twinnings.

A second kind of documentation used in the study is the texts published on, or linked to, the European Union’s web pages related to the areas of activity of the investigated Twinnings. When going through the transcribed interviews I would often come across passages that I did not quite comprehend because they referred to technical or professional concepts and accounts that were most likely unproblematic and “obvious” to the interviewees, but not to me. On these occasions I would seek – and find! – guidance

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on EU web pages. This use of web material indeed helped me clarify and delineate the EU context within which Twinning projects take place. In the presentation of the three cases I have chosen to refer to EU documentation on the various subject matters throughout. The idea has been to point to interesting connections, motivations, origins etc, but not to provide any deeper analysis of EU legislation.

Having presented the empirical data as such, I will conclude this chapter on methodology by commenting on how I worked with my material – both interviews and documents – and how I made sense of it.

Interpreting, Presenting, and Analysing the Empirical Material

In contrast to the more positivist employment of documents and interview material, I do not consider empirical data to “give access to ‘facts’ about the world” (Silverman 1993:91). Rather, I see both the interview situation and the production of official documentation as providing the interviewee and the author, respectively, with an opportunity to construct and convey a certain version of reality. Accordingly, every interviewee has chosen to present me, the Swedish researcher, with a certain story and the same goes for the official reports written on the studied Twinnings. On these constructions I have subsequently had to build my own understandings. These understandings, in their turn, are the result of an intense interpretative effort on my part, where I have brought together and combined empirical input with theoretical perspectives. The interpretation has proceeded in a number of steps, starting with the creation of “thick” descriptions (Geertz 1991/1973) of the investigated Twinnings and ending with theoretical generalisations of the findings from this study to the phenomenon of soft regulation in general.

The interpretative process is difficult to describe, especially since it most likely includes both intuitive elements and unconscious aspects. All the same, it is important to take a reflective stance towards the interpretations made, and this is what I will try to do here. The interpretative work that I have performed within this study can be said in some ways to have been inspired by hermeneutical ideas and ideals, as described by Alvesson and Sköldberg (1994). The starting point has been to view the empirical material as being ambiguous, and open to numerous interpretations. The key task for me has then been to fish out patterns and underlying tendencies from the data in order to generate theoretically interesting discoveries and insights. My goal has been to discern patterns that provide increased understandings, and this has been achieved in a process that builds on empirical data and uses theoretical notions as its sources of inspiration. I have thus swung between empirically influenced theories and theoretically influenced empirical data (Alvesson and Sköldberg 1994), constantly trying out new interpretations until I found one that worked, in the sense of provided intriguing in-
sights. Below, I will attempt to describe in more concrete terms how I arrived there.

With a number of theoretical assumptions at the back of my mind, I first constructed my descriptions of the Tax Project, the Statistics Project, and the Judiciary Project. With a view to illuminating the theoretically defined elements of motives, objects, relations, and results involved in Twinning (see next chapter), I chose the chronology as the main organising device for the empirical chapters. By dividing Twinning projects into four general phases – initiation, preparation of the covenant, realisation of activities, and outcomes – and by continuously referring – and making explicit the connections – to theoretical concepts when describing each phase, I created three coherent, chronological and interpretative story lines. By fashioning links between theoretical cues and empirical material, i.e. both interview and document quotations, a first, and basic, interpretative step was taken. In more concrete terms, the empirical stories were constructed by systematically filling each Twinning phase with empirical content. Documents were mainly used for background and details, while interviews served to bring the stories to life. I tried to include as many voices and opinions as possible in the accounts, and in so doing I relied quite heavily on interview quotations. The quotes fill two primary functions. First of all, they provide the bases from which my interpretations and analyses in Chapters 8 and 9 are derived. In this sense, the quotes represent the clay that is so vital in the production of pottery, but clay that is highly malleable and has indeed been managed and kneaded by me. Secondly, they are intended to convey the general atmosphere of Twinning, and to illustrate the reality of concrete projects, to the reader. In this way, I have attempted to demonstrate as openly as possible on what, and how, my subsequent interpretations and understandings have been built.

The results of the second phase in my interpretative work are presented in the empirically oriented analysis in Chapter 8. Starting with a synthesis of findings from the three empirical chapters, and drawing on the theoretical conceptualisations introduced in Chapter 4, the three studied Twinnings are examined in relation to each other for similarities and differences. Here, the interpretations tentatively made in each empirical chapter are further developed and related to the other cases as well as to the theoretical elements of organisational imitation in a more explicit and elaborated way. The third, and final, part of my attempts to analyse the regulative characteristics of Twinning consists of reflections on regulative elements. In Chapter 9 the underlying regulative processes at work in Twinning, and revealed in the empirical analysis, are delineated and discussed in relation to soft regulation in general.

An analysis requires a theoretical underpinning, which I shall now present. Chapter 4 will describe the intriguing matters of rules, rule-following, and imitation.
Chapter 4.
Rules, Rule-Following, and Imitation

Rules and regulation are social phenomena that frequently come with negative connotations. When we think of rules we often think of prohibitions, control, and sanctions, and it is easy to forget that rules not only constrain but also enable. In fact, it can be argued that rules and rule-based behaviour constitute the very foundation for organisational action (cf. Simon 1997/1947). Without rules there is chaos, and actorhood is difficult in chaos. Organisation and organising are basically about rules and rule-making (March et al. 2000), and yet rule-following and the power of rules are very hard to grasp. As the nature of rules has frustrated and baffled many prominent philosophers and social scientists (e.g. Wittgenstein 1978; Kripke 1982; McGinn 1984; Bloor 2002), I do not aspire to settle these complicated matters. But by analysing one example from the plethora of new regulative instruments emerging on the global arena, I will be able offer some insights into the workings and characteristics of emerging soft regulation. In order to do so, I need to understand the problematic aspects of rules and rule-following, and I need theoretical tools to help me comprehend what I see when I look at Twinning practices.

Depending on theoretical perspective the object under study acquires different meanings, but in order to see anything meaningful at all a theoretical lens is indeed necessary, as discussed in Chapter 3. I have chosen to work with a new institutionalist interpretation of rules and regulation in general, and with the concept of imitation to understand Twinning practice. This latter choice is both empirically and theoretically motivated, as will be described in section 3.2. However, the choice to draw on new institutionalist ideas is rather a question of conviction and belief. I believe that the new institutionalism in organisational theory – with its emphasis on organisational environments, on the necessity of legitimacy, and on the significance of classifications, routines, scripts, and schema to organisational action (cf. Powell and DiMaggio 1991) – tells us something important about organisational reality. Even if it cannot be described as “true” in the conventional sense of the word, it offers ways to understand organisations that are thought-provoking as well as sensible. Also, many studies of transnational regulation and governance have been inspired by this perspective (e.g. Brunsson and Jacobsson 2000; Tamm Hallström 2000; Marcussen 2004; Djelic and Sahlin-
Andersson 2006; Dahl 2007), providing ideas and conceptualisations for me to draw on.

This chapter has two main parts. In the first one, focusing on rules and regulation, I outline how these phenomena can be understood to function in general, and in the context of international organisations in particular. In the second part, a conceptual framework for considering Twinning as imitation is presented. The chapter concludes with the formulation of a theoretical vantage point to guide and structure the subsequent empirical and analytical texts.

4.1 Rules, Regulation, and International Organisations

As the main problem with which this thesis is concerned has been derived from the intensifying study of regulation, and of soft regulation in particular, these concepts need to be defined. The following section is divided into three parts. The first deals with rules in general and the characteristics of rules and rule-following. The second is about the changed patterns of regulation of present times, with special emphasis on soft regulation. The third part delineates the role that international organisations play in the regulation of states.

Characterising Rules and Rule-Following

Let me begin with a quotation: “rules are social institutions or social customs or social conventions; to follow a rule is therefore to participate in an institution and to adopt or conform to a custom or convention” (Wittgenstein 1967: 199). This is a philosophical definition of rules but it is interesting because it emphasises the social side to rules and rule-following. Another – and probably more useful from a social science perspective – definition is that rules are “explicit or implicit norms, regulations, and expectations that define and order the social world and the behavior of actors in it” (Barnett and Finnemore 2004:18). Perhaps the most important thing in this definition is that rules hold the power to define and order. In addition, rules direct attention by indicating what is important in any given situation, which enables action (March and Olsen 1979). To summarise, and to use Giddens’ (1984) terminology, rules have a double function: they constitute meaning and sanction modes of social conduct. The constitutive, meaning-creating side of rules has to do with the “what” of regulated behaviour; it is related to the comprehension of a phenomenon as a distinguishable and precise instance of a specific category. Hence, the constitutive side of rules defines, as well as composes a part of, the phenomenon it bears on. The regulative aspect of rules, on the other hand, relates to the “how” of connected behaviour. It refers to features of conduct that must be observed and is therefore closely connected to sanc-
tions. To Giddens (1984:21), rules are “procedures of action, aspects of praxis”, indicating that rule-following is primarily about doing and acting, and that it is possible to follow rules without being able to verbally express these same rules. This is important because formulated rules, and the law in particular, are frequently regarded as the typical and most constraining kind of rules. The law is often portrayed as coherent, clear, and stable (cf. van Gunsteren 1976), or as a “seamless web of tightly linked principles, free from class interests and other social influences” (Suchman and Edelman 1996:907). However, I will argue that any kind of formulated rule is not the rule per se but rather its interpretation. Accordingly, underlying practice will always trump words when it comes to the steering of behaviour, and there is never one true and eternal interpretation of the rule.

The law is perhaps the “king” of rules, but there are many types of rules and they are not equally apparent. March and Olsen (1989) give the following examples of what rules in an organisation may be: routines, procedures, conventions, roles, strategies, organisational forms, technologies, beliefs, paradigms, codes, culture, and knowledge. Accordingly, some rules are more formal than others, some are codified in text, whereas others rather exist in the minds of organisational members. Rules can be formal or informal, explicit or implicit, and they are coupled to various kinds of sanctions (March et al 2000; Brunsson and Jacobsson 2000; Nordström 2004). To systematise, rules come in the shape of norms, directives, and standards (Brunsson and Jacobsson 2000a). In practice, the boundaries between the three categories are blurred as they overlap and apply differently in different contexts, but a classification is all the same useful to structure thought. Hence, norms are internalised rules that direct behaviour in an automatic and unreflecting, or even unconscious, way. When acting according to norms actors do not need to justify their behaviour because it is seen as natural and unproblematic. In addition, norms are implicit in situations and self-evident to their holders, meaning that they are only ever visible when someone – typically an “outsider” – violates them. Directives, on the other hand, are explicit and come in written form. They have been issued by someone and a relation, or a contract, that ensures abidance exists between the issuer and the follower. Further, directives are connected to sanctions so that non-abidance frequently leads to some kind of official punishment. Standards, finally, are explicit rules formulated without reference to any formal authority. Therefore the producers of standards cannot formally make others follow their rules but rather rely on the usefulness and facilitating qualities of the standards. Standards are not connected to sanctions but “provide a kind of recipe or advice for many others regarding what they should do” (Brunsson and Jacobsson 2000a:13).

Regardless of kind, rules are hard to follow because they, by necessity, contain ambiguities as to their interpretation and implementation (March 1987; Bloor 2002; Modell 2002). Ambiguity is to be understood as that cha-
racter of rules that provides organisational actors following a certain rule with a range of interpretations and choices for action when applying it (Modell 2002). And all rules are ambiguous because there is “nothing in the abstract, context-free rule itself that can guarantee its unproblematic application” (van Gunsteren 1976:120). Accordingly, the rule in itself has no power but it can become powerful through the social context in which it applies. It is also this context that reduces rule ambiguity through the provision of cues on how the rule is to be understood (cf. Weick 1995). However, what counts as rule-following is dependent on the estimations and evaluations of the members of the group to which the rule pertains, and the meaning of rules is never fixed once and for all: “The meaning of rules is not given, but it is a contingent accomplishment of the actors themselves, generated by the very processes of interaction that the rules are supposed to determine” (van Gunsteren 1976:119). Hence, the application of rules is strongly connected to ongoing organisational practice and forms of life, and probably the only way to grasp the meaning of rules is to engage in that practice and get as close to the actors involved as possible (ibid).

Concerning the rules encoded in directives and legal text, rule ambiguity and processes of meaning generation are also at work. According to van Gunsteren (1976:81) vertical legal certainty, i.e. that certainty is expected to be found “primarily or exclusively in the text of legal enacted law only”, is of central concern to the institution of the Rechtsstaat. However, this ideal is highly problematic. Laws are numerous, badly systematised and vague, and change frequently (ibid) and therefore provide rather fuzzy guidelines for action. Also, text needs to be interpreted and translated into action in order to apply, and in such processes interesting things appear to happen. In line with Law and Society studies, and following van Gunsteren’s argument, extra-legal processes continuously construct and reconstitute the meaning and impact of legal rules too (cf. also Scott 2004). Reciprocity exists between the legal and the social so that “[f]ormal doctrine helps to constitute informal norms, and, simultaneously, informal norms help transform formal doctrine” (Suchman and Edelman 1996:908). Formal rules are always interpreted and transformed by the local actors implementing them, and the law – just like any kind of rule – is obscure, fragmented, and highly ambiguous. In consequence, it is malleable, contested, and socially constructed rather than authoritative; it is symbolic, discursive, and constitutive rather than coercive (ibid).

In summary, rules of any kind are ambiguous and need to be socially defined in order to affect behaviour. Rules guide behaviour through their connection with sanctions but most of all through their power to define and constitute the reality they bear on. This is also true of the rules of the European Union. The actions of the member states are influenced as well as placed within a meaningful context by both the EU’s formal regulation, i.e. the acquis communautaire, and the informal rules regarding who to be, what to do,
and how to do it. This ability of rules to classify and construct the world will be further developed below in relation to the ways in which international organisations can regulate their members. But first the context within which international organisations regulate will be outlined through conceptualisations of regulation and new, soft ways to steer and control.

Changing Patterns of Regulation

In the introductory chapter Twinning was described as rules on how to follow rules. Hence, Twinning involves processes of regulation. To regulate means to create and propagate rules (Brunsson and Jacobsson 2000), but this is only part of how I understand regulation. Regulation includes the rule-producer, the process of producing rules, the rules themselves, and the ways in which they interact with the rule-taker. These four dimensions are also largely in line with four regulative shifts proposed by Djelic and Sahlin-Andersson (2006a). According to these authors the composition and combination of rule-issuers, regulatory modes, the nature of rules, and compliance mechanisms are changing, giving rise to new regulatory patterns. To this compilation could perhaps also be added rule-takers, or followers, as states are increasingly agreeing to follow rules that have been issued by others than themselves (McNeely 1995; Finnemore 1996; Jacobsson 2006; Dahl 2007). As the sovereign and autonomous nation state is one of the most powerful institutions of Western society (cf. McNeely 1995; Meyer et al 1997) it is somewhat paradoxical that states agree to follow externally produced rules, but they do and sometimes they even seem to request more regulation than currently exists. In this section the changing dimensions of regulation will be explored, and in the next international organisations as regulators of states will be investigated.

Regulation is certainly not a new phenomenon but its preconditions and consequences seem to be changing. More specifically, it is the scope, shape, and expressions of regulation that are developing and transforming (Djelic and Sahlin-Andersson 2006a), rendering old ways of comprehending rules and rule-following obsolete. One distinguishing characteristic of today’s regulative activities is that they are increasingly transnational, i.e. they are “not being contained within the state” (Hannerz 1996:6). Rules have begun to cross national borders and regulate actors in several states, and even states themselves, and this cannot be accounted for by a traditional understanding of regulation. Regulation now frequently originates from outside the state, which is rather contrary to classical views of regulation as emanating exclusively from the sovereign and authoritative nation state (Djelic and Sahlin-Andersson 2006a; Mörth 2006). Accordingly, states are no longer the sole

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47 The sovereign nation state is arguably a social construction rather than a “natural” actor; for a discussion see McNeely 1995, Chapter 4.
rule-makers but share their regulative task with international organisations, multinational companies, representatives of civil society, professional associations, and expert groups (Mörth 2006; Jacobsson and Sahlin-Andersson 2006). The regulators’ section is becoming crowded as those issuing advice and direction increase in numbers. It seems that anyone can issue rules, but to get someone to follow them is a totally different thing. Accordingly, rule-makers need some kind of authority (cf. Tamm Hallström 2000; Jacobsson and Sahlin-Andersson 2006) in order to be able to influence behaviour.

When rules are issued by the state they are associated with the state’s coercive power over its territory and with threats of sanctions for non-compliance (Djelic and Sahlin-Andersson 2006a). Since there is no authority above, or outside, the state on the world level, transnational regulation by necessity relies on other ways to influence behaviour. Looking at states as rule-followers there is basically no regulator that can coerce a state into compliance, meaning that different tools, or regulatory modes (ibid) must be applied. Whereas states frequently regulate by hard law and directives, non-state rule-makers must rather regulate through soft law (Snyder 1994; Mörth 2004). Soft law is not legally binding and can come in the shape of goals, action programmes, guidelines, standards, codes of conduct, recommendations, advice, and information (Jacobsson and Sundström 2006; Jacobsson and Sahlin-Andersson 2006) as well as incentives and procedural requirements (Knill and Lenschow 2004). Soft law is “rules of conduct which, in principle, have no legally binding force but which nevertheless may have practical effects” (Snyder 1994:198). Indeed, the practical effects may be both political and legal, and of substantial magnitude, as soft law builds on normative commitment (Jacobsson, K 2004), which has been demonstrated to be a forceful compulsion (DiMaggio and Powell 1983). In this context norms are powerful because they “form part of a wider scheme of regulation which has monitoring and behaviour-modifying mechanisms” (Scott 2004:156). Being, or becoming, part of a normative community implies shared perceptions and understandings that will subsequently affect behaviour through social control (Jacobsson and Sahlin-Andersson 2006), and in addition to normative pressure, socialisation and acculturation are also relied on for compliance in soft law (Djelic and Sahlin-Andersson 2006a). This tendency indicates that transnational regulation is not only about formal and codified rules but also about more informal ones. Informal rules might be harder to observe but their ability to steer behaviour is at least as great as that of formal rules.

To summarise the argument so far, states can no longer be regarded as the rule-makers par excellence. But since non-state rule-makers lack formal authority and recourse to sanctions they have to rely on soft regulation, which, in its turn, builds on the rule followers wanting – in some sense and to some degree – to comply with the rules. There are ways of creating such a desire and the three strategies of expertise, association, and organising have
been proposed as increasing the rule-maker’s authority (Jacobsson and Sahlin-Andersson 2006) and, by consequence, the attractiveness of its rules. While association is about creating connections to rules, regulations, or rule-makers that are already perceived as legitimate (ibid; Dahl 2007), expertise gains power by making references to satisfying the common good and what’s best for everybody (Boli 2006). Experts, it is claimed, know better than the man in the street because their knowledge is thorough and rests on science and specialised understandings (Drori and Meyer 2006). Hence, rules become important if they are connected to other important rules and/or if they build on expertise. The third way to authorise rules consists of creating an organisation and making it attractive to be a member of that organisation. The power of organisational membership resides in it being mandatory for organisational members to follow the organisation’s rules (Ahrne et al 2000; Ahrne and Brunsson 2006), and this argument will be further developed in the upcoming section on the role that international organisations play in transnational regulation.

To conclude, transnational regulation can be described as building on a multitude of regulators issuing huge amounts of different kinds of rules in relation to almost all aspects of social life. Being a rule-follower in such a context might seem hard but the prevalence of soft rules somewhat eases the regulatory burden. Soft rules are frequently voluntary to follow and include elements of self-regulation (Brunsson and Jacobsson 2000a). In addition, they tend to involve connections, exchanges, and discussions between regulator and regulatee. Through the dialogue thus created – and sometimes referred to as responsive regulation (Ayres and Braithwaite 1992; see also Nordström 2008) – common “norms and understandings develop, and possibilities for voluntary compliance are formed” (Jacobsson and Sahlin-Andersson 2006:253). It is possible to view Twinning as one vehicle for responsive regulation where regulators – the Commission and the member states – meet the regulatees – the candidate countries but also, and interestingly, the member states – in order to ensure appropriate rule-following. Responsive regulation can be performed by a variety of regulators, but as this thesis is about soft regulation in relation to the European Union, it is now time to define what international organisations do in the transnational regulatory space.

The Regulatory Power of International Organisations

Within political science it has been assumed that international organisations with states as their members – e.g. the UN, NATO, the OECD, and the EU – are only important in their function as arenas for state power struggles (Waltz 1979). From such a perspective states are the essential actors and the international organisations do not really hold any power of their own; the organisations are not actors in their own right but are rather treated as “by-
products of state action” (Barnett and Finnemore 2004:vii). However, the importance of international organisations as a specific type of organisational actor with particular characteristics and capabilities has long been recognised and studied within organisation studies (McNeely 1995; Barnett and Finnemore 2004; Jacobsson et al 2004; Ahrne and Brunsson 2006). Even though there is certain agreement on international organisations being able to influence states, a number of different takes on the relations between them exist. States and international organisations can either be seen as clearly separated and stable actors, or as actors that are dynamic, open, and continuously changing through their interactions and exchanges. From this latter perspective increased transnational interaction and contacts lead to states “becoming integrated in and enveloped by wider European and global schemes of rules and ideas” (Jacobsson 2006:211). These rules and ideas will not leave states unaffected and their spread and propagation is largely dependent on international organisations. Let us therefore take a closer look at the relations between states and international organisations.

First of all, a definition is in order. This thesis is about regulation within the EU, which is a so-called international governmental organisation (IGO). An IGO is “a formal structure created by agreement among two or more sovereign states for the conduct of regular political interaction” (McNeely 1995:30). Moreover, IGOs are created by international treaties – conventions, charters, or constitutions – that specify the goals, competencies, basic norms, and operational principles of the organisation as well as the relations between the organisation and its members (Jacobson 1984). These are the rules, in the broadest sense, of the organisation and members are expected to follow them. However, IGOs belong to the category of meta-organisations (Ahrne et al 2000; Ahrne and Brunsson 2004), i.e. organisations whose members are other organisations, which struggles with particular regulative problems. Even though meta-organisations are “important tools for achieving global order” (Ahrne and Brunsson 2006:87) they have relatively weak rule-enforcing capabilities due to their constitution. A meta-organisation is highly dependent upon its members, who are frequently more powerful, better known, and seemingly more important to the international community than is the organisation. As a consequence, meta-organisations experience difficulties in enforcing negative sanctions and mobilising positive ones vis-à-vis their members (ibid). Nevertheless, IGOs are definitely not powerless in relation to their members. IGO membership is very popular and applying for membership signals a willingness to accept and submit to the organisational rules. This means that it is in the phase of accepting new members that the regulative power of IGOs is the strongest (Ahrne and Brunsson 2006). The logic of international governmental organising implies that membership is voluntary, but once obtained it brings with it the obligation to follow the organisational rules, making membership a strong regulative mechanism
(Jacobsson 2006). IGOs do have the power and the right to regulate their members, and breaking the rules means subjection to possible sanctions.

As described above, international governmental organisations regulate their members but, perhaps more importantly, they also define those members (McNeely 1995) and constitute the world they function in (Barnett and Finnemore 2004). Organisational requirements and membership criteria define member states as they prescribe what a member is; for instance, the members of the EU are defined, through the Copenhagen Criteria, as democratic market economies with professional and apolitical civil services. A state that does not display these characteristics is not, and cannot by definition be, a member of the EU. Further, IGOs, through their activities, constitute the world: they define and frame new categories of problems to work on, they set agendas, and they create new norms, interests, actors, and shared social tasks (Barnett and Finnemore 2004). In line with the above argument on rules filling both regulative and constitutive functions, international governmental organisations both regulate and constitute the world through their rules because those rules do three things: they “(1) classify the world, creating categories of problems, actors, and action; (2) fix meanings in the social world; and (3) articulate and diffuse new norms and rules” (Barnett and Finnemore 2004:31). This might give the impression that states are rather at the mercy of very powerful international organisations, and it is important to keep in mind that IGOs are neither “byproducts of state action” nor dictators of state action. As noted above, states and IGOs are not separate and stable actors but become intertwined through their interactions and exchanges, making it difficult to discern the national from the international. For instance, after more than ten years of EU membership, the Swedish public administration has become deeply embedded in EU politics (Jacobsson and Sundström 2006). This makes it impossible to say that Swedish opinions are exclusively formed and formulated nationally, or in the EU committees. Just as international organisations would be nothing without their members, member state participation in IGO regulatory activities shapes and fills these activities with content, and it is these activities that will subsequently regulate and constitute member state practice.

The IGO rules that regulate and constitute the member states vary in character. They frequently come in the shape of standards (Ahrne et al 2000), because standards are perceived as less constraining than directives, but this is not the only alternative. The complexity of formal EU rules was described in Chapter 2, and the different regulative modes involved can be analysed along the dimensions of the level of obligation imposed by the regulator and the level of discretion of the regulatee (Knill and Lenschow 2004). Some regulations, like directives, come with a high level of obligation leaving the regulatee with little room for manoeuvre, while others, like the Open Method of Co-ordination, impose a lower degree of obligation. This means that the rules can be more or less defined, and more or less constraining, as the dis-
cretion of the member states is a matter of degree. But whether or not the rules take the form of regulations, directives, or opinions they must all be managed in some way. In addition, the more informal rules emanating from practice and EU interaction also need to be handled. Accordingly, states wanting to become members of the European Union are faced with an enormous body of complex regulation to consider.

4.2 Rule-Following through Imitation

If the proposition that states find themselves at the crossroads of massive amounts of different kinds of rules, produced by a multitude of rule-makers, and bearing on almost all areas of social and political life, is valid, it would not be surprising if they experienced uncertainty regarding how to manage all this regulation. The uncertainty is of course further reinforced by rule ambiguity. And when applying for membership in an organisation the number of rules to follow is likely to increase, making it even harder to navigate the regulative waters. The *rational* response when faced with uncertainty would be to find out more and find alternative courses of action. But rationality has been questioned as a viable logic for action (March and Olsen 1989; Brunsson 2006). Another classical answer to uncertainty is to imitate other similar and successful organisations (DiMaggio and Powell 1983), and mimesis would hence be a feasible, as well as tempting, strategy. In fact, imitation may be described as the predominating change-strategy in organisations and is therefore liable also to occur when new rules are introduced and must be followed. In addition, the set-up and explicit objectives of Twinning seem to encourage imitation on the part of candidate countries when it comes to implementing the acquis, using the member states’ administrative solutions as models. Below, a conceptualisation of organisational imitation will be developed, intended to do two things. First, the outline of the mimetic process will be used as a structuring device for the upcoming analyses. Second – and because seeing a phenomena as something else is the essence of interpretative research (Alvesson and Sköldberg 1994) – considering Twinning as imitation will bring insight into what Twinning is about, how it works, and what it produces. In order to understand the changing patterns of regulation, and soft regulation in particular, we need to know what they look like, and imitation will be used to provide such a picture.

The Prevalence of Imitation

Imitation is a common human and organisational activity. Some even argue that imitation is the one variable from which all human, and social, behaviour can be deduced (Tarde 2001/1890). However, such a broad approach lacks explanatory power and in the sections to come I will delineate imita-
tion as I intend to use it in order to make sense of the organisational and regulative processes involved in Twinning.

Imitation takes place at many levels of society: individuals imitate other individuals, and various types of organisations look to each other for inspiration and solutions. The majority of industrialising societies have emulated organisational forms that originated outside their borders (cf. Westney 1987), and this tendency is still vivid in our own epoch (see e.g. Djelic 2001). Imitation is thus a frequent activity, and it has even been claimed that mimesis is in fact “crucial to many cases of institutional change” (Jacoby 2000:2, emphasis added). This highlights the connection between imitation and change, and the two concepts are intimately intertwined. To imitate implies a readiness and/or willingness to change while at the same time, and as noted above, imitation is a frequently employed strategy for bringing about change in organisations. When talking about imitation, we thus talk about some kind of change.

The great number of studies conducted, and texts composed, with a view to analysing the characteristics and effects of organisational imitation (e.g. Tolbert and Zucker 1983; Fligstein 1985; Sevón 1996; Haunschild and Miner 1997; Djelic 2001; Hedmo et al 2005; for an overview see also Mizruchi and Fein 1999) bear testimony to the subject’s longevity and significance to the field of organisation studies. Imitation is, in other words, a well-researched and scientifically recognised organisational phenomenon. A variety of different approaches – both quantitative and qualitative – have been employed to pin down the mimetic process, and a number of theoretical perspectives have been applied in making sense of it. According to John Meyer, the typical (American) starting point for such analyses would be to opt for either/or: “there is either active purposive social action or there is passivity, as when people and organizations under uncertainty are driven into passive conformity with institutional norms and definitions” (Meyer 1996:243, emphasis added). However, Meyer goes on, these are not the only two options. There is a middle way, building on the concept of the soft actor and implying a particular understanding of actorhood. Instead of treating actors as hard-wired and bounded, this line of thinking sees actors as culturally embedded. Actors exist, and action is possible, building on the core principle that “identity and activity always involve ideas, which always have exogenous aspects, and that organizational behaviour involves the routine use and modification of them” (Meyer 1996:244). I adhere to this notion of soft actors, culturally embedded without being confined to passivity, and along these lines I have assembled my theoretical perspective on organisational imitation.

According to Meyer’s argument there are two basic perspectives on imitation. In their seminal article from 1983, DiMaggio and Powell describe imitation as one of three mechanisms producing organisational isomorphism (the other two being coercion and normative pressure). In the view of these
authors, uncertainty and the search for legitimacy would be the primary driving forces for organisational change. Along the lines of Meyer’s (1996) reasoning, this perspective represents a view of actors as passive adopters of organisational elements, conforming to norms prevalent in their environment. Accordingly, in the (American) sociological new institutionalist literature it is quite common to equate organisational imitation with diffusion and thus statistically map out the spread, in time and space, of an investigated structure or practice (see e.g. Tolbert and Zucker 1983; Fligstein 1985; Haunschild and Miner 1997). In this vein, both the automatic nature of imitation and its homogenising effects are emphasised. Given the pronounced macro perspective of many new institutionalists this development is perhaps not surprising. However, it is unsatisfactory because in its focus on the spread of organisational elements it leaves out the receiving end, i.e. the imitating organisation. This aspect of imitation has instead been more thoroughly explored by another group of scholars.

Scandinavian organisation researchers, inspired by the works of Latour and Callon, have proposed a performative perspective on imitation, emphasising the receiving (i.e. imitating) organisation and the enfolding mimetic process rather than the originating organisation and the concrete model organisational elements (cf. Czarniawska and Sevón 1996). In this vein, imitation is to be regarded as a mechanism for learning; it represents a way to learn from others’ experience through a process in which something new is created and continuously transformed by way of successive translations (Sevón 1996; Sahlin-Andersson and Sevón 2003; Czarniawska and Sevón 2005). Imitation is treated as a process initiated and pursued by the imitating organisation and propelled by its perceptions of its current situation, of its identity, and of the identity of possible models for emulation (Sahlin-Andersson and Sevón 2003). Imitation thus defined is about organisations actively appropriating ideas – sometimes embodied in systems or structures – and translating them into something that fits their new context. This “something” will then work to guide and direct new, i.e. imitated, types of behaviour (ibid).

As I am more interested in understanding the meeting between model and imitator than in the origins and spread of specific structures or practices, it is the theoretical approach building on soft actors and their choices and actions within mimetic processes that will now be pursued.

The Constitution of the Mimetic Process

In order to somehow concretise the theoretical notion of imitation I have found it useful to define and separately investigate the different elements of the mimetic process. I argue that such an approach is rather necessary since many studies tend to take the elements and their connections for granted instead of problematising them. Attempting to understand imitation, it is
fruitful to view mimetic processes as evolving around a triad of important components and, in particular, the relations that develop between them. Consequently, a thorough theoretical understanding of imitation includes directing attention to the model organisation (i.e. the source of what is being imitated), to the object of imitation (i.e. that which is being imitated: concrete practices, systems, routines etc but also their ideational foundations), and to the imitator. These are the three basic elements involved in the mimetic process, and the relations between them indicate aspects of soft actorhood. To fully understand imitation it is also important to investigate why organisations engage in mimetic behaviour and with what outcomes. Hence the motives, or justifications, for imitation as well as the results of mimetic activities need to be attended to.

In the sections to come, a fuller exploration of these elements will be undertaken. The characteristics of each component will be outlined and the relations between them will be clarified. Imitation occurs in all kinds of settings and situations, but as this thesis deals with states that imitate each other within a framework of transnational regulation, the presentation will be from the angle of an international context emphasising states and state administrations. The argumentation is a general one but it will be directed mainly towards clarifying imitation between public administrations embedded in an international organisational context.

The Motives for Imitation

Starting out by investigating the motives for mimesis, a number of alternatives ranging from coercion to explicit will to change have been identified in the literature. In the introduction to this section uncertainty was mentioned as the classical motivation for engaging in imitation (DiMaggio and Powell 1983) – when organisations do not know what to be or what to do they look to others for inspiration and ideas. But uncertainty is certainly not the only identified motive. Another common approach to the description of mimesis is an emphasis on voluntariness (Westney 1987; Jacoby 2000). Imitation brings with it connotations of local initiative and voluntary choice, but this voluntariness appears often to be intermixed with external, and more or less explicit, pressures for change. These pressures may be based in various types of dependencies (Djelic 2001) and are produced by, for example, integration into international regimes or by the conditionality of international organisations (Jacoby 2000). In the former case it is commonly the organisational solutions of Western member states that are promoted in developing or candidate countries (cf. McNeely 1995; Finnemore 1996). Regarding conditionality, this is employed by such organisations as the World Bank and IMF (Jacoby 2000), the European Bank for Reconstruction and Development (Dahl 2007), and the EU (Schimmelfennig and Sedelmeier 2005). Here, the granting of loans or membership is dependent upon the achievement of cer-
tain goals, e.g. democratisation, market liberalisation, or environmental protection. The goals are set and the means to attain them are also influenced by the international organisation through persuasion, technical or material support, promised rewards and threats of deprivation of future funding (Jacoby 2000). In this way international organisations have the ability to promote, or even prescribe, organisational solutions for prospective members to imitate.

Yet another kind of motive for imitation is based on organisational identity, and deals with both others’ perceptions and self-perceptions. Accordingly, mimesis can change important others’ perception of the focal organisation (Westney 1987; Djelic 2001) but it can also change the focal organisation’s own identity (Sevón 1996, Sahlin-Andersson and Sevón 2003). In the first case, imitation of established and institutionalised models represents a way to gain acceptance and respect from the environment (Westney 1987). Through enhanced legitimacy the imitator’s situation will improve as dependencies may decrease and the organisation’s position in relation to important others may be strengthened (Djelic 2001). In sum, imitation can be driven by perceptions of inferiority and by a desire to be accepted, and endowed with legitimacy, by a wider international environment. Here, imitation is rather motivated by the search for acceptance, but organisations can also experience an explicit will to change their identity. Imitation can then be seen as a means for the imitator to change its identity into a more suitable or desirable one (Sahlin-Andersson and Sevón 2003). The identity of an organisation is created in relation to others, and in the process of creating an identity the organisation needs to make comparisons and references to others in order to determine what it is like (Sevón 1996). Accordingly, the organisation comes to identify with certain organisations and use others as yardsticks for what it considers deviant or undesirable. However, an organisation may change its reference group and start to identify with a new set of organisations. When this happens perceptions of what are considered correct and desirable structures and behaviours will change, and the organisation will experience a will to change (Sahlin-Andersson and Sevón 2003). Consequently, identification with a new group and the ensuing desire to change are strong motives for imitation.

Summarising the motives for imitation they can be divided into external, i.e. in the form of various kinds of pressures and constraints, and internal, i.e. experienced uncertainty, identification, and will to change.

The Objects of Imitation

Regarding the object of imitation, a first important point to make is that in order for imitation to be initiated, model organisations must “possess characteristics which seemingly make them successful” (Sahlin-Andersson 1996: 70). It needs to be stressed that “successful” may mean quite different things in different contexts. It may mean modern, because modernity – in the sense
of upholding a division between the natural and the moral or social (Latour 1993; Meyer et al 1994) – constitutes one of Western societies’ most dominant development trends (Olsen 1990). Or it might simply mean legitimate, because legitimacy is what ensures organisational survival (Meyer and Rowan 1977). It could also be about what is fashionable (Røvik 1996), because fashions hold the power to reduce complexity and facilitate choice-making (Blumer 1969). Whichever the case, the important thing is that the object consists of “success”, or rather of success stories spread and told. Imitators rarely have any direct and hands-on experience of the objects they imitate but rather have to rely on accounts and materialisations of ideas or organisational practices (Hedmo et al 2005). Consequently, objects of imitation can be conceptualised as rationalisations, or images of practice made presentable to the institutional environment. It is not real-life experiences and actual practice that are being imitated; instead it is standardised models and presentations of practice that spread (Sahlin-Andersson 1996). Accordingly, it is ideal and universal organisational solutions, devoid of local features and described in rationalistic terms, that are normally being imitated. In other words, the objects of imitation often consist of context-free prototypes (ibid) that emphasise the successful, clean, and functional aspects while downplaying the drawbacks, idiosyncratic circumstances, and complicated reality.

Additional aspects of these rationalised objects of imitation are the terminology used when presenting them and the ideals that this terminology implies (Sahlin-Andersson 1996). The terminology used can be expected to pick up on the institutionalised (cf. Brunsson 1990) and fashionable (Røvik 1996) aspects of organisational reality, but it will most likely also be characterised by simplicity, clarity, and rationality (cf. Sahlin-Andersson 1996). These characteristics facilitate a wide spread and imply universal applicability. In addition, the elegance of simplicity gives off a signal of effortless success, which would make imitating the object even more tempting.

The Model and the Imitator...

Under this heading the actors involved in the mimetic process will be described. In the next section special emphasis will then be placed on the relations between them, because this is where their soft actorhood is most clearly expressed. It has already been noted that the model needs to be successful in some sense. Accordingly, the model organisation can be described as being – in one way or the other – superior to the imitator. That organisations indeed provide models for each other is clear (cf. Czarniawska and Sevón 1996), and it is also clear that organisations actively put themselves forward as models. According to Meyer (1996) the reasons for this are to be found in the ideal of rationality and rational behaviour:
Because modern organizations legitimate themselves as specific instances of models (i.e. sets of ideas) that are universally true, progressive and rational, they not only use exogenous ideas, but turn their own structures and practices into such ideas. They live by the standard of universalistic rationality, and gain strength and stability by promoting themselves as instances of this standard. (Meyer 1996:245)

Organisations can “store up and stabilize their prestige and success” (ibid) by functioning as models, but they can also be viewed as carriers of ideas. The concept of carriers has been explored by Sahlin-Andersson and Engwall (2002) in relation to the expansion of management knowledge but I believe its applicability to be wider than that. Carriers are defined as actors who “play significant roles in the framing, packaging, and circulation of management ideas” (Sahlin-Andersson and Engwall 2002a:6), and typical examples would be business schools, management consultants, and the business media. I argue that in many ways the model organisation in a mimetic process can be regarded as a kind of carrier of ideas, but not necessarily exclusively of management knowledge. Rather, carriers can be expected to frame, package, and circulate all kinds of institutionalised and fashionable ideas in society. The suggested way to analyse carriers is to view them as being both mediators of specific ideas and supporters, reproducers, and transformers of “the more fundamental institutions of modern society” (Sahlin-Andersson and Engwall 2002a:8). Carriers are both passive and active in their relation to ideas and this is where the soft actorhood of the model organisation comes in. The model both reproduces and transforms ideas in its own practice and subsequently turns them into accounts of success or, in other words, objects of imitation.

Moving on to the imitator, it will – in line with the conception of the model as successful – experience some kind of inferiority in comparison to others. In Sevón’s (1996:52) definition of imitation “[t]o imitate is to act like someone else with the more or less conscious intent to achieve the same, or similar, consequences”. This means that the imitator – either voluntarily or as an outcome of external pressure – has as its goal the attainment of the same kind of result as the model. The starting point for such a desire to change and improve is the identification of some kind of problem, and the imitator normally experiences a gap between the current situation and the ideal or desirable one. This experience will arise from comparisons made with other organisations with which the focal one identifies (Sahlin-Andersson 1996). Hence, “[p]erceived likeness of identity and/or context with an imitated model seems to be necessary, both for the attention to and the development of beliefs about what is correct, true and desired, and for judgement about whether it is possible to obtain a similar outcome” (Sevón 1996:59).
As regards the manner in which the imitator relates to the object of imitation, this can be expected to build on translation (Sevón 1996; Sahlin-Andersson and Sevón 2003; Czarniawska and Sevón 2005). As noted above, translation emphasises actors and what these actors do with the ideas they encounter. Actors are not treated as passively receiving diffused ideas but rather as managing and moulding them in some way. The translation process works as follows: first of all an idea must be translated into an object (e.g. a text, a picture, a prototype) in order to spread, and then it can be disembedded from its original context and start to travel (Czarniawska and Joerges 1996). When the idea-translated-into-an-object subsequently arrives in a new context it needs to be translated again so that it can be fitted into, i.e. reembedded in, its new milieu (ibid). That this process of disembedding and reembedding can take different turns and lead to different outcomes has been demonstrated by, among others, Erlingsdóttir (1999). Hence, the spreading and institutionalisation of ideas assume different shapes and exert different degrees of influence on practice depending on factors such as the origin of the idea, the number and character of the “idea-issuers”, the package in which the idea travels, the relations between idea and receiver, and the norms and activity patterns the idea builds on (ibid). Imitation in the sense of translation is a process where something new and at least partially different is created when an idea, a system, or a structure travels from one context to another. The departures from the imitated object may be extensive or very small, but the important thing to note is that the result of imitation is not an exact copy of the original, nor a completely new invention. It is something in between these ideal types (Sahlin-Andersson and Sevón 2003).

… and the Relations Between Them

The relations that exist and develop between model and imitator constitute an important element in the mimetic process, and clues as to what they may be like have been provided throughout the chapter. First of all, the imitator seldom has any direct experience of either the object of imitation or the model organisation. An organisation might want to present itself as a model and an imitator might have identified its model, but the two rarely meet and communicate in practice. Instead, the imitator meets the model indirectly through accounts spread through published success stories, international organisations, the media, and consultancies (Sahlin-Andersson 1996; Sahlin-Andersson and Engwall 2002). Particularly consultants have been singled out as extraordinarily important to the spread of models and success stories (Armbbrüster and Kipping 2002). This is so because the employment of consultants is increasing in all kinds of organisations, and because consultancies have direct contact with the organisations engaging them, which other carriers – such as business schools and the media – often lack (Sahlin-Andersson and Engwall 2002).
However, a direct relation between model and imitator is possible. For instance, Djelic (2001) makes a convincing case for the relations between model and imitator having considerable effects on the outcome of large-scale macro processes of cross-national transfer. Such transfers constitute rather particular cases, but I believe that parallels to imitation in general, and to mimesis between states in particular, do exist. Also, Djelic herself predicts that her theoretical tools could also apply “with some marginal adoption, to transfer processes more limited in their scale” (Djelic 2001: 280), and this is why I have chosen to rely on parts of her conceptualisation. Hence a number of prerequisites for imitation can be formulated. One important factor is readiness for change. The imitator must be open and receptive to modifying its behaviour and, furthermore, a suitable model must exist and should appear to be superior. A first characteristic of the relations between model and imitator is thus that they are not of equal standing. Djelic (2001) names this a situation of asymmetrical dependence. The next important aspect of the relations concerns the attitudes and roles of the model. According to Djelic (2001:132) “nationals from the [the model country] have to have strong motives to justify pressing radical change on [the imitating country]”. Djelic means that a model may motivate its participation in, or encouragement of, mimetic behaviour with reference to economic, political, and geopolitical motives, but it may also be driven by a missionary spirit. Hence, “[d]eeply convinced of the superiority of the model their own country embodies, [the model country officials] may desire to shape at least parts of the world following that model” (ibid). This would be the conscious attitude coming closest to the conceptualisation of the model presented by Meyer (1996).

One last thing concerning relations should be mentioned, and it is based on the perspective of the imitator. Even if imitation is basically construed as a voluntary act it does frequently contain some degree of coercion, or at least external pressure. Therefore an object of imitation, or even an entire model organisation, may encounter resistance from the imitator. Following Djelic’s (2001) terminology, attempts at resistance are obstacles to imitation and they can vary in strength.

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48 Djelic’s model of the stages of cross-national transfer processes is wide-ranging and includes: the conditions and origins of the transfer process; the process itself and its main mechanisms; its reception and the obstacles it might encounter. In addition, Djelic rather treats imitation as a mechanism of cross-national transfer and not as a core concept. As her book is one of the few investigating the relationship between concrete models and imitators (or receivers in her case), I have deemed it appropriate to single out and adjust the parts of her model that deal with relations and attitudes. As Djelic’s model takes a large-scale and structuralist perspective it is not ideal for my purposes, but it does provide the outline of how mimetic relations can be conceived.
The Results of Imitation

As should, it is hoped, be clear from this conceptualisation of imitation as translation, the results of mimesis will never be one-to-one copies of the object of imitation. This is frequently as far as theories of imitation go, and in order still to be able to say something about what kind of outcomes can be expected from imitation between states in an international context, I will refer to the study of administrative reform as organisational change. Here, a division between activity-creating and identity-creating change has been suggested (Jacobsson 1994). While the former leads to changed behaviour, the latter leads to the emergence of new ideas, attitudes, and perceptions. Activity-creating change can be expected to result in altered organisational rules, structures, governance and information systems, while identity-creating change would rather fit organisational activities into a (new) context and give meaning to, and justification for, both activities and perceptions (ibid). In practice, the two are of course highly interdependent, but while activity-creating change is frequently tangible and leaves physical remnants, identity-creating change is harder to detect. It is rather expressed through altered perceptions and appraisals (Jacobsson 1994) and therefore requires a “before and after” approach in order to be grasped. If an authority – for instance a state-operated debt collector – that has traditionally seen its line of business as being about control and enforcement, starts perceiving its activities rather as being about providing a service to clients (as opposed to citizens) its behaviour is likely to change (Sahlin-Andersson 1996), although probably only slowly. Altered perceptions thus lead to altered behaviour, but it most likely works the other way too. If policy documents, methodologies, and administrative routines are changed so as to represent those of a service organisation, a change in perceptions and identity can be expected to evolve.

To conclude, imitation is likely to result in new or changed activities as well as new ways to perceive, categorise, and make sense.

4.3 Summarising the Argument: Regulation through Imitation

This chapter has described the complexity of rules and the increase – in amount and kind – of regulation. It has also presented organisational imitation as a viable way to handle the uncertainty that this massive regulation is likely to give rise to in regulatees. This is a general argument but it has been given greater specificity by a focus on international governmental organisations and their powers and possibilities as rule-makers. The European Union is one such organisation and even though it is sometimes argued that the EU is a quite unique construction (for a discussion, see Eilstrup-Sangiovanni 2006), it shares the basic regulative capabilities of other IGOs. Because its
vision is grander and further-reaching than those of other international organisations, the EU’s rules are more extensive, but they function in the same way. However, it is this great bulk of regulation – its sheer magnitude, complexity, and level of detail – that motivated the creation of Twinning in the first place.

In order to ensure that the candidate countries would indeed follow the rules of the organisation, and follow them in the correct and appropriate way, the Commission deemed it necessary to provide extensive and highly organised assistance. The candidates were not trusted to be able to implement the acquis on their own but were required to co-operate with member states. Twinning participation was more or less mandatory for candidate countries seeking EU membership, meaning that the rules on how to follow rules contained in Twinning were rather constraining even though they were presented as assistance and support.

The plan was thus that the old member states would teach the candidates to follow the rules, and the candidates would accordingly learn from the member states’ experience. As imitation is basically concerned with learning from others’ experience it quite clearly captures the fundamental ideas behind Twinning. Twinning provides rules on how to follow rules and is organised to encourage imitation, which leads to project realisation essentially dealing with regulation through imitation. Given the strictly determined Twinning procedure and the tight monitoring and control of project development, Twinning can even be conceptualised as regulation through organised imitation and this is the theoretical vantage point from which my analyses will be made.

In the next three chapters the empirical material of the thesis will be presented. The Tax Project, the Statistics Project, and the Judiciary Project will be outlined in some detail. The questions of how Twinning projects are realised, and what their contents and outcomes are, will be considered. The member state Twinning partners will be cast as the model organisations while the candidates are the imitators. The content of the projects provides the objects of imitation and the outcomes provide the mimetic results. The external motives for imitation are provided by the acquis underlying each project’s initiation. The internal ones, on the other hand, have not been explicitly formulated and cannot be observed in the empirical stories. Rather, they emerge from interpretative analysis and will therefore have to wait until Chapter 8 to be outlined. Chapter 8 consists of a fuller analysis of the Twinning processes presented in the empirical chapters and using the theoretical tools from the mimetic process to understand both what goes on in projects and what it means. In Chapter 9, finally, the characteristics of Twinning are related to soft regulation in general in order to discuss the regulative power of soft regulation. But first the empirical accounts of the Tax Project, the Statistics Project, and the Judiciary Project will be presented.
Chapter 5.
The Tax Project: “How a modern tax administration is supposed to work”

One of the fundamental ideas of the European Union is the internal market. The internal (or common) market is truly one of the cornerstones of the EU and its realisation is a project that has been going on virtually since the instigation of the European Coal and Steel Community in 1950. The creation of a single European market has proceeded in steps, one of the more important being the signing of the Treaty of Rome, which established the European Economic Community with its “common market”\(^4^9\). The policy area of the internal market is heavily regulated, indicating its importance and core position among the functions of the European Union. Taxes, taxation, and the exchange of tax-related information between member states constitute important cogs in the internal market machinery, particularly since indirect taxes (VAT and excise) can “create an immediate obstacle to the free movement of goods and the free supply of services within an Internal Market”\(^5^0\). The Twinning that will be presented in this chapter – the Tax Project – is closely connected to the internal market and hence justified with reference to its smooth functioning. Since the internal market constitutes one of the more prioritised areas of Community co-operation this Twinning quite naturally acquires importance – and certain peculiarities! – as well.

Here the Tax Project will be described and explored in relation to the issues of external motives, objects, relations, and results of Twinning as imitation. The reason for initiating the Twinning, its content, the development of relations between member state and candidate country, and the results of the project will be considered. But first of all the general area of the Twinning, its prerequisites, and its main actors will be presented.

\(^{49}\) http://ec.europa.eu/internal_market/top_layer/index_2_en.htm, 2007-06-29

5.1 Introducing the Area and the Actors

The Tax Project was a vast, comprehensive, and complex Twinning that went on for two years and included hundreds of activities and expert missions. The Lithuanian organisation responsible for its implementation was the State Tax Inspectorate (STI) and the member state partner was the Swedish National Tax Board (Skatteverket). As indicated by the title of the project, it was connected to the EU activity area of taxation and hence to the policy area of taxation and customs union. Taxation and customs union are, in their turn, closely coupled to the idea of the internal market of the European Union, and these links provide the basic motivation behind the initiation of the Tax Project. The general objective of the Twinning was to “align the Lithuanian Tax Administration with the Internal Market Acquis facilitating administrative cooperation and mutual assistance” (final report, p. 5), which indicates that the justification for the project is to be found in one of the fundamental purposes of the European Union. As mentioned above, the parts of the acquis dealing with the internal market are very extensive – to illustrate, the list of internal market directives adopted as of 1 April 2007 comprises somewhere around 1850 legal acts, while EUR-Lex cites more than 4700 documents – but of course not all of them were dealt with within the Tax Project.

Important as taxation is, the internal market acquis quite naturally deals with much more than just taxes and therefore provides rather blunt guidelines when it comes to administrative practice. To further concretise the tax-related parts of the acquis, the Commission (DG Taxud) has elaborated the so-called Fiscal Blueprints. These eleven blueprints consist of “best practice for operating a modern tax administration in a Single Market/.../ They cover a range of administrative structures explicitly required by the acquis, as well as structures which are not explicitly required but which are nonetheless necessary for the effective implementation of the acquis”53. In practice the Blueprints are used as benchmarks against which to measure shortfalls in the candidate countries’ operational capacity, and the candidates are encouraged to use them as a guide to their tax-related reform processes. Accordingly, the line of justification for the Tax Project starts from the internal market acquis but draws most heavily on the acquis on taxation, as incorporated in the Fiscal Blueprints. Both hard directives and formally unregulated structures – i.e.

52 EUR-Lex (http://eur-lex.europa.eu/en/index.htm) provides direct free access to European Union law. Here one can consult the Official Journal of the European Union as well as the treaties, legislation, case-law and legislative proposals.
informal rules, or socially required practices – justify the initiation of this particular Twinning. Let us now leave the background to the Tax Project and turn to its more concrete prerequisites and unfolding development.

5.2 Initiating the Project

It appears that the Tax Project was only one link in a longer chain of tax-related assistance – in the shape of both Twinning projects and other kinds of bilateral co-operations – provided by a variety of actors. To fully comprehend the development of this particular project, I believe that a certain contextualisation in time and space is necessary. The Tax Project officially commenced on 19 December 2002. At this point in time it appears that the Lithuanian tax administration was lagging behind in its preparations for EU membership compared to many of the other candidate countries, especially when it came to the VIES\textsuperscript{54}. More precisely the function, or unit, responsible for the VAT exchange needed to be strengthened and the technical solutions necessary to sustain the transfer of information had to be developed. Because of Lithuania’s belated start on attending to these matters, and because the project as a whole had a strong connection to the internal market, this Twinning was a priority for both the political and administrative levels. As described by a Lithuanian civil servant:

This time, well it was the priority set by our top management, entering the EU, building this system, priority number one. /…/ you know, this project is extraordinarily important for us, we had it as a big task for us.

Interview 5.2 (candidate country)

The project was thus of the utmost importance to the Lithuanian administration and even though it did not, as will be demonstrated, in any way constitute a first effort to improve taxation routines, it entailed far-reaching changes. Before engaging in the Tax Project the STI had been involved in numerous international co-operations of various kinds. As early as 1995 Lithuania had participated in a Sida\textsuperscript{55}-financed project with Sweden, another big bilateral project had been realised with the Netherlands, and a Twinning light\textsuperscript{56} project involving the Danish administration had been completed. In

\textsuperscript{54} VAT Information Exchange System; this is an electronic means of transmitting information related to VAT-registration of companies registered in the EU. The system enables companies to obtain rapid confirmation of the VAT numbers of their trading partners and enables VAT administrations to monitor and control the flow of intra-Community trade to detect all kinds of irregularities (http://ec.europa.eu/taxation_customs/taxation/tax_cooperation/mutual_assistance/vat_administrative_regulation/index_en.htm, 2006-11-24)

\textsuperscript{55} Swedish International Development Cooperation Agency

\textsuperscript{56} Twinning light is a less extensive version of Twinning.
addition, preparatory work had also been initiated in connection with the IOTA\textsuperscript{57}, where the Lithuanian project leader had been a member of a working group intended to help candidate countries prepare for EU membership. This all meant that the Lithuanian administration was definitely becoming acquainted with the idea of tax reform. The image conveyed is one of slow, careful, Lithuanian rapprochement to EU requirements where the Lithuanian civil service was well aware of its administrative and technical shortcomings. As put by one Lithuanian specialist:

\ldots actually what the Commission identified [in terms of administrative weakness in the area of taxation] was no secret because we knew ourselves that we had a considerable gap as regards the information technologies, up to the level to make sure they are compatible with the EU taxation information systems. As an initiative of the Commission we had a number of monitoring missions [to Lithuania] and I\’m sure that the very first missions, they started back in 1999, were on the IT side /\ldots/ So at that point we started getting familiar with the requirements, what is expected from us as a new member state.

Interview 5.7 (candidate country)

As regards the official rationale behind the Tax Project the connection to the internal market acquis has already been mentioned. In order to ensure the exercise of the four freedoms of the internal market a number of organisations, structures, and systems need to be in place and running smoothly, and this was what the Lithuanian tax administration had to work on. Given that it is the Commission\’s opinion that “there is no need for an across the board harmonisation of Member States' tax systems. Provided that they respect Community rules, Member States are free to choose the tax systems that they consider most appropriate and according to their preferences”\textsuperscript{58}, it was not the Lithuanian tax system per se that was to be developed but rather some of its functions, priorities, and methodologies. In particular, it was the issues of VAT and excise that needed to be addressed. Accordingly, it was the ideas of the internal market that drove the initiation and development of the Twinning project but it was also grounded in the Fiscal Blueprints. The practical importance of these Blueprints was described by one Lithuanian civil servant as follows:

\ldots

\textsuperscript{57} The Intra-European Organization of Tax Administrations; this is a non-profit intergovernmental organisation, which provides a forum to assist members in the European Countries in improving their tax administrations. The organisation was founded after a decision was made during the Conference of Tax Administrations of Central and Eastern Europe and Baltic Countries (CEEB) in October 1996. The decision was supported by the European Union and nine of its Member States, the International Monetary Fund, the OECD, CIAT and the USA (http://www.iota-tax.org/eng/?template=p&iid=1, 2006-11-24)

\textsuperscript{58} http://ec.europa.eu/taxation_customs/taxation/gen_info/tax_policy/index_en.htm# (2006-11-24)

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... it was sort of a model, how a modern tax administration is supposed to operate in the EU. So that model was developed as a part of the Commission’s strategy, pre-accession strategy on the customs and taxation side. /.../

One reason for developing that model was actually for the candidate countries to use them as a guide and also to analyse the gaps from the point where they were, at that stage, towards those indicators or the requirements of the modern tax administration.

Interview 5.7 (candidate country)

To be a modern tax administration appeared to be essential, and the importance of the Blueprints is illustrated by the fact that reference was made to them in the project fiche. In a sense, therefore, the Lithuanian Tax Project was initiated for all the good, or perhaps rather right, reasons: there were weaknesses in the administration, the Commission had identified these weaknesses, and the STI was aware of them. In addition, the conditions for its successful implementation were in place: taxation was a priority area for EU funding and the STI, including its top management, was ready and prepared to take action. What we see is that strong EU demands came together with a committed as well as an aware and seemingly prepared tax administration, which somewhat blurs the line between the coercive motives for engagement and the more voluntary ones.

5.3 Selecting a Partner and Agreeing on the Covenant

The Lithuanian engagement of Sweden as Twinning partner for the Tax Project came about in a somewhat unusual way. The project was a definite priority for the tax administration – as it seems the project was initiated at the highest political level by the Minister for Finance – and finding a (suitable) partner was thus imperative. Previous Lithuanian experience of circulating project fiches and not receiving any offers at all added to the seriousness of the situation, and might provide a partial explanation for the proactiveness of the Lithuanian administration in this case. The earlier and rather extensive bilateral co-operation between Lithuania and Sweden as well as some “cultural and administrative similarities” (informal conversation 5a) between the two countries could also have influenced the Lithuanian decision to encourage Swedish participation. This was exactly what happened in the Tax Project, as the Swedish Tax Board received signals that the Lithuanians were very much interested in Sweden’s participation in the Twinning. The Swedish Tax Board has been quite active in the Twinning field, participating extensively in projects with many different candidate countries59, and main-

59 The Swedish Tax Board has been involved to a varying degree in seven Twinning projects in the 1998 to 2004 Twinning rounds. The projects have concerned the Polish, Lithuanian, Latvian, and Bulgarian tax administrations (Sector Overview. Twinning Projects under Phare 1998-2004)
tains a rather high profile in this area. In addition, Lithuania can be considered a neighbouring country and thus of particular interest to the Swedish Tax Board. As a Swedish civil servant said:

... of course it is more interesting for Sweden to run this project here [in Lithuania] than it would have been to run the same project with... say Cyprus or... because [Lithuania] is naturally a country that we need to have good relations with in our work on taxes.

Interview 5.8 (member state)

Lithuania’s geographical situation together with the general aim and direction of the proposed Twinning suited the Swedish Tax Board, and the decision to submit an offer was made. But even before the submission of this offer, the European Commission organised a kind of get-together where representatives from both old member states and candidate countries could meet and discuss tax-related matters. One of the seminars consisted of the future Swedish PAA presenting the Swedish experience from the CLO information exchange, and in this way the Lithuanians got a “preview” of the up-coming Twinning offer. This might actually have had quite a decisive effect on the development of the Tax Project, since a lot of Lithuanian emphasis is put on the experience of the member state co-operation partner. One Lithuanian official described the selection procedure and the importance of concrete and demonstrated member state experience like this:

... there are a number of factors that will be taken into account. If we have a choice! Then obviously how the proposed member state actually fits into the project fiche, meaning their experience in that area./.../ Yes that was also one of the factors or criteria for us to analyse, whether the countries are strong enough on the technical side. /.../ And so what we actually do, we study these countries’ experience before we take a decision.

Interview 5.7 (candidate country)

In more than one way the Lithuanians knew what to expect from Sweden as a potential Twinning partner, which was perhaps fortunate for the project as a whole since the Swedish Board was the only authority responding to the Lithuanian fiche. According to a Swedish official, the initial Swedish idea when submitting an offer was to organise the Twinning as a consortium together with one or more other member states. The Swedish Board was thus open to co-operation but all the same stressed the importance of functioning as senior partner in this Twinning; a fact that indicates that the Tax Project was also significant to the Swedish partner. In the end, and because no other member state responded – possibly because “the ring was raked for Sweden” (informal conversation 5a) – the Swedish Tax Board shouldered the entire member state partner responsibility for the project.

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60 Central liaisons office; see section on VAT and excise administration.
The situation was thus the following: Lithuania had formulated a fiche, Sweden had made a presentation on the initiative of the Commission, and had then – as the only member state – submitted an offer to run the Tax Project. One would think that the deal would then be closed and that the project could enter the next Twinning phase, but no. Even though the Lithuanians had solicited Swedish participation, and the Swedish Tax Board was the only "competitor" for the project, a selection meeting still had to be organised in Vilnius. The fact that a member state presentation had to be made although there was no competition to speak of can be taken as a sign of the European Commission’s wish to continuously influence, monitor, and control the development of Twinnings. A representative from the European Commission’s Delegation to Vilnius explained the practice of insisting on selection meetings as follows:

Sometimes we have cases where we have no proposals or only a single proposal for a project, that happens sometimes. Because member state administrations, they are not always so keen on sending their best people abroad for one or two years. So in this case it is of course a little bit different, in this case we [i.e. the Delegation] just see whether they meet the minimum criteria /.../ of course there is always a presentation because I mean, you have to base your choice on some… you can’t just buy a pig in a poke, it’s too important. I mean there are thousands of millions of Euros involved so I mean you must at least see the people and have a personal… see them and see what they are doing and not just base your choice on paper.

Interview 5.1 (European Commission)

The need to make sure that the member state partner is serious about its commitment, and also that EU money does not go to waste, emerge as important factors to the European Commission. To be interested in participating is not enough; the member states must also justify their offer and argue for its virtues. Apparently the Swedish Tax Board did a convincing job in this respect – the Lithuanian choice of Sweden as Twinning partner was given the green light, and the preparation of the project covenant could then commence.

The Tax Project was a substantial one and covered a number of important areas. Approximately 90 short-term expert missions were performed by Swedish civil servants in Lithuania during the two years that the implementation phase of the project lasted, and to plan all these activities was obviously a demanding task. Starting from the project fiche, where Lithuanian needs and wishes were specified, and the Swedish idea of how to improve the situation, a detailed work plan was put together. In relation to this work one Swedish official said:

… you are rather specific in the beginning, what has to be done, with objectives and you have to set a frame. But you can’t escape the fact that you are
describing something in advance, in a situation where you in many respects don’t have any deeper knowledge about the receiver’s circumstances.

Interview 5.8 (member state)

The above quotation highlights the somewhat precarious situation where a programme had to be prepared while some of the necessary building blocks for its construction were lacking. The Commission’s prescription of the writing of the covenant as a joint effort between candidate country and member state is naturally intended to reduce, as far as possible, the risk of misunderstandings, unrealistic objectives, unattainable results etc but, as is often the case, reality tends to differ from theory. In practice it is frequently the member state that controls the process with only a minimum of input from the candidate country. A comment by a civil servant at the Delegation illustrates the situation:

Well, normally the process of drafting [the covenant] we [the Delegation] do not supervise it, we say that it’s the business of the beneficiary [candidate country] and the partner institution [member state]. It’s up to them. What happens normally is that they…it’s the partner organisation who does most of the work, 80-90%, and then the beneficiary just flips through it and says OK, yes it sounds good, looks good. And they make some proposals.

Interview 5.1 (European Commission)

The division of work described above portrays the “typical” Twinning project, and not the Tax Project, it seems. When asked about the preparation phase, the problems mentioned by the interviewees relate to other aspects of the process than the co-operation between the STI and the Swedish Tax Board. The Lithuanians and the Swedes appear to have worked together, and quite thoroughly, on preparation. Indeed, one of the main reasons for the project’s successful implementation was – according to the final report – thought to have been “Careful and common planning by the STI and the Swedish Tax Agency at the stage of drafting the Twinning Covenant and its annexed initial work plan” (final report, p. 72, emphasis added). This account, given by a Lithuanian official, illustrates how ideas were connected to practice by way of linking activities and responsibilities to people and, once again, points to the STI’s commitment to the Twinning:

… we set the detailed work programme and we see what side of the activities, and then outcomes, we established for ourselves. So at that part we also consider who will be the counterpart or who will be the key stakeholders for that particular activity. /.../ so at that stage of planning obviously, in the bilateral discussions we were already discussing what level and who will be the counterpart at that point.

Interview 5.7 (candidate country)
Lithuanian involvement at an early stage was thus not wanting. Since the functioning of the VIES/SEED (VAT Information Exchange System/System of Exchange of Excise Data) was “essential to EU accession” (final report, p. 6, emphasis added) it was absolutely imperative to get these going in a satisfactory manner, which might partially explain the activity of the Lithuanian side. However, the urgency of the situation was not enough to create a smooth and problem-free preparation phase. In what might be described as a vicious circle, the importance of the Tax Project solicited thorough planning and preparations, which, in turn, delayed the implementation of the project activities and thus further tightened the already tight time frame. As one Lithuanian specialist said:

… given the fact that the time we spent on the preparatory side and all the procedural stages left us with less time for actual implementation in the face of… end of negotiations and our obligations through joining the EU. /.../ we were also facing some bureaucratic barriers here on the local level with the Commission’s Delegation in order to get the Twinning covenant approved. /.../ the project started with a late start and a late approval of the Twinning covenant so we had… we didn’t have sufficient time for the, for all the activities as we planned. So it needed rescheduling and some activities were going in parallel

Interview 5.7 (candidate country)

The implementation phase of the Twinning was delayed by the Commission’s interference and wish to control, imposing additional time constraints on an already pressured project. Since various activities and missions had to be performed sequentially, some of them building on the prior realisation of others, the entire project, but particularly the IT part so closely connected with the investment component, was at some point in time at risk. In the end the situation was satisfactorily resolved, as the practical solution of parallel activities was found to work.

This section on preparatory work points out some interesting aspects of the relations between candidate countries and member states, as well as of the influence and interests of the Commission. It seems that previous co-operation played an important role in the selection of Twinning partner, and coupled to the focus on substantiated practical member state experience this might have provided a certain basis for predictability and trust. As regards the role of the EU in this phase, it is fairly clear that the Commission was constantly overseeing the preparations and making the final decisions, while the member state and the candidate country were left with the responsibility of managing the very concrete obstacles and problems. As a result we see that strong EU pressure is capable of creating incentives for commitment, which might, in its turn, have helped to motivate change processes. Let us now turn to an account of what happened during the implementation phase.
5.4 The Realisation of Twinning Activities

As the general objective of the Tax Project – i.e. to “align the Lithuanian Tax Administration with the Internal Market Acquis facilitating administrative cooperation and mutual assistance” (final report, p. 5) – was both broad and vaguely formulated, it had to be concretised through the formulation of “sub-level” objectives. The Twinning dealt with three main areas of activity, and for each of these areas more specific objectives were devised:

<table>
<thead>
<tr>
<th>Main Component</th>
<th>Legislation</th>
<th>Administration</th>
<th>IT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Objectives</td>
<td>Adjustments of VAT, excise and IT-related legislation, including secondary legislation, to meet EU requirements.</td>
<td>The development of organisational structures and procedures for the operational VAT and excise systems, including cooperation with other authorities, taxpayer services and risk management</td>
<td>The development of priority data applications of the tax information system, implementation, testing to interface with EU information exchange system…</td>
</tr>
</tbody>
</table>

Table 3: The Components and Objectives of the Tax Project (source: final report, p. 5-6)

Based on these objectives, eleven more manageable sub-components were implemented under the three main components of the project. Accordingly, the project consisted of a VAT legal component, an IT legal component, a combined legal and administrative excise component, a VAT administrative component, a taxpayer communication component, a media component, an internal communication/co-operation component, a risk management component, an anti-fraud component, a staff training/education component, and a pure IT component (focusing on strengthening IT competence within the STI). Reviewing the work carried out in all these sub-components would take more effort than it would yield interesting and/or relevant information, which is why the following presentation of the implementation of the Tax Project will be structured by themes rather than sub-components. Some elements or types of activities were, quite naturally, common to several sub-components, and, in addition, not all sub-components are equally important to include. Consequently, a number of informative, illuminating, unexpected, or otherwise interesting parts of the project have been selected for more detailed description. The following account does not therefore claim to be a complete picture of the development of the Twinning, but rather a collection of informative Twinning activities. More precisely, it will focus on the issues of VAT and excise administration, taxpayer communication, and risk management. But first, a few words will be said on the initial anchoring of the
Preparing the Grounds and Legal Harmonisation

In line with the detailed, and co-operative, planning given concrete expression in the Twinning covenant, one of the initial activities in the Tax Project consisted of a national “PAA Tour”. The Swedish PAA travelled to all ten regional STI offices to introduce and anchor the Twinning with the parties concerned. In this way, the relevant Lithuanian civil servants were able to acquaint themselves with what lay ahead and perhaps defuse the seriousness of the changes involved. But the most important effect of these visits was most probably the increased awareness and comprehension among the Lithuanians, together with the manifestation of Swedish commitment:

The purpose of these visits was to establish awareness about the new common systems for indirect taxation and to highlight possibilities and obligations. PAA gave presentations on the new systems for VAT, Excise and also on EU legislation and structures including the FISCALIS\(^{61}\) programme and the work of some key EC-committees. Additionally, the presentations were adjusted to each region’s needs by considering the structure of trade in the respective region. Emphasis was also on the new tasks and on the need for prioritizing intra community related control versus domestic control. These visits were attended by the high- and mid management of the county STIs and key specialists. (final report, p. 15)

From the above summary it becomes clear that a shift from the domestic to the community level as centre of attention was demanded, and that the Twinning was intended to help produce such a shift. To some extent the activities can thus be viewed as a way of broadening the horizon of the Lithuanian administration by indicating that membership in the EU means becoming part of a specific context. Certain obligations would ensue, and treating the national administration as part of a bigger system – as opposed to a system in and of itself – was one of them. That the STI was deeply committed to this process has already been indicated, and is further underlined by the instructions given by the central management. Parallel with the “PAA Tour”, the central STI administration worked hard to promote, and secure support for, the Twinning project internally. As described by one specialist from the STI’s International Programmes and Projects Unit:

… to make sure that people [at the STI] are aware of their obligations and then… in the projects. From the inside of the institutions we also sort of set

\(^{61}\) FISCALIS is a Community programme intended to improve the operation of taxation systems in the internal market.
the structure officially with the order of the Director General that appointed project leader, appointed project co-ordinators and also establishing the working groups. And the whole project is in parallel also sort of adopted internally within our institution.

Interview 5.7 (candidate country)

From the start, therefore, the importance of the Tax Project was acknowledged not only at the central level but also – at least to some extent – throughout the entire STI organisation. Further testimony to this anchoring effort, and a specificity of this particular Twinning, was the introduction of more frequent monitoring activities than were demanded by the European Commission. The same specialist described the situation as follows:

… well, one of the tools for monitoring is the Committee which on a quarterly basis monitors the activities of the project from inside the organisation, we also have reports on a quarterly basis. But for this particular project, given the fact that it was accession driven and also sensitive in terms of… preparing some outcome before the 1st of May [2004]. So for this particular project the reporting was introduced even on a monthly basis. So the senior management of our administration was requiring on a monthly basis to look how the project was progressing, were there any problems?

Interview 5.7 (candidate country)

Together, the “PAA Tour”, the solid Lithuanian work on grounding the Twinning activities within the tax administration, and the increased reporting (and hence possibility of control) vouched for the STI’s commitment and eagerness to change and modernise. But what did the STI do in practice? As the raison d’être for Twinning is to facilitate the candidate countries’ adoption of the acquis communautaire, a vital part of any Twinning project consists of work on harmonising national and EU legislations. In the Tax Project quite a number of laws were either amended or introduced for the first time, e.g. the laws on VAT, on information society services, and on tax administration. In addition, a fair amount of secondary legislation was published or ordered as a result of the Twinning. Hence, it is reasonable to look into the process of legal harmonisation in some detail. It was the Lithuanian Ministry of Finance, and not the STI, that was responsible for the legal part of the Twinning, and below the work conducted in this vein is described by a Swedish specialist:

[using VAT as an example] So, two Swedish experts have studied the Lithuanian VAT law and compared it to the 6th directive⁶² and then created a “diff list”. And based on the “diff list” they have suggested a number of areas that

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Several interesting and noteworthy issues emerge in the above quotation. A particular procedure appeared to guide the work, where the Swedish side functioned as a kind of supervisor – pointing out deficiencies or incompatibilities and giving advice and comments – while the Lithuanians were supposed to engage and buy into the task at hand. The Swedish specialists could accordingly, and based on legal expertise, spot the gaps in the Lithuanian legislation. Next, the abstract rules were made concrete through “normal EU practice” as well as Swedish practice. Finally, the Lithuanians were told to choose their way, but under the constant supervision of the Swedes. The magnitude of legal changes introduced to the Lithuanian system is illustrated by yet another comment from a Swedish official:

Yes, they had [a tax system before applying for EU membership] but a number of dimensions had to be added. On the excise side new legal figures and new concepts were introduced, so some things were completely new. But also on the VAT side, a revolution! You are obliged to pay taxes on your purchases; they lived in a system where you had to pay taxes when you sold things. You still have to do that but now you have to pay taxes when you buy things too.

The Swedish civil servants came to be seen as some kind of certified interpreters of EU law regarding these activities, and as such they had to continuously check the Lithuanian proposals. They were experts in their field, and their expertise rested on experience more than anything else. The Lithuanians appear to have turned to their Swedish counterparts quite confidently and concerning all kinds of matters. In the words of a Lithuanian civil servant:

Well, this project was let’s say to help our tax administration also /…/ And well, we didn’t have at that time any experience in that field, the only possibility is to talk to those people who were already involved, had been involved.
Striking a similar note, but emphasising the uncertainty as regards implementation facing the Lithuanian administration when adapting their legislation to the acquis, another Lithuanian civil servant said:

And how that law is applied, practically, I mean that part is also crucial because you can, as you said, read the acquis and simply well, put the wording into the national legislation and that’s the easiest part! /…/ Unless, you know, for the development of the secondary legislation which is at some degree an interpretation from the provisions, from the law. The system from Sweden was also important because then you can also discuss the interpretations of one or the other provision in the acquis, in the law, and what does it mean and how is it supposed to be applied. How is it supposed to be interpreted. /…/ And who else can explain to you, if that is a completely new thing, to the taxpayer and to the tax administrator, than the member state that has already been going through that!

Interview 5.7 (candidate country)

The STI thus recognised the difficulty of understanding the practical significance of the acquis and also the benefits of turning to the Swedes who had practical experience of interpreting – in the sense of moving from the abstract to the concrete – these matters. The ease with which the Lithuanians approached their Swedish partners can perhaps partly be understood as a consequence of trust and a certain kind of identification. In terms of legal harmonisation work, Sweden had, like Lithuania, been obliged to adopt the full acquis in one sweep, so to speak, when becoming an EU member in 1995. Instead of the gradual amendments to national law that the older member states had gone through over an extended period of time and upon participating in their common negotiations, Sweden too had had to embrace it all without any (major) exceptions. Said one Lithuanian official:

We were aware that Sweden was joining [the EU] in the same wave as… before the current EU enlargement. So the benefit from that, from our perspective, was well, that it’s very fresh, very new experience that they can share. /…/ So there’s clearly a major benefit in the case of Sweden and the people who had themselves been running similar [adaptation] projects.

Interview 5.2 (candidate country)

Two aspects of legal harmonisation within the framework of the Tax Project need particularly to be underlined and they both relate to the roles, or positions, of the parties involved. First, the emphasis on member state, in this case Swedish, expertise and experience was strong. The Swedes supervised, controlled, gave advice, and approved Lithuanian activities. Second, and perhaps as the reverse side of this emphasis, the Lithuanians took a somewhat subordinate position. The STI’s trust in, and perhaps even reliance on, Swedish input was pronounced, indicating that the two did not hold equal positions in the co-operation. But however important the legal transposition
work was in the Tax Project, it constituted only part of the Twinning activities. The time has come to probe deeper into the part of the project focusing on administrative development.

VAT and Excise Administration

On the basis of the legal transpositions described in the section above, the next step was to organise and structure the work needed to implement the new laws and legislations. Put differently, “it means internal procedures, how we should organise all those things in order to implement the regulations and directives” (interview 5.2). The emphasis on procedures points to the fact that the administrative part of applying rules was very much centred on methodologies and the concrete, practical work assignments implied by the adoption of the acquis. In many cases this task is not all that regulated on the formal EU level – as will be further demonstrated in relation to the other Twinning projects studied in this dissertation – but as regards VAT and excise administration, the situation is slightly different. Since the international exchange of VAT and excise information is both technically complicated and closely connected to the functioning of the internal market, the EU actually has agreed on some common rules. As described by a Swedish civil servant:

Well, the excise and VAT are EU harmonised taxes so in principle we have a common set of rules and regulations on the legal side. We don’t have any common legal framework as regards the administrative side; this is a national concern but it has been revealed… that this is not enough in certain respects. In particular in relation to the exchange of information there is a need for a common administrative legal framework too. Accordingly, there is a regulation concerning administrative co-operation on the VAT side and something equivalent, but somewhat weaker, on the excise side, dealing with common procedures and data systems.

Interview 5.8 (candidate country)

Concerning indirect taxation the EU hence regulates on both the legal and administrative levels. One part of the latter level prescribes the establishment of so-called ELO (excise liaison office) and CLO (central liaison office) functions within each national tax administration. For the Lithuanians, the creation of these functions had already been initiated with the Netherlands in the bilateral project mentioned previously, and the Twinning took over and developed or strengthened some parts of this organisational unit. As the ELO and CLO functions are prescribed by the EU, and in fact only made necessary by EU membership, the creation of the units was purely accession-driven. The first steps towards their creation had been taken in 2003 when three people were engaged to start working on the international exchange matters in the CLO. Two years later the unit had grown considerably, em-
ploying 15 people on a full-time basis. The ELO/CLO would thus constitute a classic example of an organisation whose sole justification is to be found in the practical, everyday practice of EU administration, and as such the development of the units becomes particularly interesting to study.

In addition to the administrative, procedural side of the establishment of the functions, the technical, IT-related matters connected to the actual transference of information were also dealt with in the Twinning project, in order to ensure a correct tendering procedure when purchasing the necessary equipment. So, both technical and administrative aspects were covered and the activities, especially regarding the CLO/VAT part, were extensive as well as thorough. According to the final report (p. 39), “to describe all the practical work of the STEs [short term experts] and STI after the initial phase in detail in this area is not possible” because of the comprehensiveness of the work carried out. Hence, a brief overview is all that will be offered here.

The objective of the activities relating to the administrative part of excise issues was to develop organisational structures and procedures needed for the excise systems to run smoothly, also including co-operation with other national authorities than the STI. The guaranteed results were, first, reinforced administrative structures, and second, harmonised operational procedures and methods. In addition, the idea was that the Lithuanian civil service would, by means of the work carried out in this part of the Twinning, get acquainted with the procedure of continuously assessing national law in relation to new EU regulations and directives. (final report, p. 27). In this way, the work on excise matters can be viewed as laying the foundations for routines regarding administrative adjustments in accordance with possible future changes in the tax-related acquis. Stress was put on structures, procedures, and methods, which basically translates into the creation of new, or at least altered, ways of organising the work. As one Swedish expert put it:

Organisational changes per se is not what is important, what is important is rather the changed ways of working and better methodologies

Interview 5.8 (member state)

But how did the project arrive at changed ways of working and better methodologies? The solution applied in the administrative part of the Tax Project basically followed a logic of drafting documents, making study visits, and organising training sessions.

Within the administrative component, a huge number of documents – ranging from concept papers and strategy documents to orders and rules, as well as various kinds of forms – were produced. The matters dealt with in these “paper products” were mostly related to the professional, or fiscal, side of tax administration. For example, orders were written on the affirmation of rules on accounting for excisable goods received from another member state.
by registered traders, and on the registration of special warehouses for diesel fuels exempted from excise duties. *Rules* were produced on such issues as the reception, registration and use of documentation assuring payment of excise duties, and on information to district STIs on the reception of excisable goods from another member state. And *forms* were created concerning matters such as the authorisation to establish an excise warehouse, and the certification of registered traders. What is noteworthy in this respect is both the content and the level of detail of these “paper products”. The issues concerned were very concrete and immediately applicable, as the orders, rules, and forms dealt with such hands-on matters as practical bookkeeping, the distribution of information, and certification. In this way the very practical and everyday nature of the Twinning content becomes visible.

In relation to VAT/CLO, in particular, it seems, yet another kind of document was prepared, namely concept papers and implementation planning, intended to provide a strategy for the further organisation of work connected with VAT. The creation of such potentially influential documents is obviously a delicate and complicated task, and its realisation appears to have been very much a co-operative effort between Swedish and Lithuanian civil servants. As a Lithuanian specialist, who was also the head of the CLO, said:

We received a lot of advice, suggestions from our Swedish colleagues /.../ but we had to build it ourselves of course, prepare the... concept paper for our division, in the beginning yes, we co-ordinated that document with our top management. They approved that document and we started with all those things mentioned in the concept paper and we also prepared working plans, how to implement... those tasks.

Interview 5.2 (candidate country)

In other words the Swedish officials provided support but it was the Lithuanians who were in charge of the developments. The general idea seemed to be that the Lithuanian administration was to own and take full responsibility for the documents drafted, while the Swedes acted as some kind of supervisor and/or sounding board. In the words of a Swedish official:

... because when the Lithuanians create these products we [the Swedish side] try to, if possible, give our opinion when they are in some kind of “semi manufactured” state. So that’s what we do. And it’s an organic process from initiation to finished product and during all that time there is an exchange of opinions.

Interview 5.8 (member state)

The situation described above could quite easily be interpreted as Sweden monitoring the Lithuanians, making sure that they got things right. The notions of distrust and ensuing control lie close at hand, but this was not how the parties involved talked about the process. Rather on the contrary, as exemplified by this quote by a Lithuanian civil servant:
… giving advice, well teaching, in some cases teaching. Some topics were absolutely new to us so they [the Swedes] were acting like teachers. We were listening to those things for the first time, the second time. /…/ they introduced the system in Sweden each time, then they also introduced advantages and disadvantages of that system, compared their system to what we already had and they gave some… obviously they gave some proposal for how we could improve our situation. What has to be done because of entering the EU and what can be done additionally to improve the situation, to make it more efficient. /…/ No, presenting the system in Sweden is some kind of tool to help us understand how it works in reality, in Sweden. Then we have two pictures, the picture we have at the moment and the picture we have in Sweden, and compare those pictures. And well… come up with some ideas, new ideas, brainstorm some things.

Interview 5.2 (candidate country)

In the work on administrative organisation the Swedish system thus appears to have functioned as a model and benchmark for the STI to relate to when developing their own procedures and planning. In particular – and perhaps because the EU regulations on the excise side are not as specified – in relation to VAT a lot of emphasis was put on the implementation planning, using Swedish experience of preparing for EU accession as a concrete example (final report, p. 37). A detailed “milestone list” was created, specifying all the necessary steps to be taken in order to get the VIES system up and running before 1 May 2004. Another important point needing considerable attention was the drafting of the “orders and forms of the International Information Exchange Division. This was necessary, since these forms and orders related to, for STI, totally new areas” (ibid). As stated in the final report (p. 39), “[a]lmost every old form and many procedures had to be changed”; mainly because the Swedish experts considered them “unreasonably complex” and to contain “unnecessary surplus information” (ibid). In other words, the Lithuanian solutions were not considered good enough by the Swedes and improvements incorporating Swedish ideas were introduced. This is how one Lithuanian civil servant experienced the process:

… the task was to adjust our procedures to the ones required by the Commission, described in EU legal acts, with the acquis, yes. And the task for the Swedish experts was to evaluate whether those procedures implemented, well developed during the project, [actually] implemented EU procedures. Are those procedures enough, let’s say, does it work or not. If it works, very good. So the task was to help us build those procedures and of course we built them in a bit different way than they were built in Sweden before. And in this respect they [the Swedish experts] just said that “it works, very good, implement it. We have some suggestions for how you could get that more efficient” but it’s up to us to decide whether we take those comments onboard or not. Usually we took them onboard and we improved. Because different countries, different approaches, it’s a normal thing.

Interview 5.2 (candidate country)
The role of the Swedish experts thus appears to have been that of, first, certifiers or “approvers” of Lithuanian ideas, and, secondly, experienced practitioners or senior advisors. The remarks also illustrate an important aspect of the relationship between the Lithuanian and Swedish civil servants. That the Swedes were in a position to give advice and recommendations was taken for granted, as was the Lithuanian choice to listen to the advice or not. The interesting part is of course that the Lithuanians seemed to have “taken onboard” the advice most of the time and, in their own opinion, ended up with a better solution. To give the reader an idea of what kind of input the Swedes provided, as well as the level of detail of the recommendations made, a few examples from the first VAT administrative benchmark report (quoted in the final report, p. 37) will be given. The report states that it was recommended that the length of the VAT identification number for natural persons should not be more than twelve digits due to the VIES user manual; it was recommended that the VAT return form be amended to include additional boxes for the value of goods supplied to VAT-registered taxpayers within EU member states; it was recommended that the STI decide how to handle the VIES return and the VIES information from other EU countries.

The Swedish civil servants were thus involved in activities ranging from the detailed design of forms to the more fundamental issue of how to deal with both the resources and the information expected to result from Lithuanian participation in the VIES system. It is also clear that adjusting and/or preparing a national tax administration for membership of VIES is no child’s play; it is a demanding task and the Swedes seem to have been thoroughly involved in all parts of the Lithuanian adaptation process.

Leaving the “paperwork” part of the administrative component behind, a few words will now be said on the subject of Lithuanian study visits to Sweden. Two main trips were made, focusing on excise and VAT respectively. The idea of study visits is to let the participants study “live” work on these issues, and apparently it is very useful and appreciated. This is how a Swedish official described the contents of these field trips:

Q: And so, are seminars and workshops organised there [during the study visits]?

A: That’s a possibility. Or you can give pure lectures. But it can also be practically oriented study visits, you visit a data hall, you look at equipment, you look at a stream of work. It is preferable that you look at real, actual work, how it is performed. For instance you can go over a case from ear to loaf for example, that can be a very good way to do it. Especially in this case when they [the Lithuanian civil servants] were to have totally new work tasks. On the excise side they say that without a doubt, the most useful part of the project was when they were in Sweden and got to see what work tasks existed, and didn’t exist here [in Lithuania], and how they were performed.

Interview 5.8 (candidate country)
The study visits gave the Lithuanian participants the opportunity to observe a functioning practice, i.e. procedures and methods of work. They were allowed to study excise and VAT administrative work related to intracommunity transactions, as well as the functioning of the Swedish ELO and CLO functions. In the final evaluation made at the end of the Twinning, these study visits received a lot of praise, which points to the importance of immersion in the actual art of EU-related administrative work in order to fully grasp the practical side of it.

Quite naturally, these study visits were only offered to a limited number of key persons – like the director-general and the deputy director-general of the STI in the VAT case – and obviously this was not enough to ensure any comprehensive organisational understanding of changes under way. Consequently, an additional, and important, part of the administrative component of the Twinning consisted of various kinds of training activities. The training sessions were organised around the notion that knowledge and understanding of the changes made to laws, strategy documents, forms, functions etc needed to be disseminated – as far as possible – to all parts of the Lithuanian tax administration. To require the entire organisation to comprehend and act according to the new EU demands at once was not a realistic objective, but efforts were made to at least inform and raise awareness all the way down to the local county offices. A Swedish civil servant said:

... well, the bulk of the training part [of the Twinning] has consisted of going over the new rules and regulations, the EU rules, and what changes they entail. And then these changes have to be linked to... departing from the new rules a new work methodology has to be developed. /.../ [We] explain for instance a way of working or a methodology. And then there are discussions about what we do in Sweden and how we do it and why we do it. We discuss and compare with how they [the Lithuanians] do and then we look at the parts of what we do that are important, and that they agree are important, and how they in that case can be implemented here.

Interview 5.8 (member state)

Discussions and comparisons seem to have been important elements in the training activities, and it is also clear that Swedish practices and solutions were seen as models when talking about possible Lithuanian methodologies. Another interesting remark by a Swedish civil servant highlights a particular understanding of what went on in these training sessions:

We [the Swedes] transfer the knowledge and then they [the Lithuanians] have the knowledge and departing from that, they can do their work in a different way.

Interview 5.8 (member state)

That is to say, the Swedish civil servants were seen as possessing the knowledge of how to organise and administer excise and VAT data, and during
the Twinning process they could communicate their knowledge to their Lithuanian counterparts, who would then re-organise and improve their work.

Swedish-Lithuanian co-operation on indirect taxation neatly illustrates the relational elements involved in Twinning realisation. Again it demonstrates that Sweden had a superior position while Lithuania had an inferior one. The Lithuanian civil servants appear to have looked up to and very much trusted the advice – motivated with reference to experience – given by the Swedes. In addition, the project component on VAT and excise frequently refers to the importance attached to practice and planning. That planning was the key is demonstrated by the introduction of organisational practices such as assessments, strategy papers, and checklists. From the more technical side of taxation we shall now turn to the somewhat different issue of taxpayer communication.

Taxpayer Communication

If the previously described Twinning components can be labelled “hard” in the sense of dealing with concrete and visible legal and organisational changes, the taxpayer communication part involved adjustments that were in some sense “softer”, or more subtle. Or at least adjustments of another kind. Most of the activities here concerned the preparation of a revised STI strategy on communication and services, and certain tangible measures (e.g. the employment of staff questionnaires and the production of information leaflets) ensuing from this strategy. The key concern was the creation of channels of communication between the STI and the Lithuanian taxpayers and the final report (p. 43) notes that, “the task was not easy, since it required new thinking and orientation from the STI”. One important shift was in the presentation of the STI’s changed perception of the work of the organisation, namely the turning of taxpayers into customers, or clients. Where the focus of the work used to be on control and monitoring, the idea was now to provide a service. This surely required a certain change of mentality, which of course is not easy to achieve. This is how one Swedish official described the process:

Q: And this whole changing of attitudes, ways of thinking, I mean I suppose you can’t formulate that as a goal…?

A: No, but you can specify what value base (värdegrund) the organisation has, what values you have and what values a person needs to share if he or she is to work in this organisation. For instance that you are not primarily a “person of power” (maktperson), that you are there for the clients, that is, the taxpayers. And we have worked a lot with this within the taxpayer communication component.

Interview 5.8 (member state)
This description indicates that the STI was to engage in a thorough evaluation and subsequent reformulation of its activities and perspectives. Activities in this area began with a fact-finding mission performed by Swedish civil servants. By interviewing Lithuanian civil servants and organising workshops to discuss the current situation, the Swedes were introduced to the Lithuanian legislation, secondary legislation, and methods and organisation of work. As a result specific issues requiring attention were identified and a number of recommendations concerning the communication and services strategy were made, with a special emphasis on dissemination of information and internal co-ordination (final report, pp. 42-43). Examples of recommendations are:

- that a revised strategy (on communication and services) should clarify the aim and strategic targets for information given to all inhabitants and businesses;
- that a revised strategy should include targets that provide early information to taxpayers on new and changed legislation and procedures;
- that a revised strategy should also specify the aims to provide levelled information to different groups of taxpayers. There should also be a target for comprehensibility;
- that methods of co-operation between units of STI and between STI and CSTI [county offices] should be developed.

As these recommendations were intended to improve a situation that was at the time unsatisfactory, it is possible to infer from them that the STI’s existing aims and strategic targets, information routines, and co-operation patterns were not good enough. In order to become a proper member of the EU these areas had to be worked on. The focal point of the taxpayer communication component was the strategy document, which was then intended to have concrete effects on the behaviour and activities of the members of the organisation. On the issue of the nature of the Twinning activities realised in this respect, a Swedish civil servant said:

A lot of seminars [have been organised] where we explain how we [the Swedes] link various documents in our organisation – planning documents, policy documents, strategy documents – to the basic values [of our organisation]. And how such policy documents, the values, how they are anchored throughout the line. In Sweden we organise mandatory seminars around these kinds of issues, which is totally new here [at the STI]. You [we] can’t spread these changes without discussing with the managers, who also have to function as some kind of role models in these matters.

Interview 5.8 (member state)
The emphasis on *values* was strong and according to the above description the first step towards finding and anchoring proper values consisted in winning the management levels over. In other words, raising their awareness and starting to change their perceptions and understandings. Such a shift in attitudes and mentality is quite naturally not something that can be prescribed by the EU in the form of regulations, but other motives or objectives could be invoked. Comparing this component to the Twinning activities regarding administrative organisation, where many changes were actually *prescribed* by the EU, one Swedish civil servant was of the opinion that the issues at stake are not as strictly regulated. But, he went on:

If you want to be a modern organisation, and [the Lithuanians] want this, then they turn into imperatives

Interview 5.8 (member state)

Once again, the importance of being a modern organisation was highlighted, and a central move towards this end apparently lay in the preparation of a strategy document. As a result of the Tax Project, the national taxpayers’ service and communication strategy was formulated and an implementation plan initiated. The strategy was described as “a modern document, that can be seen as a part of a holistic view on the mission of the STI” (final report, p. 43).

On a concrete level at least some parts of the STI seem to have bought into the idea of communicating with, rather than controlling, the taxpayers and to have started to apply the strategy and policy documents in practice. Said one Lithuanian official:

Of course we have already had a taxpayer service system for a few years, of course, but [now] we change our priorities in that area. We change our methods of work, we change the mission of the STI, and we go to other methods. So we have the same people, we have the same structure maybe, sometimes we have the same material, but we employ other methods in our work.

Interview 5.3 (candidate country)

Changes were seemingly under way, but they would not happen overnight. Even though things appear to have happened at the central level, there was no way of knowing that the policy documents were actually followed throughout the organisation, and certainly no way of assessing the desired effects on the general public. On this same issue, a representative of the European Commission’s delegation to Vilnius painted a rather gloomy picture:

So for example this Swedish approach to get the confidence of the taxpayers and make them voluntarily pay more taxes, that’s quite… I mean, the Lithuanians they smile at it because they say no one in their right mind voluntarily pays taxes. Because we, for us, the Soviet tradition, you see the state as an enemy, you have to protect yourself against the state and… paying taxes is
something you should avoid at any price. And the only way to make people pay more taxes is to force them, to put more pressure on them. I mean, I’m exaggerating but it’s the traditional way they see it. So I think there’s quite a mentality problem and I don’t know, as I’ve understood it they’ve adopted the Swedish way but how it works in practice… I mean, how… that has to be seen.

Interview 5.1 (European Commission)

This quote points to the most important feature of the taxpayer communication component, namely the intended level of change involved. The component did not deal foremost with methodologies or work routines, but rather with changing attitudes, understandings, and perceptions. It is also noteworthy that these seemingly complex and quite far-reaching changes were to occur via documents and their production. The general idea appears to have been that if the strategy and mission documents were re-written, alterations in attitudes would follow. Changes such as moving from control to service are very major ones, but judging by the way the civil servants involved spoke about them they also seemed to be necessary in order to become a modern organisation and an appropriate member of the EU.

Risk Management

The last component of the Tax Project that will be described here concerned the idea of risk management, which can also be considered to be something of a “soft” issue. In effect, the STI was merely introduced to the ideas of risk management within the Tax Project, and the plan was to deepen the knowledge and develop the systems necessary within the framework of a second Twinning together with the Swedish administration \(^{63}\). Even though the part of the Tax Project dealing with risk management was perhaps not very significant in quantitative terms (only five short-term missions were carried out on the issue), I believe that it merits some attention on account of the importance attached to work of this kind within the EU. According to a Swedish official the Union has not formulated any directives concerning risk management, but

... there is a recommendation that has been prepared, dealing with the application of risk management and risk analysis when selecting objects [to control, inform, train etc]  

Interview 5.8 (member state)

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\(^{63}\) This project focused on risk analysis and audit support, and its implementation phase started a few months before the Tax Project was finalised. In this way a certain overlapping occurred, meaning that the civil servants involved – both Swedish and Lithuanian – had time to prepare and make sure that the “baton-changing” was smooth.
Also, it is possible to see many of the approaches and perspectives expressed by Swedish civil servants in relation to other components of this Twinning as deriving from, or being inspired by, the ideas underlying risk management. In order for this relation to become clear, a few general words will be said on risk management within tax administration before the specific activities of the Tax Project are described.

The notion of risk management is of course not used only in relation to tax collection and tax administration but it seems to have acquired a particular meaning and given rise to specific approaches and practices within the EU policy area of taxation and customs union. A guide on how to understand and apply risk management in tax administration has even been developed by DG Taxud\textsuperscript{64}, indicating the growing importance attached to this method of work within the European Union. A policy decision regarding the application of risk management has been made, and in the process of preparing this decision Sweden has been active, which can be taken as a sign of Sweden’s commitment to the idea. But the Swedish Tax Board is not the source of the approach; “[t]he Swedish risk management has to a great extent been influenced by best practice identified by the OECD” (final report, p. 53) as well as inspired by the “most modern experiences” (interview 5.8) to be found in Australia, Canada, and New Zealand. However, and as described by a Swedish civil servant, even though the ideas and guidelines originate within the OECD, the Swedish dimension was still apparent when it came to their application since

the solutions, they are dependent upon our mentality, what we find important and unimportant, how we treat the tax payers, what attitudes we have in our organisation. So it is not possible to cut this Swedish dimension away.

Interview 5.8 (member state)

Hence, risk management seems to have travelled from Australia, Canada, and New Zealand, via the OECD, to be formulated as best practice, and adopted by the Swedish Tax Board and the European Union, and then finally to the Lithuanian STI. But what, then, is risk management in tax administration?

In many ways risk management can be described as a way of thinking and of understanding tax administration. Risk management is defined by the Fiscalis Risk Analysis Group as “a technique to improve the tax administration’s effectiveness in dealing with risks”\textsuperscript{65} and the reason for applying it is

\textsuperscript{64}Risk Management Guide for Tax Administrations, Fiscalis Risk Analysis Project Group, July 2006. The guide was “prepared by tax officials for tax officials” (p.2) and was co-produced by a team headed by a representative of DG Taxud and comprising delegates from the tax administrations of Germany, Greece, Italy, the Netherlands, Austria, Sweden, the UK, and Poland.

\textsuperscript{65}Risk Management Guide for Tax Administrations, Fiscalis Risk Analysis Project Group, July 2006, p.6
to “enable a tax administration to accomplish its mission(s) by facilitating management to make better decisions”\textsuperscript{66}. In somewhat more concrete terms it can be stated that risk management is basically about minimising tax evasion and tax fraud, and builds on a specific procedure incorporating the following steps: risk identification, risk analysis, risk assessment and prioritisation, treatment, and evaluation. Driving the evolution of these steps is a formulated strategy derived from the objectives of the tax administration, which are, in turn, based in the administration’s organisational context. In connection with all of the above-listed steps, definitions, techniques, and output criteria have been formulated and are continuously refined as the practice of risk management becomes more and more widespread within the tax administrations of the EU. Again, a few quotes from the Fiscalis Risk Analysis Group will be used to illuminate the evolution and purpose of risk management. According to the group, risk management is based on universal and basic theoretical concepts but also continuously develops through its meeting with actual tax administration; “[a] few years ago risk management was more or less applied as a form of risk analysis, focused mainly on better selection for tax audits. As the risk management approach has evolved it is now applied in a more structured way and using more advanced technology”\textsuperscript{67}. As to the future of risk management, the group’s opinion seems to be that the approach is here to stay: “[t]his [evolution] leads to a way of thinking that, in the long run, will change the administration in a more profound way. Tax administration is not about detecting tax evasion and applying sanctions, it is about ensuring compliance and in order to achieve this, a holistic and cooperative approach is necessary”\textsuperscript{68}.

Returning now to the introduction of risk management in the workings of the Lithuanian STI, a first important point to be noted is that the STI had started working with risk management before the Tax Project through the creation of a planning system. In pursuit of the STI’s vision of being “a modern, open and towards the best practice oriented STI, ensuring voluntary compliance” (final report, p. 52) a number of plans had been formulated and were screened and evaluated by Swedish experts as a first step in the risk management component. Swedish recommendations on how to proceed and improve were made, and several workshops were organised around these issues.

As risk management represents a particular way of thinking and comprehending tax administration the commitment of the management levels was deemed essential to secure in order to anchor and spread the ideas throughout the STI. The understanding that the leaders must lead and inspire the rest

\textsuperscript{66} ibid
\textsuperscript{67} Risk Management Guide for Tax Administrations, Fiscalis Risk Analysis Project Group, July 2006, p.10
\textsuperscript{68} ibid
of the organisation was therefore emphasised, as illustrated here by a Swedish official:

And then we have organised some seminars exclusively for the management level. Some seminars, risk management for instance, have been arranged purely for the management level in order to influence the insights. And we had a special seminar for all tax managers in the regions exactly because we wanted to create an awareness

Interview 5.8 (member state)

The Lithuanians would then continue this work on their own, anchoring and spreading the newly acquired insights. In this work, too, the Swedish experts were of assistance. The Lithuanians seem to have received continuous Swedish input and influence, which can be taken as a sign of the general Swedish commitment and engagement to the ideas of risk management. As one Lithuanian civil servant said:

Well, we continued with that, sometimes with the help of Swedish experts. All the time, we organised, each seminar was organised with some help from the Swedish side. /…/ the Swedish side gave us a lot of help, preparing training material, well evaluating whether the material is comprehensive enough. They gave some advice and ideas, what should be included, additionally, in their opinion.

Interview 5.2 (candidate country)

On the issue of the effect of these efforts, and in answer to a direct question on whether people are working with risk management locally in Lithuania, one highly involved Lithuanian expert said that

in the seminars we talk about risk management, every time, they know, I think they know [and work with it]

Interview 5.3 (candidate country)

Because a very important element in risk management seems to consist of planning and producing various kinds of plans – national plans, annual plans, compliance plans etc – a lot of emphasis needed to be placed on how to perform this planning in Lithuania. A number of workshops were therefore organised around Swedish practice and experience including presentations of strategies and planning models used in Sweden, the introduction of risk management in Sweden, research in the field of tax compliance, and analysis and assessment of risk area levels (final report, p. 53). To try to achieve a “wide understanding and acceptance of risk management” (final report, p. 54) Swedish recommendations on Lithuanian products were continuously updated and developed, and as a result a paper on the principles of risk management and a draft policy paper on how to carry out the actual work were created by the STI (ibid). As already men-
tioned, the missions on risk management included in the Tax Project were supposed to introduce ideas subsequently to be developed in an ensuing Twinning. Hence, the phase included in the Tax Project can be described as “a first step” (interview 5.3) and no profound effects could be expected. However, that some Lithuanian civil servants did accept the approach and the techniques is demonstrated by the following quotation:

So I think for us, our work is very complicated so… but I try to use some information about risk management, which I have, in my every step. I try, but maybe not every time with a good result…

Interview 5.3 (candidate country)

The work was then to continue and become more profound, but that is a different story. What we learn from the Tax Project is that the Swedish administration was deeply committed to the ideas and ideals of risk management and that this enthusiasm was seemingly transferred to the STI, or parts thereof. It is also clear that risk management is a prioritised issue within the EU policy area of taxation, and one that will most likely develop and expand in the future. The work on risk management provides a lucid illustration of the contents of Twinning activities as it demonstrates that not only “hard” organisational elements but also “softer” ideational aspects can be attended to. Although risk management is basically about perception – in the sense of how to understand and deal with the essential line of business of a modern, European tax administration – the Twinning activities were planned and realised in a very rational way. This same emphasis on rationality and rational reasoning was present in the way both Lithuanian and Swedish civil servants spoke about the issue, which signals a shared understanding of why and how risk management is important. Let us now turn to a brief investigation of what came out of the Tax Project as a whole.

5.5 General Outcomes of the Tax Project

The atmosphere and developments of the Tax Project can be characterised as rather positive. It seems to have been a Twinning that left the involved parties content, both with the co-operation as such and with its outcomes. As described by one Lithuanian official: “we have a good relation /…/ [and] we have results, I think that the results are good” (interview 5.3). Another Lithuanian said that

Swedish experts /…/ were amazing, very good. And we had no problems with that at all /…/ We were absolutely happy with what we had /…/ I am very happy that we had this Twinning”

Interview 5.2
The Swedish opinion on Lithuanian input seems to have been positive as well; the Lithuanians were generally described as active, knowledgeable, committed, and “above expectation” (interview 5.8), and all that was specified in the covenant has “been delivered /…/ everything has been achieved and then we have done some extras as well” (interview 5.8).

These “extras” point to how the Twinning worked in areas and on issues that were not really mandatory, or prescribed by the EU, but still of importance. In such areas the difficulties inherent in evaluating what constitutes an improvement became apparent. In many ways these kinds of judgements were left in the hands of the Swedish civil servants, who would advise and make recommendations on how to improve things in Lithuania. That this division of responsibility evolved is perhaps not surprising, given the way in which the Lithuanians appeared to perceive the co-operation. One Lithuanian official said that “we are like students” (interview 5.3) while another one recalled:

_We decided /…/ [but] in some cases [it was] teaching, in some cases we had… some topics were absolutely new to us so they [the Swedish civil servants] were acting like teachers, we were listening to those things for the first time_

Interview 5.2 (candidate country)

It becomes clear that the Lithuanians had to make all the important decisions but in so doing they relied quite heavily on Swedish experience and advice.

So much for the general atmosphere of the Tax Project; let us now turn to some of the more tangible, or visible, effects of this Twinning.

As noted above, the parties involved seemed to be satisfied with the realisation of the Tax Project, but what came out of the project is a partly different thing. On this issue a Swedish expert had the following to say:

_I have a pretty good idea about how things work here at the Vilnius office but the Vilnius office is significantly better in many ways than the rest of the regions. /…/ so the only thing that I can’t guarantee in the short-term, or I can’t really guarantee anything but what I can’t even vouch for, is what the implementation looks like at the very end point. On the other hand, this is a problem that every organisation deals with and we deal with it ourselves, at home, in relation to every change. Because is there supporting capacity and enough competence in each region in every respect? No, there couldn’t possibly be._

Interview 5.8 (member state)

No radical and all-encompassing transformation of the entire Lithuanian tax administration ensued from the Tax Project, but this was most likely never the idea. Instead moderate changes in a desired direction seemed to be the goal on both the Lithuanian and the Swedish sides. The Swedish official quoted above said that whether the policy documents produced within this
Twinning were in fact observed or not was not something on which the Swedish participants could have an opinion, but he also said that here at the central level I perceive changes in both attitudes and insights, people really do have insights /…/ the transfer of knowledge, you can see that people grow, you can observe the insights sinking in  

Interview 5.8 (member state)

That the insights were not only detectable from the Swedish point of view is illustrated by the following comments of two Lithuanian experts. They show that the STI has acquired an awareness of its new and wider work context, with both demands and opportunities:

… new challenges, new possibilities, new… yeah, actually new opportunities, new possibilities after entering the EU. /…/ Co-operation with other member states, it’s vital now I would say, after entering the EU. And it was vital before but it is now open for us, the gate is open. /…/ You know, it gives us more possibilities, more information, we can now organise… control more efficiently.  

Interview 5.2 (candidate country)

… we know that we should work in such high, clever… level as our colleagues in other countries, it’s necessary for us to stay at that level. It’s very important.  

Interview 5.3 (candidate country)

These statements demonstrate that at least some of the Lithuanian civil servants involved in this Twinning appear to have adopted a perspective on tax administration that goes beyond the national and also includes the EU level and its rewards and requirements. In addition they acknowledge that comparisons are made and identifications occur, and that both of these processes are positive as well as demanding. Perceptions and practices seem to have begun to change, and in these processes the Swedish input could hardly be ignored. The Lithuanian reliance on Swedish expertise, advice, and support has also been illustrated throughout the chapter. That the member state assists the candidate country in understanding and applying the EU rules is the basic idea behind Twinning, but the extent of influence and dependence can of course be discussed. Said a Swedish civil servant:

… they are, to varying degrees, influenced, and sometimes too influenced, sometimes perhaps even outright copying… But all the same it is turned into something Lithuanian, and that’s important. And it [the copying] can be highly cost effective, it depends on the issue. /…/ We had a methodology to combat carousel fraud on the VAT side and they have copied it from us and the Dutch and it of course represents a risk, of them missing out on some of their own qualities. But the advantages clearly outweigh the disadvantages.  

Interview 5.8 (member state)
The appropriateness of direct copying hence seems to depend on the extent and kind of the issue copied. A methodology or special rules can apparently be copied, if the argument of effectiveness is used, but in other cases it is more important to draw on national circumstances and competences. To be fair, the Lithuanians did not only, or even for the most part, copy the Swedish solutions; as already mentioned it was the STI that always had the final say concerning important decisions, and quite frequently with positive results, as it seems. Two quotes by a Lithuanian official will highlight the progress and growing assertiveness of the STI:

... we had decided to combine all the issues related to international co-operation [ELO and CLO] into one unit, one division. And well, when we introduced our solution to other member states and to candidate countries, they admitted that our solution is very good, that having all these things in one hand gives a lot of advantages

Interview 5.2 (candidate country)

I would say that we can handle EU matters better than the old member states /.../ It was discussed, during our annual meeting for member states and the old member states admitted that new member states work more efficiently and everything is built more accurate and it works in those countries. But they have many problems in their countries.

Interview 5.2 (candidate country)

These statements show that the Lithuanian STI had, probably partly as a result of the Tax Project, come to identify with and subsequently evaluate its work against that of the old member states. The quotations demonstrate that the STI no longer took the position of underdog but rather seemed to want to take advantage of its newly acquired EU membership. Apart from concrete organisational changes alterations have seemingly also occurred in the Lithuanian attitudes and perceptions.

5.6 Concluding Comment

In this chapter the major developments of the Tax Project have been presented. The reasons for the Twinning, its contents and general outcomes, as well as the relations evolving between the Lithuanian STI and the Swedish National Tax Board, have been depicted and commented on. To conclude the chapter, and to connect the story more explicitly to the theoretical reasoning introduced in Chapter 4, I will give a brief analysis of the Tax Project in relation to the four themes of external pressure, objects, relations, and results.

As regards the external pressures at work in the Tax Project, they were mainly expressed through directives, i.e. hard law connected to sanctions and
thus containing explicit coercive features. Both directives on the specific area of taxation, such as the Sixth Council Directive on indirect taxation, and the more general internal market acquis were invoked to motivate the Twinning. However, the project also included administrative structures that are not explicitly required in the acquis but all the same necessary for the tax administration to function, as put in the Fiscal Blueprints. In this way the Twinning was justified with reference to both hard law and unregulated, albeit formally expressed, perceptions of what is needed to secure effectiveness in the system.

Turning next to the objects of imitation involved, we see that both concrete organisational solutions and more elusive ideational elements occurred. In the first category Swedish legal solutions (e.g. how to turn the Sixth Council Directive into secondary legislation), administrative routines (e.g. how to distribute tasks within a CLO unit), IT systems (e.g. what software to use when analysing VAT data), and work methodologies (e.g. how to select objects to control) can be included. When it comes to the ideationally oriented objects they were made up of, firstly, legitimised interpretations and understandings of the acquis communautaire – as expressed through the Lithuanian reliance on Swedish assessments and approval in the legal area – and modern management ideals and techniques – as illustrated by the shift from control to service and the pronounced emphasis on the ideas behind risk management.

The relations between member state and candidate country displayed a number of noteworthy specificities. First of all, everybody involved appeared to be largely satisfied with the co-operation. Moreover, the relations were marked rather by commitment (on both sides and both to the project as such and to the ideas sustaining it) and trust. The Lithuanians seemingly relied on the Swedish expertise and knowledge, while the Swedes appeared happy to share it. A related aspect of the relations is to be found in the unequal positions, or different roles, of the parties involved. It is rather clear that the Swedish partner was in many ways perceived – by itself as well as by the STI – as superior to the Lithuanian administration. The superiority granted the Swedish organisation influence over the Lithuanian development, but not the ability to determine it. On the contrary, the Lithuanians retained the final say and the continuous ability to choose and act.

Regarding the results of the Tax Project, the activity-creating ones are to be found among the great number of revised and harmonised laws, in relation to the reinforced CLO/ELO functions, and in the wake of the strategy and planning documents produced in connection with taxpayer communication and risk management. Speaking about identity-creating results these can be derived from the rather extensive talk within this Twinning about “changes in people’s minds” and altered perceptions or attitudes. Along these lines the Lithuanian administration seems to have acquired a certain sense of belonging to a new, European context, as expressed in comparisons,
identification, and positive opportunities. In addition, the STI appears to have adopted the rational ideas and ideals incorporated in the notions of risk management and taxpayers as clients quite eagerly, which indicates at least an initial shift in perceptions and understandings. In other words, these results can be taken as signs of the Lithuanian tax administration turning towards what is modern and rational.

Now that the Tax Project has been presented and scrutinised we shall turn southwest and look at Warsaw, where the Polish Central Statistical Office is located. In the next chapter a Twinning entitled the Statistics Project will be described. As will become clear, this Polish-Swedish Twinning differed from the Tax Project in a number of interesting ways.
Chapter 6.
The Statistics Project: “*Happier people, better statistics!*”

The Twinning project presented in this chapter deals with statistics. Statistics play an important role in the functioning of the European Union, and the European Community has even created a specific statistical authority: Eurostat. Eurostat is the main co-ordinating organisation within the area of EU statistics and oversees the so-called European Statistical System (ESS). Eurostat’s web page states that “Since the early days of the Community it was realised that decisions on and planning and implementation of Community policies must be based on *reliable and comparable statistics*. So the ESS was built up gradually with the objective of providing comparable statistics at the EU level.”69 Statistics produced under the aegis of Eurostat are therefore intended to be put to use and form the basis for community-wide comparisons, decisions, and actions. In this sense, and in contrast to the internal market and taxation, statistics are not regarded as an activity or policy area of the European Union, but rather as a *service*. The production of statistics is thus separated from policy and administration and is expected to provide decision-makers and civil servants with input for their activities. The importance attached to statistics and their applicability is expressed through the treaty-based autonomy accorded to Eurostat, which enshrines “at a constitutional level the principles of impartiality, scientific independence and statistical confidentiality that are foundations of statistics in a democratic society”70. The connection made between democracy and objective statistics naturally creates and requires particular pressures and constraints. These contextual circumstances most probably had effects on the realisation of the Statistics Project.

Below I will discuss how these circumstances might have influenced the reasons for the Twinning, its contents and outcomes, as well as the relations forming between member state and candidate country. In other words, the mimetic elements of motives, objects, relations, and results will be illuminated.

70 ibid
6.1 Introducing the Area and the Actors

The Statistics Project was realised in co-operation between Statistics Sweden (SCB) and the Polish Central Statistical Office (GUS). The time spent on implementation was two years, making it quite a large project. For GUS this project was not the first Twinning experience; in fact the office had already been involved in two major projects, together with first France and then Germany, and thus to a considerable extent knew both what to expect and what to require in relation to Twinnings. This also means that the development of the Polish statistical system had come quite some way towards the goal of reaching the standards set by the EU, and more specifically by Eurostat and the ESS. However, some issues still remained to be worked on.

The general objective of the Statistics Project was to produce an “Upgrade of the quality of Polish statistics, following the EU requirements addressed to the Candidate Countries and considering European Community needs expressed in the Programme for Community Statistics 2003-2007” (project fiche, p. 1). It was hence the quality of statistics that was emphasised, and immediate and clear reference to EU demands was made, grounding the Twinning in the statistical practice of the Union. In comparison with the areas of the internal market and taxation, statistics is much less regulated on the formal level – a simple search on EUR-Lex yields a mere 100 hits under the heading “Statistics”. But, as will be demonstrated throughout this chapter, the service of statistics appears to be highly controlled by standards, guidelines, recommendations and the like. However, on the official level the Statistics Project was justified foremost with reference to the Programme for Community Statistics, the establishment of which is regulated by the acquis (Council Regulation (EC) No 322/97). In addition to the Programme the European Statistics Code of Practice on Quality (which will be outlined in section 6.4) provided a concrete rationale for the initiation of the Twinning. This code is not mandatory, but it is promulgated in a Commission recommendation. Consequently the justification for the Statistics Project starts

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71 In this programme the main aims of the European Statistical System are given every five years. In the 2008-2012 programme the statistical implications of the major Community policies are summarised as follows: 1) Economic and Monetary Union: all of the statistics required for Phase III EMU and the pact on stability and growth; 2) EU enlargement: incorporating those areas of statistical indicators of primary importance for the accession negotiations and for the integration of Candidate Countries into the ESS; 3) Competitiveness, sustainable development and the Social Agenda: in particular, statistics on the labour market, environment, services, living conditions, migration and e-Europe; 4) Structural Indicators: further consolidation of work as requested by the Lisbon summit (http://epp.eurostat.ec.europa.eu/portal/page?_pageid=1153,47169267,1153_47183518&_dad =portal&_schema=PORTAL; 2006-10-02).

from the functioning of the European Statistical System, but finds its more concrete expression in the Statistical Programme 2003-2007 and is further prompted by the Code of Practice. As was also the case with the Tax Project, both hard directives and softer kinds of regulation justify the initiation of the Twinning. But how, then, did the Statistics Project come about? The launch of the project offers an answer.

6.2 Initiating the Project

In the words of one Swedish civil servant involved in the Statistics Project, the Polish statistical system was, at the time of initiation of the Twinning, not a particularly good or bad system in comparison to the other [member state systems]. It is definitely not the worst one but perhaps not the best one either.

Interview 6.1 (member state)

Quite separate from the formal regulations bearing on the production of member state statistics, there are a large number of statistical working groups convening on the EU level. Through the organisation of these groups, and the importance officially attached to good statistics, a strong emphasis on standard work procedures and reporting has seemingly developed among EU statisticians. The quality of member state statistics is strongly stressed, and some improvements on the Polish side were still demanded in order to meet the specified quality criteria. One of the most important documents relating to the quality of European Statistics is the European Statistics Code of Practice\(^\text{73}\), wherein a number of quality criteria are defined and collected. Partially in connection with this code, but also related to a number of statistical procedures and methodologies, the European Commission had identified a number of Polish weaknesses and shortcomings, and the Polish Statistical Office responded by proposing to initiate a Twinning. As was also the case with the Tax Project, the Statistics Project presents some telling deviations from the procedure prescribed by the Twinning Manual as regards the launching of projects.

Even before the project fiche had been officially approved and circulated to the member states, a first contact was made between the Polish and the Swedish sides. During one of the many statistical conferences organised by

\(^\text{73}\) The European Statistics Code of Practice is based on 15 principles. Governance authorities and statistical authorities in the European Union commit themselves to adhering to the principles fixed in this code covering the institutional environment, statistical processes and outputs. A set of indicators of good practice for each of the 15 principles provides a reference for reviewing the implementation of the Code. (http://epp.eurostat.ec.europa.eu/pls/portal/docs/PAGE/PGP_DS_QUALITY/TAB47141301/VERSIONE_INGLESE_WEB.PDF, 2006-10-02)
the EU, a highly placed civil servant from GUS approached the director-general of Statistics Sweden to talk about the Polish plans to initiate a Twinning. The idea that Poland would very much appreciate it if Sweden would run the project was conveyed, and a first draft of the fiche was even presented to the Swedes. Though flattered that the Polish office so openly encouraged Swedish participation, SCB still hesitated before engaging in such a large and demanding project. Since SCB is quite active in the area of administrative aid – they even have a special unit, the International Consulting Office, responsible for these issues – and frequently engages in various kinds of bilateral co-operations financed by Sida, there was no immediate impetus to partake in the Statistics Project. Notwithstanding the initial hesitation, and after careful consideration and discussions lasting at least a year, the decision to submit an offer was finally made and motivated mainly along alliance-creating dimensions, as illustrated in the explanation below:

… possibly I personally but also the Ministry of Finance was pushing, and the director-general thought that Poland is a big and important country and we tried to find solutions for how to solve this. And we found a certain solution, which made us decide to submit an offer.

Interview 6.1 (member state)

So, in the end Statistics Sweden put together a Twinning offer, and as it happens Sweden was the only member state that did. Taken together, the prerequisites forerunning the initiation of the Statistics Project were thus the following: the Polish Central Statistical Office had been preparing for EU membership for quite some time, but still needed some additional work to meet the standards of Eurostat. These standards are not so much expressed in formal regulation as in professional practices and norms, meaning that the motivation for GUS to engage in the project was not based in any formal kind of coercion. Instead it was professional standards and requirements that propelled this Twinning.

6.3 Selecting a Partner and Agreeing on the Covenant

As mentioned above, the Swedish offer was the only one GUS received, but not because no other member states were interested. A number of other members were preparing to make offers, but withdrew upon hearing about the request made by GUS to SCB. In a sense, Poland had already made its choice and selected Sweden, and there was not much sense in devoting time and money to producing an offer that would not stand a chance anyway. Consequently there was only one offer for the Twinning, but from the Polish perspective it was an offer that responded to the Central Statistical Office’s wishes. In addition, Statistics Sweden signed collaboration agreements with
the central statistical offices of Germany, Denmark, and Finland so that ex-
erts from these countries would also participate in the project and nuance
the presentation of member state solutions. Even though Sweden was the
only official Twinning partner, this idea of connecting other member states
with the project conveys an image of encouraging candidate countries to
look around for inspiration but nevertheless create their own systems and
organisations. An observation by a Swedish civil servant will be used to
illustrate the idea, which is very much in line with the official EU prescrip-
tions:

\[\ldots\text{there is no point in you [the Poles] coming here [to Sweden] to study in}
detail what we do and how we do it because you will not be able to do it in
the same way. So it’s better if we focus on how you will do it. And then we}
have a lot to offer, we have loads of experience that we will share with you
and we can give advice.\]

Interview 6.1 (member state)

This statement presents the Swedish rhetoric accompanying these issues, and
it is quite possible that it constitutes the prevailing perception of the civil
servants involved in Twinning co-operations. However, and as will be dem-
onstrated throughout this chapter, talk might differ considerably from prac-
tice. A certain tension between Polish independence and strong Swedish
ideas keeps recurring, but before we go into that a few more things need to
be said on the Polish selection of Sweden as co-operation partner. Because
even if SCB was not competing against other member states in the conven-
tional Twinning sense, the Swedish organisation was nevertheless explicitly
chosen, and for particular reasons.

One of the key elements of the Statistics Project was to upgrade the use of
administrative data as a source for statistical analysis\(^{74}\), and the Nordic
Countries are very advanced when it comes to this method of work. Appar-
ently Sweden has been pushing this issue rather hard within the European
Union on the grounds of effectiveness and efficiency, and has received a
certain hearing for the ideas. More and more countries are turning towards
this model and since Sweden has been one of the forerunners – approximate-
ly 90% of the statistics produced by SCB are based in various kinds of regis-
ters – it is not so surprising that Poland wanted to co-operate with Statistics
Sweden. Said one Polish civil servant involved in the project:

\[\text{To use administrative data, or registers, for statistical purposes means that the national}
statistics office will employ data collected by other authorities in its analyses. Instead of}
collecting its own data through surveys and the like, registers belonging to, for example, the
tax authorities will be used. Examples of such registers would be population registers and
VAT registers, which are of course produced for purposes other than the purely statistical}
one, meaning that they will need to be checked and elaborated on before they can be em-
ployed by the statistical office.\]

\(^{74}\)
It was the idea of our president [director-general] and it seems to me that the president has chosen [Sweden] as the counterpart for this Twinning concerning upgrading the quality of Polish statistics. It’s because the Swedish statistical office is very known in Europe, as a statistical office that has a very high standard of quality.

Interview 6.3 (candidate country)

The Swedish reputation for good quality and extensive use of administrative data might thus have provided one of the reasons for Poland’s choice, but it was most likely not the only one. When asked about the influence of the Swedish approach on the Polish choice, a Swedish official replied:

… it could also be a political thing because they had just, the German project was at that time on-going so perhaps they wanted to broaden their scope of co-operation and not only focus on some major countries. Because it could also be an advantage in the European Union to have smaller alliances. And we also have historical things together.

Interview 6.1 (member state)

The quote points towards a political dimension to the choice of Twinning partner, which is completely at odds with the European Commission’s guidelines. Even though the Commission prescribes neutral and objective evaluations of Twinning offers, and all candidate country national co-ordinating offices pick up this requirement in their specification of selection criteria, strategic or political deliberations as regards the choice of Twinning partner appear frequently to be present (see also Chapter 2).

Moving on then to the next phase in the Twinning process, i.e. the writing of the covenant, this part too portrays a pattern already introduced in Chapter 2. The project fiche, which is to provide the point of departure for the organisation and specification of activities, participants, financing etc, was described by the Swedes as “containing some contradictions” (interview 6.1) and at least in some parts as being “pretty vague” (ibid). However, the general structure was clear and there were no question marks as to what administrative areas needed to be addressed. Instead the challenge was to fill the abstract framework with more concrete content, and this task was mainly incumbent upon the Swedish side. The bulk of the work was performed by Swedish civil servants, and they described the process in much the same way. Quite in agreement with most other Twinnings, the production of the covenant was depicted as “rather time-consuming!” (interview 6.1) and as “slave labour” (interview 6.4), and the way the involved parties talked about this work is quite illuminating. Two comments will demonstrate the general atmosphere:

And that process was very exciting I have to say because, you asked if there were consultations with the Poles and obviously… let’s put it this way, they define what they want, they define the areas, and since we have entered the
project we think that that is reasonable. And all the time we are doing this for their sake /.../ But then when it comes to implementation and realisation of activities I think that we had a great deal of, or a pretty big influence over the final plan. And we did disagree in the beginning; it was a bit exciting also.

Interview 6.1 (member state)

We had that balance of burden that we wrote the first draft and the first ideas from the Swedish side. And then we came here and had real negotiations actually with the [Polish] project leader and some co-ordinators also. /.../ so that was, I mean they accepted some and proposed changes and... we were here three times I think before we agreed on everything. /.../ So it was important to find the right balance and also, I mean details. The Polish side wanted more, longer missions here, one week or something like that. But we think it is more efficient to have shorter periods. So normally we had two, three days instead and I think, now being inside the project, I think this was quite good.

Interview 6.4 (member state)

The picture emerging is one where the Polish side had ideas of their own on what they wanted and how they wished to organise the activities, but where the Swedes seem to have been the ones to come out of the negotiations victorious. To some extent it is warranted to speak of two very different approaches to organising the future work, where the Polish office had one idea and the Swedish represented another. GUS seemingly wanted to know about solutions in detail while the Swedes preferred general presentations subsequently to be filled with Polish content:

So they [the Poles] are always trying to look also at other countries and see what they have, so they don’t only want to buy one model that is presented by one country. Then I think also that the Polish side, they are very eager to know exactly how things are done, they don’t just want to scratch the surface.

Interview 6.4 (member state)

And [the Polish] model was, and we got it early on in the negotiations, that they wanted to know exactly how we work and how Finland works and how Denmark works and how Germany works, they suggested a lot of, 25 study visits. And we thought that this is the wrong approach, it’s a bad way to go about it and we also told them. It was during the negotiations and we were a bit apprehensive as to how they would receive it. /.../ it was something of a critical moment and we were a bit worried, would they accept it? /.../ And the next day they had accepted it. And I mean we knew that we were right, we knew that this was the reasonable thing to do.

Interview 6.1 (member state)

In the end the Swedish partner appears to have gained a hearing for its proposed solution. As put by a Swedish official it was “not too difficult to get them [the Poles] to accept it” (interview 6.1). Given the initially diverging ideas on how to realise the project it is not surprising that this preparatory phase was rather long and demanding, but in the end the thorough discus-
sions, investigations, and negotiations appear to have had a positive effect on the project as a whole since a solid base for the actual implementation had been built. Even though the subsequent realisation of Twinning activities was perhaps not a bed of roses, some question marks had been straightened out and some apprehensions had been dealt with. As one of the Polish participants said:

But I must say that this preparatory time of work was very long, but it was a good thing because after the preparation time the realisation of the Twinning is very effective. And I think it’s the good way to deal with this kind of projects, to think long but to deal very quickly and efficiently [with the activities].

Interview 6.3 (candidate country)

The preparatory phase of the Statistics Project tells a lot about the relations between SCB and GUS. One of its main features is the strongly expressed Polish wish to co-operate with Sweden. Despite this interest, some clashes occurred as differing ideas on organisation and contents led to real negotiations, which took time to resolve in a satisfactory way. Clearly, the Swedish partner wanted to lead while the Polish administration was not very interested in simply being led but wanted to actively participate and influence the project.

6.4 The Realisation of Twinning Activities

Departing from the general objective of the Statistics Project – i.e. to upgrade the quality of Polish statistics – and the specifications made in the project fiche – i.e. the definition of the areas where assistance was needed – three major project components were assembled. The three components dealt with

- Strategy and a long-term quality programme, including two pilot projects where the new quality programme was used.
- Improvements in selected areas of statistics: this component dealt with a number of divergent, and rather technical, issues where the Polish Central Statistical Office experienced particular shortages, e.g. structural and short-term indicators, statistics on eStatistics, internal work on eStatistics, and agriculture statistics.
- The collection, and use, of administrative data in the production of statistics, including a feasibility study and a number of pilot projects.
As in all Twinnings, the activities in the Statistics Project ranged from seminars and work-shops to study visits in Sweden, but a special emphasis was put on practically oriented pilot projects where the ideas and solutions discussed were to be tried and implemented at least on a limited scale. In relation to the work on quality, for instance, the benchmarks started on a more theoretical level – “good knowledge of the organisation of the quality management by National Statistical Institutes within the European Statistical System” (final report, p. 5) – and then went on to practical implementation – “two projects focused on quality management are determined and initiated, a plan to work for the improvement of standard quality reporting is launched” (ibid). In this way the links between theoretical knowledge and practical implementation were made clear and the Polish participants were required to apply their newly acquired knowledge in a concrete way.

Before we move on to investigate the realisation of activities within the three components of the project, a few words will be said on the circumstances at the time of commencing the implementation phase of the Twinning. Perhaps as a consequence of the diverging views on how to organise the project that were manifested during the writing of the covenant, some hesitation or disagreements appear to have remained during the first couple of months of the implementation phase. For the two main components of the project, i.e. the work on quality and the use of administrative registers, the plan was that they would run in parallel for the full duration of the project, and it was thus important to get the activities going to avoid delays. Since these activities were so central, it was equally important to really engage the participants and make them understand “the value and the benefits” (interview 6.1) of the ideas behind the various methods of work. The project suffered from some initial problems of communication, which led to a slight delay in the realisation of activities. As expressed by a Swedish official:

I participated in a couple of meetings and I was pretty worried because there was… silence. There were 50 or 60 people in the same room and it was, everybody was quiet for like ten minutes and that feels rather awkward. /…/ We didn’t know how to proceed and what do they really want. We didn’t know what their legislation says or if they were serious about this… It was difficult work to find this common language, culture, approach.

Interview 6.1 (member state)

Eventually a “common language” was arrived at and after this initial deadlock the project implementation started to run more smoothly. The work done in the three components will now be described in some detail.
Quality Work – Statistical Standards and Management Techniques

Concerning the acquis related to statistics, it is particularly the statistics on various aspects of the national economy that are regulated and need to be harmonised. The Polish Central Statistical Office had passed the “formal test” on these issues but still needed to improve some of its routines and methods of work. In the words of a Swedish civil servant, this part of the Twinning project thus dealt with some of the “softer” aspects of producing statistics:

“It’s a bit more informal and it is essentially a matter of us helping them to, how shall I put it…? Matters that deal with their organisation, their quality awareness and maybe some management issues; to make them more efficient and more open.

Interview 6.1 (member state)

The general idea was thus to improve the quality of Polish statistics, and improve it in every part of the statistical process, meaning that besides the more technical aspects of the production of statistics, some administrative and personnel-related matters were also covered. Hence, the work on quality involved a wide variety of areas and was very much in line with the spirit of TQM (total quality management), which is also invoked on several occasions in the project’s official documentation. Everything from the very hard elements of producing statistics – “it’s not that easy, I mean statistics is a science” (interview 6.4) – to the more elusive aspects of human resource management – “Happier people, better statistics!” (interview 6.4) – was included, and the main goal was to prepare a strategy and a long-term quality programme for GUS that would be in line with the prescriptions of Eurostat. Eurostat has elaborated a number of “quality components” in relation to statistical output and Polish standards for how to deal with, and measure, these aspects needed to be defined “in the correct way” (interview 6.4), as one of the Swedish civil servants put it. Even if many of the catch phrases of quality management, such as the balanced scorecard and self-assessment, were used in relation to the activities performed, the technical background of producing statistics (specified for instance in Eurostat’s quality components) was frequently emphasised. The general idea is neatly illustrated by this quote:

“Quality sounds soft, as you said, but it’s hard as a law! /…/ this is quality of statistics and quality is almost like a legal provision… This is crucial, it’s unavoidable to have it

Interview 6.4 (member state)

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75 These components will be explored in detail in the upcoming section on the DG-1 survey.
Within the field of statistics, measures of quality are seemingly strongly related to statistical skills and the Poles needed to improve some of their techniques and methods, and possibly also their ideas about what quality is and how it can be guaranteed. The lodestar seems to have been that

> Quality is a very fundamental requirement for statistics because you can’t call them statistics if they are not on a level that is satisfying and a level along with the other member states

Interview 6.4 (member state)

A broad approach to quality work and quality awareness was applied, and a number of different activities were organised to address these issues. As the main goal of the quality component was to produce a strategy for quality work and a long-term quality programme, the first step was to “build a knowledge base amongst the staff” (final report, p. 5). This was accomplished through a number of presentations, trainings, conferences, and study visits.

To really introduce and anchor the ideas on quality awareness within the organisation, a special seminar series directed towards the top management of GUS was held, focusing on various quality techniques and tools. Starting with the legal prerequisites for producing statistics together with international standards, norms, and codes of practice, the discussions moved on to cover areas such as business intelligence, strategies and priorities, management and leadership, appraisal discussions, competence management, how to get efficient teamwork, and self-assessment models (final report, p. 6). In addition to these theoretical presentations, a number of study visits by GUS’s staff to the statistical offices of Sweden, Finland, and Germany were carried out. The theme of these study visits was quality management, and more specifically various aspects of TQM. Issues covered included how such an approach can be introduced and developed, how the balanced score card can be implemented, and how human resource development can be organised. The last part of this general introduction to quality awareness consisted of two Polish specialists participating in the 2004 European Conference on Quality and Methodology in Official Statistics.

In parallel to these general, or abstract, elements of quality work, a more concrete application was organised with the setting-up of a number of Polish working groups and the realisation of two pilot projects. One team was assigned to work on the so-called Prostaff project, focusing on employee satisfaction and training; two teams were to work on the DG-1 survey in order to increase the effectiveness of its realisation without negative quality effects; and one team was to prepare a draft for the long-term quality programme. We will first turn to the pilot projects, which were selected to represent the two sides of the activity of producing statistics – the administrative aspect (Prostaff) and the statistical process (DG-1).
The DG-1 Survey and the Prostaff Project
How might one work on the quality of statistics in practice? In order to illustrate this issue, one specific Eurostat-required survey was selected and worked on as a pilot case within the Statistics Project. The idea was then to apply the experiences gained and conclusions drawn to the production of other kinds of statistics. The survey worked on was what is known as the DG-1 survey. This is a national survey on the economic activities of enterprises, and it is carried out monthly. Within the pilot project focus was put on the “statistical process” and two things were achieved: a mapping out and evaluation of the different actions carried out in the course of producing DG-1 statistics, and a completed quality report of the kind required by Eurostat. Hence, the first step was to obtain an overview of the statistical process at hand, and this was achieved through work on a “flow-chart that contained the whole process for conducting the DG-1 survey” (final report: 7, emphasis added). From the activity chain thus obtained improvements targeted at each part of the process could be suggested and discussed.

Apparently cost-effectiveness – which is one of the principles defined in relation to statistical processes in the European Statistics Code of Practice\footnote{The Code of Practice is not (yet) an EU directive, but to apply it is a recommendation by the Commission. This means that the Code is promoted by the Commission who also recommends “appropriate actions with a view to ensuring effective implementation of these standards” (COM(2005) 217 final, p. 9)} (2005) – was central to the “fluoroscopy” of the DG-1 survey, and quite some emphasis was placed on attempts to “estimate the time the staff spent on different actions” (final report: p. 7). One Polish participant described the work like this:

… they are trying to reduce the cost, or more to say increase the effectiveness, the financial effectiveness of the survey. So reduce the cost and at the same time increase the quality. So they have special… measures for the cost, of course this is easy, but also for the quality. So to see, we reduce the cost and what happens to the quality?

Interview 6.2 (candidate country)

The idea was to upgrade the entire work process by working on various aspects of quality (mainly in the sense defined by Eurostat), and a large part of the effort was related to the completion and submission of a Standard Quality Report. These reports are of the utmost importance to Eurostat since they constitute one of the backbones of comparability within the European Statistical System. In its efforts to establish common reporting practices throughout the ESS, Eurostat has produced a number of manuals, guidelines, principles, collections of best practice etc, and it also makes evaluations and ratings of member state performance on a regular basis. In one of these evaluations it was discovered that the Polish quality reporting was deficient and
needed to be improved, and the work on reporting within the Polish Statistics Project was one way to deal with this issue. To give the reader an idea of what standard quality reporting is about, a few descriptive examples will now be given.

Let us start with a definition of quality provided by Eurostat’s Working Group Assessment of quality in statistics: “the totality of features and characteristics of a product or service that bear on its ability to satisfy stated or implied needs”77. The definition is derived from ISO 8402, i.e. the international quality standard for management systems, and is further specified as follows:

Quality of statistics is defined by Eurostat with reference to the following six criteria:

- Relevance;
- Accuracy;
- Timeliness and punctuality;
- Accessibility and clarity;
- Comparability; and
- Coherence

Although not a measure of quality, the costs involved in the production of statistics as well as the burden on respondents act as a constraint of quality. When assessing the ability of a Member State to comply with quality guidelines, it is necessary to take into account the cost and burden of statistics.78

Each of the six criteria is then specified in some detail79 and the document concludes with some general remarks. It is noted that there is a “trade-off between the different components of quality,”80 and that the Eurostat breakdown of quality into these six components is neither unique nor fixed or stable over time.

Connected to the definition of quality in statistics is a handbook, or manual, on how to complete a standard quality report, and this was presumably the document used when preparing the DG-1 Quality Report within the Statistics Project. The manual gives an extended, and very detailed, description of the six quality dimensions, together with specifications of what information on the respective dimensions needs to be included in the report. To illu-

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78 ibid
79 Relevance will be used as an example – it is defined as “the degree to which statistics meet current and potential users’ needs. It refers to whether all statistics that are needed are produced and the extent to which concepts used (definitions, classifications etc.) reflect user needs” (Methodological Documents – Definition of Quality in Statistics, p. 2)
80 ibid: 4
strate the level of detail, and using the example of “Relevance”, items such as a description and classification of users; a description of the variety of users’ needs (by class of users, mainly); main results regarding the satisfaction of users; follow-up of the user satisfaction assessment; and circulation and/or readership of publications (paper or electronic) must be noted in the quality report.

For each quality dimension reports on items like the ones specified above thus need to be assembled, and it is clear that some of the points mentioned are not all that clear-cut but demand some kind of interpretation or translation into practice. This is precisely what was worked on in relation to the DG-1 survey, and in this way the Polish civil servants received assistance and practical support from the more experienced Swedish experts. In the final report it is stated that “the project has finalised a Standard Quality Report. A set of quality indicators has been suggested as well as some proposals of improvements of the DG-1 survey” (p. 7). Hence, the somewhat vague or abstract demands formulated in the standard quality reports manual had been translated into more concrete indicators, and some problematic elements within the statistical process had been identified and attended to. The two objectives of this pilot project, i.e. to break down and thoroughly scrutinise a statistical process and to put together a quality report in line with Eurostat’s prescriptions, were successfully fulfilled and the insights and experiences acquired hold a more general applicability in relation to the entire ESS. The same goes for the second pilot project directed at one of the more administrative aspects of statistics, namely employee satisfaction.

The very pragmatic reason for the quality work directed towards the staff at GUS, i.e. the Prostaff project, was the rather high employee turnover rate within the organisation. One Polish civil servant involved in the project described the situation as follows:

Many people are coming [to GUS], young people, but they are also leaving rather quickly. So they wanted to check why and what should be done to keep them. /.../ if you employ someone and he works here for two years and he knows already the field of statistics that he works with, and then he leaves. And then you have to employ another one and teach him again. For sure this is important for the quality of statistics that you must teach every second or third year new persons for the same surveys.

Interview 6.2 (candidate country)

So, a questionnaire to measure the satisfaction of the staff was prepared and disseminated among the employees. A section for proposed improvements was also included where training – e.g. foreign languages or IT – and also participation in conferences and new technical equipment were expected to come up. Then certain activities designed to meet the wishes expressed in the replies were organised and at the end of the Twinning employee satisfaction was measured again. The approach to this part of the project is very
much in line with HRM (human resource management) ideas and notions of increased productivity through staff contentment, and it appeared to be something of a new move within GUS. Said a Swedish official:

… in GUS you have a rather strict hierarchy, hierarchical system, and the employee involvement is not very high. But this was the first time, I mean that you really ask the employees what they would like, what they would need. So in that case this is a little bit of a shift of paradigm. And this goes also for the component as a whole, I mean they try to introduce… that’s why we carried out these seminars for the high level management.

Interview 6.4 (member state)

The purpose of these activities seemed to be to change the employees’ mentality and perceptions, and the comment quoted treats the Swedish approach to quality work as rather self-evidently correct. The Polish way of organising was quite different from the Swedish, and now new ideas and ways of thinking about what is important as well as new perceptions of the employees and their needs were to be introduced. Talk about “paradigm shifts” indicates radically altered views and opinions, and even though such a description might be somewhat exaggerated, these new ideas seem to have found champions high up in GUS’s management hierarchy.

In order for the results of the Prostaff assessment to be put to wider use, a programme for the introduction of new employees was developed, using the experiences and opinions of the current staff, as expressed in the questionnaire. The Swedish input in this process was described as “coaching”, concerning which one Swedish civil servant commented:

And we have been coaching then because… for instance the recruitment of personnel, how does one work? And this was very much inspired by TQM; how does one work, what processes are present and where are big variances to be found. Where can one decrease the variances, is everybody engaged? And to create an atmosphere, an open atmosphere where one can discuss, one is open to change, increasing the propensity to change and improve.

Interview 6.1 (member state)

Again a picture of the Polish system as not quite measuring up to the more modern ideas on quality emerges, and a lot of emphasis is put on how the Polish administration can move further. Eurostat has found a (the?) solution and the most important issue seems to have been to make GUS understand the benefits of the system, after which a desirable development would follow more or less automatically. In this respect the two pilot projects constituted the very first building blocks in the much wider construction of a Polish statistical system in line with Eurostat’s Code of Practice. A few further steps in this direction were made through the draft of a formal quality programme for GUS and through the addition to the covenant of a number of
seminars on the Swedish (possibly inspired by Canadian and Dutch practices) quality tool “quality audit”.

**Long-term Quality Programme and Quality Audits**

Based on lessons learned from the two pilot projects described above, and in close Polish-Swedish co-operation, a draft quality programme was also put together as part of the quality component of the Twinning project. Work on quality continued throughout the project and many different national proposals for the management of quality work were presented to GUS personnel. During a study visit to Statistics Sweden a number of Polish civil servants were introduced to a specific Swedish method of work called the quality audit. This solution apparently appealed greatly to the Polish side, and especially to the management of GUS, and at Polish request a number of workshops were organised on the subject. Such specific attention to this particular tool had not been foreseen in the covenant, but it was included in the project on a more ad hoc basis. In the words of a Swedish civil servant:

… the Polish executive management was here [at SCB] in May on one of those study visits to kind of see how things work around here, and we also told them about some other things that we thought might interest them. And one thing was that we told them about our system, in English we call it quality audit. And the idea is that we have trained a number of scrutinisers [genomlysare] and then we have a small management team. Well, it’s really only one person, and then two people, one method man [metodare] and one IT person, are sent to our units. And they scrutinise and analyse a certain product during one week, they are there for two days and talk to everybody. And then they contemplate and write a report, how does it work, what problems exist, and also suggestions for improvements and some follow-up. And they [the Poles] were thrilled about this method!

Interview 6.1 (member state)

The Polish director-general was very enthusiastic about the solution and wanted to implement it in GUS as quickly as possible – the idea was to “just get the work going” (interview 6.4). The Swedish experts, on the other hand, advocated a more cautious approach where careful investigations and analyses would precede the actual implementation of quality audits. The Polish eagerness to progress and the Swedish attempts to slow the process down, and continue to plan, are neatly illustrated by the following view of the subject:

… and they really think that there are no problems, that it is just a matter of getting started. But we said that sure, we can tell you how it [quality audit] works, how we have organised it, but well, you will have to do it your way, this way suits us and we have been preparing this for years. /…/ But I mean if it was just a matter of adopting something, of just pushing the button… if their pilots will get training today and tomorrow and then they can fly on their own. It doesn’t work that way, and they will realise this. And one thing-
that our experts will bring with them is this kind of warning, that you will probably have to work a bit more to find a method of work that suits your organisation.

Interview 6.1 (member state)

All in all, the quality audit activities appear to have been quite successful. They were initiated by the Polish side, which indicates a genuine Polish interest in this kind of work. In addition, the Polish workshop participants were described as very active, inquisitive as to the Swedish model, and keen on discussing various topics related to quality audits (final report, p. 7). Even so, Statistics Sweden apparently felt a need to continue to stress the importance of systematic and thorough preparatory work. The final report (p. 7) states that “The participants /…/ have a good base to stand on for the future efforts in Poland, although extensive work is still needed in order to decide on a suitable approach for the Polish statistical system. It is important to notice the fact that developing a successful audit approach will take considerable time and one should not expect to be able to start running audits on a full scale before autumn 2006”. The Swedish side apparently did not consider GUS ready to undertake this kind of work without some additional thought and preparation, and a number of concrete recommendations – or perhaps rather guidelines on what steps to take next – were formulated by the Swedish experts. Among other things a clear definition of the purpose of Polish quality audits in the context of GUS’s long-term goals, the setting-up of a team responsible for establishing a reasonable work plan, the securing of management support for the development, and the provision of sufficient financial resources were emphasised. Subsequently, a programme for quality audits for GUS and the regional statistical offices was developed in cooperation with Swedish experts. The document was finalised by March 2006, which can be taken as a sign of the Poles pressing on and speeding up the process.

Bringing together the hands-on and practical experiences from the concrete implementation of quality work – in particular within the two pilot projects – and the more theoretical knowledge of Eurostat requirements and various ways (Swedish/Danish/Finnish) to organise such work, was basically the task of the Polish working group set up to prepare the strategy and long-term quality programme for GUS. This work went on for the full duration of the project, and the idea appears to have been to collect as much relevant knowledge and skill – of all kinds – as possible and let it feed into the production of these documents. With the assistance of Swedish experts a draft programme was put together by the Polish working group and presented to the management of both GUS and the regional statistical offices at the end of 2005. The programme was expected to be endorsed by the president of GUS in April-May 2006 (final report, p. 6), and one of the major objectives of the Polish Statistical Project would thus be reached.
Bringing the (Quality) Pieces Together

The Twinning component dedicated to various aspects of quality in relation to statistics was clearly considerable and dealt with many complex issues. To bring the pieces together, a “sum-up seminar” was organised in March 2006 to mark the end of the activities. Reports and results from the different parts of the component were presented and summarised, and the idea was for this collection of knowledge, skills, and experiences to provide building blocks for the future work with quality management within the Polish statistical system. A number of very distinct recommendations were also made by the Swedish experts. These reveal what – in the eyes of the Swedish civil servants – constituted the remaining deficiencies and shortcomings of the Polish organisation. They imply reservations about a certain lack of solid foundations for realistic plans based on systematic evaluations and analyses of the Polish situation. Again Statistics Sweden appeared to prescribe caution, thoroughness, and careful preparatory work while GUS seemed to want to start working and then see what happens.

Among other things the Swedish experts recommended (final report, p. 8) that GUS establish a quality organisation to support the implementation of the quality plan with a mandate from the president (pointing out that the plan is not enough in itself but must be realised by real organisational effort); finalise the definition of the mission, vision and quality strategy of GUS (indicating that some planning still remained); and lay down an order of priority for the development areas (emphasising that not everything can be done at once and that change takes time and must be planned). Overall, the list of recommendations contained advice along a number of different dimensions, ranging from organisational/structural aspects to more behavioural features. A commonality was the rationalistic tone and the sequential nature of the recommendations, more or less turning them into a checklist.

To summarise the sections on quality work: these particularly illustrate the concrete and highly interesting contents of Twinning and hence provide partial answers to the question of what it is that is being imitated. The activities realised within the quality component share a grounding in a holistic approach to statistics and their production. The message conveyed is that the production of statistics is a complex process, which must be understood and managed in detail. Furthermore, in order to understand and steer this process, a rational appreciation based in thorough assessments and planning is necessary, and one way to do this is to work with such techniques as TQM, the balanced scorecard, and human resource management. The prevalence and use of modern management ideas and techniques within the Statistics Project is conspicuous, and also points to their importance within the general service area of European statistics. But from quality, let us now turn our attention to the second component of the Twinning process, which concerned a number of rather technical aspects of statistical work.
Improved Techniques – How to Produce “Better” Statistics

The second part of this Twinning project was made up of a variety of elements that did not have very much in common. In the words of a Swedish official it is “not a very easy component to describe because there are many sub-components that are not exactly related to one another either” (interview 6.4). The activity areas covered were structural and short-term indicators, statistics on eStatistics, internal work on eStatistics, and agriculture statistics. In many ways these areas are strongly connected to the technical aspects of statistics as well as to the statistical profession and skill. As the component included many small areas of activity, a small number of the more informative and interesting ones have been selected for presentation below, namely different kinds of indicators, eStatistics, and internal work on eStatistics. The first two constitute activities prescribed by Eurostat and harmonised within the ESS, while the third one is of a more practical nature as it dealt with the construction of a new web portal for the Central Statistical Office.

Indicators and eStatistics – Improved Methods of Work

Beginning with the structural and short-term indicators, just a few things will be said. The activities were intended mainly to make Polish statistics compatible with Eurostat’s requirements, and two examples will illustrate the kind of work done here. According to Eurostat’s evaluation on structural indicators, GUS did not measure up to the ESS standards: the Polish organisation did not have “enough indicators” (interview 6.3) which meant that new tools would have to be developed to collect the data needed for these indicators. The same goes for the short-term indicators, as described by a Polish civil servant:

... there is a common set of indicators for all European Union countries and there is a regulation which covers all the requirements concerning these indicators. /.../ for example in construction we have all the needed indicators but for example in services or in industry it is not the case, so in this area we would like to co-operate, to improve our short-term indicators.

Interview 6.3 (candidate country)

The crux of the matter is that even though Eurostat has defined and regulated the various indicators, these still need to be filled with concrete content. If the data is to be collected by means of a questionnaire for instance, questions must be formulated and a certain methodology needs to be created. These problems can be dealt with in a number of ways, and the idea behind the activities relating to indicators was to make sure that the Polish solution would indeed measure up to Eurostat’s prescriptions. Since SCB was already working with, and reporting on, these same indicators, the Swedish experts were in a position to give concrete advice and assistance to their Polish colleagues. This is an example of what might happen in such a session:
Yes, they [Swedish experts] come to us [GUS] and we meet in the group of experts in a certain area, for example one mission is devoted to the industrial output indicator. And at the beginning we describe our survey and the methodology of this survey. Well, we tell the difficulties we encounter during the process of accounting. And the Swedish experts say that according to their idea maybe it will be a good solution to implement such a survey or such a method of accounting.

Interview 6.3 (candidate country)

Accordingly, the activities appear to have developed largely from definite professional opinions on techniques, methodology, and the like. The procedure followed can be summarised as the Poles describing their current systems and ideas, and the Swedes suggesting improvements. One Polish civil servant described the work as a “sharing of knowledge and experiences and it is very useful in our statistical work” (interview 6.3). A number of study visits to Sweden and Finland, to study different aspects of the production and use of indicators, were also arranged in order to see how different statistical offices work on these issues. The very concrete goal of these efforts was ultimately to obtain Eurostat’s certificate on the developed indicators, and even if this goal was not reached by the end of the Twinning “some of the problems have been solved. The work on quality licensing ... has been improved” (final report, p. 10). Also included in this part of the Twinning component was Polish participation in the 2004 conference OECD World Forum on Key Indicators – Statistics, Knowledge and Policy. Four representatives of GUS went to Palermo and one of them described the conference as “useful and fruitful”, and went on to say that

There are many excellent guests. And researchers and experts, and not only from statistical offices but also from governments, from ministries for other countries, from universities. So it was a very high level conference ... there are many valuable papers on a very high merit level. So this is the kind of meeting that helps international statistics, to design the future direction of developments.

Interview 6.3 (candidate country)

This comment speaks of the professionalisation of the trade of producing statistics, of the norms and ideas directing behaviour, and of standards being set by a community of experts and professionals. Activities and exchanges going on among statisticians appear to have affected Polish behaviour and perceptions at least as much as formal regulations.

Moving on to the subject of statistics on eStatistics, this part too dealt a lot with technical and methodological matters. The wider Eurostat dimension directing work along these lines is information society statistics, and the

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81 The certificate is an “exact description of the sources of data for this indicator, so methodologically what advantages and disadvantages does this indicator have in these circumstances, and a general assessment of the indicator” (interview 6.3).
concrete survey worked on within the Twinning project concerned ICT (information and communication technology) usage. This is a harmonised, Europe-wide survey financed by Eurostat, who also prescribes methodological and content-related guidelines. The survey is directed towards different user groups, such as households, enterprises, and financial institutions, and within the Statistics Project a number of these were covered to various degrees. Before conducting the survey there was “intense co-operation with our Swedish colleagues in this area” (interview 6.3). During a Polish study visit to Sweden for instance, information on, and discussion of, the Swedish solution led to “some changes of the corresponding surveys in Poland” (final report, p. 11). In relation to ICT usage in investment outlets, it was the first time that GUS would conduct such a survey and a lot of preparation was needed, especially since there is no harmonised Eurostat methodology in this particular area. Said a Polish project co-ordinator:

And the Swedish co-operation was important for us because there were... we designed the survey for the first time, so we designed the questionnaire, we designed the questions, the glossary also. And our Polish and Swedish partners did it together and read the questions one by one in the statistical questionnaire, they compared the questions, they compared certain words. Because in this specific survey also the formulation of the questions is very important and there are also the strict rules of Eurostat about the contents of this questionnaire. So this is very particular, this very exact exchange of knowledge and exchange of solutions was very important because this allows us to ensure that our way is correct.

Interview 6.3 (candidate country)

This quote also illustrates the professional aspects of the relationship between the Polish and Swedish civil servants, i.e. between statisticians. The level of detail involved in the work is particularly noteworthy, where even the specific choice of words was attended to. The ”golden rules” of statistics – such as thoroughness, avoiding bias, and an objective stance – are highlighted, and it becomes clear that the Polish wish was to benchmark Polish ideas and solutions against the well-reputed Swedish organisation. Sweden was recognised as the more experienced party, and Poland sought some kind of stamp of approval before taking action and conducting the survey. On a quite different note, this second Twinning component also included the construction of a new web portal for GUS. It is now time to turn to a description of these activities.

**Internal Work on eStatistics**

The very concrete aim of the activities relating to internal work on eStatistics was to set up and start running a new internet portal. This entailed “the modification of the data collection and data dissemination standards and elaboration and design of a modern WWW statistical portal” (final report, p. 2), and
since SCB had gone through exactly such a modernisation only two years earlier, the Swedish experts had a lot of fresh and relevant know-how and advice to offer. The general idea, at least from the Swedish side, was to “help them [the Poles] to use the Internet in a better way” (interview 6.1) and in this respect SCB seems to be one of the world’s leading authorities. One Swedish civil servant described the Swedish approach – conveying a positive perception of modernity and technological progress – as follows:

All [Swedish] statistics can be found on the web since the year 2000. Our databases are accessible there and I think that we were the first [statistical office] to offer this, free of charge at that. /.../ We are turning more and more towards electronic versions. And they [the Polish] are following, actually the whole world is following.

Interview 6.1 (member state)

Obviously the Swedish partner had a lot to offer, not least as regards potential problems and how to avoid costly mistakes. The building of an Internet portal seems mostly to be about technical details and solutions, software and hardware as well as equipment etc, and even though many of the activities in this component dealt with these and similar issues, other matters also needed to be addressed. The organisation of data – by date of availability or by category? – posted on the web page for instance, as well as its presentation – with what typeface – and under whose responsibility – the IT team’s or the producers’? – it was to be published. Characteristics such as the user-friendliness of the interface, the accessibility of the portal to disabled persons, and the extent of bilingual information were also discussed. A number of study visits to Sweden and Germany dealt with issues such as how to collect, process, and report statistical data electronically, the possible contents and structure of a web page, and data collection via the Internet together with security matters in this respect. A report by a Polish official illustrates the kind of activities going on, and their purpose:

There were six missions from the Swedish side, and one study visit which helped us to use the right tools. For example the software content and management system. And also the IT experts get assistance to prepare the tender documentation, there are 1000 pages of documentation for the tenders, for software and hardware which is devoted to this Internet [portal]. So the main work will be conducted in the future, but all the preparatory work which is very difficult and which should be very well prepared, in this work the Swedish covenant helps us very, very much. Especially we get very good experts from the Swedish office.

Interview 6.3 (candidate country)

Rules and routines for the administrative running of the portal as well as technical specifications and tender documents were prepared within the Twinning project, and in all this the Swedish experts had an advisory, and
inspirational, role. On the kind of inspiration provided by the Swedish example and its effect on the Polish product, one Polish civil servant said that

... many rules are the same, for example how to design the headlines, how to design the map of the internet portal, what data is important and should be on the first page and what is less important and should be hidden for example. So there are many universal rules, the special solutions may be different but the rules are the same.

Interview 6.3 (candidate country)

Again it was the technical and professional aspects of the work that were emphasised – how does one create an appealing and user-friendly web page and how does one make the information on it appetising? What information is important by international/professional standards and according to what logic could it best be organised? These are of course important questions to a national statistical office, and their contents and level of detail demonstrate the possible range of EU influence on candidate country administration.

In fishing out the most noteworthy traits of the second Twinning component, two things should be especially mentioned. First of all, the activities realised build on and emphasise a particular attitude to statistical operations. Stress was placed on the technical, professional skill, working with specific techniques and methodologies. The theme of the component is therefore an understanding of the existence of a universally applicable best way to produce statistics, and an objective approach for its realisation. The second important aspect of the component deals with the relations between Swedes and Poles. Frequently these relations were described in terms of exchanges between statistical experts. In general, more emphasis was consequently placed on discussions, insights, and improvements than on SCB teaching GUS what to do and how to do it.

Administrative Data – the Nordic Example

Turning now to the third, and last, component of the Polish Statistics Project, a few initial comments on the use of administrative registers in the production of statistics are called for. As already mentioned, Sweden and the other Nordic Countries have come a long way in this area and the practice of using such registers is also gaining ground on a wide front within the EU and the ESS. The main reason for introducing this new data collecting practice appears to be “The need of decreasing the respondents’ burden” (fiche, p. 4), but other advantages are also to be found. This is how one Swedish expert described the situation, emphasising that it is a progressive, modern and cost-effective way to work:

… the Nordic Countries are completely unique in this respect, in the world, that maybe 90% of statistics are collected from registers. The population reg-
ister and the VAT register and all different kinds, we have tens of registers to work with. It is often the case that some other public authorities own the register and we have co-operation agreements with them. And this is not easy because usually the data has been collected for some other purpose and then we have to make quality checks and well, do many different things before we can use it. But it is still immensely less expensive and leads to better statistical work quality than if you do a survey where you use telephone interviews or questionnaires or something else. So we think that this is a very good model, and they [GUS] have realised, or knew already that we are the best in the world.

Interview 6.1 (member state)

Even though the use of administrative registers has clear advantages, their application has certain attendant difficulties. In relation to the Polish prerequisites for introducing the use of administrative registers, a number of things should be noted. In Sweden, routines for this kind of data collection have been built up and stabilised over a long period of time, and for a state wishing to start running such procedures many issues need to be considered. First of all, there is the legality issue – various administrative registers are owned by the collecting public authority and there may be legislative obstacles to the sharing of information between different administrative units. Comprehensive co-ordination and standardisation are also required in order to allow the transfer of data between organisations that may sometimes work with more or less incompatible computer systems. On a more practical level, routines for adjusting the data to statistical needs as well as securing their statistical quality must be developed, along with the technical equipment to sustain the new procedures. These were some of the challenges facing the Polish Central Statistical Office, and obviously the use of administrative data is not something that can be introduced overnight. According to one Swedish civil servant, the fiche spoke of some limited Polish use of administrative data having already begun, but, as it seemed

…they have probably done less than we thought from the beginning /.../ it was a rather sporadic use /.../ Maybe the Polish didn’t know how difficult it is but they still knew that it is tempting for several reasons.

Interview 6.1 (member state)

To summarise, GUS was highly interested in the method of work, but perhaps lacked knowledge of what it would mean and what it would require. This is where the Swedish assistance came in and started making preparations.

The first point on the agenda was to prepare a feasibility study in order to explore the present situation and its possibilities. The main responsibility for the work lay with a Polish working group but with the assistance of Swedish, Danish, and Finnish experts. A Swedish civil servant described the objective and procedure of the study:
Yes, that was actually to see what would be needed to increase the use of administrative data and also what registers could be the objective for this use of administrative data, for statistics. I mean, not all administrative registers are suitable and not needed even. So there was an exploration of registers in the society which could be possible to use. And then they made a feasibility study, what kind should we focus on. And then they also discussed how they should make a model for the use of administrative data because there are a lot of methodology and things to check, you can’t just take the data from an administrative register and use it…

Interview 6.4 (member state)

The work procedure appears to have been one where the Polish civil servants did the groundwork and presented drafts that were then discussed with Swedish, Danish, and Finnish experts, who also made suggestions and gave practical advice. Despite some initial gravel in the machinery in the form of different opinions on how to proceed leading to a slight delay in the work plan, the Poles eventually got going and apparently did a very thorough job. When the draft feasibility study was presented in June 2004, the Swedish experts were “extremely impressed” by the work, and their recommendations mostly concerned technical details (final report, p. 14).

The next step was an inventory of the Polish legal setting in relation to the transfer of data between authorities. A presentation of the Nordic situation and EU legislation was organised to provide a background against which the Polish situation could be evaluated. It appears that even though the Polish legislation was not optimal in this respect, there were no formal obstacles to the sharing of administrative data. Given the present state of the regulations (or perhaps rather the lack thereof), there was however room for future complications. Said a Swedish official:

They concluded that… there is not a general regulation in the statistical law in Poland that permits you to get this data. But on the other hand the respective laws, the tax law and the population law and so on, they do not contain any… obstacles to releasing data for statistical purposes.

Interview 6.4 (member state)

This draws attention to the fact that even though the law did not object to the release of administrative data for statistical purposes, it did not prescribe it and the final decision would always rest in the hands of the public authority responsible for the register. To secure the goodwill of the owners of registers in a situation like this, contacts and co-ordination are necessary. In order to explore the practical possibility and consequences of working with administrative data, three areas\(^\text{82}\) were selected as pilot cases. Representatives from the ministries and authorities responsible for the selected registers were in-

\(^{82}\) 1) Population register and building and apartment register; 2) Health and social security system and social insurance system; 3) Tax system.
vited to some of the initial seminars within the Twinning component in order to introduce them to the intended changes, and perhaps also secure their support. The three GUS working groups responsible for the pilot cases were encouraged to have “informal contacts with those operating the administrative registers concerned” (final report, p. 14), and on several occasions this “unofficial” aspect of creating relations between formally separate parts of the administration was mentioned in interviews. For instance one Swedish civil servant’s description of the process illuminated the importance of contacts and co-operation across organisational boundaries:

And this has been a very significant thing with the Twinning, that GUS staff has started to co-operate with the ministries and others who are responsible for the administrative registers. Earlier on they did not have that much contact and… I mean this is also something in the differences between countries, for us in Sweden it’s evident, self-evident that you contact a person in another organisation if you want an answer or some kind of co-operation or something. But here it’s a bit more… stiff.

Interview 6.4 (member state)

Once a plan for the mapping out of the legal environment had been agreed, more practically oriented activities were initiated. Starting out with a number of study visits to the central statistical offices of Denmark, Finland, and Sweden, possible ways of developing a procedure for the processing of administrative data for statistical purposes were investigated. A number of expert missions focused on various aspects of the selected pilot case registers also took place in Poland. The process of transferring data from administrative to statistical registers was also presented, using the Danish experience as an example. (final report, pp. 15-16) Two points deserve further elaboration in this respect: the evaluation of the administrative data against data produced for statistical purposes, and the technical aspect of data transfer.

A number of routes for the transfer of data were explored. Once GUS received input from the three pilot registers the next step in the process was to investigate how, and to what extent, this data could be used to produce statistical products of an acceptable quality. In relation to this work one Polish civil servant said:

I know that for example for the tax system they received already some data, and also when it comes to social security they received some data. What they were doing recently, they finished this I think, they were comparing. Because they received this data for the period for which they had also their data, statistical data, so they were making a comparison concerning the quality and everything. And it seems like this comparison was very good.

Interview 6.2 (candidate country)

Apparently the Polish statistical system did include the necessary components for extending the use of administrative data, but a number of details
still needed to be worked out. One could say that solid ground for the development of this method of working was prepared by the Twinning co-operation, but some very concrete obstacles still existed. A very problematic situation, which might actually have positive effects in the end, was the level of computerisation within the Polish state administration. A Swedish civil servant remarked that

The development has not gone so far within the administrative registers, they are not computerised all of them, so you can’t access the data online, you have to… but on the other hand this is good because if statistics are considered all the time when you develop this computerised data you can see to it that the statistical needs will be satisfied at the same time.

Interview 6.4 (candidate country)

This quotation illustrates the well-known notion that it is often more complicated to change an existing system than to start from scratch. There is no guarantee of what will happen, but it is plausible that if both administrative and statistical needs are accommodated and built into the future computerised systems, the quality of statistical output will be higher than if statistical purposes are not considered. The contacts established between GUS and the relevant ministries and authorities during the Twinning may have increased the likelihood of statistical aspects being included.

As regards the Swedish input to this component it is clear that the Swedish experience was, for obvious reasons, extensive. It is just as clear that SCB was more than willing to share this experience with its Polish colleagues. The general atmosphere seemed to build on a strong Swedish wish to guide Polish developments, but a wish that accommodated at least a certain appreciation of Polish specificities. It was emphasised that GUS was unable to do things as they were done in Sweden, but still the approach is universal. One Swedish expert described the basic idea like this:

In Poland they have a different system …/ but also I think that the techniques are quite similar, so we can really teach them the techniques. And the problems that generally arise when you use the techniques that are put in place

Interview 6.4 (member state)

This expresses a pronounced belief in a rational progression along “universal” lines. The techniques are the same, the problems that will arise are the same, and the general ways to solve them can be transferred from one system to another. This seems to be the Swedish idea (or ideal) but did changes really occur in Polish practice?

On a practical level, the three pilot register cases all seem to have been successful. According to the final report, the Danish, Finnish, and Swedish experts involved in the component were all “very impressed” with the work
carried out and the developments set in motion. The general opinion seemed to be predominantly positive. It was concluded that concerning the tax register system “GUS will have possibilities to use tax register data to replace or at least complete some surveys in the near future” (final report, p. 17); and in relation to the population registers that “Quite soon it could be possible to eliminate direct or indirect data collection processes” (ibid); and as regards the social security registers that “The plans for the future work show visions and it is obvious that the use of administrative data can make a difference for Polish statistics in many areas” (ibid). To sustain this beneficial evolution a number of important documents linked to these processes were produced during the Twinning project. One of them was the feasibility study already described, and the other two were portrayed by a Polish civil servant like this:

Then they also prepared already principles for this, for the use of administrative data. And the third document was principles and then rules, and they prepared a very concrete document; who within GUS or within Polish statistics, because it is not always GUS, it can be some regional office, who will be responsible for which system. And what will be the scope of the responsibility of this person. So they have also a kind of organisational planning already, who will take care of which system, what will be the scope of responsibility. So… well, so they are really, I mean they advanced a lot within this project.

Interview 6.2 (candidate country)

The Polish Central Statistical Office, through this Twinning project, seems to have been able to build a solid base for the extended use of administrative data within the Polish statistical system. Thorough preparatory work has been done under the auspices of the “true experts” in the area, and even though the Poles, at the end of the Twinning, were still not able to apply administrative registers systematically and comprehensively, “the conditions for doing so on a wide front in the long run” (interview 6.1) had been created.

Thus it is clear that in relation to the work on administrative data as well, a lot of emphasis was placed on the technical procedures required in order to produce good, reliable statistics. The Swedish civil servants seemed convinced that the use of administrative registers constitutes a superior method of work with universal applicability, and they propagated this view with enthusiasm. They are experts on the method and they were willing to spread their knowledge to their less experienced, but all the same competent, Polish colleagues. The main argument used to “sell” the use of administrative data was that it will result in better statistics – and the possibility and desirability of better statistics are rather taken for granted – and underpinning this argument is a rational, universal approach to how the work should be organised and why it is important. Let us now turn to the outcomes of all the hard work carried out within this Twinning project.
6.5 General Outcomes of the Statistics Project

In many ways the Statistics Project was extremely complex – it contained a wide variety of different components and activities, and the focal point of the entire project, i.e. quality of statistics, in itself draws on an unusually broad basis of multifaceted elements. The project’s connection to the European Statistical System provided further complexity because of the system’s exacting demands and high standards. It has not been an easy task for any of the candidate countries to meet all the statistical requirements. Many complicated demands and complex requests needed to be accommodated, and of course this was a process that had to take time. Said one Swedish expert:

It should be noted also that… many of the Poles have been members of Eurostat’s working groups at least since the year 2000, so four or five years before they [Poland] became a member [of the EU]. Consequently, to a certain extent they have participated and become… but then the EU has put them under very strong pressure, not just the Poles but all the new members. When it comes to statistics I mean, it is really tough. Placing demands, both formal and… well, how they are to do things so that… well, this [the Twinning work] is a sort of extension of that pressure.

Interview 6.4 (member state)

One of the more prominent features of the Statistics Project, and a notion that is also brought forward in the quotation above, was the manifest combination of formal and informal rules or guidelines within the area of statistics. In the interviews the professionalism of statisticians and of statistical tools and methods was constantly mentioned, and the ways in which the Twinning activities were talked about indicated a certain perception of what statistics is all about. The observations below illustrate some aspects of this professionalism. First, a rather general note on the common nature of various national statistical endeavours and the taken-for-grantedness of their positive outcomes:

But it is still some kind of profession where you… use the same methods, and you are international in that sense. And also now that we are members of the EU, and there is nothing controversial in saying so, it is good to have comparable statistics, everybody agrees on that. Even if there are other problems, and sometimes even big ones, they do not concern matters of principle.

Interview 6.4 (member state)

Next, a description of the core of activities performed within the Twinning project and how to draw on statistical experience and know-how:

… it is this kind of sharing knowledge and experience and it is very useful in our statistical work /…/ we have the opportunity to know about many solutions, many ideas, many applications. But only a few of them we apply in our practice. /…/ And we would like to be able to apply some solutions because
they are really very good solutions. /.../ it’s impossible to imitate that solution, the only thing we can do is to take the idea and adjust it to our circumstances. But in each case we choose the best thing that the partner offers us.

Interview 6.3 (candidate country)

Statistics thus appear to constitute a highly professionalised field, to a large extent structured by formal and informal rules concerning both what participating actors can be and what they can do. Given the level of structuration, it is not surprising that quite a number of Twinning projects have been initiated in this area of EU activities. As previously noted, the Polish Central Statistical Office has participated in three large-scale Twinnings and in addition to the presumed socialising or professionalising effect ensuing from such heavy engagement, other results appear to have been produced as well. Both GUS and the Swedish partner have been able to draw, and build, upon the fact that the Polish organisation knew the Twinning procedure and what to expect – albeit in slightly different ways. One Swedish civil servant said that he thinks that “we have benefited a great deal from the fact that this is the third project, because they, GUS, sort of know how you work” (interview 6.1), meaning that many of the procedural details and administrative routines connected to the realisation of Twinnings had already been sorted out. There was thus no need to waste time or energy on elucidating practical issues such as responsibilities or forms for reports, terms of reference in relation to missions, active participation etc. The general framework was already in place and facilitated the implementation of the project activities.

These routines were also beneficial and facilitating for the Poles, but to them the greatest benefit from previous Twinning experiences seems to have lain elsewhere. Through participation in this kind of international co-operation, the Polish organisation appears to have learned or realised quite a few things about its own practice and preferences. Even if GUS did not always gain a hearing for its ideas, these ideas were at least formulated and conveyed. One could perhaps even say that the Polish self-perception has been altered, as testified in the following interviews with two Polish civil servants:

… without this hard work there is no result and... life is difficult then. /.../ Now we have many experiences and we know that the most important thing is to prepare these fields for co-operation in a very exact and very good way. /.../ Because now we know that we should exactly articulate needs and we can ask about assistance in certain areas. Sometimes it is impossible for the partner to meet these demands but articulated demands, it’s the only way to go.

Interview 6.3 (candidate country)

I think that because it is also the third Twinning for them, they became more… assertive you can say. It means that we had, it happened for our Twinning and it did not happen for the French Twinning for example, that an
expert came and let’s say that their [the Poles’] expectations were different from what he [the expert] could offer them. So they said thank you very much, we would like to change the expert because this one does not fulfil our expectations. So they also, the Polish side, they also learned to express what they wanted /…/ they know what they know already, what is their value, and they want to increase, they don’t want to lose the time just for courtesy you know. /…/ We had two situations when they said they were not satisfied… I remember for the French project they were more taking what they were given.

Interview 6.2 (candidate country)

Accordingly, an enforced appreciation of self-worth and own capabilities, together with a certain assertiveness in relation to what kind of assistance is still needed, seem to have resulted from participation in Twinning projects. Besides the more tangible results – for instance in the form of programmes and strategy documents, new organisational solutions, extended patterns of co-operation within the Polish administration and across national borders, and new routines for evaluations and reports – new ways of perceiving and thinking had been introduced and were starting to take root. In the words of one Polish civil servant:

There is a knowledge which is tangible, but in our minds. It’s difficult to describe, it’s difficult to say that it is a concrete result, but it is an important result. Because all these changes start in our minds.

Interview 6.3 (candidate country)

The Statistics Project thus clearly had an impact on several levels of the Polish organisation, but was it the appropriate kind of impact? To conclude the story of the Statistics Project a few comments will be made on the various evaluations – both internal and external – carried out. First, a telling summary from the project’s final report paints an image of what the organisations directly involved thought of the development. The text reads:

The Twinning project has been a success. All benchmarks have been achieved. The human and economic resources have been sufficient. The working climate has been very good. In many areas a continued cooperation has been agreed, which is a good sign of a beneficial project. It is evident that Poland has benefited from all activities involving Danish, Finnish, German and Swedish experts. But what is also evident is that these experts have benefited from the cooperation in the framework of the project, and this is actually the purpose of “twinning” (final report, p. 21)

The project appears to have achieved many things – at least on the level of preparations and paving of ways – and the parties involved seem largely to have been satisfied. The project had its problems, particularly at first, but the end result has been evaluated in predominantly positive terms. Also the ex-
ternal monitoring and assessment conducted by UKIE gave high scores to this Twinning, which indicates that the project was considered to function according to the formal EU guidelines. Hence, the Statistics Project managed to produce a variety of positively evaluated outcomes. Apart from keeping both directly involved participants – i.e. SCB and GUS – and official “supervisors” – i.e. the European Commission and UKIE – happy, a number of both concrete and intangible outcomes also ensued. Organisational structure and administrative routines were developed, as was the professionalism of the Polish civil servants. In addition, a certain “change in people’s minds” was noted together with increased assertiveness.

6.6 Concluding Comment

In this chapter the Statistics Project has been presented. As the nature of this Twinning was rather technical, centring on the professional approach to producing statistics, large parts of the account have concerned the content of the Twinning activities performed. Also the particularities of the professional relations developing between the Polish Central Statistical Office and Statistics Sweden have been described and commented upon. In concluding the chapter I shall now, in a few words, relate the more conspicuous traits of the Statistics Project to the four elements of the mimetic process: external pressure, objects, relations, and results.

Looking first at the ways in which the Statistics Project is externally motivated, I see the Twinning as derived from the acquis in an indirect sense – via the constitutional establishment of the ESS and the Council Regulation on the European Statistical Programme – hence involving some rather coercive elements. However, the strongest justifications seemed to lie outside of hard and formal regulations. Instead, softer kinds of pressure were at work. Professionally developed and agreed standards, techniques, and procedures as well as formal but not binding documents such as the Eurostat’s Code of Practice caused the emergence and determined the direction of the Twinning project.

As regards the objects of imitation present, these were mainly of two kinds as they can be classified either as procedures or as attitudes. The procedures were present in the many and varied techniques, methodologies, and practices propagated by Statistics Sweden. Examples would be the many management techniques – such as TQM, the balanced score card, and human resource management – but also the concrete and practical statistical operations worked on to improve the Polish output. Attitudes, in their turn, were

83 The Office of the Commission of European Integration; a government body that coordinates the works of all ministries and institutions directly engaged in the process of Poland’s integration with the European Union.
manifested in a number of ways but were basically connected to rational and professionalised approaches to the production of statistics. The naturalness with which the benefits of statistics were talked about – indicating the taken-for-granted perception of statistics as objectively good – provides an illustrative example, as does the frequent emphasis on universally applicable methods and the use of rational planning involving careful assessments and goal specification.

The relations between Sweden and Poland were also marked by a professional approach and attitude. Project interaction was described in terms of exchanges, discussions, insights, and improvements, which indicates that the Twinning partners were on a roughly equal footing. We have seen that the Polish office was active and took initiatives, but the Swedish organisation was not ready to give up on their ideas easily. SCB continuously retained the control of the project, manifesting its greater experience and wish to guide Polish developments. The Polish administration seems to have accepted the somewhat subordinate position most of the time, hence maintaining the traditional balance between Twinning partners.

Concerning the results of the Statistics Project, activity-creating ones are found in relation to the many new procedures introduced by the Twinning – especially noteworthy is of course the introductory work performed in relation to the use of administrative registers. The identity-creating results are primarily manifested in the recurring displays of professional attitudes, perceptions, and approaches. By becoming a professional statistician opportunities for identification with professional, European colleagues multiply, and this tendency towards professionalisation was strong within the Statistics Project.

We will now leave the Polish Central Statistical Office and its continuing efforts to improve, but we will remain on Polish ground. Chapter 7 will present the Judiciary Project, which is a Twinning that differs quite substantially from both the Statistics Project and the Tax Project. Accordingly, it adds further dimensions to the regulative significance of Twinning.
Chapter 7.
The Judiciary Project: “Our structures are fine, everything is fine!”

The political and co-operative efforts carried out within the framework of the European Union fall into a number of areas of activity – such as agriculture, economic and monetary affairs, environment, and the internal market – which are not equally developed. Some activities, e.g. taxation or agriculture, are accorded great importance, and as a consequence become heavily regulated. Others are not deemed as essential, or are rather seen as largely being the responsibility of the sovereign member states, and accordingly receive less regulatory attention. However – and this is important – this division is not fixed and stable but rather evolves as European co-operation itself evolves, to include more and more areas and more and more issues. The Twinning project that is described in this chapter belongs to the activity area of justice, security and freedom. This is an area that is currently undergoing important changes as the European Community extends and deepens its internal exchanges within this field. Traditionally, the European Union’s attention in the judicial area has mainly been directed towards national – and hence separate – legal systems co-operating in civil and criminal matters, and only recently have ideas of extended integration in this field started to have an effect. In fact, that the whole European Union is to function as an area of freedom, security and justice – and that it should be overseen by a specific unit with particular tasks and responsibilities – was specified in the Treaty of Rome (signed in 1957), but it was not until October 1999 that the activities were brought together in a full directorate general. Accordingly, DG Justice, Freedom and Security is the newest Commission department, and it is also the smallest. Issues related to justice have been a field for European co-operation for a long time, but their scope and importance have started to grow only in recent years.

In this chapter a story of what effects these judiciary extensions might give rise to in practice will be told. That the area of justice, freedom and security is now rapidly developing seems to have affected many aspects of

84 http://ec.europa.eu/dgs/justice_home/index_en.htm, 2008-03-27; the DG has a staff of 320 (out of a total of 17,000 Commission officials)
the Judiciary Project. Again, attention will be paid to the motives, objects, relations, and results of the Twinning.

7.1 Introducing the Area and the Actors

The Judiciary Project was realised by the Polish and French ministries of justice in co-operation. It can be characterised as a rather problem-ridden Twinning that made heavy demands on all parties involved, including the European Commission and its Delegation to Warsaw. In addition, it reproduced a familiar pattern in relation to Polish Twinning participation in the area of justice. Civil servants involved in the project commonly, and quite irrespective of nationality and formal role in the realisation of the Twinning, described it as having been peculiar for several reasons. First of all, the general direction of the project differed from the path most commonly taken in Twinning projects within the field of justice, freedom and security. As mentioned above, these Twinnings frequently concern issues of legal cooperation across national borders, but this was not the case in the Judiciary Project. Instead, it dealt with the purely domestic issue of public access to justice. Secondly, and this is rather remarkable, the Judiciary Project was not derived from the acquis communautaire as such. As a rule, and as I have tried to make clear, the starting point for any Twinning is the acquis and the general aim is to strengthen or improve the state administration’s ability to implement it. Focus is put on firstly incorporating the acquis into national legislation, and then preparing or training civil servants in its practical application. This is not how the Judiciary Project was justified. One Polish official described the project as being

… completely not about the acquis. And this was the first project that had as objective not to help directly the judges and prosecutors and the justice sector, as a sector of the administration, but rather to assist people as clients of justice.

Interview 7.4 (candidate country)

In other words, even though the project activities involved the public administration the idea was, if anything, to benefit the general public in quite a direct way. The overall objective of the project was to “improve Poland’s judicial system, thereby giving the country’s citizens better access to the justice” (the covenant, p. 2).

Furthermore, and of particular importance, there is no acquis underlying the project’s focus on citizens’ access to justice. Instead the rationale behind the project is to be found in the general formulations of the Copenhagen Criteria, in the Charter of Fundamental Rights of the European Union (prepared by the European Convention and of unclear legal status because of the
postponed Constitution), and in the European Convention for the protection of Human Rights and Fundamental Freedoms (a Council of Europe treaty, which has not been signed by the EU\(^5\)). Due to the fact that the strengthening of the European Union as an area of justice, security and freedom is still very much in the course of development many issues within this field are, as yet, unregulated. The Judiciary Project demonstrates that the acquis is apparently not the only conceivable, or possible, motivation for initiating a Twinning – since the matter of equal access to justice and legal aid are largely unregulated on the EU level (one directive on legal aid for cross-border litigants exists) other rules are simply invoked.

Proceeding from the first Copenhagen Criterion’s requirement of stability of institutions guaranteeing democracy, the rule of law, human rights and respect for, and protection of, minorities, the implication justifying the realisation of the Judiciary Project is that equal access to justice for all will thereby be assured. This is in fact stated as follows in the project’s covenant (p. 5, emphasis added):

> Such a goal [equal access to justice for all] can be achieved only if the legal aid system is sufficiently effective and the public is amply informed about it so that people are not kept from taking action in court due to financial reasons and if people potentially involved in the judicial process can count on the courts to provide reliable and accurate information on the trial process, the process to be informed about their rights, the progress of their litigation, and, lastly, that citizens are aware of the rights granted to them by law.

From this quote it can be inferred that by some standard European understanding or interpretation, the Polish judicial system was deficient – its legal aid system was not effective enough, information was not disseminated efficiently enough, and, as a consequence, the citizens were not knowledgeable enough. But still, there is no acquis regulating these matters. The justification for the Judiciary Project has therefore to be formulated along the following lines: as there is no acquis underlying the Twinning the project is called for in accordance with other, commonly accepted, European treaties, covenants, and conventions. Indirectly, the initiation of the Judiciary Project can be supported through benevolent interpretations, implicit understandings, and inferences from legal acts referring to cross-border issues, but strictly speaking this Twinning does not seem to be necessitated by the acquis itself. The regulations bearing on the project are accordingly of somewhat unclear status, once more pointing to the blurry line between hard and soft rules. The European Convention for the Protection of Human Rights, for instance, is an internationally binding agreement, but it is not exactly the task of the Euro-

\(^5\) The European Convention for the Protection of Human Rights and Fundamental Freedoms has been negotiated within the framework of the Council of Europe and is the prime European convention protecting civil and political rights and freedoms. Even though the EU has not signed the Covenant all EU member states have done so individually.
pean Union to enforce it. Similar remarks can also be made in relation to the other regulations invoked, placing the Judiciary Project in a distinctly ambiguous position. But did these particularities have any concrete effects? Let us now turn to the actual Twinning.

7.2 Initiating the Project

The Judiciary Project was not concerned with harmonising national law with the acquis, but rather with transforming, or developing, some very specific aspects of the legal system. Clearly there were, at the time of the initiation of the Twinning, rather serious shortcomings in the Polish judiciary when it came to the public’s access to justice, especially in terms of information and financial aid in case of litigation. Simply put, the Polish judiciary did not provide any easy, reliable way for the citizens to obtain information about the legal system in general, nor about their specific court cases. In addition, the regulations concerning who is entitled to financial aid when carrying on lawsuits were deficient, leading to rather arbitrary practice in these matters. According to one civil servant from the European Commission, these deficiencies in the Polish system had been a recurrent point of discussion during the years leading up to accession, and had also been mentioned repeatedly in the Regular Reports. Hence, the Commission was quite satisfied when the Polish side suggested dealing with the problem by means of a Twinning project, and it certainly encouraged the proposal. Even though the project had a limited budget, and thus could only go so far, the general opinion was that it was a step in the right direction and a sign of Polish acceptance of EU demands.

The Polish side, on the other hand, appeared to want to tell a somewhat different story. The Polish version conveys the perception that all the legislative harmonisation work had already been performed, the judges and prosecutors had gone through enough training (and were described as quite tired of it), and the time had come to go further and do something different. According to one Polish civil servant the idea was to

\[\text{do something new and that was the purpose so we decided to do something apart from the normal practice of Twinning.}\]

Interview 7.4 (candidate country)

The Polish intention was to show the public that “the EU can actually make a positive difference to them in a very concrete way” (interview 7.4), and also to try and alter the citizens’ negative perception of the justice system. And if this idea was also in line with the Commission’s wishes, so much the better.
There is most likely a certain truth in both versions because, as the Commission’s former Delegation to Poland pointed out, the initiative for a Twinning project must in some respect come from both parties if it is to work. However, and to further complicate the matter, the Polish Ministry of Justice made no secret of the view that the most interesting part of any Twinning is the investment component, and the Delegation was very frank about the Ministry’s general lack of enthusiasm for Twinning projects. This is how one Commission representative described the Polish attitude:

… the Ministry of Justice always had a rather critical attitude towards Twinnings. Because they say “our structures are fine, everything is fine”. And what they always wanted, I mean they made it unofficially clear that “we accept Twinning and you buy us investments”.

Interview 7.2 (European Commission)

In addition, the ambivalence concerning “the ownership” of the Judiciary Project was amplified by the fact that the Polish side prepared a first version of a project fiche, which was then rejected by the Commission and had to be re-written. The Commission’s influence on the initiation of the project was thus obvious but does not, of course, rule out a Polish interest in the matter of bringing the justice system closer to the people. It is rather testimony to the fact that the Polish Ministry of Justice’s participation in Twinning projects was not unconditional but involved negotiations and strong opinions.

A second version of the fiche was then circulated but this, too, was described as having been quite vague in its wording. The objective of the project was to be to make the judiciary system more accessible to the general public and this can obviously be achieved in a number of ways. However, it became clear that the initial Polish project leader (who was later transferred to Brussels and therefore replaced) early on had quite an active eye on the French solution, with its reception desks for basic legal information in courts. The Polish project leader had worked in France and was well acquainted with the French system and its workings, which might have had some influence on the contents of the fiche. Yet another particularity of this phase of the project was that the French administration had received information about the project and its general contents even before the fiche was officially circulated to the member states. Through contacts established in a former – and apparently rather successful – Twinning project between the two ministries of justice it became known that a project dealing with information and access to justice would be initiated, a fact that could easily be interpreted as an expression of a Polish wish for French participation.

Summarising the conditions leading up to the Judiciary Project, it is clear that the Commission had been aware of, and constantly pointed out, rather serious shortcomings within the Polish judiciary for quite some time when
the Ministry of Justice finally agreed to attend to them. But it did so hesitantly and stressed its own will and priorities rather than the demands of the EU as the motivation. Also, since no suitable legal rationale existed on the EU level, the good of the Polish citizens was used as a motivating argument. Next, we shall turn to the engagement of France as a Twinning partner and the ensuing preparatory work.

7.3 Selecting a Partner and Agreeing on the Covenant

The project fiche for the Judiciary Project was released in the autumn of 2002, and in December that same year the selection meeting was held in Warsaw. A number of project proposals had been submitted and there was thus an actual member state competition for participating in the Twinning. It is not entirely clear how many offers were received, or from what member states – in addition to France there is definite agreement on Spain being interested, but quite possibly also Germany and Finland. By comparison with the French proposal the Spanish one was seemingly perceived by the Poles as more technical and legalistic in its approach, and hence as not very fitting for the more practical and concrete elements defined in the fiche. This is a perfectly legitimate reason for choosing to not co-operate with the Spanish administration, but all the more revealing is the following comment by a Polish civil servant:

… it’s a Twinning rule that there is a project fiche and there is free competition, call for proposals. But of course we… thought about France as a partner that had the biggest experience so we could presume that their Twinning offer would fit best with our needs.

Interview 7.4 (candidate country)

Here, it was fairly openly admitted that the Polish Ministry of Justice had already accorded France certain advantages that were not exactly in line with the Commission’s call for objective evaluations. However, in this case such a stance might have been justified by the specific contents of the French solution. As will become clear throughout the account of the realisation of this Twinning, it was a rather special project, with somewhat unusual content, building more on the very practical and down-to-earth needs of Polish citizens as clients of justice than on theoretical knowledge of the administration. All the same it should be noted that the member state project proposals are just proposals and leave great room for extensions, elaborations, and negotiations in the subsequent phase of drafting the covenant. This is just to say that the divergent approaches of the French and Spanish offers might

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86 On this matter I have not been able to access any official documentation but have relied on the varied statements of civil servants involved in the project.
very well have been common knowledge, and even something of a “given fact”, to the Polish administration, especially since it had extensive experience of Twinning co-operation with both countries in the field of justice and home affairs. In this particular case, the French judicial system had, in the last ten years or so, developed a rather special reception-of-clients/information-to-citizens solution and it would not be strange, or even surprising, if at an early stage of the project the Polish side actually already saw it as a real model for how to improve its own practice. If this fact had an effect on the Polish decision, it would not be the first time; according to a representative from the EC Delegation she

…got the impression sometimes that they had already made the decision by far in advance, before really giving a chance to look at everybody

Interview 7.2 (European Commission)

This kind of reason does not however fit the European Commission’s official guidelines for the development of Twinning projects, where the principle of free and fair competition reigns. Or, as put by Poland’s National Contact Point: “there are two main rules of the European Commission, equal opportunity and transparency” (interview 7.5). Consequently, when asked, the Polish civil servants involved in the evaluation of offers and the selection of Twinning partners all produced very rational and “appropriate” motivations for their choices. In line with the evaluation sheet developed by UKIE the first selection criterion invoked in relation to the Judiciary Project was the fit between the needs specification in the fiche and the offers. Given the brevity of the offers and the complexity of various national systems and solutions, it is hard to imagine how such a fit would be established or verified in practice. An influential factor in this regard appeared to be previous experience, both of working with particular member states and of participation in various Twinnings and other forms of co-operation. As already noted, the Polish administration had worked rather extensively with the French and Spanish judiciaries and it is reasonable to think that this knowledge provided the background against which every new Twinning offer was evaluated. As put by a Polish official:

Well, the [selection] criteria are basically… what ideas brought by the potential partners are closest to our needs. And more or less we know the legal system, the system of organisation of the judiciary in separate countries so we can compare where their practical experience may be useful for our needs, for

87 The policy area of justice and home affairs (which is the former label for what is now named justice, freedom and security) is divided into 7 sub-categories: anti-corruption, drugs, police, organised and economic crime, judiciary and court system, asylum, refugees and migration, and border control and Schengen. Between 1998 and 2004 Poland had participated in 5 projects with France and 4 with Spain (Sector Overview. Twinning Projects under Phare 1998-2004)
our system. But also some social or economic or other aspects may be comparable between countries. But it’s also our own experience from the partner and... honestly, after the second or third Twinning with the French partner we said never again a French partner in Twinning! And a year after, the French project was the best so we decided to choose that one.

Interview 7.4 (candidate country)

In this quote several interesting elements are highlighted. First of all that the Polish administration had, with time, come to perceive some of the member state judiciaries in a certain way, which is likely to affect the reception and initial evaluation of project offers. Secondly, it shows that despite differences and problems the Poles appeared to return to France and Spain as partners time and again; possibly because it is easier to assess an offer when some parameters are known and expectations are somewhat defined. The motivations given involve rational arguments along the lines prescribed by the European Commission but also to some extent build on a softer approach to the practice of evaluating offers.

However, behind the safe and legitimate motivations for selection, other more “unofficial” factors may have played a role in this Twinning as well. It was the firm belief of one French civil servant that the main reason for picking France as Twinning partner in this project, and at this stage in the enlargement process, was political. Even though the French solution for informing the public might have appeared attractive per se, as might the background of a long and prosperous previous co-operation between the French and Polish ministries, it is difficult to ignore the very political dimensions of the situation. To begin with, the time frame is of importance since the selection meeting took place in December 2002, which was a rather sensitive moment in the Polish accession process. In the words of a French civil servant:

I think there was a more political reason; in Poland it explains a lot of things. Necessarily, and maybe unfortunately, they wanted to create a certain thinking, they wanted France to support them in the accession.

Interview 7.1 (member state)

Along the same political lines a pattern can be discerned in relation to the Polish Ministry of Justice’s selection of Twinning partners. In 2002 it was important to maintain good contacts with France, as one of the big players of the European Union, whereas the following year, when the formal accession decision had been made, other issues were at stake. This was the period when the discussions about the EU constitution and the number of member state votes were going on, and where two camps with opposing opinions – France and Germany on the one side and Spain and Poland on the other – started to appear. Maybe by coincidence, but interestingly nonetheless, Spain
was systematically chosen as Twinning partner by the Polish side during this time. This was how one French civil servant analysed the situation:

I think they work like this. Very often it’s a will to seek an ally, maybe to reward an ally that helped them in a certain way in the political field. So it doesn’t mean that the project was maybe the best designed for Poland at this time, but I think the main reason is there [in the political dimension].

Interview 7.1 (member state)

Of course this analysis only represents the French perception of the situation. Whether it accurately represents Polish reasoning is not very important in itself since perceptions may have very real effects, and probably had in this case. So, whatever "the real" reasons for choosing the French proposal, the result of the selection meeting was that France was picked as the sole Twinning partner in the Judiciary Project, and was thus assigned the task of preparing the covenant.

Within the French Ministry of Justice there is a department dedicated to foreign co-operation and a special unit devoted to legal assistance, and it is this unit that deals with French Twinning participation in the area of justice. The unit possesses a great deal of procedural experience of various kinds of legal co-operations, and also of Twinning projects since the French Ministry of Justice has been involved in quite a number of them. However, in the specific case of the Judiciary Project the preparation phase got off to a somewhat bumpy start, which might explain some of the problems that the Twinning later experienced. The project’s French PAA was not directly connected to the Ministry of Justice – he was an administrative judge without much knowledge of the proceedings of international legal co-operation but with a general interest in Poland. At the time of preparation, no one from the Ministry appears to have been engaged in the writing of the covenant, meaning that the responsibility for this very important document was left in the hands of the PAA, who was in fact “an outsider to the Ministry” (interview 7.1). Hence, he was not a specialist on the legal aid system, and given the fact that he did not get much assistance from the Ministry it was “really difficult to do something” (interview 7.1). The ideal is that the project fiche will provide guidelines for the design of the covenant, but as is commonly the case the fiche was vague and the specified objectives were in many ways open to interpretation. As the entire Twinning schedule – including activities, experts involved, and a detailed budget – is to be outlined in the covenant, its production certainly benefits from some sort of knowledge of the Polish (in this case) judiciary system. The preparatory work is also supposed to be a joint effort to which both member state and candidate country contribute, thus providing the Polish side with the opportunity to introduce the French partner to the Polish system and prerequisites. As it was, the French PAA got some support from the civil servant having functioned as PAA in
the previous Franco-Polish project, but not much input from the Polish Ministry of Justice. A French expert described the work as follows:

We had to prepare this covenant with some activities, some ideas and goals to attain, and the Polish side said what pleased them and what didn’t please them. So there was not very much working together, let’s say. They said for very specific points that this didn’t fit them or that this fitted them but must be written in another way, or the goals must be written in other words, these kinds of things. /…/ They gave some ideas, and more precisely they defined what they wanted us to write exactly so that it would fit them.

Interview 7.1 (member state)

Judging from the above quotation it seems that the elaboration of the concrete content of the covenant rested more or less completely in the hands of the PAA, who did not possess any experience of Twinning procedures, while the Polish contribution consisted more of the inclusion of certain specified ideas about objectives as well as an emphasis on the very exact choice of words. Furthermore, the objectives specified appeared to be grounded in certain Polish perceptions of what was acceptable to work on within the Twinning frame. One possible interpretation of this behaviour is that in this way French – or European Commission, for that matter – involvement could be screened off from some areas and “allowed” in others so that the Polish side was still, at least to a certain extent, in charge of the development. At any event, the result of this effort was a contract approved and signed by both the French and Polish sides, as well as by the Commission’s Delegation to Warsaw, who would again verify the fit between the covenant and the project fiche. With hindsight, and given the troubles attending the Twinning, a French civil servant expressed some regrets as regards the contents of the contract:

… you have to be very careful when you write this covenant, so maybe I wasn’t every time very careful because I had no experience and was not helped very much by the French Ministry of Justice. /…/ In fact you have to be very careful at that time, and maybe give… less precise activities than was done in our case. And to be aware of this, because afterwards, when you implement the covenant, the Commission will look very closely to the goals and to the benchmarks and so on. It’s very difficult, it can be stressing, it’s better to first know if it’s possible to do these kinds of activities, if it’s possible to reach that goal because if not you can be involved in bigger problems.

Interview 7.1 (member state)

The fact that the activities and goals specified in the covenant were perhaps not those best suited for the Polish situation again refers back to the lack of co-operation between the Twinning partners at this stage. In addition, it points to the importance of preparation and fact-finding in order to assess what is actually feasible in certain circumstances, and also perhaps of estab-
lishing a first relation, or common grounds for understanding, between administrations to pave the way for a smoother Twinning implementation. In case of the Judiciary Project, this initial contact did not seem to have been entirely satisfactory, which might have had an effect on the later difficulties. Another reason was of course the lack of co-ordination within the Polish Ministry of Justice where one group of civil servants was assigned to work with the Twinning while another group – under the auspices of the Minister for Justice – was doing “the real work” in parallel to the project (more on this later on). Given the prerequisites for the writing of the covenant it is perhaps not surprising that the Twinning ran into problems; problems which are normally dealt with by making official amendments to the covenant. But what is quite exceptional to this case, is that a number of the guaranteed results were either altered or deleted along the way.

The preparatory phase of the Judiciary Project reveals important aspects of the relations forming between the French and Polish civil servants. There seems never to have been much co-operation at this stage – it was rather the French who did the groundwork while the Poles merely reacted to suggestions made, and did so without much input of their own. However, as will become clear below, this reaction on the part of the Polish organisation does not imply that it did not have ideas on what it wanted or expected from the Twinning. At least it knew very well what it did not want, and even though the Ministry was perhaps not very open about its wishes but rather concealed them at this stage of the process, it was able to affect the covenant through its lack of engagement.

7.4 The Realisation of Twinning Activities

As in all Twinnings, the overall aim of the Judiciary Project, i.e. to improve Poland’s judicial system and give the citizens better access to justice, was broken down into more concrete objectives to be realised in sub-components. In this case the number of objectives was four, namely:

- Improvement of the legal aid system to make it more understandable and easier to use for citizens.
- Development of a general policy of information about citizen rights in the [legal] process and how to better perform them.
- Better access for citizens to integrated information within the courts through kiosk information system.
- Experiment of a physical reception desk for customers in the courts as an alternative to computerised access to justice. (the covenant, p. 3, emphasis added)

Various kinds of activities – including training, workshops, French expert missions to Poland and Polish study visits to France – were specified and
expected to end in a number of guaranteed results. These results ranged from theoretical knowledge on the prerequisites of legal aid to more concrete, tangible output in the form of production of information leaflets and recommendations concerning formal changes to the Polish legal aid system. On a general level the project can be described as containing two main parts, one dealing with the assessment and alteration of the Polish legal aid system, and one concerned with improving the dissemination of legal information to the public. As it was, the first part proved the more problematic, perhaps since it involved a more sensitive interference with the Polish legal system. The part of the project dealing with information appears to have addressed issues that were also perceived as very problematic by the Polish side, thus creating more positive grounds for change. In this area all parties could easily agree that something had to be done in order to improve the current situation. Both Twinning parts will be described in some detail, but let us first turn to some of the initial conditions in which the project took place.

The Polish Reception and Engagement

The official starting date of the Judiciary Project was 1 October 2003, and this was the date when the French PAA’s “local” work was supposed to start. Even at this stage of the implementation process a number of particularities, or perhaps rather obstacles, started to form. As the PAA functions as a Twinning project’s main operative co-ordinator, organising the activities, matching needs with experiences, communicating with the parties involved, and generally working as a mediator between the candidate country and the member state, s/he has a very important role to play. Being a member state national, s/he will naturally lack knowledge and experience of the candidate country administration and extensive input from the candidate country is therefore necessary. Hence, co-operative efforts are quite vital. For several reasons, many of which are to do with aspects of the Polish judiciary in general and the Ministry of Justice in particular, the relationship between the Polish and the French civil servants was complicated from the start.

First, the set-up of the Polish judiciary is somewhat special, with completely atomised courts run by independent presidents who are free to organise their operations as they see fit. Since the Ministry of Justice – which was the main beneficiary institution responsible for implementing the Twinning – cannot tell the courts what to do, the project’s fate in many ways depended on the goodwill of the courts’ presidents, who had not been involved in formulating the covenant. As it seems, the division between central and local levels had been invoked as the reason for implementation problems in relation to Twinning on a rather frequent basis. Secondly, the Polish Ministry of Justice is a complex organisation; it was described as a “very proud ministry”, as “self-sufficient”, and as “always against any influence” by the Commission’s Delegation. These characteristics are perhaps common to
many, if not all, ministries of justice but in the Polish case they seem to have had very concrete effects on Twinning. According to one representative of the Commission’s Delegation to Poland, the Ministry has constantly resisted EU involvement, but this resistance has only created threats and intensified pressure on the part of the Commission:

… it has been a strategy from the Ministry to choose, to try to limit the influence of the Twinning partners, always! /…/ And also in this Twinning the Ministry of Justice has played its game and has limited the impact of the Twinning, but nevertheless we achieved something. But we only achieved something after serious threatening. /…/ with the Ministry of Justice we always put them under pressure because we knew we would not receive anything otherwise.

Interview 7.2 (European Commission)

This same picture was also conveyed and reinforced by a French official’s experience of working with the Polish Ministry of Justice:

… we could feel in fact at the very beginning, the Ministry of Justice, and when I say the Ministry of Justice I mean the central organisation, was not really interested in implementing, in doing this project. It was “OK, we have to do this, we have to write this report, we have to do these trainings and so on but that’s all. That’s all, it doesn’t matter to us”.

Interview 7.1 (member state)

Consequently, the initial conditions for co-operation in this Twinning were not the very best. The Polish Ministry brought a heavy luggage of previous experiences, expectations, and ideas about what was desirable, and it was not easy for the French PAA to find his place and start to co-ordinate the project. The task was not exactly facilitated by his physical location. In what might be interpreted as a growing or increasing Polish resistance, the Ministry of Justice had become bolder in its actions over time, as described by a Commission official:

[The department for international co-operation] within the Ministry of Justice is on the sixth floor and the first PAA [in the first Polish Twinning within the justice sector] was sitting there. Then came the second ones, they were already in another building, you had to walk only five minutes. And Pierre [the Judiciary Project’s PAA], he was like… over where the Red Cross is, really I couldn’t find it in the beginning! And what is that? You are the Twinner and you are located in the middle of nowhere and you do not have the daily contact. How can you build up confidence?

Interview 7.2 (European Commission)

So, right from the start the relations between the Twinning partners were a bit apprehensive, to say the least. This somewhat “chilly” atmosphere was reinforced by the fact that upon arrival in Warsaw, the French PAA discov-
ferred that the Phare funds for the project had not been requested on time by the Polish authorities (final report, p. 12). This meant that there was no money available to finance the Twinning activities, which were consequently delayed. In the end, the EC Delegation made the exceptional decision to pre-finance some activities from a budget available for other programmes (ibid), but the initial delay resulted in a good deal of new planning and rescheduling of activities. Once again the failure to request project funds could be seen as a sign of Polish reluctance to participate in the Twinning project, or at least as proof of the Judiciary Project’s minor importance to the Ministry of Justice. The activities relating to legal aid could eventually commence about a month behind the original schedule.

However, a further complicating factor soon arose since both the French and Polish project leaders were replaced. That the French one was changed does not seem to have had any serious effects on the Twinning, but the Polish substitution might have had some implications for the realisation of the project. The first Polish project leader was apparently a rather influential individual with extensive contacts and the ability to “make things happen”. One French civil servant said that

> He was able to frighten these people [within the Ministry of Justice] and to make them work by fear; it’s a kind of old way of managing but it works everywhere.
>
> Interview 7.1

Along the same lines he was described by a representative from the EC Delegation as follows:

> Especially if you are the project leader you need to go to a president of the court if something is not working and say “listen, I know I don’t have the possibility to influence your work because I am from the Ministry and you have your independence. But nevertheless da da da, these are the points.” You need to have a certain character to do that. And the former project leader /…/ he is really good at that. /…/ he could bring some progress and ensure some progress.
>
> Interview 7.2 (European Commission)

Hence, the first Polish project leader had the ability to exert an influence but before long, perhaps unfortunately for the Twinning, he was appointed as a counsellor in the Permanent Representation of Poland to the European Union. He was then replaced by the new head of the Office of Pre-Accession Programmes in the Department of International Co-operation. The new project leader was rather young, and was described as bright, energetic, and full of good intentions, but still her appointment appears to have evoked mixed feelings. Because she was young she “didn’t have a very big importance in the institution” (interview 7.1), she was “on a very low level, in the
hierarchy she was very low, she was unknown, young” (interview 7.2), and as a consequence did not perhaps have the authority necessary to push things through the system. Also, her selection as Polish project leader can be interpreted as a clear statement from the Ministry of Justice of their perception of Twinnings. According to the EC Delegation, the Poles were always very eager to have high-ranking officials as member state project leader – “they should be minimum undersecretary of state” (interview 7.3) – but they did not appear to attach any great importance to their own counterpart:

And then they [the Ministry] come and choose somebody who is, I exaggerate, but who is really on a very low level. She was pretty new, she didn’t have much knowledge and definitely did not have the… she didn’t receive the training on how to deal with people. /…/ And also people must react when [the project leader makes demands]… it was something like “who is that? What does she want? Yeah, OK, next one!” So again it was a kind of statement from the Ministry of Justice, what they think about Twinning.

Interview 7.2 (European Commission)

The appointment of rather weak project leaders might thus have been a conscious effort to try and avoid real changes and resist influence, and apparently the selection of the Judiciary Project’s new project leader was not an isolated incidence but part of a more general pattern where young, or new, employees within the Ministry became leaders of very important Twinning projects. The preparations for and early stages of the Judiciary Project give several rather clear signs of Polish resistance. Together they can be seen as indications that the Ministry of Justice wanted to minimise external (i.e. from both France and the EU) influence in every way possible. As we shall see, these were hardly ideal conditions for a fruitful Twinning co-operation.

The (Intended?) Changes to the Polish Legal Aid System

As specified in the covenant, the legal aid part of the project was intended to yield two specific results. First of all, a working group consisting of French and Polish experts were to jointly prepare recommendations on appropriate changes to the legal aid system – particularly related to the definition of financial limits for potential beneficiaries of legal aid – and official lists of legal-aid lawyers were to be drawn up. The second guaranteed result was a draft application form for legal aid, together with a compilation of information material (in Polish and English) on how legal aid works for the public. This information was also to appear on the Ministry of Justice’s official website in a comprehensible and accessible format. In addition, the component also included training in information on legal aid for district court magistrates and civil servants. Approximately 160 Polish judges and courts’ clerks were trained on the regulations concerning free legal aid in different member states (mainly France, the Netherlands, and Spain), on the organisa-
tion of the nomination and work of official legal-aid lawyers in these countries, on the existing and anticipated regulations in Polish law, on propositions to improve the level of free legal aid in Poland, and on drafting new application forms (final report, pp. 6-7).

The proposal on legal changes and the draft application form, in particular, would represent rather substantial encroachments on existing Polish legislation, and this may be why their realisation proved problematic, if not impossible. As could be expected, the versions of what happened, and why, differ somewhat depending on who is telling the story. The fact of the matter is that the guaranteed result was changed – which is rare and indicates a very serious situation – from “Draft an application form and information materials on how legal aid works for the public (in Polish and English) and make them also available on the Ministry of Justice’s website” (covenant, p. 3) to “draft a proposal of an application form to be used while drafting relevant law on access to justice, draft information materials on how legal aid works for the public (in Polish and in English) and make them available on the Ministry of Justice’s website” (final report, p. 3, emphasis added). This small change, which at first glance might not seem very important, actually hides a very serious situation that in fact threatened to jeopardise the entire Twinning project.

Even in the fiche it was stipulated that a form on legal aid – specifying who is entitled to it etc – was to be drafted within the frame of the Twinning and two things must be mentioned before the different versions of the story of Polish legal aid can be presented. One was that the EC Delegation had been on the Ministry’s back for years to change the regulations concerning legal aid; and the other is the period of time that elapsed between the formulation of the fiche and the implementation of the project – in this case slightly more than a year.

Everybody involved in the Judiciary Project agrees that before the initiation of the Twinning there were no clear Polish rules on legal assistance in civil cases. The decision on who is entitled to financial support (to cover the cost of a lawyer and the court fees) was in the hands of individual judges, and the allocation process was thus highly arbitrary and could vary from case to case. A new bill thus needed to be formulated together with an easily understood and user-friendly application form. These were also guaranteed results of the Twinning. However, in the year that passed between the circulation of the fiche and the beginning of the Twinning activities the Polish Minister for Justice changed several times, and to the one who was in office

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88 It can be argued that the change is in fact not small at all since the two formulations build on different assumptions. While the initial guaranteed result presupposes the existence of a law on legal aid, the amended one rather builds on such a law being under development. Thus, the Twinning assumed that a law would be developed during its implementation and in cooperation between French and Polish officials but the actual situation was one where no such co-operation developed.
in 2003, the matter of legal aid seemed to be priority. According to one Polish civil servant, it was

… the objective of his [the Minister for Justice] life to simplify the civil procedure and to reduce court fees in civil cases

Interview 7.4 (candidate country)

So what he did was to put together a team of experts within the Ministry of Justice – and all of this happened in parallel to the ongoing Twinning proceedings – whose mission it was to draft a bill on the reduction of court fees and an accompanying form for legal aid. The form is described as “very much customer-friendly, even more so than we thought during the Twinning” (interview 7.4), and even though the bill had not yet been sent to the Parliament for approval, the work was already well advanced when the French PAA arrived in Warsaw.

One would think that for the Poles to work on their own was not necessarily a bad thing. The argument would then be that it was better for the Polish administration to do something and develop than to just sit and wait for the Twinning project to start. Since the lead times in Twinnings are rather long it might not be possible to halt certain developments, especially since the EU demands for change and adaptation in many areas were both strong and explicit at this particular point in time. What appears to have been problematic in this case was principally that the drafting of the bill and the form were included as guaranteed results in the Twinning covenant – which was then approved and signed, turning it into a legally binding contract, by all parties involved – but also the Polish behaviour and the actual contents of the Polish solution.

The EC Delegation to Poland was in fact very dissatisfied with the Ministry of Justice’s actions in relation to the matter of legal aid. One representative describes the result as “a failure” (interview 7.2) and the criticism is rather harsh. The Polish practice of agreeing to put certain elements in the covenant and then proceeding to resolve them before the Twinning starts was apparently a bad habit and something of a “political game” (ibid). On the subject of the legal aid bill and the extremely long preparation phase in Twinning, a Delegation representative exclaimed:

Isn’t it lovely, they have worked ten years on it! They could have waited another six months, couldn’t they?

Interview 7.2 (European Commission)

This outburst stresses the Commission’s frustration with the Ministry of Justice; the EU had – through its Regular Reports and other evaluations – continuously been criticising the Polish situation and when it finally got a
hearing for its demands the Ministry still managed to do its own thing, so to speak. And the Polish product did not exactly please the Delegation:

… the form that was developed was suboptimal, to put it mildly. It was not resolved in a very good way because the problem behind this is that it was not clear, there are no objective criteria /…/ this is what we were criticising all the time and this is why they finally did it. But there are still lots of doors open for arbitrary ruling by the judge. Because normally you have a threshold, you say so you earn 15 000 zloties a year, you cannot afford it so you get legal aid. They didn’t have the threshold. Now they have a threshold that doesn’t make any sense so… And this is what we wanted to help them with, but the Ministry showed again that it doesn’t need any help.

Interview 7.2 (European Commission)

The Polish solution was thus deemed not good enough, but the real issue appears to have been the Ministry’s attitude to Twinning and its practice of saying one thing and then doing something else. To the French side, the discovery of the parallel expert group and the development of its work proved an unpleasant surprise, especially since France had committed itself to producing a guaranteed result and could be punished (financially) for failing to reach it. The PAA knew before going to Warsaw that the group had been set up and had been running for a couple of months, but it appears that the extent of the progress made and, above all, the Polish attitude to the French input had been misjudged. A number of French legal experts had been engaged to participate in various activities connected to the reform of the legal aid system, but their assistance did not seem to be much wanted. As put by a French official:

… I had known for the last two or three months that there was this project and we couldn’t do anything for them. It [the draft bill] was already written by the legislative department. It was very difficult to get an appointment with these people from the legislative department, which is kind of a very important department because they issue all the regulatory proposals. And they didn’t want to change anything. So we had to work to add something, which was planned to be proposed to the Minister, as a complement, something added to the first proposal. /…/ It was not written at all like this in the covenant because it was not at all pictured like this. /…/ And it was obvious when we wrote the covenant in the beginning of 2003 that it would be a very important part of the work, how to get this form, because… maybe how to change some parts of Polish law and so on. But when I came in October 2003 there was already this project which was only driven by the Ministry, it was not even in the Parliament but they didn’t want to change anything.

Interview 7.1 (member state)

This demonstrates once again the Ministry of Justice’s resistance and its unwillingness to co-operate in Twinning projects on important matters. The picture appearing is one of Twinning activities being sidestepped on things
that really mattered; the Ministry accepted the instrument but did not consider it, or its effects, to be of any particular importance. Twinnings were allowed to take place in parallel to the Ministry’s “real” work since they were considered rather harmless. The component on legal aid shows that the EU or the member state Twinning partner cannot make the legislation, organisation, or system change – all they can do is offer advice, share their experience, and make suggestions and hope that the candidate country will accept their input. In the end, the final decision is always in the hands of the Poles and if there is no important/powerful Polish civil servant or politician who will push the matter, not much is likely to change in practice. What happened in the case of Polish legal aid was that the second Polish project leader blamed the first one for having agreed on the draft bill and form as guaranteed results, and in a sense washed her hands of the development. Since the Polish opinion was that the proposal by the Minister’s working group was perfectly all right, no additional Twinning assistance was needed. The Polish project leader thus decided to try and have an amendment to the covenant accepted. The idea was to convince the European Commission that it did not make any sense to rewrite the bill and work on the form within the Twinning because it was simply a waste of money and time. She describes her task as very demanding:

It was the hardest moment of the Twinning because the European Commission was completely… closed to any argument. /…/ no arguments were acceptable to the Commission, I said, it’s a waste of money. It’s a waste of your money, it’s a waste of [European] tax payers’ money. And that was the argument and the Delegation said OK. /…/ We can spend this time on additional training or additional study visits of French experts here or maybe they could give us some advice on how to popularise this reform. Because it was a reform, reduction of court fees. And well, finally I convinced the Delegation but it was really… a big deal.

Interview 7.4 (candidate country)

Here the Polish wish to use the EU funds in other areas than those initially planned is highlighted. In the situation at that time, such a solution might have appeared reasonable – to put the money to good use even though some parameters had changed. However, the proposal could also be interpreted as a way of steering the Twinning away from the hard legal issues to the softer areas of training and advice, which do not imply any direct administrative changes. In fact, this kind of interpretation is supported by a representative of the EC Delegation, who claimed that “the Poles they always like to be trained and trained and trained but substantial changes is not really what they are looking for” (interview 7.2). In the end, an amendment was made to the covenant and even though many of the parties involved were not entirely satisfied with this solution, some kind of closure was reached, and the other elements of the Twinning could be implemented.
To summarise the work on legal aid a number of things should be noted. First of all, the developments described clearly show that the Polish Ministry of Justice manoeuvred at its own will and not solely according to EU demands. Also, it is evident that this behaviour was not appreciated by either the French Twinning partner or the Commission. The Polish actions might have been sensible, or even rational, but they were not ‘by the book’ and hence not acceptable. They demonstrate Polish independence and the EU’s attempts to keep the Ministry on the right path.

Information to the Public

By comparison with the work on legal aid described above, the parts of the Judiciary Project dealing with information to the public can be characterised as less dramatic. Even so, their execution did not exactly run altogether smoothly. Given the start to which the Twinning got off, with the replacement of project leaders on both sides, and the much changed circumstances for co-operation in the first part, it is hardly surprising that some issues remained unresolved throughout the project. To simplify, the contents of the information component of the Twinning can be further divided into two categories, one dealing with the production and dissemination of basic information material on legal issues, and the other with the more hands-on management of legal information in courts.

Information Policy

To start with the production of information, the primary objective was to create a general policy on information about citizens’ rights, and then to initiate practical action in this direction. The visible results would be an Internet web site (“Justice made easy”) linked to the Ministry of Justice’s home page, a number of information posters to be placed in district courts throughout Poland, and seven different brochures advising on the steps to take in some common legal situations (e.g. divorce and separation, alimony, inheritance). The idea was to produce simply worded advice that the average citizen could easily access and use as a first source of information in case of legal problems. The work was to be carried out in co-operation between French experts and a special working group from the Ministry of Justice’s Bureau of Information. Despite some initial resistance from the Polish side the working group appears, with time, to have come to function well, or at least as well as could be expected. One French civil servant described the proceedings as follows:

They were quite active but we had to... make them active. It was very funny because the first two or three months they didn’t want to co-operate, really to them it was a burden, it was something awful. They didn’t say it but you could feel it, they didn’t want to be in any working group. /.../ And after-
wards we worked together thoroughly, they became involved, maybe against their will but some of them really were deeply involved and wanted to do it. It was funny in a way because you can see that if people take an interest in their mission they will do something, but there was no pushing from the central administration.

Interview 7.1 (member state)

It becomes clear that the Ministry of Justice suffered from a lack of coordination where the department signing the Twinning covenant, i.e. the Department of International Co-operation, had not secured the support of the unit who would later on participate in the Twinning activities. The result was resistance from the working group and a poor understanding of the possible benefits from participation. In addition, the lack of commitment from the central administration again comes to the fore as the reason for the working group’s weak motivation. However, as shown in the above quotation, motivation and commitment improved during the working process, and the end result was satisfactory. The posters and leaflets were drafted, their contents were published on the Ministry’s home page, the public procurement of their printing was finalised, and they were distributed to the targeted regional courts. Typically of the somewhat luckless Judiciary Project an additional problem was introduced since the legal situation concerning one of the topics of the brochures changed between publication and distribution, rendering parts of the information incorrect. But this was not considered a major setback since the idea behind these activities was bigger than the mere production of specific leaflets. These Twinning activities provided an example of how one might go about disseminating information, and the methods presented were intended to be used more generally as a new way of working. In the words of a Polish official:

… the changes [as to the steps to take in legal proceedings] were not very big but they can still create some problems for people. But the objective was to popularise, in courts, the idea of informing people through charters, through leaflets. Because the cost is not very high, just the idea that this is a good way of communication because well, sometimes people prefer to read a leaflet to turn to a human being [with their questions on legal matters].

Interview 7.4 (candidate country)

The last part of this project component consisted of an effort to connect the Ministry of Justice and its new information policy to other organisations involved with legal assistance and information, e.g. bar associations and various NGOs. Following an audit of the current Polish situation by French experts, a number of seminars were organised where representatives from NGOs and the legal professions could meet and talk with civil servants from the Ministry. The French solution for dealing with the public need for legal assistance – i.e. the organisation in bigger cities of Maisons de Justice et de Droit, open 24 hours a day seven days a week and offering free legal assis-
tance to anyone who needs it – was presented together with the communication and information policy of the French Ministry of Justice. Some first steps towards co-operation between the invited organisations were taken, and rules regarding who can disseminate legal information to the public, and how, were agreed upon. The French example, the *Maisons de Justice et de Droit*, was much discussed during the seminars, and might subsequently have functioned as a source of inspiration “for those who could gain something from it, not in a material sense, I mean for NGOs” (interview 7.4). On this subject a Polish civil servant made the following comment:

… well, we tried to… describe this model to the Polish partners, courts but also advocates, well generally the bar and NGOs, the model of co-operation in legal assistance that exist in France but it is very hardly to be copied on Polish ground.

Interview 7.4 (candidate country)

The main obstacle to introducing a similar solution in Poland appeared to be a conflict between the legal counsellors’ associations and NGOs over who is actually qualified to provide the general public with advice on legal matters. Through the Twinning the different parties were invited to talk and even if the issue was not resolved, ideas and opinions were at least exchanged. One French official said that “we produced a co-operation between people from NGOs, the legal professions, and the Ministry of Justice, very important thing to do” so some things appear to have started to change. The final report (p. 9) says that “No guaranteed result was linked to the definition of guidelines [for obtaining] the status of ‘Legal Clinic’ but proposals were issued after the audit and the exchanges on the subject with representatives of these entities, the legal corporations, and [the Polish Ministry of Justice]”. Hence, discussions were initiated, providing a first step. An additional contribution was made in the form of an EU-funded purchase of computers for a number of Polish legal aid clinics (NGOs).

**Reception Desks**

The action taken with regard to the next section of the information part of the project appears to have been firmly grounded in a deeply felt Polish need to somehow change a very problematic situation. The “information-to-citizens” situation in Poland was, at the time of the Twinning, poorly organised, almost chaotic. Many citizens lacked knowledge about their rights in general and about legal processes in particular, and this constituted a real problem since the amount of litigation is high in Poland, and the list of cases waiting for a ruling long. The normal routine has been for people to turn to the courts with their many questions, and often enough they have not trusted the information provided by the court clerks – who have not always been able, or willing, to answer their questions – but have wanted to turn directly
to someone higher up the hierarchy. As a result, the court secretariats were more or less invaded by court clients seeking information on everything from basic legal rights to details of their specific cases. The regional court of Krakow, to take an example, received approximately 6000 people every day, many of them needing some kind of information on how to proceed in various matters. And not even the highest officials were spared, as illustrated in the following anecdote:

… I will never forget when I was in Gdansk, I was sitting there with the president of the court and suddenly the door opens and it was an old man and he was asking, kind of yelling at the president of the court, wondering where he had to go to get information on heritage, where was the office to do that. And therefore you need a reception desk. The president of the court he just looked at me; “you see? You see where the problem is?”

Interview 7.2 (European Commission)

In addition, the quality of assistance provided by court personnel was generally felt to be quite low and customer satisfaction surveys showed that people did not have a very positive perception of the services provided. Something needed to be done and the experimental solution included in the covenant was to introduce a kiosk information system and reception desks (inspired by the French example) in a number of the busier courts in Poland. The courts of Krakow, Gdansk, and Łódz were selected mainly on the basis of their size and the related scope of the reception/information problem, but also due to the attitude of their presidents. As described by a representative from the Delegation:

And fortunately they identified the courts where they have very open-minded presidents, because the president decides at the end of the day how far they want to co-operate [due to the independence of the courts] /…/ the president of the court in Krakow, which was co-operating, she had been in Bobigny on an exchange programme and she had seen it [the reception desks] and she thought that this is a good idea also to have in Poland, and as they have their independence they can create it. And the one in Gdansk he had also already seen it.

Interview 7.2 (European Commission)

In order for these information efforts to work, the commitment – both mental and financial – of the courts was essential, and in general this seems to have been quite strong on most of the relevant levels. The implementation of this part of the project was, in principle, described in positive terms and it seems to have been rewarding in many ways. Even though only three courts were selected to actually implement the proposed solutions to these problems, many more were involved in the training activities (150 judges and clerks took part in seminars or workshops), which obviously reinforced the effects.
In the work on reception desks the first step was for the French experts and Polish court clerks to co-operate in defining the technical and organisational requirements for establishing a better reception of the public in the courts. In addition, guidelines on how to choose the best employees to staff the reception services were developed, and a number of representatives for the 42 regional courts in Poland were trained in service and organisational matters. The overall reference point for these efforts was the French solution of reception desks in big courts, and the French approach on how to deal with customers. As previously noted, the feeling that information services needed improving was prevalent, and many of the people involved had knowledge of the French system. On the subject of the French example in this Twinning, a French civil servant said:

… it was to do, to try and translate an experiment that has been implemented in France for the last ten years. To have a front office that can offer information to people who enter a court, quite deep and thorough information to these people about their case and so on. And this doesn’t exist at all in Poland, there is no reception desk in the court, really there is not even the simplest reception desk in the court. You cannot even ask somebody where to go or something like that. So it was to do that /…/ But to try and make them think that it would be worth while for everybody, for the secretaries, for the people who enter the court, to get some information at first from the front office and to get thorough information because like this people won’t disturb the functioning of the court.

Interview 7.1 (member state)

Apparently the French model was fairly well understood, as well as deemed efficient and successful, but other factors also influenced the development of the activities. One of the aspects mentioned as facilitating a good result was the careful matching of French experts and Polish participants so that the very practical issues of day-to-day work would be the focus of discussion. The starting point was the understanding that all courts – be they French, Swedish, or Polish – experience some common problems and that the administrations might profit from looking at each other’s ideas. The French experts coming to Poland were those who worked on the same information-related issues in France. Said one French official:

So it worked very well because the Poles understood that they had some problems that they maybe didn’t even know about. But they felt they had a problem, if they identified it or not, and that in France for example, but it could be any European country, they have found new solutions, or they try new solutions to solve them.

Interview 7.1 (member state)

So, a lot of information exchanges and sharing of experiences ushered in the work on the physical reception desks. Later on, emphasis was placed on
various kinds of training, which are interesting primarily because of their content. Their key themes were namely customer orientation and human resource management. Another specificity of the training was that it was primarily directed at the lower levels of the court administrations, i.e. not judges and prosecutors but court secretaries and other representatives of the administrative staff. According to one Polish official the idea was to provide training on

… how to deal with people but also what are the standards and what kind of information they should provide to people and in what form.

Interview 7.4 (candidate country)

This part of the Twinning appears to have been quite successful and beneficial to all parties involved. One French expert expressed his positive feelings like this:

And these people, these women who worked as secretaries in the courts, they were really fantastic because they participated and they wanted to be heard, and to hear. They were many times more positive than the persons from the central administration. They were ready to change their habits, even if they thought at first that it was not worth it they were ready to listen and to give their experience.

Interview 7.1 (member state)

The training dealt with the issues of customer orientation, the psychology of reception, and communication, and often involved elements of role-playing and the like. The comments of, first, a French official and, second, a Polish civil servant convey the atmosphere:

The French experts were two persons from the national school of registrars /…/ So they were working for this school, which has programmes for teaching registrars how to deal with their work. But… with a phase of psychology of reception and so on. So in fact it was to give them [the Poles] what is done in France to better train the persons who will work in courts dealing with clients.

Interview 7.1 (member state)

… the French are very very expressive and normally they have this administrative culture a bit different from ours, but those trainings on the practical aspects of the management of information were highly evaluated by the trainees. Sometimes even more than… well, merit aspects, like what should be said not how it should be said, should be communicated to a customer. Because normally they [the Polish court clerks] know what to communicate but the problem is how to do it.

Interview 7.4 (candidate country)
These quotations illuminate two points. Firstly, that the French brought with them, and introduced, an existing model for training, and secondly that focus was put on the rather soft issue of “people skills”. Apparently this emphasis on communicative skills and psychology was something new to the Polish court administration. In the bigger picture “management alone is rather new to them” (interview 7.2) and as a consequence human resource management has not exactly been a prioritised area in the state organisation. The impression of one French expert was that this training represented the first occasion when the court clerks and registrars received any comment and/or input regarding their behaviour; that they

…heard for the first time that it was normal to do like this or that, they should do like they were doing or they should not do like they were doing

Interview 7.1 (member state)

The practical and highly relevant advice (no doubt in the form of certain modern management ideas) seems therefore to have been useful in a tangible way to the Polish participants, but other more indirect effects may also have come out of this training. An official from the Commission described the informal side to exchanges within Twinning where connections might lead to relations that might lead to trust:

… that is always a nice thing about Twinning, normally you have the possibility to discuss in the evenings, especially when it’s about training. You are in a training centre, you will get completely different people suddenly when judge X Y Z is not there anymore. So you learn a lot. This is important also for the old member state in order to understand how they are ticking. Because everything that is in the area of justice, at the end of the day it is a question of trust.

Interview 7.2 (European Commission)

Following this rather successful part of the Twinning, it is again time to turn to a more problematic matter, namely the opening of information kiosks, or infomats, in the three courts of Krakow, Gdansk and Łódź.

**Information Kiosks**

The initial idea behind this Twinning component was to “support and evaluate the introduction of a computer solution offering citizens a complete range of integrated information in the courts” (covenant, p. 9) and also to provide training for court personnel in how to use these facilities, known as infomats. The activities were tightly coupled to the investment side of the Twinning, which was intended to result in the technical equipment needed for the setting up of information kiosks, and this work apparently constituted the root of many problems. The French input in this part of the project basically consisted of examining the current reception of customers in Polish
courts, of presenting the French solution to this kind of problem, and of assessing the technical specifications of the hardware and software to be used in the infomats. The Poles were thus responsible for purchasing the software to be loaded into the computers that the Commission would finance through the investment component, and the French were merely to provide support and assistance. There is nothing extraordinary to this division of work, but it was essential to the Judiciary Project for the equipment to be in place before the Twinning activities were to commence. Because how can you provide training on how to use the infomats or evaluate their functioning if they have not yet been purchased and prepared? Again, and in more than one way, the Ministry of Justice appears to have opposed the external involvement of the EC Delegation and the French Twinning partner.

The body in charge of procuring hardware and producing the software was the CORS (computerisation) department in the Ministry of Justice, and the procedure had to be approved by the CFCU (Central Financing and Contracting Unit) within the Ministry of Finance. However, all the operative work of co-operating with the French experts was incumbent upon the computerisation department, which does not appear to have been very keen on getting involved in the Twinning activities. A French civil servant described the attitude as follows:

I understood that they had their own business plan and so on. And they were developing several tools, several investment plans in this ministry and they got money from another Phare project /.../ it was quite a good deal of money. So they were following this and in the same way as in other parts of the project they accepted to add us in their investment plan, with this auditing thing and so on. But in fact it was not interesting for them, what was interesting for them was to get money, to get the money to buy working stations and so on. Well they co-operated, they understood that their unwillingness to co-operate could be dangerous to the whole project, so they showed more interest and they worked with the French experts…

Interview 7.1 (member state)

The computerisation department seems to have been torn between a number of demands, making it hard to prioritise. However, once more an initial reluctance to co-operate appears to have gradually been broken down as the actual work got started and the benefits of sharing knowledge and experience became apparent. The technical experts involved on both sides could learn from each other and the exchange of expertise, solutions, and ideas was mutual. The underlying reason for the Polish reluctance to co-operate was the greater importance of the business plan mentioned above, and the fear of Twinning activities interfering with this more significant work. The compu-

89 The Commission would finance according to the principle of co-financing, i.e. the EU contributes up to 75% of the sum and the candidate country administration provides the remaining 25%.
The result of all these obstacles was that the tender procedure was seriously delayed, and only after severe threats from the EC Delegation did the process gain momentum. The technical specifications were not ready until more than half the Twinning period had passed, making it difficult for the French partner to assist in the evaluation of the infomats and to suggest improvements. As a consequence one of the three guaranteed results related to this component had to be abandoned, and the other two were reformulated. “Provide a kiosk information system...” was changed to “Prepare and support a kiosk information system...”, and “Draft a user’s guide...” was transformed into “Draft basic guidelines...” (final report, p. 3). Again, guaranteed results are hardly ever altered in Twinnings, and that this occurred on several occasions in the Judiciary Project is indeed a sign of serious complications.

Bringing together the important characteristics of the information component, they too illustrate Polish resistance, independent manoeuvring, and avoidance. In addition, the weak commitment at the central administrative level recurs, but is somewhat counterbalanced by the activity manifested at the local level. The French Twinning partner appears to have felt obstructed, as the Polish officials gave only what they absolutely had to and not an ounce more. The French Ministry of Justice wanted to assist its Polish counterpart by providing a good example, but on several occasions it was not recognised as such, which had clear effects on the development of the Twinning.
7.5 General Outcomes of the Judiciary Project

With the exception of the changes mentioned throughout the text, all of the guaranteed results of the Judiciary Project were achieved, at least to some degree. The biggest failure of the Twinning was of course the “missed opportunity” to contribute to the bill and form on legal aid, but on the other hand many smaller things were accomplished. In terms of tangible results the information material produced still exists in a very real sense, as do the reception desks and infomats in Krakow, Gdansk, and Łódz. This entire package of informational activities was described by a French civil servant as “a new kind of organisation towards the citizens” (interview 7.1). In a manner of speaking it constituted a new direction within the Polish judiciary and might lead to further changes later on, as it provided concrete examples of what it is possible to do in order to improve. There is evidence of courts other than the ones selected for participation in this Twinning being interested in trying the solution of reception points, and since representatives from all regional courts were trained on these issues the model might very well spread. Said a Polish expert:

I know that they [representatives from courts in some smaller cities] turned to some of them [the pilot courts] to know how it works and to send their administrative employees to observe in the daily conditions, how does it work and would it be possible to copy this type of reception in other courts.

Interview 7.4 (candidate country)

Besides – or perhaps rather behind? – the concrete organisation of reception desks and infomats, it is clear that this Twinning mainly concerned attitudes, ideas, and principles. The two European-wide principles of citizens’ right to justice and the state’s obligation to inform about this right appear to lie at the core of the project, and these are soft values rather than hard law. Even though the Judiciary Project was marked by tensions, these tensions did not seem to arise from the importance of these principles per se but rather from their detailed application. Hence, the Polish accepted the principles but wanted to contribute to the interpretation of their practical significance. In addition, there seems to be agreement on some actual changes in mentality or perception within the Polish Judiciary, at least on the lower levels of the hierarchy. A French civil servant said concerning the results of the project:

So I think the most important for them was to understand that it was worthwhile trying to dedicate some thought and money to better educating citizens in legal issues. It is very important, and not always to treat people like… like somebody who will bother you with his problems. We tried harder and harder to make them understand that it was really an issue, and to try to help poor people to get free access to justice was really worth it also.

Interview 7.1 (member state)
This suggests some success in instilling new insights and understandings, and perhaps also new perceptions and priorities. Thus, the people directly involved in the Twinning appeared to be somewhat receptive to change. The crucial thing, however, is that these people were seemingly not the ones with the power to decide on future developments. As a Polish official noted:

… some people in the Ministry are still not convinced that there should be money allocated for these intangible aspects of the administration of the courts. /…/ But I can only count on people, that people in courts know that in a pilot court in a neighbouring city there was a pilot project, there was a reception established, so they can turn to the Ministry. And this is what I strongly believe in, that they turn to the Ministry and ask for this type of training because they see the practical effects of this training in a neighbouring court.

Interview 7.4 (candidate country)

So, at least some supporters were won through the Judiciary Project, and a first step is always a first step, however small. The EC Delegation was of the opinion that “they are not yet at the point where they really can fulfil all the needs but at least there is a starting point and the hope that there will be developments in the future” (interview 7.2). What might hinder such advances is the oft-mentioned reluctance of the Ministry of Justice to accept external involvement. It is something of a paradox that the Ministry appeared to be both active and rational in its search for viable solutions, yet still continued to resist many forms of assistance along these lines. In the majority of interviews with Polish civil servants, the attractiveness of foreign models and good examples was highlighted, as the Poles appeared to be very interested in hearing about how other member states have organised their EU-related administration. As one official from the Ministry of Justice expressed it:

… [in Twinnings] we get to know another administration, we see other solutions. There is a proverb in Polish; why open the door which is already open? It means why look for a solution on my own when we can see it in another country.

Interview 7.3 (candidate country)

Coupled to the aforementioned tendency to do their own thing, this curiosity on the part of the Ministry suggests a wish to compare models to try and find a solution that combines the strong points of member state systems with Polish prerequisites and traditions. One Polish expert said, on the subject of reception desks and the relationship between the Polish and the French organisation, that “the general solution is the same” (interview 7.4), but this perception was questioned by the EC Delegation. To them, the political dimension was always present and influenced every wish to change. Their perception seemed to be that to the Poles talk is cheap, and to actually commit to change is a completely different thing. Said one official:
And although they [the Polish administration] like to look at others, if you have a project leader like Agnieszka who then later makes proposals – to whom? If the undersecretary of state doesn’t take it into consideration all these proposals just end up somewhere…

Interview 7.2 (European Commission)

Two more comments by a French civil servant help to describe the general environment for Twinning co-operation in the area of justice. The first one tells about the constant Polish effort to balance EU demands and their own priorities. The second one illustrates the perceived Polish attitude of self-sufficiency and unwillingness to accept external influence:

The Ministry of Justice, in fact they don’t want to co-operate, if was for them a kind of obligation because they knew it was linked to the opportunity to get money to modernise the system and so on. So in fact for them, they had an obligation to do a Phare Programme project, so they were thinking “what to do, what to propose? Let’s propose this less problematic thing, something where we can agree, everybody can agree and there won’t be any thorough implementation in our country.”

Interview 7.1 (member state)

The fact was, in this Ministry of Justice in fact they were thinking “well, say what you want, we don’t mind, we know better than you anyway.” And that’s all. And it’s a pity because when we met with people working as a judge or a prosecutor and so on they were interested and in fact wanted to make changes. I think it was really the central administration that was very fossilised and they didn’t want anything that is new or different. It was dangerous for them.

Interview 7.1 (member state)

The picture emerging is hence one of a divided judiciary with rather big differences between the various levels. The central administration appears to be quite rigid while the regional or local courts are more open to new ideas, maybe as a result of their being the ones exposed to the very real effects of sub-optimal organisation. Given these prerequisites one possible scenario is that future initiatives for change will come from the lower levels of the judiciary and gradually work their way up to the top of the administration. This is perhaps all the more likely to happen since the courts have their independence and cannot be controlled by the central organisation on many important issues. Through Twinning the EU has been able to reach out and create relationships with – and at least to some degree influence – the more peripheral parts of the Polish judiciary, which might prove valuable since the actual ministry appears so closed to external input. The Commission’s various strategies to bring the Polish administration in line, so to speak, together with these connections to the local level, might also have pushed the results of the Judiciary Project further. This was how one EU official described the
relations between the Commission and the Polish Ministry of Justice and how certain – not officially sanctioned – strategies were used and paid off:

With the Ministry of Justice, we always put them under pressure because we knew we would not receive anything [otherwise]. And we tried, in the project fiche you have project conditionalities and sometimes we were building up on these project conditionalities and it was not really following the procedure. We need to be assured, and this is self understood, that if you have a reception desk then of course you also have staff to [manage it], and you need additional staff and not just take it from one department and put it there but you need to create new positions. And only then you will also receive the computers you would like to have and the server you would like to have. And then it worked out!

Interview 7.2 (European Commission)

In conclusion, the Polish Ministry of Justice does not seem to have been either eager to adapt or very open to external influence, meaning that every Twinning project it initiated turned into something of a struggle. This shows that the relationship between the European Union and its new member states is not always clear-cut and easy to assess. Both parties have their strategies, so to speak, and apply them within the framework of the enlargement context. The outcomes of the Judiciary Project are not very impressive at first glance, but may bear the seeds of future change. The divided judiciary carries a potential, as does the undefined nature of the ideas introduced by the Twinning. Equal access to justice constitutes a soft value with fuzzy boundaries, but concrete examples were provided and exchanges of experiences occurred and may have effects in the long run.

7.6 Concluding Comment

In this chapter the Judiciary Project has been described. This Twinning differs in many interesting ways from both the Tax Project and the Statistics Project, and it does so along all of the dimensions of the mimetic process. To conclude the chapter, and also the empirical part of the thesis, I will now summarise the most conspicuous traits of the projects in the vocabulary of mimetic motives, objects, relations, and results.

Starting with the external pressure, the Judiciary Project is rather peculiar in that it was not justified with reference to the acquis communautaire. Instead, other international agreements – some of them produced by the EU, some of them agreed upon by other international organisations – are seen as justification for the Twinning. Neither the Copenhagen Criteria nor the Charter of Fundamental Rights of the European Union can be classified as hard law in any regular sense, and even though the European Convention for the Protection of Human Rights and Fundamental Freedoms is connected to real
sanctions through the European Court of Human Rights it cannot – because it is not an EU agreement – be invoked on the same grounds as the acquis. Consequently, attempts to justify the Judiciary Project were based more on European (or occidental) ideals than on explicitly formulated regulations. By citing indirect connections to international agreements and extensions of vague formulations the project was then packaged as a regular Twinning.

Consequently, attempts to justify the Judiciary Project were based more on European (or occidental) ideals than on explicitly formulated regulations. By citing indirect connections to international agreements and extensions of vague formulations the project was then packaged as a regular Twinning.

Concerning the objects of imitation present, these were both very concrete and very ideational. Among the concrete ones the French solutions of Maisons de Justice et de Droit as well as of reception desks and infomats in courts are particularly noteworthy. These in their turn expressed a number of more intangible ideals, namely those of legal aid, customer orientation, and equality. In the end, all these ideals are derived from strong ideas about justice as such, and about European citizens’ fundamental and universal rights to it.

The relations evolving between the French, the Poles, and the Commission officials, were chiefly marked by tensions. The Commission was constantly present in the Judiciary Project – overseeing, controlling, and intervening on a regular basis – which indicates that the Poles were not exactly behaving as they were expected to. This is also manifested in the actual exchanges between Polish and French experts. While the latter seemed eager and committed to assisting and supporting in every way they could, the former were rather reluctant to accept what was offered. The Polish Ministry of Justice was neither committed to, nor even concerned with, the development of the Twinning, resulting in constant French disappointments and failure to reach expected results. In a persistent cat-and-mouse game the Polish Ministry and the Commission employed various strategies to steer the evolution of the project, and the French partner was rather caught in the middle.

As for the results of the Judiciary Project, some very tangible ones emerged – such as the infomats and reception desks set up in the pilot courts – but they were few. This Twinning in many ways dealt with ideas, attitudes, and perceptions and it is within these categories that the most important results should be found. However, as the Polish side so persistently resisted all external influence the identity-creating results were probably hindered to a considerable extent. Some signs of change occurred on the local level, but look to have been very weak on the decisive central level. Seeds of future reform were indeed sown, but their chances of taking root did not appear all that bright at the end of the Judiciary Project.
Chapter 8.
Twinning as Organised Imitation

In the previous chapters the specificities of three Twinnings were presented, and the time has now come to analyse these projects in some detail. Using organisational imitation as a structuring device, I shall consider the three cases of the Tax Project, the Statistics Project, and the Judiciary Project, and attempt to show what it implies to follow rules through imitation. Patterns and idiosyncrasies will be brought out and analysed in search of what it is that characterises Twinning in terms of organised imitation. In consequence, part of the answer to the question of how regulation through Twinning is constructed will be provided. In the next chapter, the regulative processes involved in this organised imitation will then be further investigated.

In the sections to come, I will probe into the four previously defined aspects of the mimetic process, as they develop within Twinning projects. These matters have already been attended to in the brief comments concluding each of the empirical chapters, but here they will be more fully elaborated upon. To answer the question of how regulation is constructed through Twinning, the four mimetic aspects will be used as the first step in the analysis. First I will look into the motives for Twinning, starting out with the wider context prompting participation in Twinning projects. I will then examine the ways in which Twinnings can be derived from their primary source of origin, i.e. the acquis communautaire. In other words, it is the connections made between rules and project initiation that are highlighted. Also, the more internal motives for imitation will be analysed. Second, I will turn to what it is that constitutes the objects of imitation in Twinnings, i.e. the structures, systems, routines, methods of work etc that member states bring to projects. These objects are particularly important because they tell what organisational characteristics and practices are required in order for the acquis to be considered – by the Commission and by the member states – implemented. Accordingly, they consist of the rule-following behaviour – together with the ideas sustaining it – of the old member states. Third, I will deal with the social, inter-organisational dimension of Twinning, emphasising the relations between old member state and candidate country as well as the part played by the Commission. Relations are interesting because the way participants relate to each other speaks about the different roles they play in the continuous construction of regulation. Finally, the results of Twinning
projects will be commented upon. The purpose of Twinning is to reinforce
the administrative capacity of candidate countries, but what comes out of
projects might be a different story. The identity-related and perception-
related results will give a picture of Twinning’s ability to induce change. All
in all, both similarities and differences between the three projects studied
will be pointed out and analysed, resulting in a number of defining character-
istics of Twinning as organised imitation.

Assembling the specificities in relation to the mimetic process of the Tax
Project, the Statistics Project, and the Judiciary Project yields the following
table, which will serve as the point of departure for the analyses of this chap-
ter.

<table>
<thead>
<tr>
<th>Motives</th>
<th>Tax Project</th>
<th>Statistics Project</th>
<th>Judiciary Project</th>
</tr>
</thead>
<tbody>
<tr>
<td>- what external and internal forces motivate the project?</td>
<td>Common market acquis and best practice; eagerness to adapt</td>
<td>Professional standards and codes of conduct; will to progress</td>
<td>European norms; avoidance</td>
</tr>
<tr>
<td>Objects</td>
<td>Rationale and modern perceptions</td>
<td>Professional logics and rationalisations</td>
<td>Modern concretisations of ideals</td>
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<td>- what is being imitated?</td>
<td>Trust and partial dependence</td>
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<tr>
<td>Relations</td>
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<td>- what characterises the relations?</td>
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<td>Results</td>
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<td>- what came out of the project?</td>
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Table 4: Summary of the mimetic elements

8.1 The Motives for Participation

The justification for a Twinning project is connected to the motives for imi-
tation as presented in Chapter 4. Accordingly, imitation can be motivated
either by uncertainty, by external pressure, by a will to change, or by a mix-
ture of these (DiMaggio and Powell 1983; Sevón 1996; Jacoby 2000; Djelic
2001). It is hard to conceive of completely voluntary acts of imitation
(Westney 1986; Jacoby 2000), and this is obviously not what we encounter
within Twinning either. Instead, Twinning is engaged in from a complicated
mix of motives. External pressures of various kinds and more internally
based incentives come together, making it somewhat difficult to discern
what drives the change processes. In addition, the context within which
Twinnings are enacted also contributes to motivate candidate country partic-
ipation in projects since it, in itself, contains both pressures, uncertainties,
and instances of voluntary choice. As this context is the same for all Twin-nings the argument below is a general one.

The Context

Quite apart from the justifications for particular projects – which will be dealt with below – all Twinning can be said to share a common root in that they are all formally connected to the implementation of the acquis communautaire. The implementation of the acquis, in its turn, is compulsory for EU members. Meanwhile, to apply for membership is a voluntary act since the European Union cannot force states to become members. The EU does not hold that kind of power but rather draws on other sources of influence (cf. Barnett and Finnemore 2004). Accordingly, membership of the EU is voluntary but once it is sought the applying state must agree to follow the organisation’s rules (cf. Ahrne et al 2000). In some sense the submission of an application can be said to build on a will to change because such change is implied in membership. The organisational rules of the EU, in their turn, come in many shapes, as described in Chapter 2, and the member states’ rule-following is organised in a number of different ways (Hanf and Soetendorp 1998; Mény et al 1996; Jacobsson et al 2001), meaning that there is a certain leeway in their application caused by rule ambiguity (van Gunsteren 1976; Baier et al 1986; March 1987). It also means that new members will have a hard time knowing what counts as following the rules and what does not. Consequently, at this level – which can be termed the level of general justification as opposed to the level of specific justification connected with particular Twinning projects – there is already interplay between voluntariness, coercion, and uncertainty. Elements of hard and soft regulation interact with organisational practice and choice to place candidates at the intersection of multiple demands. And this interplay will continue when moving closer to concrete Twinnings.

Starting from the notion that following the EU’s rules, i.e. implementing the acquis, is mandatory also implies administrative and organisational change, and acknowledging that the direction of change is not determined in detail means that Twinning potentially harbours a number of different motives for imitation. This is also amply illustrated by the justifications invoked and motives involved in the Tax Project, the Statistics Project, and the Judiciary Project. The external pressure, in the sense of EU regulation, is present in all three projects but the degree to which it actually constrains the candidate countries varies. The uncertainty as to how to implement the rules in practice can also be found throughout, as can different degrees of willingness to change. I will probe deeper into these issues by analysing each project’s formal line of justification as well as its general atmosphere, as interpreted from reports and interviews with the civil servants involved. Here, both external (in the sense of pressures and constraints) and internal
(experienced uncertainty, identification, and will to change) motives will be considered.

External Pressures

Under this heading the concrete EU rules that motivate the initiation of Twinning projects will be discussed. As described in Chapter 4, rules can be of many kinds and each kind can achieve different things in terms of affecting behaviour (Brunsson and Jacobsson 2000a). The three central Twinnings of this thesis are grounded in quite different kinds of rules, and this is likely to be one of the reasons for the projects’ varied developments. On a general note, and using Brunsson and Jacobsson’s (2002a) classification, the Tax Project mainly builds on directives, the Statistics Project on standards, and the Judiciary Project on norms. But this is not the whole story since various rule types interact in each project, most of the time reinforcing each other.

Looking first at the Tax Project, this Twinning is firmly grounded within the important common market acquis and draws heavily on the 6th Directive on taxation, but also includes softer forms of regulation. Hence, it incorporates a fair amount of explicit external pressure concerning both organisational and technical elements while simultaneously making use of best practice – as formulated in the Fiscal Blueprints – that in fact moves beyond what is formally regulated by the EU. For instance, the creation of a central liaisons office and the computer systems necessary for the exchange of VAT information are prescribed in EU rules but the application of risk management is not. This latter instead provides an example of “structures, which are not explicitly required, but nonetheless necessary for the effective implementation of the acquis”, as expressed in the Blueprints. Risk management is a recommendation rather than a prescription. As to the holistic take on the service (as opposed to the control function) of tax inspection so intensely propagated by the Swedish administration, this is neither a formal rule nor codified best practice. Rather, it seems to represent a norm of modern tax administration within the European Union and the Lithuanian authority accepted it willingly.

Turning next to the Statistics Project, the external EU pressure is of a somewhat different kind. Again, both hard and soft rules work on the project but the balance between them is rather reversed. In practice more weight is accorded to standards and codes of conduct than to hard law, but the project is all the same indirectly grounded in a Council Regulation (No 322/97) concerning the establishment of the European Statistical Programme. Also, in addition to the explicitly formulated standards, codes, and guidelines bearing on the project, the strong and pronounced emphasis on the statistical profession had clear regulative effects as all the parties involved appeared to share a particular understanding of what the production of statistics and the profession of statisticians mean and entail. Hence, the norms of statisticians enve-
loped, and to some extent permeated, the different kinds of formal rules, i.e. regulations and standards, involved. Standards and codes of conduct certainly motivated the Statistics Project but these are not regulation that has been politically agreed; rather they are recommendations produced by professional statisticians. Accordingly, they represent the views and understandings of EU expert civil servants, and seemingly spoke directly and very clearly to the Polish statisticians involved.

As regards the *Judiciary Project*, this Twinning is possibly the most interesting from the motivation point of view, since it did not follow the lines of justification prescribed by the Commission itself. Being based in a Council of Europe agreement and the generally formulated Copenhagen Criteria rather than in actual EU acquis, it clearly falls outside the defined and agreed scope of Twinning. And yet it was initiated and realised. The Judiciary Project did not have any EU regulations or standards to fall back on but rather seemed to build on certain ideas and ideals – shared by the Commission and the old member states – about justice. Accordingly, the Twinning was motivated by European norms that had not – and this is important! – been explicitly formulated at the international organisational level. That these norms were nonetheless strong and prevalent became clear when the Polish administration violated them and was put under additional Commission pressure as a consequence.

**Internal Motives**

Under this heading motives connected to organisational identity and will, or readiness, to change will be discussed, together with the presence of uncertainty in the Twinning situation. I have already pointed out that the act of applying for membership in the EU signals a will to change, but to be prepared in theory is quite a different thing from actual engagement in concrete change activities. To separate talk from action, i.e. to make use of decoupling (Brunsson 1989), is a common enough strategy when it comes to organisational change and to find that it also occurs in the context of the European Union’s Eastern enlargement would not be surprising. However, the projects studied indicate that the will to change is a matter of degree rather than of either/or. When it comes to experienced uncertainty in relation to rule implementation, this too appears to vary across projects.

One of the more conspicuous trademarks of the *Tax Project* was the Lithuanian willingness to take on new solutions. This willingness in fact appears to permeate practically all aspects of the Tax Project, as testified by the deep Lithuanian commitment. The State Tax Inspectorate (STI) participated in the planning of the project, made sure that the entire organisation knew what was going on, solicited activity and input from individual civil servants, and even turned to more frequent reporting than required. All these are signs of a willingness to change and adjust to the requirements – both
formal and informal – of the European Union. That the Lithuanian administra-
tion was ready to change is clear but it is also clear that it experienced
uncertainty as to how, more precisely, it was to transform. As the project
dealt partly with issues that were totally new to the STI, the authority
deemed it necessary to turn to its more experienced Swedish counterpart for
help. This Lithuanian behaviour also speaks of how the STI identified with
the Swedish board; the choice of model tells what the imitator wants to be
like and the STI seemingly saw itself as capable of being transformed into a
modern, European tax administration. The identification with the rest of the
EU members is further expressed through the comparisons explicitly made
between the Lithuanian tax administration and those of the old member
states, where the STI judged itself more advanced than many of its potential
model organisations.

Moving on to the Statistics Project, the internal motivation of the Nation-
al Statistical Office (GUS) for participating in the Twinning was both similar
to, and different from, that of the Lithuanian STI. Whereas the STI expe-
rienced uncertainty concerning the VIES (VAT Information Exchange Sys-
tem) and related matters, GUS rather displayed confidence in its own know-
ledge, capabilities, and needs. The Polish organisation had a solid base to
stand on when the Twinning was initiated, but it wanted to improve and de-
velop. As opposed to the STI, which knew very little about the VIES, the
Polish civil servants were statisticians and they knew statistics. So the Statis-
tics Project was not about building something new: it was about progress. In
terms of willingness to change and identification, GUS did not wish to
change into a different organisation but into a more advanced one, and by
working with the more experienced Swedish statisticians this would be
achieved. The Swedish civil servants had more experience, and experience
of a different kind, than the Polish ones and the latter wanted to learn how to
be better, in the sense of producing better statistics. GUS was indeed uncer-
tain as regards specific EU-required techniques and methods and identified a
qualified tutor; the basis for identification being that even though Statistics
Sweden (SCB) had knowledge that GUS lacked, the two authorities be-
longed to the same category. In addition, identification also occurred with
the international statistical community, which extends beyond the sphere of
public administration within the framework of the European Union.

Concerning the Judiciary Project, the internal motives for engagement
were rather weak, if not non-existent. It appears that the Polish Ministry of
Justice did not exactly wish to initiate any Twinning but was rather per-
suaded, or pressured, into doing so. The Commission had been asking the
Polish administration to do something about the situation for years, and in
the end it said yes to Twinning in this area. But it did so reluctantly, basic-
ally lacking the will to change, or at least to change in the way the Commis-
sion desired, because when change eventually came about it was not as a
result of the Twinning. As described in Chapter 7, the Polish Ministry of
Justice had its own ideas and went about realising them quite regardless of the planned Twinning. That it did so, and did not turn to the French Twinning partner for assistance or advice, is an indication that the Polish Ministry did not experience any pronounced uncertainty as to how equal access to justice should be achieved. The Polish solution was not to the liking of either the Commission or the French Twinning partner, but the Poles insisted on sticking to their own idea. The Twinning partner could make suggestions and give advice but in the end it was not at all certain that the Ministry would listen. Even though some change was brought about by the Judiciary Project it was relatively minor and it was always hard to achieve. In contrast to the developments of the Tax Project and the Statistics Project, the Judiciary Project was not initiated because the Ministry of Justice wanted to change and improve according to the EU’s wishes, and uncertainty was not a motive either. Rather, this project was pushed from the outside, almost against the Ministry’s will, which is likely to be one reason for the extensive problems the project experienced.

A first point to make when summarising the motives for imitation through Twinning is that they vary. Trivial as this point might seem, it is important because it tells about the regulative characteristics of Twinning. Within the common framework of membership obligations, the analysis showed that the formal justification can move from the very hard, i.e. directives and regulations, to the very soft, i.e. rules that are not the EU’s, and that are neither formal nor explicit. Accordingly, Twinning sometimes moves outside the acquis, which is thought to be its prime motivator. In addition, informal rules, such as professional norms and ideals, constituted an important part of the external pressure on candidate countries. Twinning thus has a broad scope, a wide reach, and makes use of a number of different regulative tools. The internal motives for participation also vary but in a slightly different manner. Uncertainty is common, but not inevitable, and it can arise in relation to details or in relation to entire organisational structures. As the analysis demonstrated, where rules were hard (in the Tax Project) the uncertainty was great, while softer rules (in the Statistics Project and the Judiciary Project) did not provoke uncertainty to the same extent. Hard law is normally understood to leave little leeway for interpretation (cf. Suchman and Edelman 1996) and uncertainty could accordingly be expected to be reduced, but this is not what Twinning tells us. On the contrary it is the hard rules that seem to create uncertainty on the part of the rule-follower.

In relation to will to change and identification, it has been demonstrated that they are frequent and beneficial, but the Judiciary Project tells us that it is quite possible to engage in imitative practices without them. The Polish Ministry of Justice apparently did not want to change, did not identify with the French partner, and did not experience any pronounced uncertainty. Seemingly, where the will to change is weak and identification does not occur, the insistence on one’s own ideas and solution may be all the stronger.
Conversely, when the will is strong, uncertainty prevails and models are sought. Ending this section, and relating Twinning to classical, or ideal, imitation, it is clear that they share the ability to draw on different and varied motives.

8.2 The Objects Involved

One of the more prominent characteristics of objects of imitation is that they constitute some kind of success (Sahlin-Andersson 1996). Furthermore, they frequently represent ideals rather than actual practice (ibid) and pick up on what is modern (cf. Brunsson 1990) as well as fashionable (Røvik 1996). In most instances Twinning incorporates these same characteristics, but it also includes a twist of concrete practice. If “success” is interpreted as “accepted as following the rules” then the administrative practices of the old member states are indeed successful objects for the candidates to imitate. In this sense the objects involved in Twinning are also, at least to some extent, real rather than ideal since they build on member state practice. What is particularly interesting in relation to Twinning is that not only practices, but also attitudes, perceptions, and identities seem to function as objects of imitation. Each practice is based on certain perceptions and these perceptions are revealed as the Twinning project proceeds, exposing candidate countries to the taken-for-granted understandings of the member states. In this way not only practice but also norms are shared and spread by Twinning.

In the Tax Project it was the Swedish organisation of tax information exchange, taxpayer communication, and risk management that represented the concrete objects of imitation. In the Statistics Project it was the Swedish work with, and organisation of, statistical procedures; and in the Judiciary Project it was the French attempts to achieve equal access to justice. These seemingly rather dissimilar objects share common roots. Even though they deal with varied issues, and issues that are regulated to different extents, they all draw on ideas of rationality and they all find parts of their concrete expression in modern management models and techniques.

In the Tax Project, the large number of planning documents produced bespeaks a strong faith in a rational perception of how a public administration should work. An explicit vision is needed, the basic values of the administration must be formulated, strategies and plans are imperative, and all work must be viewed and performed as an integrated whole, i.e. as a coherent and co-ordinated unit. A logic connecting vision with task is necessary, and it needs to be shared within the organisation if activities are to run smoothly. All this was expressed as existing in the Swedish model organisation, and as essential for the STI to acquire if it wanted to be modern. And that the Lithuanian tax administration wanted to be modern was both taken for granted and explicitly expressed – in words and in the importance at-
tached to such modern practices as treating taxpayers as customers and es-
establishing procedures for risk management. Clearly, the STI wanted to ad-
here to these practices, which are not prescribed by the acquis communau-
taire but still appear to be part of the appropriate way to implement it.

In the Statistics Project a lot of emphasis was placed on some of the more
famous, and hence fashionable, modern management models. The project as
such was about quality in relation to statistics and the two are intimately
intertwined: “it is not statistics if it is not of a certain quality”, seemed to be
the general opinion within the Twinning project. Interestingly, the way to
reach an acceptable level of statistical quality was apparently to be found in
the application of management tools and techniques. Swedish statistics were
described as being of very good quality, and when assisting the Polish coun-
terpart the Swedish organisation drew heavily on techniques such as human
resource management (which was the foundation for the Prostaff Project);
business process re-engineering (which provided the rationale for the work
on the DG-1 survey); and the balanced scorecard (which was thoroughly
described and used during study visits). In other words a number of man-
agement techniques were introduced under the umbrella concept of total
quality management as a first step towards better statistical output. Working
with these techniques means buying into a modern, and rationalistic, way of
perceiving the world, and such a perception was propagated, by the Swedish
Twinning partner, as improving the quality of statistics. The Polish counter-
part did not appear to find this problematic; on the contrary, GUS engaged in
these practices whole-heartedly.

As regards the Judiciary Project, the objects of imitation were both very
ideational and very concrete. The core of the Twinning project was citizens’
equal access to justice, and even though this right is inscribed in the Council
of Europe’s Convention for the Protection of Human Rights and Fundamen-
tal Freedoms, it is probably more of an ideal than a functioning practice. All
the same, this ideal was the goal of the Judiciary Project. The ideal of justice
has been described as one of the main comprehensive and evolving goals of
Western society (Meyer et al 1994) and as such it is very hard to resist. It is
also very hard to measure and define, which may explain why there is no
regulation on the EU level in this field. However, some kind of implicit
agreement on what counts as equal access to justice in the European Union
seems to exist and this became clear when the Polish solution did not quite
meet the standards. It was the European Union interpretation of what equal
access to justice is that functioned as the object of imitation in the Judiciary
Project. In addition, some very specific features of the French justice system
were involved: reception desks, infomats, and the idea of Maisons de Justice
et de Droit. Implicit in these solutions, as became clear in introducing them,
were ideas of customer orientation – that citizens are to be viewed by courts
as customers and not as inconveniences – and human resource management
– that employees and their opinions matter and must be properly managed.
Consequently, also when dealing with ideals it was important to introduce management into the system.

In summary it may be said that the objects of imitation seem more alike than the motives for participation. The analysis showed that on a general level Twinning deals with *what* members of the EU are supposed to do – provide tax services, participate in the VIES, use risk management, produce statistics of good quality, and ensure equal access to justice – as well as *how* they are expected to do it. A closer look at the member state practices that function as objects of imitation reveals that they seem to be largely about modern management models and techniques. Some of the more prominent management models of our times, such as management by objectives, total quality management, and business process reengineering (Røvik 1998), were actually present in the Twinnings studied. The answer to the question of how EU members are to do what is required seems quite simple: by organising according to management ideas and ideals. The objects of imitation, i.e. the member state administrative practice, can be described as both modern and fashionable as they apply management models and are largely based in rational organisation (Brunsson and Sahlin-Andersson 2000). Therefore these practices are almost perfect objects for imitation: they constitute success (Sahlin-Andersson 1996) because they are modern (Brunsson 1990) and fashionable (Røvik 1996). Also, the objects involved in Twinning are probably matters of practice more than are objects of imitation in general. Even though the member states by necessity account for their practice, this practice is also studied, e.g. in study visits. Where it is normally consultants (or other carriers) that introduce the objects of imitation to the imitator (Sahlin-Andersson 1996; Sahlin-Andersson and Engwall 2002) here it is the model that does it; in other words Twinning creates a direct link between the two. The model is likely to be the one who is most familiar with its own practice, and because of the direct link with the imitator the room for translations is probably reduced as the model is always there to “fill in the blanks”. Then it is of course a question of whether the imitator is willing to take on the object or not and, as will be discussed below, this willingness can vary.

To conclude, Twinning is about *what* it is that EU members are supposed to do and *how* they are expected to do it, but it also seems to communicate *who* a member of the Union is. From the practices that function as objects for imitation and what they signal, it can be concluded that a member of the EU is expected to be a rational organisation, with all that this entails. The member states function as carriers of modern ideas, and even if the candidate countries did not wish to buy into these ideas they would be hard to resist, as the remaining sections will show.
8.3 The Relations Enacted

In the ideal mimetic situation the imitator perceives itself as inferior to the model (Djelic 2001). The model, in its turn, might very well wish to share its experiences and promote its practices as the right thing to do (ibid; Meyer 1996). Viewing Twinning as organised imitation, a number of specificities appear in the relations evolving in projects. First of all, the context of EU enlargement constrains the actors involved. The member states are by definition superior to the candidates in the sense that they are already following the rules, and following the rules is mandatory. In addition, Twinning participation is more or less prescribed, meaning that imitation is virtually compulsory. Finally, Twinning includes an additional actor besides the model and the imitator – i.e. the Commission – which oversees as well as interferes in the mimetic relations. Together the member state, the candidate country, and the Commission constitute a triad of actors that relate to each other in different ways; each one has a specific role to play but deviations from the script can, and do, occur. Circumventions are frequent and resistance is possible. The projects studied also demonstrate that the connection between degree of inferiority/superiority of imitator and model and the ensuing behaviour is varied and not as clear-cut as previously thought.

Starting out with the relations emerging in the *Tax Project*, a first thing to note is that the Commission’s involvement was minor. It mainly consisted in checking and approving the ideas of the Swedish and Lithuanian authorities, and once the initial problems with the covenant had been resolved the Twinning partners were evidently left to work largely on their own. Further Commission involvement was not necessary since member state and candidate country played their respective roles as expected: the Swedish Tax Board behaved like a true model and was indeed perceived as superior by the Lithuanian STI. The project was marked by the Lithuanian trust in the Swedish partner’s experience and judgement but this tendency also meant that the development of the STI depended rather heavily on Swedish input. The STI experienced uncertainty and explicitly looked for guidance and advice from its partner. The Swedish Tax Board, in its turn, was keen on sharing its solutions and seemed determined to make the STI into a better, i.e. modern, tax administration. In this sense the Swedish board was, at least to some extent, driven by what Djelic (2001) calls a “missionary spirit” – it was rather convinced of the universal applicability of its solutions and wanted them to spread. The Lithuanian STI proved a perceptive imitator that looked and listen carefully in order to take in as much advice as possible. In managing to make use of Swedish experience and knowledge when building and reinforcing its administrative system, the Lithuanian authority made great progress and even surpassed some of the old member states’ ways of dealing with tax matters in the EU context. So in the case of the Lithuanian tax administration the traditional role distribution of model and imitator proved successful.
In the Statistics Project, relations were both similar to, and different from, those in the Tax Project. As with the Tax Project, the Commission did not interfere very much in the project – since it went according to EU expectations there was no need for active involvement. However, even if the roles of model and imitator were enacted in the Statistics Project, the relations between them were somewhat more complex than in the Tax Project. The essence of the Statistics Project quite clearly resided in the profession of statisticians and the professionalisation of the production of national statistics. The Twinning centred on techniques, methods, and tools, and everybody involved seemed to speak a common language when it came to statistics. The Swedish organisation was perceived – by itself and by the Polish counterpart – as more experienced and knowledgeable and GUS wanted to learn, discuss, and improve. So much for the professional aspects of the project; when it came to the more organisational matters relations were rather more strained. To begin with, the missionary spirit of the Swedish office was even more pronounced than in the Tax Project, as SCB was clearly convinced of the benefits of its approach and solutions. In addition, the Swedish office was used to assisting other countries in applying them and had developed a certain procedure for doing this. The official SCB line was that the Twinning was being done to assist GUS on Polish terms and considering Polish needs, but it is quite clear that when push came to shove the Swedish side knew better. Polish initiative was explicitly encouraged, but in the end the Swedes wanted to make the important decisions. Hence, where the relations in the Tax Project were about trust and dependence, the relations in the Statistics Project were about professional logic and hierarchy. It is of course noteworthy that even though the Swedish organisation had the final say on most important matters – such as overall project organisation and content – GUS did not always yield. The Polish office had ideas of its own and sometimes implemented them against Swedish advice – as when the work on quality audits was regarded as rushed by SCB – and sometimes said “no thanks” outright – as when Swedish experts were dismissed from activities. All in all, there was a hierarchy, but it was not cut in stone.

The relations evolving in the Judiciary Project, on the other hand, were of a quite different character. First of all, the Commission was much more active and involved than in the other two projects. The first project fiche was not approved; special funds were made available when the Polish Ministry of Justice failed to provide; and the French Twinning partner could sometimes use the Commission to lean on reluctant parts of the Polish administration – in comparison to the other Twinnings studied, Commission involvement was extensive, which demonstrates the EU’s ability to intervene and push the process. However, the fact that the Commission was frequently called on to put pressure on the Polish Ministry of Justice in Twinning projects rather points to the effects of this pressure being neither great nor long-lasting. Instead, pressure seemed to produce counter-pressure in the shape of new
strategies to get around or avoid Commission demands. Perhaps as a consequence, perhaps totally unrelated, the frosty relations between the Commission and the Polish Ministry were mirrored in those between the Ministry and the French Twinning partner. Even though the French partner was quite clearly driven by a missionary spirit, and demonstrated a strong belief in the universal importance of equal access to justice, it did not usually manage to get through to its Polish counterpart. The Polish Ministry of Justice proved a decidedly reluctant imitator and even though civil servants involved in actual Twinning activities would sometimes become engaged and interested, the general attitude was one of resistance and avoidance. The Polish Ministry was only mildly interested in what the French partner had to offer and hardly made any serious commitments; it frequently dismissed the French assistance and attempted influence. It is quite clear that the Ministry did not perceive its Twinning partner as superior in any way and, in consequence, imitation was difficult. But through participation engagement was sometimes created, indicating the power of exchanges and discussions. Also, the local branches of the Polish judiciary were less reluctant than the central organisation, and as bottom-up approaches to change can be just as efficient as top-down ones, the Judiciary Project was not a lost cause. However, the general tendency was for the Ministry of Justice to act according to its own logic rather than to that suggested by the Commission and codified in the Twinning Manual, and this had serious, and mostly negative, effects on the relations in the project.

The relations between model and imitator may be summarised as complex and multi-facetted. The projects studied can be said to represent one case of harmonious relations, one case of positive relations with some friction, and one case of constant struggle. Good relations obviously facilitate the work of the actors involved but they are also benevolent to the mimetic process. In projects where the model was perceived as superior to the imitator and the imitator was ready to imitate, relations were more or less smooth and exchanges between the actors could occur. Good relations allow for discussions, diverging opinions, new ideas, and connections, and this is probably what the Commission has wanted to produce with the aid of the Twinning Manual. In both the Tax Project and the Statistics Project the beneficiary organisation was engaged and committed and wanted to use the Twinning partner in the best possible way, and with good results. In case of the Tax Project, where the imitator still seemed to feel a pronounced inferiority, everybody involved was indeed content and the STI even managed to perform better than some of the old member states, i.e. some of its potential models.

In the Judiciary Project, on the other hand, the relations were reversed. The Polish Ministry of Justice did not see itself as inferior and did not identify with the French partner; relations were strained, to say the least; there was no real commitment on the Polish side; avoidance, circumventions, and outright resistance were the norm; and hardly anyone seemed satisfied with the
project. Given these conditions it is of course interesting that anything was achieved at all by this Twinning. As will be developed below, some things did change as a result of the Judiciary Project, which indicates that it is possible to “force” imitation – at least to a certain degree – even if the model is not perceived as superior to the imitator. The Judiciary Project shows that no perceived inferiority may still lead to minor change in the face of resistance, which is something that traditional takes on imitation do not account for in any detailed way.

8.4 The Results Produced

The results of Twinning projects are dependent on, but not determined by, the objects of imitation involved. Regardless of intentions, and because of rule ambiguity (March 1987; Bloor 2002) and processes of translation (Sevón 1996; Sahlin-Andersson and Sevón 2003), the resulting practice will deviate, more or less, from the object. Bearing in mind the idea of imitation as translation instead of as copying, this section will focus on some general tendencies as opposed to particular translation processes. Without going into details of how Swedish and French practices have been translated into Lithuanian and Polish solutions, the patterns that emerge will be analysed. Bringing together the results of the Tax Project, the Statistics Project, and the Judiciary Project yields a picture of rule-following within the European Union as mainly concerned with modernisation and professionalisation. The Twinnings studied illustrate both the frequent perceptiveness, and eagerness, of the candidates when it comes to buying into these ideas, and how difficult it seems to be to resist them altogether. The ideas of rational organisation (Brunsson and Sahlin-Andersson 2000) are present in the objects of imitation, and that they re-appear in the results is therefore not a surprise. It is rather the openness towards these ideas among the candidate countries, together with the naturalness with which they are propagated by the member states, that is striking.

In the Tax Project the Swedish Tax Board brought a modern, and rational, outlook to the practice of tax administration – including both normative beliefs and normative practices. And the Lithuanian administration bought into these beliefs and practices as it revised its legislation, built up its CLO and ELO functions, introduced the notion of risk management, and turned its previous control function into a service. As already mentioned, the Swedish view seemed to be one of the universal applicability – albeit allowing for local adjustments – of the Swedish attitude to tax administration and the Lithuanian authority never seemed to question this view. Instead, it accepted its basic tenets and used them as the building blocks for its organisation. As a consequence, the ideas of modernity and rationality were built into the new organisation of the STI when hierarchy and identity were created by the de-
inition of visions, missions, values, and plans. The main result of the Tax Project was hence the turning of the STI into a modern, professionalised state organisation with defined goals and tasks. Moreover, as the STI began to perceive itself as a modern organisation, and was also recognised as such by the Swedish Twinning partner, a pronounced identification with the European Union and its member states seemed to emerge. Once “one of them”, the Lithuanian organisation started to compare and evaluate its own performance against that of the other members, indicating that in addition to perceiving itself as modern the STI also saw itself as European.

The results of the Statistics Project in many ways reproduce the ones obtained in the Tax Project. Once again the Swedish partner introduced a particular way of understanding statistical work built on rationality and modern management techniques. If anything, the focus on management ideas and ideals was even more pronounced than in the Lithuanian project, and together with the importance attached to professionalism – including attitudes and perceptions as well as actual competence – this led to quite interesting results. Its perception of itself as a rational statistical office was apparently rather strong within GUS even before the project began but it was reinforced by co-operation with SCB. The Swedish statistical office was described, by itself and by GUS, as advanced and modern, and the Polish partner eagerly accepted the solutions, methods, and models proposed. As a result, a total quality management perspective on the production of statistics was introduced, bringing with it work models such as human resource management and the balanced scorecard. Particularly telling is the enthusiasm with which the Polish office jumped at the Swedish quality audits, which can be seen as a sign of identification with the more successful partner. That quality audits functioned well in the Swedish organisation was taken as a guarantee that they would in the Polish one too, since the offices belonged to the same category of organisations. In parallel, the exchange of ideas, methodologies, and solutions between expert statisticians in order to improve and develop statistical products was a key to the Statistical Project. Throughout the Twinning a particular way of talking about statistics was detectable, accentuating the objective, technical, and even scientific aspects of producing statistics. Also, the importance accorded to professional standards – as opposed to outright regulation – was pronounced. Statistics were regarded as vital and beneficial, and the light guiding their production was provided by Eurostat’s standards and code of practice. The eagerness with which GUS pursued the guidelines and wanted to incorporate them indicates that the office indeed identified with the statistical profession, sharing its values and ideals. Looking at the outcomes of the Statistics Project, it is clear that they were about reinforced modernisation and professionalisation of the already functioning Polish national statistical office.

Ending this section by looking at the results of the Judiciary Project, we see that these are, once again, quite different from those of the other Twin-
nings. Where the results of the Tax Project and the Statistics Project were extensive, noticeable, and positively evaluated by all involved parties, the ones of the Judiciary Project were rather the opposite. They were of minor value and deemed insufficient by the Commission; they were local and very hard to realise; they were wanted by a few but resisted by the majority. All the same, the idea that justice can be achieved by the introduction of rational organising and modern management models and techniques was introduced to parts of the Polish judiciary and some proponents were won. Reception desks and infomats were created and court employees did get training etc, and other parts of the judiciary started to want the same. The practical, everyday reality of implementing the Twinning project managed to influence the development of concrete administrative practices to some extent, and small steps were made towards the EU ideal and norms of justice. Also, the increase in international contacts and the exposure to external systems, methods, and organisation may have opened the door to further change. Experiences from this Twinning – e.g. of seeing citizens as customers, of human resource management, and of “being heard” – may have demonstrated to the Polish civil servants that similar problems occur all over Europe. In this sense, identification with the rest of the EU’s member states may be under way. However, the general results of the Judiciary Project can only be summarised as minor moves towards the European ideals.

The results of the Twinnings studied can be summarised as rather coherent – at least in terms of their meaning, if not of their tangible manifestations. Modernity, in the sense of a focus on progress, effectiveness, and rational approaches to public administration (cp. Olsen 1990), and the professionalisation of civil servants are recurring themes in the account of what comes out of Twinning. In fact, the common denominator in the results seems to be the turning of public administrative units into formal organisations. No single project could achieve this transformation on its own but every project worked with some aspects of organisation, and it should be remembered that the Polish and Lithuanian administrations participated in numerous Twinning projects. Over time, and step by step, the building blocks of organisation, i.e. hierarchy, identity, and rationality (Brunsson and Sahlin-Andersson 2000), were incorporated into the Lithuanian STI, the Polish National Statistical Office, and parts of the Polish judiciary. Hierarchy, identity, and rationality, as well as modern approaches and professionalism, were inherent in the member state practices that functioned as objects of imitation, and so were spread to the candidate countries. What is particularly noteworthy is that all of this seemingly took place without any pronounced resistance, which points to the attractiveness of modern ideas, ideals, and practices (Meyer and Rowan 1977; Finnemore 1996, Sahlin-Andersson and Engwall 2002). Even though the results have been studied in general rather than in detail, searching for patterns instead of probing deep into each project, it is safe to say that the candidate countries’ new or
changed activities and identities did not become copies of those of the member states. The ideational foundations and concrete practices of the Swedish tax and statistics administrations and the French organisation of access to justice were disembodied from their original context and subsequently re-embedded in Polish and Lithuanian milieus, and in this process ideas and practices were transformed (cp. Czarniawska and Joerges 1996; Erlingsdóttir 1999). French and Swedish practice inspired, but did not determine, the Polish and Lithuanian administrative changes.

8.5 Summary: The Specificities of Organised Imitation

This chapter has analysed Twinning in relation to the elements of the mimetic process, and this analysis may now help to answer the question of what it implies to follow rules by imitation. The Twinnings I have studied took place in the particular context of the 2004 Eastern enlargement of the European Union, which was a thoroughly political process. Strong ideas and ideals surrounded the enlargement, which quite naturally affected the contents and implementation of Twinning projects. In addition, Twinning is a genuinely organised practice that gained further importance through its regulative effects. Twinning projects do not therefore display any perfect process of imitation – if such processes even exist – but they do involve mimetic elements. As predicted by traditional views on imitation, many different motives interact to prompt project initiation; the objects of imitation involved frequently represent success in some sense; relations of inferiority and superiority are common between imitator and model; and the results are similar to, even though not identical with, the model solutions. The general outline is the same but it is the particular context and contents that give the study of Twinning as organised imitation an edge. By using organisational imitation to provide structure, the analysis performed in this chapter has contributed a number of insights, which are also relevant to imitation in general.

First of all, the external motives involved are very varied indeed, and not always contained within the formal rules of the EU. Imitation is frequently described as voluntary, but this was not the case with the organised imitation implied in Twinning projects. However, the external pressure can be more or less formal, as both hard directives and non-codified ideals – and anything between those two extremes – are invoked as reasons for initiating projects. It is noteworthy that it was the hard rules that seemed to create the most uncertainty while the softer rules did so to a much lesser extent, which is quite contrary to how regulation is commonly perceived. Hard law is associated with clear and defined goals and actions but – as the Tax Project demonstrated – this is not necessarily how rule-followers perceive it.
Second, and much in line with the Scandinavian new institutionalist view of imitation, the analysis showed that a pronounced will to change facilitates mimesis, but it also includes uncertainty as a complementary factor. Where the will to change was great uncertainty as to how to follow the rules in the appropriate way arose, resulting in turning to, and reliance on, more experienced models. Accordingly, the desire to change and the uncertainty it provoked worked together to induce imitation. In this way one classical and one identity-based motive for imitation combine in organised imitation.

Third, the contents of projects – i.e. the objects of imitation – evolve very much around modern management. This is quite in line with the new institutionalist take on imitation as most management models and techniques are both fashionable and rational, meaning that their adoption is perceived as constituting success. However, Twinning is based in practice in a way that does not necessarily apply in other imitation contexts. The models – i.e. organisations already working with the objects of imitation – are much more involved and have direct relations with the imitators, which is otherwise rare. Instead of relying only on context-free and rationalised accounts of practice, a more or less pronounced touch of practice is actually included. To the imitator this situation facilitates comparisons but it simultaneously reduces the room for translation since the model is involved in the process, checking and approving along the way. Hence, organised imitation certainly allows for translation processes, but the translation is constrained.

Fourth, the relations involved in organised imitation are complex and varied. Because models and imitators seldom actually meet, the mimetic relations are commonly played out at a distance, or indirectly, but this is not so when it comes to Twinning. Model and imitator interact in a very real sense, which gives rise to quite peculiar results. Where the imitator is commonly portrayed as perceiving itself as inferior to the model, such an unequal relation is not necessary when it comes to organised imitation. The traditional relationship of inferior imitator and superior model seemingly facilitates imitation but it is not a prerequisite, as the Judiciary Project illustrated. It is possible for the imitator to resist both the model and the object of imitation, but it is equally possible to force imitation somewhat against the imitator’s will. In such cases it is the context that provides the power to force and in some ways this situation resembles conditionality. However, conditionality does not account for resistance and through the imitator’s ability to resist, mimetic processes become more dynamic.

Fifth, the outcomes or results of organised imitation share a common root. Normally the outcomes of imitation are analysed in relation to the objects of imitation and focus is on similarities and differences between them. The analysis performed in this chapter has rather looked at general tendencies and patterns. Just as the objects of imitation mainly consist of modern management models and techniques, the results of organised imitation evolve around formal organisation. Through processes of modernisation – in the
sense of introducing new ideas, techniques, and systems – and professionali-
sation, the imitator was re-structured according to the ideal of formal organi-
sation. Conspicuously, the imitators did not seem to resist this tendency; 
external involvement and specific components were resisted but not the no-
ton of organisation per se. This is so because the notion of organisation is 
rather hidden in Twinning, but also because it is highly legitimate in Western 
society.

To summarise, Twinning involves an intricate interplay between volunta-
ry choice and coercion. It is about introducing management models into pub-
lic administrations that are to become formal organisations. And through its 
set-up as organised imitation it gives rise to interesting and unexpected 
“side-effects”. As demonstrated above, motives, objects, relations, and re-
sults display particularities when attempts are made to understand Twinning 
as imitation. These particularities provide an answer to the question of what 
it implies to follow rules through imitation.

Twinning was designed to assist the candidate countries in implementing 
the acquis communautaire, and it can thus be conceived of as rules on how to 
follow rules. Further, the rule-following to which Twinning gives rise is 
constructed as organised imitation, which displays certain specificities as 
summarised above. It is noteworthy that although Twinning is intended to 
help candidates follow the rules of the EU, the realisation of projects brings 
with it more, and different, regulation. The set-up as well as the content and 
evolving practice of Twinning turn it into a regulative instrument in itself: a 
new kind of soft regulation. In the next chapter the regulative processes and 
characteristics involved in Twinning will be discussed in relation to the 
power of soft regulation in general. In this way the regulative elements at 
work in Twinning will be outlined, providing the second part of the answer 
regarding the construction of regulation through Twinning.
Chapter 9.  
The Power of Soft Regulation

This thesis took its point of departure in the increasing and changing regulation found in modern society. New regulatory instruments are being developed, and the widespread regulatory mode of hard law is complemented by softer forms of regulation. The regulative shifts concerning regulators, regulatory modes, the nature of rules, and compliance mechanisms (Djelic and Sahlin-Andersson 2006a) are profound and affect both regulators and regulatees. The European Union and its member states are playing an important part in these regulatory developments. The EU holds the power to issue hard rules but it also makes use of numerous softer ways to influence its members, to the point that the Union has even been described as “experimenting with a variety of different regulatory approaches” (Knill and Lenschow 2004:218). Twinning represents one such soft regulatory approach. Soft kinds of rules have certainly attracted attention and interest as their use has grown, but the workings of soft regulation in general are still poorly understood. In this chapter soft regulation will be discussed in terms of the regulative capacities that constitute its power to influence.

In the previous chapters three individual Twinning projects were described, compared, and synthesised. The analysis assumed a theoretical framework of imitation, and a number of patterns and themes were brought out. It was concluded that Twinning projects draw on a variety of rules and frequently move beyond what is prescribed by the acquis communautaire; they are based on rule-following as constructed in, and by, member state organisational practice; they allow candidate countries to act, in the sense of both seeking and resisting external involvement; and they build on rational organising and management ideas. It is striking that Twinning – despite its softness – yields apparent as well as significant results in terms of altered structures, perceptions, and practices. How can this be? What is it that makes Twinning such a powerful means to regulate? Soft regulation clearly contains certain regulative elements that hold the power to influence both activities and identities. I argue that this power is based in the combinative, co-productive, and constitutive elements of soft regulation, and these three elements will be discussed and developed in this chapter.

The combinative elements involved in soft regulation have the capacity to bring together and combine various regulative ingredients. First, different
kinds of rules can be combined in soft regulation. In a number of ways, and to varying degrees, hard and soft, formal and informal, as well as implicit and explicit rules can be made to work in parallel within soft regulation, which seemingly increases the regulative reach. Second, the regulation of identity and the regulation of activity can be combined in soft regulation. Rules on what to do, how to do it, and why to do it can be brought together to envelop and permeate the regulatee, which appears to reinforce the regulative anchorage. Third, different sources of legitimacy can be combined in soft regulation. Many and varied legitimising logics can be tapped into when justifying the rules, which makes it harder to question and resist the regulation. The combinative elements of soft regulation will be further discussed in section 9.1.

When it comes to the co-productive elements of soft regulation, these have the capacity to interweave regulators and regulatees in the regulatory process. Soft regulators constitute a specific kind of regulator that lacks formal authority, coercive means, and sanctioning power. Because they – like all kinds of organisations – are embedded in institutional environments their ability to regulate is negotiated and framed by their surroundings. Accordingly, soft regulators are somewhat constrained in their rule-making by societal norms and expectations. The regulatees, on the other hand, can be portrayed as being in the opposite situation. Because all rules must be translated into practice, agency is accorded to the rule-followers and in soft regulation the potential for agency is great. Consequently, soft regulatees are both regulated and empowered in specific ways. In section 9.2 I will argue that regulators and regulatees create soft regulation together and that this co-production greatly contributes to the power of soft rules.

The constitutive elements involved in soft regulation, finally, have the capacity to construct regulatees as formal organisations susceptible to further regulation. Through its concrete content and ideational foundation, soft regulation constitutes rule followers as organisations with identities and hierarchies. Most importantly, it also introduces and firmly anchors the ideas and ideals of rationality and modernity within both the practices and understandings of the regulatees. The constitutive elements of soft regulation will be developed in section 9.3.

The combinative, co-productive, and constitutive elements of soft regulation give rise to specific regulative processes. Through combination, co-production, and constitution a particular kind of regulation that differs substantially from hard law – which is formal, coercive, and relies on sanctions to affect behaviour – is created.
9.1 The Combinative Elements of Soft Regulation

One of the main findings in Chapter 8 was that Twinning relies on a number of different kinds of rules when regulating administrative developments in the candidate countries. Directives, regulations, and codes of conduct and also non-codified ideals were used to motivate project initiation. It was also demonstrated that structures and procedures as well as perceptions were affected by Twinning through the introduction of modern management ideas and techniques. Further, everybody involved seemed to agree that Twinning is efficient in building administrative capacity. Twinning seems to draw on many different regulative sources, manages to influence both identities and activities, and is perceived as a thoroughly legitimate procedure. In the sections to come I will argue that the combination of kinds of rules, of rules for identity and activity, and of sources of legitimacy that Twinning displays is relevant to soft regulation in general.

Combining Different Kinds of Rules

Rules can be of different kinds: they may be explicit or implicit, formal or informal, hard or soft. I argue that part of soft regulation’s power to influence is likely to stem from the capacity to draw on different kinds of rules. It has been noted that the shift from government to governance has resulted in a variety of kinds of rules and control mechanisms simultaneously bearing on regulatees (Scott 2004), and the combination of rules seems to hold the ability to reach further than traditional hard law. Different kinds of rules are associated with different ways of regulating and they all have their strengths and weaknesses. Sometimes hard law, with its backing in coercion and sanctions, is deemed necessary in order to achieve change or order, but only strongly authoritative rule makers have the general power to issue this kind of rules. In contrast, soft forms of regulation might sometimes succeed where hard law has failed, or is not possible for structural or political reasons (cf. Mörth 2004a). However, it is difficult draw the line between hard and soft rules (Mörth 2006), and hard and soft elements are frequently dependent upon each other to reach their full capacity. The rules relevant to Twinning, i.e. the acquis and the rules of Twinning – as specified in the Twinning Manual and concretised through Twinning practice – lucidly illustrate the co-dependency of hard and soft rules.

The acquis consists mainly of formal rules. They are explicitly formulated and codified in legal documents, but these formal rules contain both hard and soft elements. Some of them – like the 6th Council Directive on Indirect Taxation – represent mandatory prescriptions connected to formal sanctions, while others come in the shape of standards, norms, guidelines and recommendations. Overall, the acquis is connected to coercive sanctions – because of its elements of hard law and its explicit link with the Copenhagen Criteria.
– but it is rather evident that it draws on normative and professional pressures too. Existing member state practice as well as professional exchanges also function as compliance mechanisms, which gives the acquis a softer touch. The acquis contains a great deal of hard law but also accommodates softer, and frequently practice-based, kinds of rules in much the same way as the EU holds the formal power to issue hard rules but in practice often relies on soft regulation instead (Mörth 2006). The blending of kinds of rules is also evident in relation to the rules of Twinning. The rhetoric of assistance and support surrounding Twinning makes it appear to build on soft rules but it is in fact quite closely connected with hard law. The covenant is a legally binding contract obliging the signatories to live up to the promises made therein, and the Commission has the right to make use of coercive sanctions if it is not respected. However, such severe measures appear to be avoided in favour of social and normative ones, which indicates a blending of hard rules and soft sanctions. That the formal rules of Twinning are frequently contradicted by informal ones emerging from Twinning practice further complicates the relation between the different kinds of rules involved. In addition, the informal rules seemingly go beyond what is formally prescribed, substantially extending the regulative reach of Twinning. Hard and soft rules interact with formal and informal ones, meaning that the regulation is more comprehensive than might be noted at first glance.

To summarise, soft regulation combines a number of different kinds of rules and regulative elements, and this combination seems to increase the ability of the regulation to influence behaviour. Twinning demonstrates this tendency as not only structures and methods of work but also perceptions and identities are changed by project implementation. Dahl (2007), treating the EU’s monitoring of the candidate countries’ membership adaptations as a mode of governance, also shows that softer regulative practices frequently envelop the hard acquis. And in relation to the Open Method of Coordination K. Jacobsson (2004) has defined a number of, using her terminology, governance mechanisms that combine and work together to foster converging outlooks as well as normative guidance. The combination of hard and soft, formal and informal, explicit and implicit rules is likely to extend the regulative reach as more issues and activities can be covered in a way that is less intrusive – and therefore more attractive to the regulatee – than the reliance on hard law alone. Accordingly, the combination of different kinds of rules is compelling, and the use of regulative instruments drawing on both hard and soft elements is becoming more and more important in the context of transnational regulation (cf. Mörth 2006). But the blend of different kinds of rules is not the only combinative element involved in soft regulation. Below, the capacity to include rules for both identity and activity will be discussed.
Combining Rules for Identity and Rules for Activity

Rules can influence regulatees in a number of ways: they can direct attention (March and Olsen 1979), create meaning (McNeely 1995; Finnemore 1996), envelop identity, and indicate appropriate action (March and Olsen 1989). I argue that the power of soft regulation stems partly from its capacity to combine the regulation of identity with the regulation of activity. By targeting the identity of regulatees, soft regulation has the capacity to induce self-regulation because – according to a logic of appropriateness (March and Olsen 1989) – identity steers activity. Conversely, by focusing on concrete activities soft regulation has the capacity to influence regulatee identity because changed actions can lead to changed perceptions (cf. March 1997). Accordingly, by including rules for both identity and activity soft regulation can seemingly take a stronger hold of the regulatee.

In general, regulation applies to certain actor categories and not others. International organisations, for instance, regulate their member states, and not individuals or non-member states. The member states therefore share the identity of being members and are similar in at least this respect. The organisational rules apply in much the same way to all the regulatees included. When rules are extended to new regulatees – as in the case of the EU’s candidate countries – it signals that the newcomers share common traits with the experienced rule followers. In this way the regulatees’ identities are regulated. Twinning builds on the possibility of transferring knowledge of the acquis from one state to another. Consequently, it contains the implicit assumption that candidate countries and member states are more or less the same and belong to the same category. That the EU treats the candidates as capable of becoming modern, European states is likely to have effects on their self-perceptions. A regulative practice such as Twinning – which has been created to introduce new members to a regulatory community – can be described as the concrete expression of the assumed similarity between regulatees. Therefore it holds the power to influence the identity and identification of the regulatees, and this is also what Twinning achieved.

Turning next to the regulation of activities, this has two dimensions: rules on what to do and rules on how to do it. The rules on what to do direct attention (cf. March and Olsen 1979) towards certain issues or activity areas. They point out which activities are important and meaningful for the regulator, and should be so to the regulatees as well. Generally, that which is attended to becomes meaningful and the rules on what to do have the capacity to steer regulatee priorities. In relation to Twinning it is primarily the acquis that says to what attention must be paid. The candidate countries’ attention was directed towards the VAT Information Exchange System, the European Statistical System, and the ideal of equal access to justice, which then became meaningful for them to work with. In this way the EU defines the reality its future members are about to become a part of (cf. Barnett and Fin-
The EU rules specify what the candidates need to do but not how it is to be done. However, soft regulation has the capacity also to influence the “how” of regulated activities.

When it comes to the question of how to achieve the regulated systems, structures, or ideas in the appropriate way, soft regulation can rely on interactions, discussions, and exchanges as more or less hidden – and genuinely social – forms of regulation. These exchanges can take place between regulatees but they can also involve the regulator, as will be discussed in section 9.2. Through different kinds of contacts the content of rule-following is defined by practice. Activities such as peer review, benchmarking, actor involvement, networking, and partnerships (cf. Jacobsson K 2004 on the Open Method of Co-ordination) build on regulators and regulatees interacting and exchanging experiences. In Twinning this interaction is thoroughly organised and vital to the regulative capabilities of the instrument. Through the provision of concrete examples of rule-following, i.e. the already existing member state administrative practices, Twinning demonstrates how the acquis is supposed to be turned into practice. Instead of leaving the question of how to follow the rules in the hands of the newly initiated regulatees, the more experienced ones were called on to explain, elucidate, and concretise. In this way Twinning provides rules on how to act, and so do other practice-based forms of soft regulation.

To summarise, soft regulation can combine the regulation of identity with the regulation of activity, which potentially strengthens its power. Identities and activities are interconnected and continuously influence each other. By involving and influencing both identity and activities soft regulation has the capacity to permeate the regulatees on several levels. Where hard law can rely on authority and coercive sanctions, soft regulation rather regulates through socialisation, common grounds, and shared beliefs. These take time and effort to develop, and common identities and practices can be expected to speed up the process. Based on findings from Twinning I argue that the combination of rules for identity and rules for activity has the capacity to induce common identities and practices, and therefore contributes to the power of soft regulation.

Combining Sources of Legitimacy

No matter what kind of rules a regulator issues, and regardless of their regulating identity or activity, the legitimacy of the rules will be essential to their ability to influence and guide. I argue that soft regulation has the capacity to increase rule legitimacy by combining different sources of legitimacy. On a general note legitimacy is key because it bestows greater capabilities upon the focal object, be it an organisation, behaviour, or a rule. That which is perceived as legitimate is never questioned but rather left alone (Meyer and Rowan 1977). Hence the notion of legitimate regulation is central to a rule’s
chances of being followed, and therefore the capacity to build legitimacy is vital. Legitimacy can be created in numerous ways and in soft regulation legitimising sources can be combined to boost the regulation’s reach. Where the legitimacy of hard law is foremost connected to the authority of the rule-maker, soft regulation draws on a variety of legitimising logics. That the rules are modern, and in line with modern ways of organising, renders the regulation legitimate (Ahrne and Brunsson 2004; Mörth 2006), but other sources also exist and can be combined.

One important source of legitimacy found in Twinning is the connection to organisational membership. Because organising constitutes a dominant trend in modern society (Ahrne and Brunsson 2004; 2006), and because organisations have the right – or even the duty – to provide rules for their members, applying for membership means agreeing to follow the rules. This is the logic of organisational membership (Ahrne at al 2000; Jacobsson and Sahlin-Andersson 2006) and it is a central source of legitimacy when it comes to rules on the inclusion of new organisational members. At this stage membership is conditional upon the new members accepting the rules, and in the case of the 2004 EU enlargement Twinning was created to facilitate this acceptance. Hence, Twinning had a highly legitimate purpose and its legitimacy was all the greater because EU membership was so attractive to the Central and East European states.

A second source of legitimacy in relation to Twinning – and one that has been noted in other cases as well – is the positive rhetoric enveloping soft regulation. When participants describe Twinning, emphasis is put on assistance, voluntary exchanges, and knowledge-sharing rather than regulation and monitoring. Along the same lines the Open Method of Co-ordination is framed as being about learning and improvement (Jacobsson K. 2004) rather than steering and control. Soft regulation is commonly presented as progressive and as contributing to prosperity (Djelic and Sahlin-Andersson 2006b) and since these are highly attractive values, legitimacy is bestowed on the rules that are said to realise them. By explicitly connecting to science and/or expertise (ibid) soft regulation gains an aura of objectivity and of conveying the best possible guidelines for action. What counts as expertise might vary from one context to another – in Twinning it was the member states’ administrative practice that constituted the relevant expertise – but by making reference to expertise, and to “good” or “true” values, legitimacy can be created around regulation.

A third legitimising source found in Twinning, and applicable to many kinds of soft regulation, is practice. Because soft regulation frequently comes in the shape of recommendations, best practice, peer review procedures or the like – which are all connected to, and intended to bear on, practice – practice acquires a particular standing as a source of legitimacy. In contrast to political ideals and scientific discussions, practice can be presented as “real” and connected to “actual activities”. In Twinning practice is
essential and the member states are cast as experts on following the EU rules. Just as expertise has been claimed to create authority in relation to rule-makers (Jacobsson and Sahlin-Andersson 2006), I argue that it can create legitimacy in relation to soft regulation. If the expert rule-followers approve of the rules they are, by definition, legitimate. A further legitimising aspect of practice – richly demonstrated in Twinning – is that it is so strongly grounded in modern management ideas, techniques, and models. As these models and techniques are highly legitimate in modern society (Røvik 1998; Sahlin-Andersson and Engwall 2002) their application sheds legitimacy on their appliers too.

In summary, soft regulation has the capacity to connect to a number of legitimising sources, such as the logic of organisational membership, universally positive values, and practice permeated by modern management. The combination of different sources of legitimacy is likely to increase the attractiveness of soft regulation in the eyes of both regulators and regulatees, and surrounds the rules with positive connotations. Because soft regulation is not coercive it must rely on other processes to induce compliance, and the creation of legitimacy around the rules is seemingly a viable one.

To conclude, the combinative elements of soft regulation contain kinds of rules, rules for identity and activity, and sources of legitimacy. But soft regulation also has the capacity to bring rule-makers and rule-followers close together. The co-productive elements of soft regulation will now be outlined.

9.2 The Co-productive Elements of Soft Regulation

One of the essential findings in Chapter 8 was that rule-following is constructed in, and by, member state organisational practice rather than enforced by the rules themselves. The rules of Twinning were particularly illustrative in this regard because the practice evolved well beyond, and sometimes even contradicted, the formal regulation. Both the acquis and the rules of Twinning must be filled with concrete content in order to influence behaviour, and this filling is mainly done by the member states and the candidates, i.e. the regulatees. In Twinning processes regulation and regulators do not in themselves manage to direct candidate country behaviour. Something appears to happen on the way from rule-making to rule-following – something that I call *co-production.* Looking closely at soft regulation in a transnational context reveals several regulators and numerous regulatees, and I argue that the co-productive elements of soft regulation create dynamic connections between regulators and regulatees.
The Role of the Regulators

Regulators obviously regulate, but the processes of producing and enforcing rules are not straightforward. Because all organisations are embedded in, and thoroughly affected by, their institutional environments (Meyer and Rowan 1977; Jacobsson 2006), regulators too are influenced by their surroundings. I argue that regulators are enabled as well as constrained in their rule-making by these environments. Both the organisations with which the regulators interact and societal norms and ideas have the potential to touch and influence their rule-making. While institutionalised environments have granted states the legitimate right to rule, other kinds of regulators face particular possibilities and restrictions emanating from these same environments. The European Union’s attempts to regulate through Twinning provide telling examples of the mixture of opportunities and constraints.

Through its founding treaties, and the institutional importance accorded to them, the EU has the formal right and power to regulate by hard means. However, it frequently chooses not to apply hard regulation. One reason for this may be that it is perceived as more appropriate – and probably more viable – to use soft regulation. Twinning seems to have grown out of the EU’s wish to gain some control over the administrative developments in its future member states. As shown throughout this thesis, Twinning also contributes to quite substantial changes, and yet it is never described as regulation. Instead, the EU has chosen to frame Twinning in different, and softer, terms such as assistance, professional exchanges, and knowledge-sharing. As a consequence of this soft rhetoric it is difficult for the candidate countries to oppose Twinning and the regulation it exerts. Twinning evolves around the positively perceived notions of best practice, benchmarking, and knowledge transfer (cf. Jacobsson K. et al 2004), and these notions signal progress and improvement, which makes them hard to refuse in a context of modern states and organisations (Meyer et al 1994). However, it may not be that the EU decided to use this soft rhetoric; a trend towards de-emphasising the elements of control within soft regulation has been noted in studies of governance and this applies to Twinning as well. Control is still important to regulation but it is “increasingly hidden and neutralized behind reference to science and expertise” (Djelic and Sahlin-Andersson 2006b:379). It appears that coercion is gradually becoming perceived as an illegitimate sanctioning mechanism, presumably because it does not represent a modern, rational, and knowledge-based way to regulate. Because even such powerful regulators as the EU are constrained by norms of modernity and rationality, soft regulation may be the most appropriate way to regulate.

The appropriateness of soft regulation is further reinforced by the fact that most non-state regulators do not have recourse to coercive sanctioning mechanisms. Even if the EU holds a certain regulative authority it is, in principle, still weaker than its members because these are states with institutio-
nalised sovereignty. And states are not the only regulatees with institutionalised actorhood – all kinds of organisations as well as individuals come with institutionalised expectations regarding some degree of “sovereignty” (cf. Czarniawska-Joerges 1989; Drori and Meyer 2006). Because coercion is not an option for most regulators, and because almost all regulatees hold institutionalised agency, it is not possible to enforce compliance. Instead, regulatees seem to need to comply voluntarily, or at least be enveloped in a framework of rhetoric and practice marked by voluntariness. The regulators’ need to create such frameworks appears to lead to innovative and soft forms of regulation – like Twinning – which accommodate both the regulators’ will to influence and the regulatees’ freedom to act, as will be discussed in the next section.

To summarise, non-state regulators are embedded in institutionalised environments granting them certain regulative abilities but also restricting them in their rule-making. Regulators are therefore expected to regulate but they are not free to regulate as they see fit, and this is an important ingredient of co-production. The illegitimacy of coercive means to regulate and the actorhood of the regulatees hinder non-state regulators from using hard law and oblige them to turn to softer means. The societal “rules on how to regulate” must be considered in every instance and as a result, new and soft types of regulation emerge. The capacity of soft regulation to still accommodate the regulators’ wish to control and influence most likely contributes to its power.

The Responsibilities of the Regulatees

Rules influence their followers, but they do so in unpredictable ways. On a general note rules are ambiguous and do not determine behaviour in the details (March 1994; Modell 2002), while what counts as rule-following is negotiated in a genuinely social process (van Gunsteren 1976; Bloor 2002). Together these two elements open the door for agency on the part of the regulatee, and I argue that the use of soft regulation, while constraining, also empowers the regulatees. The agency and room for manoeuvre seem greater for soft regulation than for hard law, and hard regulation with soft elements – such as the acquis – can be expected to allow for more discretion than solid directives. One reason for this might be that the combination of different kinds of rules creates gaps as some rules work against each other. Another is that soft regulation has the capacity to include and activate the regulatee in the regulative process in a way different from hard law.

In Twinning, both the EU acquis and the rules of Twinning allow for agency. For instance, the hard and formal 6th Council Directive on Indirect Taxation states that the members of the EU are required to adopt laws, regulations, and administrative provisions necessary for the system to enter into force. However, it does not specify how this is to be achieved in practice – neither the concrete contents of the laws needed nor the practical organisa-
tion, procedures, or methods of work to be applied are indicated. The rule-
following member states must fill the prescriptions with content, and that
freedom – or rather necessity – of choice exists is demonstrated by the mem-
ers opting for different solutions. For instance in relation to the Tax
Project, the Lithuanian solution is inspired by the Swedish organisation but
they are not identical, and they are still both accepted by the EU. Regarding
the rules of Twinning, and particularly those emanating from project imple-
mentation practice, they stipulate that the member states evaluate, make
comments, and give advice, but that it is the candidate countries that are
supposed to come up with ideas and make the important decisions. Because
the members are expected to approve of the candidates’ proposed solutions
Twinning can be described as a testing-ground for rule-following, as solu-
tions are tried and discussed in terms of their compatibility with EU de-
mands. In this way the meaning of the acquis is negotiated between expe-
rienced rule-followers and newcomers, which rather demands the active
participation of the regulatees.

That regulatees are included and involved in soft regulative processes is
further highlighted by the sanctioning procedures involved. Because soft
rules, such as standards and recommendations, are not legally binding, fail-
ure to follow them is not “illegal”. The same goes for hard rules enveloped
in soft regulation, such as the rules of Twinning. The covenant is a legally
binding contract and breaking it should mean sanctions but, as the Judiciary
Project demonstrated, sanctions are not always activated. Because breaches
and sanctions are not determined beforehand but rather negotiated as they
occur, soft regulation can be described as more loosely formulated than hard
law. Within soft regulation regulatees can argue, discuss, and negotiate with
the regulator to an extent that is not possible when hard law is involved, and
they might even evade sanctions altogether. This is quite clearly what hap-
pened in the Judiciary Project, where the Polish Ministry of Justice repeated-
ly failed to follow the rules of Twinning but never experienced any real
sanctions.

To summarise, soft regulation allows for, and sometimes presupposes,
agency on the part of the regulatee. Because soft regulation is more loosely
formulated than hard law it needs agency to become practice. Soft regulation
is not coupled to coercive sanctions and non-compliance is not punished
through official channels. Instead, it provides a frame within which rule-
following can develop. As Twinning illustrates, the regulative procedure is
one where the regulator all but tests what is acceptable to the regulatee; rules
are formulated but when they are not followed they are frequently renego-

90 The tendency for member states to opt for very different administrative solutions and or-
ganisational responses to EU rules has been noted extensively in the literature on Europeani-
sation (e.g. Mény et al 1996; Hanf and Soetendorp 1998; Jacobsson et al 2001; Jungar and
Ahlbäck-Öberg 2002; Börzel and Risse 2003), testifying to its prevalence and general appli-
cability.
tiated rather than enforced. Also, societal norms and expectations cast trans-
national regulatees as modern and rational actors. Such actors are expected
to be active rule-shapers rather than passive rule-takers. With soft regulation
regulatees are both regulated and free to act, and the interplay between con-
text, regulators, and regulatees will be further explored below.

The Co-production of Soft Regulation

Co-production implies that regulators and regulatees produce regulation
together. In the preceding sections I have proposed that soft regulation in-
volves constrained and empowered regulators and regulatees, but the impor-
tant thing to note is that they are still regulators and regulatees. Soft regu-
lation has the capacity to let regulators regulate although they are constrained,
and to grant regulatees freedom of choice although they are regulated, and I
argue that this is one of its main advantages. Soft regulation can bring regu-
lators and regulatees close together – as in the case of Twinning – and give
rise to complex patterns of interaction. In both the formulation and enact-
ment of soft regulation, practice appears to hold a central position and con-
stitutes a bridge between regulators and regulatees. As put by van Gunsteren
(1976), rules are defined in, and by, the social practices they are intended to
regulate, and the same evidently goes for their formulation. When the rules
of Twinning were formulated the administrative practice of both member
states and candidate countries was considered, and in their subsequent
enactment through the realisation of projects this practice was, again, essen-
tial.

In many instances practice seems to have power over both intentions and
ideals. This is clearly illustrated by Twinning where member state input is
essential. Quite apart from the political agreements underlying the acquis
and the bureaucratic procedures leading up to the formulation of the rules of
Twinning, it is the member states that possess the knowledge and experience
relevant to the rule-following involved in Twinning. Accordingly, the EU –
i.e. the central regulator – has delegated the responsibility for running and
realising Twinning projects to them. Regulation through Twinning is per-
formed through the member states and their existing administrative practice
rather than by the European Union. Such co-productive processes where both
rule-makers and rule-takers take part in the regulation are likely to be rele-
vant to all kinds of soft regulation that are based on some kind of practice,
e.g. codes of conduct, best practice, and peer review. These types of soft
rules are built on the power of practice and draw on it to increase their own
attraction. However, by recognising the importance of existing and evolving
rule-following practice, and by simultaneously downplaying the ideals or
intentions behind the formulated rules, regulators risk losing control over the
contents of their regulation. Soft means of regulation are hence a sign of the
regulator trusting the regulatees.
In summary, soft regulation walks a fine line between the regulator’s wish to control and the regulatee’s freedom of choice, and its capacity to harbour both these pressures constitutes an important part of its regulative power. Put in different terms, the use of soft regulation implies that control over the rule-following practice is shared between regulators and regulatees. The concept of co-production is quite consistent with a theoretical perspective emphasising the social dimension of rule-following while it rather contradicts the notion of hard conditionality. Hard conditionality is frequently used to explain why the Central and East European states have adapted so quickly and so successfully to EU rules (Schimmelfennig and Sedelmeier 2005), but in line with the above, I argue that processes of co-production contained in soft regulation have also had an influence. Soft regulation allows regulators to regulate and regulatees to act within the framework of the rules, which makes it appealing from many perspectives. This appeal is likely to increase the popularity of soft rules and, by consequence, their power to influence. The third regulative element contributing to this power I have named constitution. It will be discussed below.

9.3 The Constitutive Elements of Soft Regulation

While processes of combination relate chiefly to the composition of soft regulation and the co-productive processes mainly evolve around the enactment of regulation, the constitutive processes are connected to the outcomes of soft regulation. One of the more conspicuous findings in Chapter 8 was that the implementation of the acquis so frequently involved the application of modern management models and techniques. Moreover, a certain perception, emphasising progress, effectiveness, and rationality, was demonstrated in the results of the projects studied. These models and perceptions apply to, and are typical of, *organisations*, and I argue that when they are spread to Polish and Lithuanian public administrative units it means that these units are becoming – or are being constituted as – formal rational organisations. The capacity to constitute organisations is the subject of the following sections.

The Constitution of Formal Organisations

In many ways the creation of formal organisations constitutes the first step towards further change. Organisations embody and uphold the institution of rationality (Brunsson 2006) and being an organisation means being susceptible to rational regulation. This means that the capacity to constitute regulatees as formal organisations is potentially very powerful, and I argue that soft regulation has precisely this capacity. Once social units perceive themselves as organisations the number of guidelines for action increases expo-
nentially as the supply of ideas and models for what organisations should be, have, and do is huge (Meyer 1996; Drori and Meyer 2006). Because soft regulation has the ability to constitute formal organisations it can be described as paving the way for more – possibly hard\textsuperscript{91} – regulation. In Twinning for example, the candidate countries were made to see that certain methods, systems, and perspectives were necessary to European co-operation, and, with the help of their member state partners, they developed the structures needed to sustain this co-operation. Once in place these structures prepared the candidates for participation in, and handling of, the continuous development of EU rules, which are sometimes soft and sometimes hard.

Organisations are expected to have certain autonomy, as one of their basic characteristics (Brunsson and Sahlin-Andersson 2000). Through the constitution of formal organisations by means of soft regulation such autonomy is achieved, and this autonomy is crucial to the functioning of soft rules. This is so because advice, standards, recommendations and the like can only work as guiding principles for autonomous actors with the ability to assess and act on them (Brunsson and Jacobsson 2000b). Accordingly, soft rules frequently presuppose that the regulatee enjoys some autonomy, and the very first thing a prospective regulator needs to regulate into being is therefore formal organisations. As the example of Twinning shows, organisations were created in an indirect way through the introduction of certain organisational elements in the Lithuanian and Polish administrative units. Because organisations comprise such a highly institutionalised actor category in Western society, they are surrounded by norms and expectations concerning their being and behaving. The most marked of these norms is that organisations should have clear identities, be hierarchically structured, and function according to a logic of rationality (Brunsson and Sahlin-Andersson 2000; Brunsson 2006). I argue that soft regulation has the capacity to instil these norms and bring about the structures needed to sustain them in regulatees not yet constituted as formal organisations. In the constitutive processes both rhetoric and practice can be used to convey identity, hierarchy, and rationality.

In Twinning, identity was constructed in different ways. First of all it was created through drawing and defining boundaries between the focal authority – or organisation-to-be – and other units that were to become co-operation partners. Secondly, it was created through the emphasis on uniqueness – and on making an effort to be a unique organisation – which was particularly apparent in the Tax Project. In this Twinning a lot of importance was attached to formulating a modern vision and then letting it “permeate the entire organisation”. That modern and/or professional identities were promoted

\textsuperscript{91} Soft regulation is sometimes referred to as a precursor of hard law (cf. Mörth 2004) but not along the lines of constituting organisations. Rather, these arguments emphasise that soft law can be used as a first regulatory step in new policy areas.
by Twinning is clearly illustrated by the Tax Project and the Statistics Project.

When it comes to hierarchy, this was largely constructed through the regular focus on leadership. Attention was constantly directed towards the management levels of the Lithuanian and Polish authorities, reinforcing the notion that it is the leaders that bring about change. The mere use of the term “manager”, instead of director, signals modernity and the importance of committing the managers was continuously emphasised. On several occasions special seminars were arranged exclusively for the top managers, and ideas and techniques for how to be a good leader were also involved.

Concerning the creation of rationality, it can be said to permeate the entire set-up of Twinning. The rational definition and setting of objectives is prescribed in the Manual, as is the justification of past actions through the production of quarterly, yearly, and final reports. The production of reports carries the rational idea that reports will facilitate the allocation of responsibility at later stages. Also the procedure involved in choosing Twinning partners instils rationality because the candidates are expected to rationally evaluate all offers and give rational motivations for their choices. That the candidates were always able to provide such rational motivations – even in cases when other, non-rational reasons were also important – signals that the instilment of rationality through soft regulation is working.

To summarise, the organisational norms of identity, hierarchy, and rationality are promoted by soft regulation that, as a consequence, has the capacity to constitute regulatees as formal organisations. With the incorporation of these norms in soft rules, and their spread through soft regulation, organisations are created and a door is opened towards more regulation. In this way the regulative base of the regulator is broadened, because organisations are seemingly easier to regulate than other kinds of social units. This is so because organisations are constructed as rational actors (see below), and I argue that the capacity to constitute organisations contributes greatly to the power of soft regulation. Just as important is the twin capacity to rationalise, which will now be described.

The Constitution of Modern and Rational Organisations

As discussed above, rationality is a vital ingredient of organisation but it is also an essential trait of modern society (Meyer and Rowan 1977; Brunsson 2006). I argue that soft regulation has the capacity to introduce and reinforce ideas of rationality and modernity in regulatees. Because soft rules build on, and promote, modern ideas and values, they function as carriers of modernity and rationality (cf. Djelic and Sahlin-Andersson 2006). To be rational and function according to the logic of rationality is a sign of modernity, and to be modern is an ideal that is both taken for granted and extremely difficult to resist. This is so because modernity is associated with success, and with such
strong and positively appraised values as progress and justice (Meyer et al 1994). Striving for modernity is both rational and legitimate, and soft regulation can provide a structure for this striving.

Starting at the very beginning, the mere idea of the possibility of planning and organising change through regulation is, in itself, based on a logic of rationality (cf. Olsen 1990). In Twinning, the future goal of increased administrative capacity provides the central motivation, while clear and explicit benchmarks must be formulated and ticked off along the way towards this goal. Even if the difficulty of planning and foreseeing the future is acknowledged in practice, the strict guidelines concerning the structure and contents of the covenant force the involved actors to act according to a rational logic. Or, they are at least forced to present their actions as consistent with rational planning, and in this way rationality is anchored in the regulatees through the structure and organisation of soft regulation.

Looking next at what it is that soft rules regulate into being, the contents of soft regulation are frequently directly connected to management ideas and models (Djelic and Sahlin-Andersson 2006a). Soft rules can come in the shape of standards, recommendations, or guidelines, and they often relate to issues of organisation, administration, or management. Many of these soft rules are closely coupled to popular management models (ibid; Furusten 2000), to the point where it is sometimes hard to tell the difference between management ideas and soft regulation. The study of Twinning suggests that to follow the rules of the EU means to adopt and enact popular and widespread management models. Rationality and rational ideals are built into these practices, and their application constitutes the appliers as rational organisations. Applying the 6th Council Directive on Indirect Taxation means creating a tax administration guided by management by objectives; to be a viable part of the European Statistical System entails working with total quality management; and to be an appropriate and just EU member state requires the use of approaches such as customer orientation and human resource management. While these management models embody rationality, their application also signals modernity because they can be conceptualised as recipes for how to be a modern organisation (Røvik 1998).

Ideas such as management by objectives and total quality management are frequently presented as the organisational expression of societal modernisation (Meyer 1996). Consequently, working with these techniques means being modern, and soft regulation has the capacity to get the work started. In Twinning, other modern organisations – e.g. the Swedish Tax Authority and the Swedish National Statistical Office – applied and propagated the models and the newly constituted organisations – e.g. the Lithuanian State Tax Inspectorate and the Polish National Statistical Office – were apparently quite eager to adopt them. That modernity was sought – and therefore probably easier to instil – was explicitly expressed through both texts and talk in the
studied projects. Hence, to be, or become, a modern organisation may be the motive for following soft rules, or it may be the outcome of soft regulation.

To summarise, the above sections have outlined the constitutive elements of soft regulation. Through soft rules formal, modern, and rational organisations are constituted and continuously reinforced. The ideal of rationality and the institution of organisation are closely linked and work together to amplify each other. The formal set-up, formulated purpose and specific content of soft regulation seem to be permeated by the norms of rationality and organisation. Consequently, processes of constitution work through many different channels when influencing regulatees, and I argue that the elements of constitution add considerably to the power of soft regulation. Constitutive processes open the door to further regulation: rational organisations voluntarily follow rules because this signals participation in the modern project.

9.4 Concluding Remarks

In this chapter the combinative, co-productive, and constitutive elements of soft regulation have been outlined. These elements form the main contribution of the thesis to the understanding of soft regulation. Their construction and labelling are derived from insights generated within the empirical case of Twinning, but they are relevant to soft regulation in general. Each process is composed of several contributing elements, providing them with complexity and dynamics. Combination includes different kinds of rules, rules on identity and activity, and various sources of legitimacy; co-production deals with the agency, constraints, and empowerment of regulators and regulatees; and constitution is about the creation of formal, rational, and modern organisations in the wake of soft regulation. These regulative elements have all been to some extent noted and theorised before, but not as systematically and not in relation to the wider phenomenon of soft regulation. Hence, this chapter provides a systematic and empirically grounded understanding of the regulative processes at work within soft types of regulation. That rules can be of many different kinds, and that rule-following is constructed through social interaction can perhaps be termed common knowledge within organisation studies, as can the classificatory and constructive power of rules, but so far the combination of these analytical insights has been scarce. This chapter brought them together in order to comprehend the power of soft regulation.

In the introductory chapter I argued that Twinning is a critical case of soft regulation, and as such its study can improve our understanding of soft kinds of rules in general. The regulative elements of combination, co-production, and constitution may take on different forms, and may be present to varying degrees, but they are characteristic of soft regulation. This being so, the overarching conclusion of this chapter must be that soft regulation has quite
far-reaching regulative powers; builds on complex, dynamic, and social interactions; and embodies as well as promotes some of Western society’s most strongly institutionalised ideas. To some, this conclusion might seem rash, given the common view that soft regulation is inefficient and incoherent (for a discussion, see Nordström 2008:13-16), and the pessimistic evaluations of, for instance, the Open Method of Co-ordination (cf. Büchs 2007), which is perhaps the EU’s most “famous” instrument of soft regulation. And if the focus of study is “implementation effectiveness”, “accountability”, or “problem-solving capacity” (Knill and Lenschow 2004; Büchs 2007), soft regulation might not contain the best solutions. However, such estimations of soft regulation rather build on evaluations departing from pre-defined goals and measures, and this is not the approach I have chosen to take when carrying out this study. I have studied a regulative practice and I have let this practice inform my analytical categories instead of bringing pre-defined ones to the field, which has allowed me to see in a specific way.

I do not know if the implementation effectiveness, accountability, or problem-solving capacity of Twinning is good or bad simply because this is not what I have studied. Instead I have looked at Twinning not from the perspective of the regulator – focusing on regulative goals and means to reach them – or the regulatee – emphasising levels of intrusion and goodness of fit – but starting with the regulation itself, its constitution, workings, and ways to influence. By focusing on regulation I have looked at practice rather than plans and wishes, which colours the conclusions in the thesis. Yes, soft regulation has far-reaching powers but perhaps not as far-reaching as desired by the regulator and perhaps not of the intended kind. Furthermore, soft regulation builds on social relations but these relations hardly allow themselves to be controlled by either regulators or regulatees. And, finally, soft regulation carries ideas of rationality and modernity, not by intention but because it relies on practice and this practice is saturated with institutionalised ideals. Adopting this perspective accords the characteristics and dynamics involved in soft regulation importance in themselves and not as outcomes of rational planning, strategic action, or deliberate decision-making. Quite regardless of the European Commission’s intentions, the member states’ missionary spirits, and the candidate countries’ interest in change, Twinning contains combinative, co-productive, and constitutive elements, and the same goes for other kinds of soft regulation. Accordingly, regulators do not make rules exclusively and on their own, regulatees are not passive rule adopters, and rules gain their meaning through practice, meaning that co-production is essential to soft regulation. Furthermore, in both the formulation of rules and the ensuing construction of meaning, institutionalised understandings and ideals are important as regulators and regulatees are embedded in a particular context. From this angle, the issues of accountability and implementation effectiveness rather lose their relevance, as the bigger picture is larger than that.
This thesis has contributed a different interpretation of regulation, as it has looked to the internal dynamics as well as the societal context of soft rules. To the study, and measurement, of outcomes of different regulative instruments it has added a more nuanced and comprehensive understanding of rules and regulation. To the study of soft regulation it has added both the three regulative processes of combination, co-production, and constitution, and a new category: soft regulation that is not framed and described as regulation, but that all the same has clear and far-reaching regulative effects. The thesis has demonstrated that regulation is indeed a complex, complicated, and abstruse phenomenon in need of comprehension, and it has contributed a piece to the regulative puzzle. But the puzzle is not finished, as will be discussed in the concluding chapter.
Chapter 10.
Regulation through Organised Imitation

This thesis began with the European Union’s 2004 enlargement and the massive amount of regulation this event brought to bear on the ten states becoming members. At the outset the thesis’ focus on regulation and on states as rule-followers was spelled out, and Twinning was presented as providing a link between them. A number of intriguing issues were highlighted: that states, which are themselves powerful regulators, are frequently following the rules of others; that transnational regulation is increasingly relying on soft rules to influence regulatee behaviour; and that even authoritative rule-makers, like the EU, are complementing hard law with softer ways to regulate. The attraction of soft regulation seems strong, as does its ability to regulate even such authoritative actors as states.

Starting from a view of rules and regulation as ambiguous and socially constructed phenomena, and the related enigma of increasingly popular regulation, the EU’s candidate countries were depicted as finding themselves in an utterly challenging situation. In order to become members they must incorporate and follow the rules of the EU, but these same rules are extremely encompassing and frequently all but incomprehensible to those intended to apply them. Twinning was created by the European Commission, and endorsed by the then EU members, in order to assist the candidate countries in their efforts to adopt the acquis. Twinning meant guidance, monitoring, and evaluation in relation to candidate country rule implementation, and thus it constitutes rules on how to follow rules. In addition, through its founding ideas and thoroughly organised procedures Twinning resembles imitation, but imitation of a certain kind: organised imitation. In this way the two theoretical lines of regulation and imitation were combined, and the combination was further reinforced by the ability of Twinning to regulate the candidate countries, quite apart from the regulation contained in the acquis. The set-up and practices of Twinning were shown to contain regulative abilities of their own, and, consequently, Twinning was cast as a new and particular kind of soft regulation. Twinning is regulation by organised imitation, and by studying it as such I have contributed to theories of both imitation and soft regulation. The conclusions and contributions of the thesis will now be summarised and linked to ideas for further research. Each possible answer gives rise to new questions, and even if this thesis contributes insights into the consti-
10.1 Findings from Organised Imitation

Viewing Twinning as organised imitation provided a structure for exploring the motivation for, and the realisation, content, and outcomes of, Twinning projects, together with the relations forming within them. The findings from my study of three individual Twinnings made slight modifications and a number of additions to the traditional new institutionalist understandings of imitation. First, whereas imitation is normally portrayed as motivated by forces either external (mainly coercion) or internal (primarily uncertainty, will to change and identification), Twinning demonstrated that these also combine in unforeseen ways: where the will to change is great, uncertainty regarding how to change may result, providing additional incentive for imitation. Second, the presupposed relation of inferiority-superiority between imitator and model was called into question by Twinning, as imitators could be pressured into mimetic relations that they subsequently resisted. Hence, the view of imitation as a voluntary act was contradicted by the practice of Twinning, while the understanding that coercion and voluntariness work together was reinforced. Third, the content and outcomes of Twinning consisted largely of elements of organisation and modern management, which is quite in line with Scandinavian new institutionalist predictions. Success, and success stories, functioned as objects of imitation and the results came in the shape of different kinds of organisational elements. Fourth, Twinning also showed that the inclusion of practice in the mimetic situation seemed to reduce the imitator’s room for manoeuvre and ability to translate freely. Practice reduced uncertainty on the part of the imitator, but it also constrained the search for alternative solutions. Finally, and as a link between imitation and regulation, Twinning revealed that the hard law involved in project motivation created more uncertainty for the regulatee than did reliance on soft rules. Soft rules seemingly did not evoke uncertainty to the same extent, but rather created comfort for the rule-follower. One reason for this relationship could be that since soft regulation is not coercive and coupled to sanctions, it sends out the signal that the appropriate rule-following behaviour is more open to negotiation than that prescribed by hard law. In this way soft rules seem less constraining and more permissive than hard law, but my analysis of Twinning as soft regulation demonstrated that this is not necessarily the case. Soft regulation is intrusive and constraining because it is able to envelop and permeate the regulatee in ways that are different from the workings of hard law.
10.2 Understanding the Power of Soft Regulation

After establishing the power to influence of soft regulation, I have also outlined the regulative elements contributing to this power. Drawing on insights from Twinning, and incorporating conclusions from previous research on soft rules, I have identified and described three regulative elements involved in soft regulation in general: combination, co-production, and constitution. These elements and their capacities are what make soft regulation such a powerful means of influence. Soft regulation combines different kinds of rules, the regulation of identity and the regulation of activity, and many sources of legitimacy; it depends on regulators and regulatees interacting to co-produce regulation; and, as its main result, it constitutes the rule followers – be they business corporations, voluntary associations, or public administrations – as formal, rational, and modern organisations. The discussion of the regulative elements of combination, co-production, and constitution represents the main contribution of the thesis to the theoretical understanding of soft regulation. Even though the regulator studied here was a powerful international organisation and the regulatees consisted of sovereign states, these processes have a more general applicability and are likely to work in other types of soft regulation – with different regulators and regulatees – as well.

As indicated in the above summary, soft regulation influences behaviour through interplay between combinative, co-productive, and constitutive regulative processes. One example of such interplay is provided by Twinning. Throughout the thesis it has been underlined that even though Twinning is never described in terms of regulation it nevertheless has regulative effects on the candidate countries. Because combination diminishes the need to rely on hard regulative elements, because co-production creates and even presupposes agency on the part of the regulatee, and because constitution is coated in positive values and connected to modernity, the regulative workings of soft regulation are rather hidden. This is not to say that they are necessarily deliberately concealed, but they are neither apparent nor always perceived. In some ways soft regulation equals indirect regulation because it is mediated through, enveloped in, or even presented as, something other than rules. That the regulation is not perceived or experienced as regulation can be expected to have particular effects on the regulatee’s rule-following, and in order to understand these effects more research is needed, both in order to identify indirect regulative instruments other than Twinning, and in order to comprehend what their creation and spread do to the general conditions of rule-following. Three themes for further research connected to the power of soft regulation are suggested below.

First, Twinning indicated that soft rules have the ability to preserve, and sometimes reinforce, an aura of voluntariness. Soft regulation might have clear and distinct regulative effects, but it is still perceived as more or less
voluntary to follow. The idea of voluntary rule-following presents a logical paradox, but one that is not necessarily experienced in practice. The relation between freedom and coercion – or voluntariness and compulsion – is complex and paradoxical; the one more or less presupposes the other in order to be comprehensible. Meanwhile, the dividing line between them is not always easy to uphold. Arguably, “[w]here one speaks of voluntariness there are also traces of its opposite, and where one does not speak of voluntariness it is all the same distinguishable. What is perceived as voluntary is not always completely voluntary, and what is to a large extent voluntary may not be perceived as voluntary at all” (Boström et al 2004a:190; my translation). Accordingly, and as lucidly demonstrated by Twinning, soft regulation might operate in the shadowlands of regulation and still have considerable effects. Rule-following that is experienced as appropriate (given the regulatee’s identity) and legitimate, as allowing room for manoeuvre, and as rational and modern – i.e. the kind of rule-following induced by soft regulation – is potentially more attractive than the kind that is perceived to build on power imbalances, coercion, and sanctions. The overwhelmingly positive attitudes to Twinning testify to this tendency, and because soft regulation is increasing rapidly its ability to solicit “voluntary compliance” needs to be further investigated. Also the supposedly different kinds of rule-following to which hard and soft regulation give rise would benefit from additional study.

Second, soft regulation carries the potential to reach further and touch areas that, for various reasons, might be out-of-reach for hard law. The European Union and its manifested inclination towards creating new kinds of regulation provide a suitable case in point in this respect. In a context as political – and hence potentially sensitive to complex tensions and conflicts – as that of the EU, soft regulation might constitute the only possible option. But as illustrated by this thesis, as well as argued elsewhere (e.g. Mörth 2006); soft regulation does not equal weak regulation. Results of various kinds – ranging from changed organisational procedures to altered identities and perceptions – came out of Twinning and they were apparently obtained faster and more effectively than anyone would have expected. In addition, Twinning managed to reach and influence issues that are definitely off limits when it comes to hard directives. The three Twinnings presented in this thesis all displayed elements of moving beyond what is prescribed by the acquis communautaire. The Judiciary Project, which dealt with an issue that was not at all covered by the acquis, is particularly telling because it demonstrates that even though soft regulation does not have the ability to make the regulatees follow rules, it might enter into force in areas that simply cannot be reached by hard law. Overall, the Judiciary Project was deemed a failure, and a disappointment to many of the parties involved, but in the larger scheme of things it actually illustrates the power of soft regulation. Accordingly, an important effect of soft regulation is its ability to regulate former-
ly unregulated issues or areas, and the preconditions for, as well as limits to, this ability needs defining by further research.

Third, soft regulation entails particular prerequisites regarding the agency of the regulatee. Because soft rules do not prescribe in the same way as hard law does they require some kind of input from the regulatee, as discussed in relation to processes of co-production. Here, I want to stress that soft regulation not only allows regulatees to act but also induces engagement and, consequently, provokes activity. This is what we saw in the Judiciary Project, where the initial negative and even reluctant Polish attitude was transformed into some kind of commitment that subsequently produced results. When soft regulation applies, the regulatee is more or less forced to choose and make decisions and fill the abstract rules with concrete content, which constitutes a clear step away from the view of rule-following as passive compliance. In some instances hard rules and precise prescriptions might be perceived by the regulatee as more comfortable – in the sense of requiring less effort – than soft regulation, but if we embrace the modern credo of individuality and free will (cf. Meyer et al 1994; Meyer et al 1997; Brunsson 2006), or their equivalent on a larger scale, namely the sovereign state, hard law is not always legitimate. It would be hard to imagine the European Union determining and prescribing in detail the administrative developments of its candidate countries, and through programmes such as Twinning the actorhood of the Central and East European states was awakened and activated. Because processes of co-production appear so central to soft regulation, and because the requirement of regulatee agency for soft regulation to work seems so counterintuitive, more research is needed in order to clarify both the relations between regulators and regulatees and the significance of these relations.

10.3 Final Reflections

One important question was raised in the introductory chapter of this thesis: wherein lies the power of soft regulation to influence even such powerful actors as states? The answer provided by this study is the following: The regulation of states by soft regulation is possible because soft regulation builds on combinative, co-productive, and constitutive elements, and because soft regulation involves voluntary compliance, reaches further than hard law, and demands regulatee agency in order to work. Admittedly, this answer is incomplete and in need of both empirical and theoretical support, but all the same it provides a starting point and a direction for further investigations into soft regulation.

As for the general implications of this study’s conclusions, the use of softer forms of regulation is likely to continue to increase. As both authoritative – such as international organisations and states – and non-authoritative –
such as standard-setting organisations and non-governmental organisations – rule-makers have discovered its possibilities, advantages, and powers there is no reason why it should retreat. This is particularly relevant when it comes to the regulation of states because states – even though they are dependent upon and conditioned by their environment – have strong societal expectations on them regarding agency. States are not supposed to follow rules; they should know what they want and follow their own course. That it is indeed difficult to regulate states “against their will” is amply illustrated by the regulative developments of the European Union. On every occasion that the EU has wished to extend its regulation into new policy areas, intense and lengthy discussions, negotiations, and compromises have ensued. Twenty-seven sovereign states with supposedly independent wills are hard to herd and the EU is frequently described as an extremely unwieldy organisation. But soft rules seem to work, and the Union continues to develop new kinds.

The power and popularity of soft regulation are also highly relevant when it comes to possible future EU enlargements. The European Union started out as a West European organisation and has gradually expanded its foundation for recruiting, or perhaps rather accepting, new members. All states are similar, and all states are different, and a common perception seems to be that each enlargement includes members that are progressively “different”. Spain and Portugal are commonly experienced as having more in common with Germany and France than have Estonia and Bulgaria. Yet still all these states are somehow pulling in the same direction – with various degrees of enthusiasm and resistance, obviously. I believe that the use of soft regulation has contributed to the EU’s achievement of loosely connecting the European states to each other, simply because soft rules have the capacity to accommodate both regulatory intentions and state sovereignty. That soft regulation is perceived as less intrusive than hard law naturally adds to its attractiveness. In order to gather and push the EU member states in – more or less – the same direction the Union must make them want to follow the rules, and this is likely to be even more important when states as “different” as Serbia and Turkey\(^{92}\) become members. From this perspective voluntary rules that allow for regulatee discretion and choice seem more attractive than hard directives coupled to coercive sanctions, and, as the thesis has demonstrated, the power of soft regulation should not be underestimated.

\(^{92}\) Turkey was granted the status of candidate country in 1999 and Serbia has held the status of potential candidate country since 2003.
REFERENCES


Jacobsson, B. 2002. *Östersjöstater i ett nytt Europa – institutionell förändring i ett mångvetenskapligt perspektiv*, Södertörns högskola, research project application


Documents, Reports, and Web Pages


Guide to the main administrative structures required for implementing the acquis (informal document for guidance only), May 2005, the European Commission (available at: http://ec.europa.eu/enlargement/pdf/enlargement_process/accession_process/how_does_a_country_join_the_eu/negotiations_croatia_turkey/adminstructures_version_may05_35_ch_public_en.pdf, 2009-03-23)

LI 00/IB-FI-05 (Final Report)
LT2002/IB/FI-01 (Final Report)

Offers Concerning Twinning Co-operation within Institution Building Programme (the Polish evaluation sheet for Twinning Offers), UKIE, 2005


PL02/IB/JH-04 (Twinning Covenant)
PL02/OB/JH-04 (Final Report)
PL2003/004-379/01.05 (Twinning Fiche)
PL2003/004-379/01.05 (Final Report)


Report on an Assessment of the Twinning Instrument under Phare, 2000, Birker, E., Cooper, C., Molander, P. and Pochard, M.


Sector Overview. Twinning Projects under PHARE 1998-2004, the Twinning Coordination Team

SR/IB/SO/01 (Final Report)

Tax policy in the European Union – priorities for the years ahead, 2001, the European Commission (available at:

Twinning: Building Europe Together, 2006, the European Commission

Twinning in Action, October 2001, the European Commission

Twinning Institution Building Programme, presentation for Twinning Information Meetings in New Member States, Spring/Summer 2005, the Twinning Coordination Team, DG Enlargement

http://ec.europa.eu/enlargement/pdf/financial_assistance/institution_building/twinni
ng_statistics_012007_en.pdf, 2009-04-14
http://ec.europa.eu/taxation_customs/taxation/gen_info/tax_policy/index_en.htm#,
2006-11-24
http://ec.europa.eu/taxation_customs/taxation/tax_cooperation/mutual_assistance/vat
_administrative_regulation/index_en.htm, 2006-11-24
http://europa.eu/abc/eurojargon/index_en.htm, 2009-03-09
http://europa.eu.int/comm/enlargement, 2003-08-11
http://www.iota-tax.org/eng/?template=p&id=1, 2006-11-24

Interviews

Arvidsson, Bo (the Swedish National Tax Board)
Balodis, Gabriela (the Swedish Work Environment Authority)
Berry, Stefan (the Swedish Agency for Economic and Regional Growth)
Dahlström, Bo (the Swedish National Financial Management Authority)
Gasiliauskiene, Adrijja (Lithuanian Ministry of Agriculture)
Gravière, Laurent (French Ministry of Justice)
Gustavsson, Tore (the Swedish Board of Fisheries)
Hallgren, Bo (the Swedish Patent and Registration Office)
Hedenskog, Magnus (the Swedish National Financial Management Authority)

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Hildeman, Anneli (the Swedish International Development Cooperation Agency)
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Kloss-Tullius, Sabine (European Commission’s Delegation to Warsaw)
Koeth, Wolfgang (European Commission’s Delegation to Vilnius)
Korowajczyk, Marek (Polish Ministry of Justice)
Leffler-Roth, Carolyn (European Commission, Brussels)
Lindström, Lennart (Swedish Ministry of Finance)
Lindström, Ove (the Swedish Courts)
Makstutis, Gintaras (Lithuanian Ministry of Finance)
Marciniak, Agnieszka (Polish Ministry of Finance)
Melin, Birgitta (the Swedish Work Environment Authority)
Mickunaite, Giedre (Lithuanian Ministry of Justice)
Mikailionis, Danas (the Lithuanian State Tax Inspectorate)
Molander, Per (MAPSEC)
Niva, Matti (Statistics Sweden)
Olsson, Magnus (the Swedish Board of Agriculture)
Pawelczyk-Masluk, Sylwia (the Polish National Statistical Office)
Persson, Per (the Swedish Board of Agriculture)
Petner, Marek (Polish Ministry of Agriculture)
Piatkowski, Tomasz (UKIE, Poland)
Piekarski, Andrzej (Polish Ministry of Agriculture)
Pilas-Ahlin, Helena (Swedish Ministry for Foreign Affairs)
Przybylska, Lycyna (the Polish National Statistical Office)
Purliene, Birute (the Lithuanian State Tax Inspectorate)
Rapoliene, Grazina (the Lithuanian State Tax Inspectorate)
Sagatuskaite, Raimonda (Lithuanian Ministry of Interior)
Samuelsson, Per (Statistics Sweden)
Sehlstedt, Annika (the Swedish Courts)
Sidorkiewicz, Elzbieta (Polish Ministry of Interior and Administration)
Soldatkovas, Eugenijus (Lithuanian Ministry of Finance)
Skoczek, Joanna (Polish Ministry of Justice)
Stariene, Lijana (Lithuanian Ministry of Justice)
Tersman, Ingrid (Swedish Ministry for Foreign Affairs)
Toth, Stefan (the Swedish National Tax Board)
Trunciene, Ieva (Lithuanian Prosecutor General’s Office)
Vaitiekunas, Vytautas (the Lithuanian National Research Center for Pisciculture and Fishery)
Wenell, Katarina (the Swedish Board for Accreditation and Conformity Assessment)
Wennerström, Erik (Swedish Ministry of Justice)
Widegren, Monica (the Swedish Competition Authority)
Wyszinski, Jaroslaw (Polish Ministry of Finance)
Ångman, Per-Olof (Swedish Ministry of Industry, Employment, and Communication)
Södertörn Doctoral Dissertations

34. Tommy Larsson Segerlind, *Team Entrepreneurship: a process analysis of the venture team and the venture team roles in relation to the innovation process*, 2009