

# Governing by monitoring: The EU Commission's SOLVIT-centers as judicialized internal market watchdogs

The Case of Sweden<sup>i</sup>

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An earlier draft of this paper was presented at the Council of European Studies, Montreal April 15-17<sup>th</sup> 2010.

SSE/EFI Working Paper Series in Business Administration

No 2010:7

November, 2010

*Updated March, 2011*

## Abstract

Various evaluations of the internal market suggest that member states' implementation continues to lag behind in several areas. In addition to the European Court of Justice, the European Commission also has means for pursuing compliance without judicial recourse. Since 2002, the Commission coordinates the SOLVIT-network: national authorities with the mandate to resolve problems related to misapplications of internal market directives by informal means. Using the case of Sweden, we investigate the techniques used by SOLVIT and what impact these have on the administrative system of an individual member state. Drawing on a governmentality perspective, we find that the work methods of SOLVIT Sweden contribute to a formalization and judicialization of how the internal market is realized. The governmentality approach also highlights the policy-making capacity of ex post control. Specifically, the visibility provided by the national SOLVIT-centers work suggests a role as watchdogs for the Commission's enforcement of the internal market.

## Introduction

Realizing the inner market lies at the core of the European Union (EU) cooperation and significant steps have been taken to bring it into being. Nevertheless, various evaluations suggest that member states' implementation continues to lag behind (European Commission 1996, 2009b; Laudati 1996; Börzel 2003; UNICE 2004). The monitoring of member states intensified in the late 1980's (Tallberg 1999), and the European Commission (the Commission) has continuously developed new means for enhancing member states' implementation. The ultimate reprimand is of course the European Court of Justice (the ECJ). However, the Commission's current objective is to reduce the number of costly and time consuming infringement proceedings. This has prompted the introduction of measures to increase cooperation and coordination between member states' administrations (Craig, forthcoming; Egeberg 2006; Tallberg 1999). These include monitoring practices such as score boards, regulatory networks of national agencies and training programs for bureaucrats. Many of these new control mechanisms are soft, non-legislative instruments. What distinguishes them from other soft practices such as the Open Method of Coordination, is that they seek to increase compliance with binding legislation and that they most often are less formalized. To understand the development of EU governance requires further investigation of soft instruments (Christiansen and Piattoni 2003). These instruments are formulated based on a particular understanding of implementation gaps as being caused by insufficient knowledge, lack of coordination and burdensome bureaucracy (Borraz 2007).<sup>1</sup> Such an understanding of implementation gaps has informed the development of new governance instruments at the EU level in order to mitigate these causes (see Lascoumes and Le Galès 2007). Soft instruments are used as a necessary complement to ensuring goal attainment since they are considered to provide a less intrusive means of pursuing compliance. Avoiding formal legal process can help to uphold the legitimacy of the European project (Sverdrup 2004). However, a functionalist view of implementation and monitoring does not acknowledge that governance instruments serve as carriers of normative ideas which embody limited repertoires of appropriate action. An understanding of the practical influence of these instruments can be gained through studying the deployment of specific techniques which seek to influence behavior through the formulation of shared ideas, specification of particular work methods and signaling of good performance (Walters and Haahr 2005; Bruno, Jacquot and Mandin 2006).

To date, few studies have inquired into the *practices* associated with monitoring. It is this gap that we address, since this aspect of EU-governance might otherwise be left unaccounted for. In the paper, we are hence not primarily concerned with *why* (or why not) member states are compliant, but rather *by what means* compliance is sought. We also argue that the way Europeanization comes about also affects the content of the policies in the member states. Our particular focus is the workings of SOLVIT. Since 2002, this network of national authorities located in each member state has been operated by the Commission with a mandate to "solve without legal proceedings problems caused by the misapplication of Internal Market law by public authorities" (SOLVIT website). Citizens and companies can contact SOLVIT if they believe that a national public authority has violated internal market directives. The network then functions as an informal dispute settlement mechanism (Craig, forthcoming). SOLVIT is hence designed to deal with misapplications, something far more difficult for the Commission to detect than for instance delayed transposition.

In our study of SOLVIT, we take as point of departure that there are many settings in which tools, techniques and organizational arrangements limit what Europe can become.

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<sup>1</sup> This understanding of implementation gaps is the starting point for a vast literature which maps the abilities and willingness of national administrations to transpose common legislation (Börzel 2001, 2003, 2010; Falkner et al 2004; Knill 1998; Sverdrup 2007; Mendrinou 1996; Tallberg 1999).

Hence, how monitoring is organized and realized in practice influences both the way Europe is perceived and what possible futures can be achieved. This view of the attainment of political goals is informed by ideas on governmentality.

The governmentality approach originates from the terminology of Foucault, and has been developed by Miller and Rose (1990, 2008) and others (Bell 1993; Barry and Osborne 1996). It explicitly advises us to study the use of government techniques such as indicators, charts, key performance measures and ways of rendering activities visible and measurable (Power 1997). The concept of techniques should also be understood as incorporating not only tools for intervention, but also particular ways of thinking, i.e. intellectual techniques (Miller and Rose 1990). The reason for studying techniques in practice is that they are assumed to be carriers of normative ideas. In relation to studies of European integration, understanding the minutiae of how specific techniques are formulated and deployed is of importance since it follows that: “[t]here is no generic European government or European integration. There are only particular regimes of thought and practice within which certain ways of governing Europe become possible” (Walters and Haahr 2005:14).

Thus, we inquire into how the work of the SOLVIT-network plays out in an individual EU member state. Using the case of Sweden, we investigate the particular techniques for monitoring used by SOLVIT and what impact this has on the national administrative system. Through a description of this organizational toolbox, we seek to understand what particular versions of Europe these techniques envision and enact.

## The governmentality of europeanization

A growing number of scholars are engaged in studying soft modes of governance (Rhodes 1996; Joerges and Neyer 1997; Pierre and Peters 2000; Jacobsson 2004; Mört 2004). Their interest is similar to that in the present study. However, a key difference is that SOLVIT is a soft tool for increasing compliance with *binding regulation* and thus works in the shadow of hierarchy which the threat of an infringement process implies. Moreover, SOLVIT is explicitly instructed to solve and remove misapplications in an *informal manner* (European Commission 2001), where the direct interactions among business organizations, individuals and authorities are opaque to public scrutiny (see Christiansen and Piattoni 2003). Scholars have recently highlighted the particular importance of studying soft and informal modes of governance in relation to the internal market (Eberlein 2004; Nicolaïdis 2007; Schmidt 2007). The EU differs from other cooperative arrangements in its focus on integration by law. However, scholars argue that the informal means for upholding the laws need to be studied in relation to integration issues (Christiansen and Piattoni 2003). For instance, the informal working methods – in terms of non-codified practices and non-publicly sanctioned exchanges, have been shown to lead to an informalization of the national administrations’ work practices (*Ibid.*; Casula Vifell 2009). We take as a point of departure that the tools used by SOLVIT-centers to solve cases may carry with them constructed normative ideals about how to interpret and implement the internal market (see also Christiansen et al. 2001). This brings us back to the concept of governmentality. As mentioned, such an approach draws attention to how politics is influenced by techniques serving as carriers of normative ideas, and embodying limited repertoires of appropriate action (Miller and Rose 1990). An understanding of the practical influence of these techniques is gained through a study of their contents and form, as well as the governance mechanisms whereby they seek to influence behavior through the formulation of shared ideas, specification of particular work methods and signaling of good performance (Miller and Rose 1990).

When studying the effects of EU-governance on national administrations, a governmentality lens focuses on the normative components that specific administrative tools

and organizational arrangements (re)produce in practice. The work to realize the EU, and in particular the internal market, offers particularly fruitful sites for such inquiry: a rare occasion to study an ‘experimental workshop’ with multiple mentalities of government that is populated by many, explicitly transnational, technologies of power including the open method of coordination, the ECJ, commitology – and the SOLVIT-network.

### Methodological considerations

The SOLVIT-network has not been subject to extensive scholarly interest (although see Craig, forthcoming). The present description of the network’s structure and functioning at the EU-level is therefore based on the collection and analysis of primary data. In addition, a case study approach provides a deeper empirical account of this unknown organization at the member state level. As our interest is in the techniques that the SOLVIT-network uses to undertake informal problem-solving concerning internal market misapplications, we focus on the work practices of an individual SOLVIT-center.

The choice of the Swedish SOLVIT-center is premised on several considerations. *First*, that Sweden is often generically described as best-in-class in complying with EU policy (SOLVIT 2009; UNICE 2004). Specifically, SOLVIT Sweden is used as a role model example in SOLVIT-publications (SOLVIT 2009). Both the Commission and other member states view SOLVIT Sweden as a forerunner in implementing a well-functioning national SOLVIT-center (Björk 2007). Sweden is a comparatively small, open economy with an expressed political will to increase compliance with multilateral free-trade agreements. The political priorities are therefore well in line with those expressed by the Commission in SOLVIT-related matters. Hence Sweden is a likely case in which to observe both the Commission’s intentions for SOLVIT and consequences of the network’s implementation at the member state level. *Second*, that Sweden is a relatively experienced member state, having joined in 1995. The presence of compliance concerns is therefore not a result of recently having adapted the national administration to an extensive body of directives.

The data consists of ten semi-structured interviews with six respondents: four current and former employees of SOLVIT Sweden, the SOLVIT contact person at the Foreign Ministry, and two members of the Commission SOLVIT team. Interviews were performed between December 2009 and February 2010. Participant observations and personal communication with both Commission officials and course participants from several member states were also carried out during a SOLVIT-training course in Brussels in May 2010. Document studies were carried out of: national guidelines for SOLVIT Sweden, documents issued by SOLVIT Sweden and national evaluations of the organization’s activities. We have also read Commission recommendations and decisions preceding the creation of the SOLVIT-network, the SOLVIT-network annual reports, the network website and the Commission’s evaluations of SOLVIT. We also draw on findings from an interview-based pilot study of the Commission’s strategies for governing the SOLVIT-network and the network’s operation in Sweden and Germany (Björk 2007). The specific cases described below were among those provided by respondents when asked to describe topical, typical and extreme cases.

## Solving internal market misapplications

### The SOLVIT-network: inception, structure and management

Although the White paper of 1985 sets the realization of the inner market to 1 January 1993, the functioning of the market is still questioned. At present, the Commission’s explicit ambition is to: “achieve at better balance between different governance tools that all need to be developed in full consideration of the principle of subsidiarity, proportionality and national administrative traditions in the member states” (European Commission 2007). As part of this,

the Commission has emphasized the importance of soft governance measures. The SOLVIT-network is described as one important tool for effective problem-solving in the internal market (European Commission 2007), with the main difference that it deals with ex post monitoring of trade barriers, unlike measures such as the 98/34 directive which seeks to prevent them ex ante.

The Commission has a history of using soft measures to enforce the internal market. A prominent example is the single market score board, tracking the transposition deficit of member states in relation to the European Council's target. In 2009, 18 out of 27 member states were estimated to have achieved the 1% target (European Commission 2009a). Another example is a precursor to the SOLVIT-network established in 1997. Member states were instructed to create Co-ordination Centers to assist individuals and companies experiencing problems with non-compliant national authorities in other member states (European Commission 2001). This measure was in line with an action plan for improving the inner market which stipulated that important steps towards a better functioning could be taken without additional regulation.

Through recommendations, the Commission established procedural principles<sup>2</sup> and means of increasing peer-pressure on member state authorities' to achieve better compliance with inner market regulation. A central database was also created to house case information from all national SOLVIT-centers. The database is meant to coordinate solutions across member states, and facilitate exchange of information. Since July 2002, a network of thirty SOLVIT-centers is operational in all member states and the EFTA-countries.

The Commission intends for SOLVIT to provide: "informal problem resolution, [and thus] it should only deal with cases, which are not the subject of legal proceedings at national or Community level" (European Commission 2001). SOLVIT can deal with matters such as citizens' being denied the right to vote in local elections of a member state to which they have moved, or businesses facing unjustified refusal of access to a national market.

The Commission supports the national SOLVIT-centers using a team of five civil servants in Brussels: the so called SOLVIT EC. Their task is to advise national SOLVIT-centers during the case handling process. They also manage the central database and website, which includes links to national websites and a standardized complaint submission form. To ensure coherent case handling, the Commission hosts biannual network workshops and provides training and discussions on topical issues. SOLVIT EC also publishes an annual report which includes database statistics and a description of the functioning of the network, based on an annual survey of the SOLVIT-centers.

Since its inception, the SOLVIT-network has received a growing number of complaints. The number of registered cases was 1000 in 2008, an increase of 100% from 2006. The standardized online form launched in 2007 is thought to have contributed to the rapid increase, despite the high rejection rate of web-based inflow (80% of 1225 submissions in 2008). A majority of complaints concern individuals. This percentage has also grown from ~67% (2004) to 90% (2008). As regards the resolution rate, approximately 78 % of all registered cases are solved (SOLVIT 2009). Individual success stories are communicated by various means, such as the SOLVIT-network annual report and website.

SOLVIT Sweden exists in its present form since 2002, and operates under the National Board of Trade (NBT), a public authority under the Foreign Minister. It is comparatively well staffed, with five fulltime employees. The number of submitted cases has developed at a slower rate than the SOLVIT-network as a whole (20% between 2006 and 2008). However, the

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<sup>2</sup> The basic framework is a division between the HOME-center, who receives the compliant, and the LEAD-center, in which country the alleged misapplication of inner market regulation by a national authority has taken place.

number of Swedish cases registered in the SOLVIT-database has increased by 172% in the same time period, from 18 to 49 cases. SOLVIT Sweden's annual report provides further details about its case mix, notably that 40% of the 124 submitted complaints in 2008 were cases in which both the client and the governmental body were Swedish (so-called Sweden-Sweden cases). The annual report also notes that SOLVIT Sweden dealt with approximately 75 "qualified information cases", in addition to the 124 trade barrier cases (National Board of Trade 2009a).

## The case handling process

### Formal instructions

SOLVIT Sweden has developed a formal case handling manual in order to "[improve] effectiveness, consistency and quality...which is easier to achieve if every handling officer has access to clear guidelines and routines in their work" (National Board of Trade 2009c). While it is acknowledged that individual SOLVIT cases differ considerably "by virtue of the fact that SOLVIT is an informal tool for problem-solving" (*Ibid.*), it is stressed that SOLVIT is dependent on its reputation of being correct and impartial in handling cases, since it engages in informal problem-solving and thus lacks sanctions.

The manual describes four types of cases, of which only the first two are appropriate to register in the SOLVIT-database:

1. Incorrect application of EU-law
2. Barriers to trade resulting from national regulation which conflict with EU-law (SOLVIT+ cases).
3. SOLVIT-initiated trade barrier cases which result from incorrect application of EU-law that do not fulfill the criteria for inclusion in the SOLVIT-database
4. SOLVIT-initiated trade barrier cases resulting from national regulation which conflict with EU-law that do not fulfill the criteria for inclusion in the SOLVIT-database

The manual describes nine steps to the case handling process (National Board of Trade 2009c: 3). In the following account, we focus on three overarching stages: identification, evaluation and resolution. For each stage, we describe the formal steps and actual activities, using illustrative examples.

### Case identification: inflow, inclusion and exclusion

Formally, SOLVIT's work is initiated by a client complaint. Prospective clients are required to submit certain information, described on the SOLVIT Sweden homepage. Documentation about which governmental organization is subject to the complaint and who the relevant contact person is at said organization is particularly important. A standardized SOLVIT complaint form is accessible through the NBT-website and via a link from the SOLVIT-network website.

However, in practice, not all contacts from prospective clients concern matters appropriate for SOLVIT. In order to improve the inflow of cases, the Swedish homepage was updated in mid-2009. One handling officer saw clarity as the main improvement: "We more clearly state what SOLVIT can help with, in what situations SOLVIT can be used and at the same time explain what SOLVIT *cannot* do and what we *cannot* help out with".

Formally, whether or not a client contact concerns a real SOLVIT case depends on its legal merits. The case handling manual emphasize the central importance of "analysis based on EU-law" (National Board of Trade 2009c), first when evaluating prospective cases and subsequently when evaluating individual cases.

Notwithstanding the perceived ease of determining inclusion, the manual includes a section entitled How to deal with edge balls that explicitly acknowledges the possibility of cases which do not fulfill the formal inclusion criteria but which could nevertheless be appropriate to take on. Thus, as previously mentioned, SOLVIT Sweden undertakes a number of qualified information cases every year. These cases cannot be registered in the SOLVIT-database, but they are undertaken: “because we see it as a service” (Handling officer, SOLVIT Sweden). Nevertheless, the formal instructions clearly privilege trade barrier cases. This view is aligned with what one long-time employee describes as an on-going shift in case mix. He linked the emphasis on trade barrier cases to the influx of experts in EU-law: first through the appointment of a new manager in 2008, and subsequent in the recruitment of case handling officers. When this respondent retired in January 2010, all of the SOLVIT Sweden handling officers had such a legal background. Another contributing factor to an increased judicial orientation within the SOLVIT-network was the 2004 enlargement: “then there were lots of new people and I jokingly commented that they looked very young...but they were lawyers with a background in EU-law” (Handling officer, SOLVIT Sweden).

Two cases involving the Sweden Road Administration (SRA) illustrate the importance of legally framing a case. The matter of an imported Mercedes from Germany exemplifies a case that “was not clearly justified on EU legal grounds”, but where the respondent nevertheless considered it appropriate for SOLVIT to remove a “bureaucratic obstruction” (Handling officer, SOLVIT Sweden). The problem was that the engine had been changed in Germany prior to its export to Sweden. This change was performed by one of only two companies specialized in building such engines, specifically the firm not owned by the manufacturer. The car had then been tested and approved by the largest testing site in Germany. The SRA initially rejected the application to register the vehicle in Sweden on the grounds that the stronger engine required further modifications to the car’s suspension. SOLVIT Sweden received a complaint and considered it to be a matter of mutual recognition.<sup>3</sup> The SRA, meanwhile, argued that mutual recognition could be set aside in matters concerning safety. To test the car’s safety, the SRA demanded that it undergo a destruction test. As the name implies, this test involves the destruction of the car in order to test its safety under stress. Our respondent noted that it is often difficult to disapprove safety claims. However, the Mercedes-case was framed in relation to the judicial principle of mutual recognition (of the German testing facility’s approval). This judicially defined basis of the case was important for its inclusion as a SOLVIT case. Furthermore, as described in the following section, it also served as a tool for resolving the complaint. A lack of judicial framing could lead to the rejection of a case by SOLVIT Sweden on the grounds of it being unsolvable, as the following case illustrates:

In this case an individual had purchased a motorcycle in another member state that was built of parts from several brands. When the SRA refused to register the vehicle, SOLVIT Sweden was contacted. The handling officer describes how he relatively quickly realized that – unlike the aforementioned Mercedes-case – there were no legal means of solving the case. Furthermore, since there were no applicable rules it was not a matter of bureaucratic obstruction either. ”So I had to call the guy and explain to him that...there is nothing I can do...there are no rules whatsoever that can be used to get the bike registered” (Handling officer, SOLVIT Sweden). When a problem cannot be framed as a misapplication of EU-law or a matter of bureaucratic obstruction, it falls outside the scope of possible solutions available via SOLVIT.

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<sup>3</sup> The principle of mutual recognition as applied within the non-harmonized area states that a product compliant with national technical and quality standards cannot be denied market access in another member state.

## Case evaluation: judging the merits of a complaint

Once a complaint has been judged to be a SOLVIT case, the next stage is to evaluate the possible solutions using what is referred to as “a legal analysis from the point of view of Community law” (Manager SOLVIT Sweden). This ‘legal method’ basically follows standard practices of private law firms. Introduced by SOLVIT employees with previous experience from such firms, it stresses skills in EU-law since the case specifics determine what ECJ-rulings, Treaty articles or directives are relevant. It is critical that the facts and their evaluation is “objective from a legal perspective”, since the legal arguments will shape the manner in which a solution is sought (Manager, SOLVIT Sweden).

A first step of the legal method is to verify whether the case is within a harmonized or non-harmonized area. Within the harmonized area, the next step is to investigate the transposition of the directive. As part of evaluating whether the transposition has been done correctly, the handling officer checks whether there are ECJ-rulings which can guide the evaluation. Within the non-harmonized area, the ECJ-rulings are even more important, as the evaluation must determine whether or not the complaint is valid in relation to the treaties. If SOLVIT Sweden determines that another member state has erred, then a request is made to the national SOLVIT-center to contact the governmental organizational in question in order to seek a resolution.

The next step in the formalized procedure at SOLVIT Sweden is to enter the case into the SOLVIT-database. When a case gets registered is of considerable importance, since there is a recommended maximum processing time of ten weeks. This is a short time period, according to respondents, which makes it imperative to have prepared the case well before entering it into the database. Information about each SOLVIT-center’s performance – including unsolved and late cases – is made public in annual statistics prepared by SOLVIT EC. Sweden ranks comparatively well in these annual evaluations. One contributing reason is the growing number of Sweden-Sweden cases (described above). Previously, it was impossible to register such cases since there was no counterpart. However, SOLVIT Sweden now asks another SOLVIT-center to take part. This provides increased transparency in the activities of SOLVIT Sweden and a better control of resources (Manager, SOLVIT Sweden). It also makes it possible to register the cases. As a result, SOLVIT Sweden has been able to report increased productivity in recent years.

## Case resolution: reaching and registering closure

A case is registered as closed in the database when it has been resolved, or when further efforts to find a solution are deemed fruitless. There are various ways to solve a case. The standard way is to inform the public authority of its misapplication, and make it change its handling of the issue. Personal relationships within the national administration – knowing whom to contact and having a working relationship with that person – can speed this process. As an example, SOLVIT Sweden received a complaint from a Slovak registered nurse whose qualification was not approved by the Swedish National Board of Health and Welfare (NBHW), despite it being listed as one to be directly approved by all member states. A call from the SOLVIT handling officer to the handling officer at the NBHW quickly cleared up the matter. But even with personal contacts, the resolution of certain cases can be significantly more laborious. In another case, it took three years to resolve which tests were needed for Germany to approve export of a Swedish invention for remotely operating trucks. Before the matter was resolved in a satisfactory manner, more than 360 emails were sent, a number of trips were made by the SOLVIT Sweden case handling officer to various German authorities, and individuals from the Foreign Ministry and Ministry for Trade were involved.

In certain cases, personal relationships can facilitate resolution by slightly more unorthodox means. In the aforementioned case of the imported Mercedes car, the assigned SOLVIT handling officer had a good relationship with the head of the SRA vehicle unit. He first requested that SRA approve the car, and when this was refused, he then asked what information was needed for them to do so. The SOLVIT handling officer subsequently got the German testing engineer to write a document containing this information. Once the Mercedes-case was resolved, it became an ‘example case’ against which other complaints were evaluated. Thus, in the previous example of the multi-part motorcycle, the conclusion was that it *was not* a Mercedes-case – and thus could not be resolved in a similar manner.

However, it is not always straightforward when a case can be registered as closed in the database. Formally, a case can be classified as solved once the solution has become available to the client. However, it happens that authorities respond that they will formally make the necessary decision in a month or so, when only one day remains of the ten week time-limit. In such a situation, the handling officer can close the case, pending the pledged decision of the authority. It also happens that cases remain unsolved. This happened to a Finnish pharmaceutical company, who wanted to sell a product for treating arthritis as a nutritional supplement in Sweden. The Swedish Medical Products Agency wanted it registered as a pharmaceutical, a much more complex and costly procedure. SOLVIT Sweden’s evaluation of the EU regulation within the area concluded that this interpretation was possible, and the case was registered as unsolved. It now serves as an example case: if a new complaint was submitted with similar characteristics, then the company would be informed that SOLVIT cannot resolve the matter (Handling officer, SOLVIT Sweden).

Thus far, we have accounted for work to identify, evaluate and resolve cases within SOLVIT Sweden. As we will discuss below, there are various tools to facilitate this and also to prevent new cases which can be seen as a way of extending the influence of SOLVIT Sweden beyond the resolution of individual cases.

## Prevention, political influence and pro-activity

### Preventing cases of misapplication: the creation of the Internal market guide

According to our respondents, a historical cause of misapplications was lack of knowledge about EU-law within governmental authorities. This led, for example, to the incorrect privileging of Swedish regulation over EU-law (Manager and handling officer, SOLVIT Sweden). The existence of a parallel lack of political understanding, which records of parliamentary debates confirm, was also said to contribute to misapplications. The former manager of SOLVIT Sweden notes that it is relevant to remember that the remit of SOLVIT is to specifically advocate free trade and not consider other political considerations. Nevertheless, in order to proactively address the perceived lack of knowledge about internal market regulation in particular, SOLVIT Sweden developed a first version of the *Internal market guide for public authorities* (the IM-guide) in 2006.

This initiative was taken by a newly recruited specialist in EU-law, who joined SOLVIT Sweden from a law firm (Handling officer, SOLVIT Sweden). The pilot project for the IM-guide’s development included a discussion group with representatives from a number of public authorities with which SOLVIT Sweden had well-functioning relationships (Handling officer, SOLVIT Sweden). SOLVIT Sweden also visited the discussion group member’s organizations. A concrete outcome of this was that SOLVIT Sweden needed to provide illustrations, in addition to the salient regulatory texts. Thus, in the current version of the IM-guide the section *The principle of EU-law precedence* has one paragraph describing how conflicts between a national rule and EU-law always must be resolved by privileging the latter. This principle is then

illustrated with the case of a named company who won a judgment against the National Board of Agriculture in the Swedish Administrative Supreme Court since EU-law granted the firm more far-reaching rights of appeal than did Swedish legislation (National Board of Trade 2009b). Another concrete tool in the IM-guide is a one-page check-list which describes a stylized decision tree of “[t]hose questions that need to be asked in conjunction with an evaluation based on EU-law” in order to ensure that a particular course of action is compliant (*Ibid.*).

The IM-guide is not used as a tool for solving complaints but respondents perceived it as a useful tool for prevention, since it communicates how to appropriately comply with EU-law to a wider group of civil servants within the Swedish bureaucracy. One handling officer also noted that SOLVIT Sweden learnt additional legal arguments in the course of drafting the IM-guide. This made contacts with national authorities more efficient. In addition, the IM-guide has garnered outside attention: it was given positive feedback by the Swedish Government Offices and also presented at one of the biannual SOLVIT-network workshops.

### Involving the political level

In addition to preventing cases of misapplication through communication within the Swedish administrative system, SOLVIT Sweden seeks to influence the enforcement of internal market regulation by involving the political level. This involvement can relate to individual cases, such as when the Swedish Minister for Industrial Affairs contacted his German counterpart in an effort to expedite export of the aforementioned Swedish truck invention. The political involvement also takes other forms. Notably, the Minister of Trade is supplied with information about ongoing SOLVIT cases that need a ‘political push’ to find their solution prior to attending multilateral or bilateral meetings. The current Minister of Trade has also written opinion pieces, where SOLVIT’s work is used to support the Minister’s arguments for increased free trade. Reports from SOLVIT Sweden are also used by the Foreign Ministry to identify Swedish laws and instructions to authorities that need to be adjusted in order to remove or prevent trade barriers.

### Aiming for structural change

In addition to resolving cases of realized internal market misapplications, SOLVIT Sweden also undertakes so-called SOLVIT+ cases. These complex and comparatively time-consuming cases arise in situations where the root cause of recurrent problems requires structural changes, notably of national regulation in a particular area.

The case handling manual notes that SOLVIT+ cases are “formally not part of the SOLVIT-networks core-operations” (National Board of Trade 2009c). It is also openly acknowledged that certain national centers (Germany and Denmark) do not take on SOLVIT+ cases on the grounds that they violate the formal remit of the network, specifically the Commission recommendation which states that SOLVIT should not deal with cases that imply substantial regulatory tasks at the national or EU-level (interviews German SOLVIT and EC SOLVIT officials 2007, 2010; SOLVIT 2009). However SOLVIT Sweden is “probably more active than most” in undertaking SOLVIT+ cases, according to one handling officer. In 2008, SOLVIT Sweden achieved structural changes in two areas. First, the National Tax Authority was made to change the written instructions to its regional offices in order to ensure necessary interim documentation to service providers from other member states without prohibitively long delays (Manager, SOLVIT Sweden; SOLVIT 2009). Second, the routines of business associations in the construction sector were changed to recognize foreign work qualifications

within the framework of the Swedish collective agreements.<sup>4</sup> EU nationals were previously required to take a qualification test in order to secure full compensation. As this qualification test was in Swedish, it was an illegal language test (Manager, SOLVIT Sweden).

Although the absolute number of SOLVIT+ cases within the network remains small (32 open and 12 resolved cases in 2008; SOLVIT 2009), it is a growing trend. Respondents suggested that opposition was probably unsustainable over time, even without changes in SOLVIT's mandate: "No one wants to be shamed...so one would expect them to come on board eventually" (Former manager, SOLVIT Sweden). However, a challenge is that the resolution of SOLVIT+ cases can take time. Yet they are subject to the same ten week processing time and any failure to meet the deadline is visible. "The clock is ticking. When you go into the database you see how many days you have until the case should be solved. You can request and receive extensions for two or four weeks....[but] if you go over time, you get 'minus time' and then you lose; it looks bad in the statistics" (Handling officer, SOLVIT Sweden). The possibility for other SOLVIT-network members and the Commission (via SOLVIT EC) to access the database and supervise progress creates additional pressure to keep deadlines. Respondents also noted that the database information about on-going cases gives the Commission insight into the administrative systems of individual member states. The possibility of Commission insight could be used to urge national authorities to comply with internal market regulation. The threat was not so much the last resort of an infringement process, but rather that the Commission might pay attention to the situation and act on it (Former and current handling officers, SOLVIT Sweden).

### Proactively seeking out misapplications

At the time of our study, SOLVIT Sweden discussed whether to start internally initiating cases. According to the current manager of SOLVIT Sweden, "there is nothing in the SOLVIT routines that require clients to come to us". The initial idea for a first SOLVIT-initiated case, concerning demands made certain municipalities for environmental certification of pellet stoves, was a contact made by a prospective client. However, this contact failed to materialize into a formal complaint: "[Then] we saw an article in one of the daily newspapers concerning the matter. A fourteen year old girl stated she was so pleased that her school had raised environmental demands on the food in the cafeteria. We immediately thought: we should look at this!.. it could be a trade barrier" (Manager, SOLVIT Sweden). The manager saw it as appropriate to "be proactive, rather than merely reactive" (Manager, SOLVIT Sweden).

## Discussion

We will now characterize the tools observed in the work of SOLVIT based on their content, form and governance mechanisms. The latter refers to means by which to influence behavior through common understanding, shared problem definition, common work methods, visibility or ranking (Miller and Rose 1990, 2008). We will discuss how these tools, separately and together, take part in shaping and encouraging particular repertoires of action.

A broad spectrum of tools emerged from our empirical account (see Table 1), ranging from recruitment of specialists in EU-law, to the crafting of informational brochures for civil servants and the public communication of comparable data on productivity and adherence to deadlines. All of the observed tools are formulated within the SOLVIT-network. Several are internal to SOLVIT Sweden, but some are sourced from SOLVIT EC and thus external to SOLVIT Sweden. The tools have both internal targets, i.e. SOLVIT Sweden, and external targets, notably presumptive clients and – perhaps most importantly – government authorities.

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<sup>4</sup> EU-law gives business associations the same legal status as public authorities in those cases where their functioning according to collective agreements makes them critical to the realization of free movements of goods, services, capital and persons.

An example of an externally generated tool used to guide the work of SOLVIT Sweden is the SOLVIT database (8) while the IM-guide (4) is an internally generated tool which targets the activities of government authorities.

[Table 1 approximately here]

The various tools incorporate a range of governance mechanisms influencing the actions of the different targets by communicating, defining, and rewarding appropriate performance. Several of the tools serve to craft a *common understanding* of what are appropriate priorities and behaviors. One example of this is the SOLVIT annual report's presentation of success stories (10). This common understanding within the SOLVIT-network is arguably further reinforced through SOLVIT workshops and training (9), in which best practices can be shared. One example of this is how SOLVIT Sweden presented the IM-guide at such a SOLVIT-network meeting.

The IM-guide (4) is a tool that illustrates both common understanding and, more specifically, *shared problem definition*. This document seeks to create a common understanding about what is misapplication among the targeted governmental organizations. The document also communicates a particular – legally informed – version of defining and resolving clashes between national and EU-rules: through the privileging of a EU-law at a lower administrative level rather than raising the issue to the political level which might potentially generate other solutions to the inconsistency than a national regulation adapted in a certain way as suggested by SOLVIT.

Another tool that strongly contributes to crafting a common understanding and shared problem definition is staffing. This arguably also has far-reaching consequences for the use of *common work methods*. In particular, the recruitment of handling officers that are specialists in EU-law (1) arguably impacts both on the choice of cases to accept and on the case handling process as such. In a similar vein, the case handling manual (2) includes repeated mention of the importance of analyzing complaints in relation to EU-law. Seemingly, there is an assumption of a generic legal model that is also applicable in to SOLVIT Sweden, despite it being an organization whose mandate is to engage in informal problem-solving outside of legal process. Undertaking SOLVIT+ cases (5), and SOLVIT-initiated cases (6), are additional examples of a judicial approach to defining and solving problems within SOLVIT Sweden. The latter form of case identification, in particular, is explicitly premised on the existence of a legal basis for possible misapplication – but not necessarily the actual experience of such a misapplication on the part of a specific client. In sum, we observe many tools that push for common understandings, shared problem definitions and work methods that are legally influenced.

In addition to this, we see how several tools – notably those deployed by SOLVIT EC to target national SOLVIT-centers – serve to *make visible* and *rank performance*. The SOLVIT database (8) crafts particular definitions of performance, in the form of case load and adherence to deadlines. The visibility of this definition of good performance, both in the SOLVIT database and through the communication of this data (10), creates particular behavioral incentives. For example, it is desirable to register cases in the database as late as possible, in order to ensure a timely resolution. We can see how this directly impacts the methods and priorities of SOLVIT Sweden. The case handling manual puts case registration as step 5 in the process, signaling that significant work is carried out before SOLVIT formally takes on a case. We also note that cases which cannot be registered in the database (notably, qualified information cases) are de-prioritized relative to trade barrier cases. It is also

interesting to note how SOLVIT Sweden found a way to register Sweden-Sweden cases in the database. Even as this adds to the image of success for SOLVIT Sweden, it also places greater pressure on the Swedish authorities to comply with internal market regulations.

## Conclusions

The paper has taken an interest in how the organization of an informal network-based means of monitoring the adherence of national administrations to the regulations governing the internal market plays out at member state level. Using a governmentality perspective, we have inquired into how particular techniques used by SOLVIT Sweden to identify and remove trade barriers and bureaucratic obstruction promote particular versions of the internal market and by extension the EU-cooperation as a whole. The techniques mapped in the study clearly serve as carriers of particular normative ideals. One overarching conclusion is that many tools privilege a judicial approach to SOLVIT's remit and work methods. This is not, however, the kind of formal judicialization implied when the ECJ as an avenue for European integration is stressed. In the present case, we broadly align with the notion of judicialization as "the spread of rule-guided action or the expectation of lawful conduct, in any setting, private or public" (Blichner and Molander 2008). We also link it to the normative issues raised by the possibility that legal domination might undermine democratic values by imposing a particular cooperative form which down-plays the role of political conflict and debate (*Ibid*). Thus, what we observe could be characterized as a broader form of *cognitive judicialization*, whereby the approach and work methods of SOLVIT become aligned with legal problem definitions and work methods. Thus, we observe a tendency whereby the SOLVIT process for informal problem-solving is increasingly formalized with a strong linkage to judicial work methods. Sverdrup (2004) argues that Sweden's comparatively low rate of ECJ infringement cases is a result of informal problem-solving capacity within the political system. The present study brings this conclusion into question, as the informal problem-solving of SOLVIT Sweden is very legally formalized. As shown above, the cognitive judicialization gains particular salience in light of the formative effect that these work methods have for shaping the actions of the national administrations. In sum, we see that our inquiry into the minutiae of how SOLVIT Sweden engages in informal problem-solving of internal market applications suggest more far-reaching consequences of the tools deployed to complete this task.

We would therefore tentatively argue that the case of SOLVIT Sweden also suggests a process of "bottom-up" Europeanization of the Swedish administration. We interpret the growing importance attributed to SOLVIT+ cases and the possibility of SOLVIT-initiated as a shift towards ex ante regulation of internal market misapplication, rather than ex post identification and resolution. This brings into question the idea that SOLVIT deals with the removal of trade barriers and deregulation contributing to negative integration. Rather, this suggests positive integration by the creation of new common rules where SOLVIT governs the national authorities from below. The shift in case mix paints members of SOLVIT Sweden as freedom fighters for the internal market, pushing a bottom-up Europeanization with particular priorities. In this role, we note that SOLVIT could be characterized also as an 'internal market watchdog' for the Commission. The SOLVIT-network is formally tasked with solving problems of internal market misapplications. Yet in our study we find tendencies that the network can also serve as a tool for Commission influence, since the SOLVIT-network (notably the SOLVIT database) provides visibility into national administrations.

In the context of Sweden, the perceived pressure to address internal market misapplications due to possible Commission insight could perhaps be particularly strong due to the political agenda for trade liberalization. Furthermore, since the Sweden-Sweden cases contribute to positive feedback within the SOLVIT-network, this might also encourage further efforts on the part of SOLVIT Sweden to identify and address problems within Swedish public

authorities rather than in other member states. The frontrunner position of SOLVIT Sweden in taking on SOLVIT+ cases is an indication that there is a strong ambition to follow and expand on the Commission's mandate and be 'best in class'. The role model position of SOLVIT Sweden would arguably suggest that this development is encouraged and can be expected in other member states.

More generally, the present study describes a form of soft and informal governance in which compliance to binding regulation is sought through codified practices and exchanges between authorities, businesses and individuals which are neither politically codified nor publicly visible. We observe the emergence of stable informal relations and practices guided by judicial principles. It is important to recognize that these principles are not value-neutral stances. Although the realization of the internal market is unquestionably a core component of the EU-cooperation, it cannot be automatically and systematically privileged over other political priorities which have not yet been addressed within the scope of the EU or within national policy. Because of the increasingly proactive work of SOLVIT, such matters may indirectly be addressed and dealt with. The de facto legalistic privileging which we observe takes place at what must be considered the implementation or monitoring stage of the policy process. Thus, it is not directly preceded by political debate, but rather by de-politicized discussions at lower – presumably – administrative levels.

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## Endnotes

<sup>1</sup> The authors gratefully acknowledge Research Assistant Viktoria Björk's contribution to the empirical work of this study. The research project was made possible by financial support from Riksbankens Jubileumsfond and Jan Wallanders och Tom Hedelius stiftelse.

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**Table 1: Summary of key elements in the SOLVIT tool box**

#	Tool	Target	Source	Governance Mechanism
1	<b>Recruitment of EU-law specialists:</b> with knowledge about legal method and EU-law	SOLVIT Sweden handling officers	SOLVIT Sweden	Common understanding Problem definition Common work methods
2	<b>Case handling manual:</b> that emphasizes the legal method and analysis based on EU-law	SOLVIT Sweden handling officers	SOLVIT Sweden	Common understanding Problem definition Common work methods
3	<b>Making cases into examples:</b> which are used to categorize future cases	SOLVIT Sweden handling officers	SOLVIT Sweden	Common understanding Problem definition Common work methods
4	<b>IM-guide:</b> which informs about the interpretation and handling of EU-law	Swedish public authorities (SOLVIT-network)	SOLVIT Sweden	Common understanding Problem definition Visibility Common work methods
5	<b>SOLVIT+ cases:</b> where structural changes are sought to resolve root causes of misapplications	Swedish public authorities	SOLVIT Sweden	Problem definition Visibility
6	<b>SOLVIT-initiated cases:</b> which proactively identify cases of possible misapplication	Swedish public authorities	SOLVIT Sweden	Problem definition Visibility
7	<b>Homepage and submission form:</b> to structure information inflow and spread information	Presumptive clients	SOLVIT Sweden/ SOLVIT EC	Problem definition Common work methods
8	<b>SOLVIT-database:</b> to collect information and compare performance	SOLVIT Sweden and other national centers	SOLVIT EC	Common understanding Visibility Ranking
9	<b>SOLVIT workshops and training:</b> to share knowledge and undertake joint training	SOLVIT Sweden and other national centers	SOLVIT EC	Common understanding Problem definition Common work methods
10	<b>Annual report and success stories:</b> to communicate activities and performance	National SOLVIT-centers EU Commission Member states Presumptive clients	SOLVIT EC	Common understanding Visibility Ranking