

2007 EDITION

Fact Sheets on the European Union – 2007 EDITION

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EUROPEAN PARLIAMENT

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Note to readers

This 2007 edition of the Fact Sheets is the eleventh since the publication first appeared in 1979 for the first direct elections to the European Parliament. As with previous editions, every effort has been made to ensure that the Fact Sheets fulfil their purpose of providing non-specialists with an overview of the European integration process. We have therefore kept things simple, clear and concise and used a format that is as consistent and straightforward as possible.

Only very minor changes have been made to the overall size (159 fact sheets) and structure of the publication. We have naturally included developments that have occurred over recent years, such as the changes resulting from the Nice Treaty, the proposals for a Treaty establishing a Constitution for Europe and the EU enlargements that took place in 2004 and 2007. *Furthermore, where reference is made to articles of the Treaties (Treaty establishing the European Community and Treaty on European Union), only the new numbering system introduced by the Nice Treaty is now used.*

In addition to bringing the fact sheets up to date, we hope that we have further improved their readability and thus also their value to readers as a quick but sufficiently comprehensive overview of progress on the main points of European integration. Readers wishing to go into greater detail are referred to more specialist works, including those produced by Parliament's Secretariat.

As before, each fact sheet is identified by a three-digit number, the first two digits of which refer to the section and chapter to which the fact sheet belongs. Cross-references to other fact sheets — which appear at the end of the relevant sentences — use the same numbering scheme, as does the contents page at the beginning of the publication, which lists all the fact sheets by section and chapter.

Lastly, regular updates are made to the English, French and German versions of the fact sheets on the European Parliament's website (<http://www.europarl.europa.eu/>).

European Parliament Secretariat

January 2007

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SEPTENTRIO

MARE GLACIALE

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annotationes.

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Prostat nunc in Officina
TOMAE CORN. LOTTER
Geogr. et Chalcogr.
AUG. VINDEL.



ANNOTATIO.

Sicuti plures res in hac mappa et in aliis
quae jam in publicam lucem evasi, differunt
ab illis quae reperuntur in tabulis quae ha-
ctenus vulgatae sunt, sequens erit, ut hae
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Principis Meridianus

O C E A -

N U S



INSULAE BRITANNICAE
MARE HANNICUM
MARE GALLICUM

REGNUM BRITANNIAE
MARE ADRIATICUM
MARE IONICUM



1.1. Historical evolution of European integration

1.1.1. The first Treaties

Legal basis

- The Treaty of the European Coal and Steel Community (ECSC), or Treaty of Paris, was signed on 18 April 1951 and came into force on 25 July 1952. For the first time, six European States agreed to work towards integration. This Treaty made it possible to lay the foundations of the Community by setting up an executive known as the 'High Authority', a Parliamentary Assembly, a Council of Ministers, a Court of Justice and a Consultative Committee. Concluded for a limited period of 50 years, in accordance with its Article 97, the ECSC Treaty expired on 23 July 2002. In accordance with the protocol annexed to the EC Treaty, the net worth of the ECSC's assets at the time of its dissolution was allocated to research in the sectors related to the coal and steel industry through a Research Fund for Coal and Steel. The coal and steel sectors are now completely under the ordinary regime set up by the EC Treaty.
- The Treaties of the European Economic Community (EEC) and the European Atomic Energy Community (EAEC, otherwise known as 'Euratom'), or the Treaties of Rome, were signed on 25 March 1957 and came into force on 1 January 1958. In contrast to the ECSC Treaty, the Treaties of Rome were concluded 'for an unlimited period' (Art. 240 of the EEC Treaty and Art. 208 of the EAEC Treaty), which gives them almost a constitutional character.
- The six founding countries were Belgium, France, Germany, Italy, Luxembourg and the Netherlands.

Objectives

- The avowed intentions of the founders of the ECSC were that it should be merely a first stage towards a 'European Federation'. The common market in coal and steel was to be an experiment which could gradually be extended to other economic spheres, culminating in a 'political' Europe.
- The aim of the European Economic Community was to establish a common market based on the four freedoms

of movement of goods, persons, capital and services and the gradual convergence of economic policies.

- The aim of Euratom was to coordinate the supply of fissile materials and the research programmes on the peaceful use of nuclear energy, already under way or being prepared in the Member States.
- The preambles of the three Treaties reveal a unity of purpose behind the creation of the Communities, namely, the conviction that the States of Europe must work together to build a common future as this alone will enable them to control their destiny.

Main principles

The European Communities (the ECSC, EEC and Euratom) were born of a gradual process of thinking about Europe, an idea that was closely bound up with the events that had shattered the continent. In the wake of the Second World War the major industries, in particular the steel industry, needed reorganising. The future of Europe, threatened by East–West confrontation, lay in Franco–German reconciliation.

- A. The appeal made by Robert Schuman, the French Foreign Minister, on 9 May 1950 may be considered as the starting point for the Community. At that time, the choice of coal and steel was highly symbolic: in the early 1950s coal and steel were vital industries, the basis of a country's power. In addition to the clear economic benefits to be gained, the pooling of French and German resources was to mark the end of antagonism between the two countries. On 9 May 1950 Robert Schuman declared: 'Europe will not be built in a day nor as part of some overall design; it will be built through practical achievements that first create a sense of common purpose'. It was on the basis of that principle that France, Italy, Germany and the Benelux countries (Belgium, the Netherlands, Luxembourg) signed the Treaty of Paris, of which the main points were:

- the free movement of products and free access to sources of production;

- permanent monitoring of the market to avoid distortions which could lead to the introduction of production quotas;
 - respect for the rules of competition and price transparency;
 - support for modernisation and conversion of the coal and steel sectors.
- B.** Following the signing of the Treaty, although France was opposed to the reconstitution of a German national military force, René Pleven envisaged the formation of a European army. The European Defence Community (EDC) negotiated in 1952 was to have been accompanied by a political Community (EPC). Both plans were shelved following the French National Assembly's refusal to ratify the Treaty on 30 August 1954.
- C.** Efforts to get the process of European integration under way again following the failure of the EDC took the form of specific proposals at the Messina Conference (in June 1955) on a customs union and atomic energy. They culminated in the signing of the EEC and EAEC Treaties, known as the 'Euratom' Treaty.
- 1.** The EEC Treaty's provisions included:
 - the elimination of customs duties between Member States;
 - the establishment of an external Common Customs Tariff;
 - the introduction of a common policy for agriculture and transport;
 - the creation of a European Social Fund;
 - establishment of a European Investment Bank (EIB);
 - the development of closer relations between the Member States.
- To achieve these objectives the EEC Treaty laid down guiding principles and defined the framework for the legislative activities of the Community institutions. These involved common policies: the common agricultural policy (Articles 38 to 43), transport policy (Articles 74 and 75) and a common commercial policy (Articles 110 to 113).
- The common market was to allow the free movement of goods and the mobility of factors of production (free movement of workers and enterprises, the freedom to provide services and the free movement of capital).
- 2.** The Euratom Treaty laid down highly ambitious objectives, including the 'speedy establishment and growth of nuclear industries'. However, owing to the complex and delicate nature of the nuclear sector, which touched on the vital interests of the Member States (defence and national independence), the Euratom Treaty had to scale down its ambitions.
- D.** The agreement on certain joint institutions, which was signed and entered into force at the same time as the Treaties of Rome, stipulated that the Parliamentary Assembly and Court of Justice would be common institutions. It only remained to merge the 'executives', and the Treaty establishing a Single Council and a Single Commission of the European Communities of 8 April 1965, known as the 'Merger Treaty', thereby completed the unification of the institutions.

→ Denis **BATTA**
11/2005

1.1.2. Developments up to the Single European Act

A. Main achievements in the first stage

- Article 8 of the Treaty of Rome provided for completion of a common market over a transitional period of 12 years, in three stages ending on 31 December 1969.
- Its first aim, the customs union, was completed more quickly than expected. The transitional period for enlarging quotas and phasing out internal customs ended as early as 1 July 1968. By the same date Europe had adopted a common external tariff for trade with third countries.
- ‘Green Europe’ was the second major project for European integration. The first regulations on the Common Agricultural Policy (CAP) were adopted and the European Agricultural Guidance and Guarantee Fund (EAGGF) was set up in 1962.
- Meanwhile the Court of Justice interpreted the regulations on the transitional period in such a way that, when it ended, a number of Treaty provisions took direct effect, such as Articles 13, 30, 48, 52 and 59 (→3.2.3).
- Even so, at the end of the transitional period there were still major obstacles to freedom of movement; the single market was not complete.

B. First amendment of the Treaties

1. Improvements to the institutions

- (a) The first institutional change came about with the Merger Treaty of 8 April 1965, which merged the executive bodies. This took effect in 1967, setting up a single Council and Commission of the European Communities (the ECSC, EEC and EAEC) and introducing the principle of a single budget.
- (b) The Council Decision of 21 April 1970 set up a system of the Community’s own resources, replacing financial contributions by the Member States (→1.5.1).

(c) Budgetary powers

- The Treaty of Luxembourg of 22 April 1970 granted the European Parliament (EP) certain budgetary powers (→1.3.1).
- The Treaty of Brussels of 22 July 1975, gave the EP the right to reject the budget and to grant the Commission a discharge for implementing the budget. The same Treaty set up the Court of Auditors, a body responsible for scrutinising the

Community’s accounts and financial management (→1.3.10), which began work on 25 October 1977.

- The EP systematically used its budgetary powers to develop the Community’s action.

- (d) The Act of 20 September 1976 had given the EP a new legitimacy and authority by introducing its election by direct universal suffrage by Community citizens. The first election took place in June 1979 (→1.3.1).

2. Enlargement

Meanwhile the Community was getting larger. The UK joined on 1 January 1973, together with Denmark and Ireland; the Norwegian people had voted against accession in a referendum. Greece became a member in 1981; Portugal and Spain joined in 1986.

- 3. After this first round of enlargement there were calls for greater budgetary rigour and reform of the CAP. The 1979 European Council reached agreement on a series of complementary measures. The Fontainebleau agreements of 1984 obtained a sustainable solution, based on the principle that adjustments could be made to assist any Member State with a financial burden that was excessive in terms of its relative prosperity.

C. Developments in comprehensive plans for integration

Encouraged by the initial successes of the economic community, the aim of also creating political unity for the Member States resurfaced in the early 1960s, despite the failure of the plans for the European Defence Community (EDC) in August 1954.

1. Failure of an attempt to achieve political union

(a) The Fouchet Plan

At the 1961 Bonn summit the Heads of State and Government of the six founding Member States of the European Community asked an intergovernmental committee, chaired by the French ambassador Christian Fouchet, to put forward proposals on the political status of a union of European peoples. This research committee tried vainly, on two occasions between 1960 and 1962, to present the Member States with a draft treaty that was acceptable to all. Fouchet based his plan on strict respect for the identity of the Member States, thus rejecting the federal option. The negotiations failed on three objections: uncertainty as to the place of the United Kingdom, disagreement on the issue of a

European defence system aiming to be independent of the Atlantic Alliance, and the excessively intergovernmental nature of the institutions proposed, which was likely to undermine the supranational aspect of the existing Community institutions.

- (b) After the failure of the Fouchet proposals there were no further attempts at a fundamental review of the Community Treaties until the Spinelli initiative in 1984. The debate on the form a future political union might take continued at a more pragmatic level in a number of reports and resolutions.
- (c) In the absence of a political community, its substitute took the form of European Political Cooperation, or EPC (→6.1.1.). At the summit conference in The Hague in December 1969 the Heads of State and Government decided to look into the best way of making progress in the field of political unification. The Davignon Report, adopted by the foreign ministers in October 1970 and subsequently amplified by further reports, formed the basis of EPC until the Single Act entered into force.

2. The 1966 crisis

A serious crisis arose when the tricky issue of moving on to the third stage of the transition period (due on 1 January 1966) began to emerge. At this stage voting procedures in the Council were to change, with a move from unanimous to qualified majority voting in certain areas. The change of voting method reflected greater emphasis on a supranational approach in the Community. France opposed a range of Commission proposals, which included measures for financing the CAP, and stopped attending the main Community meetings (its 'empty chair' policy). In exchange for its return it demanded a political agreement on the role of the Commission and majority voting, which would involve a complete review of the treaty system. Eventually, on 30 January 1966, agreement was reached on the celebrated Luxembourg Compromise (→1.3.6), which stated that when vital interests of one or more countries were at stake members of the Council would endeavour to reach solutions that could be adopted by all while respecting their mutual interests.

3. The increasing importance of European 'summits'

Meanwhile, although they were outside the Community institutional context, the conferences of Heads of State and Government of the Member States were induced to provide some political impetus and settle the problems that the normal Council could not handle. After early meetings in 1961 and 1967 the conferences took on increasing significance with the Hague Summit of 1 and 2 December 1969, which allowed negotiations to begin on enlarging the Community and agreed on the Community

finance system. The October 1972 Paris summit went on to reach the decision to use the Treaty provisions, including Article 235 (now Article 308), as widely as possible in the fields of environmental, regional, social and industrial policy; while the Fontainebleau summit in December 1974 took major political decisions on direct elections, the European Regional Fund and the Council's decision-making procedure. At that point it also decided to meet three times a year as the 'European Council' to discuss Community affairs and political cooperation (→1.3.7).

To revive the process of European integration the Belgian Prime Minister Leo Tindemans was given the task of drawing up a report on European Union. Presented on 29 December 1975, his report put forward a series of proposals on external relations, economic and monetary policy and the citizens' Europe. But it did not result in any specific reforms.

4. Towards the end of the 1970s there were various reactions in the Member States to the worsening economic crisis, and this affected efforts to bring their economic and fiscal policies into line. The Heads of Government decided in 1978 to set up a committee of three 'Wise Men', Mr Biesheuvel, Mr Dell and Mr Marjolin, to consider 'adjustments to the machinery and procedures' of the institutions, so as to provide for the harmonious operation of the Communities and further progress on the road to European Union. However, the committee confined itself to practical suggestions on organising Council business and relations with the Commission and Parliament, but only some of them were taken up.

To solve the problem of monetary instability and its adverse effects on the CAP and cohesion between Member States, the Bremen and Brussels European Councils in 1978 set up the European Monetary System (EMS). Established on a voluntary and differentiated basis (the UK decided not to participate in the exchange-rate mechanism) the EMS depended on the existence of a common accounting unit, the ECU (→5.1.).

At the London European Council in 1981 the foreign ministers of Germany and Italy, Mr Genscher and Mr Colombo, put forward a proposal for a 'European Act' covering a range of subjects: political cooperation, culture, fundamental rights, harmonisation of the law outside the fields covered by the Community Treaties, and ways of dealing with violence, terrorism and crime. It was not adopted in its original form, but some parts of it resurfaced in the 'Solemn declaration on European Union' adopted in Stuttgart on 19 June 1983. This text forms an important part of the backcloth to the Single European Act (SEA).

5. The Spinelli Project

A few months after its first direct election in 1979 Parliament ran into a serious crisis in its relations with the Council, over the budget for 1980. At the instigation of Altiero Spinelli MEP, founder of the European Federalist Movement and a former Commissioner, a group of nine MEPs met at the 'Crocodile' restaurant in Strasbourg in July 1980 to discuss ways of relaunching the operation of the institutions. In July 1981 the EP set up an institutional affairs committee, with Spinelli as its coordinating rapporteur, to draw up a plan for amendment of the existing Treaties. The Spinelli group and the subsequent committee rapidly decided to formulate plans for what was to become the European Union. The draft Treaty was adopted by a large majority on 14 February 1984. It was a major leap forward, providing for the transfer of new responsibilities in essential fields. Legislative power would come under a twin-chamber system akin to that of a federal State. The system aimed to strike a balance between the EP and the Council.

This was how the process leading to the SEA got off the ground.

D. Developments up to the Single European Act

Having settled the Community budget dispute of the early 1980s, the European Council decided at its Fontainebleau meeting in June 1984 to set up an ad hoc committee of the personal representatives of the Heads of State and Government, known as the Dooge committee after its chairman. The committee was asked to make proposals for improving the functioning of the Community system and of political cooperation. It drew up an interim report for the European Council meeting in Dublin in December 1984. The report proposed a major step forward in qualitative terms, particularly in the institutional sphere. The Dublin European Council said the committee should continue to work towards a consensus, as three of the 10 representatives had expressed serious reservations about the text of the report. But the European Council in Milan in June 1985 decided by a majority vote (of 7 to 3, an exceptional procedure in that body) to convene an intergovernmental conference to consider the powers of the institutions, the extension of Community activities to new areas and the establishment of a 'genuine' internal market.

The Intergovernmental Conference met during the summer and autumn of 1985 and, as a result of a number of disagreements, submitted a set of somewhat disparate texts to the European Council meeting in Luxembourg on 2 and 3 December 1985. With some difficulty, the Council adopted conclusions and the Foreign Ministers knocked them into shape on 27 January 1986.

E. The Single European Act (SEA): an important stage

On 17 February 1986 nine Member States signed the SEA, followed later by Denmark (after a referendum voted in favour), Italy and Greece, on 28 February 1986. The Act was ratified by Member States' parliaments during 1986, but because a private citizen had appealed to the Irish courts its entry into force was delayed for six months, until 1 July 1987.

The SEA was the first substantial change to the Treaty of Rome.

1. Extension of the Union's powers

(a) Through the creation of a large internal market

to be completed by 1 January 1993. The creation of the internal market consisted in taking up and broadening the objective of the common market introduced in 1958 (→3.1.).

(b) Through establishing new powers

- monetary capability,
- social policy,
- economic and social cohesion,
- research and technological development,
- the environment,
- cooperation in the field of foreign policy.

2. Improvement in the decision-making capacity of the Council of Ministers

Qualified majority voting

(a) replaced unanimity in four of the Community's existing responsibilities:

- amendment of the common customs tariff,
- freedom to provide services,
- the free movement of capital,
- the common sea and air transport policy.

(b) was introduced for several new responsibilities:

- the internal market,
- social policy,
- economic and social cohesion,
- research and technological development,
- the environment.

(c) formed the subject of an amendment to the Council's internal rules of procedure, so as to comply with the presidency's declaration on Article 149(2) of the EEC Treaty in the Final Act of the SEA. This states that in future a vote may be called in the Council not only on the initiative of its President, but also at the request of

the Commission or a Member State if a simple majority of the Council's members are in favour. They must receive two weeks' notice of such a request.

3. Growth of the role of the European Parliament

The EP's powers were strengthened by:

- making Community agreements on enlargement and association agreements subject to Parliament's assent;

- introducing a procedure for cooperation with the Council (→1.4.1.) which gives Parliament real, if limited, legislative powers. It applied to about a dozen legal bases at the time and marked a crucial point in the transformation of the EP as co-legislator, on an equal footing with the Council.

1.1.3. The Maastricht, Amsterdam and Nice Treaties

I. The Maastricht Treaty

The Treaty on European Union, signed in Maastricht on 7 February 1992, entered into force on 1 November 1993.

The Union's structure

By instituting a European Union, the Maastricht Treaty marks a new step in the process of creating an 'ever-closer union among the peoples of Europe'. The Union is based on the European Communities (→1.1.1. and 1.1.2.) and supported by policies and forms of cooperation provided for in the Treaty on European Union. It has a single institutional structure, consisting of the European Council, the European Parliament (EP), the Council of Ministers, the European Commission, the Court of Justice and the Court of Auditors. The European Council's task is to define general political guidelines. The EP, Council, Commission, Court of Justice and Court of Auditors (strictly speaking the only Community institutions) exercise their powers in accordance with the Treaties. The Council, Commission and Parliament are assisted by an Economic and Social Committee and a Committee of the Regions, which both have advisory powers. A European System of Central Banks and a European Central Bank have been set up under the provisions of the Treaty in addition to the existing financial institutions in the EIB group, namely the European Investments Bank and the European Investment Fund.

The powers of the Union

The Union created by the Maastricht Treaty was given certain powers by the Treaty, which are classified into three groups and are commonly referred to as 'pillars':

- The first 'pillar' consists of the European Communities, providing a framework within which the powers for which sovereignty has been transferred by the Member

States in the areas governed by the Treaty are exercised by the Community institutions.

- The second 'pillar' is the common foreign and security policy laid down in Title V of the Treaty on European Union.
- The third 'pillar' is cooperation in the fields of justice and home affairs laid down in Title VI of the Treaty on European Union.

Titles V and VI provide for intergovernmental cooperation using the common institutions, with certain supranational features such as associating the Commission and consulting Parliament.

A. The European Community (first pillar)

The Community's task is to promote throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women, sustainable and non-inflationary growth, a high degree of competitiveness and convergence of economic performance, a high level of environmental protection, the raising of the standard of living and quality of life, economic and social cohesion and solidarity among Member States. The Community pursues these objectives, acting within the limits of its powers, by establishing a common market and related measures set out in Article 3 of the EC Treaty (ECT) and by initiating the economic and single monetary policy referred to in Article 4. Community activities must respect the principle of proportionality and, in areas that do not fall within its exclusive competence, the principle of subsidiarity (Article 5 ECT).

B. The common foreign and security policy (CFSP) (second pillar)

The Union has the task of defining and implementing, by intergovernmental methods, a common foreign and

security policy (→6.1.1.). The Member States must support this policy actively and unreservedly in a spirit of loyalty and mutual solidarity. Its objectives are:

- to safeguard the common values, fundamental interests, independence and integrity of the Union, in accordance with the principles of the United Nations Charter;
- to strengthen the security of the Union in all ways;
- to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter, including principles relating to external borders;
- to promote international cooperation;
- to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.

C. Cooperation in the fields of justice and home affairs (third pillar)

The Union's objective is to develop common action in these areas by intergovernmental methods (→4.1.1.1.) to provide citizens with a high level of safety within an area of freedom, security and justice.

It covers the following areas:

- rules and the exercise of controls on crossing the Community's external borders;
- combating terrorism, serious crime, drug trafficking and international fraud;
- judicial cooperation in criminal and civil matters;
- creation of a European Police Office (Europol) with a system for exchanging information between national police forces;
- combating unauthorised immigration;
- common asylum policy.

II. The Amsterdam Treaty

The Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, signed in Amsterdam on 2 October 1997, entered into force on 1 May 1999.

A. Increase in EU powers

1. European Community

- With regard to objectives, special prominence has been given to balanced and sustainable development and a high level of employment.

- A mechanism has been set up to coordinate Member States' policies on employment, and there is a possibility of some Community measures in this area.
- The Agreement on Social Policy has been incorporated into the EC treaty with some improvements (removal of the opt-out).
- The Community method now applies to some major areas which hitherto came under the 'third pillar' such as asylum, immigration, crossing external borders, combating fraud, customs cooperation and some of the cooperation under the Schengen Agreement, which the EU and Communities have endorsed in full.

2. European Union

- Intergovernmental cooperation in the areas of police and judicial cooperation has been strengthened by defining objectives and precise tasks and creating a new legal instrument similar to a directive.
- There are changes in the policy areas of the environment, public health and consumer protection.
- There are new provisions with regard to specific problems such as general interest services, cultural diversity and the use of languages and measures applicable to very remote and island regions and overseas countries and territories.
- The instruments of the common foreign and security policy were developed later, in particular by creating a new instrument, the common strategy, which should normally be implemented by a majority decision, a new office, the 'Secretary-General of the Council responsible for the CFSP', and a new structure, the 'Policy Planning and Early Warning Unit'. With regard to security, a reference to 'Petersberg' missions defines the scope of any future joint action.
- In the area of external economic policy, the Council has been empowered to extend the field of application to services and intellectual property rights.

B. A stronger position for Parliament

1. Legislative power

(a) **The co-decision procedure has been extended** to 15 legal bases which were in the EC Treaty:

- Article 12: prohibition of discrimination,
- Article 18: free movement of EU citizens,
- Article 42: free movement of workers,
- Article 47(1): recognition of qualifications,
- Article 67: visa procedures,
- Article 71: transport policy, including air transport,
- Article 141(3): implementation of equal pay for equal work,

- Article 148: implementation of the Social Fund,
 - Article 150(4): vocational training measures,
 - Article 153(4): consumer protection,
 - Article 156: trans-European networks ('other measures'),
 - Article 162: implementation of the Regional Development Fund,
 - Article 172: implementation of framework research programmes,
 - Article 175(3): environment protection measures,
 - Article 179: development cooperation;
- and to eight new legal bases:
- Article 129: measures to promote employment,
 - Article 135: customs cooperation,
 - Article 137(2): social policy,
 - Article 152(4): health protection, veterinary and plant health measures,
 - Article 255: principles governing access to documents,
 - Article 280: combating fraud,
 - Article 285: Community statistics,
 - Article 286: establishment of a body to monitor protection of individuals with regard to data processing.

It therefore applies to most areas of legislation.

- (b) Excepting only agriculture and competition policy, the co-decision procedure applies to all the areas where the Council may take decisions by qualified majority. In four cases (Articles 18, 42 and 47 and Article 151 on cultural policy, which remains unchanged) the co-decision procedure is still combined with a requirement for a unanimous decision in the Council. The other legislative areas where unanimity is required are not subject to co-decision (qualified majority decisions are now required under Article 166 on framework research programmes, which was previously subject to unanimity).
- (c) Under the simplified co-decision procedure (Article 251), Parliament and the Council have become co-legislators on a practically equal footing, in particular because it is now possible to adopt an act at first reading if there is agreement between the two branches of the legislative authority, and because the power of the Council unilaterally to impose its decision at third reading has been removed. However, there is still no satisfactory solution to the problems raised by delegating implementing acts, as Declaration 31 confines itself to calling on the Commission to submit a new proposal on comitology.

2. Power of control

As well as its vote to approve the Commission as a body, Parliament also has a vote to approve in advance the person nominated as President of the future Commission (Article 214).

The Amsterdam Treaty expressly confirms the protection of fundamental rights through the application of Community law, which until then had been a matter for Court of Justice case-law. The Treaty adds a system of political sanctions which may be decided on in the event of serious and persistent violation by a Member State of the founding principles of the EU (freedom, democracy, human rights and the rule of law).

3. Election and statute of members

With regard to the procedure for elections to Parliament by direct universal suffrage (Article 190), the Community's power to adopt common principles has been added to the existing power to adopt a uniform procedure. A legal basis making it possible to adopt a single statute for MEPs has been included in the same article. However, there is still no provision allowing measures to develop political parties at European level (cf. Article 191).

C. Closer cooperation

For the first time, the founding Treaties contain general provisions allowing some Member States under certain conditions to take advantage of common institutions to organise closer cooperation between themselves. This option is in addition to the closer cooperation covered by specific provisions, such as economic and monetary union, creation of the area of freedom, security and justice and incorporating the Schengen provisions. The areas where there may be closer cooperation are the third pillar and, under particularly restrictive conditions, matters subject to non-exclusive Community competence. The conditions which any closer cooperation must fulfil and the planned decision-making procedures have been drawn up in such a way as to ensure that this new factor in the process of integration will remain exceptional and, at all events, can only be used to move further towards integration and not to take retrograde steps.

D. Simplification

The Amsterdam Treaty removes from the European Treaties all provisions which the passage of time has rendered void or obsolete, while ensuring that this does not affect the legal effects which derived from them in the past. It also renumbers the Treaty articles. For legal and political reasons the Treaty was signed and submitted for ratification in the form of amendments to the existing Treaties.

E. Institutional reforms with a view to enlargement

1. The Amsterdam Treaty has set the maximum number of members of the EP, in line with Parliament's request, at 700 (Article 189).
2. Composition of the Commission and the question of weighted votes are covered by a 'Protocol on the institutions' attached to the Treaty. This provides that, in a Union of up to 20 Member States, the Commission will comprise one national of each Member State, provided that by that date, weighting of the votes in the Council has been modified. In any event, at least a year before the 21st Member State joins, a new IGC must comprehensively review the Treaties' provisions on the institutions.
3. There is certainly provision for the Council to use qualified majority voting in a number of the legal bases newly established by the Amsterdam Treaty (see above and the decisions on employment guidelines (Article 128(2)) and on very remote regions (Article 299(2)). However, of the existing Community policies, only research policy has new provisions on qualified majority voting, at Articles 166 and 172. In the EC Treaty alone, 44 articles still require unanimity, of which 20 concern legislative areas such as tax harmonisation (Article 93), approximation of laws (Article 94), culture (Article 151), industrial policy (Article 157), the Structural Funds (Article 161) and some aspects of environmental policy (Article 175).

F. Other matters

- A protocol covers Community procedures for implementing the principle of subsidiarity.
- New provisions on access to documents (Article 255) and greater openness in the Council's legislative work (Article 207(3)) have improved transparency.

III. The Nice Treaty

The aim of the Treaty of Nice was to reform the institutional structure of the European Union to withstand the challenges of the new enlargement. It was characterised by technical reforms principally concerning:

- a change to the weighting of votes in the Council of Ministers;

- a change to the size of the Commission (one Commissioner per Member State up to 26,
- then a system of rotation to be decided by the Council) and to its operation, with a greater role for its President, and also to its method of appointment;
- a new division of jurisdiction between the Court of First Instance and the Court of Justice, and the new right to create specialist judicial chambers;
- a change to the number of MEPs in preparation for enlargement;
- a change to the composition and appointment of members of the Court of Auditors, the Economic and Social Committee and the Committee of the Regions;
- relaxation of the conditions of implementation and the extension of the scope of enhanced cooperation.

The EP obtained a number of significant policies, however:

- extension of the scope of qualified majority voting;
- the right to bring cases to the Court of Justice to challenge the legality of acts was no longer limited to the defence of its own prerogatives;
- strengthening the role of the European political parties by means of a regulation to be adopted using the co-decision procedure.

Finally, in parallel with the adoption of the Charter of Fundamental Rights, the Treaty of Nice gave the EP the right to trigger a procedure warning of the risk of a serious violation of fundamental rights by a Member State, referred to in Article 6 of the Treaty on European Union.

Role of the European Parliament

Consultation before an intergovernmental conference is called. Parliament is also involved in the intergovernmental conferences according to ad hoc formulas; during the last three it was represented, depending on the case, by its President or by two of its members.

→ Denis **BATTA**
11/2005

1.1.4. The Treaty of Nice and the Convention on the Future of Europe

I. Treaty of Nice

The Treaty was signed on 26 February 2001 and entered into force on 1 February 2003.

Objectives

The conclusions of the Helsinki European Council (10 and 11 December 1999), confirmed at Nice in December 2000, required the EU to be able, by the end of 2002, to welcome the new Member States which were ready for accession. In the event the European Union opened its doors to 10 new Member States on 1 May 2004. The presence of these countries, which have a low or moderate level of population, will increase the total relative weight of countries with a smaller population compared with the most populous countries (only two of the applicant countries are more populous than the current Member State average). The Treaty of Nice thus seeks to:

- make the Community institutions more efficient and legitimate;
- prepare the EU for its major enlargement to include countries from eastern Europe.

Background

A number of institutional issues had been addressed by the intergovernmental conferences of Maastricht and Amsterdam (→1.1.3) but not satisfactorily resolved (unfinished business referred to as the 'Amsterdam leftovers'): the size and composition of the Commission, weighting of votes in the Council, extension of qualified majority voting. The protocol on the institutions annexed to the Treaty of Amsterdam stipulated that, in the case of enlargement entailing the accession of not more than five countries, the Commission 'shall comprise one national of each Member State, provided that, by that [accession] date, the weighting of the votes in the Council has been modified' (no provision was made for the eventuality of more than five new members joining).

The Cologne European Council (3 and 4 June 1999) had thus decided that a further intergovernmental conference (IGC) would have to be convened in early 2000 and completed by the end of that same year. Its remit would be those institutional questions still unresolved after Amsterdam and the new treaty amendments which would be necessary in this context. Further to this decision and on the basis of a report by the Finnish presidency, the Helsinki

European Council set the agenda for the IGC as follows: the three items of 'Amsterdam leftovers' plus all the changes required in preparation for enlargement.

Content

The IGC opened on 14 February 2000 and completed its work in Nice on 10 December 2000, reaching agreement on the above institutional questions and a range of other points, namely:

- a new distribution of seats in the EP;
- more flexible enhanced cooperation;
- monitoring of fundamental rights and values within the EU; and
- strengthening of the EU's judicial system.

A. Weighting of votes in the Council

Right from the start of the IGC it was clear that the key to any other agreement would be the nature of the qualified majority voting system to be used in future in the Council. Taking together the system of voting in the Council, the composition of the Commission and, to some extent, the distribution of seats in the EP, the European Council realised that the main imperative at this summit was to change the relative weight of the Member States and their ability to wield their influence, a subject which no IGC had addressed since the Treaty of Rome.

The protocol on the institutions annexed to the Treaty of Amsterdam had envisaged two methods of defining qualified majority voting: a new system of weighting (modified from the present one) or the application of a dual majority (of votes and population), the solution proposed by the Commission and upheld by Parliament.

The IGC chose the former option and decided that the number of votes allocated to each Member State would be changed with effect from 1 January 2005. In a declaration annexed to the Treaty it also set out a common position to be adopted by the Union for determining, in the course of accession negotiations, the number of votes to be given to the applicant countries. In a Union of 15, a qualified majority will require 169 votes out of 237, or 71.3 % of the votes. In a Union of 27, a qualified majority will require 255 votes out of 345, or 73.9 % of the votes. The current requirement is 62 votes out of 87, or 71.27 %. Once the enlargement process is completed, the threshold for qualified majority voting will thus be higher than it is at present.

Moreover, when a measure is being adopted, a Member State may request verification that the qualified majority represents at least 62 % of the total population of the Union. If it does not, the decision will not be adopted.

The breakdown of votes will be as follows: 29 for Germany, the United Kingdom, France and Italy; 27 for Spain and Poland; 14 for Romania; 13 for the Netherlands; 12 for Greece, the Czech Republic, Belgium, Hungary and Portugal; 10 for Sweden, Bulgaria, Austria and Slovakia; 7 for Denmark, Finland, Ireland and Lithuania; 4 for Latvia, Slovenia, Estonia, Cyprus and Luxembourg; 3 for Malta (total 348).

Although the number of votes has increased for all Member States, the share of the most populous Member States decreases: currently 55 % of the votes, it will fall to 45 % when the new members join and to 44.5 % on 1 January 2005. This is where the new provisions such as the demographic 'safety net' should prove their worth.

B. Commission

1. Composition

As of 2005 the Commission will have just one commissioner for each Member State. Once the accession treaty for the 27th Member State is signed the Council will decide, acting unanimously:

- on the number of commissioners;
- on the arrangements for a rotation system, given that Member States are treated on an equal footing with regard to determining the sequence of, and the time spent by, their nationals as members of the Commission, and given too that each Commission must reflect the demographic and geographical range of the Member States.

2. Nominations

The President of the Commission will henceforth be nominated by a qualified majority vote of the European Council. Once this nomination is approved by the EP, the Council will also vote by qualified majority to nominate the other members of the Commission, by agreement with the President. Following a fresh vote by the EP approving the membership of the Commission as a whole, the Council will officially appoint the President and members of the Commission by qualified majority.

3. Internal organisation

The Treaty of Nice continues a development begun in Amsterdam, giving wide powers to the Commission President on how the Commission is organised. The President will allocate responsibilities to the commissioners and may redistribute these in the course of a term of office. He chooses the vice-presidents and decides how many

there shall be. The new Treaty thus creates a hierarchy of power within the Commission.

C. European Parliament

1. Composition

The Treaty of Amsterdam had set the maximum number of MEPs at 700, once and for all in principle. At Nice the European Council thought it necessary, with an eye to enlargement, to revise the number of MEPs for each Member State together with the total number of MEPs. The new composition of the EP has also been used to counterbalance the weighting of votes in the Council.

The Treaty of Nice set the maximum number of MEPs at 732. For the 2004–09 parliamentary term each of the 25 Member States will be allocated a number of seats equal to the sum of the seats allocated to them in Declaration No 20 annexed to the Final Act of the Treaty plus the number of seats resulting from distribution of the 50 seats which will not be going to Bulgaria and Romania. The number of seats for the existing Member States has been cut by 91 (from 626 to 535). Only Germany and Luxembourg retain their current complement of MEPs. This reduction will apply in the first instance to the EP elected in 2009.

Since new Member States will be joining the Union in the course of the 2004–09 parliamentary term, a temporary exceeding of the maximum number of 732 seats in the EP will be permitted in order to accommodate MEPs from the new countries entering Parliament after the European elections in 2004.

2. Powers

The EP may, like the Council, Commission and Member States, institute a legal challenge to acts of the Council, Commission or ECB on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaty establishing the European Community or of any rule of law relating to its application, or misuse of powers.

Following a proposal by the Commission, Article 191 is transformed into a legal base for operations enabling regulations governing political parties at European level and the rules regarding their funding to be adopted using the co-decision procedure. The regulations and general conditions governing MEPs will be approved by the Council acting by qualified majority, except for measures relating to the taxation of current or former MEPs.

The EP's powers have been increased, with a slight broadening of the scope of the co-decision procedure and by the requirement that the EP must give its assent to the establishment of enhanced cooperation in areas covered by co-decision. The EP will also be asked for its opinion

when the Council pronounces on the risk of a serious breach of fundamental rights in a Member State.

D. Reform of the judicial system

1. Court of Justice

The Court of Justice will have one judge for each Member State, as in the past. But it will henceforth meet in a number of different ways: it may sit in chambers (consisting of three or five judges), in a Grand Chamber (11 judges) or as a full Court. The Council, acting unanimously, may increase the number of advocates-general, which remains at eight. The Court of Justice retains jurisdiction over questions referred for a preliminary ruling, but it may under its Statute refer types of matters other than those listed in Article 225 of the EC Treaty to the Court of First Instance.

2. Court of First Instance

The powers of the Court of First Instance are increased to include certain categories of preliminary rulings. Judicial panels will be established by unanimous decision of the Council. A declaration asks for the establishment as swiftly as possible of a judicial panel with jurisdiction to deliver judgments in first instance on disputes between the Community and its servants. All these operating provisions, notably the powers of the Court of First Instance, are henceforth set out in the Treaty itself.

E. Legislative procedures

Although a considerable number of new policies and measures (27) now require qualified majority voting in the Council, co-decision has been extended only to a few minor areas (Articles 13, 62, 63, 65, 157, 159 and 191 of the EC Treaty; assent is required for Article 161).

F. Enhanced cooperation

The basic idea in Nice was to compensate for the inadequate extension of qualified majority voting and prevent blockages in decision-making after enlargement.

Like the Amsterdam Treaty, the Treaty of Nice contains general provisions which apply to all areas of enhanced cooperation and provisions specific to the pillar concerned. But whereas the Amsterdam Treaty provided for enhanced cooperation under the first and third pillars only, the Treaty of Nice provides for it under all three pillars.

As before, enhanced cooperation must be a last resort. On this point, however, the Treaty of Nice makes two changes: previously the rule was that enhanced cooperation 'is only used where the objectives of the said Treaties could not be attained by applying the relevant procedures laid down therein' (Article 43 of the Maastricht Treaty (EUT)); in future, enhanced cooperation can only be used 'when it has been established within the Council that the objectives of such cooperation cannot be attained, within a reasonable period

of time, by applying the relevant provisions of the Treaties'. So referral to the European Council will no longer be possible, and the concept of 'a reasonable period of time' clarifies the overly flexible wording of Article 43 of the EUT.

The EP's role in the authorisation procedure has been strengthened. Under the third pillar, Parliament's right to be informed becomes a requirement that it be consulted. Under the first pillar, consultation remains the general rule but the EP's assent is required in all areas where enhanced cooperation relates to a question covered by the co-decision procedure.

G. Protection of fundamental rights

A paragraph was added to Article 7 of the EUT, concerning decisions to be taken in the event of a 'serious and persistent breach' of fundamental rights by a Member State, to cover cases where a patent breach of fundamental rights has not actually occurred but there is a 'clear risk' that it may occur. The Council, acting by a majority of four-fifths of its members and after obtaining the assent of the EP, determines the existence of the risk and addresses appropriate recommendations to the Member State in question.

Role of the European Parliament

- As at the earlier intergovernmental conferences (IGCs), the EP was actively involved in preparations for the 2000 IGC, giving its views on the conference agenda and its progress and objectives in resolutions adopted on 3 February and 13 April 2000. Parliament also expressed its opinion on the substance and judicial implications of the Charter of Fundamental Rights by adopting a resolution and a decision (resolution on the drafting of a European Union Charter of Fundamental Rights and decision of 14 November 2000 approving the draft Charter of Fundamental Rights of the European Union).
- In its resolution of 31 May 2001 on the Treaty of Nice and the future of the Union, the EP was very critical of the Treaty, accusing it above all of not having prepared adequately for the forthcoming round of new accessions. It did, however, express its satisfaction at the substantial reforms made to the structure and operation of the judicial system, which were intended to preserve the unity of Community law, thus consolidating the Union's judicial role.
- The EP thought that the smooth functioning of the EU would depend on the outcome of the debate on the future of Europe announced in a declaration annexed to the Treaty. This debate will culminate in a treaty reform in 2004. A propos of this, Parliament insisted that the next IGC should proceed along lines radically different

from the traditional model: it should be a transparent process, with the involvement of members of the EP and national parliaments, the Commission, and input from ordinary people, and it should culminate in the production of a constitution-type document.

II. Convention on the future of Europe

Basis

In accordance with declaration No 23 of 11 December 2000 annexed to the Treaty of Nice, the Laeken European Council decided to organise a Convention bringing together the main parties concerned for a debate on the future of the European Union.

Objectives

To prepare the next IGC in as transparent a manner as possible, addressing the four main issues raised by the further development of the EU: a better division of competences, simplification of the Union's instruments of action, increased democracy, transparency and efficiency, and the drafting of a constitution for Europe's citizens.

Structure

A. The Convention

- 1 chairman (Mr Giscard D'Estaing);
- 2 vice-chairmen (Mr Amato and Mr Dehaene);
- 15 representatives of the Member State Heads of State or Government;
- 30 members of the national parliaments (2 per Member State);
- 16 members of the EP;
- 2 members of the European Commission.

The countries which have applied to join the Union may also take part in the debate on an equal footing, but they cannot block any consensus which may emerge among the Member States. The Convention thus has a total of 105 members.

B. The Convention Praesidium

In addition to the chairman and vice-chairmen, the Praesidium comprises nine members of the Convention:

- representatives of all governments holding the Council presidency during the lifetime of the Convention (Spain, Denmark and Greece);
- 2 members of national parliaments (Mr Bruton and Mrs Stuart);

- 2 members of the EP (Mr Hänsch and Mr Méndez de Vigo);
- 2 members of the European Commission (Mr Barnier and Mr Vitorino).

It also includes an 'invited representative' chosen by the applicant countries to attend meetings of the Convention (Mr Peterle, member of the Slovene Parliament).

The Praesidium had the role of lending impetus to the Convention, providing it with a basis on which to work.

C. The Convention Secretariat

The Secretariat was made up of a Secretary-General, a Deputy Secretary-General, a spokesman, an Office of the Chairman (2 officials) and 15 officials drawn from the staff of the Council, EP and Commission. It provided assistance to the members of the Convention on all issues arising in the course of their work.

Organisation of the work of the convention

The work of the Convention comprised three phases:

- a 'listening phase' in which the Convention sought to identify the expectations and needs of Member States and Europe's citizens;
- a phase in which the ideas expressed were studied;
- a phase of drafting recommendations based on the essence of the debate.

The first phase began with the launch of the Convention in February 2002 and ended on 14 June 2002 with the creation of 11 working groups designed to pursue further a number of themes which could not be addressed in detail in meetings of the full Convention.

At the end of 2002 the working groups (on 'subsidiarity', 'charter/ECHR', 'legal personality', 'national parliaments', 'complementary competencies', 'economic governance', 'external action', 'defence', 'simplification', 'freedom, security and justice' and 'social Europe') presented their findings to the Convention. The Praesidium for its part presented the preliminary draft of a European constitution on 28 October 2002.

During the first half of 2003, the Convention drew up and debated, in several stages, a text which became the draft Treaty establishing a Constitution for Europe. In the course of 26 full meetings of the Convention, the Praesidium heard 1 812 contributions from members; the Convention's website received 692 250 visits, 97 000 of them in the month of June 2003 alone; and 5 995 amendments were put forward by members of the Convention to the text of various articles.

Part I (principles and institutions, 59 articles) and Part II (Charter of Fundamental Rights, 54 articles) were laid before the Thessaloniki European Council on 20 June 2003. Part III (policies, 338 articles) and Part IV (final provisions, 10 articles) were presented to the Italian presidency on 18 July 2003. There are also five protocols and one declaration.

The intergovernmental conference adopted this text on 18 June 2004 with a number of amendments, notably to the provisions governing the institutions and the areas of application of the qualified majority. Nevertheless, the basic structure of the Convention's draft was retained.

→ Wilhelm LEHMANN
01/2007

1.1.5. The Treaty establishing a Constitution for Europe

The Treaty, which was signed on 29 October 2004 and approved by the European Parliament (EP) on 12 January 2005, has to be ratified by each Member State in accordance with its own constitutional requirements (Article IV-447). It is planned to come into force, subject to a successful ratification process, either on 1 November 2006, or at the start of the second month following the final ratification.

Objectives and background

→ 1.1.4.II.

Contents

Although the nature of the document, with its title of 'Treaty establishing a Constitution for Europe', has given rise to various political interpretations, there is no longer any doubt about its legal status: the text constitutes the same type of treaty as the earlier treaties which it replaces (Article IV-437). Three key elements prove this: the provisions on its entry into force (requiring the agreement of each Member State), on its revision (requiring unanimous approval, Article IV-443(3)) and on the possibility given to the Member States to withdraw from the Union (Article I-60). All three show that the Union is still answerable to the Member States.

Although the new text puts an end to the concept of 'pillars', it still maintains the hybrid structure of the EU. Certain Community-level (supranational) elements have been strengthened, particularly in the areas of justice and home affairs (JHA), while other fields like the common foreign and security policy (CFSP) remain an intergovernmental matter (→ 1.4.1., 1.4.2.). The Treaty nevertheless contains certain important new elements, both in its general provisions and policies and in relation to institutional reform. These include:

- recognition of the EU's legal personality (Article I-7);
- the incorporation of the Charter of Fundamental Rights, which marks a major step forward for the protection of citizens' rights in the EU;
- the election of a President of the European Council;
- the creation of a post of Union Minister for Foreign Affairs.

A. Basic structure

1. Preamble.
2. Four main sections containing 448 articles:
 - Part I: fundamental provisions on the objectives, competences, institutions and bodies, democratic life and finances of the Union, together with the rules for membership;
 - Part II: the Charter of Fundamental Rights;
 - Part III: the internal and external policies and functioning of the Union;
 - Part IV: general and final provisions.
3. two annexes and 36 protocols
4. 50 declarations

B. More effective institutions

1. A European Parliament with greater powers

The EP's legislative and budgetary powers and its functions of political scrutiny and consultation have once again been extended (Article I-20).

The introduction of the 'ordinary legislative procedure' (Article III-396), which corresponds to the current co-decision procedure with the Council acting by a qualified majority, reaffirms the EP's role as co-legislator. The scope of this procedure has been increased to 34 areas (including agriculture, asylum and immigration) and, with a few minor

differences, now also covers the budgetary procedure (→ 1.4.3.). The abolition of the distinction between compulsory and non-compulsory expenditure means that the EP will be able to negotiate the adoption of the entire Community budget on an equal footing with the Council (Article III-404). As for the other legislative procedures, the 'cooperation procedure' has been abolished, while 'assent' continues to exist as 'consent' and will apply to the arrangements concerning the EU's own resources (Article I-54), among other things. Only the consultation procedure remains unchanged. The EP will now be consulted in the area of diplomatic and consular protection, for example.

Regarding the EP's powers of supervision and appointment, it should be noted that the EP has a new right to elect the Commission President on a proposal from the European Council, which chooses the candidate by a qualified majority taking account of the outcome of the European elections. The EP also approves the Commission as a whole.

As for Parliament's internal organisation, the maximum number of MEPs has been set at 750. By the time of the 2009 elections the European Council must decide, on an initiative from Parliament and with its consent, how the seats are to be distributed. The system will be based on the current 'degressively proportional' representation system, with a minimum of six and a maximum of 96 seats for each Member State.

2. A more important European Council

The Treaty for the first time recognises the European Council as an EU institution (Article I-19). It is principally responsible for providing the Union with the 'impetus necessary for its development' and for defining its general political priorities (Article I-21), and thus appears to have greater capacity to influence crucial political choices within the EU. The new rules on its internal organisation support this idea. The current rotating presidency will now be replaced by a permanent President, elected by a qualified majority of the members of the European Council for a term of two and a half years, renewable once. In order to make the European Council work more coherently and efficiently, the President must, above all, create a climate that facilitates consensus, which remains the general rule for adopting decisions within the institution. Furthermore, the President must also ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the powers of the Union Minister for Foreign Affairs.

3. The EU Council of Ministers

The EU Council of Ministers continues to exercise legislative, budgetary and coordinating functions (Article I-23). As a general rule, it takes decisions by a qualified majority. In order to facilitate decision-making in an

enlarged Council, the weighting system for voting laid down in the Nice Treaty has been reformed. The issue was heavily disputed throughout the reform process, but the Intergovernmental Conference (IGC) finally opted for the following solution: from 1 November 2009, a double majority system (Member States and population) is to be introduced. A decision will be adopted in the Council if it has the agreement of at least 55 % of the Member States accounting for at least 65 % of the EU population. A blocking minority must include at least four Member States. Where a proposal from the Commission is not necessary, or where a decision is not adopted on a proposal from the Minister for Foreign Affairs, the majority required is greater (72 % of Member States and 65 % of the population).

As for the organisation of its work, meetings of the specialist formations of the Council will now be divided into two: these meetings will be public when deliberating on legislation, but in camera when discussing non-legislative issues. A Foreign Affairs Council will be set up, chaired by the Union Minister for Foreign Affairs. The Council presidency will continue on the basis of equal rotation, but from now on there will be team presidencies in order to ensure better continuity of work.

4. The European Commission

The European Commission keeps its traditional functions (Article I-26): it promotes the general interest of the Union, ensures the application of Community law and exercises coordinating, executive and management functions. In order to ensure that the decision-making process runs smoothly in a larger Commission, the Convention had proposed to reduce the number of commissioners, but after vehement objections from the smallest Member States, this idea was abolished by the IGC, and it was agreed that there would be 'one Commissioner per Member State' until 2014. After that date the Commission will have a number of members corresponding to two-thirds of the number of Member States, selected on the basis of a system of equal rotation between the Member States.

With the same aim of promoting more coherent and effective work, the role of the Commission President has been considerably enhanced (Article I-27), and his election by the EP will give him greater legitimacy. He will also be able to decide on the internal organisation of his institution (appointment of commissioners, distribution of portfolios, requesting commissioners to resign).

5. The Union Minister for Foreign Affairs

The minister, a new institutional position, will be appointed by a qualified majority of the European Council with the agreement of the President of the European Commission (Article I-28). He will be responsible for the EU's common

foreign and security policy as a whole, and has the power to put forward proposals relating to it. He will chair the Foreign Affairs Council and will at the same time be one of the Vice-Presidents of the Commission ('double-hatting').

A European External Action Service, comprising staff from the General Secretariat of the Council and the Commission and national diplomats, will be set up to ensure the continuity and coherence of the Minister's work (Article III-296).

C. Simplified instruments and procedures

1. Clearer distribution of competences

For the first time the Treaty sets out a list which clearly divides competences into three separate groups (Article I-12):

- areas of exclusive competence (Article I-13): the Union alone can legislate, and Member States implement the EU's legislation;
- areas of shared competence (Article I-14): the Member States can legislate and adopt legally binding measures where the Union does not do so;
- areas of supporting competence (Article I-17): the EU adopts measures to support or complement Member States' policies.

2. Reduction in the number of legal instruments

A new 'hierarchy of norms' simplifies how these competences are exercised by reducing the number of EU legal instruments. The Treaty divides acts into two groups (Article I-33):

- (a) legislative acts (Article I-34), which are generally adopted through the ordinary legislative procedure:
 - European laws are directly applicable and binding in their entirety;
 - European framework laws are binding on each Member State to which they are addressed as to the result to be achieved, while leaving it to the national authorities to choose the methods.
- (b) non-legislative acts (Article I-35), which will be adopted by the European Council, the Council of Ministers, the Commission, or other institutions, where appropriate:
 - European regulations are regulatory acts of general application;
 - European decisions have individual or general application;
 - recommendations and opinions express points of view and are not binding.

D. Democratic life, citizens' rights and transparency

A whole series of provisions are designed to do more to promote democratic rights and citizens' rights at European level (→2.1. to 2.5.).

Regarding the EU's democratic foundations, the Treaty refers for the first time to the three fundamental principles of democratic equality, representative democracy and participatory democracy. Participatory democracy includes the possibility of a citizens' initiative (Article I-47): one million European citizens from a number of Member States can sign a petition asking the Commission to put forward proposed legislation on a particular subject.

In the area of the protection of fundamental rights, the rights of European citizens will now be more comprehensively guaranteed than ever before (Article I-9). This can be seen not just in the plans for the EU to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms, but above all in the inclusion of the Charter of Fundamental Rights in the Treaty, giving the Union a list of rights that will be legally binding on its institutions and bodies and on the Member States when applying European law.

In order to try to make the EU's political system more transparent, Parliament and the Council will now be required to meet in public when considering and voting on a legislative act (Article I-50). Citizens will also have a constitutional right of access to documents of the EU's institutions, bodies, offices and agencies.

E. The policies of the Union

Of the provisions relating to the Union's internal and external policies (Part III of the Treaty), the main changes from previous Treaties primarily concern the fields of justice and home affairs (→4.11.), economic and monetary policy (→5.1. to 5.5.) and the CFSP (→6.1.).

F. Other provisions

1. The role of the national parliaments and the principles of subsidiarity and proportionality

The desire to bring Europe closer to its citizens is reflected in major changes to two protocols annexed to the Treaty (→1.2.2.).

- (a) Protocol 1 — 'The role of national parliaments in the European Union' promotes greater involvement of the Member States' parliaments in the EU's political process by giving them information and monitoring rights, including:
 - the direct forwarding to the national parliaments of draft legislative acts and other documents from the European institutions;
 - a six-week period between a draft legislative act being forwarded and the date when it is put on the agenda for the Council, and 10 days between its being placed on the agenda for the Council and its adoption.

(b) Protocol 2 — ‘The application of the principles of subsidiarity and proportionality’ requires the European institutions to take these two principles into consideration when drafting legislative acts. It gives national parliaments the right:

- to say whether they think both principles have been applied correctly (‘early warning system’). If one third of the parliaments (or one quarter where the proposal is in the JHA field) feel that there has not been adequate compliance with the principles, the Commission must reconsider its proposal and decide whether to withdraw, maintain or amend it, giving precise reasons for doing so;
- to bring proceedings before the Court of Justice, through their Member States, for infringement of the principle of subsidiarity by a legislative act.

2. Flexibility

(a) ‘Bridging clauses’ and ‘emergency brakes’

Despite the more widespread application of qualified majority voting (Article I-23), decisions in the Council of Ministers still require unanimity in certain important areas. To make work run more smoothly in future, a general bridging clause (Article IV-444) has been included in the Treaty. This will enable the European Council, acting by unanimity and after obtaining the consent of the EP, to allow a qualified majority vote instead of a unanimous vote, or, where appropriate, an ordinary legislative procedure instead of a special legislative procedure for any area mentioned in Part III of the Treaty, except for decisions with military implications or in the area of defence. However, a single national parliament may prevent the decision from coming into force by expressing its opposition within six months to the use of the bridging clause. In addition to the general bridging clause, there are also specific bridging clauses which apply to clearly defined areas such as social policy (Article III-210) or the CFSP (Articles I-40 and III-300). ‘Emergency brakes’ have been introduced in several fields so that if a Member State considers that draft legislation or a procedure would undermine the fundamental principles of its legal system, it can call on the European Council to look at the case in question.

(b) Enhanced cooperation

In areas where the EU has non-exclusive competence, a number of Member States may establish enhanced cooperation between themselves in order to attain the objectives of the Union (Articles I-44 and IV-416 to IV-423). Such cooperation may be undertaken only as a last resort and must involve at least one third of the Member States. It is authorised by the Council acting unanimously on a proposal from the Commission and after obtaining the consent of Parliament. Decisions taken by the Member States involved will apply only to themselves.

3. Revision of the Treaty

As well as the introduction of simplified revision through the bridging-clause mechanism, two provisions pave the way for the Treaty to be revised:

- (a) an ordinary revision procedure (Article IV-443), which includes two innovations:
- the EP can now submit proposals for revising the Treaty;
 - the President of the European Council can decide to convene a Convention in order to prepare for an IGC. He does not have to do so, however; the European Council may decide by a simple majority and with the EP’s consent not to convene a Convention.
- (b) a simplified procedure (Article IV-445), which applies only to the Union’s internal and external policies referred to in Title III of Part III of the Treaty. This enables the European Council to amend the Treaty without having to convene an IGC. All amendments are adopted by a unanimous decision of the Council after consulting the EP and the Commission, and they must be ratified by all the Member States.

The role of the European Parliament

The EP was one of the main driving forces in the ‘post-Nice’ reform process, demanding additional reforms before enlargement to 25 Member States and putting forward specific proposals on how the reforms should be prepared and what they should involve.

This process proved to be a notable success for Parliament, which managed to achieve a considerable number of its initial objectives, particularly concerning the hierarchy of norms, the ordinary legislative procedure, the extension of qualified majority voting, the division of competences, the election of the Commission and the incorporation of the Charter of Fundamental Rights. In its resolution of 12 January 2005 on the Treaty, Parliament rightly welcomed the Treaty as a ‘vast improvement’.

However, it should also be pointed out that some fields are still largely outside of its sphere of influence, such as revisions of the Treaties, institutional reforms, the CFSP and defence policy.

During the reform process, the EP took considerable advantage of the working methods of the Convention, which, in the early stages at least, relied on open deliberation rather than closed diplomatic negotiation, the traditional IGC method. Similarly, the EP was able for the first time to participate fully in all phases of the IGC.

→ Wilhelm LEHMANN
11/2005

1.2. Main characteristics of the Community legal system

1.2.1. Sources and scope of European Union law

Legal bases

- Treaty on European Union;
- Treaties establishing the European Community (primary Community law);
- Articles 249, 202, 211 and 308 of the EC Treaty (legal bases for secondary or derived Community law);
- unwritten Community law;
- international treaties.

Objective

Creation of a Community legal order as a basis for affirming the objectives of the Community.

Achievements

A. Primary Community law

→ 1.1.1.–1.1.3.

B. Secondary Community law

1. General points

The Community's forms of action under Article 249 of the EC Treaty (ECT) are regulations, directives, decisions, recommendations and opinions. These are original legal instruments in Community law, with no connection to national or international legal instruments. These legal actions may be undertaken by the Community institutions only if they are empowered to do so by a provision of the Treaty (principle of attribution of powers). Individual legal acts (with the exception of recommendations and opinions, which have no binding force) must be based on actual provisions of the Treaty (including what are known as implied powers). If a specific power is not provided by the Treaty, in certain circumstances recourse may be had to the subsidiary rule regarding competence in Article 308 ECT. The list of legal actions in Article 249 is not exhaustive; there are, in addition, various forms of action, such as resolutions, declarations, organisational and internal actions, the designation, structure and legal effects of which stem from the individual provisions of the Treaty or

the overall context of law embodied in the Treaty. Furthermore, the legal character of a measure taken by a Community Institution does not depend on its official designation, but on its object and material content. As preliminaries to the adoption of legal acts, White Papers, Green Papers and action programmes are also significant. They are mostly agreed upon by Community institutions as a way of promoting longer-term objectives (e.g. the White Paper on the single market).

2. The various legal acts under secondary Community law

(a) Regulations

They have general application, are binding in their entirety and are directly applicable in all Member States. As 'Community laws', regulations must be complied with fully by those to whom they apply (private persons, Member States, Community institutions). Regulations apply directly in all the Member States, without requiring a national act to transpose them, on the basis of their publication in the *Official Journal of the European Communities*.

Regulations serve to ensure the uniform application of Community law in all the Member States. At the same time, they prevent the application of national rules the substance of which is incompatible with their own regulatory purpose. National laws, regulations and administrative provisions are permissible only in so far as they are provided for in regulations or are otherwise necessary for their effective implementation. National implementing provisions may not amend or amplify the scope and effectiveness of regulations (Article 10 ECT).

(b) Directives

(i) Nature and scope

They are binding, as to the result to be achieved, upon the Member States to whom they are addressed. However, those Member States are left the choice of form and methods to achieve their objectives. Directives may be addressed to individual, several or all Member States. In order to ensure that the objectives laid down in directives become applicable to individual citizens, an act of

transposition (or national implementing measure) by national legislators is required, whereby national law is adapted to the objectives laid down in directives. Individual citizens are given rights and bound by the legal act when the directive is transposed into national law. Since the Member States are only bound by the objectives laid down in directives, they have some discretion, in transposing them into national law, in taking account of specific national circumstances. Transposition must be effected within the period laid down in a directive. In transposing directives, the Member States must select the national forms which are best suited to ensure the effectiveness of Community law (Article 10 ECT, *'effet utile'*). Directives must be transposed in the form of binding national legislation which fulfils the requirements of legal certainty and legal clarity and establishes a position whereby individuals can rely on the rights derived from the directive. Legislation which has been adapted to EC directives may not subsequently be amended contrary to the objectives of those directives ('blocking' effect of directives).

(ii) Possible direct applicability

Directives are not directly applicable, in principle. The European Court of Justice, however, has nevertheless ruled that individual provisions of a directive may, exceptionally, be directly applicable in a Member State without requiring an act of transposition by that Member State beforehand (consistent case-law since 1970: ECR pp. 1213 et seq.) where the following conditions are satisfied:

- the period for transposition has expired and the directive has not been transposed or has been transposed inadequately;
- the provisions of the directive are imperative and sufficiently precise;
- the provisions of the directive confer rights on individuals.

If these requirements are fulfilled, individuals may cite the provisions of the directive against all agencies in whom State power is vested. Such agencies are organisations and establishments which are subordinate to the State or on which the State confers rights that exceed those arising from the law on relations between private persons (Court judgment of 22 June 1989 in Case 103/88 *Fratelli Costanzo*). The case-law is mainly justified on the principles of *effet utile* and the uniform application of Community law. But even when the provision concerned does not seek to confer any rights on the individual, the Court's current case-law says the Member State authorities have a legal duty to comply with the untransposed directive. This case-law is mainly justified on the grounds of *effet utile*, the penalisation of violations of the Treaty and legal protection. On the other hand, an individual may not directly invoke

against another individual (the 'horizontal effect') the direct effect of an untransposed directive (case-law, see *Faccini Dori* [1994] ECR I-3325 et seq. at point 25).

(iii) Responsibility for failure to transpose a directive

According to Court case-law ('Francovich' case, [1991] ECR I-5357 et seq.), an individual citizen is entitled to claim compensation from a Member State which has not transposed a directive or has done so inadequately where:

- the directive is intended to confer rights on individuals;
- the substance of the rights can be ascertained on the basis of the directive;
- and where there is a causal connection between the breach of the duty to transpose the directive and the loss sustained by the individual.

Fault on the part of the Member State does not then have to be demonstrated in order to establish liability. If the Member State has powers of discretion in transposing the law, the violation must also, in addition to the three above criteria, qualify as defective or non-existent transposition: it must be substantial and evident (*Brasserie du Pêcheur/ Factortame* judgment of 5 March 1996, Cases 46/93 and 48/93, ECR I-1029).

(c) Decisions

They are binding in their entirety upon those to whom they are addressed. These may be Member States or natural or legal persons. Decisions serve to regulate actual circumstances vis-à-vis specific entities addressed thereby. Like directives, decisions may include an obligation on a Member State to grant individual citizens a more favourable legal position. In this case, as with directives, an act of transposition on the part of the Member State concerned is required as a basis for claims by individuals. Decisions may be directly applicable under the same preconditions as the provisions of directives.

(d) Recommendations and opinions

They have no binding force, that is to say they do not establish any rights or obligations for those to whom they are addressed, but do provide guidance as to the interpretation and content of Community law.

3. System of competence, procedures, enforcement and application of legal acts

(a) Legislative competence, right of initiative and legislative procedure:

(→ 1.3.6, 1.3.8. and 1.4.1.)

(b) Enforcement of legislation:

Under primary Community law, the EC has only limited powers of enforcement itself, and EC law is therefore

usually enforced by the Member States (duty of loyal cooperation under Article 10 ECT).

(c) Actual application of the various forms of action:

In many cases the Community Treaties lay down the required form of legal action (e.g. Article 94 EC Treaty specifies directives). In many other cases, however, no specific type of legal action is stipulated (e.g. Article 71 ECT — ‘any other appropriate provisions’) or an alternative is at least permitted (e.g. Articles 40 and 83 ECT — ‘directives or [...] regulations’). In exercising such discretion, however, the Community institutions must take due account of the principles of proportionality and subsidiarity (→1.2.2). In December 2002 the number of directives in force was 1 729, and that of regulations 5 207.

C. EU non-Community law (outside the scope of the EC Treaty)

Under the second and third pillars, the Union does not operate using the traditional legal instruments of Community law, but by means of original legal acts:

- in the second pillar of the Treaty on European Union (common foreign and security policy — CFSP), these instruments are essentially political in nature: the common strategies, common actions and common positions. Although under the terms of Article 15 of the Treaty on European Union (EUT), ‘common positions shall define the approach of the Union to a particular matter’, they have been used in the context of combating international terrorism to freeze the assets of persons, groups and terrorist organisations. This is why, following much discussion, the Treaty establishing a Constitution for Europe includes the right of physical and legal persons subject to these restrictive measures to refer them to the courts (Article III-282);
- in the third pillar (police and judicial cooperation in criminal affairs — PJCC), the Union acts by means of: common positions, which are more political than legal in nature and which ‘(define) the approach of the Union to a particular matter’ (Article 34 EUT); framework decisions, which are similar instruments to Community directives and are used for the approximation of laws; decisions for any purpose other than the approximation of laws, which have no direct effect; and the traditional instrument of international agreements between Member States.

D. Unwritten Community law

These are the general principles of Community law, particularly:

- the fundamental rights guaranteed by the European Convention for the Protection of Human Rights and

Fundamental Freedoms and the constitutional traditions of the Member States recognised at Community level by Article 6(2) EUT as general principles of Community law: the right to defence, the right to respect for one’s private life, etc.;

- the principle of a Community based on the rule of law;
- the principles of proportionality, legitimate expectations, etc.

E. International treaties concluded by the EC

The Community has partial international personality and may, therefore, within the sphere of its competence, conclude international treaties with other States or international organisations. The treaties thus concluded by the Community are binding on the Community and the Member States pursuant to Article 300(7) ECT and are an integral part of Community law.

F. Ancillary Community law

This is made up of rules contained in intergovernmental treaties which have been concluded between the Member States and which further the objectives of the Community. The conclusion of such international treaties is partly provided for in Article 293 ECT and, since the introduction of the third pillar by the Treaty of Maastricht, in the field of police and judicial cooperation in criminal affairs (Article 34(2) EUT).

G. Hierarchy within Community law

Primary Community law is at the pinnacle of the hierarchy of law. The provisions of primary Community law are fundamentally of equal rank. This also applies to unwritten Community law. International treaties concluded by the Community rank below primary and unwritten Community law. These are duly followed by secondary Community law (Article 7(1), second subparagraph ECT), i.e. to be valid, such legal acts must be compatible with hierarchically superior law. There is no precedence for individual legal acts of secondary Community law, either *de jure* or according to the enacting Institution.

H. Treaty establishing a Constitution for Europe

Besides removing the division into pillars of the European Treaties, which has lasted since the Treaty of Maastricht, the European Constitution rationalises the instruments of action used by the common institutions. The traditional triple arrangement of regulations, directives and decisions disappears in favour of European laws and framework laws. European regulations, like European decisions, become executive rather than legislative acts. Recommendations and opinions are retained as non-binding acts.

Role of the European Parliament

Under the procedures laid down in Article 250 et seq. ECT, Parliament has certain rights to participate in the enactment of Community legislation (→1.4.1.). However, despite the widening of its powers in the EUT (→1.1.2.), it continues to have limited influence (negative competence). With the aim of improving the application of Community law in the Member States and of increasing the acceptance of Community law by its citizens, Parliament is taking action to simplify the legislative process, improve the

drafting of legislation and secure more effective penalties for those cases where Member States fail to comply with Community law. It has made proposals to replace the present system of legislation by a more transparent and more manageable system (resolutions on the Maastricht Treaty and on the 1996 Intergovernmental Conference).

→ Denis **BATTA**
11/2005

1.2.2. The principle of subsidiarity

Legal basis

Article 5 of the Treaty establishing the European Community (ECT), in conjunction with the preamble, recital 12 and Article 2 of the Treaty on European Union (EUT).

Objectives

In areas other than those in which the Community has exclusive competence, the principle of subsidiarity seeks to uphold the capacity to take decisions and action at Community level when the scale and effects of the proposed action mean that the objectives would be better achieved at Community level. It also upholds the capacity of the Member States to take action in those areas that cannot be dealt with more effectively by Community action. The purpose of including it in the European Treaties was also to bring decision-making as close to the citizen as possible.

Achievements

A. Origin and history

The principle of subsidiarity has not just applied since its incorporation in Article 5 ECT. As long ago as 1951, Article 5 of the ECSC Treaty provided for the Community to exert direct influence on production only when circumstances so required. Although it was not referred to by name, a subsidiarity criterion was included in Article 130r of the EEC Treaty, on the environment, by the Single European Act in 1987. However, the Court of First Instance of the EC ruled in its judgment of 21 February 1995, ECR II-289 at p. 331, that the subsidiarity principle was not a general principle of law, against which the legality of Community action should be tested, before the EU Treaty entered into force.

Without changing the wording of the subsidiarity criterion in Article 5(2) ECT, the Treaty of Amsterdam incorporates the 'Protocol on application of the principles of subsidiarity and proportionality' into the European Treaties. The overall approach to the application of the subsidiarity principle agreed in Edinburgh in 1992 thus became to a large extent subject to judicial review via the protocol on subsidiarity.

The principle in Article 5, second paragraph, ECT merely distinguishes, as regards the exercise of a given competence, between Member State and Community levels. But the Declaration on subsidiarity by Germany, Austria and Belgium (of which the Amsterdam Summit took note) clearly points out that 'action by the European Community in accordance with the principle of subsidiarity not only concerns the Member States but also their entities, to the extent that they have their own law-making powers conferred on them under national constitutional law'.

B. Definition

The general aim of the principle of subsidiarity is to guarantee a degree of independence for a lower authority in relation to a higher body or for a local authority in respect of a central authority. It therefore involves the sharing of powers between several levels of authority, a principle which forms the institutional basis for federal States.

When applied in a Community context, the principle means that, except in areas in which the Community has exclusive competence, the Member States are responsible for areas which they govern more effectively at their own level, while the Community is given those powers which the Member States cannot discharge satisfactorily at national, regional or local level.

Under Article 5, second paragraph, ECT there are two preconditions for Community action in accordance with the principle of subsidiarity:

- The objectives of the proposed action cannot be sufficiently achieved by the Member States.
- The action can therefore, by reason of its scale or effects, be implemented more successfully by the Community.

C. Scope

1. Principle of application

In general terms, the application of the principle of subsidiarity may be seen from two points of view. In areas in which the Treaty gives responsibility to the Community — shared with the Member States — the principle is a yardstick for measuring that responsibility (limiting the exercise of powers). And in areas in which the Treaty does not give the Community responsibility, the principle does not create additional competence (no allocation of powers).

2. Demarcation problems

The principle of subsidiarity applies only to areas shared between the Community and the Member States. It therefore does not apply to areas which fall within the exclusive competence of the Community or those which fall within exclusively national competence. The dividing-line is blurred, however, because Article 308 ECT may extend the Community's areas of competence if, for instance, action by the Community proves necessary to attain Treaty objectives. The demarcation of the areas of exclusive Community competence continues to be a problem, particularly because it is laid down in the Treaties not by reference to specific fields but by means of a functional description.

In a number of decisions stemming from the Treaties, for example, the Court has defined and recognised certain competences (which are not explicitly regulated in the Treaties) as exclusive, but it has not laid down a definitive list of such competences.

The lack of any clear dividing-line for applying the principle of subsidiarity will continue to result in different interpretations of this principle. At the same time, however, the Community clearly has the aim of limiting Community action to the objectives of the Treaty and ensuring that decisions on new action are taken as closely as possible to the citizen. Particular emphasis is also placed on this connection between the principle of subsidiarity and closeness to the citizen in the preamble to the EU Treaty.

3. Where it applies

The principle of subsidiarity applies to all the Community institutions. The rule has practical significance for the

Council, Parliament and Commission in particular. The Court's decisions are also bound by Article 5, second paragraph ECT. Citizens of the Union cannot derive any rights directly from this provision.

D. Judicial reviewability

Under Article 5, second paragraph, ECT the principle is in theory subject to judicial testing. Where its application is concerned, however, the EU's bodies have wide discretion regarding the form that this takes, which the Court is bound to respect. In general terms, it can be said that the extent of the Court's jurisdiction is in inverse proportion to the extent to which the Member States are effectively involved in a decision on the substance and scale of measures under consideration, consideration of the question of necessity has been thorough and has done justice to the interests involved, and the institutions and legal entities concerned (including those below national level) have been fully consulted. In this connection, as long ago as 1990 Parliament suggested the introduction of an Article 172a into the ECT to give the Court of Justice the right to determine whether a proposal breaches the limits of Community competence (referral to the Court would take place after a legal act was adopted but before it was implemented, and would be open to both the Member States and the institutions).

In its judgments of 12 November 1996 in Case C-84/94, ECR I-5755 and 13 May 1997 in Case C-233/94, ECR I-2405, the Court found that compliance with the principle of subsidiarity was one of the conditions covered by the requirement to state the reasons for Community acts, under Article 253 ECT. This requirement is met even if the principle is not expressly mentioned in the act's recitals but it is clear from reading these recitals as a whole that the principle has been complied with.

E. Treaty Establishing a Constitution for Europe

The European Constitution strengthens the principle of subsidiarity considerably by involving the national parliaments in the decision-making process and by proposing new political and judicial review mechanisms involving the national parliaments.

Accordingly, pursuant to the future Protocol on the application of the principles of subsidiarity and proportionality, national parliaments should be consulted before any European legislative acts are proposed and will have six weeks in which to send the Presidents of the EP, the Council and the Commission a reasoned opinion, where necessary, of which these bodies must take note, stating why they consider the draft in question does not comply with the principle of subsidiarity.

Monitoring of subsidiarity has also been strengthened by the introduction of a mechanism known as the 'early warning' system, which forces a review of any proposed legislation opposed by a third of the votes allocated to the national parliaments (each Member State has two votes, or one per chamber in two-chamber systems). This threshold drops to one quarter in the fields of police and judicial cooperation in criminal matters (see Article III-264). Once the draft legislation has been reviewed, the Commission, the other institutions or the group of Member States that initiated the draft decide whether to uphold, amend or withdraw the proposal, giving a reasoned decision.

Finally, a judicial review mechanism is introduced by the European Constitution, by which Member States can launch proceedings for annulment for violation of the principle of subsidiarity at the Court of Justice, on behalf of their parliament if their constitution permits.

The Committee of the Regions also has the right to do this where provision is made for it to be consulted.

Role of the European Parliament

A. Ongoing work

Parliament has defended the principle of subsidiarity for many years, and was the instigator of the introduction of this principle when, on 14 February 1984, in adopting the Draft Treaty on European Union, it included a provision stipulating that where the Treaty conferred on the Union competence which was concurrent with that of the Member States, the Member States could act so long as the Community had not legislated. Moreover, it stressed that the Community should only act to carry out those tasks which could be undertaken more effectively in common than by individual States acting separately.

Parliament was to reincorporate these proposals on the principle of subsidiarity into many resolutions (e.g. resolutions of 23 November and 14 December 1989, 12 July and 21 November 1990 and 18 May 1995), in which it reaffirmed its support for this principle in the context of the European Union and called for a debate to be opened on the interpretation and application of the principle of subsidiarity.

2. Agreement on interinstitutional cooperation

The debate triggered by Parliament resulted (supported by the conclusions of the Edinburgh Council on subsidiarity, transparency and democracy and Parliament's resolution of 18 November 1992) on 25 October 1993 in the conclusion of an interinstitutional agreement between the Council, Parliament and the Commission. This gave expression to decisive steps by the three institutions in this area. All three institutions are thus required to respect the principle of subsidiarity.

The aim of the agreement is to use procedures for implementing the principle of subsidiarity to regulate the details of the powers conferred on the Community institutions by the Treaties, so that the objectives laid down in the Treaties can be attained. It includes the following provisions.

- In exercising its right of initiative, the Commission will take into account the principle of subsidiarity and show that it has been observed. The same applies to Parliament and the Council, in accordance with the powers conferred on them by Articles 192 and 208, respectively, of the ECT.
- The explanatory memorandum for any Commission proposal will include a justification of the proposal under the principle of subsidiarity.
- Any amendment which may be made to the Commission's text by the Council or Parliament must be accompanied by a justification regarding the principle of subsidiarity if it entails a change in the sphere of Community intervention.

The three institutions will regularly check, under their internal procedures, whether the action envisaged complies with the provisions concerning subsidiarity as regards both the choice of legal instruments and the content of the proposal. Accordingly, under Rule 58 of Parliament's Rules of Procedure, 'During the examination of a legislative proposal, Parliament shall pay particular attention to respect for fundamental rights and the principles of subsidiarity and proportionality'.

In addition to this agreement, at the European Council in Edinburgh the Commission undertook, *inter alia*, to provide justification for all its proposals for legal acts in the light of the application of the principle of subsidiarity, to withdraw or revise certain proposals and to review existing legislation. It was also envisaged that the Commission would draw up an annual report on observance of the principle.

In its resolution of 13 May 1997 on the Commission reports on application of the subsidiarity principle in 1994, 1995 and 1996, Parliament drew attention to the binding, constitutional nature of the subsidiarity principle, which was subject to interpretation by the Court, and pointed out that it should not obstruct the legitimate exercise of Community powers. Neither should it in any way be used as pretext to call into question the *acquis communautaire*. In its resolution of 8 April 2003, Parliament considers that differences with regard to implementing the principles of subsidiarity and proportionality should preferably be settled at the political level, on the basis of the Interinstitutional Agreement of 25 October 1993, but notes

the proposals currently under consideration by the Convention on the Future of Europe, whereby national parliaments should take on a role in monitoring subsidiarity issues through an 'early warning' system. It underlines the importance of Community institutions and Member States, through regional and local authorities as well as at central

ministerial level, keeping a permanent watch on the application of the subsidiarity and proportionality principles.

→ Denis **BATTA**
11/2005

1.3. European Union institutions and bodies

1.3.1. The European Parliament: historical background

Legal basis

- The original Treaties (→1.1.1.);
- Decision and Act concerning the election of the representatives of the European Parliament (EP/Parliament) by direct universal suffrage (20 September 1976), amended by the Council Decision of 25 June and 23 September 2002.

Three communities, one assembly

Following the creation of the EEC and Euratom, the ECSC Common Assembly was expanded to cover all three Communities. With 142 members, the Assembly met for the first time in Strasbourg on 19 March 1958 as the 'European Parliamentary Assembly', changing its name to 'European Parliament' on 30 March 1962.

From appointed assembly to elected parliament

Before direct election, MEPs were appointed by each of the Member States' national parliaments. All members thus had a dual mandate.

The Summit Conference in Paris on 9–10 December 1974 decided that direct elections 'should take place in or after 1978' and asked Parliament to submit new proposals to replace its draft Convention of 1960. In January 1975 Parliament adopted a new draft, on the basis of which the Heads of State or Government, after settling a number of differences, reached agreement at their meeting of 12–13 July 1976.

The Decision and Act on European elections by direct universal suffrage were signed in Brussels on 20 September 1976. After ratification by all the Member States, the text came into force on 1 July 1978. The first elections took place on 7 and 10 June 1979.

Subsequent enlargements

1. When Denmark, Ireland and the United Kingdom joined the European Communities on 1 January 1973 (the first enlargement), the number of MEPs was increased to 198.
2. For the second enlargement, with the accession of Greece on 1 January 1981, 24 Greek members were delegated to the EP by the Greek Parliament, to be replaced in October 1981 by directly elected members. The second direct elections were held on 14 and 17 June 1984.
3. On 1 January 1986, with the third enlargement, the number of seats rose from 434 to 518 with the arrival of 60 Spanish and 24 Portuguese members, appointed by their national parliaments and subsequently replaced by directly elected members. The third direct elections were held on 15 and 18 June 1989.
4. Following German unification, the composition of the EP was adapted to demographic change. In accordance with Parliament's proposals in a resolution on a scheme for allocating the seats of its members, the number of MEPs elected in June 1994 increased from 518 to 567. After the fourth EU enlargement, the number of MEPs increased to 626, with a fair allocation of seats for the new Member States, in line with the resolution mentioned above.

5. The Intergovernmental Conference in Nice introduced a new distribution of seats in the EP which was applied at the European elections in 2004. The maximum number of members (previously set at 700) was increased to 732. The number of seats allocated to the 15 old Member States was reduced by 91 (from 626 to 535). The 197 remaining were distributed among all old and new Member States on a pro rata basis.
6. With the accession of Bulgaria and Romania on 1 January 2007 the number of seats in the European Parliament was temporarily raised to 785 in order to accommodate MEPs from these countries. After the 2009 elections the number of seats will be reduced to 736. However, the Treaty establishing a Constitution for Europe would provide for a maximum number of 750 members.
7. Since 1 January 2007, with effect from 20 July 2004, membership of the EP has been as follows:

Belgium	24
Bulgaria	18
Czech Republic	24
Denmark	14
Germany	99
Estonia	6
Greece	24
Spain	54
France	78
Ireland	13
Italy	78
Cyprus	6
Latvia	9
Lithuania	13
Luxembourg	6
Hungary	24
Malta	5
Netherlands	27
Austria	18
Poland	54
Portugal	24
Romania	35
Slovenia	7
Slovakia	14
Finland	14
Sweden	19
United Kingdom	78
Total	785
	(absolute majority: 393)

Gradual increase in powers

1. Replacement of Member States' contributions by the Community's own resources (→1.5.1.) led to a first extension of Parliament's budgetary powers under the Treaty of Luxembourg, signed on 22 April 1970. A second treaty on the same subject, strengthening Parliament's powers, was signed in Brussels on 22 July 1975 (→1.1.2.).
2. The Single Act enhanced Parliament's role in certain legislative areas (cooperation procedure) and made accession and association treaties subject to its consent.
3. The Maastricht Treaty, by introducing the co-decision procedure in certain areas of legislation and extending the cooperation procedure to others, marked the beginning of Parliament's metamorphosis into the role of co-legislator. It gave Parliament the power of final approval over the membership of the Commission, which was an important step forwards in Parliament's political control over the European executive.
4. The Treaty of Amsterdam extended the co-decision procedure to most areas of legislation and reformed the procedure, putting Parliament as co-legislator on an equal footing with the Council. With the appointment of the President of the Commission being made subject to Parliament's approval, Parliament further increased its control over the executive power.
5. The Treaty of Nice extended the scope of the co-decision procedure in seven provisions of the EC Treaty (ECT): measures to support anti-discrimination action of the Member States (Article 13 ECT), certain measures for issuing visas (Article 62(2)(b)(ii) and (iv) ECT), measures on asylum and on certain refugees matters (Article 63 ECT), measures in the field of judicial cooperation in civil matters (Article 65 ECT), support measures in the industrial field (Article 157 ECT), actions in the field of economy and social cohesion (Article 159 ECT) and regulations governing political parties at European level and in particular the rules regarding their funding (Article 191 ECT).

→ Wilhelm LEHMANN
01/2007

1.3.2. The European Parliament: powers

Legal basis

Articles 189 to 201 EC Treaty (ECT).

Objectives

As an institution representing the citizens of Europe, Parliament forms the democratic basis of the Community. If the Community is to have full democratic legitimacy, Parliament must be fully involved in the Community's legislative process and exercise political control on the public behalf over the other Community institutions.

Constitutional-type powers and powers of ratification

Since the Single European Act (SEA), all treaties marking the accession of a new Member State and association treaties are subject to Parliament's assent. The SEA also established this procedure for international agreements having important budgetary implications for the Community (replacing the conciliation procedure established in 1975). The Maastricht Treaty introduced it for agreements establishing a specific institutional framework or entailing modifications to an act adopted under the co-decision procedure. Parliament must also give its assent to acts relating to the electoral procedure (since the Maastricht Treaty). Since the Amsterdam Treaty, its assent is further required if the Council wants to declare that a clear danger exists of a Member State committing a serious breach of the European Union's fundamental principles, before addressing recommendations or penalties to this Member State. On the other hand, the draft Statute for members of the European Parliament (EP/Parliament) has to receive the assent of the Council.

Participation in the legislative process

Parliament takes part in the drafting of Community legislation to varying degrees, according to the individual legal basis. It has progressed from a purely advisory role to co-decision on an equal footing with the Council.

A. Co-decision

Since the Treaty of Nice came into force, the simplified co-decision procedure (Article 251 ECT) applies to 46 legal bases in the ECT that allow for the adoption of legislative acts (→1.3.1.). It may therefore be considered a standard legislative procedure. It puts Parliament, in principle, on an equal footing with the Council. If they agree the act is adopted at first reading; if they do not agree, the act can only be adopted after successful conciliation.

B. Consultation

The consultation procedure continues to apply to agriculture, taxation, competition, harmonisation of legislation not related to the internal market, aspects of social and environmental policy (subject to unanimity), some aspects of the area of freedom, security and justice, and adoption of general rules and principles for 'comitology'. This procedure also applies to a new 'framework-decision' instrument created by the Amsterdam Treaty under the third pillar (Article 34(2)(b) EU Treaty (EUT)) for the purpose of approximation of laws and regulations.

C. Cooperation

The cooperation procedure (Article 252 ECT) was introduced by the SEA and extended under the Maastricht Treaty to most areas of legislation where the Council acts by majority. This procedure obliges the Council to take into account at second reading those of Parliament's amendments that were adopted by an absolute majority, insofar as they have been taken over by the Commission. This marked the beginning of real legislative power for Parliament. Its importance has been diminished by the general use of the co-decision procedure under the Amsterdam Treaty. It survives only in four provisions of the Economic and Monetary Policy (Articles 98 et seq.).

D. Assent

Since the Maastricht Treaty, the assent procedure applies to the few legislative areas in which the Council acts by unanimous decision, limited since the Amsterdam Treaty to the Structural Funds and Cohesion (Article 161 ECT).

E. Right of initiative

The Maastricht Treaty also gives Parliament the right of legislative initiative, but this is limited to asking the Commission to put forward a proposal.

Budget powers (→1.4.3.)

Parliament is one of the two arms of the budgetary authority, and has the last word on non-compulsory expenditure (Article 272 ECT).

It is involved in the budgetary process from the preparation stage, notably in laying down the general guidelines and the type of spending (Articles 269 et seq. ECT).

When debating the budget it has the power to table amendments to non-compulsory expenditure but only to propose modifications to compulsory expenditure (Article 272 ECT).

It finally adopts the budget and monitors its implementation (Articles 272, 275 and 276 ECT).

It discusses the annual general report (Article 200 ECT).

It gives a discharge on implementation of the budget (Article 276 ECT).

Control over the executive

Parliament has several powers of control.

A. Investiture of the Commission

Parliament began informally approving the investiture of the Commission in 1981 by approving its programme. However, it was only when the Maastricht Treaty came into force (1992) that its approval was required before the Member States could appoint the President and Members of the Commission as a collegiate body. The Amsterdam Treaty has taken matters further by requiring Parliament's specific approval for the appointment of the Commission President, prior to that of the other Members.

B. The motion of censure

The Treaty of Rome made provision for a motion of censure against the Commission (Article 201 ECT). It requires a two-thirds majority of the votes cast, representing a majority of Parliament's component members, in which case the Commission must resign as a body. There have been only eight motions of censure since the beginning and none has been adopted, but the number of votes in favour of censure has steadily increased. However, the last motion (vote on 8 June 2005) obtained only 35 votes to 589, with 35 abstentions.

C. Parliamentary questions

These take the form of written and oral questions with or without debate (Article 197 ECT) and questions for Question Time. The Commission and Council are required to reply.

D. Committees of inquiry

Parliament has the power to set up a temporary committee of inquiry to investigate alleged contraventions or maladministration in the implementation of Community law (Article 193 ECT).

E. Control over common foreign and security policy and police and judicial cooperation

Parliament is entitled to be kept informed in these areas and may address questions or recommendations to the Council. It must be consulted on the main aspects and basic choices of the common foreign and security policy and on any measure envisaged apart from the common positions on police and judicial cooperation (Articles 21 and 39 EUT). Implementation of the interinstitutional

agreement on budgetary discipline and sound financial management (2006/C 139/01), is expected to improve CFSP consultation procedures.

Appeals to the Court of Justice

Parliament has the right to institute proceedings before the Court of Justice in cases of violation of the Treaty by another institution.

It has the right to intervene, i.e. to support one of the parties to the proceedings, in cases before the Court. It exercised this right in the 'Isoglucose' judgement (Cases 138 and 139/79 of 29 October 1980). In its ruling, the Court declared a Council regulation invalid because it was in breach of its obligation to consult Parliament.

In an action for failure to act (Article 232 ECT), Parliament may institute proceedings against an institution before the Court for violation of the Treaty, as in Case 13/83, in which judgment was found against the Council because it had failed to take measures relating to the common transport policy (→4.5.1).

Under the Treaty of Amsterdam the Parliament could bring an action to annul an act of another institution only for the purpose of protecting its prerogatives. The Treaty of Nice amended Article 230 ECT: the Parliament doesn't have to demonstrate specific concern and therefore is able to institute proceedings in the same way as the Council, the Commission and the Member States. The Parliament may be the defending party in an action against an act adopted under the co-decision procedure or when one of its acts is intended to produce legal effects vis-à-vis third parties. Article 230 ECT thus upholds the Court's rulings in Cases 320/81, 294/83 and 70/88.

It is finally now able to seek a prior opinion from the Court of Justice on the compatibility of an international agreement with the Treaty (Article 300 ECT, modified by the Treaty of Nice).

Petitions

When EU citizens exercise their right of petition, they address their petitions to Parliament (Article 194 ECT) (→2.5.0).

Appointing the Ombudsman

Parliament appoints the Ombudsman (Article 195 ECT) (→1.3.14).

→ Wilhelm LEHMANN
01/2007

1.3.3. The European Parliament: organisation and operation

Legal basis

- Articles 183–201 EC Treaty (ECT);
- European Parliament's (EP/Parliament's) Rules of Procedure.

Membership

There are at present 785 Members, allocated as follows: Germany – 99; France, Italy and the United Kingdom – 78; Spain and Poland – 54; Romania – 35; the Netherlands – 27; Belgium, Greece, Hungary, Portugal, and the Czech Republic – 24; Sweden – 19; Austria and Bulgaria – 18; Finland and Slovakia – 14; Denmark, Ireland and Lithuania – 13; Latvia – 9; Slovenia – 7; Cyprus, Estonia and Luxembourg – 6; Malta – 5.

Organisation

A. Management bodies

They comprise the Bureau (the President and 14 Vice-Presidents); the Conference of Presidents (President and political group chairmen); the six (after July 2009 five) Quaestors responsible for Members' administrative and financial business; the Conference of Committee Chairmen; and the Conference of Delegation Chairmen. The term of office of the President, Vice-Presidents and Quaestors is two and a half years.

B. Committees and delegations

Members are assigned to 20 committees, 2 subcommittees, interparliamentary delegations and delegations to joint parliamentary committees. There is also the Joint Assembly set up under the agreement between the African, Caribbean and Pacific ACP States and the EU.

Each committee or delegation elects its own 'bureau' comprising a chairman and four (after July 2009 three) vice-chairmen.

C. The political groups

Members do not sit in national delegations but according to their political affinities, in transnational groups. Under the Rules of Procedure a political group shall comprise members elected in at least one-fifth of the Member States. After accession of Bulgaria and Romania the minimum number of members required to form a political group is 20, coming from at least six Member States (Rule 29). The political groups hold regular meetings during the week before the part-session and during the part-session week, as well as seminars to determine the main principles of their Community activity. Several political groupings have founded political

parties that operate at European level, e.g. the European People's Party, the Party of European Socialists, the European Green Party and the European Liberal Democrat and Reform Party. They work in close cooperation with the corresponding political groups within Parliament.

D. European political parties

The European political parties' importance in forming a European awareness and in expressing the political will of the citizens of the Union is recognised in Article 191 ECT, introduced by the Maastricht Treaty. Parliament recommends the creation of an environment favourable to their continued development, including the adoption of framework legislation. The Treaty of Nice supplemented Article 191 with a legal base which allowed the adoption via the co-decision procedure of a statute of European level political parties and particularly of rules concerning their funding. Since the entry into force of this regulation (2004/2003 EC), in 2004, several new political parties have been founded, raising their total number to 10.

Operation

Under the Treaty, Parliament organises its work independently. It adopts its Rules of Procedure, acting by a majority of its members (Article 199 ECT). If the Treaties do not provide otherwise, Parliament acts by an absolute majority of the votes cast (Article 198 ECT). It decides the agenda for its part-sessions, which primarily cover the adoption of reports by its committees, questions to the Commission and Council, topical and urgent debates and statements by the presidency. Plenary sittings are held in public.

Seat and places of work

From 7 July 1981 onward, Parliament has adopted several resolutions on its seat, calling on the governments of the Member States to comply with the obligation incumbent upon them under the Treaties to establish a single seat for the institutions. Since they failed to respond, it took a series of decisions concerning its organisation and places of work (Luxembourg, Strasbourg and Brussels).

At the Edinburgh European Council of 11 and 12 December 1992 the Member States' governments reached agreement on the seats of the institutions, whereby:

- Parliament should have its seat in Strasbourg, where the 12 monthly part-sessions, including the budget session, should be held;
- additional plenary part-sessions should be held in Brussels;

- the parliamentary committees should meet in Brussels;
- the Parliament’s secretariat and departments should remain in Luxembourg.

This decision was criticised by Parliament. However, the Court of Justice (judgment of 1 October 1997 — C 345/95) confirmed that it had determined the seat of Parliament in accordance with Article 289 ECT. The substance of this decision was included in the Treaty of Amsterdam in a protocol annexed to the Treaties, which Parliament regretted.

Parliament draws up its annual calendar of part-sessions on the proposal of the Conference of Presidents. In general, Parliament holds 12 four-day part-sessions in Strasbourg and six two-day part-sessions in Brussels. On 18 December 2006 Parliament held for the first time a supplementary plenary sitting in Brussels directly after the European Council of 15/16 December 2006. In future, this practice will be continued.

→ Wilhelm LEHMANN
01/2007

Membership of Parliament by group and member state

	PPE-DE	PSE	ALDE	UEN	Greens/ALE	GUE/NGL	IND/DEM	ITS	NI	
Belgium	6	7	6		2			3		24
Bulgaria	4	6	7					1		18
Czech Republic	14	2				6	1		1	24
Denmark	1	5	4	1	1	1	1			14
Germany	49	23	7		13	7				99
Estonia	1	3	2							6
Greece	11	8				4	1			24
Spain	24	24	2		3	1				54
France	17	31	11		6	3	3	7		78
Ireland	5	1	1	4		1	1			13
Italy	24	15	12	13	2	7		2	3	78
Cyprus	3		1			2				6
Latvia	3		1	4	1					9
Lithuania	2	2	7	2						13
Luxembourg	3	1	1		1					6
Hungary	13	9	2							24
Malta	2	3								5
Netherlands	7	7	5		4	2	2			27
Austria	6	7	1		2			1	1	18
Poland	15	9	5	20			2		3	54
Portugal	9	12				3				24
Romania	9	12	9					5		35
Slovenia	4	1	2							7
Slovakia	8	3							3	14
Finland	4	3	5		1	1				14
Sweden	6	5	3		1	2	2			19
United Kingdom	27	19	12		5	1	10	1	3	78
Total	277	218	106	44	42	41	23	20	14	785

PPE-DE: Group of the European People’s Party (Christian Democrats) and European Democrats — PSE: Socialist Group in the EP — ALDE: Group of the Alliance of Liberals and Democrats for Europe — UEN: Union for Europe of the Nations Group — Greens/ALE: Group of the Greens/European Free Alliance — GUE/NGL: Confederal Group of the European United Left/Nordic Green Left — IND/DEM: Independence and Democracy Group — ITS: Identity, Tradition, Sovereignty — NI: Non-attached Members

1.3.4. The European Parliament: electoral procedures

Legal basis

Article 190 paragraphs (1) and (2) of the EC Treaty (ECT).

Common rules

Principles

The founding Treaties stated that Members of the European Parliament (EP) would initially be appointed by the national parliaments but made provision for election by direct universal suffrage, based on a project drawn up by Parliament itself. It was only in 1976 that the Council decided to implement this provision by the Act of 20 September (now incorporated in the ECT at Article 190(1)).

In 1992, the Maastricht Treaty inserted a provision into the EC Treaty (Article 190(4)) stating that elections must be held in accordance with a uniform procedure in all Member States and Parliament should draw up a proposal to this effect, for unanimous adoption by the Council. However, the Council was unable to agree on a uniform procedure, in spite of the various proposals presented by Parliament.

To resolve this deadlock, the Treaty of Amsterdam introduced into the ECT the possibility, failing a uniform procedure, of 'common principles' with a view to enhancing the democratic legitimacy of the EP and the feeling of being a citizen of the European Union. On this basis it was possible to modify the 1976 act by Council Decision 2002/772/EC, Euratom of 25 June 2002 and 23 September 2002. This decision introduced the principles of proportional representation and incompatibility between national and European mandates.

Application: common provisions in force

Right of non-nationals to vote and to stand as a candidate

According to Article 19 of the ECT, 'every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the EP in the Member State in which he resides'. The arrangements for implementing this right were adopted on 6 December 1993 in Directive 93/109/EC.

Electoral system

The elections must be based on proportional representation and use either the list system or the single transferable vote (Council Decision 2002/772/EC, Euratom).

Incompatibilities

The office of member of the EP is incompatible with that of member of the Commission, judge, advocate-general or

registrar of the Court of Justice, member of the Court of Auditors, member of the Economic and Social Committee, member of committees or other bodies set up pursuant to the Community Treaties for the purpose of managing the Communities' funds or carrying out a permanent direct administrative task, member of the Board of Directors, Management Committee or staff of the European Investment Bank, and active official or servant of the institutions of the European Communities or of the specialised bodies attached to them.

The 2002 Council Decision added further incompatibilities: member of the Court of First Instance, member of the Board of Directors of the European Central Bank, Ombudsman of the European Communities and, of course, member of a national parliament.

Arrangements subject to national provisions

In addition to these common rules, the electoral arrangements are governed by national provisions that are at times quite different.

A. Electoral system

Pursuant to the 2002 Council Decision, all of the Member States must now use a system based on proportional representation. Lists failing to obtain, for example, 5 % of the vote in Germany or France, or 4 % in Austria or Sweden, are excluded from the allocation of seats. Until the 1994 elections the United Kingdom used the first-past-the-post system (except in Northern Ireland, where proportional representation was already in use). Most major new Member States apply the 5 % or 4 % threshold.

B. Constituency boundaries

Until 2003, in 11 Member States (Germany, Austria, Denmark, Spain, Finland, France, Greece, Luxembourg, the Netherlands, Portugal and Sweden) the whole country formed a single electoral area. In four Member States (Belgium, Ireland, Italy and the United Kingdom) the national territory was divided into a number of constituencies. Most new Member States have introduced single electoral areas (e.g. the Czech Republic and Hungary). Poland has 13 regional constituencies.

Since the 2002 Council Decision, a number of the old Member States have amended or are amending national laws. France has abandoned the use of a single electoral constituency and has established eight large regional constituencies: North-west, West, East, South-west, South-east, Massif Central, Île-de-France and Overseas. In Great

Britain, the territory of Gibraltar, whose population does not vote in the European elections due to the disagreement on the issue between the Spanish and British governments, should be incorporated in one of the existing 12 constituencies. In Germany, although the electoral legislation will not be changed, parties are allowed to present lists of candidates at either *Land* or national level. Similarly, in Finland parties may present their lists at either constituency or national level.

C. Entitlement to vote

1. Vote of non-nationals in the host country

Voting age is 18 in all the Member States. Citizens of the Union residing in a Member State of which they are not nationals now have the right (Article 19 of the EC Treaty) to vote in elections to parliament in the Member State in which they reside, under the same conditions as nationals of that State. However, the concept of residence still varies from one national electoral system to another.

Some countries require voters either to have their domicile or customary residence on electoral territory (Finland and France), or customarily to stay there (Germany, Luxembourg, Belgium, Greece, Spain, Portugal and Italy), or to be registered on the electoral roll (Austria, Denmark, United Kingdom, Hungary, Ireland, the Netherlands, Poland and Sweden).

To be entitled to vote in Luxembourg, Community citizens must also prove a minimum period of residence. This was reduced, however, with the entry into force of the new electoral law on 18 February 2003. Since then, the obligatory period of residence in the territory of Luxembourg has been five years, although this period does not apply to Community electors who do not have the right to vote in that State because they are resident outside their Member State of origin or because of the period of that residence.

2. Vote of non-resident nationals in the countries of origin

In the United Kingdom the right to vote of citizens resident abroad is confined to civil servants, members of the armed forces and citizens who left the country less than five years before, provided they submit a declaration to the appropriate authorities. Austria, Denmark, Portugal and the Netherlands only grant the right to vote to their nationals living in an EU Member State. Sweden, Belgium, France, Spain, Greece and Italy grant their nationals the right to vote whatever their country of residence. Germany grants this right to citizens who have lived in another country for less than 10 years. In Ireland and Hungary the right to vote is confined to EU citizens domiciled on the national territory.

D. Right to stand for election

Apart from the requirement of nationality of an EU Member State, which is common to all the Member States, conditions vary from one to another.

1. Minimum age

Eighteen in Finland, Sweden, Denmark, Germany, Spain, the Netherlands, Luxembourg, Portugal and most new Member States, 19 in Austria, 21 in Belgium, Greece, the Czech Republic, Ireland, Lithuania, Poland, Slovakia and the United Kingdom, 23 in France and 25 in Italy.

2. Residence

In Luxembourg, since the new electoral law of 18 February 2003, at least 5 years' residence is required (previously 10 years) to enable a Community national to stand for election to the EP. Moreover, a list may not comprise a majority of candidates who do not have Luxembourgish nationality.

E. Nominations

In some Member States (Denmark, Germany, Greece, Estonia, the Netherlands, Sweden and the Czech Republic) only political parties and political organisations may submit nominations. In the other countries nominations may be submitted if they are endorsed by the required number of signatures or electors, and in some cases (Ireland, the Netherlands and the United Kingdom) a deposit is also required. In Ireland and Italy candidates may nominate themselves if they are endorsed by the required number of signatures.

F. Election dates

In accordance with national traditions, the voting takes place on:

- Thursday in Denmark, Ireland, the Netherlands and the United Kingdom,
- Sunday in all other countries.

The last elections were held on 10 and 13 June 2004.

G. Voters' option to alter the order of candidates on lists

In some States (Germany, Spain, France, Greece and Portugal), voters cannot alter the order in which candidates appear on a list. In others (Austria, Belgium, Denmark, Finland, Italy, Luxembourg, the Netherlands and Sweden), the order on the list may be changed using transferable votes. In Luxembourg, voters may vote for candidates from different lists. In Sweden, voters may also add names to the lists or remove them. The list system is not used in Ireland, Malta and the United Kingdom.

H. Allocating seats

Most Member States have adopted the d'Hondt rule for allocating seats. Germany uses the Hare-Niemeyer method and Luxembourg a variant of d'Hondt method, the Hagenbach–Bischoff method. In Italy, seats are allocated by the whole electoral quota and largest remainder method, in Ireland by the single transferable vote method, in Greece by the weighted method of proportional representation known as 'Eniskhimeni Analogiki', and in Sweden by the Sainte-Laguë method (division by successive odd numbers but modified to make the largest common divisor 1.4).

I. Verification of the result and rules on election campaigns

There is provision for the EP to verify the election results in Denmark, Germany and Luxembourg, and for the courts to do so in Austria, Belgium, Finland, France, Italy, Ireland and the United Kingdom, while both are provided for in Germany. In Spain, the result is verified by the 'Junta Electoral Central'; in Portugal and Sweden a verification committee does so.

Contrary to the practice in national elections, no special rules on election campaigns have been laid down. For a long time, political parties at the European level received no direct allowances for election campaigns. Recently, however, a system for the funding of European political parties was established (Regulation (EC) No 2004/2003).

J. Filling of seats vacated during the electoral term

In some Member States (Austria, Denmark, Finland, France, Italy, Luxembourg, the Netherlands and Portugal), seats falling vacant following 'open' resignation are allocated to the first unelected candidates on the lists (possibly after permutation to reflect the votes obtained by the various candidates). In Belgium, Ireland, Germany and Sweden, vacant seats are allocated to substitutes. In Spain and Germany, if there are no substitutes, account is taken of the order of candidates on the lists. In the United Kingdom, by-elections are held. In Greece, vacant seats are allocated to substitutes on the same list; if there are not enough substitutes, by-elections are held. The European Parliament

is currently preparing a resolution on changing its rules applying to MEPs in the event of maternity or paternity, taking into account national legislation on the filling of seats.

Role of the European Parliament

Since the 1960s, Parliament has repeatedly voiced its opinion on issues of electoral law in reports, resolutions and in written and oral questions and has put forward proposals in accordance with Article 138 of the EEC Treaty. Parliament adopted three resolutions, in 1991, 1992 and 1993, on establishing a uniform electoral procedure, but the Council did not consider them as proposals within the meaning of Article 138 and in any case adopted only the proposal concerning the allocation of seats among the Member States.

Article 190 of the EC Treaty, modified by the Amsterdam Treaty, provides for Parliament to draw up a proposal for elections in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States. In 1997, Parliament's Committee on Institutional Affairs decided to draw up a report which resulted in a resolution on a proposal for a uniform electoral procedure. The Council's decision of 25 June 2002 incorporates the substance of the EP's proposal, with two exceptions:

- the Council does not take over the proposal for the establishment of a single European constituency for the election of 10 % of the seats,
- the decision does not make reference to the principle of parity between men and women.

The continuing lack of a genuine uniform procedure for election to the EP shows how difficult it is to harmonise different national traditions. The Amsterdam Treaty's option of adopting common principles has to some extent made it possible to overcome these difficulties.

→ Wilhelm LEHMANN
01/2007

1.3.5. The European Parliament: relations with the national parliaments

Objectives

A. Rationale for cooperation

The very process of European integration involves transferring some responsibilities that used to be exercised by the national governments to joint institutions with decision-making powers, thus diminishing the role of the national parliaments (NPs) as legislative, budgetary and controlling authorities. The transfer of responsibilities from national level to European level has largely been to the Council, and the European Parliament (EP) has not acquired all the powers that would have enabled it to play a full parliamentary role in Community affairs. There is thus a structural 'democratic deficit'.

Both the EP and the NPs have deplored this democratic deficit and endeavoured to reduce it.

- The NPs have gradually become concerned at this loss of influence and have come to see better national control over their governments' European activities and closer relations with the EP as a way of restoring lost influence and ensuring together that Europe is built on democratic principles.
- On its side, the EP has generally taken the view that substantial relations with the NPs would help to strengthen its legitimacy and bring Europe closer to the citizen.

B. The evolving context of cooperation

The role of the NPs has continued to decline as European integration has progressed, with the strengthening of Community fiscal and budgetary powers in 1970 and 1975, the rise of majority voting in the Council and of the EP's legislative powers following the Single Act in 1987 and the Maastricht Treaty in 1993, the latter also creating the common foreign and security policy (CFSP) and cooperation in the spheres of justice and home affairs (CJHA), and a further increase in the EP's legislative powers in the Amsterdam Treaty of October 1997.

Until 1979 the EP and the NPs were linked organically, since MEPs were appointed from within the NPs. Direct elections to the EP broke those ties, and for some 10 years relations ceased altogether. The need to restore them became apparent after 1989, when contacts were made and attempts were set in train to replace the original organic ties. The Maastricht Treaty helped by including two

declarations (Nos 13 and 14) on the subject, which provide in particular for:

- respecting the NP's involvement in the activities of the European Union (their respective governments must inform them 'in good time' of Community legislative proposals and joint conferences must be held where necessary);
- cooperation between the EP and the NPs, by stepping up contacts, holding regular meetings and granting reciprocal facilities.

The NPs have recently acquired a measure of control over their governments' Community activities, as a result of constitutional reforms, government undertakings or amendment of their own operating methods. Their committees specialising in European affairs have played a major role in this development, in cooperation with the EP.

The protocol on the role of NPs annexed to the Treaty of Amsterdam encourages greater involvement of NPs in the activities of the EU and requires consultation documents and proposals to be forwarded promptly so the NPs can examine them before the Council takes a decision. The role of NPs is furthermore dealt with in a declaration to the Nice Treaty (2000) and in the declaration of the European Council in Laeken (2001). It also played an important role during the debates of the Convention on the future of Europe (→ 1.1.4), where it was the subject of one of the 11 working groups. The Convention finally adopted a Protocol on the role of NPs in the European Union, which was attached to the Treaty establishing a Constitution for Europe. In May 2006, the European Commission has agreed to transfer electronically all new proposals and consultation papers to the national parliaments.

Achievements: the instruments of cooperation

A. Conferences of Presidents of the parliamentary assemblies of the European Union

Following meetings held in 1963 and 1973, the Conferences were introduced in 1981. Comprising the Presidents of the NPs and the EP, they were held initially every two years. They are prepared by meetings of secretary-generals and discuss precise questions of cooperation between the NPs and the EP.

Over the last years, the Presidents met every year. Important recent conferences were held in Stockholm in

November 2001 (discussing the role of NPs in the European Structure) and in Athens, on 22–24 May 2003 (on the role of the European parliaments (NPs and the EP) in an enlarged Europe: the political and institutional dimension).

Since 1995 the EP had maintained close relations with the parliaments of the associate and accession countries. The Presidents of the EP and parliaments have met repeatedly to discuss accession strategies and other topical questions.

B. The ECPRD

The grand conference in Vienna in 1977 set up the European Centre for Parliamentary Research and Documentation (ECPRD), a network of documentation and research services that cooperate closely to facilitate access to information (including national and Community databases) and coordinating research so as to avoid duplication. It centralises and circulates research and has created a website to improve exchanges of information. Its directory facilitates contact between the member parliaments' research departments. The Centre is jointly administered by the EP and the Parliamentary Assembly of the Council of Europe.

C. Conference of parliaments of the Community

This idea took practical shape in Rome in 1990 under the name of 'European assizes'. Its theme was 'the future of the Community; the implications, for the Community and the Member States, of the proposals concerning economic and monetary union and political union and, more particularly, the role of the national parliaments and of the European Parliament' and there were 258 participants, 173 from the NPs and 85 from the EP. There has not been another one since.

D. Conference of the Community and European Affairs Committees of the Parliaments of the European Union — COSAC

Proposed by the President of the French National Assembly, the conference has met every six months since 1989,

bringing together the NPs' bodies specialising in European Community Affairs and six MEPs, headed by the two vice-presidents responsible for relations with national parliaments. Convened by the parliament of the country holding the presidency of the Community and prepared jointly by the EP and the parliaments of the presidency 'troika', each conference discusses the major topics of European integration.

COSAC is not a decision-making but a consultation and coordination body that adopts its decisions by consensus. The Protocol to the Treaty of Amsterdam on the role of the national parliaments in the European Union particularly states that COSAC may make any contribution it deems appropriate for the attention of the institutions of the European Union. However, contributions made by COSAC in no way bind national parliaments or prejudice their position.

E. Cooperation

Most of the EP's standing committees consult their national counterparts through bi- or multilateral meetings and visits by chairmen and rapporteurs.

Contacts between the EP's political groups and the NPs' equivalents have developed to differing degrees, depending on the country or political party involved.

Administrative cooperation is developing in the form of traineeships in the EP and exchanges of officials. Reciprocal information on parliamentary work, especially in legislation, is of increasing importance.

→ Wilhelm LEHMANN
01/2007

1.3.6. The Council

Legal basis

In the European Union's single institutional framework, the Council exercises the powers conferred on it by the Treaty on European Union (Articles 3 and 5) and the Treaty establishing the European Community (ECT) (Articles 202 to 210).

Role

A. Community legislation

On the basis of proposals presented by the Commission, the Council adopts Community legislation in the form of regulations and directives, either jointly with the European Parliament (EP) in accordance with Article 251 EC or alone after consultation with the European Parliament (→1.4.1.). The Council also adopts individual decisions and non-binding recommendations (Article 249 ECT) and issues resolutions. The Council establishes requirements for exercising the implementing powers conferred on the Commission or reserved to the Council itself.

B. Budget

The Council is one of the two branches (the other being the EP) of the budgetary authority which adopts the Community budget (→1.4.3.).

C. Other powers

1. Community external policy

The Council concludes the Community's international agreements (which are negotiated by the Commission and require the EP's assent in some cases).

2. Appointments

The Council, acting by qualified majority (since the Treaty of Nice), appoints the members of the Court of Auditors, the Economic and Social Committee and the Committee of the Regions.

3. Economic policy

The Council ensures coordination of the economic policies of the Member States (Article 145 ECT) and, without prejudice to the powers of the European Central Bank, takes political decisions in the monetary field. The decision to admit a Member State to the single currency is taken by the Council meeting at the level of Heads of State or Government.

4. Common Foreign and Security Policy and cooperation in the fields of justice and home affairs

In these fields of competence, created by the Treaty on European Union, the Council does not act as a Community

institution but according to specific intergovernmental rules.

In the field of foreign and security policy, it adopts common positions and joint actions and also draws up conventions. The Troika formula has changed after the Treaty of Amsterdam: the presidency of the Council is assisted in the field of the common foreign and security policy by the Council secretariat-general whose secretary-general exercises the functions of High Representative for common foreign and security policy and the Member State that will hold the next presidency. The Council and presidency are also assisted by a policy planning and early warning unit, which was set up under a declaration annexed to the final act of the Amsterdam Treaty.

Since the Treaty of Amsterdam, the Council has also adopted framework decisions on approximation of legislation in the fields of justice and home affairs (→4.11.1).

Organisation

A. Composition

1. Members

The Council consists of a representative of each Member State, at ministerial level, 'authorised to commit the government of that Member State' (Article 203 ECT).

2. Presidency

The Council, acting by a qualified majority (since the Treaty of Nice), is chaired by the representative of the Member State that holds the Union's presidency: this changes every six months, in the order decided by the Council acting unanimously (Article 203 ECT). The Treaty of Nice did not change this six-monthly rotation. In order to give new Member States the time to prepare for their presidency the previous rotation order was continued until the end of 2006. On 1 January 2007 the following order was decided: Germany and Portugal in 2007, Slovenia and France in 2008, the Czech Republic and Sweden in 2009, Spain and Belgium in 2010, Hungary and Poland in 2011, Denmark and Cyprus in 2012, Ireland and Lithuania in 2013, Greece and Italy in 2014, Latvia and Luxembourg in 2015, the Netherlands and Slovakia in 2016, Malta and the United Kingdom in 2017, Estonia and Bulgaria in 2018, Austria and Romania in 2019, and Finland in the first half of 2020.

B. Operation

Depending on the area concerned, the Council takes its decision, by simple majority, qualified majority or unanimously (→1.4.1. and 1.4.3).

1. Simple majority

This means that a decision is taken when there are more votes for than against. Each Member of the Council has one vote. The simple majority is applicable when the Treaty does not provide otherwise (Article 205(1) ECT). It is thus the decision-making process found in ordinary law. In practice it applies to only a small number of decisions: internal Council rules, organisation of the Council secretariat, and the rules governing committees provided for in the Treaty.

2. Qualified majority

(a) Mechanism

In many cases the Treaty requires decisions by qualified majority, which entails more votes than a simple majority. In that case there is no longer equality of voting rights. Each country has a certain number of votes in line with its population (Article 205(2) ECT).

Before the accession of the 10 new Member States, the situation was the following: Germany, France, Italy and the United Kingdom – 10 votes; Spain – 8 votes; Belgium, Greece, the Netherlands and Portugal – 5 votes; Austria and Sweden – 4 votes; Denmark, Finland and Ireland – 3 votes and Luxembourg – 2 votes. The total was 87 with 62 needed for a decision. In the event of a decision without a Commission proposal, the 62 votes must have been cast by at least 10 Member States.

With the accession of the 10 new Member States, the total number of votes in the Council rose to 124 during a transitional period (1 May 2004–31 October 2004). The required qualified majority is 88 (70.97 %).

As from 1 November 2004, a new weighting of votes will be introduced and qualified majority will be obtained if with 27 Member States:

- the decision receives at least 255 votes of a new total of 345 (73.91 %),
- the decision is approved by a majority of Member States, and
- the decision is approved by at least 62 % of the EU's population (the check on this latter criterion must be requested by a Member State).

If a proposal does not come from the Commission, adoption of an act of the Council shall require at least 55 votes in favour, cast by at least two-thirds of the members.

In an EU of 27 Member States, the qualified majority will be fixed at 255 out of a total of 345 (73.91 %).

(b) Scope

The Treaty of Nice extended the scope of decision-making by qualified majority. Twenty-seven provisions change completely or partly from unanimity to qualified majority, among them Article 18 ECT (measures to facilitate freedom of movements for the citizens of the Union), Article 65 (judicial cooperation in civil matters) and Article 157 (industrial policy). Qualified majority is now required for the appointment of the President and the members of the Commission, for the members of the Court of Auditors, the Economic and Social Committee and the Committee of the Regions (→1.4.1 and 1.4.2).

3. Unanimity

Unanimity is required by the ECT for only a small number of decisions but some of the most important (taxation, social policy, etc.) It should be noted that the Council tends to seek unanimity even when it is not required. This goes back to the 1966 Luxembourg compromise.

This ended the dispute between France and the other Member States that developed in 1965 when France refused to move from unanimity to the qualified majority voting laid down for certain decisions by the Treaty of Rome. France then refused to sit on the Council for six months. The text of the compromise reads: 'Where, in the case of decisions which may be taken by a majority vote on a proposal from the Commission, very important interests of one or more partners are at stake, the Members of the Council will endeavour, within a reasonable time, to reach solutions which can be adopted by all the Members of the Council while respecting their mutual interests and those of the Community, in accordance with Article 2 of the Treaty'. This has no legal force in that it does not modify the Treaty but the resulting tendency to seek unanimity has in the past considerably slowed down decision-making.

Coreper

A committee consisting of the permanent representatives of the Member States prepares the Council's work and carries out the tasks that it assigns to it (Article 207(1) ECT).

→ Wilhelm LEHMANN
01/2007

1.3.7. The European Council

Legal basis

Articles 4, 13, 17 and 40 of the Treaty on European Union (EUT).

History

A. Summits

The European Council is the present form of summit conferences of Heads of State or Government of the Community Member States. The first of these 'European summits' took place in Paris in 1961. There have been several since then at fairly regular intervals, becoming more frequent since 1969.

B. How the name arose

The Paris European summit in February 1974 decided that such meetings of Heads of State or Government should be held regularly in future under the name of 'European Council', enabling a general approach to be taken to the problems of European integration and ensuring that Community activities were properly coordinated.

C. Tasks

The Solemn Declaration on European Union adopted by the Heads of State or Government in Stuttgart in 1983 defined the tasks of the European Council as:

- defining approaches to further the construction of Europe;
- issuing guidelines for Community action and political cooperation;
- initiating cooperation in new areas;
- and expressing the common position in questions of external relations.

The Treaty establishing a Constitution for Europe would make the European Council on institution of the European Union (Article I-21). Its tasks would be to 'provide the Union with the necessary impetus for its development and [to] define the general political directions and priorities thereof.'

D. Incorporation in the Treaties

The Single Act (1986) included the European Council in the body of the Community Treaties for the first time, defining its composition and convening its meetings twice a year.

The Treaty of Maastricht (1992) formalised its role in the European Union's institutional process.

Organisation

A. Composition

The European Council brings together the Heads of State or Government of the Member States and the President of the Commission, assisted by the Foreign Ministers and a member of the Commission.

B. Operation

The European Council meets at least twice a year. It is chaired by the Head of State or Government of the country holding the Council presidency. It normally takes decisions unanimously. Since 2002 one European Council meeting per presidency is held in Brussels. When the Union comprised 25 members, all formal European Council meetings started to be held in Brussels. The presidencies are nevertheless free to organise informal European meetings wherever they like.

Role

A. Place in the Union's institutional system

Under Article 3 EUT, the European Council forms part of the 'single institutional framework' of the Union. But it is the source of a general political impetus rather than a decision-making body in the legal sense. It only takes decisions with legal consequences for the Union in exceptional cases (see point 2 below). In essence it is an intergovernmental body, taking decisions unanimously.

It is not a Community Institution. When the Treaty establishing the European Community (ECT) entrusts a decision to the Heads of State or Government, they act as a Council in the Community sense of the word and not as the European Council. This applies to:

- decisions as the ultimate authority for allowing closer cooperation in the Community sphere, under Article 11(2) ECT;
- choosing the Member States which fulfil the conditions for access to the single currency, under Article 121(4) ECT.

The same applies when the EUT (Article 7) gives the Council, meeting in the composition of Heads of State or Government, the power to start the procedure suspending the rights of a Member State as a result of a serious breach of the Union's principles.

B. Relations with the other institutions

The European Council takes decisions with complete independence; unlike the Community system, its decisions

do not involve a Commission initiative or Parliament's participation.

But the Treaty does provide an organisational link with the Commission, since its President forms part of the European Council, which is also assisted by another Commissioner. Moreover, the European Council often asks the Commission to submit reports in preparation for its meetings.

The only link with Parliament laid down by the EUT is that in Article 4 EUT, requiring the European Council to submit to Parliament:

- a report after each of its meetings,
- a yearly written report on the progress of the Union.

But Parliament can exercise some informal influence:

- by the presence of its President at European Council meetings, which has become the practice,
- by the resolutions it adopts on items on the agenda for meetings, on the outcome of meetings and on the formal reports submitted by the European Council.

C. Powers

1. General

The European Council provides the Union with 'the necessary impetus for its development' and defines the 'general political guidelines' (Article 4 EUT).

2. Foreign and security policy matters

The European Council defines the principles of and general guidelines for the common foreign and security policy (CFSP) and decides on common strategies for its implementation (Article 13 EUT).

It decides whether to recommend to the Member States moving towards a common defence, under Article 17 (1).

If a Member State intends to oppose the adoption of a decision for important reasons of national policy, the Council may decide by a qualified majority to refer the matter to the European Council for a unanimous decision (Article 23 (2) EUT). The same procedure can apply if Member States decide to establish enhanced cooperation in this field (Article 27c (2) EUT).

3. Police and judicial cooperation in criminal matters

At the request of a member of the Council, the European Council decides whether enhanced cooperation in an area related to this field can be established (Article 40a (2) EUT).

Achievements

A. General assessment

The creation of the European Council was a step forward in the process of European integration, which was thus

sufficiently advanced to warrant a regular meeting of the Member States' highest political authorities.

The European Council has been effective in adopting general guidelines for action by the Union, and also in overcoming deadlock in the Community decision-making process.

But its intergovernmental constitution and decision-making procedures may be curbing the federal development of European integration in general, and even putting at risk the supranational achievements of the Community system.

B. Sectoral contributions

1. Foreign and security policy

Since the beginning of the 1990s foreign and security policy has been an important item at the European Council's summit meetings. Decisions taken in this area have included:

- international security, disarmament and the fight against terrorism;
- transatlantic relations;
- relations with Russia;
- relations with the Mediterranean countries;
- relations with Asia and Latin America;
- the settlement of conflicts in the former Yugoslavia and the Middle East.

On 10 and 11 December 1999 in Helsinki, the European Council decided to reinforce the CFSP by developing military and non-military crisis management capabilities, in particular the means to launch and conduct EU-led military operations in response to international crises.

A European Security Strategy was approved by the European Council in Brussels on 12 December 2003.

2. Enlargement

The European Council has set the terms for each round of enlargement of the European Union. At Edinburgh in 1992 it decided to start accession negotiations with several EFTA Member States. At Copenhagen in 1993 it laid the foundations for a further wave of accessions (Copenhagen criteria). Meetings in subsequent years further specified the criteria for admission and the institutional reforms required beforehand. The Luxembourg European Council in December 1997 took decisions enabling accession negotiations to be launched with the countries of Central and Eastern Europe and Cyprus.

The Helsinki European Council (December 1999) decided to begin accession negotiations with Romania, Slovakia, Latvia, Bulgaria and Malta and to recognise Turkey as an

applicant country, thus marking the transition to a new phase of enlargement.

The Copenhagen European Council (12 and 13 December 2002) decided the accession as from 1 May 2004 of Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia. Romania and Bulgaria have joined the Union on 1 January 2007.

On 3 October 2005 in Luxembourg, the Council approved a framework for negotiations with Croatia and Turkey on their accession to the EU. Negotiations began immediately afterwards.

3. Institutional reform

The European Council meetings of Madrid (June 1989), Strasbourg (December 1989), Dublin I (April 1990) and Dublin II (June 1990) were important stages in the process leading to economic and monetary union and the EUT. The Dublin European Council of April 1990 decided that the intergovernmental conference on EMU would start work in December 1990, and that a second conference would be called on the subject of political union.

Again, the special meeting at Turin in March 1996 marked the official opening of the Intergovernmental Conference,

which led to the treaty reforms approved by the Amsterdam European Council in June 1997.

The European Council meeting at Tampere (15 and 16 October 1999) decided on the arrangements for drafting the EU Charter of Fundamental Rights (→2.1). The Helsinki European Council (December 1999) convened the intergovernmental conference in preparation for the Treaty of Nice.

The Laeken European Council (14 and 15 December 2001) decided to convene a Convention for the future of Europe (→1.1.4.) in order to pave the way for the next intergovernmental conference as broadly and openly as possible. The Convention presented its draft 'Treaty establishing a Constitution for Europe' to the European Council in Thessaloniki in June 2003.

After a short intergovernmental conference, the Treaty establishing a Constitution for Europe was signed by the Heads of State or Government in Rome in October 2004 (→1.1.5).

→ Wilhelm LEHMANN
01/2007

1.3.8. The Commission

Legal basis

Articles 211 to 219 of the Treaty establishing the European Community (ECT).

History

The Commission is the Community's one executive body. To begin with, each Community had its own executive: the High Authority for the European Coal and Steel Community of 1951, and a Commission for each of the two communities set up by the Treaty of Rome in 1957, the EEC and Euratom. These three bodies merged into a single European Commission under the Treaty of 8 April 1965, which took effect on 1 July 1967 (→1.1.2.).

Composition and legal status

A. Number of Members

The Commission was for a long time composed of 30 members, at least one and not more than two Commissioners per Member State. In practice the five most

populous countries returned two Commissioners and the others one, including the 10 new Member States since 1 May 2004.

Since 1 November 2004 onwards the Commission consists of one Commissioner per Member State. When the Union reached the number of 27 Member States on 1 January 2007 the number of the Commissioners should become smaller than the number of the Member States. The Members of the Commission will be selected on the basis of a rotation system based on the principle of equality. This new system will only be introduced with the new Commission to be appointed in 2009.

The Treaty establishing a Constitution for Europe would provide for a similar system (Article I-26). The first Commission to be appointed under the provisions of the Constitution shall consist of one national of each Member State. Subsequently, the Commission shall consist of a number of members, including its President and the Union Minister for Foreign Affairs, corresponding to two thirds of the number of Member States. The members of the

Commission shall be selected from among the nationals of the Member States on the basis of a system of equal rotation, reflecting satisfactorily the demographic and geographical range of all the Member States.

B. Method of nomination

Under the Treaty of Amsterdam the nomination of the Commission took place as follows:

- The Member States' nominee for Commission President was first put to Parliament for approval;
- After approval the Member States appointed the other Commissioners by common accord with the nominated President;
- Finally, there was a further round of parliamentary approval and the Commissioners were appointed.

The Treaty of Nice introduced the following changes:

- It is the Council, acting by a qualified majority, which nominates the person it intends to appoint as President of the Commission; the nomination must be approved by the European Parliament (EP);
- The Council, acting by a qualified majority and by common accord with the nominee for President, adopts the list of the other persons whom it intends to appoint as members of the Commission in accordance with the proposals made by each Member State;
- The President and the other members of the Commission must be approved as a body by the EP and appointed by the Council, acting by a qualified majority.

C. Legal status

1. Term of office

Since the Treaty of Maastricht a Commissioner's term of office has matched Parliament's legislative term of five years. It is renewable.

2. Personal accountability (Articles 213(2) and 216 ECT)

Members of the Commission are required:

- to be completely independent in the performance of their duties, in the general interest of the Community; in particular, they may neither seek nor take instructions from any government or other external body;
- not to engage in any other occupation, whether it is gainful or not.

Commissioners can be dismissed by the Court of Justice, at the request of the Council or the Commission itself,

- if they break any of these obligations,
- if they cease to fulfil the conditions required for the performance of their duties,
- if they are guilty of serious misconduct.

3. Collective accountability

The Commission is collectively accountable to Parliament under Article 201 ECT. If Parliament adopts a motion of censure against the Commission, all of its members are required to resign.

Organisation and operation

A. Allocation of tasks and administrative organisation

The Commission works under the political guidance of its President, who decides on its internal organisation in order to ensure that the Commission acts consistently, efficiently and on the basis of collegiality.

The President allocates the sectors of its activity among the members. This gives each Commissioner responsibility for a specific sector and authority over the administrative departments concerned.

After obtaining the approval of the College, the President appoints the Vice-Presidents from among its members. A member of the Commission has to resign, if the President so requests and after obtaining the approval of the College.

The Commission has a general secretariat consisting of 23 directorates-general and 15 specialist departments, including the European Anti-Fraud Office, the Legal Service, the Statistical Office and the Publications Office.

B. Method of decision-making

With one or two exceptions, the Commission takes decisions by a majority vote, under Article 17 of the Merger Treaty. This establishes the principle of collegiate responsibility.

Powers

As it acts in the common interest, the Commission is responsible for launching Community action and ensuring that it is carried out.

A. Power of initiative

As a rule the Commission has a monopoly on the initiative in Community decision-making. It draws up proposals for a decision by the two decision-making institutions, Parliament and the Council.

1. Full initiative: the power of proposal

The power of proposal is the complete form of the power of initiative, as it is always exclusive and is relatively constraining on the decision-making authority, which cannot take a decision unless there is a proposal and must base it on the proposal as presented.

(a) Legislative initiative

The Commission draws up and submits to the Council and Parliament any legislative proposals (regulations or directives) that are needed to implement the Treaties

(→1.4.1.). In drawing up such proposals the Commission normally takes account of the national authorities' guidelines. This concern was one of the aspects of the 1966 'Luxembourg Compromise'. This document, which is a declaration with no legal value (→1.1.2. and 1.3.6), expresses the wish that where proposals are of a particularly delicate nature (of 'particular importance') the Commission will contact the governments of the Member States before drafting begins, but it does add that such consultation must not affect the Commission's right of initiative.

(b) Budgetary initiative

The Commission draws up the preliminary draft budget, which is put to the Council under Article 272(2) and (3) ECT (→1.4.3.).

(c) Initiative in Community relations with third countries

The Commission is responsible for negotiating international agreements under Articles 133 and 300 ECT, which are then put to the Council for conclusion.

2. Limited initiative: the power of recommendation or opinion

This form of initiative differs from the previous kind because, firstly, it does not always give the Commission exclusive rights and, secondly, it does not form the only basis for decision-making by the authority concerned.

(a) In the context of economic and monetary union

The Commission has an important role in setting up economic and monetary union (EMU). For the move to the third stage, in 1999, it was asked to report to the Council on whether the Member States had fulfilled the conditions for access and to make recommendations for the access of individual Member States, under Article 121 ECT. It will have the same task with the access of further countries,

The Commission has a role in managing EMU. It submits to the Council:

- recommendations for draft broad guidelines of the economic policies of the Member States, under Article 99(2);
- reports reviewing economic developments in the Member States, under Article 99(3);
- recommendations on the attitude to be taken on Member States which are not complying with the broad guidelines, under Article 99(4);
- proposals for measures in the event of serious economic difficulties in the Community or a Member State, under Article 100(1) and (2);
- opinions and recommendations in the event of an excessive government deficit in a Member State, under Article 104(5) and (6);

- proposals for conferring on the European Central Bank specific tasks for prudential supervision of credit institutions, under Article 105(6);
- proposals (in the absence of proposals from the Bank) for amending the Statute of the European System of Central Banks, under Article 107(6);
- recommendations for the exchange rate between the single currency and the other currencies and for general orientations for exchange-rate policy, under Article 111;
- recommendations on measures to be taken if a Member State is in balance-of-payments difficulties, under Article 119.

(b) Under the common foreign and security policy and police and judicial cooperation

In these areas, not only is the Commission fully involved in the Council's work, but it may also — in the same way as the Member States — consult the Council on any proposal, under Articles 22 and 34(2) EUT.

B. Powers to monitor the implementation of Community law

The Community Treaties require the Commission to ensure they are properly implemented, together with any decision taken to implement them (secondary law). This is its role as guardian of the Treaties. It does so mainly through the 'failure to act' procedure under Article 226 ECT: if it considers that a Member State has failed to fulfil an obligation under the Treaty, it can initiate proceedings by requiring the State concerned to submit its observations. If these do not satisfy the Commission it delivers a reasoned opinion requiring the matter to be put right by a specific date; after that date it can ask the Court of Justice to settle the matter.

C. Implementing powers

1. Conferred by the Treaties

The main ones are:

- implementing the budget, under Article 274 ECT;
- authorising the Member States to take safeguard measures laid down in the Treaties, particularly during transitional periods;
- enforcing the competition rules, particularly in monitoring state subsidies, under Article 88(2).

2. Delegated by the Council

Articles 124 EAEC and 211 ECT state that the Commission must exercise the powers conferred on it by the Council for the implementation of the rules laid down by the Council. The Single Act amended the ECT, in Article 202, so as to require the Council to confer such powers, but it also allowed the Council:

- to reserve the right to exercise implementing powers itself,
- when conferring such powers on the Commission, to impose certain requirements.

As part of these 'requirements' the Council has taken to setting up 'committees' composed of national civil servants which are associated with the Commission's implementing powers. While some of these committees are only advisory, others make it possible to curb the Commission's powers (in the case of management committees) or even absorb them (in the case of regulatory committees). With respect to the competition rules applying to companies — concerted practice and abuse of a dominant position — Council regulatory acts have conferred considerable implementing powers on the Commission (→3.3.1. and 3.3.2.).

Parliament has repeatedly criticised the adverse effects of this 'comitology', which was increasingly inappropriate as the co-decision procedure spread into general use (see in particular Parliament's resolution of 13 December 1990). The Council Decision of 1999 'laying down the procedures for the exercise of implementing powers conferred to the Commission' improved the involvement of the European Parliament in the comitology procedures by acknowledging a right to information and a right to review.

After long negotiations between the three institutions, a new committee procedure ('regulatory procedure with scrutiny') was introduced by Council Decision 2006/512/EC of 17 July 2006. The Parliament changed its Rules of Procedure accordingly (resolution of 14 December 2006). This new procedure entitles Parliament and Council to

scrutinise quasi-legislative measures implementing an instrument adopted by co-decision and to reject such measures.

D. Regulatory powers

The Treaties seldom give the Commission full regulatory powers.

1. 'Obsolete' provisions:

- establishing levies on undertakings under the ECSC Treaty;
- paving the abolition of taxes and measures having an equivalent effect to customs duties or quantitative restrictions during the transitional period of the Treaty of Rome, setting up the customs union.

2. Provisions that remain in force: applying Community rules to public undertakings and public service undertakings, under Article 86(3) ECT.

E. Consultative powers

The Treaties give the Commission a general power of recommendation and opinion, under Article 211 ECT.

They also provide for it to be consulted on certain decisions, such as on the admission of new Member States to the Union, under Article 49 EUT.

Lastly, the Commission is consulted on the Statute for MEPs and the Statute for the Ombudsman.

→ Wilhelm LEHMANN
01/2007

1.3.9. The Court of Justice and the Court of First Instance

I. Court of Justice of the European Union

Legal basis

Articles 220, 226(2), 227, 230, 232, 234–237 and 300 of the EC Treaty (ECT).

Article 136 of the Euratom Treaty.

Protocol, annexed to the Treaties, on the Statute of the Court of Justice.

Certain international agreements.

Composition and statute

A. Composition

1. Number (Articles 221 and 222 ECT)

One judge per Member State, so there are currently 27.

Eight advocates-general, which may be increased by the Council if the Court so requests.

2. Conditions to be met (Article 223 ECT)

They will be chosen from persons:

- who possess the qualifications required for appointment to the highest judicial offices in their

respective countries or who are jurisconsults of recognised competence;

— whose independence is beyond doubt.

3. Appointment procedure (Article 223 ECT)

Judges and advocates-general are appointed by common accord of the governments of the Member States.

B. Characteristics of the office

1. Duration (Article 223 ECT and Statute)

Six years.

Partial replacement every three years:

- eight and seven judges replaced alternately,
- half of the advocates-general replaced alternately.

Retiring judges and advocates-general may be reappointed.

2. Privileges and immunities (Statute)

Judges and advocates-general are immune from legal proceedings. After they have ceased to hold office, they continue to enjoy immunity in respect of acts performed by them in their official capacity.

Their immunity may only be waived by a unanimous decision of the Court.

3. Obligations (Statute)

Judges and advocates-general:

- take an oath (independence, impartiality and preservation of secrecy) before taking up their duties;
- may not hold any political or administrative office or engage in any occupation;
- give an undertaking that they will respect the obligations arising from their office.

Organisation and operation (Article 223 ECT and Statute)

A. Internal organisation

The judges elect the President from among their number for a renewable period of three years.

The Court appoints its Registrar.

B. Operation

The Court establishes its Rules of Procedure, which require the approval of the Council, acting by a qualified majority.

The Court sits in chambers (of three or five judges), in a Grand Chamber (11 judges) or in a full Court (these various formations were introduced by the Treaty of Nice: →1.1.4.).

Responsibilities

A. Fundamental role

Ensuring that 'in the interpretation and application of the Treaties the law is observed' (Article 220 ECT).

B. Responsibilities

1. Direct proceedings against Member States or Community institutions

The Court gives a ruling on the proceedings against the States or institutions that have not fulfilled their obligations under Community law.

(a) Proceedings against the Member States for failure to fulfil an obligation

These actions are brought:

- either by the Commission, after a preliminary procedure (Article 226 ECT): opportunity for the State to submit its observations, reasoned opinion (→1.3.8.),
- or by another Member State after it has brought the matter before the Commission (Article 227 ECT).

Role of the Court:

- confirming that the State has failed to fulfil its obligations, in which case the State is required to take the necessary measures to comply with the Court's judgment;
- if the Commission considers that the Member State concerned has not taken such measures, it may (after a preliminary procedure, as provided for above) propose to the Court of Justice that it impose a lump sum or penalty payment on the Member State in question, the amount being determined by the Court on the basis of a Commission proposal (Article 228 ECT).

(b) Proceedings against the Community institutions for annulment and for failure to act

Subject: cases where the institutions have adopted acts that are contrary to Community law (annulment: Article 230 ECT) or, in infringement of Community law, have failed to act (failure to act: Article 232 ECT).

Referral: actions may be brought by the Member States, the institutions themselves or any natural or legal person if it relates to a decision addressed to them.

Role of the Court: the Court declares the act void or declares that there has been a failure to act, in which case the institution at fault is required to take the necessary measures to comply with the Court's judgment (Article 233 ECT).

(c) Other direct proceedings

Actions against Commission decisions imposing penalties on firms (Article 229 ECT).

Actions for compensation for damages caused by the institutions or their servants (Article 235 ECT); actions by Community officials and servants against their institutions (Article 236 ECT) — competence currently devolved to the Civil Service Tribunal (see below).

Actions relating to contracts concluded by the Community (Article 238 ECT).

2. Indirect proceedings: question of validity raised before a national court or tribunal (Article 234 ECT)

The national courts are normally responsible for applying Community law in cases relating to the implementation of the law. However, when an issue relating to the interpretation of the law is raised before a national court or tribunal, the court or tribunal may seek a preliminary ruling from the Court of Justice. If it is a court of last instance, it is compulsory to refer the matter to the Court.

3. Responsibility at second instance

The Court has the jurisdiction to review appeals limited to points of law in rulings of the Court of First Instance. The appeals do not have suspensory effect.

The Court also has the jurisdiction to review decisions made by judicial panels (see below, Civil Service Tribunal) or by the Court of First Instance on preliminary issues. The review procedure is an exceptional procedure, limited to cases where there is a serious risk of the unity or consistency of Community law being affected.

If the Court's ruling might affect the decision on the proceedings that were the subject of the decision at first instance, it is not however an appeal 'in the interest of the law'.

Achievements

The Court of Justice has shown itself to be a very important factor — some would even say a driving force — in European integration.

1. In general

Its judgment of 15 July 1964 in the *Costa/Enel* case was fundamental in defining European Community law as an independent legal system taking precedence over national legal provisions. Similarly, its judgment of 5 February 1963 in the *Van Gend & Loos* case established the principle that Community law was directly applicable in the courts of the Member States. Other significant decisions concern the protection of human rights: judgment of 14 May 1974 in the *Nold* case, in which the Court stated that fundamental human rights are an integral part of the general principles of law that it upholds (→2.1.).

2. In specific matters

(a) The right of establishment: judgment of 8 April 1976 in the *Royer* case, in which the Court upheld the right of a

national of a Member State to stay in any other Member State independently of any residence permit issued by the host country.

- (b) The free movement of goods: judgment of 20 February 1979 in the *Cassis de Dijon* case, in which the Court ruled that any product legally manufactured and marketed in a Member State must in principle be allowed on the market of any other Member State.
- (c) The external jurisdiction of the Community: AETR judgment of 31 March 1971, in the *Commission/Council* case, which recognised the Community's right to conclude international agreements in spheres where Community regulations apply.
- (d) Recent judgments establishing an obligation to pay damages by Member States that have failed to transpose directives into national law or failed to do so in good time.
- (e) Various judgments relating to social security and competition.
- (f) Rulings on breaches of Community law by the Member States, which are vital for the smooth running of the common market.

One of the great merits of the Court has been its statement of the principle that the Community Treaties must not be interpreted rigidly but must be viewed in the light of the state of integration and of the objectives of the Treaties themselves. This principle has allowed the Community to legislate in areas where there are no specific Treaty provisions, such as the fight against pollution.

II Court of First Instance

Legal basis

Articles 224 and 225 of the ECT, Article 40 of the Euratom Treaty;

Protocol annexed to the Treaties on the Statute of the Court of First Instance (Title IV).

The Court of First Instance was created through the Council Decision of 1988 in accordance with the Single Act (1986), which provided for its creation. It was incorporated into the ECT by the Treaty of Maastricht (1991). The Treaty of Nice did away with its status as a court 'attached' to the Court of Justice and extended its jurisdiction.

Composition and statute (Article 224 ECT)

Composition

Number

One judge per Member State, so there are currently 27.

The judges may be called upon to perform the task of advocate-general.

Conditions to be met

They must possess the ability required for appointment to high judicial office.

They must be persons whose independence is beyond doubt.

Appointment procedure

The judges are appointed by common accord of the governments of the Member States.

Characteristics of the office

Identical to those of the Court of Justice.

Organisation and operation

A. Internal organisation

The judges elect the President from among their number for a renewable period of three years.

The Court appoints its Registrar.

B. Operation

In agreement with the Court of Justice, the Court of First Instance establishes its Rules of Procedure, which require the approval of the Council.

The Court sits in chambers of three or five judges. Its Rules of Procedure determine when the Court sits as a full Court, in a Grand Chamber or is constituted by a single judge. The latter applies in particular to cases concerning Community officials, contracts concluded by the Community and actions brought by individuals against the institutions, where there is no difficulty regarding the question of law or fact raised and the cases are of limited importance.

Responsibilities

A. Responsibilities of the Court of First Instance (Article 225 ECT)

The Court has jurisdiction to hear at first instance actions concerning the following aspects, unless the actions are brought by Member States, Community institutions or the European Central Bank, in which case the Court of Justice has sole jurisdiction (Article 51 of the Statute):

- actions for annulment or for failure to act brought against the institutions (Articles 230 and 232 ECT);
- actions for the reparation of damage caused by the institutions (Article 235 ECT);
- disputes concerning contracts concluded by the Community (Article 238 ECT).

The Statute may extend the Court's jurisdiction to other areas.

The judgments given by the Court at first instance may be subject to a right of appeal to the Court of Justice, but this is limited to points of law.

B. Responsibility at first and last instance

The Court of First Instance has the jurisdiction to give preliminary rulings (Article 234 ECT) in the areas laid down by the Statute. However, these decisions may exceptionally be subject to review by the Court of Justice 'where there is a serious risk of the unity or consistency of Community law being affected'. The review does not have suspensory effect.

It is not, however, an appeal in the interest of the law if the Court's ruling is likely to have an impact on the decision on the proceedings that were the subject of the Court's ruling:

- in cases of reviews of decisions of the Court of First Instance ruling on the decisions of judicial panels (see below), the Court of Justice refers the matter to the Court of First Instance, which is bound by the points of law laid down by the Court of Justice. However, the Court of Justice itself decides the case if the decision on the proceedings is based on the same evidence as that brought before the Court of First Instance, taking into account the review of the Court of Justice;
- in cases of reviews of decisions of the Court of First Instance on preliminary issues, the Court of Justice's answer to the question referred replaces that of the Court of First Instance (Article 62 of the Court's Rules of Procedure).

C. Responsibility for appeals

If the Council decides to make use of the option to create judicial panels to hear and determine at first instance certain classes of actions, the decisions of these panels may be subject to a right of appeal before the Court of First Instance.

III Civil Service Tribunal of the European Union

In order to relieve the Court of First Instance of some of its proceedings, Article 225(a) ECT, introduced by the Treaty of Nice, provides for the possibility of establishing 'judicial panels' with the jurisdiction to hear certain categories of actions 'in certain specific areas' at first instance. In accordance with this provision, the Council Decision of 2 November 2004 establishes a 'European Union Civil Service Tribunal' (Official Journal L 333 of 9.11.2004, p.7).

The Council Decision stipulates that the decisions of this Tribunal are subject to appeals to the Court of First Instance without suspensory effect and are limited to points of law. They must lie on the grounds of lack of jurisdiction of the

Civil Service Tribunal, a breach of procedure before it that adversely affects the interests of the party concerned and the infringement of Community law.

IV The Treaty establishing a Constitution for Europe

Changes are introduced by the draft European Constitution with regard to the following points:

- the appointment of candidates for the posts of judge and advocate-general by the Member States will first be subject to an examination by a panel of seven persons, one of whom will be proposed by the European Parliament (EP);
- the legality of acts of the European Council and of bodies or organisms (agencies, offices, etc.) intended to produce legal effects vis-à-vis third parties will henceforth be reviewed;
- taking into account the development of case-law, the conditions governing the admissibility of cases brought by natural and legal persons against regulatory acts will be facilitated;
- the scope of cases brought for failure to act is extended to include the European Council and other EU bodies and organisms;
- the Court of Justice will have jurisdiction to review judicial cooperation in criminal matters and police cooperation, but not to review the validity or proportionality of police operations or the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security;

- although the Court still does not have jurisdiction over the acts adopted in the area of the common foreign and security policy, it has jurisdiction to review the legality of restrictive measures against natural or legal persons.

Significant progress is also made in the area of infringements: when the Commission brings a case before the Court of Justice against a Member State that has failed to fulfil its obligation to notify measures transposing a framework law, it may, when it deems appropriate, specify to the Court the amount of the lump sum or penalty payment to be paid by the Member State.

Finally, the changes to the Court's Statute will now form part of European law and will therefore be subject to qualified majority voting, rather than unanimity in the Council.

Role of the European Parliament

Since a 1990 ruling on a case by Parliament brought as part of the legislative procedure on the adoption of health measures to be taken following the Chernobyl nuclear accident, the Court has granted the EP the right to bring before the Court actions to have decisions declared void (Article 230 ECT) for the purpose of safeguarding its prerogatives under the legislative procedure.

The Treaty of Nice extends the EP's capacity to bring such decisions before the Court, which is no longer limited to defending its prerogatives.

→ Denis BATTÀ
01/2007

1.3.10. The Court of Auditors

Legal basis

Articles 246 to 248, 279 and 280 of the EC Treaty.

The Treaty of 22 July 1975 amending certain financial provisions of the Community treaties added these provisions to the Treaties of Paris and Rome. The Treaty on European Union raised the Court of Auditors to the rank of Community institution by amending Article 7 of the EC Treaty accordingly. The Nice Treaty introduced some minor changes to its composition and role.

Structure

A. Composition

1. Number

One member per Member State (the Nice Treaty formalised what had hitherto only been the recognised procedure), thus currently 27.

2. Qualifications

They must:

- belong or have belonged in their respective countries to external audit bodies, or be especially qualified for this office;
- show that their independence is beyond doubt.

3. Nomination

Members of the Court are appointed:

- by the Council, by qualified majority (under the new terms of the Nice Treaty prior to that, a unanimous vote was required);
- on the recommendation of each Member State regarding its own seat;
- after consulting the European Parliament (EP).

B. Type of mandate

1. Term

Six years, renewable. The term of office of the President is three years, renewable.

2. Status

Members enjoy the same privileges and immunities that apply to judges of the Court of Justice.

3. Duties

Members must be 'completely independent in the performance of their duties'. This means:

- they must not seek or take instructions from any external source;
- they must refrain from any action incompatible with their duties;
- they may not engage in any other professional activity, whether paid or not;
- if they infringe these conditions the Court of Justice can remove them from office.

C. Organisation

The Court elects its President from among its members for a renewable term of three years.

Powers

A. Examining accounts

1. Scope

The Court's remit covers examination of any revenue or expenditure accounts of the Community or any Community body, unless precluded by that body's constitution. It examines the accounts to satisfy itself of:

- their reliability;
- the legality and regularity of the underlying transactions; and
- the soundness of financial management.

2. Methods of investigation

The Court's audit is continuous; it may be carried out before the closure of accounts for the financial year in question.

It is based on records and may also be carried out on the spot, in:

- Community institutions;
- any body which manages revenue or expenditure on the Community's behalf;
- the premises of any natural or legal person in receipt of payments from the Community budget.

In the Member States the audit is carried out in liaison with the competent national bodies or departments.

These bodies are required to forward to the Court any document or information it considers necessary to carry out its task.

3. Other prerogatives

Each year the Court provides Parliament and the Council with a statement of assurance ('DAS' or *déclaration d'assurance* in French) as to the reliability of the accounts and the legality and regularity of the underlying transactions.

It draws up an annual report, which it forwards to the Community institutions and publishes in the Official Journal together with the institutions' replies to the Court's observations.

B. Advisory powers

1. Opinions issued at the request of other institutions

The other institutions may ask the Court for its opinion whenever they see fit.

The Court's opinion is mandatory when the Council:

- adopts financial regulations specifying the procedure for establishing and implementing the budget and for presenting and auditing accounts;
- determines the methods and procedure whereby the Community's own resources are made available to the Commission;
- lays down rules concerning the responsibility of financial controllers, authorising officers and accounting officers;
- or adopts anti-fraud measures.

2. Submitting its observations

The Court may comment at any time on specific issues, particularly in the form of special reports.

Role of the European Parliament

The Court of Auditors was created in 1977 at the initiative of the EP. Since then, it has assisted the EP and the Council in exercising their role of controlling the implementation of the budget.

A bone of contention has been the absence of an unqualified positive DAS (i.e. the Court of Auditors' annual statement of assurance). The DAS was always qualified by reservations over recent years and has been criticised repeatedly by the EP, notably in its discharge resolutions in which it made concrete proposals as to how to arrive at a positive DAS. The Court of Auditors reacted by suggesting the development of a Community internal control framework with common principles and standards to be used at all levels of administration in the institutions and Member States alike (Court of Auditors' opinion 2/2004 on the 'single audit' model).

The Commission has taken this up and developed the 'roadmap to an integrated internal control framework' (adopted by the Commission on 15 June 2005). The EP has welcomed this in its discharge resolution of April 2006 with respect to the implementation of the 2004 budget.

The Interinstitutional Agreement (IIA) of 17 May 2006 on budgetary discipline and sound financial management (see Multiannual Financial Framework, →1.5.2.) stipulates under 'Ensuring effective and integrated internal control of Community funds': 'The institutions agree on the importance of strengthening internal control without adding to the administrative burden for which the simplification of the underlying legislation is a prerequisite. In this context, priority will be given to sound financial management aiming at a positive Statement of Assurance, for funds under shared management.'

→ Helmut WERNER
01/2007

1.3.11. The European Economic and Social Committee

Legal basis

Articles 257 to 262 EC Treaty (ECT).

Composition

1. Number and national allocation of seats (Article 258 ECT)

The Committee currently has 344 members, divided between the Member States as follows:

- 24 for Germany, France, Italy and the United Kingdom;
- 21 for Spain and Poland;
- 15 for Romania;
- 12 for Austria, Belgium, Bulgaria, Greece, Hungary, the Netherlands, Portugal, the Czech Republic and Sweden;
- 9 for Denmark, Finland, Ireland, Lithuania and Slovakia;
- 7 for Estonia, Latvia and Slovenia;
- 6 for Cyprus and Luxembourg;
- 5 for Malta.

2. Method of appointment (Article 259 ECT)

Members are appointed by the Council by qualified majority (it used to be unanimously, before the Treaty of

Nice), on the basis of proposals by the Member States in the form of lists containing twice as many candidates as there are seats allotted to their nationals. The Council consults the Commission on these nominations. They must ensure that the various categories of economic and social activity are adequately represented. In practice one third of the seats goes to employers, one third to employees and one third to other categories (farmers, retailers, the liberal professions, consumers, etc).

3. Type of mandate (Article 258 ECT)

Four years, renewable (five years in the Treaty establishing a Constitution for Europe, Article III-390). The Treaty on European Union (EUT) stipulates that members must be completely independent in the performance of their duties, in the general interest of the Community (the form of words used for members of the Commission and Court of Auditors).

Organisation and procedures

The ESC is not one of the Community institutions listed in Article 7 of the ECT, but it does have a large degree of autonomy in its organisation and operation, which the EU Treaty has increased.

- It appoints its chairman and officers from among its members, for a two-year term.
- It adopts its own rules of procedure.
- It may meet on its own initiative, but it normally meets at the request of the Council or Commission.
- To help prepare its opinions it has specialised sections for the various fields of Community activity, and can set up sub-committees to deal with specific subjects.
- It has its own secretariat.

Powers

The ESC has an advisory power. Its purpose is to inform the institutions responsible for Community decision-making of the opinion of the representatives of economic and social activity.

1. Opinions issued at the request of Community institutions

(a) Mandatory consultation

In certain areas the ECT stipulates that a decision may be taken only after the Council or Commission has consulted the ESC:

- agricultural policy (Article 37);
- free movement of persons and services (Part Three, Title III);
- transport policy (Part Three, Title V);
- harmonisation of indirect taxation (Article 93);
- approximation of laws for the internal market (Articles 94 and 95);
- employment policy (Part Three, Title VIII);
- social policy, education, vocational training and youth (Part Three, Title XI);

- public health (Article 152);
- consumer protection (Article 153);
- trans-European networks (Article 156);
- industrial policy (Article 157);
- economic and social cohesion (Part Three, Title XVII);
- research and technological development (Part Three, Title XVIII);
- the environment (Title XIX).

(b) Voluntary consultation

The Committee may also be consulted by the Commission, Council or Parliament on any other matter as they see fit.

When the Council or Commission consult the Committee (whether on a mandatory or voluntary basis) they may set it a time limit (of at least one month), after which the absence of an opinion cannot prevent them taking further action.

2. Issuing an opinion on its own initiative

The Committee may decide to issue an opinion whenever it sees fit.

Relations between Parliament and the Committee

The two bodies are often required to comment on the same proposed legislation, so contacts have naturally grown up between them. These informal contacts occur in various ways, such as: regular exchanges of views and efforts to coordinate work; meetings between the President and Chairman of the two bodies or between committee and section members; or joint conferences.

→ Wilhelm LEHMANN
01/2007

1.3.12. The Committee of the Regions

Legal basis

Articles 263 to 265 of the EC Treaty (ECT) introduced by the Treaty of Maastricht.

Objectives

The Committee of the Regions is an advisory body representing regional and local authorities in the Union. It speaks on behalf of their interests in dealings with the Council and Commission, to which it addresses opinions.

The creation of the Committee of the Regions was an implementation of the resolve expressed in the preamble to the Treaty on European Union 'to continue the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen in accordance with the principle of subsidiarity'.

In order to fulfil this role better, the committee is seeking the right to refer to the Court of Justice cases where the principle of subsidiarity is infringed. It is hoping that future revisions of the Treaty will confer this right. Article 8 of the Protocol on the Application of the Principles of Subsidiarity and Proportionality annexed to the Treaty establishing a Constitution for Europe would indeed open this possibility for the committee.

Organisation

A. Composition (Article 263 ECT)

1. Number and national allocation of seats

The Committee of the Regions is made up of 344 members and an equal number of substitutes, broken down between the Member States as follows:

- 24 for Germany, France, Italy and the United Kingdom;
- 21 for Spain and Poland;
- 15 for Romania;
- 12 for Austria, Belgium, Bulgaria, Greece, Hungary, the Netherlands, Portugal, the Czech Republic and Sweden;
- 9 for Denmark, Finland, Ireland, Lithuania and Slovakia;
- 7 for Estonia, Latvia and Slovenia;
- 6 for Cyprus and Luxembourg;
- 5 for Malta.

2. Nomination

Members are appointed for four years (five years according to the Treaty establishing a Constitution for Europe, Article

III-386), by the Council acting unanimously on a proposal from the respective Member States. The term of office is renewable. In practice those appointed are usually local and regional elected representatives.

B. Structure (Article 264 ECT)

The committee elects its chairman and officers from among its members for a term of two years. It adopts its rules of procedure and submits them to the Council for approval.

Powers

A. Opinions issued at the request of other institutions

1. Mandatory consultation

On certain issues the Council or Commission are required to consult the Committee of the Regions before taking a decision:

- education, vocational training and youth (Article 149 ECT);
- culture (Article 151 ECT);
- public health (Article 152 ECT);
- trans-European transport, telecommunications and energy networks (Article 156 ECT);
- economic and social cohesion:
 - specific actions (Article 159 ECT),
 - defining the tasks, priorities and organisation of the Structural Funds (Article 161 ECT),
 - implementing decisions relating to the European Regional Development Fund (Article 162 ECT).

2. Voluntary consultation

The Commission, Council or Parliament may also consult the committee on any other matter as they see fit.

When the Council or Commission consults the committee (whether on a mandatory or voluntary basis) they may set it a time limit (of at least one month), after which the absence of an opinion cannot prevent them taking further action.

B. Issuing an opinion on its own initiative

1. When the Economic and Social Committee is being consulted

When the Council or Commission is consulting the Economic and Social Committee it must also inform the Committee of the Regions, which may issue an opinion on the matter if it considers that regional interests are involved.

2. General practice

As a general rule the committee may issue an opinion whenever it sees fit.

3. For example, the committee has issued opinions on its own initiative in the following areas:

- small businesses (SMEs),
- trans-European networks,
- the tourist industry,

- Structural Funds,
- health (the fight against drugs),
- industry,
- urban development,
- training programmes,
- the environment.

→ Wilhelm LEHMANN
01/2007

1.3.13. The European Investment Bank

Legal basis

- Articles 266 and 267 EC Treaty (ECT);
- A protocol annexed to the ECT lays down the bank's Statute.

Organisation and operation

A. Legal status

The European Investment Bank (EIB) is not a Community institution within the meaning of Article 7 of the ECT, but it is a financial body governed by public law, with legal personality (Article 260 of the ECT) and an administrative structure separate from that of the other Community institutions.

B. Structure

Its governing bodies are:

1. The Board of Governors

(a) Composition

Twenty-seven ministers appointed by the Member States (generally the finance ministers).

(b) Tasks

Its tasks are to:

- lay down general directives for the bank's credit policy;
- approve the accounts and the annual report;
- decide whether to increase the subscribed capital;
- commit the bank to financing outside the Union;
- appoint the members of the Board of Directors, the Management Committee and the Audit Committee.

2. The Board of Directors

(a) Composition

26 members are appointed by the Board of Governors for five years; one for each

Member State nominated by the countries and one by the Commission.

(b) Role

Meeting around 10 times a year, it has exclusive responsibility for deciding on loans, guarantees and borrowing, and interest rates on loans.

3. The Management Committee

(a) Composition

One President and 8 vice-presidents appointed for a renewable period of six years by the Board of Governors on a proposal from the Board of Directors.

(b) Tasks

As the bank's executive body, it is responsible for:

- managing current business;
- preparing and implementing the Board of Directors' decisions.

4. The Audit Committee

(a) Composition

Three members appointed by the Board of Governors for a renewable term of three years.

(b) Tasks

- It verifies that the bank's operations have been conducted and its books kept in a proper manner on

the basis of work carried out by internal and external monitoring and audit bodies;

- it ensures that the bank's operations comply with the statutory procedures.

C. Resources

1. Capital

The EIB's capital is subscribed by the Member States in accordance with their respective economic weight. The significant increase in operations in the European Union, the arrival of 10 new Member States on 1 May 2004 and two new Member States on 1 January 2007 resulted in an increase in the EIB's capital to EUR 164 billion from 1 January 2007. The 12 new Member States have subscribed to the Bank's capital according to the subscription key applied to the current Member States.

2. Borrowing operations

The EIB raises the greater part of its resources by borrowing operations, mainly through public bond issues.

The EIB is one of the principal international borrowers and its bonds are quoted on the world's major stock exchanges. It borrows on the capital markets the funds it needs to grant its loans. It is not a profit-making institution and it therefore sells on its resources at interest rates that reflect the cost at which it collected them.

In 2005, approved projects totalled EUR 51 billion. EUR 52.7 billion was raised after swaps and had been achieved through 330 transactions across 15 currencies.

The bank plays a key role in the development of the capital markets of the new and future Member States.

Goals and achievements

The EIB is the European Union's long-term financing institution. In accordance with Article 267 of the ECT, its task is to contribute, through use of the capital markets and its own resources, to the balanced and smooth development of the common market in the interest of the Community. To this end, through loans and guarantees and without any profit-making goal, it facilitates the funding of projects in all sectors of the economy.

In carrying out its role, the EIB facilitates the financing of investment programmes in conjunction with the Structural Funds and other Community financial instruments.

A. Within the European Union

1. Regional development and economic and social cohesion

In 2005, the Bank granted loans of almost EUR 28 billion in the 25-member Union for projects to assist regions lagging behind in their economic development (Objective 1

regions) or grappling with structural difficulties (Objective 2 regions), or suffering from both, which is equivalent to 84 % of total individual loans in the EU. Global loans to financial intermediaries, for on-lending in support of small and medium-scale investments in assisted areas, reached EUR 5.9 billion, bringing total lending for economic and social cohesion to some EUR 34 billion in 2005, 80 % of all lending in the EU last year.

2. Protection and improvement of the environment

The EIB is involved in environmental protection, either directly by specific investment or indirectly by ensuring that projects submitted for funding comply with national and Community environmental legislation. It has set itself the objective of allocating between a quarter and a third of its individual loans to projects aimed at protecting and improving the environment. Individual loans for environmental investment projects totalled EUR 10.9 billion in the European Union, accounting for 33 % of direct lending. In addition, most global loans have multiple objectives, including environmental protection, and the EIB also provides dedicated environmental global loans. In 2005, the EIB advanced EUR 210 million for two such loans in Austria and Germany.

3. Support for small and medium-sized enterprises

The bank supports investment by small and medium-sized enterprises (SMEs) in a decentralised way by means of global loans granted through banks. In 2005, global loans in the EU amounted to EUR 8.9 billion, of which EUR 4.2 billion benefited an estimated 20 000 small and medium-sized enterprises. Most of these loans supported other core objectives of the Bank as well. A considerable part went to SME investment fostering economic and social cohesion. EIB-financed research and development by innovative SMEs helped to implement the Lisbon agenda.

(a) The 'Innovation 2010' (i2i) initiative

As part of this initiative launched following the Lisbon European Council in March 2000, which aims to build a Europe based on knowledge and innovation, the EIB has granted loans totalling around EUR 17 billion. An additional EUR 20 billion has been earmarked for the 2003–06 period. Since it set up i2i in 2000, the EIB has advanced loans for innovative investment projects worth EUR 34.8 billion, EUR 10 billion of which in 2005 alone. The overall quantified objective is to lend a minimum of EUR 50 billion under the i2i programme over the current decade.

(b) Improvement of trans-European networks and other infrastructures

The EIB is one of the main sources of funding for the trans-European networks (TENs) for transport, telecommunications, energy and related infrastructure.

(c) Education and training

In 2005, 30 loans for investment in education and training under the i2i umbrella amounted to almost EUR 2.2 billion.

B. Outside the EU**1. Scope**

The EIB assists states or groups of states with which the EU has concluded agreements.

(a) African, Caribbean and Pacific countries (ACP) and overseas countries and territories (OCTs)

The Cotonou Agreement, which replaced the Lomé Convention with effect from 1 April 2003, provides the framework for EIB financing. An 'investment facility' totalling EUR 2 200 million has been agreed by the Member States for the following five years. This will be supplemented by investment from the bank's own resources (EUR 1 700 million).

(b) Latin American and Asian countries

The current EIB mandate for lending in Asia and Latin America (ALA) provides for up to EUR 2 480 million in loans between 2000 and January 2007. Under the mandate, EUR 256 million was lent in 2005, and it is expected that the resources will be fully utilised by the end of the mandate.

(c) Countries belonging to the Euro-Mediterranean partnership (Algeria, Egypt, Gaza/West Bank, Israel, Jordan, Lebanon, Morocco, Syria, Tunisia and Turkey)

The year 2005 was the first operational year of the FEMIP (Facility for Euro-Mediterranean Investment and Partnership) Trust Fund. Created in mid-2004 and so far having EUR 33.5 million at its disposal, donated by 15 Member States and the European Commission, the Trust Fund complements the Technical Assistance Fund by focusing on upstream technical assistance and risk capital operations in the Mediterranean Partner Countries. Over the course of the year, seven operations were approved for a total amount of EUR 3.4 million. In terms of geographical

distribution, four of the projects approved had a regional focus, while the three other targeted Algeria, Morocco and Syria.

(d) Western Balkan countries (Albania, Bosnia-Herzegovina, FYR of Macedonia)

Total lending in the western Balkans reached EUR 399 million. Lending in Bosnia and Herzegovina ran to EUR 211 million, while EUR 35 million was advanced in Albania. Projects in Serbia and Montenegro amounted to EUR 153 million. EIB lending takes place in close cooperation with other donors, such as the European Commission, the European Agency for Reconstruction and the World Bank.

2. Forms of intervention

The bank's operations take the form of loans on own resources sometimes accompanied by interest subsidies, financed by the EU budget. It may also manage, under mandate, risk capital finance provided from budgetary resources. It keeps within the limits laid down in the relevant agreements.

C. The EIB group

Established following the Lisbon European Council (March 2000), the EIB group is composed of the EIB and the EIF (European Investment Fund). Created in June 1994, the EIF's majority shareholder is the EIB (60.5 % of the capital), the other shareholders being the European Commission (30 %) and various major European financial institutions. All risk capital activities are concentrated within the EIF, thereby making it one of the leading sources of risk capital within the Union. The EIF also continues to undertake guarantee operations involving its own resources or those of the EU budget. The EIB Group is thus able to play a predominant role in boosting the competitiveness of European industry.

→ Wilhelm LEHMANN
01/2007

1.3.14. The European Ombudsman

Legal basis

Articles 21 and 195, EC Treaty (ECT).

Objectives

Created by the Maastricht Treaty (1992) as an element of European citizenship, the institution of the European Ombudsman aims to:

- improve the protection of citizens in cases of maladministration by Community institutions and bodies,
- and thereby to enhance the openness and democratic accountability in the decision-making and administration of the Community's institutions.

Achievements

As laid down in the ECT, the regulations and duties of the Ombudsman were spelt out by the European Parliament (EP/Parliament) decision of 9 March 1994, after consulting the Commission and with the approval of the Council of Ministers. On the basis of that decision, the Ombudsman adopted implementing provisions which took effect on 1 January 1998. The procedures for appointing and dismissing the Ombudsman are laid down in Rules 194–196 of Parliament's Rules of Procedure.

A. Regulations

1. Appointment

(a) Requirements

- The Ombudsman must meet the conditions required for the exercise of the highest judicial office in the country or have the acknowledged competence and experience to undertake the duties of the Ombudsman;
 - offer every guarantee of independence;
- and have the support of a minimum of 32 MEPs from at least two Member States.

(b) Procedure

- Nominations are submitted to Parliament's Committee on Petitions, which considers their admissibility.
- A list of admissible nominations shall then be submitted to the vote of Parliament. The vote is held by secret ballot on the basis of the majority of votes.

2. Mandate

(a) Length

The Ombudsman is appointed by Parliament after each election for the duration of the term of office. The mandate is renewable.

(b) Duties

The Ombudsman:

- must be completely independent in the performance of his duties, in the interest of the Union and its citizens;
- may not seek or take instructions from any body;
- must refrain from any act incompatible with his office;
- may not engage in any other political, administrative or professional occupation, whether gainful or not.

3. Dismissal

The Ombudsman may be dismissed by the Court of Justice at the request of the Parliament if he no longer fulfils the conditions required for the performance of his duties or is guilty of serious misconduct.

B. Role

1. Scope

The Ombudsman deals with cases of maladministration by Community institutions and bodies.

(a) Maladministration may consist of administrative irregularities, discrimination, the abuse of power, refusal to disclose information, unfair delays, and so on.

(b) Exceptions

The following matters fall out:

- action by the Court of Justice and the Court of First Instance in their judicial role, cases that are being or have been considered before a court of law;
- any cases which have not previously been through the appropriate administrative procedures within the organisations concerned;
- cases dealing with labour relations between the Community bodies and their staff, unless the opportunities for internal application and appeal have been exhausted first.

2. Referrals

In accordance with his duties, the Ombudsman shall conduct inquiries for which he finds grounds either on his own initiative or on the basis of complaints submitted to him by EU citizens or any natural or legal persons residing

or having their registered office in a Member State, directly or through a member of the EP, except where the alleged facts are or have been the subject of legal proceedings.

3. Powers of inquiry

The Ombudsman can request information from:

- Community institutions and bodies, which must comply and provide access to the files concerned, unless they are prevented from doing so on duly substantiated grounds of secrecy;
- officials and other staff of Community institutions and bodies, who are required to testify at the request of the Ombudsman, though speaking on behalf of and under instruction from their administrations and continuing to be bound by their duty of professional secrecy;
- the Member States' authorities, who must comply unless such disclosure is prohibited by law or regulation; but even in such cases, the Ombudsman can obtain the information if he undertakes not to pass it on.

If he does not obtain the assistance he requests, the Ombudsman will inform Parliament, which will take appropriate action.

The Ombudsman can also cooperate with his counterparts in the Member States, subject to the national law concerned.

The Ombudsman and his staff are required not to pass on information that they obtain in the course of their inquiries, particularly if it could harm the complainant or any other person concerned.

However, if the information appears to be a matter of criminal law, the Ombudsman will immediately notify the competent national authorities and the Community institution to which the official or member of staff is answerable.

4. Outcome of inquiries

Wherever possible, the Ombudsman will act in concert with the institution or body concerned to find a solution that will satisfy the complainant.

Where the Ombudsman establishes an instance of maladministration, he shall refer the matter to the institution or body concerned, which shall have three months in which to inform him of its views.

The Ombudsman shall then forward a report to the EP and the institution or body concerned on the outcome of his inquiries.

Finally, the Ombudsman shall inform the complainant of the result of the inquiry, the opinion delivered by the institution or body concerned and any recommendations of his own.

At the end of each annual session, the Ombudsman shall submit a report to Parliament on the outcome of his inquiries.

C. Administration

The Ombudsman is assisted by a secretariat, whose staff are subject to the rules of the European civil service. The Ombudsman appoints the head of the secretariat.

D. Activities

The first Ombudsman, Mr Jacob Söderman, served two terms of office from July 1995 to 31 March 2003. During his mandate the Ombudsman's Office received more than 11 000 complaints of which about 30 % were declared admissible. In more than 5 000 cases, the complaints were transferred to a competent body or the citizens were advised whom to address for help. Almost 1 500 investigations were opened, including 19 own initiatives. In more than 500 cases, the institution in question settled the matter to the complainant's benefit. In more than 200 cases, a critical remark was issued to promote better administration in similar situations in the future. Friendly solutions, recommendations and special reports have been used increasingly. In only a handful of cases have the institutions rejected what the Ombudsman proposed. In about 700 cases, the Ombudsman found, after an investigation, that no maladministration had occurred.

Among the Ombudsman's achievements, the following can be cited: the Code of Good Administrative Behaviour (approved by the EP in 2001), a procedural code for complainants under the Article 226 ECT infringement procedure (adopted by the Commission in 2002), the abolition of age limits in recruitment to the institutions and bodies, and the draft recommendation to the European Commission in complaint 116/2005/MHZ concerning public access.

At the plenary sitting of 15 January 2003, Mr. Nikiforos Diamandouros was elected European Ombudsman by the EP for the remainder of the current parliamentary term. Seven candidates were interviewed at the public hearing for the post of European Ombudsman, held by the Committee on Petitions on 25–26 November 2002.

On 11 July 2006, the Ombudsman submitted to the President of Parliament a proposal for adaptation of his Statute of 9 March. The Committee on Petitions supported this proposal in its report on the Ombudsman's Annual Report 2005 (EP resolution of 16 November 2006).

Role of the European Parliament

Although entirely independent in the performance of his duties, the Ombudsman is a parliamentary ombudsman.

He has very close relations with Parliament which is exclusively responsible for his appointment and dismissal, regulates his duties, assists with his investigations and receives his reports.

On the basis of several annual reports on the activities of the European Ombudsman, the Committee on Petitions reiterated that the European Ombudsman and his national and regional opposite numbers should work with the

Committee and the Parliament to ensure that what emerges from the current modifications of the treaties maximises the access, transparency and accountability of the European Union.

→ Wilhelm **LEHMANN**
01/2007

1.4. Decision-making procedures

1.4.1. Supranational decision-making procedures

History (→ 1.1.1.1. to 1.1.4)

1. The Treaty of Rome gave the Commission powers of proposal and negotiation, mainly in the fields of legislation and external economic relations, and allocated powers for decision-making to the Council or, in the case of appointments, representatives of the Member States' governments. It gave the European Parliament (EP/Parliament) a consultative power.
2. Parliament's role has gradually grown, in the budgetary domain with the reforms of 1970 and 1975, in the legislative domain with the Single European Act, and in the area of appointments with the Treaty of Maastricht. The Single European Act also gave Parliament the power to authorise ratification of accession and association treaties; Maastricht extended that power to other international treaties of certain kinds.
3. The Treaty of Amsterdam made substantial progress down the road to democratising the Community, by simplifying the co-decision procedure, extending it to new areas and strengthening Parliament's role in appointing the Commission.
4. Following this approach, the Treaty of Nice considerably increased Parliament's powers. On the one hand, the co-decision procedure (in which Parliament has the same powers as the Council) will apply to almost all new areas where the Council decides by qualified majority. On the other hand, Parliament now has the

same powers as the Member States in terms of referring matters to the Court of Justice.

Legislative procedures

Co-decision procedure (Article 251 of the EC Treaty)

Scope

Since the entry into force of the Treaty of Nice, this procedure has applied to no less than 32 legal bases (→ 1.1.4). It now covers all of the areas requiring a qualified majority in the Council with the exception of the common agricultural policy and commercial policy. However, it does not apply to several important areas that require unanimity in the Council, for example fiscal policy.

Procedure

1. Commission proposal

2. First reading in Parliament

Parliament gives its opinion by a simple majority.

3. First reading in the Council

The Council adopts a 'common position' by a qualified majority, except in the fields of culture, freedom of movement, social security and coordination of the rules for carrying on a profession, which are subject to a unanimous vote.

4. Second reading in Parliament

Parliament receives the Council common position and has three months to take a decision. It may thus:

- expressly approve the proposal as amended by the common position or take no decision by the deadline; in both cases, the act as amended by the common position is adopted;
- reject the common position by an absolute majority of its members; the act is not adopted and the procedure ends;
- adopt, by an absolute majority of its members, amendments to the common position, which are then put to the Commission for its opinion; the matter returns to the Council.

5. Second reading in the Council

- If the Council, voting by a qualified majority on Parliament's amendments, and unanimously on those which have obtained the Commission's negative opinion, approves all of Parliament's amendments no later than three months after receiving them, the act is adopted;
- otherwise, the Conciliation Committee is convened within six weeks.

6. Conciliation

- The Conciliation Committee consists of an equal number of Council and Parliament representatives, assisted by the Commission. It considers the common position on the basis of Parliament's amendments and has six weeks to draft a joint text;
- the procedure stops and the act is not adopted unless the Committee approves a joint text by the deadline;
- if it does so, the joint text goes to the Council and Parliament for approval.

7. Conclusion of the procedure

- The Council and Parliament have six weeks to approve it. The Council acts by a qualified majority and Parliament by an absolute majority of the votes cast;
- the act is adopted if Council and Parliament approve the joint text;
- if either of the institutions has not approved it by the deadline, the procedure stops and the act is not adopted.

Cooperation procedure (Article 252 of the EC Treaty)

1. Scope

The cooperation procedure is now limited to certain decisions relating to economic and monetary union.

2. Procedure

- (a) At a first reading Parliament delivers an opinion on the Commission proposal. The Council, acting by a qualified majority, then adopts a common position and forwards

it to Parliament, enclosing all the information required and its reasons for adopting the common position.

- (b) Parliament has three months to take a decision: it can adopt, amend or reject the common position. In the latter two instances it must do so by an absolute majority of its members. If Parliament rejects the proposal the Council can only take a decision at second reading unanimously. Within a period of one month, the Commission reconsiders the proposal on which the Council adopted its common position and forwards the reconsidered proposal to the Council. It has discretion to incorporate or exclude the amendments proposed by Parliament.
- (c) Within a period of three months, which can be extended by a maximum of one month, the Council may, acting by a qualified majority, adopt the proposal as reconsidered by the Commission or, acting unanimously, amend the reconsidered proposal or adopt amendments not taken into account by the Commission. As long as the Council has not acted, the Commission may alter or withdraw its proposal at any time.

Consultation procedure

Before taking a decision the Council must take note of the opinion of Parliament and, if necessary, of the Economic and Social Committee and the Committee of the Regions. It is required to do so, as the absence of such consultation makes the act illegal and capable of annulment by the Court of Justice (see judgment in Cases 138 and 139/79). When the Council intends to substantially amend the proposal, it is required to consult Parliament again (judgment in Case 65/90).

Assent procedure (where applicable to the legislative field)

1. Scope

The assent procedure applies in particular to the basic legislation relating to the Structural Funds (→1.3.2).

2. Procedure

Parliament considers a draft act forwarded by the Council; it decides whether to approve the draft (it cannot amend it) by an absolute majority of the votes cast. The Treaty does not give Parliament any formal role in the preceding stages of the procedure to consider the Commission proposal; but as a result of interinstitutional arrangements it has become the practice to involve Parliament informally. (For conditions for implementing this procedure under the EU Treaty (EUT): →1.4.2).

Budget procedure (→1.4.3)

Appointment procedures

A. The Council, acting by qualified majority, appoints:

- the President and other Members of the Commission (Article 214 ECT) after:
 - the Council, meeting at Heads of State and Government level, has nominated the Commission President by qualified majority;
 - Parliament has approved the nomination;
 - the Council, acting by qualified majority and by common accord with the nominated President, has nominated the other Members of the Commission;
 - Parliament has approved the College of Commissioners;
- the members of the Court of Auditors (Article 247 ECT) after consulting Parliament and in accordance with the proposals put forward by the Member States;
- the members of the Committee of the Regions and the Economic and Social Committee (Articles 259 and 263 ECT) on a proposal by the Member States' governments (after consulting the Commission in the case of the ESC).

B. The governments of the Member States appoint by common accord:

- the President, Vice-President and other members of the Executive Board of the European Central Bank (the governments meet at Heads of State and Government level to act on a Council recommendation after consulting Parliament);
- the judges and advocates-general of the Court of Justice and Court of First Instance (Articles 223 and 224 ECT).

C. Parliament appoints the Ombudsman (Article 195 ECT)

Quasi-constitutional procedures

A. Conclusion of international agreements

1. The Commission presents recommendations to the Council and conducts negotiations.
2. The Council defines the mandate for the negotiations.
3. **Proposal for conclusion:** Commission.
4. **Parliament's role:**
 - assent for agreements under Article 310 ECT (association agreements) and for agreements creating a special institutional framework, having

significant budgetary implications or involving the amendment of an act adopted under the co-decision procedure;

- consultation in other cases.

5. **Decision:** Council, by a qualified majority except in fields requiring unanimity for the adoption of internal regulations and for agreements under Article 310 ECT.

System of own resources

1. **Proposal:** Commission.
2. **Parliament's role:** consultation.
3. **Decision:** Council, unanimously, subject to adoption by the Member States in accordance with their respective constitutional requirements.

Provisions for election of Parliament by direct universal suffrage

1. **Proposal:** Parliament.
2. **Decision:** Council, unanimously after obtaining Parliament's assent, subject to adoption by the Member States.

Adoption of the statute for members of the EP and the Statute for the Ombudsman

1. **Proposal:** Parliament.
2. **Commission's role:** opinion.
3. **Council's role:** assent (by qualified majority except in relation to rules or conditions governing the tax arrangements for members or former members in which case unanimity applies).
4. **Decision:** Parliament.

Amendment of the protocol on the Statute of the Court of Justice

1. **Proposal:** Court of Justice.
2. **Commission's role:** consultation.
3. **Parliament's role:** consultation.
4. **Decision:** Council, unanimously.

Prospects

- At the 2000 IGC, Parliament made several proposals to extend the areas to which the co-decision procedure would apply. Parliament also repeatedly voiced its opinion that, if there was a change from unanimity to qualified majority, co-decision should apply automatically. The Treaty of Nice endorsed this position but did not fully align qualified majority and co-decision.
- As a result, the issue of simplifying procedures was one of the key elements addressed at the Convention on

the Future of Europe. Many members of the convention highlighted the excessive number of procedures currently in use. It was proposed quite simply that the cooperation and consultation procedures be abolished, that the co-decision procedure be simplified and extended to cover the entire legislative field, and that the assent procedure be limited to the ratification of international agreements.

— In the field of appointments, the Treaty of Nice failed to put an end to the unjustifiably wide range of different procedures, the continued general insistence on unanimity, which is always likely to provoke political disputes, or the lack of genuine legitimation by Parliament. However, some progress has been made with the move from unanimity to qualified majority for the appointment of the Commission President.

1.4.2. Intergovernmental decision-making procedures

Legal basis

- Articles 7, 11, 23, 24, 34, 43, 44, 48, 49 of the EU Treaty;
- Article 11 of the EC Treaty.

Description

The Treaty on European Union (EUT) lays down a number of rules and procedures of a constitutional nature. For the common foreign and security policy and police and judicial cooperation in criminal matters it sets up a special form of intergovernmental cooperation in the guise of action by supranational institutions. These procedures are distinct from those covered by the Treaty establishing the European Community (ECT).

A. Procedure for amendment of the Treaties (Article 48 EUT)

1. **Proposal:** any Member State or the Commission.
2. **Commission's role:** consultation and participation in the intergovernmental conference.
3. **European Parliament's role:** consultation before the intergovernmental conference is convened (the conferences involved the European Parliament (EP/Parliament) on an ad hoc basis; at the last three it was represented either by its President or two of its members, depending on the case).
4. **Role of the Governing Council of the European Central Bank:** consultation in the event of institutional changes in the monetary field.
5. **Decision:** common accord of the governments on amendments to the Treaties, which are then put to the Member States for ratification in accordance with their constitutional requirements.

B. Accession procedure (Article 49 EUT)

1. **Applications:** from any European state which complies with the Union's principles (see Article 6).
2. **Commission's role:** consultation; it takes an active part in preparing and **conducting** negotiations.
3. **European Parliament's role:** assent, by an absolute majority of its component Members.
4. **Decision:** by the Council, unanimously; the agreement between Union Member States and the applicant state, setting out the terms of accession and the adjustments required, is put to all the Member States for ratification in accordance with their constitutional requirements.

C. Sanctions procedure for a serious and persistent breach of Union principles by a Member State (Article 7 EUT)

1. **Main procedure**
 - Proposal for a decision determining the existence of a serious and persistent breach: one third of the Member States or the Commission.
 - The EP's assent: adopted by a two-thirds majority of the votes cast, representing a majority of its members.
 - Decision determining the existence of a breach: adopted by the Council at Heads of State and Government level, unanimously, without the participation of the Member State concerned, after inviting the State in question to submit its observations on the matter.
 - Decision to suspend certain rights of the State concerned: adopted by the Council by a qualified majority (without the participation of the Member State concerned).

2. The Treaty of Nice supplemented this procedure with a precautionary system:
 - Proposal for a decision determining a clear risk of a serious breach of Union principles by a Member State: on the initiative of one third of the Member States, of the Commission or of the EP.
 - The EP's assent: adopted by a two-thirds majority of the votes cast, representing a majority of its members.
 - Decision: adopted by the Council by a four-fifths majority of its members, after hearing the State in question.

D. Closer cooperation procedure

1. Cooperation in the Community sphere (Article 11 ECT)

- (a) **Proposal:** exclusive right of the Commission; Member States which intend to establish enhanced cooperation can apply to the Commission to that effect.
- (b) **The EP's role:** opinion only, or assent when enhanced cooperation relates to an area covered by the co-decision procedure.
- (c) **Decision:** by the Council, acting by a qualified majority. However, a member of the Council may request that the matter be referred to the European Council, after which the Council will in turn act by a qualified majority.

2. Cooperation in the fields of justice and home affairs (Article 40A EUT)

- (a) Application to the Commission by the Member States concerned.
- (b) Proposal from the Commission or not less than eight Member States.
- (c) Consultation of the EP.
- (d) The Council acts by a qualified majority.
- (e) The procedures for the Council's decision and, if necessary, for referral to the European Council are similar to the preceding case.

E. Procedure for decisions in foreign affairs

1. In general

- (a) **Proposal:** any Member State or the Commission (Article 22 EUT).
- (b) **European Parliament's role:** regularly informed by the presidency and consulted on the main aspects and basic choices. Under the interinstitutional agreement on financing the CFSP this consultation process is an annual event on the basis of a Council document.

2. Common strategies, joint actions and common positions (Article 23 EUT)

- (a) **Recommendation for common strategy:** adopted unanimously by the Council.
- (b) **Decision on common strategy:** European Council, unanimously.
- (c) **Adoption of joint actions, common positions or other decisions** on the basis of a common strategy, adoption of decisions implementing a joint action or common position: by the Council, acting by a qualified majority, unless a Member State opposes it for important reasons of national policy. If so, the Council, acting by a qualified majority, may request referral of the matter to the European Council for a unanimous decision.
- (d) Adoption of common positions or joint actions not covered by a common strategy: the Council, unanimously.

3. International agreements (Article 24 EUT)

- (a) Authorisation to open negotiations: Council.
- (b) Negotiations conducted by the presidency of the European Union, assisted by the Commission as appropriate.
- (c) Agreement concluded by the Council on a recommendation from the presidency.
- (d) Where the agreement relates to a matter on which unanimity is required for the adoption of internal decisions, the Council acts unanimously. In the reverse case or where the agreement relates to implementing a joint action or common position, the Council acts by a qualified majority in accordance with Article 23.

F. Procedure for decisions on police and judicial cooperation in criminal matters (Article 34 EUT)

1. **Proposal:** any Member State or the Commission.
2. **Parliament's role:** consulted before the adoption of framework decisions, decisions (excluding common positions) or conventions; the presidency and the Commission must regularly inform Parliament of the progress in these areas.
3. **Decision:** by the Council, unanimously, or by a qualified majority when adopting measures to implement 'decisions'. Measures implementing conventions can be adopted by a majority of two-thirds of the contracting parties.

Prospects

In the run-up to the 1996 Intergovernmental Conference, Parliament called for 'communitisation' of the second and third pillars, so that the decision-making procedures applicable under the Treaty establishing the European Community also applied to them. However, the Treaty of Amsterdam only made minor changes in these areas. But they needed reforming if Union policy in this regard was not to face complete paralysis, particularly after enlargement. The entry into force of the Treaty of Nice on 1 February 2003 brought some progress on this dossier in that, as we have seen, it made the qualified majority procedure generally applicable and, in particular, extended

it to the second and third pillars. Yet, it can still be applied only in certain, well-defined cases.

In this respect, the greatest progress should eventually come from the proceedings of the Convention on the future of the European Union, followed by the next intergovernmental conference, in 2004. The convention's mandate does in fact include the simplification and democratisation of decision-making procedures. This will mean bringing together the first, second and third pillars within a European Constitution and, no doubt, making the qualified-majority rule and the co-decision procedure generally applicable, thereby giving Parliament a greater role to play.

1.4.3. The budgetary procedure

Legal basis

- Article 272 of the EC Treaty (ECT), Article 177 of the Euratom Treaty;
- Articles 31 to 47 of the Financial Regulation (Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the financial regulation applicable to the general budget of the European Communities, OJ L 248 of 16.9.2002);
- Interinstitutional Agreement of 6 May 1999 on budgetary discipline and improvement of the budgetary procedure (OJ C 172, 18.6.1999);
- Interinstitutional Agreement (IIA) of 17 May 2006 on budgetary discipline and sound financial management (OJ C 139 of 14.6.2006);
- The European Parliament's (EP/Parliament's) Rules of Procedure Annex IV — Implementing procedures for examination of the general budget of the European Union and supplementary budgets.

Objectives

The exercise of budgetary powers consists firstly in determining the nature of the expenditure, then establishing the annual amount of such expenditure and the revenue necessary to cover it, and finally exercising control over the implementation of the budget. The budgetary procedure itself involves the preparation and adoption of the budget (see →1.5.3 for details on implementation and →1.5.4 for details on control).

Achievements

A. Background

Parliament has gradually become the second arm of the budgetary authority.

Before 1970, budgetary powers were vested in the Council alone; Parliament had only a consultative role. After having adopted the draft budget, the Council forwarded it to Parliament for its opinion. If Parliament's opinion contained proposed modifications, the Council gave the budget a second reading and adopted the final version.

The Treaties of 22 April 1970 and 22 July 1975 increased Parliament's budgetary powers:

- the 1970 Treaty, which followed on from the introduction of the Community's own resources, gave Parliament the last word on what is known as 'non-compulsory expenditure';
- the 1975 Treaty gave it the right to reject the budget as a whole.

Budgetary decisions now have to be taken jointly by Parliament and the Council with Parliament having a decisive role to play: it has the last word on non-compulsory expenditure, which now accounts for a majority of all expenditure (approximately 62 % of commitment expenditure and 59 % of payment expenditure respectively in the general budget for 2006), and it finally adopts the budget and can also reject it as a whole.

B. The stages in the procedure

The budgetary procedure is set out in Article 272 of the ECT, which stipulates the sequence of stages and the time limits which must be respected by the two arms of the budgetary authority: the Council and Parliament. The budgetary procedure, as defined in the Treaty, extends from 1 January to 31 December of the year preceding the budget year in question.

In practice, however, a 'pragmatic' timetable has been applied by the three institutions since 1977, completed by the provisions on budgetary discipline in the Interinstitutional Agreement and improvements to the budgetary procedure. The different stages are now as follows:

1. Stage one: establishment of the preliminary draft budget by the Commission

The Parliament and the Council lay down guidelines which are discussed in the course of a triologue on the priorities for the budget and an ad hoc conciliation procedure on compulsory expenditure. The Commission draws up the preliminary draft budget and forwards it to the Council by 1 September at the latest (the end of April, according to the pragmatic timetable). Since 2002, an Annual Policy Strategy decision (APS) has preceded the adoption of the preliminary draft budget.

The Commission may modify the preliminary draft budget at a later stage by means of a letter of amendment, to take account of new developments.

2. Stage two: establishment of the draft budget by the Council

At first reading, and after conciliation with a Parliament delegation, the Council, acting by a qualified majority, adopts the draft budget and forwards it to Parliament by 5 October at the latest (the end of July according to the pragmatic timetable). While this reading is going on, the ad hoc conciliation procedure is initiated on the compulsory expenditure to be entered in the budget, leading to a second triologue meeting between the institutions in late June.

3. Stage three: first reading by Parliament

Parliament has 45 days in which to state its position.

Within that period, it may either adopt the draft budget or decline to state a position, in both of which cases the budget is deemed finally adopted, or else modify it:

- either in the form of amendments to non-compulsory expenditure; these must be adopted by an absolute majority of the component Members of Parliament: 'qualified majority';

- or in the form of proposed modifications to compulsory expenditure; these must be adopted by an absolute majority of the votes cast: 'simple majority'.

Thus altered, the draft is then referred back to the Council.

4. Stage four: second reading by the Council

The Council has 15 days in which to conduct its second reading, which generally takes place during the third week of November. It may:

- accept all of Parliament's amendments and proposed modifications, in which case the budget will be deemed adopted;
- or not accept them, in which case:
 - it takes a final decision on the proposed modifications (relating to the compulsory expenditure): if a proposed modification would not increase the overall expenditure of any of the institutions, the Council must, acting by a qualified majority, expressly reject or alter it, failing which it will be deemed accepted; if the proposed modification would lead to an increase, the Council must, again acting by a qualified majority, expressly accept it, failing which it will be deemed rejected;
 - it can alter the amendments (relating to the non-compulsory expenditure) adopted by Parliament, or accept them.

The draft budget as amended is returned to Parliament around 22 November.

5. Stage five: second reading by Parliament and adoption of the budget

Parliament has 15 days in which to complete the second reading.

- If it does not state its position within that period, the budget is deemed adopted together with the amendments modified by the Council.
- If, acting by a majority of its members and three fifths of the votes cast, it amends or rejects the changes which the Council has made to its initial amendments, in so doing it winds up the procedure and the President of Parliament declares that the budget has been finally adopted and it can then be implemented.
- Parliament may also, acting by a majority of its members and two thirds of the votes cast, reject the budget as a whole. Should it do so, the procedure must begin again from the start, on the basis of a new draft, and, until the latter is adopted, the Community must operate with monthly appropriations calculated on the basis of one twelfth of the budget for the previous financial year (known as the 'provisional twelfths' system).

6. Supplementary and amending budgets

In the event of unavoidable, exceptional or unforeseen circumstances, the Commission may propose during the year that the budget as adopted be amended; it does this by submitting preliminary draft amending budgets.

Amending budgets are also used to enter the balance from the previous year in the budget for the current year.

These amending budgets are subject to the same rules as the general budget.

C. Compulsory expenditure and non-compulsory expenditure (→1.5.1)

1. Compulsory expenditure (CE)

The distinction between compulsory expenditure and non-compulsory expenditure determines the division of power over the budget between Parliament and the Council. Parliament has the last word on non-compulsory expenditure (62 % of the Budget 2006) and the Council on compulsory expenditure (38 % of the Budget 2006).

Parliament may only propose modifications to compulsory expenditure, on which the Council has the last word. However, as we saw above, if Parliament's proposals would not increase the overall expenditure of any of the institutions, the Council must act by a qualified majority in rejecting them, failing which they will be deemed accepted. This arrangement enables Parliament to exert influence even over compulsory expenditure.

2. Non-compulsory expenditure (NCE)

Parliament has the last word on this type of expenditure (62 % of the Budget 2006), in that it takes the final decision at last reading on the amendments which it adopted previously. However, its powers are restricted by the maximum rate of increase in expenditure.

3. The (maximum) rate of increase in non-compulsory expenditure

Article 272 of the ECT, which sets out the budgetary procedure, allows Parliament, in certain circumstances, to increase the amount of non-compulsory expenditure by amending the Council's draft budget subject to a maximum rate of increase in relation to the previous financial year. This maximum rate of increase is calculated by the Commission on the basis of various macroeconomic data and may be exceeded only if the Council agrees. It constitutes Parliament's margin for manoeuvre under the terms of the Treaty. In reality, since the Interinstitutional Agreements came into force, the limit imposed by the ceiling of the financial perspective has replaced the maximum rate of increase within the framework of the annual procedure.

Role of the European Parliament

A. The powers conferred by the Brussels Treaty (Article 272)

Since the Brussels Treaty of 1975, Parliament has shared budgetary decision-making power with the Council. Parliament and the Council constitute the two arms of the budgetary authority. Parliament has the last word on non-compulsory expenditure, can reject the budget and grants the Commission discharge.

Article 272 has remained unchanged since then; Parliament has rejected the budget twice (December 1979 and December 1988); the proportion of non-compulsory expenditure has risen from 8 % of the budget in 1970 to 57 % in 2005, and 62 % of commitment appropriations in the 2007 budget.

Granting discharge for year n-2 according to Article 276 of the ECT (→1.5.4.), has become a major political act, which is sometimes a source of conflict and has even caused an independent panel of experts to be appointed. The panel's first report, which revealed a large number of malfunctions and cases of mismanagement within the Commission, was the reason for the Commission's resignation in March 1999.

B. The Interinstitutional Agreements on budgetary discipline (IIA, multiannual financial frameworks) (→1.5.2.)

Following the budgetary crises in the 1980s (referral to the Court of Justice, delays in the adoption of the budget, rejection of the budget by Parliament, the use of provisional twelfths), the legal, political and institutional balance of the 1970s has deteriorated. The institutions tried to overcome these difficulties with the joint declaration in 1982, prefiguring the Interinstitutional Agreements of 1988 on implementation of the Single European Act (1988–92), of 1993 for the period 1993–99, of 1999 for the period 2000–06, and of 2006 for the period 2007–13.

These successive agreements meant that the recurrent confrontations were replaced with an interinstitutional reference framework for the annual budgetary procedures.

They considerably improved the way the budgetary procedure worked:

- by formalising interinstitutional collaboration through trilogues and conciliation between the various stages of establishing the budget;
- by providing special provisions in certain areas of conflict, such as the classification of expenditure, the inclusion of the financial provisions in legislative instruments, the legal bases and the pilot projects and preparatory actions (initiatives of the Parliament with no

- legal basis), expenditure relating to the fisheries agreements, financing of the CFSP, etc.;
- by limiting the role of the maximum rate of increase rule;
 - by setting up decision-making mechanisms for additional resources, such as the flexibility instrument, the emergency aid reserve, the European Globalisation Fund, the European Solidarity Fund or the revision of the ceilings of the multiannual financial framework.

Although multiannual financial frameworks do not replace the annual budgetary procedure, the Interinstitutional Agreements have introduced a form of budgetary co-decision procedure, which allows Parliament to assert its role as a fully-fledged arm of the budgetary authority, to consolidate its credibility as an institution and to orientate the budget towards its political priorities.

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09/2006

1.5. Financing

1.5.1. The Union's revenue and expenditure

Legal basis

- Treaties:
 - tax revenues: Articles 268 to 280 of the EC Treaty (ECT); Article 173 of the Euratom Treaty;
 - loans: Article 308 of the EC Treaty (ECT); Articles 172 and 203 of the Euratom Treaty.
- Council Decision of 22 April 1970 on the own resources system, as replaced by the Decisions of 7 May 1985, 24 June 1988, 31 October 1994 and 29 September 2000 (OJ L 252 of 7.10.2000, p. 42);
- Council Regulation (EC, Euratom) No 2028/2004 of 16 November 2004 amending Regulation (EC, Euratom) No 1150/2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources (OJ L 352, 27.11.2004);
- Financial Regulation (Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the financial regulation applicable to the general budget of the European Communities, OJ L 248, 16.9.2002), especially Articles 40 to 47.

Objectives

To provide the European Union with some financial autonomy within the bounds of budgetary discipline.

Achievements

The European Parliament (EP/Parliament) and the Council authorise expenditure, whilst revenue is set by a Council decision following ratification by the parliaments of the Member States.

I. Revenue

'Traditional' own resources

These were created by the Decision of 1970 and have been collected since then. In 2005 they represented 12 % of the budget. They consist of:

- agricultural levies and sugar production levies;
- customs duties, which are collected at the Union's external borders.

The VAT levy

Although provided for in the 1970 Decision, this levy was not applied until the VAT systems of the Member States were harmonised (1979). It consists in the transfer to the Community of a percentage of the VAT collected by the Member States. The rate was initially set at 1 % of the VAT base and then raised to 1.4 % in 1984, before being brought back down to 1 % in 1999. The VAT base has been capped since 1988, initially at 55 % of each Member State's

GNP, reduced to 50 % in 1999. The VAT levy in 2005 brought in approximately EUR 24.1 billion (14.6 % of the budget).

The fourth resource

This 'fourth own resource' was created by the Decision of 1988 and consists of the levy on the Member States' GNP of a percentage set by each year's budget. Originally it was only to be collected if the other own resources did not fully cover expenditure. In 2005, the levy represented 72.6 % of the budget.

The 1988 Decision also placed an overall ceiling on own resources, expressed as a percentage of the total of the Member States' GNP. This ceiling was set at 1.15 % in 1988, before being raised to 1.20 % in 1992 and 1.27 % in 1999 (equivalent to 1.24 % of Gross National Income (GNI)). The 'fourth own resource' therefore cannot exceed the difference between the maximum authorised percentage of GNI (1.24 %) and the other own resources.

The correction mechanism

Correcting the budgetary imbalances between Member States' contributions is also part of the own resources system. The 'British rebate' agreed in 1984, which amounts to a reduction in the United Kingdom's VAT and GNP contributions, is financed by all the other Member States, although Germany, the Netherlands, Austria and Sweden benefit from a reduction in their contribution by 1/4. The December 2005 European Council confirmed these arrangements although it provides for a slow phasing out of the UK abatement, and foresees, for the 2007–13 period only, a reduction of the GNI contribution of EUR 605 million annually for the Netherlands, and of EUR 150 million annually for Sweden. On 8 March 2006 the Commission has introduced a proposal for a Council decision on the system of the European Communities' own resources to cover these adjustments.

Borrowing and lending operations

The Euratom Treaty expressly empowers the Community to contract loans. Although the EC Treaty does not, Article 308 thereof has been applied for this purpose and loans have greatly increased in volume since 1978.

The new Interinstitutional Agreement on Budgetary Discipline and Sound Financial Management of May 2006 provides for extended recourse to such 'new financial instruments':

the Commission and the European Investment Bank (EIB) have been invited, in their respective spheres of competence, to make proposals:

- in accordance with the conclusions of the European Council of December 2005, to increase the EIB's capacity for research and development loans and guarantees up

to EUR 10 billion in the period 2007–13, with an EIB contribution of up to EUR 1 billion from reserves for risk-sharing financing;

- to reinforce the instruments in favour of Trans-European Networks (TENs) and Small and Medium-sized Enterprises up to an approximate amount of loans and guarantees of EUR 20 billion and EUR 30 billion, respectively, with an EIB contribution of up to EUR 0.5 billion from reserves (TENs) and up to EUR 1 billion (competitiveness and innovation) respectively.

II. Expenditure

Basic principles

The Community budget obeys the nine general rules of unity, budgetary accuracy, annuality, equilibrium, unit of account (the euro), universality, specification (each appropriation is allocated to a particular kind of expenditure), sound financial management and transparency, according to articles 3 to 30 of the Financial Regulation.

Nonetheless, the annuality rule has to be reconciled with the need to manage multiannual actions, which have grown in importance within the budget. The budget therefore includes differentiated appropriations consisting of:

- commitment appropriations, covering the total cost during the current financial year of legal obligations contracted for activities lasting a number of years;
- payment appropriations, covering expenditure in connection with implementing commitments contracted during the current financial year or previous ones.

The unity rule is not fully adhered to either, owing to the fact that European Development Fund appropriations are not included in the budget.

Budget structure based on the characteristics of the appropriations

1. Nature of the appropriations: compulsory expenditure/non-compulsory expenditure (see also →1.4.3)

Article 272 of the ECT sets out two types of expenditure: 'compulsory' expenditure enabling the obligations resulting from the Treaty or from acts adopted in accordance with it to be fulfilled, and 'non-compulsory' (all other) expenditure. It also sets out two different procedures.

Compulsory expenditure essentially consists of:

- agricultural price support expenditure (EAGGF-Guarantee section);

- international agreements, including the fishing agreements;
- reserves for loan guarantees and reserves for emergency aid;
- officials' pensions.

2. Operating expenditure/administrative expenditure/individual activity budgets

The general budget is divided into eight sections, one for each institution. While the other institutions' sections consist essentially of administrative expenditure, the Commission section (Section III) consists of operational expenditure to finance actions and programmes and the administrative costs of implementing them (technical assistance, agencies, human resources).

As part of its administrative reform, the Commission has introduced a new budget nomenclature by establishing individual activity budgets grouping together expenditure on a particular measure, thus making it easier to assess the cost and effectiveness of each Community policy.

3. Financial perspective (→1.5.2)

Since 1988, Community expenditure has been placed in a multiannual framework known as the 'Financial Perspective', which breaks the budget down into headings with expenditure ceilings. The financial perspective indicates the scale and composition of the Community's forecast expenditure and reflects the main budgetary priorities for the period covered (generally 7 years). It does not replace the annual budgets.

Role of the European Parliament

A. Revenue

Parliament has in several resolutions (e.g. its resolution of 11 March 1999, its resolution of 8 June 2005 on Policy Challenges and Budgetary Means of the enlarged Union 2007–13, its resolution of 17 May 2006 on the IIA and its resolution of 18 May 2006 on Commission's Annual Policy Strategy for 2007), drawn attention to the inadequacy of revenue and expressed its support for reform of the own resources system. Taking the view that the third and fourth resources cannot, in their present form, be regarded as genuine own resources, it has put forward proposals to ensure that the Union is financially independent and to make revenue collection more visible to citizens and more democratic.

Parliament's wishes have not yet been taken into account.

With a view to adjusting the current rules on own resources, the Berlin European Council of 24 and 25 March 1999 instructed the Commission to consider this issue in general, taking particular account of the effects of enlargement. The Commission has put forward new proposals aimed particularly at establishing a generalised rebate system but with no plans to change the ceiling (1.24 % of GNI for 27 Member States).

Following the December 2005 European Council the Commission has introduced on 8 March 2006 a proposal for a new Council decision on the system of the European Communities' own resources. The EP's Committee on Budgets (Lamassoure Report) is in favour of adopting it with a few minor amendments. However, an own initiative report on own resources (also by Mr Lamassoure as rapporteur) should be voted on by the end of 2006 and before that the rapporteur consults EU national parliaments with a view to achieve a consensus on a coherent approach on the future of EU's own resources. This should provide common guidelines for the Commission's review work in 2008/2009, thus giving a clear signal to the Heads of State and Government of what their parliaments' concepts for the future may be.

B. Expenditure (→1.4.3)

Parliament has from the start opposed the distinction between compulsory and non-compulsory expenditure, regarding it as restricting the powers of Parliament. Although technical in nature, the criterion has major institutional implications because it determines the division of budgetary powers between the Council and the Parliament, and it also constitutes the basis for structuring Parliament's budgetary powers.

It has made several appeals to the Court of Justice. However, the Institutional Agreements on budgetary discipline of 6 May 1999 and of 17 May 2006 maintain the distinction between compulsory and non-compulsory expenditure but confirm and develop the principle of budgetary co-decision between the EP and the Council.

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1.5.2. Multiannual Financial Framework

Legal basis

Articles 268 to 274 of the EC Treaty form only the background. The Multiannual Financial Framework or 'Financial Perspective' is not stipulated by the Treaties but it is set up by interinstitutional agreements:

- Interinstitutional Agreement of 6 May 1999 on budgetary discipline and improvement of the budgetary procedure (OJ C 172 of 18.6.1999);
- Interinstitutional Agreement (IIA) of 17 May 2006 on budgetary discipline and sound financial management (OJ C 139 of 14.6.2006).

Objectives

As from the 1980s, the political and institutional balance of the Community's financial arrangements came under mounting pressure from three types of difficulties:

- a climate of conflict in relations between the institutions;
- the question of budgetary imbalances;
- a growing mismatch between resources and requirements.

Therefore the Community institutions were prompted to agree on a method designed to improve the budgetary procedure in order to ensure budgetary discipline, to agree on a medium-term programming of the main budgetary priorities for the following period and, lastly, to translate these priorities into a financial framework in the shape of the Financial Perspective.

This will allow the EU to design and implement multi-annual policy programmes more consistently.

Achievements

The first Interinstitutional Agreement (IIA) was concluded in 1988. It covered the 1988–92 Financial Perspective, known as the Delors I package, which was intended to provide the resources needed for the budgetary implementation of the Single European Act.

Since the balance sheet of the first IIA and Financial Perspective was positive, the institutions followed the same procedure in concluding a new IIA on 29 October 1993, with the Financial Perspective for the 1993–99 period, the Delors II package, which enabled the structural funds to be doubled and the own resources ceiling to be increased (→1.5.1). The third IIA on the Financial Perspective for the

period 2000–06, the Agenda 2000, was signed on 6 May 1999 and one of its main challenges was reconciling the common agricultural policy (→4.1) and enlargement (→6.3.1).

In February and July 2004 the Commission proposed a new agreement and a new Financial Perspective for the period 2007–13 which in a series of intense negotiations (see below) led to the new IIA of 17 May 2006 providing for EU spending of up to EUR 864.3 billion over the 2007–13 period.

It is devised in three parts:

- Part I contains a definition and implementing provisions for the financial framework, as well as the multiannual expenditure framework, by heading:

Sectoral distribution total for 2007–13 (in million EUR – 2004 prices):

- Heading 1: Sustainable growth 382 139 (44.2 %)
- Heading 1(a): Competitiveness for growth and employment 74 098 (8.6 %)
- Heading 1(b): Cohesion for growth and employment 308 041 (35.6 %)
- Heading 2: Preservation and management of natural resources 371 344 (43.0 %)
- Heading 3: Citizenship, freedom, security and justice 10 770 (1.2 %)
- Heading 3(a): Freedom, Security and Justice 6 630 (0.8 %)
- Heading 3(b): Citizenship: 4 140 (0.5 %)
- Heading 4: EU as a global player 49 463 (5.7 %)
- Heading 5: Administration: 49 800 (5.8 %)
- Heading 6: Compensations: 800 (0.1 %)
- Total for 2007–13: 864 316 (100.0 %)

- Part II 'Improvement of interinstitutional collaboration during the budgetary procedure' and Part III 'Sound financial management of EU funds':
 - The qualitative elements are at least as important as the quantitative ones;
 - Possibility for the Commission to present a report on the IIA if it deems necessary;
 - Possibility for the newly elected European Parliament (EP/Parliament) to assess the functioning of the IIA by the end of 2009 on the basis of a report to be presented by the Commission;

- Better political and financial control of the common foreign and security policy (CFSP): Such meetings will be planned jointly between the Foreign Affairs/Budgets committees of the EP and the Council presidencies;
- Freedom, Security and Justice: Council and Commission accept a unilateral EP declaration to discuss the 2nd pillar (Justice and Home Affairs) at each Trialogue;
- Certification (internal control): the text of the IIA is a major step forward for ensuring the sound financial management of EU funds;
- Financial Regulation: inclusion in the IIA of a reference to principles that should simplify the access to EU funds for potential beneficiaries;
- Financial programming: the joint declaration of July 2000 is now integrated in the IIA (part III). It will allow the Committee on Budgets to follow-up with more accuracy the impact of the legislation in force.

A major advantage of the IIAs on budgetary discipline has been that they allow for consistent multi-annual programming (→ 1.4.3). Following the agreement on the IIA the Commission adopted on 24 May 2006 a legislative package including 26 revised and five new proposals, covering the majority of EU programmes and policy areas.

The conclusion of this new IIA presents major achievements:

- continuity of the EU legislative process: 90 % of Community programmes are terminating at the end of 2006. The functioning of the programmes is guaranteed;
- first financial framework for 27 Member States for the coming seven years;
- fair balance of powers between institutions and the principle of co-decision;
- it allows for the development of EU policies and for mobilisation of additional means if necessary;
- it guarantees room for manoeuvre within the annual budgetary procedures;
- Review on the basis of the Commission's assessment of the current IIA in 2009 and a full involvement of Parliament in the wide-ranging mid-term review;
- it contributes to answering the EP's requests for improving the quality of implementation of the budget;
- active use of new financial instruments through co-financing with the EIB;
- it safeguards Parliament's budgetary and legislative prerogatives and strengthens the democratic scrutiny in external programmes and CFSP;
- support for emergency events, although financed mostly outside the financial framework;
- it provides for flexibility and rapid reaction by the European Union Solidarity Fund, the Flexibility Instrument, the European Globalisation Adjustment Fund and the Emergency Aid Reserve;
- it provides for a better and flexible alignment of legislative acts and financial programming.

The Commission has been invited to undertake a full, wide-ranging review covering all aspects of EU spending, including the common agricultural policy, and of resources, and to report in 2008/2009. That review should be accompanied by an assessment of the functioning of the Interinstitutional Agreement. The EP will be associated with the review at all stages of the procedure.

Role of the European Parliament

A. The process of negotiation of the multiannual financial framework 2007–13

The process of adoption of the Financial Perspective may be summarised as follows:

- proposal by the Commission (February and July 2004);
- in September 2004 Parliament sets up a temporary committee on the Financial Perspective which concludes and sets its negotiating position by the resolution of 8 June 2005 on Policy Challenges and Budgetary Means of the enlarged Union 2007–13;
- common position of the European Council (conclusions of the European Council of 15–16 December 2005 — the summit of June 2005 having been inconclusive);
- negotiations between the EP, the Council and the Commission on the new Interinstitutional Agreement (trilogues of 23 January 2006, 21 February 2006, 21 March 2006 and 4 April 2006 when agreement was finally reached);
- The Council approved the agreement on 15 May 2006, the EP voted in favour on 17 May 2006 and the agreement was signed the same day.

B. The European Parliament has strengthened its role

For the first time, the EP has adopted a negotiating position prior to the Council's conclusions:

- the EP has insisted on negotiating the qualitative elements despite the Council's reluctance in order to secure the improvement of the quality of the implementation of the EU budget (new part III of the IIA);

— the EP has opposed the Council's (governmental) approach on ceilings and percentages and focused on an approach based on programmes (citizens approach). It has obtained that the additional amount be allocated to its priorities and directly to programmes.

→ Anne VITREY
Helmut WERNER
09/2006

Financial framework 2007–13

(million EUR — 2004 prices)

Commitment appropriations	2007	2008	2009	2010	2011	2012	2013	Total 2007–13
1. Sustainable growth	51 267	52 415	53 616	54 294	55 368	56 876	58 303	382 139
1(a) Competitiveness for growth and employment	8 404	9 097	9 754	10 434	11 295	12 153	12 961	74 098
1(b) Cohesion for growth and employment	42 863	43 318	43 862	43 860	44 073	44 723	45 342	308 041
2. Preservation and management of natural resources	54 985	54 322	53 666	53 035	52 400	51 775	51 161	371 344
of which: market related expenditure and direct payments	43 120	42 697	42 279	41 864	41 453	41 047	40 645	293 105
3. Citizenship, freedom, security and justice	1 199	1 258	1 380	1 503	1 645	1 797	1 988	10 770
3(a) Freedom, Security and Justice	600	690	790	910	1 050	1 200	1 390	6 630
3(b) Citizenship	599	568	590	593	595	597	598	4 140
4. EU as a global player	6 199	6 469	6 739	7 009	7 339	7 679	8 029	49 463
5. Administration ⁽¹⁾	6 633	6 818	6 973	7 111	7 255	7 400	7 610	49 800
6. Compensations	419	191	190					800
TOTAL COMMITMENT APPROPRIATIONS	120 702	121 473	122 564	122 952	124 007	125 527	127 091	864 316
as a percentage of GNI	1.10 %	1.08 %	1.07 %	1.04 %	1.03 %	1.02 %	1.01 %	1.048 %
TOTAL PAYMENT APPROPRIATIONS	116 650	119 620	111 990	118 280	115 860	119 410	118 970	820 780
as a percentage of GNI	1.06 %	1.06 %	0.97 %	1.00 %	0.96 %	0.97 %	0.94 %	1.00 %
Margin available	0.18 %	0.18 %	0.27 %	0.24 %	0.28 %	0.27 %	0.30 %	0.24 %
Own Resources Ceiling as a percentage of GNI	1.24 %	1.24 %	1.24 %	1.24 %	1.24 %	1.24 %	1.24 %	1.24 %

⁽¹⁾ The expenditure on pensions included under the ceiling for this heading is calculated net of the staff contributions to the relevant scheme, within the limit of EUR 500 million at 2004 prices for the period 2007–13.

Source: Interinstitutional Agreement of 17 May 2006, OJ C 139 of 14.6.2006

1.5.3. Implementation of the budget

Legal basis

Articles 202, 274, 275 and 279 of the EC Treaty (ECT).

Article 179 of the Euratom Treaty.

Objectives

The statement of income and expenditure must comply with the budgetary decisions.

The Commission implements the budget on its own responsibility (Article 274 ECT) but is subject to the political control of the European Parliament (EP/Parliament) (→1.5.4) and to control by the Court of Auditors (→1.3.10). The Member States shall cooperate with it to ensure that the appropriations are used in accordance with the principles of sound financial management, i.e. economy, efficiency, effectiveness.

Operation

A. Basic mechanism

Implementation of the budget is made up of two main operations, commitments and payments: in the first instance, commitment of expenditure, i.e. a decision to use a particular sum from a specific budgetary line in order to finance a specific project; then (after the corresponding legal commitments have been established and the contractual service, work or supplies been delivered) comes the authorisation of the expenditure and the payment of the sums due. The Commission must comply with the Treaties, of which it is the guardian, and with provisions and instructions set out in the Financial Regulation and in specific regulations, decisions or directives. Moreover, it is important that expenditure be undertaken within policy guidelines.

B. Implementing bodies

The budget may be implemented through centralised management (by Commission services), shared management (by Commission and national bodies), joint management (with international organisations) and by delegated management (via executive agencies created by Community decision), according to Article 54 of the Financial Regulation.

In practice, a large proportion of the budget is implemented on a day-to-day basis by Member States, especially for those sections of the budget involving agriculture (EAGGF-Guarantee →4.1.4., →4.1.6.) and the Structural Funds (European Regional Development Fund,

→4.4.2.; European Social Fund, →4.8.2.; EAGGF-Guidance, →4.1.5., →4.1.6.; and Financial Instrument of Fisheries Guidance (FIFG), →4.3.3.), and by candidate countries as part of pre-accession aid (→6.3.1.).

In some specific cases, the Council may directly exercise its implementation capacity but generally it confers on the Commission powers for the implementation of the rules which the Council lays down by means of comitology (Article 202 ECT and Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, OJ L 184, 17.7.1999) i.e. with the help of advisory, management and regulatory committees composed of representatives of the Member States and chaired by a representative of the Commission.

Poor implementation of the budget by Member States is penalised through the clearance of accounts procedure for agricultural spending, whereby corrections to receipts of national governments from the budget are made following controls by the Commission. A similar arrangement has been introduced to ensure that only eligible expenditure is financed by the Structural Funds.

This kind of implementation may also give rise to difficulties between the Council and the EP. In effect, the Council may decide to reserve for itself the right to commit expenditure or the power to amend the Commission's commitment decision, should a committee consisting of representatives of the Member States deliver an opinion conflicting with that decision.

Implementation of the budget in particular sectors has been the subject of frequent criticism by the Court of Auditors (→1.3.10). Since the resignation of the Commission in March 1999 in response to the first report of the Committee of Independent Experts, which denounced inefficiencies and maladministration, a chain of administrative and political responsibility as well as standards of financial management have been established within the Commission.

C. Implementation Rules

1. The Financial Regulation

The process of recasting the Financial Regulation, in which Parliament played a major role by dint of its budgetary powers, was a key element in the administrative reform of the Commission. The previous Regulation (dating from 1977) was governed by the system of prior control, in accordance with which the Financial Controller of each

institution had to approve each expenditure entry before it was paid out. This system has given way to a system of *ex ante* and *a posteriori* controls, which enables the authorising officer to undertake the expenditure without requiring the prior approval of the Financial Controller, but which is then subjected to various types of controls, including those related to the internal audit. The Financial Regulation (Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, (OJ L 248, 16.9.2002) should be read together with its Implementing Rules (Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 (OJ L 357, 31.12.2002) as amended by Commission Regulation (EC, Euratom) No 1261/2005 of 20 July 2005, OJ L 201, 2.08.2005).

The Commission's main tool for implementing the budget and for monitoring its execution is its computerised accounting system ABAC (accruals based accounting). The Commission has adjusted the system to the obligations laid down in the new Financial Regulation. This includes the transition from 'cash oriented' accounting to modern 'accrual' accounting, which allows accounting events (e.g. entering into a legal commitment) to be recorded when they occur, rather than only when cash is received or paid. Furthermore, the Commission has taken actions to meet the highest international accounting standards, in particular the International Public Sector Accounting Standards (IPSAS) established by the International Federation of Accountants (IFAC).

2. The procurement rules

An important aspect of budgetary implementation is compliance with Community legislation applicable to public procurement contracts (supply, works and services, →3.4.1.).

Role of the European Parliament

Firstly, the EP, as a branch of the budgetary authority, has a prior influence on the implementation of the Community budget, by means of the amendments and decisions taken in the context of the budgetary procedure (→1.4.3) to allocate funds. The EP may ask to make use of the reserve mechanism of the budget: during the budgetary procedure the Commission may propose to transfer funds for expenditure of whose justification, sufficiency or implementation conditions it is not convinced to a reserve (Article 43 of the Financial Regulation). Both the EP and the Council are required to approve proposals for transfers (Article 24 of the Financial Regulation).

Moreover, the discharge procedure (→1.5.4), although concerning the financial year which ended two years

previously, allows the EP to control and influence current budgetary implementation. Many of the questions put to the Commission by the Committee on Budgetary Control in the framework of the discharge procedure concern the implementation of the budget, and the discharge resolution, which is an integral part of the discharge decision, contains many obligations addressed to the Commission, the proper execution of which is monitored in follow-up reports.

Furthermore, in virtually all policy areas, the EP influences the implementation of the budget through its legislative and non-legislative activities, e.g. by reports and resolutions or simply by addressing oral or written questions to the Commission.

Over the last few years, Parliament has strengthened its political control over the Commission by introducing instruments which enable an exchange of information on the implementation of funds and the amount of commitments outstanding, i.e. legal commitments which have not yet been honoured by payment. Outstanding commitments can become a problem if accumulated over longer time periods. The EP is therefore pushing the Commission to keep these under control.

New tools are being developed that should allow for a better monitoring of the implementation and to improve 'value for money' of EU programmes. For this purpose the EP supports high standard Activity Statements (prepared by the Commission in Preliminary Draft General Budget working documents) and regular cost effectiveness analyses of Community programmes.

Finally, it should be mentioned that the EP has strongly supported and influenced the new revision of the Financial Regulation, as well as the Interinstitutional Agreement (IIA) of 17 May 2006 on budgetary discipline and sound financial management (Multiannual Financial Framework, →1.5.2). Key elements are the improvement of the implementation of the budget, increasing the visibility and the benefits of Community funding to the citizen and achieving the right balance between the protection of financial interests, the proportionality of administrative costs and user-friendly procedures. According to Article 44 of the IIA, priority will be given to sound financial management aiming at a positive Statement of Assurance (→1.3.10. and →1.5.4).

The EP is also involved in the current revision of the comitology decision 1999/468/EC of 28 June 1999 mentioned above.

→ Anne VITREY
Helmut WERNER
07/2006

1.5.4. Budgetary control

Legal basis

Articles 274, 275, 276, 279 and 280 of the EC Treaty (ECT);
Articles 180(b) and 183 of the Euratom Treaty.

Objectives

To verify the legality, accuracy and financial soundness of budget operations in the broad sense.

Achievements

A. Control at national level

Initial control of income and expenditure is exercised partly by national authorities. These have kept their powers, particularly on own resources (→1.5.1), for they have the necessary machinery for collecting and controlling these sums. Twenty-five percent of traditional own resources are retained by Member States as a collection fee (this figure was 10 % before the 'own resources decision' 2000/597/EC of 29 September 2000, which came into force on 1 March 2002). Collection of own resources is nevertheless a matter of great importance to EU institutions. It was in this connection that the European Parliament (EP/Parliament) established a Committee of Inquiry on Transit (see below). Operational expenditure under the European Agricultural Guidance and Guarantee Fund (EAGGF), the Social Fund and the Regional Fund is also controlled in the first instance by the authorities of the Member States, which often have to bear part of the cost of such interventions.

B. Control at Community level

1. Internal

At Community level, control is exercised by authorising officers and accountants and then by the internal auditor in each institution.

2. External

(a) By the Court of Auditors (→1.3.10)

External control is carried out by the European Court of Auditors (ECA), which submits each year to the budgetary authority detailed reports in accordance with Article 248 of the ECT. These are:

- the 'declaration of assurance as to the reliability of accounts and the legality and regularity of the underlying transactions' (known as the DAS);
- the annual report relating to implementation of the general budget, including the budgets of all institutions and satellite bodies;

— special reports on specific issues.

On occasion, the ECA also reports on lending and borrowing operations and the European Development Fund.

(b) By OLAF

The Office for the Fight against Fraud (known as OLAF) was established in 1999 (Commission Decision 1999/352/EC, ECSC, Euratom). Since then it has been formally independent from the Commission. At the instigation of the EP it has been reinforced. Its role is to protect the Union's financial interests, with a responsibility for fighting fraud involving EU funds in all institutions and for coordinating the bodies responsible in the Member States.

Within the framework of Regulation (EC) No 1073/1999 and (Euratom) No 1074/1999 regarding OLAF's investigations, on 25 May 1999, Parliament, the Council and the Commission signed an Interinstitutional Agreement regarding internal investigations. This agreement stipulated that each institution should establish common rules intended to ensure the smooth running of OLAF's investigations. A part of these rules which is now integrated into the EU institutions' Staff Regulations oblige staff to cooperate with OLAF and include a certain amount of protection for staff members who divulge information regarding possible fraud or corruption. This is also known as protection of 'whistleblowing'.

Article 280 of the ECT concerns fraud and the EU's financial interests; it requires close and regular cooperation between Member States and the Commission, as well as opening the way to specific Council measures to afford equivalent and effective protection in the Member States for the EU's financial interests.

(c) By the European Parliament: the discharge procedure (→1.5.3)

Once a year, Parliament, on the Council's recommendation, gives discharge to the Commission on the implementation of the budget for the year n-2, after having examined the ECA's annual report and the replies from the Commission and the other institutions to its questions (Article 276 of the ECT). The Commission and the other institutions are obliged to take action on Parliament's observations in its discharge resolution (Article 147 of the Financial Regulation).

Similarly, the EP gives discharge annually to the other institutions as well as to the agencies. The EP gives

discharge to the Commission separately for the implementation of the European Development Funds as these are not yet integrated in the general budget. The EP's discharge decision and resolution concerning the implementation of the EU general budget Section I – European Parliament is addressed to the President of the EP.

Role of the European Parliament

A. Development of powers

From 1958 to 1970 the EP was simply kept informed of decisions on discharge given by the Council to the Commission on its implementation of the budget. In 1971, it won the power to grant the discharge together with the Council. Since 1 June 1997, when the Treaty of 22 July 1975 entered into force, it alone has given the discharge on the accounts, after the Council has given its recommendation.

B. Use of the discharge

The EP may decide to defer discharge where it is dissatisfied with particular aspects of the Commission's management of the budget. Refusal of discharge is considered as tantamount to requiring resignation of the Commission. This threat was put into effect in December 1998: following a vote in plenary at which the discharge motion was rejected, a group of five independent experts was established, which reported on accusations of fraud, mismanagement and nepotism against the European Commission; the Commissioners then resigned en bloc on 16 March 1999.

Because of the complexity of the Community budget, individual members of the Committee on Budgetary Control specialise in particular Community policies and prepare the EP's response to ECA special reports in their field, often in the form of working papers for the guidance of the general rapporteur on the discharge.

As stated above, the Commission, the other institutions and the agencies must report on the measures taken in the light of the observations of the discharge resolutions. The Member States must inform the Commission on the measures they have taken following the EP's observations and the Commission must take these into account when

writing its follow-up report (Article 147 of the Financial Regulation).

As described in →1.3.10, following the absence of an unqualified positive statement of assurance by the Court of Auditors for many years in a row the EP has instigated the development of an integrated control framework comprising also the management shared with the Member States.

C. Other instruments

Parliament's specialist committees are also encouraged to play a positive role in ensuring that Community funds are spent economically in the best interest of the European taxpayer.

On a number of occasions, the members of the Committee on Budgetary Control have also held discussions with representatives of the corresponding committees of parliaments in the Member States, with national auditing authorities and with representatives of customs departments; on-the-spot enquiries have also been carried out by individual members to ascertain the facts underlying particular problems.

In December 1995 the EP exercised for the first time its right acquired under the Treaty to establish a Committee of Inquiry. This committee reported on allegations of fraud and maladministration under the Community transit system. The committee's 38 recommendations received wide support and following up on their implementation has been the responsibility of the Committee on Budgetary Control. This entailed the implementation of a new computerised transit system (NSTI) at the end of 2003.

Following the fact that several EU officials who had divulged information on possible fraud, corruption or mismanagement had not apparently been protected adequately by the aforementioned whistleblowing protection rules, the EP's Committee on Budgetary Control has suggested to the Commission that these rules be revised.

→ Helmut WERNER
07/2006

2

1 How the European Community works

4 Common policies

2 Citizens' Europe

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Citizens' Europe

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2.1. Respect for fundamental rights in the EU

Legal basis

The protection of fundamental rights is one of the basic tenets of European Community law. However, none of the Treaties contains a written list of these rights. Only the principle of equal pay for men and women has, from the start, been codified in Article 19 of the EC Treaty (ECT).

The European Court of Justice recognised the existence of fundamental rights at Community level at an early stage, and has steadily extended them. Under the Court's continuing case-law, they form part of the general principles of Community law and are equivalent to primary law in the Community legal hierarchy.

The source of these general principles of law is now Article 6(2) of the EU Treaty (EUT), which commits the EU to respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.

The Treaty of Amsterdam introduced Article 13 of the ECT to combat discrimination and Article 7 of the EUT stipulating that the Council, meeting in the composition of the Heads of State or Government and acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the assent of the European Parliament (EP), may determine the existence of a serious and persistent breach by a Member State of principles mentioned in Article 6. In this case, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of the Treaty to the Member State in question. The Treaty of Nice supplemented this mechanism with a new procedure relating to a clear risk of a serious breach by a Member State of these principles (Article 7(1) EUT).

Objectives

To ensure that fundamental freedoms are protected in the drafting, application and interpretation of Community law. In their traditional defensive role the Community's fundamental rights protect the individual from the erosion of sovereignty by Community bodies.

Achievements

— Case-law of the Court of Justice

1. Development of rights

The Court decided back in 1974 that fundamental rights form part of the general principles of Community law that it is required to uphold, and that in safeguarding such rights it should be guided by the constitutional traditions of the Member States. Accordingly, no measure may have the force of law unless it is compatible with the fundamental rights recognised and protected by the Member States' constitutions (Court of Justice [1991] ECR I-2925 at p. 41). The main specific rights recognised so far by the Court are:

- human dignity (*Casagrande* [1974] ECR 773);
- equal treatment (*Klöckner-Werke AG* [1962] ECR 653);
- non-discrimination (*Defrenne v Sabena* [1976] ECR 455);
- freedom of association (*Gewerkschaftsbund, Massa et al.* [1974] 917, 925);
- freedom of religion and confession (*Prais* [1976] ECR 1589, 1599);
- privacy (*National Panasonic* [1980] ECR 2033, 2056 et seq.);
- medical secrecy (*Commission v Federal Republic of Germany* [1992] ECR 2575);
- property (*Hauer* [1979] ECR 3727, 3745 et seq.);
- freedom of profession (*Hauer* [1979] 3727);
- freedom of trade (*International Trade Association* [1970] 1125, 1135 et seq.);
- freedom of industry (*Usinor* [1984] 4177 et seq.);
- freedom of competition (*France* [1985] 531);
- respect for family life (*Commission v Germany* [1989] 1263);
- entitlement to effective legal defence and a fair trial (*Johnston v Chief Constable of the Royal Ulster Constabulary* [1986] 1651 et seq., 1682; *Pecastaing v Belgium* [1980] 691 et seq., 716);
- inviolability of residence (*Hoechst AG v Commission* [1989] 2919);
- freedom of expression and publication (*VBVB, VBVB* [1984] 9 et seq., 62).

2. Scope of protection

If a fundamental right is found to be breached, the Court of Justice declares the act concerned to be void, with retroactive and universal effect.

However, under the case-law of the Court there are limits to the protection of fundamental rights:

- such rights must be compatible with the Community's structure and objectives. They must always be considered with regard to the social function of the protected activity (*Internationale Handelsgesellschaft* [1970] ECR 1125).
- the principle of proportionality and the guarantee of essential content are further constraints. Consequently, where the Community intervenes in the protected sphere of a fundamental right it may neither violate the principle of proportionality nor affect the essential content of that right (*Schröder v Hauptzollamt Gronau* [1989] ECR 2237 at 15).

It is the European Community that is committed to respecting fundamental rights. The Member States are only required to comply with the minimum standards which the rights lay down when they are implementing Community law (Article 10(5) of the ECT) (cf. *Kremzow v Austrian Republic*, judgment of 29 May 1997, ECR I-2629 at 15 et seq, 19).

When adopting acts of secondary Community law affecting fundamental rights, the Community institutions must also comply with international provisions on human rights, and particularly the standards of the European Convention on Human Rights.

Charter of Fundamental Rights

1. Working methods

To draw up the draft European Charter of Fundamental Rights, the European Council decided to set up an ad hoc body made up of representatives of various established institutions (meeting in Tampere in October 1999).

This body, which decided to call itself a 'Convention', broke new ground by publishing its working documents and debates.

The charter was proclaimed by the Commission, the Council and Parliament on 7 December 2000 at the Nice European Council.

2. Substance

(a) The charter covers rights in three areas:

- civil rights: human rights and the right to justice, as guaranteed by the European Convention of Human Rights adopted by the Council of Europe;
- political rights deriving from the European citizenship established by the Treaties;

- economic and social rights, incorporating the rights set out in the Community Charter of the Social Rights of Workers, adopted on 9 December 1989 at the Strasbourg summit by the Heads of State or Government of 11 Member States in the form of a Declaration.

These rights are not new: the charter represents 'established law', i.e. it gathers together in one document the fundamental rights recognised by the Community Treaties, the Member States' common constitutional principles, the European Convention of Human Rights and the EU and Council of Europe Social Charters. However, the document aims to respond to problems arising from current and future developments in information technology or genetic engineering by establishing rights such as personal data protection or rights in connection with bioethics. It also responds to the legitimate contemporary demands for transparency and impartiality in the functioning of the Community administration, incorporating the right of access to the Community institutions' administrative documents and the right to good administration, which sums up Court of Justice case-law in this area.

(b) Presentation of rights

The charter consolidates all personal rights in a single text, thus implementing the principle of the indivisibility of fundamental rights. It breaks the distinction that European and international texts had drawn until then between civil and political rights on the one hand and economic and social rights on the other, and lists all the rights grouped according to the basic principles of dignity, freedoms, equality, solidarity, citizens' rights and justice.

(c) Beneficiaries

Under the principle of universality, most of the rights listed in the charter are conferred on all people, regardless of their nationality or place of residence. However, rights linked directly to citizenship of the Union are conferred only on citizens (such as the right to take part in elections to the EP or municipal elections) and some rights are for certain categories of people (for example, children's rights and some social rights of workers).

The charter aims only to protect the fundamental rights of individuals with regard to action undertaken by the EU institutions and by the Member States in application of the EU Treaties.

3. Scope

The question of the legal status of the charter for the Member States and the Community institutions has yet to be resolved even though the Commission and Parliament have stated that they consider it to be binding and the

Court of Justice has already invoked some of its provisions. The charter is included in Part II of the Treaty establishing a Constitution for Europe, amounting to definitive recognition of its legal validity once the Treaty has been adopted.

C. EU accession to the European Convention on Human Rights and Fundamental Freedoms

The Treaty establishing a Constitution for Europe states that the Union shall accede to the Convention (Article I-9).

D. Towards an EU Agency for Fundamental Rights

The European Monitoring Centre on Racism and Xenophobia, created in 1997 and established in Vienna, will be converted into an Agency for Fundamental Rights following the European Council Decision in December 2003. The Commission presented two proposals to this effect in June 2005.

Role of the European Parliament

1. General attitude

The EP has always given priority to respect for fundamental rights in the Union. Since 1993, it has held a debate and adopted a resolution on this issue every year on the basis of a report by its Committee on Citizens' Freedoms and Rights, Justice and Home Affairs.

2. Specific actions

The EP has in particular upheld the importance of codifying fundamental rights in a binding document:

It was responsible for the declaration of principle on the definition of fundamental rights adopted by the EU's three political institutions (Commission, Council and EP) on 5 April 1977 and expanded in 1989.

In 1994, it drew up a list of the fundamental rights guaranteed by the Union.

It has given special attention to the drafting of the charter by making it 'one of its constitutional priorities' and stipulating its requirements, notably that:

- the document should have fully binding legal status by being incorporated into the Treaty on European Union ('A Charter [...] constituting merely a non-binding

declaration and [...] doing no more than merely listing existing rights would disappoint citizens' legitimate expectations'); it thus called for the charter to be incorporated into the Treaty of Nice and for it now to be incorporated into the new Treaty establishing a Constitution for Europe;

- any amendment should be subject to the same procedure as its original drafting, including the formal right of assent for Parliament;
- it should contain a clause requiring the consent of Parliament whenever fundamental rights are to be restricted;
- it should recognise that fundamental rights are indivisible, by making the charter applicable to all the institutions and bodies of the EU and all its policies, including those contained in the second and third pillars in the context of the powers and functions conferred upon it by the Treaties;
- it should be binding on the Member States when applying or transposing provisions of Community law (Resolutions of 16 September 1999 and 23 October 2002)

Finally, it has regularly called for the EU to accede to the European Convention on Human Rights, stressing that this accession would not duplicate the role of a binding Community charter.

It has called for the creation of an Agency for Fundamental Rights on several occasions. In a Resolution on 26 May 2005 constituting a demand for legislation to be initiated in accordance with Article 192 of the ECT, it stresses that the Agency must follow the development of the implementation of the charter and the provisions of the Treaty. It should ensure the quality and coherence of the EU's human rights policy. The Agency must be independent. An informal dialogue between the EP, the Council and the Commission has been put in place to define the Agency's structure and mandate.

→ Jean-Louis Antoine GRÉGOIRE
05/2006

2.2. The citizens of the Union and their rights

Legal basis

Articles 17 to 22 of the EC Treaty (ECT).

Objectives

1. Inspired by the freedom of movement for persons envisaged in the Treaties, the introduction of a European citizenship with precisely defined rights and duties was considered as long ago as the 1960s. Following preparatory work which began in the mid-1970s, the Treaty on European Union, adopted in Maastricht in 1992, gave as an objective for the Union 'to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union'. A new part of the ECT (Articles 17–22 ECT) is devoted to this citizenship.

Like national citizenship, citizenship of the Union is intended to describe a relationship between the citizen and the European Union which is defined by the citizen's rights, duties and political participation. This is intended to bridge the gap between the increasing impact of Community action on citizens of the Community, and the safeguarding of rights and duties and participation in democratic processes, which remains an almost exclusively national matter. The aim is to increase people's sense of identification with the EU and to foster European public opinion, a European political consciousness and a sense of European identity.

Moreover, there is to be stronger protection of the rights and interests of Member States' nationals (Article 2, third indent, Treaty on European Union (EUT)).

Achievements

1. Definition of EU citizenship

According to Article 17 of the ECT, every person holding the nationality of a Member State is a citizen of the Union. Nationality is defined according to the national laws of that state. Citizenship of the Union is complementary to national citizenship but does not replace it, and it comprises a number of rights and duties in addition to those stemming from citizenship of a Member State.

2. Substance of citizenship

For all citizens of the Union, citizenship implies:

- the right to move and reside freely within the territory of the Member States (→2.3.0.);

- the right to vote and to stand as a candidate in elections to the European Parliament (EP/Parliament) and in municipal elections in the Member State in which they reside, under the same conditions as nationals of that State (→2.4.0.);
- the right to diplomatic protection in the territory of a third country (non-EU state) by the diplomatic or consular authorities of another Member State, if their own country does not have diplomatic representation there, to the same extent as that provided for nationals of that Member State;
- the right to petition the EP and the right to apply to the Ombudsman appointed by the EP concerning instances of maladministration in the activities of the Community institutions or bodies. These procedures are governed by Articles 194 and 195 ECT (→1.3.14. and 2.5.0.);
- the right to write to any Community institution or body in one of the languages of the Member States and to receive a response in the same language (Article 21(3) ECT);
- the right to access EP, Council and Commission documents, subject to certain conditions (Article 255 ECT).

3. Scope

With the exception of electoral rights, the substance of Union citizenship achieved to date is to a considerable extent simply a systematisation of existing rights (particularly as regards freedom of movement, the right of residence and the right of petition), which have now been enshrined in primary law on the basis of a political idea.

By contrast with the constitutional understanding in European states since the French Declaration of Human and Civil Rights of 1789, no specific guarantees of fundamental rights are associated with citizenship of the Union. Article 6(2) EUT states that the 'Union' will 'respect' fundamental rights in accordance with the European Convention on Human Rights and the 'constitutional traditions common to the Member States', as general principles under Community law but it does not make any reference to the legal status of Union citizenship (for fundamental rights in the European Union, →2.1.0.).

Union citizenship does not as yet entail any duties for citizens of the Union, despite the wording to that effect in

Article 17(2) ECT, which constitutes a major difference between it and citizenship of the Member States.

Article 22(2) ECT and Article 48 EUT provide opportunities to develop citizenship of the Union gradually and thus provide citizens of the Union with an enhanced legal status at European level.

Role of the European Parliament

- In electing the EP by direct suffrage, EU citizens are exercising one of their essential rights in the EU, that of democratic participation in the European political decision-making process.
- Parliament has always wanted to endow the institution of Union citizenship with comprehensive rights. It advocated the determination of Union citizenship on an autonomous Community basis, so that EU citizens would have an independent status. In addition, from the start it advocated the incorporation of fundamental and human rights into primary law and called for EU citizens to be entitled to bring proceedings before the Court of Justice when those rights were violated by EU institutions or a Member State (resolution of 21 November 1991).
- During the negotiations on the Treaty of Amsterdam, Parliament again called for the rights associated with EU

citizenship to be extended, and it criticised the fact that the Treaty did not make any significant progress on the content of EU citizenship, with regard to either individual or collective rights. One of Parliament's demands that is still outstanding is the adoption of measures by a qualified majority to implement the principle of equal treatment and ban discrimination (resolution of 11 June 1997). It should be noted, however, that since the Treaty of Amsterdam the co-decision procedure that applies to the measures has made it easier to exercise the rights associated with EU citizenship (Article 18(2)).

- In accordance with Parliament's requests, the Draft Treaty establishing a Constitution for Europe of 18 July 2003, drawn up by the Convention on the Future of Europe, stipulates that any natural or legal person may institute proceedings against an act addressed to that person or which is of direct and individual concern to him or her, and against a regulatory act which is of direct concern to him or her and does not entail implementing measures.

→ Denis **BATTA**
11/2005

2.3. Freedom of movement of persons

Legal Basis

- Article 14 ECT: establishing the internal market, free movement of persons; Article 18 ECT: Union citizens have the right to move and reside freely within the territory of the Member States;
- The Treaty of Accession signed on 16 April 2003 Part IV: Temporary Provisions;
- Title IV (Article 61 et seq. ECT): 'Visas, asylum, immigration and other policies related to free movement of persons' (4.11.2 and 4.11.3 for measures related to third country nationals).

Objectives

Freedom of movement for persons and the abolition of controls at internal frontiers form part of a wider concept, that of the internal market, in which it is not possible for internal frontiers to exist or for individuals to be hampered in their movements. The concept of the free movement of persons has changed in meaning since its inception. The first provisions on the subject referred merely to the free movement of individuals considered as economic agents, either as employees or providers of services (→3.2.2. and 3.2.3.). The concept has gradually widened to encompass all EU citizens, irrespective of their economic activity, as well as nationals of third countries, because after controls were abolished at internal borders people could no longer be checked for nationality.

Achievements

A. Changes introduced by the Treaty of Amsterdam

1. The Schengen area

The most significant development in setting up the internal market without obstacles to the free movement of persons has been the conclusion of the two Schengen agreements, the Schengen Agreement of 14 June 1985, and the Schengen Implementing Convention of 19 June 1990 which came into force on 26 March 1995.

(a) *Incorporation of the Schengen system and other parts of cooperation in the fields of justice and home affairs in the 'Community pillar'*

Initially, the Schengen implementing convention formed part of the cooperation in the fields of justice and home affairs (CJHA) within the European Union. This meant that it was not part of Community law but took the form merely of intergovernmental cooperation. A protocol to the Amsterdam Treaty provides for transfer of the 'Schengen acquis' into a new Title IV, comprising Articles 61 et seq. ECT on 'Visas, asylum, immigration and other policies related to free movement of persons'. Many of the areas covered by Schengen have therefore now been transferred to the Community sphere. As most of Schengen is now part of the EU acquis, at the time of the last EU enlargement of 1st May 2004 it was no longer possible for accession countries to 'opt out' (Article 8 of the Schengen Protocol).

(b) *Participating countries*

There are currently 15 Schengen members: Belgium, Germany, France, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain, Austria, Denmark, Finland, Iceland, Norway and Sweden. Not all Schengen members are members of the EU.

Ireland and the UK are not members but have an opportunity to 'opt in' to the application of selected parts of the Schengen body of law.

On 1 May 2004, 10 new countries (Poland, the Czech Republic, Slovakia, Hungary, Estonia, Latvia, Lithuania, Malta, Cyprus and Slovenia) became members of the EU. The 10 new Member States haven't automatically become fully operational members of the Schengen cooperation.

Membership of the Schengen cooperation is a process in two steps. During the accession negotiations the new Member States accepted the Schengen acquis. For the internal border controls to be lifted there has to be a separate verification and a specific (European Council) decision.

Switzerland has signed the Schengen Convention on 26 October 2004. It will have full membership to the Schengen system following a European Council decision. This procedure is similar to what happened when the Nordic countries became full members of Schengen

(c) *Scope*

- (i) Abolition of internal border controls for all people
- (ii) Measures to strengthen and harmonise external border controls:
 - all EU citizens may enter the Schengen area merely by showing an identity card or passport;
 - common visa policy: nationals of third countries included in the common list of non-member countries whose nationals need an entry visa are entitled to a single visa valid for the entire Schengen area; however, Member States may require a visa for other third countries;
 - harmonisation of the treatment of asylum-seekers. This was taken over by the Dublin Convention, which entered into force on 1 September 1997 for the 12 original signatories, on 1 October 1997 for Austria and Sweden and on 1 January 1998 for Finland. As of 1 September 2003, the Dublin II Regulation provides the legal basis for establishing the criteria and mechanism for determining the State responsible for examining an asylum application in one of the Member States of the EU (excluding Denmark, but including Iceland and Norway) by a third country national. However, from that date, the Dublin Convention remains in force between Denmark and the other Member States of the EU (including Iceland and Norway).
 - police and judicial cooperation: police forces assist each other in detecting and preventing crime and will have the right to pursue fugitive criminals into the territory of a neighbouring Schengen state.

The Schengen Information System (SIS) is essential for effective operation of the Convention: it supplies information on the entry of third country nationals, the issue of visas and police cooperation; access to the SIS is primarily restricted to the police and the authorities responsible for border checks. In addition, the present SIS database has limited capacity. A new system, SIS II, should be in place by 2007.

(d) *Institutional consequences*

With the entry into force of the Treaty of Amsterdam, the Council replaced the Executive Committee of the Schengen Convention. The Council also had, pursuant to Title IV ECT, to adopt measures within a period of five years 'to establish progressively an area of freedom, security and justice' in the field of visas, asylum, immigration and other policies related to free movement of persons, to ensure that Union citizens and third country nationals are not checked when crossing internal borders. It is also responsible for regulating standard measures for checks on

persons at external borders and standard rules for issuing visas and granting freedom of travel within the Member States' territory to third country nationals. The Council focused on these accompanying measures of secondary legislation in its Resolution of 18 December 1997 laying down the priorities.

Following the transfer of parts of CJHA to the Community sphere, the Court of Justice has received new powers, as measures under the new Title IV ECT are actionable in the Court, provided that they do not concern the abolition of frontier controls, the maintenance of law and order or the safeguarding of internal security under Article 68(2).

2. European Union area

As the Schengen Convention is not yet being effectively applied in all the EU Member States, Union territory as a whole should be considered separately from the Schengen area.

(a) EU nationals and their families

With the aim of transforming the Community into an area of genuine freedom and mobility for all Community citizens, the Council has guaranteed rights of residence to persons other than workers:

- retired persons: employees and self-employed persons who have ceased their occupational activity (Directive 90/365/EEC);
- students: exercising the right to vocational training (Directive 90/366/EEC);
- others: all persons who do not already enjoy a right of residence (Directive 90/364/EEC);
- family members (spouses and children under 21, irrespective of their nationality) have the right to reside with a national of a Member State who is employed in the territory of another Member State (Regulation (EEC) No 1612/68, Directive 73/148/EEC, Directive 90/364/EEC, Directive 90/365/EEC, Directive 93/96/EEC).

These directives require Member States to grant the right of residence to those persons and to some of their family members (including in certain cases family members in the ascending line), provided that they have adequate resources so as not to become a burden on the social assistance schemes of the Member States and are covered by sickness insurance. However, the rights of the family members are derivative and not independent of the right of the EU citizen in the respective family; the latter must actually have exercised his or her own right of free movement. If the family members are not EU citizens they may be required to hold an entry visa by the Member State of their residence.

Current legislation includes:

In 2004, the Union has adopted a directive on the right of citizens of the Union to move and reside freely within the Member States: European Parliament and Council Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

This new directive brings together the piecemeal measures found in the complex body of legislation that has governed this matter to date. The new measures are designed, among other things, to encourage Union citizens to exercise their right to move and reside freely within Member States, to cut back administrative formalities to the bare essentials, to provide a better definition of the status of family members and to limit the scope for refusing entry or terminating the right of residence. Also it broadens the definition of family to also include non-married partners. Within the scope of Directive 2004/38/EC, family members include: the spouse; the registered partner, if the legislation of the host Member State treats registered partnerships as equivalent to marriage; the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner as defined above; the dependent direct relatives in the ascending line and those of the spouse or partner.

This directive has been transposed into national law and has started to be implemented by all Member States since 30 April 2006. It has now replaced all the aforementioned legal measures.

(b) Transitional period for workers from new EU Member States

The Treaty of Accession signed on 16 April 2003 (Act of Accession, Part IV: Temporary Provisions), allows the 'old' EU-15 Member States to introduce the so-called 'transitional arrangements' to nationals from the 10 new members, except for the particular cases of Cyprus and Malta.

The majority of the old Member States are using these transitional periods, during which the ordinary national migration legislations continue to be applied to workers coming from eight CEEC countries. Ireland, the United Kingdom and Sweden have been the only three Union members not closing transitionally doors for mobility into their labour markets

The transitional periods are divided in three different stages:

- Firstly, between 2004 and 2006 the free movement of workers will be left exclusively in the hands of the EU-15 Member States.

- Secondly, in the first half of 2006 the European Commission has reviewed the situation, which will subsequently be examined by the Council of Ministers. The old-15 Member States have notified the Commission which of them plan to retain the barriers on the free movement of workers from the new Member States or to continue applying the bilateral agreements for up to a further three years (i.e. 2009) and which ones would like to lift these barriers.
- Finally, by 2009 all the national legislation should not apply any transitional measures limiting the access to their labour markets. Yet, any of these Member States facing particular difficulties that may lead to 'disturbances of the labour market or a threat thereof' can ask the Commission for a further two-year extension based on exceptional or unexpected circumstances.

Therefore, for a period of up to seven years (what has been officially qualified as 'the 2+3+2 formula'), which may potentially last until 2011, not much will change for workers and services providers from the new eight Member States who may wish to exercise fully their free movement rights and fundamental freedoms.

(c) Third country nationals

In the provisions of the Treaty of Amsterdam, third country nationals (TCNs) have finally found their place in Community law. Certain categories of third country nationals already benefited from the protection of Community law. These are:

- members of the family of an EU national;
- nationals of states connected to the EU by an association or cooperation agreement;
- workers of a company based in one Member State on whose behalf they carry out services in another Member State (see European Court of Justice (ECJ) ruling in the Vander Elst–ECJ Case C-43/93 whereby the ECJ decided that third country nationals participating in the freedom to provide services enjoyed by their employer, do have a right to enter other Member States in order to fulfil their labour contracts).

Legal measures adopted since the Amsterdam Treaty to extend free movement rights to third country nationals:

- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ L 251 (2003), pp. 12–18);
- Council Directive 2003/109/EC of 25 November 2003 concerning long-term resident third-country nationals to extend their free movement rights, on the basis of Article 63(4) (OJ L 016 (2004), pp. 44–53);

- Council Directive of 13 December 2004 on the conditions of entry and residence of third country nationals for the purpose of studies, unremunerated training or voluntary service (OJ L 375, 23.12.2004);
- Council Directive and two proposals for recommendations on the admission of third country nationals to carry out scientific research in the European Union, COM(2004) 178, 16.03.2004.

(d) Restrictions on freedom of movement

Freedom of movement for people is subject to limitations justified on grounds of public policy, public security or public health (Articles 39(3), 46(1) and 55 ECT). These exceptions must be strictly interpreted and the limits to their exercise and scope are set out by the general principles of law such as the principles of non-discrimination, proportionality and protection of fundamental rights.

B. Changes introduced by the Treaty of Nice

Under the Treaty of Nice, visa, asylum and immigration policy are to be decided mainly by the co-decision procedure. The shift to qualified majority voting is provided for under Article 63 of the ECT for matters concerning asylum and temporary protection, but subject to prior unanimous adoption of common framework legislation on asylum.

According to the statement signed by the Heads of State and Government, the shift to qualified majority voting and co-decision would take place as of 1 May 2004 (without the need for a unanimous decision) for:

- Article 62 of the ECT, for measures setting out the conditions for free circulation of non-Member State nationals legally resident on EU territory;
- Article 63 of the ECT, for illegal immigration and the repatriation of illegally resident persons.

Role of the European Parliament

Parliament wants to secure the greatest possible measure of freedom to travel for all persons within the Union's internal frontiers. In its view, this is an essential condition for the operation of the internal market.

Parliament warmly welcomes the new Directive 2004/38/EC as its correct implementation by Member States will bring about very beneficial improvements. The barriers still facing citizens wishing to exercise their rights would almost disappear. Moreover, Parliament believes there should be no distinction within the internal frontiers between freedom of movement for Community nationals and that of third country nationals. Freedom of movement is a fundamental human right; any restriction on that freedom

hinders third country nationals' access to the internal market. While the abolition of internal borders requires some accompanying measures, this must not be a pretext for introducing systematic controls in border areas or hermetically sealing off external borders.

Parliament is adamant that, in the post-Nice process, the co-decision procedure is extended to all areas within justice and home affairs, including the rights of third country nationals. It believes that it is vital to ensure a balance between the aims of freedom, security and justice (FSJ), taking account of fundamental rights and citizens'

freedoms. To this end, the EP supports very much the developments which the European Constitution, particularly its Article III-396 would bring to the field of FSJ, such as co-decision powers in almost all FSJ matters. Moreover most decisions in the Council would be taken by qualified majority voting which would accelerate the speed of development of FSJ.

→ Johanna APAP
09/2006

2.4. Voting rights and eligibility

Legal basis

— Article 19 and 189–191 of the EC Treaty (ECT).

Objectives

Since 1976 (Act of 20 September), EU citizens have had the right to elect their representatives in the European Parliament (EP/Parliament) in the State of which they are nationals. In addition to this right, the Treaty of Maastricht gave all citizens of an EU Member State the right to vote and stand as a candidate in elections to the EP and local elections in the Member State in which they reside — whether they have its nationality or not — under the same conditions as apply to nationals of the country of residence. By abolishing the nationality condition that most Member States had previously attached to exercise of the right to vote or stand as a candidate, this right improves the integration of Union citizens in their host country.

Achievements

1. Rights relating to municipal elections

(a) Principle

Directive 94/80/EC of 19 December 1994 on rights relating to municipal elections grants all citizens of the Union the right to vote and to stand as a candidate in municipal elections in the Member State in which they reside, without substituting this for electoral rights in their State of origin, which naturally gives them greater freedom.

(b) Limitations

— In order to protect their own sovereign interests, Member States may stipulate that only their own

nationals are eligible to be elected to offices within the executive body of a basic local government unit. Under some national election provisions, this participation in executive bodies includes ballots in individual referendums, which are seen as distinct from general elections to the local authority. However, the opportunity for nationals of other Member States to exercise their right to stand as a candidate must not be unduly affected. As far as participation in municipal elections is concerned, all citizens of the Union are basically treated as nationals.

- Derogations — e.g. a longer minimum period of residence as a condition for participation in municipal elections — may be invoked by Member States in which the proportion of non-national EU citizens who are eligible to vote and to stand as candidates exceeds 20 % of the total electorate; this currently applies in Luxembourg and to certain local government units in Belgium.
- At national level, there are ongoing debates concerning third country nationals' right to vote. Since the Treaty of Maastricht, two situations have coexisted within the Union: countries where third country nationals have the right to vote in municipal elections (Ireland, Denmark, Finland, the Netherlands, Sweden) and countries where this right is not recognised (Austria, Belgium, France, Germany, Greece, Italy, Luxembourg, Portugal, Spain, United Kingdom).

2. Elections to the European Parliament

(For the common rules and national provisions, →1.3.4.)

Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote

and to stand as a candidate in elections to the EP gives all citizens of the Union the opportunity to choose whether to participate in elections to Parliament (by voting or by standing as a candidate) in their State of origin or their State of residence within the EU, if these are not the same. Participation in EP elections in the State of residence is governed by the same conditions as apply to nationals of that State. Derogations may be invoked by Member States in which the proportion of non-EU nationals is substantially above the average (around 20 % of the total electorate). In this case a longer period of residence may be required than for nationals.

Role of the European Parliament

1. Rights relating to municipal elections

In its resolutions on the draft directive on rights relating to municipal elections, Parliament endeavoured to keep to a

minimum the permitted exceptions to the rule of equal treatment with nationals regarding the right to vote and to stand as a candidate

2. Elections to the European Parliament

- In several resolutions, Parliament had expressed its regret that it only had the right to be consulted, and had no power of co-decision, concerning the legal acts to be adopted pursuant to Article 19(2) of the ECT. This situation has not changed.
- Moreover, Parliament has long called for a uniform system for elections to the EP, to take the place of the national electoral laws for such elections (→1.3.4).

2.5. The right of petition

Legal basis

Articles 21 and 194 EC Treaty (ECT), added by the Treaty of Maastricht (1993).

Objectives

The right to petition was introduced to provide European citizens and EU residents with a simple way of contacting EU institutions with requests or complaints.

Achievements

A. Principles (Article 194 ECT)

1. Those entitled to petition the European Parliament

Any citizen of the European Union, and any natural or legal person residing or having its registered office in a Member State, may petition the European Parliament (EP/Parliament), either individually or in association with others.

2. Scope

To be admissible, petitions must concern matters which come within the European Union's fields of activity and affect the petitioners directly. This latter condition is given a very wide interpretation.

B. Procedure

The procedure for petitions is laid down in Rules 191 to 193 of Parliament's Rules of Procedure, which confer responsibility on a parliamentary committee, at present the Committee on Petitions.

1. Formal admissibility

Petitions must state the name, nationality and address of each petitioner and be written in one of the official languages of the EU.

2. Material admissibility

Petitions which meet these conditions are sent to the Committee on Petitions, which first decides whether they are admissible, by checking that the matter comes within the European Union's fields of activity. If it does not, the committee declares the petition inadmissible and informs petitioners accordingly, giving the reasons and often suggesting they apply to another national or international authority.

In 2005 the committee declared 628 petitions admissible and 318 inadmissible.

3. Consideration of petitions

The Committee on Petitions then generally asks the Commission to provide relevant information or give its opinion on the points raised by the petitioner. It sometimes also consults other parliamentary committees, particularly in the case of petitions seeking a change in existing laws. The Committee on Petitions may also hold hearings or send members on fact-finding missions (there were three fact-finding missions in 2005 — to Malta, Madrid and Poland).

When sufficient information has been collected the petition is put on the agenda for a Committee meeting, to which the Commission is invited. At the meeting the Commission makes an oral statement and comments on its written reply to the issues raised in the petition. Members of the Committee on Petitions then have an opportunity to put questions to the Commission representative.

4. Further action

This depends on the case.

- If the petition is a special case requiring individual treatment, the Commission may contact the appropriate authorities or put the case to the permanent representative of the Member State concerned, as this approach is likely to settle the matter. In some cases the committee asks the President of Parliament to contact the national authorities.
- If the petition concerns a matter of general importance, for instance if the Commission finds that Community law has been infringed, the Commission can institute legal proceedings, and this is likely to result in a ruling by the Court of Justice to which the petitioner can then refer.
- The petition may result in political action by Parliament or the Commission.

In every case the petitioner receives a reply setting out the result of the action taken.

C. Some examples

1. The report on Multiple Sclerosis

In August 2001, Louise McVay addressed a letter to the President of the EP concerning the disparity of treatment afforded by EU countries to persons who have been diagnosed with multiple sclerosis (MS). She wanted to obtain some recognition for her personal situation and for the thousands of other people who were suffering from such inequality of treatment, many of whom were still being denied their fundamental human rights of access to proper medical support. Although the Commission said that this case had nothing to do with European legislation, the Committee on Petitions invited the petitioner to state

her case at one of its meetings, at which various associations and MS sufferers were also present. The Committee on Petitions then drew up a report, in close cooperation with the Committee on Employment and Social Affairs, to provide a clear set of answers for the petitioner and set out what it believes to be a clear and necessary European strategy for combating this debilitating disease for which there is still no known cure.

2. The Equitable Life case in the United Kingdom

There were two petitions in which policyholders of the Equitable Life Assurance Society described the losses they had suffered because the company ran into financial difficulties. The petitioners alleged that United Kingdom had not adequately implemented European legislation on insurance companies.

As a result the EP set up a committee of inquiry.

3. The Lyons–Turin rail tunnel

The residents of the Susa valley, supported by the local authorities, presented a petition expressing concern about the environmental and health effects of the building of the high-speed Lyons–Turin rail line. A delegation from the Committee on Petitions visited and MEPs urged the drawing up of more detailed environmental impact assessments. These assessments were then considered at a joint meeting of the Committee on Petitions and the Committee on Transport and Tourism, with Mr Barrot, member of the Commission, and the petitioners. The conclusions and assessments were then sent to the Italian government. The file remains open and work continues, in cooperation with the Committee on Transport and the Committee on the Environment.

4. Non-compliance of the urban development law in Valencia, Spain

Over 15 000 people signed petitions against an urban development law adopted by the autonomous region of Valencia, which they felt violated their rights as property owners. The Committee on Petitions sent two fact-finding missions. The Committee on Petitions' activities persuaded the Valencian authorities to amend the legislation and Parliament was even invited to make recommendations. The recommendations were the subject of a resolution in December 2005.

5. M30 motorway project in Madrid

In June 2006 there was a fact-finding visit to Madrid following several petitions concerning a planned extension to the M30 motorway in Madrid. The petitioners' main complaint concerned the lack of environmental impact studies that should have been carried out for a project of this kind and scale in view of its location. Such studies are required under Council Directive 97/11/EC of 3 March 1997

amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (the petition was still open in September 2006).

→ Claire GENTA
09/2006

Annual number of petitions received by Parliament

Parliamentary year	Total	Admissible	Inadmissible
2000	908	578	330
2001	1 132	812	320
2002	1 601	1 186	415
2003	1 315	858	457
2004	1 002	623	379
2005	1 032	628	318

The internal market

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3.1. Principles and general completion of the internal market

Legal basis

Articles 3(c), 14, 18, 94 and 95 of the EC Treaty (ECT).

Objectives

The common market created by the Treaty of Rome in 1958 was intended to eliminate trade barriers between Member States with the aim of increasing economic prosperity and contribute to 'an ever closer union among the peoples of Europe'.

The Single European Act of 1985 included in the EEC Treaty the objective of the internal market defining it as 'an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured'.

Nowadays, the whole bulk of the internal market legal framework is in place and the debate concentrates on the effectiveness and the impact of EU regulation concerning sectors covered by that legislation and involves almost the majority of policies mentioned by the EC Treaty (ECT). It asks for an approach focused on the topics of complete transposition, implementation and enforcement of internal market rules, going beyond the debate on the normative procedures and the infringement procedures and moving towards what could be called the 'management' of the internal market and the 'partnership' between EU institutions and national authorities, every day cooperation on strategies and decisions, to share these 'common responsibilities' vis-à-vis the European citizens.

Achievements

A. The common market of 1958

1. Aim of the common market

The common market, the Treaty of Rome's main objective, was intended to amalgamate the economies of the Member States as far as possible by:

- a customs union with a common external tariff;
- free movement of goods, persons, especially employed persons, services and, to a certain extent, capital;
- elimination of quantitative restrictions (quotas) and measures having equivalent effect.

This objective was supported by the exclusive competence of the Community on competition.

2. Implementation

The customs union, achieved on 1 July 1968 (→3.2.1.), the abolition of quotas, the freedom of any EU national to look for and take a job in another Member State under the same conditions as the nationals (→3.2.2.) and some tax harmonisation with the general introduction of VAT (1970) (→4.17.2.) were achieved before the end of the transition period (1 January 1970).

On the contrary, the freedom of trade in goods and services and freedom of establishment remained restricted by continuing anti-competitive practices imposed by the public authorities (exclusive production or service rights, State aids, aimed to maintain frontiers, which were either physical (checks on persons and goods at internal customs posts) or technical (a whole range of national rules) or tax-related (maintenance of indirect taxes at very varied rates, leading to slow and costly cross-border formalities) or merely administrative), the reduction of measures having an effect equivalent to quantitative restrictions and of national technical rules for products (→3.2.1.) and the free movement of services or the freedom of establishment, except certain professions such as doctors, still remained not completely attained by the mid-1980s.

B. The launching of the internal market in the 1980s and the Single European Act

1. The internal market

The lack of progress and the stagnation in the achievement of the common market, largely attributed to the choice of a too detailed legislative harmonisation method and to the unanimity rule required for Council decisions to be taken, had a considerable economic cost — 'the cost of non-Europe' Cecchini report, presented in March 1988 — estimated at 4.25 % to 6.5 % of GDP.

The political debate led the EEC in the mid-1980s to consider a more thorough approach to the objective of removing trade barriers: the internal market. The green light was given in Brussels in March 1985, when the European Council set the end of 1992 as the date for completing the internal market and asked the Commission to prepare a programme with a list of acts to be adopted and a timetable for implementation.

The Commission adopted in 1985 its White Paper, approved by the European Council in Milan, where most of the

legislative measures to be taken, approximately 300, were listed, grouped under three main objectives:

- the elimination of physical frontiers, abolishing checks on goods and persons at internal frontiers;
- the elimination of technical frontiers, breaking down national barriers on products and services, by harmonisation or mutual recognition;
- the elimination of tax frontiers, overcoming the obstacles created by differences in indirect taxes, by harmonisation or approximation of VAT rates and excise duty.

The new approach aimed to get away from the systematic technical harmonisation of the national rules method, to be reserved only for essential requirements (such as security and health), and introduced the mutual recognition principle.

The Single European Act (entered into force on 1 July 1987), incorporated the specific concept of the internal market in the EEC Treaty, set a precise deadline for its completion: 31 December 1992 (Article 18 ECT) and gave strength to the internal market decision-making machinery, by introducing qualified majority voting for subjects as: common customs tariff; free provision of services; free movement of capital; approximation of national legislation; (respectively articles 26, 49, 60, 94 and 95 ECT).

2. The situation in 1993

By the deadline, over 90 % of the legislative projects listed in the 1985 White Paper had been adopted, largely by using the majority rule. They included:

- liberalisation of capital movements (→3.2.4.);
- almost total abolition of checks on goods at internal frontiers (→3.2.1.);
- abolition of routine checks on national citizens at internal frontiers (→2.3.0.);
- major progress in introducing freedom of establishment and freedom to provide services, through harmonisation and mutual recognition (banking and insurance, diplomas for access to the regulated professions) and by opening up public markets.

There remained some serious failures:

- the 10 % of scheduled legislation not yet adopted included some very important topics, as total abolition of controls on persons, the statute for the European company, full liberalisation of transport services, and tax harmonisation; in addition, some proposals not contained in the 1985 programme but added later, such as liberalisation of public service sectors, telecommunications, electricity, gas, postal services and

the establishment of trans-European networks, were not adopted;

- a significant part of the adopted directives were not transposed correctly;
- Finally, acts properly transposed were often badly implemented by national administrations (Sutherland Report of October 1992).

3. New efforts

Since 1993 the Commission regularly submitted reports reviewing the results obtained and launched actions and programmes to complete those projects still pending. Apart from the annual reports on the state of progress and operation of the single market, it is worth mentioning:

- the communication of 2 June 1993 on improving the effectiveness of the single market, and the strategic programme of 22 December 1993;
- the communication of 30 October 1996 on 'The impact and effectiveness of the single market', and the 'Action plan for the single market' of 4 June 1997. The progress chart continues to be published twice a year;
- The 'strategy for Europe's internal market', launched on 24 November 1999. This action plan combined medium- and short-term perspectives, laying down strategic objectives to be achieved up to 2004 by means of 'targeted measures' reviewed annually;
- the Commission document of 7 January 2003, 'The internal market — ten years without frontiers';
- The Commission communication 'Internal market strategy priorities 2003–06'.

While providing this impetus the Commission also took repressive actions under Article 226 of the ECT for prosecuting infringements by the Member States for: delayed transposition of directives; incorrect transposition; bad implementation.

C. Towards a shared responsibility to achieve the internal market

The European internal market, the world's largest common space of almost 500 million consumers, strongly contributed to the prosperity and integration of the European economy, increasing intra-Community trade (by about 15 % per year over 10 years), increasing productivity and reducing costs (through the abolition of customs formalities, harmonisation or mutual recognition of technical rules and lower prices as a result of competition), generated extra growth of 1.8 % in the last 10 years and created around 2.5 million more jobs, while reducing the differences in income levels between Member States.

A new internal market strategy, running from 2003 to 2006, focused on the need to facilitate the free movement of goods, integrate the services markets, reduce the impact of tax obstacles, simplify the regulatory environment and meet the demographic challenge.

Particularly worth noting are the substantial progress in completing the legislative programme (EC law opened up transport and telecommunications services, caused a significant opening up of other 'public service' sectors (electricity, gas and postal services) and strengthened supervision of mergers) and in transposition; measured by the 'transposition deficit', which is the percentage of directives not transposed in all the Member States, this deficit fell to 1.6 % in 2005.

The number of current prosecutions, nevertheless (at various stages of the infringement proceedings, which start with a default notice and may continue with a reasoned opinion and then referral to the Court of Justice), has risen from approximately 700 in 1992 to the figure of over 1 600 in May 2005.

Some serious gaps remain as essential legislative projects are still pending, like the full freedom of movement for persons, tax harmonisation and certain directives not yet transposed in all Member States on public contracts, transport and intellectual property.

The debate on the effective achievement of the internal market focuses nowadays on its complete transposition and implementation as well as on the need that all EU policies be finalised and executed taking into account their interdependence and complementarity with the objective of the so called 'European home market'.

In other words, the debate on the European home market focuses, at the moment, on the best way to fit all the EU policies in the perspective of a single domestic space, and all discussions and decisions related to the various objectives, policies and their implementation, are to be discussed and taken in cooperation between EU and national authorities as much as possible, under a shared responsibility principle.

The requirements of European integration suggest that the internal market should eventually culminate in a fully integrated home market: a 'European home market'. Its features would include numerous objectives and policies going beyond the four freedoms, the mutual recognition, the single currency and the fair competition as a harmonised tax system, a unique space based on freedom and security, with complete freedom of movement for persons and an unconditional right of residence throughout the Union, a public procurement and services of public interest regulated system, as well as in media and

information society and e-commerce, company law and contract law, corporate governance, financial market, intellectual property, data protection, mutual recognition, legal instruments to enable businesses to operate effectively throughout the market, completion of the trans-European transport, energy and telecommunications networks, the creation of a free market for services (→3.2.3).

Role of the European Parliament

The European Parliament (Parliament) was a driving force in the process that led to the launching of the internal market. Particular mention should be made of its resolution of 9 April 1984. It vigorously supported the White Paper in 1985 and regularly supported the Commission's efforts. In particular, it has backed the idea of transforming the internal market into a fully integrated home market by 2002 (resolution of 20 November 1997).

In many recent resolutions (between many others: 12 February 2006, 14 February 2006, 16 May 2006, 6 July 2006) Parliament supported the idea that the internal market is a common framework and point of reference for many EC and EU 'policies' and asked for a debate which goes beyond the common rules on the four freedoms, on fundamental rights and on competition. Parliament underlined, notably, the need:

- to improve the effectiveness of the control by the Commission of the correct transposition and implementation of EC and EU law, including the *ex ante* scrutiny of national draft regulations, and the procedures opened by complaints and by petitions;
- for Member States to ensure that they are not causing new implementation problems by imposing additional requirements ('gold-plating');
- to improve the central role of Parliament in monitoring Member States' implementation of, and compliance with, Community law and supervising the Commission, also via the new 'regulatory procedure with scrutiny';
- to strongly increase the involvement of national parliaments
- for a common approach to better regulation, based on regulatory principles, namely subsidiarity, proportionality, accountability, consistency, transparency and targeting, and the constitution of 'better regulation' task forces, accompanying all proposals with a 'Better Regulation Check List', with references to any relevant study or impact assessment, in particular in relation to internal market legislation;
- for the Commission, as the classic method of regulation is not always the most appropriate, to provide in the

annual work programme a list of those proposals which may be the subject of alternative regulation. Parliament must be provided with a list of policy measures in which the Commission has used alternative means of regulation, including an evaluation of the failure or success of such means of regulation, their impact on the situation in practice — and more specifically on employees and consumers rights, social cohesion, fair competition, the stimulation of growth and the EU's competitive position — as well as clear objectives and defined deadlines for actions, as well as sanctions for non-compliance (Interinstitutional Agreements of 16 December 2003 on 'better law-making' and of 22 December 1998 on 'quality of drafting EU legislation');

- to have more transparent and effective stakeholder consultation, in the view of the importance of participative democracy;
- that the Commission must continue to consolidate, simplify and codify Community legislation to improve accessibility and legibility;
- that the Commission's reports on implementation must not be confined to a legal analysis and should evaluate the application of the legislation in question in practice.

→ Azelio **FULMINI**
06/2006

3.2. The main freedoms of the internal market

3.2.1. Free movement of goods

Legal basis

Articles 3 paragraph 1(a) and (c), 14, 23 to 31 and 90 EC Treaty (ECT).

Objectives

The free movement of goods originating in the Member States, or originating in third countries which are in free circulation in the Member States, is one of the fundamental principles of the Treaty (Article 23, second subparagraph ECT).

At the beginning, free movement of goods was seen as part of a customs union between the Member States, involving the abolition of customs duties, quantitative restrictions on trade and equivalent measures, and the establishment of a common external tariff for the Community.

Later on, the emphasis was placed on eliminating all remaining obstacles to free movement with the aim of creating the internal market — an area without internal frontiers, in which goods (among other things) could move as freely as on a national market (→3.1.0).

Achievements

The elimination of customs duties and quantitative restrictions (quotas) between Member States, which was due to be completed by the end of the transitional period, was in fact accomplished by 1 July 1968, i.e. one and a half years early. This deadline was not met in the case of the supplementary objectives — the prohibition of measures having an effect equivalent to that of customs duties and of quantitative restrictions, and harmonisation of the relevant national laws. These objectives became central in the ongoing effort to achieve freedom of movement. The plans for a single market gave a new impetus.

A. Prohibition of charges having an effect equivalent to that of customs duties: Articles 23 paragraph 1 and 25 EC Treaty

Since there is no definition of this concept in the Treaty, case-law has had to provide one. The Court of Justice considers that any charge, whatever called or applied, which, imposed upon a product imported from a Member State to the exclusion of a similar domestic product has, by altering its price, the same effect upon the free movement of products as a customs duty and may be regarded as a

charge having equivalent effect, regardless its nature or form (Cases 2/62 and 3/62, 14 December 1962, and 232/78, 25 September 1979).

B. Prohibitions of measures having an effect equivalent to quantitative restrictions: Articles 28 and 29 EC Treaty

The concept of a measure equivalent to a quantitative restriction is vague. The Court of Justice, therefore, in the *Dassonville* judgment, took the view that all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade are to be considered as measures having an effect equivalent to quantitative restrictions (Cases 8/74, 11 July 1974 and C-320/03, 15 November 2005, points 63 to 67).

The measures in question are generally those which affect imported products more than domestic ones (Case C-441/04, 23 February 2006, point 23). However, in the *Cassis de Dijon* judgment (Case 120/78, 20 February 1979), the Court enlarged this notion, ruling that a measure could be deemed to have equivalent effect even without discrimination between imported and domestic products. In particular, the technical rules of the importing State imposed on products from other Member States may be considered as an equivalent measure, if not justified, as the imported products are penalised by being forced to undergo cost adjustments. The lack of Community harmonisation cannot be used to justify this attitude, if it effectively hinders freedom of movement. The Court therefore laid down the principle that any product legally manufactured and marketed in a Member State in accordance with the fair and traditional rules and manufacturing processes of that country must be allowed onto the market of any other Member State. This is the principle of mutual recognition by the Member States of their respective rules in the absence of harmonisation.

To prevent the emergence of further obstacles a directive was adopted in 1983 (replaced by Directive 98/34 of 22 June 1998) requiring Member States to inform the Commission of all projected technical regulations. National standardisation bodies are for their part required to forward their work programmes and draft standards.

C. Exceptions to the prohibition of measures having an effect equivalent to that of quantitative restrictions

Article 30 ECT allows Member States to take measures having an effect equivalent to quantitative restrictions when these are justified by general, non-economic considerations (public morality, public policy or public security, the protection of health and life of humans, animals or plants, the protection of national treasures and

the protection of industrial and commercial property). Control over the use made of this possibility is of course exercised by the Court of Justice. Such an exception to a principle, must be strictly interpreted and national measures can not constitute a mean of arbitrary discrimination or disguised restriction on trade between the Member States. In case C-241/04, p. 28, the Court of Justice (ECJ) stated that: 'According to settled case-law, in the context of the application of the principle of the free movement of goods, the Treaty does not affect the existence of rights recognised by the legislation of a Member State in matters of intellectual property, but only restricts, depending on the circumstances, the exercise of those rights.' Exceptions are no longer justified if Community legislation has come into force in the same area and does not allow them. Finally, the measures must have a direct bearing on the public interests to be protected and must not go beyond the necessary level (principle of proportionality).

The Court of Justice has recognised (*Cassis de Dijon* case) that, over and above the rules set out in Article 30 ECT, the Member States may make exceptions to the prohibition of measures having an equivalent effect on the basis of mandatory requirements (relating, among other things, to the effectiveness of fiscal supervision, fairness of commercial transactions, consumer protection and protection of environment).

As stated in Articles 95 and 97 ECT, Decision 3052/95/EC of the European Parliament (EP/Parliament) and Council of 13 December 1995 and Council Regulation (EC) No 2679/98 of 7 December 1998, aimed to facilitate supervision of national exemption measures introducing a procedure for the exchange of information and a monitoring mechanism. Member States have to notify any such measure to the Commission.

D. Harmonisation of national provisions

Since the late seventies, the Community has made considerable efforts in this respect: more than 250 directives on a great variety of subjects related to the internal market have been adopted. The adoption of Community harmonisation laws enabled the obstacles created by national provisions to be removed as inapplicable and stated common rules aimed both to guarantee the free circulation of goods and products and the respect of the other EC Treaty objectives as environment, consumers, competition, etc.

Harmonisation was often extremely arduous at the beginning as directives were dealing with all the technical specifications and required unanimity in the Council. Nevertheless their impact was positive. In case C-421/04 the ECJ stated that: 'According to settled case-law, in a field

which has been exhaustively harmonised at Community level, a national measure must be assessed in the light of the provisions of that harmonising measure and not of those of primary law' (p.20).

The harmonisation was then facilitated by the introduction of the qualified majority rule, required for most directives relating to the completion of the single market (Article 95 ECT as modified by the Maastricht Treaty) and by the adoption of a new approach aimed to avoid an onerous and detailed harmonisation, proposed in the Commission White Paper of June 1985.

E. Completion of the internal market

The creation of the single market implies the elimination of all remaining obstacles to free movement. The Commission White Paper of June 1985 set out the physical and technical obstacles to be removed and the measures to be taken by the Community to this end. Most of these measures have now been adopted.

1. Elimination of checks at internal borders (physical barriers)

(a) Customs formalities

These were simplified during the period 1985–92 (single administrative document, common border posts, simplification of Community transit procedures) before being abolished on 1 January 1993.

(b) Border controls

These were abolished on 1 January 1993. Checks, particularly in connection with animal and plant health, may be carried out inside a Member State, without discrimination based on the origin of the goods or the mode of transport, in the same way as such checks are made on domestic products.

2. Elimination of technical barriers

After the removal of customs formalities and border controls, technical barriers became the chief remaining obstacle to complete freedom of movement. They are numerous, highly diverse and constantly changing. There are two main ways in which they can be eliminated.

(a) Monitoring of compliance with the principle of mutual recognition of national rules (Article 28 EC Treaty).

(b) Legislative harmonisation

The New Approach and the Global Approach were based on Council Resolution of 7 May 1985, confirmed in Council Resolution of 21 December 1989 and Council Decision 93/465/EEC. Under this approach the guiding principle is the mutual recognition of national rules. Community harmonisation must be restricted to essential requirements and is justified when national rules cannot be considered equivalent and create restrictions.

Directives adopted under this new approach have the dual purpose of ensuring the free movement of goods, through technical harmonisation of entire sectors, and of guaranteeing a high level of protection of public interest objectives referred to in Article 95(3) ECT. As an example, they include those dealing with simple pressure vessels, toys, building materials, machines, gas appliances and telecommunications terminal equipment.

3. Standardisation

The need for European standards arising from the new approach has led to major development of the European standardisation system. Standardisation is a voluntary process based on consensus amongst different economic actors and carried out by independent standards bodies, acting at national, European, international level. The European Standardisation System, originally based on two bodies — CEN, set up in 1961, and Cenelec, set up in 1962 — was relatively inactive, and has been revived in the early 1980s when Directive 83/189/EEC (replaced by Directive 98/34/EC). Three organisations now exist: CEN, Cenelec and ETSI.

Harmonisation directives referred at the beginning to the industrial standards which are not mandatory as they are not laid down by the national authorities. This made the production of European standards considerably suitable. The process was still hampered by its slowness and the practice of transposing European standards into national ones.

In the course of the 1990s further discussions improved the quality and the efficiency of European standardisation, in particular by replacing consensus with majority voting for adopting standards and by the direct application of European standards (no need for national transposition).

Manufacturers refer nowadays to the European standards, laid down by European standardisation bodies. The validity of the remaining national standards is covered by the mutual recognition principle.

F. The principle of mutual recognition

The Court's reasoning developed the 'Cassis de Dijon' jurisprudence, laying down the principle that any product legally manufactured and marketed in a Member State in accordance with its fair and traditional rules, as well as manufacturing processes of that country, must be allowed onto the market of any other Member State. This was the basic reasoning which animated the debate towards the identification of the principle of mutual recognition also in the absence of harmonisation.

As consequence, the Member States, even in the absence of European harmonisation measures (Secondary EC Law), are obliged to allow goods which are legally produced and

marketed in one Member State to circulate and be placed on their market, unless mandatory requirements subsisted. In this case, any measure taken must be scrutinised under the principles of necessity and proportionality.

The action plan for the single market, adopted on June 1997, made the application of the principle of mutual recognition a cornerstone to improve the effectiveness of the internal market.

Role of the European Parliament

The European Parliament (Parliament) supported the completion of the internal market (→3.1.0.) and the role of the European standardisation bodies, and has always given particular backup to the 'new approach' in connection with the free movement of goods, clarifying its definition in a report in 1987. It has made a strong legislative contribution to the harmonisation directives.

Parliament also supported the need for a stronger cooperation between European and national authorities in order to improve the quality of the European legislation, to identify the legislation in need of simplification or codification, in accordance with the goal to put more effort into better regulation, prompt transposition and correct

implementation. Parliament often called on the other institutions to support, when possible, co-regulation and voluntary agreements in order to respect the same principle of better law-making.

Nevertheless, for Parliament, 'better regulation' does not necessarily mean 'no regulation at all' and it amended several legislative acts introducing rules to prevent the risk for consumers to be misled into buying cheaper goods without being informed to buy a smaller volume or quantity. In this respect Parliament always strongly supported the need for clear and complete information to the consumers to be included in all pre-packed goods under free movement, as well as for their 'certification of origin', clear indication of prices, mandatory nominal quantities or pack size for most of pre-packed goods, readable weight and volume indications on product labelling, respect of national rules for typical products.

Parliament strongly supported, in this respect, a strategy at European level for a comprehensive and high-quality impact assessment policy on the European legislation.

→ Azelio FULMINI
09/2006

3.2.2. Free movement of workers

Legal basis

In general

Articles 3 paragraph 1(c), 14 and 39 to 42 of the EC Treaty (ECT).

In particular

Regulation (EEC) No 1612/68 of 15 October 1968 (amended by Regulations (EEC) No 312/76 and (EEC) No 2434/92) and Directive 2004/38/EC.

Objectives

- Increasing workers from the Community's chances of finding work and adding to their professional experience.
- Encouraging the mobility of workers, as a way of stimulating the human resource response to the requirements of the employment market.
- Fostering contacts between workers throughout the Member States as a way of promoting mutual

understanding, creating a Community social fabric and hence 'an ever closer union' among the peoples of Europe, the main aim of the Treaties.

Achievements

A. Current general arrangements on freedom of movement

Any national of a Member State is entitled to take up and engage in gainful employment on the territory of another Member State in conformity with the relevant regulations applicable to national workers.

This right is recognised to apply equally to workers on permanent contracts, seasonal and cross-border workers and those who are providing services.

Workers are entitled to the same priority as the nationals of that Member State as regards access to available employment, and to the same assistance as that afforded by the State's employment offices to their own nationals

seeking employment. Recruitment may not be dependent on medical, occupational or other criteria which discriminate on the grounds of nationality.

1. Workers' rights of movement and residence

(a) Movement

For stays of less than three months, the only requirement on Union citizens is that they possess a valid identity document or passport. The host Member State may require the persons concerned to register their presence in the country within a reasonable and non-discriminatory period of time.

(b) Residence

The right of residence for more than six months remains subject to certain conditions. Applicants must:

- either be engaged in economic activity (on an employed or self-employed basis);
- or have sufficient resources and sickness insurance to ensure that they do not become a burden on the social services of the host Member State during their stay. The Member States may not specify a minimum amount which they deem sufficient, but they must take account of personal circumstances;
- or be following vocational training as a student;
- or be a family member of a Union citizen who falls into one of the above categories.

Union citizens acquire the right of permanent residence in the host Member State after a five-year period of uninterrupted legal residence, provided that an expulsion decision has not been enforced against them.

This right of permanent residence is no longer subject to any conditions. The same rule applies to family members who are not nationals of a Member State and who have lived with a Union citizen for five years. The right of permanent residence is lost only in the event of more than two successive years' absence from the host Member State.

The directive recognises the right of permanent residence for Union citizens who are workers or self-employed persons and for family members before the five-year period of continuous residence (arising from Regulation (EEC) No 1251/70) has expired, subject to certain conditions being met.

Permanent residence permits are valid indefinitely and are renewable automatically every 10 years. They must be issued no more than three months after the application is made. Citizens can use any form of evidence generally accepted in the host Member State to prove that they have been continuously resident.

2. Rights of entry and residence for family members

The new Directive 2004/38/EC has amended the regulation with regard to family reunification.

Firstly it extends the definition of 'family member', which was formerly limited to spouse, descendants aged under 21 or dependent children, and dependent ascendants, to include registered partners if the host Member State's legislation considers a registered partnership as the equivalent of a marriage.

For periods of less than three months, members of a family from a Member State may thus exercise their own fundamental rights and stay freely on the territory of another Member State. For periods of longer than three months their rate of residence is dependent on the fact that they are members of the family of a worker who is an EU citizen. They no longer need a residence permit but they must register with the authorities concerned.

Family members from a non-EU country have the same rights as the EU citizen whom they are accompanying but may be required to obtain a short-stay visa or the equivalent. For periods over three months, they must apply for a residence permit for family members of Union citizens. These are valid for at least five years and in principle may not be withdrawn.

All members of a family, no matter what their origin, have the same right of permanent residence after an uninterrupted period of five years. This right is lost in the event of absence from the host country for a period of more than two years. They are also entitled to social security and to engage in economic activity on an employed or self-employed basis.

Directive 2004/38/EC introduces EU citizenship as the basic status for nationals of the Member States when they exercise their right to move and reside freely on EU territory. Previously there were various Community instruments that dealt separately with employed and self-employed persons, students and other unemployed persons. The rights of members of workers' families are thus incorporated into the new system.

3. Work

(a) Taking up employment and treatment at work

Workers who are nationals of a Member State may not, in the territory of another Member State, be treated differently from national workers as regards working and employment conditions (dismissal and remuneration in particular) because of their nationality. They also have the same entitlement to occupational training and retraining measures.

They have the same social and tax benefits as national workers.

Nationals of one Member State working in another are entitled to equal treatment in respect of the exercise of trade union rights, including the right to vote and to be eligible for the administration or management posts of a trade union. They may be excluded from the management of bodies under public law and from the exercise of an office under public law. They have the right of eligibility for workers' representative bodies within the undertaking.

(b) Right to remain in the host country after stopping work

Laid down in the ECT, this right was spelled out in Regulation (EEC) No 1251/70, which allows workers to remain permanently in the State where they last worked, provided they have worked and lived there for three years or have reached the age of retirement or suffer from permanent disability. The same goes for those members of their family who live with them.

B. Restrictions on freedom of movement

1. Restrictions on the freedom of movement of nationals of the new Member States

The EU-15 Member States may allow total or partial freedom of movement for workers from the new Member States. Thus, they may restrict this freedom during the transitional period, which starts on 1 May 2004 and is due to last for a maximum of seven years.

On 8 February 2006, as provided for in the accession treaties, the Commission published a report on the transitional provisions for the period from 1 May 2004 to 30 April 2006. This report provided a factual basis enabling the old Member States to decide whether they wanted to continue to make the free movement of workers subject to national restrictions during the period from 1 May 2006 to 30 April 2009.

The report concluded that national restrictions have little effect on controlling migration movements and depend more on factors associated with supply and demand conditions.

On 1 May 2006 four more Member States (Spain, Finland, Greece and Portugal) joined the three Member States (United Kingdom, Ireland and Sweden) that had already opened their labour markets. Italy followed suit on 21 July 2006. Austria and Germany are maintaining restrictions. Five other countries (Belgium, France, the Netherlands, Luxembourg and Denmark) have adopted a more flexible procedure covering either the labour market as a whole (Denmark) or certain sectors and professions where there are labour shortages (Belgium, France, the Netherlands and Luxembourg).

2. Restrictions on the right of entry and right of residence

The Treaty allows Member States to refuse a Community national the right of entry or residence on their territory on grounds of public policy, public security or public health.

Measures affecting freedom of movement and residence must be based on the personal conduct of the individual concerned. Previous criminal convictions do not automatically justify such measures.

Such conduct must represent a sufficiently serious and present threat which affects the fundamental interests of the State. The mere fact that the entry documents used by the individual concerned have expired does not constitute grounds for expulsion.

In any event, before taking an expulsion decision, the Member State must assess a number of factors such as the period for which the individual concerned has been resident, his or her age, degree of integration and family situation in the host Member State and links with the country of origin. Only in exceptional circumstances, for overriding considerations of public security, can expulsion orders be served on a Union citizen if he has resided in the host country for 10 years or if he is a minor.

The person concerned by a decision refusing leave to enter or reside in a Member State must be notified of that decision. The grounds for the decision must be given and the person concerned must be informed of the appeal procedures available and time limits applicable. Except in emergencies, the subject of such decisions must be allowed at least one month in which to leave the Member State.

Lifelong exclusion orders cannot be issued under any circumstances. Persons concerned by exclusion orders can apply for the situation to be reviewed after a maximum of three years. The directive also makes provision for a series of procedural guarantees.

3. Restrictions on taking up jobs in the public service

The ECT ruled out freedom of movement in the case of 'employment in the public service'.

In order not to leave the assessment of this concept to the discretion of Member States, where the legal situation of public service employees varies so much and the Member States could abuse this exemption, the Court of Justice was obliged to define it. It rejected the description of the legal relationship between the worker and the public service (manual worker, non-manual worker or official; public law or private law relationship, see Case 66/85, 3 July 1986) as a criterion and adopted a functional view: jobs in the public service were those 'which involve direct or indirect participation in the exercise of powers conferred by public law' as characterised by exercise of a power to constrain individuals or by association with higher interests, such as the internal or external security of the State.

In a statement on 5 January 1988, the Commission listed the activities that it considered formed part of the 'public

service': these were, firstly, the specific functions of the State and allied bodies, such as the armed forces, the police and the other forces of order, the judiciary, the tax authorities and the diplomatic service and, secondly, employment in government departments, regional authorities and other similar bodies, and central banks, where this involved staff (officials and other employees) who carried out activities organised on the basis of a public legal power of the State or of another legal person governed by public law.

C. Measures to encourage freedom of movement

1. Mutual recognition of training

Freedom of movement is often hampered by differences in training from one Member State to another.

This is true particularly in the case of regulated professions for which States have prescribed purely national certificates and diplomas for access, which they require the citizens of other States to possess, thus restricting considerably the practical significance of the freedom to take up employment without formally contravening the rule of non-discrimination on the basis of nationality. Not being able to harmonise the training concerned, the Community has followed the course of mutual recognition of certificates and diplomas:

- firstly for specific professions;
- then on the basis of general systems of equivalence.

Such mutual recognition was introduced primarily so that the professions covered could be practised on a self-employed basis but it also applies, of course, to employed persons.

The problem also exists in the non-regulated professions, where failure to possess national professional qualifications, which are often the only ones known to employers, may hamper chances of finding work. Here the Community has introduced comparability of vocational qualifications: on the basis of a Council decision of 16 July 1985, comparability has been ensured for skilled workers in 19 vocational sectors; the result was published in the form of tables in the Official Journal. (The work was carried out by a specialised body, Cedefop, and completed in 1993.)

From 2007, directives in force will be repealed by Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (→3.2.3).

2. Exchanges between young workers

To encourage freedom of movement, the ECT stipulated that Member States should encourage the exchange of young workers within the framework of a joint programme. This was first carried out through the PETRA programme,

which lasted from 1988 to 1994. After 1994 the PETRA machinery was integrated in the wider framework of the Leonardo da Vinci programme (→4.16).

3. The EURES network (European Employment Services)

The Commission is aiming to reinforce and consolidate EURES as a fundamental instrument by networking the employment services of the EEA countries. Occupational and geographical mobility has thus become a key element of the European Employment Strategy (EES) and of the Action Plan on Skills and Mobility (→4.8.3).

4. European Year of Workers' Mobility (2006)

(a) Context

Worker mobility, in both geographic and occupational terms, has been specifically pinpointed as one of the instruments for helping to implement the revised Lisbon objectives. Freedom of movement for workers is a right and, as such, is one of the founding principles recognised by the Treaty.

The role of mobility has also been stressed in the employment guidelines (2005–08) as a factor contributing to the strengthening of the infrastructure of labour markets in Europe and as an instrument for more effectively anticipating the effects of economic restructuring.

The current figures show that very few Europeans work abroad. The percentage of Europeans residing in an EU country other than their country of origin has remained stable at around 1.5 % over the last 30 years. As for job mobility, in nine countries of the European Union 40 % of workers have been in the same job for more than 10 years.

The European Union has of course made major efforts to create an environment conducive to worker mobility:

- an action plan on skills and mobility was launched in 2002 and expired at the end of 2005;
- a European health insurance card, launched in 13 Member States in June 2004, was expected to be distributed in the other Member States and the EFTA countries at the start of 2006;
- the coordination of social security schemes was speeded up following the adoption of Regulation (EC) No 883/04;
- a proposal for a directive on the portability of pension rights in the case of mobility for occupational reasons was adopted in October 2005.

The European Year of Workers' Mobility (the European Year) will make it possible to identify new policy orientations to encourage mobility and remove barriers.

(b) Objectives

The objectives of the European Year are threefold:

- to make all involved aware of the rights of workers to free movement, to the opportunities which exist and to the instruments which have been introduced to promote freedom of mobility (EURES, in particular);
- to promote the exchange of good practices on mobility;
- to expand the knowledge base (studies and surveys) on mobility flows in Europe, the obstacles to workers' mobility and the motives that lead workers to undertake a period of mobility in another Member State.

Role of the European Parliament

The European Parliament (EP), which considers all employment-related topics to be among the European

Union's main priorities, has always stressed that the European Union and its Member States should coordinate their efforts and promote the free movement of workers. The free movement of workers is one of the objectives of the completed internal market. The EP has always played a dynamic role in the establishment and improvement of the internal market and it has always energetically supported the Commission's efforts in this area.

Recently the EP commenced an own-initiative report on the application of Directive 96/7/EC on the posting of workers (2006/2038(INI)).

→ Huberta HEINZEL
09/2006

3.2.3. Freedom of establishment, freedom to provide services and mutual recognition of qualifications

Legal basis

Articles 3 paragraph 1(c), 14 and 43–55 of the EC Treaty (ECT).

Objectives

The ECT lays down the principle that the self-employed (whether working in commercial, industrial or craft occupations or the liberal professions) the economic operators, established in the territory of a Member State, may exercise an economic activity in all Member States in two ways. Self-employed persons and professionals or legal persons, within the meaning of Article 48 ECT, who are legally acting in one Member State, may carry on an economic activity in a stable and continuous way in another Member State (freedom of establishment: Article 43) or offer and provide their services in other Member States on a temporary basis while remaining in their country of origin (freedom to provide services: Article 49). This implies eliminating discrimination on the grounds of nationality and, if these freedoms are to be used effectively, the adoption of measures to make it easier to exercise them, especially harmonisation of national access rules or their mutual recognition.

Achievements

A. Liberalisation in the Treaty

1. Two 'fundamental freedoms'

The right of establishment includes the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, for a permanent activity of a stable and continuous nature, under the same conditions laid down by the law of the Member State of establishment for its own nationals.

Restrictions on freedom to provide services within the Community shall be prohibited in respect of nationals of the Member State who are established in a State of the Community other than that of the person for whom services are intended. Items that shall be considered as 'services' are all those services normally provided for remuneration, insofar as they are not governed by the provisions relating to freedom of movement for goods, capital and persons. As long as restrictions on freedom to provide services have not been abolished, each Member State shall apply such restrictions without distinctions on grounds of nationality or residence to all persons providing 'services'. The person providing a 'service' may, in order to do so, temporarily pursue her/his activity in the

State where the service is provided, under the same conditions as are imposed by that State on its own nationals.

Activities such as transport, insurance, banking, are also affected by this freedom but are dealt with in separate fact sheets (→4.5, 3.4.3 and 5.3).

These provisions have direct effect from the end of the transition period, i.e. from 1 January 1970 (*Reyners* judgment of 21 June 1974 (2/74) on freedom of establishment and the *Van Binsbergen* judgment of 3 December 1974 (33/74) on freedom to provide services). The direct effect of the two articles of the ECT means that Community nationals are entitled to be treated as nationals and that they can require competent national jurisdictions to apply Articles 43 and 49 ECT. Any discrimination on the grounds of nationality is prohibited. This means that Member States must modify national rules that restrict these two freedoms, including also the national rules which are indistinctly applicable to domestic and foreign operators if they hinder or render their exercise less attractive, with delays and additional costs.

Articles 43 and 49 ECT cannot be interpreted as conferring on companies a right to transfer their central management and control of their central administration to another Member State while retaining their status as companies incorporated under the legislation of the Member State of origin.

The European Commission and the European Court of Justice are responsible for ensuring the implementation of and respect for EC rules. The Commission has the power to open infringement procedures against those Member States who do not comply with their obligations, under Article 226 ECT (→3.4.2. and 3.4.3).

2. The exceptions

The Treaty excludes activities connected with the exercise of official authority from freedom of establishment and provision of services (Article 45(1) of the ECT). This exclusion is limited by a restrictive interpretation: exclusions can cover only those specific activities and functions which imply the exercise of the authority; a whole profession can be excluded only if the entire activity is dedicated to the exercise of official authority, or the part that is dedicated to the exercise of the public authority is inseparable from the rest.

Exceptions enable Member States to exclude the production of or trade in war material (Article 296(1)(b) of the ECT) and retain rules for non-nationals in respect of public policy, public security or public health (Articles 46(1) and 55 of the ECT).

B. Implementation of Articles 43 and 49 of the EC Treaty

Two general programmes adopted on 18 December 1961 made provision for directives to abolish restrictions to freedom of establishment and provision of services for various activities. Although the Council adopted a good number of directives, the work was far from being completed in 1974 when the Court decided that, despite omissions or lack of secondary EC Law (mainly directives and regulations), under the terms of the Treaty, the two freedoms had a direct effect from the end of the transition period, i.e. from 1 January 1970. These rulings were the *Reyners* judgment of 21 June 1974 (2/74) on freedom of establishment and the *Van Binsbergen* judgment of 3 December 1974 (33/74) on freedom to provide services.

The direct effect of the two freedoms means that Community nationals are entitled to be treated as nationals. A Member State must allow nationals of other Member States to establish themselves or provide services on its territory under the same conditions as its own nationals. Any discrimination on the grounds of nationality is thus prohibited. Nevertheless, national rules concerning the conditions of access to and the exercise of the activities still leaves barriers for non-nationals, eventually obliged to engage in further studies to obtain the national qualifications required or to cover extra costs and burdens. Community measures aimed to facilitate the exercise of the two freedoms remained, then, still worthwhile and they mainly aim to secure mutual recognition of the national rules and, possibly, harmonise them. In some cases they abolish other collateral restrictions on movement, as Council Directives 73/148/EC (repealed by Directive 2004/38/EC) and 93/96/EEC on the right of residence, or Directive 96/71/EC on posting of workers in the framework of the provision of services. Under Directive 2004/38/EC Member States will grant the right of permanent residence to nationals of other Member States who establish themselves within its territory in order to pursue activities as self-employed persons, when the restrictions on these activities have been abolished. A 'residence permit for a national of a Member State of the EC' is issued and may not be withdrawn solely on the grounds that she/he is no longer in employment. The right of residence for persons providing and receiving services is of equal duration to the period during which the services are provided.

An important step toward the effectiveness of the exercise of these two fundamental freedoms is Council Regulation (EC) No 2157/2001 on the Statute for a European Company, completed by Council Directive 2001/86/EC.

C. Harmonisation and mutual recognition of qualifications and diplomas

Paragraph 1 of Article 47 of the ECT provides that the mutual recognition of the diplomas and other qualifications, required in each Member State for access to the regulated professions, can be used to facilitate freedom of establishment and provision of services (Council Decision 85/368/EEC and Council Resolution of 28 October 1999). Paragraph 2 addresses the need to coordinate national rules on the taking-up and pursuit of a profession, involving a minimum of harmonisation of the rules, especially on the training for the qualifications required. Paragraph 3 subordinates the mutual recognition, in cases where such harmonisation is a difficult process, to the coordination of the conditions for their exercise in the various Member States.

The harmonisation process evolved through a number of directives from the mid-1970s. On these bases, legislation on mutual recognition is adjusted to the needs of different situations. It varies in completeness according to the profession concerned and has recently been adopted under a more general approach.

1. The sector-specific approach (by profession)

(a) Mutual recognition after harmonisation

Harmonisation went faster in the health sector, for the obvious reason that professional requirements, and especially training courses, did not vary much from one country to another (unlike other professions), meaning that it was not difficult to harmonise them. This harmonisation developed through a number of directives from the mid-1970s until the mid-1980s which regulated, with regard to establishment and freedom of services, many professions (doctors: Directives 75/362/EEC and 75/363/EEC of 16 June 1978 — codified by Directive 93/16/EEC of 5 April 1993 and modified by Directive 97/50/EEC of 6 October 1997; dentists: Directives 78/686/EEC and 78/687/EEC of 24 August 1978; nurses: Directives 77/452/EEC and 77/453/EEC of 27 June 1977; veterinary surgeons: Directives 78/1026/EEC and 78/1027/EEC of 23 December 1978; midwives: Directives 80/154/EEC and 80/155/EEC of 21 January 1980 — these directives have been supplemented and amended by Council Directives 81/1057/EEC and 89/594/EEC; pharmacists: Directives 85/432/EEC and 85/433/EEC; self-employed commercial agents: Directive 86/653/EEC of 18 December 1986).

The Lisbon European Council of 23 and 24 March 2000 launched economic reforms to make the EU the most dynamic and competitive knowledge-based economy in the world by 2010. This led the Commission to adopt a communication on 'An Internal Market Strategy for Services' in December 2000 and, on 7 March 2002, to

propose a directive on the recognition of professional qualifications. The proposed directive aimed to clarify, simplify and modernise existing directives and combine them all into one directive. This led to Directive 2005/36/EC of 7 September 2005, to be transposed by 20 October 2007 at the latest, combining the regulated professions of doctors, dentists, nurses, veterinary surgeons, midwives, pharmacists as well as architects in one legislative text.

The directive specifies, among many other things, how the 'host' Member States should recognise professional qualifications obtained in another ('home') Member State. The recognition of professionals includes both a general system for recognition as well as specific systems for each of the above-mentioned professions. The recognition focuses amongst many other things on the level of qualification, training (general and specialised respectively) and professional experience.

The directive also applies to professional qualifications within the transport sector, insurance and intermediaries and statutory auditors. These professions were regulated under other directives.

(b) Mutual recognition without harmonisation

When, for other professions, the differences between national rules have prevented harmonisation, mutual recognition has made less progress. The diversity of legal systems has prevented the full mutual recognition of diplomas and qualifications that would have secured immediate freedom of establishment on the basis of the country of origin's diploma. Council Directive 77/249/EEC of 22 March 1977 permitted the freedom to provide occasional services for lawyers; free establishment otherwise required the host country's diploma. Directive 98/5/EC of 16 February 1998 was a significant step forward stating that lawyers holding a diploma from any Member State, may establish themselves in another Member State to pursue their profession, with the proviso that the host country can require them to be assisted by a local lawyer when representing and defending their clients in court. After three years' work on this basis lawyers acquire the right (if they so wish) to full exercise of their profession under the host country's diploma without having to take a qualifying examination.

Other directives applied the principle to other professions such as: road haulage operators (Directives 74/561/EEC and 74/562/EEC of 12 November 1974 and 77/796/EEC of 12 December 1977); insurance agents and brokers (Directive 77/92/EEC of 13 December 1976); hairdressers (Directive 82/489/EEC of 19 July 1982); architects (Directive 85/384/EEC of 10 June 1985).

2. The general approach

Drafting of legislation for mutual recognition, sector by sector, sometimes with more extensive harmonisation of national rules, was always a long and tedious procedure. For that reason a general system of recognition of the equivalence of diplomas, valid for all regulated professions that have not been the subject of specific Community legislation, was originated. The new general approach changed the perspective (see the recent Council resolution of 10 November 2003). Before it the 'recognition' was subordinated to the existence of EC rules concerning the 'harmonisation' in the specific regulated profession or activity. After it the 'mutual recognition' is almost automatic, under the established rules, for all regulated professions concerned without any need for sectorial specific secondary legislation.

From that moment 'harmonisation' and 'mutual recognition' methods continued under a parallel system, with eventual situations where they have been used under a complementary system using at the same time a regulation and a directive (see Council resolutions of 3 December 1992 and 15 July 1996 on transparency of qualifications and vocational training certificates).

The new system was set up in three stages:

- 1990, recognition of higher education diplomas awarded on completion of professional education and training of at least three years' duration (Directive 89/48/EEC of 21 December 1988);
- 1992, expansion of the system to diplomas, certificates and qualifications that are not part of long-term higher education, with two levels:
 - shorter post-secondary or professional courses,
 - secondary courses (Directive 92/51/EEC of 18 June 1992);
- In 1999 a system was introduced for the mutual recognition of qualifications for access to certain

commercial, industrial or craft occupations not yet covered by the previous directives (textiles, clothing, leather, wood, etc.) (Directive 99/42/EC of 7 June 1999).

In all three cases, the host Member State may not refuse access to the occupation in question if applicants have the qualifications required in their country of origin. However, it may demand, if the training they received was of a shorter duration than in the host country, a certain length of professional experience or may require, if the training differs substantially, an adaptation period or aptitude test, at the discretion of the applicant, unless the occupation requires knowledge of the national law.

Role of the European Parliament

Here again, the European Parliament (Parliament) has been instrumental in liberalising the activities of the self-employed. It has ensured strict delimitation of activities that may be reserved for nationals (e.g. those relating to the exercise of public authority). It is also worth mentioning the case Parliament brought before the Court of Justice against the Council for failure to act with regard to transport policy. That case, brought in January 1983, led to a Court judgment (13/83 of 22 May 1985) condemning the Council for failing to ensure free provision of international transport services and to lay down conditions under which non-resident carriers may operate transport services within a Member State. This was in breach of the Treaty. The Council was thus obliged to adopt the necessary legislation ([→4.5.1](#)).

The role of Parliament has grown with the application of the co-decision procedure (as provided for in the Maastricht Treaty) to most aspects of freedom of establishment and provision of services.

→ Azelio **FULMINI**
09/2006

3.2.4. Free movement of capital

Legal basis

Articles 56 to 60 of the EC Treaty (ECT).

Objectives

Removing all restrictions on capital movements between Member States, then between Member States and third countries (in the latter case with the option of safeguard measures in exceptional circumstances).

Liberalisation should help to establish the single market by encouraging other freedoms (the movement of persons, goods and services).

It should also encourage economic progress by enabling capital to be invested efficiently.

Achievements

A. First endeavours (before the single market)

1. The first Community measures

These were limited in scope.

- A 1960 directive, amended in 1962, unconditionally liberalised:
 - direct investment.
- short- or medium-term lending for commercial transactions.
- purchases of securities dealt in on the stock exchange.

2. Unilateral national measures

Some Member States decided not to wait for Community decisions and abolished virtually all restrictions on capital movements:

- the Federal Republic of Germany did so in 1961;
- the United Kingdom did so in 1979;
- the Benelux countries did so, between themselves, in 1980.

B. Further liberalisation and its completion under the single market

1. Further progress

It was not until the single market was launched, almost 20 years later, that the progress begun in 1960–62 was resumed. Two directives, in 1985 and 1986, extended unconditional liberalisation to:

- long-term lending for commercial transactions;
- purchases of securities not dealt in on the stock exchange.

2. General liberalisation

Liberalisation was completed by Directive 88/361/EEC of 24 June 1988, which scrapped all remaining restrictions on capital movements between residents of the Member States on 1 July 1990. As a result, liberalisation was extended to monetary or quasi-monetary transactions, which were likely to have the greatest impact on national monetary policies, such as loans, foreign currency deposits or security transactions.

The directive did include a safeguard clause enabling Member States to take protective measures when short-term capital movements of exceptional size seriously disrupted the conduct of monetary policy. But such measures only applied to restrictively identified transactions and could not last for more than six months.

It also allowed some countries to maintain permanent restrictions, mainly on short-term movements, but only for a specific period: Ireland, Portugal and Spain until 31 December 1992, and Greece until 30 June 1994.

C. The definitive system

1. Principle

The Treaty on European Union introduced provisions in the Treaty of Rome establishing the new system. The main principle (Article 56) prohibits all restrictions on the movement of capital and payments.

Exceptions are largely confined to movements with third countries and these are subject to a Community decision. Apart from the option to maintain the national or Community measures in force on 31 December 1993 concerning direct investment and certain other transactions, the Council may take:

- new measures concerning these transactions;
- safeguard measures for no more than six months in the event of serious difficulties for the operation of economic and monetary union;
- urgent measures following a decision under the common foreign and security policy to reduce economic relations with a country;
- action in support of national measures against a country for serious political reasons or in an emergency.

The only restrictions on capital movements in general, including movements within the Union, which Member States may decide to apply, are:

- measures to prevent infringements of national law, particularly in the field of taxation and the prudential supervision of financial services;
- procedures for the declaration of capital movements for administrative or statistical purposes;
- measures justified on grounds of public policy or public security.

Article 226 ECT provides that 'if the Commission considers that a Member State has failed to fulfil an obligation under this Treaty; it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations. If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice'. Enforcement of Court decisions is governed by Article 228 ECT.

2. Recent infringement cases concern special rights of public authorities in private companies/sectors

(a) *Infringement proceedings against Spain regarding the law amending functions of the Spanish electricity and gas regulator*

The law in question includes provisions that require an authorisation from the regulator concerning acquisitions of over 10 % of share capital or any other percentage giving significant influence, in a company that engages directly or indirectly in regulated activity. The law includes the reasons on which basis the regulator may grant or refuse such acquisitions; however the Commission thinks these reasons are vague and so give the regulator wide discretionary powers and therefore may unduly restrict the freedom of capital movement (Article 56)

(b) *Hungarian privatisation laws*

The European Commission has decided to formally ask Hungary to amend its privatisation framework law of 1995 which it considers incompatible with European law. During EU accession negotiations Hungary had agreed to amend its privatisation law by the date of its accession and a bill had been presented to the Hungarian parliament in Spring 2004; however, since then nothing further has happened. The State can, through a golden share, veto certain strategic management decisions and could dissuade companies from other Member States from investing in the companies concerned.

(c) *Infringement proceedings against Sweden and Greece*

The European Commission has taken action against Sweden and Greece to ensure that they implement internal market laws correctly. The Commission will formally request Sweden to modify an aspect of its taxation legislation requiring foreign financial institutions that are not formally established in Sweden to provide the Swedish tax

authorities with annual information on any business they do with Swedish residents. The Commission considers that this requirement tends to dissuade foreign financial institutions from providing cross-border services in Sweden and is therefore incompatible with ECT rules on free movement of services and free movement of capital. The Commission will also formally request Greece to modify its legislation on company law rendering valid decisions on capital increases in public limited liability companies taken by the Greek government. The Commission considers this to be incompatible with EU company law, which requires these decisions to be taken at a general meeting.

D. Consequences of economic and monetary union

1. Abolition of the safeguard clause

Since 1 January 1999 and the beginning of the third phase of economic and monetary union, the articles relating to the safeguard clauses to remedy crises in the balance of payments (Articles 119 and 120 ECT) are no longer applicable to those Member States having adopted the single currency. On the other hand, they remain applicable to the Member States which do not belong to the euro area.

2. Payments

(a) *Harmonisation of the cost of domestic and cross-border payments*

Regulation (EC) No 2560/2001 of 19 December 2001 harmonised the costs of domestic and cross-border payments within the euro area.

(b) *New legal framework for payments*

The Commission proposed, in December 2005, a directive that will bring down existing legal barriers to enable the creation of a single payments area in the EU by 2010. The aim is to make cross-border payments as easy, secure and cheap as national payments. The proposed directive has been extensively reviewed in the Committee on Economic and Monetary Affairs and is due for first reading in October 2006 in the European Parliament; main points of discussion concerned the scope of the directive, its efficiency and application to payment service providers.

Role of the European Parliament

The European Parliament has strongly supported the Commission's efforts to encourage the liberalisation of capital movements. However, it has always taken the view that such liberalisation should be more advanced within the Union than between the Union and the rest of the world, to ensure that European savings treat European investment as a priority. It has also pointed out that capital liberalisation should be backed up by full liberalisation of financial services and the harmonisation of tax law in order

to create a unified European financial market. It was thanks to its political pressure that the Commission launched the legislation on harmonisation of domestic and cross-border payments (resolution of 17 June 1988).

The European Parliament in its last non-legislative resolution of 7 July 2005 (T6-0301/2005) supports the goal of an efficient, integrated and safe market for clearing and settlement of securities in the EU. It believes that the creation of efficient EU clearing and settlement systems will be a complex process, and notes that true European integration and harmonisation will require the combined efforts of different stakeholders and that the current public

policy debate should focus on: (a) bringing down the cost of cross-border clearing and settlement; (b) ensuring that systemic or any other remaining risks in cross-border clearing and settlement are properly managed and regulated; (c) encouraging the integration of clearing and settlement by removing distortions of competition; and (d) ensuring proper transparency and governance arrangements.

→ Josina **KAMERLING**
09/2006

3.3. Rules of competition

3.3.1. General competition policy and concerted practices

Legal basis

Chapters 5 and 6 of Title I of the EAEC Treaty for the nuclear power industry.

Articles 3 point (g) and 81 to 85 EC Treaty (ECT) for all other industries.

Objectives

The Community's competition rules are not an end in themselves; they are primarily a condition for achieving a free and vibrant internal market, acting as one instrument among many in the promotion of economic welfare. The Treaty does make competition a principal goal, albeit it does not elaborate on the concept as such. As stated in Article 3 point (g) of the ECT, the aim is 'a system ensuring that competition in the internal market is not distorted'. In the three areas of application of the rules (concerted practices, abuse of dominant position and State aid), prohibition is limited to practices that have an impact on trade between Member States and excludes those that solely affect trade within a State (Article 81 ECT). However, Article 81 of the ECT also allows anti-competitive practices in exceptional cases where they benefit the economy. Essentially, this can be allowed if the pro-competitive

effects of these practices outweigh their anti-competitive effects (Article 81(3) ECT).

Competition law in the European Union has recently been in transition toward policy based on market-centred economic considerations, rather than pure administrative 'legal form'. After 40 years of European competition rules, the Community implemented a 'modernised' enforcement procedure in 2004 (Council Regulation (EC) No 1/2003).

Achievements

A. Provisions in the EC Treaty (Articles 81 and 85 ECT)

1. Prohibition in principle (Article 81(1) and (2) ECT)

All agreements between undertakings (including associations and concerted practices) which may affect trade between Member States are prohibited and automatically void. Examples include:

- price fixing;
- limiting or controlling production, markets, technical development or investment;
- sharing markets or sources of supply;
- applying dissimilar conditions to equivalent transactions;

- making the conclusion of contracts subject to supplementary obligations that have no connection with the subject of the contracts.

2. Possibilities of exemption (Article 81(3) ECT)

Agreements that help to improve the production or distribution of goods or to promote technical or economic progress may be exempted, provided that:

- consumers are allowed a fair share of the resulting benefit and
- the agreement does not impose unnecessary restrictions, or aim to eliminate competition for a substantial part of the products concerned.

3. The role of the Commission (Article 85 ECT)

The Commission is responsible for application of the rules. It investigates cases on application by a Member State or on its own initiative. If it finds infringements, it proposes measures to bring them to an end. Pending the entry into force of rules for application (in the form of Council regulations and directives, as laid down in Article 83 ECT), the Member States have their own concurrent powers pursuant to Article 84 ECT.

B. Implementing rules

These were the subject of Council Regulation No 17 of 6 February 1962, on the basis of Article 83 of the ECT, which enhanced and clarified the Commission's role in investigating and settling competition cases by individual or joint decisions. Special regulations have been adopted for transport (→4.5.6. and 4.5.8.). Regulation No 17 has been replaced by Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the ECT.

1. Individual decisions

The Commission can take the following decisions on concerted practices.

(a) Infringements

Any infringement of the rules in Article 81(1) ECT means that the agreement or practice automatically becomes void and has to be ended immediately. The Commission may impose fines on undertakings of up to 10 % of their turnover. It may also impose periodic penalty payments not exceeding 5 % of the average daily turnover in the preceding business year per day and calculated from the date appointed by the decision until the infringement has ended.

National bodies (specialised authorities and courts) may also impose penalties for infringements, as the provisions of the first two paragraphs of Article 81 ECT have direct effect. The national courts, but not the Commission, may grant damages to companies that have been affected. But

the national courts must withdraw from a case once the Commission begins proceedings. Since 1 May 2004, all national competition authorities are also empowered to apply fully the provisions of the Treaty in order to ensure that competition is not distorted or restricted. National courts may also apply these prohibitions directly so as to protect the individual rights conferred to citizens by the Treaty.

(b) Exemptions

Although a company's dealings infringe the prohibition in Article 81(1) ECT, the company can escape penalty under paragraph 3 of the same article. Exemptions are issued exclusively by the Commission at the company's request. They are granted for a fixed period and may be subject to modification of certain aspects of the agreements or practices concerned.

In these individual cases the Commission can act on its own initiative on the basis of information available, e.g. following its own inquiries. It can also do this on the company's initiative (requests for negative clearance or exemptions) or following a complaint by any party with an interest in taking action against an agreement (other companies, public authorities or individuals). During an investigation, the Commission can ask the company for information and carry out checks on the spot. It can carry out investigations in a sector as well as in individual cases.

2. Block decisions

These are designed to simplify the Commission's administrative task so it does not have to deal individually with too many concerted practice cases and to make it easier for companies to fulfil their obligations by giving certain types of action a general prior exemption on the basis of Article 81(3) ECT. The Commission was granted this facility under several Council regulations (in particular No 19/65/EEC of 2 March 1965, No 2871/71 of 20 December 1971 and (EC) No 1215/1999 of 10 June 1999), each relating to certain categories of agreement. The Commission uses block exemption to this end.

C. Practice

On the basis of the ECT and the implementing rules, over some 40 years the Commission has developed a substantial policy on concerted practices.

1. Wide use of block exemptions

(a) Horizontal or cooperation agreements

Among the horizontal or cooperation agreements (between companies in competition), the main beneficiaries have been:

- specialisation agreements (Regulation (EC) No 2658/2000);

— research and development agreements (Regulation (EC) No 2659/2000).

The Commission evaluated (January 2002) the functioning of Regulation (EC) No 240/96 concerning application of competition rules to technology transfer agreements. As a result the Commission Regulation (EC) No 772/2004 of 27 April 2004 on the application of Article 81(3) of the ECT to categories of technology transfer agreements was adopted.

(b) Distribution or vertical agreements

Distribution or vertical agreements (concluded between undertakings at different levels of the same production chain) were subject to separate exemption rules for each type of agreement and each sector but are now covered by a single system granting a general exemption for agreements, as long as the companies in question do not dominate the market; this condition has resulted in the setting of ceilings (a turnover of not more than EUR 50 million for the parties to the agreement and not more than 30 % of the market share for the distributor), and certain serious restrictive practices are in any case excluded (Regulation (EC) No 2790/1999 of 22 December 1999).

A notable block exemption concerns motor vehicles. Commission Regulation (EC) No 1400/2002 of 31 July 2002, replacing Regulation (EC) No 1475/95, removes important regulatory constraints in distribution. It is valid for eight years and will allow, inter alia, competing brands in the same showroom, increased access to original parts and competition among retail outlets.

2. Agreements of minor importance

The Commission on the other hand has concluded that although certain agreements do not fulfil the conditions of Article 81(3) ECT and thus are not entitled to an exemption, they should not be regarded as infringing the prohibition. These are agreements of minor importance (the 'de minimis' principle), considered inherently incapable of affecting competition at Community market level but useful for cooperation between small and medium-sized enterprises. As a result the undertakings do not have to notify them and obtain a ruling on compatibility with the Treaty. These agreements were for a long time defined by market share and annual turnover ceilings for all the undertakings concerned. At the end of 2001 the Commission further relaxed this definition; the turnover criterion has been removed and the market share ceiling rose to 10 % for horizontal agreements and 15 % for vertical agreements. The Article 81 ECT rules do not generally apply to:

- relations between an undertaking and its commercial agents or a company and its subsidiaries;
- cooperation agreements;
- subcontracts.

3. Agreements prohibited without exception

Despite this complex provision, designed to ease the restrictions on companies and not hinder practices favourable to the economy or without substantial market impact, certain types of agreement are still considered by the Commission as harmful to competition and thus prohibited without exception. They are usually presented in public black lists. They include:

- among the horizontal agreements:
 - price fixing;
 - joint sales offices;
 - production or delivery quotas;
 - sharing of markets or supply sources;
- among the vertical agreements:
 - fixing the resale price;
 - absolute territorial protection clause.

A particularly significant example was the *Volkswagen* case (1998), in which the Commission fined Volkswagen AG EUR 102 million for agreements aiming to prevent Volkswagen dealers in Italy from selling vehicles to buyers who were not resident in Italy. The fine was subsequently reduced by the Court to EUR 90 million.

D. Reform of the implementing rules

The Commission conducted a review of the system for applying the rules on competition (Regulation (EC) No 1/2003), which had been in existence since 1962 (Regulation No 17). This review highlighted the disadvantages of the obligation on undertakings to notify it of any agreements in order to obtain negative clearance or exemption; this is a heavy burden for the undertakings and means that the Commission has to examine a number of files which often do not raise problems with regard to the applicable rules but involve so much work that it has no time to reach well-founded decisions. It resorts to 'administrative letters' which close the case on the basis of a presumption of non-infringement of the rules but do not have legal effect. Moreover, the Commission is unable to devote sufficient time and effort to investigating the most serious infringements of which, it may be supposed, it will not receive notification.

On the basis of this analysis, the Commission proposed radical changes which after consultation with Parliament (resolution of 6 September 2002), were adopted on 16 December 2002 by the Council as Regulation (EC) No 1/2003, replacing Regulation No 17. The regulation came into force on 1 May 2004. The main differences brought in by the new regulation are:

- to decentralise the system:

- by replacing the principle of ‘prior authorisation’ of restrictive agreements with that of ‘legal exemption’, which would make agreements legal and therefore enforceable as soon as they are concluded if they are compatible with the Treaty (Article 81 ECT);
- by consequently giving direct effect to the provisions of Article 81(3) ECT, i.e. enabling the Member States’ courts and competition authorities to apply them;
- at the same time, ensuring that the rules are applied uniformly:
 - only those practices which may affect trade between Member States would be subject to Community law;
 - the Commission would retain the power of decision on important matters, such as block exemptions, individual decisions (rulings on infringement or inapplicability), formulating guidelines, taking over cases from national authorities, etc.;
 - the Commission’s ability to carry out on-site inspections would be increased;
- there is provision for systematic cooperation between national authorities and between them and the Commission.

Role of the European Parliament

The principal role of the European Parliament (Parliament) is scrutiny of the executive. Commissioners are called to account for controversial decisions at question time in plenary and the Commissioner responsible for competition appears several times a year before the Committee on Economic and Monetary Affairs to explain his policy and discuss individual decisions.

Parliament is involved in competition legislation only through the consultation procedure. Its influence is thus limited in favour of that of the Commission and Council. Annually, Parliament adopts a resolution on the Commission Annual Report on Competition Policy. At various occasions in this context, it has demanded competition legislation to be brought under the scope of the co-decision procedure (most recently April 2006).

→ Arttu MAKIPAA
09/2006

3.3.2. Abuse of a dominant position and investigation of mergers

Legal basis

Article 82 of the EC Treaty (abuse of a dominant position).

Articles 81, 82 and 235 of the EC Treaty (mergers).

Article 83 of the EC Treaty (adoption of regulations and directives).

Article 85 of the EC Treaty (Commission’s investigative powers).

Objectives

The aim is to prevent companies with a dominant position in their economic sector from abusing this position and from distorting competition in intra-Community trade. This aim requires preventive intervention to investigate company mergers, since these may create dominant positions.

Achievements

1. Abuse of a dominant position

A. Basic Treaty provision

Article 82 of the EC Treaty (ECT) does not prohibit dominant positions as such, merely the abuse of such a position in a specific market when it is likely to affect trade between Member States.

1. The concept of the dominant position

This was defined by the Court of Justice in the *United Brands* case (27/76 of February 1978): a dominant position is ‘a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained in the relevant market by giving it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of consumers’. The main indicator of dominance is a large

market share; other factors include the economic weakness of competitors, the absence of latent competition and control of resources and technology.

2. The market concerned

Under the ECT, dominant positions are assessed throughout the Community market, or at least a substantial part of it. How much of the market to take into account will depend on the nature of the product, substitute products and consumers' perceptions.

3. The concept of abuse

Article 82 of the ECT does not define dominance, but merely gives examples of 'abusive practice':

- imposing unfair prices or other unfair trading conditions;
- limiting production, markets or technical development to the prejudice of consumers;
- applying dissimilar conditions to equivalent transactions with other trading parties;
- imposing supplementary obligations which have no connection with the purpose of the contract.

In its judgment on the *Hoffmann-LaRoche* case (85/76 of 13 February 1979), the Court stated that abusive exploitation of a dominant position was 'an objective concept'. It was 'recourse to methods different from those which condition normal competition in products and services on the basis of the transactions of commercial operators', with the effect of further reducing competition in a market already weakened by the presence of the company concerned.

Abusive practices may take various forms. Those mentioned in the Treaty are only the main ones, and the Commission and Court have identified others:

- geographical price discrimination;
- loyalty rebates which discourage customers from using competing suppliers;
- low pricing with the object of eliminating a competitor;
- unjustified refusal to supply;
- refusal to grant licences.

4. Effect on intra-Community trade

Abuse of a dominant position must adversely affect trade between Member States, or be likely to do so. This means that behaviour which only affects a national market is excluded from consideration under the ECT's competition rules.

B. Implementing procedures

1. The system at present

The reform of the implementing procedures of rules on concerted practices (→3.3.1.) through Council Regulation

(EC) No 1/2003 of 16 December 2002, that replaced Regulation No 17 and came into force on 1 May 2004, also applies to the abuse of a dominant position. The aim of this reform is to:

- Enable more effective application of Community competition law with a decentralised system for implementation by both the Commission and the competition authorities and the courts of the Member States. The regulation introduced a system of legal exception, whereby agreements not contravening the competition rules are automatically considered lawful, replacing the current system based on the principle of prohibition. The Commission no longer issues 'negative clearances'.
- At the same time the regulation ensures that the rules are applied uniformly:
 - by subjecting to Community law only abuses which have an effect beyond the national level;
 - by the Commission retaining important decision-making powers to refer individual cases for rulings on infringements, cessation of infringements or inapplicability, and to take over a case from the national authorities;
 - by increasing the Commission's powers to carry out on-site inspections;
 - by making provision for systematic cooperation among the national authorities and between them and the Commission.

II. Merger investigation

A. The problem and initial legal vacuum

Company mergers, by concentration or acquisition, can obviously create or strengthen a dominant position which may give rise to abuse. This risk justifies the Community authority in exercising prior control on merger operations. But while the ECSC Treaty had granted the Commission exclusive power, under Article 66, to authorise or prohibit mergers between coal or steel companies, the EEC Treaty made no such provision. The increase in mergers as a result of completion of the common market led to a need for Community intervention. At first this took the form of interpreting the existing provisions, in which the Court led the way. In the *Continental Can* judgment of 1973, the Court ruled that there is abuse of a dominant position when a company already holding such a position strengthens it by acquiring a competitor. In 1987, in the *BAT-Philip Morris* case, it went so far as to acknowledge that in the absence of a dominant position, an acquisition of this kind could be penalised as forming an anti-competitive agreement under Article 81.

On the basis of this interpretation, the Commission set up an informal system for investigating mergers. But this only allowed for investigation after the event, and so as long ago as 1973, the Commission proposed a formal regulation. The Council did not adopt it until 1989, in the shape of Regulation (EEC) No 4064/89 of 21 December 1989, subsequently amended by Regulation (EC) No 1310/97 of 30 June 1997, which took effect on 1 March 1998.

B. The present regulations

The rules under Council Regulation (EEC) No 4064/89, as amended by Regulation (EC) No 1310/97 and Commission Regulation (EC) No 447/98 of 1 March 1998, allowed prior investigation and thus prevented mergers that would give rise to an abuse of a dominant position on the Community market. These rules have been replaced by Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC merger regulation). The new legislation states that a concentration which would significantly impede effective competition, in the common market or in a substantial part of it, in particular by the creation or strengthening of a dominant position, shall be declared incompatible with the common market.

1. Scope

Investigation applies to:

- Companies in all economic sectors:
 - when they are proposing a concentration, which means an operation to integrate previously separate companies;
 - by merger of two or more previously independent undertakings or parts of undertakings;
 - by acquisition by one or more persons already controlling at least one undertaking, or by one or more undertakings, whether by purchase of securities or assets, by contract or by any other means, of direct or indirect control of the whole or parts of one or more other undertakings;
 - or by creating a joint company having the nature of an autonomous economic entity; if the aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than EUR 250 million;
- Provided that such a concentration has a Community dimension, and so is likely to affect the European market.

A concentration has a Community dimension where:

- the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 5 000 million;

- the aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than EUR 250 million unless each of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State.

A concentration that does not meet the thresholds set out above has a Community dimension where:

- the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 2 500 million;
- in each of at least three Member States, the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million;
- in each of at least three Member States included for the purpose of point (b), the aggregate turnover of each of at least two of the undertakings concerned is more than EUR 25 million; and
- the aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than EUR 100 million, unless each of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State.

2. Procedure and powers

(a) Powers

Companies proposing mergers within the terms defined above must notify the Commission, which will consider whether the proposal creates or strengthens a dominant position on the relevant market. If it does so, the operation is prohibited. If not, the Commission confirms that it is compatible with the common market and authorises the merger, possibly on certain conditions. Furthermore, merging parties may request the referral of a case to the Commission or to a Member State (or Member States) prior to its notification at the national or Community level, an option not currently available; merging parties may request the referral of a case to the Commission if it is notifiable in at least three Member States; if all competent Member States agree, the Commission acquires exclusive jurisdiction for the case. Finally, the criteria to be fulfilled for referral have been simplified in comparison to the past.

(b) Procedure

The normal Phase 1 deadline now expires after 25 working days. This period is extended by 10 working days when commitments are offered or when a Member State requests the referral of the case. For Phase 2 cases (in-depth investigations), the basic deadline expires after a further 90 working days, extended automatically by 15 working days when commitments are offered towards the end of the investigation. In complex cases, the deadline may also be

extended by a maximum of 20 additional days, at the parties' request or with their approval.

C. Practice

Since the regulations entered into force in 1990, the Commission has examined over a thousand proposed mergers, and the numbers have risen from 131 notifications in 1996 to 249 in 2004. Most of these cases end in authorisation. Outright prohibitions are very rare, since in 1990 they represent less than 1 % of all notified transactions. The most notable cases include the Aérospatiale–Alenia merger with de Havilland, which was prohibited in 1991, and the Boeing merger with McDonnell Douglas, which was authorised subject to certain commitments by Boeing in 1997.

Role of the European Parliament

The European Parliament (Parliament) has generally favoured extending the Community's powers on abuse of a dominant position. In particular, it supported the Commission proposal for reducing the thresholds for launching a merger investigation. In July 2002 it adopted a report on the Commission's Green Paper of December 2001 on a review of Council Regulation (EEC) No 4064/89 (the Merger Regulation). That report accepted most of the Commission's proposals, especially with regard to the division of responsibility between the Commission and the Member States. Parliament has been consulted on the draft merger regulation, which came into force on 1 May 2004.

→ Charalampos **IPEKTSIDIS**
11/2005

3.3.3. State aid

Legal basis

Articles 87 to 89 of the EC Treaty (ECT).

Objectives

Competition can be restricted not only by businesses (→3.3.1. and 3.3.2.) but also by governments, if they grant public subsidies to businesses. For this reason, the Treaty of Rome in principle prohibits any form of State aid that is likely to distort intra-Community competition, on the grounds that it is incompatible with the common market. However, an absolute ban would be untenable: even under a strictly liberal system, it is hard to imagine any government willingly divesting itself entirely of the opportunity to provide funding for certain economic activities. To do so would be to fail in one of its basic responsibilities, namely to ensure that people's basic needs are supplied by correcting imbalances or helping out in emergencies. For this reason the ECT provides for a number of exceptions to the principle prohibiting aid.

Achievements

A. The legal framework provided by the EC Treaty: the ground rules (Article 87)

1. General prohibition, under Article 87(1)

An extremely wide-ranging ban covers:

- not only aid granted directly by the Member States but also aid that uses State resources, which includes any agencies that might distribute aid on the basis of government funding, such as local authorities, public establishments and various statutory organisations;
- resources 'in any form whatsoever', which means not only non-repayable subsidies but also loans on favourable terms and low-interest loans, and forms of subsidy in which the donated element is less apparent, such as duty and tax exemptions, loan guarantees, the supply of goods or services on preferential terms
 - distort or merely threaten to distort competition; and
 - are granted not only to undertakings but also to favour the production of certain goods (this includes support to a specific industry).

However, the aid must be such as to 'affect trade between Member States', which rules out any aid that only has internal consequences within a Member State.

2. Exemptions

Laid down by law, under Article 87(2). Exemptions apply automatically to:

- aid having a social character granted to individual consumers, provided it is granted without discrimination related to the origin of the products concerned;

- aid to make good the damage caused by exceptional events, such as natural disasters;
- aid for certain areas of the Federal Republic of Germany affected by the division of Germany.

Possible in some circumstances, under Article 87(3). Such exemptions 'may be considered' and hence are not automatic. They cover:

- aid to underdeveloped regions;
- aid to promote the execution of a major project of European interest or remedy a serious disturbance in the economy of a Member State;
- aid to facilitate the development of certain economic activities or areas, provided it does not adversely affect trading conditions to an extent contrary to the common interest;
- aid to promote culture and heritage conservation (with the same proviso);
- other categories as may be specified by the Council.

B. The administrative framework: procedure under Article 88 of the EC Treaty

To apply the ground rules that it lays down, and in particular the various possibilities for exemption, the Treaty sets up a complete system for Community-level processing of State aid. This gives the Commission the main responsibility, with the option of intervention by the Council and ultimate control by the Court of Justice. The basic principle of this administrative and legal procedure is to ensure that no aid is granted without the Commission's agreement.

1. Review of existing aid under Article 88(1)

This means aid that already existed before the common market was created, or aid already authorised by the Commission. The Commission carries out the review in conjunction with the Member State concerned and may suggest that it takes certain action. If it finds that the aid is not compatible with the common market, it initiates infringement proceedings, although this does not have the effect of suspending application of the aid schemes concerned.

2. Treatment of new aid under Article 88(3)

New aid must be notified in advance: Member States are required to inform the Commission of any plans to grant or alter aid, so that it can submit comments. It follows that the Member States do not have the right to put these plans into effect if they have not received Commission authorisation, and that aid granted through plans which have not been notified is illegal and must be repaid.

If the Commission considers that an aid plan is incompatible with the common market, it initiates

infringement proceedings. This suspends application of the measures proposed until there is a final decision.

3. Infringement proceedings under Article 88(2)

The Commission formally serves notice on the Member State charged with the offence, requiring it to comment within a given period (normally one month).

If the comments fail to satisfy the Commission, the latter may decide that the State must alter or abolish the aid within a given period (normally two months).

If the Member State fails to comply with the Commission decision by the deadline, the Commission, or any other State involved, may refer the matter to the Court of Justice.

The State concerned may itself apply to the court within the specified period.

At the same time, the Member State concerned may apply to the Council for a decision on whether the aid is compatible with the common market. Such an application results in suspension of any infringement proceedings under way, but if the Council has not made its attitude known within three months, the Commission has to give a decision.

C. Implementation

1. General view

The ECT gives the Commission, if not discretionary powers, at least very wide scope for exercising its judgement in applying the provisions of the Treaty, both with regard to the basic rules (the exemptions allowed under Article 87(3)) and to procedure (Article 88). It states, however, that Council regulations may be introduced to implement the provisions. This option was not taken up until very recently, with the result that implementation of the aid procedure was for a long time an entirely administrative and judicial matter.

Until the early 1970s the issue of State aids did not take on special importance. It began to do so after the recession of 1974 and 1975, and particularly after 1980, when the considerable growth of aid led to a very marked rise in cases referred to the Commission. The Commission tried to ease this increasing workload by establishing criteria for application of the ground rules and procedures, which it decided should be made public in the form of various types of texts: framework documents, communications, guidelines, sometimes just letters, but also directives and regulations. But this piecemeal approach at the purely administrative level did not provide sufficient legal certainty or clear and effective administrative management. Legislation was therefore needed, and was adopted in 1998 for the ground rules and 1999 for the procedural rules. In Commission Regulation (EC) No 794/2004 of 21 April 2004,

implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, new detailed provisions concerning the form, content and other details of notifications and annual reports referred to in Regulation (EC) No 659/1999 are set out. The new regulation also sets out provisions for the calculation of time limits in all procedures concerning State aid and of the interest rate for the recovery of unlawful aid.

2. Application of the ground rules

As there is by definition no obligation to notify aid which is automatically exempt (Article 87(2)), the Commission's work consists of applying the rules on exemption laid down by the Treaty for certain types of aid (Article 87(3)) and thus establishing for each of them a set of exemption criteria.

(a) Regional aid (Article 87(3), (a) and (c))

The current system is laid down by the 'guidelines' of March 1998, which brought together several previous communications. In March 2002, the Commission issued a multi-sectoral framework on regional aid for large investment projects that covers regional aid intended to promote initial investment, including associated job creation. This framework was modified by the Commission communication of November 2003 on the modification of the multi-sectoral framework on regional aid for large investment projects (2002) with regard to the establishment of a list of sectors facing structural problems. A proposal of appropriate measures pursuant to Article 88 (1) of the ECT, concerning the motor vehicle sector and the synthetic fibres sector, was issued. The criteria for exemption are:

(i) Territorial criteria

For exemption under Article 87(3)(a) (aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment), the aid must go to regions with a per capita GDP below 75 % of the Community average (Level 2 regions of the Nomenclature of Territorial Statistical Units — NUTS); for exemption under Article 87(3)(c) (aid to facilitate the development of certain economic activities or areas but not having a significant adverse effect on trading conditions), the aid must go to regions corresponding to Level 3 of NUTS forming compact zones of at least 100 000 inhabitants each, to regions with a population density of under 12 inhabitants per km², or to regions eligible under the structural funds, all within an overall ceiling for the number of aid recipients laid down at Community level and divided between the Member States;

(ii) criteria for objective and volume

In principle, aid cannot be used to help run businesses, but only for investment (start-up or creating additional jobs). It

must not exceed a certain proportion of investment, in general, 50 % for exemption under Article 87(3)(a), and 20 % under Article 87(3)(c).

(b) Sector-specific aid

The exemption criteria have been laid down in several texts for each of the main sectors: steel, shipbuilding, automobiles and synthetic fibres (→4.7.2-5). These include various types of texts but, for shipbuilding, they are Council directives on the basis of Article 87(3)(e). Transport and agriculture are subject to a specific legal system involving Articles 87 to 89 and ad hoc provisions (→4.5.1. and 4.1.1.). The same is true for State enterprises and public services (→3.3.4.).

These texts have one common theme: to be acceptable, aid must not tend to preserve the status quo by maintaining overcapacity but must aim to restore long-term viability by resolving structural problems, including by reducing capacity; it should be degressive and proportional.

Guidelines for application of competition rules to different sectors are regularly issued. Recent communications refer to environmental protection, risk capital, advertising of agricultural products, public service broadcasting and restructuring of the steel sector.

(c) Horizontal aid

This is aid which is likely to benefit all sectors of the economy: research and development, SMEs, environmental protection, salvage and restructuring of failing enterprises, employment.

Until now, horizontal aid, like the other forms of aid, has been covered by various piecemeal texts (framework documents, guidelines, etc.) laying down the exemption criteria for each type of aid.

On 7 May 1998, horizontal aid became subject to the first Council Regulation ((EC) No 994/98) on the basis of Article 89 for the application of Article 87(3). This gives the Commission the power to adopt regulations exempting certain categories on the principle of declaring certain aid compatible a priori with the common market and thus exempt from the obligation to notify. This is applicable to aid for SMEs, research and development, environmental protection, employment and training and to certain types of regional aid. The exempting regulations must specify the purpose of the aid, the categories of beneficiaries and the thresholds. In January 2001, the Commission adopted three new regulations on the application of the competition rules to training aid, as amended by Commission Regulation (EC) No 363/2004 of 25 February 2004, on the 'de minimis' rule and on State aid to small and medium-sized enterprises, as amended by Commission Regulation

(EC) No 364/2004 of 25 February 2004. In November 2002, the Commission adopted a further block exemption for employment aid.

3. Procedure

In order to guarantee coherence, stability and efficiency as laid down in Article 89 of the Treaty, the Commission has adopted a number of procedural rules, for example with regard to deadlines or to reimbursement of aid which had not been notified. Regulation (EC) No 659/1999, adopted on 22 March 1999 and amended by Commission Regulation (EC) No 794/2004 of 21 April 2004, incorporates a number of existing practices. It seeks to clarify and rationalise these, in particular by specifying the deadlines applicable to the various stages of the process and by setting strict rules on the suspension and recovery of aid incompatible with the Treaty. It establishes the Commission's methods of investigation (in particular, making provision for on-site monitoring visits) and the Member States' obligation to cooperate (in particular through annual reports on all existing aid systems).

The gradual clarification of the rules and reinforcement of the principle of suspension and provisional recovery of non-notified aid has increased the number of notifications.

4. Transparency

During 2001, the Commission introduced two new instruments to promote transparency in the area of State aid. The State Aid Register, first published in March 2001, provides summary information on notifications and Commission decisions. The State Aid Scoreboard, launched in July 2001 and updated twice annually, provides indicators of the situation and control procedures in each Member State.

D. Reform

In June 2005, the Commission launched the State Aid Action Plan (SAAP). Instead of dealing with all areas

separately, the Commission proposed a comprehensive and consistent reform with uniform principles applied in all instruments. Also, State aid should be better supporting the Lisbon strategy as aid in areas contributing to growth and employment would be facilitated (R & D, innovation and risk capital). State aid should incorporate a refined economic approach and be better targeted at types of interventions where financial markets are more reluctant to lend money. Furthermore, through the SAAP, State aid is also adapted to the needs of an enlarged Europe. The overall objective is to achieve less and better targeted aid.

Role of the European Parliament

The European Parliament (Parliament) has adopted many reports in the area of State aid (most recently State aid in the form of public service compensation of 22 February 2005, State aid as a tool for regional development of 15 December 2005, State aid for innovation of 27 April 2006). The publication of the State Aid Scoreboards and Surveys on State Aid every six months has provided the focus for Parliament's work in this area, for which the Committee on Economic and Monetary Affairs is responsible. Parliament has called upon the Member States to live up to the commitment they made at the Stockholm and Barcelona European Councils of March 2001 and 2002 to reduce State aid as a proportion of GNP and reallocate aid to horizontal objectives. Furthermore, on 14 February 2006 Parliament adopted a resolution on State aid reform (SAAP) supporting the plan in general and stating that it would like decisions on competition policy to be under the co-decision procedure.

→ Arttu MAKIPAA
08/2006

3.3.4. Public undertakings and services of general interest

Legal basis

Public undertakings and undertakings to which Member States have granted special or exclusive rights: Articles 31, 86 and 295 of the EC Treaty (ECT).

Public services, services of general interest and services of general economic interest: Articles 16, 30, 46, 73, 86(2) and (3), 87, 88 and 95 of the ECT.

Objectives

To create an effective and complete common space in which the internal market rules and the rules on fair competition apply to almost all economic activities, whatever the nature or the essence of the specific activity is public or private.

Achievements

‘Public undertakings’, ‘undertakings to which special or exclusive rights have been granted or specific tasks of public interest’ have been assigned — such as public services and services of general interest — by public authorities, as well as ‘public services’ and ‘general interest services’, are an example of fields where the continuous dialogue between EU institutions and Member States aimed to carefully interpret and combine rules and objectives included in the ECT with the existing national rules.

The commitments for the EU to take full account of the specific role of services of general interest, in the policies and activities falling within its sphere of competence, which may stem from general interest considerations such as security of supply, environmental protection, economic and social solidarity, regional planning, promotion of consumer’s interests, and economic, social and territorial cohesion, under the guiding principles of continuity, equality of access, universality and transparency, has been included in the EC Treaty by the Maastricht and Amsterdam Treaties.

This shared responsibility is aimed, nowadays, to ensure that users have access to high-quality and affordable services of general interest in the European Union, in line with the principles of better regulation, the prior assessment of the impact of major initiatives, the respect of the competence of national, regional and local authorities to define, organise, finance and monitor services of general interest, and, of course, the respect of the other rules of the ECT.

The Commission can address decisions and directives of a regulatory nature to the Member States and supervises them to ensure that State aid and the exercise of exclusive rights are compatible with the ECT.

A. Public undertakings and undertakings to which Member States have granted special or exclusive rights

1. Notions

‘Public undertaking’ is an undertaking over which the public authorities directly or indirectly exercise dominant influence when they: (a) hold the major part of the undertaking’s subscribed capital, (b) control the majority of the votes attached to shares issued by the undertakings or (c) are in a position to appoint more than half of the members of the undertaking’s administrative, managerial or supervisory body. Article 295 EC Treaty is neutral on the public or private nature of undertakings share holders.

‘Undertakings to which Member States have granted special rights or an exclusive right or a monopoly’ are private or public operators authorised to exercise a given economic activity of general interest, for which an authorisation has been granted by public authorities respectively to several operators or only to them.

2. The principle and the exceptions

As a matter of principle the economic activities of these undertakings are subject to the same rules as other businesses. Article 86 of the ECT prohibits Member States from adopting or maintaining in force any measure contrary to the rules contained in the ECT, particularly the rules on the internal market and the competition rules.

Nevertheless, the 2nd paragraph of that article provides that undertakings ‘entrusted with the operation of services of economic general interest (SGEs) or having the character of a revenue-producing monopoly’ are subject to the rules on competition ‘insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them’. Opportunities for exempting such undertakings are allowed only if necessary to enable them to perform the particular assigned tasks.

Article 31 ECT provides that national monopolies of a commercial character have to ensure that no discrimination between nationals of Member States exists, whether the monopoly was exercised by the State itself or delegated to one or more organisations or businesses.

The regimes based on special and exclusive rights may be maintained under two conditions: the application of the

competition rules would prevent the performance of the particular tasks assigned to the undertaking; trade is not disrupted to an extent that would be contrary to the Community's interests.

B. Public services, services of general interest and services of general economic interest (SGEIs)

1. Notions

'Public services' (services of public interest or public utility such as electricity, gas and water supply, transport, postal services and telecommunications) are economic activities of general interest set up by the public authorities and operated by them or by delegated separate operators (public or private).

The concept of the 'public service' does not correspond to the concept of the 'public sector'. The concept of 'public service' is a twofold one: it embraces, wrongly, both bodies providing services and the general-interest services they provide.

'General-interest services' are services assured by public authorities, in the general interest and submitted to specific public-service obligations. The classic case is the obligation to provide a given service throughout the territory of a country at affordable tariffs and on similar quality conditions, irrespective of the profitability of individual operations. They contribute to achieving the objectives of solidarity and equality and include: (a) non-market services (i.e. compulsory education, social protection); (b) obligations of the State (i.e. security and justice); (c) services of general economic interest (SGEIs) (i.e. basic electricity, telecommunications, postal services, transport, water and waste removal services and energy). Article 86 of the ECT does not apply to the first two categories.

'Services of general economic interest', not defined by EC law, are normally considered as commercial services of general economic utility, on which the public authorities therefore impose specific public-service obligations (transport, postal services, energy and communications). The definition of services considered to be 'of general economic interest' is essentially left to the Member States.

'Public-service obligations' may be imposed by the public authorities on the body providing a service. In this context, the term 'concessions' and the rules concerning their award, as well as the application of the provisions of public contracts relating to the creation of 'mixed capital entities' whose objective is to provide a public service (institutionalised PPPs), should be clarified.

2. The principle and the exceptions

The Treaty of Rome, as modified, does grant a place to the 'SGEIs', and provides an opportunity to exempt them from the rules on internal market and competition in so far as it

is necessary to enable the undertakings responsible for such services to perform their tasks (Article 86(2) of the ECT), as well as on the basis of particular aspects of general interest under Articles 30 and 46 ECT (free movement of goods and services) and Articles 81(3), and 87 ECT (competition rules).

Article 16 of the ECT, modified by the Treaty of Amsterdam, acknowledges the place occupied by SGEIs among the shared values stating that: 'Without prejudice to Articles 73, 86 and 87, and given the place occupied by SGEIs in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Community and the Member States, each within their respective powers and within the scope of application of this Treaty, shall take care that such services operate on the basis of principles and conditions which enable them to fulfil their missions.'

Article 36 of the Charter of Fundamental Rights of the European Union requires the Union to recognise and respect access to SGEIs to promote the social and territorial cohesion of the Union.

It therefore follows that almost all services offered can be considered 'economic activities' within the meaning of Articles 43 and 49 of the ECT.

The ECT leaves to Member States the freedom to define missions of general interest and to establish the organisational principles of the services intended to accomplish them. However, Member States must take account of Community law as any activity consisting of supplying goods and services in a given market by an undertaking constitutes in principle an economic activity, regardless of the legal status of the undertaking and the way in which it is financed (*Pavlov and others case, C-180/98 to C-184/98*). The Treaty does not require the service to be paid for directly by those benefiting from it (*Bond van Adverteerders case, C-352/85*).

C. Development of Community policy

For a long time, faced with a lack of rules in the EEC Treaty, EC institutions were sensitive not to be seen to infringe the requirement of neutrality on the ownership of undertakings, as laid down by Article 295 of the ECT, and to respect activities essentially connected with the public interests, within the exclusive competence of the Member States. The questions materialized in the mid-1980s when the compatibility of the modalities of accomplishing a mission of public or general interest by these subjects was scrutinized under the rules on competition and internal market and concern rose up on the links existing between the public authorities and the undertakings they own or control as well as the aid that public authorities were able to grant to such undertakings.

The Commission, using its special powers under Article 86(3) ECT, required, with the Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings, (lately amended by Directive 2000/52/EC) Member States to provide information on financial assistance granted to public undertakings and other information concerning the activities of the public undertakings. They also have to submit annual reports.

The Commission then started to put forward the view that, even if the infrastructure itself remains under exclusive ownership, the monopolist owner must grant access to third parties wishing to compete with regard to supply of transport, services or energy via that network (i.e. telephone communications or electricity) and, from the early 1990s, started to challenge special and exclusive rights, either by taking actions under Article 226 or by proposing directives aimed to apply the principles of the internal market to the specific sectors. The Commission, in various communications (Official Journal C 281 of 26.09.1996 and C 17 of 19.01.2001), aiming to establish a European public service policy, acknowledged the importance of public services and proposed to insert the concept into the Treaty and to establish instruments to evaluate and coordinate national regulatory bodies and to develop trans-European networks. At the European Council held in Lisbon in March 2000, the Heads of State and Government acknowledged the key role of services of general interest and called for more rapid liberalisation in the gas, electricity, transport and postal services sectors. The 2003 Green Paper and the 2004 White Paper on services of general interest defined the elements of a horizontal strategy to ensure that all citizens and firms in the Union have access to quality general-interest services at affordable prices.

In this sense, EC legislation wishes to promote the supply of high quality general-interest services in the area of network activities, such as telecommunications, electricity, gas and railways, with the aim of opening up markets by limiting special or exclusive rights, or cutting them back substantially, identifying the 'public service' as a 'social obligation', or a 'universal service' and encourages the public authorities to be clear about the relationship between the burdens or obligations associated with the mission and the restrictions on access to the market necessary to allow these organisations to perform properly.

The public authorities and the operators cooperate most frequently under these situations. Directive 2004/18/EC applies.

- Delegation: when the public authorities decide to delegate a mission of general interest to an external

partner. Community law on public contracts and concessions comes into play and the principles of transparency, equal treatment and proportionality apply;

- The management of a service under a public-private partnership (PPP): is increasingly used to provide services of general interest. Directive 2004/18/EC applies as soon as a public authority intends to conclude a contract for pecuniary interest with a legally distinct enterprise. Significant clarifications on the distinction between 'internal' and 'third party' entities have been brought by the court in the *Stadt Halle* judgment (Case C-26/03);
- Use of public financial compensation: a public authority may decide to pay compensation to an external body for the performance of a mission of general interest, intended to refund for any expenditure involved in accomplishing this mission which would not have been incurred by an enterprise operating solely according to market criteria. As the Court declared that such effective compensations are not a State aid (Ferring case, C-53/00, and *Altmark Trans* case, C-280/00), the Commission (OJ L 312 of 29.11.2005, pp. 67–73) decided to establish thresholds and criteria to consider the compensation received by the vast majority of services as compatible with the competition rules if the services in question have, in advance and by legal act, been attributed with a mission of general interest;
- Regulation of the market: where private operators provide such a service, whether or not linked by a public services contract, Member States may impose 'public service obligations', but only if such obligations are necessary, justified, not discriminatory, applied indiscriminately, based on objective criteria, known in advance and proportionate (*Anallir* case, C-205/99).

Some examples on exclusive rights (the import and wholesale marketing of alcoholic beverages and the tobacco monopoly in Austria, the retail sale of alcohol in Sweden and Finland, the 'de minimis aid' granted to transport by rail, road and inland waterways under Regulation (EEC) No 1191/69) illustrate the flexibility in the application of the Treaty when it comes to recognising the inherent missions of these services' missions of general interest.

The EC provisions applicable to specific sectors include those relating to the transport sector, based on Article 73 ECT, which allows State aid if intended to compensate for 'the discharge of certain obligations inherent in the concept of a public service', Directive 97/67/EC on postal services which began to open up the sector to competition but also required Member States to provide a minimum

level of services for users' benefit under the term of 'universal service' and 'reserved service', the directive of 10 June 2002 which has opened up the market for mail weighing more than 100g from 2003 and more than 50g from 2006 and Directive 2003/55/EC which has made a significant contribution towards the creation of an internal market for gas. The Community definition of 'universal service', in the field of communications, provides that users must be able to have access at a fixed location to international and national calls, as well as emergency services. Other Community policy instruments and actions share the same consumer protection objectives, namely: the implementation of the trans-European networks programme; the initiative for the creation of a European research area; the action plan on consumer policy; the eEurope action plan. Horizontal consumer protection legislation, dealing with issues such as unfair contract terms, distance selling, etc., also applies the principles mentioned related to the services of general interest.

Role of the European Parliament

The European Parliament (Parliament) has linked the need to respect and support 'public services' and 'services of general interest' with the need to increase in competition to the benefit of the consumers and citizens.

In its resolution on services of general interest of 14.01.2004, Parliament reiterated the fundamental importance of the subsidiarity principle, the competence of the national authorities to make their choice of missions, organisation and financing arrangements for services of general interest and services of general economic interest, the task at Community level to guarantee their exercise within the internal market, to act in support of projects of general European interest and, notably, to ensure that public service obligations are compatible with competition rules. Parliament considers that the European Union must lay down common principles, such as: universality and equality of access, continuity, security and adaptability, quality, efficiency and affordability, transparency, transparency, stability, duration and equitable risk-sharing, protection of less well social groups, protection of users, consumers and the environment, and citizen participation, taking into account circumstances which are specific to each sector.

Parliament proposed some criteria to be used to distinguish economic from non-economic services, such as: commercial or non-commercial purpose; percentage of public funding; level of investment; profit motive, and covering costs; benefits; commitment to guarantee social rights; furtherance of social inclusion and integration. It underlined the fundamental obligation on the public

sector to apply fair and appropriate tendering procedures and the need to control the other forms of exercise of services of general economic interest by public authorities, such as concessions and PPPs. It finally welcomed the liberalisation achieved notably in the telecommunication and energy sectors, and rejected the option of European regulators at sectoral level calling for the strengthening of coordination and cooperation with and between the authorities responsible for national regulations.

It called for assessments to be conducted horizontally in an integrated manner, in particular, to be qualitatively-oriented. 'Impact assessment' is a straightforward mapping out of the consequences with regard to social, economic and environmental aspects, as well as a mapping out of the policy alternatives that are available to the legislator in that area.

Services of general interest such as education, public health, public and social housing and social services of general interest assuming functions of social security and social inclusion, are not considered to fall within the scope of EU competition law. The services of general interest and the services of general economic interest have been recently excluded from the application of the draft 'services directive' following an amendment by Parliament.

In connection with the sector-specific legislation on network activities, its recent resolutions include, inter alia: electricity and gas: 6 July 2001, 20 December 2001, 13 March 2002, 7 June 2005; railway networks: 13 January 1998, 30 May 2002, 14 January 2003; air transport networks: 19 February 1998, 15 June 1998, 6 July 2000; telecommunications: 20 February 1997, 18 September 1997, 26 October 2000, 1 March 2001, 13 June 2001; postal services: 14 December 2000, 13 March 2002.

General statements of position with regard to public services include: resolutions of 6 May 1994, 17 December 1997, 13 January 2001, 13 November 2001, 21 November 2002 and 22 February 2005; the resolutions adopted in the process of drafting the Treaty of Amsterdam, in order to secure a revision recognising the place of public services (15 May 1995, 14 December 1995 and 13 March 1996).

A recent improvement of Parliament's role in this area is the modification of Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission (resolution of 6 July 2006 for the decision on the conclusion of an interinstitutional agreement introducing the new 'regulatory procedure with scrutiny') when co-decision procedure applies.

→ Azelio FULMINI
06/2006

3.4. Approximation of legislation

3.4.1. Public procurement contracts

Legal basis

Articles 14, 28, 47(2), 49, 50, 55 and 95 of the EC Treaty.

Objectives

Public procurement contracts play a significant role in the economy of Member States. They are estimated to be equivalent to more than 16 % of Union GDP. Prior to the implementation of Community legislation, only 2 % of public procurement contracts were awarded to non-national undertakings. They play a key role in certain sectors such as construction and public works, energy, telecommunications and heavy industry, and are, traditionally, characterised by a preference for national suppliers, based on statutory or administrative rules. This lack of open and effective competition was one obstacle to the completion of the single market, pushing up costs for contracting authorities and inhibiting, in certain key industries, the development of competitiveness.

The application of the principles of the internal market (in particular freedom to provide services and freedom of competition) to these contracts secures a better allocation of economic resources and a more rational use of public funds (public authorities obtaining products and services of the highest available quality at the best price under keener competition). Giving preference to the best-performing undertakings across the European market encourages the competitiveness of European firms (therefore able to step up their size and develop their outlets) and reinforces respect for the principles of transparency, equal treatment, genuine competition, efficiency and reducing the risks of fraud and corruption. A genuinely open single market would be achieved only when all firms can compete for these contracts on an equal footing.

Achievements

The Community equipped itself with legislation aimed to coordinate national rules, imposing obligations on the publicity for the invitations to tender and on the objective criteria to scrutiny tenders. The Community has decided,

after various normative acts adopted since the 60s, to simplify and coordinate public procurement legislation and it has adopted four directives (92/50/EEC, 93/36/EEC, 93/37/EEC and 93/38/EEC).

As proposed in the Green Paper of 27 November 1996, three of these directives were merged, with the aim of simplification and clarification, into Directive 2004/18/EC, on public works contracts, public supply contracts and public service contracts, and Directive 2004/17/EC, modified by Directive 2005/75/EC, on water, energy, transport and postal services sectors. Some annexes of both directives have been modified by Directive 2005/51/EC.

They do not apply, or apply under limitations, to: contracts permitting the contracting authorities to provide or exploit public telecommunication networks or to provide to the public one or more telecommunication services (covered by Directive 93/38/EEC) — they apply, nevertheless, to voice telephony, telex, mobile telephone, paging and satellite services; contracts covered by state security or secrecy, national essential interests and by international agreements (Decision 94/800/EC); contracts related to services co-financed by research and development programmes; contracts related to immovable property; contracts related to specific audiovisual services in the field of broadcasting, with application to contracts related to the supply of technical equipment for the production and broadcasting; contracts awarded on the basis of an exclusive right; contracts related to arbitration and conciliation services; contracts related to service concessions; contracts related to Central Bank services and financial services; contracts regulating employment conditions; contracts related to Regulations (EEC) No 3975/87 and (EEC) No 3976/87 (air transport); contracts related to those bus transport services excluded by Directive 93/38/EEC.

With regard to Directive 2004/17/EC, the 'special arrangements' provided for by Directives 93/38/EC, 94/22/EC, 90/531/EEC and Decisions 93/676/EEC, 97/367/EC, 2002/205/EC, 2004/73/EC, as well as the limitations or the exclusions concerning 'special or exclusive rights', 'affiliated undertakings', 'joint ventures', shall still apply. Directive

2004/17/EC shall not apply to work and service 'concessions', awarded simply for carrying out the specific concerned activities.

'Public contracts' are defined as being the contracts concluded in writing between one or more economic operators and one or more contracting authorities having as their object the execution of works, supply or services in exchange for remuneration.

'Contracting authorities' means the State, regional or local authorities, as well as bodies governed by public law and associations formed by one or several of such authorities or one or several of such bodies governed by public law, which are established for the specific purpose of meeting needs of general interest, not having an industrial or commercial character, having legal personality and financed by or subject to management supervision of the 'contracting authorities'. They are all listed in the annexes.

'Concessions' are contracts similar to a public service contract but which consist either solely of the right to exploit the service or of this right together with payment.

A. Procedures

Calls for tenders have to correspond to three types of procedure, to be used on the basis of a threshold system, combined with the methods for calculating the estimated value of each public contract and the indications for the procedures to be used, compulsory or indicative, as stated by the directives. The threshold system is to be updated every two years. In the 'open procedure' any interested economic operator may submit a tender. In the 'restricted procedure', only invited candidates may submit a tender. In the 'negotiated procedure', the contracting authorities may consult the economic operators of their choice and negotiate the terms of contract with one or more of them. A 'competitive dialogue' (a procedure in which any economic operator may request to participate and where the contracting authorities may conduct a dialogue with the admitted candidates, aimed to develop more suitable alternatives capable of meeting its requirements, and, consequently, invite to tender only chosen candidates) is suitable, within the framework of Directive 2004/18/EC, for complex contracts.

As a general principle, all rules to be applied to the tender on procedure, admission, quantifiable features, auction process and technical specifications, subcontracting, obligations, conditions for performance, economic, financial and technical capacities, qualifications, award of the contract, have to be clarified in the 'call for tender' and the annexed 'specifications'.

All procedures have to respect the principles of EU law such as transparency, non-discrimination, competition, free

movement, mutual recognition, proportionality, confidentiality, efficiency. The respect of these principles is compulsory also in the case of public procurement contracts signed by a third party, whether public or private, relating to special or exclusive rights to carry out a public service which has been granted by a contracting authority. National rules on public morality, public policy, public security, health, human and animal life, employment conditions and safety at work, safety of the transaction of information via electronic means, security, confidentiality, privacy, certification, environment, misconduct, rules concerning the conditions for the pursuit of activities or a profession, etc., can be applied but they have to respect existing EU law.

The Commission is keen on developing an electronic public procurement's system and will propose measures in order to: ensure a properly functioning internal market through the use of electronic public procurement systems; improve the governance of the public procurement system; achieve a greater efficiency, towards an international framework for electronic procurement. Directives 1999/93/EC and 2000/31/EC shall apply.

Specific rules concern: 'public work concessions'; service design contests; subcontracting; framework agreements; dynamic purchasing systems; public work contracts with subsidised housing schemes.

B. Criteria for the award of the contract

A choice is allowed between: (a) the lowest price, and (b) the most economically advantageous bid (a criterion containing several elements: quality, price, technical merits, environmental elements, time limit on delivery, profitability, etc.).

The chosen criteria have to be specified in the call for tender, and the attached documents.

C. Rules on publicity and transparency

Public contracts whose values exceed the thresholds stated in the directives have to be published in accordance with standard forms. In certain contracts the publication of an information notice (e.g. notice of a design contest) is compulsory, while in others it is not compulsory (e.g. prior information notice).

The forms of publicity, the time limits, the rules applicable to communication and exchange of information and the conduct of the procedure, are set out in the two directives and their annexes, as well as in the Regulation (EC) No 1564/2005.

Decision 2005/15/EC set out detailed rules concerning the procedure for establishing whether a given activity is directly exposed to competition, provided for in Article 30 of Directive 2004/17/EC.

Each contracting authority shall duly inform tenderers on the decisions reached, concerning the procedure and the award of contracts, as soon as possible. Any unsuccessful candidate shall be informed of the reasons for rejection.

D. Transposition and review

In order to facilitate the transposition of the two directives, to be transposed by the Member States by 31 January 2006, Regulation (EC) No 2195/2002 provides for a 'Common Procurement Vocabulary' (CPV). In April 2006, the majority of Member States had not yet completely transposed the two directives and the Commission is prepared to open the procedures for infringement against some Member States. An action plan for the implementation of the two directives is under discussion.

Member States shall ensure implementation by effective, available and transparent mechanisms and may use the help of an independent body. In order to further develop public procurement within the Union, the Commission will review the situation and report on the results achieved by the end of 2007. Member States shall submit a statistical report on public procurement to the Commission, by 31 October each year.

European Parliament role

The European Parliament (Parliament) succeeded in having environmental and social criteria (including health and safety and access by disabled persons), as well as monitoring mechanisms, clearer contract award criteria and transparency reflected at all stages of public procurement procedures.

Public procurements are strictly related to the attribution of powers among the national bodies, a system which has a 'constitutional relevance' in most Member States, in order to fulfil their institutional duties. A high level of differences exists in the Member States, regarding both the distribution of powers and the procedures related to the execution of those public tasks via contracts with third parties, whether covered by private or public law. All contracts concerning the provision of services or the execution of works are covered by the European competition and public procurement legislation, with the exception of 'excluded cases' and 'in-house' activities, i.e. activities performed directly by the public body itself. As a consequence, problems arise on some questions, for example, on the issue of which regime should govern 'inter-communal cooperation' or 'Public-Private Partnership'. In fact, public services such as local water management, road maintenance, distribution of energy, waste management, social housing, sports and cultural infrastructures, crematoria, public transports, are not simply economic activities and it may be not suitable to simply submit them to the mere principles of the internal market. The definition of 'control exercised by the public body over the undertaking' is also subject to criticism. Parliament is interested in considering eventual adjustments to be carried out to the actual legislation and organised a public hearing to this purpose, on 20 April 2006.

→ Azelio FULMINI
09/2006

3.4.2. Company law

Legal basis

Principal basis: Article 44(2)(g) of the EC Treaty (ECT) provides that, in order to attain freedom of establishment, the Council must act by means of directives in accordance with the co-decision procedure to provide the necessary degree of coordination of the safeguards which, for the protection of the interests of members and others, are required by Member States of companies or firms within the meaning of the second paragraph of Article 48, with a view to making such safeguards equivalent throughout the Community.

Article 48 enshrines in the ECT the two systems that exist in the Community for attaching a company or firm to the legal system of a Member State. Companies may come under the incorporation system, which is typical of common law, or be subject to the law of the country in which their registered office is located. The first system is found in the United Kingdom and the Netherlands, and the second in Belgium, Germany, France and other countries.

Articles 94, 95, 293 and 308 of the ECT also allow Community intervention in company law but play only a secondary role.

Objectives

Because of its position in the text of the ECT, there is no doubt that the primary objective of the harmonisation of company law is to promote the attainment of freedom of establishment by removing obstacles which the different national legal systems are likely to present for companies operating across borders.

The aim is also to guarantee legal certainty by requiring all companies subject to the jurisdiction of the Member States to fulfil a minimum set of common obligations in an undistorted system of competition.

A further aim is to remove the legal obstacles to company development on a European scale: the single market implies the creation of Europe-wide companies, which must be able to act throughout the Community in the same way as in their own country. This will result in the implications of 25 national legal systems being removed.

Achievements

A. A minimum set of common obligations

1. Setting up a company

Certain conditions must be complied with when a company is set up.

(a) A first Council directive (68/151 of 9 March 1968)

laid down substantial disclosure requirements for setting up companies with share capital and private limited liability companies to ensure that third parties are given full details of the new company. Preventive control when a company is formed is also required. As such controls are not infallible, provision is made in certain cases for nullity of companies that have been constituted irregularly.

This was amended by Directive 2003/58/EC of the European Parliament (EP/Parliament) and of the Council of 15 July 2003, which gives the public easier and faster access to information on companies, while at the same time simplifying the disclosure requirements for the companies. The documents and particulars required can now be filed in paper form or by electronic means, and interested parties may then obtain a copy in either form. Furthermore, companies continue to disclose their documents and particulars in the language or one of the languages of their Member State, but may also voluntarily disclose them in other European Union languages in order to improve cross-border access to information about them.

(b) A second Council directive (77/91/EEC of 13 December 1976) added to this body of law, but relates only to public limited liability companies. The

constitution of such companies requires a minimum amount of authorised capital as security for creditors and a counterpart to the limited responsibility of shareholders. There is also a minimum content requirement for public limited liability companies' instruments of incorporation. In order to prevent misuses of Directive 77/91/EEC, Council Directive 92/101/EEC amended it so that it also includes companies covered by Directive 68/151/EEC and those coming under the jurisdiction of a non-Community country and having a comparable legal form. The EP is currently examining a proposal for a directive from the Commission (COM(2004) 730) which is designed to facilitate measures taken by public limited liability companies which affect their capital. It enables the Member States to eliminate specific reporting requirements in certain cases in order to make it easier, in certain conditions, to make changes to share ownership and to provide a basically harmonised legal procedure for creditors in the context of capital reduction. Companies should then be able, with regard to capital size, capital structure and ownership, to react more promptly and in a less costly and protracted manner to developments in the markets. The amendments proposed largely focus on protecting shareholders.

2. Company operation

The first directive ensures the validity of the company's undertakings towards third parties acting in good faith, a subject which, apart from the 12th Council directive (89/667/EEC of 21 December 1989) on single-member private limited liability companies, is so far covered only by proposals. Adoption of the third proposal for a fifth directive in 1991 on the structure of public limited liability companies and the powers and obligations of their bodies has been blocked because of its provisions on worker participation (→4.8.6). The ninth directive on affiliated undertakings, i.e. under law relating to groups of companies, has not even reached the proposal stage.

As far as the system of taxation for companies is concerned, Council Directive 90/435/EEC of 23 July 1990 (amended by Directive 2003/123/EC) on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States introduces tax rules which are neutral from the point of view of competition for groups of companies of different Member States. It abolishes the double taxation of dividends distributed by a subsidiary in one Member State to its parent company in another.

3. Company restructuring

Efforts were made to give shareholders and third parties the same guarantees during restructuring in the third

Council directive (78/855/EEC of 9 October 1978) on national mergers of public limited liability companies and the sixth directive (82/891/EEC of 17 December 1982) on the division of public limited liability companies.

Following Parliament's rejection of an amended proposal for a 13th directive on takeover bids in July 2001, a new proposal presented in October 2002 led to the adoption of Directive 2004/25/EC of the EP and of the Council of 21 April 2004 on takeover bids. This aims to establish minimum guidelines for the conduct of takeover bids for the securities of companies governed by the laws of Member States, where some or all of those securities are admitted to trading on a regulated market. It also aims to provide adequate protection for shareholders within the Community by establishing a framework of common principles and general requirements which Member States are to implement through more detailed rules in accordance with their national systems and their cultural contexts.

4. Guarantees concerning the financial situation of companies

After a certain period, authorised capital required for the constitution of a public limited liability company no longer gives creditors a guarantee of security. Thus the second directive contains provisions to ensure that authorised capital is available throughout a company's existence. To ensure that information provided in accounting documents is equivalent in all Member States, the fourth, seventh and eighth directives (78/660/EEC of 25 July 1978, 83/349/EEC of 13 June 1983 and 84/253/EEC of 10 April 1984) require company accounts (annual accounts, consolidated accounts and approval of persons responsible for carrying out statutory audits) to give a true and fair view of the company's assets, liabilities, financial position and profit or loss. Regulation (EC) No 1606/2002 of the EP and of the Council of 19 July 2002 on the application of international accounting standards harmonises the financial information presented by publicly traded companies in order to guarantee protection for investors.

A proposed directive on the statutory audit of annual accounts and consolidated accounts will amend Directives 78/660/EEC and 83/349/EEC and will repeal Directive 84/253/EEC. In its legislative opinion adopted at first reading on 28 September 2005, the EP opts for a more flexible approach than the Commission by giving the Member States greater scope to adapt the directive to their national legislation. In particular, Parliament opposes the requirement to set up separate audit committees for public interest entities such as publicly traded companies and banks. MEPs considered that this provision could place an excessive financial and administrative burden on

companies. The amendments adopted give Member States the option of determining how companies should supervise their internal audit reports. Auditors and European audit companies will have to prove that they are independent of the management of the companies audited. Another controversial issue was the obligation for public interest entities to change auditors every five years and to change audit companies every seven years. The amendment adopted in the plenary provides for rotation every seven years, but only for the key auditor and not for the audit companies themselves. This is in order to avoid placing an unnecessary burden on SMEs. The Commission has been asked to present a report by the end of 2006 on the impact of the current national liability rules for carrying out statutory audits on the European capital markets and on the insurance conditions for auditors and audit firms, including an objective analysis of the limitations of financial liability. The Commission will submit recommendations to the Member States in the light of this report, if it considers it appropriate.

B. Regulations for companies with a Community dimension

1. Removal of barriers to company development on a Community scale

The first aim was to make it easier for companies to operate in Member States other than their country of origin. This was the aim of the Convention of 29 February 1968 on the Mutual Recognition of Companies, which has still not come into force as it has not been ratified by all of the Member States.

A proposal for a 10th directive of the European Parliament and of the Council of 18 November 2003 on cross-border mergers of companies with share capital (COM (2003) 703) is intended to facilitate cross-border mergers of commercial companies without the national laws governing them — as a rule the laws of the countries where their head offices are situated — forming an obstacle. As Community law currently stands, cross-border mergers are possible only if the companies wishing to merge are established in certain Member States. In other Member States, the differences between the national laws applicable to each of the companies which intend to merge are such that the companies have to resort to complex and costly legal arrangements. These arrangements often complicate operation and are not always implemented with all the requisite transparency and legal certainty. They result, moreover, as a rule in the acquired companies being wound up — a very expensive operation. Unless otherwise provided by the draft directive, each company involved in the merger remains subject to its national law on domestic mergers. Furthermore, the Member States are specifically

authorised to adopt rules to protect minority shareholders who were against the cross-border merger.

The EP's legislative opinion adopted at first reading on 10 May 2005 makes a number of changes to the Commission proposal, with MEPs laying particular emphasis on protecting the information, consultation and participation rights of workers and their representatives. Thus, the management or administrative organ of each of the merging companies will have to draw up a report intended for the members explaining and justifying the legal and economic aspects of the cross-border merger and explaining the implications of the cross-border merger for members, creditors and employees. The report is to be made available to members, employees and their representatives not less than one month before the date of the general meeting. Furthermore, if a new company does not grant its employees the same rights that they enjoyed before the merger, their participation will be the subject of negotiations in accordance with the rules provided for in the Statute for a European Company (SE). The rights and obligations arising from contracts of employment or from employment relationships and existing at the date on which the cross-border merger takes effect are to be transferred to the new company on that same date. The establishment of an appropriate threshold will exempt small and medium-sized enterprises employing fewer than 500 workers from the application of the reference provisions on participation. Parliament would also like to allow the Member States not to apply the directive to cooperative societies, to allow a derogation for undertakings for collective investment in transferable securities, and to introduce additional requirements for the information to be given in the common draft merger terms (e.g. information on the value of the assets and liabilities transferred to the company resulting from the cross-border merger).

Finally, Directive 2005/19/EC of 17 February 2005 amending Council Directive 90/434/EEC of 23 July 1990 introduces a common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States.

2. The operation of European-scale companies

There has not been much development other than on tax (→4.20.2.) and social rules (→4.8.6.). The 11th Council directive (89/666/EEC of 21 December 1989) on disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State or even a non-Community country enables persons resident in a country where a branch is established to obtain a minimum amount of information on branches in other Member States. An international bankruptcy convention was signed on 23 November 1995, under

which European-scale undertakings will be declared bankrupt at European level, instead of undergoing the multiple bankruptcies that were hitherto the case.

3. Community statutes

(a) Aim: To allow companies that want to act or establish themselves beyond their national frontiers the option of being subject to one set of legislation and not several as is the case at present.

(b) Long period of stalemate

The efforts to bring about this Community legislation are not new, as the Commission presented its first proposal for a regulation on a statute for a European company in 1970, but this proposal (which has been amended on numerous occasions) became permanently stalled because of its provisions on worker participation; some Member States totally rejected such participation, while others made it a condition for accepting the very idea of a European company.

In order to break the deadlock, the Commission presented (in 1989) a new proposal which had a legal basis providing for adoption by the Council acting by a qualified majority, and no longer unanimously, and which was divided into two parts so as to split off the provisions on worker participation:

- a proposal for a regulation on the operation of the European company (based on Article 96),
- a proposal for a directive on the role of workers (Article 44).

The deadlock persisted, however. It was not even broken, as the Commission had hoped, with the adoption on 22 September 1994 of the directive (94/95) on European works councils (→4.8.6.).

(c) Breaking the deadlock

The Commission therefore made a fresh effort. Within the framework laid down by a communication of November 1995 (COM(95) 547), a group of experts chaired by Étienne Davignon proposed a system allowing considerable freedom of choice as to the method of worker participation.

On the basis of their report (May 1997) the Council resumed its work and an agreement on the involvement of employees reached during the Nice European Council in early December 2000 enabled the deadlock to be broken after 30 years of negotiation.

In October 2001 the Council adopted definitively the two legislative instruments necessary for the establishment of a European company, namely the Regulation on the Statute for a European company ((EC) No 2157/2001) and the directive supplementing the Statute with regard to the

involvement of employees in the European company ((EC) No 86/2001), both of which form an indissociable whole.

Under the Regulation on the Statute for a European company ((EC) No 2157/2001, entry into force 8 October 2004), a company may be set up within the territory of the Community in the form of a public limited liability company, known by the Latin name 'Societas Europaea' (SE). The SE will make it possible to operate at Community level while being subject to Community legislation directly applicable in all Member States. Several options are made available to undertakings of at least two Member States which want to set themselves up as an SE: merger, establishment of a holding company, formation of a subsidiary or conversion into an SE. The statute will enable a public limited liability company with a registered office and head office within the Community to transform itself into an SE without going into liquidation. The SE will be entered in a register in the Member State in which it has its registered office. Every registered SE will be published in *the Official Journal of the European Communities*. The SE will have to take the form of a company with share capital. In order to ensure that such companies are of reasonable size, a minimum amount of capital is set at not less than EUR 120 000.

The directive on the involvement of employees in the European company (2001/86/EC, entry into force 8 October 2001) is aimed at ensuring that the establishment of an SE does not entail the disappearance or reduction of practices of employee involvement existing within the companies participating in the establishment of an SE. In view of the great diversity of rules and practices in the Member States as regards the manner in which employees' representatives are involved in decision-making within companies, there are no plans for a single European model. Employee information and consultation procedures at transnational level are nevertheless ensured. If and when participation rights exist within one or more companies establishing an SE, they are preserved through their transfer to the SE, once established, unless the parties involved decide otherwise within the 'special negotiating body' which brings together the representatives of the employees of all the companies concerned.

The draft statutes for a European association, cooperative society and mutual society (proposals for regulations and directives, July 1993) have undergone the same fate as the statute for a European company for the same reasons.

Although the legislative procedure has still to be completed as regards the statutes for a European association and mutual society, Regulation (EC) No 1435/2003 on the Statute for a European Cooperative Society (SCE) introduces the SCE and organises a genuine single legal statute for it. It enables a cooperative to be

established by persons resident in different Member States or by legal entities established under the laws of different Member States. With a minimum capital of EUR 30 000, these new SCEs can operate throughout the single market with a single legal personality, set of rules and structure. They can extend and restructure their cross-border operations without having to set up a network of subsidiaries, which costs both time and money. In addition, cooperatives in several different countries can now merge to form an SCE. Finally, a national cooperative with activities in a Member State other than where it has its head office may be converted into a European cooperative without first having to go into liquidation.

Directive 2003/72/EC of 22 July 2003 supplements this statute with regard to the involvement of employees in the SCE in order to ensure that the establishment of an SCE does not entail the disappearance or reduction of practices of employee involvement existing within the companies participating in the establishment of the SCE.

The Council was also able to adopt the regulation ((EEC) 2137/85 of 25 July 1985) on the creation of the European Economic Interest Grouping (EEIG). This enables companies in one Member State to cooperate in a joint venture with companies or legal persons in other Member States, the profits being shared between the members. Such groupings have legal capacity. However, Article 3 of the regulation states that the purpose of a grouping is to facilitate or develop the economic activities of its members and to improve or increase the results of those activities, but not to make profits for itself. Its activity must not be more than ancillary to the economic activities of its members. An EEIG may not offer its securities to the public.

Role of the European Parliament

Parliament has been able to get some of its amendments incorporated in legislation. It has strongly defended worker participation in companies (→4.8.6). It was for this reason that it refused to deliver an opinion on the proposal for a 10th directive on cross-border mergers of public limited companies, thus preventing its adoption until the question of worker participation had been settled at Community level.

Parliament was behind proposals for a European statute for undertakings in the mutual sector, following a report putting forward the idea of a European cooperative society and a resolution of 13 March 1987 advocating a European statute for associations. It was a parliamentary intergroup that presented the Commission with a draft European statute for associations on 14 April 1985.

→ Denis **BATTA**
11/2005

3.4.3. Financial services

Legal basis

Articles 43–48 (right of establishment), 49–54 (services), 56–60 (capital and payments) and 94–97 (approximation of laws) of the EC Treaty.

Objectives

Financial services (banking, insurance, securities) have traditionally been subject to strong government supervision, resulting in generally stringent national regulation of access to the profession and its exercise, in rules that vary from one Member State to another. The direct effect of freedom of establishment and freedom to provide services, the status quo since 1970 (→3.2.3.), has been to prevent discrimination on the grounds of nationality, but it has not done away with the requirement to comply with national regulations.

Hence, in order to complete the internal market in these sectors, major efforts were needed to bring these rules into line and secure their mutual recognition, so as to enable the two freedoms to be exercised. A further obvious requirement in these financial industries (and one laid down by the Treaty of Rome) was the freedom of movement of capital.

Achievements

A. General overview

1. Basic conception

The main target of legal approximation was the rules in commercial law applying to companies, taking the same approach in all three sectors:

- harmonisation of the basic rules on company formation and management;
- responsibility for supervision entrusted to the country of origin;
- mutual recognition of controls carried out in the country of origin.

However, the harmonisation and mutual recognition of conditions for access to the professions (the requirement for diplomas and other qualifications), mainly affecting the liberal professions and employees (→3.2.3. and 3.2.2.), may often also apply to the financial sector.

2. The Financial Services Action Plan (FSAP)

The construction of the single market in financial services had started in 1973 but was accelerated by the Financial

Services Action Plan. Proposed by the Commission in 1999, it was endorsed by the European Council in March 2000 (Lisbon) and March 2002 (Barcelona). It involves a series of regulatory and legislative measures designed to achieve, among other things, a single wholesale European financial market, open, secure and state-of-the-art prudential rules, and supervision. In all, it called for 42 measures, 39 of which had been achieved by September 2005. The Commission published a White Paper in December 2005; the European Parliament decided to commission an impact assessment study on the FSAP in 2006.

3. The Lamfalussy procedure

On a proposal from the ‘Committee of Wise Men’ chaired by Mr Lamfalussy, the Commission and the European Parliament (Parliament) agreed in February 2002 on a simplified legislative procedure for adopting legislation on financial services:

- framework legislation under the co-decision procedure (Parliament and Council) to define principles and an implementing process.

In 2004 the level 2 and 3 Lamfalussy committees were set up. The Commission is working on implementation via the comitology procedures, hence lightening the implementation process. However, the ‘sunset clause’ comes into effect from 2007, unless Parliament and Council explicitly agree to extend the Commission’s delegated powers

Currently the Interinstitutional Monitoring Group is reviewing the Lamfalussy process, with a second interim report due out early 2007. Issues reviewed are the four-level regulatory process and possible improvements.

B. Banking

1. Harmonising access rules

(a) *The first coordinating directive*
(77/780/EEC of 12 December 1977)

This directive makes the establishment of a credit institution subject to government authorisation; to obtain it, certain conditions must be met and a programme of operations submitted.

(b) *The second coordinating directive*
(89/646/EEC of 15 December 1989)

This directive entered into force on 1 January 1993. It amounted to a quantum leap in liberalisation (provided for in the White Paper on the single market). It introduced the principle of a single Community authorisation, granted by a

Member State to a credit institution, allowing it to pursue all basic banking business throughout the Community, either by setting up subsidiaries or by providing its services directly from the country in which it is established. The home Member State carries out overall supervision of the banking institution, while the host Member State supervises branches established on its territory.

2. Harmonising protection and control rules

(a) Common basic rules for all credit institutions

Directive 89/299/EEC of 17 April 1989, as amended by Directives 91/633/EEC and 92/16/EEC. Supervision of credit institutions is covered by Directive 2002/87/EC (which also covers insurance and investment firms).

(b) Solvency ratios

The newly recast Capital Requirements Directive 2006/48/EC and Directive 2006/49/EC, have been signed by both Parliament and the Council and are due to be transposed and implemented in Member States by the end of this year. The directives create flexibility and allow for both a simple and more sophisticated approach to calculating risk capital.

(c) Monitoring and control of major risks

Directive 92/121/EEC of 21 December 1992 harmonises the basic rules on supervision.

(d) Deposit guarantees

Directive 94/19/EC of 16 May 1994 aims to provide Community-wide protection for depositors in credit institutions, particularly by making guarantee schemes set up in one Member State applicable to depositors in subsidiaries set up in other Member States.

(e) Countering financial crime

Directives 91/308/EEC of 10 June 1991 and 2001/97/EC require the Member States to prohibit money laundering and introduce appropriate penalties. The third directive on the prevention of money laundering and terrorist financing was adopted in 2005 and is to be implemented at the latest by December 2007.

3. Consolidating Directive 2000/12/EC (20 March 2000)

This directive groups together the key aspects of the legislation. Amended by Directive 2000/28/EC.

4. Single payments area proposal for a directive amending Directives 97/7/EC, 2000/12/EC and 2002/65/EC

The Commission proposed, in December 2005, a directive that will bring down existing legal barriers to enable the creation of a single payments area in the EU by 2010. The aim is to make cross-border payments as easy, secure and cheap as national payments. The proposed directive has been extensively reviewed in the Committee on Economic and Monetary Affairs and is due for first reading in October

2006 in Parliament; the main points of discussion concerned the scope of the directive, its efficiency and application to payment service providers.

C. Insurance

The insurance sector is even more highly regulated than the banking industry, out of a concern to protect its clients, especially private individuals. In endeavouring to coordinate the national rules, Community law has taken account of this concern, while seeking to ensure that freedom of establishment and freedom to provide services are exercised effectively so that consumers can enjoy the widest and most attractive range of products possible. These aims are difficult to reconcile, which explains why freedom of movement has in practice taken so long to introduce.

1. Freedom of establishment

This element was the first to be tackled as it aroused fewer misgivings.

The first coordinating directive was on non-life insurance (i.e. insurance other than life assurance) (73/239/EEC of 24 July 1973). This directive made it necessary to obtain authorisation in order to establish a company or set up branches or agencies. Sectoral authorisation for a class of insurance, based on a programme of operations, could be refused if the conditions governing the taking up of business, laid down by national legislation, were not met.

Similar arrangements were laid down for life assurance by Directive 79/267/EEC of 5 March 1979.

2. Freedom to provide services (conclusion of cross-border contracts)

(a) General

Two Court of Justice judgments of 4 December 1986 (*Commission v Germany* and *Commission v France*) provided legal certainty. The court ruled that the host State (in which the risk is situated and the service is provided) may require a company to obtain authorisation in view of the need to protect consumers, in particular in connection with small risks. Authorisation must be granted, however, to any company established in another Member State which meets the conditions laid down by the legislation of the State in which the service is to be performed. Those conditions may not duplicate conditions that have already been fulfilled in the home State, and the controls carried out for this purpose by the latter must be taken into consideration. This precedent speeded up the legislative process.

(b) The second coordinating directive on non-life insurance (88/357 of 22 June 1988)

This directive aims to facilitate the exercise of freedom to provide services, making a distinction between 'large risks'

(concerned with large undertakings) and 'small risks' (concerned with private individuals). In the case of large risks, an insurance company may provide its services in another Member State (the State in which the risk is situated) without authorisation from that State and under the supervision of the State in which its head office is located (Member State of establishment), which applies its own legislation. In the case of small risks, the State in which the risk is situated retains a significant supervisory role: it may require authorisation for the provision of services and approval for contract forms and its legislation (including tax law) is applicable. But the authorisation procedure must take account of controls already carried out by the Member State of establishment.

(c) The second coordinating directive on life insurance (90/619/EEC of 8 November 1990)

This directive achieves the effective exercise of freedom to provide service. Policies taken out on the initiative of the insured party ('passive commitment') are governed by the Member State in which the insurer is established ('State of establishment'). Policies taken out on the insurer's initiative ('active commitment') are deemed to require greater protection for the consumer and are subject to regulation and supervision by the State in which the risk is situated ('State of commitment'). In both cases, however, the tax regime applicable to policies is that of the State of commitment.

3. Completion of liberalisation

Finally, in 1992, definitive arrangements were introduced to complete the liberalisation of insurance operations, as provided for in the White Paper, with regard to the two aspects of freedom of establishment and freedom to provide services.

The third coordinating directive on non-life insurance (92/49 of 18 June 1992)

This directive introduces the single authorisation arrangement. Authorisation (the conditions for the granting of which are harmonised) granted by a Member State to an insurance company to operate on its territory permits that company to operate throughout the Community either on a freely established basis or as a service provider.

The third coordinating directive on life assurance (96/92/EC of 10 November 1992)

This directive also lays down a single authorisation, valid throughout the Community, by the State in which the company has its head office.

It should be stressed that general legislation on non-life insurance does not cover motor vehicle third party liability insurance. That is governed by special rules (Directive

90/618/EEC of 8 November 1990), under which an insurer established in one Member State must, in order to insure a vehicle registered in another Member State (freedom to provide services), appoint a representative in that State.

Alongside the directives to safeguard the right of establishment and freedom to provide services, other Community directives have been adopted in the insurance sector: motor vehicle liability (2000/26/EC), supervision of insurance undertakings (95/26/EC and 98/78/EC), solvency of life insurance and non-life insurance companies (2002/12/EC and 2002/13/EC), winding-up of insurance undertakings (2001/17/EC).

The directive of 13 May 2003 on occupational pensions will create an internal market for occupational retirement pensions under a prudential framework to protect the rights of future pensioners.

4. Solvency II

The commission has started the Solvency II project to assess whether extensive changes should be made to the EU insurance solvency regime, especially in harmonising a more risk-based approach, technical provisions, new risk transfer provisions and financial reporting.

D. Marketable securities

1. Stock exchange listing

(a) Admission to official listing

The first measures date back to the early 1980s with the adoption of three directives covering: the conditions for admission of securities to official stock exchange listings (79/279/EEC of 5 March 1979, as amended by Directive 88/627/EEC of 12 December 1988); the listing particulars required for admission to the stock exchange (80/390/EEC, as amended by 94/18/EC) and the reporting requirements by companies quoted on the stock exchanges (82/121/EEC). Directive 88/627/EEC dealt with publication requirements, when a major holding in a listed company is acquired or is disposed of. For clarity and rationality, the above directives have been grouped together in a single text (Directive 2001/34/EC).

(b) Prospectuses

The revised directive of 15 July 2003 on prospectuses, amending Directive 2001/34/EC, will make it easier and cheaper for companies to raise capital throughout the EU, while reinforcing protection for investors by guaranteeing that all prospectuses provide them with the clear and comprehensive information they need to make investment decisions. The Commission submitted to Parliament in April 2006, propositions to amend accounting measures for third country issuers in the Level 2 of the prospectus directive and the transparency directive. Discussions are currently ongoing.

2. Investment services

(a) Undertakings for collective investment in transferable securities (UCITS)

Directive 85/611/EEC of 20 December 1985 (amended by Directives 2001/107/EC and 2001/108/EC) reconciles the conditions for competition between UCITS and for shareholder protection, enabling UCITS to operate throughout the Community on the basis of a single authorisation granted by the Member State of origin while remaining exclusively subject to the law of that Member State. In 2001, the directive's field of application was extended to bodies investing in financial assets other than transferable securities. In 2005, the Commission launched a review of the EU legal framework for investment funds.

(b) Investment firms

The 'Investment Services' directive, 93/22/EEC of 10 May 1993 (as amended by Directives 95/26/EC and 97/9/EC) enables investment firms to carry on their business throughout the Community on the basis of a single authorisation granted by the Member State of origin.

Directive 93/6/EEC of 15 March 1993 (as amended by Directive 98/31/EC) harmonises the rules on capital adequacy required for the formation of firms and the pursuit of their business.

Directive 97/9/EC of 3 March 1997 requires that Member States put in place a system to compensate investors in the event of the failure of a firm.

(c) *Markets in financial instruments directive (MIFID) 2004/39/EC*
Transposition is due to be finalised in 2007. Followed up by the implementing directive, 2006/31/EC which incorporates a series of technical measures implementing MIFID. The directive was intensively discussed in the

Committee on Economic and Monetary Affairs, with Parliament's proposed changes having been taken into account by the Commission. One of the major changes was an increased level of investor protection as well as changes on portfolio management, internal commissions and best execution. Parliament also called for an increased role for CESR, the Committee of European Securities Regulators, concerning issues of supervision.

3. Insider dealing

Directive 89/592/EEC of 13 November 1989, updated by Directive 2003/6/EC of 28 January 2003, prohibits insider dealing and coordinates the regulations applying to it.

Role of the European Parliament

Involved as co-legislator in the process emanating from the financial services action plan, the EP welcomed this plan and the Lamfalussy proposals to create a genuine service single market for financial services. It supports the need to reform how the EU regulates financial markets so legislation can be enacted speedily and kept up to date. Its concern has been to ensure that any new approach respects the parallelism of the legislative roles of Parliament and the Council and that transparency and democratic control are ensured in the co-decision process. In this context it has two nominees on the Interinstitutional Monitoring Group (Parliament, the Council and the Commission) set up to monitor the functioning of the four-level regulatory process, as part of the Lamfalussy proposals.

→ Josina **KAMERLING**
09/2006

3.4.4. Intellectual, industrial and commercial property

Legal basis

- Article 30 of the EC Treaty (ECT) includes '[...] the protection of industrial and commercial property' in the grounds for exemption from the free movement of goods. 'Industrial and commercial property' is applicable to all rights of industrial or intellectual property, including copyright, patents, trade marks, designs and models and designations of origin;
- Industrial or intellectual property also comes under the provisions on free competition (Articles 81 and 82 of the ECT) insofar as it may give rise to concerted practices or abuse of a dominant position;
- The Paris and Berne Conventions signed in the late 19th century, to which the Member States are parties, did not establish international rights to intellectual property.

Objectives

As exclusive rights, intellectual, industrial and commercial property rights are still dependent on the various national laws. The Member States have never seriously envisaged the prospect of total and absolute unification of such laws. They settled for a compromise of setting up rights at Community level to which undertakings could have recourse as a complement or alternative to national rights.

Achievements

A. Legislative harmonisation

1. Trade marks, designs and models

- Directive 89/104/EEC of 21 December 1988 approximates national laws by laying down common rules on signs constituting trade marks, grounds for refusal or nullity, and rights conferred by trade marks;
- Regulation (EC) No 40/94 of 20 December 1993 created a Community trade mark alongside national trade marks and set up a Community trade mark office, the Office for Harmonisation in the Internal Market, concerned with trade marks and designs (OHIM); the office, which was established in Alicante, became operational in 1996;
- Directive 98/71/EC of 13 October 1998 approximates national legislation on the legal protection of designs and models. The directive provides for registration in the Member States;
- Regulation (EC) No 6/2002 of 12 December 2001 institutes a Community system for the protection of

designs and models. The regulation establishes a single Community system for protecting designs and models via a simple and inexpensive procedure for registering them with the EU agency responsible, the OHIM. This Community system exists alongside national systems of protection. Any issues that do not fall within the scope of the regulation are covered by the national legislation of the respective Member States. National legislation on the protection of designs and models, as harmonised by Directive 98/71/EC, still exists in parallel to the Community-level provisions.

2. Copyright

(a) Main Community measures

- Directive 91/250/EEC of 14 May 1991, on the legal protection of computer programmes (see below);
- Directive 92/100/EEC of 19 November 1992, on the borrowing and lending of works of art;
- Directive 93/83/EEC of 27 September 1993 on cable distribution and satellite broadcasting;
- Directive 93/98/EEC of 29 October 1993 harmonising the duration of copyright and related rights;
- Commission Green Paper of 19 July 1995 on copyright and related rights in the information society, adopted on 19 July 1995.
- Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society.
- Directive 2001/84/EC on the resale right for the benefit of the author of an original work of art.

(b) Approval of international treaties

On 16 March 2000 the Council approved the World Intellectual Property Organisation (WIPO) Treaty on copyright and the Performances and Phonograms Treaty (WPPT). These treaties will help to ensure a balanced level of protection for works of art and other protected objects and allow public access to content available on networks.

By Decision 94/800/EC of 22 December 1994 the Council approved the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) concluded in the Uruguay Round negotiations. The agreement provides that the States parties shall apply among themselves the rules of 'national treatment' and 'most-favoured-nation treatment'.

3. Patents

(a) *Initial attempt at creating a Community patent*

— For a long time a Community system of patents had been deemed necessary to prevent the unfair competition resulting from national patents' territorial limits. This was the aim of the Luxembourg agreement of 15 December 1989 on the creation of a Community patent issued by the European Patent Office (EPO) and effective uniformly and simultaneously throughout the European Union. The agreement has never come into force as not all the Member States have ratified it. Nonetheless, the European Patent Office has been managing the system of European patents with some success since 1978, handling more than a million patent applications over that period.

(b) *Partial improvement*

(i) Harmonisation of national rules

— Commission Regulation (EC) No 240/96 of 31 January 1996 harmonised and simplified the rules applicable to patent licences and know-how licences, to encourage the dissemination of technical know-how in the Community and promote the manufacture of technically improved products;

(ii) Community protection of certain sectors

- Directive 87/54/EEC of 16 December 1986 on the legal protection of topographies of semiconductor products;
- Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs (amended by Directive 93/98/EEC of 29 October 1993). This directive requires the Member States to protect computer programs by copyright, as literary works within the meaning of the Berne Convention for the Protection of Literary and Artistic Works;
- Supplementary protection certificate for plant protection products created by Regulation (EC) No 1610/96 of 23 July 1996;
- Directive 96/9/EC of 11 March 1996, provides for the legal protection of databases — a database being defined as 'a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means'. It stipulates that databases shall be protected both by copyright, covering the intellectual creation involved in their selection or the arrangement of their contents, and by a *sui generis* right protecting investment (of money, human resources, effort and energy) in the obtaining, verification or presentation of the contents. The directive does not apply to computer programs used in the making or operation of databases nor to the works and other materials that they contain.

Nor does it affect the legal provisions for, in particular, patent rights, trade marks, design and model rights and unfair competition;

- Protection of biotechnological inventions by Directive 98/44/EC of 6 July 1998;
- Directive 98/84/EC of 20 November 1998 on the legal protection of services based on, or consisting of, conditional access covers all services to which access is conditional, including pay-TV and radio, video and audio services on demand, electronic publishing and a wide range of online services offered to the public on a subscription or pay-as-you-use basis;
- Council Regulation (EC) No 873/2004 amends Council Regulation (EC) No 2100/94 instituting a system of Community protection for plant varieties, in such a way as to bring its provisions into line with Directive 98/44/EC on the protection of biotechnological inventions. Regulation (EC) No 873/2004 provides that 'Compulsory licences shall be granted to one or more persons by the Office, on application by that person or those persons, but only on grounds of public interest' (Article 1(1));
- A draft directive on the patentability of computer-implemented inventions proposed by the Commission on 20 February 2002 was rejected by the European Parliament (EP/Parliament) at its second reading on 6 July 2005;
- The Commission has proposed an amendment to Directive (EC) No 71/98 with the aim of freeing up the trade in component parts for motor vehicles. Nine Member States have currently liberalised this sector, whilst component parts are protected in 16 others. The Commission estimates that parts are between six and nine times more expensive in the Member States where they are covered by model-protection provisions. The proposal does not affect non-visible parts such as motors and mechanical components. Vehicle manufacturers would retain exclusive rights covering the use of models for the production and sale of new vehicles, thereby ensuring a return on investment in design and safeguarding innovation. The Council has blocked the proposal because of differences over the problem of patent translation.

(c) *New plan for a Community patent*

On 1 August 2000 the Commission presented a new draft regulation on the Community patent (COM(2000) 0412). According to this draft, the Community patent will coexist with the national patents. Legal protection will be guaranteed by a special court. The EP approved the draft on 9 April 2002 with a series of amendments concerning language provisions, the role of national patent offices vis-à-vis the European Patent Office, and legal arrangements.

4. Efforts to combat counterfeiting

Counterfeiting, piracy and attacks on intellectual property generally constitute an ever-growing phenomenon that has already assumed international proportions, seriously threatening national economies and the authority of the Member States. Yet differences among national systems for penalising such offences impede the Member States in their efforts to combat counterfeiting and piracy effectively. For these reasons the Commission has brought forward a draft directive and a draft framework decision on measures to combat infringements of intellectual property rights, including criminal-law penalties, with a view to stepping up the fight against counterfeiting and piracy.

The new proposals are intended to complement Directive 2004/48/EC on the enforcement of intellectual property rights, which provides for measures, procedures and compensation solely under civil and administrative law.

The proposals are currently before the EP for a first reading.

B. Court of Justice case-law

1. Existence and exercise of intellectual property rights

(a) The distinction between the existence and exercise of a right was drawn in connection with the application of the Treaty's competition rules to the exploitation of industrial property rights. First raised in the *Consten-Grundig* judgment (56 and 58/64 of 13 July 1966), on the granting of a trade mark, it was subsequently restated in the important *Parke Davis* judgment (24/67 of 29 February 1968). The distinction was made between matters covered by the 'existence' of industrial property rights, governed by Article 30, and matters relating to the 'exercise' of such rights, which could not elude the principle of free movement (see also the *Deutsche Grammophon* judgment, 78/70 of 8 June 1971).

(b) The 'existence' of a right is, however, an imprecise concept and too dependent on the intentions of national legislators. It was the concept of the 'specific subject-matter' which made it possible to determine what might be covered by the legal status of any industrial or intellectual property right without damaging the principle of free movement:

— In the field of patents, the 'specific subject-matter' consists, in the Court of Justice's view, in 'the exclusive right to use an invention with a view to manufacturing industrial products and putting them into circulation for the first time [...] as well as the right to oppose infringements' (judgment in *Centrafarm v Sterling Drug*, 15/74 of 18 October 1974);

— It took longer to define the 'specific subject-matter' of a trade mark. In the *Terrapin* judgment (119/75 of 22 June 1976), the Court found that 'the basic function of the trade mark [is] to guarantee to consumers that the product has the same origin', a definition later expanded in the *Hoffmann-Laroche* judgment, 'by enabling [them] without any possibility of confusion to distinguish that product from products which have another origin' (102/77 of 23 May 1978).

2. Theory of the 'exhaustion' of rights

(a) Definition

This is the theory that the proprietor of an industrial and commercial property right protected by the law of one Member State cannot invoke that law to prevent the importation of products which have been put into circulation in another Member State (see its application to designs and models in the judgment in *Keurkoop v Nancy Kean Gifts*, 144/81 of 14 September 1982). This theory applies to all domains of industrial property, but may in the case of trade marks undergo adjustment as a result of the judge's consideration of the 'essential function of the trade mark', which is 'to guarantee the identity of the origin of the marked product to the consumer' (*HAG II* judgment in Case C-10/89). The proprietor of a trade mark is justified in preventing a product from being marketed on his territory by a third party if the importer's conduct — such as reprocessing the product or affixing a different trade mark — has made it impossible for the consumer to identify the origin of the marked product with certainty (*Centrafarm v American Home Products* judgment, 3/78 of 10 October 1978).

(b) Limits

The theory of exhaustion of Community rights does not apply in the case of marketing of a counterfeit product, or of products marketed outside the European Economic Area. This is stipulated in Article 6 of the agreement on intellectual property rights concluded under the Uruguay Round (TRIPS, Agreement on intellectual property rights affecting trade).

In July 1999 the Court ruled, in its judgment in *Sebago et Ancienne Maison Dubois et Fils v GB-Unic SA* (C-173/98) that the Member States may not provide in their domestic law for exhaustion of the rights conferred by the trade mark in respect of products put on the market in non-member countries.

Role of the European Parliament

In its various resolutions on intellectual property rights, and particularly on the legal protection of databases, biotechnological inventions and copyright, Parliament has

argued for the gradual harmonisation of intellectual, industrial and commercial property rights. It has also opposed the patenting of parts of the human body.

Parliament has, similarly, opposed the patenting of inventions capable of being implemented on a computer, its concerns here being to avoid obstructing the spread of

innovation and to afford small and medium-sized enterprises (SMEs) free access to software created by major international developers.

→ Denis **BATTA**
11/2005

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4.0. The Lisbon strategy

Legal basis

There is no legal basis, but the conclusions of the European Council meetings set down a blueprint for strategic development.

Objectives

Today, the overall ambition of the 'Lisbon agenda' or 'strategy' is often quoted in European Union (EU) literature: 'to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion' (presidency conclusions, Lisbon European Council, 23 and 24 March 2000) 'and a sustainable environment'. This last objective was added in the course of the Gothenburg summit in June 2001. The achievement is set for 2010.

Achievements

A. General context

At the Lisbon summit on 23–24 March 2000, European leaders agreed to aim for an average economic growth of 3 % and the creation of 20 million jobs by 2010. They defined the main measures needed — at European and national level — to achieve these objectives. Following the adoption of the Lisbon strategy in 2000, the European Council focused on assessing progress towards 'making Europe the most competitive knowledge-based economy in the world'. The Commission published its 'Spring Report' as a basis for the 25–26 March 2004 Spring summit in Brussels, where the former Dutch Prime Minister, Wim Kok, was chosen to head an independent expert group to review the first five years of the implementation of the Lisbon strategy.

Five years after the Lisbon strategy was launched, results have been mixed.

There have been obvious shortcomings and delays, and it has therefore been vital to relaunch the Lisbon strategy without delay, refocusing priorities on growth and employment to make the EU the most competitive economy in the world by 2010.

B. Lisbon strategy: phase I — 2000–05.

At the extraordinary meeting of the European Council of 23 and 24 March 2000 in Lisbon, the Heads of State and Government of the 15 countries of the EU defined a new

strategic objective in order to strengthen employment, economic reform and social cohesion. Faced with the dramatic changes resulting from globalisation and the challenges of a new knowledge-driven economy, the European Council put in place an overall strategy aimed at:

- preparing the transition to a knowledge-based economy and society by better policies for the information society and R & D, by stepping up the process of structural reform for competitiveness and innovation and by completing the internal market;
- modernising the European social model, investing in people and combating social exclusion;
- sustaining the healthy economic outlook and favourable growth prospects by applying an appropriate macroeconomic policy mix.

The Lisbon European Council of 2000 considered that the overall aim of these measures should be, on the basis of the available statistics, to raise the employment rate from an average of 61 % at that time to as close as possible to 70 % by 2010 and to increase the number of women in employment from an average of 51 % at that time to more than 60 % by 2010. Given their different starting points, Member States had to consider setting national targets for an increased employment rate. This, by enlarging the labour force, would reinforce the sustainability of social protection systems.

The former Prime Minister of the Netherlands, Wim Kok, was appointed chairman of a group of experts charged with reviewing the Lisbon strategy. The group's work proved decisive in drawing up the 2005 strategy. On 2 February 2005, the Commission proposed a new start for the Lisbon strategy focusing the European Union's efforts on two principal tasks — delivering stronger, lasting growth, and more and better jobs. From that point on, the institutions of the European Union began to turn the new momentum for a relaunch into concrete action. The European Council of March, as well as the European Parliament (EP/Parliament) and the European social partners, gave full support to the Commission's proposal to relaunch and refocus the Lisbon strategy.

The new strategy focuses on:

- support for knowledge and innovation in Europe;
- reform of state aid policy;

- improvement and simplification of the regulatory framework in which business operates, and the completion of the internal market for services;
- the removal of obstacles to free movement in the areas of transport, labour and education;
- development of a common approach to economic migration;
- support for efforts to cope with the social consequences of economic restructuring.

At the European Council of March 2005, all the Member States made a commitment to draw up, by October 2005 and under their own responsibility, national reform programmes based on the integrated guidelines. The reform programmes take into account the diversity of situations and policy priorities at national level.

C. Lisbon strategy: phase II — 2005–08

Particular attention needs to be paid to the delivery of the Lisbon agenda. In order to achieve the objectives of growth and employment, the Union must do more to mobilise all the resources at national and Community levels so that their synergies can be put to more effective use. To this end, the broad economic policy guidelines (BEPGs) reflect the new start for the Lisbon strategy and concentrate on the contribution of economic policies to higher growth and more jobs. Section A of the BEPGs deals with the contribution that macroeconomic policies can make in this respect. Section B focuses on the measures and policies that the Member States should carry out in order to boost knowledge and innovation for growth and to make Europe a more attractive place to invest and work.

In line with the conclusions of the Brussels European Council (22 and 23 March 2005), the BEPGs, as a general instrument for coordinating economic policies, should continue to embrace the whole range of macroeconomic and microeconomic policies, as well as employment policy insofar as this interacts with those policies; the BEPGs will ensure general economic consistency between the three strands of the strategy. The existing multilateral surveillance arrangements for the BEPGs will continue to apply.

These guidelines are applicable to all Member States and to the Community. They should foster coherence of reform measures included in the national reform programmes established by Member States and will be complemented by the Lisbon Community programme 2005 to 2008 covering all actions to be undertaken at Community level in the interest of growth and employment. Implementation of all relevant aspects of these guidelines should take into account gender mainstreaming.

The Brussels European Council (23 and 24 March 2006) confirmed that the integrated guidelines 2005–08 for jobs and growth remain valid.

Role of the European Parliament

1. The European Parliament and its involvement in the Lisbon process

In July 2000, the EP adopted a resolution, after the Feira European Council meeting, welcoming the consensus on the policy mix set out by Council's conclusions but calling for an interinstitutional agreement. The following year, Parliament examined Council's preparatory work for the Spring Council and expressed doubts on Member States' ability to deliver the Lisbon commitments. Though Parliament saw an environmental dimension for the Lisbon strategy, it warned against setting too many targets and underlined the need for more widespread consultation with interested parties, including applicant countries. In its May 2001 resolution Parliament again stressed its right to be involved in any follow-up to the Lisbon strategy and called for the open coordination method established by the Lisbon European Council.

In reply to the conclusions of the Gothenburg European Council, Parliament supported the emphasis on sustainable development, but regretted that the Council had only agreed on the general principle while failing to take concrete actions.

Following the 2003 Spring Council, Parliament analysed the overall Lisbon achievements and stressed the need for further progress in the four priority objectives set out by the Council. The Commission was asked to prepare a roadmap to achieve the Lisbon goals by 2010. Parliament reiterated its criticisms of the coordination method and called for effective mechanisms to bring about the required structural changes. In June 2003, Parliament asked for an interinstitutional agreement that would secure Parliament's role in defining objectives and indicators and guarantee the development of a Community method.

In a second resolution following the December 2003 European Council, Parliament reiterated its concerns about Member States' substantial failure to follow up the Lisbon strategy and asked for better monitoring, underlining the need for structural reforms to restore Europe's competitiveness, generate growth and increase employment, taking into account the multiple aspects of the European social model.

In the wake of the 2004 Spring Council, Parliament emphasised that the full implementation of agreed commitments was crucial and called for political action rather than the setting up high-level groups and called for

structural reforms to increase employment to achieve the 70 % employment rate necessary to cope with an ageing population.

Finally, Parliament presented its views on the findings of the Kok Report by underlining the need to focus on both structural reforms and macroeconomic actions in order to stimulate growth and employment, and warned that the stability and sustainability of public finances should not be jeopardised.

2. Coordination group on the Lisbon strategy: composition, objectives and Parliament resolution 2005

In December 2004, the Lisbon Strategy Coordination Group was set up to create a forum for discussion, actions and interinstitutional dialogue. It is made up of 33 representatives from the different political groups representing the 10 parliamentary committees most concerned by the Lisbon strategy and is chaired by Mr Joseph Daul, President of the Conference of Committee Chairs. It provides a forum for regular open debate and support for the legislative work of the different committees and increases communication with national representatives.

On 9 March 2005, the EP adopted a resolution on the 'Mid-term review of the Lisbon strategy' (P6_TA(2005)0069) supporting an effective re-focusing of the Lisbon strategy, identifying key policy areas, such as innovation, reducing bureaucracy, and important proposals, such as REACH or the services directive and emphasising economic growth, the environment and social cohesion.

3. Parliament resolution 2006

On 15 March 2006, the EP adopted a resolution on the 'Preparations for the European Council: the Lisbon strategy' (P6_TA(2005)0069), demanding the objective analysis of the national action plans, concrete proposals responding to future demographic challenges and addressing the strategic role of energy policies.

4. Interparliamentary dialogues

The EP places great importance on the role of national parliaments and focuses on the strengthening of a bilateral dialogue. Debates at the 2nd Joint Parliamentary meeting between the EP and the national parliaments — 'The Parliaments on the way to Lisbon', 31 January 2006 to 1 February 2006, highlighted the need to define the Lisbon strategy in more specific and realistic terms. The benefits of the 'flexicurity' model proposed by the new Lisbon agenda received general approbation and it was acknowledged that social cohesion is unsustainable without competitiveness and competitiveness is not viable without social cohesion.

Finally, in December 2005, the Coordination group on the Lisbon strategy organised a public hearing to discuss competitiveness, research and eco-design. The hearing boosted discussions on the role of stakeholders in the implementation process of the Lisbon objectives and on creating a sound competitive and research area in Europe.

5. 2007 developments

At the beginning of 2007, the European Commission published its yearly report on the status of implementation in all Member States of the national reform programmes. The EP continues to closely monitor implementation through the activities of its Lisbon G33 Group.

The group's mandate was extended for another year at the coordinator's meeting in September 2006, where it was also decided to appoint two *co-rapporteurs* to prepare the EP resolution which will be voted on in advance of the European Spring Council. Emphasis will be placed on benchmarking, the integrated guidelines for growth and jobs and the critical issue of energy in the EU.

→ Olalla **LÓPEZ ALVAREZ**
 Gianpaolo **MENEGHINI**
 Jochen **RICHTER**
 09/2006

4.1. Common agricultural policy

4.1.1. The Treaty of Rome and the foundations of the CAP

Legal basis

Articles 32 to 38 in Title II of the EC Treaty (ECT).

Objectives

A. Basic raison d'être

When the Treaty of Rome established the common market in 1958, agriculture in the six Member States at the time was strongly affected by State intervention, particularly with regard to what was produced, setting prices, marketing products and farm structures. If agricultural produce was to be included in the free movement of goods while maintaining State intervention in the agriculture sector, national intervention mechanisms which were incompatible with free movement had to be removed, and at least some of them transferred to Community level; this is the basic rationale on which the common agricultural policy (CAP) is founded. Some Member States and all the farmers' professional organisations wanted to maintain strong State intervention in agriculture.

B. Particular objectives

Article 33 of the ECT sets out the internal objectives of the CAP:

- to increase agricultural productivity by promoting technical progress and ensuring the optimum use of the factors of production, in particular labour;
- to ensure a fair standard of living for farmers;
- to stabilise markets;
- to assure the availability of supplies;
- to ensure reasonable prices for consumers.

Article 131 sets out the objectives of the common commercial policy applicable to trade in agricultural products.

Achievements

Overall results

The CAP produced spectacular results. The Community was soon able to overcome the food shortages of the 1950s, achieving self-sufficiency and then generating cyclical and structural surpluses. There were a number of technical, economic and political reasons, in particular the gradual decline of Community preference and the replacement of local products on European markets by products imported on preferential terms. Changes in Community and world agriculture during the 1980s led to the establishment of new priorities. Under guidelines proposed in 1985 in the Green Paper (the Commission's discussion paper on the prospects for the CAP), the measures introduced by the Single Act (1986), decisions adopted by the Council in February 1988 and the 1992 and 1999 reforms (Agenda 2000) (→4.1.2.), new foundations were laid for the CAP. In Luxembourg on 26 June 2003, the Council of agricultural ministers of the European Union reached agreement on a new radical reform of the CAP, based on the Commission proposals presented on 23 January 2003. Many reasons, both internal and external justified this substantial change, in particular the need to consolidate the European agricultural model in an enlarged EU, to satisfy the greater demands made by society, to improve the economic efficiency of the instruments of agricultural policy, to seek to achieve compatibility with the WTO agreements, thereby ensuring a greater degree of acceptability at international level, and finally to bring farmers and taxpayers together again by involving them in a joint project with more acceptable costs and a less bureaucratic management.

Instruments of the Common Agricultural Policy

1. Overall view

Since the major CAP reform in 2003, implemented in several stages (→4.1.2. and 4.1.4.) and which is still ongoing for certain sectors, the main instruments of the CAP are based on reformed common organisations of the market (COMs) (→4.1.4.), and reformed rural development policy (→4.1.5.).

The CAP also makes use of the external trade policy (→4.1.7.) and the harmonisation of legislation (see below). It has a financing fund (→4.1.6.) and new implementing machinery, reinforcing the previous aims of competitiveness, solidarity and fuller consideration of environmental concerns.

In practical terms, the reform consists of the adoption of a package of horizontal and implementing regulations establishing common rules for direct support schemes (SFP scheme, cross-compliance, modulation and control) and support for rural development. Apart from a series of provisions governing various common market organisations (CMOs), the reform (via Council Regulation (EC) No 1782/2003) introduces provisions that are radically new in their application procedures and their effects: among several key initiatives, the decoupling of direct support and the introduction of a single farm payment (SFP), compulsory cross-compliance, compulsory modulation in favour of strengthening rural development, and the introduction of a financial discipline mechanism (→4.1.2).

2. The most prominent bodies playing a role in applying the Common Agricultural Policy

The 'committees' date back to 1961, when the first common organisations of the market were established. The Commission had proposed to give itself wide decision-making powers for running the COMs; some Member States felt, however, that this power should remain with the Council. The committees were a compromise between the two positions: management was entrusted to the Commission, but it had to consult a committee consisting of representatives of the Member States, using the qualified majority procedure. Three main types of committee take

part in designing and implementing the Union's agricultural policy: management committees (dealing with the various market organisations), regulatory committees (dealing with rules to be applied in general areas) and other committees (socio-economic advisory committees or scientific committees) (→1.3.8).

Professional organisations in the EU are the Committee of Agricultural Organisations of the EU (COPA) and the General Committee for Agricultural Cooperation in the EU (Cogeca).

Role of the European Parliament

A. Scope for action

Since the beginning (Treaty of Rome), the European Parliament (Parliament) has had only advisory powers on agriculture, and some Council decisions do not even require it to be consulted.

The only area in which it has decision-making power is the impact of agriculture on human health, since the Amsterdam Treaty gave it the power of co-decision with the Council on public health matters.

B. Influence

Having no decision-making powers, Parliament has exercised a strong influence over the CAP since the beginning by using non-binding methods like use of own initiative reports and resolutions through mainly consultation procedures.

→ Beata **KOWALKOWSKA**
11/2006

4.1.2. Reform of the CAP

Legal basis

Articles 32 to 38 EC Treaty.

Objectives

The objectives laid down for the Common Agricultural Policy (CAP) in the Treaty are still perfectly valid (→4.1.1.). However, the following CAP reforms adapted different mechanisms and principles used in order to attain those objectives more successfully. The radical reform initiated by Agenda 2000 introduced some new objectives into the CAP:

- improving competitiveness by gearing agriculture more to the market;
- enhanced food safety and security;
- stabilisation of incomes, with 'modulation' and redistribution of aid between farmers;
- maintenance of a viable agricultural sector, incorporating environmental objectives;
- creation of additional income and employment sources;
- contribution to the economic and social cohesion of the Union.

Achievements

A. First steps

From the time it was introduced in 1962 the CAP has fulfilled its objectives for ensuring secure food supplies. Then, with its policy of guaranteed prices that were very high compared with the world market prices and an unlimited buying guarantee, the CAP started to produce more and more surpluses, which by the 1970s became a real problem for certain products. Running the CAP in such circumstances imposed a heavy burden on the Community which became untenable at the beginning of the 1980s. In order to improve the situation, the Commission published the Green Paper (COM(85) 0333), containing the first measures to restrict institutional prices (prices determined by the public authorities) and the guarantee mechanisms specific to the common market organisations (CMO), such as the introduction of milk quotas and certain 'stabilisers' in the cereal and wine markets.

In February 1988, on the basis of the Commission document 'The Development and Future of the CAP', the European Council decided to take further steps, since the previous action had not been successful in reducing either expenditure or surpluses. The most important measures taken were: the application of stricter budgetary discipline, extension of the budgetary stabilisers to virtually all sectors whereby exceeding a certain production level was penalised by a reduction in prices, aid and other institutional payments. Measures to reduce supply (such as the arable land set-aside system and a scheme for the extensification of production and conversion of surplus products, in which producers who agree to reduce their production volume are awarded premiums) were also introduced. To offset the resulting loss of income to farmers, a direct income aid system was introduced.

B. The 1992 reform

In view of the persistence of surpluses and the burden on the budget, in 1991 the Commission published two discussion papers (COM(91) 0100 and COM(91) 0258) on the future of the CAP. On 21 May 1992, the Council reached a political agreement on the proposed reform. The reform brought about radical changes in the CAP, replacing a system of protection through prices with a system of direct income support, calculated specifically for each agricultural sector. From 1993 onwards, the reform was applied in the herbaceous crops, beef, sheep and goat meat, dairy products and tobacco sectors. It was gradually introduced in other sectors, such as dried fodder, cotton and sugar.

C. Agenda 2000

1. The Commission communication

Agenda 2000, a financial framework for the Union from 2000–06 submitted by the Commission in July 1997 (COM(97) 2000), made the stabilisation of the CAP budget a priority. Although the 1992 agricultural reform has been considered highly successful, the Commission proposal stressed the further need to continue the process of aligning CAP prices with world prices, and compensating for this with direct income support. This approach was justified by the need to avoid further market imbalances, the prospect of a further cycle of trade negotiations in the World Trade Organisation (WTO), and the wish to make agriculture more environmentally friendly and quality-conscious.

For example, Agenda 2000 proposed a 20 % reduction in the intervention price for cereals, offset by an increase in direct support, alignment of the oilseed system to the arrangements for cereals, a 20 % reduction in the price of beef and veal, with increased support; an average 10 % price reduction in the dairy sector, whilst introducing new annual support and maintaining the quota system until 2006. Those measures are accompanied by a ceiling for all direct income support and, in addition, Member States may introduce criteria for the differentiation of support, i.e. 'optional modulation'. To help farmers who face difficulties, all these measures are accompanied by a consolidation of rural development.

2. The Berlin European Council

The Berlin European Council on 24 and 25 March 1999 set the objective for the reform: a multifunctional, sustainable and competitive agriculture throughout Europe, including regions facing particular difficulties. It focused on maintaining the landscape, the countryside, and the vitality of rural communities which respond to consumer concerns and demands regarding food quality and safety, environmental protection and animal welfare standards. The Council considered that this reform could be implemented within a financial framework of an average level of EUR 40 500 million, plus 14 000 million for rural development and veterinary and plant health measures. The Commission was invited to submit a report before the next enlargement which would serve as a basis for a review of the agricultural guidelines.

D. The mid-term review of the common agricultural policy (MTR)

The MTR (COM(2002) 394) of 10 July 2002 confirmed that the objectives for reform remained the same as those set in Berlin in 1999 and at the Gothenburg Summit in 2001 namely:

- a competitive agricultural sector, by making intervention a safety net and allowing producers to respond to market signals;

- introduction of production methods which correspond to society's expectations as regards the protection of the environment, animal health and welfare, and food safety and quality.

The reform has the additional purpose of facilitating the enlargement process and the defence of the modernised CAP in WTO talks.

The MTR proposed a sustainable and market-oriented agriculture based on:

- the decoupling and cross-compliance of aids, by switching from product support to direct producer support, based on a system of aid granted independently of production and conditional upon cross-compliance with mandatory environmental standards;
- the optional modulation of aid, the introduction of a specific instrument authorising Member States to reduce aid;
- degressive aid, by reducing direct payments to large farms to deal with the problems arising from the social distribution of direct support and the need to strengthen rural development, by transferring funds from the first pillar — market support and direct aids.

The MTR also proposed the reduction in institutional prices for cereals and rice and evaluation of the advantages and disadvantages of four different options for the reform of the dairy sector in relation to the quota system and asymmetric cuts in intervention price for butter and skimmed milk powder.

The Brussels European Council in October 2002 fixed a ceiling for expenditure on the first pillar of the CAP (market support and direct payments under current heading 1A) for the EU of 25. These maximum amounts, were laid down for the period from 2007 to 2013 under the new heading 2 COM(2004) 0498.

E. The reform of the common agricultural policy in June 2003

The agriculture ministers of the EU reached an agreement on 26 June 2003 in Luxembourg on Regulation (EC) No 1782/2003, on an in-depth reform of the CAP based on the Commission's proposals from 23 January 2003 (COM(2003) 0023).

The reform was implemented in three main waves. The first one covering the main common market organisations (CMOs), particularly in the cereals, rice, dried fodder, and milk and milk products sectors; the second one, in April 2004, covering the so-called 'Mediterranean Package' for olive oil, raw tobacco, hops and cotton sectors; the third one covering the Sugar CMO (in force since 1 July 2006) is

still ongoing for remaining products such as wine and fruits and vegetables.

The single farm payment, came into force on 01 January 2005, but some Member States were allowed to delay its application until 1 January 2007 at the latest: 10 countries (Austria, Belgium, Denmark, Germany, Ireland, Italy, Luxembourg, Portugal, Sweden and UK) chose the earliest possible date (1 January 2005) for the application of the reform. The remaining five Member States (France, Finland, Greece, Netherlands and Spain) started a year later, on 1 January 2006

1. Objectives

The new reform of the CAP is intended to:

- enhance the competitiveness of a sustainable and more market-oriented European agriculture;
- stabilise the income of farmers while at the same time ensuring the stability of budgetary costs;
- produce high-quality foods which meet the public's expectations and demands;
- strengthen the negotiating position of the EU in WTO discussions (→4.1.7).

2. Measures

In line with the objectives of Agenda 2000 with regard to sustainable agriculture and rural development, the reform introduces several adjustments to CMOs as well as some new tools.

- Introduction of the decoupled single farm payment (SFP), established at the farm or the regional level, calculated on the basis of the amount of direct aid received during the reference period (2000 to 2002) and replacing most of the former premia under different CMOs. In some cases, however, and subject to certain conditions, Member States were able to retain limited coupling in order to avoid the abandonment of production.
- A compulsory cross-compliance (eco-conditionality) making the link between the full granting of the SFP and the compliance with regulatory requirements relating to management activities in the fields of public health, animal and plant health, the environment and animal welfare, as well as to the maintenance of land in good agricultural and environmental condition.
- Enhancement of rural development policy (→4.1.5).
- Reduction of direct payments (modulation) for farms receiving more than EUR 5 000 in direct aid, in order to finance additional rural development policy measures (by 3 % in 2005, 4 % in 2006 and 5 % from 2007 to 2013).
- Introduction of a financial-discipline measure in order to guarantee compliance with the agricultural budgetary ceilings.

- Changes in CMO (→4.1.4.): in September 2003, the Commission published the reform package for certain CMOs. Further proposals concerning reform of CMOs in other sectors were published in 2004 and 2005. The main aim of those proposals was to make agriculture more competitive and trade-friendly, replacing the previously used production-linked payments by a total or partial decoupled single payment.
- Introduction of a new farm advisory system.

Role of the European Parliament

The European Parliament has globally supported all the CAP reforms. However, it supported the proposals for reform submitted by the Commission in January 2003, whilst expressing an opinion in favour of a partial

decoupling and again calling for full co-decision powers on agricultural policy (resolution of 5 June 2003).

- It emphasised in its resolution of 22 April 2004 (A5-0268/2004) that it is not bound by the decision taken by the Brussels Council on agricultural spending until 2013, and reaffirmed its support for strengthening of the rural development policy.
- It expressed reservations concerning the seven-year period for the next financial perspective. It called also for the completion of the reform in the remaining sectors (in particular in the wine and fruit and vegetables sectors).

→ Beata KOWALKOWSKA
11/2006

4.1.3. Common organisations of the market (CMOs): general concept

Legal basis

The Treaty of Rome defined the legal basis of an agricultural policy for the whole Community. The market policy — based on Article 32 and on basic regulations founded on that article governing the various common market organisations (CMOs) (→4.1.4.) — is the oldest instrument of that policy and, until the 1992 reform, it was the most important.

Objectives

The market policy aims to guide agricultural production and stabilise markets. It works by placing products or groups of products under a particular regime, the common market organisation (CMO), in order to govern their production and trade, in compliance with the basic principles of the CAP (i.e. the single market, Community preference and financial solidarity) and in accordance with common rules and appropriate mechanisms. The latter are defined in basic regulations for each product, under two main headings: the internal regime, which is intended to protect Community production, and the regime governing trade with third countries, which is intended to manage the opening up of the markets.

Achievements

A. Scope of the CMOs

The first CMOs, and the instrument that funds them, the EAGGF, were introduced in 1962. Shortly afterwards, the range

of products placed under CMOs was expanded to cover all the agricultural products listed in Annex II to the Treaty, the two major exceptions being alcohol and potatoes. Although the CMOs are often similar in structure, they vary in organisational detail. They offer guarantees which vary according to the special economic and agricultural characteristics of the products concerned and are grouped under two main headings, i.e. internal market regulations and an external system of protection against third countries. Thus, for the most important products, the CMOs are a combination of common price systems, guarantee mechanisms and a system of trade with third countries, which in some cases are supplemented by instruments for organising production and marketing via producer groups or professional agreements, or various measures relating to quality standards and marketing. For other products, the CMOs contain only a system of direct aid or protection at the border.

When the new reform of the CAP decided on by EU farm ministers on 26 June 2003 is implemented, most forms of direct aid will be made subject to the principle of decoupling, which Member States will be able to apply, either in full or in part, in certain sectors and subject to certain conditions.

The market support policy and the mechanisms associated with it, having suffered the effects of currency fluctuations and of difficulties resulting from the structural production surpluses which had occurred in most sectors, were reformed in 1992 and 1999 (→4.1.2.), in favour of a progressive reduction in institutional prices (→4.1.3.) offset

Contribution of the EAGGF Guarantee Section

Measures	%	1989	1999
Direct aids	(reforms of 1992 and 1999)	–	72
Market support	Export refunds	38	14
	Intervention	62	13
Other			1

by the granting of direct aid and the generalised application of supply control measures.

Developments in the contribution made by the EAGGF Guarantee Section show the extent to which the CAP has been transformed into an incomes policy consisting of compensatory direct aids.

Moreover, consolidation of restrictions on supply as a result of continuing surpluses, greater openness of the markets and reduction of subsidised exports following the Uruguay Round agreement have led to the establishment of stabilising mechanisms sector by sector, which in some cases entitle European farmers or industrialists to guarantee prices or production quotas.

B. CMO classification by support mechanism

Changes in the aims and means of organising the markets resulting from the 1992 and 1999 reforms have changed the design of the CMOs, which may now be classified in five categories according to the support mechanisms they use (Table I).

1. CMOs with guaranteed prices and automatic intervention

These still apply to sugar and dairy products. Minimum or guaranteed prices are paid to farmers by public intervention agencies in exchange for delivery of their products, where market prices are too low. The CMO for sugar, which the Commission had considered reforming by 2002, was extended for five years. However, in September 2003 the Commission submitted options for reform (→4.1.4.). The Agricultural Council, meeting on 26 June 2003 in the context of the new reform of the CAP, decided in favour of a review of market policy for the dairy sector (→4.1.4.).

2. CMOs with guaranteed prices and conditional intervention

These apply to wine, pigmeat and some fresh fruit and vegetables. They involve a guaranteed price scheme, although it is applicable only in the event of a serious market crisis.

3. Mixed CMOs with guaranteed prices and additional direct production aids

These apply to cereals, rice, sheepmeat, bananas, milk and beef (although from 2002 a conditional intervention scheme

with a 'safety net' was set up). This category has grown since the CAP reform packages adopted in 1992 and 1999.

4. CMOs with direct production aids only

These involve aids at a flat rate or proportional to the quantities produced or yields. They apply to oilseeds, protein crops, feeding stuffs, tobacco, textiles, pulses, hops, processed fruit and vegetables, some fresh fruit and vegetables (asparagus and nuts), olive oil and olives.

5. CMOs without direct production support

These apply to poultry, eggs, processed agricultural products, flowers and plants, some fresh fruit and vegetables and other marginal or exotic products (ethyl alcohol, coffee, tea, etc.). These products receive only customs protection.

C. CMO classification by supply control mechanism

Since the most recent CAP reforms, there are four co-existing mechanisms for controlling production quantities (Table II):

1. Production quotas as such

Quotas are fixed at national level for milk and sugar and allocated to farms or enterprises. Producers exceeding the quotas in each Member State face penalties.

2. National guaranteed production quotas

These quotas, which are maximum guaranteed quantities (MGQs), maximum guaranteed areas (MGAs) and premiums per head of livestock, cover a long list of products. They are equivalent to direct aid to producers, reduced proportionally if predetermined thresholds are exceeded.

3. Guaranteed production quotas at Community level

These quotas, which are calculated on the basis of overall EU production, are being phased out and at present only apply to some processed fruit and vegetables, pulses and bananas.

4. National quotas for surpluses

These quotas are for some Mediterranean products (wine, using approved distillation volumes) and some fresh fruit and vegetables (using thresholds for withdrawal from the market).

Table I — Products listed by market organisation mechanism after the Berlin summit (Agenda 2000)

CMOs with guaranteed prices and automatic intervention	CMOs with guaranteed prices and conditional intervention	Mixed CMOs with guaranteed prices and additional direct production aids	CMOs with direct aids	CMOs with no support (customs CMOs)
Sugar	Wine	Cereals	Oilseeds	Poultry
Milk (until 2004)	Pigmeat	Rice	Protein crops	Eggs
	Fresh fruit and vegetables	Sheepmeat	Fodder	Processed farm products
		Bananas	Tobacco	Flowers and plants
		Milk (2004)	Cotton	Some fresh fruit and vegetables
		Beef and veal (before July 2002)	Other textiles	Potatoes
			Pulses	Ethyl alcohol
			Processed fruit and vegetables	Other marginal and exotic products
			Hops	
			Asparagus	
			Nuts	
			Olives	
			Olive oil	
			Beef and veal (2002)	

NB. This table does not take into account the decisions of 26 June 2003 on the decoupling of aid ([→4.1.4](#)).

Table II — Sectoral mechanisms for controlling supply after the Berlin summit (Agenda 2000)

National production quotas	National guaranteed production quotas	Community guaranteed production quotas	National surplus quotas
Sugar and isoglucose (A and B quotas)	Rice (MGA)	Some processed fruit and vegetables (guarantee threshold for pears and peaches; processing threshold for citrus fruit; MGA for dried grapes)	Wine products (voluntary and conditional distillation volumes)
Vines (ban on planting)	Cotton (MGQ)		Fresh fruit and vegetables (producer organisation withdrawal thresholds)
Milk	Feeding stuffs (MGQ)		
	Tobacco (MGQ)		
	Potato starch		Pulses (MGA)
	Processed tomatoes		Bananas (MGQ)
	Cattle (per head)		
	Suckler cows (per head)		
	Sheep and goats (per head)		
	Herbacea (MGA)		
	Milk (2005/2006)		
	Olive oil		
	Olives		

4.1.4. Common organisations of the market (CMOs): sectoral applications

A. Common organisation of the market for cereals

Cereals are in the centre of the common agricultural policy (CAP). They represent 11.4 % of the EU agriculture area and take 36.2 % of the CAP budget. The common organisation of the market (CMO) in cereals has been constantly modified in order to better respond to the changing internal and external aspects (Macsharry in 1992, Agenda 2000, mid-term review of Agenda 2000 leading to the CMO reform in 2003). Whilst the objectives of the original CMO remained, the implementing tools were subject to ongoing adjustments. These included continuous reductions in market support, the introduction of progressively increasing direct payments (arable aids) and compulsory set-aside.

The last reform for CMO in cereals commenced as part of the mid-term review of the CAP presented in the Commission proposal in January 2003 (COM/2003/0023 final), on which the decision by the EU agriculture ministers was finally reached on 26 June 2003. This led to establishing Regulation (EC) No 1784/2003 on the common organisation of the market in cereals, adopted in September 2003. The principal measures introduced by the regulation are:

- replacement of direct payments by single farm payments (fully or partially decoupled);
- maintenance of intervention price for cereals at EUR 101.31/tonne and the direct payments per hectares at EUR 63/tonne;
- reduction of existing seasonal correction for the intervention price ('monthly increments') by 50 %;
- abolition of the intervention system of rye;
- introduction of other horizontal conditions (in particular cross-compliance and modulation).

B. Common organisation of the market for rice

As part of the mid-term review of the CAP, the Commission set out principles for the reform of the CMO designed to stabilise the market, especially in light of the expected impact of the 'Everything But Arms' initiative (proposal to open up the markets to the benefit of the least developed countries presented by the European Union in 2001, →6.5.5). On this basis, the EU agriculture ministers decided on 26 June 2003 to set the intervention price at EUR 150/tonne, limit intervention to 75 000 tonnes per year and

increase the direct payment to EUR 177/tonne (EUR 102/tonne of this payment is integrated in the single farm payment scheme, allocated on the basis of historical rights), Regulation (EC) No 1785/2003. The Council also called on the Commission to begin discussions in the WTO on the modification of the bound duties applicable to imports.

In July 2004, the EU decided to adopt a bound duty for husked rice of EUR 65/t and for milled rice of EUR 175/tonne. Furthermore, in July 2005 the EU and the United States have agreed on a new regime for imports of husked rice into the Community. That agreement establishes a mechanism to calculate applied duties on husked rice which may be adjusted every six months based on a comparison between actual imports and a reference import level. In practice, the applied duty can be EUR 65/tonne, EUR 42.5/tonne or EUR 30/tonne depending on the operation of the mechanism.

C. Common organisation of the market for sugar and isoglucose

The CMO for sugar was renewed in May 2001 for a period of 5 years (until 2005/2006), in accordance with Council Regulation (EC) No 1260/2001, subject to several changes to the system, including a reduction in quotas A and B. However, in September 2003 the Commission presented its options for reform (extension of the CMO as a whole; elimination of quotas, reduction in prices and introduction of a form of single farm payment; end to the current system to encourage a liberalisation of the sector). These were followed in June 2005 by an important reform package covering the reform of the common organisation of the markets in the sugar sector, the establishment of a temporary scheme for the restructuring of the sugar industry and direct support schemes under the CAP, which was formally adopted by the European Union agriculture ministers in February 2006, and entered into force on 1 July 2006.

The package of three proposals included in the Council Regulation (EC) No 318/2006 is intended to:

- reform the sugar CMO to enhance the competitiveness and market orientation of the sector and strengthen the EU's position in the current round of World Trade Organisation (WTO) talks;
- restructure the EU's sugar industry by the establishment of a restructuring fund, encouraging uncompetitive sugar producers to leave the industry;

- provide direct income support to sugar beet producers (CNS/2005/0119).

Moreover, the regulation establishes progressively reduced reference prices and minimum beet price up to 2010. By the end of February 2010 The Commission shall decide the common percentage needed to reduce existing quotas for sugar in the marketing years from 2010/2011.

The core of the reform is a 36 % cut in the guaranteed minimum sugar price, establishment of reduction quotas per country or region and percentage by which they should decrease on an annual basis, with penalties for surplus amounts produced. The production of sugar for non-food use for the chemical and pharmaceutical industries, and for the production of bio-ethanol is excluded from production quotas.

D. Common organisation of the market for olive oil

As part of the second wave of measures concerning the reform of the CAP, in September 2003, the Council adopted a Regulation (EC) No 1782/2003 (horizontal legislation) by which the sector had to introduce decoupling of the majority of support and integrate the single farm payment into the legal framework. The specific legislation for CMO olive oil and table olives, Regulation (EC) No 865/2004, entered into force on 7 May 2005 and is applicable since the 1 November 2005/2006 marketing year. In order to prevent olive groves from being abandoned in important producing regions, which could result in the current system of production aid being simply converted into a single farm payment, it proposed that the Member States should retain 40 % of the production aid allocated to this sector under national envelopes and that producers should be granted a premium calculated on the basis of the number of trees or hectares.

The Council authorised the Commission on 25 November 2003 to negotiate on behalf of the European Community the revision of the International Agreement on Olive Oil and Table Olives (which dates from 1986, and which was amended and extended in 1993 and 2004) This mandate entitles the Commission to negotiate on the general objectives with respect to international technical cooperation, standardisation of international trade in olive products, the expansion of international trade and the promotion of olive products.

E. Common organisation of the market for fruit and vegetables

The fruit and vegetable (F&V) sector is one of the key sectors in EU agriculture, accounting for 17 % of EU final

agricultural production. In some countries, notably Greece, Spain, Portugal, Malta, Italy and Belgium this share is even higher than the EU average, with Italy and Spain being the main F&V producers. The EU is a key global trading partner in F&V, being the first world importer and second world exporter.

The CMO for F&V differs from other CAP regulations applied to other agricultural products. The basic regulations covering fresh F&V, processed F&V, and a system of Community aids granted to certain citrus fruits were laid down in 1996, although the basic regulation has been subjected to a number of amendments since 2000. For fresh products, the system is characterised by support to producer organisations (POs) under operational funds as well as intervention measures through market withdrawals compensated with Community funds. Processed products are guided by a system based on direct aids to producers according to national thresholds with penalties if processed volumes increase beyond fixed limits.

In July 2001, the European Parliament (EP) adopted a resolution on the Commission report, highlighting weaknesses of the sector, in particular an insufficient supply organisation, combined with multilateral or bilateral agreements with third countries, that are increasingly exposing the EU F&V sector to an open and competitive environment.

The Council presidency conclusions of June 2002 demanded simplification of the CMO regime in F&V. As a result, in 2003, three regulations were adopted in the simplification package:

- Regulation (EC) No 1432/2003 on POs recognition: a clarification has been made on the faculty given to the Member States to allow non-producer Members to become members of POs;
- Regulation (EC) No 1433/2003 on operational funds and operational programmes: simplification on financial contributions of members to the operational funds;
- Regulation (EC) No 1535/2003 for the processed fruit and vegetable sector. The main modification introduced was the improvement of mechanisms, procedures and deadlines for applying the regime.

Furthermore, the Council requested the Commission to carry out an extensive impact assessment analysis of the possible alternatives to the current aid systems in line with the principles of the 2003 CAP reform.

The EP, in its own initiative report, A6-0121/2005, on simplification of the common organisation of the market in F&V, addressed some strategic questions concerning the reform of the sector. The report outlines some points that

should be taken into account in the forthcoming Commission proposal namely:

- improving the work of POs and increasing the concentration of supply;
- introducing a new crisis management system as the current withdrawals system is proving totally inadequate for that task, owing to the administrative obstacles that exist to product withdrawals and the low payment for them;
- maintaining the support scheme for processed products since it has enabled the development of an expanding Community industry;
- increasing the competitiveness of the sector in the face of imports, since the European fruit and vegetable sector is confronted with increasingly easy access for imports from third countries;
- promotion of F&V;
- ensuring the fruit and vegetable sector does not become a 'refuge sector' following the reform of the CAP.

F. Common organisation of the market for the wine sector

Approved by the Council in May 1999 (Regulation (EC) No 1493/1999), the new CMO regime entered into force on 1 August 2000. It sets out provisions for the entire sector, including:

- control of wine production potential (framework for planting rights until 2010, plan to restructure production, abandonment premium);
- market mechanisms (aid for private storage, for distillation, for new markets, etc.);
- producer organisations and interbranch organisations;
- trade regime with third countries influenced by the provisions of the WTO agreement on agriculture (reduction in customs duties and export refunds).

The Regulation (EC) No 753/2002 which entered into force in 2003, modified certain rules for applying Council Regulation (EC) No 1493/1999 as regards the description, designation, presentation and protection of certain wine sector products.

1. US–EU wine agreement

In September 2005, the European Union and the United States reached a first phase agreement on trade in wine, which aims to protect EU wine designations and secure access to the crucial American market.

2. Proposal for a Council regulation

This proposal, COM (2005) 0395, aims to replace the obligation to distil by-products of wine-making with the obligation to withdraw such by-products under supervision in the wine-producing zone in Slovenia and Slovakia. It also amends the annex to Regulation (EC) No 1493/1999 regarding the classification of the wine-growing areas in Poland as wine-growing zone A.

Moreover, authorisation is proposed for a number of oenological practices and processes which have been authorised on an experimental basis in some Member States, under the conditions set out in Regulation (EC) No 1622/2000.

The proposal also contains suggestion to extend the derogation for certain sparkling wines produced in the specified regions and to authorise the use of certain languages and specific wording in the labelling of wines.

3. Upcoming major reform of the common organisation of the market in the wine sector

This European Commission called for a reform aimed to prepare the EU's vine growers and wine producers and traders for the mounting competition in the new global market situation. The key objectives are:

- to increase the competitiveness of the EU's wine producers, strengthen the reputation of EU quality wine, recover old markets and win new ones in the EU and worldwide;
- to create a wine regime that operates through clear, simple rules — effective rules that ensure balance between supply and demand;
- to create a wine regime that preserves the best traditions of EU wine production and reinforces the social and environmental aspects of many rural areas.

There are two approaches being considered as alternatives for the reform of OMC in the wine sector:

(a) two-step variant

- the abolition of the system of planting rights before focusing on improving competitiveness;
- producers would be offered generous incentives to grub up uneconomic vineyards;
- outdated market support measures such as distillation would be abolished and the systems of labelling and wine-making practices would be updated and simplified;
- funds would be redirected towards rural development measures tailor-made for the wine sector and Member States would receive a national financial envelope to pay for measures decided at national level.

(b) one-step variant

- the system of planting rights restrictions would be either allowed to expire on 1 August 2010, or be abolished immediately;
- the current grubbing-up scheme would also be abolished at the same time.

G. Common organisation of the market for bananas

The previous CMO for bananas established an income support scheme for Community producers (compensation for loss of income from marketing and single premium for producers ceasing production) and a common system for trade with third countries (customs protection for the Community market based on tariff quotas).

Following complaints on three occasions (in April 1993 on the GATT agreement and in 1997 and in 1999 to the WTO) and having been penalised for the incompatibility of some aspects of the Community banana import system with the multilateral trading rules, it became clear that the CMO for bananas will have to be amended.

In February 2005, following the CMO's extension to 10 new Member States, the Commission published a report on the operation of the CMO for bananas. This launched a wide-ranging debate on the future of the CMO, in the context of the conclusion of the Doha Round negotiations, the implementation of a new generation of partnership agreements with the ACP countries, the end of the exemption of bananas from the Everything But Arms agreement, and the renewal of the Union's policy towards its outermost regions (POSEI programmes).

On 1 January 2006, a reform of the banana CMO was launched, with respect to the agreement concluded in 2001 with the USA and taking into account the results of arbitrations within the WTO. The EU substituted a tariff-only regime for the system of import quotas by region of origin.

The main objectives of this reform are:

- maintaining agricultural activity and the economic and social balance of the main producing regions;
- increasing the level of aid to European banana producers with the aim of improving the economic and environmental sustainability of banana production;
- fulfilling the requirements imposed by the financial discipline in order to implement the method used for fixing aid to banana producers;
- reducing the trade-distorting effect of subsidies for granting aid;
- compensating the inequality of support between producers in different regions;

- solving the problems linked to the management and control of the aid.

H. Common organisation of the market for milk and dairy products

This CMO is governed by Regulation (EC) No 1255/1999, amended by Regulation (EC) No 1787/2003. The CMO is based on a system of quotas at national level. The reform of the mechanisms of the CMO for dairy products began with the Agenda 2000 proposals. The 1999 Berlin Council agreed to reduce institutional prices (by 15 % in three stages from 2005/2006) in exchange for a direct premium based on the quota by producer and calculated on the basis of a flat rate per tonne.

Giving priority to the decisions for reform taken as part of Agenda 2000, the Council had not fully abided by the proposals to extend and accelerate the reform of the milk sector proposed by the Commission in January 2003. As a result certain mechanisms were maintained:

- extending the system of milk quotas to the 2014/15 marketing year;
- phasing-in direct aid by 2007, which will be part of the single farm payment from 2008, unless the Member States decide to introduce decoupling at an earlier date (payments set at EUR 11.81/tonne for 2004; EUR 23.65/tonne for 2005 and EUR 35.50/tonne from 2006);
- a further 25 % reduction in the intervention price for butter between 2004 and 2007 together with a decrease in intervention purchases (volume of 70 000 tonnes in 2004, falling by 10 000 tonnes per year, to reach 30 000 tonnes in 2007);
- maintaining the Agenda 2000 provisions concerning the reduction in the intervention price for skimmed milk (5 % decrease over three consecutive years between 2004 and 2006);
- the general increase in quotas decided on as part of Agenda 2000 from 2006 (gradual increase in quotas of 1.5 %).

The main objectives of the reform are:

- reducing the imbalance between supply and demand on the market and removing the resulting structural surpluses;
- promoting consumption of milk and milk products and improving their competitiveness on international markets;
- reducing the intervention price for butter and skimmed milk;
- establishing common rules for direct support schemes under the CAP and establishing certain support for farmers.

I. Common organisation of the market for beef

1. General development

The current structure of the CMO for beef includes intervention mechanisms, a system of direct premiums and arrangements for trade with third countries. However, the system of direct payments to producers has now overtaken the traditional market management mechanisms (protection at borders, export refunds, system of public intervention/aid for private storage), absorbing over three quarters of the funds allocated to the sector (apart from the direct aid linked to bovine spongiform encephalopathy — BSE). Over the years the CMO for the sector has been a subject of subsequent reforms.

The Community beef market has, for several years, been hampered by structural difficulties aggravated by the recent health and veterinary crises (BSE in 1996 and 2000, foot and mouth disease in 2001), which precipitated the trend towards a fall in consumption, caused a significant reduction in exports and resulted in a substantial decrease in prices.

2. The 2003 reform package proposals

Presented in a context of overproduction and restriction of the European agriculture budget, 2003 reform package proposals were presented by the Commission in January 2003: as a result the agriculture ministers agreed to introduce the principle of decoupling and the single farm payment but with an *à la carte* approach. This allows the Member States to decide to keep:

- either up to 100 % of the current premium for suckler cows and up to 40 % of the slaughter premium;
- or up to 100 % of the slaughter premium;
- or up to 75 % of the special premium for male bovine animals.

Member States can also choose when to introduce the new decoupling system (on either 1 January 2005 or 1 January 2007).

→ Beata KOWALKOWSKA
11/2006

4.1.5. Rural development policy

Legal basis

Articles 36 and 37 EC Treaty.

Objectives

The aim of the common agricultural policy (CAP) reform adopted by the Berlin European Council under Agenda 2000 was to develop a model for European agriculture that would be closely linked to the balanced development of rural land, which covers 90 % of the Community's territory. Agricultural and rural policy plays a key role in the territorial, economic and social cohesion of the Union and in the protection of the environment. Alongside market measures (first pillar), rural development (second pillar) has become an essential component of the European agricultural model. Its aim is to create a cohesive and sustainable framework safeguarding the future of rural areas, based in particular on agricultural multifunctionality capable of providing a range of services going beyond the mere production of foodstuffs and on the ability of the rural economy to create new income and employment whilst conserving the culture, environment and heritage of rural areas.

Achievements

A. The origin of a rural development policy — first structural measures

The first Community rural development measures to be implemented were based on three 1972 directives on farm modernisation, measures to encourage the cessation of farming and on socio-economic guidance and occupational training for farmers. In 1975, a directive on mountain and hill farming and less-favoured areas was added. In 1985, those four directives were replaced by Council Regulation (EC) No 797/85 on improving the efficiency of agricultural structures, which introduced measures to promote investment in agricultural holdings, installation of young farmers, forestation, land use planning and support for mountain and hill farming and less-favoured areas. All those measures were to be financed jointly by the Community European Agricultural Guidance and Guarantee Fund (EAGGF) and the Member States.

B. The 1988 reform of the Structural Funds

Since that reform (→4.4.1., 4.4.2. and 4.4.3.) structural agricultural policy has been part of a regional and rural development policy that is financed by the Structural

Funds and no longer solely by the EAGGF Guidance Section. The Community structural measures have several fundamental objectives of which, Objective 1 (regions whose development is lagging behind), Objective 5(a) (adjustment of agricultural structures) and Objective 5(b) (development of rural areas), are directly applicable to rural development.

C. The 1992 reforms

1. The reform of the common agricultural policy

The 1992 reform of the CAP emphasised the environmental dimension of agriculture, which is the biggest user of land. It introduced major changes in the CAP protection system (→4.1.2.) and measures (known as accompanying measures because they accompanied the market policy) to offset the reduction in farmers' income as a result of the reform. The measures concerned conservation of the environment, forestation and an early retirement scheme. It should be noted that for the first time the Guarantee Section of the EAGGF was financing measures not directly market-related.

2. The reform of the Structural Funds

The 1992 reform of the Structural Funds introduced, in Objectives 1 and 5(b), new measures such as the promotion of high quality products, the prevention of natural disasters in the most remote regions, the renovation and development of villages and the promotion and conservation of the rural heritage, which were supported by the EAGGF Guidance Section.

D. Agenda 2000

1. General objective

The primary aim of Agenda 2000 was to adapt agriculture to the changes stemming from the new market-oriented policy: although direct income support has increased, these changes affected the economies of the rural areas generally and not just farmers' incomes. In addition, the diversification of activities in rural areas such as the development and marketing of high quality products, rural tourism, conservation of the environment or cultural heritage supplemented agricultural income and opened up new prospects for rural life.

2. Overall concept

The idea was to create an integrated and sustainable rural development policy through a single legal instrument which would make rural development, price policy and market policy more cohesive. That approach was established by Council Regulation No 1257/1999 on support for rural development from the EAGGF.

E. Implementation

The rural development measures introduced by the new regulation, with the Community contributing a varying

percentage of the financing according to the type of measure and geographical location, are as follows:

- investments in agricultural holdings to help improve agricultural incomes and living, working and production conditions;
- human resources development:
 - setting-up aid for young farmers,
 - support for early retirement,
- support for vocational training;
- compensation for less-favoured areas and for areas with environmental restrictions;
- support for farming practices designed to safeguard the environment;
- rationalisation of processing and marketing of agricultural products to help increase their competitiveness and added value;
- support to improve the economic, ecological and social functions of forests;
- introduction of a wide range of different measures to develop all the Community's rural areas, based on experience with the programmes implemented in the regions whose development is lagging behind or rural areas with conversion difficulties (former Structural Funds Objectives 1, 6 and 5(b)).

1. The rural development measures:

- in Objective 1 areas are integrated into the measures aiming to promote development;
- in Objective 2 areas accompany the support measures; and
- in the remaining territory are to be integrated into the planning for rural development schemes (except in the case of accompanying measures).

Under the new Structural Funds regulation, the Community financing source for rural development differs according to the territory concerned, except for the 'accompanying measures' which are financed by the EAGGF Guarantee Section throughout the Community.

Mention should be made of the Leader+ Community initiative, financed by the EAGGF Guidance Section, which promotes the implementation of original strategies for integrated sustainable development.

It was decided by the Berlin European Council that the average maximum amount available each year for rural development and for accompanying measures in the period 2000–06 is about EUR 4 300 million.

F. The mid-term review and prospects for rural development

1. The mid-term review (MTR) was based on the idea that the rural development policy approach introduced by Agenda 2000 will remain limited, and only 16 % of total EAGGF expenditure (and 10 % of EAGGF Guarantee Section expenditure) would go to rural development.

2. The MTR therefore proposed:

- that financial resources be transferred from the first pillar (agriculture) to the second pillar of CAP (rural development) by means of a progressive reduction in direct payments (modulation) as from 2004;
- that the second pillar of CAP be consolidated by extending the scope of the accompanying measures, by adding two new ones namely 'Food Quality' and 'Meeting Standards' which will amend Regulation (EC) No 1257/99.

G. The 2003 reform of the CAP

The reform decided on in June 2003 confirmed that rural development is one of the fundamental elements of the CAP and consequently includes the following legislative measures to strengthen it.

1. **Increase in the total amount of funding**, paid for out of the funds released by the modulation of aid to large farms (a 5 % modulation rate should make it possible to release an additional EUR 1 200 million from 2007).

2. **Extension of the scope** of rural development instruments from 2005 onwards in the following areas:

(a) Food quality

Farmers taking part in programmes to improve product quality and production processes will receive, provided certain guarantees are given to consumers, a 'quality' aid up to a maximum amount of EUR 3 000 per farm per year. Information and promotion campaigns by producers' groups will be able to receive funding of up to 70 % of eligible costs.

(b) Compliance with standards

It will be possible to give temporary and progressively decreasing support to farmers to help them to adapt to the strict Community standards regarding the environment, public health, animal and plant health, animal welfare and safety in the workplace. This aid will be payable for five years and will be subject to a maximum amount of EUR 10 000 per farm per year.

(c) Farm advisory service

Farmers will be able to receive support at the rate of 80 % of the cost of this type of service, up to a maximum amount of EUR 1 500.

(d) Animal welfare

Aid will be granted to farmers who undertake to improve the welfare of their farm animals, beyond the level required by normal good farming practice, based on the additional costs and loss of earnings. This aid will be subject to a maximum amount of EUR 500 per livestock unit per year.

(e) Young farmers

There will be an increase in the Community aid given to young farmers to finance their investments.

(f) New proposal

On 5 July 2005, the European Commission adopted the new EU strategic guidelines for rural development, based on the European Agricultural Fund for Rural Development (EAFRD), COM(2005) 034. Following the political agreement by the Agriculture Council on Regulation (EC) No 1290/2005 on future financing of the CAP, the guidelines set out a strategic approach and propose a range of options which Member States could use in their national rural development programmes. The future rural development policy 2007–13 will focus on three areas in line with the 'three axes' of measures laid down in the new rural development regulation: improving competitiveness for farming and forestry; environment and countryside; improving quality of life and diversification of the rural economy. A fourth axis based on experience with the Leader programme introduces possibilities for locally-based bottom-up approaches to rural development.

The new programming period provides a unique opportunity to refocus support from the new rural development fund on growth, jobs and sustainability. The target date for the adoption of the EU strategic guidelines is autumn 2005. Member States can finalise the detailed programming of their national strategy plans in the first half of 2006.

For each set of priorities, key actions are suggested. Member States will prepare their national rural development strategies on the basis of six Community strategic guidelines, which will help to:

- identify the areas where the use of EU support for rural development creates the most value added at EU level;
- make the link with the main EU priorities (Lisbon, Gothenburg);
- ensure consistency with other EU policies, in particular cohesion and environment;
- accompany the implementation of the new market-orientated CAP and the necessary restructuring it will entail in the old and new Member States.

Communities strategic guidelines

1. Improving the competitiveness of the agricultural and forestry sectors
2. Improving the environment and countryside
3. Improving the quality of life in rural areas and encouraging diversification
4. Building local capacity for employment and diversification
5. Translating priorities into programmes
6. Complementarity between Community instruments.

Role of the European Parliament

Apart from the reports adopted by the European Parliament (EP) in relation to the CAP reforms, the Committee on Agriculture and Rural Development adopted several reports in the course of 2004 and 2005 on the 2003 CAP reform and subsequently on the new

organisation of CMOs. The committee also adopted its opinion on the proposal for a regulation on support for rural development by EAFRD. The report stressed that rural development policy should reinforce, supplement and adapt the CAP to protect the European agricultural model.

In May 2002, the committee adopted a report, A5-0164, on rural development in the framework of Agenda 2000, setting out its views on the rural development policy adopted by the Berlin European Council in the framework of Agenda 2000 and proposing guidelines for the next MTR. It also called for co-decision powers for the EP on agriculture.

The EP will adopt its position on the Commission proposal, COM(2005) 0304, on rural development strategic guidelines in early 2006.

→ Beata KOWALKOWSKA
11/2005

4.1.6. Financing of the CAP: the European Agricultural Guidance and Guarantee Fund (EAGGF)

Legal basis

Article 34(3) of the EC Treaty (ECT).

Objectives

The European Agricultural Guidance and Guarantee Fund (EAGGF) finances the common agricultural policy (CAP). Set up in January 1962, it was split into two sections in 1964: the Guarantee Section and the Guidance Section. The Guarantee Section, which is much larger, has the purpose of funding expenditure resulting from application of the market and price policy. The second is used to finance structural policy measures. Under the Regulation (EC) No 1258/1999 EAGGF, Guarantee Section expenditure consists partly of refunds for exports to third countries granted under the common organisation of the markets (CMO) and partly of intervention payments to regularise agricultural markets. The Guarantee Section also finances measures which are not strictly related to the management of agricultural markets, namely specific veterinary and plant health measures, an instrument intended to provide information on the common agriculture policy including evaluation actions, as well as rural development measures

outside Objective 1 programmes (except the rural development Community initiative). The Guidance Section finances rural development measures which are not covered by the Guarantee Fund (Regulation (EC) No 1258/99).

Achievements

The EAGGF funds are an integral part of the Community budget under the compulsory expenditure heading, whereby the European Parliament (EP) is consulted. However, the resources allocated to Structural Funds are non-compulsory expenditure on which the EP has the decisive power.

A. General development of the fund

1. Guarantee Section

The volume of payments made by the Guarantee Section rose from EUR 8 700 million in 1978 to EUR 40.245 million (EU-25) in 2004 and to EUR 42.835 in 2005 (commitment appropriations). It has significantly increased over the past 26 years, as much for internal reasons, such as the accession of new Member States, as for external ones such as the

saturation of world markets. In spite of this growth, the percentage of the Community budget represented by Guarantee Section expenditure has declined, falling from 67 % to 42 % between 1988 and 2004. This long anticipated trend (Delors Packages I and II) is mainly due to the imposition as from 1988 of a budgetary discipline called the 'agricultural guideline' (see D.1 below).

2. Guidance Section

The appropriations allocated to the EAGGF Guidance Section (rural development) were EUR 6.536 million (EU-25) in 2004 and EUR 6.841 in 2005 (in commitment appropriations).

In 2005 the Council decided by the way of its Regulation (EC) No 1290/2005 on the future financing of the common agricultural policy through the creation of two separate European agricultural funds, namely the European Agricultural Guarantee Fund (EAGF) for financing of market measures, and the European Agricultural Fund for Rural Development (EAFRD). This regulation will apply as from 1 January 2007, except for Article 18(4) which entered into force on 18 August 2005 (after the seventh day of its publication in the Official Journal). There are also several provisions that will apply as from 16 October 2006, which is the day that Regulation (EC) No 1258/1999, currently in force, will be repealed.

B. Distribution of expenditure

1. By country

Tables I and II (→4.1.9) show that France is the largest beneficiary of the EAGGF Guarantee Section in absolute terms, followed by Spain, Germany and Italy. However, it is clear from Table 1 (→4.1.9) that, proportionally, the agricultural sectors in Finland, Sweden and Austria receive the greatest support from the EU, since EAGGF Guarantee spending accounted for between 76 % and 144 % of their agricultural net value added (NVA) in 2001.

Table III (→4.1.9) shows the spending trend for each Member State. It should be noted that all the States now obtain most of their benefits through direct aid. France is the Member State that receives the most in refunds, followed by the Netherlands and Germany. The countries receiving the least in refunds are Portugal, Greece, Austria and Sweden.

2. By sector

Table III (→4.1.9) shows the distribution of Guarantee Section expenditure by sector in 2001, broken down by type of expenditure (refunds, intervention payments through prices and direct aids). The first three areas of expenditure are arable crops (cereals, oil-seed and proteins), beef and milk products.

C. Nature of EAGGF Guarantee Section expenditure

1. Characteristics

Spending in this section under the common organisations of the market (CMOs):

- falls into the compulsory category (Article 272 ECT), which means that it arises from the content of the relevant regulations (hence the importance of this section for agricultural incomes);
- is difficult to predict, as its volume depends on a number of variables: production levels, international prices, etc.;
- is adjusted during a marketing year to bring appropriations into line with requirements by adopting amended or supplementary budgets (supplementary and amending budget).

2. Categories

In addition, such spending is classified in terms of the economic nature of the measures put in place for the CMOs.

- Export refunds: as a result of the trend in world prices and the 1993 General Agreement on Tariffs and Trade (GATT) agreements, they amounted to almost 6.2 % of Guarantee Fund appropriations in 2005;
- Intervention payments through prices (aid for public or private storage): this amounted, in 2005, to 6 % of appropriations (Table III, →4.1.9);
- Direct aids to producers or industries: amounted in 2001 to 68.9 % of appropriations.

D. Structure and operating mechanisms of the EAGGF

To carry out the Fund's activities the Commission receives assistance from the EAGGF Committee, comprising the representatives of the Member States. The Court of Auditors and Parliament's Committee on Budgetary Control provide a retrospective review. The Brussels European Council of February 1988 was of major importance in reaching agreement on the adoption of crucial measures whose principles are still in operation now, including the following:

1. Budgetary discipline

To curb the rise in farm spending, the funds available were subject to 'budgetary discipline' through the establishment of an agricultural guideline laid down for the period 1988–92 and set at ECU 27 500 million in 1988, with an annual growth rate of 74 % of the rate of increase of EU GNP.

The agricultural guideline was extended until 1999 by the Edinburgh European Council in December 1992, then until 2006 under Agenda 2000 and until 2013 under the decision of the October 2002 European Council.

2. Early warning system

Each month the Commission presents a working document on the budgetary situation, to improve the information available to the budgetary authority. This makes it possible to monitor Guarantee Section expenditure month by month and chapter by chapter for each common organisation of the market to ensure that spending does not exceed the funds available.

3. Monetary reserve

This is a budgetary mechanism to amortise exchange-rate fluctuations in the market between the euro and the US dollar in relation to the exchange rate used for implementing the budget. The reserve receives funds from the Guarantee Section when the dollar goes up and finances Guarantee Section expenditure when it goes down.

The reserve is not included in the financial guideline. Its initial value is EUR 500 million; funds are not transferred to or from the reserve below a threshold of EUR 200 million.

Under decisions taken at the Edinburgh European Council the reserve may also cover possible cost increases of agri-monetary origin, even if this increases the risk of its depletion, in which case the Council has to take special measures to re-provision the EAGGF Guarantee Section.

4. Obligatory scheme to finance the depreciation of surplus stocks

The EU is required to depreciate stocks at the time of purchase or twice a year, and not at the time of sale as used to be the practice.

5. Fraud

There has been a significant increase in fraud in recent years. The number of infringements has risen steadily. To deal with the situation, the Commission has decided to

tighten up inspection arrangements (e.g. more on-the-spot investigations and inspections) as well as administrative and criminal penalties.

Role of the European Parliament

Since October 1993 and subsequently since 1999 the interinstitutional agreement has enabled Parliament to somewhat increase its impact on compulsory expenditure. Parliament indicates its position on the total amount of EAGGF appropriations and how they are allocated by product and activity, but the final decision lies with the Council. Parliament's main contributions to the operation of the EAGGF include its firm support for the amendment of Regulation (EC) No 1258/1999 on the funding of the CAP and rural development, as a way of preventing the disputes arising from dialogue exclusively between the Member States' national departments and those of the regions concerned. Parliament's Committee on Agriculture and Rural Development argued that there is a need to set up a conciliation body in each Member State, with representatives of the regions on it, to facilitate dialogue between the regions and the Member State. Parliament takes the view that the Commission's estimates of expenditure for the budget are not precise enough, and it therefore intends to take a closer look at this area of the EAGGF Guarantee Section to monitor the level of discrepancy between estimated and actual spending. In this context the debates on the agricultural section of Agenda 2000 have had a major impact on the future of the CAP, stabilising agricultural spending and, at the same time, reducing the Commission's margin for manoeuvre within the guideline.

→ Beata KOWALKOWSKA
11/2006

4.1.7. External agricultural policy: agricultural agreements under the GATT and the WTO

Legal basis

In the context of the General Agreement on Tariffs and Trade (GATT), signed in Geneva in 1947, and the agreement establishing the World Trade Organisation (WTO), signed in Marrakesh in 1994, the actions of the European Union and its Member States are governed by the following articles of the EC Treaty:

- Article 133 (common commercial policy);
- Article 300 (negotiation and conclusion of international agreements);
- Article 310 (agreements establishing an association involving reciprocal rights and obligations, common action and special procedure).

Objectives

The fourth WTO ministerial conference, held in Doha (Qatar) in November 2001, launched new trade negotiations on a broad range of subjects, including agriculture. In the area of agriculture, the talks had already begun in March 2000, in accordance with the provisions of Article 20 of the agreement on agriculture and in response to the requirements of the WTO agenda, to which the member countries had committed themselves at the previous negotiations.

The conference's final declaration confirmed the aims of the initial work, clarified the general framework for negotiations — which are now held as part of the Doha development agenda — and established a new timetable:

- the objective of the negotiations continues to be the establishment of a fair and market-oriented trading system through a programme of fundamental reform comprising strengthened rules and specific commitments on support and protection in order to correct and prevent restrictions and distortions in world agricultural markets;
- to achieve this, the members have committed themselves to negotiations aimed at substantial improvements in market access, reducing, with a view to phasing out, all forms of export subsidies, and substantial reductions in trade-distorting domestic support, by ensuring that special and differential treatment for developing countries is an integral part of all elements of the negotiations and by taking non-trade concerns into account;

- there are three key deadlines in this process: 31 March 2003 for establishing the details of the scheme; the fifth session of the ministerial conference (due to be held in September 2003) for the presentation of the comprehensive schedules; and 1 January 2005 for the conclusion of the negotiating agenda as a whole.

Achievements

A. The legal framework

All of the WTO's agreements and memorandums of understanding on trade in goods apply to agriculture, which is also covered by certain provisions of the WTO agreements on trade in services (GATS) and on trade-related aspects of intellectual property rights (TRIPS). However, agriculture is special in that it has its own specific agreement, the agreement on agriculture, whose provisions prevail.

1. The agreement on agriculture

The agreement on agriculture entered into force on 1 January 1995. It is attached to the General Agreement on Tariffs and Trade (GATT) for goods and based on the general principles and specific provisions set out in the GATT. It is also based on the commitments made by each country in the schedules annexed to the Marrakesh protocol (including, as part of the EU's commitments, the memorandum of understanding on oilseeds between the European Economic Community and the United States as part of the GATT — Blair House agreement). The ministerial decision on 'Measures concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries' and the agreement on the application of sanitary and phytosanitary measures (SPS) supplement it.

The agreement implements a programme for the reform of trade in agricultural products (over the period 1995–2000 for developed countries and 1995–2004 for developing countries), which lays down specific binding commitments in three major areas: market access, domestic support and export competition. There is a certain degree of flexibility as regards implementation for both developing country members (special and differential treatment) and least-developed and net food-importing developing countries (special provisions). Finally, the agreement contains a clause on due restraint

aimed at decreasing the risk of disputes (Article 13), preventing support measures implemented as part of the reform from being challenged before the WTO and its Dispute Settlement Body (DSB) until 2003.

B. The current negotiations

1. Progress

The deadlines agreed upon have barely been met up to now.

(a) The negotiations on the modalities for the commitments were not concluded by the deadline of 31 March 2003. The substantial differences between the WTO members resulted in them rejecting the compromise text presented by the chairman of the agriculture negotiations, Mr Stuart Harbinson. Since the beginning of the negotiations, little real progress had in fact been made. Several elements contributed to this situation, not least the mixed results of the agreement on agriculture. There were significant differences between the members as regards whether or not to recognise an agricultural exception, or even the way in which non-trade concerns should be taken into account in the multilateral rules, not to mention the contentious trade issues (hormones, bananas, GMOs) that had been brought before the WTO (at the expense of the EU in the case of the first two).

(b) The ministerial conference held in Cancun from 10 to 14 September 2003, which was to assess the progress since the last ministerial conference in November 2001 on the 20 or so chapters on the negotiating table (including agriculture) in accordance with the Doha work programme, also ended in failure. This was due to several factors: the initial debate based on the discussions, the lack of political will in the preliminary negotiations and the controversy surrounding the 'Singapore issues'. Although agriculture was the main stumbling block, in the end it was the refusal of the developing countries to discuss the 'Singapore issues' that left its mark on the conference, in addition to the criticism of the EU positions on the 'Singapore issues' and those of the United States on the 'cotton' initiative put forward by four African countries. This failure has been attributed to the clumsiness of the revised draft ministerial text and the ill-adapted structures of the WTO.

2. Positions

The previous negotiations, held as part of the Uruguay round, had proved to be particularly difficult. Launched in September 1986 at the instigation of the United States by the Punta del Este Declaration, they were only concluded in December 1993 after much debate between the EC and the United States and several noteworthy events (failure of

the Heysel conference in December 1990; rejection by the EC of the final act presented in December 1991 by the GATT Director-General, Mr Dunkel; reform of the common agricultural policy (CAP), May 1992; preliminary Blair House agreement, November 1992).

The current negotiations are just as delicate a subject, in which the EU, Cairns group and United States and the developing countries are the key players.

(a) *The European Union*

Relying at times on the 'Friends of Multifunctionality' that share some of its ideas, the EU is seeking a better organised and more market-oriented multilateral trading system, but is concerned about social, economic and environmental sustainability (in accordance with the overall negotiating proposal and specific documents: G/AG/NG/W/90; G/AG/NG/W/34 — export competition; G/AG/NG/W/19 — animal welfare and trade in agriculture; G/AG/NG/W/18 — food quality; G/AG/NG/36/ Rev.1 — notes on non-trade concerns). It refers to efforts made and to be made in future in the areas of domestic support (1992, 1999, and 2003 CAP reforms see (→4.1.2.)) and market access ('Everything But Arms' initiative, →6.5.5.). The recently presented proposal on the modalities for commitments reaffirmed the desire for balance in the continued reform of the agricultural trading system by ensuring special treatment for developing countries, due regard for environmental considerations, rural development and animal welfare and fair distribution of the burden. However, these measures are to a large extent dependent on several conditions, in particular consideration of non-trade concerns, strict regulation of export credits for agricultural products, food aid, certain export practices of state-owned enterprises, and negotiation of specific commitments to guarantee fair access for certain agricultural products.

(b) *The United States*

Within the WTO the United States is busy trying to achieve a fundamental reform of the global trade in agricultural products. Ignoring the criticisms concerning the level and forms of its domestic support policy, it seems to be prepared to reduce domestic support substantially, which will result in trade disruption. The current US proposal to cut agricultural tariffs by 90 % in the EU highly protected sectors would be devastating — the impact on many farm sectors would be a serious loss of jobs and livelihoods.

(c) *The Cairns group*

Bringing together 17 exporting countries whose common interest is to reduce obstacles that are harmful to agriculture, this group is very bitter towards the wealthy countries, which maintain a high level of subsidies. It is especially critical of the EU, which it holds responsible for

the detrimental effects of the CAP on the agricultural world and the limited access to Community markets. It is hot on eliminating export subsidies, and very lukewarm about the concept of agricultural multifunctionality.

(d) The developing countries

Representing three quarters of WTO members, developing countries have become distrustful and seek to defend their own agricultural production and non-trade concerns (food security, means of subsistence, poverty, rural employment, etc.). They also call for special and differential treatment adapted to their specific situation. During the Cancun ministerial conference, they organised themselves into new alliances in order to promote their interests more successfully.

- Around 20 countries (G-21), led by Brazil, India and China, came together to thwart the compromise on agriculture concluded on 13 August 2003 between the EU and the United States. Opposed to agricultural subsidies, the group called, in particular, for the abolition of export subsidies and stricter rules for food aid and export credits.
- A new alliance was formed during the second day of negotiations among the African Union, the ACP countries and the least-developed countries (G-90) over a range of common negotiating positions on agriculture, market access for non-agricultural products, the Singapore issues and development issues. The African countries denounced, in particular, the poor access for their products to the markets of developed countries and the importance of tariff and non-tariff barriers. They also criticised the agricultural subsidies in developed countries (United States, EU and Japan), stating that they were one of the most questionable aspects of the Doha round.
- Finally, an alliance of developing countries (G-33) was formed to promote recognition of strategic products (special products designated by the beneficiaries themselves and exempt from reductions or quotas) and a special safeguard mechanism for developing countries.

C. New chapter in negotiations 2005

In October 2005, the EU tabled new proposals on agriculture and other areas of the Doha development agenda (DDA) trade talks to its negotiating partners in the 'five interested parties' (FIPs). The European Union recognised that agricultural negotiations have now entered a critical phase, and these proposals represent a comprehensive, substantive and credible contribution. The EU proposals are thought to bridge the different proposals tabled by other WTO members. These

proposals are thought to unlock progress in other areas of the Doha negotiations, particularly trade in industrial products and services, which are crucial to the European economy.

The price cuts proposed go further than the EU's original offer and significantly further than the cuts agreed in the Uruguay round. Importantly, the average cut is higher and more uniformly applied in the various levels of tariffs. In the Uruguay round, the highest tariffs received the lowest cuts. The EU's new proposal ensures that the higher the original tariff, the higher the reduction. The proposal is within the current negotiating mandate given to the Commission. However, it is at the outer limit of that mandate.

D. The conditionalities

EU proposals in market access are strictly conditional on further clarification from other developed countries on the elimination of their forms of export support. US commitments on food aid and export credits are not yet sufficient. Australia, Canada and New Zealand need to provide further commitment on the reform of their state trading enterprises. The EU also seeks real disciplines on the most trade-distorting US farm payments (counter cyclical payments).

The EU proposals are also contingent on the acceptance of a number of proposals in the negotiating areas of the DDA outside of agriculture.

Role of the European Parliament

The European Parliament (EP) has always called on the Commission to safeguard the interests of European producers and consumers as well as the interests of producers in those countries with which the EU has historically had particularly close relations (the ACP countries). Its resolution of 18 November 1999 on the Commission communication on the EU approach to the WTO millennium round (COM(1999) 331) expressed its support for the approach adopted by the Community's negotiators in championing multifunctionality and defending the European agricultural model. The resolution of 13 March 2001 containing the EP's recommendations to the Commission on the WTO built-in agenda negotiations reiterated this support and highlighted the importance of expressly acknowledging non-trade concerns and taking account of the public's demands regarding food safety, environmental protection, food quality and animal welfare. The EP has also given consideration to the negative judgements of the WTO's special groups (resolutions of 26 June 1997 on the 'hormones panel' and of 15 May and 18 September 1997 on the 'bananas panel').

In February 2003 the EP adopted its resolution on the WTO agricultural trade negotiations and subsequently, in September, a resolution on the Doha development round, noting its regret on the Cancun failure and supporting the EU offer of further negotiations.

→ Beata KOWALKOWSKA
11/2005

4.1.8. The agricultural implications of enlargement

Legal basis

Agricultural relations between the EU and the central and eastern European countries (CEECs), Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, the Slovak Republic and Slovenia, are governed by agreements that came into effect on 1 July 2000 (1 January 2001 for Poland and Lithuania), entered into under association agreements based on Article 238 ECT.

Objectives

- To bring the candidate countries up to Community acquis level in the technical, economic and legal spheres.
- To that end, trade in agricultural goods is to be gradually liberalised through mutual tariff concessions and agricultural pre-accession aid will help the CEEC applicants transform and modernise their agricultural sector and rural regions in order to enable them to adopt the common agricultural policy (CAP) acquis at the time of accession.

Achievements

A. Problems arising from the situation of agriculture in the accession countries

As was made clear in a discussion paper produced by the Commission in 1995 (CSE(95) 607), the situation of agriculture in the CEECs makes integrating them into the CAP a delicate task.

1. Importance of agriculture in those countries

- (a) Whereas the combined gross domestic product of the 10 CEECs equals about 4 % of that of the EU (see table), their agricultural output is 30 % of the agriculture of the EU-15. Their accession will result in a marked increase in the proportion of the EU's GDP represented by agricultural production.
- (b) The agricultural production of the CEECs might also increase after accession, due to the adoption of western

technologies and the incentive that will be provided by the high level of agricultural prices in the Union. Several CEECs are likely to become net exporters of agricultural products in the near future.

- (c) In the CEECs, agriculture is the dominant form of land use, covering on average more than 55 % of total land area. In several countries a net migratory flow to the countryside has been noted as general economic conditions worsened during transition and agriculture played the role of buffer.

2. Consequences for the Union

- (a) The integration of the CEECs' agriculture into the present CAP will have significant budgetary and trade implications due to the extension of direct payments for income subsidies and export refunds. According to the forecasts and the methods of analysis used, the additional costs of management of the agricultural markets in an enlarged Union are estimated to be within the EUR 5 000 to 50 000 million range.
- (b) It will also create problems arising from the obligations the EU and the CEECs have entered into under the GATT and the WTO.
- (c) It will cause tensions on the markets.
- (d) Lastly, underemployment and hidden unemployment related to subsistence farming pose future challenges for a balanced development of rural economies.

B. Union responses to these problems

The European Commission has several times expressed the view that immediate implementation of the system of direct payments to the CEECs would fail to take account of the specific characteristics of the structural changes in those countries and might create social tension. It would be preferable to use the available resources to finance rural development and restructuring in the first instance.

1. Adopting those proposals, the European Council in Copenhagen (13 December 2002) decided that direct

aid to future Member States would be introduced progressively over 10 years, rising from 25 % of the Community rate in 2004 to 100 % in 2013. They would, on the other hand, be eligible immediately for market support measures (export refunds and intervention).

2. The new Community support for pre-accession measures for agriculture and rural development (Sapard) (Council Regulation (EC) No 1268/1999) to prepare enlargement and solve priority problems in agriculture and rural development in the CEECS can be considered the temporary equivalent to the new second pillar of the CAP, which relates to rural development. Its annual budget is EUR 520 million for the period 2000–06.

The countries have negotiated the programmes with the European Commission, which has approved them. The programmes incorporate the commitments entered into in order to reach the Community standard, with particular reference to food safety standards. Management of the programmes has been delegated to the national agencies, as has their financial management, which is to be undertaken by the financial agencies, the last of which were approved by the Commission in 2002.

3. A general set of guidelines is introduced by the regulation on coordinating aid to the applicant countries in the framework of the pre-accession

strategy and an instrument for structural policies for pre-accession (ISPA), which is similar to the Cohesion Fund, allocates EUR 1 000 million per annum as aid for infrastructure.

4. The Commission has furthermore reoriented the Phare programme towards two priority objectives — strengthening administrative and judicial capacity and investments connected with the adoption and implementation of the *acquis*.
5. Lastly, to deal with the structural problems, the Copenhagen Council adopted a reinforced rural development strategy with an overall budget of EUR 5 100 million for the period 2004–06.

Role of the European Parliament

The European Parliament (EP/Parliament) has paid close attention to the agricultural implications of enlargement, through its Committee on Agriculture and Rural Development and in the parliamentary association committees on which it is represented alongside members of parliament of the associated countries.

1. Parliament has urged that enlargement should not call into question the current level of support towards the agriculture of the EU-15 or the principles of the CAP (subsidiarity, financial solidarity, Community preference and the unity of the market) (see, for example, its

The CEECs compared with the EU (1999)

	Gross Domestic Product		Population	Employment	Agric. Surface
	million EUR	% of agric.	million	% of agric.	million ha
Czech Republic	50 000	3.4	10.29	5.2	4.28
Hungary	(*)45 400	(*)4.5	10.07	7.1	5.74
Poland	145 400	3.3	38.65	18.1	18.41
Slovak Republic	18 300	4.1	5.39	7.4	2.44
Slovenia	18 600	3.2	1.98	10.2	0.49
Bulgaria	(*)11 700	(*)17.6	8.21	26.6	5.52
Romania	31 900	13.9	22.46	41.7	14.79
Estonia	4 800	5.1	1.44	8.8	1.00
Latvia	5 600	3.6	2.43	15.3	2.49
Lithuania	100 000	7.9	3.70	20.2	3.50
CEEC-10	345 500	5.1	104.63	22.0	58.66
EU-15	7 983 100	1.8	375.35	4.5	135.82
CEEC/EU	4 %		28 %		43 %

(*) 1998

Source: The agricultural situation in the European Union (2000 report).

resolutions of December 1996 (report C4-0023/96) and 4 October 2000). It has stressed that the Community's legislative acquis, particularly on veterinary, phytosanitary and animal welfare matters, must be transposed by the candidate countries in its entirety.

2. It supported the idea that the CAP in its present form should not be extended to the new members in full or immediately, with particular support for the proposal by the European Commission for progressive application of direct payments spread over 10 years (resolutions of 4 December 1997 and 13 January 2002).
3. However, it urged action by the Union to promote restructuring of the CEECs' agricultural sectors:
 - regretting that the Commission had not developed a specific policy framework for, inter alia, the whole rural community (resolution of 4 December 1997);
 - calling for an increase in EU aid for restructuring in the pre-accession phase (abovementioned resolution of December 1996).
4. It has demanded powers of co-decision on agricultural policy and the agricultural budget before any new Member State is admitted to the EU (resolution of 4 October 2000).
5. Subject to those reservations, it unanimously adopted the policy proposed by the Commission in Agenda 2000 in its entirety (6 May 1999, →4.1.2.) and has even asked the Commission and the candidate countries to speed up the pre-accession operations (resolution of 13 January 2002).

4.1.9 The CAP in figures

Table I — Basic figures on Community agriculture

	% AAU ⁽¹⁾		% FAP ⁽²⁾		% AWU ⁽³⁾		% EAGGF-Guarantee by MS ⁽⁴⁾		EAGGF-Guarantee/ NVAfc ⁽⁵⁾		% GAV/ GDP ⁽⁶⁾	
	1996	2001	1996	2001	1996	2001	1996	2001	1996	2001	1996	2001
BE	1,0	1,1	2,6	2,6	1,1	1,2	2,9	2,2	50,2	41,6	1,3	1,1
DK	2,1	2,1	3,2	3,2	1,3	1,2	3,5	2,6	43,7	35,2	2,8	2,3
DE	12,8	13,2	16,0	15,7	10,0	10,1	15,5	14,0	59,9	47,3	0,9	0,9
IE	3,2	3,5	2,2	2,1	3,3	2,9	4,3	3,8	63,9	72,3	5,5	2,5
EL	3,7	3,0	3,9	4,0	8,9	9,2	7,2	6,2	37,4	32,0	8,4	6,7
ES	21,6	19,7	11,7	12,3	15,6	15,5	10,3	14,7	20,4	30,0	4,6	3,6
FR	21,7	23,0	22,4	22,5	16,0	16,8	24,4	22,0	40,4	38,4	2,5	2,2
IT	11,1	11,6	14,8	15,1	20,0	20,2	10,8	12,7	20,6	25,1	2,8	2,4
LU	0,1	0,1	0,1	0,1	0,1	0,1	0,1	0,1	23,0	42,4	0,9	0,6
NL	1,4	1,5	7,1	7,3	3,3	3,5	3,9	2,7	21,5	16,7	2,9	2,2
AT	2,5	2,6	2,1	1,9	2,7	2,8	3,1	2,5	77,1	76,1	1,6	1,3
PL	2,9	2,9	2,1	2,2	9,1	7,9	1,7	2,1	28,8	36,1	3,2	2,6
FI	1,6	1,7	1,4	1,4	2,0	1,8	1,7	1,9	96,9	144,4	1,4	0,9
SE	2,3	2,3	1,7	1,6	1,2	1,2	1,6	1,9	59,7	89,2	0,8	0,6
UK	11,9	11,8	8,8	8,3	5,5	5,5	8,9	10,4	35,6	57,4	1,3	0,7
EU-15	100,0	100,0	100,0	100,0	100,0	100,0	100,0	100,0	34,9	36,9	2,1	1,7

(1) Agricultural area in use

(2) Final agricultural production

(3) Agricultural work unit

(4) EAGGF guarantee section by Member State

(5) % represented by EAGGF Guarantee Section in net value-added at factor cost

(6) % Gross value added of agriculture in the total economy

Sources:

31st Financial Report concerning the EAGGF Guarantee Section, Commission.
New Cronos, Eurostat.

4.2. Forestry policy

Legal basis

Although Article 32 of the Treaty of Rome stipulates that the rules of the common market apply to agricultural products, no mention is made of forestry products and, apart from cork, the detailed list in Annex II of the Treaty does not include wood.

Under the terms of this article, the Commission may propose to the Council that it add other products to the list. However, this provision applied only for the two years following entry into force of the Treaty, and the Commission did not take advantage of this possibility. This has prevented the development of a genuine common forestry policy.

All action in this area since 1957 has been carried out under legal bases relating to other policies, such as the common agricultural policy (CAP), regional policy and trade policy. The following provisions of the EC Treaty have been applied:

- for Community forests: Articles 37, 158 to 162 and 174;
- for tropical forests:
 - Article 310 for cooperation with African, Caribbean and Pacific countries and the associated countries of Asia and Latin America,
 - Article 133 for Community participation in the international tropical timber agreement.

Objectives

The lack of a specific legal basis in the Treaties has meant that all measures in this area have developed without pre-determined objectives. Objectives have been established on an ad hoc basis.

A. Community forests

In 2006 the Commission communication COM (2006) 302 final on the EU Forest Action Plan established the following objectives:

- to improve long-term competitiveness;
- to improve and protect the environment;
- to contribute to the quality of life; and
- to foster coordination and communication.

The overall objective of the EU Forest Action Plan is to support and enhance sustainable forest management (SFM) and the multifunctional role of forests:

B. Tropical forests

In 1989 the Commission communication COM(89) 410 established the following objectives:

- to strengthen cooperation between the Community and developing countries that produce tropical timber;
- to provide more funding to protect tropical forests;
- to support measures designed to regulate the trade in timber;
- to help find solutions to general problems which have indirect repercussions on tropical forests;
- to promote and coordinate forestry research;
- to participate in international initiatives on tropical forests.

Achievements

A. Community forests

1. 1964–88

The European Community took certain measures to develop the forestry sector, but these lacked a systematic approach and were always directly linked to the CAP, in particular the policy on improving agricultural structures. The measures concerned harmonisation of legislation, the development of forests and forestry, the protection of forests against atmospheric pollution and fires and forestry research.

2. 1988–92

The Community adopted a more coherent approach to its forestry projects. In September 1998 the Commission presented to the Council a Community forestry strategy and a forestry action programme. This was adopted by the Council in 1989 and focused on five main areas:

- afforestation of agricultural land;
- development and optimum use of forests in rural areas;
- cork;
- forest protection;
- accompanying measures.

3. The 1992 changes

In 1992 Community measures in the forestry sector entered a more ambitious phase. Decisions in two main areas fundamentally modified the 1985 action programme:

Measures to protect forests from atmospheric pollution and fires were strengthened through Regulation (EC) No

2157/92 (which completely revised the previous Regulation (EC) No 3528/86 of 17 November 1986) and Regulation (EC) No 2158/92 of 23 July 1992 (both later amended, most recently in 1997 by Regulations (EC) No 207/97 and (EC) No 208/97). These regulations included the following measures:

- on pollution: periodic inventories of damage caused to forests and intensive monitoring of forestry ecosystems and pilot projects for improving awareness of the effects of atmospheric pollution on forests and for restoring damaged forests;
- on fires: Community measures to be concentrated in high-risk areas, Member States to draw up forest fire protection plans including analysis of the causes of fires, a Community information system and EU support for protection measures.

On 30 July 1992 three regulations aimed at supporting forestry measures in agriculture were adopted as part of the measures accompanying the reform of the CAP. These included Regulation (EC) No 2080/92 instituting a Community aid scheme for forestry measures in agriculture, which provided for:

- aid to cover afforestation costs;
- a premium to cover maintenance costs;
- annual premiums to cover loss of income as a result of afforestation;
- aid for the improvement of woodlands.

Since 1992, other Community measures in the forestry sector have included:

- the European Forestry Information and Communication System (EFICS), as reconstituted in 1994 (Regulation (EC) No 400/94);
- forestry research co-financed under the EU's research and development programmes in the field of agricultural and environmental research.

4. Recent developments

In response to this request the Commission put forward a communication on the implementation of the strategy (COM(2005) 84 final), accompanied by the Commission staff working document that provides a detailed review of the activities implemented in the context of the EU Forestry Strategy in the period 1999–2004. Whereas the communication stresses the importance of good governance for protection and sustainable management of forests and the necessity to enhance cross-sectoral cooperation, coordination and coherence between forest policy and other policies that affect forests and forestry. The Commission staff working document has focused on

analysis of the forest and forestry contribution to both the Lisbon objectives of sustainable economic growth and competitiveness and to the Gothenburg objectives of safeguarding the quantity and the quality of the natural resource base.

On 15 June 2006, the EU Forest Action Plan was adopted. It was built on the report on implementation of the EU Forestry Strategy and conclusions of the Council. The Forest Action Plan provides a framework for forest-related actions at Community and Member State level and serves as an instrument of coordination between Community actions and the forest policies of the Member States.

The five-year action plan (2007–11) consists of a set of key actions which the Commission proposes to implement jointly with the Member States. It also points out additional actions which can be carried out by the Member States according to their specific conditions and priorities, with support from existing Community instruments, although implementation may also require national instruments.

B. Towards an overall strategy

In 1989 an important step was taken towards an overall strategy with the publication of the aforementioned Commission communication COM(89) 410, which examined in detail the causes of the destruction of tropical forests and proposed measures to tackle the problem. On 20 December 1995 the Council adopted Regulation (EC) No 3062/95 which set out objectives and procedures for action at Community level, complementing action by Member States, to contribute to the conservation and sustainable management of tropical forests. It covered the period 1996–99.

In its communication of 4 November 1999 to the Council and the EP, the Commission reviewed that period and put forward proposals for a sustainable development strategy which was set out in Regulation (EC) No 2494/2000 of the EP and of the Council of 7 November 2000, focusing on conservation and the sustainable management of tropical forests. It follows on from the above-mentioned Regulation (EC) No 3062/95 and is on similar lines; a total appropriation of EUR 249 million was allocated for the period 2000–06.

Role of the European Parliament

The European Parliament (EP) has repeatedly expressed concern at global deforestation and has criticised the Commission for not doing enough to develop the Community's forestry potential, as a means of reducing its timber deficit or to protect the environment.

The EP in its own initiative report INI/2005/2193 (see INI/2005/2192 and INI/2005/2195) on natural disasters; fires, floods and droughts highlights the need for a specific

Community forest protection programme designed to prevent and manage the risk of forest fires. This programme should be tailored to the specific nature of forest in the Member States. The report of the EP deplored the fact that the Commission communication on the implementation of the EU Forestry Strategy did not pay enough attention to the issue of fires, ignoring the fact that they are the main cause of their deterioration. The EP asked that the Forestry

Action Plan must contain provision for a possible European Fire Fund or European Forest Fund which could be used to support action intended to conserve and restore the mountain and forest areas included in the Natura 2000 network.

→ Beata KOWALKOWSKA
11/2006

4.3. Common fisheries policy

4.3.1. Common fisheries policy: origins and development

Legal basis

Articles 32 to 37 of the EC Treaty.

Objectives

The Treaty of Rome made provision for a common fisheries policy (CFP): Article 33(1) sets out the objectives for the common agricultural policy (CAP), which are shared by the CFP since Article 32 defines agricultural products as 'the products of the soil, of stock-farming and of fisheries and products of first-stage processing directly related to these products'. The CFP's original objectives were to preserve fish stocks, protect the marine environment, ensure the economic viability of European fleets and to provide consumers with quality food. The 2002 reform added to these objectives the sustainable use of resources from a biological, environmental and economic point of view. The new CFP basic rules came into force on 1 January 2003.

Achievements

A. Background

The CFP originally formed part of the CAP, but it gradually developed a separate identity as the Community evolved, with the entry of countries with substantial fleets and fish stocks, and in order to tackle specific fisheries problems, such as conservation of stocks and international relations after the economic exclusion zones (EEZs) were introduced.

1. Beginnings

It was not until 1970 that the Council adopted legislation to establish a common organisation of the market (COM) for fisheries products and put in place a Community structural policy for fisheries.

2. First development

Fisheries played a significant role in the negotiations leading to the United Kingdom, Ireland and Denmark joining the EC in 1972. This resulted in a move away from the fundamental principle, enshrined in the Treaty of Rome, of freedom of access to the sea; exclusive coastal fishing rights up to 12 miles were established and have been upheld ever since.

3. Reforms of the common fisheries policy

(a) 1983 regulation

In 1983, after several years of negotiations, the Council adopted Regulation (EEC) No 170/83, establishing the new generation CFP, which enshrined commitment to EEZs, formulated the concept of relative stability and provided for conservatory management measures based on total allowable catches (TACs) and quotas. After 1983, the CFP also had to adapt to the withdrawal of Greenland from the Community in 1985, the accession of Spain and Portugal in 1986 and the reunification of Germany in 1990. These three events have had an impact on the size and structure of the Community fleet and its catch potential.

(b) 1992 regulation

In 1992, Regulation (EEC) No 3760/92, which contains provisions governing fisheries policy until 2002, endeavoured to remedy the serious imbalance between fleet capacity and catch potential. The remedy it advocated was to reduce the Community fleet and alleviate the social impact with structural measures. A new concept of 'fishing effort' was introduced, with a view to restoring and maintaining the balance between available resources and fishing activities. Access to resources should be regulated more effectively by the gradual introduction of fishing licences in order to reduce surplus capacity.

(c) 2002 reform

However, these measures were not effective and the deterioration of many fish stocks continued at an even faster rate. The major challenge of this reform was tackling simultaneously the risk of collapse of certain stocks, the disappearance of the most exploited species, significant economic losses and the loss of jobs. This critical situation resulted in a new reform being adopted at the end of 2002. This reform came into force on 1 January 2003.

B. The new common fisheries policy**1. The legislative dimension of the reform**

This consists of three regulations which were adopted by the Council in December 2002 and entered into force on 1 January 2003:

- Framework Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources (repealing Regulations (EEC) No 3760/92 and (EEC) No 101/76);
- Regulation (EC) No 2369/2002 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector (amending Regulation (EC) No 2792/1999);
- Regulation (EC) No 2370/2002 establishing an emergency Community measure for scrapping fishing vessels.

2. Reorientation of the objectives

The primary objective of the new CFP is to ensure a sustainable future for the fisheries sector by guaranteeing stable incomes and jobs for fishermen while preserving the fragile balance of marine ecosystems and supplying consumers. The new CFP is an integral part of the Community's policy on sustainable development and gives equal priority to the environmental, economic and social aspects.

3. Details of the innovations of the reform*(a) A more long-term approach to fisheries management, accompanied by emergency measures if necessary*

Multiannual management and stock recovery plans will be established with a view to enabling fish stocks to

reproduce and fishermen to plan their activities better. They will take a precautionary approach and will be based on the recommendations of competent scientific bodies. If there is a serious threat to the conservation of resources, emergency measures may be taken by the Commission for a period of 6 months which may be renewed. If a Member State disagrees with the measures, it may refer the matter to the Council.

(b) Reorientation of public aid to the fleet

In order to avoid helping to aggravate the imbalance between the overcapacity of the fleet and the actual fishing possibilities, from 2005, aid will be used exclusively to improve safety and working conditions on board and product quality or to switch to more selective fishing techniques or equip vessels with satellite vessel monitoring systems. This new system will gradually replace the old multiannual guidance programmes (MAGPs), which have not solved the problem of the overcapacity of the Community fleet. The Member States will be entrusted with greater responsibilities in order to achieve a better balance between the fishing capacity of their fleet and the available resources.

(c) More flexible socio-economic measures to support those in the industry during the transition period:

- aid for the temporary cessation of activities, designed to support fishermen and vessel owners who have to stop their fishing activity temporarily, has been extended;
- aid for early retirement and the retraining of fishermen in other professional activities allows them to continue fishing on a part-time basis if they wish to do so;
- a 'scrapping fund' will help the sector to achieve the reductions in fishing effort required under the stock recovery plans. It will allocate premiums that are 20 % higher than those available for decommissioning under the Financial Instrument for Fisheries Guidance (FIFG).

(d) More effective, transparent and fair controls

These will be carried out by national and Community inspectors as part of the new Community control and enforcement system. Member States will continue to be responsible for the application of sanctions for infringements but cooperation among them will be strengthened. To this end, a Community Fisheries Control Agency (CFCA) has been created, located in Vigo.

(e) More direct involvement of fishermen in the decisions that affect them

Regional Advisory Councils (RACs) consisting of fishermen, scientific experts, representatives of other sectors related to fisheries and aquaculture, as well as local, regional and national authorities and environmental groups and consumers from the maritime or fishing zone in question,

will be set up. The RACs may be consulted by the Commission, submit recommendations and suggestions or inform the Commission or the Member State concerned about problems concerning the implementation of CFP rules in their area. Each RAC will cover sea areas under the jurisdiction of at least two Member States. It will establish its own procedures. Following the reform, seven Regional Advisory Councils were set up in 2004 to promote better governance within the CFP and closer involvement of the various interests in the sector in its development. Areas covered by the regional advisory councils include the Baltic Sea, the Mediterranean and the North Sea, pelagic stocks and the deep-sea fishing fleet.

4. Accompanying measures

As part of the reform, the Commission also presented a series of Community action plans which aim to clarify some aspects of the CFP, in particular:

- a Community action plan on fisheries in the Mediterranean;
- a Community action plan to integrate environmental protection requirements into the CFP;
- a Community action plan for the eradication of illegal, unreported and unregulated fishing;
- a strategy for the sustainable development of European aquaculture;
- an action plan to counter the social, economic and regional consequences of the restructuring of the EU fishing industry;
- a Community action plan to reduce discards of fish.

In addition, two important Commission communications complement the new CFP:

- a communication on fisheries partnership agreements with third countries, and
- a communication on improving scientific advice for fisheries management.

Role of the European Parliament

A. Competence

- Fisheries legislation: consultative role;
- EU membership of international conventions and conclusion of agreements having significant financial implications: assent.

B. Role

The reports on the Commission communications on various aspects of the CFP have given the European Parliament (Parliament) the opportunity to express opinions which go beyond the dictates of the economic

situation and develop its own model for the CFP. This is the case for the following reports:

- report A5-0392/2002 on the proposal for a Council regulation on the conservation and sustainable exploitation of fisheries resources under the CFP;
- report A5-0362/2002 on the Commission communication on the Community action plan for the eradication of illegal, unreported and unregulated fishing;
- report A5-0360/2002 on the Commission communication setting out a Community action plan to integrate environmental protection requirements into the CFP;
- report A5-380/2002 on the Commission communication on the reform of the CFP ('Roadmap').

Parliament has also adopted own-initiative reports that have gone into greater detail on the main aspects of the CFP:

- report A5-0365/2000 on the CFP and the challenge of economic globalisation;
- report A5-0446/2002 on fisheries in international waters in the context of external action under the CFP;
- report A5-0448/2002 on aquaculture in the European Union: present and future;
- report A5-0162/2003 on the Commission communication to the EP and the Council on the action plan to counter the social, economic and regional consequences of the restructuring of the EU fishing industry;
- report A5-0171/2003 laying down a Community action plan for the conservation and sustainable exploitation of fisheries resources in the Mediterranean Sea under the CFP;
- report A5-0163/2003 on a Community action plan to reduce discards of fish;
- report A5-0412/2003 on the tuna fleet and industry;
- report A5-0331/2003 on the CFP: action plan and joint inspection structure;
- report A5-0166/2004 on the CFP: Community financial contribution to Member States' fisheries control programmes;
- report A5-0167/2004 on the CFP: Regional Advisory Councils.

→ Eva CASALPRIM-CALVÉS
09/2006

4.3.2. Fisheries resources policy

Legal basis

Articles 32 to 37 of the EC Treaty.

Objectives

The main objective is to guarantee the long-term viability of the sector through sustainable exploitation of resources.

Achievements

A. Basic principles

1. Relative stability

Fishing opportunities are allocated among the Member States in such a way so as to ensure the relative stability of the fishing activities of each Member State for each stock concerned. This principle of relative stability, based in particular on historical catch levels, means maintaining a fixed percentage of authorised fishing effort for the main commercial species for each Member State. Fishing effort should be generally stable in the long term, taking account of the preferences to be maintained for traditional fishing activities and regions that are most dependent on fishing.

2. Conservation of resources

Conserving resources by constantly adjusting fishing capacity to take account of catch possibilities is a priority of the common fisheries policy (CFP). To this end, the CFP bases its decisions on the best scientific advice available and applies the precautionary approach, whereby the absence of sufficient scientific information should not be used as a reason for postponing or failing to take measures to conserve species on the brink of collapse.

3. Freedom of access to waters and resources

The principle concerned is that of equal access to waters and resources in all Community waters. An exception is made for coastal zones (up to 12 miles): States may retain exclusive fishing rights in these areas. The measures establishing the conditions of access to waters and resources are adopted on the basis of the biological, socio-economic and technical information available. A review of the current provisions is due to take place in 2012 (Article 17 of Regulation (EC) 2371/2002).

B. Details of the measures

The new CFP entered into force on 1 January 2003 and contains specific measures on resource conservation and management:

1. Access to waters and resources

- (a) Maintaining the current regime restricting access to 6 to 12-mile zones to vessels that traditionally fished in those waters. These restrictions have been effective in limiting fishing effort in the most sensitive areas and in preserving traditional fishing activities on which the social and economic development of certain coastal communities depends.
- (b) Maintaining the principle of relative stability, taking into account the precarious economic situation facing the fisheries sector.
- (c) Maintaining other access arrangements, such as those restricting access to the Shetland Box (zone in northern Scotland) until the Commission reviews the situation of the stocks concerned in 2003. The Council will then take a decision that is valid until the end of 2004.
- (d) Access for Spanish, Portuguese and Finnish vessels to unregulated or unallocated resources in certain zones of the North Sea from 1 January 2003.

2. A long-term strategy for fisheries resources management

(a) Multiannual stock recovery and management plans

- Stock recovery plans will be implemented for fish stocks that are in danger. They are based on scientific advice and provide for limits on the fishing effort (that is, the number of days vessels are at sea). They ensure 'that the impact of fishing activities on marine ecosystems is kept at sustainable levels.'
- Multiannual stock management plans seek to maintain the volume of stocks within safe biological limits. These plans lay down maximum catches and a series of technical measures, taking into account the characteristics of each stock and fisheries (species targeted, gear used, state of stocks concerned) and the economic impact of the measures on the fisheries in question.

(b) Emergency measures

In the case of serious and unexpected problems, the Commission and the Member States may adopt emergency measures to protect fish stocks and to restore the balance of marine ecosystems that are in danger. In particular, the Member States may adopt conservation and management measures applicable to all fishing vessels within their 12-mile zone provided that these measures are not discriminatory and that consultations with the Commission, other concerned Member States and the relevant Regional Advisory Council (RAC) have taken place.

(c) *Adjusting the fishing effort to the available resources*

In order to reduce the fishing pressure on fish stocks, the new CFP has established a range of complementary management tools:

- Limiting catches: The total allowable catches (TACs), based on the scientific opinions of the International Council for the Exploration of the Sea (ICES) and the Scientific, Technical and Economic Committee on Fisheries (STECF), continue to be calculated annually so that they can be readjusted in accordance with the development of stocks. However, within the framework of the multiannual management of resources, they will be more stable and will enable fishermen to plan their activities better.
- Technical measures: These aim to prevent catches of juveniles, non-commercial species and other marine animals. They are determined in relation to the target species (and associated species in the case of mixed fisheries), the operating zone and the type of gear used. The most current are: the setting of a minimum mesh size for nets, the use of selective fishing gear, the delimitation of zones and periods in which fishing activities are prohibited, the setting of a minimum size for species that may be landed, and the limiting of accidental catches or by-catches.
- Limiting the fishing effort: These measures may be applied as part of the plans for the recovery of stocks that are at risk. They will consist, for example, of an authorised number of fishing days per month. This number may vary according to the gear used, the fishing zone visited (according to the ICES divisions), the species targeted, the state of the stock and/or possibly the power of the vessel. With a view to ensuring greater flexibility, the Member States may transfer these days among the various units of their fleet.

3. An enhanced control policy

The control policy seeks to ensure respect for the fisheries regulations. In short, adoption of the measures is the responsibility of the Community bodies while the Member States are responsible for implementing the measures and applying sanctions in cases of infringements in their area of jurisdiction. The new CFP (Regulation (EC) No 2371/2002) provides for enhanced control and enforcement through greater cooperation among the Member States within the framework of a Community control and enforcement system:

(a) *Improved cooperation among Member States*

Without prejudice to the primary responsibility of the coastal Member State, Member States are authorised to inspect:

- vessels flying their flag in their waters, outside Community waters, and in all Community waters, except within the 12-mile zone of another Member State;
 - vessels of another Member State in all Community waters, after authorisation of the coastal Member State concerned or where a specific monitoring programme has been adopted (Article 34(c) of Regulation (EEC) No 2847/93);
 - vessels of another Member State in international waters.
- In other cases, Member States must authorise each other to carry out inspections.

(b) *Surveillance and monitoring reports drawn up by Community inspectors,*

inspectors of another Member State or Commission inspectors will constitute admissible evidence in administrative or judicial proceedings of any Member State.

(c) *Extension of the competences of national and Community inspectors*

- National inspectors may, in addition to their national fleet, inspect any EU vessel with the authorisation of the coastal Member State or where a specific monitoring programme has been set up.
- Community inspectors may carry out an inspection on fishing vessels and places of first landing and first sales, without the assistance of national inspectors, on condition that the person inspected (fisherman, vessel owner, fish wholesaler, etc.) is not opposed to it.

(d) *A catalogue of sanctions to be applied by Member States in the event of serious infringements*

This will be drawn up by the Council in order to reduce the disparities relating to the sanctions applied by the various Member States (Article 25(4) of Regulation (EC) No 2371/2002).

(e) *Use of satellite-based vessel monitoring systems (VMS)*

This will be extended to cover vessels over 18 metres from 1 January 2004 and vessels over 15 metres from 1 January 2005. This measure provides greater safety for those on board as they can be located quickly in the case of an accident or breakdown.

(f) In addition, in its communication entitled 'Towards uniform and effective implementation of the CFP' (COM(2003) 130), the Commission proposed:

- the pooling of national inspection and surveillance resources through the establishment of a joint inspection structure;
- the creation of a Community Fisheries Control Agency (CFCA) whose mission would be to ensure that the

inspection and surveillance resources that have been pooled are deployed in accordance with Community strategies.

Role of the European Parliament

Parliament has always been concerned about respect for the principles of precaution and sustainable resources.

Of note are its recent reports on:

- the Commission communication to the Council and the EP on behaviour which seriously infringed the rules of the CFP in 2000 (A5-0228/2002);
- the proposal for a Council regulation on the conservation and sustainable exploitation of fisheries resources under the CFP (A5-0392/2002);
- the proposal for a Council regulation amending Regulation (EC) No 973/2001 laying down certain technical measures for the conservation of certain stocks of highly migratory species (A5-0015/2003);
- the proposal for a Council regulation on the management of the fishing effort relating to certain Community fishing areas and resources and modifying Regulation (EEC) 2847/93 (A5-0165/2003);
- the proposal for a Council regulation for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms (A5-0168/2003).

4.3.3. Fisheries structural policy

Legal basis

Articles 32 to 37 and 158 of the EC Treaty.

Objectives

The main objective of the fisheries structural policy is to adjust fleet capacity to potential catches in order to relieve the problem of overfishing so that the sector has a long-term future. To this end, efforts are being made to modernise the fleet and make it competitive by removing surplus capacity and orienting the industry towards support for and full development of coastal regions which are heavily dependent on fisheries.

Achievements

A. Background

The fisheries structural policy originated in 1970 with the decision to apply to the EAGGF – Guidance Section for support for construction, modernisation, marketing and processing within the fisheries sector.

In 1992, the Edinburgh European Council decided to incorporate fisheries structural policy into the Structural Funds with its own objective, Objective 5(a) (adaptation of fisheries structures), and its own financial instrument, the financial instrument for fisheries guidance (FIGG). As a response to the socio-economic implications of restructuring in the sector, additional measures were adopted in parallel with the FIGG. The PESCA Community

initiative to provide financial support for fisheries-dependent areas was put in place for the period 1994–99, together with accompanying measures such as early retirement, premiums for young fishermen, etc.

Agenda 2000 introduced new approaches, including bringing the structural problems of fisheries-dependent areas into the new Structural Funds Objective 2 (Council Regulation (EC) No 1260/1999 of 21 June 1999) and not renewing the PESCA initiative in 2000. Council Regulation (EC) No 1263/1999 establishes the new FIGG framework for intervention for the period 2000–06 with a view to achieving a sustainable balance between fishery resources and their exploitation, strengthening the competitiveness of fisheries structures and the development of viable enterprises, promoting fisheries and aquaculture products, and revitalising areas dependent on these sectors.

As part of the Common Fisheries Policy (CFP) reform, the new Regulations (EC) No 2371/2002, (EC) No 2369/2002 and (EC) No 179/2002 replace Regulations (EC) No 1263/1999 and (EC) No 2792/1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector. A simpler system to limit the fishing capacity of the Community fleet in order to match it with the available resources was adopted. Following the reform and approval of the Financial Perspective (2007–13), the European Fisheries Fund (EFF) was set up. It is intended to facilitate implementation of sustainable fishing measures and diversification of

economic activities in fishing areas. This fund replaces the financial instrument for fisheries guidance (FIFG).

B. Structural policy instruments

1. The first structural programmes

The multiannual guidance programmes (MAGP), which for a long time were a key element of structural policy, were discontinued in the 2003 reform. They were intended to adjust the size of the fleet in the EU Member States, to adapt fishing effort to available resources. The Member States had to calculate the reduction of effort needed in each segment for each national fleet. Reduction in effort could be achieved either by withdrawing some vessels for good or by a system that tied vessels up in port for a given period of time. In the MAGP the size of the fleet had to be determined by the available resources. The Council set the MAGP's reduction objectives and the Commission then approved the national programmes.

The FIFG made provision for socio-economic measures such as early retirement or help in changing occupation. Other measures of general interest concerned improvement of working conditions or training for quality improvement. The FIFG also made provision for compensation for a temporary cessation of activity and aid for small-scale coastal fishing or modernisation of vessels. Aquaculture, processing and marketing were not forgotten and these helped generate new jobs. The measures were taken under multiannual programmes co-financed by the FIFG in the Objective 1 regions and also in the other regions of the European Union.

2. Reform

In 2005, following the reform of the CFP, financial aid for fleet renewal was discontinued and a simpler system was introduced for limiting the capacity of the European fishing fleet. This system gave the Member States more responsibility for the management of their fleets. The emphasis was no longer on reduction of fishing capacity (i.e. the tonnage of the vessel and engine capacity) but on limitation of fishing effort (calculated by multiplying capacity by the number of days at sea). There are three main aspects:

- The capacity of the fleet of each Member State must comply with a reference level.
- Member States are free to decide how to manage their capacity.
- The conditions for granting the various forms of public aid to the fleet are reviewed.

Aid for modernisation of vessels was discontinued at the end of 2004 and its availability is now limited to:

- Member States that have achieved their overall capacity-reduction objectives;

- vessels of at least 400 GRT (gross registered tonnes), subject to the following conditions:
 - for vessels up to 100 GRT, the Member State must withdraw, without aid, an equivalent tonnage to each new tonne created with aid;
 - for vessels over 100 GRT, the Member State must withdraw, without aid, 1.35 tonnes (GRT) for each new tonne created with aid.

Aid for modernisation of vessels continues under certain conditions: vessels must be at least five years old and the aid must be used for specific purposes (use of more selective fishing methods; installation of satellite vessel monitoring systems (VMS); better product processing and quality on board and better working and safety conditions).

3. The European Fisheries Fund

The European Fisheries Fund (EFF) has replaced the FIFG. The FIFG, one of four EU Structural Funds, had been in existence since 1993 (Council Regulation (EEC) No 2080/93). However, many FIFG measures are included in the new fund.

(a) Objectives

The EFF provides financial support for social, economic and environmental objectives. The fund supports the sector in efforts to adapt fleets whose competitiveness needs to be strengthened and encouraged by measures to protect and improve the environment. The EFF will also help the fishing communities most severely affected by these changes to diversify their economic activities.

The EFF has five priorities:

- supporting the main objectives of the CFP, especially those established under the 2002 reform. This means ensuring sustainable exploitation of fisheries resources and a stable balance between these resources and the capacity of the EU fishing fleet;
- increasing the competitiveness and economic viability of operators in the sector;
- promoting environmentally-friendly fishing and production methods;
- providing adequate support for those employed in the sector;
- facilitating diversification of economic activity in areas dependent on fishing.

(b) Types of action

To ensure the economic, environmental and social sustainability of fishing, the EFF concentrates on these five priority areas:

- Measures for the adaptation of the Community fishing fleet: fishermen and the owners of vessels affected by

the measures taken to combat overexploitation of resources may obtain aid for permanent or temporary withdrawal of fishing vessels or for training, reconversion or early retirement;

- Aquaculture, processing and marketing: the acquisition and use of gear and methods that reduce the impact of fishing on the environment will be promoted. The aid will be concentrated on small and micro enterprises;
- Measures of common interest: projects that help sustainable development or the conservation of resources, the strengthening of markets in fishery products or the promotion of partnerships between scientists and operators in the fisheries sector will be eligible for aid;
- Sustainable development of fisheries areas: measures and initiatives aimed at diversifying and strengthening economic development in areas affected by the decline in fishing activities will be supported;
- Technical assistance: action relating to preparation, monitoring, administrative and technical support, evaluation, audit and control necessary for implementing the proposed Regulation.

The Member States are responsible for allocation of the financial resources between these five priorities.

(c) Resources

For the period 2007–13 the total EFF budget amounts to EUR 3.849 million of which EUR 2.908 million will go to the convergence areas and EUR 941 million to the non-convergence areas. Funding will be available for all sectors of the industry — sea and inland fisheries, aquaculture businesses, producer organisations, and the processing and marketing sectors.

C. The socio-economic consequences of the new Common Fisheries Policy

The reform of the CFP has accelerated modernisation of management of the Union's fisheries and put them on the path towards sustainability. This will lead to an economically healthier fishing industry, but it is a painful process that has inevitably entailed measures to restrict fishers' catches, the time spent fishing and, hence, profits and will continue to do so for the foreseeable future. This process will continue over the next few years, with economic and social consequences. Fishing possibilities and fishermen's income are already reduced because of the depletion of so many fish stocks. Public aid is available to support the sector during this restructuring process under a fund dedicated to the fisheries industry: the FIGF.

Nevertheless, the recent increase in operating costs due to higher fuel prices therefore comes at a sensitive time,

creating unprecedented difficulties for many parts of the industry. The combination of depleted stocks, inevitably restrictive management measures, heavy increases in costs and static or decreasing income means that many vessels with high fuel consumption are operating at a loss.

Based on the experience of the restructuring of the Spanish and Portuguese fleets fishing in Moroccan waters, the Commission considers that a maximum of 28 000 fishermen (+/- 11 % of all those employed at sea) could be affected by this limitation (an average of 8 000 jobs have been lost annually in the fisheries sector in recent years).

In order to manage the structural adjustment required as a result of the decrease in job opportunities in the fisheries sector, while guaranteeing an improvement in living and employment conditions in the sector, the Commission proposed the following strategy:

- bilateral consultations of the Member States to assess the likely socio-economic impact of fishing effort limitation schemes;
- on the basis of these consultations, preparation of an action plan to counter the socio-economic consequences of the restructuring of the fishing industry;
- reprogramming of the Structural Funds to make good use of the existing instruments;
- development of a long-term strategy for the integrated coastal development of fisheries-dependent sectors (in particular promoting the recognition of the role of fishermen in preserving the social and cultural heritage of coastal areas and encouraging the development of complementary coastal activities likely to provide replacement jobs);
- improved sectoral dialogue (e.g. including the social clause in Community fisheries agreements; improving the sector's image among young people; enhancing the role of women by improving their status and social protection);
- assessment of working and safety conditions in the context of fishing and fish processing.

Role of the European Parliament

The European Parliament (EP/Parliament) has always been in favour of incorporating the fisheries structural policy into the Structural Funds.

- It recommended the creation of an autonomous Objective 6 (1993 reform) for fisheries within the Structural Funds;
- It closely monitored the creation of the FIGF, paying special attention to certain problems which were

excluded from or not adequately covered by the Commission proposals, such as the social impact of restructuring in the sector, support for small fisheries, aid for experimental fishing campaigns, improvement of distribution channels, etc;

- Similarly, it urged that the FIG's opportunities for intervention and financial endowment should at least match those of the instruments it replaced;
- In its resolution on the CFP after 2002 (A4-0298/1997), Parliament stressed the need for an integrated approach to developing coastal areas and gradual regionalisation of fisheries structural policy;
- As part of the new reform of the CFP, the EP prepared in particular:
 - a report on the proposal for a Council regulation amending Regulation (EC) No 2792/1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector (A5-0396/2002). In this report, the EP states that the ultimate goal of the CFP is 'to ensure a fair standard of living for fishermen and all other operators in the sector in accordance with the provisions of Article 33 of the Treaty' and strongly criticises the European Commission for not having drawn up in advance a report on the economic and social situation in the regions heavily dependent on fisheries as required by Community legislation (Article 14 of Regulation (EC) No 3760/1992);
 - an own-initiative report on the Commission communication to the EP and the Council on the

action plan to counter the social, economic and regional consequences of the restructuring of the EU fishing industry (A5-0162/2003), in which it 'reaffirms the social, cultural and economic role of the fishing industry, particularly small-scale fisheries in fisheries-dependent regions, and calls on the Commission to ensure that the necessary economic and social measures are taken to guarantee economic and social cohesion in areas dependent on fisheries, including the outermost regions, with an aim to become financially self-reliant.' In this same report, Parliament calls on the Commission to consider 'quality employment and health and safety conditions at work as one of the objectives of the common fisheries policy'.

- Finally, Parliament supported the EFF budget provided for in the agreement on the Financial Perspective (2007–13). In its legislative report on the regulation on the EFF (A6/0217/2005), Parliament proposed reform of the system of providing financial aid for fishermen. Members approved the principle of the reform, the conservation of fishery resources, but thought the social and economic impact should also be taken into account. There were some compromises: the permanent withdrawal of fishing vessels, the financing of fishing gear and investment in aquaculture. Report A6/0340/2005 also dealt with additional funding for the EFF.

→ Eva CASALPRIM-CALVÉS
09/2006

4.3.4. International fisheries relations

Legal basis

Articles 32 to 37 and 300 of the EC Treaty.

Objectives

- to ensure appropriate EU access to the world's main fishing zones;
- to contribute to the sustainable development of world fisheries;
- to enhance bilateral and/or regional sectoral political dialogue;

- to strengthen control and inspections under the regional fisheries organisations;
- to improve scientific research.

Achievements

A. International fishing agreements

1. Role and importance

(a) *Raison d'être*

Bilateral and multilateral fishing agreements became necessary after many non-member States established exclusive economic zones (EEZs) in the mid-1970s.

Although EEZs cover only 35 % of the total area of the seas, they contain 90 % of the world's fish stocks. Thus, these stocks came under the control of the countries closest to them, and the Member States' fleets, which had traditionally fished these waters, no longer had access. In order to regain access and extend it to new areas, the Community concluded fishing agreements with the countries concerned.

(b) Geographical extension

Since the first agreement signed with the United States in 1977, 29 agreements have been signed in all, 26 of which were in force in the period 1993 to 1999, mainly with African and Indian Ocean countries (15) and countries in the North Atlantic (10); only one was signed with a Latin American country (Argentina). At the end of 2002, 21 fishing agreements were in force.

(c) Financial investment

The budget allocated to international fishing agreements increased from EUR 5 million in 1981 to almost 300 million in 1997 (0.31 % of the total Community budget and nearly 30 % of the resources allocated to the fisheries sector). Investment was maintained in 1998 and 1999, but slackened off when the agreement with Morocco (totalling about EUR 90 million) was not renewed. In 2003, the amount allocated for fishing agreements was less than EUR 200 million and no increase is planned in the 2004 budget.

(d) Benefits for the EU

In 2002, catches under the international agreements accounted for 20 % of all Community catches and were valued at approximately EUR 1 000 million. They provide direct employment for about 30 000 people and generate considerable economic activity in sectors and regions heavily dependent on fishing.

2. Types of fishing agreement

(a) Reciprocal agreements (access to resources/access to resources)

Principle:

- These involve an exchange of fishing opportunities between EU fleets and those of non-EU countries. The reference base to guarantee an equal exchange is the 'cod equivalent' (one tonne of cod represents x tonnes of another species in exchange).
- Geographical application:
 - Norway, the Faeroes and Iceland have concluded this type of agreement. The agreements with the Baltic States combine the reciprocal principle with financial compensation from the EU.

(b) Agreements involving financial compensation (access to resources/financial compensation)

— Principle:

These are concluded with non-member states wishing to concede part of their fishing rights in their own EEZ without acquiring reciprocal access rights. The main object of such agreements is to allow fishing (by a certain number of vessels or a certain volume of gross register tonne, or grt). The financial compensation is in the form of a contribution by the Union and fees paid by private shipowners benefiting from the access rights.

— Geographical application:

All the fishing agreements with the African and Indian Ocean countries (14 countries in Africa, the Caribbean and the Pacific) are of this type, as is the agreement with Greenland (although the latter does not include private fees). In addition to the financial compensation, agreements can include access to the European market at lower customs tariffs (e.g. Greenland).

(c) 'Second generation' agreements (establishment of joint ventures)

These are based on encouraging the establishment of joint ventures to operate in a non-member State's EEZ, together with a guaranteed quota allocation for the particular species listed in the agreement. At present there is only one agreement of this type, with Argentina.

3. Geographical distribution of catches

(a) For fishing agreements with countries in the South,

catch landings amounted to a yearly average of almost 2 040 000 tonnes over the period 1993–97 (average calculated over five years despite the temporary suspension of the agreement with Morocco during that period). With more than 87 % of catches, Spain caught far more (not including tuna) than the other Member States under agreements with countries in the South. Morocco, with more than 74 %, was the main supply country, far ahead of Mauritania, Guinea Bissau, Senegal and Angola (25 % between the four of them).

(b) For fishing agreements with countries in the North,

catch landings by the Community fleet fluctuated over the period 1993–97 between 300 000 and 370 000 tonnes per year. The main 'industrial' species (used primarily for the manufacture of fishmeal) made up more than 70 % of catch landings; the main species in terms of value is cod. Denmark, with 82 % of the catch, is the biggest producer. Germany, United Kingdom and Sweden share 15 % of the volume. Catches by other countries are less than 5 % of the total. The agreement with Norway represents more than 60 % by value, followed by Greenland (27 % of the total); the

other agreements represent less than 2 % of the total value of catches.

4. The new CFP reform proposes new types of agreement which will gradually replace the previous agreements:

(a) Continuity agreements

The purpose of these is to consolidate cooperation with third countries, in particular adjacent coastal states with which the EU traditionally shares fishing interests, by implementing responsible fishery management systems.

(b) Fisheries partnership agreements (FPAs)

These are aimed at strengthening cooperation with developing third countries to ensure sustainable and responsible fishing in the mutual interest of the parties concerned. Sustainable impact assessments will be carried out with a view to negotiating further fisheries partnership agreements.

B. International conventions

1. Role

As well as bilateral agreements concerning coastal waters, the United Nations Conference on the Law of the Sea (Unclos) recognises the principle of international conventions for the exploitation of resources on the high seas. Although some of these conventions date back to the period before the Second World War, most of them were concluded afterwards. They generally set up commissions responsible for scientific research, publication of the results and recommendations for managing stocks, which may remain as recommendations or become mandatory if no objections are made within a certain period.

They generally act in the following ways:

- limiting catches by two methods: a global quota or national quotas;
- introducing prohibited zones or periods;
- banning or regulating fishing gear.

2. EU participation in bodies set up by conventions

(a) The EU has member status in the following international organisations:

- NAFO (Northwest Atlantic Fisheries Organisation), set up under an international convention approved by Council Regulation (EEC) No 3179/78 of 28 November 1978 which came into force on 1 January 1979;
- NEAFC (North East Atlantic Fisheries Commission), convention approved by Council Decision 81/608/EEC of 13 July 1981 which came into force on 12 August 1981;
- NASCO (North Atlantic Salmon Conservation Organization), approved by Council Decision 82/886/

EEC of 31 December 1982 which came into force on 1 October 1983;

- IBSFC (International Baltic Sea Fisheries Commission), convention approved by Council Decision 83/414/EEC of 25 July 1983 which came into force on 18 March 1984;
- IOTC (Indian Ocean Tuna Commission), approved by Council Decision 95/399/EC of 18 September 1995;
- CCAMLR (Commission for the Conservation of Antarctic Marine Living Resources), convention approved by Council Decision 81/691/EEC of 4 September 1981 which came into force in 1982;
- ICCAT (International Commission for the Conservation of Atlantic Tunas), approved by Council Decision 86/238/EEC of 9 June 1986 which came into force on 14 November 1997;
- GFCM (General Fisheries Council for the Mediterranean), approved by Council Decision 98/416/EC of 16 July 1998;
- CECAF (Fishery Committee for the Eastern Central Atlantic), set up by the FAO in 1967; the EU has been a member since 1991;
- WECAFC (Western Central Atlantic Fishery Commission);
- IOFC (Indian Ocean Fisheries Commission), set up by the FAO in 1967; the EU has been a member since 1991.

(b) The EU only has observer status in conventions concluded by individual Member States:

- ISEAF (International Southeast Atlantic Fisheries Commission);
- IWC (International Whaling Commission);
- NAMCO (North Atlantic Marine Mammal Commission);
- IATTC (Inter American Tropical Tuna Commission) (set up in 1949).

(c) In addition, the EU is a member of the following international organisations:

- MHLC (Multilateral High Level Conference);
- SEAFO (South East Atlantic Fisheries Organization);
- SWIOC (South West Indian Ocean Fisheries Commission).

Role of the European Parliament

1. Role in the procedure for concluding agreements

On the basis of Articles 37, 300 and 310 of the EC Treaty, the European Parliament's (Parliament's) assent is required for:

- accession by the EC to international fisheries conventions or the conclusion or amendment of agreements having important financial implications;

- agreements concluded with one or more states or international organisations establishing an association involving reciprocal rights and obligations, common action and special procedures;
- agreements establishing a specific institutional framework by organising cooperation procedures.

In addition, Parliament must be 'immediately and fully informed of any decision [...] concerning the provisional application or the suspension of agreements' (Article 300(2)).

2. Basic position

Parliament has several times stressed the importance of international fisheries agreements for Community fish supplies, for the EU regions most dependent on fishing and for employment in the sector (notably in its resolution of 15 May 1977). In addition, Parliament has addressed itself to the consistency of the agreements with other EU external policies (environment and development cooperation). It has declared its support for the eradication of vessels flying flags of convenience and condemned the growing use of private agreements outside the control of the EU authorities (resolution of 20 November 2002).

4.3.5. European fishing industry in figures

A. Catches

Following a period of continuous growth, world catches seem to have reached a ceiling, at 145 million tonnes. European Union production has been gradually declining (by 20 % between 1992 and 2003) and is now 5.3 million tonnes. At the start of the 1990s, EU catches represented 7 % of world fisheries, which made the EU the third largest world producer after China and Peru. In 2003, Community production accounted for only 3 % of world production, so that it fell back into sixth place. In 2003, 72 % of Community catches were caught in the North-East Atlantic, 9 % in the Mediterranean and the Black Sea, and 8 % in the Mid-East Atlantic.

In 2003, five Member States (Denmark, Spain, France, the United Kingdom and the Netherlands) accounted for 71 % of Community production. There are structural differences between these five countries. In Denmark, 69 % of production is for industrial use, mainly the production of fish meal, whereas the corresponding figure in the United Kingdom is only 6 %. In Spain, France and the Netherlands, all production is intended for human consumption. Catch values and employment in the fisheries sector are an accurate reflection of this situation. For example, the unit value of landings in Spain is seven times higher than that of Danish landings.

The enlargement of 2004 caused a 9 % increase in EU catches. Some 97 % of catches by the 10 States which acceded to the European Union in 2004 are shared by the four countries which border the Baltic Sea. Of these four States, only in Lithuania have catches remained stable over the last decade. By contrast, catches in Poland have fallen by 54 %, those in Estonia by 34 %, and those in Latvia by 21 %.

B. The fleet

Between 1997 and 2004, the fishing fleet of the EU-15 was reduced by 16 %, from 102 404 to 85 709 vessels. The reduction in the fleet's tonnage was 7 % and the reduction in its engine power was 13 %.

The enlargement of 2004 caused an 8 % increase in the number of vessels (bringing it to a total of 92 422), an 8 % increase in the engine power of the fleet and a 12 % increase in its tonnage. Of the number of vessels belonging to the new Member States, 53 % belong to the four countries bordering the Baltic, and those same four countries account for 85 % of the tonnage and 66 % of the engine power of the fleet of the new Member States.

In 2004, Greece owned 20 % of the total number of fishing vessels, followed by Italy (16 %), Spain (15 %) and Portugal (11 %). Those four countries plus France and the United Kingdom represented 79 % of the fishing vessels of the EU-25.

Spain represents 23 % of the total tonnage of the Community fleet (491 000 tonnes), followed by the United Kingdom (223 000 tonnes or 12 %), Italy (216 000 tonnes or 10 %), France (214 000 tonnes or 10 %) and the Netherlands (195 000 tonnes or 9 %). Member States in the South represent 55 % of the total tonnage but 75 % of the number of vessels, a fact which is explained by the predominance of smaller vessels.

With the exception of Belgium and the Netherlands, where large vessels predominate, all Member States' fleets have relatively similar structures. In Finland, Greece, Portugal, Cyprus and Malta, more than 90 % of vessels are less than

12 metres in length, reflecting the importance of coastal fishing in those countries.

If we take vessels of less than 12 metres in length as being the coastal fishing fleet, in this case the reduction in the number of vessels in the EU-15 was 17 %, which is comparable with the figure for the fishing fleet as a whole. However, the reduction in tonnage was 30 %, and the reduction in engine power 11 %. In the coastal fishing fleet, enlargement resulted in an increase of 8 %, not only in the number of vessels but also in tonnage and engine power.

The average age of the fishing fleet of the EU-25 is 22.8 years, and 69 % of vessels are less than 30 years old, but 6.5 % are more than 50 years old. Belgium is the only Member State which does not possess any vessel over 50 years old.

The fishing fleet of the new Member States is considerably younger than that of the EU-15 (an average of 18.5 years compared with 23.1 years). The average age of the fleets of northern countries is 21.6 years compared with 23.2 years of those in the South.

C. Aquaculture

Between 1993 and 2003, Community aquaculture production increased by 42 %, though at the end of the 1980s it seemed to have reached a ceiling of 1.4 million tonnes. During the same period, the value of production increased by 48 %. In 2003, aquaculture represented 25 % of the volume of catches and 46 % of the value of landings. Community aquaculture is mostly concentrated on four species: mussels, trout, salmon and oysters. However, the production of species such as seabass, seabream and turbot is growing. Five countries account for 75 % of the production volume of Community

aquaculture. These are Spain (23 %), France (18 %), Italy (14 %), the United Kingdom (13 %) and Greece (7 %). Bivalve molluscs (mussels, oysters and clams) predominate in Spain, France and Italy, but species vary from one State to another. The United Kingdom, for its part, produces largely salmon and trout, whereas Greece processes mainly other sea fish species. Differences in species distribution explain the different production values of aquaculture production. France represents 19 % of the value of aquaculture production, while Italy and the United Kingdom each represent 17 %, Spain 12 % and Greece 11 %.

D. External trade

The European Union is a net importer of fishery products, with a negative trading balance which in recent years has amounted to 3.5 million tonnes, with a value of EUR 10.5 billion. Both imports and exports are showing a tendency to rise, though this is more pronounced in the case of imports. In 2004, the European Union imported 5 169 495 tonnes with a value of EUR 12.387 billion. In the same year, the EU exported 1 903 819 tonnes with a value of EUR 2.283 billion.

E. Employment

At present, Member States submit data on employment in the fisheries sector to Eurostat on a voluntary basis, without being subject to any restrictive legislation. However, this information is not harmonised and therefore does not allow any coherent analysis of employment figures.

→ Jesús IBORRA-MARTIN
11/2005

4.4. Regional and cohesion policy

4.4.1. Economic and social cohesion

Legal basis

Articles 158 to 162 of the EC Treaty (Title XVII), established by the Single European Act.

Objectives

1. Main aims

Economic and social cohesion, as defined by Article 158, is needed for the Community's 'overall harmonious development' and requires a reduction of the 'disparities between the levels of development of the various regions', i.e. the 'backwardness of the least favoured regions', which include rural areas.

2. Means

In order to achieve these aims, the Treaty makes provision for:

- coordination of economic policies;
- implementation of Community policies, in particular the single market;
- use of the existing Structural Funds (European Agricultural Guidance and Guarantee Fund, Guidance Section; European Social Fund (ESF); European Regional Development Fund (ERDF)) and creation of a Cohesion Fund.

Achievements

A. Background

1. The Treaty of Rome made no provision for regional policy but only solidarity mechanisms in the form of two Structural Funds: the European Social Fund (→4.8.2.) and the European Agricultural Guidance and Guarantee Fund, Guidance Section (→4.1.5.).
2. Regional policy was not put in place until after the Community's first enlargement in 1973, with the creation of the European Regional Development Fund in 1975. But for a long time it had only modest resources, which limited the level of regional policy activities.

2. The additionality principle was adopted right at the beginning of regional policy. This means that projects receiving Community aid must be new projects which the Member States would not have undertaken by themselves. But national funding must predominate; Community aid complements it. Similarly, the national and regional authorities are responsible for selecting projects and managing them, within the general Community criteria.

B. The growth of regional policy (1988–99)

1. Impetus given by the Single Act

The Single Act (1986) gave the Community new competence for economic and social cohesion and set its objectives and means. The foremost of these means was systematic use of the Structural Funds; this entailed a reform of their operational rules. The reform required a Commission proposal, a unanimous Council decision and consultation of the European Parliament (EP/Parliament). It was to be governed by the cooperation procedure which enables the Council to decide by qualified majority and gives Parliament a degree of control.

The Council carried out this reform by Regulation (EEC) No 2052/88 of 24 July 1988; Regulation (EEC) No 4253/88 of 19 December 1988 laid down the implementing provisions for coordinating the use of the funds. The principles of the new rules are as follows:

- funds are concentrated under objectives and regions;
- the Commission, the Member States and the regional authorities work in partnership to plan, implement and monitor use of the funds;
- measures are programmed;
- additionality of Community contributions is observed.

These new rules went together with a major financial boost. During the same year, 1988, the Council gave its agreement in principle to a series of economic measures known as the 'Delors I package', which planned to double the amount of the Structural Funds for the following five years (see summary table at the end of the text).

2. Developments following the Maastricht Treaty

(a) Contribution of the Treaty

The Maastricht Treaty:

- stipulated that the Commission must submit a report to the Council and Parliament every three years on the progress made towards achieving economic and social cohesion (Article 130(b)(2));
- provided for the possibility of 'specific actions' outside the Structural Funds (Article 130(b)(3));
- provided for the creation of a Cohesion Fund (Article 130(d)(2));
- reformed the decision-making procedures:
 - the tasks, objectives, organisation, general rules and coordination of the Funds are still determined on the basis of the Commission's proposal and a unanimous decision of the Council but are subject to the assent of Parliament (Article 130(d)(1));
 - implementing decisions relating to the ERDF are governed by the cooperation procedure (Article 130(e)(1)). Since the Treaty of Amsterdam, they have been governed by the co-decision procedure involving the Council and Parliament.

(b) A new and substantial increase in the amount of the Structural Funds.

Just after the Maastricht Treaty was signed, the Commission had proposed a considerably higher level of funding, known as the 'Delors II package'. The Council, meeting in Edinburgh in December 1992, approved only part of these proposals and planned to spread the expenditure over a longer period. Nevertheless, it signed up to a sizeable increase. The budget allocated to the whole package of structural measures for the six years 1994–99 was set at ECU 208 billion.

(c) A major reform of the Structural Funds

Adopted through a Council decision in July 1993 (Regulation (EEC) No 2081/93, amending Regulation (EEC) No 2052/88 and Regulation (EEC) No 2082/93, amending Regulation (EEC) No 4053/88 for coordinating measures), this reform was intended to do two things: to integrate all structural measures into the overall strategy to combat unemployment and to develop the least favoured regions. It included the following changes:

- adjustment of the funds' priority objectives to current economic change and revision of the ESF in respect of political guidelines and adoption of a strategic approach;
- revision of the procedure for establishing lists of areas eligible under Objectives 2 and 5(b);

- simplification of planning procedures (single programming documents);
- greater partnership, with special attention to cooperation with economic and social representatives;
- stronger ex ante analysis, monitoring and ex post analysis of structural measures;
- increased attention to the principle of additionality;
- greater concentration on environmental protection, in line with the principle of sustainability;
- encouraging equal treatment for men and women;
- increased involvement by Parliament in the enactment of structural policy.

(d) Creation of the Cohesion Fund

Provided for by the Maastricht Treaty, the fund was set up in March 1994 (→4.4.3).

C. Recent decisions and prospects

1. A new reform of the Structural Funds

On the basis of the Commission's broad guidelines set out in 'Agenda 2000' (July 1997) and detailed in its March 1998 proposals, the Council meeting in Berlin in March 1999 approved a new reform of the Structural Funds. This reform aimed to concentrate aid further, to simplify and decentralise the way the funds operated, to increase their efficiency through better evaluation and monitoring and to stress additionality. At the same time the Cohesion Fund (→4.4.3) was maintained and the Financial Instrument for Fisheries Guidance (FIG →4.2.3) was made a separate fund. The Council formally adopted the reform with Regulation (EC) No 1260/1999 of 21 June 1999.

2. A new financial effort

At the same time, the Berlin Council approved the allocation of EUR 213 billion to structural measures for the period 2000–06, EUR 7 billion of which is destined for the new 'Instrument for Structural Policies for Pre-Accession' (ISPA), which the Council had approved in December 1997 (Luxembourg) in the context of Agenda 2000, with the aim of helping the Central and Eastern European applicant countries to adapt to the requirements of EU membership (→6.3.1).

D. The European Constitution's contribution (→1.1.5)

The Treaty establishing a Constitution for Europe included, for the first time, territorial cohesion among the Union's objectives (Article I-3 paragraph 3). It also amended the legislative procedure (the assent procedure is replaced by the co-decision procedure (Article III-223)). It also introduced the role and place of regional and local government into the European institutional system, primarily through recognition of the principle of regional

and local autonomy (Article I-5), the new definition of the principle of subsidiarity (Article I-11 paragraph 3) and new rights and responsibilities granted to the Committee of the Regions (Article 8 of the Protocol on subsidiarity and Article III-365 paragraph 3).

A better definition and allocation of powers in the EU also represents significant progress, as in future it will be easier to identify levels of responsibility for each EU policy.

E. Strategic guidelines for cohesion policy after 2007

(→4.4.2.)

With an overall budget of EUR 308 billion, the new reform of cohesion policy is intended to make structural measures:

- more closely centred on priority objectives such as those set out in the Lisbon and Gothenburg strategies: a competitive and sustainable knowledge-based economy, European employment strategy);
- more focused on the most disadvantaged regions while anticipating developments in the rest of the EU;
- more decentralised and implemented more simply, transparently and effectively.

1. Relaunching of the Lisbon strategy

Following the European Council meeting in March 2005, the Lisbon strategy was renewed by means of a partnership for growth and employment. Under this strategy, cohesion policy must focus on the promotion of sustainable growth, competitiveness and employment.

2. Priorities for strategic guidelines

Strategic guidelines are focused on three priorities:

- improving the attractiveness of Member States' regions and cities;
- encouraging innovation, entrepreneurship and the growth of the knowledge economy;
- creating more and better jobs.

Role of the European Parliament

The European Parliament's (Parliament's) basic position is that economic and social cohesion is an essential precondition for solidarity in order to maintain a consensus among the citizens in the regions and various social groups concerning their commitment to the EU itself. As such, it must remain an essential aspect of European integration, on an equal footing with the single market and monetary union. The appropriations allocated must remain at a sufficiently high level to ensure that it is effective. Parliament has always vigorously supported the proposals, which it considers the minimum necessary, to increase allocations to the Structural Funds.

Parliament has made use of its new powers in this area:

- the Single Act introduced cooperation with the Council for implementing decisions regulating the Structural Funds;
- the Maastricht Treaty introduced the assent procedure for decisions on regulations;
- the Amsterdam Treaty introduced co-decision with the Council for implementing measures.

It endeavoured to affect the 1993 reform, stressing the need for sufficient funding. It persuaded the Commission (July 1993) to accept a code of conduct on implementing structural policy which binds it closely to the establishment of Community support frameworks (→4.4.2.) and to their implementation and evaluation. The code of conduct has given rise to an ongoing dialogue in which Parliament has given its support to two Commission projects: a system for publicising Structural Fund measures and a regulation on recovery of sums invested in the event of irregularity.

Parliament was able to influence the 1999 reform on the basis, firstly, of its new power to give assent to general rules on the Structural Funds. It expressed its position in particular in its resolution of 19 November 1998, and the

Trend in the allocation to the structural funds

	1988–92 (EU-12)	1993–99 (EU-12/EU-15) (*)	2000–06 (EU-15/EU-25) (**)	2007–13 (EU-25/EU-27) (***)
EU budget (billion EUR)	481	683	687	862
Structural Fund budget (billion EUR)	111	208	213	308
Structural Fund budget compared with the EU budget (%)	24 %	31 %	31 %	35.7 %

(*) Accession of Austria, Finland and Sweden in 1995.

(**) Accession of Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia in 2004.

(***) Accession of Bulgaria and Romania in 2007.

Council took most of its views into account, so that Parliament was able to give its assent on 6 May 1999. With regard to the implementing measures, it was even able to obtain legislative co-decision, anticipating the entry into force of the Amsterdam Treaty. The code of conduct with the Commission has been extended to include all the structural instruments (6 May 1999).

Because of its cooperative approach, Parliament was able to obtain an increase in financial resources for territorial cohesion for the period 2007–13, an objective of prime importance in the context of enlargement. It also put forward several proposals that helped enhance the text of the new regulation by stressing:

- the need to make funds more accessible to disabled people;

- the strengthening of the partnership principle: namely that any appropriate body representing civil society, environmental partners, non-governmental organisations, and bodies responsible for promoting equality between men and women can take part in the Structural Funds partnership negotiations;
- the strengthening of the environmental aspect in managing the Structural Funds, particularly sustainable development, and the introduction of a new article ensuring that this dimension is always taken into account.

→ Ivana **KATSAROVA**
09/2006

4.4.2. The European Regional Development Fund (ERDF)

Legal basis

Articles 158 to 162 of the EC Treaty.

Objectives

To help redress regional imbalances through participation in:

- the development and structural adjustment of regions whose development is lagging behind;
- the conversion of declining industrial regions (Article 160).

Achievements

A. History

The European Regional Development Fund (ERDF) was set up in 1975 and has become the main instrument of the Community's regional policy.

1. Main operating principles

The main principles by which it currently operates were laid down by the general reform of the Structural Funds in 1988 (→4.4.1.). 'Community support frameworks' negotiated between the Commission, the Member States and the regional authorities lay down the broad outline of the measures that commit the Member States and the Community jointly and provide a reference framework for operational programmes submitted by the Member States. The Commission has the final decision on co-financing these programmes.

2. The four objectives of 1993

The regulations reforming the Structural Funds in 1993 (→4.4.1.) gave the ERDF the following four objectives for the period 1994–99:

- Objective 1: development and structural adjustment of regions whose development is lagging behind;
- Objective 2: redevelopment of regions severely affected by industrial decline;
- Objective 5(b): development of rural regions;
- Objective 6: fostering the Arctic regions (this objective was included when Sweden and Finland joined).

Some 80 % of the fund's resources are reserved for Objective 1.

3. Community initiatives

These are projects which affect the whole Community, for which the Commission alone is responsible.

(a) Relevant sectors

The 1993 regulations laid down the relevant sectors:

- interregional cooperation,
- employment and manpower,
- industrial development,
- very remote regions,
- urban policy,
- rural development.

(b) Main programmes

- Interreg, which supports cross-border cooperation projects between regions at the Community's internal and external borders, in very varied fields;
- URBAN, which applies to problematic urban areas (high unemployment, run-down buildings, poor housing and inadequate social network);
- Konver, which encourages the arms industry to convert to civilian activities.

B. The Regulation of 1999 (→4.4.1.)**1. Objectives**

The regulation adopted in 1999 for the period 2000–06 (Council Regulation (EC) No 1261/1999 of 21 June 1999) limits the ERDF's objectives to two:

(a) Objective 1

This remains unchanged: development and structural adjustment of regions whose development is lagging behind. However, it now includes the areas which were eligible under Objective 6 and the very remote regions.

(b) Objective 2

This is new: economic redevelopment and development of areas with structural problems. It covers the former Objectives 2 and 5(b) and extends them to other areas: urban areas in difficulty, crisis-hit areas dependent on fisheries and areas heavily dependent on services.

2. Eligible regions*(a) Under Objective 1*

- Those whose GNP is less than 75 % of the Community average, a list of which is drawn up by the Commission;
- Very remote regions (French overseas territories, the Azores, Madeira and the Canary Islands);
- Regions covered by Objective 6.

All these regions represent about 20 % of the EU population.

(b) Under Objective 2

There are four types of Objective 2 region: industrial, rural, urban and fishery-dependent. The Commission, in close cooperation with the Member States concerned, will draw up a list of these regions. They cover about 18 % of the EU population.

3. Transitional arrangements

There are transitional assistance arrangements for regions which were eligible under Objectives 1, 2 and 5(b) in 1999 but are no longer eligible in 2000.

4. Community initiatives

Relevant sectors:

- Transfrontier, transnational and interregional cooperation to stimulate development and coordinated, balanced planning; rural development;
- transnational cooperation on new practices to deal with any kind of discrimination or inequality in access to employment.

5. Programmes

The number of programmes has been reduced to four: Interreg, URBAN, Leader and EQUAL. Their funding has been cut back to 5.3 % of the total for the Structural Funds.

6. Allocation of responsibilities

This has been spelt out more clearly:

- the Commission underwrites the strategic priorities;
- programme management is more decentralised, with a greater role played by regional and local authorities and the economic and social partners.

C. Prospects for the period 2007–13

In July 2004 the Commission presented a package of five proposals for regulations for reform of regional policy. The reform is due to enter into effect on 1 January 2007.

1. Three new objectives

A total of EUR 308 billion will be allocated to fund measures under the three new objectives.

(a) Convergence

This objective, which is similar to the current Objective 1, aims to accelerate the convergence of the least developed Member States and regions by improving growth and employment conditions. It will be financed by the ERDF, the European Social Fund (ESF) and the Cohesion Fund. The following regions and Member States will be eligible:

- for the Structural Funds (ERDF and ESF):
 - regions where per capita GDP is below 75 % of the Community average; they must be at NUTS II level;
 - regions where per capita GDP would have been below 75 % of the Community average (the statistical effect of enlargement); they will benefit from transitional, specific and decreasing financing;
- for the Cohesion Fund: Member States whose per capita Gross National Income (GNI) is below 90 % of the Community average and which are running economic convergence programmes;
- for specific ERDF funding: the very remote regions. The aim is to facilitate their integration into the internal market and to take account of their specific constraints (such as compensation of excess costs due to their remote location).

(b) Regional competitiveness and employment

This objective aims to strengthen the competitiveness, employment and attractiveness of regions other than those which are the most disadvantaged. It will be financed by the ERDF and the ESF. The eligible regions are:

- regions which fell under Objective 1 during the period 2000–06, which no longer meet the regional eligibility criteria of the convergence objective, and which consequently benefit from transitional support. The Commission will produce a list of these regions which, once adopted, will be valid from 2007 to 2013;
- all other regions of the Community not covered by the convergence objective.

(c) European territorial cooperation

This new objective aims to strengthen cross-border, transnational and interregional cooperation and is based on the existing Interreg initiative. It will be financed by the ERDF. Regions eligible for funds are those regions at NUTS III level that are situated along internal land borders, certain external land borders and certain regions situated along maritime borders separated by a maximum of 150 km. The Commission will adopt a list of eligible regions.

2. Provisions specific to the three objectives

Resources are not transferable between the objectives. An amount of 0.3 % of the total is allocated for technical assistance. For the convergence and regional competitiveness and employment objectives, 3 % of the total constitutes a 'quality and performance reserve'. In no case may the annual allocation of resources exceed 4 % of the GDP of the Member State in question. Provision has also been made for a new 'national contingency reserve' to supply extra assistance in the event of an unforeseen sectoral or local crisis due to the effects of economic and social restructuring or trade opening. It is constituted by the Member States by taking 1 % of the convergence contribution and 3 % of the competitiveness contribution.

Role of the European Parliament

The code of conduct adopted with the Commission in 1993 and expanded in 1999 requires the European Parliament (Parliament) to be kept regularly informed of the fund's activities. Under the 1999 reform, Parliament also succeeded in retaining the URBAN programme as one of the Community initiatives.

Summary table

2000–06		2007–13	
Objectives	Financial instruments	Objectives	Financial instruments
Cohesion Fund	Cohesion Fund	'Convergence'	ERDF
Objective 1	ERDF		Cohesion Fund
	ESF		
	EAGGF – Guarantee and EAGGF – Guidance		
	FIFG		
Objective 2	ERDF	'Regional' competitiveness and employment' regional level — national level:	ERDF
	ESF		ESF
Objective 3	ESF	European employment strategy	
Interreg	ERDF	European territorial cooperation	ERDF
URBAN	ERDF		
EQUAL	ESF		
Leader+	EAGGF – Guidance		
Rural development and restructuring of fisheries outside Objective 1	EAGGF – Guarantee FIFG		
9 objectives	6 instruments	3 objectives	3 instruments

Despite the cost of the 2004 enlargement, the increased number of less-developed regions and the extra efforts that have to be made if the structural policies are to succeed, for the period 2007–13 the ERDF will have resources that are 0.04 % less than the amount proposed by the European Commission with the support of Parliament.

Because of its spirit of cooperation, Parliament was successful in obtaining the changes required concerning

environmental protection. Its voice has been heard in the areas of partnership where, under the general regulation, greater involvement of civil society and NGOs is foreseen.

→ Ivana **KATSAROVA**
09/2006

4.4.3. The Cohesion Fund

Legal basis

Article 161 of the EC Treaty, introduced by the Maastricht Treaty.

Objectives

The Treaty states that the fund 'shall provide a financial contribution to projects' in the fields of:

- environment;
- trans-European networks in the area of transport infrastructure.

Achievements

Initially the Council set up (1 April 1993) a 'cohesion financial instrument' (Regulation (EEC) No 792/93). The Cohesion Fund replaced it on 16 May 1994 (Regulation (EC) No 1164/94 modified by Regulations (EC) No 1264/1999 and (EC) No 1265/1999).

A. Field of application

1. Eligible countries

The fund is reserved for Member States whose per capita GNP is less than 90 % of the Community average and who have set up a programme aiming to meet the criteria set by Article 104(c) of the Treaty; this concerns excessive government deficits in the context of coordinating economic policies as part of EMU. Four Member States qualify: Spain, Greece, Ireland and Portugal.

2. Eligible projects

In the two areas of action laid down by the Treaty, the fund may assist:

Environmental projects contributing to achieving the objectives of Article 174 (130(r)) of the Treaty in the following areas: quality of the environment, human health,

utilisation of natural resources and regional or worldwide environmental problems. These projects include those resulting from measures taken under Article 175 (130(s)) and are in line with the priorities given to Community environmental policy by the fifth programme of policy and action in relation to the environment and sustainable development.

Transport infrastructure projects of common interest financed by Member States, within the framework of the guidelines referred to in Article 155 (129(c)) of the Treaty; however, other trans-European network projects contributing to achieving the objectives of Article 154 (129(b)) of the Treaty may be financed until the Council adopts appropriate guidelines (→4.6.2).

Preparatory studies related to eligible projects.

Technical support measures and related studies.

B. Aid mechanism

1. Scale of funding

The level of funding is between 80 % and 85 % of public expenditure on a project, depending on the type of operation. If a project receives other Community aid as well as assistance from the fund, the total amount of assistance may not exceed 90 % of the total expenditure, except for preparatory studies, which may receive 100 % funding.

2. Procedure

The Commission, in agreement with the beneficiary Member State, takes the decision to fund a project. Decisions must maintain a balance between the two areas (environment and transport infrastructure). The Commission presents an annual report on the activities of the fund to the European Parliament (EP/Parliament), the Council, the Economic and Social Committee and the Committee of the Regions.

C. Volume of aid

1. The fund's resources

(a) For the period 1993–99, the total volume of resources that could be committed under the fund was just over ECU 15 000 million.

Regulation (EC) No 1264/1999 allocated funds between the beneficiary Member States, on a purely indicative basis:

- Spain: 61 to 63.5 %;
- Greece: 16 to 18 %;
- Portugal: 16 to 18 %;
- Ireland: 2 to 6 % (Ireland has not been eligible since 1 January 2004).

(b) For the period 2000–06, Regulation (EC) No 1264/1999 sets the total resources available for commitments at EUR 18 000 million at 1999 prices.

Following the Union's enlargement on 1 May 2004, the Cohesion Fund applies to the 10 new Member States until the end of 2006, as well as to the three Member States eligible at the end of the 2000–06 period (Greece, Portugal and Spain). Spain will no longer be eligible after 1 January 2007.

The act concerning the conditions of accession of the 10 new Member States grants a total of EUR 7 590 million in commitment appropriations at 1999 prices for those countries between 1 May 2004 and 31 December 2006. How the overall resources of the fund are allocated among the Member States depends on a number of criteria: each country's population and area, its per capita GNP and socio-economic factors such as its infrastructure. However, the total amount that these Member States receive from the Cohesion Fund each year, together with the assistance they receive from the Structural Funds, may not exceed 4 % of their GDP.

(c) Programming period 2007–13

The new regulation sets out the general provisions for the operation of the Structural Funds and the Cohesion Fund and lays down that the Cohesion Fund contributes to the convergence objective (→4.4.2) covering less developed Member States and regions through financial participation in the convergence objective's operational programmes.

The accession of new Member States on 1 May 2004, all of which are eligible for the Cohesion Fund and which face new and important financing needs, justifies an extension of both the fund's area of intervention and of the budget of EUR 18 000 million (for the period 2000–06) to EUR 61 000 million for the new programming period (EUR 58 000 million + EUR 3 000 million for specific transitional support).

The fund can therefore also finance actions in support of sustainable development, where these have a clear environmental dimension, such as energy efficiency or renewable energy. Beyond the trans-European transport networks, this also allows for financing of rail, navigable maritime and river waterways, multi-modal transport actions and their interoperability, road and air traffic management, clean urban transport, and communal transport. This extension of the area of intervention is in accordance with the corresponding provisions in the Treaty, and is in line with the priorities decided by the European Council in Lisbon (March 2000) and Gothenburg (June 2001).

Role of the European Parliament

The creation of the Cohesion Fund in 1994 was Parliament's first opportunity to use the new power of assent on the Structural Funds conferred on it by the Maastricht Treaty (Article 130 (d)). It was able to ensure that regional and local authorities were involved in monitoring projects financed by the fund; its assent also had a bearing on the way the fund operates.

In subsequent years, Parliament's influence on cohesion policy increased. In particular, it was opposed to the way the conditionality clause on government deficits penalised countries which had already fulfilled the criteria, considering that this did not mean that these countries had succeeded in removing regional and social disparities, as is apparent from the conclusions to the first three-yearly report on cohesion. Parliament also stressed the contribution that the fund has made to job creation in the beneficiary countries: more than 57 000 jobs created directly and more than 17 000 indirectly in 1996, according to Commission estimates.

The EP was actively involved in drawing up a new regulation for the period 2007–13.

It put forward several proposals that helped enhance the text, with an emphasis on:

- environmental protection;
- the disabled;
- simplification of procedures and transparency;
- a stronger role for regional actors and the introduction of a premium system (in the form of a Community quality and performance reserve, which in the period 2000–06 was provided only for the Structural Funds).

The Council did not think it appropriate to accept all of these proposals.

→ Ivana KATSAROVA
09/2006

4.5. Transport policy

4.5.1. Transport policy: general principles

Legal basis

Article 3(1)(f) and Title V of the EC Treaty

Objectives

In the Treaties of Rome, Member States had already stressed the importance of a common transport policy with its own title. Transport was therefore one of the first common policy areas of the Community. The first priority was the creation of a common transport market, in other words the realisation of freedom of services and the opening of transport markets. To a great extent, this goal has been reached. One exception has proved to be rail transport, for which the completion of the single market was brought about only in part.

In the process of opening the transport markets, it is also a matter of creating fair conditions for competition as much for individual modes of transport as between them. For this reason, the harmonisation of national legal and administrative regulations, including the prevailing technological, social and tax conditions, has gradually taken on an ever-increasing importance.

The successful completion of the European internal market, the discontinuation of internal borders and falling transport prices due to the opening and liberalisation of transport markets as well as changes in production systems and in storage have led to a constant growth in transport. The transport of people and goods has more than doubled over the last 30 years. Nevertheless, the economic view of a very successful and dynamic transport sector is juxtaposed with increasing social and ecological ramifications. Increasingly, the model of 'sustainable mobility' gains in significance.

This model is in a tug of war between two different sets of goals. On one hand, it is a question of safeguarding fairly priced and efficient mobility for people and goods as the central element of a competitive EU internal market and as the basis for the free movement of people. On the other hand, there is the coming to terms with increased traffic and the minimisation of subsequent consequences such as traffic accidents, respiratory diseases, noise, environmental damage or traffic jams.

Using this model involves an integrated approach to optimise the efficiency of the transport system, transport organisation and safety as well as to reduce energy consumption and environmental repercussions. The cornerstones of this model include improving the competitiveness of environmentally friendly modes of transport, the creation of integrated transport networks used by two or more modes of transport (combined transport and intermodality) as well as the creation of fair conditions of competition between modes of transport through fair charging for external costs caused by them.

Achievements

A. General policy guidelines

The 1985 White Paper on the completion of the internal market made recommendations for ensuring the freedom to provide services and set out the guidelines for the common transport policy. In November 1985, the Council adopted three main guidelines: the creation of a free market (without quantitative restrictions) by 1992 at the latest, increasing bilateral and Community quotas and eliminating distortion of competition. It also adopted a 'master plan' of goals to be reached by 31 December 1992 for all modes of transport (land, sea, air). This included the development of infrastructure of Community interest, the simplification of border controls and formalities as well as improving safety.

On 2 December 1992, the Commission adopted the White Paper on the future development of the common transport policy. The main emphasis was placed on the opening of transport markets. At the same time, the White Paper represented a turning point towards an integrated approach, embracing all modes of transport, based on the model of 'sustainable mobility'.

The Commission Green Paper of 20 December 1995, entitled 'Towards fair and efficient pricing in transport' [COM(95) 961], dealt with the external costs of transport. In this paper, the Commission strove for the creation of an efficient and fair charging system for the transport sector to reflect these costs, thereby reducing distortions of

competition within and between the different modes of transport. Tax measures in particular were discussed in this context. In the subsequently published White Paper of 22 July 1998, 'Fair payment for infrastructure use: a phased approach to a common transport infrastructure charging framework in the EU' [COM(98) 466], the Commission drew attention to the large differences between Member States in terms of the imposition of transport charges, which led to various intra- and intermodal distortions of competition. Furthermore, the existing charging systems did not sufficiently take into account the ecological and social aspects of transport.

In the White Paper: 'European Transport Policy for 2010: Time to decide' [COM(2001) 370], the Commission first analysed the problems and challenges of the European transport policy — in particular with regard to the then upcoming eastern enlargement of the EU. It predicted a massive rise in traffic, which went hand-in-hand with traffic jams and overloading, especially in the case of road and air transport, as well as increasing health and environmental costs. This threatened seriously to endanger the EU's competitiveness and climate protection goals. In order to overcome these tendencies and to contribute to the creation of an economically efficient but equally environmentally and socially responsible transport system, the Commission put forward a package of 60 measures. They were designed to break the link between economic and traffic growth and combat the unequal growth of the various modes of transport.

According to the Commission, the imbalance in the development of individual modes of transport is one of the biggest challenges. The goal of the White Paper is to stabilise the environmentally friendly modes of transport's share of the total traffic volume at 1998 levels. This purpose should be served by measures taken to revive rail transport, to promote sea and inland waterway transport and to promote the interlinking of all the modes of transport.

Furthermore, the Commission announced a revision of the guidelines for trans-European networks (TEN-T/→4.6.1), to adapt them to the enlarged EU and to push forward more strongly than previously the elimination of cross-border 'bottlenecks'.

Thirdly, the White Paper puts the rights and responsibilities of transport users under the spotlight. Amongst the announced measures was a plan of action for improving road transport safety, improvement of user rights as well as the creation of accurate costing for all modes of transport by harmonising the principles of infrastructure charging. Fourthly, the Commission stresses the need to tackle the consequences of globalisation in the transport sector. To better serve the interests of the EU, it proposed that the

Community's role should be stronger in international organisations such as the International Maritime Organisation and the International Civil Aviation Organisation.

B. Implementation

Despite the Commission's efforts, the common transport policy made only stuttering progress until the second half of the 1980s. The way forward to Community legislation was only cleared by the European Parliament's (EP/Parliament's) proceedings initiated against the Council because of its failure to act. In the 22 May 1985 judgment in Case 13/83, the European Court of Justice urged the Council to act on the transport policy. Only after this was the wind put back in the European transport policy's sails.

Many of the measures announced in the 1992 and 2001 White Papers have since been implemented or introduced (see the following chapters).

Furthermore, the EU has launched some ambitious technological projects in this period, such as the satellite navigation system Galileo, the European Rail Traffic Management System (ERTMS) and the SESAR programme to improve air traffic control infrastructure. These large European projects are intended to contribute in the future to more efficient and safer traffic management.

In June 2006, the Commission published a provisional appraisal of the most recent White Paper [COM(2006) 314]. Despite various advances in European transport policy it holds the opinion that the measures planned in 2001 are not sufficient in order to achieve the formulated objectives. For this reason, it announced further measures to reach these goals. These include amongst others: (a) a plan of action for goods transport logistics, (b) the promotion of intelligent transport systems and new technologies for a more environmentally friendly and efficient mobility, (c) European approaches to mobility in urban areas, (d) a plan of action for the promotion of inland waterway transport as well as (e) a programme for environmentally friendly fuels in road transport.

The Role of the European Parliament

1. Powers

Up until the Treaty of Maastricht came into force, legislation concerning transport came under the consultation process. Subsequently, the cooperation procedure was used for nearly all aspects of the common transport policy (the co-decision procedure was used to establish the guidelines for trans-European transport networks). Since the Treaty of Amsterdam, European legislation on transport policy (apart from a few exceptions) has been adopted using the co-decision procedure. As an equal co-legislator, the EP has

played a crucial role in shaping the EU's transport policy through numerous legislative procedures.

2. General attitude

The large majority of MEPs have long since demanded an integrated global approach to the common transport policy. Parliament's aforementioned legal action against the Council did much to bring the common transport policy into being. Alongside fundamental support for the liberalisation of the transport markets carried out, the EP continued to stress the necessity of implementing this alongside an all-embracing harmonisation of the prevailing social, tax and technological conditions and of safety standards. Moreover, the EP regularly supported the model of sustainable mobility with specific proposals and demands.

On 12 February 2003, Parliament adopted a resolution on the Commission's White Paper 'European Transport Policy for 2010: a time to decide'. The resolution stressed that the idea of sustainability must be the foundation and the standard for the European Transport Policy. Parliament shared the Commission's analysis as regards the magnitude of problems relating to transport and the unequal growth

of the modes of transport. It stressed the importance of creating an integrated global transport system. The shift of emphasis towards environmentally friendly modes of transport, whilst maintaining the competitiveness of road transport, was approved as was the fair charging of infrastructure and external costs for each mode of transport. Additionally, Parliament demanded that transport should be given the political and budgetary consideration warranted by its strategic character and its role as a service of general interest. Parliament supplemented this general approach with a multitude of specific demands and proposals for each individual mode of transport, transport safety, the schedule, and financing of the European transport network as well as better coordination with other EU policy areas. The same applies for the further transport-related topics of intermodality, research, development and new technologies. The Commission has already taken up many of these themes in its most recent legislative proposals.

→ Nils **DANKLEFSEN**
09/2006

4.5.2. Land transport: market access

Legal basis

Title V of the EC Treaty, and in particular Article 71.

Objectives

To create a single transport market by facilitating the exercise, in practice, of freedom of establishment and freedom to provide services throughout the Community.

Achievements

A. Road transport

1. Opening up the freight transport market

(a) International freight transport

Regulation (EEC) No 881/92 of 26 March 1992 consolidated existing legislation on international transport between Member States and laid down definitive arrangements on access to the international freight transport market. The rules apply to transport from or to a Member State or to transport passing through one or more Member States. Whereas, previously, transport between two Member States had only been possible on the basis of bilateral

agreements and had also been subject to restrictions, the new regulation abolished all quantitative restrictions (quotas) and price regulations as of 1 January 1993. Since then, access to the market has been subject only to qualitative requirements that have to be met in order for a carrier to be granted a Community authorisation, which is issued by the Member State in which the company is established and which must be recognised by all the other Member States.

Regulation (EC) No 3916/90 of 21 December 1990 introduced a 'crisis mechanism' in the event of serious disruption of the market.

(b) Cabotage

Rules on so-called 'cabotage', i.e. the operation of transport services within a Member State by a carrier established in another Member State, have been laid down separately in Council Regulation (EEC) No 3118/93 of 25 October 1993. This regulation introduced unrestricted access to the market for this type of road freight transport operation and lifted all existing quantitative restrictions as from 1998. In the case of Member States acceding in 2004 (with the

exception of Malta, Cyprus and Slovenia), the Accession Treaties provided, however, for staggered transitional periods of up to five years.

The above legal framework created the conditions for a liberalised road freight transport market in the European Union. In order to create fair conditions of competition, further harmonisation was, however, needed in terms of social, technical and fiscal conditions (→4.5.3.).

2. Opening up the passenger transport market

(a) International passenger transport

In contrast to road freight transport, progress in opening up the market for passenger transport services has been slower.

Regulation (EC) No 684/92 of 16 March 1992 helped open up the market for international coach and bus services, by permitting all carriers from the Community to operate international passenger transport services between Member States. The regulation was supplemented and revised by Regulation (EC) No 11/98 of 9 January 1998, which introduced a Community licence for commercial carriers that are entitled to carry persons by coach and bus in their country of establishment. Carriers must keep the Community licence with them as proof that they are entitled to operate services in their home country. International regular services also require authorisation, which is issued under a simplified procedure.

(b) National transport (cabotage)

Regulation (EC) No 12/98 of 11 December 1997 has opened up the market for occasional services (by coach and bus), regular special services covered by a contract between the organiser and the carrier (such as for the transport of workers or students) and regular services operated as part of an international service.

The market has not as yet been opened up for the following services: national services operated independently of an international service and urban, suburban and regional services, even when supplied as part of an international service. Non-resident carriers may be refused permission by the competent authorities to operate such services.

B. Rail transport

1. Legislation

(a) Access to infrastructure

Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways requires the Member States:

- to afford railway undertakings the status of independent operators and ensure that they are commercially managed;
- to separate the accounts for the operation of infrastructure and the provision of transport services.

It lays down the principle of the right of a railway undertaking in a Member State to have access to the infrastructure in other Member States. The rail market has also been further opened up by two so-called 'rail infrastructure packages'.

Directive 91/440/EEC has been amended by Directive 2001/12/EC of 26 February 2001. The directive provided for access, from March 2003, by international freight transport services to the Trans-European Rail Freight Network. From 15 March 2008 the whole of the European network for international rail freight services was to be opened up. In addition, the directive provided for the introduction of separate organisational units for the provision of rail transport services and the operation of infrastructure, as well as introducing separate accounting for passenger and freight transport services. The aim was to ensure that the allocation of infrastructure capacity, the levying of charges for use and the granting of authorisations is carried out independently of the provision of transport services, and to ensure balanced, non-discriminatory access to rail infrastructure. Under the second rail infrastructure package, the opening up of the market was taken a step further by Directive 2004/51/EC of 29 April 2004. The full opening up of the freight transport market, including cabotage, is now to take place from 1 January 2007. The agreement on the second rail infrastructure package included a declaration by the European Parliament (EP/Parliament) and the Council of Ministers that the aim was to open up the market for international rail passenger services by 2010.

(b) Allocation of infrastructure capacity

Directive 95/19/EC of 19 June 1995 aimed to guarantee fair and non-discriminatory access to infrastructure. An important aspect was the requirement to set up a system for the charging of infrastructure fees based on actual costs, with the fees being collected by an independent body. As part of the first railway package, this directive was replaced by Directive 2001/14/EC of 26 February 2001, which gives a more precise definition of railway undertakings' rights in relation to the allocation of infrastructure capacity, and introduces a procedure for alleviating capacity constraints. With the adoption of the second railway package, this directive and Directive 95/18/EC were amended by Directive 2004/49/EC of 29 April 2004. The aim was to harmonise the legislative framework in the Member States and to develop common safety targets and methods. A system was introduced for the issuing, content and validity of safety certificates, and the principle of an independent technical investigation in the event of accidents was established. The key elements of common safety systems for infrastructure managers and railway undertakings were also laid down.

2. Outlook: revitalising the railways

In 1996 the Commission already formulated a strategy for revitalising the railways, which was reinforced in September 2001 by the publication of the White Paper entitled 'European transport policy for 2010: time to decide'. This comprises the following main elements:

- the opening up of national freight markets to cabotage;
- the establishment of a high safety level;
- the development of interoperability;
- the gradual opening up of international passenger services;
- the promotion of measures relating to quality of services and strengthening of customer rights;
- the creation of a European agency for safety and interoperability.

Thanks to the adoption of the first and second railway packages, significant progress has been made in recent years in revitalising the railways. Many of the obstacles in the way of an integrated European railway area have been gradually removed. However, European railways still face considerable challenges if they are to maintain their current share of total traffic volume and increase it in the medium term. In the area of rail freight transport this will depend on legislation already adopted being properly transposed into national law and applied in all of the Member States.

In the area of rail passenger transport the opening up of the market is still far from a reality. For that reason the Commission submitted a third railway package on 3 March 2004, proposing, in particular, the opening up of the market for international passenger services, including cabotage, by 1 January 2010, the strengthening of passenger rights and a directive on the certification of train drivers. This third railway package is currently going through the legislative procedures in the Council of Ministers and the EP.

C. Urban, suburban and regional services

Urban, suburban and regional rail and road transport services frequently entail public service obligations in the Member States and are often provided by public companies. The main legislation governing this area is Regulation (EEC) No 1191/69 of 26 June 1969 (as amended by Regulation (EEC) No 1893/91 of 20 June 1991). A

Commission proposal of 26 July 2000 proposed replacing this with a new regulation aimed at developing competition in public passenger transport services, in particular public local and regional transport services, with the help of compulsory public tendering. The proposal was replaced in July 2005 by a new Commission proposal [COM(2005) 319], which is currently going through the legislative procedures in the Council and the EP.

Role of the European Parliament

In the area of road transport, Parliament has called for, and supported, the gradual opening up of the market for road freight and passenger transport operations in numerous resolutions. At the same time, it has repeatedly emphasised that liberalisation must go hand in hand with harmonisation, including in the area of social aspects and transport safety.

In the area of rail transport, Parliament has also repeatedly advocated the gradual opening up of national markets, taking proper account of social aspects, and urged the Member States to step up their efforts. Specifically:

- during the legislative procedures for the first and second railway packages, Parliament successfully pressed for rail transport markets to be opened up more quickly than originally envisaged by the Council of Ministers;
- Parliament has supported the other key elements of the strategy for revitalising the railways and creating an integrated European railway area with a view to making a major contribution to strengthening rail transport, which is an environmentally-friendly mode of transport.

More recently Parliament has concentrated on the opening up of the market for urban, suburban and regional services. In November 2001 Parliament substantially amended the Commission proposal concerning such services by placing stronger emphasis on the subsidiarity principle and freedom of choice for the competent authorities and softening the compulsory tendering requirement. The Commission subsequently submitted a new proposal [COM(2005) 319] in July 2005.

→ Nils **DANKLEFSEN**
09/2006

4.5.3. Land transport: harmonisation of legislation

Legal basis

→4.5.1.

Objectives

A common transport policy aimed at establishing fair conditions of competition and guaranteeing freedom to provide services implies the need to harmonise Member States' transport legislation. This particularly applies to taxation (VAT, vehicle taxes and fuel taxes), technical specifications (maximum authorised dimensions and weights, safety standards), social provisions and rules concerning other forms of State intervention, such as subsidies.

In the area of rail transport, this above all concerns technical requirements. Significant differences between the individual Member States with regard to technical requirements, safety rules, signalling, track gauge and control systems continue to stand in the way of creating a — legally and technically — integrated European railway area, and are making it more difficult for the railway industry to compete with other modes of transport. Gradual harmonisation of these technical requirements is indispensable in order to establish interoperability between the individual national rail systems.

Different authorisation procedures and measures on environmental and consumer protection also necessitate a degree of harmonisation in order to avoid distortion of competition and make it easier for new companies to access the network.

Achievements

D. Road transport

1. Tax harmonisation

(a) VAT and excise duty

General agreement has been reached on the levying of VAT on transport services. There has also been some harmonisation of excise duties on fuels, with the adoption of Council Directives 92/81/EEC and 92/82/EEC of 19 October 1992.

(b) Charging of infrastructure costs

Directive 99/62/EC of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures laid down provisions on tolls and charges for the use of motorways and multi-lane roads, bridges, tunnels and mountain passes, with minimum and maximum rates. This directive was amended by Directive 2006/38/EC of 17 May

2006 (known as the 'Infrastructure Charging Directive' or 'Eurovignette Directive'). Apart from harmonisation of rates in all Member States and uniform methods for calculating infrastructure costs, the new directive places far greater emphasis on the 'polluter pays' principle and the internalisation of external costs. It provides for greater differentiation between charges, taking account of environmental aspects or congestion, and consequently provides the Member States with an instrument for traffic management. In certain regions additional toll charges may be levied in order to tackle the problem of environmental damage, including poor air quality, or to invest in more environmentally-friendly modes of transport such as railways. By not later than two years following the entry into force of the directive, the Commission is to present a generally applicable, transparent and comprehensible model for the assessment of all external costs, including environment, noise, congestion and health-related costs, to serve as the basis for future calculations of infrastructure charges. This is to be accompanied by a strategy for the stepwise implementation of the model for all modes of transport.

2. Technical harmonisation

(a) Maximum authorised dimensions and weights

Directive 96/53/EC of 25 July 1996 laying down maximum dimensions and weights settled an issue which is a fundamental one for competition between transport operators. In addition, Directive 97/27/EC concerning the masses and dimensions of certain categories of motor vehicles and their trailers was adopted on 22 July 1997. Directive 2002/7/EC of 18 February 2002, amending Directive 96/53/EC, harmonises the maximum dimensions of buses in the European Union.

(b) Roadworthiness tests

Directive 96/96/EC of 20 December 1996 concerns the approximation of the Member States' legislation relating to roadworthiness tests for motor vehicles and their trailers. It provides for regular compulsory testing of motor vehicles for the transport of passengers or goods. Such tests include exhaust emissions and speed limitation devices where these are compulsory. Directive 2000/30/EC of 6 June 2000 introduces unannounced technical roadside inspections, in order to detect irregularities that may be covered up in anticipation of the annual test.

3. Administrative harmonisation

(a) Drivers' legal obligations

Directive 91/439/EEC of 29 June 1991 on driving licences harmonises the format of licences and categories of

vehicles, introduces the principle of mutual recognition and lays down basic requirements in respect of health and competence. Directive 96/47/EC of 23 July 1996 provides for an alternative 'credit card' format for driving licences. In October 2003 the Commission submitted a proposal on recasting the directive on driving licences [COM (2003) 621].

Regulation (EC) No 484/2002 of 1 March 2002 introduced a uniform driver attestation. The attestation confirms that a lorry driver engaged in international freight transport is employed in accordance with the legislation and administrative regulations of the Member State in which the carrier is established. The driver attestation is aimed at countering social dumping and distortion of competition.

Directive 2003/59/EC of 15 July 2003 lays down minimum standards for the initial qualification and periodic training of drivers of certain goods or passenger transport vehicles. The aim is to ensure that drivers are able to adapt to the changing conditions in their field of work.

(b) Vehicle registration

Council Directive 99/37/EC of 29 April 1999 harmonises vehicle registration documents and simplifies checks on ownership and transfers between residents of two different Member States. Council Regulation (EC) No 2411/98 of 3 November 1998 on the recognition of the distinguishing sign of the Member State in which motor vehicles are registered makes it compulsory for number plates to show the European flag and the international abbreviation for the Member State of registration.

4. Social harmonisation

(a) Working time

The transport sector was excluded from Directive 93/104/EC of 23 November 1993 on working time. Directive 2002/15/EC of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities is aimed at establishing minimum requirements in relation to working time in order to improve the health and safety of drivers. Under the directive, average weekly working time is 48 hours. This may be increased to 60 hours provided that an average of 48 hours per week is not exceeded in any four-month period.

(b) Driving time

Regulation (EEC) No 3820/85 of 20 December 1985 laid down rules on driving time, including maximum authorised periods of continuous driving, rest periods and driving time per week. It has been replaced by Regulation (EC) No 561/2006 of 15 March 2006, which amended the rules on driving and rest periods for professional drivers in favour of the introduction of more frequent rest periods, a reduction in exemptions and improved, simplified checking and

penalty measures. In addition, the new regulation amended Regulation (EEC) No 3821/85 of 20 December 1985, definitively introducing the digital tachograph and making it easier for checks to be made on infringements in future.

Directive 2006/22/EC of 15 March 2006 is an accompanying measure which lays down minimum requirements and the minimum number of checks to be carried out by Member States in connection with monitoring compliance with the above regulations.

(c) Users

The Council has adopted Recommendation 98/376/EC of 4 June 1998 on a parking card for disabled people. Since 1 January 1999 this has entitled card-holders to use special parking spaces throughout the Community.

E. Rail transport

1. Technical harmonisation

(a) Interoperability

With the adoption of Directive 96/48/EC of 23 July on the interoperability of the trans-European high-speed rail system and Directive 2001/16/EC of 19 March 2001 on the interoperability of the trans-European conventional rail system, the EU began a process designed to enable the through use of the different railway systems in the Member States and to allow a smooth, safe passage from one Member State network to another. In order to implement this legislation, a number of technical solutions (so-called 'technical specifications for interoperability' or TSIs) have already been drawn up, focusing initially on key aspects such as control/command, signalling, telematic applications for freight services, qualifications of staff engaged in international transport operations, and noise problems.

The two directives have been amended by Directive 2004/50/EC of 29 April 2004 and brought up to date with the latest developments in technology. At the same time, the scope of the directive on the conventional rail system has been extended to include the whole of the European rail network, in order to meet the demands posed by the full opening up of the rail network to freight transport services scheduled for 2007. In March 2005, representatives of the rail industry and the Commission signed a memorandum of understanding on the deployment of the European Rail Traffic Management System (ERTMS). The ERTMS is designed to harmonise European signalling systems and introduce a uniform automatic speed control system, based on the latest developments in telecommunications technology. A timescale of 10 to 12 years has been set for universally introducing the ERTMS.

(b) European Railway Agency

In order to assist the Commission and the Member States in improving the interoperability and safety of the European rail network, a European Railway Agency, with its seat in Lille and Valenciennes in France, has been set up under Regulation (EC) No 881/2004 of 1 May 2004, within the framework of the second railway package. The main task of the agency is the gradual harmonisation, registration and monitoring of technical specifications (TSIs) and the preparation of common safety targets for European railways. The agency itself has no decision-making powers, but, with the assistance of groups of experts, draws up draft decisions for the Commission.

2. Social harmonisation

Directive 2005/47/EC of 18 July 2005 lays down the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector. It is based on an agreement between the European social partners in the rail industry.

In March 2004, as part of the third railway package, the Commission submitted a proposal on the certification of train crews operating locomotives and trains on the Community's rail network [COM(2004) 142]. In addition to harmonisation in respect of recognition of the qualifications of drivers and other crew, the proposal aims to clarify responsibilities with regard to specific training relating to the route operated, the equipment used and the operational and safety procedures specific to a particular company.

3. Passenger rights

Also as part of the third railway package, the Commission has proposed a regulation concerning the protection of the rights of international rail passengers [COM(2004) 143]. The proposal covers minimum standards for information for passengers, compensation in the event of delays or accidents and assistance for individuals with reduced mobility.

4. Administrative harmonisation

(a) Admission to the occupation (operating licences)

Directive 95/18/EC of 19 June 1995 provides that, in order to be allowed to exercise its right of access to the

infrastructure in all of the Member States, a railway undertaking must have an operating licence. The licence is issued by the Member State in which the company is established, subject to compliance with certain common conditions (good repute, financial fitness and professional competence), and is valid throughout the Community. The directive has been amended by Directive 2001/13/EC of 26 February 2001, which extended the provisions on the issuing of licences to cover almost all railway undertakings with just a few exceptions. In addition, the safety, economic and financial conditions required to be met in order for a licence to be granted, and the licensing procedure, were laid down.

Role of the European Parliament

The European Parliament (Parliament) has used its legislative powers to support, in principle, most of the Commission's proposals for harmonisation, whilst at the same time emphasising certain aspects to which it attaches particular importance.

- During the legislative procedure on the Infrastructure Charging Directive in 2005, Parliament successfully pressed for the scope of the directive to be extended to include all vehicles over 3.5 tonnes, and for the environmental aspects of the directive to be strengthened. In negotiations with the Council of Ministers, Parliament was able, in particular, to successfully argue that the new directive should include a roadmap for the internalisation of external costs for all modes of transport.
- In the area of social legislation, Parliament made a substantial contribution to improving and simplifying the regulation on driving and rest time. In addition, Parliament secured a significant increase in checks on driving and rest time. In the negotiations on the working time directive, Parliament successfully argued that the provisions should apply not only to employed drivers but also, from 2009, to self-employed drivers, who make up some 40 % of all drivers.

→ Nils **DANKLEFSEN**
09/2006

4.5.4. Road transport: traffic and safety regulations

Legal basis

Article 71 of the EC Treaty

Objectives

The aim is to improve road safety and, in this way, contribute to long-term sustainable mobility. Every year in the EU there are still more than 40 000 people killed and 1.7 million injured in 1.3 million accidents. There are two different areas of application of the safety concept: in relation to road users and people on board vehicles (passengers and staff), and in relation to goods transport and people and places involved with the transport of dangerous goods.

Achievements

1. General

In June 2003 the Commission published the 'European Road Safety Action Programme 2003 to 2010'. In 1993 and 1997 the Commission had already proposed action programmes for road safety. The new action programme endorsed the objective set out in 2001 in the White Paper on transport policy, to halve the number of road deaths in the EU by 2010. The action programme envisages a package of measures in various areas, including:

- improving road users' behaviour, by pursuing efforts to combat dangerous practices, increased enforcement of the rules and harmonisation of penalties, and dissemination of exemplary practices;
- technical measures to make vehicles safer, in particular making it compulsory to wear seat belts in coaches, a unified system for fixing child seats, improved crash protection in vehicles, using modern communications and information technologies ('eSafety') to develop traffic guidance and information systems, and automatic emergency calls when accidents occur;
- technical measures to improve the safety of road infrastructure.

In February 2006 the Commission published a Communication on a mid-term review of the European Road Safety Action Programme (COM(2006) 74). This shows that, despite a reduction in the number of road deaths, considerable further efforts are needed if the main aim of the action programme — halving the number of road deaths by 2010 — is to be achieved.

2. Technical condition of vehicles

Harmonisation of national legal provisions on the technical condition of vehicles concerns mainly the following:

- vehicle testing (Directive 77/143/EEC of 29 December 1976, repeatedly modified);
- compulsory use of seat belts in motor vehicles under 3.5 tonnes (Directive 91/671/EEC of 16 December 1991). This directive was modified by Directive 2003/20/EC of 8 April 2003, which provides for children to be protected by the use of special child restraint systems. It also stipulates that seat belts must be worn in all vehicles in which they are fitted, which affects coaches, for example;
- Directive 92/6/EEC of 10 February 1992 which introduced compulsory installation of speed limitation devices in motor vehicles over 3.5 tonnes. Directive 2000/30/EC of 6 June 2000 introduced the possibility of roadside technical inspection of commercial vehicles. Directive 2002/85/EC of 5 November 2002 extended the obligation to use speed limitation devices to all vehicles over 3.5 tonnes;
- Directive 2003/102/EC of 17 November 2003 on the protection of pedestrians and other vulnerable road users before and in the event of a collision provided for less dangerous frontal structures on new vehicles from 2005. Directive 2005/66/EC of 26 October 2005 on the use of frontal protection systems on motor vehicles aims to provide better protection for road users in the event of a collision with a vehicle fitted with a frontal protection system;
- Directive 2003/97/EC of 10 November 2003 stipulates that from 1 January 2007, all HGVs registered in the EU must be fitted with additional rear-view mirrors or devices to ensure vision in the 'blind spot'.

3. Transport of dangerous goods

Directive 94/55/EC of 21 November 1994 extended to national transport the rules for international transport in the European agreement concerning the international carriage of dangerous goods by road (ADR). Directive 95/50/EC of 6 October 1995 introduced uniform procedures for checks. Directive 2001/26/EC of 7 May 2001 modified Directive 95/50/EC, to introduce uniform procedures for checks on the transport of dangerous goods by road.

Council Directive 96/35/EC of 3 June 1996 on the appointment and vocational qualification of safety advisers

for the transport of dangerous goods by road, rail and inland waterway obliges every undertaking concerned with this transport to appoint one or more suitably qualified safety advisers to monitor compliance with the rules.

4. eSafety

In its communication 'Information and communications technologies for safe and intelligent vehicles' (COM(2003) 542) of 15 September 2003, the Commission expresses its intention of supporting the development, large-scale deployment and use of modern safety systems based on new information and communications technologies. On this basis what is known as the eSafety Initiative was introduced. Intelligent vehicle safety systems include automatic speed adjusters, devices to prevent involuntary lane departures, collision warning devices and automatic emergency call systems in the event of an accident (eCall).

5. Safety of road infrastructure

Directive 2004/54/EC of 29 April 2004 lays down minimum safety requirements for tunnels in the Trans-European Road Network. These rules are concerned with the organisational, technical and operational aspects of tunnels. The directive aims to impose new and harmonised safety rules on all tunnels longer than 500 metres that are in use, under construction or being planned.

6. Miscellaneous

The Commission has introduced a databank on road traffic accidents (CARE), which makes it possible to undertake comparative studies of the circumstances in which accidents occur and facilitates dissemination of information and proposed solutions.

In its Recommendation 2001/115/EC of 17 January 2001 to the Member States on the maximum permitted blood alcohol content for drivers, the Commission proposed a maximum of 0.5 mg/ml for all vehicle drivers and 0.2 mg/ml for HGV drivers.

In its Recommendation 2004/345/EC to the Member States, the Commission proposed procedures for enforcement of the rules on drink driving, speeding and the use of seat belts.

Role of the European Parliament

In many resolutions the European Parliament (EP) has underlined the importance of road safety in the Community. Most recently it expressed its views in its resolution of 29 September 2005 on the Commission's latest action programme. Parliament endorsed the Commission's guiding principles for this programme and called for further measures such as a Europe-wide road safety campaign, more uniform road signs and increased use of new technologies such as: (a) seat belt reminders; (b) advanced restraint systems; (c) electronic speed limitation systems; (d) 'alcolocks', which block the car if the driver is drunk; and (e) new cars to be fitted with an automatic emergency call system (eCall) from 2009. Parliament also called on the Commission to propose legislative measures with regard to maximum alcohol limits (in line with Parliament's recommendation of 0.5 mg/ml for adults and 0.2 mg/ml for new drivers).

In the context of its legislative powers, Parliament basically supported the Commission proposals, and at the same time contributed a number of proposals for improvements to the legislation. For example in the negotiations on the directive on safety in tunnels, Parliament improved the provisions on emergency exits, lighting and escape routes. In addition the directive takes account of Parliament's calls for more attention to be paid to the needs of disabled people in the construction of emergency exits.

→ Nils DANKLEFSEN
09/2006

4.5.5. Air transport: market access

Legal basis

Article 80 of the EC Treaty

Objectives

- Creating an internal aviation market on Community territory;
- Taking account of the global aspect of air transport by means of a coherent Community aviation policy towards third countries;
- Improving the competitiveness of European airlines.

Achievements

A. Internal aviation market

Following the adoption and entry into force of a total of three 'liberalisation packages', a Community aviation market has been in place since 1997.

1. Harmonisation of professional requirements

Regulation (EEC) No 2407/92 of 23 July 1992 set out requirements for the awarding of air carrier licences. Air operators must be based in a European Union Member State, be directly or indirectly monitored by a Member State, or national authorities of a Member State, and provide air transport as their main occupation.

2. Freedom of market access

Regulation (EEC) No 2408/92 of 23 July 1992 abolished the restrictions regarding cabotage with effect from 1 April 1997, permitting air carriers from all Member States access to all intra-Community routes for the domestic and international transportation of passengers, cargo and mail.

3. Open Skies agreements with third countries

Following the emergence of the internal aviation market in 1992, the Commission was of the opinion that Member States should cease to conclude bilateral agreements with third countries. Since 1994, the United States had been seeking 'Open Skies agreements' with other countries. Following a case brought by the Commission, the European Court of Justice ruled on 5 November 2002 that sections of the bilateral Open Skies agreements that eight EU Member States had concluded with the United States were incompatible with Community law. It also stated that Member States were not authorised to enter into obligations with third countries in areas in which common rules applied, if the agreements in question would affect those common rules. The Court's judgment provided the basis for Regulation (EC) No 847/2004 of 29 April 2004 on

the negotiation and implementation of air service agreements. Ensuring a harmonised approach in the negotiation, implementation and application of bilateral agreements is an integral part of the regulation. Provision is made for standard clauses to guarantee the agreements' compliance with Community law. In addition, under the so-called horizontal mandate the Commission can negotiate Community agreements with third countries. In the last few years, several agreements of this kind have been signed (including with Chile, Singapore, Ukraine, Croatia and Georgia) or concluded (for instance with Australia, Malaysia, Morocco and Lebanon). The Community is currently in talks with the United States on the creation of an 'open aviation area'.

B. Additional achievements

1. Access to the groundhandling market

The groundhandling market is governed by Directive 96/67/EC of 15 October 1996. Prior to this, the provision of groundhandling services at airports within the EU was a monopoly controlled by a small number of service providers. With the entry into force of this directive, these services were gradually opened up to competition and full liberalisation was achieved in December 2002. The directive is primarily concerned with introducing free market access for the providers of groundhandling services. Furthermore, for certain categories of service there must be a choice of at least two providers at the larger airports in the EU.

2. Reservation systems

(a) Computer reservation systems

Computer reservation systems are crucial to the efficiency of air transport. There is strong interest from passengers wishing to find the best-value fares as well as from smaller companies anxious to have access to the system. Regulation (EEC) No 2299/89 of 24 July 1989 on a code of conduct for computerised reservation systems was, therefore, adopted. Experiences of applying this code and developments in information technology, in particular as regards the Internet, made it necessary to amend the regulation to meet the objectives more effectively and to extend the use of computer reservation systems (CRS) to rail travel. This was achieved with Council Regulation (EC) No 323/99 of 8 February 1999.

Role of the European Parliament

The European Parliament (EP/Parliament) has supported the development of the Community aviation market. It therefore argued in favour of 'code-sharing' and the

extension of access rights, including to cabotage (see its resolution of 14 February 1995 on the Commission communication 'The way forward for civil aviation in Europe'). At the same time, it has recommended that liberalisation should proceed at a cautious pace to take into account its effects with regard to safety, quality of service, fare transparency and employee working conditions. In its resolution of 4 May 2000, Parliament insisted that safety concerns should remain an underlying principle in all measures and policies in air transport.

The recently concluded aviation agreements with third countries were approved by the EP. However, in its resolution of 17 January 2006 on air transport relations with

Russia, Parliament stressed that no comprehensive agreement should be concluded without the immediate and complete abolition of Russian overflight charges.

In its resolution of 17 January 2006 on Community external aviation policy, Parliament insisted on the need for a coherent strategy for developing a common external aviation policy and outlined the requirements in terms of market opening, safety standards, social policy and the environment.

→ Nils **DANKLEFSEN**
09/2006

4.5.6. Air transport: competition and passenger rights

Legal basis

Article 80(2) of the EC Treaty (ECT), completed by Article 153 of the ECT (consumer protection), the general provisions on competition (Articles 81 through 83) and on the freedom to provide services (→3.2.3).

Objectives

The objective is to lay down the procedure for implementing the Treaty's provisions on competition to air transport, taking into account the unique features of the sector, which to an extent is still characterised by State aid for national airlines and airports and also by cartel-related problems caused by the formation of global alliances. As well as the creation of fair conditions of competition, the competition policy is intended to encourage airlines to provide passengers with a cost-efficient and high-quality service. Recently, the European air transport policy has concentrated on the strengthening of consumer rights with regard to safety or overbooking.

Achievements

A. Competition

1. Agreements and business practices

This subject is governed by the regulations of 14 December 1987, (EEC) No 3975/87, laying down the procedures for the application of the rules on competition to undertakings in the air transport sector, and (EEC) No 3976/87 on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices in the air transport

sector, amended by Regulations (EEC) No 2410/92 and (EEC) No 2411/92, which extended the original provisions to all air transport within the Community. Through these provisions, the Commission was empowered to grant exceptions to various categories of agreement and concerted practices, subject to certain conditions designed so that competition is not eliminated or unduly restricted. These regulations have been changed over time and adapted to current developments (including Regulations (EEC) No 2410/92 and (EEC) No 2411/92 of 23 July 1992 as well as Regulation (EC) No 1/2003 of 16 December 2002).

The Community took the global aspect of air transport into account in Regulations (EC) No 411/2004 of 26 February 2004 and (EC) No 868/2004 of 21 April 2004. It thereby created the necessary legal basis for the application of the rules of air traffic competition between the Community and third countries, in order to avoid distortion to competition in the form of State aid or dishonest pricing policies from third-country companies.

2. State aid

In 1984, the Commission established the criteria for the evaluation of State aid to airlines. In 1993, a committee of civil aviation experts was set up which issued recommendations on State aid in its report of 1 February 2004. According to these recommendations, the provision of State aid must meet certain conditions:

- it must be a 'one-off' measure;
- it must be linked to a restructuring plan, which will be assessed and monitored by

- independent experts appointed by the Commission, and should ultimately lead to privatisation;
- the relevant government must undertake to refrain from interfering in the commercial
- decisions of the airline, which in turn must not use the aid to finance new capacities;
- the interests of other airlines must not be adversely affected.

In September 2005, the Commission approved guidelines on financing airports and on granting start-up aid for airlines departing from regional airports.

3. Tariffs

The matter is currently governed by Council Regulation (EEC) No 2409/92 on fares and rates for air services (for intra-Community routes alone), part of the 'air transport package' adopted in June 1992. As a rule, airlines can set their own prices, but the regulation contains a number of safeguard clauses to avoid overly high or low (dumping) prices.

4. Allocation of timetable slots

The continuous growth of air transport over the past decade has increased the pressure on airport capacity. Regulation (EEC) No 95/93 of 18 January 1993 was the first step towards establishing non-discriminatory rules for the allocation of time slots for take-offs and landings at Community airports. As the procedure was not regulated sufficiently clearly and was not uniformly applied in the Member States, there was a pressing need for an amendment. The new regulation of 21 April 2004 ((EC) No 793/2004) aimed primarily at redefining these timeslots as a right of usage. According to the regulation, slots represent a right to use the airport infrastructure for take-offs and landings at specified times and on specified days, with no right of ownership. A coordinator, appointed by the particular airport, is responsible for the allocation of slots. Whilst taking into account the interests of established airlines, this regulation facilitated market access for new competitors, as 50 % of timeslots were to be made available to them.

B. Passenger rights

1. Overbooking, denied boarding, delays

The first common rules for a system of compensation payment in the case of denied boarding on scheduled flights were set out in Regulation (EEC) No 295/91 of February 4 1991. Package flights were governed by Directive 90/314/EEC.

On 17 February 2005, Regulation (EC) No 261/2004 of 11 February 2004 came into force, establishing common rules on compensation and assistance to passengers in the

event of denied boarding, and of cancellation or long delay of flights. It was aimed at securing a higher level of protection for passengers and as these events can cause serious inconvenience, passengers have the right to claim compensation. In the event of denied boarding due to overbooking or cancellation of flights, passengers' rights include reimbursement of their tickets, a free return flight to the point of departure or a later flight to their destination, or compensation (staggered up to EUR 600 for flights of over 3 500 km). Additionally, meals, refreshments, means of telecommunication and hotel accommodation if necessary must also be made available. In the event of a delay, passengers have the right to compensation depending on the length of the delay.

2. Black list of unsafe airlines

The Council and the European Parliament (EP/Parliament) drew up a blacklist of unsafe airlines in Regulation (EC) No 2111/2005 of 14 December 2005, thus strengthening passengers' right to information. The EU-wide blacklist will be updated at least every three months. It contains the names of all airlines where there is evidence of serious safety defects or where it has become clear that the authorities responsible for an airline are unwilling or unable to implement safety norms or oversee an aircraft. Airlines in this blacklist are prohibited from flying in EU territory. It will no longer be possible for an aircraft which has been banned from taking off or landing in one Member State to fly to another Member State.

The ticket vendor is required — regardless of how the booking is made — to inform passengers of the identity of the airline with which they will fly, as soon as this has been determined. Passengers have the right to reimbursement or an equivalent flight, in the event of the reserved airline being added to the blacklist after the booking was made.

3. Rights of passengers with reduced mobility

The Council of Ministers and the EP agreed on a series of rights for passengers with reduced mobility in Regulation (EC) No 1107/2006 of 5 July 2006. The regulation includes the following elements:

- the creation in all airports with over 150 000 passengers of designated points which people with reduced mobility can approach to request assistance. They cannot be refused boarding, except in a few very strictly defined cases;
- the airport operators are responsible for the provision of these services free of charge. Those affected cannot be charged for any additional costs. The request for assistance (for example to and from the aircraft) must be made known by the persons concerned at least 48 hours before departure;

— all airlines (according to their passenger share) are to contribute to the financing of these services.

4. Insurance requirements for aircraft operators

The objective of Regulation (EC) No 785/2004 of 21 April 2004 was the harmonisation of the level of insurance in air transport, establishing the minimum levels of insurance cover per passenger and per item of luggage. The minimum level of insurance in respect of third-party liability was also established. The rules are equally valid for Community airlines as for non-EU aircraft operators and apply to damage occurring in flight and on the ground. As well as accidents, insurance must also cover the risks of war, hijackings, acts of terrorism and sabotage. Aircraft operators are obliged to present insurance certificates to the competent Member State authorities.

Role of the European Parliament

In numerous reports and statements, the EP emphasised the significance of a common air transport policy as well as stronger competition between airlines. In the resolution of 4 May 2000, Parliament put forward the opinion that the development of the internal market for European air transport had contributed positively to competition and that passengers now have at their disposal an extensive range of flights at often cheaper prices. However, other elements such as delays, overbookings, etc. must not be permitted to impair the benefits of liberalisation. With regard to State aid, the EP welcomed the end, as announced by the Commission, of the transition period for State aid for airlines and put forward the view that state airlines should be made to exist within an entirely commercial environment.

On the subject of time slot allocation, the EP requested in the same resolution that the Commission should submit a proposal for the revision of the relevant regulation. In the subsequent legislative procedure, the Parliament supported the Commission's proposal in principle.

However, it secured improvements for example with regard to the empowerment and independence of the coordinator and to market entry chances for new competitors, as well as the introduction of sanctions in the event of misuse of a time slot.

In 2005, the EP successfully pushed through the EU-wide black list of unsafe airlines. The Commission's proposal originally planned 25 different lists, one per individual Member State. Under pressure from Parliament, this regulation also considerably strengthened passenger rights with regard to information and compensation. For the transport of passengers with reduced mobility, the EP insisted successfully during the legislative procedure that the blind, visually impaired, deaf, those with impaired hearing and the mentally handicapped should be included amongst those who must be given help at an airport.

On 30 May 2006, in a case brought by the EP, the European Court of Justice annulled the EU-US agreement on the use of passenger data (PNR) in the fight against terrorism and cross-border crime. The EP brought a nullity suit against this agreement on the grounds that it lacked legal basis and clarity. Additionally, according to the EP, the collection of personal data permitted by the agreement was not proportionate to the need to fight crime and terrorism. In its subsequent recommendation to the Council, the Parliament did not pronounce itself against passing on personal passenger details in general, where this was necessary in the interest of safety. However, the EP did express serious misgivings about the systematic access by authorities to personal data linked to behaviour. This would include details such as credit card numbers, e-mail addresses, affiliation to a particular group, frequent flyer information and information on ordinary passengers (i.e. people that are not registered as dangerous or criminal in the receiving country).

→ Nils **DANKLEFSEN**
09/2006

4.5.7. Air transport: air-traffic and safety rules

Legal basis

Article 80(2) of the EC Treaty.

Objectives

The creation of a single aviation market requires a first-rate air transport system that allows Community air transport to operate safely, smoothly and efficiently. This, in turn, necessitates the application of high uniform safety standards by airlines, optimum use of European airspace capacity and a high uniform level of air transport safety.

At the end of the 1990s, pressure grew on the Community to improve the existing air transport system. The reasons for this were the steady rise in air travel, the fragmentation of European airspace, shrinking airport capacity, the increasing severity of delays and the use for military purposes of a large section of the airspace. There was, therefore, a particular need for (a) higher safety standards, (b) better overall efficiency of air transport and (c) better use of airspace capacity.

Achievements

1. International framework

On 13 December 1960 five European countries signed the International Convention relating to Cooperation for the Safety of Air Navigation, to which 17 countries have now acceded. Extensive amendments to the convention in 1981 led to the emergence of the European Organisation for the Safety of Air Navigation, which includes the Permanent Commission and the Agency. The term 'Eurocontrol' refers to both the convention and the organisation. The organisation is responsible for setting long-term objectives, coordinating national policies and promoting vocational training. It also examines amendments to regional plans to be submitted to the International Civil Aviation Organisation (ICAO) and sets and collects route charges on behalf of the contracting States.

On 8 October 2001 the European Community signed a protocol providing for its accession to Eurocontrol. The accession aims to ensure consistency between the two and to improve the regulatory framework for air traffic management.

2. Single European Sky

On 10 October 2001, the Commission presented an action programme for the creation of the Single European Sky. In the ensuing legislative process, the Council and the

European Parliament (EP/Parliament) agreed on the 'Single Sky package'. This legislation represents the most significant reform of EU aviation policy thus far. It includes a framework regulation setting out overall goals, as well as three detailed regulations on the organisation and use of airspace, the provision of air navigation services and the interoperability of the European Air Traffic Management Network. The aim was to turn Europe's sky into an integrated airspace governed by the same principles and rules by December 2004. Framework Regulation 549/2004 of 10 March defines the overall goals. These include optimising the use of airspace, establishing Community air traffic management, creating larger and more efficient operational airspace blocks and increasing flexibility with regard to civil and military use of airspace.

Service Provision Regulation (EC) No 550/2004 of 10 March 2004 is intended to ensure the uniform application of common standards for air navigation services and lays down rules for the certification of air navigation service providers. Airspace Regulation (EC) No 551/2004 of 10 March 2004 establishes common procedures for the design, planning and management of air traffic. It restructures the upper airspace according to operational and practical criteria, so that airspace blocks are distinct from the borders of Member States. Interoperability Regulation (EC) No 552/2004 of 10 March 2004 governs the interoperability of the individual systems within the European Air Traffic Management Network.

3. European Aviation Safety Agency

Regulation (EC) No 1592/2002 of 15 July 2002 established the European Aviation Safety Agency (EASA). The EASA is an executive agency of the European Union based in Cologne, Germany. It is responsible for adopting safety rules applicable to products, persons and organisations and for conducting inspections and investigations to ensure that these rules are being observed. Further tasks of the EASA include awarding airworthiness certificates, giving expert opinions and supporting the Commission in the drafting of legislative proposals in the field of air transport. In November 2005, the Commission put forward a proposal to extend the EASA's tasks to cover common rules on air operations, pilot licences and the authorisation of third country aircraft.

4. Galileo and Sesar

- (a) The Commission first presented its proposal on the satellite navigation system Galileo in February 1999. The aim of the programme is to equip the EU with

independent technology that can be used for a broad range of activities, in particular in the transport field. Galileo, which was set up by Council Regulation (EC) No 876/2002 of 21 May 2002 as a joint undertaking (by the Commission and the European Space Agency (ESA)), should be ready for use by 2008.

- (b) A technological component of the Single European Sky, the Sesar programme aims to develop a new generation of European air traffic management. The project is to be carried out in three stages: the Definition Phase (2005–07), the Development Phase (2008–13) and the Deployment Phase (2014–20).

5. Technical requirements and administrative procedures for civil aviation (EU-OPS)

To ensure high safety standards, Regulation (EC) No 3922/91 of 16 December 1991 set out to harmonise technical requirements and administrative procedures in the field of civil aviation. At the beginning of 2006, the Council and Parliament agreed to proceed with a revision of this regulation (not yet published in the Official Journal). This makes the technical requirements and administrative procedures (JAR-OPS) drawn up by the Joint Aviation Authority part of Community law as 'EU-OPS'. The regulation sets out detailed rules in a variety of areas, such as flight and duty time limitations and rest requirements, instruments and equipment, communication and navigation equipment, the transport of dangerous goods and rules on cabin crew.

6. Safety of third country aircraft

Directive 2004/36/EC of 21 April 2004 introduced a harmonised procedure for the monitoring of the compliance of third country aircraft with safety standards.

When an aircraft from a third country lands at a Community airport, a safety inspection may be carried out even in the absence of any grounds for suspicion. Airlines operating aircraft that have repeatedly been identified in the past as having safety flaws should be subject to more frequent inspections. In the event of the discovery of safety flaws, aircraft could be grounded. To ensure the best possible monitoring of safety standards, the information gathered by a Member State during an inspection must be passed on to the Commission and the other Member States.

7. European air traffic controller licence

Directive 2006/23/EC of 5 April 2006 introduced common requirements for the granting of a Community air traffic controller licence. The rules on the training and licensing of air traffic controllers were also harmonised. This should ensure the mobility of air traffic controllers within the EU.

8. Air security

Following the attacks of 11 September 2001, Regulation (EC) No 2320/2002 of 16 December 2002 was adopted, establishing common standards, measures and procedures in the field of civil aviation security. Some of the areas covered by the regulation are passenger security checks, security restricted areas at airports, staff checks, cockpit security, training and air-to-ground communication. The regulation requires each Member State to adopt a national civil aviation security programme. In December 2005, the Commission presented a proposal to revise the regulation.

9. Dealing with accidents

- (a) Directive 94/56/EC of 21 November 1994 establishing the fundamental principles governing the investigation of civil aviation accidents and incidents seeks to provide the competent authorities with an appropriate legal framework.
- (b) The Warsaw Convention, which governs air carriers' liability in the event of an accident, covers only international transport. On 9 October 1997, the Community adopted Regulation (EC) No 2027/97. It is applicable to accidents that befall Community air carriers on domestic or international routes, in which passenger injury occurs. The liability limit is higher than that of the Warsaw Convention. This regulation was then amended by Regulation (EC) No 889/2002 of 13 May 2002. With regard to airline liability in the event of an accident, Community law was brought fully into line with the Montreal Convention of 28 May 1999. This ensures the uniform application of certain rules regarding international air transport.

Role of the European Parliament

Parliament has always closely monitored issues relating to air safety. In particular, it has advocated the establishment of a single control authority. The EP called for and supported the creation of a 'Single European Sky' (see, for example, its resolution of 6 July 2000). In the legislative process on this matter, Parliament was able to secure better civil-military cooperation and closer cooperation in air traffic management between national troops, in spite of initial resistance from Member States.

In the legislative process on the safety of third-country aircraft, Parliament was able to ensure that Member States retained the option of carrying out spot checks on a non-discriminatory basis, even in the absence of any justifiable suspicion. Parliament was also able to prevent the Council from curbing the Commission's powers to take Community-wide measures against foreign operators with inadequate safety standards. If a Member State informs the

Commission that it has banned a given air carrier from landing at its airports, the Commission can now choose to extend that ban to the whole of the Union.

With regard to the harmonisation of technical requirements and administrative procedures in civil aviation, Parliament supported the Commission proposal. In addition, it insisted on practical rules for express freight services and detailed minimum requirements for cabin staff.

Parliament believes that the interoperability of new technologies and support for Europe-wide initiatives in

research and technological development (e.g. Galileo) for the creation of intelligent air transport systems should be made a top priority. In its resolution of 3 October 2001 on Galileo, Parliament emphasized the technical and industrial importance of the Galileo programme for European aeronautics and telecommunications.

→ Nils DANKLEFSEN
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4.5.8. Sea transport: market access and competition

Legal basis

Article 80(2) of the EC Treaty supplemented by the Treaty's general provisions on competition (Articles 81 to 89) and freedom to provide services (→3.2.3.).

Objectives

The aim is to apply the Treaty principle of freedom to provide services to the Union's sea transport industry and ensure that competition rules are complied with. This policy is based on the Community's need to defend itself against the threat of unfair competition from the merchant fleets of third countries and against protectionist trends. The Community is particularly concerned to ensure that the principal maritime transport routes are kept open to all operators.

Achievements

A. General

Sea transport was the subject of a 1985 Commission memorandum entitled 'Progress towards a common transport policy — maritime transport' and a 1996 communication, 'Towards a new maritime strategy'.

The Commission Green Paper on sea ports and maritime infrastructures [COM(97) 678] contained a detailed review of the industry and took a close look at the problems of port charges and market organisation. It also discussed integrating ports into the trans-European networks and maximising their role as transshipment points in the intermodal transport chain.

B. Market access

1. First action to apply the principle of freedom to provide services

Regulation (EEC) No 4055/86 of 22 December 1986, applying the principle of freedom to provide services to maritime transport between Member States and third countries, abolished the restrictions on EU shipowners after a transitional period. It prohibited future cargo-sharing arrangements with third countries other than for liner shipping in exceptional circumstances.

Regulation (EEC) No 4058/86 of 22 December 1986, on coordinated action to safeguard free access to cargoes in ocean trade, enables the Community to take retaliatory measures if EU shipowners or ships registered in a Member State encounter restrictions on the free access to cargoes.

2. The free market: liberalisation of cabotage

In June 1992 the Council adopted a package of measures to phase in the liberalisation of cabotage, i.e. access for carriers not resident in a given Member State to the maritime transport market between the ports of that Member State. Council Regulation (EC) No 3577/92 of 7 December 1992 laid down definitively the principle of liberalisation of cabotage from 1 January 1993 for Community shipowners operating vessels registered in a Member State. The liberalisation process was completed on 1 January 1999.

C. Competition rules

On 22 December 1986 the Council adopted Regulations (EEC) No 4056/86 and (EEC) No 4057/86 as part of the

maritime package. The first of these regulations laid down the procedures for applying the rules on competition to international maritime transport to or from one or more Community ports and aimed to ensure that competition was not distorted by means of agreements. It exempted certain technical agreements and, in some cases, liner conference agreements from the rules on competition laid down in Articles 81 and 82 of the Treaty (a 'block exemption'). On 13 October 2004, the Commission adopted a White Paper on the review of Regulation (EEC) No 4056/86, applying the EC competition rules to maritime transport [COM(2004) 675]. There it concluded that there was no longer any justification for retaining the exemption for liner conferences, as price stability could also be achieved by means of other forms of cooperation which would distort competition less.

The second regulation, Regulation (EEC) No 4057/86, provided for a redressive duty to protect Community shipowners against unfair pricing practices adopted by certain third-country shipowners.

Regulation (EEC) No 479/92 granted a further block exemption in favour of 'consortia' between liner shipping companies (further details of which have been decided on a number of occasions over the years).

In 2004, the Commission also submitted revised guidelines for State aid to maritime transport (Communication C(2004) 43). This indicated what aid — particularly for the purpose of promoting the entry of vessels in the registers of the Member States or a return to registration under their flags — was compatible with Community law.

In February 2001 the European Commission submitted a package of measures to establish clear rules and to set up an open and transparent procedure for access to services in ports — the 'ports package' [COM(2001) 35]. The purpose of the proposal was to open up port services to competition and thereby realise the fundamental freedoms guaranteed by the EC Treaty and comply with its competition rules, both at individual sea ports and between them. This was intended to increase the efficiency of sea ports. In addition, the financial relationships between sea ports or port systems and providers of port services on the one hand and the State authorities on the other hand were to be rendered transparent. After the European Parliament (EP/Parliament) had rejected the proposal at third reading on 20 November 2003, the Commission made a fresh attempt to tackle the matter and on 13 October 2004 submitted a new proposal [COM(2004) 654], which was intended to overcome certain criticisms of points in the original, failed proposal. However, the EP also rejected the new proposal, this time at first reading, on 18 January 2006, and some time later the Commission withdrew it.

Directive 1999/63/EC of 21 June 1999 was based on an agreement between the European Community Shipowners' Associations (ECSA) and the Federation of Transport Workers' Unions in the EU. It concerns the organisation of the working time of seafarers on board ships flying the flag of an EU Member State. Directive 1999/95/EC of 13 December 1999 complements it, applying to ships flying the flag of a third country which call at Community ports. The aim is to ensure that the same health and safety rules apply to all seafarers.

Role of the European Parliament

Parliament's resolution of 24 April 1997 welcomed the Commission communication 'Towards a new maritime strategy' and 'consider(ed) it vital, with international competition at its present level, to provide support for the European shipping industry to offset the undeniable extra cost incurred by Community shipowners if they respect the social and safety standards applying in the Union'. This plea is a counterweight to other statements in the same resolution in favour of a more open market. Parliament also attached value to seafarers' social protection in accordance with international agreements, with which Parliament considered that vessels flying flags of convenience should also comply. Parliament also called for clarification of the legal status of second registers and for a Community register.

With reference to the Green Paper on sea ports, the EP called on the Commission in its resolution of 13 January 1999 to submit a study of the structures of sea ports in order to help restore transparency of competitive conditions between and within European sea ports. The EP also called on the Commission to supervise all sea ports and port undertakings effectively and in the same way with reference to aid and compliance with competition rules. Parliament proposed that public financing of port and maritime transport infrastructure should be assessed on the basis of three categories:

- public port infrastructure measures,
- undertaking-related port infrastructure measures,
- undertaking-related port superstructure measures.

In Parliament's opinion, the proposals for directives on market access in ports submitted after the Commission Green Paper were not suitable for regulating competition in and between ports. Accordingly, the EP rejected these proposals, as described above, and thus brought these legislative procedures to a halt.

In its resolution of 12 April 2005 on short sea shipping, the EP called for short sea shipping to be promoted more strongly, for administrative procedures to be reduced as

much as possible, for the development of high-quality corridors between Member States and for priority to be given to investment in infrastructure in order to improve access to ports from both land and sea. The resolution also contained numerous proposals and requests concerning (a) introducing a uniform system of liability, (b) intermodal

loading units, (c) electronic communication, (d) customs, (e) support structures for short sea shipping, (f) environmental aspects and (g) motorways of the sea.

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4.5.9. Sea transport: traffic and safety rules

Legal basis

Title V of the EC Treaty, particularly Article 71(1)(c) and Article 80(2).

Objectives

Safety at sea to protect passengers and crew members and also to protect the marine environment and coastal regions is a fundamental objective of sea transport policy. The global dimensions of sea transport necessitate the development by IMO (the International Maritime Organisation) of safety standards which should be as uniform as possible and recognised worldwide. The principal international agreements include the International Convention for the Prevention of Pollution from Ships (Marpol), the International Convention for the Safety of Life at Sea (SOLAS) and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW).

The prompt amendment of Community law to take account of these international agreements is an essential objective of the EU's sea transport policy. In the past, however, not all IMO measures have proved adequate to improve safety at sea. It was therefore equally necessary both for Member States and/or the Community to participate in the further development and improvement of these international agreements and to adopt additional measures at EU level.

Achievements

A. Fundamental legislation

As there are international rules to regulate safety at sea, the Community's main contribution has been to transpose them into Community law, ensuring that they have legal force and uniform application throughout the Member States. In the 1990s, considerable progress was made in this regard.

1. Training of seafarers

Directive 94/58/EC of 22 November 1994 on minimum training conditions for seafarers gave the 1978 IMO Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) the force of Community law. It has been amended a number of times in accordance with new international requirements, and the various provisions were consolidated by Directive 2001/25/EC of 4 April 2001.

2. Ships' equipment

Directive 96/98/EC of 20 December 1996 concerning on-board equipment aims to ensure uniform application of the SOLAS Convention on marine equipment for commercial vessels and enforce the IMO resolutions deriving from it.

3. Safety of passenger craft

On 8 December 1995 the Community adopted Regulation (EC) No 3051/95 on the safety management of roll-on/roll-off passenger ferries ('ro-ro' ferries). This laid down that safety management systems must be established and maintained.

The safety of vessels providing scheduled services between two Community ports is the subject of Directive 98/18/EC of 17 March 1998. In addition to compulsory safety standards, the directive provides for regular inspections of ships and certification by means of safety certificates. This directive was amended by Directive 2003/24/EC of 14 April 2003 and Directive 2203/75/EC of 29 July 2003.

Directive 98/41/EC of 18 June 1998 on the registration of persons sailing on board passenger ships makes it possible to monitor the number of passengers and thus improve the effectiveness and speed of rescue operations in the event of an accident.

4. Port State control

The aim of Directive 95/21/EC of 19 June 1995 is to enforce international environmental and safety standards more effectively by means of compulsory regular inspections at

Community ports (port State control). As a result, enforcement of safety standards and inspections of living and working conditions on board ships are no longer left purely to the flag states but have partly become a matter for the competent authorities at EU ports. The directive was amended as part of the Erika I package (see below).

5. Ship inspection and survey organisations (classification societies)

Council Directive 94/57/EC of 22 November 1994 lays down common rules and standards for ship inspection and survey organisations (classification societies). It was likewise amended as part of the Erika I package.

B. Developments after the Erika and Prestige disasters

After the accidents involving the Erika and Prestige, EU maritime safety standards were again tightened up considerably. In March and December 2000 the Commission put forward the so-called Erika I and II packages to bring about the necessary improvements. The following measures were adopted as a result:

1. The Erika I package

Directive 2001/105/EC of 19 December 2001 stepped up and simplified the Community rules and standards laid down in the original directive concerning ship inspection and survey organisations (classification societies). Its aim was uniform compliance with standards, more stringent quality requirements applicable to classification societies, greater transparency of findings and making classification societies more independent of ship-owners or shipbuilding companies. The directive provides for the competent authorities of the Member States to monitor classification societies. If their performance is shown to be inadequate, their recognition can be temporarily suspended or withdrawn altogether. In the event of proven negligence, a classification society can under certain circumstances be held liable for the consequences of an incident involving a ship.

Directive 2001/106/EC of 19 December 2001 made port State control compulsory for certain potentially hazardous vessels. Member States are required to carry out inspections more frequently and more thoroughly and to conduct more extensive inspections of certain high-risk vessels such as gas, oil and chemical tankers. In addition, the directive introduced a so-called blacklist. It became possible to deny access to EU ports to ships sailing under the flag of a blacklisted State (the blacklist being published in the annual report of the Paris memorandum of understanding) if previous inspections at other ports had shown safety on board to be inadequate.

Regulation (EC) No 417/2002 of 18 February 2002 laid down a fixed timetable for phasing out the use of single-

hull oil tankers and provided for them to be replaced by 2015 at the latest with safer double-hull vessels, the deadlines depending on the size, type and age of the vessel. After the Prestige oil tanker disaster, the timetable was again accelerated considerably by Regulation (EC) No 1726/2003 of 22 July 2003. The use of single-hull tankers to carry particularly toxic heavy oil to and from Community ports was banned immediately.

2. The Erika II package

Directive 2002/59/EC of 27 June 2002 established a Community vessel traffic monitoring and information system. The operator of any vessel wishing to call at a port in a Member State must, in advance, supply various information to the relevant port authority, particularly concerning dangerous or polluting cargoes. The vessel must be fitted with an automatic identification system (AIS), and a timetable was laid down for the compulsory fitting of vessels with voyage data recording systems (VDR systems or 'black boxes'). The directive gave Member States greater powers of intervention and authorised the competent authorities to forbid vessels from departing in bad weather conditions. It also required Member States to adopt plans for giving refuge to vessels in distress.

Regulation (EC) No 1406/2002 of 27 June 2002 established the European Maritime Safety Agency (EMSA). Its task is to provide scientific and technical advice to the Commission and to monitor the implementation of legislation in the field of maritime safety. Its remit has recently been expanded to include new duties in the field of pollution control.

3. New Commission proposals

On 23 November 2005, the Commission submitted a third package of legislative measures on maritime safety [COM(2005) 585], which comprises the following seven proposals:

- a directive on the fulfilment of flag state obligations;
- an amendment to the directive on port State control;
- an amendment to the directive on the Community's vessel traffic monitoring and information system;
- an amendment to the directive on classification societies;
- a directive on investigations after accidents at sea;
- a regulation on liability and compensation for personal injury caused by accidents at sea;
- a directive on the third-party liability of ship-owners.

These proposals are currently passing through the legislative procedure at the Council and the European Parliament (EP/Parliament).

C. Hazard control on ships and in port facilities

In response to the terrorist attacks on 11 September 2001, the so-called ISPS Code was adopted at the Diplomatic Conference of the IMO in 2002, as were various amendments to other international agreements. The aim is to improve the protection of ships and port facilities, particularly against terrorist attack. Regulation (EC) No 725/2004 of 31 March 2004 is intended to ensure uniform interpretation and implementation of these IMO decisions. The regulation requires Member States, inter alia, to carry out security assessments at their port facilities and to monitor compliance with security regulations.

D. Environmental standards for shipping

In recent years, numerous measures have been taken to protect the marine environment. These include:

- Regulation (EC) No 782/2003 of 14 April 2003 on the prohibition of organotin compounds on ships; these compounds are mainly used as anti-fouling products on ships' hulls and are highly polluting;
- Directive 2005/33/EC of 6 July 2005 on reducing the sulphur content of marine fuels;
- Directive 2000/59/EC of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues, which provides for compulsory disposal of oil, oily mixtures, ships' waste and cargo residues at EU ports and enforcement of the rules on this subject;
- Directive 2005/35/EC of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements.

Role of the European Parliament

Parliament has strongly supported the initiatives relating to safety at sea and has helped to make progress in this field by means of initiatives of its own.

After the Erika tanker disaster, Parliament urged the Commission, in its resolutions of 20 January 2000 and 2

March 2000, to submit concrete proposals for improving safety at sea.

The Erika I and Erika II shipping safety packages which the Commission subsequently submitted received Parliament's support. Parliament urged that the legislative procedure be concluded swiftly and also secured important improvements. For example, despite the initial resistance of some EU governments, Parliament inserted a provision requiring ships to be equipped with voyage data recording systems (VDR systems or 'black boxes'), which provide information for use in investigations after an accident.

After the Prestige oil tanker disaster off the coast of Spain in 2002, the EP decided to set up a temporary committee on improving safety at sea (MARE). In the final report of this committee, which was adopted in April 2004, the EP made many recommendations for future measures in the field of safety at sea. It called for a comprehensive and coherent policy for maritime transport, based, inter alia, on the following additional measures: a ban on non-compliant ships, the introduction of a system of liability covering the entire maritime transport chain, and improvements to the living and working conditions and training for seafarers. Parliament also called for the establishment of a European coastguard, compulsory pilotage in environmentally sensitive and navigationally difficult sea areas, and a clear decision-making and command structure in Member States for dealing with maritime emergencies, in particular as regards the mandatory assignment of an emergency mooring or port. Parliament took the view that EU action, such as, for instance, the banning of flags of convenience from European territorial waters, might be necessary, and called upon the Commission to investigate the scope for introducing mandatory insurance for vessels in European waters. The Commission has already taken account of some of these requests in its proposed third package of measures to promote safety at sea.

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09/2006

4.5.10. Inland waterway transport: intermodality and logistics

Legal basis

→4.5.1.

Objectives

Together with rail and short-sea shipping, inland waterway transport is considered to be a mode of transport which can contribute to sustainable mobility and help improve the sustainability of the transport system. Per tonne-kilometre, inland waterway transport is extremely energy-efficient and is regarded as one of the most environmentally-friendly and safest modes of transport. The Community has more than 35 000 km of inland waterways linking many towns and areas of industrial concentration. Inland waterways exist in 18 out of the 25 Member States. The modal share of inland waterway transport currently accounts for 7 % of total inland transport in the European Union. In the hinterland of the largest seaports, the modal share of inland waterway transport can reach up to 43 %.

Besides safeguarding the proper application of the legislation on market access and competition as well as the harmonisation of specific legal provisions, attention has recently focused on the promotion of inland waterway transport. In line with the objectives set out in the Commission's transport White Paper, the intention is to promote and improve the competitiveness of inland waterway transport in the freight sector. The aim is to achieve further and better integration of inland waterway transport into the intermodal logistics chain.

The promotion of intermodal transport logistics is a core element of the Commission's 2001 transport White Paper. Here, the aim is to create the technical, legal and economic parameters for optimal integration of various modes of transport for a door-to-door service. A particular focus is the integration of more environmentally-friendly modes of transport such as rail, inland waterway transport and short sea shipping into the transport chain.

Achievements

A. Inland waterway transport

1. Market access and competition

Since 1 January 2000, the inland waterway transport market has been regarded as fully liberalised.

(a) Market access for international goods transport

Council Regulation (EC) No 1356/96 of 8 July 1996 aims to ensure that any operator is allowed to transport goods or

passengers by inland waterway between Member States and in transit through them without discrimination provided that he is properly established in a Member State. The regulation does not affect the rights of third country operators under the Revised Convention for the Navigation of the Rhine (Mannheim Convention) and the Convention on Navigation on the Danube (Belgrade Convention).

(b) Freedom for non-resident carriers to operate inland waterway transport services in a Member State (cabotage)

This was introduced by Council Regulation (EEC) No 3921/91 of 16 December 1991. Since 1 January 1993, carriers who are properly established and licensed in a Member State have been able to transport goods or passengers by inland waterway in a Member State in which they are not established ('cabotage').

(c) Harmonisation and mutual recognition of occupational qualifications

Council Directive 87/540/EEC of 9 November 1987 regulates access to the occupation of carrier of goods by waterway in national and international transport and the mutual recognition of diplomas, certificates and other evidence of formal qualifications for this occupation.

Reciprocal recognition of national boatmasters' certificates for the carriage of goods and passengers by inland waterway in the Community was achieved with Council Directive 91/672/EEC of 16 December 1991. Council Directive 96/50/EC of 23 July 1996 harmonised the conditions for obtaining these national boatmasters' certificates.

(d) Competition rules

Council Directive 96/75/EC of 19 November 1996 introduced a system of free chartering and pricing, thus ending the system of minimum compulsory tariffs from 1 January 2000.

2. Harmonisation of legal provisions

(a) Overcapacity

The problem of existing overcapacity was addressed by Regulation (EEC) No 1101/89 of 27 April 1989. The 'structural improvements' in inland waterway transport provided for in the regulation comprise:

- the payment of premiums for the scrapping of vessels;
- the obligation that the owner of the vessel to be brought into service scraps a tonnage of carrying capacity equivalent to the new vessel ('old-for-new' rule), or pays into a scrapping fund a special

contribution equal to the scrapping premium fixed for a tonnage equal to that of the new vessel.

Commission Regulation (EC) No 336/2002 of 22 February 2002 introduced amended 'old-for-new' ratios in order to maintain the overall balance, without reversing the structural improvements.

(b) Technical requirements

Council Directive 76/135/EEC of 20 January 1976 requires Member States to recognise navigability licences for inland waterway vessels issued by another Member State.

Most of the provisions of Council Directive 76/135/EEC were amended by the provisions of Council Directive 82/714/EEC of 4 October 1982. It also introduced a Community inland navigation certificate, valid on all Community waterways except the Rhine, attesting the compliance of vessels with the common technical requirements. For the Rhine, a valid certificate issued pursuant to Article 22 of the Revised Convention for the Navigation of the Rhine applies, which is valid on all Community waterways.

(c) Harmonised river information services on inland waterways in the Community

Directive 2005/44/EC of the European Parliament (EP) and of the Council of 7 September 2005 on harmonised river information services (RIS) on inland waterways in the Community provides a comprehensive framework for the establishment and further development of a harmonised, interoperable RIS on the Community's inland waterways. The directive imposes an obligation on those Member States through which certain Community inland waterways flow to establish these information services in line with the principles and specifications set forth in the directive. The technical specifications should be developed within a specific timeframe. With these interoperable information services based on modern information and communications technology, the aim is to integrate inland waterway transport more effectively into the intermodal logistics chain. Among other things, RIS will provide fairway and traffic information as well as strategic traffic information for time and journey planning. The system also opens up new opportunities for better freight and fleet management.

3. Promotion of inland waterway transport

On 17 January 2006, the Commission proposed a multiannual integrated European action programme for inland waterway transport (NAIADES) [COM(2006) 6 final]. It recommends action to be taken between 2006–13 with the aim of fully exploiting the market potential of inland navigation and deploying the ample free capacities of inland waterway transport more effectively. The

programme provides for numerous legislative, coordination and support measures, and focuses on five strategic areas:

- creating favourable conditions for services and the development of new markets. This includes (a) testing and introduction of new logistical concepts, (b) supporting scheduled services for intermodal transport, (c) facilitating access to capital for SMEs, and (d) improving the administrative and regulatory framework;
- incentives for the modernisation of the fleet, e.g. by developing and promoting the use of innovative concepts and technologies for the construction of new vessels;
- measures to address the skills shortage, e.g. by improving working and social conditions, greater mutual recognition of qualifications, and securing the existence of education and training institutions;
- promotion of inland navigation as a successful partner in business, e.g. through more intensive publicity work or by setting up and expanding a European IWT promotion and development network;
- provision of appropriate infrastructure through the improvement and maintenance of the European waterway network and development of transshipment facilities, and by supporting and coordinating the development and introduction of RIS.

B. Intermodality and logistics

Intermodal transport is defined as 'a transport system whereby at least two different modes are used in an integrated manner in order to complete a door-to-door transport sequence'. A priority, in this context, is to integrate the more environmentally-friendly modes of transport — rail, inland waterway transport and short sea shipping — into the transport chain more effectively. Impediments and friction costs arise primarily when there is a change of mode during a journey. This may result in higher prices, longer journeys and more delays, and may have an impact on the competitiveness of intermodal transport. To that extent, improving the logistical quality and efficiency of intermodal transport is a key objective.

1. Marco Polo programme

On 22 July 2003, the EP and the Council adopted Regulation (EC) No 1382/2003 on the Marco Polo programme. The financial framework for implementation of the Marco Polo programme for the period 1 January 2003 to 31 December 2006 is EUR 75 million. The aim of the programme is to shift international road freight traffic to short sea shipping, rail and inland waterways as well as to promote innovative projects.

On 14 July 2004, the Commission presented a proposal to establish a 'Marco Polo II' programme [COM(2004) 478].

Relying on the proven mechanisms of the current programme, Marco Polo II includes two new actions: (a) larger geographical scope for intermodal transport solutions and alternatives to road transport, including outside the EU, and (b) motorways of the sea, which are intended to encourage a shift towards short sea shipping. During the negotiations on the financial perspective, the EP and the Council agreed a total budget of EUR 450 million for 'Marco Polo II' for the period 2007–13.

2. Intermodal loading units

In April 2003, the Commission presented a proposal for a directive on intermodal loading units [COM(2003) 155]. It aims to create new uniform technical norms for a European intermodal loading unit which can be used in all modes of transport. This would greatly simplify the process of transshipment and make intermodal transport more competitive. An amended proposal by the Commission has now been published after the EP, but not the Council, gave its opinion on this proposal.

3. Freight transport logistics

In June 2006, the Commission published its communication on freight transport logistics in Europe — the key to sustainable mobility [COM(2006) 336]. It defines a strategy to improve the framework conditions in which to increase the efficiency of individual modes of transport and their combinations. The aim is to utilise fewer units of transport, such as vehicles, wagons and vessels, to carry more freight.

Role of the European Parliament

The EP has regularly voiced support for inland waterway transport and measures to promote intermodal transport. In its resolution of 12 February 2003 on the Commission's transport White Paper, the EP called for the substantial expansion of the Marco Polo programme with significant additional funding. It also called for increased EU co-financing for key inland waterway projects undertaken within the framework of the trans-European infrastructure networks (TEN) in a manner compatible with the requirements of EC environmental legislation, and called on the Commission to submit a proposal for harmonised technical provisions for the implementation of RIS. It also called for a significant increase in the number of transport centres and logistical centres and put forward specific proposals to improve and promote intermodality.

The Commission's proposal for a directive on intermodal loading units was adopted by the EP on 12 February 2004, subject to certain amendments. The NAIADES programme and the communication on freight transport logistics are currently being examined by Parliament.

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09/2006

4.6. Trans-European networks

4.6.1. Trans-European networks: guidelines

Legal basis

Title XV of the EC Treaty.

Objectives

The Maastricht Treaty gave the Community the task of establishing and developing trans-European infrastructure networks (TEN) in the areas of transport, telecommunications and energy, in order to help develop the internal market, reinforce economic and social cohesion and to link island, landlocked and peripheral regions with the central regions of the Community. The establishment of the TEN relates to Community-wide collaboration, the improvement of the interoperability of national networks and facilitating access to them.

In line with the principle of subsidiarity, the Community has no exclusive competence for the developing, financing or building the infrastructures. The main responsibility for doing so continues to lie with the Member States. Nevertheless, the Community contributes substantially to the development of these networks by acting as a catalyst and by providing financial support, particularly at the outset, for infrastructures of common interest.

To this end, the Community lays down guidelines under the co-decision procedure identifying eligible 'projects of common interest' and 'priority projects' and covering the objectives, priorities and broad lines of measures.

Results

A. General guidelines and general ideas

The Commission White Paper on Growth, Competitiveness and Employment, presented to the Brussels European Council in December 1993, emphasised the fundamental importance of the TEN for the internal market. The White Paper referred in particular to the contribution made to job creation — not only in building the infrastructure itself, but also through its subsequent role in economic development. It identified 26 priority projects for transport, 8 for energy and 9 for a data highway system. The Brussels European Council adopted the White Paper in December

1993 and set up two working groups, whose recommendations were approved by recommendations of the European Councils of Corfu and Essen (including 14 priority projects for transport and 10 for the energy sector).

B. Sectoral legislative measures

1. Transport

(a) *The 1996 guidelines*

Decision No 1692/96/EC of 23 July 1996 on Community guidelines for the development of the trans-European transport network (TEN-T) sets out broad lines for the measures necessary to set up the network. The decision established characteristics of the networks for each mode of transport, eligible projects of common interest and priority projects. Emphasis was placed on environmentally-friendly modes of transport, in particular rail projects. Fourteen projects were designated as priority projects.

Decision No 1346/2001/EC of the EP and of the Council of 22 May 2001 amending the TEN-T guidelines as regards seaports, inland ports and intermodal terminals added criteria for these remaining elements missing from the TEN-T, thereby providing for a Community transport development plan encompassing all modes of transport.

(b) *Revision of the TEN guidelines*

The impending enlargement of the EU in 2004, coupled with serious delays and financing problems in the realisation of the TEN-T — particularly cross-border sections — led to the need for a thorough revision of the TEN guidelines. On the basis of proposals made by a specially appointed working group headed by former European Commissioner Karel van Miert, this revision was adopted in the form of Decision 884/2004/EC of 29 April 2004. The revision comprised the following main elements:

- The number of priority projects was increased to approximately 30. Many of these projects now also involved the Member States that joined in 2004;
- EU environmental rules were brought into sharper focus, particularly through a strategic environmental impact assessment as a complement to the conventional environmental impact assessment;

- The concept of ‘motorways of the sea’ was introduced to make certain sea routes more efficient and to integrate short sea shipping into the intermodal transport chain. A total of four such motorways of the sea were combined into one priority project;
- ‘European coordinators’ would be appointed to accompany future priority projects and to contribute to their swift and successful realisation. The Commission has since appointed six coordinators for particularly important projects;
- By 2020, TEN-T should cover 89 500 km of roads and 94 000 km of railways, including 20 000 km of high-speed railways. In addition, 11 250 km of inland waterway networks, 210 inland waterway ports, 294 seaports and 366 airports are part of the TEN-T. Completion of the TEN-T made it necessary to add approximately 4 800 km of roads and 12 500 km of railways to the existing network. In addition, 3 500 km of roads, 12 300 km of railways and 1 740 km of inland waterways need to be improved or developed;
- The total costs were estimated at around EUR 600 000 million, including between EUR 225 000 million and EUR 252 000 million for the 30 priority projects. (For more on the financing of the TEN, see Chapter 4.6.2.).

2. Energy

(a) The 1996 guidelines

At the Essen summit of December 1994, several energy projects were awarded priority status. Decision No 1254/96/EC of 5 June 1996 laid down a series of guidelines for trans-European energy networks. They contained an action plan by which the Community might identify eligible projects of common interest and help create a framework to encourage their implementation. They also laid down sectoral objectives for electricity.

(b) New guidelines

Decision No 1229/2003/EC of 26 June 2003 abolished the old guidelines set out in Decision No 1254/96/EC.

The objectives of the new guidelines were to diversify supplies, to increase security of supply by strengthening links with third countries and to incorporate networks in the new Member States. With these new guidelines, the EU reformulated its priorities, objectives and broad lines of measures in the area of the trans-European energy networks. In relation to the previous legislation, additional criteria were fixed for determining projects of common interest and priority projects for the electricity and natural gas networks.

The priorities for the trans-European energy networks must be compatible with the goals of sustainable development

These priorities include: (a) overcoming cross-border missing links; (b) taking account of enlargement; (c) establishing energy networks in island and peripheral regions through diversification and renewable energy sources; and (d) interoperability of EU networks with the networks of the new Member States and third countries. Twelve projects of common interest were deemed to be priority projects in annex I to the decision.

On 10 December 2003, the Commission came forward with a further proposal on the trans-European networks in the field of energy (COM(2003) 0742). The aim of the proposal was to adapt the guidelines to the changed circumstances in the European Union arising from the accession of 10 new Member States and to guarantee security of supply by means of connections between the Member States and neighbouring countries (south-east Europe, the Mediterranean states, Ukraine and Belarus). The proposal also aimed at further increasing the speed of preparation and implementation of projects.

3. Telecommunications (→4.7.7. and 4.7.8.)

Decision No 2717/95/EC of 9 November 1995 established a series of guidelines for the development of the integrated services digital network (ISDN) as a trans-European network. The decision defined the objectives, priorities and common-interest projects for developing a range of services based on the Euro-ISDN in the prospect of a future European broadband communications network.

Decision No 1336/97/EC of 17 June 1997 laid down guidelines for the trans-European telecommunications networks. This set out the objectives, priorities and broad lines of the measures envisaged. The priorities adopted included applications contributing to economic and social cohesion and the development of the basic networks, particularly satellite networks. These guidelines were modified slightly by Decision No 1376/2002/EC of 12 July 2002.

These guidelines identify projects of common interest as well as the procedure and criteria for their selection. The Community promotes the interconnection of telecommunications infrastructure networks, the creation and development of interoperable services and applications, and access to them. The following objectives were envisaged: (a) to facilitate the transition towards the information society; (b) to improve the competitiveness of the Community’s businesses, in particular SMEs; (c) to strengthen economic and social cohesion; and (d) to accelerate the development of new, more growth-intensive areas of activity with a view to creating new jobs.

Role of the European Parliament

Parliament strongly supported the trans-European network policy. At the same time, Parliament has regularly drawn attention to delays in implementation of priority transport projects, called for firm timetables for their realisation and called on the Member States to increase substantially the budgetary resources available — particularly for the trans-European transport networks (see the European Parliament (EP/Parliament) resolution of 4 May 2000). Furthermore, in its resolution of 12 December 2001, the EP called for priority to be given to the promotion of those projects which clearly demonstrated positive and long-term effects on the environment and employment and which helped to remove bottlenecks in the trans-European transport network, particularly in rail and combined transport. Parliament also called for a range of administrative changes to improve implementation of the trans-European networks. For example, the Commission was asked to come forward with new guidelines for the trans-European energy networks. In this connection, the EP has criticised delays to the original plans.

During the revision of the guidelines for the trans-European transport networks, Parliament was able to make a number of amendments in the negotiations with the Council in

April 2004. Among other things, the guidelines' environmental rules were strengthened and the concept of a strategic environmental impact assessment was introduced as a binding requirement, under pressure from the EP. Parliament also obtained a change to the list of priority projects. Under pressure from Parliament, the realisation of priority projects was more strongly linked to a timetable than the Member States had envisaged. For the first time, the possibility of removing the status of 'priority project' was created. This was intended to tie the Member States to prompt realisation of projects.

Concerning the revision of the guidelines for the trans-European energy networks in June 2003, the EP saw a number of demands made to the Council of Ministers fulfilled and reached an agreement whereby, among other things, Community subsidies for construction and maintenance of energy structure would remain highly exceptional. Moreover, priority projects had to be compatible with the objectives of sustainable development and increase the security of supply for the Community in order to receive funding.

→ Nils DANKLEFSEN
09/2006

4.6.2. Financing the trans-European networks

Legal basis

Title XV of the EC Treaty. Under Article 155 of the EC Treaty, Community aid may be granted to projects of common interest that meet the requirements laid down in the guidelines.

Objective

To contribute to the establishment of trans-European networks (TEN) in the fields of transport, energy and telecommunications through targeted Community support (→4.6.1.).

Results

A. Direct financing through the Community budget

Generally, EU funding serves as a catalyst for starting up projects. Member States must raise the majority of the funding.

1. Principles

The principles governing funding are set out in Council Regulation (EC) No 2236/95 of 18 September 1995 laying down general rules for the granting of Community financial aid in the field of trans-European networks

(a) Conditions

Community aid for projects may take one or several of the following forms:

- co-financing of studies related to projects, including preparatory, feasibility and evaluation studies, and other technical support measures for these studies (in general not exceeding 50 % of the total cost of these studies);
- subsidies of the interest on loans granted by the European Investment Bank (EIB) or other public or private financial bodies;
- contributions towards fees for guarantees for loans from the European Investment Fund or other financial institutions;

- direct grants to investments in duly justified cases;
- Community assistance may be combined. However, regardless of the form of intervention chosen, the total amount of Community aid under Regulation (EC) No 2236/95 may not exceed 10 % of the total investment cost;
- Community aid for the telecommunications and energy networks must not cause distortions of competition between businesses in the sector concerned.

(b) Selection criteria

The following project criteria must be applied:

- projects must help to achieve the networks' objectives;
- projects must be potentially economically viable;
- the maturity of the project; the stimulative effect of community intervention on public and private finance and the soundness of the financial package;
- direct or indirect effects on the environment and employment;
- coordination of the timing of different parts of the project.

The projects financed must comply with Community law and Community policies, in particular in relation to environmental protection, competition and the award of public contracts.

Regulation (EC) No 2236/95 covers the period 2000–06 and has been amended by, among others, Regulation (EC) No 1655/1995 of 19 July 1999, Regulation (EC) No 788/2004 of 21 April 2004 and Regulation (EC) No 807/2004 of 21 April 2004, which introduced a range of new elements:

- indicative multiannual programmes intended to raise the profile of EU project financing;
- association of risk capital in EU financial aid;
- increase in the upper limit for EU financial aid, i.e. from 2003 up to 20 % of the total project costs in the case of projects concerning satellite positioning and navigation systems and since 2004 for cross-border sections of priority projects;
- the financial framework for the period 2000 to 2006 allocated EUR 4 600 million to the TEN, EUR 4 170 million of which for transport (TEN-T) and EUR 430 million for energy (TEN-E) and telecommunications networks (eTEN).
- at least 55 % of the funding for the TEN-T to be devoted to railway projects and a maximum of 25 % to road projects.

B. Other financing possibilities

1. Community structural funds

In the period 2000–06, these funds contributed approximately EUR 20 000 million to TEN projects — particularly through the cohesion fund in Greece, Ireland, Portugal and Spain. The Member States that joined the EU in 2004 were allocated EUR 2 480 million in pre-accession aid. In addition, for the period 2004–06 these countries were allocated EUR 4 240 million from the Cohesion Fund and EUR 2 530 million from the other Structural Funds (→4.4.3. and 4.4.2.)

2. European Investment Bank aid

No territorial restrictions apply to EIB loans. They are granted on the basis of banking criteria. These include the financial (ability to repay), technical and environmental feasibility of the project. In the period 1995–2005, the EIB granted loans for TEN projects totalling approximately EUR 50 000 million.

3. Private sector contribution

On 30 April 2004, the Commission published a Green Paper on public-private partnerships, which examines PPPs in the light of Community law on public contracts and concessions (COM(2004) 0327).

In addition, on 7 March 2005, the Commission published a communication on the design of an EU loan guarantee instrument for TEN-Transport projects (COM(2005) 0076). The instrument is intended to provide support for specific types of PPPs. The aim is to stimulate private sector investment in priority TEN-T projects by providing credit assistance.

C. The new financial framework for 2007–13

For the new financing period 2007–13, the Commission, with Parliament's support, initially proposed EUR 20 350 million for TEN-T and EUR 340 million for TEN-E. However, the Council insisted on a drastic reduction of these funds. The agreement between the Council and Parliament on the new TEN financial framework provided for EUR 8 013 million in the area of transport and EUR 155 million in the area of energy. Thus the amounts laid down in the financial framework represent only 40 % of the amount originally proposed in the area of transport and 45 % of the amount for energy. The Commission therefore submitted an amended proposal laying down general rules for the granting of Community financial aid in the field of the trans-European networks (COM(2006) 0245), in which it proposes that, in order to complement national (public or private) sources of financing, these limited resources should be focused on certain categories of projects which will provide the greatest added value for the network as a whole. These include, in particular, cross-border sections

and projects aimed at removing bottlenecks. In addition, the rates of support should be modified for certain categories of projects (e.g. for certain waterways, ERMTS/ETCS or the SESAR programme). The proposal is currently going through the legislative procedure between the Council and Parliament.

Role of the European Parliament

In the course of the legislative procedure on the adoption of Regulation (EC) No 2236/95, Parliament requested amendments intended primarily to improve criteria, objectives and procedures in order to provide Member States and businesses with more certainty and transparency and to develop partnership between the public and private sectors.

In the subsequent legislative procedure on amendment of this regulation, Parliament urged that more environmentally-friendly modes of transport be given priority in terms of funding. Thus the percentage share of funding for transport infrastructure projects was fixed in such a way as to devote at least 55 % to railway projects (including combined transport) and a maximum of 25 % to road projects. Furthermore, Parliament emphasised the need for the Commission to ensure coordination and

coherence of completed projects with those financed by contributions from the Community budget, the EIB, the cohesion fund, the ERDF or other Community financing instruments.

In its resolution of 8 June 2005 on the financial framework for 2007 to 2013, Parliament welcomed the Commission proposal on TEN-E and on TEN-T priority projects. However, Parliament noted that the resources allocated for 30 transport priority projects constitute a minimum amount which must be regarded as subject to upward revision. It also declared its willingness to examine innovative financing instruments such as loan guarantees, European concessions, European loans and an interest relief fund, or EIB facilities.

After the Council had agreed massive reductions to the original Commission proposal at the end of 2005, Parliament, in the subsequent negotiations on the financial perspective, urged that the amount allocated to the TEN be increased. In the final agreement with the Council, Parliament obtained an increase of EUR 500 million as well as extra EIB funding for the realisation of the TEN.

→ Nils DANKLEFSEN
09/2006

4.7. Industrial policy

4.7.1. General principles of EU industrial policy

Legal basis

Since the Treaty of Maastricht, Article 157 of the EC Treaty has laid down initiatives for industrial policy by which the Commission can coordinate the actions of Member States. This article, which was amended by the Treaty of Nice, is governed by co-decision, giving Parliament the role of co-legislator.

Objectives

EU industrial policy aims to speed up the adjustment of industry to structural changes, encourage initiative,

development and cooperation between undertakings and foster the industrial potential of innovation, research and technological development.

A number of policies already well-integrated with industrial policy can contribute to its objectives:

- greater openness of the world trading system — specifically, the opening of protected third country markets to EU producers and service suppliers. By giving EU producers cheaper access to foreign inputs while subjecting them to increased competition from third countries, it both enables and forces them to improve their competitiveness;

- single market related policies generally have a positive impact on competitiveness, in particular, by fostering liberalisation of markets and harmonisation of rules;
- R & D policy, by reinforcing the knowledge base and focusing on key enabling technologies;
- competition policy induces firms to enhance their efficiency and better enable their survival within their markets. It also helps to prepare EU companies for the challenge of third-country markets;
- social and employment policies, including vocational training, have a key role in ensuring that the promotion of competitiveness is part of the balanced implementation of the Lisbon strategy. Constant upgrading of workers' skills and quality helps meet demand in the labour market and contribute to the knowledge-based economy;
- consumer protection and public health policy are essential preconditions for consumer confidence which is the basis for stable and growing demand;
- environmental protection may need to restrict or even ban the use of certain inputs or technologies, which can raise production costs in the short term. In the longer term, however, it can help EU companies gain a competitive edge at the global level and create new markets for clean products and technologies.

Achievements

1. Overall conception

Industrial policy is horizontal in nature and aims at securing framework conditions favourable to industrial competitiveness. Its instruments, which are those of enterprise policy, aim to create the general conditions within which entrepreneurs and businesses can take initiatives, and exploit their ideas and opportunities.

Industrial policy should take into account the specific needs and characteristics of individual sectors. Many products, such as pharmaceuticals, chemicals, automobiles, are subject to detailed sector-specific regulations matching their inherent characteristics or use.

2. Major documents

The initiatives taken to complete the internal market announced in the Commission's 1985 White Paper entitled 'Completing the Internal Market' (COM(85) 0310), gave EU industrial policy a major boost. An integrated market should give industry the advantages already enjoyed by its American and Japanese competitors in their substantial internal markets, including opportunities for mass production, specialisation, economies of scale, transnational cooperation among enterprises, technical

harmonisation, research, innovation, investment and EU-wide tendering.

In 1990, the Commission communication on 'Industrial Policy in an Open and Competitive Environment' (COM(90) 0556) proposed a coherent industrial policy strategy aimed at creating general conditions for enterprise to improve competitiveness of EU industrial policy and compensate where necessary for market failure. The instruments provided by various other EU policies were to be used. Industrial policy strategy has been refined and re-examined in the ensuing years.

The 1993 Commission White Paper entitled 'Growth, competitiveness, employment — the challenges and ways forward into the 21st century' (COM(93) 0700) referred to the particular importance of expanding research and technological development, adjusting education and training systems and accelerating the installation of trans-European networks, especially in the areas of transport, telecommunications and energy, in a partnership between the public and private sectors.

The 1995 Commission report (SEC(95) 0437 final) on 'Implementation of Council Resolutions and Conclusions on Industrial Policy' showed that action taken by the EU on industrial policy contributes to a general improvement in competitiveness. The Commission reviews the state of competitiveness of EU industry in annual reports. The 2002 report on European competitiveness (SEC(2002) 0528) examined issues such as the role of human capital in economic growth, productivity in services, sustainable development in manufacturing industry, and links between industrial policy and competition policy.

In December 1995, the Commission adopted the Green Paper on innovation (COM(95) 0688 final), which identified factors which encourage or hamper innovation in the EU and proposed, at all decision-making levels, practical measures to step up the EU's overall innovation capacity, with special emphasis on SMEs. In 1996, Parliament endorsed the main principles of the Commission's conclusions on innovation.

The Commission Communication entitled 'Competitiveness of European Enterprises in the face of globalisation' (COM(98) 0718) invited industry, trade unions and the EU institutions to define a new industrial policy and proposed measures for improving the competitiveness of EU companies in the global market.

The Commission considered it necessary to examine the future of EU industrial policy in view of European enlargement. In 2002, its communication on 'Industrial policy in an enlarged Europe' (COM(2002) 0714) underlined the key role of knowledge and innovation in a global

economy. EU industry is faced with the challenge of globalisation, which requires EU industry to respond quickly to unanticipated developments, and an increased convergence on regulatory issues. Other challenges include technological and organisational changes, improved innovation and entrepreneurship, improved investment in sustainable development and lastly the recognition of changing societal demands. The Commission proposes that all these challenges be met through the promotion of innovation, knowledge and research, of entrepreneurship, and of sustainable industrial production.

The communication entitled 'Fostering structural change: an industrial policy for an enlarged Europe' (COM(2004) 0274) follows on from the December 2002 communication on 'Industrial policy in an enlarged Europe' and the November 2003 communication on 'Some Key Issues in Europe's Competitiveness — Towards an Integrated Approach', which had sketched out an analysis of the problem of deindustrialisation. The Commission proposes three types of action to accompany structural change. Firstly, the EU must continue its efforts at better legislation and creating a regulatory framework that is favourable to industry. Secondly, the synergies between different Community policies having an impact on industry's competitiveness need to be better exploited. Thirdly, the Union must continue to develop the sectoral dimension of industrial policy.

The Commission Communication on industrial policy, announced as part of the EU's Lisbon programme in July 2005, aims to strengthen the European Union's industrial sector by developing a more integrated approach to industrial policy (COM(2005) 0474). The health of manufacturing industry is essential for Europe's ability to grow. This communication aims to extend and complete the existing framework of EU industrial policy by focusing on its practical application in the various sectors.

Role of the European Parliament

The Maastricht changes to the EC Treaty dealt with the question of industrial policy for the first time, an achievement that can be attributed to initiatives by the European Parliament (Parliament) which helped stimulate the reorganising of the steel sector and called for a more dynamic industrial policy. Parliament adopted numerous resolutions, e.g.:

- resolution of 14 May 1998 on the Commission paper on 'Competitiveness of European Industry' identified weaknesses in the European economy (e.g. inadequate presence in new areas of information technologies, low investment, unfriendly tax systems causing company relocations, a fragmented single market coupled with a lack of a European company identity) and called on the Commission to come forward with a genuine European industrial policy based on a mix between incentives to encourage investments, loans or direct financial aid to help old industries modernise and the use of venture capital;
- resolution of 15 January 1999 called on the Commission for a detailed analysis of the effects of the international financial crisis on EU industry, especially for textiles, steel and shipbuilding;
- resolution of 13 June 2002 assessed the Commission communication of November 2001 on 'Sustaining the commitments, increasing the pace' (COM(2001) 0641) and, in particular, reiterated its support for the objective of the Lisbon European Council in 2000 of making the EU, by 2010, 'the most competitive and dynamic knowledge-based economy in the world, capable of sustainable growth with more and better jobs and greater social cohesion';
- resolution of 9 June 2005 welcomed the Commission's decision to make industrial policy a priority on the EU agenda and supported the promotion of a proactive industrial policy to foster and anticipate structural changes and develop a sound and competitive industrial base;
- resolution of 5 July 2006 on 'A policy framework to strengthen EU manufacturing — towards a more integrated approach for industrial policy' (2006/2003(INI)) welcomed the Commission communication, which set out a policy framework and an enhanced work programme for the manufacturing industries for the coming years and considers this communication a major building-block for shaping a sound and balanced industrial policy by combining concrete sectoral actions with cross-sectoral policy initiatives.

→ Miklos GYÖRFFI
09/2006

4.7.2. Steel industry

A. Legal basis

Fifty years after entering into force, the Treaty on the European Coal and Steel Community, as the legal base for the steel industry, expired as planned on 23 July 2002. Before its expiry, it had been amended on various occasions by the following treaties: the Merger Treaty (Brussels 1965), Treaties amending certain financial provisions (1970 and 1975), the Treaty on Greenland (1984), the Treaty on European Union (EUT, Maastricht, 1992), the Single European Act (1986), the Treaty of Amsterdam (1997), the Treaty of Nice (2001) and the Treaties of Accession (1972, 1979, 1985 and 1994).

At the beginning of the 1990s, following extensive debate, its expiry was considered the best solution as opposed to renewing the Treaty or a compromise solution. Thus, the Commission proposed a gradual transition of these two sectors into the Treaty establishing the European Community. The rules of this Treaty have applied to the coal and steel trade since the expiry of the ECSC Treaty.

A protocol on the financial consequences of the expiry of the ECSC Treaty and on the research fund for coal and steel is annexed to the Treaty of Nice. This protocol provides for the transfer of all assets and liabilities of the ECSC to the European Community and for the use of the net worth of these assets and liabilities for research in the sectors related to the coal and steel industry.

Some decisions of February 2003 contain the necessary measures for the implementation of the provisions of the protocol, the financial guidelines and the provisions relating to the research fund for coal and steel. Thus, since the Treaty of Maastricht, Article 157 of the EC Treaty constitutes the legal basis for the steel industry. This article, is governed by co-decision, giving the European Parliament (EP/Parliament) the role of co-legislator.

B. Objectives

The EU is the world's second largest steel producer after China, with total production of crude steel of 143 million tonnes in 2004 (30 % of world production). The European steel industry comprises some 300 enterprises — almost all of them large. They account for about 1.8 % of the value added and 1.5 % of employment in EU manufacturing. There has been a rapid growth in steel production elsewhere in the world — mainly in Asia — leading to a sharp decline in the EU's traditional surplus in iron and steel. EU imports have increased from 15.4 million tonnes in

1997 to 26.6 million tonnes in 2001. The EU is second to the US in trading power, with Japan third.

The Luxembourg-based Arcelor Group, created in February 2002 following the merger of three steel producers — Aceralia, Arbed and Usinor — became the world's second largest steel making group, with 5 % of the market. In 2006, following a bid of Mittal Steel, based in The Netherlands, a new group called Arcelor Mittal has been formed, which is the world's leading steel company, by both revenue and production. The company operates 61 plants across 27 countries, employing some 320 000 employees.

EU tariffs for steel products are relatively low. The average consolidated bound rate was around 2 % in 2000, and all tariffs disappear in 2004 in line with the EU's commitments in the GATT Uruguay Round. Imports from many countries enter the EU at preferential rates under bilateral agreements. Imports of steel products from all countries except Russia, Ukraine and Kazakhstan enter the EU freely without facing quantitative restrictions or similar barriers.

Naturally, the global economic situation has had a great impact on demand for steel. World export prices for a tonne of commonly traded hot-rolled coil rose to USD 400 during 2003, up from USD 260 in 2002 and USD 175 in 2001. The rises have sparked anger on the part of big steel users like Caterpillar, the US maker of construction machines, and Emerson, a leading electronics equipment producer. Since January 2002, the shares of Ispat, Corus, Nucor and Arcelor (some of the largest steel making companies in the world) have risen 85 %, 31 %, 28 % and 22 % respectively, relative to world stock markets. However, while demand in the EU and the United States is decreasing rapidly, China comes to the rescue of the world's steel makers. Unexpected surges in demand of as much as 10 % in 2002 pulled global steel consumption to a record level in 2002. The high demand is primarily a result of the country's booming construction industry.

To reduce costs and increase competitiveness, many large steel producers are collaborating on the improvement of production technologies. In 2002, Eurostrip, and Arcelor, ThyssenKrupp and Voest Alpine consortium, set up two test plants in Germany and Italy, producing steel by a thin-strip method called Castrip, based on technology originally developed by BHP, an Australian mining and steel concern. The partners are currently attempting to license this technology, which they say could lead to steel plants making 500 000 tonnes a year with half the costs of conventional mills.

In March 2002, US President Bush announced tariffs for three years of up to 30 % on imported steel, guided by section 201 of the Trade Act, a safeguard clause in US trade legislation. This decision was made in order to protect the country's ailing steel industry during a restructuring of the American industry. President Bush had followed the International Trade Commission's recommendation from 2001 to impose significant tariffs of between 20 % and 40 % on 17 steel products for three years in order to remedy the steel crisis in the US. Under WTO rules, countries can impose temporary increases in tariffs, known as safeguards, to give time for a domestic industry to restructure to improve competitiveness. The EU Commission, however, claims the US action breaks WTO rules. It is particularly concerned that there has been no overall increase in steel imports — a precondition for safeguard actions — and that some of the moves target the wrong steel products. Two thirds of EU steel exports were affected by President Bush's actions, which came into force two weeks after the announcement.

In June 2002, the WTO's Dispute Settlement Body accepted the request by the Commission and by other world producers that a panel should be established to judge the legality of the US steel safeguards. Their arguments included the following:

- the US hit a wide diversity of steel products on the basis of an arbitrary definition of like-products;
- the US action was not justified by sudden, recent, sharp and significant increase in imports;
- the US failed to ensure that the injury caused by other factors is not attributed to imports;
- as a result, the US measures are disproportionate because they go beyond the extent
- necessary to remedy the injury caused by imports;
- the US excluded imports from certain WTO members from the measures, in a manner incompatible with relevant WTO provisions;
- the US failed to observe the obligation to grant equal treatment in excluding developing members from their protectionist measures.

The tariffs affected two thirds of the EU's steel exports and the Commission rapidly took action, imposing additional customs duties on imports of certain US products. On 12 July 2002, the total number of steel products exempted from the tariffs was 250, or about 6 %. Most of the exempted products were smaller speciality items, which are not sold in large volumes in the US. Retaliatory sanctions from the EU towards the US could amount to as much as EUR 378 million. EU Trade Commissioner Pascal

Lamy said the decision on whether to retaliate or not would depend on how many European steel companies gained exemptions from the tariffs.

The climbing steel prices affect in particular the automotive industry. In Russia, car producers have had to break contract relations with regional steel producers and start building new ones with foreign suppliers, whose products can be cheaper. Russia exports steel worth up to EUR 460 million a year to the USA, but its exports are currently severely affected by the US tariffs. However, the decrease in exports to the USA is being partly compensated for by an EU–Russia trade agreement, signed on 9 June 2002, designed to increase imports of certain Russian steel products into the EU. The agreement increases quantitative limits for the import of steel products such as flat and long products into the EU for 2002 to 2004. Similar agreements have been made with both Ukraine and Kazakhstan.

From an environmental viewpoint the industry remains an important emitter of carbon dioxide, accounting for around 30 % of all industrial CO₂ emissions in the EU. During the last 20 years, the energy required to produce a tonne of steel has fallen by 40 %, and throughout the nineties there has been a reduction of 20 % in CO₂ emissions for the industry. Steel is 100 % recyclable with no downgrading in quality. This makes steel the most recycled material in the world.

In many of the new Member States the steel industry is of great importance. In March 2002, representatives from the Czech Republic held meetings with the EU on the restructuring of the Czech steel industry. Poland is seeking a privatisation of the industry with help from foreign investors. Polish production in the first quarter of 2002 fell 11.3 % from the same period of 2001, and in the second quarter fell a further 16 %, producing 8.8 million tonnes of steel compared to 10.5 million tonnes in 2000. Nearly half of Poland's 25 steel mills have been privatised since 1990, and over EUR 1 000 million have been invested in modernisation programmes over the same period. Romania is attempting to retain its privileged status under the association agreement with the EU.

For some time now, the EU has been pressed by Japan to allow the new Member States of central Europe to prolong the favourable terms which they accord to foreign investment. Japanese companies are concerned that their investment advantages will be lost if Poland, the Czech Republic, Hungary and other new EU members abolish the preferential rules designed to attract foreign capital. So far, the EU has insisted on an end to the practice as a condition of EU membership.

C. Achievements

After the expiry of the ECSC Treaty, the Eurostat statistics system on the steel industry was meant to expire. However, both the steel industry and the Commission requested a prolongation of the system until the end of 2002, since statistics have shown to be an important aid in the decision-making process for both policy makers and the industry. In 2003, Regulation (EC) No 48/2004 of the EP and of the Council established a common framework for the statistics on the production of the steel industry for the period 2003–09. Each year the Member States forward their aggregated data to the Commission, which within five years of the entry into force of the Regulation must submit a report to the EP and the Council on its implementation.

As a response to the US tariffs, a resolution of the ECSC Consultative Committee was adopted unanimously in April 2002. The Consultative Committee, whilst recognising that the US steel industry is faced with economic, social and regional problems, firmly contested that these problems were caused by imports, since the volume of imports into the US in 2001 alone fell by more than 23 %. The Consultative Committee doubted that there were sufficient grounds for taking measures under Article 201 of the US Trade Act. The first steps had already been taken in January 2002, when the Commission adopted Regulation (EC) No 76/2002 introducing prior surveillance of imports of certain iron and steel products covered by the ECSC and EU Treaties originating in certain third countries as a response to the already worsened situation of the steel industry and the possibility of American-imposed tariffs.

Council Regulation (EC) No 1031/2002 established additional customs duties on imports of certain products originating in the US. Additional duty of 100 % was imposed on certain products such as some dried vegetables, fruits, juices and clothing. In February 2003, Parliament expressed its concern in two resolutions in February 2003 about the continuing US tariffs and the overall crisis in the steel industry, pointing to the decision of the steel giant, Arcelor, to close hot rolling lines in all the group's continental sites, which will lead to thousands of

job losses throughout Europe. The Commission was asked to pursue, through both the OECD and the WTO, stricter multinational rules against unfair competition.

Enlargement has affected the agreements with a number of countries. The customs duties applied to all of the new EU Member States and Turkey will be gradually reduced. Similarly, the Council has amended its agreements with Ukraine (Decision 2004/521/EC), Russia and Kazakhstan, which all relate to trade in certain steel products.

The European Commission has also taken a more firm position on imports originating from such countries as Russia, India, Ukraine, China and other major non-European producers by introducing a set of anti-dumping duties.

D. Role of the European Parliament

The EP has on several occasions sought to defend Europe's iron and steel industry.

- In its resolution of 12 February 2004, Parliament states that it is necessary to ensure that a strong and modern steel sector is maintained in the EU, in order to meet the requirements of lasting development and job creation. It urges the Commission to act firmly within the WTO and OECD to guarantee that there is a level playing field in the global steel market. It also welcomes the efforts made by Commissioner Lamy in the steel conflict with the US and expresses its concern about the steady loss of market share of Italian and European steel production.
- In its resolution of 24 February 2005, Parliament invites the Commission, after the expiry of the ECSC Treaty, to present a strategy for the future prospects of the steel sector in order to promote independent European capacity in this sector. It also calls on the Commission to work for a decision at WTO and OECD level that would ensure the protection of the Union's steel industry on the international market.

→ Miklos GYÖRFFI
09/2006

4.7.3. Shipbuilding

Legal basis

Since the Treaty of Maastricht, Article 157 of the EC Treaty has laid down initiatives for industrial policy by which the Commission can coordinate the actions of Member States. This article, which was amended by the Treaty of Nice, governed by co-decision, giving the European Parliament (Parliament) the role of co-legislator is the one also to serve as the legal basis for the shipbuilding industry.

Objectives

In 2004, Japan was the world's largest shipbuilding country, followed by Korea. Today the EU only accounts for 13 % of world tonnage (2002). The largest European shipbuilding group is the Norwegian Aker Yards Group, the world's fourth largest, with more than 10 shipyards. The industry in Europe covers the highest technological segment of world production: advanced container vessels, ferries and ro-ro ships, multipurpose and shuttle tankers, offshore platforms and FPSO, chemical and gas carriers, sophisticated fishing vessels and small, specialised ships.

The shipbuilding industry has for some time been facing major problems due to an imbalance of supply and demand. Past expansion of shipyards, mainly in Korea but increasingly in China too, has resulted in prices decreasing rapidly. The global economic situation has led to a sharp decline in demand; in 2001, only the segment of liquefied natural gas carriers (LNGs) saw an increase in absolute order volume. However, this is a niche market as it only represents around 8 % of world orders in compensated gross tonnes (cgt). Korean yards took 79 % of new LNG carrier orders in 2001, without holding any patents on the requisite key technologies. Daewoo Shipbuilding, the world's second largest shipbuilder, is the world's largest constructor of LNG carriers, taking half of world LNG tonnage orders in 2000. Along with semiconductors and steel, shipbuilding was the major driver of South Korea's economic growth in 2001.

In the 1990s, South Korean shipyards tripled their shipbuilding capacities, while ignoring demand levels in order to achieve market leadership, which they achieved in 1999. This led to overcapacity and destructive prices for the international shipbuilding market. Even the economic and financial crisis in South Korea, which began in 1997, did not lead to a change of course, although the country had been granted substantial international financial support under the condition that it incorporated the principles of a free market economy. Shipyards that were heavily indebted and

had been declared bankrupt were not closed down, but freed of debt by the state without capacity restrictions in return. The devaluation of the South Korean currency gave the yards an additional competitive advantage. In 1999, prices from the Korean yards had been reduced to down to 40 % below production costs, according to an EU Commission report. And since the EU was pursuing a policy to reduce the State aid granted to European shipbuilding companies, the lower prices of the Asian companies meant significant market shares for the Korean shipyards. Thanks to a historically high level of ordering in 2000, prices recovered to some extent, but the significant drop in orders in 2001 led to a new reduction in prices (total orders were 21 % lower in 2001 than in 2000 based on cgt). While the decline in the world economy in 2001 mainly affected the liquid bulk and the container segments, the events of 11 September had a strong impact on the cruise industry, which saw three bankruptcies and a significant drop in bookings.

Up to May 2001, the Commission tried to engage South Korea in talks aiming to stabilise the world shipbuilding market through market instruments. The investigation into subsidies carried out under the Trade Barrier Regulation (TBR) established that substantial subsidies had been granted to Korean shipyards through both export and domestic programmes, which contradicted the WTO's 1994 Subsidies Agreement. These efforts took place on a bilateral level and in the OECD. However, no progress was achieved, as the Korean government claimed that it had no influence on the shipyards or on the financial institutions supporting them, and further said that it was convinced business was conducted along free market principles.

After the fruitless talks between Korea and the EU, the Commission drew up a TBR report in May 2001. It found that Korean state aid to shipyards included, in particular, aid totalling EUR 2 600 million to Daewoo and EUR 1 700 million to Sambo. In October 2000, the Committee of European Union Shipbuilders' Associations (CESA) lodged a complaint under TBR in order to eliminate certain trade practices caused by the subsidising of commercial shipbuilding in Korea and adversely affecting EU sales of commercial vessels. The report found subsidies in the form of the advance payment guarantees and loans provided by the state-owned Export-Import Bank of Korea (KEXIM), which were not consistent with WTO regulations, debt forgiveness and interest relief by government-owned and government-controlled banks, and special tax concessions.

In the middle of the trade dispute with the EU, South Korea unveiled an ambitious programme on 17 June 2002 to extend the country's leadership in the industry, ignoring foreign pressure to reduce capacity. The programme — suggested at a meeting of government officials and shipbuilders — called for USD 170 million to develop new technology over the next 10 years. At the meeting, the Korean shipbuilders agreed to raise their global market share from 30 % in 2001 to 40 % in 2010. It was suggested that high-end and high-margin vessels such as cruise ships and supply vessels should account for 35 % of total production in 2010 compared to 13 % in 2001.

Furthermore, they promised to boost exports of shipbuilding equipment and parts to USD 2 000 million by 2010 from USD 370 million in 2001. In 2001, ship exports accounted for 6.4 % of South Korea's total exports. The programme also highlighted concerns about Japanese shipbuilders who were teaming up to compete with Korean rivals through mergers and strategic partnerships. Still, the Korean shipbuilders had enough construction orders to keep them busy until the end of 2003. In May 2002, the world's largest shipbuilder, Hyundai Heavy Industries won USD 400 million worth of orders from four shipping firms to build 12 petroleum carriers. At that time, Hyundai had captured orders for 22 ships worth about USD 800 million, bringing its backlog to 110 ships, enough to occupy its shipyards for the next two and a half years.

In order to further increase sales in the EU, Korean shipbuilders have been holding talks with several Dutch companies, which are said to be very strong in fields like navigation, consulting and high-tech equipment. Furthermore, the Netherlands has the asset of the Port of Rotterdam, which has grown to become one of the busiest in the world. In 2001, the Netherlands was the second largest investor in Korea after the US. Korean shipbuilders are also highly interested in the Czech Republic, which they hope to use as an entry point to the EU market. The country was ideal for investments just before it became a part of the EU, since there were a large number of advantages for foreign investors: cheap labour, 10-year tax holidays, job creation grants and duty-free import of machinery. Furthermore, the country's steel production is known by shipbuilders worldwide to be of high quality.

As far as the new Member States are concerned, the Commission carried out a study in 2000, in which it is stated that eastern European yards need cash aid in order to withstand the competition after their accession to the EU. Bulgaria requires financial support from outside the EU because of the weakness of the country's banking system, according to the report. However, low labour costs bring hope for the industry in the future. The Slovakian sector is having the same problems and is furthermore still suffering

significantly from the Kosovo conflict. There are positive signs in Lithuania and Latvia with the four Lithuanian yards expanding beyond their traditional Eastern European customer base to Scandinavia and western Europe. Europe's third-largest shipbuilder, Poland's Gdansk Shipyard, filed for bankruptcy in 2002, with debts of USD 448 million. However, the company reopened with fewer workers with the help of the Polish government, since the industry needed to be cleared up before EU entry. It employs about 7 500 people, with revenue worth EUR 300 million in 2005.

Achievements

As regards the Republic of Korea and the EU, the Commission is claiming that the Korean shipbuilding industry is contravening the WTO's 1994 Subsidies Agreement. Also in 1994, Council Regulation (EC) No 3286/94 (the Trade Barrier Regulation) was adopted. This regulation sought to establish the necessary EU procedures in the field of the common commercial policy to enable the EU to exercise its rights under international trade rules, in particular those established under WTO auspices. On 24 October 2000, the Committee of European Union Shipbuilders Associations' (CESA) filed an official complaint under the Trade Barrier Regulation (TBR).

With a view to achieving a quick settlement of the dispute, on 18–19 July 2000 the EU and Korea held a first round of consultations on shipbuilding in Seoul. The EC and Korea adopted minutes on that occasion with a view to promoting fair and competitive conditions and stabilising the market. In accordance with these minutes, the Korean government agreed to refrain from any direct or indirect intervention to underwrite loss-making Korean shipyards and to apply internationally accepted financial and accounting principles to ensure that Korean shipyards set prices that reflected market conditions. The EU ended operating aid in the form of subsidies to European shipbuilders on 31 December 2000, because the Commission was convinced that State aid was in principle a factor that distorted competition and did not necessarily help the industry to improve its competitiveness.

Given the failure of the negotiations between the EU and Korea, on 25 July 2001 the EU proposed adopting a Council regulation imposing a temporary defensive mechanism of providing EU shipbuilders with subsidies in order to make them competitive once more. It was one element of the Commission's two-stage strategy, which consisted of proposing a temporary defensive mechanism and then initiating dispute settlement proceedings. Competition Commissioner Mario Monti stated that the proposal in no way aimed to reintroduce operating aid to shipbuilding, which came to an end on 31 December 2000, but was

simply a way of bringing back the competitiveness of the European industry. The proposal was adopted on 27 June 2002, with the EU firstly aiming to resolve the dispute amicably, after which it would immediately launch procedures for the establishment of a panel of experts responsible for preparing the EU–Korea case within the WTO and activate the temporary defensive mechanism for European shipbuilding, disregarding the reservations of Finland, Sweden, Denmark and the UK. France decided to back the Commission's proposal at the meeting of the EU Industry Council on 6 June 2002 in Luxembourg, thus helping to create the qualified majority in the Council required for the process. A year earlier, the Commission had already proposed reintroducing subsidies temporarily for European shipyards, but disagreement among the 15 States had blocked the plan. This time, Competition Commissioner Mario Monti said that the compromise plan would reduce the amount of subsidies from the originally proposed 14 % and that it would also limit their duration and scope. The Commission will now hold a series of further negotiations with the Korean authorities in an attempt to restore normal trading practices. The proposal for the defensive mechanism was limited to those market segments in which the Commission and the Council found that the EU industry had been considerably injured by unfair Korean trade practices, namely container ships and tankers carrying products in general and chemicals in particular

Seeing that the negotiations broke down between the EU and South Korean authorities in September 2002, the Commission stated in its Communication on the world shipbuilding industry (6th report) of November 2002 that it had again initiated WTO action against Korea through the dispute settlement procedure.

On 11 June 2003, the Community called on the Dispute Settlement Body (DSB) to establish a panel on the unfair practices of Korea's shipbuilding sector. As Regulation (EC)

No 1177/2002 was due to expire on 31 March 2004 and as the Republic of Korea had not yet implemented the measures decided upon in the 'agreed minutes' and the discussions in the WTO had little chance of finishing before that date, it was decided that the temporary defensive mechanism would be extended to 31 March 2005.

Given the prospect of enlargement, the Commission proposed a new programme, LeaderSHIP 2015, which defines the future of the European shipbuilding and ship repair industry. This programme was drawn up within the framework of Industrial Policy in an Enlarged Europe. LeaderSHIP 2015, which seeks to promote safe and environmentally-friendly shipbuilding together with a European approach to the needs of the shipbuilding industry, is the equivalent of 'G10 Medicines' for the pharmaceutical industry and 'STAR 21' for the aerospace industry.

Role of the European Parliament

Parliament has for a long time defended the European shipbuilding sector, particularly in light of the competition from South Korea. In its resolution of 30 May 2002, in which it states that, as early as November 2001, it approved the Commission proposal for a Council regulation concerning a temporary defensive mechanism for shipbuilding, Parliament 'recalls that it asked the Commission to amend its proposal to include other market segments, namely gas tankers (LNG and LPG carriers), ferries and ro-ro vessels, as these ship types are also referred to in the complaint lodged with the WTO'. Parliament also reiterated its demand that the proposed temporary defensive mechanism should accompany the Community's actions against Korea in the WTO and that it should apply only for the duration of the WTO proceedings.

→ Miklos GYÖRFFI
09/2006

4.7.4. The automobile industry

Legal basis

Although the Treaty of Rome contained no specific provisions on a common policy for the automobile industry, the Treaty's provisions on competition, State aid (Articles 81–89) and the internal market empower the Commission to intervene in the automobile market. It may be authorised to negotiate with third countries (external policy). Article 157 of the Treaty provides the legal basis generally used for the EU industrial policy.

Objectives

The EU is focused on strengthening the competitiveness of the European automotive industry by implementing an effective internal market and global regulatory framework as well as promoting the interests of industry in other areas such as transport, the environment, competition, trade and enlargement.

Achievements

At the beginning of 2005 the Commission launched the high-level group CARS 21 ('Competitive Automotive Regulatory System for the 21st Century'), which brought together all the representatives of the car sector: from manufacturers to oil companies and consumer associations. The task of this group was to reflect upon the future of Europe's automobile sector, which employs more than 2 million people and is the world leader in this field. By the end of 2005 the group has produced its final report in which it has determined the regulatory measures required over the next 10 years. Its objectives include better lawmaking and simplification of the legislation that exists.

In addition to the aim of making the industry more competitive, the EU made an overview of priorities in road safety (COM(2000) 125) and policies on pollutant emissions.

A. Internal market

Harmonisation of technical requirements on motor vehicles has been achieved for three categories of vehicles: passenger cars, motorcycles and tractors. In total, over 100 directives are in place regulating the construction and functioning of motor vehicles:

- motor vehicles: Directive 70/156/EEC on type-approval of motor vehicles and their trailers, amended 19 times since 1970, lastly by Directive 2003/97/EC;
- motorcycles: Directive 2002/24/EC on type-approval of two or three-wheeled motor vehicles and tractors;

- tractors: Directive 2003/37/EC on type-approval of agricultural or forestry tractors, their trailers and attached equipment entered into force in July 2003.

The EU Whole Vehicle Type-Approval (WVTA) system has been mandatory for passenger cars and motorcycles since October 1998 and June 1999, respectively. As a result, the manufacturers have only one set of rules to consider (the relevant European type-approval directives) before marketing their products anywhere in the EU.

Optional harmonisation has been achieved for tractors since 1990. For this category, manufacturers may choose between applying the EU directives and obtaining a WVTA, or requesting a national type-approval based on the technical requirements of a Member State.

Partial harmonisation has been achieved for the remaining vehicle categories, i.e. heavy goods vehicles. A directive has been proposed to make the WVTA principle compulsory for these types of vehicles in stages, from 2007 to 2013.

The principle of type-approval implies that each authority granting an approval for a vehicle, a system, a component or a technical unit is and remains solely responsible for ensuring the conformity of production (COP) during the whole period of validity of the approval.

In the field of vehicle safety, a number of directives have been adopted, i.e. protection of motor vehicle occupants in the event of a frontal and side impact (Directives 96/79/EC and 96/27/EC respectively), frontal underrun protection of heavy goods vehicles (Directive 2000/40/EC), liquid-fuel tanks and rear underrun protection of motor vehicles and their trailers (Directive 2000/8/EC), and roadworthiness tests for motor vehicles and their trailers (Directive 99/52/EC).

The Commission is concerned with the safety of pedestrians and cyclists through the voluntary agreement signed with the automobile industry. This system will eventually be supplemented with a directive on the frontal protection of vehicles. The text is currently being examined and the European Parliament (EP/Parliament) has completed its first reading.

B. Competition policy

In promoting industrial cooperation to assist small suppliers of motor vehicle components, the Commission adopted Regulation (EC) No 1475/95 on the application of the competition rules of the Treaty to certain categories of motor vehicle distribution and service agreements valid for a seven-year period. It provides an instrument to reduce price differentials within the EU for cars, opening up the

possibility of parallel trade. The Commission periodically publishes surveys of car price differentials between Member States.

C. Research and development policy

The car industry is a significant recipient of the EU funding set aside for research and development under the Sixth Framework Programme (2002–06). In the Seventh Framework Programme (2007–13) the industry will also receive significant funding, however, in a way to be able to respond to critical events and challenges of future transportation systems for example novel transport and vehicle concepts, automation, mobility or organisation.

D. External trade policy

The EU's external trade policy is designed to protect its automobile market and to improve its industry's access to third countries through trade policy measures.

The Council's 1994 measures establishing the EU's import system and rules governing external trade defence instruments gave the EU a set of rules that enables it to deal with unfair trade practices more effectively than before.

In 1991 the EU concluded a trade agreement with Japan aimed particularly at gradually opening the EU market to Japanese cars and light commercial vehicles during a transitional period ending on 31 March 1999 and precluding market disruptions that such imports might cause. Both Japanese and Korean markets have been opened further to European imports. During 1998, the Commission continued to ensure correct application of the EU–Japan arrangement for Japanese exports of cars and light commercial vehicles.

Global technical harmonisation is a key factor in strengthening the competitiveness of the European automotive industry worldwide.

The EU and its Member States have always been at the forefront of international harmonisation efforts by actively supporting the work within the Revised 1958 Agreement of the UN Economic Commission for Europe (UN-ECE) on international technical harmonisation in the motor vehicle sector. The EU became a contracting party to the agreement on 24 March 1998 and over 100 regulations have been developed under its auspices. There is a very strong analogy between EU legislation and some of these regulations in terms of their technical provisions. The EU has adopted 78 regulations to date, most of which are considered to be equivalent to their corresponding EU directives. As a result, type-approvals based on these regulations are accepted in the EU as equivalent to type-approvals based on the respective separate directives.

In addition, the EU negotiated, through the UN-ECE, a new Global Agreement of 1998 to allow non-contracting parties to the 1958 Global Agreement, such as the US, to be associated more closely with the international harmonisation process. Both instruments have the same scope as to harmonising technical regulations on motor vehicles and parts, but the 1998 agreement does not provide for the mutual recognition of approvals granted on the basis of global technical regulations. As regards decision-making, the 1998 agreement is based on consensus, whereas the 1958 agreement relies on majority voting of regulations. In addition, unlike the regulations adopted under the 1958 agreement, those adopted under the Global Agreement do not have direct effect in the contracting parties' legal systems.

E. Environment policy

As far as environmental protection is concerned, significant progress has been made in reducing pollutant emissions, greenhouse gases and waste:

- Directive 70/220/EEC on measures to be taken against air pollution by emissions from motor vehicles lays down the limit values for motor vehicle carbon monoxide and unburnt hydrocarbon emissions;
- Commission Directive 77/102/EEC added limit values for emissions of nitrogen oxides (NO_x);
- Directive 88/436/EEC introduced limit values for particulate emissions from diesel engines;
- Directive 94/12/EC introduced more stringent limit values and provided for a 50 % reduction in the most harmful vehicle emissions compared to 1991 levels;
- Directive 98/69/EC introduced yet more stringent values to apply from 2000 and 2005, according to the type of vehicle.

The EU strategy to reduce CO₂ emissions from passenger cars and improve fuel economy (COM(1995) 689 final) was endorsed by the Council in 1996. It aims to achieve an average specific CO₂ emission figure for all passenger cars of 120g CO₂/km by 2010 at the latest. The objective is to be achieved by three instruments:

- commitments by the automobile industry on fuel economy improvements, to achieve an average specific CO₂ emission figure for new passenger cars of 140g CO₂/km by 2008/9;
- labelling of cars with information on fuel economy and CO₂ emissions of new passenger cars offered for sale or lease in the EU to enable consumers to make an informed choice;
- the promotion of car fuel efficiency by fiscal measures. The Environment Council in October 1999 reiterated the

need to study the possibility of establishing a reference framework for fiscal incentives.

The EU established a programme on air quality, road traffic emissions, fuels and engine technologies (the Auto-Oil Programme) in 1997. Its objective is to develop an enhanced methodology to assess measures to reduce noxious emissions from road transport and other sources. This technical input will help develop vehicle emission and fuel quality standards and other measures to achieve the air quality standards and related objectives at least possible cost.

A study on emission control technology for heavy-duty vehicles, delivered in May 2002 by a consortium of six organisations, will assist the Commission in the development of future legislation.

The Auto-Oil II Programme was reviewed by the Commission in its communication COM(2000) 626.

Provisions to ensure that new passenger cars and light-duty trucks up to 3 500 kg are designed to comply with required minimum rates with respect to their 'reusability', 'recyclability' and 'recoverability' have been included in the Directive 2005/64/EC of the EP and Council of 26 October 2005.

Role of the European Parliament

The EP has always taken a close interest in the EU automobile industry. It has supported the Commission and encouraged it to establish a common automobile market, to promote the general competitiveness of the automobile industry and to ensure a better balance of trade with third countries. Much attention has also been devoted to problems relating to air pollution by emissions.

As far as CARS 21 is concerned, on 6 October 2005 Parliament held a public hearing, organised jointly by the Committees on the Internal Market, Transport and the Environment. The hearing examined the competitiveness of the car industry and issues concerning road safety and environmental protection.

Two members of the EP participated in the CARS 21 high-level group as Parliament's representatives in the group: Garrelt Duin (PSE) and Malcolm Harbour (EPP-ED).

→ Miklos GYÖRFFI
09/2006

4.7.5. The chemical and pharmaceutical industries

Legal basis

The Treaty of Rome does not contain any specific provisions for the chemical and pharmaceutical industry. However, the EU may undertake certain actions within the framework of competition policy (Articles 81–89), the mandate of 30 May 1980, which empowers the Commission to put forward proposals particularly on industrial policy (Article 308), the common commercial policy and the completion of the internal market (Article 95), and, in certain cases, on the basis of Article 152 on public health. Article 157 provides for the possibility of coordination by the Commission of Member States' initiatives on EU industrial policy.

Objectives

The EU attempts to create favourable conditions for a single market, to have a unified commercial policy and to stimulate investment in this sector.

Achievements

A. Chemical industry

Chemicals are used in all of today's consumer products: food production, medicines, textiles, cars, etc. They also contribute to the economic and social well-being of citizens in terms of trade and employment. The global production of chemicals has increased from 1 million tonnes in 1930 to 400 million tonnes today. In 2003, the EU chemical industry was the world's largest, followed by that of the US, with 34 % of production value and a trade surplus of EUR 60 billion.

The chemical industry is also Europe's third largest manufacturing industry. It employs 1.8 million people directly and up to 3 million jobs are dependent on it. As well as several leading multinationals, it comprises around 36 000 SMEs, which represent 96 % of the total number of enterprises and account for 28 % of chemical production.

1. Internal market

The current system of EU chemicals legislation consists of four legal instruments:

- Directives 67/548/EEC and 99/45/EC on classification, packaging and labelling of dangerous substances and preparations;
- Regulation (EEC) No 793/93 on the evaluation of the existing substances;
- Directive 76/769/EEC on marketing restrictions on dangerous substances.

There is consensus on using these instruments more efficiently and implementing and enforcing them more rigorously.

A 2001 Commission White Paper proposed a strategy on future EU chemicals policy with the overriding goal of sustainable development. In order to achieve this, the Commission identified a number of objectives to achieve sustainable development in the chemicals industry within the framework of the single market, namely:

- protection of human health and the environment;
- maintenance and enhancement of the competitiveness of the EU chemical industry;
- prevention of fragmentation of the internal market.

This White Paper gave rise to the Commission's 'REACH' proposal concerning the registration, evaluation and authorisation of all existing chemicals. This proposal for a directive seeks to find a balance between the competitiveness of the chemical industry and environmental and health protection by testing and registering almost 30 000 chemical substances. A European Chemicals Agency is also planned.

2. Competition policy

Under the terms of the EU's competition policy, any agreement among chemical firms to restructure the market requires prior authorisation from the Commission. The Commission used its investigative powers when it suspected price-fixing in the EU plastics market early in 1987. State aid for the chemical industry has also to be authorised (see annual reports on competition policy). EU legislation, such as the block exemption regulations on specialisation, research and development and patent licensing, is particularly important for this industry.

Commission Communication COM(96) 187 set out a framework for action to strengthen the chemical industry's long-term competitiveness on the basis of specific actions: improving the regulatory framework; ensuring effective competition; encouraging intangible investment and developing industrial cooperation.

3. Research and development policy

The bulk of investment in the chemical industry relates to R & D. The principal pioneering sector is biotechnology, i.e. the application of scientific and engineering principles to the treatment of matter with biological agents. Innovation is also taking place in a second field, that of new materials (advanced composite materials, plastics, ceramics, etc.), which have themselves led to significant breakthroughs in microelectronics and biotechnology. Many chemical firms have taken part in projects sponsored under the framework programme of EU research and technological development activities. Not only does the programme provide financial contributions to meet 50 % of research costs, it also pools the research carried out by various institutes and regions, opening up new market opportunities.

B. Pharmaceutical industry

The sector is characterised by:

- the high cost of research;
- concentration of the industry;
- market fragmentation, especially in price terms.

1. Internal market

In order to remove obstacles to the internal market in pharmaceuticals while at the same time ensuring a high level of public health protection, the EU has, since 1965, gradually developed a harmonised legislative framework for medicinal products. The current system is based on two separate procedures for marketing authorisation:

- the centralised procedure leads to a single marketing authorisation valid throughout the EU based on a scientific evaluation by the committees created within the European Agency for the Evaluation of Medicinal Products (EMA) in London. This procedure is mandatory for certain medicinal products developed by means of biotechnological processes, and optional for certain other categories of medicinal products, such as those that contain new active substances, and those presenting a significant innovation.
- for those medicinal products not eligible for the centralised procedure, or where the applicant chooses not to follow the centralised procedure, the system provides for a mutual recognition procedure. This procedure has to be used by the applicant whenever an application for marketing authorisation for a medicinal product concerns two or more Member States.

Regulation (EEC) No 2309/93 introduced the centralised procedure, which entered into force in 1995. Within six years, the Commission was obliged to report on the experience acquired in Chapter III of Directive 75/319/EEC on medicinal products for human use and in Chapter IV of

Directive 81/851/EEC on medicinal products for veterinary use. The pharmacovigilance chapters of the latter were amended by Directives 2000/38/EC and 2000/39/EC respectively. These amendments are now integrated into Directives 2001/82/EC and 2001/83/EC, which, to improve clarity and rationality, codify and consolidate in a single text all EU legislation on medicinal products for human and veterinary use.

In view of the experience gained from 1995 to 2000 and the Commission's analysis report 'on the operation of the procedures for the marketing authorisation of medicinal products', the Commission proposed amending Directives 2001/83/EC and 2001/82/EC. This revision was implemented through Directives 2004/27/EC and 2004/28/EC.

Alongside this revision, Regulation (EC) No 726/2004 amended the operation of the European Agency for the Evaluation of Medicinal Products (EMEA) and changed it to the European Medicines Agency. The changes to the centralised procedure (Regulation (EC) No 2309/93) are corrections of certain operating methods and adjustments to take account of scientific and technological developments as well as the enlargement of the EU.

2. Competition policy

There are great price disparities for medicines in the Community. Governments also intervene decisively to influence price levels and the conditions governing market access. As regards prices, harmonisation will depend upon the way in which national social security systems are administered and an equalisation of income levels.

Council Directive 89/105 related to the transparency of measures regulating the pricing of medicinal products for human use and their inclusion in the scope of national health insurance systems. Given that medicines are highly innovative products that take a long time to develop, it is not possible to secure a profitable return on investments without a period of patent protection, because imitations quickly appear on the market.

3. Research and development policy

In implementing Communication COM(93) 718 on the outlines of an industrial policy for the pharmaceutical sector, the Commission noted signs of weakness in the EU industry, particularly as regards its capacity to finance R & D of innovative therapeutic drugs, and reviewed the prospects for concentration and restructuring, since these were likely to reshape the industry up to the turn of the century.

C. Cosmetics industry

In the early 1970s the EU decided to harmonise Member States' national cosmetic regulations to enable the free circulation of these products. Following intensive

discussions, Directive 76/768/EEC on cosmetic products was adopted. This directive takes into account the needs of the consumer while encouraging commercial exchange and eliminating barriers to trade. One of its objectives is to give clear guidance on what requirements a safe cosmetic product should fulfil in order to circulate freely within the EU, without pre-market authorisation. The safety of products is taken into consideration in the composition, packaging and information and it falls under the responsibility of the producer or the importer.

Commission Directive 95/17/EC lays down detailed rules for the application of Directive 76/768/EEC as regards non-inclusion of one or more ingredients on the list used for the labelling of cosmetic products. This legislative framework was completed by an inventory and common nomenclature of ingredients employed in cosmetic products established by Commission Decision 96/335/EC.

Directive 76/768/EEC has already undergone seven amendments and 44 technical adaptations to take account of scientific progress.

The most recent amendment (Directive 2003/1/EC) related to the eventual ban on animal testing for cosmetic products. These products will no longer be tested on animals in the EU after 2009, and products tested on animals outside the EU will not be authorised for sale in the Union after 2013.

Role of the European Parliament

A. Chemicals

The European Parliament (EP/Parliament) has stressed that the restructuring of the European petrochemical industry should be European rather than national, bearing in mind the international context in which it has to operate. The EP advocated an approach in which the Commission should monitor the situation closely. There is a need to increase specialisation of product ranges in which European firms enjoy a comparative advantage. On 13 March 1997 the EP adopted a resolution on the chemical industry stressing the elimination of excessive regulations and the conclusion of multinational agreements for the protection of investment.

Parliament has also adopted a resolution on the REACH proposal on 17 November 2005 in which approves an amended version of the Commission proposal. In addition to the parliamentary and legislative work on REACH, Parliament organised a public hearing on REACH in January 2005 on the joint initiative of the Committees on Industry, the Environment and the Internal Market.

B. Pharmaceuticals

In the discussion about the pricing of medicinal products (proposal for a directive, COM(86)765), the EP proposed in March 1988 that a data bank be created by the Commission

in order to improve competition in the pharmaceutical sector and insisted upon transparency of transfer prices. The Commission accepted all the amendments tabled by the EP at first reading of this proposed directive.

On 14 November 1994 the EP adopted two resolutions dealing with the specific research programmes (in the 4th Framework R & D Programme) on 'biotechnology' and 'biomedicine and health'.

The resolutions adopted by the EP in April 1996 on the Communication on the outlines of an industrial policy for the pharmaceutical industry stressed the need to ensure the industry's innovation capacity, the reduction in the time required for the approval of new medicines and the cost effectiveness of research. In response to Parliament's

resolution and the Internal Market Council Conclusions of 18 May 1998, the Commission published a Communication on the single market in pharmaceuticals (COM(98) 588) outlining an agenda of possible approaches and specific measures to complete a single European pharmaceuticals market.

In its capacity as co-legislator, Parliament has participated in all of the revisions of the directives on human and animal pharmaceutical products and the European Medicines Agency.

→ Miklos GYÖRFFI
09/2006

4.7.6. The aerospace industry

Legal basis

Air transport policy is based on Article 80(2) of the EC Treaty. Aircraft construction is based on Article 308, which covers the cases in which the Treaty does not make explicit provision for means of attaining one of the EU's objectives. Article 157 is the legal basis generally used for actions in the field of industrial policy.

Objectives

Aerospace is vital to Europe's objectives for economic growth, security and quality of life. It is influenced by a broad range of European policies such as trade, transport, environment, security and defence. European aerospace must maintain a strong competitive position in the global aerospace marketplace, a condition for achieving the EU's economic and political objectives. The Cologne European Council (June 1999) also recognised the need for an industrial and technological basis for defence to enable the EU to respond to international crises.

Achievements

The European aerospace industry is one of the world's leaders in large civil aircraft, business jets and helicopters, aero-engines and defence electronics, accounting for one third of all aerospace business turnover worldwide, compared with almost half for US industry. The construction of large passenger planes accounts for the bulk of the European industry's turnover, totalling more

than EUR 20 billion of the aerospace industry's EUR 80 billion annual turnover. The entry into service of the enormous A380 carrier, due in 2006, should lead to an increase in this figure.

According to the July 2002 report of the European Advisory Group on Aerospace 'Strategic Aerospace Review for the 21st Century' (STAR 21), which consists of seven aerospace industry chairmen, five European Commissioners, the EU High Representative for the common foreign and security policy and two members of the European Parliament (EP/Parliament), the following features give the industry its distinctive character:

- close links between civil and defence activities,
- cyclical nature of the industry,
- high level of capital intensity,
- consolidation,
- privatisation,
- EU-US relationships.

In response to the STAR 21 report, the Commission has published a communication (COM(2003) 0600), which proposes a coherent framework for the aerospace industry.

A. Aircraft industry

1. Competition policy

The Council Resolution of 1975 and Declaration of 1977 laid the foundations for coordinating Member States'

aircraft construction policies given that aerospace technology is advancing rapidly and becoming increasingly expensive, requiring extensive cooperation. The Airbus programme is exemplary in this respect. Launched in 1968 as an economic interest grouping, Airbus Industrie is now one of the most important players in Europe's aeronautical industry. Other cooperative projects are the Tornado, Alpha Jet and Transall programmes, which, together with joint space projects, greatly increase the competitiveness of European manufacturers. In 1985 a number of EU countries agreed to pool their resources in developing the EFA or 'Eurofighter' for the 1990s.

In its 1997 communications on the European aerospace and defence-related industries, the Commission recognised that the industry is too fragmented to face up to international competition and that restructuring is going too slowly. Accompanying measures were needed — actions under the Fifth European Framework Programme for Research, the application of public procurement rules, the adoption of a European Company Statute, uniform certification by a European Civil Aviation Authority and European standardisation — to avoid a de facto US monopoly.

In its 1999 communication 'The European Airline industry: from single market to worldwide challenges', the Commission assessed the progress of the European airline industry and identified policies to safeguard its competitiveness.

With a view to ensuring the competitiveness of Europe's industries, the communication 'Industrial Policy in an Enlarged Europe' (COM(2002) 0714) mentioned the aerospace sector as one of the sectors that required a clear commitment on the part of the EU and the Member States to improve competitiveness.

2. Research and development policy

The progress made in aerospace research and industry owes more to intergovernmental action and cross-border projects launched by aerospace enterprises than EU intervention. In 1988 the major aircraft manufacturers published a report entitled 'Euromart' (European Cooperative Measures for Aeronautical Research and Technology), which focuses on a programme of cooperative research and development, which is crucial if this European industry is to thrive. It called for the promotion of a strategic programme for the aeronautics industry, similar to that for the electronics sector (Esprit). In June 1995 the Commission set up an Aeronautics Task Force to coordinate research projects in the industry. Aeronautics and space research have been designated as research priorities of the 6th (2002–06) and 7th (2007–13) R & D Framework Programme.

B. The space industry

1. Competition policy

European governments began cooperating in the space sector through the European Space Agency (ESA), banks and industrial enterprises also being involved. The Ariane programme, involving 10 European countries, was launched in 1983. In 1987 the ESA Council of Ministers said that if Europe wanted to maintain its role in space in the future, ESA's 13 Member States should agree the broad-based development of the Ariane programme. The future of the European aerospace industry depends on European cooperation, since no European country has sufficient financial and economic resources to implement major space projects on its own. In 1996 the Commission proposed a European Space Strategy fostering applications in telecommunications, satellite navigation and Earth observation. The measures proposed were based on existing resources (RTD Framework Programme, trans-European networks, national and ESA programmes, EIB–EIF financing), the alignment of trade positions and better coordination. The 1996 and 1997 communications on defence-related industries proposed the application of EU rules on the award of public contracts, intra-Community trade and competition to this sector, which also includes large parts of the aerospace industry. Beyond the emblematic success of the Ariane launcher, space activities have evolved from being a research endeavour to offering a unique and critical technology enabling Europe to address and achieve a large number of policy goals related to economic growth, the information society, transport infrastructure, environmental protection and peace-keeping. Space has the potential to become an integral component of the EU's core policies. The first benefits of such a development are already highlighted by the Galileo and GMES initiatives, respectively in the field of navigation by satellite and global monitoring for environment and security.

Following the 2000 Communication 'Europe and Space: Turning To a New Chapter', endorsed by subsequent EU and ESA Council Resolutions, the Commission and the ESA Executive set up a Joint Task Force. Its aims are to further develop and implement the European strategy for space, reporting to the EU and ESA Councils and the EP at the end of 2001. In December 2001 the Commission Communication 'Towards a European Space Policy' gave an analysis and recommendations for the space sector, highlighting in particular the need to cooperate with the European Space Agency. In the Green Paper on European Space Policy (COM(2003) 0017), the Commission, together with the ESA, began a consultation process with a view to launching a debate on the medium and long-term use of space for the benefit of Europe. These discussions resulted

in the publication of a White Paper and an action plan (White Paper 'Space: a new frontier for an expanding Union — An action plan for implementing the European space policy' (COM(2003) 0673)).

2. Research and development policy

For many years, Europe's public financial support for space research and development was channelled through national space organisations and the ESA, although several space-related R & D technology projects have been financially supported under EU research framework programmes. The 7th Framework Programme is supporting the European Space Programme, focusing on applications such as:

- global monitoring for environment and security (GMES) to provide information to the user community as specified in the EU Action Plan (2001–03);
- applications of satellite telecommunications to provide affordable and economically viable services to the largest possible customer base;
- security aspects (complementary to security research and to GMES activities);
- exploration of space
- RTD for strengthening space foundations (space technology and space sciences).

C. Relations between Europe and the USA

A number of attempts have been made between the ESA and the USA to resolve the problem of State aid in the aeronautics industry. In 1992 the Council adopted Decision 92/496 on an agreement between the EU and the USA on trade in large civil aircraft providing for discipline regarding all forms of government support for manufacturers of large civil aircraft. In 1997 the Commission reviewed the 1992 agreement and decided that it could be improved, particularly as regards subsidies to military programmes, via research credits from NASA and the Pentagon. In July 1997 the Commission also authorised the Boeing/McDonnell-Douglas merger, which had raised deep concerns about competition.

In January 2005 the EU and the United States agreed to begin negotiations on the subsidies affecting the large carrier market, dominated by two companies: Airbus and Boeing. The aim is to use the negotiations to eliminate the various subsidies and ensure full and complete competition between the two firms.

Role of the European Parliament

The EP has adopted the following resolutions:

- in 1996 a resolution on the EU aircraft industry, in which it expressed concern about the European industry's loss

of market share. In November 1996, the future of the European aerospace industry was discussed in an EP symposium;

- in 1997 a resolution welcoming the EU Action Plan for Satellite Communications in the Information Society as well as the Franco–German–UK declaration in favour of a European-level restructuring of the military and civil aerospace industry and endorsing the transformation of Airbus Industrie into a single corporate entity;
- in 1998, reacting to the 1996 Commission communication on space, Parliament called for a strengthening of EU support for Europe's space industry, and reacting to the Commission Communication 'The European Union and Space: fostering applications, markets and industrial competitiveness', it emphasised the urgent need for a reshaping of the EU's space policy.

In 2000 Parliament adopted a resolution on the Commission working document 'Towards a Coherent European Approach for Space'.

In January 2002 the EP stated that it 'welcomes the drafting of a coherent European strategy for space and emphasises the importance of close and effective cooperation between the Commission and the European Space Agency on this initiative'.

In October 2003 Parliament adopted a resolution reaffirming the need for Europe to play a leading role on the international stage and be able to gain access to space through its own efforts, and to develop the necessary technologies, actively involving the countries that have joined the Union. It emphasised in this connection the fact that independent access to space for Europe is fully in keeping with the Lisbon process seeking to make Europe the world's most competitive area through the acquisition and development of a high level of industrial and technological know-how.

In January 2004, in a resolution on the implementation of the space policy, Parliament states that the European Union must make a supreme financial effort, including in particular the development of space applications relating to global security.

→ Miklos GYÖRFFI
09/2006

4.7.7. The audiovisual industry

Legal basis

EC Treaty:

- Articles 23, 25, 28 (free movement of goods, including audiovisual products);
- Articles 39–55 (free movement of workers, right of establishment, freedom to provide services);
- Articles 81 and 82 (rules on competition);
- Article 95 (technical harmonisation, including advanced television services).

Objectives

- The establishment of a common information area, including the setting up of common standards.
- The promotion of television programmes with European content as a complement to existing national programmes.
- Regulatory consistency among the Member States with a view to deregulation (or re-regulation) of broadcasting activities.

Achievements

1. State of integration

Television still operates on analog transmission systems, using three different standards (NTSC e.g. in North America, PAL in most of Europe, SECAM e.g. in France and French speaking countries). 'Over-the-air' transmission is the most widely-used system in Europe but poor reception and problems of frequency capacity have led to the development of cable and satellite. The various terrestrial transmission systems have not yet been harmonised. Digital transmission will permit many more (interactive) services thanks to digital compression. The European Digital Video Broadcasting (DVB) Group has defined specifications for digital satellite and cable which have become ETSI standards and ITU recommendations. High Definition Television is closely linked, financially and commercially, with three sectors: telecommunications, consumer electronics, professional equipment and the components industry where the USA, Japan and Europe have different strengths. Another fast-developing market is wide-screen television.

Even though there has been a boost in demand for TV programmes, supply of truly European products and intra-EU audiovisual trade remain relatively limited. Not one

group in European film/TV/video as yet rivals the global reach of the US 'majors' which in part explains why the EU audiovisual industry has a negative trade balance with the USA. The US Telecommunications Act of 1996, which liberalised the cable, television, telecommunications industry in the US, is likely to increase the competitive pressure and spread into the area of all (electronics) information-entertainment services, in which the EU has opened up its markets both internally and externally.

2. Main achievements

Directive 95/47/EC on the use of standards for transmission of television signals.

Directive 92/38/EEC on standards for satellite broadcasting of television signals.

Council decision 93/424/EEC on an action plan for the introduction of advanced television services in Europe.

Council decisions 89/337/EEC and 89/630/EEC concerning High Definition Television.

Other main achievements have been Directive 97/36/EC of 20 June 1997 ('Television without Frontiers') and the MEDIA Programme. Directive 97/36/EC, amending the 1989 Directive 89/552/EEC, sets up rules for TV programming in the EU. These rules include, inter alia, provisions for advertising, sponsorship, independent producers, European broadcasting preferences and decency standards.

The MEDIA Programme, originally adopted in 1990 for 1991–95, dedicated EUR 200 million to the European audiovisual industry. The MEDIA II Programme (1996–2000) (Council Decision 95/563/EC) has a budget allocation of EUR 310 million and seeks to encourage the free circulation of European audiovisual works and reinforce the competitiveness of the programme industry. In its Communication (COM(98) 446) of 14 July 1998 'Audiovisual policy: next steps', the Commission identified main trends and initiated a review process of audiovisual policy. On 27 July 1998, the Commission proposed a Council decision establishing an EU statistical information infrastructure for the audiovisual industry and markets (SEC(1998) 1325). On 11 March 1999, the Commission proposed a Council decision concerning EU participation in the European audiovisual observatory (COM(99) 111).

3. Competition policy and media concentration

- (a) With the 1980's liberalisation of the media in Europe, fierce competition began for market share and position between European groups and US companies. In 1994,

the European Commission carried out a vast consultation process with the European audio-visual industry on the competitiveness and competition in the audiovisual sector, which the White Paper on 'Growth, Competitiveness and Employment' (COM(93) 700), identified as one of the key sectors in the Information Society. The exercise was based upon the Green Paper 'Strategy options to strengthen the European programme industry in the context of the audiovisual policy of the European Union' (COM(94) 96). Major European audiovisual group strategies have focused on the need to achieve critical mass, the desire to diversify and to secure access to larger international markets. A series of important mergers and acquisitions have taken place, though many have been limited to a national scale.

- (b) The Commission has begun to apply the EU's competition rules to broadcasting organisations and to the supranational multi-media groups. In December 1992 it submitted a Green Paper 'Pluralism and media concentration in the internal market' (COM(92) 480), which emphasised that it is primarily for the Member States to maintain the diversity of the media and that there are for the time being, sufficient means of preventing concentration in the audiovisual sector. It therefore sees three options: no action at EU level; harmonisation of national laws on media ownership; and greater transparency regarding media ownership. The EP has demanded a directive on media concentration (resolutions of 16 September 1992, 24 October 1994, 14 July 1995, 15 June 1995). In its resolution of 19 September 1996, the European Parliament (EP/Parliament) called for both EU and national support to underpin the values of public service broadcasting, in a time of increasing competition between private, multinational media groups and public broadcasters. In the meantime, the Commission is considering options for a draft directive on access to media ownership.

4. Telecommunications and advanced television services (HDTV)

The establishment of a common market in broadcasting runs parallel to the EU's initiatives in the telecommunications sector. Both sectors are at a transitional stage, and most Member States have reacted by re-regulating their (often interlinked) national telecommunications and broadcasting systems. Parliament has repeatedly emphasised the importance of an EU framework for both broadcasting and telecommunications in order to avoid divergent national re-regulation in these related communications sectors.

HDTV is an electronic medium for cinema-quality programmes and is a major innovation in electronics. It is also the platform of the struggle over television standards in programme production, transmission and reception. Council Decision 93/424/EEC provides an action plan for the introduction of advanced television sources in Europe, aiming at promoting the wide-screen 16:9 format (625 or 1250 lines), irrespective of the European television standard used and irrespective of the broadcasting mode (terrestrial, satellite or cable).

Directive 95/47, replacing Directive 92/38 on the use of standards for the transmission of television signals, provides the legislative framework necessary for the introduction of digital television in Europe. The directive requires that digital TV service use standardised transmission systems, without dictating the details of the standards. The directive also sets requirements on conditional access systems for digital television, following intensive industry consultation with the Digital Video Broadcasting (DVB) Group.

The introduction of HDTV services is no longer the immediate objective. Instead, there is a consensus among market players that the introduction of the HDTV screen format — 16:9 wide-screen — is more strategically important and achievable. The advantage of 16:9 as a policy is that it bypasses the debate on technologies; 16:9 can be delivered using analogue or digital technologies. Unlike its predecessors (the so-called MAC directives), there is no longer a single objective (HDTV) with a particular mandated approach. The Commission publishes its regular reports on progress in implementing the action plan for the introduction of advanced television services in Europe (e.g. Annual Report 1997, COM(98) 441). At the end of 1999, the Commission published its review of the market for digital television services in the EU in the context of the TV standards Directive 95/47/EC (COM(99) 540).

Role of the European Parliament

1. The EP's resolutions on television have repeatedly called for common technical standards for direct broadcasting by satellite (DBS) with a view to preventing a proliferation of different transmission standards, as with PAL and SECAM for colour television in the 1960s (resolutions of 28 October 1983 and 22 October 1986). The EP has supported the introduction of HDTV standards which are compatible with existing television sets and has advocated the Community's adoption of a common position on the question of HDTV standards (resolutions of 16 May 1986, 11 April 1989, 20 November 1991 and 11 March 1992). In Directive 92/38/EEC of 11 May 1992 concerning satellite broadcasting standards, the Council included most of the EP amendments

which sought to balance the interests of the various groups concerned.

2. The EP also saw a need for the economic promotion of audiovisual production in the context of the HDTV strategy. This strategy must enable the European programme industry to meet in quantitative and qualitative terms the demand from the television operators introducing the new services and to increase the supply of competitive products from European producers (resolution of 22 January 1993 on encouraging audiovisual production in the context of the strategy for high-definition television). Given the new technological developments, the EP took the general view that minimum common standards should be formulated even before the introduction of the first digital television systems. It emphasised a flexible regulatory framework providing operators and consumers with a sufficiently stable environment (resolution of 19 April 1994) on digital video broadcasting.
3. The EP's Committee on Economic and Monetary Affairs and Industrial Policy organised a hearing on standards for and access to digital television on 19/20 December 1994. In Directive 95/47, the Council incorporated the EP amendments. The compromise text provides that

holders of industrial property rights to decoding systems may grant licences to manufacturers of consumer equipment at equitable, reasonable and non-discriminatory rates. The Member States must take necessary measures to ensure that operators of conditional access services offer to all broadcasters on a fair reasonable and non-discriminatory basis, technical services enabling the broadcasters' services to be received by viewers authorised by means of decoders administered by the service providers. In its resolution of 13 June 1995, the EP had reintroduced its compromise amendments which were incorporated into the directive. Parliament had insisted that the consumer should not pay the price of technological progress (successive purchases of decoders that are incompatible and rapidly become obsolete).

On 14 June 1995, the EP adopted a resolution on the Green Paper 'Strategy options to strengthen the European programme industry in the context of the audiovisual policy of the European Union'. On 16 June 1995, the EP approved the proposal for a Council Decision on the development and distribution of European audiovisual works (MEDIA II — Development and Distribution — 1996–2000).

4.7.8. Information technologies

Legal basis

The Treaties do not contain any special provisions for Information Technology (IT), although Article 157 provides a legal basis for an EU industrial policy. However, the EU may undertake certain actions within the framework of many sectoral and horizontal policies at international, EU, Member State and local levels, such as competition policy (Articles 81–89), trade policy (Articles 131–134), trans-European networks (TENs) (Articles 154–156), research and technological development (Articles 163–173) and approximation of laws (Article 95).

Objectives

Strictly speaking, IT simply means computer hardware and software but it is often used interchangeably with Information and Communication Technologies (ICT), a term which covers both information technology and telecommunications equipment and services. The two

technology sectors, originally worlds apart, have converged substantially in latter years and it is expected that they will eventually merge into one technology.

Priorities for action are: establishment of information technology infrastructure; improvement of the competitiveness of the IT industry in Europe; better consideration for the industry's needs in research policy; establishment of the information society and promotion of industrial cooperation.

Achievements

A. Internal market

Directive 96/19 opened up the telecommunications market to full competition on 1 January 1998 and included 23 measures spanning the whole of the telecom area. The 1999 Communications Review launched a broad consultation on the regulatory framework and put forward the essentials of a thoroughly revised framework for

electronic communications infrastructure and associated services. This review led to the adoption in December 2002 of a new regulatory package for the broadened scope of electronic communication services, whilst reducing the number of regulatory measures from the previous 23 to six directives and one decision.

The revised regulatory framework was applied in all Member States from 25 July 2003 and encompassed:

- Framework Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services;
- Authorisation Directive 2002/20/EC on the authorisation of electronic communications networks and services;
- Access Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities;
- Universal Service Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services;
- Data Protection Directive (e-Privacy) 2002/58/EC on the processing of personal data and the protection of privacy in the electronic communications sector;
- Radio Spectrum Decision 2002/676/EC on a regulatory framework for radio spectrum policy in the European Community;
- Commission Directive on Competition 2002/77/EC on competition in the markets for electronic communication networks and services.

The package provided for a general review of the regulatory framework in 2006, but it is not expected to cause as many substantial changes as the previous review. However, in July 2006, the Commission launched a proposal for a separate regulation for roaming charges on public mobile networks (COM(2006) 382).

The proposed regulation aims to tackle the long-standing problem of high prices and although an initiative in the field has been generally applauded, the proposal is controversial in that it proposes introducing price limits not only at wholesale but, unusually, also at retail level. The Commission has signalled a need for rapid introduction (it could enter into force in the second half of 2007).

Apart from the abovementioned package, the area is also regulated through a number of further decisions, recommendations and guidelines. Most of the legislative framework is in place, and the national regulatory authorities play a central role in its implementation, inter alia through their market analysis. Implementation of the regulation of the electronic communications field is regularly monitored by the Commission in its annual

reports and the Commission has opened a number of infringement procedures against some Member States for failing to transpose all legislation into national law. A related area currently attracting much attention is spectrum management — new services generate need for more spectrum, although some is freed up by the transfer to digital television, * 4.7.7. on the audiovisual industry for more on the directive on television without frontiers).

B. Information society

The Lisbon European Council (March 2000) set the target for the EU to become 'the most competitive and dynamic knowledge-based economy in the world by 2010'. Stimulating the development of technologies and applications in Europe is seen to be at the heart of the transition to an information society in order to increase the competitiveness of European industry and allow European citizens the possibility of benefiting fully from the development of the knowledge-based economy. The relaunch of the Lisbon strategy in 2005 reiterated the importance of ICT and the information society: 'It is essential to build a fully inclusive information society, based on widespread use of information and communications technologies (ICTs) in public services, SMEs and households' (European Council, March 2005). The activities carried out in the field of the information society are pursuant to the Lisbon conclusions and are dominated by the eEurope initiative and, more recently, the i2010 strategic framework.

The Commission proposed the eEurope action plan 2002 in November 1999. The European Parliament (EP/Parliament) adopted a resolution that was sent to the Lisbon European Council contributing to the first steps of the eEurope initiative. One of the top priorities of eEurope 2002 was to modernise the rules and regulations governing Internet access and create a single market for all telecommunications services. Subsequent action plans have set out roadmaps of what needs to be done by when. The eEurope 2002 initiative casts its net very wide, successfully putting the Internet at the top of the European political agenda.

A second eEurope action plan, eEurope 2005, narrowed the focus, concentrating on effective access, usage and ready availability of the Internet. It aimed to ensure widespread availability and use of broadband networks throughout the EU by 2005, as well as security of networks and information. The eEurope 2005 plan emphasised the importance of broadband networks. The action plan seeks to accelerate the deployment of broadband services over networks including hardwire, wireless, fibre optics, satellite links and third-generation mobile phones.

In July 2005, the Commission adopted the i2010 initiative which aims to provide a policy framework for the ICT area

building on eEurope initiatives. The i2010 initiative was taken on board in the relaunch of the Lisbon strategy and focuses on 'ICT research and innovation, content industry development, the security of networks and information, as well as convergence and interoperability, in order to establish a seamless information area'. In its i2010 initiative, the Commission outlines three policy priorities:

- to create an open and competitive single market for information society and media services within the EU; initiatives in this field will inter alia include spectrum management, audiovisual media services and digital rights;
- to increase EU investment in research on information and communication technologies (ICT) by 80 %; i2010 points to trans-European demonstrator projects to test out promising research results and to better integrate SMEs in EU research projects;
- to promote an inclusive European information society. With a view to closing the digital gap, the Commission is considering initiatives on e-government for citizen-centred services, ICT flagship initiatives (technologies for an ageing society, intelligent vehicles that are smarter, safer and cleaner, and digital libraries); and a further initiative on e-inclusion.

To stimulate Internet uptake, the EU has concentrated on providing a favourable environment in which companies and other types of organisation may develop digital skills and services. In April 2002, a formal decision (Regulation (EC) No 733/2002) was taken to create the EU Top Level Domain to allow European citizens, organisations and businesses to have websites and e-mail addresses that end with '.eu' (dot-eu) — in addition to the current domain names with country indications or generic terms such as .org, .net, etc. The independent organisation EURid was selected to operate the new registry for .eu (www.eurid.eu), and the first pre-registrations under '.eu' were made from 7 December 2005 and general registration in April 2006. Shortly thereafter, the EU institutions transferred all web and e-mail addresses to the new '.eu'.

The more networks and computers become a central part of business and daily life, the greater the need for data security. The EU institutions have taken a number of initiatives over the years regarding secure networks and information systems. One of the more important initiatives in recent years is the establishment of an agency. The European Network and Information Security Agency (ENISA) is a temporary agency of the European Union which was formally established on 14 March 2004 (following the adoption of Regulation (EC) No 460/2004). The agency, in Heraklion (Greece), works to achieve a high and effective level of network and information security

within the Community. It also seeks to develop a culture of network and information security for the benefit of EU citizens, consumers, businesses and public sector organisations. This should also contribute to the smooth functioning of the internal market. ENISA is ultimately intended to serve as a centre of expertise where both Member States and EU institutions may seek advice on matters related to network and information security. Inter alia via own-initiatives, the EP continues efforts to maintain a focus on matters of ICT security — see for instance the recommendation on the protection of critical infrastructure in the framework of the fight against terrorism (June 2005).

With respect to security, the Commission adopted a communication (COM(2006) 251), in May 2006, on a strategy on Network and Information Security (NIS). Further initiatives are under preparation in new areas such as the use of Radio Frequency Identification (RFID) technology.

Information society-related programmes:

- Modinis is a programme (2003–05) adopted as a follow-up to and financial support of the eEurope 2005 Action Plan. Modinis is intended to help disseminate good practices, compare performances of the Member States and support action to raise awareness in order to enhance the security of networks and information (Decision 2256/2003/EC). In July 2005 the Commission proposed a one-year extension of the programme in order to ensure a smooth transition to the forthcoming ICT Policy Support Programme that comes into force in January 2007.
- Safer Internet Plus is a four-year programme (2005–08) aiming to promote safer use of the Internet and new online technologies, particularly for children, and to fight against illegal, harmful content and content unwanted by the end-user (Decision No 854/2005/EC). The programme succeeds the Safer Internet Action Plan which ran from 1999 to 2004.
- eContent Plus is a four-year programme (2005–08) aiming to make digital content in Europe more accessible, usable and exploitable (Decision No 456/2005/EC). The eContent Plus programme supports the development of multilingual content for innovative online services across the EU. The programme addresses specific market areas where development has been slow: geographic content (as a key constituent of public sector content), educational content, cultural, scientific and scholarly content. The programme succeeds the eContent programme which ran from 2001 to 2004.
- IDABC stands for Interoperable Delivery of European eGovernment Services to public Administrations, Businesses and Citizens. The programme runs from 2005 to 2009 (Decision No 2004/387/EC). It aims to make use

of opportunities offered by information and communication technologies to encourage and support the delivery of cross-border public sector services to citizens and enterprises in Europe; to improve efficiency and collaboration between European public administrations and to contribute to making Europe an attractive place to live, work and invest. The programme builds on the previous IDA programmes.

- eTEN is a programme designed to help the deployment of telecommunication network-based services (e-services) with a trans-European dimension. It strongly focuses on public services, particularly in areas where Europe has a competitive advantage. This programme is part of the 'Trans-European Networks' (TENs) — including the fields of transport and energy — established to remove barriers to the movement of people, goods and services across Europe and foster the common market. In 1997, the first decision was adopted on TEN Telecommunications Guidelines (Decision 1336/97/EC) setting out priorities for the development of the European Information Infrastructure in ISDN, applications and generic services. The current programme runs from 2003 to 2006 (Decision 1376/2002/EC).

The Competitiveness and Innovation Framework Programme (CIP) (COM(2005) 121) will bring together specific Community support programmes into a common framework. One of the three specific programmes in the CIP framework is the ICT Policy Support Programme (the two others are the Entrepreneurship and Innovation Programme and the Intelligent Energy-Europe Programme). The ICT Policy Support Programme will build on the aims of the previous e-TEN, Modinis and e-Content programmes and will support the aims of the integrated strategy i2010 — European Information Society 2010. The ICT programme will stimulate the new converging markets for electronic networks, media content and digital technologies. It will test solutions to the bottlenecks that delay wide European deployment of electronic services. It will also support the modernisation of public sector services to raise productivity and improve services. Actions under the ICT-policy support programme aim to:

- underpin regulatory and research actions to stimulate emerging digital economy based on the convergence between network services, media content and new electronic devices;
- provide a bridge between research investment and wide adoption, by providing a testing ground for pan-European electronic services in both the public and private sectors;

- reinforce European cultural and linguistic identities by support for the production and distribution of European digital content;
- assist the development of an open and inclusive European Information Society by stimulating innovative approaches to inclusion, quality of life and public services.

The World Summit on the Information Society (WSIS) was originally endorsed in a UN General Assembly Resolution in 2001 (56/183) and was held in two phases. The first phase of WSIS took place in Geneva from 10 to 12 December 2003 and 175 countries adopted a Declaration of Principles and a Plan of Action. The second phase was held in Tunis from 16 to 18 November 2005, and efforts were made to put the Plan of Action into motion by setting up working groups to find solutions and reach agreements in the fields of Internet governance and financing mechanisms. The EP participated in the Tunis Summit and is currently working with the other EU institutions on the follow-up, inter alia prior to the first meeting of a new forum for multi-stakeholder policy dialogue — the Internet Governance Forum (IGF), which was proposed in the Tunis Agenda for the Information Society. The first meeting of the IGF is scheduled for October/November 2006 in Athens.

The EU has consciously made efforts to feed into the WSIS process (e.g. COM/2005/0234 and Council Conclusions 10285/05). The EP has also adopted a resolution on the second phase in June 2005 (B5/2004/2204) stressing the need to develop entrepreneurial and innovative capacities to enable countries to use ICTs to develop services and systems that directly address their societal needs. The EP felt that the development of Internet governance was key to the success of the WSIS, but considered that an international and independent Internet governance system should be maintained. The EP further stressed the importance of digital literacy programmes and the need to safeguard cultural diversity when planning governance arrangements. Parliament encouraged the fostering of innovation in educational systems, lifelong learning programmes and e-learning initiatives.

C. ICT and research

In the context of the Research Framework Programmes (FPs) information technologies have been given substantial attention:

- In the Fifth Framework programme (FP5) a number of specific programmes concerned industrial technologies (user-friendly information society; competitive and sustainable growth; and promotion of innovation and encouragement of SME participation). Moreover, FP5 — through the Information Society Technologies

Programme (IST-programme) — brought together and extended earlier programmes of the FP4 (ACTS, Esprit, Telematics Applications).

- In the Sixth Framework programme 2002–2006 (FP6) Information Society Technologies were also one of seven main thematic priorities under the specific programme for integration and strengthening of European research.
- The Seventh Framework programme 2007–2013 (FP7) again includes ICT as one of the nine central themes under the specific programme of cooperation and again proposes ICT as one of the most highly prioritised areas as regards budget allocation. The aim is to enable the EU to master and shape future developments in the area to meet the demands of society and the economy. Actions have been decided to strengthen Europe's scientific and technological base in ICT, stimulate

innovation through ICT use and ensure that ICT progress is rapidly dispersed and deployed.

Role of the European Parliament

The EP advocates a robust and advanced ICT policy. As the area is largely subject to co-decision, the EP has been very active in the adoption of legislative acts. However, the EP has also constantly helped to keep focus on the issues of Information and Communications Technology through the adoption of a host of oral and written questions, own-initiative reports, opinions and resolutions, and through calls for greater coordination of national efforts, enhanced EU support and attention to competition and prioritisation of the ICT issues.

→ Karin HYLDELUND
08/2006

4.7.9. Biotechnology industry

Legal basis

The Treaty does not contain any special provisions for biotechnology. Article 157 however provides a legal basis for an EU industrial policy. The EU may undertake certain actions within the framework of many sectoral and horizontal policies at international, EU, Member State and local levels, such as competition policy (Articles 81–89), the mandate of 30 May 1980, which empowers the Commission to put forward proposals on industrial policy (Article 308), trade policy and the completion of the internal market (Article 95).

The importance of the sector has also been addressed in the decision on competitiveness of industry and enterprises: Competitiveness and Innovation Framework Programme CIP, 2007–2013, based on the proposal by the Commission, Proposal for a Decision of the European Parliament (EP/Parliament) and of the Council establishing a Competitiveness and Innovation Framework Programme (2007–2013).

Objectives

The biotechnology industry is becoming an important sector for the EU because of its economic, social and environmental potential. In this field it is important that EU countries should cooperate with one another, since challenges and needs in the sector remain very large.

Achievements

The scientific and technological advances made in the area of life sciences and biotechnology continue at a hectic pace. The Commission proposed a strategy for Europe and an action plan in its communication 'Life Sciences and Biotechnology' (COM(2002) 27), which draws attention to three major issues:

- life sciences and biotechnology offer opportunities to address many global needs relating to health, ageing, food and the environment, and to sustainable development;
- broad public support is essential, and ethical and societal implications and concerns must be addressed;
- the scientific and technological revolution is a global reality which creates new opportunities and challenges for all countries in the world.

A. Internal market

1. Genetically modified organisms (GMOs), including seeds, GM food and feed

Recent food scares such as BSE and dioxins have reinforced the change in public policy focus and resulted in strengthening of regulations and safety criteria in the food and feed sectors. In the White Paper on Food Safety (COM(1999) 719), the Commission drew attention to the issue of securing consumers' and trading partners'

confidence in the EU food supply. This was reconfirmed in the General Food Law proposal which established the European Food Authority (COM(2000) 716 final) and which lays down the general objectives of EU food law and a number of principles, including precaution, traceability, liability and protection of consumers' interests.

The early regulatory framework for biotechnology was founded on a 'horizontal' approach, which took account of the protection of both human health and the environment across relevant sectors.

Directive 90/220/EEC governs the deliberate release into the environment of genetically modified organisms (GMOs) and the placing on the market of products containing or consisting of GMOs for use as foods, feed, seeds and pharmaceuticals.

Directive 90/219/EEC governs work activities involving the contained use of genetically modified microorganisms (GMMs) (extended by the majority of Member States to include all use of GMOs under contained conditions in national laws).

As individual sectors have continued to expand, a move towards a more sector-based approach has developed, particularly in terms of the commercialisation of products. For example:

- Regulation (EEC) No 2309/93 largely governs pharmaceutical and medicinal applications. It laid down procedures for the authorisation and supervision of medicinal products for human and veterinary use and established the European Medicines Agency (EMA) in London.
- Regulation (EC) No 258/97 governs GM foods and GM seeds under the various seed directives (66/401/EEC, 66/402/EEC, 66/403/EEC, 69/208/EEC, 70/457/EEC and 70/458/EEC on the marketing of seeds).

This sector-based legislation has introduced provisions to specifically address risk and other issues although the environmental elements come under Directive 2001/18, which replaced 90/220/EEC in 2002.

Directive 2001/18/EC introduces appropriate implementing measures and guidance; ensures a harmonised framework for authorising and labelling feed consisting of, containing or produced from GMOs; sets up a comprehensive labelling regime to allow consumers/users to fully exercise their choice; and addresses the issue of liability with respect to significant environmental damage arising from contained use of genetically modified microorganisms (GMM) (within the scope of Directive 90/219/EC) and deliberate release into the environment of GMOs. It also ensures that the Biosafety Protocol to the 2000 Convention on Biological Diversity

signed by the EU (COM(2000) 182) is appropriately implemented in EU legislation.

2. Industrial biotechnology and bioremediation

Europe is a world leader in harnessing GMMs to produce pharmaceutical compounds and industrial enzymes. The main pharmaceutical uses are production of therapeutic protein products such as insulin and growth hormones, while the industrial uses are mainly in the food and detergent industries and bioremediation. This is done in sealed systems, and the final product is neither a GMM nor directly derived from one. The approval procedure for these activities is covered by Directive 90/219/EC on contained use of genetically modified microorganisms. To the extent that GMOs are released into the environment, e.g. for bioremediation purposes, they have to be approved under Directive 2001/18/EC.

3. Non-food agricultural and silvicultural biotechnology

Non-food agricultural GMOs also need approval under Directive 2001/18/EC. Trees have been developed but not yet planted commercially, with the aim of producing paper more efficiently. Such trees are subject to prior authorisation under Directive 1999/105/EC on the marketing of forest reproductive material. Outside the EU, cotton is already a major GM crop. Cotton does not have any food use in Europe beyond the small (and economically irrelevant) quantities consumed as cotton seed oil. Fibre and wood/paper will probably remain the main candidates in this category for some time. There are other plants that have dual uses. Conventional rape is already used for diesel production, apart from feed and oil. If a food/feed plant is genetically modified to replace petroleum products by producing fine chemicals, but not to be used for food/feed, it will need approval under 2001/18/EC. If it were also used for food or feed, further approval under the proposed GM Food and Feed regulation would also be necessary. A further example is a plant modified to contain and be consumed as a pharmaceutical compound, for example a plant vaccine. This modification would have to be approved by EMA, which would also have to perform an environmental risk assessment equivalent to that under Directive 2001/18/EC.

4. Pharmaceuticals

Biotechnology is a key driver of progress in the pharmaceuticals sector, whose end-user benefits are easy to identify. Biotechnology makes possible the development of new cures; it also permits yields and quality to be improved and enables existing pharmaceutical products to be manufactured with a lesser impact on the environment. The pharmaceuticals sector is highly regulated and is already covered by substantial EU legislation; new

pharmaceutical products are subject to regulation under Directive 65/65/EEC and its supporting legislation, notably Regulation (EEC) No 2309/93. Any product (whether or not a biotechnology product) that makes medicinal claims is required to meet stringent standards of quality, safety and efficacy; under Regulation (EEC) No 2309/93 all new products with a major biotechnological component are subject to centralised assessment by the EMEA. Given the considerable barriers to market entry of these products, the regulatory system should seek to avoid unnecessary difficulties that would impede biotechnology companies' efforts to compete and bring pharmaceutical products to market. It costs an estimated EUR 250 million to develop a new drug. Consequently pharmaceutical companies tend to concentrate on potential best-sellers that can be sold to millions of people: there is relatively little research into 'orphan drugs' (treatments for rare diseases) and drugs to treat diseases that are common only in low-income countries. However, changes in legal constraints can create incentives for pharmaceutical companies to develop 'orphan drugs': in 2000 the Commission introduced an Orphan Drug Directive, which, though still in the early stages, is already having a positive impact on the use of biotechnology.

B. Competition policy

Biotechnology focuses on solving specific problems. The Commission also paid special attention to building up the competitiveness of EU industries by improving the potential to create SMEs, whose activity is based on research and the spirit of enterprise. These new industries, founded on scientific knowledge, are a source of industrial competitiveness, technological innovation for investment and job creation.

Directive 98/44/EC on the legal protection of biotechnological inventions establishes a sound legal framework concerning criteria for obtaining a patent in this field. In addition, the proposed Community Patent Regulation will increase the competitiveness of EU companies in providing for effective, affordable and legally sound protection and counter the present trend of biotechnology companies which prefer to patent in the US.

C. Research and development policy

The success of any knowledge-based economy rests upon the generation, dissemination and application of new knowledge. EU investment in research and development lags behind that of the USA. The Commission aims to restore EU leadership in life sciences and biotechnology research. The Sixth Framework Programme for research (2002–06) gives this area first priority in order to provide a solid platform for constructing, with the Member States, a European Research Area. Europe's research agenda for life

sciences should address emerging needs and strengthen links to other EU policies (health, food, environment, biotechnology, competitiveness, etc.).

D. Ethical implications

Life sciences and biotechnology address issues involving the life and death of living organisms. They raise fundamental questions of human existence and life on Earth, the very factors that have shaped the deepest religious, ethical and cultural heritage of humanity. The EU is a community of law and of shared fundamental values and human rights while respecting differences in cultural and ethical values and public morality. This is also reflected in the EU Charter on Fundamental Rights. Consideration of ethical issues and respect for cultural and ethical values are an integral part of EU action.

The Commission's main contribution has been the establishment of the European Group on Ethics in Science and New Technologies, support for research in bio-ethics and the introduction of ethical principles and evaluation for EU research support. The European Group on Ethics has contributed actively to clarifying public debate, dialogue with Member States and other interested parties, and giving specific advice to guide the EU legislative process. Cross-border cooperation on research in ethics has initiated a true reflection on fundamental values and the reasons for diversity of viewpoints in Europe, leading to better mutual understanding.

Role of the European Parliament

In a number of own-initiative reports the EP called for greater coordination of national efforts, enhanced EU support for industrial RTD activities and a common policy on biotechnology. The EP significantly influenced the content and funding of the Fourth Framework Programme (EUR 13.125 million) consisting of three thematic programmes related to life sciences and biotechnology: biotechnology, biomedicine and health, agriculture and fisheries. The EP outlined its ideas on innovation, European science and technology policy and its monitoring of the FP4 in a resolution of November 1996.

In December 1998 Parliament approved the budget for the following specific programmes in FP5 (EUR 14 960 million) for 1998–2002:

- quality of life and management of living resources: EUR 2 413 million;
- competitive and sustainable growth: EUR 2 705 million.

The EP approved the budget in June 2002 for the following thematic programmes under FP6 (EUR 17 500 million) for 2002–06:

- life sciences, genomics and biotechnology for health: EUR 2 255 million;
- food quality and safety EUR 685 million.

On 21 November 2002 the EP adopted a non-legislative resolution on biotechnology, addressing the need to enhance and broaden public debate and access to objective information. Consumers must have the opportunity to address questions to scientists and to receive answers from them. On international cooperation, Parliament stated that biotechnology alone will not help to

overcome hunger in the world and that other methods, for example a better distribution of available food, are currently more important. However, given the ever-increasing world population it might also be necessary to use genetically modified crops to produce enough food. Should a developing country wish to use biotechnology, the EU and Member States ought to provide support so that it can strengthen its own capacities.

→ [Marcello SOSA IUDICISSA](#)
11/2005

4.7.10 Defence industry

Legal basis

EU action in this field must be based on Article 308 which provides for cases in which the European Treaties do not make explicit provision for the action needed to attain one of the EU's objectives. Article 157 provides a legal basis for EU industrial policy. However, progress towards applying internal market rules on the defence equipment market have been restrained by article 296 paragraph 1 of the ECT that states 'any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material'.

Objectives

The defence industry has been important for the EU because of its technological and economic policy aspects. The competitiveness of the European defence industry is vital to the credibility of the nascent European Security and Defence Policy. It is important that the EU Member States cooperate with one another in order to end policies and practices that prevent European defence companies from working together more efficiently.

Achievements

The EU defence industry is important for the European economy as a whole. It employs around 800 000 people and over recent years has contributed between 2 and 2.5 % of EU GDP. Like all other industrial activities, the defence industry is required to deliver increased efficiency to provide value for money to its customers and, at the same time, to protect its shareholders' interests.

A. Background issues

1. Standardisation

A 1999 study on the defence industries in the EU and the USA recommended formulating specifications in a common manner in Europe to facilitate common procurement. As a follow-up, a Commission Conference 'European Defence Procurement in the 21st Century' in November 2000 investigated options for the reform of defence standards in European defence procurement. The Commission began work on a review of benchmarking U.S defence procurement practices and its implications for European defence industries. This exercise involves comparing US procurement practices against those applied in the EU, with particular reference to SMEs.

2. Research and development policy

The EU R & D Framework Programme is aimed solely at civil objectives. Some of the technological areas covered (e.g. materials, Information and Communication Technologies — ICT) can contribute to the improvement of the defence technological base and the competitiveness of this industry. One should therefore examine the best way to reflect defence industry needs in the implementation of EU research policy.

3. Intra-EU transfers and public procurement

The EU needs to simplify and harmonise the rules on intra-EU transfers of defence products and equipment. A second fundamental task is to simplify and harmonise EU rules for public procurement. It is important to have the guidelines in order to establish an EU framework in this area.

4. Exports

A common regime for dual-use goods and technologies export control was adopted by the Council based on Regulation (EC) No 1334/2000 (amended by (EC) No 2432/2001) and Joint Action 401/2000 under the CFSP concerning the control of technical assistance related to certain military end-users, which together form an integrated system. This regime reflects the international arrangements to prevent proliferation of weapons of mass destruction.

Regarding conventional arms exports, a major step was achieved in June 1998 with the adoption of an EU code of conduct on arms export. Its aim is to improve transparency, prevent unfair competition and clarify the rules applicable to common projects. The Council assesses implementation of the code on an annual basis. In June 2000 the Council adopted the common list of equipment covered by the code of conduct.

B. EU defence industry policy

1. Initial developments

In January 1996, a Commission Communication outlined the challenges facing EU defence-related industries and put forward suggestions to enable the sector to maintain its short-term competitiveness. It proposed to subject the sector as far as possible to EU law on public procurement, intra-EU trade and the monitoring of competition with particular regard to aid. Research and standardisation, both civil and military, needed better coordination and import duties better harmonisation. Distortions of competition resulting from differences in import and export control policies should also be eliminated. This warning did not trigger action and the need to implement an EU strategy to keep up with major changes in the EU defence-related industries was becoming more pressing every day. In December 1997, another Commission Communication entitled 'Implementing European Union Strategy in the field of Defence-related Industries' called for urgent restructuring in the EU defence industry and for a single market for defence products. This ground-breaking document encouraged the Council to adopt a common position on the framing of a European armaments policy.

2. Towards a defence equipment policy

More recently, in an effort to take this agenda a step further the Commission has been deeply involved in examining different aspects of the state of play of the defence market and defence industrial policy. This work is also supported by external experts such as in the July 2002 report on 'Strategic Aerospace Review for the 21st century' (STAR 21) by the European Advisory Group on Aerospace. In a communication dated 11 March 2003 and entitled 'Towards an EU Defence Equipment Policy', the Commission

identified seven priority areas of action: standardisation, monitoring of defence-related industries, intra-community transfers, competition, procurement rules, export control of dual-use goods and research. In pursuit of this action it concluded by listing the ongoing activities to achieve progress:

- provide financial assistance to for a European Standardisation Handbook to be ready in 2004;
- monitor defence-related industries;
- launch an impact assessment study in 2003 as the basis, if appropriate, for elaborating at the end of 2004 the necessary legal instrument to facilitate intra-Community transfer of defence equipment;
- continue its reflection on the application of competition rules in the defence sector in respect of the provisions of Article 296 of the EC Treaty;
- initiate a reflection on defence procurement at national and EU levels;
- raise, in the appropriate Council working groups, the issue of the Commission's involvement in export control regimes;
- launch a preparatory action for advanced research in the security field;
- pursue work on a possible EU Defence Equipment Framework overseen by an agency (or agencies). This past point has now been overtaken by a new European Defence Agency.

3. Green paper on defence procurement

Furthermore, in September 2004 the Commission presented a Green Paper on Defence Procurement (COM/608/2004), with the objective of contributing to 'the gradual creation of a European defence equipment market (EDEM) which is more transparent and open between Member States'. The Green Paper forms part of the strategy 'Towards a European Union defence equipment policy' adopted by the Commission at the beginning of 2003. The aim is to achieve more efficient use of resources in the area of defence and to raise the competitiveness of the industry in Europe, as well as to help bring about improvements in military equipment within the context of European security and defence policy. The Green Paper puts forward, for discussion, that the existing derogation pursuant to Article 296 of the EC Treaty could be clarified by an Interpretative Communication from the Commission, which could define, more precisely, contracts covered by the exemption under Article 296; it also suggests a directive could be drawn up to coordinate the procedures for awarding contracts falling within the scope of rules on exemption set out in Article 296; and finally it notes the arguments by some that a

voluntary code of conduct could be established in this sector overseen by the European Defence Agency.

4. A European Defence Equipment Agency (EDA)

In June 2003 the European Council met at Thessaloniki and committed to create [...] in the course of 2004, an intergovernmental agency in the field of defence capabilities development, research, acquisition and armaments. On 12 July 2004 a Joint Action (2004/551/CFSP) was adopted by the Council that established the European Defence Agency. It had four main functions: to develop defence capabilities in the field of crisis management; to promote and enhance European armaments cooperation; to work towards strengthening the European Defence Industrial and Technological Base (EDTIB), and for the creation of an internationally competitive European Defence Equipment Market (EDEM); and to enhance the effectiveness of European Defence Research and Technology (R&T).

5. European Security Research Programme

In parallel, the European Commission following on from existing work during the 1990s and more recently under its Green Paper on Defence Procurement, has begun to accelerate its work under security research. Since the communication dated 11 March 2003 and entitled 'Towards an EU Defence Equipment Policy' (2004/213/EC), the Commission has made progress to establish a security/defence research programme under a new Preparatory Action (OJ L 67/18 (-22), 5/03/04). Between 2004 and 2006, a budget of EUR 65 million has been earmarked for the Preparatory Action, which, the Commission hopes, will lead to a full European Security Research Programme starting in 2007. The Commission's work in this area was supported by the establishment of an expert group, the so-called 'Group of Personalities' (GoP) tasked 'with the primary mission [...] to propose principles and priorities of a European Security Research Programme in line with the EU's foreign, security and defence policy objectives and its ambition to construct an area of freedom, security and justice.'

The product of the group's work was a report entitled 'Research for a Secure Europe'. Its key conclusion was that security research is an essential pillar of future European security and as such should require substantial appropriate resources to the tune of EUR 1 billion (reaching up to EUR 1.8 billion) per year. Whilst meeting EU security needs it would also help the EU in meeting the Lisbon economic criteria and Barcelona target of 3 % spending on R & D of all Community research spending. It has yet to be seen if such a large figure will be met under the Financial Perspectives 2007–13.

The Role of the European Parliament

In a resolution in April 2002 on European defence industries, the European Parliament (EP/Parliament) reiterated its view that a strong, efficient and viable European armaments industry and an effective procurement policy were vital to the development of ESDP. This was repeated in a more recent report on the Green Paper on defence procurement (2005/2030(INI)) in response to the Commission's Green Paper consultation. The Parliament report also encourages the Commission's efforts to contribute to the gradual creation of a European defence equipment market (EDEM) which is more transparent and open between Member States. The report plays particular attention to the role of Article 296 and argues against its continued use and for efforts to focus on its removal. It also urges the Commission to work closely with the EDA on the establishment, in parallel, of a comprehensive action plan with accompanying measures in related areas, such as security of supply, transfer, exports, State aid and off-sets, which are necessary in order to create a level playing-field for fair intra-European competition. The report also notes the lack of a 'two-way' street in transatlantic defence procurement, which needs to be addressed.

→ Gérard **QUILLE**
05/2006

4.8. Social and employment policy

4.8.1. Social and employment policy: general principles

Legal basis

- Article 2 of the Treaty on European Union;
- Articles 2, 3, 13, 39–42, 125–130 and 136–148 of the EC Treaty.

Objectives

The promotion of employment, improved living and working conditions, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.

Achievements

A. The Treaty of Rome

The Treaty of Rome contained only a few provisions on social and labour market policy. Social policy was considered as an adjunct to economic policy. Articles 48 to 51 covered the free movement of labour and Title III dealt with social policy. It comprised two parts: social provisions in order to promote cooperation (including the principle of equal pay for equal work) were laid down in Articles 136–145 and Articles 146–148 dealt with the European Social Fund. Article 136 expressed the belief that improved working conditions and an improved standard of living for workers would arise from the functioning of the common market, although law, regulation or administrative action was also required. Clashes over the interpretation of this ambiguous paragraph have been numerous.

Until 1972, the harmonisation of social policy was mainly left to the functioning of the common market. Measures adopted are limited to the setting-up of the European Social Fund (→4.8.2) and to the improving of mobility of labour through the coordination of social security (Regulation (EEC) No 1408/71, →4.8.4). Some steps were also taken to improve the field of occupational health and safety (→4.8.5). The common market brought many structural changes that affected the employment situation. Increased awareness of the unevenness of growth together with government changes led to a more proactive social policy.

In 1974, the Council adopted the First Programme of Social Action. The measures proposed centred around: employment protection, employee participation, equal treatment for men and women, health and safety at work.

By the mid-1980s, Member States' governments focused more on the deregulation of labour markets. A number of directives on health and safety at work and equal treatment between women and men were adopted, but unanimity voting in the Council paralysed progress in other areas.

B. The Single European Act (1986)

The Single European Act introduced Article 138, which on the basis of avoiding 'social dumping' (i.e. companies moving to areas with lower social standards in order to gain a competitive edge) provided for harmonisation of health and safety conditions at work. Acting by qualified majority the Council adopted directives laying down minimum requirements.

The Single European Act also introduced the role of the social partners in negotiating agreements and the title on economic and social cohesion in the Community (→4.4.1).

C. The Social Charter

Everybody understood that the implementation of the internal market by 1992 would lead to widespread restructuring of industry and services across the EC. People's working lives would be disrupted. There was a growing consensus that greater account should be taken of the social aspects.

1. The Community Charter of the Fundamental Social Rights of Workers

After long debates, the Community Charter of the Fundamental Social Rights of Workers, or 'Social Charter' for short, was adopted at the Strasbourg Summit in December 1989 by the Heads of State and Government of 11 Member States — with the UK opting out. Based on the Council of Europe's Social Charter and the conventions of the International Labour Organisation (ILO), it lays down a range of social rights that are to be guaranteed in the European labour market. It was adopted as a political declaration of intent, but required

the Commission to set out a social action programme to accompany it.

2. The social action programme

The social action programme was adopted slowly, particularly as regards binding legal acts. It proposed 47 separate initiatives. The Council adopted Directive 91/533/EEC on the obligation on employers to inform employees of the conditions applicable to their employment relationship, but the main success has been the adoption of directives concerning the health and safety of employees at work (→4.8.5.). The European Court of Justice supported a broad interpretation of the concept of occupational health and safety, including also working time.

D. The Treaty of Maastricht

The promotion of a high level of employment and of social protection was added by the European Summit of Maastricht as one of the tasks of the EC. The Social Fund's remit (→4.8.2.) was specified and an entirely new section was inserted on education and vocational training (→4.16.). A protocol and an agreement on social policy were added to the new Treaty.

During the Maastricht summit, it proved impossible to obtain an agreement by all 12 Member States regarding the changes proposed in the chapter on social policy. The UK, in particular, did not agree with several changes. Rather than abandoning the proposed social chapter, the other 11 Member States made an agreement amongst themselves. This agreement is annexed to the protocol on social policy (Protocol No 14), which states that 'eleven Member States [...] wish to continue along the path laid down in the 1989 Social Charter' and exempts the UK from participation.

This meant that two sets of rules were applied in the social area: the EC Treaty covering all Member States and the Agreement on Social Policy.

The agreement contained three significant innovations:

- a more ambitious formulation of the objectives of social policy;
- a major boost for the role of management and labour at Community level (→4.8.6.);
- extension of qualified majority voting in the Council in the following areas: improvements in the working environment to protect employees, working conditions, information and consultation of workers, equal opportunities for men and women on the labour market and equal treatment at work, and occupational integration of people excluded from the labour market.

E. The Amsterdam Treaty

1. Main results

In Amsterdam the UK signed the Social Chapter and the agreement was integrated in the Treaty, replacing Articles 136–145, with a few changes:

- reference was made to the European Social Charter of Turin and the Community Charter of the Fundamental Rights of Workers;
- co-decision procedure replaced the cooperation procedure in many fields;
- action to tackle social exclusion was introduced;
- community action concerning equal opportunities was expanded.

2. Other relevant changes

The co-decision procedure also gained importance in provisions relating to the European Social Fund (4.8.2.), the free movement of workers and social security for Community migrant workers (→4.8.4.).

The promotion of employment was added to the list of the European Union's objectives. In order to attain this objective the new Employment Title gives the EU a new area of responsibility to complement the activities of the Member States, involving the development of a 'coordinated strategy' for employment. The main element of this European Employment Strategy is formed by common guidelines (→4.8.3.). In order to promote cooperation between Member States and with the Commission, an Employment Committee was created.

A new Article 13 authorises the Council to take appropriate action to combat any discrimination based on sex, race, ethnic origin, religion or belief, disability, age or sexual orientation. Two directives have been adopted, i.e. Racial Equality Directive '2000/43/EC on implementing the principle of equal treatment between persons irrespective of racial or ethnic origin' and the Employment Framework Directive '2000/78/EC on establishing a general framework for equal treatment in employment and occupation'.

The year 2007 has been declared as the 'European Year of Equal Opportunities for All' to stimulate a major debate on the benefits of diversity for European societies. The activities will focus on the discrimination some individuals suffer due to their race or ethnic origin, religion or belief, age, gender, sexual orientation or disability, all of which are grounds for discrimination that may be addressed at European level.

The key objectives are (i) to make European Union citizens aware of their right to non-discrimination and equal treatment, (ii) to promote equal opportunities for all — access to employment, education, in the workplace or in

the healthcare sector, and (iii) to promote the benefits of diversity for the European Union.

F. The Treaty of Nice

A small number of changes have been made by the Treaty of Nice: Article 137 describing the Community's activities has been rewritten to make it more concise and a Social Protection Committee has been introduced.

Traditionally, European social policy initiatives have been contained in a series of Commission action programmes. For the new century, the name has been changed to the Social Policy Agenda. The agenda forms a part of the integrated European approach towards achieving the economic and social renewal outlined at the Lisbon summit (March 2000): for the European Union to become by 2010 'the most competitive and dynamic knowledge-based economy capable of sustainable economic growth with more and better jobs and greater social cohesion'. The Nice Summit endorsed the Social Policy Agenda up to 2005 and invited the Commission to present annually a scoreboard outlining the progress made in implementing it.

G. Partnership for growth and employment

On the basis of the November 2004 report of the high-level group chaired by Mr Wim Kok, the Commission presented in February 2005 a new partnership for growth and employment, relaunching and simplifying the Lisbon strategy, now based on a three-year cycle 2005–08 (→4.8.3). This approach was initiated by the European Council in March 2005, which recognised that 'five years after the launch of the Lisbon strategy, the results are mixed'. In its resolution of 13 April 2005, the European Parliament (EP/Parliament) calls on the Commission to set out a clear roadmap for the three institutions and asks to be consulted on its content. The EP also wishes to see the creation of a mechanism for joint programming with the European Commission and requests that national and European budgets, including the 2007–13 financial perspective, be an expression of the goals of the strategy.

In the context of the relaunched Lisbon strategy 'Growth and Jobs', the Community Programme for Employment and Social Solidarity, called Progress, will be established to support financially the implementation of the objectives of the European Union in the fields of employment and social affairs, as set out in the Commission Communication on the Social Agenda, and thereby contribute to the achievement of the Lisbon strategy goals in those fields, for the period 2007–13.

Progress will be divided into the following five sections (i) employment, (ii) social inclusion and protection, (iii) working conditions, (iv) anti-discrimination and (v) gender equality with an overall amount of EUR 743.25 million for

the indicated period. It will complement the European Social Fund as well as the financial support provided for social dialogue, free movement of workers and social studies. Due to Parliament's intervention the budget of the programme has been increased from EUR 628.8 million to EUR 743.25 million.

It will replace existing Community programmes and budget lines in these fields aiming at consolidating various programmes into one streamlined programme, simplifying procedures and increasing visibility, clarity and coherence of the different policy areas covered by the programme.

Role of the European Parliament

Since the creation of the Community, the EP has been active in the development of EU employment and social policy. The EP's goal has always been to combat unemployment, improve working conditions and living conditions for the poor and socially excluded, the elderly, children, handicapped people and migrant workers, and ensure equal opportunities for women and men.

Although, according to the Treaty of Rome, the EP's role was only supervisory, it adopted many resolutions during the 1960s, 1970s and 1980s. On the one hand, Parliament supported the Commission's different proposals and, on the other hand, it called for a more active Community policy in the social area to counterpart the increasing Community importance in the economic area. It also strongly supported the concept of a European social dimension. The EP's opinion was that the decision-making procedure in the Treaty of Rome had to be changed because unanimity was very difficult to obtain in the Council.

The EP was more closely involved in the preparation of the Treaty of Amsterdam than in previous Treaty revisions. During the Intergovernmental Conference (IGC) in 2003/2004, the EP adopted many resolutions setting out, inter alia, its proposals on social policy. The social provisions in the Amsterdam Treaty reflect many of the recommendations in these resolutions, such as the inclusion of the Social Agreement in the Treaty and the insertion of an employment chapter, and constitute a successful outcome of the EP's work. The EP, however, regrets that unanimity and simple consultation of the EP have been maintained for many social matters.

In 2003, when the Commission presented the third scoreboard on implementing the Social Policy Agenda, the EP stated that the structural weaknesses identified on the labour market were largely to blame for lasting poverty and social exclusion, which were being aggravated by other factors such as health problems and disability, family break-ups, a lack of basic training and housing problems.

Parliament underlined that social security was vital to reduce the risk of poverty. It asked the Commission to provide new initiatives, inter alia with a view to incorporating a social dimension in competition policy, revising the directives on European Works Councils and on Working Time, drafting a directive on social protection for new forms of employment and adopting an initiative making it easier to reconcile work and family life. It called on the Commission and Member States to ensure the correct, full and timely implementation of the existing directives, in particular those adopted on the basis of Article 13 of the Treaty: the Commission must not hesitate in pursuing infringement actions against Member States in this regard.

The EP played an active role in the mid-term review of the Lisbon strategy. In its resolution of 9 March 2005 Parliament insists on detailed consultation and on the establishment of joint programming with the European Commission. It also calls for ‘the Lisbon strategy to be made a central part of national as well as European debate’.

In this regard, on 16 and 17 March 2005 the EP organised the first parliamentary meeting on the Lisbon strategy. Members of the EP and members of the national parliaments of the 25 Member States, together with the President of Parliament, Mr Josep Borrell Fontells, the Luxembourg Prime Minister, Mr Jean-Claude Juncker, attending as President of the Council, and the President of the European Commission, José Manuel Barroso, discussed how to approach the review. The EP called for greater participation of the national parliaments, which had in their hands the tools that could influence the Lisbon strategy by modernising the economy, by legislating on education, etc., in other words taking action in the areas in which the EP had a lesser degree of competence.

→ Christa **KAMMERHOFER**
9/2006

4.8.2. The European Social Fund

Legal basis

Articles 146 to 148 and 158 to 162 of the EC Treaty (ECT).

Objectives

Improving employment opportunities for workers in the internal market by facilitating their adaptation to industrial changes and increasing their geographical and occupational mobility, in particular through vocational training and retraining.

Contributing to the strengthening of economic and social cohesion in the Union.

Achievements

A. Background

The early stages

Set up by the Treaty of Rome, the European Social Fund (ESF) is the oldest of the Structural Funds. During the transitional period (until 1970), it reimbursed the Member States half the cost of vocational training and resettlement allowances for workers affected by economic restructuring. In total, it assisted over two million people during this period.

The first reforms

1971

A review of the system at the end of the transitional period led to an initial reform (1971 Council Decision) that increased the fund's resources substantially, replaced the system of retroactive funding with new rules providing for applications for assistance to be submitted in advance, and introduced a link between assistance and Community policies.

1983

A second reform (Council Decision 83/516/EEC of 17 October 1983) laid down the guidelines for the fund's measures, which were to focus on:

- training young people to combat the growing unemployment within this section of the population: they were to make up at least 75 % of the beneficiaries of the fund;
- the regions most in need.

The essential reforms

Reforms following the Single Act

By including in the ECT the objective of economic and social cohesion within the Community by reducing disparities between regions, the Single European Act (1986)

set the scene for the fundamental reform of the entire Structural Funds in 1988 (Regulations of 24 June and 19 December 1988), which sought to:

- double the funds' resources;
- use the funds in an integrated way through:
 - common principles and objectives,
 - a single operating framework.

The ESF was fully integrated into this new mechanism and was assigned some of the common objectives as well as objectives specific to the ESF (Regulation of 19 December 1988).

Reforms following the Treaty of Maastricht (1991)

The Treaty enshrined regional policy as one of the major Community policies with the use of the funds for structural purposes. In particular, it expanded the aims of the ESF to include 'adaptation to industrial changes and to changes in production systems, in particular through vocational training and retraining'. It also did away with the detailed provisions on assistance that had previously been included in the ECT and entrusted the Council with this responsibility.

As regards this new legal basis, there was a further reform in July 1996 with two common regulations governing the funds (2081/93/EEC and 2082/93/EEC) and specific regulations for each one. They consisted of:

- a further doubling of resources (for the period 1994/99), with the majority being allocated to the less-favoured regions,
- the establishment of new objectives,
- for the ESF in particular (Regulation (EC) No 2084/93), concentration of aid on the most obvious needs and the most effective projects.

The most recent changes

These were brought about by:

- Regulation (EC) No 1260/1999 of 21 June 1999, which lays down the general provisions governing the various Structural Funds;
- Regulation (EC) No 1784/1999 of 12 July 1999, which determines the role of the ESF within this overall framework;
- Regulation (EC) No 1081/2006 of 5 July 2006 on the ESF, repealing the Regulation (EC) No 1784/1999.

B. The role of the ESF for the period 2000–06

1. Role in relation to all Community policies

(a) Employment policy

The ESF is the main financial instrument of the Community employment policy defined by the European employment strategy and the employment guidelines (→4.8.3.).

(b) Structural policy

The ESF forms part of the structural policy framework which covers several funds. While the ESF covered six of the seven structural policy objectives in the previous period (1994/99), it covers only three objectives with the new created objectives 2 and 3:

Objective 1: regions whose development is lagging behind

(where the level of development is less than 75 % of the Community average). The ESF provides assistance in these regions together with the three other Structural Funds;

Objective 2: regions undergoing economic and social conversion

This objective is also covered by all the funds;

Objective 3: human resources

Specific to the ESF, this objective involves support for the adaptation of employment, education and training systems and policies in the Member States. It should be implemented with flexibility given the diversity of national practices.

2. Scope of the ESF intervention

(a) Key areas

As part of its own specific objective, the ESF covers five key areas (Regulation (EC) No 1784/1999).

- Developing active labour market policies to (i) combat unemployment, (ii) prevent long-term unemployment, (iii) facilitate the integration of the long-term unemployed and the integration of young people.
- Promoting equal opportunities, with particular emphasis on those exposed to social exclusion.
- Promoting and improving education and training, as part of lifelong learning policy.
- Promoting a skilled and adaptable workforce, innovation and entrepreneurship.
- Improving women's access to the labour market.

(b) Complementary concerns

In these areas of intervention, the ESF must take account of three 'horizontal' complementary objectives:

- support for local authorities in the area of employment,
- giving a social dimension to the information society,
- promoting equal opportunities for men and women.

The ESF finances the implementation of the Community initiative EQUAL, which seeks to combat discrimination and inequalities in the labour market and facilitate the social and occupational integration of asylum-seekers. In addition, innovative operations and pilot projects concerning labour

markets, employment and vocational training are supported by the ESF.

(c) Eligible activities

Three forms of assistance are eligible for ESF support:

First, assistance for individuals:

- education and vocational training, rehabilitation, guidance, counselling;
- advanced training in the fields of scientific research and technological development.

Second, assistance for structures and systems in order to increase the effectiveness of the actions to assist individuals, in particular:

- improvement of the training of teachers, trainers and administrative staff;
- improvement of employment services;
- development of links between the world of work and the education, training and research sectors;
- development of systems for anticipating changes in employment and in qualification needs.

Third, accompanying measures:

- assistance in the provision of services to beneficiaries;
- promoting socio-educational measures;
- awareness-raising.

(d) Implementing methods

(i) Decision-making procedures

Assistance from the ESF is based on the priorities laid down in the national action plans for employment. Its management must be simplified and decentralised, with greater involvement of the regional and local authorities and NGOs. Financial and control procedures will be improved.

(ii) Concentration of assistance

ESF interventions are concentrated on a limited number of areas or themes and are directed towards the most important needs and the most effective operations. A significant proportion of the funds allocated under Objectives 2 and 3 must be made available in the form of small grants, with special arrangements for access by NGOs.

C. The role of the ESF for the period 2007–13

1. Framework for intervention

The new regulation No 1081/2006 on the ESF for 2007–13, has been adopted by the EP and the Council on 5 July 2006. It aims at contributing more effectively to the employment objectives and targets of the 'Lisbon strategy for growth and jobs'. Links between the ESF and the

European employment strategy are reinforced to reach its employment objectives. Particular importance is given to the strategy's three main objectives of full employment, quality and productivity at work, social cohesion and social inclusion.

The ESF will support the Member States' policies to comply with the guidelines and recommendations adopted within the framework of the European employment strategy.

2. Scope of the ESF intervention

Under the regional competitiveness and employment and convergence objectives assistance from the ESF should focus in particular on four key areas for action set out by the European Council:

- increasing adaptability of workers and enterprises;
- enhancing access to employment and participation in the labour market;
- reinforcing social inclusion by combating discrimination and facilitating access to the labour market for disadvantaged people;
- promoting partnership for reform in the fields of employment and social inclusion.

In the least prosperous regions and Member States, the fund will focus on supporting structural adjustment, growth and job creation. To this end, under the 'convergence' objective and in addition to the above mentioned priorities, the ESF will also support (i) efforts to expand and improve investment in human capital, in particular by improving education and training systems, and (ii) action aimed at developing institutional capacity and the efficiency of public administrations at national, regional and local level.

The ESF will place particular emphasis on the promotion of good governance and partnership. The involvement of the social partners is of particular importance in the programming and implementation of the fund's priorities and operations. In particular under the 'convergence' objective, social partners will be encouraged to actively participate in capacity-building actions and to undertake joint activities in the policy areas in which they play a decisive role.

The new ESF regulation reflects more strongly the Union's commitment to the elimination of inequalities between women and men: specific actions aimed at women are combined with a gender mainstreaming approach to increase women's participation in the world of work.

Finally, the promotion and mainstreaming of innovative activities will be fully integrated in the scope of the ESF and included in the national and regional operational programmes. Under both the 'convergence' and the

'regional competitiveness and employment' objectives, the ESF will give priority to funding transnational cooperation, including joint actions and the exchange of experience and best practice across the Union, ensuring, where necessary, coherence and complementarity with other Community or transnational programmes.

Role of the European Parliament

A. Competence

The European Parliament's (EP/Parliament's) influence over the Structural Funds has increased:

- since the Treaty of Maastricht, it has had to give its assent to the general provisions governing the funds;
- since the Treaty of Amsterdam, the implementing rules for the ESF have been subject to the co-decision procedure.

B. Role

The EP takes the view that the ESF is the Union's most important instrument for combating unemployment. It has

therefore always advocated the efficient operation of the fund. It has criticised the complexity of the funds, which involve too many objectives and too many Community initiatives together with burdensome management resulting in complications and delays in payment of support to beneficiaries.

In order to improve the eligibility criteria for projects, Parliament hopes that for the period 2007–13 innovative projects will be supported and transnational cooperation will be stepped up, including exchanges of experience and best practice across the Union. Parliament believes that the ESF should also improve the information made available to the public in order to combat discrimination and inequalities more successfully.

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09/2006

4.8.3. Employment policy

Legal basis

Articles 2, 3, 125–130, 136, 137, 140, 143, 145–148 of the EC Treaty.

Objectives

Important principles, objectives and activities mentioned in the Treaty include promotion throughout the Community of a high level of employment by developing a coordinated strategy, particularly with regard to the creation of a skilled, trained and adaptable workforce and labour markets responsive to economic change.

Achievements

A. The beginning

1. The Coal and Steel Community Treaty

Workers have benefited from Readaptation Aid in the European Coal and Steel Community (ECSC) since the 1950s. Aid was granted to workers in the coal and steel sectors whose jobs were threatened by industrial restructuring. The European Social Fund (→4.8.2.), created in the early 1960s, was the principal weapon in combating unemployment.

2. Actions in the 1980s

In the 1980s and early 1990s, action programmes on employment focused on specific target groups: ERGO (long-term unemployed), LEDA (local employment development) and ELISE (helping SME). In the same period a number of observatory and documentation systems were established. The European Commission and the Ministries for Employment of the Member States decided in 1982 to set up MISEP (Mutual Information System on Employment Policies in Europe). Sysdem (Community System of Documentation on Employment) was established in 1989. At the end of 1989 the Council called upon the Commission and the Member States to set up a European Employment Observatory (EEO). The third EEO network, Resnet (Research Network), was established in 1997.

3. EURES

To encourage free movement and help workers to find a job in another Member State, the former SEDOC system was improved in 1992 and renamed EURES (European Employment Service).

In 2002, the Commission reformed the system by reinforcing and consolidating EURES as a fundamental instrument in linking the employment services in the EEA (European

Economic Area) in a network. The reform improves EURES' institutional framework by decentralising decisions to the members of the network and by adapting its structure to the enlargement of the EU to include 25 members.

Administrative coordination is the responsibility of the European Coordination Office, run by the European Commission's DG for Employment, Social Affairs and Equal Opportunities.

The reform is based on two instruments:

- The EURES Charter, which governs operation of the network and provides for the creation of a uniform system for information exchange. Common models for content and form are used to facilitate the exchanges. The members of the network have incorporated their databases on living conditions in the various countries in the EURES database. The databases of job vacancies are gradually being pooled too.
- The members and partners present three-year activity plans based on the guidelines laid down by the Coordination Office.

The members and partners of the network are:

- national and local employment services;
- employment services responsible for cross-border regions;
- other specialised employment services notified to the Commission;
- trade unions and employers' organisations.

In this context, the European Commission has designated 2006 as the European Year of Workers' Mobility (→3.2.2). The year aims to raise awareness and increase understanding of the benefits of working in a new country and/or occupation, as well as highlighting how the EU can help workers move.

B. Towards a more comprehensive policy

1. The White Paper on Growth, Competitiveness and Employment, 1993

In the early years of the 1990s, the fear spread that the high level of unemployment in most countries could become permanent. To this end, the European Commission released the White Paper on Growth, Competitiveness and Employment under president Jacques Delors in 1993. It set off a debate about European economic and employment strategy and brought the issue of employment to the top of the European agenda for the first time.

2. The Essen process (1994)

In order to fight unemployment, the European Council of Essen in December 1994 agreed on five key objectives to be pursued by Member States, i.e. (i) to invest in vocational

training, (ii) increase employment intensive growth, (iii) reduce non-wage labour costs, (iv) increase active labour market policies, and (v) fight youth and long-term unemployment. Member States should ensure that these recommendations are translated into multi-annual programmes monitored by the Commission and the Council. The European Council was informed annually on the result of the Commission's and the Council's review. The Essen Process contributed to raising awareness of high unemployment in the Member States at EU level.

3. The contribution of the Amsterdam Treaty (1997)

In 1997, the Intergovernmental Conference in Amsterdam sought a compromise between Member States in favour of more EU action in the field of employment and those reluctant to transfer decision-making competence to the EU. The compromise was based on an innovation in governance that had been part of the multilateral surveillance process for entering Economic and Monetary Union (EMU).

The result was the new Employment Title in the Amsterdam Treaty which formally set up the European Employment Strategy and the permanent, constitutionally-based Employment Committee with advisory status to promote coordination of the Member States' employment and labour market policies.

The Treaty has not changed the basic principle of the Member States having the sole competence for employment policy but the Member States have committed themselves to co-ordinate their employment policies at Community level. The Treaty entrusts the Council and the Commission with a much stronger role and new tasks and tools. The EP has been involved more closely in the decision-making process, too. The responsibilities of social partners and their possibilities to contribute are also enhanced through the inclusion of the social protocol in the Treaty.

C. European employment strategy

The extraordinary Luxembourg Job Summit in November 1997 anticipated the entry into force of the Amsterdam Treaty in 1998 and launched the European employment strategy (EES), also called the Luxembourg Process.

It created the framework for the annual cycle for coordinating and monitoring national employment policies. The coordination of national employment policies at EU level is based on the commitment of the Member States to establish a set of common objectives and targets, and the strategy was built around the following components:

- Employment Guidelines: based on a proposal from the Commission, the Council shall agree every year on a

series of guidelines setting out common priorities for Member States' employment policies;

- National Action Plans: each Member State shall draw up an annual National Action Plan describing how these guidelines are implemented into practice at national level;
- Joint Employment Report: the Commission and the Council shall jointly examine the National Action Plans and present a joint employment report to the European Council. Based on this analysis, the Commission shall present a proposal for the employment guidelines for the following year;
- Recommendations: the Council may decide, by qualified majority, to issue country-specific recommendations upon a proposal by the Commission.

The EES commits the Member States and the Community to achieve a high level of employment as one of the key objectives of the European Union and, for the first time, has been set on the same footing as the macroeconomic objectives of growth and stability. Employment has become an issue of 'common concern'. Member States and the Community are committed to work towards developing a coordinated strategy for employment at Community level by using the newly introduced open method of coordination. The open method of coordination is based on five key principles, i.e. subsidiarity, convergence, management by objectives, country surveillance and an integrated approach.

The first set of 19 guidelines were adopted in 1998 and organised around four pillars:

- Employability: policies to make unemployment systems more active and increase the skills of workers;
- Entrepreneurship and job creation: policies to encourage new, smaller and more innovative businesses and make tax systems more employment-friendly;
- Adaptability: policies to increase the flexibility of workers and work organisation arrangements;
- Equal opportunities: policies to promote gender equality.

In 2000, the Lisbon European Council agreed on the new strategic goal of making the EU 'the most competitive and dynamic knowledge-based economy in the world', capable of sustaining economic growth with more and better jobs and greater social cohesion. It embraced full employment as an overarching objective of employment and social policy and set concrete targets to be achieved in 2010, i.e. increase the overall employment rate to 70 % and the women's employment rate to more than 60 %. In 2001,

another target has been added to raise the employment rate for older workers (55 to 64 years) to 50 % by 2010.

To reflect these conclusions, five new 'horizontal objectives' were introduced in the 2001 guidelines: realising full employment, stimulating lifelong learning, promoting the role of social partners, ensuring a proper policy mix between the four pillars, and developing common indicators in order to assess progress. The improvement of the quality in work was added in 2002.

D. Review of the European employment strategy

1. The impact assessment

Five years after its launch, the European employment strategy (EES) was reviewed in 2002. Based on national policy impact evaluations carried out by independent experts, the Commission made an assessment leading to the Communication 'Taking stock of five years of the European Employment Strategy' (COM(2002) 416). One of the main achievements of the EES is that it has succeeded in identifying employment as an overarching objective and in fostering convergence of national employment policies towards the European employment guidelines. Another step forward is the support for a new pro-active labour market policy, replacing the passive and curative measures of the past with active and preventive measures.

However, the report of the Employment Taskforce ('Jobs, Jobs, Jobs — Creating more Employment in Europe', November 2003, also called the 'Kok report') identified economic and social problems with a low overall rate of economic growth and a high unemployment rate in the eve of enlargement and recommended to focus on implementation of the strategy.

2. Relaunch of the European employment strategy

Based on the report by Wim Kok, the Commission came forward with the Communication 'Working together for growth and jobs — A new start for the Lisbon Strategy' (COM(2005) 24) stating that the progress of the EU towards the targets set by the Lisbon strategy showed insufficient progress and missed the intermediate employment rate targets set for 2005. It suggests that the Lisbon strategy be relaunched, simplified and streamlined, with the focus on growth and jobs, mobilising support for change.

The proposal has led to a complete revision of the EES based on a multi-annual time framework (2005–08) and a better streamlined presentation of the strategy in form of the implementation package. The new process is as follows:

- In January, the Commission presents the conclusions of its review of the National Reform Programmes in the form of the Implementation Package, together with its Spring Report to the Spring European Council. The Spring Report presents the Commission's strategic

policy priorities for the EU. The Implementation Package includes (i) the Implementation Report of the Broad Economic Policy Guidelines, (ii) the draft Joint Employment Report and (iii) the implementation report on the Internal Market Strategy with a detailed assessment of implementation in these policy areas;

- In April, following the general political orientations given by the Spring European Council, the Commission presents its proposals for further action in these policy areas in a single document, the ‘Guidelines Package’, composed of the Broad Economic Policy Guidelines, the Employment Guidelines and the Employment Recommendations. Subsequent to further consideration by the European Parliament (EP), the relevant Council formations adopt the Broad Economic Policy Guidelines, the Employment Guidelines and Recommendations and the June European Council draws up conclusions;
- In October, the new cycle starts when Member States present their National Reform Programmes to the European Commission.

This new process of streamlining the existing and the Employment Guidelines is in practice since July 2005, with the approval of the Integrated Guidelines for Growth and Jobs by the European Council.

In addition, Member States have appointed a ‘Mr or Ms Lisbon’ at government level to coordinate the different elements of the strategy nationally and to present the Lisbon programme in order to strengthen the implementation at national level

3. The Employment Guidelines 2005–08

On 12 April 2005, the Commission proposed the Integrated Guidelines for the period 2005–08 with a total of 23 guidelines, of which 8 are devoted specifically to employment, i.e. guidelines 16 to 23 in order to boost the Lisbon strategy:

- 16: to implement employment policies aimed at achieving full employment, improving quality and productivity at work, and strengthening social and territorial cohesion;
- 17: to promote a lifecycle approach to work;
- 18: to ensure inclusive labour markets for job-seekers and disadvantaged people;
- 19: to improve matching of labour market needs;
- 20: to promote flexibility combined with employment security and reduce labour market segmentation;
- 21: to ensure employment-friendly wage and other labour cost developments;

- 22: to expand and improve investment in human capital;
- 23: to adapt education and training systems in response to new competence requirements.

The eight employment guidelines are essential to reach the three priorities for action in the field of employment (i) attract and retain more people in employment, increase labour supply and modernise social protection systems, (ii) improve adaptability of workers and enterprises, (iii) increase investment in human capital through better education and skills.

Role of the European Parliament

A. General

The EP considers employment as the most important priority for the EU and has always been of the opinion that the EU and its Member States have to coordinate their efforts and that working towards full employment should be made an explicit goal of the Member States and the EU. Since April 1983, when the EP held a special part-session on combating unemployment, it has adopted many resolutions on the issue.

B. Detailed actions

In 1994 a special Temporary Committee on Employment was created. The EP adopted the Committee’s final report in July 1995. The EP found that the EU and the Member States should adopt an integrated strategy dedicated to job creation, encompassing all policies which have an impact on employment.

During the 1996 Intergovernmental Conference, the EP was very active in ensuring that employment policy got a much higher priority in the Amsterdam Treaty than was the case with the previous Treaties and called for a specific employment chapter in the Treaty. The Treaty of Amsterdam takes up many of the EP’s proposals on employment policy.

The EP set out its proposals for the Luxembourg European Council on Employment in October 1997. The conclusions of the Council, and the following Employment Guidelines, reflect many of Parliament’s recommendations.

In its resolution of June 2003 on the Employment Guidelines, the EP asked for the inclusion of the following elements:

- better coordination between Broad Economic Policy Guidelines, Employment Guidelines, Social Inclusion Strategy and Sustainability Strategy;
- better involvement of all relevant actors (social partners, among others);

- quantitative targets to be developed to measure progress on quality at work;
- integrated approach on equal opportunities and gender equality in the labour market to be developed;
- call on Member States for a significant reduction in unemployment gaps regarding disabled and non-disabled people;
- call for a 50 % reduction in the number of working poor in all Member States by 2010;
- call on Member States to give priority to policies for innovation and job creation for low performing areas, with regional employment disparities to be reduced by 10 % annually until 2010;
- National Action Plans to be discussed and adopted by the relevant parliamentary assembly.

The new Employment Guidelines, an integral part of the mid-term review of the Lisbon strategy, have also been backed by the EP, which, in its resolution of 22 June 2005,

supports 'the economic and social principles that define the Integrated Guidelines' but calls on 'the Member States to adopt ambitious national reform programmes that are totally coherent with the Guidelines'. The EP also insisted in involving more national parliaments in the Lisbon strategy

The EP stresses in its Report on a European Social Model for the future (A6-0238/2006) that the open method of coordination should enhance the role of parliaments and calls on the Commission to democratise the open method of coordination to ensure that not only the EP but also national parliaments play a full role in setting and achieving of targets by Member States' governments. Further it expresses its disappointment that many Member States have not achieved the Lisbon strategy objectives and calls on Member States to fully implement the revised strategy and to set concrete targets for employment.

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9/2006

4.8.4. Social security cover in other Member States of the Union

Legal basis

Articles 42, 63 and 308 of the EC Treaty.

Objectives

The basic principle enshrined in the Treaty of Rome is the removal of obstacles to freedom of movement for persons between the Member States (→3.2.2). To achieve this, it is necessary to adopt social security measures which prevent EU citizens working and residing in a Member State other than their own from losing some or all of their social security rights.

Achievements

In 1958, the Council issued two regulations on social security for migrant workers which were subsequently superseded by Regulation (EEC) No 1408/71, supplemented by implementing Regulation (EEC) No 574/72. Nationals from Iceland, Liechtenstein and Norway are also covered by way of the European Economic Area (EEA) Agreement and Switzerland by the EU-Swiss Agreement.

A. The four main principles of Regulation (EEC) 1408/71

1. Equal treatment

Workers and self-employed persons from other Member States must have the same rights as the host State's own nationals. For the principle of equal treatment to apply, three conditions must be met: equivalence of facts, aggregation of periods and retention of rights. In other words, a Member State may not confine social security benefits to its own nationals. The right to equal treatment applies unconditionally to any worker or self-employed person from another Member State having resided in the host State for a certain period of time.

2. Aggregation

This principle applies where, for example, national legislation requires a worker to have been insured or employed for a certain period of time before he is entitled to certain benefits, e.g. sickness, invalidity, old age, death or unemployment benefits. The aggregation principle means that the competent Member State must take account of periods of insurance and employment completed under another Member State's legislation in deciding whether a worker satisfies the requirements regarding the duration of

the period of insurance or employment. As regards the right to membership of unemployment or sickness funds, for example, application of the aggregation principle means that the person can be transferred directly from a fund in one Member State to a fund in another Member State.

3. Prevention of overlapping of benefits

This principle is intended to prevent anyone obtaining undue advantages from the right to freedom of movement. Contributing to social security systems in two or more Member States during the same period of insurance does not confer the right to several benefits of the same kind.

4. Exportability

This principle means that social security benefits can be paid throughout the Union and prohibits Member States from reserving the payment of benefits to people resident in the country, but it does not apply to all social security benefits. Special rules apply to the unemployed, for example. Different rights apply to exporting cash benefits (e.g. sickness benefit or pensions) and benefits in kind (e.g. medical assistance). Cash benefits are usually paid in accordance with the rules of the country in which the person entitled to them lives or is staying. Generally speaking, benefits in kind are governed by the rules of the country in which the fund member is staying. If the competent State is not the State of residence, the competent State must reimburse the State of residence or stay for its expenditure on benefits in kind.

B. Persons covered

Originally, Regulation (EEC) No 1408/71 only covered workers but, with effect from 1 July 1982, its scope was extended to cover the self-employed too (see Regulation (EEC) No 1390/81). The regulation also covers members of workers' and self-employed persons' families and their dependants, as well as stateless persons and refugees (see Article 2(1)).

By Council Regulation (EC) No 1606/98 of 29 June 1998 the Council extended the scope of Regulation (EEC) No 1408/71 in order to set civil servants on an equal footing with the rest of the population as regards the general statutory pension rights provided in the Member States.

Regulation (EC) No 307/1999 of 8 February 1999 extended the scope of the regulation to include all insured persons, particularly students and persons not in gainful employment.

Council Regulation (EC) No 895/2003 of 14 May 2003 extended the scope of the regulation to cover nationals of third countries provided they are legally resident on Union territory.

C. Benefits covered

Article 4(1) of Regulation (EEC) No 1408/71 lists the social security benefits covered by the regulation and the provisions which seek to prevent migrant workers and self-employed persons from suffering losses because they work or have worked in one or more Member States:

- sickness and maternity/paternity benefits;
- invalidity benefits intended for the maintenance or improvement of earning capacity;
- old-age benefits;
- survivors' benefits;
- benefits in respect of accidents at work and occupational diseases;
- unemployment benefits;
- family benefits.

Pre-retirement benefit schemes do not fall within the scope of the regulation. According to Regulation (EEC) No 1408/71, insured persons resident in another Member State for a short period may avail themselves of emergency medical services there. Where non-emergency services are concerned, the relevant insurance fund must first give its approval. Two judgments by the Court of Justice in the Decker (C-120/95) and Kohll (C-158/96) cases suggest that all insured persons might in the future be able to obtain medical treatment or medical products anywhere in the Union, provided that this did not result in an excessive rise in costs.

D. Future outlook

1. Prospects for the reform of Regulation (EEC) No 1408/71

Since 1971 Regulation (EEC) No 1408/71 has been amended on numerous occasions in order to take into account developments at Community level, changes in legislation at national level and the case law of the Court of Justice. As the regulation was a complex and rather impractical piece of legislation the Commission presented a proposal for a fundamental reform of the whole legislative system at the end of 1998 (COM(98) 0779).

2. Towards better coordination of social security systems

Based on the Commission's proposal, the EP and the Council approved Regulation (EC) No 883/2004 of 29 April 2004 in order to replace the Regulation (EEC) No 1408/71. The aim of the new regulation is to simplify the existing Community rules for the coordination of Member States' social security systems by strengthening cooperation between social security institutions and improving the methods of data exchange between social security institutions. The obligation

on administrations to cooperate with one another in social security matters should be improved and the movement from one Member State to another, whether for professional or private purposes, without any loss of social security entitlements will be facilitated.

For example, in the area of old-age pensions, it is necessary to specify what steps the insured person must take in order to apply for payment of his/her pension, to which institution the claim must be submitted (where the insured person has worked in several Member States), how the institutions are to exchange information to ensure that the insured person's full career is taken into account, and how each institution is to calculate the pension to be paid for the relevant period.

However, the new rules on coordination in Regulation (EC) No 883/2004 cannot be applied until the corresponding implementing regulation has been adopted to replace Implementing Regulation (EEC) No 574/72.

The proposal to revise the implementing regulation has been tabled by the Commission in January 2006 (COM(2006) 16) and is in the process of first reading in the European Parliament (EP) and the Council.

The proposal completes the modernisation work done by Regulation (EC) No 883/2004 and is intended to clarify the rights and obligations of the various stakeholders as it defines the necessary measures for the persons covered to travel, stay or reside in another Member State without losing their social security entitlements. The proposal contains general principles to allow the coordination to function. These principles include single applicable legislation, assimilation of the facts, and equal treatment. Member States are required to comply with these but have exclusive competence in defining, organising and financing their national social security systems

The following elements will be covered by Regulation (EC) No 883/2004 and its implementing regulation:

- improvement of the rights of insured persons by the extension of coverage in respect of persons and scope in respect of social security areas covered: the population covered by the regulation will include all nationals of Member States who are covered by the social security legislation of a Member State. Hence not only employees, self-employed, civil servants, students and pensioners but also persons who are not part of the active population will be protected by the coordination rules. That simplifies and clarifies the rules determining the legislation applicable in cross-border situations;
- expansion of the fields of social security subject to the coordination system in order to include pre-retirement legislation: The material coverage of the regulation is

extended to statutory pre-retirement schemes, which means that the beneficiaries of such schemes will be guaranteed payment of their benefits, will be covered for medical care and will be entitled to draw family benefits even when they are resident in another Member State;

- amendment of certain provisions relating to unemployment: retention for a certain period (three months which can be extended up to a maximum of six months) of the right to receive unemployment benefit by persons moving to another Member State in order to seek employment;
- strengthening of the general principle of equal treatment;
- strengthening of the principle of exportability of benefits: insured persons temporarily staying in another Member State will be entitled to healthcare which may prove medically necessary during their stay;
- introduction of the principle of good administration: obligation on the institutions of Member States to cooperate with one another and provide mutual assistance for the benefit of citizens.

3. European Health Insurance Card

European citizens who travel within the European Economic Area (EEA) may henceforth use the European Health Insurance Card. This card facilitates access to medical care on a visit to another EEA country for personal or professional reasons. Previously, individuals had to carry a paper form with them: E110 for international hauliers, E111 for tourists, E119 for jobseekers looking for work in another Member State or E128 for employees on temporary assignments in another Member State and students.

Initially the card will replace form E111 (for tourists) from June 2004, and the other forms subsequently. The card will be issued by the institution of the competent State or State of residence. In order to facilitate acceptance of cases and refund of the costs of care provided, the three main entities involved — the insured persons, the providers of care and the institutions — must recognise the single model and the uniform specifications of the card.

Distribution of the card is scaled over the following periods:

- from summer 2004: Germany, Belgium, Denmark, Spain, Estonia, Finland, France, Greece, Ireland, Luxembourg, Norway, Czech Republic, Slovenia, Sweden;
- by summer 2005: Austria, Italy, Latvia, Liechtenstein, Lithuania, Portugal;
- from January 2006: Cyprus, United Kingdom, Hungary, Iceland, Malta, Netherlands,
- Poland, Slovakia and Switzerland.

Role of the European Parliament

The EP has always shown a keen interest in the problems encountered by migrant workers, frontier workers, the self-employed and nationals of third countries working in other Member States, and has adopted various resolutions with a view to improving their lot. The EP has on several occasions deplored the persistence of obstacles to full freedom of movement and has called on the Council to adopt pending proposals, such as those intended to bring early retirement pensions within the scope of Regulation (EEC) No 1408/71, to extend the right of unemployed persons to receive

unemployment benefit in another Member State and to widen the scope of Regulation (EEC) No 1408/71 so as to include all insured persons. Some of these demands will be met by the final adoption of the radically revised version of Regulation (EEC) No 1408/71. The EP is seeking to improve the situation of frontier workers, especially as regards their social security and taxation (Resolution of 17 January 2001).

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09/2006

4.8.5. Health and safety at work

Legal basis

Articles 71, 94, 95, 136, 137 and 308 of the EC Treaty.

Objectives

On the basis of Article 137, the EU encourages improvements in the working environment in order to protect workers' health and safety by harmonising working conditions. To this end, minimum requirements are laid down at EU level, allowing Member States to introduce a higher level of protection at national level if they so wish. Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

Achievements

A. Up to 1987

1. First steps

Since the establishment of the EEC, steps towards a global approach to health and safety at work have been taken, such as setting up a Standing Committee on Safety in Coal Mines, and an Advisory Committee on Safety, Hygiene and Health Protection at Work to assist the Commission in drawing up and implementing measures relating to the working environment.

2. The 1980 Framework Directive and its follow-up

In 1980, the Council adopted Framework Directive 80/1107/EEC on protection against the risks of exposure to chemical, physical and biological agents at work. The directive led to a number of 'daughter directives' in the following years:

- Directive 82/130/EEC, as amended by Directives 88/35/EEC, 91/269/EEC, 94/44/EC and 98/65/EC, on electrical equipment for use in potentially explosive atmospheres in mines susceptible to firedamp;
- Directive 82/605/EEC, replaced by Directive 98/24/EC, on protection against the risks associated with metallic lead;
- Directive 83/477/EEC, as amended by Directives 91/382/EEC, 98/24/EC and 2003/18/EC, on asbestos;
- Directive 86/188/EEC, as amended by Directive 98/24/EC, on noise;
- Directive 88/364/EEC, replaced by Directive 98/24/EC, on protection against certain agents;
- Directive 91/322/EEC, as amended by Directives 96/94/EC and 2000/39/EC, on indicative limit values.

B. From 1987 to 1989

1. The innovations by the Single European Act (1986)

Since the introduction of Article 138 into the Treaty by the Single European Act (SEA) of 1986 measures in the field of health and safety at work can be taken by qualified majority vote in the Council. The introduction of Article 138 had four main objectives:

- greater effort to improve workers' health and safety at work;
- harmonising conditions in the working environment;
- preventing 'social dumping' as the internal market was completed;
- preventing companies from moving to areas with a lower level of protection simply to gain a competitive edge.

Article 95, introduced by the SEA, was also instrumental in lifting all barriers to trade.

2. Results

Directives adopted under Article 138 lay down minimum requirements concerning health and safety at work.

Directives under Article 95 are intended to ensure the placing on the market of safe products including machines and personal protective equipment for professional use. Member States are not permitted to set higher requirements for their products than those laid down by the directives.

The Community Charter of Fundamental Social Rights for Workers of 1989, though not legally binding, affirms the right to health and safety at the workplace.

C. After 1989

1. Framework Directive 89/391/EEC

The framework directive aims to improve the protection of workers from accidents at work and occupational diseases by providing preventive measures, information, consultation, balanced participation and training of workers and their representatives. The directive covers all workers in the EU, employed by private companies and public institutions/organisations. Self-employed and domestic servants are not covered by the framework directive. The framework directive is the basis for the following 'daughter directives':

- Directive 89/654/EEC on requirements for working places;
- Directive 89/655/EEC, as amended by Directive 2001/45/EC, on the use of work equipment;
- Directive 89/656/EEC on the use of personal protective equipment;
- Directive 90/270/EEC on work with display screen equipment;
- Directive 90/269/EEC on manual handling;
- Directive 90/394/EEC on exposure to carcinogens;
- Directive 92/57/EEC on temporary or mobile construction sites;
- Directive 92/58/EEC on provision of safety and health signs at work;
- Directive 92/85/EEC on pregnant workers;
- Directive 92/91/EEC on mineral-extracting industries (drilling);
- Directive 92/104/EEC on mineral-extracting industries;
- Directive 93/103/EC on fishing vessels;
- Directive 98/24/EC, as amended by Directive 2000/39/EC, on chemical agents;

- Directive 99/92/EC on minimum requirements for improving the safety and health protection of workers potentially at risk from explosive atmosphere;
- Directive 2000/54/EC on the protection of workers from risks related to exposure to biological agents at work;
- Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work;
- Four directives on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents:
 - Directive 2002/44/EC (vibration)
 - Directive 2003/10/EC (noise)
 - Directive 2004/40/EC on electromagnetic fields
 - Directive 2006/25/EC on artificial optical radiation.

2. Framework Directives having an impact on other legislative acts:

- Directive 91/383/EEC on temporary workers: the Commission tabled in 2002 a new proposal to guarantee the same conditions of health and safety as for workers in the user undertaking. Since 2003, the proposal has been blocked in the Council;
- Directive 92/29/EEC on medical treatment on board vessels;
- Directive 93/104/EC, as amended by Directives 98/662/EEC, 2000/34/EC and 2003/88/EC, on certain aspects of the organisation of working time: in 2004, the Commission proposed to amend the existing Working Time Directive 2003/88/EC with a view to improving the working environment to protect workers' health and safety as concerns in particular the weekly working time.
- Council Regulation (EC) No 2062/94/EEC established the European Agency for Health and Safety at Work in Bilbao (Spain) which provides EU bodies, the Member States and those involved in this area with technical, scientific and economic information on safety and health at work;
- Directive 96/29/EC on protection against the dangers arising from ionising radiation;
- Directive 99/95/EC on working time provisions in maritime transport;
- Directive 2000/34/EC amending Directive 93/104/EC concerning certain aspects of the organisation of working time to cover sectors and activities excluded from that directive (road, air, sea and rail transport, inland waterways, sea fishing, other work at sea and the activities of doctors in training);

— Directive 94/33/EC on the protection of young people at work.

3. Contribution of the Treaty of Amsterdam (1997)

The Treaty of Amsterdam strengthened the status of employment issues by introducing the Employment Title and the Social Agreement. Minimum directives in the field of protection of health and safety at work and concerning working conditions are adopted by qualified majority and in co-decision with the European Parliament (EP/Parliament). The scope of the notion of 'working conditions' in Article 138 was a highly controversial issue and diverging approaches have been taken by Parliament, the Council, Commission and by the Member States. In its judgement of 12 November 1996 (Case No C-84/94) the European Court of Justice ruled that Article 138 should not be interpreted restrictively.

4. The Charter of Fundamental Rights (December 2000)

Article 31 of the Charter of Fundamental Rights states that 'every worker has the right to working conditions which respect his or her health, safety and dignity'. However, the charter is not yet legally binding.

5. The European Week for Safety and Health at Work

This is an annual information campaign backed by all Member States, the European Commission and Parliament, trade unions and employers' federations. It provides an opportunity to focus on the importance of safety and health at work in a certain area of safety and health at work.

For instance, in 2006 the European Week for Safety and Health at Work raises awareness for young workers on 'Save Start'. The campaign of 2005 focused at the issue of noise at work with the slogan 'Stop that noise' and in 2004 safety in the construction sector was addressed.

D. The European Social Agenda

The European Social Policy Agenda approved by the European Council in Nice in December 2000 initiated a more strategic approach on health and safety at work at EU level with the objectives:

- to consolidate, adapt and, where appropriate, simplify existing standards;
- to respond to new risks such as work-related stress, by initiatives on standards and exchanges of good practice;
- to promote the application of legislation in small and medium-size enterprises (SMEs) — taking into account the special constraints to which they are exposed — by means of a specific programme;
- to develop from 2001 onwards, exchanges of good practice and collaboration between labour inspection institutions in order to satisfy the common essential requirements more effectively.

E. Community strategy on health and safety at work (2002–06)

In March 2002, the Commission adopted a new strategy to facilitate application of existing legislation on health and safety at work and to promote new initiatives over the period concerned. It is based on a survey of the situation before 2002, which prompted the Commission to emphasise three key steps for ensuring that workers have a safe and healthy working environment through reinforcing a culture of risk prevention, applying existing laws more effectively and pursuing a global approach to well-being at work.

There are three main strands in the Community strategy:

- It adopts a global approach to well-being in the workplace, taking account of changes in the world of work and the emergence of new risks, especially of a psycho-social nature. It is geared to enhancing the quality of work, and one of the essential quality factors is a safe and healthy working environment;
- It is based on consolidating a culture of risk prevention, on combining a variety of political instruments — legislation, social dialogue, progressive measures and the identification of best practices, corporate social responsibility and economic incentives — and on building partnerships between all the players on the safety and health scene;
- It points up the fact that an ambitious social policy is a factor in the competitiveness equation and that, conversely, having a 'non-policy' engenders costs which weigh heavily on economies and societies.

The EP was involved in the consultation procedure and requested a detailed action plan with concrete timetable for implementation of the strategy. The strategy should in particular pay special attention to women at work and the Framework Directive 89/391/EEC should be extended in its scope of application (report A5-310/2002).

The Commission has announced in the work programme for 2006 the putting forward of a new strategy for the period 2007–12 focusing on prevention: less work-related accidents and diseases push up productivity, contain costs, strengthen quality in work and hence valorise Europe's human capital. The new strategy should focus on new and emerging risks and safeguarding minimum levels of protection in workplace situations and to workers not adequately covered. Specific attention should also be given to the quality of prevention services, health and safety training, as well as other tools to ensure a better application of health and safety standards. The Commission will monitor the transposition and implementation of legislation. In order to ensure effective implementation, all the players concerned must have the capacity to take on their responsibilities.

Role of the European Parliament

The EP has frequently emphasised the need for optimal protection of workers' health and safety. In several resolutions, it has called for all aspects directly or indirectly affecting the physical or mental well-being of workers to be covered. Parliament has had a significant influence on directives improving the working environment.

The EP supports the Commission's activities to increase the provision of information to SMEs. Work must be adapted to people's abilities and needs and not vice versa. Working environments should be developed to take greater account of the special needs of disabled and older workers. Parliament urges the Commission to investigate the new problem areas which are not covered by current legislation: these include stress, burn-out, violence and harassment in the workplace. The Parliament calls on the Commission to

allocate the resources necessary to reflect the high priority to be accorded to occupational health and safety and urgently calls for a detailed action plan with financial and timing commitments against each major proposal.

The EP calls for an extension of the scope of the Framework Directive 89/391/EEC to excluded groups of workers such as the military, the self-employed, domestic workers and home workers. It also calls for a directive laying down minimum standards for the recognition of occupational diseases.

In its report on promoting health and safety at workplace (2004/2205 INI) Parliament pleads for better implementation of existing directives.

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09/2006

4.8.6. Social dialogue: information, consultation and participation of workers

I. Dialogue between the social partners

Legal basis

Articles 136–140 of the EC Treaty.

Objectives

To promote dialogue between the social partners in order to facilitate contractual relations or the conclusion of agreements at Community level.

Achievements

A. General development of the social dialogue at European level

At European level, the trend has been towards greater influence of the social partners on social and labour market policy.

1. Treaty of Rome

Under Article 138, one of the Commission's tasks was to promote close cooperation between Member States with regard to the right of association and collective bargaining between employers and workers.

2. Val Duchesse social dialogue

Initiated in 1985, the Val Duchesse social dialogue process aimed to involve the social partners, represented by the European Trade Union Confederation (ETUC), the Union of Industries of the European Community (UNICE) and the European Centre of Public Enterprises (CEEP), in the internal market process. The Council is not represented. The meetings of the Social Dialogue Committee have resulted in a number of joint statements on employment, education and training and other issues.

3. Single European Act

Article 139, which was incorporated into the Treaty by the Single European Act in 1986, extended the scope of Article 138 and created a legal basis in the Treaty for the development of a 'social dialogue'. The promotion of the social dialogue became one of the Commission's official tasks and collective agreements at Community level were made possible.

4. Agreement on social policy

In October 1991, UNICE, ETUC and CEEP adopted a joint agreement which called for mandatory consultation of the social partners on the preparation of legislation in the area of social affairs and a possibility for the social partners to negotiate framework agreements. This agreement was embodied in the Agreement on Social Policy (ASP) which

was adopted by all Member States, with the exception of the United Kingdom, and annexed to the Treaty of Maastricht on European Union.

At national level, the social partners are given the opportunity of implementing directives by way of agreement. At Community level, specific rules are laid down in the agreement. The Commission must consult the social partners before taking any action in the social policy field. The negotiation process may take up to nine months, and the social partners have the following possibilities:

- they may conclude an agreement and jointly request the Commission to propose that the Council adopt a decision on implementation; or
- having concluded an agreement between themselves, they may prefer to implement it in accordance with the procedures and practices specific to the social partners and to the Member States; or
- they may be unable to reach an agreement.

In the last case, the Commission will resume work on the proposal in question and will forward the result of its deliberations to the Council.

The first practical results of this process were the adoption of framework agreements on parental leave, on part-time work and on fixed-term work, and two framework agreements on the organisation of working time for seafarers and in air transport. The agreement on telework concluded in May 2002 will be implemented for the first time in accordance with the procedures and practices specific to the social partners and the Member States. The negotiations on temporary work ended in failure in May 2001. Nevertheless, in March 2002 the Commission adopted a proposal for a directive on temporary work based on the consensus which emerged among the social partners despite the failure of their negotiations but the negotiation is blocked in Council since 2003. The first European multi-sector agreement was signed in May 2006 to protect workers exposed to crystalline silica dust which can lead to silicosis, a potentially fatal lung condition.

5. Treaty of Amsterdam

The incorporation of the Agreement on Social Policy into the Treaty on European Union, following the Treaty of Amsterdam, means that the EU Treaty provides a single coherent structure for the social and employment policies of all the Member States.

B. Bodies at Community level

It was considered important from the start of European cooperation to involve various economic and social groups in drawing up Community legislation. The Economic and Social Committee (→1.3.11) bears witness to this.

Since the 1960s a number of advisory committees have existed whose role is to advise the Commission on the formulation of specific policies. In general, these committees, such as the Committee on Social Security for Migrant Workers, the Committee on the European Social Fund and the Committee on Equal Opportunities for Women and Men, are made up of representatives of national employers' and trade union organisations as well as governments.

Some of the earliest social dialogue structures were established in the main sectors. The sectoral social dialogue at European level has made considerable progress since its structures were reformed on the basis of Commission proposals in 1998. The sectoral social dialogue is organised either on the basis of joint committees appointed by the Commission in sectors usually corresponding to one of the common policies or on that of informal working groups organised in response to a joint request of the social partners. A series of joint texts have been negotiated by the committees on questions including equal opportunities, modernisation of work, training, enlargement and the social responsibility of enterprises.

From 1970 to 2003, the key tripartite body at European level concerning discussion on employment was the Standing Committee on Employment. The ongoing consultation between the Council of Ministers, the Commission and the social partners aimed to facilitate cooperation on employment policies. The Standing Committee on Employment was reformed in 1999 and integrated into the coordinated employment strategy. The Standing Committee included 20 representatives of the social partners, divided between the trade unions and employers' organisations.

On the basis of a joint contribution of the social partners to the Laeken social affairs summit in December 2001, the Council launched a Tripartite Social Summit for Growth and Employment in March 2003. The Tripartite Social Summit replaces the Standing Committee on Employment and will facilitate ongoing consultation between the Council, the Commission and the social partners on economic, social and employment questions. The Tripartite Social Summit will meet at least once a year.

In the autumn of 1995, the European Centre for Industrial Relations (CERI) was inaugurated. This was the result of an initiative taken by the social partners with the aid of the Commission (COM(95) 0445). The aim of the centre is to promote an understanding of the European dimension in industrial relations by way of training for leaders and representatives of employers' and trade union organisations.

C. Future outlook

Following the changes introduced by the Treaty of Amsterdam the consultation process has become even more important, since it covers all proposals falling under Article 137 and presented by all the Member States.

Role of the European Parliament

The European Parliament (EP/Parliament) has always supported the development of the social dialogue and has made a practical contribution by extending frequent invitations to the social partners at EU level to present their views before the Committee on Employment and Social Affairs delivers a report on any proposal which affects them. Parliament considers it vital to promote and ensure the broadest possible participation by organisations representing the social partners, particularly at SME level.

In its communication of 26 June 2002, the Commission specified its approach to the social dialogue which it views as both a key to better governance in an enlarged Union and a driving force of economic and social reform. The communication refers to the report of the High Level Group on Industrial Relations and Change (February 2002) and the joint contribution of the social partners presented at the Laeken summit (December 2001).

In its communication on partnership for change in an enlarged Europe (COM(2004) 0557), the Commission sets out to promote the results of the European social dialogue, seeking to improve its impact and encourage further developments. EU enlargement represents a major challenge to the social dialogue which, by involving the social partners, will help to manage economic restructuring in the new Member States.

II. Information, consultation and participation of workers

Legal basis

Articles 44, 94, 95 and 137 of the EC Treaty.

Objectives

To support the Member States' action relating to the information and consultation of workers.

Achievements

Training, consultation and participation of workers have been a key theme in European debate since the first social action programme was adopted by the Council in 1974. The Social Charter stresses the desirability of promoting employee participation. The Commission's proposals in this

area, however, have often encountered resistance in the Council and a great many proposals have still not been adopted. It should nevertheless be remembered that Community legal acts in this field could only be adopted by a unanimous vote before the changes introduced by the Treaties of Maastricht and Amsterdam. The Treaty of Amsterdam strengthened the EP's influence. The procedure is now co-decision with a qualified majority in the Council.

A. Present legislation

Most of the directives adopted by the Council deal with the right of workers to be informed and consulted on a number of important issues concerning the soundness of the company or their interests. However, these directives do not contain any provision conferring on them the right to participate in decision-making:

- Directive 75/129 of 17 February 1975 on collective redundancies, as amended by Directive 98/59 of 20 July 1998. Under this directive, employers must enter into negotiations with workers in the event of mass redundancy;
- Directive 77/187 of 14 February 1977 on the safeguarding of workers' rights in conjunction with the transfer of undertakings, as amended by Directive 98/50, under which workers must be informed of the reasons for the transfer and the consequences;
- Directive 78/855 of 9 October 1978 on mergers of limited companies, pursuant to which workers in companies which merge are protected to the same extent as laid down in the directive on the transfer of undertakings;
- Directive 94/45 of 22 September 1994 on the introduction of European Works Councils. The adoption of this directive was an innovation in that, unlike previous directives in this area, it does not address specific situations. It contains general rules to ensure that workers in large multinational companies and merging undertakings are informed and consulted. It is also the first directive adopted under the Agreement on Social Policy. Workers have also been given certain rights to information and consultation in regard to the working environment;
- Directive 2002/14 of 11 March 2002 establishing a general framework for informing and consulting employees in the EU;
- The Statute for a European public limited-liability company (SE). The regulation on the Statute for a European company (2157/2001/EC) was accompanied by a directive supplementing the Statute for a European company with regard to the involvement of employees (2001/86/EC) ([→3.4.2](#));

— In the same way the Statute for a European Cooperative Society (SCE) (Regulation (EC) No 1435/2003) was supplemented by Directive 2003/72 with regard to the involvement of employees (→3.4.2).

B. Future Outlook

It has not always been possible to get a decision on other proposals. The proposals for Council regulations on a 'European association' and a 'European mutual society', together with the associated proposals for Council directives containing supplementary provisions on the involvement of workers (COM(93) 0252), have been on the Council table since the Parliament's first reading on 15 February 1993.

Role of the European Parliament

A. General

Parliament has adopted several resolutions calling for workers to have the right to be involved in company decision-making. The EP's position is that workers should not only be entitled to be informed and consulted but that they should also have the right to participate in decision-making. The right to information, consultation and participation in decision-making should apply in both national and transnational companies and the right should apply to all companies irrespective of legal status. The EP

believes that workers should be involved in company decision-making concerning the introduction of new technology, changes in the organisation of work, production and economic planning. It hopes that the rules on worker involvement in the European Company (SE) can also be applied to the 'European Association' and the 'European Mutual Society'.

B. More specifically

In a resolution of 5 June 2003 on the Commission Communication on a 'Framework for the promotion of employee financial participation' (COM/2002/0364), the EP reaffirmed its support for the participation of employees in profits and enterprise results.

Its resolution on the Commission Report (COM(2000) 0188) on the application of the directive on the establishment of a European works council called for the speedy revision of the 1994 directive.

The EP has also demanded the imposition of sanctions in the event of non-compliance with the directive on the part of representatives of the social partners. The EP has backed the establishment of works councils on a global scale.

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09/2006

4.8.7 Equality for men and women

Legal basis

Article 2, Article 3(2) and Articles 13, 94, 137 and 141 of the EC Treaty (ECT).

Articles I-2, I-3(2)(3), II-81, II-83, II-93, III-116, III-118, III-124, III-210j, III-214 in the Treaty establishing a Constitution for Europe (not yet in force).

Objectives

Ensure equal opportunities and treatment for men and women through legislation, mainstreaming and positive actions.

Achievements

A. The first directives on equality

Article 141 (ex Article 119) of the ECT enshrines the principle that men and women should receive equal pay for equal work.

However, the first directives on equality for men and women were not adopted on this basis but on the basis of Article 308 (ex Article 235, supplementary powers), Article 94 (ex Article 100, the approximation of laws) and Article 137 (ex Article 118, workers' health and safety). On these bases a series of directives have been adopted:

- approximation of laws in the Member States relating to the application of the principle of equal pay for men and women: Directive 75/117/EEC of 10 February 1975;
- implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions: Directive 76/207/EEC of 9 February 1976;
- progressive implementation of the principle of equal treatment for men and women in matters of social security: Directive 79/7/EEC of 19 December 1978;

- implementation of the principle of equal treatment for men and women in occupational social security schemes: Directive 86/378/EEC of 24 July 1986, amended by Directive 96/97/EEC of 20 December 1996;
- application of the principle of equal treatment between men and women engaged in an activity including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood: Directive 86/613/EEC of 11 December 1986;
- introduction of measures to improve the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding: Directive 92/85/EEC of 19 October 1992.

B. Progress in case-law of the European Court of Justice (ECJ)

The ECJ has played an important role in this field, by developing case-law promoting equality for men and women. The most notable judgments have been:

- Defrenne II judgment of 8 April 1976 (Case 43/75): the Court recognised the direct effect of the principle of equal pay for men and women and ruled that that principle not only applied to the action of public authorities but also extended to all agreements which are intended to regulate paid labour collectively;
- Bilka judgment of 13 May 1986 (Case 170/84): the Court felt that a measure excluding part-time employees from an occupational pension scheme constituted ‘indirect discrimination’ and was therefore contrary to Article 119 if it affected a far greater number of women than men, unless it could be shown that the exclusion was based on objectively justified factors unrelated to any discrimination on grounds of sex;
- Barber judgment of 17 May 1990 (Case 262/88): the Court decided that all forms of occupational pension constituted pay for the purposes of Article 119 and the principle of equal treatment therefore applied to them. The Court ruled that men should be able to exercise their pension rights or survivor’s pension rights at the same age as their female colleagues;
- Marschall judgment of 11 November 1997 (Case C-409/95): the Court declared that a national rule which, in a case where there were fewer women than men in a sector, required that priority be given to the promotion of female candidates (‘positive discrimination’) was not precluded by Community legislation, provided that that advantage were not automatic and that male applicants were guaranteed consideration and not excluded a priori from applying.

C. Recent developments

The Treaty of Amsterdam made the principle of equality for men and women an objective and a fundamental Community principle (Article 2). Article 3(2) also gives the Community the task of integrating equality for men and women into all its activities (also known as ‘gender mainstreaming’). To this end, a high level group on gender mainstreaming was established in 2001.

The Treaty of Amsterdam also expanded the legal basis for promoting equality for men and women and introduced new elements of major importance. The new Article 13 makes provision for combating all forms of discrimination and Articles 137 and 141 allow the EU to act not only in the area of equal pay but also in the wider area of equal opportunities and treatment in matters of employment and occupation. Within this framework, Article 141 authorises positive discrimination in favour of women.

The European Union’s most recent actions in the field of equality for men and women have been:

1. The financial framework

(a) *Fifth Community Action Programme on Equal Opportunities (2001–05)* (Decision 2001/51/EC of 20 December 2000).

The action programme is the instrument for implementing the Community’s framework strategy on gender equality (2001–05). It provides for the coordination and funding of transnational projects to promote equal opportunities. This programme has a budget of EUR 50 million for the period 2001–05. A priority theme for action is chosen each year: in 2001 it was equal pay for women and men; in 2002, the balance between work and family life; in 2003, women in decision-making; and in 2004, promoting the change in gender roles and overcoming sexist stereotypes.

The programme has been extended to the end of 2006 and will become an integral part of the new programme Progress 2007–13 (→4.8.1).

(b) *Community action programme to promote organisations active in the field of equality between men and women* (Decision No 848/2004/EC of 29 April 2004).

This programme enables financial support to be given to the European Women’s Lobby and other organisations active in promoting gender equality.

(c) *The Community Initiative EQUAL 2000–06*

As part of the Community strategy to combat discrimination, the Commission has developed a Community initiative to promote ways of combating discrimination in connection with the labour market. The gender equality objectives are reconciling family and professional life and reducing the gender pay gap.

2. Women in the labour market

(a) European framework agreements

Consulting the social partners — the ETUC (European Trade Union Confederation), UNICE (the Union of Industries in the European Community) and the CEEP (European Centre of Public Enterprises) — led to the signing of two framework agreements on gender equality:

- on parental leave (Directive 96/34/EEC of 3 June 1996);
- on part-time work (Directive 97/81/EEC of 15 December 1997).

(b) Legislation

Modification of the 'burden of proof' in cases of sex discrimination (Directive 97/80/EEC of 15 December 1997). Under the directive, it is up to defendants taken to court for direct or indirect discrimination to prove that they have not infringed the principle of equal treatment

Directive 2002/73/EC of 23 September 2002 amending Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. This directive provides a Community definition of direct and indirect discrimination, harassment and sexual harassment. It also encourages employers to take preventive measures to combat sexual harassment, reinforces the sanctions for discrimination and provides for the setting up within the Member States of bodies responsible for promoting equal treatment between women and men.

The Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) merges the Directive 75/117/EEC on equal pay, Directive 76/207/EEC as amended by Directive 2002/73, Directive 86/378/EEC as amended by Directive 96/97/EC, and Directive 97/80/EC on the burden of proof in order to contribute to legal certainty and clarity in the implementation of the principle of equal treatment.

(c) European Institute for Gender Equality

The Commission tabled a proposal to establish a European Institute for Gender Equality (2005/0017 COD) with the overall objective to contribute to and strengthen the promotion of gender equality, including gender mainstreaming in all Community and national policies. It will also fight against discrimination based on sex and raise awareness of gender equality by providing technical assistance to the Community institutions. To mention a few activities: the institute will collect, analyse and disseminate data and methodological tools. A European Network on Gender Equality will be established.

The proposed regulation is in first reading process in the Council. Parliament delivered its opinion in February 2006 requesting that the institute should be independent, provide analysis on gender equality data and delivery expertise, contribute to raise awareness of gender equality issues and be consulted in appointing the management board of the institute by the Council.

(d) Roadmap

The Roadmap for equality between women and men (COM(2006) 92) builds on the experience of the Framework Strategy for equality between women and men for the period 2001–05 and outlines six priority areas for EU action on gender equality for the period 2006–10: equal economic independence for women and men; reconciliation of private and professional life; equal representation in decision-making; eradication of all forms of gender-based violence; elimination of gender stereotypes; promotion of gender equality in external and development policies. The roadmap represents the Commission's commitment in the field equal opportunities between women and men.

(e) Gender Pact 2006

The European Pact for Gender Equality, initiated by the Swedish, French, Spanish, Finnish, Czech and Danish governments was adopted by the Spring European Council in 2006. The main purpose is to recall and enhance women's participation in the labour market, fostering measures to improve work-life balance for women and men, and promoting gender equality. The pact should build on already existing objectives, targets and instruments within the Lisbon process and reinforce the implementation of National Reform Programmes (→4.8.3.) to raise the employment rate of women.

3. Violence against women and children

(a) Daphne II Community action programme (2004–08)

This programme (Decision 803/2004/EC of 21 April 2004) aims to prevent and combat violence against children, young people and women and to protect victims of such violence. It follows on from the Daphne programme (2000–03) and has a budget of EUR 50 million for the whole period.

4. Gender equality in EU external policy

(a) Promoting gender equality in development cooperation

Regulation (EC) No 806/2004 of 21 April 2004 provides for gender mainstreaming in EU cooperation and development policy as a whole and the adoption of specific measures to improve the situation of women.

The Treaty establishing a Constitution for Europe goes further than the Treaty of Amsterdam in that it includes the principle of equality between women and men among the Union's values (Article I-2) whilst keeping the articles on

gender equality already in the Treaties. In an annex to the draft treaty, the IGC also adopted a declaration in which the Member States undertake to combat domestic violence (Declaration 13).

Role of the European Parliament

The EP has played a significant part in supporting the equal opportunities policy, particularly since it established its Committee on Women's Rights and Gender Equality in July 1984.

Parliament's action has been facilitated by extending the application of the co-decision procedure in the following areas:

- measures to promote equality between men and women with regard to labour market opportunities and treatment at work (Article 137 of the ECT as amended by the Treaty of Amsterdam);
- measures aimed at applying the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (Article 141(3) of the ECT as amended by the Treaty of Amsterdam). Parliament thus played a significant role in the adoption of Directive 2002/73/EC of 23 September 2002 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions;
- Community incentive measures to support actions taken by the Member States to combat discrimination (Article 13(2) of the ECT as amended by the Treaty of Nice), in particular the Community action programme to promote organisations active in the field of equality between men and women (Decision No 848/2004/EC of 29 April 2004).

In addition, Parliament contributes not only to the overall policy development on equality between women and men (for example by participating in defining and implementing the Community Framework Strategy and the action programme on gender equality), but also to the development of Community policy in more specific areas, such as the fight against trafficking in women (see the resolution of 19 May 2000) or the participation of women in the decision-making process (see resolution of 18 January 2001).

The EP has had an influence in other specific areas, too.

- Parliament resolutions greatly assisted the EU position at the World Conference on Women in Beijing in September 1995, at which the Council, Commission and Parliament were unanimous in their agreement on the action platform. The EP also had a major influence on the follow-up to the Beijing Action Platform (resolution of 18 May 2000).
- the EP contributed to the inclusion of the principles of equal treatment and equal opportunities in the European Union's Charter of Fundamental Rights (resolutions of 17 May 1995 and 13 March 1996).
- through the votes of its representatives from the Committee on Women's Rights and Gender Equality, the EP, has reinforced dialogue and cooperation between the national parliaments on equal opportunities within the Network of Parliamentary Committees for Equal Opportunities for Women and Men in the European Union (NCEO) since it was set up in 1997.
- pointing out that violence profoundly affects women's lives and prevents them from attaining true equality of opportunity, Parliament adopted a resolution on the need for a European 'zero tolerance' campaign on violence against women, which urged the Commission and Council to declare 1999 'European Year of action to combat violence against women' (resolution of 16 September 1997). Following this resolution, a Community action programme to combat violence against women and children (Daphne) was adopted.
- strengthening the principle of gender mainstreaming in European and national policies.

The Parliament's commitment to gender equality was confirmed in 2002 when MEPs adopted a resolution on 4 September calling for the Daphne programme to be continued after 2003. Through Parliament's pressure the budget of the programme was increased from EUR 41 million to EUR 50 million.

Finally, the EP provides impetus through its own-initiative reports, which allow it to draw the attention of other institutions to specific problems.

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4.8.8. Disabled persons, the elderly and the excluded

Legal basis

Although competence in these matters lies essentially with the Member States, action at the EU level is possible on the basis of several provisions of the EC Treaty (ECT):

A. In general

Articles 13, 39, 42, 125–130, 136–145, 150 and 308 of the ECT and Declaration No 22 annexed to the Amsterdam Treaty. Article 13 of the ECT, relating to the general principle of non-discrimination, includes discrimination based on disability and age among the forms of discrimination which the Council may take appropriate action to combat.

B. In particular

Articles 136 and 137 of the ECT, added by the Treaty of Amsterdam in 1999, list the combating of exclusion and the integration of persons excluded from the labour market among the fields in which the Community is to support and complement the activities of the Member States.

Article 308 offers a general legal basis for action necessary to attain one of the objectives of the Community in cases where the Treaty has not provided the requisite powers.

Objectives

To promote equal rights for people with disabilities and older people.

To combat social exclusion.

Achievements

A. People with disabilities

A society open and accessible to all is the goal of the European Union Disability Strategy. Eurostat estimates that about 15 % of the active population suffer from a long-term disability or medical condition. In the 25 countries in which it conducted its survey, it found that almost 45 million persons of working age, i.e. 15 to 64, had a long-term disability or medical condition.

1. Community disability strategy

In pursuance of the United Nations Resolution of 1993 entitled the 'Standard Rules for the Equalisation of Opportunities for Persons with Disabilities', the Commission adopted a communication in July 1996 [COM(96) 406]. The Community disability strategy set forth in that communication was based on equal rights and non-discrimination and on mainstreaming disability issues into

all appropriate EU policies, such as social policy, education and training, research, transport, telecommunications and public health. While responsibility in this field lies with the Member States, the communication emphasised that the European Community would make a significant contribution to the promotion of cooperation between Member States and of efforts to exchange and develop best practice.

In 1996, a high-level group on disability was set up to monitor the policies and priorities of governments, to pool information and experience and to advise the Commission. In 1997, the representative bodies of management and labour in the EU (the 'social partners') undertook to collect examples of good practice and adopted, as one result of this work, a declaration on the employment of people with disabilities on 19 May 1999.

On the basis of Article 13 of the ECT, the Council adopted Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation to prohibit discrimination of people with disabilities and others on the labour market and in the workplace and in vocational training.

The resolution on equal employment opportunities for people with disabilities adopted by the Council on 17 June 1999 calls on Member States to develop, evaluate and review support programmes for the integration of people with disabilities in various ways. The resolution prepared the Decision 2000/750/EC establishing the Community action programme to combat discrimination for the period from 2001 to 2006. The action programme will be integrated into the programme Progress 2007–13 (→4.8.1).

By virtue of its Decision 2001/903/EC of 3 December 2001, the Council declared 2003 to be the European Year of People with Disabilities. In the course of that European Year, the Council adopted several resolutions:

- OJ (2003) C 39, p. 3: resolution on eAccessibility — improving the access of people with disabilities to the knowledge-based society;
- OJ (2003) C 134, p. 6: resolution on equal opportunities for pupils and students with disabilities in education and training;
- OJ (2003) C 175, p. 1: resolution on promoting the employment and social integration of people with disabilities.

A European Year of Equal Opportunities for All 2007 has been proclaimed (→4.8.1).

In October 2003, a communication from the Commission [COM(2003) 650] served as the basis for the establishment of a European action plan to promote equal opportunities for people with disabilities, designed to foster their inclusion in an enlarged EU economy and in society as a whole and comprising three basic operational objectives:

- achieving full application of Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation;
- reinforcing mainstreaming of disability issues in relevant Community policies; and
- improving accessibility for all.

People with disabilities and employment

People with disabilities are hard hit by unemployment. One of the key issues of Community initiatives is to broaden their job prospects and to change attitudes towards people with disabilities in the area of employment. Disability aspects are included in the National Reform Programmes (→4.8.3.) and in the National Strategies for social protection and social inclusion (see C. Social inclusion).

In accordance with the EU employment strategy, launched in 1998, the employment guidelines contain commitments to promote the employability of people with disabilities on the basis of the open method of coordination (→4.8.3.).

In the framework of the European Social Fund for the period from 2000 to 2006, the EQUAL initiative promoted the adoption of new approaches to discrimination in the labour market (→4.8.2.).

In addition, the Council's Resolution of 15 July 2003 calls on the Member States and the Commission, within the framework of their respective powers, to take new practical measures to promote the employment and social integration of people with disabilities.

B. The elderly

In 2000, more than 60 million people (16.4 % of the EU population) were aged 65 or over. The rise in life expectancy is set to continue; combined with falling birth rates, this will accelerate the ageing of the population. The EU population aged 60 and over is expected to rise by 37 % by 2050.

1. Strategic approach of the EU to the problem of an ageing population

(a) Importance of the issue

Having been one of the first regions in the world to be affected by the problem of an ageing population, Europe has developed a whole raft of strategic responses. Since

1984, the Community has conducted a number of studies and seminars focusing on the contribution of the elderly to economic and social life. The first action programme for the elderly began back in 1991. The 1990s were marked by important developments in Community cooperation on matters relating to ageing. In 1999, the European Commission presented a communication on strategic responses to ageing entitled *Towards a Europe for all Ages — Promoting Prosperity and Intergenerational Solidarity* as part of its contribution to the United Nations' International Year of Older Persons. Since then, the Member States have undertaken to study questions of ageing in the context of their quest for sound public finances, employment, social protection and sustainable development while continuing to mainstream the issue in their national policies.

(b) Strategic approach

The response to ageing developed by the EU is set in the context of an overarching strategy which consists in formulating mutually reinforcing policies and covers the economic, social and employment implications of ageing. The EU approach is designed to mobilise the full potential of people of all ages. The basic principle is that the search for effective responses to the problem of an ageing population must go beyond a narrow focus on the interests of today's oldest generations.

To this end, new active policies and active ageing strategies have to be adopted to (i) encourage people to engage in lifelong learning, (ii) support for active ageing, including appropriate working conditions, improved occupational health status and adequate incentives to work longer (→4.8.3., Employment Guideline No 18); and (iii) enterprises will have to cope with an ageing workforce and fewer young recruits (→4.8.3., Employment Guideline No 21).

2. Priority tasks

Two communications from the Commission, the first entitled *Towards a Europe for all Ages — Promoting Prosperity and Intergenerational Solidarity* [COM(99) 221] and the second entitled *Europe's response to world ageing — promoting economic and social progress in an ageing world* [COM(2002) 143], identify the following priority tasks:

- tackling the economic effects of ageing with a view to maintaining growth and sound public finances;
- adapting successfully to a situation in which the labour force is older and fewer in number;
- guaranteeing appropriate, viable and flexible pensions;
- ensuring that everyone has access to high-quality healthcare while guaranteeing the financial viability of health services.

3. Green Paper 'Confronting demographic change: a new solidarity between the generations' — COM(2005) 94

The EU is facing unprecedented demographic changes that will have a major impact on the whole of society. Figures in the Green Paper on Demographic Change show that from now until 2030 the EU will lack 20.8 million (6.8 %) people of working age. The demographic changes have major implications for prosperity, living standards and relations between the generations.

The development is the result of two factors — rise in life expectancy and decreasing birth rate: from 2005 to 2030 the number of people in the age group 65+ will rise by 52.3 % (40 million), while the age group of 15–64 will decrease by 6.8 % (208 million). In 2030 roughly two active people (15–65) will have to take care of one inactive person (65+).

Modern Europe has never had economic growth without births. Now low birth rate is the result of late access to employment, job instability, expensive housing and lack of incentives (family benefits, parental leave, childcare, equal pay).

C. Social inclusion

The European Union is committed to modernising its social model based on shared values and to continue to promote social cohesion, equal opportunities and solidarity between generations while responding better to economic and social change and promoting growth and employment.

According to Eurostat, some 18 % of the population of the EU, in other words about 65 million people, have to live on less than 60 % of the average national income. A little more than one third of poor people live in working households, the 'working poor'. Another one third lives in retirement and the remaining third are either inactive (19 %) or unemployed (13 %).

1. The instrument: the open method of coordination (OMC)

On the basis of the communication from the Commission entitled Building an inclusive Europe [COM(2000) 79], the European Council debated the subject of social exclusion for the first time at its Lisbon summit in March 2000. In December 2000, it agreed that policies designed to combat social exclusion should be based on an open method of coordination combining national action plans and Commission initiatives promoting cooperation.

The main elements of this method are (i) common aims in the fight against poverty and social exclusion, (ii) national action plans for fighting against poverty and social exclusion, (iii) joint reports on social inclusion and regular monitoring, joint evaluation and peer review and (iv) common indicators to measure progress and compare good practices.

A set of four objectives was defined: (i) to promote participation in the labour market and access to all resources, rights, goods and services, (ii) to avert risks of exclusion, (iii) to act on behalf of the most vulnerable, (iv) to mobilise all players.

In 2005, the Commission proposed a new framework for the OMC of social protection and inclusion policies in the EU (COM(2005) 706) addressing three common overarching objectives providing a general framework for the work across the OMC as a whole, (i) promote social cohesion and equal opportunities, (ii) interact with the Lisbon objectives on achieving greater economic growth and more and better jobs (→4.8.3.) and (iii) strengthen governance, transparency and involvement of stakeholders in the design, implementation and monitoring of the policy.

Particular importance is placed on a decisive impact in eradication of poverty and social exclusion, on providing adequate and sustainable pensions and on ensuring accessible, high-quality and sustainable healthcare and long-term care.

Based on these objectives the Member States will draw up National Strategies for Social Protection and Social Inclusion for the period of 2006–08. Subsequently, the Commission will draft a Joint Social Protection and Social Inclusion Report for Council/Commission adoption prior to the following Spring European Council.

2. The programmes

(a) Anti-poverty programmes

Between 1975 and 1980, in the framework of its first anti-poverty programme, the European Economic Community conducted an initial set of pilot projects and pilot studies designed to combat poverty. That first programme was followed by two others. Community activity in this area, however, was continually being contested in the absence of a legal basis. This was why the fourth anti-poverty programme, proposed in 1993, was never adopted by the Council. The situation changed in 1999 with the entry into force of the Treaty of Amsterdam, which enshrined the eradication of social exclusion as an objective of Community social policy in Articles 136 and 137 of the ECT.

(b) Social Inclusion Programme 2002–06

In December 2002, the European Parliament (EP/Parliament) and the Council adopted Decision 50/2002/EC establishing a programme of Community action encouraging cooperation between Member States to combat social exclusion. The programme covers the period from 2002 to 2006 and was allocated a budget of EUR 75 million. The programme activities fall into three categories:

- analysis of the characteristics, causes, processes and development of social exclusion;

- cooperation and exchanges of information and best practices;
- promotion of a dialogue involving the various stakeholders and support for networking.

The programme will become an integral part of the new programme Progress 2007–13 (→4.8.1).

Role of the European Parliament

The EP has adopted resolutions with the aim of improving conditions for the socially excluded, the elderly and people with disabilities. It emphasises that the Community must show greater solidarity with these groups and work for their integration into society. In this context, it has urged the Member States to set minimum incomes so that the most disadvantaged groups obtain the necessary means to achieve a reasonable standard of living and are guaranteed social protection and adequate healthcare. Parliament considers it essential that Community activities in this field, in the form of action programmes, be continued and has called on the Council on several occasions to adopt the programme for the elderly and the socially excluded proposed by the Commission.

In 1993, the EP initiated the organisation of a Senior Citizens' Parliament. The EP held a European conference entitled Older people in the 21st century — a new lease of

life in October 1998 and, in November 2003, organised a EP of Disabled People.

Together with the Commission, Parliament has celebrated 3 December as the European Day of Disabled People every year since 1993. In several resolutions, it has also called for all EU education, training and youth policies and programmes to include support measures designed to promote the integration of all disabled people into mainstream education and training systems.

In recent times, the EP has called on Member States, in the Mantovani report of 2004, to transpose Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation and to make more use of qualified majority voting in the Council for the adoption of anti-discrimination legislation. Parliament also used the occasion to reaffirm its support for a United Nations convention on the rights of people with disabilities and to encourage the Member States to back that initiative.

The EP supports active ageing in its Report on a European Social Model for the future (A6-0238/2006). In the same report it considers that employment is a decisive factor in achieving social inclusion.

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09/2006

4.9. Environment policy

4.9.1. Environment policy: general principles

Legal basis

European environmental protection law dates back to a conference of Heads of State or Government in October 1972 which decided that a common environmental policy was essential. Since 1972 the Community has adopted some 200 pieces of legislation, chiefly concerned with limiting pollution by introducing minimum standards, notably for waste management, water pollution and air pollution. A number of action programmes provide the framework for this legislation. The entry into force of the Single European Act in 1987, adding a title specifically on

this subject to the Treaty establishing the European Community, is generally acknowledged as a turning point for the environment. Since the Rome Treaties were revised by the Treaties of Maastricht and Amsterdam, the legal basis for Community environment policy has been Articles 174 to 176 ex Articles 130(r) to 130(t) of the EC Treaty (ECT).

Objectives

The Treaty of Amsterdam heightened the profile of European Union environment policy. Changes to the preamble and Article 2 ex Article B of the EU Treaty

strengthened the principle of sustainable development, so that it is now one of the EU's main objectives. Article 6(3)(c) of the ECT explicitly mentions the need to integrate protection of the environment into all Community sectoral policies. This new clause has widespread application; by moving it from an article on the environment to an important position at the beginning of the Treaty, the EU's leaders underlined their commitment to the objective of sustainable development. And the final act noted the Commission's undertaking to draw up impact assessment studies when putting forward proposals that were likely to have significant environmental implications.

Under Article 174 ex Article 130(r)(2) of the ECT, Community environment policy rests on the principles of precaution, prevention, rectifying pollution at source and 'polluter pays'. Article 95 ex Article 100(a)(3) of the ECT expressly states that 'health, safety [and] environmental protection' must take as a base 'a high level of protection, taking account in particular of any new development based on scientific facts. Within their respective powers the European Parliament (EP/Parliament) and the Council will also seek to achieve this objective'. The Union thus pursues an active policy to protect the soil, water, climate, air, flora and fauna. But in accordance with the subsidiarity principle (→1.2.2.), the Union will tackle environmental problems only when it can deal with them more effectively than national or regional government.

Achievements

A. Environmental instruments

1. Community environment programmes

The Fifth Community Action Programme on the Environment, entitled 'Towards Sustainability', established the principles of a European strategy of voluntary action for the period 1992–2000 and marked the beginning of a 'horizontal' Community approach which would take account of all the causes of pollution (industry, energy, tourism, transport, agriculture, etc.).

The Sixth Community Environment Action Programme, adopted by the EP and the Council in 2002, entitled 'Environment 2010: Our future, our choice' (Decision 1600/2002/EC), provides a strategic framework for the Community's environmental policy up to 2012 and is regarded as the central environmental component of the Community's sustainable development strategy. It is based particularly on the polluter-pays principle, the precautionary principle and preventive action, and the principle of rectification of pollution at source. It focuses on four priority areas for action: climate change; biodiversity; environment and health; and sustainable use of natural resources and management of waste. Five priority avenues

of strategic action are proposed: improving the implementation of existing legislation; integrating environmental concerns into other policies; working more closely with the market; empowering people as private citizens and helping them to change behaviour; and taking account of the environment in land-use planning and management decisions.

Moreover, the programme requires the European Commission to prepare thematic strategies covering seven areas: Air Pollution (adopted 21 September 2005); Prevention and Recycling of Waste (adopted 21 December 2005); Protection and Conservation of the Marine Environment (adopted 24 October 2005); Soil Protection (not yet adopted); Sustainable Use of Pesticides (adopted 12 July 2006); Sustainable Use of Resources (adopted 21 December 2005); Urban Environment (adopted 11 January 2006).

The thematic strategies represent the next generation of environment policy. As their name suggests, they work with themes rather than with specific pollutants or economic activities as has been the case in the past. They take a longer-term perspective in setting clear environmental objectives to around 2020 and will thus provide a stable policy framework. Finally, they focus on identifying the most appropriate instruments to deliver European policy goals in the least burdensome and most cost-effective way possible.

Each strategy is founded on thorough research and science, and follows an in-depth review of existing policy and wide-ranging stakeholder consultation. The aim has been to create positive synergies between the seven strategies, as well as to integrate them with existing sectoral policies, the Lisbon strategy and the sustainable development strategy. Each thematic strategy will thus help achieve the long-term goal of environmental sustainability while contributing to the Lisbon goals of enhancing growth and employment and promoting eco-innovation.

2. Assessment of the effects of certain plans and programmes on the environment

The directive on the assessment of the effects of certain plans and programmes on the environment (2001/42/EC) supplements the environmental impact assessment system for projects introduced by Directive 85/337/EEC. Directive 85/337/EEC covers construction work and other installations or schemes, as well as other measures affecting the natural environment or landscape. The new directive introduces a system of prior environmental assessment at the planning stage. Environmental assessment is automatically required for plans and programmes which are prepared for town and country planning, land use, transport, energy, waste management, water management,

industry, telecommunications, agriculture, forestry, fisheries and tourism.

3. European Environment Agency

On 7 May 1990 the Council adopted a regulation establishing the European Environment Agency (EEA) and the European Environment Information and Observation Network (Regulation (EEC) No 1210/90 and amended Regulation (EC) No 933/1999). It defines the agency as a central Community body.

The EEA's objective is to protect and improve the environment in accordance with the provisions of the Treaty and Community environment action programmes, with a view to establishing sustainable development within the Community.

To achieve this, the agency must provide the Community and the Member States with information which is objective, reliable and comparable at European level and which will enable them to take the measures required to protect the environment, evaluate the implementation of those measures and ensure that the public is properly informed on the state of the environment.

The agency may cooperate in the exchange of information with other bodies, including the IMPEL network ('Implementation of Environment Law' — information network on environment legislation linking the Member States and the Commission). Member States are obliged to inform the agency of the main component elements of their national environment information networks. The agency is also open to countries that are not members of the European Union.

4. The Community eco-label award scheme

According to Regulation (EEC) No 880/92 (revised by Regulation (EEC) No 2000/80) on a Community eco-label award scheme, the EU-eco-label may be awarded to products available in the Community which meet certain environmental requirements and specific eco-label criteria. The criteria are set and reviewed by the European Union Eco-Labeling Board (EUEB), which is also responsible for the assessment and verification requirements relating to them. They are published in *the Official Journal of the European Communities*.

The Community eco-label award scheme is designed to promote products which have a reduced environmental impact compared with other products in the same product group and to provide consumers with accurate and scientifically based information and guidance on products. The Commission and the Member States must promote the use of the eco-label by means of awareness-raising actions and information campaigns. They must ensure coordination between the Community eco-label scheme

and existing national schemes. In 2005, the Commission finished the evaluation process of the eco-label scheme, as required under the eco-label regulation, and published final recommendations, research findings and an executive summary.

5. Eco-audits

Regulation (EEC) No 761/2001 (replacing Regulation (EEC) No 1836/93), allowing voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), set up a new scheme to improve industrial environmental protection by introducing a form of environmental management.

The objective of this regulation is to promote improvements in the environmental performance of organisations in all sectors through:

- the introduction and implementation by organisations of environmental management systems as set out in Annex I to the regulation;
- objective and periodic assessment of those systems;
- training and active involvement of the staff of such organisations;
- provision of information to the public and the other interested parties.

The EMAS scheme has been evaluated by the Commission in 2005 through the EVER study (Evaluation of EMAS and Eco-label for their revision). On 24 January 2006, Parliament signed a 'EP Environmental Statement', which expresses that the EP will ensure that its activities are consistent with best current practice in environmental management.

6. Environmental inspections in Member States

A recommendation of the EP and of the Council of 4 April 2001 (Recommendation 2001/331/EEC) provides for minimum criteria for environmental inspections in the Member States. By putting forward minimum criteria regarding the organisation, performance, follow-up and publicising of environmental inspections, this recommendation aims to ensure a more uniform implementation and application of environmental legislation in the Member States. The recommendation covers environmental inspections of all industrial installations, enterprises and facilities subject to authorisation, permit or licensing requirements under current Community environmental legislation ('controlled installations').

7. Environmental taxes and charges in the single market

In addition to framework measures harmonised at Community level, the implementation of an environmental policy also requires a number of economic, technical and

fiscal instruments. Environmental taxes and charges can be a way of implementing the 'polluter-pays' principle by inducing consumers and producers to adopt more environmentally compatible behaviour.

The Commission set out the applicable legal framework and Member States' options and obligations in accordance with single market rules in a communication (COM 97/9). In its corresponding resolution of 15 July 1998, the EP recognised that the use of environmental levies could distort competition between those Member States which introduced them and those which did not, thus making it desirable for such levies to be introduced by all Member States together.

8. LIFE: A financial instrument for the environment

(a) LIFE+

In 2004, the Commission has proposed a new single instrument for funding environmental work, called LIFE+ (COM(2004) 621). This instrument, replacing existing financial programmes such as LIFE, the 'Urban Programme', the 'NGO Programme' and Forest Focus, will cover the period from 2007 to 2013. On 27 June 2006, the EU Environment Council reached agreement on LIFE+. The final budget for LIFE+ is EUR 2 097.9 million for the period 2007–13, compared to an original budget proposal of EUR 2.19 billion made by the European Commission in 2004. The Commission proposal of 2004 included two components: 'Implementation and Governance' and 'Information and Communication'. In first reading in July 2005, the EP proposed adding a third component, 'Nature and Biodiversity'. The new budget figure was proposed by the Commission after the EP and Member States reached agreement on the overall EU financial perspectives for the 2007–13 period. The new LIFE+ programme is now divided into three strands:

- LIFE+ Nature and Biodiversity: this focuses on the implementation of the EU directives on the conservation of habitats and of wild birds, as well as further strengthening the knowledge needed for developing, assessing, monitoring and evaluating EU nature and biodiversity policy and legislation;
- LIFE+ Environment Policy and Governance: this covers the other Sixth Environmental Action Plan Programme (6EAP) priorities besides nature and biodiversity, as well as strategic approaches to policy development, implementation and enforcement;
- LIFE+ Information and Communication on environmental issues.

Of the total budget for LIFE+, 40 % has been reserved for spending on the 'nature and biodiversity' part of the programme. The text of the common position is now in

second reading and Parliament will adopt a draft recommendation in the Environment Committee in September 2006.

9. International environmental cooperation

Notable EU international cooperation concerning the environment includes:

- cooperation with Russia: the EU–Russia Partnership and Cooperation Agreement (in force since 1997) includes a Joint Work Programme on the environment;
- the Europe–Asia cooperation strategy aims to help Asian countries build up environmental management capacities (more efficient and rational use of natural resources, introduction of a sustainable wealth-creation model and creation of environmental institutions) and adopt market-based environmental measures;
- UN World Summit on Sustainable Development (Johannesburg, 26 August to 4 September 2002): the Community played a major role and contributed actively to the adoption of the political declaration and plan of implementation (to improve access to basic sanitation and drinking water; to reduce biodiversity loss, to halt the decline of fish stocks; to minimise harmful effects on human health from the production and use of chemicals by 2020).

10. Environmental liability

Directive 2004/35/CE approved by Parliament and the Council in February 2004 establishes a framework of environmental liability based on the 'polluter-pays' principle for preventing and remedying environmental damage. The directive applies to environmental damage or to an imminent threat of such damage caused by pollution of a diffuse character, where it is possible to establish a causal link between the damage and the activities of individual operators. This legislation is a response to a series of disasters in recent decades, including the Seveso chemicals factory accident in 1976, the fire at the Sandoz plant in Basle in 1986 and oil spills such as the Amoco Cadiz, the Erika and the Prestige. The directive applies without prejudice to more stringent Community legislation regulating the operation of any of the activities falling within its scope. Companies could cover themselves against possible costs by taking out insurance or using other forms of financial guarantee. As proposed by Parliament, the directive will be reviewed after six years and the Commission will check whether insurance and guarantees have become available at reasonable cost throughout Europe. If not, the Commission will, if appropriate, propose legislation setting up a standardised compulsory financial guarantee scheme.

11. The precautionary principle

A Commission communication (proposal COM(2000) 0001) and an EP vote on the precautionary principle on 14 December 2000 sought to establish common guidelines for applying that principle in a wider context and to provide criteria on how to assess, appraise and communicate risks that science is not yet able to evaluate fully.

12. European environment and health strategy (SCALE)

There is a strong link between poor health and environmental problems: as many as 60 000 deaths per year in large European cities are caused by long-term exposure to air pollution. Being more exposed to environmental risks than adults, one child in seven is affected by asthma. Seeking to reverse this alarming trend, the European Commission launched in June 2003 a European Environment and Health Strategy (COM(2003) 0338), called SCALE, aimed at achieving a better understanding of the complex relationship between environment and health and identifying and reducing diseases caused by environmental factors. The strategy focuses on five key elements: science, children, awareness, legal instruments and evaluation. It will be implemented in cycles. The first cycle, from 2004 to 2010, will focus on four health effects: childhood respiratory diseases, asthma and allergies; neurodevelopment disorders; childhood cancer; endocrine disrupting effects. In June 2004 the Commission presented a European Environment and Health Action Plan 2004–2010 (COM(2004) 416), comprising points aimed at improving coordination between the health, environment and research sectors. A mid-term review of the action plan is scheduled in 2007. In January 2005, Parliament adopted an own-initiative report (rapporteur Frédérique Ries) on the action plan. Parliament considers the action plan to be insufficiently ambitious and insufficiently promoting preventive action. Furthermore, it might have no added value for certain Member States where an 'environment and health' strategy is already in place.

13. Programme promoting NGOs active in the field of environmental protection

According to Decision 466/2002/EC laying down a Community action programme promoting non-governmental organisations primarily active in the field of environmental protection, a budget of EUR 32 million is planned for the period 2002–06. Support from the programme will target the priority areas under the Sixth Environment Action Programme. The Commission is required to submit a report to the EP and the Council on the achievement of the objectives of the programme during the first three years.

Role of the European Parliament

Parliament has been behind a large amount of legislation, such as environmental impact assessments, free access to information and the eco-label for environmentally friendly products. The Treaty of Amsterdam strengthened its role by extending the co-decision procedure to all measures under Article 175, except those dealing with taxation and the management of water resources. After a long debate between Parliament, the Commission and the Council, agreement was reached on a joint text for the 6th Community Environment Action Programme (2001–2010). At Parliament's request, the programme contains provisions for listing and phasing out environmentally harmful subsidies, for environmental taxes at appropriate national or Community level, for Kyoto Protocol emission targets and for thematic strategies for tackling environmental priorities. All legislation arising from the thematic strategies will be adopted by co-decision.

Also at Parliament's request, additional targets will be sought under the programme for cutting greenhouse gas emissions, linked to an assessment by the International Panel on Climate Change. The programme will promote the development of alternative fuels and fuel-efficient vehicles. Under the agreement, the rising volumes of urban traffic will also be tackled and efforts made to improve the quality of the urban environment.

Furthermore, environmental concerns will be mainstreamed into Community policy-making, which Parliament called for, and special attention will be devoted to increasing environmental awareness among the general public and local authorities.

Lastly, the programme will seek to improve the management and use of natural resources and improve waste management, with the aim of adopting more sustainable production methods and patterns of consumption.

Parliament also played an active role in the Johannesburg Summit on Sustainable Development and stressed the importance of the EU taking the lead in ensuring demonstrable progress towards sustainable development. In June 2006, Parliament adopted a resolution on the revised Sustainable Development Strategy.

During the long negotiations with the accession countries, Parliament played an active role as far as enlargement in general and the environmental consequences in particular were concerned (Workshop on 'Enlargement and Environment' in November 2003).

With a view to improving legislative assistance to members, Parliament's Environment Committee has concluded two framework contracts with independent research institutes.

Under the terms of these contracts, the committee can ask for independent expert advice on a variety of emerging issues falling within its area of responsibility. The first framework contract focused on regulatory issues and policy assessments concerning the environment. The second framework contract covered evaluations of a more

technical and scientific nature relating to the environment, public health and food safety.

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4.9.2. Application and control of Community environmental law

Legal basis and objectives

→4.9.1.

Achievements

A. Aarhus Convention on access to information, public participation and access to justice in environmental matters

In 1998 the European Community, together with the 15 Member States, signed the UN/ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the 'Aarhus Convention'). The convention, in force since 30 October 2001, is based on the premise that greater public awareness of and involvement in environmental matters will improve environmental protection. It is designed to help protect the right of every person of present and future generations to live in an environment adequate to his or her health and well-being. To this end, it provides for action in three areas:

- ensuring public access to environmental information held by the public authorities;
- fostering public participation in decision-making which affects the environment;
- extending the conditions of access to justice in environmental matters.

The parties to the convention undertake to apply its provisions, and must therefore:

- take the necessary legislative, regulatory and other measures;
- enable public officials and authorities to help and advise the public on access to information, participation in decision-making and access to justice;

- promote environmental education and environmental awareness among the public;
- provide for recognition of and support to associations, organisations or groups promoting environmental protection.

The signing of the Aarhus Convention obliges the European Community to bring its legislation into line with the requirements of the convention. The Community has undertaken to take the necessary measures to ensure the effective application of the convention.

1. Public access to information

The first pillar of the convention on public access to information was implemented at Community level by Directive 2003/04/EC on public access to environmental information. This directive sets out the basic terms and conditions for granting access to environmental information held by or for public authorities and aims to achieve the widest possible systematic availability and dissemination of this type of information to the public. The directive comprises the following key elements:

- disclosure of information is the general rule, unless there is an overriding public interest in refusal;
- access to information is in principle free of charge; however, public authorities may, under certain circumstances, charge a reasonable amount for supplying environmental information;
- information on contamination of the food chain is also covered, where relevant;
- requests for information must be answered within one month of being received. This deadline may be extended by an additional month if necessary;
- when replying to requests for information, public authorities must specify the different procedures used

in compiling it or refer to the standardised procedure used. Moreover, Member States will be obliged to report by no later than 14 February 2009 on their experience gained in applying this directive, and will be required to submit a report to the Commission by no later than 14 August 2009. In the light of this experience and taking into account developments in computing, telecommunications and electronics, the Commission will report to the European Parliament (EP) and to the Council, including any proposals for revision which it may consider appropriate.

2. Public participation

The second pillar, which deals with public participation in environmental procedures, was transposed by Directive 2003/35/EC. This directive contributes to the implementation of obligations arising from the Aarhus Convention, in particular by providing for public participation in drawing up certain plans and programmes relating to the environment and amending Council Directives 85/337/EEC and 96/61/EC with regard to public participation and access to justice to ensure that they are fully compatible with the provisions of the Aarhus Convention.

3. Access to justice

A proposal for a directive (COM(2003) 246) intended to transpose the third pillar, which guarantees public access to justice in environmental matters, was brought forward in 2003, but has so far only had its first reading in Parliament. Parliament wants the directive to establish a minimum framework for access to justice in environmental matters and for Member States to be free to grant broader access. It proposed amendments which would extend access to justice in environmental matters to citizens' organisations confronted with a tangible environmental problem and not only to environmental entities as in the original proposal.

4. Application in European Community institutions and bodies

A Commission proposal for a regulation (COM(2003) 622) intended to guarantee that the provisions and principles of the Aarhus Convention are applied by Community institutions and bodies. In May 2006, the Conciliation Committee reached agreement on a joint text for a regulation of the EP and of the Council on the application of the provisions of the Aarhus Convention. Parliament considers the final text as a very satisfactory and well balanced compromise, given that many of the EP second reading amendments have been accepted and satisfactory compromises were reached on the others (report Korhola, June 2006). In July 2006, Parliament adopted a legislative resolution approving the joint text agreed by the Conciliation Committee.

5. Council Decision 2005/370/EC on the conclusion on behalf of the European Community of the Aarhus Convention

This decision approved the Aarhus Convention on behalf of the Community. Community institutions are covered by the Convention's definition of a public authority and are therefore on the same footing as national or local authorities.

B. Establishment of a European Pollutant Release and Transfer Register

In 2004, the Commission adopted a proposal for a regulation aiming to enhance public access to environmental information through the establishment of a coherent, integrated, Europe-wide 'Pollutant Release and Transfer Register' (PRTR). On 18 January 2006, Parliament and Council signed a Regulation (EC) No 166/2006 concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directive 91/689 and 96/61. The European PRTR succeeds the existing 'European Pollutant Emission Register', or EPER (based on Commission Decision 2000/479/EC) and the 'Integrated Pollution Prevention and Control' instrument, or IPPC (based on Council Directive 96/61/EC). It will take the form of a publicly accessible electronic database and will lay down the rules in order to implement UNECE Protocol on Pollutant Release and Transfer Registers. Its purpose will be to facilitate public participation in environmental decision-making, as well as contributing to the prevention and reduction of pollution in the environment.

C. Implementation and enforcement of Community environmental law

The Dublin European Council in June 1990 stressed that Community environmental legislation would only be effective if fully implemented and enforced by Member States. On 14 May 1997, in its resolution on the Commission's communication (COM(96) 500 final), Parliament called on the Commission to produce and publicise an annual report on progress in adopting and implementing Community environmental law.

The Sixth Annual Survey, which covers the year 2004, follows on previous Surveys by providing up-to-date information on the state of application of Community environmental law. This is in response to the Commission Communication on implementing Community environmental law (COM(96) 500 final) and the related resolutions thereon of the Council and EP.

Implementation of EU environmental law by Member States has improved in recent years. This is reflected in the much lower number of new complaints and infringement cases opened by the Commission in 2004 in the

environment sector. Such complaints often take the form of written questions and petitions to the EP. This reflects the concern of European citizens about the state of the environment and Member States' 'green record'.

In this context, new working methods need to be developed with Member States at all stages of the implementation life cycle. Moreover, full implementation of the Aarhus Convention will improve access to justice in Member States and thus also facilitate the handling of complaints by the Commission.

D. Serious environmental crimes — protection of the environment through criminal law

In order to guarantee a high level of protection of the environment the increasing problem of environmental crime must be tackled. The Community has adopted numerous pieces of legislation protecting the environment. Member States are required to transpose and implement those acts. Experience has shown, however, that the sanctions currently applied by Member States are not always sufficient to achieve full compliance with Community law. Not all Member States provide for criminal sanctions against the most serious breaches of Community law protecting the environment. Therefore a minimum standard on the constituent elements of criminal offences in breach of Community law protecting the environment needs to be established. In order to ensure its better and harmonised application in all Member States, this objective can be better achieved at Community level rather than at national level.

On 13 March 2001, the Commission put forward a draft directive on 'Environmental protection: combating crime, criminal offences and penalties'. The EP first reading report was then adopted on 9 April 2002 (Mrs Oomen-Ruijten rapporteur). The Council never adopted a political agreement on this proposal but adopted instead a third pillar Framework Decision on the same subject (Council Framework Decision 2003/80/JHA of 27 January 2003 on the protection of the environment through criminal law, OJ 2003 L 29, p. 55). This was challenged by the Commission and the Parliament in front of the European Court of Justice and, on 13 September 2005, the Court annulled the framework decision. To see what the Commission and Council plan to do in response to the Court of Justice decision, the EP proposed adoption of two oral questions, as well as a draft resolution.

Role of the European Parliament

The EP has always insisted on the need for better public access to environment-related information and for improving public participation and access to justice in environmental matters. The EP insisted (recommendation

to replace Directive 90/313/EEC) on better public access to (environmental) information held by public authorities and on that information being disseminated using the latest technology available. This would enable Community legislation to be brought into line with the Aarhus Convention.

The EP also considers simplifying and improving Community legislation to be one of its duties and has stressed the importance of clearer legislation which is better supervised and implemented, in particular in view of enlargement.

In addition, the EP supported proposals to establish a system of minimum criminal sanctions for the most serious breaches of Community law protecting the environment.

The effectiveness of EU environmental policy is largely determined by its implementation at national, regional and local levels. At present however, although the number of complaints concerning instances of non-compliance with Community law is slightly decreasing, deficient application and enforcement remains an important issue in the field of environmental law. The need for improved implementation has been recognised as a key priority of both the Fifth and the Sixth Environmental Action Programmes.

The EP stressed (see Decision 1600/2002/EC on the 6th Community Environment Action Programme. →4.9.1.) that 'more effective implementation and enforcement of Community legislation on the environment' should be regarded as one of the strategic objectives of EU environmental policy. The EP thus called for measures to improve respect for Community rules on the protection of the environment, the promotion of improved standards of inspection, monitoring and enforcement by Member States and a more systematic review of the application of environmental legislation across the Member States.

The EP strongly supports the objective of prompt, uniform and effective implementation of EU environmental law. In 1997 the EP passed a resolution calling on the Commission to produce and publicise annual reports on progress in adopting and implementing EU environmental legislation. That the Commission is now publishing annual surveys on the implementation and enforcement of Community environmental law is in response to the EP calling on it to do so.

Implementation issues have been high on the agenda of Environment Committee meetings over the last few years. The Committee now draws up three follow-up reports each year, in which it looks at adopted EU legislation in the environment and related fields, examines problems of implementation and assesses whether or not the legislation is meeting its initial objectives.

A number of specific implementation issues have been discussed on numerous occasions within the EP. One such issue is the Spanish National Hydrological Plan, which has been raised on several occasions in committee question time, was examined by a delegation from the Environment Committee in February 2003 and was again discussed in

the presence of Commissioners Wallström and Barnier on 16 December 2003.

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4.9.3. Sustainable development

Legal basis and objectives

→4.9.1.

Achievements

A. Global partnership for sustainable development

Globalisation acts as a powerful force for sustaining global growth and providing ways of dealing with international problems such as health, education and the environment. However, market forces cause and exacerbate inequality and exclusion and can cause irreparable damage to the environment. Globalisation should therefore go hand in hand with measures designed to prevent or mitigate these effects.

On 16 May 2002, the EP adopted a resolution on a Commission communication entitled 'Towards a global partnership for sustainable development' (COM(2002) 82) in view of the World Summit on Sustainable Development (WSSD) held in Johannesburg in September 2002. For 2004 and 2005, the political focus lay on water, sanitation and human settlements. The cycle for 2006 and 2007 deals with energy, industrial development, air pollution and climate change, as decided by the 14th session of the UN Commission on Sustainable Development (CSD-14) in May 2006. Moreover, all cycles address cross-cutting issues, such as governance, finance, and sustainable consumption and production. With a view to achieving the Millennium Goal of reducing poverty by half by 2015, the Commission called on Member States to increase their development aid, first of all, to an EU average of 0.39 % of GDP and then to 0.7 % by 2010. It also urged them to agree on an immediate moratorium on debt servicing for all least developed countries (LDCs) with debt problems.

This EU strategy for sustainable development sets out a roadmap for implementing sustainable development in the Union and covers economic, social, environmental and financial aspects, as well as coherence of EU policies and

governance at all levels, including harnessing globalisation (trade for sustainable development); combating poverty and promoting social development (reducing extreme poverty in the world — i.e. people who live on a euro a day or less — by 2015); sustainable management of natural and environmental resources (reversing the trend of the loss of environmental resources by 2015 as well as developing intermediate objectives in the sectors of water, land and soil, energy and biodiversity); better governance at all levels (meaning strengthening the involvement of civil society, and the legitimacy, coherence and effectiveness of global economic, social and environmental governance); and financing sustainable development.

The EU Strategy for Sustainable Development has been revised by the European Commission with the goal of better integrating the domestic and international dimensions of sustainable development. Following the review of the EU Sustainable Development Strategy 2001 (COM(2005) 658) of December 2005 and on the basis of contributions from the Council, the European Parliament (EP/Parliament), the European Economic and Social Committee and others, the European Council adopted in June 2006 an ambitious and comprehensive renewed Sustainable Development Strategy (DOC 10117/06) for an enlarged European Union. This document sets out a single, coherent strategy on how the EU will more effectively live up to its long-standing commitment to meet the challenges of sustainable development. The overall aim of the renewed EU SDS is to support and promote actions to enable the EU to achieve continuous improvement of quality of life for both current and future generations, through the creation of sustainable communities able to manage and use resources efficiently and to tap the ecological and social innovation potential of the economy, ensuring prosperity, environmental protection and social cohesion.

In adopting a joint resolution on the revised sustainable development strategy on 15 June 2006, the EP expresses its

disappointment at the lack of progress in developing and following up the Sustainable Development Strategy adopted in Gothenburg in 2001. It considered that the Commission's platform for action on the review of the SDS was overly cautious and weak, and in its present form would not succeed in mobilising public opinion and policy-makers behind the vital tasks that lie ahead.

B. Environmental technology for sustainable development

A Commission report (COM(2002) 122) summarises the main issues concerning environmental technology, including an action plan.

At the European Council in Lisbon in March 2000, the EU set itself the objective of becoming 'the most competitive and dynamic knowledge-based economy in the world'. At the Gothenburg European Council in June 2001, a strategy for sustainable development was agreed by adding an environmental dimension to the Lisbon strategy. Environmental technologies are an important bridge between the Lisbon strategy (→4.0.0) and sustainable development, having the potential to contribute to growth while at the same time improving the environment and protecting natural resources.

New and innovative environmental technologies can add to economic growth in a number of ways. They can allow us to get more environmental protection for less money, or to meet current standards at a lower cost. This frees up resources for use elsewhere in the economy. They also help to decouple environmental pollution and resource use from economic growth, allowing our economies more scope to grow in the long run while still remaining within the environment's limits. This is central to sustainable development. Finally, an innovative environmental technology sector can help underpin growth if it is capable of tapping into rapidly growing export markets.

On 5 July 2005, the EP adopted a resolution (2004/2131(INI)) on the Commission's Communication on Stimulating Technologies for Sustainable Development: An Environmental Technologies Action Plan for the EU (COM(2004) 38). Main issues addressed were: boosting demand for environmental technologies; creating a fair and competitive market for environmental technologies; meeting the demand for environmental technology (such as providing research with sufficient means); and coherent policies on an internal as well as an external level. Finally, Parliament emphasised that sustainable development requires global solutions and welcomed all initiatives to promote environmental technologies in developing countries. Exports of outdated and polluting technology to third countries must be discouraged.

C. Integration of environmental policy

On 1 June 2004, the Commission adopted the Working Document 'Integrating environmental considerations into other policy areas — a stocktaking of the Cardiff process' (COM(2004) 394). This stocktaking of environmental integration follows from the Cardiff Summit of June 1998 and from the 2003 Spring European Council, which noted 'the Commission's intention to carry out an annual stocktaking of the Cardiff process of environmental integration and a regular environment policy review and to report in time for the outcomes of these exercises to be taken into account in the preparation of its future Spring reports, starting in 2004'. The stocktaking complements the 2003 Environment Policy Review (EPR) adopted in December 2003, and should be read in the context of the information presented in the 2003 EPR.

In response to the 'Communication from the Commission to the Council and the EP — The 2005 Review of the EU Sustainable Development Strategy: Initial Stocktaking and Future Orientations (SEC(2005) 225) (COM/2005/0037 final)', the EP adopted a resolution on 18 January 2006, based on the own-initiative report drafted by Anne Ferreira on the environmental aspects of sustainable development. The report said that it was regrettable that most of the orientations contained in the communication failed to respond to the magnitude of the challenges. It underlined the worsening of unsustainable trends in a number of fields: pollution-generating misuse of natural resources, loss of biodiversity, aggravation of climate change, the inequalities of poverty and the accumulation of public debt both in the EU and in third countries.

1. Environment and employment

A Commission proposal (COM(97) 592) and a EP resolution adopted on 16 July 1998 encouraged Member States to speed up the transition to new and clean technologies to replace polluting technologies and reconsider ways of financing the provision of public goods. The most favourable time for making this shift is when old capital is to be replaced with new investment integrating high environmental standards. The benefits would be twofold: investment would create jobs and business opportunities; new technologies would lead to a better environment.

2. Environment and energy policy

A Commission package of four directives (COM(2003) 739, 740, 741 and 742) have been discussed within the EU institutions. On 28 September 2005, Parliament and Council adopted Regulation (EC) No 1775/2005 on conditions for access to the natural gas transmission networks. On 18 January 2006, the directive of the EP and of the Council concerning measures to safeguard security of electricity supply and infrastructure investment (2005/89/EC) was

adopted. And on 5 April 2006, the EP and the Council signed the Directive 2006/32/EC on energy end-use efficiency and energy services and repealing Council Directive 93/76/EEC. In agreeing on this Act the EU intends to contribute towards the improved security of energy supply as well as reducing the emission of dangerous greenhouse gases. The first energy efficiency action plan must be submitted no later than 30 June 2007.

Furthermore, on 4 April 2006, the EP adopted a second reading report by Anne Laperrouze amending the Council's common position on the directive on Trans European Energy Networks. On 6 July 2006, the Commission gave its opinion on the EP amendments to the common position (COM(2006) 0381).

3. Approaches to sustainable agriculture

The political agreement in the Council concerning the Commission reform proposals 'CAP reform — a long-term perspective for sustainable agriculture' (26 June 2003) is therefore increasingly aimed at heading off the risks of environmental degradation, while encouraging farmers to continue to play a positive role in the maintenance of the countryside and the environment by targeted rural development measures and by contributing to securing farming profitability in the different EU regions. The agri-environmental strategy of the common agricultural policy is largely aimed at enhancing the sustainability of agro-ecosystems. The measures set out to address the integration of environmental concerns into the CAP encompass environmental requirements (cross-compliance) and incentives (e.g. set-aside) integrated into the market and income policy, as well as targeted environmental measures that form part of the rural development programmes (e.g. agri-environment schemes).

4. Integration of the environment dimension in developing countries

The current Regulation (EC) No 2493/2000 is designed to continue action on the basis of experience gained in implementing the earlier regulation, promoting the full integration of the environmental dimension into the development process of developing countries.

The regulation lays down the rules under which cooperation projects initiated by various players (governments, public bodies, regional authorities, traditional or local communities, cooperatives, international organisations, non-governmental organisations, private actors) in developing countries and which are intended to promote sustainable development may receive EU financial aid and technical assistance. The budget for applying the regulation over the period between 2000 and 2006 is EUR 93 million.

5. Strategy for integrating the environment into the single market

Environmental standards are often perceived as barriers to market access (strict technical standards), just as open markets are frequently seen as a threat to the quality of the environment. A Commission proposal (COM(99) 263) tries to develop the synergies between the single market and EU environment policy following the strategy formulated by the European Council in Vienna, with the aid of a series of measures on public procurement, State aid, standardisation, financial reporting and eco-labelling. Furthermore, a strong correlation between the environment and the single market is defined as a principle step towards the achievement of the Lisbon objectives. Economic instruments such as taxes (environmental taxes and charges) can be an appropriate way of implementing the 'polluter pays' principle.

6. Strategy for integrating the environment into industry

Industry has made considerable progress in environmental protection, by implementing environmental management and audit systems and new strategies and objectives (introducing the concept of eco-efficiency, for example). According to the Council Conclusions of 29 April 1999, environmental policy and sustainable development should be integrated into industrial policy. On 14 and 15 May 2001 the industry integration strategy was adopted at the Industry/Energy Council. The Communication 'Industrial policy in an enlarged Europe' (COM(2002) 714 final) adopted by the Commission on 11 December 2002 recognises the need to develop and strengthen policies in the area of sustainable production.

7. Promoting sustainable development in the non-energy extractive industry

Extractive operations raise two types of concern: the use of non-renewable resources and the damage done to the environment (air, soil and water pollution, noise, destruction or disturbance of natural habitats, visual impact on the surrounding landscape, and effects on groundwater levels). Mining waste is one of the largest waste streams in the EU. Some of the waste involved is dangerous. Abandoned mine sites and unrestored quarries spoil the landscape and can pose severe environmental threats particularly as regards acid mine drainage.

8. Integrating environmental protection requirements into the common fisheries policy

On the basis of an analysis of the existing situation and the international debate on responsible fishing, a certain number of ideas have been presented by the Commission during the last few years. In the framework of the reform of the common fisheries policy (CFP), these ideas have been

incorporated into an action plan to integrate environmental protection elements into the CFP by defining guiding principles, management measures and a work programme with a view to promoting sustainable development. A communication from the Commission (COM(2002) 0186 final) set out a Community action plan to integrate environmental protection requirements into the common fisheries policy. In the context of 'conservation and environment' two communications addressed the problems head-on: COM(2001) 143(01) set out the 'elements of a strategy for the integration of environmental protection requirements into the common fisheries policy'; and COM(1999) 363 defined 'the basic elements of fisheries management and nature conservation in the marine environment'.

9. Integrating the environmental dimension into sustainable development of the urban environment

Following a communication entitled 'Sustainable urban development in the EU: a framework for action' (COM(1998) 605), Decision No 1411/2001/EC put in place a framework for cooperation to define, exchange and implement good practice in sustainable urban development (in the framework of Agenda 21). The main partners are the Commission and the networks of towns and cities organised at European level. Following on from Decision No 1600/2002/EC of 22 July 2002 laying down the Sixth Community Environment Action Programme, the European Commission adopted the Thematic Strategy on the Urban Environment on 11 January 2006. The strategy builds on existing European policy initiatives for improving the quality of the urban environment and sets out new measures to support and facilitate the adoption of integrated approaches to the management of the urban environment by national, regional and local authorities.

10. Integration of the environment into economic policy

The best strategy for integrating the environment into economic policy is to create or improve the functioning of markets for environmental goods; create and assign well-defined property rights for environmental goods and services which are enforceable by law and tradable; fix a price to pay (in the form of a tax or charge) for pollution; establish deposit-refund schemes to encourage recycling; offer subsidies to goods and services which generate positive environmental effects; negotiate agreements with industry, and provide information about the environmental characteristics of goods and services.

The Commission communication on integrating environmental issues into economic policy of 20 September 2000 was the basis for the Ecofin Council's Report to the Nice European Council — 'Bringing our needs

and responsibilities together — integrating environmental issues with economic policy' ('first step toward a strategy') of 27 November 2000. Achieving the Kyoto targets through market instruments, such as an emissions trading system, was the underlying objective of the report. Furthermore, the report stressed the need for annual broad economic policy guidelines fully incorporating the objectives of environmental integration.

11. Integration of the environment into air transport

The communication COM(1999) 640 (EP resolution adopted on 7 September 2000) aims to improve the environmental performance of air transport activities so as to offset the environmental impact of growth in this sector. Following the Communication from the Commission on reducing the climate change impact of aviation (COM(2005) 459), the EP adopted a resolution on 4 July 2006, based on the own-initiative report of Caroline Lucas (2005/2249 (INI)). This report calls for tough new measures to reduce the global warming impact of aviation and apply the 'polluter pays' principle to the airline industry. MEPs supported the introduction of a kerosene tax for all domestic and intra-EU flights as a first step towards a global kerosene tax. The Environment Committee also supported a Commission proposal to cap CO₂ emissions for all aeroplanes departing from EU airports. Airlines would be able to trade their potential surplus 'pollution credits' on the EU 'carbon market' (Emissions Trading Scheme). The Commission is expected to put forward a formal proposal to include aviation in the EU ETS by the end of the year 2006.

Role of the European Parliament

→4.9.1. and 4.9.2.

At the end of 2005, the Commission published a communication reviewing the EU Sustainable Development Strategy (SDS) adopted at the Gothenburg Summit in 2001. In June 2006, the Council adopted this renewed SDS. The EP's contribution to this debate was the ENVI Committee's own-initiative report on the environmental aspects of sustainable development (Anne Ferreira, PES, France), which was adopted in plenary in January 2006 and underlines the worsening of unsustainable trends in a number of fields where improvements are needed: pollution-generating misuse of natural resources, loss of biodiversity and worsening of climate change, among others. There is a risk, for instance, that the Union will not attain the Kyoto Protocol objectives for 2012, as a result of the absence of suitable measures to curb the rise in road transport. In its joint resolution, adopted in Strasbourg on 15 June 2006, the EP expresses its disappointment at the lack of progress in developing

and following up the Sustainable Development Strategy adopted in Gothenburg in 2001. Parliament welcomed, however, the valuable work of the Austrian presidency in seeking to relaunch the SDS.

Parliament's ENVI Committee also showed its concern at the large and rapid increase in air transport and polluting emissions in that sector unless swift action is taken. This is why MEPs in the committee supported the creation of a pilot trading scheme for aviation emissions for the period between 2008 and 2012 covering all flights to and from any EU airport. The European Commission hopes to make a legislative proposal towards the end of 2006.

The final report on the environmental aspects of sustainable development, as adopted in January 2006, asked the Commission to step up its action in many fields, including:

- transfer of a large proportion of road transport to more environmentally friendly modes of transport;
- promotion of the use of biofuels;
- reversal by 2010 of the current loss of biodiversity;

- reduction at source of the production of waste;
- promotion of sustainable town planning;
- increase of resource and energy efficiency;
- reinforcement of the environmental and social aspects of the impact assessments for all its legislative proposals;
- new proposals for a first European eco-tax;
- adoption of all the thematic strategies announced by summer 2006 at the latest. At July 2006, only the TS on soil protection has not been adopted yet.

The committee concluded that sustainable development must be a guiding principle for EU policies in all areas. It points out that inaction will come at an increasingly high price and will have ever more considerable direct consequences.

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4.9.4. Treatment of waste

Legal basis and objectives

→4.9.1.

Achievements

A. General background

Total waste generation in the EU is about 2 billion tonnes per year (excluding agricultural waste). This means that approximately 3.5 tonnes per capita of waste is produced in the EU every year. According to information published by the European Environment Agency (EEA), six major waste streams make up the bulk of total waste generation in the EU: manufacturing waste (26 %), mining and quarrying waste (29 %), construction and demolition waste (22 %) and municipal solid waste (14 %). To this should be added agricultural and forestry waste, which is estimated to be of similar magnitude to construction and demolition in terms of weight.

In the EU's most densely populated areas, disposal by dumping is reaching its limits, and while it remains a possible solution in other areas the opportunities are limited in the long term by the threat of water and soil

pollution and the protests of local inhabitants. Recourse to dumping will depend on the availability of conveniently situated and well-planned sites and the pre-treatment of certain waste before final dumping.

Waste incineration is an option in many cases, having the advantage of energy recovery. However, investment is required to prevent toxic emissions, as well as careful planning and management of the plant and sensitive selection of sites. The best way to cut down the volume of waste is to prevent waste production and to recycle. Recycling has great potential for reducing pollution. Energy consumption is cut by between a quarter and three-fifths for every tonne of paper produced from waste paper rather than wood, while atmospheric pollution is cut by 75 %. Recycling of paper, cardboard and glass is therefore of prime importance. Levels of recycling in the Member States range from 28 % to 53 % for paper and cardboard (EU average: 49.6 %) and between 21 % and 70 % for glass.

1. Main thrust of EU policy

The thematic strategy on the prevention and recycling of waste, adopted by the European Commission on 21 December 2005, deals with substantial environmental

impacts. EU policy has several main objectives, including avoiding waste by promoting environmentally-friendly and less waste-intensive technologies and processes and by producing environmentally sound and recyclable products; promoting reprocessing, in particular the recovery and reuse of waste as raw materials; improving waste disposal by introducing stringent European environmental standards, particularly in the form of legislation; tightening up the provisions governing the transport of dangerous substances and reclaiming contaminated land. These objectives are to be achieved by disposing of waste at appropriate facilities as close as possible to the place where it was produced.

B. Framework legislation

1. Basic directive

Directives 75/442/EEC and 91/689/EEC lay down the general and basic provisions for all waste and hazardous waste, while Directives 75/439/EEC and 86/278/EEC set out requirements for specific waste streams (waste oil and sewage sludge), which differ due to the different waste types and problems involved.

On 21 December 2005, the Commission adopted a proposal for a new directive on waste (COM(2005) 667). The thematic strategy on the prevention and recycling of waste has identified three principal reasons for undertaking a revision of Directive 75/442/EEC, the waste framework directive:

- the need for clearer definitions and/or a mechanism to clarify the waste issue at the EU level;
- the need for a new approach to waste policy, better adapted to a situation where most of the significant waste management operations are now covered by environmental legislation. This requires the introduction of an environmental objective in the revised directive on waste (focused on the reduction of environmental impacts from waste generation and management, taking into account the whole life-cycle) and the move to a more standards based approach (application of minimum standards, clear recovery definitions and the use of end of waste criteria); and
- the need to simplify the existing legal framework. The new waste framework directive would repeal Directive 75/439/EEC on the disposal of waste oils and integrate Directive 91/689/EEC on hazardous waste. The waste oil directive (Council Directive 75/439 of 16 June 1975) is considered to be outdated and the provisions of the hazardous waste directive are closely connected with the waste framework directive. Therefore, integrating them into one framework would consolidate and simplify legislation. In addition, some obsolete or

unclear provisions in all three directives should be modified or removed. Furthermore, in the field of permitting of waste installations, the waste framework directive operates in conjunction with Directive 96/61/EC concerning integrated pollution prevention control (the IPPC Directive).

The proposal for the new directive links the waste hierarchy (prevention, reuse, recycling, incineration, and finally, disposal in landfills) with its objectives of reducing the environmental impacts of the generation and management of waste.

2. Hazardous waste

(a) *Controlled management of hazardous waste*

Council Directive 91/689/EEC concerns the management, recovery and correct disposal of hazardous waste. Decision 2000/532/EC (amended by Decision 2001/573/EC) established a single list which incorporates the list of dangerous waste laid down in previous decisions. The new waste framework directive would integrate the old hazardous waste directive. A number of the elements from the hazardous waste directive that have not been taken up in the proposal for the new framework are adequately covered by other Community legislation such as Directive 2000/76/EC on the incineration of waste and Directive 96/59/EC on PCB/PCT.

(b) *Disposal of polychlorinated biphenyls (PCB) and polychlorinated terphenyls (PCT) and environmental issues of PVC*

Directive 96/59/EC approximates the Member States' laws on the controlled disposal of PCBs, the decontamination or disposal of equipment containing PCBs and/or the disposal of used PCBs in order to eliminate them completely. In a resolution adopted on 17 January 2001 the EP recommended improving implementation of Directive 96/59/EC on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCBs and PCTs) rather than redrafting it. On 24 October 2001, the Commission adopted a Community Strategy on Dioxins, Furans and PCBs (COM(2001) 593) aimed at reducing as far as possible the release of these substances into the environment and their introduction in the food chains.

In another resolution on 3 April 2001, Parliament made a series of recommendations concerning the Green Paper published by the Commission in July 2000 on environmental issues of PVC (COM(2000) 469). The European Parliament (EP/Parliament) criticised the Commission for not having performed any lifecycle analysis of PVC products to compare them with alternative materials and called on the Commission to bring forward as soon as possible a draft long-term horizontal strategy on the replacement of PVC. It proposed that the 'polluter pays'

principle should be applied to PVC waste. It also called on the Commission to propose appropriate measures to ensure separate collection of PVC products and proposed that all use of lead and cadmium in PVC should be banned. It suggested that a recycling system similar to that for end-of-life vehicles be set up and that labelling of all plastic materials be made compulsory.

(c) Disposal of spent batteries and accumulators

On 4 July 2006, the EP adopted a resolution approving the joint text agreed by the Conciliation Committee in May 2006 on the proposed directive on batteries and accumulators (COM(2003) 0723). They agreed on a compromise that provides for a minimal ban of cadmium in batteries as well as for a recycling target of 50 % by 2016.

3. Shipments of waste

Supervision and control of cross-border shipments of waste are regulated by Council Regulation (EEC) No 259/93. In June 2003, the Commission proposed a revision of the 10-year-old waste shipment regulation (COM(2003) 379) to simplify control procedures for shipments of waste. This regulation sets environmental criteria for waste shipments within, into and outside the EU. It covers shipments of practically all types of waste by all means, including vehicles, trains, ships and planes. The proposal strengthens the current control procedures, simplifying and clarifying them to the benefit of both the environment and waste shipment companies. It is also a step towards greater international harmonisation of waste shipments, as it fully implements the UN Basel Convention, which regulates shipments of hazardous waste at international level. The proposal streamlines procedures and reduces the number of waste lists from three to two. It has four main objectives:

- implementing OECD Council Decision C(2001) 107 of 14 June 2001 in EU legislation;
- addressing the problems encountered in the application, administration and enforcement of the 1993 regulation and establishing greater legal clarity;
- pursuing global harmonisation in the area of trans-boundary shipments of waste;
- improving the structure of the articles of the regulation. The Commission's proposal brings clarification to the application and implementation of the current regulation but does not change its basic logic.

On 14 June 2006, the EP and the Council came to a new Regulation (EC) No 1013/2006 on shipments of waste. At international level, the Community signed the Basel Convention on transboundary movements of hazardous waste in 1989.

C. Waste treatment

1. Use of sewage sludge in agriculture

Council Directive 86/278/EEC on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture has been quite successful in preventing crop contamination by pathogens which could have been caused by the use of sludge on agricultural soils. Some Member States have a particularly high reuse rate, others prefer to landfill or re-incinerate the sludge they produce.

2. Landfill sites

Directive 1999/31/EC is intended to prevent or reduce the adverse effects of the landfill of waste on the environment, in particular on surface water, groundwater, soil and air, as well as on human health. The directive sets up a system of operating permits for landfill sites.

3. Incineration

Directive 2000/76/EC will apply to existing plants as from 28 December 2005 and has applied to new plants since December 2002, to prevent or reduce, as far as possible, air, water and soil pollution caused by the incineration or co-incineration of waste.

In the proposal for the new waste directive, the Commission calls for more flexibility in the waste hierarchy to allow waste to be treated in a cheaper and more energy-efficient way. The Commission has put forward an energy-efficiency threshold to determine whether an incineration facility should be considered as a recovery instead of a disposal facility. Assessment is necessary to define the energy-efficiency thresholds, the countries in which incinerators are located, as well as an estimated number of facilities which would then qualify as 'recovery' or 'disposal' operations.

D. Specific waste

1. Titanium dioxide

Council Directive 78/176/EEC aims to prevent, gradually reduce and ultimately eliminate pollution from titanium dioxide industrial waste. Council Directive 82/883/EEC sets common reference methods of measurement for sampling in order to conserve environments affected by titanium dioxide waste. Council Directive 92/112/EEC introduces rules on programmes for the reduction of pollution. In line with the action plan of the Commission 'Simplifying and improving the regulatory environment', the Commission has set up a stakeholders consultation on a draft working document in order to simplify the three more than 15 years old titanium dioxide directives.

2. End-of-life vehicles

At the moment, 75 % of end-of-life vehicles are recycled (metal content). The aim of Directive 2000/53/EC is to

increase the rate of reuse and recovery to 85 % by average weight per vehicle and year by 2006, and to 95 % by 2015, and to increase the rate of reuse and recycling over the same period to at least 80 % and 85 % respectively by average weight per vehicle and year. Less stringent objectives may be set for vehicles produced before 1980.

In November 2005, a Stakeholder Working Group presented its final report on the review of the 2015 targets. They stress that these targets will probably not be achieved due to high treatment cost and the lack of adequate governance infrastructure in place. They also question the reliability of the data that will be gathered following Commission's Decision (2005/293/EC) laying down detailed rules on monitoring and reporting on achievement of the targets set out in the ELV Directive.

3. Waste electrical and electronic equipment

Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment (the so-called RoHS Directive) was adopted after a long and controversial debate in the EP.

This aims to protect the soil, water and air against pollution through the restriction of the use of certain substances, such as lead, mercury, cadmium, chromium and certain hexavalent brominated flame retardants (e.g. polybrominated biphenyls or polybrominated diphenyl ethers) in that type of equipment. It lays down provisions to ensure that from 1 July 2006 new electrical and electronic equipment put on the market does not contain any of these substances. Certain exemptions apply, inter alia, to the use of mercury in compact and straight fluorescent lamps, as well as to the use of lead in different types of solders and as an alloying element.

It provides for the prohibition of other hazardous substances and for their replacement by more environmentally friendly alternatives as soon as new scientific evidence is available, on the basis of a new proposal from the Commission. In 2005 and 2006, the Commission has adopted several decisions amending Directive 2002/95/EC on establishing maximum concentration values for certain hazardous substances (2005/618/EC) and on adapting to the technical progress the annex on exemptions for applications (2005/717/EC, 2005/747/EC, and 2006/310/EC).

Directive 2002/96/EC on waste electrical and electronic equipment (WEEE) was also adopted after a long and controversial debate in the European Parliament (EP/Parliament). It has as its objective the protection of the soil, water and air against pollution, through better disposal of waste electrical and electronic equipment. The directive provides mainly for:

- a binding annual collection target of four kilograms of such waste per person from private households and free-of-charge collection facilities;
- the possibility for producers to put into practice individual or collective financing schemes for the collection of WEEE from private households;
- financing by producers, or by users other than private households, of the costs of 'historical waste' management (WEEE from products put on the market prior to 2005);
- clear marking by producers of electrical and electronic equipment in order to facilitate their identification and dating, as well as the later treatment and disposal of WEEE.

At July 2006, the Commission is reviewing Directive 2002/96/EC through inter alia stakeholders' consultations.

4. Radioactive waste and substances

In accordance with Directive 80/836/Euratom, each Member State must make compulsory the reporting of activities which involve a hazard arising from ionising radiation. In the light of possible dangers, activities are subject to prior authorisation in certain cases decided upon by each Member State. Shipments of radioactive waste between Member States and into and out of the EU are subject to the specific measures laid down by Council Regulation (Euratom) No 1493/93 and Directive 92/3/Euratom. Each Member State must ensure that its own radioactive waste is properly managed. The provisions of this directive prohibit the export of radioactive waste to the ACP countries, in line with the Lomé IV Convention signed on 15 December 1989, to a destination south of latitude 60° south or to a third country which does not have the resources to manage the radioactive waste safely.

5. Packaging and packaging waste

First signed in 1994, the Packaging and Packaging Waste Directive (94/64/EEC) covers all packaging placed on the market in the Community and all packaging waste, whether it is used or released at industrial, commercial, office, shop, service, household or any other level, regardless of the material used. Directive 2004/12/EC (amending Directive 94/62/EC) establishes criteria clarifying the definition of the term 'packaging'. Clear examples are given in Annex I, such as tea bags, which are non-packaging, and the film overwrap around a CD case, or labels hung directly on or attached to a product, which are packaging.

6. Directive on the management of waste from extractive industries

On 15 March 2006, a directive on the management of waste from extractive industries was adopted (2006/21/EC),

based on the Commission proposal COM (2003)319. This directive seeks to tackle the significant environmental and health risks associated with the management of mining waste as a result of their volume and pollution potential.

Role of the European Parliament

The EP has long pressed for further development of EU strategy on waste management and urged the Commission to develop appropriate proposals placing stronger emphasis on waste prevention, more extensive recycling and market and fiscal incentives.

The EP has often been the driving force and a critic of EU waste management policy. It called on the Commission to put in place a real waste management strategy based on sustainable development, ensuring that the present generation's use of resources did not jeopardise their use by future generations. Concerned to avoid 'waste tourism', Parliament also advocated implementation of the polluter-pays principle, elimination of waste at source and development of the recycling market.

The EP is expected to adopt a report in October 2006 (Rapporteur Caroline Jackson) on the new Directive on Waste (COM(2005/667). The rapporteur tabled 38 amendments aiming at: reinstating the existing 5 stage waste hierarchy; asking the Commission to put forward proposals to determine whether certain waste streams should be classified as secondary products materials and, if so, what specifications should apply to them; making use of the normal legislative procedure, instead of the comitology procedure as proposed by the Commission, for decisions of a political nature.

Also on the Thematic Strategy on Prevention and recycling of waste, Parliament drafted a report (Rapporteur Hans Blokland), which is expected to be adopted in the Committee in October 2006. It stresses that the use of the comitology procedure should be limited to decisions of a technical and scientific nature; opposes a general

declassification of waste that could lead to inappropriate environmental treatment and lack of traceability; emphasises the key importance of the 5 stage waste hierarchy; asks the Commission to propose concrete measures on prevention of waste and to develop a set of indicators; asks the Commission to propose specific directives on biodegradable waste, construction and demolition waste and sewage sludge.

Concerning the two directives in 2001 on waste electrical and electronic equipment, the EP insisted that the prevention of such waste should have absolute priority. It also urged the reuse, recycling and other forms of recovery of such waste so as to reduce the disposal thereof. The EP has also called for restrictions on the use of hazardous substances in electrical equipment in order to contribute to the environmentally sound recovery and disposal of waste electrical and electronic equipment by ensuring that substances causing major problems during the waste management phase — such as lead, mercury, cadmium, hexavalent chromium and certain brominated flame-retardants — are substituted.

During the conciliation process on batteries and accumulators, Parliament called for a more ambitious target (55 %) than that proposed in the common position (50 %) for recycling of batteries other than nickel-cadmium and lead-acid batteries. The EP also supported the introduction of a closed-loop for recycling of all the lead and cadmium contained in waste batteries; and wished to oblige Member States to ensure that recycling processes achieved these targets. Given the other improvements secured in the course of the procedure and as part of an overall agreement, the Parliament delegation was willing to accept the Council's position on a recycling target of 50 %, and on 4 July 2006, Parliament adopted a resolution on a joint text.

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07/2006

4.9.5. Noise

Legal basis and objectives

→4.9.1.

Achievements

A. General

In its Fifth Community Environmental Action Programme (1992–2000, →4.9.1.), combating noise emerged for the first time as one of the basic priorities of an integrated environmental policy. The Green Paper on 'Action against noise' (COM(96) 540) adopted on 5 November 1996 sought to develop a new approach to the problem of noise and a first step towards an integrated programme for combating noise. According to the Green Paper, around 20 % of the population of western Europe (some 80 million people) suffer from noise levels that experts consider unacceptable (exceeding 65 dB(A)) and over 50 % of the EU population is constantly exposed to single-source noise levels of between 55 and 65 dB(A). This noise is caused by traffic and by industrial and recreational activities.

Economic incentives are an essential part of EU noise abatement policy. Possible measures are:

- subsidies for the purchase of quieter products;
- a legal requirement to provide information on products;
- noise levies in accordance with the polluter-pays principle;
- the introduction of noise licences;
- subsidies for the development of quieter products.

In relation to air transport and airports, Directive 2002/30/EC of the European Parliament (EP/Parliament) and of the Council on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Community airports (text with EEA relevance) was published on 26 March 2002.

In 2005 the Commission launched a proposal for a directive of the EP and of the Council amending Directive 2000/14/EC on noise emission by equipment for use outdoors COM(2005) 0370.

B. Framework directive for the assessment and management of exposure to environmental noise

Directive 2002/49/EC relating to the assessment and management of environmental noise:

- aims to harmonise noise indicators and assessment methods for environmental noise;

- aims to gather noise exposure information in the form of 'noise maps';
- requires Member States to ensure by no later than 30 June 2007 that strategic noise maps showing the situation in the preceding calendar year are available and, where relevant, approved by the competent authorities;
- provides that all information should be made available to the public;
- requires Member States to ensure that by no later than 18 July 2008 the competent authorities have drawn up action plans designed to manage, within their territories, noise issues and effects, including noise reduction if necessary for:
 - places near major roads which have more than six million vehicle passages a year, major railways which have more than 60 000 train passages per year and major airports;
 - agglomerations with more than 250 000 inhabitants.

In January 2004 the Commission submitted a report to the Council and the EP on existing EU measures relating to sources of environmental noise.

C. Sectoral legislation

A series of directives has been adopted on noise abatement. Noise emission levels have been established for motor vehicles, motorcycles, agricultural and forestry tractors, domestic appliances, earth-moving equipment, construction equipment, lawnmowers and civil subsonic aircraft.

Particular attention has been paid to road and air traffic, which poses a major noise nuisance.

1. Motor vehicles

The basic directive on the permissible sound level and the exhaust system of motor vehicles (70/157 adapted by 1999/101) covers all motor vehicles with a maximum speed of more than 25 km/h.

The directives lay down limits for the noise level of the mechanical parts and exhaust systems of the vehicles concerned. The limits range from 74 dB(A) for motor cars to 80 dB(A) for high-powered goods vehicles. This is equivalent to halving noise output, i.e. two cars of the next generation will together produce only as much noise as one of the previous generation. However, the marked reduction in noise output by cars will be partly offset by the rise in the number of cars and the distance they travel and by the increase in powerful and heavy vehicles.

The limit value for heavy lorries introduced by the EU in November 1992 is 80 dB(A), thus ensuring that this so-called 'low-noise' lorry will become the norm for road haulage in Europe. With effect from 1995/96, in urban traffic 25 new lorries will together only produce the same amount of noise as a single lorry at the beginning of the 1980s (measured in terms of noise limit values and taking measurement techniques into account). Lorries which comply with the noise limit values have been permitted to carry a distinguishing mark since 1994, which has made the monitoring of preferential user arrangements for low-noise lorries considerably easier. It is particularly important for the current ban in Austria on night travel (10 p.m. to 5 a.m.) on all transit motorways and associated trunk roads, from which low-noise lorries (limit value: 78dB(A) for lorries < 150 kW and 80 dB(A) for lorries > 150kW) are exempted.

2. Two- and three-wheeled motor vehicles: permissible sound level of motorcycles

Directive 78/1015/EEC established common limits for the sound level of motorcycles and technical requirements relating to exhaust systems (construction, materials and durability).

The most recent reduction lays down noise limit values of 75 dB(A) for vehicles of up to 80 cc, 77 dB(A) for those between 80 and 175 cc and 80 dB(A) for those of more than 175 cc.

3. Subsonic civil jet aircraft

Regulation (EC) No 925/1999 applies to modified subsonic civil jet aircraft re-certified as a result of their compliance with the standards set out in Volume I, Part II, Chapter 3 of Annex 16 to the Convention on International Civil Aviation (third edition July 1993).

On 29 September 1999 the Commission presented a communication on progress made in consultations with the US on the development of a new-generation noise standard for civil subsonic jet aeroplanes and phase-out measures for the noisiest categories of civil subsonic jet aeroplanes within Chapter 3 (COM(1999) 452).

The directive on environmental impact assessment (85/337) applies to private and public-sector projects, i.e. to construction works and other interventions in nature and landscape. For airports with a runway length of 2 100 metres or more, Member States must carry out an assessment to ascertain and evaluate the project's main effects on the environment. The procedure provides, in particular, for public consultation.

4. Railways

The Low Noise Train development programme launched jointly by the German, Austrian and Italian railways aims to achieve a substantial reduction in noise emissions for the

whole system, of up to 23 dB(A), by new goods train designs which optimise noise reduction. A parallel aim is to make rail freight more attractive, and hence more competitive, by reducing life-cycle costs by 40 % from their present level and by achieving speeds of up to 160 km/h. One or two different locomotives and between three and five different types of wagon, geared to the products to be transported, will be developed within the next few years.

At EU level, a proposal dating back to 1984 to harmonise the regulations governing noise emissions from trains was withdrawn by the Commission on 28 July 1993.

5. Airborne noise emitted by household appliances

Legislative harmonisation must be confined to those requirements necessary to measure the airborne noise emitted by household appliances and to carry out checks on the declared level. Such measures are provided by Directive 86/594/EEC. Directives 88/180/EEC and 84/538/EEC (amended by 88/181/EEC) relate to the permissible sound-power level of lawnmowers. The permitted sound-power level ranges between 96 dB/pW and 105 dB/pW according to the corresponding cutting width of the lawnmower. For lawnmowers with a cutting width exceeding 120 cm, the sound-pressure level of airborne noise, in dB(A), measured at the operator's position under the conditions specified in Annex Ia of Directive 88/180/EEC, must not exceed 90 dB(A).

6. Construction plant

Noise emitted by hydraulic excavators, rope-operated excavators, dozers, loaders and excavator-loaders has long been limited by EU ds. The reduction in the noise levels of certain types of earth-moving machines was provided for in two stages. The second stage established the permissible sound-power level at between 93 and 114 dB(A)1pW as from 30 December 2001. Specific measures for tower cranes are provided for by Directive 87/405/EEC. EC type-examination certificates shall be issued to tower cranes which satisfy the following requirements: the lifting mechanism must emit less than 100 dB(A)/1 paw and the sound-pressure level at the operator's position must not exceed 80 dB 20 µ pA from 1992.

7. Noise emission by equipment used outdoors

The 1996 Commission Green Paper on Future Noise Policy highlighted the increase in noise pollution in urban areas. While most external noise is caused by transport equipment, noise emissions from the use of outdoor equipment are constantly increasing.

Directive 2000/140/EC relating to the noise emission in the environment by equipment for use outdoors is a framework directive designed to control noise emissions by more than 50 types of equipment used outdoors.

The noise emission limits laid down for certain types of equipment involve two stages, so as to enable undertakings to adapt to the new rules. The emission limits for stage 1 take effect two years after the entry into force of the directive. More stringent limits will enter into force in stage 2 four years later.

The new framework in this field will be provided by the directive based on Commission proposal COM(2005) 0370, as described above under 'General'.

Role of the European Parliament

Parliament has repeatedly stressed the need for further cuts in limit values and improved measurement procedures.

With regard to air traffic over residential areas near airports, consideration should be given to a ban on night flying, landing fees graded according to noise levels and measures to avoid particularly noise-intensive take-off and landing manoeuvres. Parliament has called for the setting of EU values for noise around airports and also for noise reduction measures to be extended to cover military subsonic jet aircraft.

→ [Marcello SOSA IUDICISSA](#)
11/2005

4.9.6 Air pollution

Legal basis and objectives

→4.9.1.

Achievements

A. General

Community activities to protect the air relate to a wide range of problems: limiting depletion of stratospheric ozone and controlling acidification, ground-level ozone and other pollutants and climate change.

Atmospheric pollutants, which enter the air from a wide variety of sources, can be subdivided into three broad categories.

- Emissions from mobile sources (transport industry): apart from CO₂, the main emissions are nitrogen oxides (NOx), carbon monoxide (CO) and hydrocarbons (HC), i. e. volatile or non-volatile organic compounds, soot particles (or PM) and ozone (O₃).
- Emissions from immobile sources (businesses, homes, farms and rubbish dumps): apart from CO₂, the main emissions are sulphur dioxide (SO₂), nitrogen oxides (NOx), hydrocarbons (HC), soot particles, chlorofluorocarbons (CFCs) and methane.
- Emissions caused by power generation: these are CO₂, sulphur dioxide (SO₂) and soot particles.

High concentrations of these gases and pollutants arising from them through chemical reactions in the atmosphere or in the soil are harmful to human health, corrode various

materials and damage vegetation, have a detrimental effect on agricultural and forestry production and cause unpleasant smells. Many of these pollutants, such as carbon dioxide (CO₂), methane, nitrogen oxides (NOx) and chlorofluorocarbons (CFCs), are responsible for the greenhouse effect. Some substances such as arsenic, cadmium, nickel and polycyclic aromatic hydrocarbons are human genotoxic carcinogens and there is no identifiable threshold below which they do not pose a risk to human health. Benzene (an aromatic hydrocarbon) is carcinogenic while ozone is a powerful oxidant that can damage the respiratory tract, causing inflammation and irritation.

The EU has taken important steps over the past decade, leading to a decrease in the emissions to air and water of a number of pollutants such as SO₂ (a 50 % reduction since 1980), lead (a 60 % reduction since 1980), phosphorous in many water catchment areas (a 30 % to 60 % reduction since the 1980s) and to a lesser extent NOx and volatile organic compounds (a 14 % reduction since 1990).

EU action has focused on establishing minimum quality standards for ambient air and tackling the problems of acid rain, ground-level ozone and reducing human exposure to protect human health. Polluting emissions from large combustion plant and mobile sources have been reduced; fuel quality improved and environmental protection requirements integrated into the transport and energy sectors.

B. Thematic strategy on air pollution and the Clean Air for Europe (CAFE) programme

The Community's sixth environmental action programme calls for the development of a thematic strategy on air pollution with the objective to attain 'levels of air quality that do not give rise to significant negative impacts on, and risks to, human health and the environment'. To achieve this, a Clean Air for Europe (CAFE) programme (COM(2001) 245) was launched in 2001 leading to the adoption by the Commission in September 2005 of a thematic strategy on air pollution (COM(2005) 446).

The objectives proposed in the strategy are to reduce by 2020 the concentration of PM_{2.5} by 75 % and of ground-level ozone by 60 %, as well as to reduce the threat to the natural environment from both acidification and eutrophication by 55 %, which is technically possible by 2020. This means cutting SO₂ emissions by 82 %, NO_x by 60 %, volatile organic chemicals (VOCs) by 51 %, ammonia by 27 % and primary PM_{2.5} by 59 % from 2000 levels. It is estimated that these reductions would save 1.71 million life years by lowering exposure to PM, reduce acute mortality from exposure to O₃, deliver EUR 42 billion per year in health benefits, reduce environmental damage to forests, lakes and streams and to biodiversity, reduce damage to buildings and materials, and reduce the cost of damage to agricultural crops by EUR 0.3 billion per year.

According to the proposed strategy, a large part of these reduction objectives will be delivered through improved implementation of measures already adopted. Part of the strategy will be implemented through a simplification and revision of the current legislation. Other measures will address the integration of air quality concerns into policy areas such as energy, transport, agriculture, structural funds and international cooperation. Further initiatives will be taken on new vehicles and new measures may be envisaged for small combustion plants, ships and aircraft emissions. The new phase of CAFE — implementation of the thematic strategy on air pollution — began in September 2005.

At its meeting of 20 and 21 June 2006, the ENVI Committee of the European Parliament (EP/Parliament) adopted the draft report (rapporteur: Dorette Corbey) on the thematic strategy on air pollution, which calls for a more ambitious strategy with respect to targets for NO_x, VOC and PM_{2.5} and for focusing more on measures aiming at the sources of pollution, especially in the shipping and the agricultural sectors. This report is expected to be adopted in plenary in autumn 2006.

C. Emissions from the transport sector

Emissions from the transport sector have a particular importance because of their rapid rate of growth: goods transport by road in Europe has increased by 54 % since

1980, while in the past 10 years passenger transport by road in the EU has gone up by 46 % and passenger transport by air by 67 %.

The main emissions caused by motor traffic are nitrogen oxides (NO_x), hydrocarbons (HC) and carbon monoxide (CO), accounting for 58 %, 50 % and 75 % respectively of all such emissions. Whilst emission levels in the economically more developed countries have increasingly stabilised, they are continuing to rise in the less developed countries.

Several directives have been adopted at Community level in order to limit pollution due to transport: setting maximum emission limits for vehicles and other sources of pollution and introducing tax measures in the transport sector aimed at encouraging the consumer to act in a more environment-friendly manner. Community directives establishing stricter standards for the emission of pollutants by motor vehicles have had positive results, but the progress achieved to date is threatened by the rising number of vehicles on the road and vehicle use. In recent years, fuel consumption in the EU has increased by 1.5 % a year.

1. Road vehicles: petrol and diesel engines

In cooperation with the oil and motor vehicle industries, the Commission has drawn up an auto-oil programme to reduce exhaust gas emissions. The Auto-Oil II programme (COM(2000) 626) was launched in 1997 to assess policy options for achieving air quality objectives, with a particular focus on reducing road transport emissions. Estimates of road transport emissions carried out as part of the programme suggest that emissions of the traditionally regulated pollutants will fall to less than 20 % of their 1995 levels by 2020, while CO₂ emissions will continue to rise at least until 2005. The share of overall non-CO₂ emissions attributable to road transport will have fallen substantially between 1990 and 2010 and the relative importance of other sectors will have risen correspondingly.

Under the auto-oil programmes, several measures have been adopted to tackle air pollution from motor vehicle emissions and address the quality of petrol and diesel fuel.

- Lead in petrol has been banned from the market since 2000 and progressive improvements in the environmental quality of unleaded petrol and diesel fuel have been required (Directive 98/70/EC).
- Emission limit values for petrol and diesel cars have been introduced, according to the type of vehicle, applicable from 2000 and 2005, and a new European test cycle and permission for tax incentives by Member States to encourage compliance (Directive 98/69/EC).
- EC approval of replacement catalytic converters and EC approval of vehicles which can run on liquefied petroleum gas or natural gas (Directive 98/77/EC);

- Emission limit values for diesel-powered lorries as well as limit values for heavy-duty engines fuelled by natural gas or liquefied petroleum gas (Directive 1999/96/EC);
- Sulphur content of certain liquid fuels of less than 10 mg/kg (ppm), down from the current limit value of 50 ppm as from 1 January 2005 and full conversion to zero sulphur fuels by 1 January 2009 (Directive 2003/17/EC), and the entry into force of new emission limits for EURO IV vehicles.

2. Non-road mobile machinery: gaseous pollutants

Directive 97/68/EC, as amended by Commission Directive 2002/88/EC, approximates the laws of Member States with regard to emission standards and type-approval procedures for engines intended to be fitted to non-road mobile machinery. Directive 2004/26/EC extends the scope of Directive 97/68/EC to cover locomotives and inland waterway vessels. It also reinforces the emission standards applicable to the machinery in question, in particular as regards oxides of nitrogen and particles, and provides for means of improving the methods of testing new engines prior to marketing. In addition, manufacturers who comply with the requirements before the deadline can display a label on their engines to give them greater market visibility.

3. Wheeled agricultural or forestry tractors: pollutant gases

Directive 2000/25/EC amending Council Directive 74/150/EEC concerns emissions from agricultural or forestry tractors. It is particularly concerned with the definition of type-approval procedures by type of engine intended to be fitted to tractors and with the definition of type-approval procedures by type of vehicle from the point of view of emission pollutants.

4. CO₂ emissions from new passenger cars

Decision No 1753/2000/EC established a new scheme to monitor the average specific emissions of CO₂ from new passenger cars, with the aim of measuring the effectiveness of the Community strategy to reduce CO₂ emissions from cars. The Commission reports regularly on the effectiveness of this strategy (COM(2002) 693).

D. Emissions from industry

1. Pollution from large combustion plants

Directive 2001/80/EC (the LCP directive) applies to combustion plants with a rated thermal input equal to or greater than 50 MW, irrespective of the type of fuel used. It aims at gradually reducing the annual emissions of SO₂ and NO_x from existing plants and lays down emission limit values for SO₂, NO_x and dust in the case of new plants. Further requirements for plants below 50 MW are under consideration as part of the implementation of the thematic strategy on air pollution.

2. Volatile organic compounds

Council Directive 1999/13/EC on the limitation of emissions of volatile organic compounds (VOCs) due to the use of organic solvents in certain activities and installations is part of the overall strategy to reduce pollution. It complements the auto-oil programme, by combating emissions of organic solvents from stationary commercial and industrial sources, and the 1994 directive on volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution chain. The requirements on the solvent content of paints and varnishes are established in the paints directive (Directive 2004/42/EC).

3. Integrated pollution prevention and control (IPPC)

The IPPC framework directive (96/61/EC) concerns highly polluting industrial activities, as defined in Annex I (energy industries, production and processing of metals, mineral industry, chemical industry and waste management). The directive defines the basic obligations to be met by all the industrial installations concerned, whether new or existing. These basic obligations cover a list of measures for preventing the pollution of water, air and soil by industrial effluent and other waste. They serve as the basis for drawing up operating licences or permits for industrial installations.

The IPPC directive was amended twice in 2003: the first amendment (2003/35/EC) reinforced public participation (in line with the Aarhus Convention), while the second (2003/87/EC) clarified the relationship between the permit conditions established in accordance with the IPPC directive and the greenhouse gas emission trading scheme. The Commission has recently launched a review process of the IPPC directive and related legislation on industrial emissions (such as the LCP directive). This review process is expected to be concluded by the end of 2007.

E. Management and quality of ambient air

1. The air quality framework directive and its daughter directives

The air quality framework directive (96/62/EC) sets out the basic principles of a common strategy for establishing ambient air quality objectives with a view to reducing or preventing harmful effects on the environment and health. It establishes quality objectives for ambient air (outdoor air in the troposphere), common methods and criteria for assessing air quality and requirements for obtaining and disseminating information on air quality. It is supplemented by so-called 'daughter' directives relating to specific pollutants.

(a) *Sulphur dioxide, nitrogen dioxide and nitrogen oxides, particulates (PM 10) and lead in ambient air*

The first 'daughter' directive (1999/30/EC) introduces the requirements to assess concentrations of these substances

on the basis of common methods and criteria, to obtain adequate information and to ensure that it is made available to the public and to maintain ambient air quality where it is good and improve it in other cases. It complements and partially repeals Council Directive 82/884/EEC, as amended by Council Directive 90/656/EEC, and Council Directive 91/692/EEC on a limit value for lead in the air, and Council Directive 85/203/EEC on air quality standards for nitrogen dioxide.

(b) Benzene and carbon monoxide

The second 'daughter' directive (2000/69/EC) introduces specific limit values for benzene and carbon monoxide.

(c) Ozone

The third 'daughter' directive (2002/3/EC) establishes an information threshold, an alert threshold (higher than the information threshold), target values and long-term aims for ozone concentration in ambient air and the provision of adequate public information on these concentrations.

(d) Arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons

The fourth 'daughter' directive (2004/107/EC) establishes target values for concentrations of these substances in the air, defines methods and criteria for assessing concentrations and deposition levels and ensures that adequate information on these substances is obtained and made available to the public.

In September 2005 the Commission submitted a proposal for a CAFE directive (COM(2005) 447) together with the thematic strategy on air pollution. It aims to combine the framework directive with the first, second and third 'daughter' directives, set more stringent requirements for the removal of non-compliance, and introduce a concentration cap for fine particles (PM_{2.5}) and a system of electronic reporting as part of the Inspire initiative. In June 2006, the ENVI Committee of the EP adopted a draft report on the Commission proposal seeking to revise existing Community legislation on ambient air quality. Parliament asked for a two-step approach with regard to the concentration cap for PM_{2.5}. In the initial stage there should only be a target value set. In the long run the limit values should, however, be stricter both for PM_{2.5} and PM₁₀ than those proposed by the Commission.

2. National emission ceilings for certain atmospheric pollutants

Directive 2001/81/EC is part of the follow-up to the Commission's communication on a strategy to combat acidification (COM(97) 88 final), which sought to establish, for the first time, national emission ceilings for four pollutants — sulphur dioxide (SO₂), nitrogen oxide (NO_x), volatile organic compounds (VOC) and ammonia (NH₃) —

causing acidification, eutrophication and tropospheric ozone formation. The Commission has started the preparatory work for a legislative proposal to revise the national emission ceilings directive, which will build upon the work performed under the CAFE programme and the thematic strategy on air pollution. A new proposal is expected to be adopted in the Commission in the first half of 2007.

F. Greenhouse gas emissions and climate change

1. The Kyoto Protocol and its ratification

Under the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC) concluded in 1997, contracting parties committed themselves to reducing the six greenhouse gases responsible for climate change: carbon dioxide (CO₂), methane, nitrous oxide, hydrofluorcarbons, perfluorcarbons and sulphur hexafluoride. The European Community committed itself to achieving an overall reduction in CO₂ emissions of 8 % in the period 2008–12 compared with 1990 levels. For the protocol to enter force, it had to be ratified by 55 contracting parties, accounting for 55 % of total CO₂ emissions in 1990. The protocol entered into force in February 2005.

The Council adopted a decision on the ratification by the European Community of the Kyoto Protocol (Decision 2002/358/EC). It was agreed that Member States would endeavour to take the necessary steps with a view to depositing their instruments of ratification or approval simultaneously with those of the European Community and the other Member States and as far as possible not later than 1 June 2002. The EC and Member States will fulfil their commitments jointly. The emission levels are set as a percentage of the figures for the base year or period in the 'Burden Sharing Agreement'. The quantified emission limitation and reduction commitment agreed by the European Community and its Member States for the purpose of determining the respective emission levels allocated to each of them for the first quantified emission limitation and reduction commitment period 2008–18 are set out in Annex II.

(a) Monitoring mechanisms and reporting

Decision 280/2004/EC of the European Parliament and of the Council, (amending Council Decisions 93/389/EEC and 99/296/EC) provides for a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol. It enables the Community and the Member States to improve compliance with obligations in relation to monitoring, evaluation and the preparation of reports laid down in the UNFCCC and the Kyoto Protocol. In addition, the Community is considering enhancing its monitoring

capabilities, notably through information technologies and satellite observation systems.

2. Greenhouse gas emissions trading scheme

(a) *A scheme for greenhouse gas emission allowance trading within the Community*

It was established by Directive 2003/87/EC. It aims to create an instrument of environmental protection to reduce emissions of greenhouse gases in a cost-effective manner, in order to allow the Union to meet its obligations under the UNFCCC and the Kyoto Protocol. While seeking an overall reduction in greenhouse emissions, it also aims to ensure the proper functioning of the internal market and prevent any distortions of competition which might result from the establishment of separate national trading schemes. The first phase of the proposed scheme covers the period between 2005 and 2007. It proceeds the Kyoto Protocol's first commitment period 2008–12, which corresponds to the second phase of the Community scheme. The EU emissions trading system started in January 2005 and covers in a first phase CO₂ emissions from large industrial and energy activities. These are estimated to account for 46 % of the EU's CO₂ emissions in 2010, and about 4 000 to 5 000 installations across the EU will be affected. Each installation covered by the directive will apply to the competent authority in its Member State for a permit allowing it to emit greenhouse gases. The permit procedure will be fully coordinated with the procedure under Directive 96/61/EC on integrated pollution prevention and control (IPPC) in order to avoid unnecessary bureaucracy. On the basis of the permits, Member States will allocate emission allowances to each installation on an annual basis. On 22 December 2005, the Commission adopted a communication entitled 'Further guidance on allocation plans for the 2008 to 2012 trading period of the EU emission trading scheme' (COM(2005) 703).

(b) *Greenhouse gas emission trading in respect of the Kyoto Protocol's project mechanisms*

The so-called 'linking directive' (2004/101/EC) links the EU emissions trading system with the other Kyoto flexible mechanisms: joint implementation (JI) and the clean development mechanisms (CDM). This directive allows European companies to carry out emissions-curling projects around the world and convert the credits earned into emissions allowances under the European Union emissions trading scheme. This 'linking' increases the diversity of compliance options within the Community scheme, thereby leading to a reduction in compliance costs for installations in the scheme.

(c) *Climate change and aviation*

In September 2005 the Commission adopted a communication (COM(2005) 459) outlining plans to reduce

the impact of aviation on climate change. The communication recommends that aviation emissions should be included in the EU emissions trading scheme as part of a comprehensive approach which includes research into cleaner air transport, better air traffic management and the removal of legal barriers to taxing aircraft fuel.

On 4 July 2006, Parliament adopted an own-initiative report drafted by Caroline Lucas (INI/2005/2249). Parliament advocates an aviation scheme as well as its inclusion in the EU emissions trading scheme (ETS).

3. European Climate Change Programme

The European Climate Change Programme (ECCP) was established in June 2000 on the basis of two communications (COM(2000) 88 and COM(2001) 580) to help identify the most environment-friendly and cost-effective EU measures enabling the EU to meet its targets under the Kyoto Protocol. With current measures, it is estimated the EU will achieve an overall reduction of 4.1 % by 2008–12. More work is needed to reach the Kyoto Protocol targets and a second ECCP was launched in October 2005.

4. The EU's post-2012 strategy

The Commission has issued a communication on 'Winning the battle against global climate change' (COM(2005) 35), which recommends a number of elements to be included in the EU's future climate change strategies and proposals to prepare the EU's position for future international negotiations. A Parliament resolution on winning the battle against climate change was adopted on 16 November 2005.

Role of the European Parliament

The EP has played a decisive role in the formulation of a progressive environmental policy to combat air pollution and played a leading and active role in the long discussions between Parliament, the Commission and the Council concerning the EU's policy on climate change and on emissions trading. In the discussion on including aviation in the EU emissions trading scheme, Parliament stressed that the policy instruments must be chosen in such a way as to ensure that the reduction of greenhouse gas emissions was as high as possible while the distortion of competition between Europe-based air carriers and carriers from outside the EU is minimised and the unfair competition between the air transport sector and other transport sectors within the EU is reduced. Another issue addressed was the worldwide introduction of kerosene taxes. Parliament underlined that the tax exemptions on air transport led to very unfair competition between aviation and other transport sectors such as the railway sector. Parliament went on to urge the Commission to promote

the introduction of bio-fuels for aviation as a contribution to reducing the impact on climate change. With regard to the seventh framework programme, research and development relating to clean engine technologies and alternative fuels must be assigned priority.

Parliament proposed the introduction of a separate dedicated scheme for aviation emissions, recognising that, due to the lack of binding commitments for international aviation emissions under the UNFCCC and the Kyoto Protocol, the aviation sector would be unable to actually sell into the ETS. If aviation were to be eventually incorporated into the wider ETS, there should at least be a pilot phase of a separate scheme covering the period 2008–12. Special conditions should be applied to ensure it does not distort the market to the detriment of less protected sectors: a cap on the number of emission rights it is permitted to buy from the market, and a requirement to make a proportion of the necessary emissions reductions without trading, before being allowed to buy permits.

In the report on winning the battle against climate change, Parliament stressed that the EU strategy on climate change should be based on a seven-pronged approach, involving: building on key Kyoto elements (i.e. binding greenhouse gas emission targets, a global cap-and-trade system, and flexible mechanisms); undertaking strong emissions reductions at home (starting with 20 to 30 % domestic reductions by 2020); adopting a proactive approach to engage other main actors, notably the USA; developing a

strategic partnership with countries like China, South Africa, Brazil and India to help them develop sustainable energy strategies; vigorously promoting research and innovation for sustainable energy technologies and removing 'perverse' incentives such as fossil fuel subsidies; using legislation to stimulate greater energy efficiency; and encouraging citizens to become directly involved to a much greater extent in mitigation efforts, inter alia through the provision of detailed information about the carbon content of products and services. The report said that a future regime should be based on 'common but differentiated responsibilities aiming at contraction and convergence, on continued and progressively greater emission reductions and the involvement of more countries in the reduction efforts'. Any targets for emission cuts should be based on recent science and aiming to not exceed a global average temperature increase of 2 °C with reasonable certainty. Cost-effectiveness should be a characteristic of all measures considered and a long-term goal should therefore be to develop a global carbon market, based on cap and trade. Parliament supported the introduction of ecotaxes at Community level and underlined that effective climate change mitigation would require a major transformation of the energy and transportation systems.

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4.9.7 Water protection and management

Legal basis and objectives

→4.9.1.

Achievements

A. Framework directive in the field of water policy (FWD)

The objective of the framework directive (2000/60/EC) is to establish an EU framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater, in order to prevent and reduce pollution, promote sustainable water use, protect the aquatic environment, improve the status of aquatic ecosystems and mitigate the effects of floods and droughts. By

December 2003, Member States had to identify all the river basins lying within their national territory and assign them to individual river basin districts. River basins covering the territory of more than one Member State are assigned to an international river basin district.

By 2007, Member States must complete an analysis of the characteristics of each river basin district, a review of the impact of human activity on the water, an economic analysis of water use and a register of areas requiring special protection. All bodies of water used for the abstraction of water intended for human consumption, providing more than 10 m³ a day as an average or serving more than 50 persons, must be identified. Nine years after the date of entry into force of the directive, a management

plan and programme of measures must be produced for each river basin district. The objective of the framework directive is to be achieved no later than 15 years after it enters into force, although this deadline may be extended or relaxed under certain conditions.

By 2010, Member States must ensure that water pricing policies provide adequate incentives for users to use water resources efficiently and that the various economic sectors contribute to the recovery of the costs of water services, including those relating to the environment and resources. By 2012 at the latest and every six years thereafter, the Commission will publish a report on the implementation of the directive and will convene, where appropriate, a conference of interested parties on EU water policy, involving Member States, representatives from competent authorities, the European Parliament (EP), NGOs, social and economic partners, consumer bodies, academics and other experts. Decision No 2455/2001/EC added Annex X to the framework directive. This ranks in order of priority the substances for which quality standards and emission control measures will be set.

B. EU international agreements

1. Helsinki Convention: transboundary watercourses and international lakes

Signed on behalf of the EU in Helsinki in 1992.

2. Convention on the protection of the Rhine

The EU signed the new convention in April 1999 in Berne.

3. Danube–Black Sea region

Environmental cooperation in the Danube–Black Sea region (COM(2001) 615): with enlargement, many of the Danube countries will become members of the EU, and the Black Sea will ultimately become a coastal area of the EU. As the environmental situation in the region is extremely critical, a strategy is required to address it.

4. Barcelona Convention on the protection of the Mediterranean

Today, 20 Mediterranean coastal States and the EU are the contracting parties to the Barcelona Convention, signed in 1976 by all Member States. In 1995 amendments to the convention established the precautionary principle and set as a new and ultimate target the full elimination of pollution sources. The most significant aspect of the Barcelona Convention and the Mediterranean action plan are its six protocols, dealing, for example, with pollution from ships and aircraft, pollution from land-based sources, pollution by transboundary movements of hazardous wastes and their disposal, and Mediterranean specially protected areas. When a sufficient number of Member States have ratified the convention, these protocols will become binding in international law.

5. Helsinki Convention on the protection of the Baltic Sea

This convention, signed in March 1974 by all States bordering the Baltic, is intended to abate pollution of the Baltic Sea area caused by discharges through rivers, estuaries, outfalls and pipelines, dumping and normal operations of vessels as well as through airborne pollutants. The convention entered into force in 1980.

6. Paris Convention on the protection of the marine environment of the north-east Atlantic

This convention was signed in Paris on 22 September 1992. The parties to the convention must observe two principles: the precautionary principle and the polluter-pays principle.

C. Thematic strategy on the conservation and protection of the marine environment

1. Measures for marine pollution

On 24 October 2005, the European Commission adopted a thematic strategy on the conservation and protection of the marine environment, which aims to achieve a good biological, chemical and physical status in the marine environment by 2021, and which will constitute the environmental pillar of the future maritime strategy. The identified principal threats to the marine environment are overfishing, the discharge of pollution from land-based sources, oil spills, discharges from offshore oil and gas exploration, pollution from ship dismantling, climate change, nutrient enrichment and associated algal blooms, the illegal discharges of radio-nuclides, and noise pollution. The proposed directive (COM(2005) 505) defines common objectives and principles at EU level, and European marine regions will be established as a basic unit for managing the marine environment. Member States will be expected to develop a strategy for each of their marine regions and to actively cooperate with one another.

2. Accidental marine pollution

EU action on accidental marine pollution has been based on the following three elements since 1978: action programmes on the control and reduction of pollution caused by hydrocarbons discharged at sea, EU information systems, and task forces, composed of experts from the Member States, who are called on to provide practical assistance in the event of accidental marine pollution. Decision No 2850/2000/EC is designed to improve these three elements and integrate them into a single framework for cooperation, covering the period 1 January 2000 to 31 December 2006.

3. Compensation for oil pollution damage occurring in European waters

A compensation fund for oil pollution in European waters (the COPE Fund) is being set up (COM(2000) 802) to

provide compensation to any person entitled to compensation for pollution damage but who has been unable to obtain full compensation under the international regime due to insufficient compensation limits. Member States must lay down a system of financial penalties to be imposed on any person involved in the transport of oil by sea convicted of grossly negligent behaviour.

D. Water quality legislation

1. Intended for human consumption

As groundwater supplies 75 % of the EU's drinking water, pollution from industry, waste dumps and nitrates from the agricultural sector is a serious health risk. It is estimated that 800 000 people in France, 850 000 in the UK and 2.5 million in Germany are drinking water with nitrate concentrations above the permitted EU limit (Directive 75/440/EEC on the quality required of surface water intended for the abstraction of drinking water, as last amended by Directive 91/692/EEC). Following Commission proposals for the extensive modification of the legislation on the quality of water intended for human consumption, Directive 98/83/EC adapted Directive 80/778/EEC to take account of scientific and technological progress and reduced the limit value on lead from 50 µgrams/litre to 10 µgrams/litre. It was claimed that this would have serious financial implications because of the need to replace pipes.

Given that many of the pollutants washed out of the soil over the past decade have not yet reached the water table, it will take between 25 and 50 years for groundwater nitrate levels in the watersheds of the Netherlands, Belgium, Denmark and Germany to fall to an acceptable figure in accordance with the drinking water directive, despite recent cuts in the use of fertilisers in some Member States.

2. Bathing water

The bathing water directive (76/160/EEC, as last amended by 91/692/EEC) concerns the quality of bathing water (with the exception of water intended for therapeutic purposes and water used in swimming pools) and lays down minimum quality criteria (physical, chemical and microbiological parameters). Protection of bathing waters has been one of the most successful elements of EU water policy, resulting in unprecedented public awareness. On 15 February 2006, the Commission adopted a new bathing water directive (2006/7/EC). This directive aims to enhance public health and environment protection by laying down provisions for the monitoring and classification (in four categories) of bathing water. It also provides for extensive public information and participation (in line with the Aarhus Convention) as well as for comprehensive and modern management measures. The new directive will complement the water framework directive as well as the directives on urban wastewater treatment and on nitrates

pollution from agricultural sources. The main issue addressed during the conciliation procedure, was the severity of the health standards that bathing sites must attain to comply with the directive.

3. Surface water

The European Commission adopted a proposal for a new directive to protect surface water from pollution on 17 July 2006 (COM(2006) 397 final). The proposed directive, which is required to support the water framework directive, will set limits on concentrations in surface waters of 41 dangerous chemical substances (including 33 priority substances and eight other pollutants) that pose a particular risk to animal and plant life in the aquatic environment and to human health. The proposal will contribute to the Commission's better regulation initiative by replacing five older directives, allowing their repeal.

This proposal is part of the new strategy against chemical pollution of waters introduced by the water framework directive. The proposal is accompanied by a communication (COM(2006) 398 final) which elaborates on this approach and an impact assessment which illustrates the choices that the Commission made.

4. Quality required of shellfish waters and water to support fish life

Specific measures are intended for the protection and/or improvement of the quality of freshwaters which support certain fish species and shellfish. These are Directive 79/923/EEC on the quality required of shellfish waters and Directive 78/659/EEC on the quality of freshwaters needing protection or improvement in order to support fish life. On 12 May 2006, in accordance with the EU's policy to simplify legislation, the Commission has proposed a codification of Directive 79/923/EEC and its subsequent amendments into a single text (COM(2006) 205).

5. Urban wastewater treatment

Directive 91/271 (as amended by 98/15/EC) concerns urban wastewater treatment. Aid under the Structural Funds and the Cohesion Fund may be allocated for the investment required to comply with the directive. The Commission also intends to increase its support to small and medium-sized agglomerations affected by the deadline of 31 December 2005 as well as to the candidate countries, for which the implementation of the directive represents a major challenge.

E. Discharges of substances

1. Nitrates

The protection of waters against pollution caused by nitrates from agricultural sources is laid down by Directive 91/676/EEC. In its most recent report (COM(2002) 407), the Commission noted that monitoring networks indicate that

over 20 % of groundwater in the EU and between 30 % and 40 % of lakes and rivers are showing excessive nitrate concentrations. Nitrogen from agricultural sources accounts for between 50 % and 80 % of the nitrates entering European water. Although it will take some years for the full impact of the directive to be felt, positive results are already starting to be seen in some regions.

2. Directive on the protection of groundwater against pollution

Rules to protect against groundwater pollution have been in place since the adoption of Directive 80/68/EEC. This directive should be repealed in 2013, after which the protection regime should be continued through the water framework directive (WFD) and the present groundwater daughter directive (required under Article 17 of the WFD). Article 17 of the directive provides for the adoption of specific criteria for the assessment of good chemical status and the identification of significant and sustained upward trends and for the definition of starting points for trend reversals. Beyond the principles set out in Article 17, the WFD also lays down fundamental requirements for groundwater protection: specific environmental aims (Article 4), monitoring of the state of groundwater (Article 8), prohibition of direct discharge in the context of a planned programme of measures (Article 11), and special regulations for 'water bodies for the withdrawal of drinking water' (Article 7). On 13 June 2006, Parliament adopted second reading on the proposal for a directive on groundwaters (COM(2003) 550) which sought to improve sampling methodologies, tightening up the wording of the legislation, closing loopholes to prevent the directive being undermined.

The second semester of 2006 will be very active with respect to policy development: the conciliation process (expected to start in early September) of the groundwater directive should enable its adoption before the end of the year.

F. Dangerous substances

EU legislation has introduced a system of strict limit values for dangerous substances discharged into the aquatic environment by industrial plants, while at the same time leaving Member States free to choose the system of quality objectives, with the corresponding obligation to show that these objectives are being met. The 'basic directive' on discharges of certain dangerous substances (76/464/EEC) contained a blacklist of 132 substances declared dangerous by virtue of their toxicity and bio-accumulation. It was supplemented by Directive 80/68/EC on the protection of groundwater against pollution caused by certain dangerous substances. Pursuant to these directives, specific directives were introduced prescribing limit values and

quality objectives for the discharge of cadmium, hexachlorocyclohexane (HCH) and mercury. A directive on reduction and eventual elimination of pollution caused by waste from the titanium dioxide industry (89/428/EEC) was adopted in June 1989.

Articles 22 and 16 of the water framework directive set out the transitional provisions for integrating the existing directive on discharges of certain dangerous substances (76/464/EEC) and its supplementary directives. On 17 July 2006, the Commission adopted a proposal (COM(2006) 397 final) for a new directive on environmental quality standards in the field of water policy, amending the water framework directive (2000/60/EC) by establishing a list of priority substances. This list contains 33 priority substances and eight other pollutants. The emission reduction programmes, as mentioned in the old directive (76/464/EEC), will still be in place until 2013.

Role of the European Parliament

The EP has frequently taken the initiative in the field of water protection. In addition to the situation in general, it is concerned with the serious environmental damage caused by oil spills from ships. In January 2000, following the oil slick disaster caused by the wreck of the Erika, the EP called for a sustainable, long-term European transport policy to be implemented to prevent the risk of any further oil pollution disasters. It welcomed the initiative seeking to set up an EU cooperation framework in the field of accidental marine pollution (COM(1998) 769), and insisted that this decision should be taken as quickly as possible in order to create the optimum conditions for managing crises such as that caused by the Erika.

Concerning the framework directive on water policy, the EP urged an effective, coherent, integrated policy on water, which would take account of the vulnerability of aquatic ecosystems near coasts and estuaries. The EP set four objectives: coordination of Member State initiatives, charges for water use, a programme of measures for Member States, and exemptions.

The EP is expected to adopt a first reading on the thematic strategy for the conservation and protection of the marine environment and on the marine strategy directive by the end of 2006. Parliament calls for a directive with clear, measurable targets to be achieved within shorter deadlines than in the proposal, and introduces the obligation of the establishment of 'marine protected areas' in EU legislation.

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4.9.8 Nature protection and biodiversity

Legal basis and objectives

→4.9.1.

Achievements

A. General

The EU and its Member States have played an important international role in seeking solutions to global problems such as climate change and the destruction of the tropical rainforests. The United Nations Conference on the Environment and Development (UNCED), held in Rio de Janeiro in June 1992, was of major importance for environmental policy. It ended with the adoption of the Framework Convention on Climate Change, the Biological Diversity Convention, both of which are new treaties in international law, the Rio Declaration, a statement of forest principles and the 'Agenda 21' programme. At the Gothenburg summit in 2001, the EU Member States agreed to halt biodiversity loss in the EU by 2010 and to restore habitats and natural ecosystems. At the Johannesburg World Summit on Sustainable Development, in 2002, over 100 world leaders agreed to 'significantly reduce the rate of biodiversity loss globally by 2010'.

B. Biodiversity action plans

In 2002 the Council adopted a Commission communication (COM(2001) 162) containing biodiversity action plans, each covering individual areas: conservation of natural resources, agriculture, fisheries, and development and economic cooperation. It outlined the steps which it considered necessary in each area and identified indicators for evaluating their effectiveness, some of which already exist; others have yet to be developed. The main objectives of these action plans are to improve or maintain the biodiversity status and prevent further biodiversity loss.

In May 2006, the Commission adopted a communication (COM(2006) 216) entitled 'Halting the loss of biodiversity by 2010 — and beyond — Sustaining ecosystem services for human well-being', which provides an EU action plan with concrete measures and which outlines the responsibilities of EU institutions and Member States.

C. Sectoral action

1. Conservation of natural habitats and of wild fauna and flora

Directive 92/43/EEC (the habitat directive) on the conservation of natural habitats and of wild fauna and flora (as amended by Directive 97/62/EC) established a

European ecological network known as 'Natura 2000'. The network comprises 'special conservation areas' designated by Member States in accordance with the directive, and special protection areas classified pursuant to Directive 79/409/EEC (conservation of wild birds). The habitat directive aims principally to promote the conservation of biological diversity while taking account of economic, social, cultural and regional requirements.

2. International conventions for the protection of fauna and flora

The EU is a party to the following international conventions, among others:

- the Bonn Convention of 23 June 1979 on the protection of migratory species of wild fauna;
- the Berne Convention on the protection of European wildlife and natural habitats;
- the Washington Convention (CITES) of 3 March 1973 on international trade in endangered species of wild fauna and flora; and
- the Rio de Janeiro Convention on biological diversity.

For many years there has been a substantial loss of biological diversity due to human activities (pollution, deforestation, etc.). The UNEP estimates that up to 24 % of species belonging to groups such as butterflies, birds and mammals have completely disappeared from the territory of certain European countries.

The convention on biological diversity was signed by the EU and all the Member States at the United Nations Conference on environment and development in Rio de Janeiro from 3 to 14 June 1992 anticipating, preventing and attacking the causes of significant reduction or loss of biological diversity at source.

3. Fauna and flora

The basic regulation ((EC) No 338/97) on the protection of species of wild fauna and flora by regulating trade therein, applies in compliance with the objectives, principles and provisions of the convention on international trade in endangered species of wild fauna and flora (CITES). The species covered by the regulation are listed in four annexes.

Other directives concerning fauna and flora protection are:

- Directive 1999/22/EC which sets minimum standards for housing and caring for animals in zoos and reinforces the role of zoos in conserving biodiversity while retaining a role in education and scientific research;

— Directive 86/609/EEC, adopted by the Council in November 1986 following an EP resolution on limiting animal experiments and on the protection of laboratory animals, in which it called for a limitation on animal experiments if similar results could be obtained by other methods and if the results were stored in a central European data bank.

Acts concerning marine fauna are:

- Regulation (EEC) No 348/81 on common rules for imports of whale or other cetacean products, restricting imports into the EU of cetacean products;
- Decision 1999/337/EC on the signature by the EU of the agreement on the International Dolphin Conservation Programme, to help reduce incidental dolphin mortality during tuna fishing.

The Council adopted Regulation (EEC) No 3254/91 banning the use of leghold traps in the EU and the import into the EU of pelts and manufactured goods of certain wild species originating in countries which allow leghold traps or trapping methods which do not meet international humane trapping standards. However, the Commission failed to come to an agreement, as required in the regulation, on humane trapping methods with the countries where leghold traps are used (Canada and Russia). In its resolution of 21 February 1997 the EP severely criticised the Commission and, in agreement with the Council of Environment Ministers, called for a ban to be introduced not later than 31 March 1997 on imports of the skins of animals caught with leghold traps.

4. Forests

There are several measures aimed at the protection of forests:

- an EU scheme to protect forests against fire;
- an EU scheme to protect forests against atmospheric pollution by fostering the monitoring and study of forest ecosystems;
- measures to promote the conservation and sustainable management of tropical forests and other forests in developing countries;
- establishment of a European forestry information and communication system (EFICS) to set up a system to collect, coordinate, standardise, process and disseminate information concerning the forestry sector and its development.

The Council adopted Regulation (EC) No 3062/95 on operations to promote tropical rainforests, intended to preserve the biological diversity of tropical forests and ecosystems by making financial and technical aid available to the developing countries concerned, and by securing the active participation of local people.

Regulations (EEC) No 3528/86 and (EEC) No 2158/92 on the protection of the EU's forests against atmospheric pollution and fire respectively, which expired in 2002, have been integrated into the forest focus regulation ((EC) No 2152/2003).

5. Genetically modified organisms

The main objective of the basic directive (90/219/EEC) was to lay down common measures for the contained use of genetically modified microorganisms (GMOs) for the purposes of protecting human health and the environment.

Member States are required to regulate the contained use of genetically modified microorganisms in order to minimise their potential negative effects on human health and the environment, as microorganisms released in the environment of one Member State in the course of their contained use may spread into other Member States.

The directive classifies genetically modified microorganisms into two groups according to the level of hazard.

Directive 2001/18/EC introduced a new regulatory system, more efficient and transparent than that established by Directive 90/220/EEC, on the deliberate release into the environment of genetically modified organisms. In addition, in 2001, the Council adopted Decision 2001/204/EC supplementing Directive 90/219/EEC as regards the criteria for establishing the safety, for human health and the environment, of types of genetically modified microorganisms.

Regulation (EC) No 1829/2003 lays down procedures for the authorisation, supervision and labelling of genetically modified food and feed and aims to guarantee a high level of protection for human life and health, animal health, the environment and consumers' interests while ensuring that the internal market functions properly. It also establishes transparent procedures to assess, authorise and monitor genetically modified food and feed and a system for the labelling of genetically modified food and feed. Regulation (EC) No 1830/2003 broadens the concept and includes all types of foodstuffs containing or produced from GMOs (e.g. proteins), additives and flavourings for human consumption, and GMO animal feed.

Role of the European Parliament

The European Parliament (Parliament) has always played a decisive part in establishing EU systems concerning the protection of nature and biodiversity. On 16 March 2006, Parliament adopted a resolution on preparations for the COP–MOP meetings on biological diversity and bio-safety in Curitiba, Brazil. Parliament was deeply concerned at the continued loss of biodiversity and at the EU's ever

increasing ecological footprint, which extended the impact on biodiversity well beyond the borders of the EU. Parliament pointed out the direct link between the conservation of biological diversity and the provision of ecosystem services, such as food production, water purification, nutrient circulation and climate regulation.

During the 'Biodiversity on the political decision table' debate of the EU's Green Week, Chairman Karl-Heinz

Florenz of the ENVI Committee underlined the need to take the biodiversity debate beyond 'green circles' and include debate with industry, farmers and regions.

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09/2006

4.9.9 Industrial risks: dangerous substances and technologies

Legal basis and objectives

→4.9.1.

Achievements

A. Dangerous substances

1. Classification and labelling

Before an environmental policy had even been defined, in 1967 the Council adopted Directive 67/548/EEC on the classification, packaging and labelling of dangerous substances, last amended by Directive 98/98/EC. These measures aimed to achieve the following objectives:

- to guarantee adequate protection for humans and the environment against the potential risks of chemical substances;
- to introduce a uniform notification procedure for new chemical substances and provisions on packaging and temporary labelling for dangerous substances;
- to introduce an environmental hazard mark;
- to reduce as far as possible the number of experiments on animals.

The directive creates a single 'gateway' through which all new chemical substances must pass before entering the EU market. It obliges manufacturers and importers to label chemical substances with information indicating the quantities manufactured, uses, safety precautions, the results of toxicological and environmental pollution tests and the possibilities of 'neutralising' the substance. More stringent tests are necessary for substances for which production figures exceed 100 tonnes per year or a total of 500 tonnes and for substances for which marketing figures exceed 1 000 tonnes per year or a total of 5 000 tonnes.

These rules apply to all chemical substances marketed in the EU for the first time after 10 September 1981. The directive also provides for the classification and labelling of existing chemical substances. All substances, which were on the market between 1 January 1971 and 18 September 1981 are listed in the European inventory of existing commercial chemical substances (Einecs). This unique inventory lists more than 100 000 chemical substances. To date, 2 500 of these substances have been shown to be dangerous and classified and labelled accordingly. Of the remaining substances, a further 20 000 are probably also dangerous. However, analysis and assessment of all substances will probably take a few more years.

The aim of Regulation (EEC) No 793/93 on the evaluation and control of the risks of existing substances is to permit the systematic evaluation at EU level of the risks posed by the substances listed in the Einecs (Regulation (EC) No 1488/94 established the appropriate principles for such an evaluation.)

Directive 94/48/EC, which emerged from the 1990–94 action plan and the 'Europe against cancer' programme, aims to restrict the marketing and use of carcinogenic and mutagenic substances and those causing birth defects, and of certain aliphatic chlorinated hydrocarbons and coal-tar oils.

2. Restrictions on use

The EU has restricted the use of other dangerous substances and preparations by Directive 76/769/EEC, as last amended for the 29th time by Directive 2005/90/EC.

(a) *PCBs and PCTs*

Polychlorinated biphenyls (PCBs) and terphenyls (PCTs), used as components in electrical transformers, can turn

into dioxin if exposed to fire (as at Seveso). Directive 96/59/EC on the elimination of PCBs and PCTs aims to harmonise national rules on the controlled disposal of PCBs, decontamination or disposal of equipment containing PCBs and/or the disposal of used PCBs, in order to eliminate them completely.

(b) PCP

Directive 91/173/EEC restricted the use of pentachlorophenol (PCP) since this substance, which is used in wood preservatives among other things, is considered to be a carcinogen. In a judgment of the Court of Justice, the Federal Republic of Germany, which had set a limit value for PCP of 0.01 % before this directive was adopted, was forbidden — at the request of France — to set a more stringent national limit value than that established in the directive, after the Commission had earlier approved an exemption pursuant to Article 100(a)(4) of the Treaty.

(c) Asbestos

The fifth amendment to Directive 76/769/EEC defined asbestos as a dangerous substance within the meaning of the original directive. Directives 91/382/EEC and 2003/18/EC, amending Council Directive 83/477/EEC, intend to protect workers against the dangers of asbestos. The main point of Directive 2003/18/EC is the introduction of a single limit value (of a maximum airborne concentration of 0.1 fibres per cm³ as an 8-hour time-weighted average) for the exposure of workers instead of the two years in the original directive. This directive applies to both the maritime and air transport sectors, which was not the case under the original directive.

Directives 91/659/EEC and 1999/77/EC, adapting Annex I to Directive 76/769/EEC, aim to restrict still further its marketing and use.

(d) Pesticides

Two measures apply to plant protection products: a European Parliament (EP) and Council regulation on maximum residue levels of pesticides in products of plant and animal origin adopted in April 2004, and Directive 79/117/EEC, concerning the harmonisation of legislation, which is intended to prohibit the sale and use of plant protection products containing certain active substances. Directive 91/414/EEC on the placing of plant protection products on the market (as last amended by Directive 99/1/EC) aims to create uniform conditions for the authorisation of pesticides and to establish an authorisation procedure. It complements provisions on classification, packaging and labelling. On 12 July 2006, the Commission adopted a proposal (COM(2006) 388) for a regulation to replace this directive. Complementarily, the Commission adopted a thematic strategy on the sustainable use of

pesticides (COM(2006) 372) and a proposal for a directive establishing a framework for Community action to achieve a sustainable use of pesticides (COM(2006) 373).

(e) Biocide products on the market

Directive 98/8/EC established a regulatory framework for placing biocides on the market while ensuring a high level of protection for man and the environment. These substances are authorised only if they appear on a positive list. Pursuant to the mutual recognition principle, a substance authorised in one Member State may be used throughout the EU.

(f) Detergents

Regulation (EC) No 648/2004 of the EP and of the Council on detergents seeks to achieve these objectives by modernising the directives that lay down rules for the biodegradability of surfactants used in detergents and by incorporating and expanding labelling rules contained in Commission Recommendation 89/542/EEC. Modernisation is provided by new biodegradability tests which will provide an enhanced level of protection to the aquatic compartment. In addition, the scope of the tests is extended to all classes of surfactant, thereby including the 10 % of surfactants that escape current legislation. As regards labelling, rules are extended to include fragrance ingredients that could cause allergies, and manufacturers are obliged to disclose a full list of ingredients to medical practitioners treating patients suffering from allergies.

By 8 April 2007 the Commission will evaluate, submit a report on and, where justified, present a legislative proposal on the use of phosphates with a view to their gradual phase-out or restriction to specific applications.

By 8 April 2009 the Commission will carry out a review of the application of Regulation (EC) No 648/2004, paying particular regard to the biodegradability of surfactants, and will evaluate, submit a report on and, where justified, present legislative proposals relating to:

- anaerobic biodegradation; and
- the biodegradation of main non-surfactant organic detergent ingredients.

No later than 8 October 2005, Member States had to adopt appropriate legal or administrative measures in order to deal with any infringement of the regulation and dissuasive, effective and proportionate sanctions for any such infringement.

B. The risk of major accidents associated with certain industrial processes

1. Major accidents: Seveso directives

After the accident at Seveso, the EU took steps to prevent major accidents and to limit their consequences.

Directive 82/501/EEC, updated in 1987, imposes the same obligation on manufacturers in all Member States to inform the authorities about substances, plants and risks of major accidents (excepting nuclear installations). It requires Member States to inform persons likely to be affected by a major accident. The Commission maintains files containing an account of major accidents, including an analysis of their causes and the measures taken in response.

Directive 88/610/EEC extended the original directive's scope to include the storage of dangerous chemical products, whether packaged or not, at any site. The provisions on informing the public have also been made more stringent; details are given of the minimum information which must be made available, for example the nature of the risk to the public and the environment, measures to be taken in the event of an accident, existing emergency plans, and provisions on access to further information.

The Seveso II directive (96/82/EC) replaced the original Seveso directive (82/501/EEC). It revised and extended the scope of the directive, introduced new requirements relating to safety management systems, emergency planning and land-use planning and tightened up the provisions on inspections to be carried out by Member States. The directive constitutes the instrument for transposing into law the EU's obligations under the Convention on the trans-boundary effects of industrial accidents of the United Nations Economic Commission for Europe.

The Seveso II directive was amended by Directive 2003/105/EC. In view of recent industrial accidents (the Netherlands, France and Romania), the amended directive provides for an obligation on industrial operators to put into effect safety management systems, including a detailed risk assessment using possible accident scenarios.

2. Chemical products

The objective of the White Paper COM(2001) 88 is to develop a strategy for a future chemicals policy promoting sustainable development. Although EU legislation already prohibits some harmful chemicals (asbestos, for example), there are gaps with regard to existing chemical substances. There is a lack of information on the effects of many existing substances placed on the market prior to 1981, when the requirement for the testing and notification of new substances was introduced. Such substances account for approximately 99 % of the total volume of substances available on the market and, although the Commission has initiated an assessment of these substances, it is a lengthy process and does not subject existing substances to the same stringent test criteria as new substances. In view of concerns about the harmful effects of chemical substances

on human health and the environment, the Commission considers that a strategy must be developed to guarantee the protection of human health and the environment in a sustainable development context.

The White Paper refers to four current EU legal instruments concerning chemicals: on the marketing and use of certain dangerous substances and preparations; on the classification, packaging and labelling of dangerous substances; on the classification, packaging and labelling of dangerous preparations; and on the evaluation and control of the risks of existing substances. The objectives are in line with the overriding goal of sustainable development and seek to make the chemical industry accept more responsibility while respecting the precautionary principle and safeguarding the single market and the competitiveness of European industry.

The EP adopted on first reading in November 2005 two draft reports on the Commission proposal on the new EU regulatory framework for the registration, evaluation and authorisation of chemical substances (REACH) and on setting up a European Chemicals Agency (COM(2003) 644). On 27 June 2006, the Council reached a common position. The Commission expects the final adoption of the proposal by 2007.

3. Test on chemical substances

Directive 2004/10/EC (amending and repealing Directive 87/18/EEC) aims to harmonise laws, regulations and administrative provisions relating to the application of the principles of good laboratory practice and the verification of their applications for tests on chemical substances. Directive 2004/9/EC amends and repeals Directive 88/320/EEC on the inspection and verification of good laboratory practice.

C. Biotechnology

In 1990 the Council adopted Directives 90/219/EEC and 90/220/EEC (both amended in 1994) on, respectively, the contained use of genetically modified microorganisms and the deliberate release into the environment of genetically modified organisms. Measures to control the contained use of genetically modified microorganisms (GMOs) (e.g. in research and development) have been drawn up on the basis of the first directive. These include a notification system, the implementation of specific containment measures depending on the type of microorganism and the nature of the activity and measures relating to accidents and waste management. Regulation (EC) No 258/97 on novel foods and novel food ingredients was adopted after a long process of conciliation. Agreement was reached on compulsory Europe-wide labelling of foods and food ingredients containing GMOs, which may not be marketed unless authorised and proven harmless (see →4.9.8).

D. Export and import of dangerous substances

Regulation (EC) No 304/2003 concerning the export and import of dangerous chemicals, aims to implement the Rotterdam Convention of 1998 (on the prior informed consent procedure (PIC)) and to establish import and export notification procedures for dangerous chemicals.

Role of the European Parliament

The EP played a leading and active role in the long discussions with the Commission and the Council concerning the new Seveso II directive (2003/105/EC — preparing for emergencies, informing the public, and mapping areas that might be affected by the consequences of major accidents).

In the ongoing discussion concerning the future of chemicals policy in the EU the EP is trying to find a compromise between the diverging positions of the Commission and industry. The most controversial areas within the REACH discussions have been 'registration', 'authorisation' and 'substitution'. In its common position, the

Council adopted most of Parliament's first reading amendments on registration and evaluation; while significant differences between the position of Parliament and the Council on the authorisation chapter remain. In the second reading, the rapporteur (Guido Sacconi) focuses on the issues of duty of care, the role of Parliament in the agency, SMEs, and animal testing.

Parliament has strongly criticised the Commission, in particular for having authorised the marketing of genetically modified maize despite the reservations expressed by some scientists and despite the opposition shown by 13 of the 15 Member States to marketing this type of maize (cf. in particular the resolution adopted on 8 April 1997). Austria and Luxembourg have since adopted measures under Article 16 of Directive 90/220/EEC to prohibit the marketing of genetically modified maize.

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4.9.10 Integrated product policy

Legal basis and objectives

→4.9.1

Articles 174 to 176 of the EC Treaty.

Achievements

A. Green Paper on integrated product policy

The objective of the Green Paper on integrated product policy (IPP) (COM(2001) 68) is to present a strategy for strengthening and refocusing product-related environmental policies with a view to promoting the development of a market for greener products and, ultimately, to stimulating public discussion. In principle, all products and services fall within the scope of this Green Paper. The strategy proposed in the Green Paper calls for the involvement of all the parties concerned at all possible levels of action and throughout the life-cycle of the products. Eco-design must be promoted by the manufacturers to ensure that products on the market are more environment friendly. Distributors should put green products on the shelves and should inform consumers of their existence and benefits. Consumers should preferably choose green products and use them in such a way as to

prolong their shelf life and reduce their impact on the environment. Stakeholders could play a role in identifying problems and solutions with a view to creating products that are more environment friendly.

The integrated product policy (IPP) strategy focuses on the three stages in the decision-making process which strongly influence the life-cycle environmental impacts of products: application of the polluter pays principle in fixing the prices of products, information for consumer choice and definition of eco-designed products.

1. Setting product prices

The environmental performance of products can be optimised by the market once all prices reflect the true environmental costs of these products. This is not normally the case, but application of the polluter pays principle would enable these market failures to be corrected by ensuring that the environmental costs were integrated into the price. The main idea advanced in the Green Paper as a means of implementing the polluter pays principle is differentiated taxation according to the environmental performance of products, e.g. the application of lower VAT rates to products carrying the eco-label or the introduction of other environmental taxes and charges.

2. Informed consumer choice

The Green Paper sees the process of educating consumers (including children) and companies as an important way of promoting demand for more environment-friendly products, thereby making for greener consumption. Another way of ensuring informed consumer choice is to provide consumers with understandable, relevant and credible technical information either through product labelling or through other readily accessible sources of information. In order to minimise the environmental impact, attention should be drawn to the appropriate conditions governing the use of these products. The Internet and other new information technologies open up prospects for data exchange, including assessment and best practice data.

The European eco-label represents a source of information for consumers, but its scope needs to be widened to take in a broader range of products. Public funding of this kind of eco-labelling should be increased, both at European and at national level.

3. Eco-design of products

With a view to extending eco-design across a broader range of products, steps must be taken to produce and publish information on the environmental impact of products throughout their life cycle. Life-cycle inventories (LCIs) and life-cycle analyses (LCAs) are effective instruments to this end, as are other tools designed to permit rapid environmental impact monitoring. The Green Paper notes that eco-design guidelines and a general strategy for integrating the environment into the design process could be used as instruments to promote the life-cycle concept within companies.

4. Other instruments

Eco-management and environmental audit schemes, such as the EMAS systems, are important instruments in the quest to ascertain and control the effects of products on the environment. They have a potential role to play in the promotion of IPP.

Other Community instruments, such as the research and development programmes and LIFE, are listed as instruments that could help to promote IPP.

B. 'Integrated product policy — Building on environmental life-cycle thinking'

Commission communication of June 2003 (COM(2003) 302) further outlines the strategy for reducing the environmental impact caused by products. It sets out a number of actions to encourage improvement in a product's environmental impact throughout its life cycle. It emphasises three aspects:

- 'life-cycle thinking': which means that when pollution-reduction measures are identified, consideration is

given to the whole of a product's life cycle, from 'cradle to grave';

- flexibility of policy measures to be used: among different policy measures such as taxes, product standards and labelling, and voluntary agreements, the focus should be on the most effective measure, working with the market where possible;
- stakeholders involvement: designers, industry, distributors, retailers and consumers should be involved and take action in their sphere of influence in order to reduce products' impacts.

The communication proposes two approaches:

- improve existing tools, such as the EU eco-management and audit scheme (EMAS), environmental labelling and the provision of life-cycle information, to make them more product-focused and improve coordination between the different instruments to better exploit their synergies;
- take action towards a better environmental performance.

Those approaches result in the following concrete actions:

- in 2003, identification and launch of pilot projects for particular products on the basis of stakeholders' suggestions to the Commission;
- in 2005, on the basis of a stakeholders' dialogue, publication of a practical handbook on best practice with life-cycle assessment (LCA);
- in 2005, publication of a discussion document on the need for product design obligations on producers;
- in 2006, development of a Commission action programme for greening its procurement;
- in 2007, identification of a first set of products with greatest potential for environmental improvement.

C. Integration of environmental considerations into public procurement

New public procurement directives (2004/18/EC) were adopted by the Council and the EP on 31 March 2004. The main objectives of the new directives are to simplify, clarify and modernise the procedures (notably through the introduction of electronic or e-procurement). The basic principles of non-discrimination and transparency remain at the core of public procurement law. The recitals refer to Article 6 of the EC Treaty, underlining the directives' aim of clarifying how contracting authorities may contribute to the protection of the environment. They consolidate recent case-law of the Court of Justice in this field (C-448/01 'Wienstrom' of 4 December 2003 and C-513/99 'Finnish Buses' of 17 September 2002), referring explicitly to the

latter case in the first recital. As such, they stress the possibilities indicated by the Commission in its interpretative communication of 4 July 2001 on the possibilities for integrating environmental considerations into public procurement.

Relevant provisions on 'green' public procurement are listed below.

- The definition of technical specifications, which includes environmental performance standards and production methods. This enables contracting authorities to ask for products with environment-friendly production methods or to award extra points for products manufactured as such. In February 2004, the Commission adopted COM(2004) 130 on the integration of environmental aspects into European standardisation.
- The possibility of defining technical specifications in terms of performance or functional requirements, including environmental characteristics.
- Environmental characteristics in terms of performance or functional requirements may be defined in tender documents by using the specifications as defined by European or (multi)national eco-labels (under certain conditions relating to the scientific basis, accessibility and stakeholder consultation).
- Member States may oblige contracting authorities to make sure that candidates or tenderers are informed of obligations relating to environmental protection.
- The possibility for contracting authorities to ask for environmental management measures as a means to prove a tenderer's capacity to execute a specific works or service contract (e.g. in a works contract to build a bridge in a nature reserve, implying the need for continuous environmental management, and adoption of specific protection measures during the work).
- Explicit preference for EMAS (and equivalent means of proof) when asking for environmental management measures, as a way to certify the measures put in place.
- Environmental characteristics listed as a possible award criterion: it follows from the wording of the relevant provision that environmental criteria may be of a qualitative (e.g. emission level) or economic nature (e.g. energy consumption), and there need not be a direct

advantage to the contracting authority itself (e.g. if additional points were to be awarded for timber products from woods harvested in an environmentally sustainable manner). Award criteria should always be linked to the subject of the contract (which excludes criteria related to the operation of environmental management schemes because such schemes cover a wide variety of measures, most of which would not be related to the subject of the contract). All technical specifications (including environmental performance standards and environmental production methods) can be translated into award criteria.

- Environmental considerations can be included among the conditions relating to the performance of a contract (e.g. a requirement to deliver the products in bulk), provided they are not discriminatory.

Role of the European Parliament

The integrated product policy strategy developed in the Commission Green Paper is fully in line with the objectives and ideas of the EP (as underlined on various occasions). The EP has stressed the need for environmental criteria to be incorporated into government procurement procedures, and has expressed the view that a more exhaustive study should have been carried out into the success and failures of existing IPP policies, such as the European eco-label scheme and the directive on packaging. It also regretted the lack of clear objectives with timetables and the lack of methods and indicators for monitoring IPP.

Furthermore, the EP felt that the subsequent communication in 2003 provided only limited guidance on how to move society in the direction of truly sustainable systems for product development and design, and called on the Commission to formulate tangible objectives aimed at establishing coherence and consistency in the area of product-related environmental protection. The EP also played a strong role in the introduction of provisions allowing greener procurement in public procurement directives.

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09/2006

4.10. Consumer protection and public health

4.10.1 Consumer policy: principles and instruments

Legal basis

Articles 95 and 153 EC Treaty

Objectives

Article 95 is the legal basis for the harmonisation measures which have as their object the establishment of the internal market and emphasises the objective of a high level of protection, taking into account any new development based on scientific facts, when concerning consumer protection measures.

Article 153, as modified by the Amsterdam Treaty, introduced a legal basis for a complete range of actions at European level. It stipulates that 'the Community shall contribute to protecting the health, safety and economic interests of consumers as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests'. It also provides for greater consideration to be given to consumer interests in other EU policies. Article 153 strengthens, in this sense, Article 95 and broadens its remit beyond single market issues to include access to goods and services, access to the courts, the quality of public services, and certain aspects of nutrition, food, housing and health policy. It states also that EU actions shall not prevent any Member State from maintaining or introducing more stringent measures as long as they are compatible with the EC Treaty.

As a consequence, consumer policy is nowadays part of the Union's strategic objective of improving the quality of life of all its citizens. In addition to direct action to protect their rights, the Union ensures that consumer interests are built into EU legislation in all relevant policy areas (Council resolution of 31 December 1986). It is important that all 460 million citizens in the EU benefit from the same high level of consumer protection (Council regulation of 9 November 1989 on future priorities for relaunching consumer protection policy). EU legislation, cooperation with the national authorities, common actions, co-regulation between consumer and business organisations, good practice guidelines and support of consumer organisations are all considered as a major instrument.

Achievements

A. General

EU action in favour of consumers has started in the form of a series of action plans, beginning with the Council resolution of 14 April 1975.

Following the completion of the single market, consumer policy objectives have now to be considered as part of the EU's major policies.

The most recent programme on the strategy for consumer policy at European level for the period 2002–06 (Council resolution of 2 December 2002) sets out three mid-term objectives, implemented through actions in a short-term rolling programme (Decision No 20/2004/EC), which will be regularly reviewed:

- high common level of consumer protection;
- effective enforcement of consumer protection rules;
- involvement of consumer organisations in EU policies.

EU consumer policy aims nowadays to:

- guarantee essential health and safety standards, so that buyers are confident about making cross-border purchases and sure that the products are safe (see in this sense the numerous European normative acts on the Community eco-label);
- guarantee that they are protected against illegal and abusive practices;
- enable individuals to be informed and understand policies that affect them;
- establish a coherent and common environment across the Union for an effective enforcement of consumer protection rules;
- ensure that consumer's concerns are integrated into the whole range of relevant EU policies from environment and transport to financial services and agriculture.

The Commission estimates that a major future objective is to harmonise and simplify all rules and actions in the area of consumer protection nowadays involving many

directives, in addition to the case-law and the various rules of the Member States. Simplification of existing rules, where possible, could help both consumers (access to a greater choice of products at better prices) and businesses (reducing their burdens). The methods of achieving this simplification are the adoption of new directives or the adoption of framework directives to be supplemented by targeted directives and national rules. The method of framework directives is estimated by the Commission to be more effective in combination with the current self-regulation rules or codes of good conduct and the voluntary undertakings from businesses with regard to consumers (amended proposal for a decision establishing a programme of Community action in the field of health and consumer protection policy 2007–13 (COM(2006) 235 final).

B. Sectoral measures

→4.10.2

1. Consumer groups

EU institutions wish to involve representatives of consumers' interests.

Decision No 20/2004/EC establishing a general framework for financing Community actions in support of consumer policy provides that the Commission shall be assisted by an advisory committee (see also Decision 2003/709/EC).

2. Consumer education

The EU has organised actions for consumer education at various stages, for example in primary and secondary schools, with the gradual inclusion of consumer education in school syllabuses. The Commission has also piloted teacher-training schemes.

The draft 2007–13 programme aims to introduce other special actions in this sense, as the support for the creation of master courses on consumer's rights and consumer policy at university level.

3. Consumer information

The ability of consumers to protect themselves is directly linked to knowledge. Broad policy lines included the transparency of prices, product information, the development of consumer information services, and increased comparative testing of products.

A first step was reached with Directive 98/6/EC which established common rules for the indication of the prices of products offered in the internal market.

Directives 90/313/EEC and 2003/4/EC introduced rules on public access to environmental information.

The EU has set up European consumer information centres (ECC-Net) to provide information and handle consumer complaints and has reinforced the link with and between consumer organisations. A parallel network, FIN-NET, fulfils

the same role for complaints about cross-border financial services.

The Commission also published a practical guide for consumers.

4. Legal protection of consumer rights

One of the major assets to be dealt with is, since the Amsterdam Treaty, the guarantee of the highest possible level of effective legal protection of consumer interests, via administrative, jurisdictional and non-jurisdictional procedures.

Almost all directives have introduced rules concerning jurisdictional and alternative dispute resolutions that consumers can use to protect their rights when intra-national conflicts arise, in order to guarantee the effectiveness of the actions and avoid excessive burdens and costs for the consumers themselves, in particular with the alternative dispute resolution (ADR) procedures and the injunctions.

5. Scientific support

Decision 93/53/EEC set up a scientific committee for designations of origin, geographical indications and certificates of specific character.

Three scientific steering committees were created by Decision 2004/210/EC to bring wider scientific experience and overview into questions related to consumers. The advice of the scientific committees is now public (including on the Internet).

6. Warning systems

Existing information networks are: the European Consumer Centres Network 'Réseau CEC' or 'ECC-Net'; RAPEX (a system for the rapid exchange of information on non-food products); a rapid alert system in case of food risks; a network for the surveillance and control of communicable diseases; the European Centre for Disease Prevention and Control; the European Judicial Network; and the Solvit network (the internal market problem solving system). An internal market 'product warning system' now exists in the Commission and is available to receive consumers' complaints.

Role of the European Parliament

The strong and persistent pressure exerted by Parliament for consumer concerns to be dealt with comprehensively by the other EU institutions has brought to the Single European Act modifications which shifted consumer protection policy from a technical harmonisation of standards policy in furtherance of the internal market to the recognition of consumer protection as part of the drive to improve the objective of establishing a 'citizens' Europe'. The introduction of the co-decision procedure and the

widening of the areas of legislation to be adopted under the qualified majority voting procedure in the Council, gave to Parliament the power to increase the Community action in this area.

Parliament has been particularly active in ensuring higher budgetary provisions for:

- the information and education of consumers;
- the development of consumer representation in the Member States;

- the need for a detailed consumer protection policy;
- a greater coordination at EU level of the activities of national consumer groups;
- the need for European consumer information centres.

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06/2006

4.10.2 Consumer protection measures

Legal basis

Articles 95 and 153 of the EC Treaty.

Objectives

- To ensure that all consumers in the Union, wherever they may live, travel or shop in the EU, enjoy a high common level of protection against risks and threats to their safety and economic interests.
- To increase the ability of consumers to defend their own interests.

Achievements

A. Protection of consumers' health and safety

1. Community actions in the field of public health

Directive 2001/37/EC and Decision 2003/641/EC harmonise national rules on tobacco products.

Decision No 1786/2002/EC adopted a programme for 2003–08 (health, cancer, drug addiction, health surveillance and pollution-related diseases, injury prevention and rare diseases). The precautionary principle may be invoked where urgent measures are needed to face a danger to public health. Decision 2004/210/EC set up three advisory scientific committees (consumer safety, public health and environment). A decision of 15 December 2004 and Regulation (EC) No 58/2003 set up an executive agency.

2. Foodstuffs safety legislation and genetically modified organisms

Directives 90/496/EEC, 94/54/EC, 1999/10/EC, 2000/13/EC and Regulations (EC) No 1468/1999, (EC) No 178/2002 and (EC) No 1304/2003 harmonised the rules on labelling, presentation and advertising of foodstuffs and established the European Food Safety Authority (EFSA).

Directive 2001/18/EC and Regulations (EC) No 1830/2003 and (EC) No 65/2004 strengthened the EC rules on the release into the environment and improved the efficiency and the transparency of the authorisation procedures for placing of genetically modified organisms (GMOs) on the market. It introduces a common methodology for risk assessment, a mandatory public consultation safety mechanism and GMOs labelling and traceability, in accordance with the precautionary principle.

3. Medicinal products

Directive 89/381/EEC, as amended, contains special provisions to promote particularly high standards for medicinal products derived from human blood.

Directive 2001/83/EC introduces a code relating to medicinal products for human use (governing production, placing on the market, distribution and utilisation). The good practices regarding clinical trials for medicinal products for human use are laid down in Directive 2003/94/EC. Directive 92/28/EEC sets out rules on the advertising of medicinal products for human use.

Set up in 1993, the European Medicines Agency (EMA) manages the procedures for the authorisation of marketing of pharmaceutical products. No medicinal product may be placed on the market unless an authorisation has been issued.

4. General product safety system

Directive 2001/95/EC organises a general product safety system requiring the respect of standards by any product put on the market for consumers, including all products that provide a service, products which are not eatable but could easily be confused with foodstuff by their appearance, smell or packaging (Directive 87/357/EC), excluding second-hand products and antiques. Distributors

and manufacturers must provide consumers with the necessary information, take the necessary measures to avoid such threats (e.g. withdraw products from the market, inform consumers, recall products which have already been supplied to consumers), monitor the safety of products and provide the documents necessary to trace the products. If a product poses a serious threat calling for quick action, the Member State involved immediately informs the Commission via RAPEX, a system for the rapid exchange of information between States and the Commission.

5. Safety of cosmetic products, explosives for civilian use and toys

Various directives (80/1335/EEC, 82/434/EEC, 83/514/EEC, 85/490/EEC, 93/73/EEC, 95/32/EC and 96/45/EC) have been adopted to improve the safety of cosmetic products, as well as protecting consumers by providing for ingredient inventories and more informative labelling.

Safety requirements for explosives for civilian use and similar products such as explosives and pyrotechnic articles are set out in Directives 93/15/EEC, 99/45/EC, 2004/57/EC and Decision 2004/388/EC. The directives do not apply to explosives for military or police use and munitions.

Toy safety requirements (mechanical and physical danger, toxicity and flammability, toys for children less than three years old) are stipulated by Directives 88/378/EEC, as amended, and 76/769/EEC and by Decisions 93/465/EEC and 1999/815/EC. The Standardisation Committee (CEN) revises and develops new standards. Toys that meet these standards bear the 'CE' conformity marking.

6. European exchange of information and surveillance systems

Decisions 93/683 and 93/580 established an European home and leisure accident surveillance system (Ehlass), a regular information system on accidents at home and during leisure activities and a Community system for the exchange of information between Member States on the dangers arising from the use of consumer products, except pharmaceuticals and products for trade use.

B. Protection of consumers' economic interests

1. Information society services, electronic commerce and electronic and cross-border payments

Directive 2000/31/EC covers the liability of service providers established in the EU for services (services between enterprises, services between enterprises and consumers, and services provided free to the recipient which are financed, for example, by advertising income or sponsoring), online electronic transactions (interactive telesales of goods and services and online purchasing centres in particular), and online activities such as newspapers, databases, financial services, professional

services (solicitors, doctors, accountants and estate agents), entertainment services (video on demand), direct marketing and advertising and Internet access services.

Directive 2002/38/EC stipulates rules on taxation for services supplied in electronic form over electronic networks (information, cultural, artistic, sporting, scientific, educational, entertainment or similar services, as well as software, computer games and computer services).

Directive 97/5/EC and Regulation (EC) No 2560/2001 ensure that charges for cross-border payments in euro (cross-border credit transfers, cross-border electronic payment transactions, cross-border cheques) are the same as those for payments in that currency within a Member State.

Directive 98/26/EC reduces the risks associated with the participation in payment and security systems. It lays down common rules stating that transfer orders and netting must be legally enforceable and cannot be revoked once they have been entered into the system. The insolvency of a participant may not have retroactive effects and the insolvency law of the State whose system is involved is applicable.

Directives 2002/58/EC, concerning the processing of personal data and the protection of privacy in the electronic communications sector, and 2002/22/EC, concerning the 'universal service' and the users' rights related to electronic communications and services, dealt with consumer protection.

2. TV without frontiers

Directive 89/552/EEC, as amended, ensuring the free movement of broadcasting services, preserves certain public interest objectives, such as cultural diversity, the right of reply, consumer protection and the protection of minors. The provisions relate to, inter alia, ethical considerations (in particular the protection of minors — programmes broadcast in unencoded form are to be preceded by an acoustic warning or identified by a visual symbol) and compliance with criteria concerning advertisements for alcoholic beverages and teleshopping. Advertising of tobacco and medicines and programmes involving pornography or extreme violence are prohibited. Events of major importance for society are to be broadcast freely in unencoded form, even if exclusive rights have been purchased by pay-TV channels.

3. Distance selling contracts and contracts negotiated away from business premises

Directives 85/577, as amended, and 2002/65/EC, amending Directives 90/619/EEC, 97/7/EC and 98/27/EC, protect the consumer in respect of contracts: negotiated at a distance (via the press and post, television, home computer, fax and

telephone); stipulated away from business premises; offered without the express wish of the consumer; in respect of which the consumer receives a visit from or takes part in an excursion organised by a trader. The consumers must be informed in advance and by writing of: identity and the address of the supplier; characteristics of the goods or services; their price; delivery costs; arrangements for payment, delivery or performance; the existence of a right of withdrawal; the period for which the offer or the price remains valid and the minimum duration of the contract; the cost of using the means of distance communication. Commission recommendation 92/295/EEC introduced a code of practice.

4. The sale of goods and guarantees, unfair terms in contracts and unfair commercial practices

Directives 93/13/EEC and 99/44/EC harmonise national provisions on the sale of consumer goods (the principle of conformity of the product with the contract) and associated guarantees in order to ensure a uniform level of protection. A contractual term not individually negotiated (particularly in the context of a pre-formulated standard contract) shall be regarded as unfair if, contrary to the good faith, it causes a significant imbalance in the parties' rights and obligations, to the detriment of the consumer.

Directive 2005/29/EC, to be implemented for the end of 2007, simplified existing EC legislation. Unfair commercial practices (misleading and aggressive practices, 'sharp practices', such as pressure selling, misleading marketing and unfair advertising, and practices which use coercion as a means of selling) are prohibited, irrespective of the place of purchase or sale. Criteria to determine aggressive commercial practice (harassment, coercion and undue influence) and a 'blacklist' of unfair commercial practices (pyramid schemes, unsolicited supply or use of bait advertising, when the low-priced product is not available, or use of advertorial — advertisement written in the form of editorial copy) are included.

5. Comparative and misleading advertising

Directives 84/450/EEC, 97/55/EC and 2005/29/EC harmonise national legislations. The Member States will ensure effective actions to a court, or before a competent administrative body, against misleading advertising. In this context, Member States will invest the jurisdictional or administrative bodies with effective powers.

Comparative advertising is 'any advertising which explicitly or by implication identifies a competitor'. It is permitted if it is not misleading, compares comparable goods or services, compares objectively, does not create confusion, does not discredit or denigrate, relates to products with the similar designation of origin, does not take unfair advantage, does not present goods or services

as imitations or replicas of protected trade-mark or trade-name goods or services.

6. Liability for defective products and price indication

Directive 85/374/EEC, modified by Directive 99/34/EEC, establishes the principle of objective liability or liability without fault of the producer in cases of damage caused by a defective product. The injured consumer seeking compensation needs to prove the damage, a defect in the product and a causal link, within three years.

Directive 98/6/EC, on unit prices, obliges traders to indicate sale prices and prices per measurement unit in order to improve and simplify comparisons of price and quantity between products on the market.

7. Consumer credit and insurance

Directive 87/102/EC, as amended, aimed to make uniform the level of protection of rights enjoyed by consumers in the single market. Credit agreements are to be made in writing and must state the annual percentage rate of charge and the conditions under which it may be amended. The consumers must be informed on any change of the annual rate of interest or of the relevant charges and may discharge their obligations before the fixed time, with an equitable reduction in the cost of the credit (communication of the Commission of 1 March 2001).

The harmonisation of the laws on compulsory insurance against civil liability (Directive 72/166/EEC as amended, on the use of vehicles and Regulation (EC) No 785/2004 on insurance requirements for air carriers and aircraft operators), life insurance (Directive 2002/83/EC), cross-frontier non-life insurance (Directives 88/357/EEC and 92/49/EEC) and legal expenses insurance (Directives 87/343/EEC and 87/344/EEC) concerns also the protection of consumers' economic interests.

8. Package holidays and timeshare properties

Directive 90/314/EEC protects consumers purchasing package holidays within the EU stating that: the information contained in the brochure is binding on the organiser if the consumer withdraws from the contract or if the organiser cancels the package; the consumer is entitled either to take an alternative package or to be reimbursed; where appropriate, the consumer is entitled to be compensated for non-performance or improper performance of the contract, except cases of fault or *force majeure*.

Directive 94/47/EC covers the obligation of information on the constituent parts of the contract and the right to withdraw without giving any reason within 10 days, paying exclusively those expenses effectively incurred. The purchaser's right of withdrawal may be exercised, with no

costs, within three months if the information required by the directive were not included in the contract.

9. Air transport

Regulations (EC) No 261/2004 and (EC) No 2027/97, as amended, establish common rules on compensation and assistance to passengers in the event of denied boarding and cancellation or long delay of flights and on air carrier liability (passenger and baggage), in case of accidents. Passengers now have the right to demand a cash compensation payable within one month under the rules to be displayed at airports.

Regulation (EEC) No 2299/89, as amended, on computerised reservation systems (CRS) for air transport products establish obligations for the system vendor (to allow any carrier on equal basis) and for the carriers (to communicate with equal care and timeless information to all systems).

Regulation (EEC) No 2409/92 introduces common criteria and procedures governing the establishment of the air fares and air cargo rates charged by air carriers on air services within the Community.

Regulation (EC) No 2320/2002, as amended, introduces common rules in the field of civil aviation security standards, following the criminal acts of September 11th, 2001.

10. European Consumer Centres network (Euroguichets)

The European Consumer Centres network (ECC-Net) — the ‘Euroguichets’ — gives information and assistance to consumers within the context of cross-border transactions. This network also works together with other European networks, notably FIN-NET (financial), Solvit (internal market) and the European judicial network in civil and commercial matters.

C. Protection of consumers’ legal interests

1. Alternative dispute resolution (ADR) procedures and injunctions

Recommendation 98/257/EC, Decision No 20/2004/EC and a Council resolution of 25 May 2000 lay down the principles to be followed in ADR proceedings, aimed to guarantee the single consumer with cheaper and faster intra-national legal remedies.

Directive 98/27/EC, as modified, harmonises existing EU and national law and, in order to protect the collective interests of consumers, introduces the ‘actions for

injunctions’, which can be opened, at the competent national courts level, against infringements (misleading advertising, unfair commercial practices, contracts negotiated away from business premises, consumer credit, package travel, medicinal products for human use, unfair contractual terms, time-shares, distance contracts, sale of consumer goods and associated guarantees) made by commercial operators from other countries. Consumers associations may seek to: stop or prohibit, under an urgent procedure, any illegal act; adopt the needed measures to eliminate the effects of the infringement; order the payment of a penalty in the event of failure to comply with the former decision within the specified time limit.

2. European judicial network in civil and commercial matters and obligation to cooperate for national authorities

Decision 2001/470/EC established such a network to simplify the life of citizens facing cross-border litigations by improving the judicial cooperation mechanisms between Member States in civil and commercial matters and by providing them with practical information to facilitate their access to justice.

Regulation (EC) No 2006/2004 establishes a network of national authorities responsible for the effective enforcement of the EC consumer protection law and obliges them, since 29 December 2005, to cooperate to guarantee the enforcement of EC law and to stop any infringement, using appropriate legal instruments such as injunctions, in case of intra-Community infringements.

Role of the European Parliament

The European Parliament (Parliament) has been at the origin of most of the adopted measures (inter alia, European Food Safety Authority, European Medicines Agency, GMOs, safety in the areas of cosmetics, tourism, unfair contract terms, distance selling, door-to-door sales, use of hormones, exports of various dangerous substances as pesticides, greater protection to workers and consumers in the destination countries for EU exports and Directive 76/768/EEC on animal experiments for cosmetic products).

Parliament has also supported traditional food and producers located in isolated areas.

→ Azelio FULMINI
06/2006

4.10.3 Public health

Legal basis

The EC Treaty, whilst not introducing an EU health policy, nonetheless takes a number of steps in that direction. Article 152 stipulates that 'a high level of human health protection shall be ensured in the definition and implementation of all Community policies and activities' and that 'by way of derogation from Article 37' (CAP), the Council will adopt 'measures in the veterinary and phytosanitary fields which have as their direct objective the protection of human health'. These measures, plus measures concerned with human blood and organ quality and incentive measures designed to protect and improve human health, are subject to qualified majority voting in the Council.

Objectives

Historically, EU health policy originated from health and safety provisions, and later developed as a result of free movement of people and goods in the internal market, which required coordination in public health. In harmonising measures to create the internal market, a high level of protection formed the basis for proposals in the field of health and safety.

Various factors, including the BSE crisis towards the end of the century, put health and consumer protection high on the political agenda. As a result, DG XXIV (renamed the Directorate-General for Health and Consumer Protection) was considerably reinforced.

Achievements

A. Early development

Despite the absence of a clear legal basis, public health policy had developed in several areas prior to the current Treaty, including the following.

- Medicines: legislation introduced since 1965 sought to achieve high standards in medicine research and manufacturing, harmonisation of national drug licensing procedures, and rules on advertising, labelling and distribution.
- Research: medical and public health research programmes date back to 1978 on subjects such as age, environment and lifestyle related health problems, radiation risks, and human genome analysis, with special focus on major diseases.
- Mutual assistance: in the event of disaster and extremely serious illness.

The emergence of drug addiction, cancer and AIDS (among others) as major health issues, coupled with the increasingly free movement of patients and health professionals within the EU, pushed public health ever further on to the EU agenda. Major initiatives launched included the 'Europe against cancer' and 'Europe against AIDS' programmes in 1987 and 1991, respectively. In addition, several key resolutions were adopted by the Council's health ministers on health policy, health and the environment, and monitoring and surveillance of communicable diseases.

B. Developments following the Maastricht Treaty

In November 1993 the Commission published a document entitled 'Communication on the framework for action in the field of public health', which identified eight areas for action.

1. Health promotion

This Community action programme focused on promoting healthy lifestyles and behaviour, particularly in the areas of nutrition, alcohol consumption, tobacco and drugs, medicines and medication.

2. Health monitoring

This programme based on cooperation is less than that proposed by Parliament, which wanted a specific budget and much tighter specifications for an EU, as opposed to Member State, programme, including a centre for data collection.

3. Cancer

The 'Europe against cancer' programme ran until the end of 2002. New areas of activity include epidemiological studies to measure the impact of cancer on the population, and research collaboration and dissemination. In recognition of the strong link between cancer and lifestyles, a special part of the plan is dedicated to alcohol consumption, diet and, most importantly, smoking, both active and passive. This runs in conjunction with existing EU legislation on tobacco, which includes:

- a Council resolution on banning smoking in public places (1989);
- two directives on labelling of tobacco products, with obligatory health warnings as well as tar and nicotine yields, and also banning oral tobacco products (1989 and 1992) and a directive on the maximum tar yield of cigarettes (1990);
- an agreement reached by the Council and Parliament on the text of a new directive to replace Directive

98/43/EC (which was the object of a successful legal challenge) on the advertising and sponsorship of tobacco products. Together with the directive on television advertising of tobacco products, this directive will ban the advertising and sponsorship of tobacco products in the EU.

4. Drugs

This is the only major scourge to be specifically mentioned in the EU Treaty, and recognised in the Commission's communication as a multi-faceted problem linked to social exclusion and unemployment. The EU set up a European Committee to Combat Drugs (CELAD) in 1990, and a European Monitoring Centre for Drugs and Drug Addiction (based in Lisbon) in 1995. The EU has also signed the UN Convention against illicit traffic in narcotics, as well as developing bilateral contacts with producer countries.

5. AIDS and communicable diseases

The current programme comprises information, education and preventive measures to combat AIDS and other related communicable diseases. Emphasis is also placed on collaborative research, international cooperation and information pooling. The Commission has also proposed the creation of a network for the epidemiological surveillance and control of AIDS and other communicable diseases such as CJD.

6. Injury prevention

This programme focuses on home and leisure accidents and targets children, adolescents and older people. Activities are complementary to those pursued in other fields such as consumer protection, transport, civil protection and the Ehlass programme.

7. Pollution-related diseases

Many of the provisions of the fifth environmental action plan — on energy, transport and agriculture — will have a significant indirect health impact. The pollution-related diseases programme concentrates on improving data and risk perception as well as disease-specific actions for respiratory conditions and allergies.

8. Rare diseases

This programme targets those diseases with a prevalence rate of less than five people per 10 000 of the EU population. It is intended to create an EU database and information exchange to improve early detection and identify possible 'clusters', as well as encouraging the setting-up of support groups.

9. Other activities

Activities outside the eight programmes have included tobacco control, surveillance and control of communicable diseases, safety of blood and blood products and various reports and studies.

C. Recent developments

1. Evaluation of the current programmes

The eight programmes carried out between 1996 and 2002 were evaluated during 2003. During their lifetime the overall design of the programmes was criticised for being limited in effectiveness because of the dilution caused by its disease-by-disease approach. Calls were made for a more horizontal, interdisciplinary approach concentrating on areas where EU action could produce 'added value'.

2. The 2003–09 programme

In May 2000 the Commission put forward a proposal for a new programme to replace the existing eight programmes with a single, integrated, horizontal scheme. The proposal was adopted after a long co-decision procedure and the final decision was published in October 2002. The scheme came into effect on 1 January 2003 to run for six years with a budget of EUR 312 million. The new programme will focus on key priorities where a real difference can be made. It focuses on three strands of action.

(a) Mutual exchange of information

This concerns knowledge about people's health, health interventions and health system functioning. The inclusion of health system comparisons is a new element here since this had always been considered a purely national matter. In terms of organisation it still is, but systems have much to learn from each other and Court of Justice decisions on citizens seeking medical help in other Member States have increased the importance of this aspect, as has the fact that Member States face the same kinds of problems in providing health services to an increasingly elderly population.

(b) Strengthening rapid response capacity

It is now seen as essential for the EU to have a rapid response capacity to react to major health threats in a coordinated manner, especially given the threat of bioterrorism and the potential for worldwide epidemics in an age of rapid global transport making it easier for diseases to spread.

(c) Targeting actions to promote health and disease prevention

This is to be undertaken by tackling the key underlying causes of ill health relating to personal lifestyles and economic and environmental factors. This will entail, in particular, working closely with other EU policy areas such as environment, transport, agriculture and economic development.

In addition, it will mean closer consultation with all interested parties and greater openness and transparency in decision-making. A key initiative in this is the setting-up of an EU health forum as a consultative mechanism.

Provisions have been made for structural arrangements, establishing a new programme committee and strengthening the Commission's coordinating and technical capabilities by externalising certain functions, and possibly by creating an executive agency for certain functions once a regulation on the establishment of such agencies has been adopted.

In addition to projects on specific areas of the three policy strands, there will be cross-cutting projects involving elements of all three. Projects will be much more clearly linked to policy development needs and will be larger than in the past to ensure added value at EU level and a measurable and sustainable contribution to public health. Some projects will involve all Member States and accession countries, whose inclusion in the programme from an early stage is seen as essential.

In recent years a number of initiatives have been taken to reinforce Community involvement in public health and consumer protection, notably the establishment of specialised agencies in these two areas. Developments include the setting-up of a European Food Safety Authority in Parma, Italy, and a European Centre for Disease Prevention and Control in Stockholm, Sweden. The latter was created by Regulation (EC) No 851/2004 of the European Parliament and of the Council of 21 April 2004 establishing a European Centre for Disease Prevention and Control, published in the *Official Journal of the European Union* on 30 April 2004.

Role of the European Parliament

Parliament has consistently promoted the establishment of a coherent public health policy. It has also actively sought to strengthen and promote health policy through numerous opinions and own-initiative reports on issues including:

- radiation protection for patients undergoing medical treatment or diagnosis;
- respect for life and care of the terminally ill;
- a European charter for children in hospital;
- research in biotechnology including organ transplants and surrogate motherhood;
- safety and self-sufficiency in the EU's supply of blood for transfusion and other medical purposes;
- hormones;
- drugs;
- tobacco and smoking;
- breast cancer and women's health in particular;
- ionising radiation;
- an EU health card — a European health card incorporating a microchip containing essential medical data which could be read by any doctor;
- BSE and its aftermath and food safety and health risks;
- biotechnology and its medical implications;
- the rights of patients to seek medical assistance and care in other Member States.

In 2005 work was initiated leading to the approval by co-decision (following a single reading) of a programme of Community action in the field of health, 2007–13 (COD/2005/0042A), based on a communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on healthier, safer, more confident citizens: a health and consumer protection strategy (SEC(2005) 425 and COM(2005) 115 final).

→ **Marcello SOSA IUDICISSA**
11/2005

4.11. An area of freedom, security and justice

4.11.1. An area of freedom, security and justice: general principles

Legal basis

Title IV (Articles 61 to 69) of the EC Treaty (ECT) entitled ‘Visas, asylum, immigration and other policies related to free movement of persons’: these provisions, created by the Treaty of Maastricht outside the Community context (third pillar), were incorporated in the ECT by the Treaty of Amsterdam and to some extent come under the Community decision-making system.

Title VI of the Treaty on European Union (EUT) entitled ‘Provisions on police and judicial cooperation in criminal matters’: these provisions remain outside the Community context and are the subject of intergovernmental decisions.

Objectives

The gradual creation of an area of freedom, security and justice (AFSJ) was introduced by the Treaty of Amsterdam. It replaces the concept of justice and home affairs introduced by the Treaty of Maastricht. As highlighted by the European Council (Tampere, 15 and 16 October 1999), the aim is to reconcile the right to move freely throughout the Union with a high degree of protection and legal guarantees for all.

A new stage in the development of the AFSJ was embarked upon with the signing of the European Constitution in October 2004 and the adoption of the Hague programme in November 2004 and the Hague action plan in June 2005.

Achievements

A. Developments brought about by the Treaty of Amsterdam

1. Scope

The policies which were originally grouped under the heading of Justice and Home Affairs (JHA) in the Maastricht Treaty are quite numerous and diverse. In the Amsterdam Treaty, which entered into force on 1 May 1999, they were

enshrined under three aspects: ‘freedom, security and justice’:

- freedom, which includes free movement of persons, asylum, legal immigration;
- justice, which includes both civil and criminal matters;
- security, which includes both internal and external aspects — terrorism, crime, drug trafficking, trade in human beings, illegal immigration.

2. Partial ‘communitarisation’

The Amsterdam Treaty moved a good deal of the Maastricht third pillar into the Community sphere, in particular customs cooperation and judicial cooperation in civil matters (see Section C.3). However, this ‘communitarisation’ is only partial insofar as the decision-making procedures and the powers of the Court of Justice in this respect do not comply with the normal rules under Community law.

(a) *Decision-making procedure (Article 67 of the ECT)*

(i) During a transitional period of five years:

- the Commission’s right of legislative initiative is shared with the Member States (except in a few areas: Article 67(3));
- decisions are adopted by the Council acting by a qualified majority except in the areas referred to in paragraph 3;
- Parliament is simply consulted.

(ii) After the transitional period:

- the Commission largely regains its monopoly over initiative as the Member States’ right of initiative is limited to calling on the Commission to submit a proposal to the Council, a request that the Commission is only required to examine (paragraph 2);
- a few areas become subject to co-decision (between Parliament and the Council) (paragraph 4) and the Council may decide (but only unanimously) to apply this system to other areas (paragraph 2).

(b) *Jurisdiction of the Court of Justice (Article 68)*

The Court's jurisdiction is restricted in relation to ordinary law under the ECT.

- (c) Police and judicial cooperation in criminal matters remains outside the ECT and thus in the intergovernmental sphere, although it is subject to some Community rules.
- (d) The entire system is highly complex: it includes three types of flexibility clause, seven supplementary protocols, 17 declarations by Member States, several timetables for implementation and the option to engage in closer cooperation. It is thus extremely difficult to implement.

C. Developments since Amsterdam

1. Contributions of the Treaty of Nice

It extends the co-decision procedure (Article 67(5)):

- to certain measures relating to asylum and refugees provided that the Council has already adopted legislation defining the common rules and basic principles governing these issues;
- to judicial cooperation in civil matters, with the exception of aspects relating to family law.

2. Slow progress

- (a) The Cardiff European Council (June 1998) instructed the Council and Commission to produce an action plan on the best method of implementing the new provisions. The plan, approved by the Vienna European Council (December 1998), establishes a calendar of priorities lasting two and five years.
- (b) The Tampere European Council (October 1999) stressed its intention to turn the EU into an area of freedom, security and justice. It called on the Commission to produce a scoreboard indicating the progress made and compliance with deadlines. This scoreboard, which has been in operation since 2000, is updated twice a year and has three objectives: guaranteeing transparency for citizens, maintaining the momentum generated by the Tampere European Council and highlighting any delays that have been identified.
- (c) The December 2001 meeting of the European Council in Laeken provided an opportunity to assess the progress made. The Commission, in its update of the scoreboard for the second half of 2001, concluded that the situation was positive overall but that certain deadlines had not been respected, notably with regard to immigration and asylum. It noted that the 'change of pillar' had not accelerated the process but that progress had been made as regards mutual recognition and the

creation of a range of new cooperation bodies. The Council broadly subscribed to these conditions.

- (d) The Seville European Council (June 2002) highlighted the need to develop a common policy in the field of asylum and immigration. It stressed the importance of adopting tangible measures to combat illegal immigration and manage external borders on the basis of two plans adopted in this field during the first half of 2002.
 - (e) At the end of 2002 the Commission noted that although the impetus given at the Laeken European Council was continuing to bear fruit in certain areas, this had not made up for the delay with regard to asylum and immigration in particular, despite the fact that all of the necessary proposals had been submitted to the Council.
 - (f) The Hague European Council of 4 and 5 November 2004 adopted the Hague programme, which aims to build upon the work achieved during the now-expired Tampere programme. The Hague programme sets ambitious objectives for the next five years. It takes into account the objectives set by the Constitution for the creation of an area of freedom, security and justice. The main steps forward concern the adoption of measures for:
 - completing the second phase of the common asylum policy by 2010;
 - initiating a debate on the possible creation of a European corps of border guards;
 - setting up the Schengen information system (or SIS II, due to be up and running by 2007) and the visa information system (VIS);
 - establishing the Internal Security Committee as set out in the Constitution;
 - introducing the European evidence warrant by 2005;
 - setting up a European police record information system.The Hague programme is translated into a series of concrete measures by the Hague action plan, which was approved by the European Council meeting on 16 and 17 June 2005. The Hague action plan will be updated at the end of 2006.
- #### 3. List of the main legal texts
- (a) Action plan of the Council and the Commission on how best to implement the provisions of the Amsterdam Treaty on the creation of an area of freedom, security and justice (OJ C 19, 23.1.1999, p. 1).
 - (b) Conclusions of the Tampere European Council, 15 and 16 October 1999.

- (c) Treaty establishing the European Community (consolidated version) (OJ C 325, 24.12.2002) — Title IV (Articles 61 to 69):
- external borders;
 - asylum policy;
 - immigration and the rights of third country nationals;
 - fight against fraud and cross-border corruption;
 - fight against drug trafficking;
 - customs cooperation.
- (d) Treaty on European Union (consolidated version) (OJ C 325, 24.12.2002) — Third pillar (Title VI, Articles 29 to 42):
- police cooperation;
 - judicial cooperation in criminal matters;
 - fight against organised crime;
 - fight against trafficking in human beings.
- (e) European Constitution (OJ C 310, 16.12.2004).
- (f) The Hague programme.

Role of the European Parliament

In accordance with Article 39 of the EUT, the European Parliament holds a debate each year on the progress made in the area of police and judicial cooperation in criminal matters. In fact, its annual report covers all the progress made in establishing an area of freedom, security and justice.

The EP fully supports the creation of the AFSJ. Its role is simultaneously to:

- legislate, by participating in the decision-making process;
- provide impetus, by initiating new projects;
- act as a watchdog, by monitoring respect for adoption deadlines for texts and their compatibility with civil liberties.

Parliament notes that the establishment of such an area is today one of the main priorities of European integration. It believes that it is vital to ensure a balance between the aims of freedom, security and justice, taking account of fundamental rights and citizens' freedoms. However, it considers that as a representative of the peoples of the EU, and without prejudice to its formal competences, it should be involved in the adoption of all measures, including those adopted within the framework of the third pillar. It

highlights the negative consequences that the division between the first and third pillar entails for the achievement of an area of freedom, security and justice, including a serious lack of parliamentary control. Cooperation with the Council is considered to be insufficient. The EP hopes that the post-Nice process will see the co-decision procedure being extended to all areas within justice and home affairs. The EP strongly supports the developments which the Constitution, particularly Article III-396 thereof, would bring in the field of freedom, security and justice as it would give the EP co-decision powers on almost all AFSJ matters. In addition, most Council decisions would be taken by qualified majority voting (QMV), which would speed up the development of the AFSJ.

It is critical of the current system, which encourages haphazard initiatives by Member States instead of proposals that are coherent and carefully prepared from a strategic point of view.

As regards the common asylum and immigration policy, the EP notes that moving this area from the third to the first pillar under the Treaty of Amsterdam has not resulted in any greater efficiency and regrets the fact that there are still many obstacles within the Council.

Main European Parliament resolutions:

- resolution of 27 October 1999 on the European Council meeting in Tampere;
- resolution of 10 March 2003 on progress in 2002 on implementing the AFSJ;
- resolution of 19 December 2003 on the outcome of the intergovernmental conference;
- resolution of 11 March 2004 on the progress made in 2003 in creating an area of freedom, security and justice (AFSJ);
- recommendation of 14 October 2004 on the future of the area of freedom, security and justice as well as on the measures required to enhance the legitimacy and effectiveness thereof;
- resolution of 8 June 2005 on the progress made in 2004 in creating an area of freedom, security and justice (AFSJ) (Articles 2 and 39 of the EUT).

→ Johanna APAP
11/2005

4.11.2 Asylum and immigration policies

Legal basis

Article 63 of the EC Treaty (ECT)

Objectives

Setting up a common asylum procedure: the aim is to set up a harmonised and effective asylum procedure to bring about a common procedure and status for refugees.

Defining a balanced approach to immigration: the aim is to set up a balanced approach to dealing with legal migration and illegal immigration. Proper management of migration flows also entails ensuring a more effective integration policy and access to rights by third-country nationals within the EU as well as greater cooperation with non-member countries in all fields, including the readmission and return of migrants.

Achievements

A. Developments brought about by the Treaty of Amsterdam

The entry into force of the Amsterdam Treaty on 1 May 1999 marked a new stage in asylum and immigration matters. It provides for the establishment of an 'area of freedom, security and justice' (AFSJ) and gives EU institutions new powers to develop legislation on immigration and asylum matters. For the first time it became possible to talk meaningfully of a European asylum policy and a European migration policy.

1. Scope

The scope of Article 63 ECT covers:

- asylum, refugees and temporary protection;
- regular immigration (and relevant measures on integration of third-country nationals);
- rights of regular third-country nationals including the right to reside in another Member State;
- irregular immigration (including return measures).

2. Communitarisation of asylum and immigration matters

With the Amsterdam Treaty, the transfer of competence of the third pillar towards the first pillar seemed impressive: all the matters listed under Article K.1 of the Maastricht Treaty were transferred to the first pillar, except for police and judicial cooperation in criminal matters, which remains in the third pillar. The new Title IV 'Visas, asylum, immigration and other policies related to free movement of persons',

which brings together the most important provisions, is subject to a special institutional mechanism providing for derogation on numerous points from the supranational approach (Article 67 — see below) and allowing for a transition period (five years after the entry into force of the Treaty before majority voting is introduced).

(a) *Decision-making procedure (Article 67 ECT)*

(i) During a transitional period of five years:

- the Commission's right of legislative initiative is shared with the Member States (except in a few areas: Article 67(3));
- decisions are adopted by the Council acting by a qualified majority except in the areas referred to in paragraph 3;
- the European Parliament (EP/Parliament) is simply consulted.

(ii) After the transitional period (see also Section B.1):

- the Commission largely regains its monopoly over initiative as the Member States' right of initiative is limited to calling on the Commission to submit a proposal to the Council, a request that the Commission is only required to examine (paragraph 2);
- a few areas become subject to co-decision (between Parliament and the Council) (paragraph 4) and the Council may decide (but only unanimously) to apply this system to other areas (paragraph 2).

(b) *Jurisdiction of the Court of Justice (Article 68 ECT)*

The Court's jurisdiction is restricted in relation to ordinary law under the ECT.

B. Developments since Amsterdam

1. Contributions of the Treaty of Nice

Under the Treaty of Nice visa (see →4.11.3), asylum and immigration policy are to be decided mainly by the co-decision procedure. The shift to qualified majority voting is provided for under Article 63 of the ECT for matters concerning:

- asylum and temporary protection, provided that the Council has already adopted unanimously legislation defining the common rules and basic principles governing these issues;
- illegal immigration and the repatriation of illegally resident persons — the shift to qualified majority voting and co-decision would take place as of 1 May 2004 (without the need for a unanimous decision as initially laid down by Article 67 of the EC Treaty);

— regular migration once a ‘common framework’ has been completed — which is still not the case.

2. Slow rate of progress

The Treaty of Amsterdam established Community competence in asylum and immigration matters. However, in matters of regular immigration the Council will continue to act unanimously and the EP is simply consulted as the condition of a ‘common framework’ is still far from fulfilled. The Hague programme retains the current procedure. Decisions will continue to be taken unanimously by 22 States.

- By virtue of a Protocol annexed to the Treaty of Amsterdam, Denmark has no vote.
- The United Kingdom and Ireland also abstain from voting, by virtue of another Protocol to the Treaty of Amsterdam, but an opt-in clause allows them to participate, on a case-by-case basis, in texts negotiated by the EU.

3. List of the main EU legislative measures and other relevant legal texts since the Treaty of Amsterdam

(a) *Asylum, refugees and temporary protection (Article 63(1) and (2) of the ECT)*

(i) Relevant international legal texts:

- 1951 Geneva Convention relating to the status of refugees and the 1967 Protocol relating to the status of refugees, the prohibition of expulsion or ‘principle of *non-refoulement*’;
- agenda for protection of the United Nations, 26 June 2002.

(ii) The main EU legislative measures:

- Council Decision 2000/596/EC of 20 September 2000 establishing a European Refugee Fund (OJ L 252, 6.10.2000, p. 12);
- Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of the Dublin Convention (OJ L 316, 15.12.2000, p. 1);
- Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L 212, 7.8.2001, p. 12);
- Council Regulation (EC) No 407/2002 laying down certain rules to implement Regulation (EC) No. 2725/2000 concerning the establishment of ‘Eurodac’ for the comparison of fingerprints for the

effective application of the Dublin Convention of 28 February 2002 (OJ L 62, 5.3.2002, p. 1);

- Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (OJ L 31, 6.2.2003, p. 18);
- Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 50, 25.2.2003, p. 1);
- Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, OJ L 222/3, 5.9.2003;
- Council Decision 2004/904/EC of 2 December 2004 establishing the European Refugee Fund for the period 2005 to 2010 (OJ L 381, 28.12.2004, p. 52);
- Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals and stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ L 304, 30.9.2004, p. 12).

(iii) What are the next steps in EU policy as regards asylum?

The Hague programme reinforces the idea of the ‘external dimension of asylum’, i.e. integrating asylum into the EU’s external relations with third countries. The programme invited the Commission ‘to develop EU regional protection programmes (RPP) in partnership with the third countries concerned and in close consultation and cooperation with UNHCR’ (see COM(2005) 388 final, 1.9.2005).

Also, according to the action plan implementing the Hague programme, the Commission is to present a proposal before the end of 2005 extending the ‘EC long-term resident status’ to refugees.

(b) *Regular immigration (Article 63(3)(a) and (4) of the ECT)*

(i) The main EU legislative measures:

- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ L 251, 3.10.2003, p. 12);
- Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ L 16, 23.1.2004, p. 44);

- Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service (OJ L 375, 23.12.2004, p. 12);
 - proposals for a Council directive and two recommendations on the admission of third-country nationals to carry out scientific research in the European Union (COM(2004) 178, 16.3.2004).
- (ii)** Other relevant EU legal measures:
- Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.7.2000, p. 22).
 - Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, p. 16).
- (c) Irregular immigration (including return measures) (Article 63(3)(b))*
- (i)** The main EU legislative measures:
- Council Decision 2000/261/JHA of 27 March 2000 on the improved exchange of information to combat counterfeit travel documents (OJ L 81, 1.4.2000, p. 1);
 - Council Directive 2001/51/EC of 28 June 2001, supplementing the provisions of Article 26 of the convention implementing the Schengen Agreement of 14 June 1985 (OJ L 187, 10.7.2001, p. 45);
 - Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings (OJ L 203, 1.8.2002, p. 1);
 - Council Framework Decision 2002/946/Jha Of 28 November 2002, on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, p. 1);
 - Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, p. 17);
 - Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, p. 1);
 - Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air (OJ L 321, 6.12.2003, p. 26);
 - Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for removals from the

territory of two or more Member States, of third-country nationals who are the subjects of individual removal orders (OJ L 261, 6.8.2004, p. 28);

- Council Regulation (EC) No 377/2004 of 19 February 2004 on the creation of an immigration liaison officers network (OJ L 64, 2.3.2004, p. 1).

(ii) What are the next steps in EU policy as regards immigration?

As part of the work under the Hague programme, a policy plan on regular migration, including admission procedures, is to be presented at the end of 2005. This will build on the results of the discussions on the Green Paper on an EU approach to managing economic migration (COM(2004) 811 final, 11.1.2005). The integration of migrants has been placed at the top of the AFSJ agenda by the Hague programme, where the Council reconfirmed the need for greater coordination of national integration policies and EU initiatives in this field.

On the external dimension of migration, the Hague programme establishes that 'policies which link migration, development cooperation and humanitarian assistance should be coherent and be developed in partnership and dialogue with countries and regions of origin'.

With regard to irregular migration, the Hague programme calls for an integrated approach towards return and repatriation procedures. The instruments adopted should cohere with other external policies of the Community that include migration aspects (e.g. partnerships with the countries of origin or readmission agreements). In light of this, the 'external dimension of asylum and immigration' has become a principal focus within the programme.

In view of the next steps on immigration, on 1 September 2005, the Commission published a 'migration package' consisting of four communications.

Role of the European Parliament

The EP very much supports the developments which Article III-396 of the Constitution would bring about in this field as a result of the extension of its co-decision powers as well as qualified majority voting to all matters under Article 63 of the EC Treaty.

On immigration policy the Constitution would incorporate the provisions of the Treaty of Amsterdam. It would provide for:

- placing European policy for legal immigration in the context of the management of migration flows;
- the creation of a clear legal basis for the integration of third-country nationals.

The EP actively supports the introduction of a European immigration policy. On the admission of third-country

nationals, it calls for the development of legal means, particularly to reduce incentives for illegal immigration. The EP supports 'controlled immigration' and considers that the EU's admission policies must take into account reception capacity and enhanced cooperation with the countries of origin.

The EP adopted a resolution on 9 June 2005 on the link between legal and illegal migration and the integration of immigrants. Parliament agreed with the Commission that the mass regularisation of illegal immigrants is not a solution to the problem of illegal immigration. In the absence of a common immigration and asylum system, it should be a one-off event, since such measures do not resolve the real underlying problems. It called upon the Commission to study the Member States' good practices, to be developed in the framework of an information-sharing and early-warning system.

In response to the Commission's Green Paper on an EU approach to managing economic migration, the EP adopted a resolution on economic migration on 26 October 2005. The EP regretted that the Council had decided to maintain unanimity and the consultation procedure in the whole area of legal immigration. The EP felt that only by means of the co-decision procedure would it be possible to adopt effective and transparent legislation in that field. It recalled that migrants have made a major contribution to the prosperity and the economic, cultural and social development of the Member States, and continue to do so. Economic migration is a positive human phenomenon which has always promoted the development of civilisations and cultural and technological exchanges. Parliament also regretted that the Council had not yet managed to adopt a common immigration policy, and has concentrated essentially on the punitive aspect (readmission agreements, police checks at borders, etc.). It indicated that the effective development of a common migration policy with due regard for fundamental rights and international human rights obligations is a priority goal of European integration.

On the integration of third-country nationals, the EP:

- supports the Commission's idea of civic citizenship; it calls for the granting of political rights, including the right to vote in local and European elections;
- considers that EU policy must find the 'golden mean' between immigrants' rights and obligations and those of the host society;
- warns Member States not to misuse integration policy as a way of rendering immigration impossible in practice.

On asylum policy, the EP calls for the establishment of a single procedure for the European asylum system (resolution of 15 December 2004). It regrets the 'Council's inability to respect the deadlines laid down by the European Council at Tampere, Laeken, Seville and Thessaloniki for the adoption of the texts aimed at introducing the first stage' (resolution of 1 April 2004).

As for the next stage under the Hague programme, Parliament supports the 'Commission's new approach':

- It considers that:
 - this new approach should be based on the prerequisite of the harmonisation of national laws;
 - such harmonisation cannot be founded on the lowest common denominator.
- It also rejects:
 - the creation of regional protection zones and transit centres located outside the EU, which might not guarantee an equivalent level of protection;
 - outsourcing of the application process, which deprives the asylum seeker of democratic scrutiny.

The creation of a European asylum policy implies greater solidarity between the Member States. Such solidarity must enable those most exposed to an influx of asylum seekers to be assisted by the Union, without such intervention being limited to cases of massive influx. In its communication of 3 June 2003, the Commission suggests a fairer sharing of burdens and costs between the Member States. It proposes the establishment of an integrated approach, taking into account not only the financial aspects, but also the material aspects involved in the reception of asylum seekers.

Parliament supports the idea of greater solidarity:

- between Member States; in a resolution adopted on 11 April 2000, Parliament called for the introduction of a system allowing for a sharing of resources in proportion to the relative efforts made by each Member State;
- between the EU and third countries, in a resolution adopted on 1 April 2004, it advocated sharing the burden of taking in refugees 'with third countries on the basis of a partnership involving the countries of origin, transit, initial refuge and destination'.

→ Johanna APAP
11/2005

4.11.3 Management of external borders

Legal basis

Article 62 EC Treaty (ECT)

Objectives

To establish common standards with regard to border management and controls at the Union's external borders and thus create an 'area of freedom, security and justice' without controls at internal borders for persons, whatever their nationality, within the European Union.

Achievements

A. Developments brought about by the Treaty of Amsterdam

In 1999, a protocol attached to the Amsterdam Treaty integrated part of the Schengen *acquis* into the EU legal framework. Article 62 ECT was designated as the legal base of any measure dealing with visas and borders. This provision asks the Council to adopt instruments 'with a view to ensuring the absence of any controls on persons when crossing internal borders [...] [and] on the crossing of the external borders of the Member States' along with setting out the conditions under which nationals of third countries shall have the freedom to travel in 'the territory of the Member States during a period of no more than three months'.

1. Scope

- Management of the flow of persons entering and leaving the common area of freedom of movement;
- Defining a common approach to internal security in the absence of internal controls.

2. Communitarisation of the management of the external borders

(a) *Decision-making procedure (Article 67 ECT)*

During a transitional period of five years from the entry into force of the Amsterdam Treaty:

- for all the other measures related to Article 62 ECT (apart from those related to Article 62(2)(b)) the Commission's right of legislative initiative was shared with the Member States; Parliament was simply consulted and decisions were taken by unanimity;
- for measures related to Article 62(2)(b) ECT (rules on visas for intended stays of no more than three months) the co-decision was used and decisions were adopted by the Council acting by qualified majority.

(b) *Jurisdiction of the Court of Justice (Article 68 ECT)*

The Court's jurisdiction is restricted in relation to ordinary law under the ECT.

B. Developments since Amsterdam

The Member States developed a set of rules on to cover the control of external border crossing points and their surveillance. A new agency was set up on 26 October 2004 to enhance this cooperation. In the context of enlargement and of strengthening relations with its new neighbours, the Union would like to improve 'management of external borders'. This action is being pursued under the Hague programme and two action plans: one of general scope, approved by the European Council of 21 and 22 June 2002, and the other on maritime borders, updated by the Council on 2 December 2004.

3. Contributions of the Treaty of Nice

It extends the co-decision procedure (Article 67(5)).

Pursuant to a Council Decision of 22 December 2004, questions of control and surveillance of EU external borders (Article 62 ECT) have been addressed under the co-decision procedure since 1 January 2005. Therefore decisions are taken in the Council by qualified majority voting.

4. Further steps

The adoption of measures for the control and surveillance of the EU's external borders is in keeping with the development of the area of freedom, security and justice. With the entry into force of the Treaty of Amsterdam, these matters came under the Community's competence (see Section A).

The conclusions of the Laeken European Council of 14 and 15 December 2001 introduced a new concept, i.e. an 'integrated management system for external borders'. This concept covers all activities exercised by the public authorities of the Member States with the aim of:

- accomplishing border control and surveillance,
- analysing the risks,
- anticipating personnel and facility needs.

The Treaty establishing a Constitution for Europe enshrines this concept and, should it enter into force, provides in Article III-265 for its 'gradual introduction'. The integrated system is based on the principle already stated in the Tampere conclusions and reiterated in the Laeken conclusions that 'better management of the Union's

external border controls will help in the fight against terrorism, illegal immigration networks and trafficking in human beings’.

Based on a Commission communication of 7 May 2002 on integrated border management and a feasibility study of 30 May 2002 on a European Border Police, the Seville European Council of 21 and 22 June 2002 approved an action plan on the management of external borders of the European Union (APMEB). This document, drafted by the Council, sets measures to be taken on the following levels:

- legislative: the APMEB recommends adopting a ‘common body of legislation’;
- operational: the APMEB contemplates implementing joint operations between national services responsible for external border control and surveillance. It also anticipates the introduction of pilot projects in various areas, such as training, repatriation of illegal aliens or cooperation with third countries.

The European Council of Thessaloniki on 19 and 20 June 2003 held that ‘a coherent approach is needed in the EU on biometric identifiers or biometric data, which would result in harmonised solutions for documents for third-country nationals, EU citizens’ passports and information systems (VIS (visa information system) and SIS II (second generation of the Schengen information system))’. The project of setting up a VIS had been decided upon by the Council in June 2002 following recommendations by both the Laeken and Seville European Councils. It is a system for the exchange of visa data among Member States.

On 12 December 2003 the Council adopted an action plan to combat illegal immigration through maritime routes. This programme, which supplements the plan for the management of external borders, follows a study published in September 2003 stressing the urgent need for a European policy for the management of maritime borders.

The European Justice and Home Affairs Council of 19 February 2004 adopted conclusions on the architecture, functionalities and biometric identifiers to be included in the future European visa system.

The VIS will constitute a new instrument intended to improve external border control. It will comprise two interfaces: a central visa information system (C-VIS) and a national visa information system (N-VIS).

All visas and residence permits issued to third-country nationals by Member States will contain biometric data about them that can be checked against the C-VIS. Council Regulation (EC) No 2252/2004 of 13 December 2004 lays down the standards for security features and biometrics in travel documents issued by Member States.

The European Council of 17 and 18 June 2004 called for a revision of the 2003 action plan to combat illegal immigration. The Council of 2 December 2004 carried out an evaluation and drew up new recommendations.

The Hague programme, adopted by the Hague Council on 4 November 2005, which sets out the objectives for development of the area of security and justice for the next five years, building upon the previous five years of the Tampere programme, represents a new phase in the development of a European policy for the management of its external borders. It calls for:

- further gradual establishment of the integrated management system for external borders,
- the strengthening of controls at and surveillance of external borders.

(a) Controlling the external border

The crossing external borders is only allowed at ‘authorised crossing points’, and during a set schedule. The list of crossing points is found in the annex to the common manual. This document allows for exceptions for local border traffic. On 14 August 2003, the Commission published a draft regulation that defines an applicable legal framework on crossing the external borders. The document sets out more flexible conditions that favour persons who legally reside in the border zone. In particular, this proposal, which follows the 9 September 2002 communication, introduces a special ‘L’ visa (for local border traffic), for which the acquisition rules are less strict than those for classic Schengen visas.

The main objectives of the VIS are to:

- facilitate the fight against the use of fraudulent documents;
- improve visa consultation and identifications for the application of provisions in relation to the Dublin II regulation (which establishes the criteria and mechanism for determining the State responsible for examining an asylum application in one of the Member States of the EU) and the return procedure;
- enhance the administration of the common visa policy; prevent ‘visa shopping’ by ensuring the ‘traceability’ of every individual applying for a visa and strengthen EU internal security.

The border guards will be able to use the VIS system to access a database on:

- visas (issued, cancelled or refused),
- the holder’s biometric data.

Pursuant to the provisions of the convention applying the Schengen Agreement, the controls are carried out at the

external borders of the Schengen area. This area included 26 Member States, excluding the United Kingdom and Ireland but including Norway, Iceland and Switzerland. The 10 new countries that joined the EU in 2006 and Switzerland belong to the Schengen area, even if the border controls with the other Member States are being temporarily maintained. On 28 November 2003, the Council adopted conclusions to improve the flow of traffic with the new Member States. In the conclusions, it recommends adopting bilateral agreements that are intended to ensure that persons should only have to stop once to undergo both entry and exit control procedures.

The Hague programme underlines the necessity to rapidly abolish border control with the 10 new Member States. It should happen 'as soon as possible so far as the conditions for membership to the Schengen area are fulfilled and SIS II is operational'.

Controls on external borders are carried out at crossing points situated at various locations on all the outermost limits of the Union (roads and ports) and within it (airports, railway stations). Surveillance of the Union's external borders is carried out mainly at its eastern and southern borders (Russia, Ukraine, the western Balkans, and the Mashreq and Maghreb countries).

(b) Supervision of the external borders

Supervision of the external borders is carried out by national authorities in the same way as it is carried out at the crossing points. National cooperation between these authorities falls under mutual assistance in police and customs matters. The Union encourages this cooperation through the ARGO programme. Based on a Council decision of 13 June 2002, this programme, which also concerns the operational aspects of border control, supports Member States' measures aimed at strengthening the efficiency of authorised crossing point controls and to offer an equivalent level of effective protection and surveillance at the external borders. Also, the idea of the possible creation of a European corps of border guards is mentioned in the Hague programme, though no deadline is given due to divergence of opinion between the Member States.

Council Regulation (EC) No 2004/2007 establishes the European Agency for the Management of Operational Cooperation at the External Borders. This agency, which is also known as Frontex and is based in Warsaw, will coordinate and assist Member States' various actions in managing (controlling) the common EU frontier.

The tasks allocated to Frontex are summarised below:

- coordinating the operational cooperation between the Member States as regards the management of the external borders;

- training national border guards;
- carrying out risk analyses;
- following up research on control and surveillance of the external borders;
- supporting Member States in circumstances wherein they request increased technical and operation assistance at external borders; and
- supporting Member States in organising joint return operations.

3. List of the main legislative measures

- Council Decision 2002/463/EC of 13 June 2002 adopting an action programme for administrative cooperation in the fields of external borders, visas, asylum and immigration (ARGO programme);
- Council Decision 2004/512/EC of 8 June 2004 establishing the Visa Information System (VIS);
- Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union;
- Council Decision 2004/867/EC of 13 December 2004 amending Decision 2002/463/EC;
- Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States;
- Council Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a community code on the rules governing the movement of persons across borders (Schengen Borders Code).

Role of the European Parliament

The European Parliament (Parliament) supports the introduction of a European policy for the management of external borders. Parliament endorses the idea of strengthening international cooperation between national services and supported the creation of the European Agency for the Management of Operational Cooperation at the External Borders. However, it is against the attribution of powers to the agency for the repatriation of foreigners, which could make it simply an 'expulsion agency' (resolution of 9 March 2004). It also supports the creation, in the medium term, of a Community-financed European corps of border guards 'which would in an emergency and at the request of the Member States, be deployed to assist national authorities temporarily at vulnerable sections of

the EU's external borders' (resolution of 15 January 2003). It calls for Member States to share the burden of border control and surveillance and likewise encourages sharing of the effort between Member States and third countries.

→ Johanna APAP
09/2006

4.11.4. Judicial cooperation in civil and criminal matters

Legal basis

Judicial cooperation in civil matters: Article 65 of the EC Treaty (ECT).

Judicial cooperation in criminal matters: Articles 29 and 31 of the Treaty on European Union (EUT).

These provisions are supplemented by Article 293 of the ECT.

Objectives

To enable EU citizens to apply to the courts and authorities in all the Member States just as easily as in their own country.

To ensure legal certainty through recognition and enforcement of judgments and decisions throughout the European Union.

To align the legal systems in order to facilitate judicial cooperation and prevent criminals from taking advantage of the differences between the Member States.

Achievements

A. Judicial cooperation in civil matters

1. Before the Treaty of Amsterdam

Initially, judicial cooperation in civil matters took the form of international agreements. As long ago as 1957, Article 220 of the Treaty of Rome included the option for the Member States to act within the European Community in order to simplify the formalities governing the reciprocal recognition and enforcement of court judgments.

Since the Single European Act of 1987, which enshrined in the Treaty of Rome the concept of a European Community without borders, the idea of a 'European judicial area' has been acknowledged. The Treaty of Maastricht incorporated judicial cooperation in civil and criminal matters under Title VI as an area of common interest to the EU Member States.

2. The contribution of the Treaty of Amsterdam and the Treaty of Nice

The Treaty of Amsterdam brought judicial cooperation in civil matters within the Community sphere although it did not make it subject to the Community decision-making procedures under ordinary law:

- the Commission does not have a monopoly on right of initiative,
- the Council almost always takes decisions in this area unanimously,
- Parliament only has a consultative role.

The Treaty of Nice allows measures relating to judicial cooperation in civil matters — except family law — to be adopted using the procedure in Article 251 of the ECT, in co-decision with the EP, with the Council acting by a majority.

3. The Tampere European Council (1999) and the Hague programme (2004)

The Tampere European Council stressed that citizens can enjoy freedom only in a genuine common area of justice, where everyone can apply to the courts and authorities in all the Member States just as easily as in their own country. It concluded that there was a need for closer convergence of legislation, in particular with regard to cross-border matters and automatic referral to the principle of mutual recognition of court decisions and pre-court decisions, such as those relating to evidence.

The Hague programme stresses the need to make cross-border civil law procedures easier by developing judicial cooperation in civil matters and mutual recognition. Continuing to implement mutual recognition measures is an essential priority.

4. Main legislation adopted

- Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings;

- Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses;
- Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters;
- Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;
- Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters;
- Council Decision of 28 May 2001 establishing a European Judicial Network in civil and commercial matters;
- Council Regulation (EC) No 743/2002 of 25 April 2002 establishing a general Community framework of activities to facilitate the implementation of judicial cooperation in civil matters;
- Council Directive 2003/8 of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes;
- Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000;
- Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims.

B. Judicial cooperation in criminal matters

1. Before the Treaty of Amsterdam

The Council of Europe drew up the first legal acts on judicial cooperation in criminal matters. With the inclusion of this sphere in the Treaty of Maastricht, a number of European Union agreements joined the existing instruments:

- 1995 agreement on a simplified extradition procedure based on the 1957 convention;
- 1996 agreement on extradition between Member States of the Union, supplementing the conventions of 1957 on extradition and 1977 on the suppression of terrorism by widening the scope of extradition proceedings;

- work began in 1996 on a draft convention on legal assistance to supplement the 1959 Council of Europe convention, extending mutual assistance between judicial authorities and modernising the present methods;
- special instruments adopted in the area of fraud and corruption in the EU took the form of a 1995 convention on protecting the Communities' financial interests and a 1997 convention on combating corruption involving civil servants of the European Communities or the EU Member States;

2. The contribution of the Treaty of Amsterdam and the Treaty of Nice

The last-named initiative anticipated the entry into force of the Treaty of Amsterdam. The new Title VI in the EUT, dealing with police and judicial cooperation in criminal matters, underlines the importance of fighting organised crime. It makes provision for coordinating the national rules on offences and penalties applicable to organised crime, terrorism and drug trafficking.

The Treaty of Nice introduces several references to Eurojust.

3. The Treaty establishing a Constitution for Europe

This profoundly changes the existing situation by integrating most of the provisions on judicial cooperation in criminal matters into the common procedures of the future Union. It provides for the possibility of establishing a European Public Prosecutor's Office from Eurojust.

4. The Tampere European Council and the Hague programme

The European Council stated that it was in favour of an efficient and comprehensive approach in the fight against all forms of crime and in particular the serious forms of organised and transnational crime. It highlighted the aspects linked to prevention and called for the development of the exchange of best practices and for the network of competent national authorities and bodies to be strengthened.

As regards national criminal law, efforts to agree on common definitions, incriminations and sanctions should be focused in the first instance on a limited number of sectors of particular relevance, such as financial crime, drug trafficking, trafficking in human beings, high-tech crime and environmental crime. The Council also underlined the need for specific action to combat money laundering.

The Hague programme stresses the need to develop mutual trust and to strengthen the coordination of investigations. Mutual recognition of judicial decisions in criminal matters is the cornerstone of judicial cooperation. It implies the development of equivalent standards for procedural rights in criminal proceedings. The

approximation of laws, in particular by the establishment of minimum rules, is also a priority. Eurojust is a key player in judicial cooperation in criminal matters.

5. A new body for cooperation: Eurojust

The Council Decision of 28 February 2002 sets up Eurojust with a view to reinforcing the fight against serious crime. It aims to facilitate the coordination of action by the competent authorities for investigations and prosecutions covering the territory of more than one Member State. Composed of one seconded member per Member State, who must be a prosecutor, judge or police officer with equivalent competencies, Eurojust cooperates closely with Europol and has special links with the European Judicial Network. It may call on the Member States to undertake investigations or prosecutions relating to specific events.

6. Main legislation adopted

A number of acts seek to improve cooperation between the various competent national authorities, in particular:

- Joint Action 98/428/JHA of 29 June 1998 adopted by the Council on the creation of a European Judicial Network, aimed at improving judicial assistance, particularly with regard to serious crime;
- Council Decision of 28 May 2001 establishing a European Crime Prevention Network, which seeks to promote exchanges of information and experience, analyse existing activities and identify the main areas for collaboration;
- Council Decision of 28 June 2001 establishing a programme of incentives and exchanges, training and cooperation for the prevention of crime (Hippocrates). Its aim is to encourage cooperation among all of the public and private bodies involved in crime prevention;
- Council Framework Decision of 13 June 2002 on joint investigation teams, which aims to carry out criminal investigations in one or more Member States where the offences necessitate in particular coordinated, concerted action in several Member States;
- Council Decision of 22 July 2002 establishing a framework programme on police and judicial cooperation in criminal matters, which seeks above all to promote partnerships and the exchange of good practice.

Certain acts help to align the Member States' legislation on criminal procedures or the definition of offences and the imposition of criminal sanctions, in particular:

- Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on mutual assistance in

criminal matters between the Member States of the European Union;

- Council Decision of 29 May 2000 to combat child pornography on the Internet, which aims to promote the prevention of, and fight against, this type of crime in all Member States as well as cooperation in this field;
- Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings;
- Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering; this directive is aimed in particular at extending the identification and reporting obligations to a number of activities and professions likely to be used for money laundering purposes and ensuring better coverage of the financial and credit sectors;
- Council Framework Decision of 13 June 2002 on combating terrorism, which aims in particular to approximate the definition of terrorist offences, penalties and sanctions in all of the Member States;
- Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, which seeks to replace the extradition procedures with a simplified system for surrender between judicial authorities for a range of serious crimes;
- Council Framework Decision of 19 July 2002 on combating trafficking in human beings, which seeks to harmonise offences and sanctions in this area;
- Council Framework Decision of 27 January 2003 on the protection of the environment through criminal law;
- Council Framework Decision of 22 July 2003 on the execution in the European Union of orders freezing property or evidence;
- Council Framework Decision of 24 February 2005 on the application of the principle of mutual recognition to financial penalties.

7. Consequences of the Court of Justice judgment in case C-176/03 (13 September 2005)

Following this judgment the legislator is authorised, in the framework of the ECT, to take measures relating to the criminal law of the Member States which it considers necessary to ensure that the rules which it lays down are fully effective. Thus, if the EU has a legal basis for a policy under the ECT, it should be possible to make provision if necessary for penal sanctions for implementation of this policy without being required to abide by the specific provisions of the third pillar.

Role of the European Parliament

A. Civil law

The European Parliament (EP/Parliament) considers that the Union's objective should be to simplify recourse to justice for citizens and companies and to make justice more effective in an integrated European area, particularly by encouraging the emergence of a common judicial culture. It also thinks the recognition and enforcement of judgments should be a practically automatic process between Member States, and that there is therefore an urgent need to encourage the compatibility of legal rules and proceedings.

B. Criminal law

The EP welcomes the incentive provided by the Commission and the Council — generated to a large extent by the attacks of 11 September 2001 — that has resulted in the adoption of important provisions, especially the European arrest warrant. The establishment of Eurojust is also considered to be a major step forward.

The EP's primary concern is maintaining the balance between the objective of safety and respect for fundamental rights.

The principle of mutual recognition of judicial decisions is the cornerstone of judicial cooperation. Mutual trust between national judicial systems should be strengthened. The main aim is to guarantee European citizens the right to justice both in comparable conditions and on the basis of ever-higher quality standards. To this end, the EP calls for the definition, with the Member States, of a 'Quality Charter for Criminal Justice in Europe'. It has also called on the Commission to submit to the EP legislative proposals to improve the minimum guarantees concerning procedural rights. Common minimum standards for the common basic procedural safeguards would facilitate both mutual recognition and mutual trust.

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4.11.5. Police and customs cooperation

Legal basis

- Police cooperation: Articles 29 and 30 of the EU Treaty (EUT).
 - Customs cooperation: Article 135 of the EC Treaty (ECT).
- The Treaty of Nice does not introduce any changes.

Objectives

Guaranteeing citizens a high level of protection in an area of freedom and security through police cooperation between the Member States. This objective is achieved through closer cooperation between police forces and customs authorities, both directly and through Europol.

Achievements

A. General development of police cooperation

1. First efforts

Formal police cooperation between the Member States' representatives began in 1976 with the creation of working parties known as 'Trevi groups'. Its main subjects were terrorism and the organisation and training problems of police departments.

2. The Schengen agreements (1985–90)

The Schengen system set up liaison officers in the signatory states to coordinate the exchange of information on terrorism, drugs, organised crime and illegal immigration networks. It introduced a right of pursuit across frontiers, enabling police officers to pursue a suspect on the territory of another Member State, but Member States apply this right in different ways. Patrols, in some cases with officers of different nationalities, carry out checks throughout the Schengen territory.

3. The Treaties of Maastricht (1992), Amsterdam (1997) and Nice (2003)

The Treaty of Maastricht spelt out matters of common interest on which it sought to encourage cooperation: terrorism, drugs and other forms of international crime. It also provided for a European Police Office (Europol), together with a system for exchanging information throughout the Union.

The Treaty of Amsterdam defined the objectives of the Member States and the relevant authorities, calling for cooperation between police forces, customs authorities and the courts to ensure a high level of safety. It also

increased the role of Europol. The Treaty of Nice did not introduce any changes.

4. The Treaty establishing a Constitution for Europe (2004)

Police cooperation was integrated into EU policies and Europol was integrated into the institutional framework. European law governs its structure, operations, sphere of action and missions.

5. The Tampere European Council (1999) and the Hague programme (2004)

The adoption of the Hague programme by the European Council has provided the EU with a new five-year programme, as a follow-up to the plan adopted in Tampere. Europol is to play a central role in the fight against serious forms of organised crime and cross-border terrorism. The European Police College (CEPOL) will help to increase mutual confidence in order to improve police cooperation. The fight against terrorism is a matter of the utmost importance.

B. The European Police Office (Europol)

1. Mission

Created by a Council Act of 26 July 1995 (drawing up the convention on the establishment of a European Police Office), Europol began to operate on 1 July 1999. It replaced the Europol Drugs Unit, created as an interim measure in 1995.

(a) Original mandate

Europol's objective is to improve the efficiency of the competent services in the Member States and their cooperation in the fight against terrorism, drug trafficking and other serious forms of international crime such as trafficking in nuclear and radioactive products, illegal immigration networks, trafficking in human beings, trafficking in stolen cars and money laundering connected with these types of crimes. The Council may also decide to entrust Europol with responsibility for other forms of crime.

Europol's priority tasks are as follows: facilitating the exchange of information between Member States, collating and analysing information and intelligence, aiding investigations in the Member States by notifying them of any relevant information, and maintaining a computerised system of information collected directly from the Member States.

(b) Extension of its mandate

Europol's mandate was successively extended to include money laundering in general (irrespective of the type of crime connected with the money laundered) by the Council Act of 30 November 2000 and then all of the aspects of international organised crime set out in the annex to the Europol Convention by the Council Decision

of 6 December 2001. Further amendments were made in 2003 to reinforce the operational support that Europol provides to the national police authorities. These provisions are not yet in force.

2. Organisation

(a) Administration

Europol's budget is financed by contributions from the Member States and thus does not come under the EU budget. It is dependent upon the Council, which is responsible for monitoring its activities and, in particular, appointing its director. About 590 people, including liaison officers from the Member States, work for Europol (headquarters: The Hague). Its budget is EUR 63.4 million (2006).

(b) Means of action

- The Council Act of 28 November 2002 provides for Europol's participation in joint investigation teams. It also authorises Europol to ask the Member States to conduct criminal investigations.
- The Council Decision of 27 March 2000 authorises the director of Europol to hold negotiations to conclude agreements with third countries and bodies. In this respect, Europol has notably signed cooperation agreements with Interpol and, in December 2002, with the United States. In 2004, Europol signed an agreement with Eurojust.

C. The European Police College

The European Police College (CEPOL) was created through the Council Decision of 22 December 2000, replaced by that of 20 September 2005.

The college's objective is to optimise cooperation between the various national institutes and to contribute to the training of senior officers of the Member States' police forces. It supports and develops a European approach to the major problems encountered by the Member States. To this end, it conducts training sessions, participates in the development of harmonised training programmes, and disseminates best practice and research results.

The college takes the form of a network made up of the national institutes for the training of high-ranking police officials. It has a permanent secretariat (headquarters: Bramshill, United Kingdom) and legal personality. From 2006 onwards its budget is the responsibility of the EU. It will therefore appear in the EU budget.

D. Other instruments for cooperation

The Task Force of the Police Chiefs of the Member States was established in October 2000. It meets at least once during each six-month presidency of the Council.

The European Network for Crime Prevention has met since 2001 to enable the exchange of experiences and good

practice between the national officers responsible for crime prevention in each Member State.

The European Forum for the Prevention of Organised Crime has, since 2001, brought together various groups, both public and private, who are interested in discussing these questions.

The Schengen Information System, operational since 1995, permits the registration and consultation of a certain amount of data. It enables verifications to be carried out at external borders as well as inside the Schengen area. A second-generation information system (SIS II) should be operational in 2007.

Joint investigations teams, created by the Council Framework Decision of 13 June 2002, may be instituted to carry out criminal investigations in one or more Member States. Europol representatives may participate in them.

E. The fight against terrorism

The European Council has named terrorism as one of the major threats to the EU's interests. In 2001 it drew up a plan of action, revised in 2004, setting out the EU's strategic objectives in the fight against terrorism. In December 2005 the Council adopted a new EU strategy to combat terrorism.

The European Council appointed a Counter-Terrorism Coordinator in 2004. He coordinates the Council's work and ensures effective monitoring of its decisions.

Some instruments, adopted as part of judicial cooperation in criminal matters, contribute directly to the fight against terrorism; these are connected to money laundering and the European Arrest Warrant. Specific legal measures have been adopted since 2001: the definition of terrorist acts and the harmonisation of sanctions, the freezing of accounts of people linked to a terrorist organisation, a list of organisations and individuals to be considered terrorists, a mechanism to evaluate the application at a national level of the international commitments with regard to the fight against terrorism and the allocation of new functions to the Schengen Information System.

Since September 2001, the heads of the anti-terrorist units in the Member States' intelligence services have been meeting regularly.

A Council recommendation proposes the formation of ad hoc multinational investigation teams to collect and exchange information regarding terrorists.

A directive on the retention of telecommunications data was adopted in February 2006, in connection with the fight against terrorism and organised crime.

F. Customs cooperation

On 7 September 1967, a convention on mutual assistance between customs administrations was signed in Rome.

On 26 July 1995, a convention established a common automated information system, or 'Customs Information System' (CIS). The aim of this database is to disseminate information more rapidly and to increase the efficiency of the cooperation and control procedures of the customs authorities of the Member States. This convention entered into force in November 2000 between the Member States that had ratified it.

A convention signed on 18 December 1997, known as Naples II, regulates in particular the arrangements for cross-border assistance and cooperation between the customs administrations of the Member States. It is currently in the process of being ratified and some Member States have already decided to apply it among themselves.

A European Parliament (EP/Parliament) and Council Decision of 19 December 1996 established an action programme for customs in the Community, known as the Customs 2000 programme. It seeks to ensure uniform application of Community rules, prevent fraud and illegal trafficking, and improve the efficiency of the national customs authorities and cooperation among them. On 11 February 2003, this programme was replaced by the Customs 2007 action programme, which covers the period 2003–07.

Some new proposals seek to reinforce customs cooperation regarding the prevention of money laundering, control of the EU's external borders and the fight against counterfeiting and pirating.

Role of the European Parliament

The EP considers that the creation of Europol is a vital measure in the fight against organised crime in the EU. It stresses that in a system governed by the rule of law, policing must be subject to parliamentary control, although the Europol Convention only makes provision for an annual activity report to be submitted to Parliament. It therefore calls for Europol to be integrated into the EU's institutional framework and thus be submitted to the democratic control of the EP, the judicial control of the Court of Justice, and financial and budgetary control in accordance with the EU's usual provisions in this respect. Europol should therefore become a European agency.

The EP emphasises that the framework and methods of cooperation between Europol, Eurojust and the European Anti-Fraud Office (OLAF) must be clearly defined.

The EP strongly criticises the clumsiness of the procedures for amending the Europol Convention, which require ratification by the Member States and are delaying the entry into force of the new provisions. It requests that the Council decisions be applied, in application of Article 34(2) of the EUT.

The EP emphasises that terrorism is the main problem affecting European coexistence and security. It proposes that 11 March should be declared the European Day of Commemoration of Victims of Terrorism, as approved by the European Council.

In a more general way, the EP emphasises that it is necessary to reinforce the legitimacy of the area of freedom, security and justice through deciding — in accordance with the spirit of the Constitution and making

use of the present Article 42 of the EUT, which specifies this possibility — to make the shift to the co-decision procedure with Parliament, to use the qualified majority within the Council and to extend the Court's powers, prioritising the measures regarding the fight against terrorism and international crime.

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4.12. Energy policy

Legal basis

- Coal: ECSC Treaty, particularly Article 3 and Articles 57–64 (expired in 2002);
- Nuclear energy: European Atomic Energy Community (EAEC) or Euratom, in particular Articles 40–76 (investment, joint undertakings and supplies) and 92–100 (the nuclear common market);
- Overall energy policy and energy policy in other fields: EC Treaty (ECT), particularly Articles 100 (supply difficulties) and 308;

The most recent revision of the EU Treaty (EUT) has still not managed to include a separate chapter on energy. Energy policy has simply been incorporated in the list of objectives (Article 3(u)); the subject of 'energy' is also included under the Title 'Environment' (Title XIX; Article 175, §2). In addition the Treaty mentions the Trans-European networks, which include energy infrastructure (Title XV, Articles 154, 155 and 156 in connection with Article 158).

The EUT thus confirms that the sphere of activity of the EU encompasses the energy sector. It is clear that certain Member States are as yet not prepared to transfer important responsibilities to the EU. According to the subsidiarity principle, energy policy must be largely regarded as the Member States' responsibility.

The Treaty establishing a Constitution for Europe would, if adopted, contain a distinct chapter on energy. In Article I-14, paragraph 2(i), energy is defined as a shared competence; and in Section 10, Article III-256, the following is outlined as aims for the Union's policy on energy:

- ensure the functioning of the energy market;
- ensure security of energy supply in the Union, and

- promote energy efficiency and energy saving and the development of new and renewable forms of energy.

Objectives

EU energy policy is still directed towards the long-term energy objectives first set out in 1995 in the 'White Paper on Energy Policy for the EU' (COM(95) 682), followed by the Green Paper 'Towards an European Strategy for the security of energy supply' (COM(2000) 769 and subsequent report on it, COM(2002) 321). Commission, Parliament and Council emphasise that energy policy must form part of the general aims of EU economic policy based on market integration and deregulation, and public intervention must be limited to what is strictly necessary to safeguard the public interest and welfare, sustainable development, consumer protection and economic and social cohesion. However, beyond those general aims energy policy must pursue particular aims that reconcile competitiveness, security of supply and protection of the environment. In 2005, the Commission published a 'Report on the Green Paper on Energy' (ISBN 92-894-8419-5) that proposes initiatives to promote actions towards a better and more sufficient energy supply.

Another green paper on 'energy efficiency' was adopted by the Commission in 2005, which proposes actions in Member States to promote a better use of all energy-sources (COM(2005) 265I). It was followed by the 'Green Paper: a European Strategy for Sustainable, Competitive and Secure Energy', COM(2006) 105). This set out new energy realities facing Europe based on three main objectives: sustainability, competitiveness and security of supply. The overall framework — the first 'Strategic EU Energy Review' — should help to achieve these objectives.

Concrete proposals are made such as completing the internal gas and electricity market, ensuring that EU's internal energy market guarantees security of supply and solidarity between Member States, asking for a real Community-wide debate on the different energy sources, dealing with the challenges of climate change in a manner compatible with the Lisbon objectives, relying on a strategic energy technology plan and enhancing a common external energy policy.

The European Council on 23 and 24 March 2006 called for an energy policy for Europe (EPE) and invited the Commission and the Council to prepare a set of actions with a clear timetable enabling it to adopt a prioritised action plan at its meeting in spring 2007.

EPE should be based on shared perspectives on long-term supply and demand and an objective, transparent assessment of the advantages and drawbacks of all energy sources and contribute in a balanced way to its three main objectives:

- increasing security of energy supply through the development of a common external policy approach and dialogues with Member States and partners;
- ensuring the competitiveness of European economies and the affordability of energy supply by working with Member States to complete the opening of the internal market for electricity and gas for all consumers by mid-2007. A transparent implementation of internal market legislation is needed;
- promoting environmental sustainability by strengthening the EU leadership by adopting an action plan on energy efficiency, continuing the development of renewable energies, implementing the Biomass Action Plan counting on support from RD&D.

Apart from the general energy objectives, the EU has set various sectoral objectives including maintaining the percentage of solid fuel (coal) in total energy consumption (in particular by making production capacity more competitive); increasing the ratio of natural gas in the energy balance; establishing maximum safety conditions as a prerequisite for planning, construction and operation of nuclear power stations; increasing the share of renewable sources of energy. While the EU has achieved undeniable success in pursuing the above objectives, the success rate of the various Member States in achieving these objectives is still very unequal.

The Commission, Parliament and the Council are agreed that an effort should be made to at least double the proportion of renewable energy sources in total energy consumption to 15 % by 2010 (substitution principle). The Commission has to translate this goal into concrete

measures. There is some opposition to individual measures and much controversy on whether and in what form at EU level.

Achievements

A. Energy generation and consumption: general survey

In the past three decades, the EU has achieved a degree of success as regards its energy objectives (reduction of energy dependence, development of crude oil substitutes, energy saving, etc.). Since 1975, it has been possible to increase primary energy production considerably, especially as a result of increased oil production in the UK. Despite a considerable increase in economic output, the rise in gross domestic energy consumption in the EU has been relatively low (total consumption for the EU-12 was 1 100 million toe in 1990, and for the EU-25 1 131.6 million toe in 2003; energy consumption increased, but at a slower pace in the last few years — approximately 0.8 % per year currently). This trend, however, has changed in recent years as dependence is projected to be 70 % in 2030, but not ultimately due to declining oil production in the UK. The EU currently imports 76.6 % of its oil demand, 53 % of its gas demand and 35.4 % of its coal demand and by 2030 it is estimated that the EU will be 90 % dependent on imports of oil and 80 % of gas.

However, there are still considerable differences between the Member States as regards production and consumption, energy dependence and in particular the attainment of energy conservation objectives and crude oil substitution. There are also great differences between the Member States concerning the share of individual energy sources in total consumption. This is attributable not only to structural differences between the Member States but also to different national energy objectives (for example in respect of nuclear energy).

In order to harmonise the internal market in energy, a regulation was adopted in 2003 which sets rules for cross-border exchanges of electricity (EC 1228/2003). In addition, Directive 2003/54 sets common rules for the internal market in electricity, and Directive 2003/55 creates the same mechanism for the internal market in natural gas. European Union legislation states that, from July 2007 at the latest, all consumers should be free to shop around for gas and electricity supplies. Further, the EU aims to ensure that infrastructure, such as electricity and gas transmission networks, is improved, to transport energy as efficiently as possible to where it is needed. Finally, regulators have been established in each EU country with the intention of ensuring that suppliers and network companies operate correctly and provide the services promised to their customers (Regulation 1775/2005 addresses conditions for

access to the natural gas transmission networks; and Directive 2004/67/EC the issue of security of gas supply. The regulation of access to gas transmission networks is addressed in COM(2003) 741).

B. Individual sectors (sectoral aspects) of energy policy

1. Coal and other solid fuels

EU energy policy objectives are to promote the use of coal and make domestic production capacity more competitive to achieve a notable increase in solid fuel consumption. Enlargement of the EU in May 2004 meant a change for the role of coal in the EU in respect of coal reserves and patterns of production as well as consumption. Since enlargement in 2004, a number of energy-related issues have been discussed intensively in the EU — including security of supply, not least sparked by the Ukraine–Russia gas dispute at the beginning of 2006. Currently, reviews of status quo and effects of the adopted regulation of the European energy markets are being undertaken by the Commission. Coal combustion is associated with emissions of air pollutants (such as sulphur dioxide) and carbon dioxide (CO₂). However, coal is an abundant fuel and will play an important role in energy security discussions as well as other issues (for instance on energy mix, co-utilisation, self-reliance, etc.). Many Member States have coal reserves, which creates both employment and export opportunities. Given that coal is likely to remain an important fuel for power generation worldwide in the next decades, much has been done to develop the economic and technological potential of clean coal. Clean coal technologies (CCT) have been developed and employed and still hold potential for further development. Increasingly carbon dioxide capture and storage (CCS) has been developed as an option to mitigate greenhouse gas emissions (). The different CCS elements and technologies have reached different stages of development, but overall constitute a set of interesting options for contributing to meet both future demand for electricity and objectives to limit climate change (achieving Kyoto and post-Kyoto targets).

2. Hydrocarbons

EU energy policy objectives are to substitute crude oil by other forms of energy while also encouraging prospecting (offshore exploration, etc.) and the exploitation of indigenous hydrocarbons. Security of supply is to be encouraged by diversifying sources and by EU rules on obligatory reserves (Member States must keep 90 day's stocks of the main petroleum products based on the previous year's figures).

3. Nuclear energy and nuclear fuels

Nuclear energy is still accorded a key role in EU energy policy objectives. However, the 1986 Chernobyl disaster

made nuclear energy highly controversial. Abandonment of nuclear power is at the earliest a medium-term prospect but, in any event, greater efforts must be made to improve the safety standards of nuclear power stations. Despite the EAEC Treaty, the Commission's powers are far from adequate (for example, no uniform standards for safety and discharges; no EU consultation procedure concerning power stations sited near frontiers; no clear EU provisions for the storage and transport of nuclear fuels or nuclear waste; difficulties in establishing basic standards of radiation protection; no adequate EU system of information and monitoring in cases of nuclear malfunctions; no agreed emergency procedures in case of disaster, etc.).

In the Green Paper on energy security, nuclear power was grouped (together with coal, oil, gas and renewables) as a 'less than perfect' energy option, and the question was raised how the EU can develop fusion technology and reactors for the future; reinforce nuclear safety; and find a solution to the problem of nuclear waste. As nuclear safety could no longer be considered from a purely national perspective, in January 2003, and in preparation for enlargement, the Commission adopted a new approach to safety of nuclear facilities and nuclear waste (COM(03) 32). In 2004, the Commission put forward a revised proposal, COM(2004) 526 based inter alia on the EP's suggestions which were grouped around two new directives: one in the field of safety of nuclear facilities (adopted finally as a Council regulation in 2006), and another on radioactive waste management.

4. Renewable sources of energy and energy efficiency

Promoting renewable energy is one of the main objectives of EU energy policy. As stated previously, the aim is to double renewables' share of total energy consumed to 15 % by 2010 and increase renewable energy sources for the internal electricity market to 22.1 % of the total production (Directive 2001/77). Decision 1230/2003 'Intelligent Energy for Europe' contains measures to promote renewables and increase energy efficiency. There are sub-programmes supporting sustainable development projects and expanding cooperation between the EU and developing countries for renewable energy sources. The framework programme is worth EUR 200 million for the period 2003–06, though both the Commission and the European Parliament (EP/Parliament) argued for much more money.

In 2002 Directive 2002/91 on the energy performance of buildings (in particular insulation, air conditioning and the use of renewable energy sources) was adopted (due for implementation in 2006). This is concerned, first and foremost, with a method for calculating the energy performance of buildings, minimum requirements for new and existing large buildings and energy certification.

With its proposed directive of July 2002 (COM(2002) 415), the Commission wanted to push ahead with the development and use of cogeneration or combined heat and power production (CHP). The production of electricity and heat in a single integrated process leads to savings in primary energy, and is therefore a further means of fulfilling the EU's energy policy objectives. The proposal gave rise to controversial discussions in both the Council and the EP, and is mainly concerned with establishing a uniform definition for electricity produced in CHP plants. The directive was adopted in co-decision in February 2004(2004/8).

In May 2003, Directive 2003/30 on the promotion of the use of biofuels or other renewable fuels for transport was adopted. The directive aims at promoting the use of biofuels or other renewable fuels to replace diesel or petrol for transport purposes in each Member State, with a view to contributing to objectives such as meeting climate change commitments, environment-friendly security of supply and promoting renewable energy sources. The directive asks Member States to ensure that a minimum proportion of biofuels and other renewable fuels is placed on their markets, and, to that effect, to set national indicative targets. Reference values for these targets provided in the directive are 2 % by 31 December 2005 and 5.75 % by 31 December 2010 calculated on the basis of the energy content of all petrol and diesel for transport purposes placed on their markets.

On 5 April 2006, the Directive 2006/32/EC on energy end-use efficiency and energy services (repealing Council Directive 93/76/EEC) was adopted. This aimed to boost energy efficiency in the EU and promote the market for energy services (such as lighting, heating, hot water, ventilation, etc.).

In May 2004, the Commission adopted a communication to Council and Parliament which proposed an evaluation of the effect of the contribution of renewable energy sources in the EU and put forward proposals for concrete actions (COM(2004) 366).

Subsequently, in its resolution on the share of renewable energy in the EU and proposals for concrete actions (2004/2153(INI)) the EP recognised the exceptional importance of renewable energies and stressed the importance of setting mandatory targets for 2020 that send a clear signal to market actors as well as national policy makers, emphasising that renewable energies are the future of energy in the EU and part of EU environmental and industrial strategy. The Commission followed with a communication 'Biomass Action Plan', COM(2005) 628 of 7 December 2005 that set out measures to increase the development of biomass energy from wood, waste and

agricultural crops, by creating market-based incentives and removing barriers to market development. The Commission's communication 'An EU Strategy for Biofuels', COM(2006) 34 of 8 February 2006 aimed to further promote biofuels and prepare for their large-scale use, and explore opportunities for developing countries.

The 'Green Paper: A European Strategy for Sustainable, Competitive and Secure Energy' places particular emphasis onto renewable energy, the full potential of which will only be realised through a long-term commitment to develop and install renewable energy. In addition to this the Commission intends to carry out a renewable energy road map.

C. Research, development and demonstration projects (→4.13.0.)

The EU framework programme of research encompasses many energy, R & D and demonstration projects to support energy policy objectives. These are designed to improve the acceptance level, competitiveness and scope of application of traditional energy (e.g. reactor safety and management of radioactive waste; gasification and liquefaction in the case of coal), encourage the adoption of new forms of energy (alternative energy sources, new technologies for a sustainable energy supply, nuclear fusion) or energy saving and rational use.

The seventh framework programme of the European Community for research, technological development and demonstration activities runs from 2007 to 2013 (COM(2005) 119) and this sets targets for research to be done to achieve the main targets of energy reduction. Moreover, it proposes a wider cooperation and concentration of research in this area, including proposals for funding these actions (see also Fact Sheet 4.13).

D. Internal market

In the energy sector, the completion of the internal market requires the removal of numerous obstacles and trade barriers, the approximation of tax and pricing policies and measures in respect of norms and standards and environmental and safety regulations. Following the directives adopted in 1990 and 1991 on transit of electricity and gas, a further opening of the electricity networks for large industrial customers ('Third Party Access' (TPA)) was agreed on 25 July 1996 (Directive 96/92). Directive 98/30 for the gas market was adopted on 22 June 1998. The Commission will report annually to Parliament on the implementation of the two directives.

With two further directives for electricity (2003/54) and gas (2003/55) — together with Regulation 1228/2003 on conditions for access to the network for cross-border exchange in electricity — the energy markets in electricity

and gas were to be fully open to competition by 2005 (2007 for household customers). As not each Member State has taken appropriate actions to implement the directives, in April 2006, the Commission sent infringement letters to those Member States where issues subsisted concerning priority allocation of cross-border network capacity in favour of pre-liberalisation contracts. Currently, the Commission is examining the responses from Member States and assessing whether further action is needed. For several Member States, priority access has already been removed.

National regulatory authorities will be established to supervise public service obligations, security of supply and tariff formation. In future, the source of electricity will have to be accurately labelled. In order to strengthen competition in the internal electricity market and promote investment in energy infrastructure and security of supply Directive 2005/89/EC of 18 January 2006 (concerning measures to safeguard security of electricity supply and infrastructure investment) was adopted (accompanied by another initiative of the Commission on Energy Infrastructure and Security of Supply COM(2003) 743). The proposed new regulation on access to gas transmission networks (COM(2003) 741) was adopted by the Council on 12 December 2007.

Directive 2003/96 introduced a new EU system for taxation of energy products. The proper functioning of the internal market and the achievement of the objectives of other EU policies require minimum levels of taxation at EU-level for most energy products, including electricity, natural gas and coal. Moreover, the taxation of energy products and, where appropriate, electricity is one of the available instruments to achieve the Kyoto Protocol objectives. Directive 2003/96 widens the scope of the EU minimum rate system — currently limited to mineral oils — to all energy products, chiefly coal, gas and electricity.

The Commission has further proposed directive (COM(2003) 739) setting targets for a more effective end-use of energy and energy services. This proposal was adopted by Council on 4 April 2006.

E. Greenhouse effect and international cooperation

The EU has stressed its commitment to international cooperation and fighting the effect of greenhouse gas emissions. However, the 1992 proposal for a carbon dioxide and energy tax (COM(92) 0226) has not yet been implemented, because of strong opposition by a number of Member States and lack of support from the main competitors (USA and Japan) on international markets. The importance of an agreed action plan to reduce greenhouse gases (particularly CO₂) became clear at the UN Kyoto conference in December 1997. The EU has promised to

reduce its CO₂ emissions by 8 % from 1990 levels by 2008–12. After a long and controversial debate, in July 2003, the directive on greenhouse gas emissions (2003/87) was accepted. By 2005, one of the largest emissions trading scheme (ETS) in the world was created and is currently undergoing review — a second stage is under consideration for 2012. The accession of new Member States to the EU will create the need to include them into the internal energy market to benefit from open competition, improvement of energy efficiency and the gradual introduction of renewable energy sources.

Role of the European Parliament

Parliament's main task is to convince Member States that the long-term common interest in solving these problems at EU level is more important than short-term national interests where other solutions may be given preference. Parliament has repeatedly advocated a separate chapter on energy, now planned for the first time in the European Constitution. In the current discussion on the EU's future energy policy, Parliament is now pressing even more vigorously for the implementation of important energy policy objectives (increasing energy efficiency, developing alternative sources of energy and secure energy supply systems, combating the greenhouse effect and pursuing international cooperation and clarification in respect of CO₂ and energy taxes).

Two important initiatives were adopted by Parliament in 2005, the first on oil dependency (PE A6-0509/2005) calling for a wider action to diversify energy sources and create a coherent global energy strategy, and the second a resolution on the share of renewable energy (A6-0227/2005) with which Parliament calls for concrete actions to replace classical energy sources by using all other renewable energy, namely wind power, hydropower plants, solar-thermal power, geothermal plants and biomass.

On 14 February 2006, the EP adopted a resolution containing recommendations on heating and cooling from renewable sources of energy (INI/2005/2122). The objective of the proposal is to evaluate and exploit economic potential with the aim of increasing the share of renewable energies used in heating and cooling in the EU from the present level of approximately 10 % to a realistic though ambitious figure of at least 20 % by 2020 whilst setting binding national targets.

In March 2006, the EP adopted a joint resolution on security of energy supply in the EU, urging the Commission and the Council to achieve a more resolute and concrete European energy policy together with new, ambitious targets.

In its own initiative report on the Green Paper on energy efficiency or doing more with less, INI/2005/2210, the EP

proposed the creation of an energy efficiency fund by which local energy and environment agencies would receive financial support.

The EP has also considered the international aspects in its 'Non-legislative resolution on EU–Russia relations', INI/2004/2170. The resolution emphasises the need to further develop and implement a common energy strategy

for Europe that incorporates producers, distributors and consumers, and creates a transparent and sustainable energy system that enhances the regional diversity of energy supplies.

→ Miklos GYÖRFFI
09/2006

4.13. Policy for research and technological development

Legal basis

Community Research and Technological Development (RTD) policy was originally based on Article 55 of the European Coal and Steel Community (ECSC) Treaty (expired in 2002); Articles 4 to 11 of the European Atomic Energy Community (EAEC) Treaty (Euratom: nuclear research); and Articles 35 and 308 of the European Community (EC) Treaty. An important milestone in the development of a European RTD policy was the adoption of four Council resolutions on 14 January 1974, notably one concerning the coordination of national policies and the definition of projects of interest to the Community in the field of science and technology and one on the need for the Community to have its own science and technology policy.

Title XVIII 'Research and technological development' of the EC Treaty (ECT) was introduced by the Single European Act (SEA), which entered into force on 1 July 1987, and provided a new and explicit basis for RTD policy, based on multi-annual framework programmes.

According to the SEA, the framework programme (FP) was adopted by unanimity in the Council, after a single consultation of the European Parliament (EP/Parliament). With the entry into force of the Maastricht Treaty on 1 November 1993 co-decision by the Council and Parliament for the adoption of the EC FP was introduced, while maintaining the requirement for unanimity in the Council. Article 7 of the Euratom Treaty (unanimity in Council, no formal requirement to consult Parliament) was left unchanged.

With the entry into force of the Amsterdam Treaty on 1 May 1999 the requirement for Council unanimity to adopt the EC FP was replaced by qualified majority. Once again the

Euratom Treaty was left unchanged and the Euratom 'Framework Programme' is adopted unanimously by the Council following a single reading in Parliament. Specific programmes within the FP are adopted by qualified majority in the Council, following simple consultation of the EP. Rules for the participation of undertakings, research centres and universities in the EC FP were adopted by separate Council decision (cooperation procedure) for the 4th and 5th EC FP, and by EP and Council Regulation (co-decision procedure) for the 6th EC FP.

Objectives

The aim of Community RTD policy, since the SEA, has been to strengthen the scientific and technological bases of European industry and to encourage it to become more competitive at international level. Promoting industrial competitiveness was central to the FPs as defined by Member States in the mid-to-late 1980s. This key provision was amended in 1993 (Maastricht Treaty) by adding the phrase 'while promoting all the research activities deemed necessary by virtue of other Chapters of this Treaty' (Article 163 of the ECT).

Article 164 of the Treaty specifies: 'In pursuing these objectives, the Community shall carry out the following activities, complementing the activities carried out in the Member States:

- implementation of research, technological development and demonstration programmes, by promoting cooperation with and between undertakings, research centres and universities;
- promotion of cooperation in the field of Community research, technological development and

- demonstration with third countries and international organisations;
- dissemination and optimisation of the results of activities in Community research, technological development and demonstration;
- stimulation of the training and mobility of researchers in the Community’.

Article 165 provides that: ‘The Community and the Member States shall coordinate their [...] activities so as to ensure that national policies and Community policy are mutually consistent’.

Achievements

A. Community RTD policy: a short review

The main instrument of Community RTD policy is the multi-annual FP, which sets objectives, priorities and the financial package of support for a period of several years (usually five, with planning for successive FPs overlapping by one or two years, but with distinct financial envelopes usually running over four years). With the 1st FP (1984–87), Community RTD activities were for the first time coordinated as part of a single, structured framework. The main aim of the 2nd FP (1987–91) was to develop technologies for the future, integrating major Community programmes in the areas of information technology (ESPRIT), materials (EURAM), industrial technologies (BRITE) and advanced communications technologies (RACE). The 3rd FP (1990–94) broadly followed the same lines, focusing on fewer lines of action, but also on the dissemination of research results. In April 1994, after a long and difficult procedure, Council and Parliament (in the first ever co-decision) adopted the 4th FP (1994–98). This programme built on the previous initiatives, but contained several important innovations, such as a new programme on targeted socio-economic research. The 5th FP (1998–2002) marked a shift from research concentrating largely on technical performance towards research and innovation addressing targeted socio-economic objectives.

B. Implementation of R&TD policy

A typical Community-funded project involves legal entities, i.e. universities, research centres, businesses, including small and medium-sized enterprises (SMEs), or individual researchers, from several Member States, associated and third countries. A balanced representation of industry and academia is generally pursued. There are also special actions to support the development of research activities in the less-favoured regions of Member States and associated candidate countries. The FP is implemented through specific programmes. The Community has several means at its disposal to achieve its RTD objectives within these specific programmes:

- direct actions carried out by the Joint Research Centre (JRC) located at Ispra (Italy), Geel (Belgium), Petten (Netherlands), Karlsruhe (Germany) and Seville (Spain), and entirely financed by the Community;
- indirect actions, which can be either (i) collaborative research projects carried out by consortia of legal entities in Member States, associated and third countries and financed by the Community to a maximum of 50 %, or (ii) coordination and support actions financed by the Community to a maximum of 100 %, or (iii) host and individual-driven actions for the purposes of researchers’ mobility in the context of various Marie Curie fellowship, grant and award schemes with a maximum Community contribution of 100 %.

C. The 6th Framework Programme (2002–06)

1. Background

The 6th RTD Framework Programme (FP6) was adopted on 27 June 2002 (Decision 1513/2002 of the EP and the Council). The programme runs from 1 January 2003 to 31 December 2006. FP6 was specially designed to promote the establishment of a European Research Area (ERA) endorsed by the Lisbon European Council in March 2000 and supported by the EP. The creation of an ERA aims at: (i) ensuring the free movement of researchers, ideas and technology in Europe; (ii) overcoming the fragmentation of European research and creating a critical mass; and (iii) coordinating national and European programmes and policies.

2. Instruments

FP6 introduced two new instruments with the aim of specifically addressing the problem of fragmentation of European research and increase its impact:

- networks of excellence, which aim at progressively integrating partners’ research capacities for the purpose of promoting Community scientific and technological excellence;
- integrated projects, which are substantial in size and aim at constituting a critical mass in research activities focusing on clearly defined scientific and technological objectives.

In addition, Article 169 of the ECT was applied for the first time to a partnership between European and developing countries for carrying out a programme of clinical trials to combat AIDS, malaria and tuberculosis.

3. Budget and lines of action

The initial FP6 budget of EUR 17.5 billion, of which EUR 1.23 billion was for Euratom, was later increased to EUR 19 235 million, of which EUR 1 352 million was for Euratom, to take enlargement into account. The overall financial amount for the EC FP (EUR 17 883 million) was distributed among different activities as follows:

(a) *Focusing and integrating Community research (including thematic priorities). Budget: EUR 14 682 million:*

- life sciences, genomics and biotechnology for health: EUR 2 514 million;
- information society technologies: EUR 3 984 million;
- nanotechnologies, materials and new production processes: EUR 1 429 million;
- aeronautics and space: EUR 1 182 million;
- food quality and safety: EUR 753 million;
- sustainable development, global change and ecosystems: EUR 2 329 million;
- citizens and governance in a knowledge-based society: EUR 247 million;
- specific activities covering a wider field of research: EUR 1 409 million (including horizontal research activities involving SMEs with a budget of EUR 473 million and specific measures in support of international cooperation with a budget of EUR 346 million);
- non-nuclear activities of the JRC: EUR 835 million.

(b) *Structuring the ERA. Budget: EUR 2 854 billion:*

- Research and innovation: EUR 319 million;
- Human resources: EUR 1 732 billion;
- Research infrastructures: EUR 715 million;
- Science and society: EUR 88 million.

(c) *Strengthening the foundations of the European Research Area: EUR 347 million.*

4. Implementation of the programme

(a) *Participation*

Any legal entity, i.e. any natural or legal person established in a Member State or associated country in accordance with national, international or Community law may respond to calls for proposals and, if their proposal is accepted, receive Community support. Thus universities, research centres, businesses, including SMEs, and international organisations may ask for funding. Entities from third countries may also participate in consortia and even receive support for certain FP activities.

(b) *Calls for proposals*

As a general rule, project proposals are submitted in response to calls for proposals. Consortia wishing to respond normally have at least three months to draw up and submit their proposal.

(c) *Information sources*

Calls for proposals are published in *the Official Journal of the European Communities* and on the Commission Internet pages designed for this purpose. The key

instrument for the dissemination of information about calls for proposals and the FP in general, as well as about related policy issues, is the Commission-supported CORDIS server. The RTD info magazine also provides information.

At national level in the Member States, associated countries and other partner countries, there are national contact points (NCPs) to supply information on the FP and assist potential applicants.

(d) *Proposal evaluation and selection of projects*

Project evaluation usually comprises a single step. For particular activities a two-phase procedure is applied: participants are first invited to submit a summary proposal; if their initial application is accepted, they are invited to submit a detailed proposal. Projects are selected for funding by Commission decision, following inter-service consultation and a comitology procedure.

(e) *International cooperation*

International cooperation (INCO) is implemented in FP6 through: (i) opening of the thematic priorities to third-country entities with funding available for INCO-targeted countries (developing countries, Mediterranean countries, including the western Balkans, Russia and the New Independent States); (ii) specific measures in support of international cooperation involving INCO-targeted countries; (iii) international activities under 'Human resources'. Finally, the Community has concluded a number of bilateral scientific and technological cooperation agreements with third countries.

(f) *Coordination of non-Community RTD activities*

The ERA-NET scheme, introduced for the first time under FP6, aims at stepping up the coordination of national and regional research programmes carried out in the Member States and associated countries through networking, including 'mutual opening' of the programmes and implementation of joint activities. FP6 also covers the operational costs of COST (cooperation in the field of scientific and technical research of activities of public interest financed nationally in Europe) and coordinates its activities with those of other European initiatives, such as Eureka (an inter-governmental initiative for market-oriented research and development activities).

D. Prospects for European RTD policy

The adoption of FP6 represents a clear step towards a new strategic orientation of Community research policy. However it is essential, as Parliament has in recent times repeatedly stressed, to step up the research effort at EU level, since only in this way can Europe's place in the field of technological innovation be assured and the necessary conditions created to safeguard Europe's economic

independence and social cohesion, which are indispensable for the prosperity of its citizens.

Compared with the main competitors on the world market (mainly US and Japan), EU research and development spending is insufficient (1.93 % of GDP in 2003, as compared to 2.59 % in the US and 3.15 % in Japan). Thus, an important step in European research policy was taken at the Barcelona European Council in March 2002, where Heads of State and Government agreed to raise investment in research and development to 3 % by 2010.

E. The 7th RTD Framework Programme (FP7)

The European Commission published its initial proposal on 6 April 2005 with an overall budget of EUR 72.7 billion (current prices) for the EC FP over the period 2007–13 and EUR 3.1 billion for the Euratom FP over the period 2007–11. The proposals contain a number of important innovations, including creating a 'European Research Council' (ERC) in support of investigator-driven frontier research, launching Joint Technology Initiatives (JTIs) around key technologies and helping create new research infrastructures. The EC FP is structured into five specific programmes: cooperation (supporting collaborative research activities in nine thematic priorities), ideas (introducing the European Research Council), people (supporting training and career development of researchers), capacities (supporting key aspects of European research and innovation capacities) and non-nuclear actions of the JRC. The Euratom FP is structured into two specific programmes and contains substantial funding for fusion energy research, in line with the international commitments undertaken by the Community for the realisation of ITER (International Thermonuclear Experimental Reactor) together with the US, Japan, Russia, China and Korea.

F. European Institute of Technology (EIT)

The European Commission in its communication to the Spring European Council, Working together for growth and jobs, A new start for the Lisbon strategy, communication from President Barroso, Commission of the European Communities, Brussels, 2 February 2005, COM(2005) 24 noted the Commission's intention to submit a proposal on the establishment of a European technology institute. The EIT has been proposed by the Commission (Commission communication of 22 February 2006 'Implementing the renewed partnership for growth and jobs, Developing a knowledge flagship: the European Institute of Technology', (COM(2006) 77) as a reference model within an integrated strategy to mobilise all components of the knowledge triangle of education, research and innovation towards the Lisbon goals. This communication, accompanied by a public consultation, has not been very well received by the stakeholders. A second communication of the Commission

(Commission communication of 8 June 2006 'The European Institute of Technology: further steps towards its creation', COM(2006) 276) on the EIT had a more positive impact among the expert communities, but still leaves many questions unanswered, which hopefully should be dealt with in the forthcoming legislative proposals and the accompanying impact assessment.

Role of the European Parliament

For more than 20 years the EP has promoted an increasingly ambitious EU RTD policy and has called for a substantial increase in total research spending in the Member States to maintain and strengthen Europe's international competitiveness. The EP has also advocated more collaboration with non-EU partners, a serious integration of activities between the Structural Funds and the FPs and a targeted approach to optimise the involvement of SMEs and facilitate the participation of promising weaker actors. Parliament further insisted that far more flexibility should be built into FPs, to enable the shifting of resources to more promising areas and the ability to react to changing circumstances and newly emerging priorities for research.

During the negotiations on FP6, the EP put forward a number of important proposals that are reflected in the legislative texts that were finally adopted. Since the EU institutions had agreed at an early stage on the overall budget of the programme, Parliament's efforts concentrated on emphasising its priorities and, where applicable, improving the budgetary provision for them. These priorities mainly concerned the structure of the programme (introducing a section on combating major diseases, including cancer and poverty-linked infectious diseases, in the first thematic priority), the financing instruments (introducing the concept of a 'stairway of excellence' to accommodate small-scale participants with innovative research projects), the rules of participation (removing liability provisions that would have discouraged small participants, introducing additional 'soft' evaluation criteria on synergies with education, engaging society as a whole and increasing the role of women in research) and support for science and society and international cooperation activities.

To a large extent, the Commission's FP7 proposals include the major demands contained in the EP resolution of 10 March 2005 on the Commission communication 'Guidelines for future European Union policy to support research'. The main issues addressed in that resolution concern: (i) the Commission's proposal to double the EU research budget; (ii) an adequately-funded, autonomous ERC to support basic research in all scientific fields on the basis of excellence; and (iii) JTIs, as a significant mechanism

to bring research closer to industry. According to the exchanges of views held so far at committee level, the Commission's FP7 proposals have generally been well-received by MEPs. After Parliament's first-reading on 15 June 2006 and due to the substantial cut in the budget for research by the Council, according to the agreement on the financial perspectives for the period 2007–13 reached in December 2005, the proposed budget and its breakdown is as follows (in EUR million):

Cooperation	32 582
Health	6 134
Food, agriculture and biotechnology	1 935
Information and communication technologies	9 050
Nanosciences, nanotechnologies, materials and new production technologies	3 467
Energy	2 415
Environment (including climate change)	1 886
Transport (including aeronautics)	4 180
Socio-economic sciences and the humanities	657
Security	1 429
Space	1 429
Ideas	7 560
People	4 927
Capacities	4 042
Research infrastructures	1 708
Research for the benefit of SMEs	1 366
Regions of knowledge	126
Research potential	350
Science in society	359
Activities of international cooperation	133
Non-nuclear actions of the Joint Research Centre	1 751
TOTAL	50 862

Adjustments were made to bring the framework programme in line with the EP's position on the Interinstitutional Agreement on Budgetary Discipline (including the Financial Perspectives 2007–13) as adopted by plenary on 15 May 2006, and to indicate by internal budgetary allocation the priorities for the framework programme which are shared by all political groups in ITRE.

In Parliament there is a broad political consensus on the priorities among the different elements of FP7. The EP assigns greatest priority to the 'European Research Council' (objective 'ideas'), which, in the EP's opinion, should be an independent structure to be established under the co-decision procedure. Other EP priorities, in order of importance, are 'people' (recruitment, careers and exchange of researchers) and 'cooperation' (especially the themes 'energy' and 'health'; in 'energy' the EP asks for two thirds of the funds to be earmarked for renewable energies and energy efficiency research). The EP also expressed concern about the possible diversion of FP7 funds to the future European Institute of Technology (EIT) and possible excessive earmarking of funds for the 'Risk-sharing Finance Facility'.

In May 2006 the EP expressed scepticism over the necessity or usefulness of the EIT in its resolution on the Commission's Annual Policy Strategy report (EP resolution of 18 May 2006 on 2007 budget: Commission's annual strategic priorities, T6-0221/2006) '[the EP] believes that the setting up of a new European Institute of Technology may undermine or overlap on existing structures and may therefore not be the most effective use of funds in this context'.

→ Miklos GYÖRFFI
09/2006

4.14. Small and medium-sized enterprises

Legal basis

Small and Medium Sized Enterprises (SMEs) operate mainly at national level, but are affected by EU legislation on taxation (Articles 90–93), competition (Articles 81–89), company law (right of establishment — Articles 43–48), the first to 13th directives on the formation of limited companies, structural operations such as mergers and divisions under each Member State's national law, cross-border mergers, takeover bids, etc., Regulation 2137/85 on the European Economic Interest Grouping, Regulation 2157/2001 on the European Company Statute and Directive 2001/86 on the involvement of employees, regional and social policy (Articles 136–145), and customs formalities (Articles 25–27).

The Commission adopted a new definition of SMEs in Recommendation 2003/361. The staff thresholds used are: micro (0 to 10 employees), small (10 to 50 employees) and medium-sized enterprises (50 to 250 employees). The recommendation increased the financial ceilings (turnover or balance sheet total) to take account of inflation since the first SME definition in 1996. The new definitions entered into force on 1 January 2005. The new rules should promote growth, entrepreneurship, investment and innovation, facilitate access to venture capital, cut administrative burdens and increase legal certainty and favour cooperation and clustering of independent enterprises.

Objectives

Micro, small and medium-sized enterprises make up 99 % of all enterprises in the EU. In the EU-25 they represent about 25 million businesses employing almost 95 million people, and are an essential source of entrepreneurial spirit and innovation, which is crucial to EU competitiveness. EU policy for SMEs aims to promote their interests and to abolish discrimination in market access.

Achievements

A. General

In Lisbon in 2000 the European Council defined its objectives in terms of employment, economic reform and social cohesion. By 2010 the EU aims 'to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion'. In 2001 the European Council agreed on a strategy for sustainable

development and added an environmental dimension to the Lisbon strategy. It recognised the need for radical transformation of the economy to create some 15 million new jobs by 2010.

EU policy for SMEs dates back to a first action programme, adopted in 1983 at the close of the European Year of SMEs and the craft industry. A second such programme began in 1987 and was reinforced by the Council for the period 1993–96. A third multiannual programme covered the period 1997–2000.

The fourth multiannual programme initially ran for the period 2001–05 with a budget of EUR 450 million (it has been extended to 2006 with an increase in the financial reference amount by EUR 88 500 000). The five prime objectives of the programme are:

- enhancing growth and the competitiveness of business in a knowledge-based economy: measures to enhance competitiveness and innovation, prepare enterprises for globalisation and promote new information and communication technologies;
- promoting entrepreneurship: measures specifically to promote business start-ups and transfers, develop training in entrepreneurship, and identify and promote specific policies for SMEs;
- simplifying and improving the administrative and regulatory environment for business, in particular to promote research and innovation: measures in particular to improve assessment of all proposed EU legislation on business and to produce better regulation;
- improving the financial environment for business, especially SMEs: measures in particular to improve the financial environment for business, develop proximity funding (business angels) and organise round-tables of bankers and SMEs;
- giving business easier access to EU support services, programmes and networks and improving coordination of these facilities: measures to promote simpler access to EU programmes, better coordination between support or advice networks such as the Euro Info Centres, and the organisation of business cooperation events.

The Council adopted the European Charter for Small Enterprises in June 2000, setting out recommendations for small enterprises to take full advantage of the knowledge economy.

The Commission produces annual implementation reports, a report on the activities of the SME Envoy and communications on: innovation policy; industrial policy; the impact of the e-Economy on European enterprises — economic analysis and policy implications; and a better environment for enterprises.

In February 2005 the Commission published a report on the implementation of the European Charter for Small Enterprises (COM(2005) 30), emphasising the role that small businesses play in the EU-25 economy. They are considered crucial for growth and employment all over Europe. The charter embodies the 'think small first' principle, and the recognition that small enterprises are the backbone of Europe's economy and the key to our competitiveness. In September 2005 the European Parliament (EP/Parliament) published an own-initiative report on the implementation of the charter (2005/2123(INI)), which comprises 10 'lines of action': education and training for entrepreneurship; cheaper and faster start-up; better legislation and regulation; availability of skills; improving online access; getting more out of the single market; taxation and financial matters; strengthening the technological capacity of small enterprises; making use of successful e-business models and developing top-class small business support; developing stronger, more effective representation of small enterprises' interests at Union and national level.

The Commission launched a 'Go Digital Awareness Campaign' in 2001 to demonstrate to SMEs the potential benefits of adopting and efficiently using e-business, and provide them with practical assistance on how to participate and take full advantage of the e-Economy. An analysis of the 'Go Digital Awareness Campaign' was published in 2003.

As a follow-up to the eEurope 2002 Action Plan and Helping SMEs to 'Go Digital', the Commission has launched specific actions to help SMEs adopt information and communication technologies (ICT) and e-business. More than 70 events were organised across Europe in 2002 by SMEs and other business organisations.

The Better Regulation Package adopted by the Commission on 5 June 2002 aims to reform the way in which the institutions, individually or jointly, legislate at European level, and how the Member States implement and apply this legislation at national level. This ambitious package is designed to meet the Lisbon European Council aim of simplifying and improving the regulatory environment. It is a political response to the frequent criticism of excessive, inappropriate and burdensome EU legislation. The Commission adopted an action plan for 'Simplifying and improving the regulatory environment' in 2002.

In January 2003 the Commission adopted an 'SME package', which analyses how Member States and the Commission are implementing the principles of the European Charter for Small Enterprises. The main findings of the SME package are set out in the communication 'Thinking Small in an Enlarging Europe' (COM(2003) 26).

At the beginning of 2003 the Commission also launched a public debate on how to further improve the entrepreneurship agenda, through its Green Paper on Entrepreneurship in Europe (COM(2003) 27). Based on an analysis of progress in Enterprise Europe, including the SME package, the Green Paper poses some essential questions on how to produce more entrepreneurs and how to get more European firms to grow.

B. Internal market

Among the measures for completing the internal market, those with particular relevance to SMEs include simplification of border formalities and initiatives in the field of standardisation.

Derogations for SMEs have been introduced in many areas, for example:

- administrative rules,
- approximation of company law,
- competition rules,
- research,
- changes in taxation.

1. Company law

The European company is regarded as one of the key elements for the completion of the internal market. The Council adopted the two legislative instruments required for the creation of a European company: Regulation 2157/2001 on the Statute for a European company and Directive 2001/86 supplementing the Statute for a European company with regard to the involvement of employees, the two instruments being inextricably linked. The European company statute should make cross-border business management more flexible and less bureaucratic and enhance the competitiveness of European business. It will make it possible for a public limited company to be set up in the EU with the Latin designation *Societas Europaea* (SE). The SE statute will allow enterprises to operate throughout the EU subject to the EU legislation directly applicable in all Member States.

2. Competition policy

The Commission has made great efforts to modernise its competition rules, make procedures more efficient, increase their transparency and facilitate their application. This policy trend has a direct bearing on SMEs. In January

2001, Regulation 70/2001 on the application of Articles 87 and 88 of the Treaty to State aid to SMEs replaced the 1996 guidelines. It exempts investment aid — 15 % of eligible costs for small and 7.5 % for medium-sized enterprises (in regionally-assisted areas higher aid ceilings apply, in order to counter both the regional and the SME-specific disadvantage); aid for consultancy (50 % of eligible costs); and aid for participation in fairs and exhibitions (50 % of eligible costs). The regulation provides that such aid does not have to be notified to the Commission unless it exceeds certain thresholds.

3. Taxation

In October 2001 the Commission communication 'Towards an Internal Market without tax obstacles — A strategy for providing companies with a consolidated corporate tax base for their EU-wide activities' (COM(2001) 582) and a detailed study on 'Company Taxation in the Internal Market' (SEC(2001) 1681) addressed problems relating to company taxation in the internal market and the situation of SMEs.

C. Information and cooperation for SMEs

The Euro Info Centre (EIC) network, a key link between Europe and SMEs, consists of some 300 members in 38 countries and 14 correspondence centres. Extended in 1998 to cover the new Member States, by 2003 the network had some 230 EICs located in public, private and semi-public bodies directly related to SMEs (chambers of commerce, local development agencies and banks). The EICs (or *Euroguichets*) inform businesses, initiate them, advise them and help them in all fields concerning EU programmes and policies, organise seminars and conferences and participate in awareness campaigns as part of the eEurope 'Go Digital' initiative.

EICs communicate with each other and the Commission using the Business Cooperation Network and the Business Cooperation Centre. They form a contact network for business consultants and seek to encourage cooperation between firms in the Member States at transnational, interregional and local level. The 'Dialogue with Business' website is a well-established multilingual gateway to data, information and advice from many existing sources. Several thousand companies use it daily to access support services at European, national and local levels. In 2001 the Commission set up an SME Envoy, whose role is to liaise with the SME business community to ensure that their specific interests and needs are taken into account in EU programmes and policies. This action is coordinated with existing networks such as the Euro Info Centres, which already provide valuable information and advice to SMEs.

A high-level consultative body advising the Commission on enterprise policy — the Enterprise Policy Group (EPG) — was created in November 2000. The EPG is divided into two

sections: a group including directors-general responsible for industry and for SMEs in the Member States, and a professional chamber, which includes among its 35 senior members SME entrepreneurs, trade union representatives and people with experience of working in and with SMEs.

As part of the 'e-Commission' and better regulation initiatives, the Interactive Policy Making (IPM) initiative introduced two new Internet-based instruments (Feedback Mechanism and Online Consultations) in order to let stakeholders participate actively in the Commission's policymaking process. This mechanism has collected information from over 17 000 cases, mainly from small businesses, about all kinds of problems which small enterprises face in their daily work. This enables the Commission to make policy based on 'hard' facts.

The Gate2Growth initiative aims to support innovative entrepreneurs in Europe. It provides a common portal for technology entrepreneurs, innovation professionals and intermediaries. In response to a request by the EP this one-stop-shop risk capital website is being further developed in cooperation with regional and national initiatives in order to give these an additional European scope. Within the Gate2Growth initiative is the Incubator Forum — a pan-European network of professional managers of technology incubators linked to research institutes and universities, launched in 2002.

D. SMEs and research

The Sixth Framework Programme (FP6) included measures to assist SME access to new technologies through close coordination between enterprise policy and RTD policy. SMEs were encouraged to participate in the activities implemented under the priority thematic areas within NoEs, IPs and specific targeted research projects. In addition, two specific schemes for SMEs having the ability to innovate without adequate research capacity were foreseen (CRAFT and Collective Research and Cooperative Research).

In March 2002 the Barcelona European Council agreed that RTD investment in the EU must be increased towards 3 % of GDP by 2010. They also called for an increase in business funding from its current level of 56 % to two thirds of total RTD investment, a proportion already achieved in the US and some European countries. The Sixth Framework Programme 2002–2006 (FP6) devoted the highest ever budget to SMEs (nearly EUR 2 200 million). All the initiatives already established under FP5 aimed at simplifying administrative procedures, reducing bureaucracy and helping SMEs were maintained and further improved. SMEs also benefited from the LIFE programme, the financial instrument for the environment, which spent EUR 28 million in 2002 on projects in which SMEs were involved,

and the EU Eco-label scheme, where 80 % of the participating companies were SMEs. ProTon Europe is a pan-European network of technology offices linked to public research organisations and universities, launched in 2002. It is supported by the Commission as part of its Gate2Growth initiative. A significant amount of world-class research is undertaken in universities and research institutions in Europe, which has actual or potential commercial relevance. To realise the potential of these public research organisations, commercialisation should become an integral part of the research process and alternative approaches to the ownership and exploitation of intellectual property rights (IPR) suitably explored. ProTon Europe aims to build up a membership of at least 250 PROs throughout Europe to boost the commercial uptake of publicly funded R & D. This should contribute to the creation of new products, processes and markets, improve the management of innovation and thereby stimulate sustainable and high value economic growth, competitiveness and employment. The working methods of ProTon Europe include benchmarking of technology commercialisation activities across Europe and the collection and dissemination of good practice in managing and commercialising IPR.

The 7th Research Framework Programme (FP7) also contains significant support dedicated to SMEs.

E. Finance

Progress has been made over the last few years in improving the availability of finance and credit for SMEs through the provision of loans, guarantees and venture capital. The European financial institutions — the European Investment Bank (EIB) and the European Investment Fund (EIF) — have increased their operations for SMEs.

Furthermore, the financial instruments of the Growth and Employment Initiative (Council Decision 98/347) have been extended under the Fourth Multiannual Programme for Enterprise and Entrepreneurship, in particular for SMEs, thus giving them a new legal basis. The latter includes four schemes: the European Technology Facility Start-up, the SME Guarantee Facility, the Seed Capital Action and the Joint European Venture programme (JEV). A successor to the current programme is foreseen as from 2007 and therefore it has been proposed that the current fourth programme should be extended by a year to include 2006.

The 2001 Commission paper on 'Enterprises' access to finance' argued that Europe's SMEs are gradually switching from loan finance to other instruments (such as equity, debt-equity combinations, leasing, and guaranteed loans and equity) although at least for the next decade enterprise finance will continue to be dominated by bank lending.

The Structural Funds have allocated some EUR 16 000 million to SME projects in the period 2000–06, approximately 11 % of the total budget. About one third of this is for advisory services and shared business services, such as incubators, networking, and clusters. In addition, this aid triggers substantial matching support from national funds.

F. Competitiveness and Innovation Framework Programme (2007–13) COM(2005) 121

The Competitiveness and Innovation Framework Programme (CIP) will bring together into a common framework specific Community support programmes and relevant parts of other Community programmes in fields critical to boosting European productivity, innovation capacity and sustainable growth, whilst simultaneously addressing complementary environmental concerns and it is composed of specific sub-programmes:

- the Entrepreneurship and Innovation Programme: will bring together activities on entrepreneurship, SMEs, industrial competitiveness and innovation. It will also be one of the instruments supporting the implementation of the Environmental Technologies Action Plan which aims at removing the obstacles so as to tap the full potential of environmental technologies to protect the environment while contributing to competitiveness and economic growth;
- the ICT Policy Support Programme will be one of the means to support actions identified in the new initiative called '2010: European Information Society' as announced in the communication from the Commission on a renewed Lisbon strategy of February 2005. The programme will build on the lessons learned from the eTen, eContent and Modinis programmes whilst improving synergies between them and improving their impact;
- the Intelligent Energy — Europe programme is the Community's non-technological programme in the field of energy focusing on the removal of non-technical barriers, the creation of market opportunities and raising awareness. It aims therefore to accelerate action in relation to the agreed Community strategy and targets in the field of sustainable energy, in particular: to facilitate the development and implementation of the energy regulatory framework.

Role of the European Parliament

As early as 1983 the EP declared a 'Year of Small and Medium-sized Enterprises and the Craft Industry' and launched a series of initiatives to encourage their development. Since then the EP has consistently

demonstrated its commitment to encouraging the development of European SMEs. A few examples:

- in 1994 it welcomed the integrated programme for SMEs and the craft industry adopted by the Commission and called on it to take measures to give SMEs easier access to public procurement and to the EU's financial instruments;
- in a 1997 resolution the EP commented on the internationalisation of small businesses, pointing out the vital importance of access to loan and guarantee schemes to finance their start-up period and cover commercial and political risks and the availability of information and cooperation between industrial networks. It also recommended reducing corporation tax on small businesses' reinvested profits as an effective way of improving employment;
- in another 1997 resolution the EP called for the banking and credit industries to grant facilities to all small businesses in order to encourage growth, employment and investment, particularly by means of a special code of banking conduct for small businesses;
- in a 2002 resolution the EP stressed the importance for small businesses of open markets in telecommunications, energy, postal services and transport. Parliament favoured applying experimental VAT-reduction measures across the board to all labour-

intensive businesses. It called for access to finance such as the EIB/EIF funds for normative investments, and supported the funding of SMEs during start-up. Parliament welcomed progress in providing for cheaper and quicker registration of enterprises in the EU.

In 2005 the EP adopted a resolution on 'Strengthening European competitiveness — the effects of industrial change on policy and the role of SMEs', in which it proposed a policy based on three elements: better lawmaking; developing an integrated approach to policy; and pursuing appropriate sectoral policies and specific measures, which requires an in-depth knowledge of each industrial sector.

The EP has adopted the CIP in (first reading) on 1 June 2006. The EP's main concern is the structural orientation of the programme towards potential applicants, i.e. direct beneficiaries in terms of radical simplification of the application procedure, including a one-stop shop approach (CIP agency). In the area of ICT programmes, it is essential that the focus is shifted from where it currently lies, with the authorities, to the real engine of innovation, which is SMEs. In the area of intelligent energy and technologies the EP favours a broadening of the scope.

→ Miklos GYÖRFFI
09/2006

4.15. Tourism

Legal basis

The EC Treaty does not contain a specific chapter on tourism, but Article 3(u) of the Treaty does allow the Community to pass measures dealing with this area. Provisions on the free movement of people, goods and services, SMEs and consumer protection, as well as environmental, transport and regional policies, are all relevant to tourism, because of its multifarious nature. The measures taken in these policy areas can affect tourism within the Community, whether directly or indirectly.

Objectives

The EU tourism industry is made up of around 2 million companies, primarily small and medium-sized enterprises. It contributes 4 % of total GDP and employment (around 8 million jobs). When its close association with other

economic sectors is taken into account, this figure becomes even higher. On the global stage, the EU is the most important tourist region. Because of its economic weight, the tourism sector is an integral part of the European economy and thus measures are needed to help organise and develop it. From a European perspective, the tourism policy is also a means of supporting general political goals in the fields of employment and growth. Tourism is also a part of the larger environmental policy and this dimension has gained in significance over time.

Achievements

A. General policy

The first Council resolution on this subject, of 10 April 1984, acknowledged the importance of tourism for European integration and invited the Commission to make proposals.

The subsequent decision of 22 December 1986 established an advisory committee on tourism.

Tourism generates considerable demand for transport services. The creation of an efficient passenger transport system with high-quality and safe transport services is thus a prerequisite for the economic development of tourism. Many decisions made in the field of European transport policy thus affect tourists and tourism companies, whether directly or indirectly (see Chapter 4.5: Transport Policy).

Since 1997, the EU has become increasingly aware of tourism's contribution to employment in Europe. On the basis of an expert group report on the growth and potential for employment of the tourism sector, which predicted considerable growth until 2010, on 28 April 1999 the Commission presented a communication on 'Enhancing tourism's potential for employment' (COM(1999) 205). In its conclusions of 21 June 1999, the Council identified four different action areas:

- furthering the exchange and dissemination of information;
- improving training and qualifications in the tourism sector;
- improving the quality of products and services related to tourism;
- promoting environmental protection and the sustainable development of tourism.

By the end of 2001, the Commission had published a communication on 'Working together for the future of European tourism' (COM(2001) 665), which proposed the creation of an operational framework, based on the method of open coordination between all stakeholders concerned. To this end, a plethora of measures and actions were proposed for the different stakeholders so as to safeguard the future of European tourism, from the point of view of sustainability and competitiveness and through the improvement of information, training, and quality and the use of new technologies. One of the results of this strategy has been the annual European Tourism Forum, held since 2002 with the participation of high-ranking representatives from the tourism industry, EU institutions and EU Member State governments. Amongst these proposed measures, the cause of sustainable development of tourism activities was championed through the drawing-up and the implementation of a European Agenda 21 for tourism.

In November 2003 the Commission adopted the communication on 'Basic orientations for the sustainability of European tourism' (COM(2003) 716). It outlined a series of measures to boost the Community's contribution. As a follow-up measure, the 'sustainability in tourism' export group was set up in 2004.

On 17 March 2006, the Commission published a communication on 'A renewed EU Tourism Policy: Towards a stronger partnership for European Tourism' (COM(2006) 134). This discussed the current challenges to the industry, with the intention of bringing about a new European Tourism Policy to meet these. The communication was based on the aforementioned Commission documents but included new aspects, in particular proposals on optimising the use of EU financial instruments in the period 2007–13, on amending the existing regulations, and also the promotion of tourism sustainability.

B. Special measures

1. For tourists

These included measures making it easier to cross borders and protecting health and safety as well as the material interests of tourists, such as the Council recommendation of 22 December 1986 on fire safety in hotels and Directives 90/314/EEC on package tours and 94/47/EEC on timeshare properties. In the field of transport, important rules on the protection of air passenger rights were adopted (see →4.5.6). Directive 2006/7/EC of 15 February 2006 on the quality of bathing water is equally relevant to the tourism policy.

2. For the tourist industry and the regions

In light of the contribution made by tourism to regional development and employment, projects supporting tourism or cultural heritage received increased support within the framework of the structural funds in the period 2000–06, with programmes such as Leader, Interreg and also the ESF playing an important role. The EU tourism industry and companies within this sector were also supported by numerous other Community programmes, including EU programmes for SMEs. The Commission also produced an Internet guide on measures taken by the EU to promote tourism companies and tourist destinations.

Great store was also placed on the creation of a Community statistical information system. An initial two-year programme, aimed at harmonising the national methods used, was introduced through Directive 95/57/EC of 23 November 1995.

The campaign against sex tourism involving children was the subject of a 1996 Commission communication (COM(96) 547), which created a general framework for Community measures in this area.

Role of the European Parliament

The EP has made vital contributions to the development of Community tourism and has often given momentum to concrete measures.

In particular, it has called for:

- a special chapter on tourism to be written into the Treaty, when it was revised in 1996. In the Treaty establishing a Constitution for Europe, there is now a specific section on tourism;
- the creation of a European Tourism Agency (resolutions of 15 December 1994 and 25 October 1996);
- increased protection of tourists' interests:
 - greater civil liability of travel agencies and stricter criteria for granting operating licences (resolution of 15 December 1994);
 - compliance with Directive 90/314 on package travel;
 - protection from overbooking in hotels (resolution of 31 March 1998 on improving safety, consumers' rights and trading standards in the tourism sector);
- action against travel agencies, airlines and hotel chains which encourage sex tourism (resolution of 6 November 1997 on the Commission communication on combating child sex tourism). In the resolution of 30 March 2000 on the same topic, Parliament requested Member States to introduce universally-binding extraterritorial laws, making it possible to legally pursue and punish people, who whilst abroad committed illegal acts relating to the sexual exploitation of children;
- coordination of Community policies on the promotion of employment in the tourism industry with national employment policies as well as the improvement of quality and safety standards within the European tourism industry (resolution on tourism and employment of 18 February 2000);
- in its resolution on the future of European tourism of 14 May 2002, Parliament supported the Commission's approach and emphasised the need for an integrated approach to all political measures affecting tourism. On this point, it called for all the relevant Commission directorates-general (transport, regional policy, employment, environment, social policy, consumer protection, education and culture) to work towards the

harmonisation of the hitherto fragmentary nature of the measures taken and towards an integration of all Community programmes aimed at safeguarding the sustainable development of this sector. It also called for the development of a sustainable and competitive tourism industry, available to all and geared towards quality, whilst taking into consideration the maximum number of tourists which each natural area or cultural site can take;

- in its resolution on tourism and development of 8 September 2005, Parliament stressed the need to reinvest the profits generated by tourism back into local development. It called for all European investments in the tourism industry of developing countries to be subject to the same regulations as those applicable to the granting of assistance within the European Union, so as to make sure that all investments which are clearly damaging to the environment, human rights, the minimum labour standards as set out by the International Labour Organisation, the native way-of-life or the cultural heritage of the destination country are not supported. Furthermore, Parliament proposed the introduction of a certified European Fair Trade Tourism label to encourage ethical standards in tourism;
- likewise, on 8 September 2005 the EP passed a resolution on 'New prospects and new challenges for sustainable European tourism', consisting of 70 paragraphs. The EP set out its position and demands on the different aspects of an EU tourism policy. These aspects included: (a) competitiveness and quality of services, (b) safety in tourism, (c) new initiatives on sustainable tourism, (d) awareness and promotion of European tourism, (e) tourism and transport, (f) promotion of tourism at Community level, (g) coordination of regulations and (h) tourism in the Treaty establishing a Constitution for Europe.

→ Nils **DANKLEFSEN**
09/2006

4.16. Culture and education

4.16.1. Education and vocational training policy

Legal basis

Articles 3, 140, 146, 149 and 150 of the EC Treaty

Articles 14 and 15 of the Charter of Fundamental Rights of the European Union

The Treaty of Rome did not make any extensive reference to education. It simply called in Article 3 for the Member States to make a contribution to quality education and training. It was only with the entry into force of the Maastricht Treaty that comprehensive reference was made to the contribution of the Community in the field of education and training. Among other things, education became subject to co-decision. The Amsterdam Treaty changed the provisions slightly, the main change being that the co-decision procedure applied to vocational training as well. The Charter of Fundamental Rights states that 'Everyone has the right to education and to have access to continuing and vocational training' (Article 14) and that 'Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation' (Article 15).

According to the principle of subsidiarity, each Member State has full responsibility for the organisation and content of its education and vocational training systems. Any act of harmonisation of legal and regulatory provisions of the Member States is excluded from the scope of Articles 149 and 150.

Objectives

A. Objectives pursuant to the EC Treaty

The EU is to contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action.

B. Current priorities

In order to achieve the Lisbon strategy objective of making the Union the most competitive and dynamic knowledge-based economy in the world, Heads of States and Government stated in 2000 that 'not only a radical transformation of the European economy, but also a

challenging programme for the modernisation of social welfare and education systems' was needed.

In 2002 the Council and Commission adopted a 10-year work programme, Education and Training 2010 (2002/C 142/01), to be implemented through the open method of coordination. This programme provides a new and coherent strategic framework incorporating all action in the field of education at European level, including vocational training. Its objectives include improving the quality of education and training systems and facilitating access to education and training for all, as well as opening up education and training to the wider world.

Since the adoption of the programme, experts from 31 European countries, international organisations and EU institutions have been working together to support the implementation of the objectives for education and vocational training at national level through exchange of good practice, study visits, peer reviews, etc. With the support of the Standing Group on Indicators and Benchmarks set up by the Commission in 2002, indicators and benchmarks are being developed to monitor progress in achieving objectives.

Achievements

A. Action programmes

Since the start of European cooperation in the field of education, more than 30 years ago, the main priorities have been to promote cross-border mobility of learners and teachers, to promote European cooperation between educational establishments and to improve the quality of education and vocational training.

With the help of action programmes and other initiatives a great deal has already been achieved in this field. The following programmes and initiatives have been adopted.

1. Socrates

This programme was launched in 1995, and was such a success that a second phase was adopted in January 2000 to run from January 2000 to December 2006 with a total budget of EUR 1 850 million. The programme consists of eight actions.

- Action 1, Comenius (from pre-school to secondary education), seeks to enhance the quality and reinforce the European dimension of school education, in particular by encouraging transnational cooperation between schools.
- Action 2, Erasmus (higher education), encourages transnational cooperation between universities and mobility of university students and teachers. To date more than 1.2 million students have taken part in exchanges with foreign universities. In the year 2003/2004 more than 135 000 students participated in exchanges at 2 199 universities in 31 countries.
- Action 3, Grundtvig (adult education and other educational pathways), seeks to encourage the European dimension of lifelong learning.
- Action 4, Lingua (language teaching and learning), promotes cooperation in developing innovative materials for use in language teaching and supports projects which encourage language learning.
- Action 5, Minerva (open and distance learning, information and communication technologies in education), supports transversal measures relating to open and distance learning.
- Actions 6, 7 and 8 are innovations and experimental programmes entitled 'Observation and innovation', 'Joint actions with other EU programmes' and 'Accompanying measures'.

2. Leonardo Da Vinci

The European dimension of vocational training is promoted by the Leonardo da Vinci programme, which was already established in 1994 and which is intended to support and supplement action by the Member States. The programme promotes transnational mobility, placement and exchange projects, study visits, pilot projects, transnational networks, language skills and cultural awareness and the dissemination of recommended methods and collation of comparative data. The programme is in Phase II, which runs from 1 January 2000 to 31 December 2006 and has a budget of EUR 1 150 million.

3. Tempus

The first Tempus programme was adopted by the Council in May 1990. Tempus is a trans-European cooperation scheme for higher education for the countries of Central and Eastern Europe (Tempus PHARE) and the republics of the former Soviet Union (Tempus TACIS). It both encourages joint European projects and provides mobility grants for individuals working in higher educational institutions. A second phase was adopted in 1993. A third phase runs from July 2000 to 2006.

4. Erasmus Mundus

This is a global programme established in July 2002, at the proposal of the European Commission, to promote intercultural understanding through cooperation with third countries in higher education. The scheme provides financial assistance for the creation of EU masters courses involving at least three higher education institutions from three different Member States, and leading to the awarding of recognised double, multiple or joint degrees, offers scholarships for students and scholars from third countries and supports partnerships between EU and third-country higher education institutions. The European Parliament (EP/Parliament) increased the budget from EUR 200 million to EUR 230 million. The programme runs from 2004 to 2008.

5. A new generation of programmes — lifelong learning

Decision 2493/95/EC established 1996 as the European Year of Lifelong Learning.

Following the success of this initiative, in June 2002 the Council adopted a resolution on lifelong learning with a view to enabling people to meet the challenges of the knowledge-based society by promoting the development of their knowledge and skills at all stages of their lives. Since that time, lifelong learning has become the guiding principle for the development of education and training policy. The goal is to provide people of all ages with equal and unhindered access to high-quality learning opportunities and to break down barriers between different forms of learning. In order to facilitate the transition to a knowledge-based society, the EU is supporting the introduction of strategies and specific action for lifelong learning, with the aim of creating a European area of lifelong learning.

An important step towards achieving this aim is the forthcoming introduction of the 'integrated action programme in the field of lifelong learning' under which financial support for the European education and training sector will be provided for the period 2007–13 (COM(2004) 474). The new integrated programme will comprise four programmes which form part of the current Socrates programme: Comenius (school education); Erasmus (higher education and training); Leonardo da Vinci (vocational education and training); and Grundtvig (adult education). It also incorporates a 'transversal' programme covering four key activities (policy cooperation, language learning, innovative approaches and dissemination of project results) as well as a Jean Monnet programme, which will support activities in the field of European integration and institutions and associations carrying out such work. According to the Commission proposal, the programme will have a budget

of EUR 13.62 billion. The proposal is currently being considered by Parliament and the Council.

Another major challenge which is currently on the agenda is to define the basic skills to be provided through lifelong learning in order to meet the demands of the labour market for a highly skilled workforce. In its proposal for a recommendation on key competences for lifelong learning (COM(2005) 548) the Commission sets out eight key competences, including communication in a person's mother tongue, communication in foreign languages, IT skills and learning skills.

6. Other programmes in the education field

(a) Cooperation with third countries

Pursuant to Articles 149 and 150 of the EC Treaty, the EU is to foster cooperation with third countries in the fields of education and vocational training. EU activities in these fields have been steadily increasing and, in addition to abovementioned programmes, include programmes such as USA–EU, Canada–EU, ALFA and ALBAN (for Latin American countries), ASIA Link (for several countries in Asia), and pilot programmes with Australia and Japan.

(b) Support for bodies that are active at European level, action programme 2004–06

Decision 791/2004/EC of the European Parliament and of the Council established a Community action programme that is designed to promote bodies active at European level and to support specific activities in the field of education and training. EUR 77 million was allocated for the period 2004–06. The overall aim of the programme is to support bodies and their activities which seek to extend and deepen knowledge of the building of Europe, or to contribute to the achievement of the common policy objectives in the field of education and training, both inside and outside the European Union.

B. Other EU initiatives

1. Quality education

Quality education at all levels is a priority for all EU Member States and essential if the Lisbon objectives of 2000 are to be achieved by 2010. However, according to the Commission communication on 'Education and Training 2010', the success of the Lisbon strategy hinges on urgent reforms and there is a shortfall of investment in human resources in the Member States compared with the US and Japan. The Commission suggested simultaneous actions in the Member States (COM(2003) 685). The Bologna Declaration on the European dimension in higher education of 19 June 1999, signed by 29 countries, marks a turning-point in the development of European higher education. The so-called 'Bologna process' in which 45 countries are now taking part, is aimed at establishing a system of readily

comprehensible and comparable degrees, establishing throughout Europe a three-stage system of degree level studies (bachelor, masters and doctorate), introducing a system of credits, encouraging mobility and promoting European cooperation in the area of quality assurance.

In 2002 the Education Ministers of 31 European countries signed the Copenhagen Declaration on enhanced European cooperation in vocational education and training. The declaration calls for concrete action to achieve greater transparency and mutual recognition and improve quality in this field. The so-called Copenhagen process has been introduced in order to implement enhanced European cooperation in vocational education and training, with a view to fulfilling the Lisbon objectives.

2. Recognition of qualifications

To promote mobility within the EU, several directives have been adopted guaranteeing mutual recognition of professional qualifications between Member States. As regards the recognition of periods of study undertaken abroad university students currently benefit from the European Credit Transfer System (ECTS), which was introduced by the Commission more than 10 years ago and which is constantly being expanded. The networks NARIC (National Academic Recognition Information Centres) and ENIC (set up by the Council of Europe and UNESCO) provide advice and information on the academic recognition of diplomas and periods of study undertaken abroad. The ENQA (European Association for Quality Assurance in Higher Education), which was set up in 2000, disseminates information, experience and good practice to quality assurance agencies, public authorities and higher education institutions. Europass was set up by Decision 2241/2004/EC with the aim of improving transparency of qualifications and skills. It offers Europe's citizens the opportunity to present their skills using harmonised documents.

3. eLearning

Despite a high level of education, the EU remains behind the US and Japan as regards new information and communication technologies. The Commission has therefore adopted the 'eLearning' initiative to adapt the Member States' education and training systems to the latest developments in this field. The initiative has four components: equipping schools with multimedia computers, training European teachers in digital technologies, developing European educational services and software and speeding up the networking of schools and teachers. In Seville in June 2002, the European Council launched the eEurope 2005 action plan with the aim of developing modern public services and a dynamic environment for e-business. In 2003 an eLearning Programme was introduced with the aim of effectively integrating information and communication technologies

into education and training systems in Europe. The four areas of action of the programme are: promoting digital literacy, European virtual campuses, e-twinning of schools in Europe and transversal actions for the promotion of e-learning in Europe. The i2010 initiative (A European information society for growth and employment) (COM(2005) 229) aims to promote a single European information space by integrating regulation, research and development.

4. Community centres, institutes and networks

Cedefop, the European Centre for the Development of Vocational Training (set up in 1975), assists the Commission in implementing the Community vocational training policy. The European University Institute in Florence (set up in 1976) contributes to the development of the cultural and scientific heritage of Europe. Eurydice, the European Information Network in the European Community (set up in 1981), collects and disseminates information on education systems in the Member States. The European Training Foundation (set up in 1990) contributes to the development of the vocational training systems of the countries of central and eastern Europe, the Independent States of the former Soviet Union, and Mongolia.

Role of the European Parliament

The EP has always supported close cooperation between the Member States in the fields of education and training

and increasing the European dimension in the Member States' education policies. It has therefore been an advocate for the establishment of a solid legal basis for education and training. Following the adoption of the Maastricht and Amsterdam Treaties which introduced two new articles in these fields, the EP gained considerable influence over the policies carried out, since all decisions are taken under the co-decision procedure and with qualified majority voting in Council. Therefore Parliament has been able to increase the budget for several Community programmes such as Socrates II and Erasmus Mundus.

In the process of adopting the 'Lifelong Learning' programme, Parliament is also calling for a clear increase in the budget allocated and for easier access to these actions. Parliament regards education as the best way of ensuring the EU's competitiveness. With a view to achieving the Lisbon objectives, Parliament recently called on the Member States to increase investment in education, frame more consistent national education policies, promote scientific and technical studies and develop an integrated strategy for lifelong learning which will support social inclusion (T6-0384/2005).

→ Constanze ITZEL
06/2006

4.16.2. Youth policy

Legal basis

Articles 149 and 150 of the EC Treaty

Although young people have benefited from the Community's activities since its creation, for example through the European Social Fund, it was with the entry into force of the Maastricht Treaty that a solid legal basis was first established for developing new programmes for the benefit of young people. Action to promote vocational training under Article 150 also expressly includes young people. Action falling within the scope of Articles 149 and 150 is subject to the co-decision procedure.

In the field of youth policy there is no provision for harmonising Member States' legislation. Rather, the Council mostly — except in relation to youth programmes and youth organisations — adopts recommendations.

Objectives

Community action is aimed at encouraging the development of youth exchanges and exchanges of youth workers.

Achievements

A. Action programmes

1. YOUTH

In 1988 the Community already established the 'Youth for Europe' programme in order to promote youth exchanges. In 1996 the Commission proposed a Community action programme for a European Voluntary Service for young people. On 13 April 2000 the Community action programme for youth was established for a seven-year period from 2000–06 with a total budget of EUR 520 million, merging the two former programmes 'Youth for

Europe' and 'European Voluntary Service' into a single programme. The programme was supplemented by other actions such as 'Initiatives for Youth', which aims to support innovative and creative projects designed to promote the social integration of young people, 'Joint Actions' with the Socrates and Leonard Da Vinci programmes and 'Accompanying Measures'. The YOUTH programme also supports cooperation activities with third countries through the Euro-Med Youth Programme I (1999–2001), which is aimed at young people in 31 participating countries — the 25 current Member States plus Iceland, Liechtenstein, Norway, Bulgaria, Romania and Turkey. The YOUTH programme also supports cooperation in south-east Europe (SEE), the Commonwealth of Independent States (CIS) and Latin America (LA).

2. Action programme to promote bodies active at European level in the field of youth

Decision 790/2004/EC of 21 April 2004 also established a Community action programme to promote bodies active at European level in the field of youth, to run from 2004 to 2006, with a budget of EUR 13 million. The programme supports the activities of organisations which contribute to strengthening Community action and increasing its effectiveness, including through: youth exchanges, educational and vocational training measures, debates on youth policy, dissemination of information on Community policy and measures to promote involvement and initiative on the part of young people.

3. Future programme: Youth in Action

As a follow-up programme, in July 2004 the Commission proposed the introduction of the 'Youth in Action' programme (2007–13) (COM(2004) 471), which aims to promote young people's active citizenship, develop solidarity among young people and promote European cooperation in youth policies. The Commission proposes to retain 'Youth for Europe' and the European Voluntary Service, and to add other actions such as 'Youth of the World', 'Youth workers and support systems' and 'Support for policy cooperation'.

B. Other EU initiatives

1. White Paper on youth

On 21 November 2001 the Commission adopted a White Paper on 'A new impetus for European youth'. The White Paper proposes a framework for cooperation in the youth field, with four priorities: to promote participation, information, voluntary activities on the part of young people and greater knowledge of youth. The EP, in its opinion of 14 May 2002, supported the Commission's proposals.

The Council, in its conclusions of 14 February 2002, recognised that the White Paper provided a basis for

establishing a framework for European cooperation in the youth field, on the one hand by applying the open method of coordination and, on the other, by taking the youth dimension into account to a greater extent in other policies. A key priority is greater participation by young people. To this end, the Commission has launched pilot projects to encourage participation by young people in the YOUTH programme.

2. European youth pact

At its spring summit in March 2005 the European Council adopted a European Pact for Youth as part of its revised Lisbon strategy refocusing on growth and employment. The Commission subsequently adopted a communication (COM(2005) 206) setting out how the pact could be implemented. The Commission believes that measures and actions implemented under the pact should be based on European employment and social inclusion strategies and on the Education and Training 2010 work programme. The main objective is to improve school education and vocational training, mobility, integration of young people into the workplace and social inclusion. At the same time, the aim is to enable work and personal life to be better reconciled. The Commission also calls for initiatives in the various areas to be organised in a coherent way and for young people to be involved in formulating these initiatives and monitoring their implementation.

Role of the European Parliament

The EP has always supported close cooperation between the Member States in the youth field. Parliament led the way in the setting up of the European Voluntary Service. It has also been an advocate for the establishment of a solid legal basis for youth policy. Following the adoption of the Maastricht and Amsterdam Treaties, the EP gained considerable influence over the policies carried out in this field, since all decisions are taken under the co-decision procedure and with qualified majority voting in Council.

In the process of adopting the 'Youth in Action' programme, Parliament is calling for a clear increase in the budget allocated and for easier access to these actions. Parliament is also stressing that young persons with disabilities must be included on an equal footing, in order to prevent discrimination. In the light of the success of European Youth Week, which took place for the second time in December 2005, Parliament is calling for the event to become a permanent feature of European youth policy (T6-0396/2005).

→ Constanze ITZEL
06/2006

4.16.3. Language policy

Legal basis

Articles 3 and 149 of the EC Treaty;

Articles 21 and 22 of the Charter of Fundamental Rights of the European Union

The Charter of Fundamental Rights adopted in 2000 places an obligation on the Union to respect linguistic diversity (Article 22) and prohibits discrimination on the grounds of language (Article 21). Respect for linguistic diversity is a fundamental value of the European Union, in the same way as respect for the person, openness towards other cultures, tolerance and acceptance of other people.

In the field of education and vocational training, the EC Treaty gives the EU the task of supporting and supplementing action by the Member States aimed at developing the European dimension in education, particularly through the teaching and dissemination of EU languages (Article 149(2)).

Objectives

The aim of European Union language policy is to promote the teaching and learning of foreign languages in the EU and thereby create a language-friendly environment for all Member State languages. Foreign language competence is regarded as one of the basic skills which every EU citizen needs to acquire in order to improve his/her educational and employment opportunities within the European learning society, in particular by making use of the right to freedom of movement of persons. Foreign language competence is also seen as very important in supporting cultural exchange and personal development (2002/C 50/01).

Within the framework of education and vocational training policy, the European Union's objective is therefore for every EU citizen to master two other languages in addition to his/her mother tongue. In order to achieve this objective, children are to be taught two foreign languages in school from an early age (SN 100/1/02 REV 1).

In the context of the Lisbon strategy adopted by the European Council in March 2000, the importance of foreign language learning in raising the competitiveness of the European economy is being emphasised. In connection with the reforms of national education and vocational training systems needed in order to achieve the Lisbon objectives, EU education ministers have set themselves the objective of improving foreign language teaching and thereby making a significant contribution to

releasing the EU's economic, social and cultural potential (5680/01 EDUC 18).

For the 2004–09 legislative term, a Commissioner whose responsibilities expressly include multilingualism — Jan Figel from Slovakia — was appointed for the first time. In November 2005 the Commission presented its New Framework Strategy for Multilingualism (COM(2005) 596), which has three main aims: to encourage language learning and promote linguistic diversity in society, to promote a multilingual economy, and to give citizens easier access to information on the EU in their own languages. The Member States are also being called upon to support the achievement of the first two of these aims by taking additional measures.

Achievements

A. Support programmes

1. Action plan

In response to a EP resolution (T5-0718/2001) and a Council resolution (2002/C 50/01), in July 2003 the Commission adopted an action plan 2004–06 on 'Promoting Language Learning and Linguistic Diversity' (COM(2003) 449), setting out three areas in which it would be providing funding for short-term action to support measures taken by Member States under existing Community programmes: lifelong language learning, improving the teaching of foreign languages, and creating a language-friendly environment.

2. Education and vocational training

The main financial support for foreign language learning is provided under the Socrates and Leonardo da Vinci educational and vocational training programmes.

(a) *Socrates: action programme in the field of education*

(i) *Lingua: promoting language teaching and language learning*

Lingua is the only programme which is wholly aimed at promoting foreign language learning. It is divided into two parts.

- Lingua 1 supports projects which raise citizens' awareness of the Union's linguistic diversity, encourage people to learn languages throughout their lifetime, and improve access to foreign language learning resources across Europe. It also supports the development and dissemination of innovative techniques and good practice in language teaching.
- Lingua 2 is aimed at improving language teaching by ensuring that sufficient high-quality language learning

tools and tools for assessing linguistic skills are made available.

(ii) Comenius: European cooperation on school education

Both parts of Comenius include measures to promote language learning. Comenius 1 supports various types of school partnerships with the aim of encouraging language learning. Under Comenius 2 individual training grants are available to teachers. Those eligible to apply are student teachers, language assistants, language teachers and teacher training establishments.

(iii) Erasmus: Community action programme in the field of higher education

Under the EU's mobility programme for students, support is provided for intensive language courses, which give students the opportunity to study the language of the host country over three to eight weeks in the host country. Support is targeted especially at courses in less widely used and taught EU languages as well as languages spoken in third countries participating in the Erasmus programme.

(iv) Grundtvig: adult education and other educational pathways

Encouraging foreign language learning is one of the main aims of the European action programme for developing adult education. The EU therefore supports the design and production of teaching materials aimed at improving knowledge of Member States' languages and culture.

(b) Leonardo da Vinci: action programme in the field of vocational training

The Leonardo programme supports projects aimed at enhancing employees' skills in the area of multilingual and multicultural communication through vocational training. In contrast to the support programmes under the Socrates programme, these projects have to be specifically targeted at a target group in the area of vocational training. They are intended to raise awareness among companies of the importance of foreign language skills and support companies in developing foreign language training opportunities.

In addition, support is provided for transnational exchange projects between businesses, on the one hand, and vocational training establishments, on the other, which are designed to contribute to developing and improving methods used in vocational training in the area of language and intercultural skills.

3. Support under other EU programmes

In addition to educational and training programmes, financial assistance for language projects is available under other EU programmes. For example, support has been provided for the translation of books and manuscripts

under the EU's cultural programme Culture 2000. The EU's action programme in the field of audiovisual media, Media, makes available funding for dubbing and subtitling of European cinema and TV films.

Funding to support regional and minority languages is available to relevant organisations under various EU programmes: agriculture, the audiovisual sector, education and training, the information society, regional policy, research and innovation, and youth. It is to the initiative of the EP — which has repeatedly drawn attention in resolutions to the situation and the need to support regional and minority languages (P5-B(2001)0815; P5-TA(2003)0372) — that these support measures are owed.

4. Future action to promote languages

From 2007 language learning will be promoted within the framework of the new integrated action programme in the field of lifelong learning, which will bring together the EU's current education and training programmes. The promotion of language learning and linguistic diversity is one of the specific objectives of the integrated programme, as set out in the Commission proposal (COM(2004) 474). According to the Commission proposal, the programme is to have a budget of EUR 13.62 billion. This proposal is currently being considered by Parliament and the Council.

B. Other EU initiatives

1. Raising awareness of the importance of foreign languages

In order to highlight the importance of linguistic diversity and foreign language learning in Europe, 2001 was declared the European Year of Languages by the EU and the Council of Europe. A total of 45 countries took part, with the aim of encouraging language learning throughout Europe. During that year language projects took place throughout Europe, and included exhibitions, open days and mini-language courses. The Commission bore a considerable proportion (EUR 6 million) of the costs of projects. Hundreds of thousands of people took part in the different projects, in which over 60 languages were represented.

Encouraged by the huge success of the European Year of Languages, the EU and the Council of Europe decided to celebrate the so-called European Day of Languages every year on 26 September, with all sorts of events promoting language learning. Like the earlier European Year of Languages, this action is aimed at raising awareness among citizens of all the languages spoken in Europe and at strengthening lifelong learning.

2. Comparability of data on language competence

As called for by the European Council, in August 2005 the Commission proposed to the Council and the EP the

introduction of a European Indicator of Language Competence (COM(2005) 356 final). This indicator is intended to make a substantial contribution to achieving the objective of 'mother tongue + two' by enabling foreign language competence to be measured in a comparable way in all Member States.

In its resolution of March 2006 (A6-0074/2006) the EP welcomed the Commission proposal and called on both the Commission and the Council to propose further measures to strengthen multilingualism in the EU.

Role of the European Parliament

A. Own initiatives

From the outset of the process of integration, the EP has been an advocate for recognising the importance of, and promoting, linguistic diversity in the European Union.

During the current legislative term, Parliament has already taken the initiative on a number of occasions in order to give fresh impetus to the development of language policy in Europe. In particular, the Committee on Culture and Education has produced own-initiative reports identifying the need for action in certain areas and calling on the Commission to draw up measures aimed at recognising the importance of, and promoting, linguistic diversity in the EU. For example, with regard to school education, the importance of a language-friendly environment in helping children from immigrant communities to integrate has been highlighted (A6-0243/2005).

B. Principle of multilingualism applying to Parliament's work

EU institutions work in 20 official languages. With the adoption of Irish as an official language of the EU and the accession of Bulgaria and Romania, the number will increase to 23 by 2008. The EU's commitment to multilingualism in law-making and administration is unique throughout the world. The EU believes that using the different languages spoken by its citizens is a factor in ensuring greater transparency, legitimacy and effectiveness. Legislation adopted by the EU must be available to all EU citizens in their respective mother tongue. In addition, every EU citizen has the right to present requests or petitions in his/her mother tongue to the EP, other EU institutions and advisory bodies and the European Ombudsman, and to receive a reply in his/her mother tongue.

As regards interpreting, the EP differs from the other EU institutions in so far as the principle of 'controlled full multilingualism' is observed in its day-to-day work. That means that interpretation is provided out of, and into, all EU official languages. With the exception of smaller meetings, interpretation is provided for part-sessions and meetings of parliamentary bodies, committees and groups on the basis of this principle, in so far as the capacity of the interpreting service allows. The right of every MEP to interpretation of debates into his/her own mother tongue and interpretation of his/her own speeches is enshrined in Parliament's Rules of Procedure. In its efforts to safeguard the use of all official languages in practice in parliamentary proceedings, the EP is the very embodiment of linguistic diversity in the EU.

→ Lisa **MUTKE**
06/2006

4.16.4. Cultural policy

Legal basis

Articles 3, 30, 87(3)(d) and 151 EC Treaty

The Treaty of Rome did not contain a specific paragraph on cultural policy. Cultural policy received its own legal basis only with the adoption of the Maastricht Treaty. Article 151 of the Nice Treaty provides a basis for action aimed at encouraging, supporting and if necessary supplementing the activities of the Member States, while respecting national and regional diversity and at the same time

bringing the common cultural heritage to the fore. EU intervention in the field of culture is governed by the principles of subsidiarity and complementarity. Any act of harmonisation of Member States' legal and regulatory provisions is excluded from the scope of Article 151. Measures are taken by the European Parliament and Council under the co-decision procedure; unanimity is required in the Council.

Article 151 makes it possible to support and supplement Member States' action in the following areas: improving

knowledge and disseminating the culture and history of the European peoples, conserving and safeguarding cultural heritage of European significance, non-commercial cultural exchanges, and artistic and literary creation, including in the audiovisual sector. The article also provides that the Community shall take cultural aspects into account in its action under other provisions of the Treaty. And cooperation with third countries and international organisations in the sphere of culture, in particular the Council of Europe, is to be fostered.

Article 13 of the Charter of Fundamental Rights stipulates that 'The arts and scientific research shall be free of constraint'. Article 22 stipulates that 'the [...] EU shall respect cultural, religious and linguistic diversity'.

The Treaty establishing a Constitution for Europe, Article III-180 of which is devoted to culture, recommends the application of qualified majority voting.

Objectives

The Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and shall bring the common cultural heritage to the fore.

Achievements

A. Action programmes

Prior to the Maastricht Treaty coming into force, the Community provided small amounts of funding for cultural activities via the European Social Fund and the European Regional Development Fund and through ad hoc initiatives. Its activity focused on measures in the areas of protection of cultural heritage, grants for artists, assistance for literary translation and support for cultural events.

1. First generation of cultural programmes

With the introduction of a legal basis for culture in the Maastricht Treaty, the EU's cultural activities were organised more systematically through three cultural programmes:

- The Kaleidoscope programme was set up in 1996 and aimed to encourage artistic creation and to promote awareness and dissemination of the culture of the peoples of Europe;
- The Ariane programme was adopted in 1997 in order to increase cooperation between Member States in the fields of books and reading, and through translation to promote a wider knowledge of literary works and the history of the European peoples. Vocational training measures in these fields were also among the range of measures funded;

- The Raphael Programme was adopted in 1997 with the aim of encouraging cooperation between the Member States in the area of cultural heritage with a European dimension.

2. Culture 2000

Kaleidoscope, Ariane and Raphael helped to reinforce and extend transnational partnerships. They improved access to culture and promoted cultural activities with a European dimension. On the basis of the experiences of this first phase of programmes, in May 1998 the Commission proposed the establishment of a First EU framework programme in support of culture (2000–04) with a total budget of EUR 167 million for a five-year period. Its purpose was to simplify action by using a single instrument for financing and programming cultural cooperation. The programme aimed to: promote cultural dialogue and mutual knowledge of the culture and history of European peoples, promote cultural activity and transnational dissemination of culture and exchanges of artists and those working creatively and in other ways in the field of culture and their works, promote cultural diversity and the development of new forms of cultural expression, promote exchanges of experience on conserving Europe's cultural heritage and foster the intercultural dialogue between European and non-European cultures. In 2003 the programme was extended unchanged for the years 2005 and 2006.

3. Culture 2007

Since Culture 2000 was very successful, in 2004 the Commission submitted a proposal to establish the Culture 2007 programme for the period 2007–13 (COM (2004)469). Based on comprehensive evaluations and consultations, the programme seeks to enhance the cultural actions referred to above. After long negotiations about the financial perspective, during which the European Parliament (EP/Parliament) called for a substantial increase in the funding provision, the budget was set at EUR 400 million (Decision 1855/2006/EC). The programme aims to promote the transnational mobility of people working in the cultural sector, encourage the transnational circulation of artistic and cultural works and products and encourage intercultural dialogue.

With a view to the wider significance of culture for the process of European integration, the Commission is preparing a comprehensive communication for 2007. It will analyse the role of culture in the process of European integration and identify new key areas for cultural cooperation with regard to both content and method.

4. Support for European bodies

European Parliament and Council Decision 792/2004/EC established an action programme to promote bodies active

at European level in the field of culture for the period 2004–06, with a reference amount of EUR 19 million. The general objective is to support the activities of bodies whose work programme or actions pursue an aim of general European interest. From 2007, support for these bodies will come under the Culture 2007 programme.

B. Other activities

1. European Capital of Culture

The European Capital of Culture was launched in Athens in 1985 and was a genuine success. In 1999, Decision 1419/1999/EC changed the selection procedure for European Capitals of Culture from 2005. These are designated by the Council, acting on a recommendation from the Commission, which takes the opinion of a selection panel into consideration. Annex I of the decision comprises a list of Member States that may present an application from one or more of their cities between 2005 and 2009. When Decision 649/2005/EC came into force, the new Member States were also able to propose candidate cities. This means that from 2009 two capitals will be designated each year: one in one of the old Member States, and the other in one of the new Member States. To further improve the selection process, on 24 October 2006 a new decision was adopted (1622/2006/EC). This decision stresses the European dimension, encourages competition between candidate cities in the Member States, and provides more support to the selected cities in their preparation phase. The new procedure will come into force in 2013.

2. Rights of the artist and artistic work

The EU has approximately 7 million people professionally active in the cultural sector. The EU supports the activities of artists through programmes such as Culture 2000, Culture 2007 and Media, and the Treaty guarantees freedom of movement for all, including professional artists. However, as Parliament has pointed out in several resolutions, this right, and therefore artists' mobility, is often hampered by national administrative barriers, which still need to be removed.

The EU has also established rights for the protection of the work of artists through its copyright and intellectual property directives and legislation concerning resale rights, and rental and lending rights (→3.4.4). Cultural goods and services are subject to VAT (minimum standard rate: 15 %, reduced rate: 5 %).

As a way of supporting artistic and intellectual creativity, the EU allows Member States to apply reduced rates of VAT to certain goods and services such as the supply of books and periodicals, access to cultural events and reception of radio and TV broadcasts.

3. Cultural goods

According to Article 30 of the Treaty, prohibitions or restrictions on the import, export or transit of national treasures possessing artistic, historic or archaeological value are permissible so long as they do not constitute a means of discrimination or restriction on trade between Member States. In view of the implications of the abolition of frontier controls in connection with the consolidation of the internal market, rules were needed for the protection of cultural goods. Therefore the EU adopted a Regulation (EEC) No 3911/92 according to which the export of cultural goods is subject to the presentation of an EU export licence, which is valid throughout the Community and is checked at the external borders. Council Directive 93/7/EEC was adopted in 1993 to secure the return of national treasures of artistic, historic or archaeological value that have been unlawfully removed from a Member State's territory.

4. Cultural industries

The cultural industries, cinema, audiovisual media, publishing, craft industry and music, make a large contribution to job creation and economic welfare, as recently confirmed by a study carried out for the Commission in autumn 2006. In view of the tensions between culture and the economy, and to protect cultural diversity, in some cases the cultural industries need different rules from those that apply to other sectors of industry. Because of the special nature of the cultural industries, in the WTO trade negotiations the EU has always taken the position that certain cultural and audiovisual sub-sectors should not be liberalised (the so-called cultural exception). Similarly in the common market, culture is to a certain extent exempt from the prohibition on state aid (Article 87.3(d)), and many audiovisual services are exempt from the field of application of the Services Directive (2006/123/EC) adopted in December 2006; the text also clearly allows measures to protect or promote cultural or linguistic diversity or media pluralism.

For the protection of cultural diversity the UNESCO general conference in October 2005 adopted the 'Convention on the Protection and Promotion of the Diversity of Cultural Expressions'. The convention contains a number of rights and obligations concerning the promotion and protection of cultural diversity. Decision 2006/515/EC concerns the European Community's agreement to the Unesco convention and its accession to it.

Several times the EP has considered the specific nature of cultural industries. In its resolution of 4 September 2003 it supported unanimity in Council in the field of trade regarding cultural and audiovisual services, which is also

recommended by the Constitutional Treaty. Parliament intends to discuss this topic again in 2007.

5. Town twinning and European citizenship

The idea of town twinning was born after World War II. It now brings together towns and localities from the whole of Europe and promotes close links between their citizens. On the initiative of Parliament, in 1989 the EU established a support scheme for twinning events. Since 2004 town twinning has been part of the Community action plan to promote active European citizenship (2004–06). In 2005 EUR 10 million was made available for town twinning. Every year the Commission awards 'gold stars' for town twinning to 10 outstanding projects which have made a successful contribution to European integration. From 2007 town twinning will also receive support from the new Europe for citizens programme (2007–13). (See 4.16.7) This programme will inter alia increase exchanges and mobility of citizens and promote civil society institutions working on European topics.

6. Intercultural dialogue

In view of the increasing multiculturalism of European societies, the Commission aims to intensify and give a better structure to the longstanding intercultural dialogue which has been fostered by Community measures. To this end, intercultural dialogue will become a horizontal priority in all Community programmes in this area. The Commission has also proposed to make 2008 the European Year of Intercultural Dialogue. Through a number of diverse programmes in connection with this year, civil society and its various representatives will be encouraged to engage in dialogue at European, national and local level. The relevant decision was adopted in December 2006 (1983/2006/EC).

Role of the European Parliament

Parliament believes that European integration should be based on cultural values. To this end Parliament decided to establish a Committee responsible for cultural matters after its first direct elections in 1979. Parliament had for many years been of the opinion that the EC Treaty should include a legal basis for cultural policy. With the adoption of the Maastricht Treaty, it not only saw this wish fulfilled, but it also obtained co-decision competence with the Council.

In past years Parliament in its resolutions has called for the situation of those working in the field of culture to be improved and for Europe's cultural heritage to be more appreciated. With regard to artistic creation, Parliament is in favour of giving the Member States the option of applying reduced VAT rates to a wider range of services and goods such as recorded music and films, provided that this does not affect the functioning of the internal market. It called for the continuation of the lower VAT rate experiment for some sectors (Resolution of 4 December 2003). Parliament also adopted a resolution on new challenges for the circus (2004/2266(INI)), calling on the Commission to introduce mechanisms for Member States' cooperation to guarantee and promote an adequate education for children from travelling communities. Improving conditions for travelling artists is also a concern of the own-initiative report on the social security status of artists, which Parliament will be considering in 2007 (2006/2249(INI)).

In another resolution, Parliament advocates better protection of cultural heritage in rural and island communities (2006/2050(INI)). In addition, in talks on the new Culture 2007 programme, Parliament called for greater attention to be paid to protection of the European cultural heritage. MEPs are also calling for an increase in the budget for culture.

→ Constanze **ITZEL**
01/2007

4.16.5. Media policy

Legal basis

In the EC Treaty:

- Articles 23, 25, 28–29 (free movement of goods),
- Articles 39–55 (free movement of people, services and capital),
- Articles 81–89 (competition policy),
- Article 95 (technical harmonisation, including advanced television services),
- Article 149 (education), 150 (professional training), 151 (culture), 157 (industry).

The Treaty of Rome did not provide any direct powers in the field of audiovisual and media policy. However, the powers to act in this sector grew implicitly over the years thanks to the provisions of free movements of persons and services and right of establishment. Competition rules and the common commercial policy also play an important part in the audiovisual field.

The Maastricht Treaty included a specific reference to the audiovisual sector in Article 151 on culture. The Amsterdam Treaty included a 'Protocol on the System of Public Broadcasting' in the Member States. The Nice Treaty altered Article 157 on industry, including the audiovisual industry, replacing unanimity voting in Council with qualified majority voting. The Charter of Fundamental Rights of the EU states in Article II-11 that 'the freedom and pluralism of the media shall be respected'.

Objectives

According to Article 151, the European Union encourages cooperation between Member States and, if necessary, supports and supplements their action in artistic and literary creation, including the audiovisual sector.

Achievements

A. First Steps

Until the 1980s EU activity in the audiovisual sector was nearly non-existent. The fact that the EU was perceived to be lagging behind the United States in this area forced it to take initiatives. The Commission's White Paper on the completion of the single market (1985) mentioned several initiatives intended to open up the audiovisual market to competition in the Member States and promote high-definition television. The European Year of Cinema and Television (1988) provided the ideal opportunity for a

debate with the national authorities and the audiovisual industry on possible measures in this sector.

B. Later developments

Important Community legislation was introduced in the late 1980s and 1990s:

- Council Decisions 89/337/EEC and 89/630/EEC concerning High Definition Television (HDTV);
- Council Directive 92/38/EEC on the adoption of standards for satellite broadcasting of television signals;
- Council Decision 93/424/EEC on an action plan for the introduction of advanced television services in Europe, aiming at promoting the widescreen 16:9 format;
- The European Parliament (EP/Parliament) and Council Directive 95/47/EC on the use of standards for transmission of television signals, providing the legislative framework for the introduction of digital television in Europe.

During this period, major European audiovisual group strategies focused on the need to achieve critical mass and the desire to diversify and secure access to larger international markets. A series of important mergers and acquisitions took place, though many limited to a national scale.

C. The 'Television without Frontiers' directive

1. The 1989 directive

The adoption in 1989 of the 'Television without Frontiers' (TWFF) directive (89/552/EEC) marked a new departure. This directive, revised in 1997, established the legal framework for the free movement of television broadcasting services in the EU. It provides rules concerning: (a) the circulation of audiovisual programmes; (b) advertising and sponsorship; (c) protection of minors; (d) availability to all of broadcasting of events of major importance to the public; (e) promotion of European works. Article 4 requires that broadcasters reserve a majority proportion of their transmission time to European works. Article 5 requires that 10 % of their transmission time or programming budget be dedicated to works by European independent producers.

2. The 'Audiovisual Media Services' directive

In December 2005, the Commission again proposed a revision of the directive (COM(2005) 646). This was necessary in order to account of developments in the sector, in particularly 'convergence' in services and technology. Convergence means that traditional distinctions between telecommunications and

broadcasting are increasingly blurred. A television channel, for example, can be viewed on a computer via the Internet. Another issue was the growth in 'non-linear' services, which allow consumers to select which programmes to watch at an hour of their convenience. A common regulatory environment is therefore required to cover all such services, now known as 'Audiovisual Media Services', irrespective of the technology used to carry them or how they are viewed. The Commission's proposal modernises and simplifies the rules for broadcasting or linear services and introduces minimum rules for non-linear services, for example on the protection of minors. The proposal has been comprehensively debated prior to first reading in Parliament (see below).

D. The MEDIA programmes

The European film landscape is characterised by strong American market dominance. In order to promote the competitiveness of the European film and audiovisual industry, the MEDIA I Programme was established for a period of five years (1990–95). MEDIA II (1996–2000) was allocated EUR 310 million and was followed by MEDIA Plus (2001–05), which had a total budget of EUR 400 million (EUR 50 million for training and EUR 350 million for development). In July 2004, the Commission presented a proposal to create a new programme, MEDIA 2007 (COM(2004) 470) under the co-decision procedure (see below), which is currently being discussed in Parliament.

However, EU aid to the audiovisual sector is still relatively modest, and should be seen as complementing rather than substituting the actions of Member States. According to figures from the European Audiovisual Observatory, subsidies paid by EU-25 to the cinema industry totalled EUR 1.3 billion in 2004 alone. This figure is considered an underestimate, as it does not include tax breaks.

Since January 2006, the Education, Audiovisual and Culture Executive Agency has taken over the operational management of the MEDIA-Plus and MEDIA-Training programmes.

E. Audiovisual initiative

The European Commission and the European Investment Bank decided in May 2001 to offer additional financial help to the audiovisual sector. They created the 'i2i Audiovisual Initiative', which provides medium to long-term financing. This 'i2i' initiative will form part of the new MEDIA 2007 programme.

F. Other initiatives

1. Film heritage

The EP has adopted several resolutions on the conservation of film heritage, for example the resolution on the deposit of cinematographic works in the EU in November 2003 (C5-

0078/2002). In November 2005 the EP and the Council adopted a recommendation on film heritage and the competitiveness of related industrial activities (2005/865/CE). They call on Member States to collect, catalogue, preserve and restore European film heritage, in order to ensure that it is passed down to future generations.

2. Europe Day at Cannes and Film Online

Since 1995 'Europe Day' at the Cannes Film Festival has focused on promoting European film production. A 'New talent in the European Union' award was introduced in 2004 in order to publicise young European authors who have followed MEDIA sponsored training.

In May 2006 EU audiovisual ministers endorsed the 'European Charter on Film Online' under the auspices of the European Commission. The charter seeks to identify a business model for online film services and enhance cooperation in the fight against online piracy.

3. Cultural diversity

The EU and its Member States have often emphasised the special nature of the audiovisual sector. The sector has an important political, social and cultural role and, despite its growing economic importance, cannot be viewed from a purely economic standpoint. Therefore the EU has always taken the position in World Trade Organisation (WTO) negotiations that certain cultural and audiovisual sub-sectors should not be liberalised (the so-called 'cultural exception'). The Commission has therefore supported the idea of developing a new international instrument on cultural diversity in the framework of the United Nations Educational, Scientific and Cultural Organisation (Unesco). In October 2005 such an instrument came into being, when Unesco approved the 'Convention on the Protection and Promotion of the Diversity of Cultural Expressions'. In May 2006, the Council adopted a decision authorising the Community to ratify the convention. The intention is that the Member States and the EC ratify it simultaneously.

4. Protection of minors and human dignity

The protection of minors is an important element of audiovisual policy, for which the TVWF directive contains specific provisions. In September 1998, the Council adopted a recommendation on the 'Protection of minors and human dignity in audiovisual and information services' (98/560/EC), which covers all electronic media. The recommendation offers guidelines for the development of national self-regulation regarding the protection of minors and human dignity. On the basis of a 2003 evaluation report the Commission decided to propose an update of the recommendation in April 2004 (COM(2004) 341). Parliament adopted its first reading report on this issue on 7 September 2005 (P6_TA(2005)0330). The rapporteur responsible is French MEP Marielle de Sarnez, whose

report is expected to be adopted in second reading in December 2006.

An additional measure in this area is the multiannual action plan to promote the safer use of the Internet by combating illegal and harmful content, which was established by a Parliament and Council Decision of 25 January 1999 (276/1999/EC).

G. The European Union's communication policy

There is a generally recognised deficit of knowledge and interest of citizens in EU policies. Following a request from Parliament and the European Council, the Commission assented to a new approach on information and communication in July 2002 (see COM(2002) 350), which outlined the importance of working more closely with the Council and the EP and in real partnership with the Member States, both at national and regional level, to better inform citizens about EU issues and to enable them to participate in EU debates. In July 2005, the Commission adopted an internal action plan aimed at modernising its communication methods. The plan is the first stage in an action programme aimed at enabling the Commission to 'renew dialogue with the citizens of the Union'. It consists of 50 measures to be implemented within Commission departments in order to improve communication of policies.

In October 2005, the Commission adopted the communication 'The Commission's contribution to the period of reflection and beyond: Plan-D for Democracy, Dialogue and Debate' (COM(2005) 494). Following the negative votes on the European Constitution in France and the Netherlands, Plan-D seeks to encourage a broad public debate and to create a new consensus on the future direction of the EU. With the aim of complementing the action plan and the Plan D, in February 2006 the Commission adopted a White Paper on a European communication policy. The paper launched a public consultation on five key areas: (a) defining common principles, (b) empowering citizens, (c) working with the media and new technologies, (d) understanding public opinion (e) and 'doing the job together'. At the end of this period, the Commission will propose plans of action for each working area.

Role of the European Parliament

The EP has emphasised that the EU should stimulate the growth and competitiveness of the audiovisual sector whilst at the same time recognising its wider significance in safeguarding cultural diversity. The EP's resolutions in the 1980s and early 1990s on television repeatedly called for common technical standards for direct broadcasting by satellite and advocated the Community's adoption of a common position on the question of HDTV standards. In its

amendments which were incorporated into Directive 95/47/EC Parliament had insisted that the consumer should not pay the price of technological progress.

A. Television Without Frontiers directive

The EP has strongly supported the Television Without Frontiers directive since 1989 and was even able to secure that Member States be allowed to decide that some major national and international events, such as the Olympic Games, have to be shown on 'free channels' when the directive was revised in 1997.

In a own-initiative report adopted in September 2005 (P6 TA(2005)0322) on the respect of Articles 4 and 5 of the TVWF directive, the EP noted that the quotas for European works and works of independent producers had 'broadly been met', although underlining that there are discrepancies between the Member States on implementing and interpreting these rules. Parliament also warned that the upcoming revision of TVWF should not 'call into question the fundamental principles of the directive'.

The EP held a public hearing on the 'Audiovisual Media Services directive' in June 2006. The major concerns raised on this occasion were, inter alia, the scope of the directive, the distinction between 'linear' and 'non-linear services' (given that the latter will not be obliged to respect quotas) and the impact of proposed rules on advertising and on so-called product placement. The EP will adopt its first-reading report, for which the rapporteur is German MEP Ruth Hieronymi, before the end of 2006.

B. MEDIA 2007 programme

The EP's amendments have been important in ensuring that the budget for the various MEDIA programmes was increased. The EP places particular emphasis on independent producers, cooperation schemes and support for digitalisation. Moreover, Parliament has urged the Commission to encourage the Member States to introduce tax incentives to attract investment in film.

The Commission initially proposed a budget of EUR 1 055 million for MEDIA 2007 for the seven period starting in January 2007 (the so-called 'Financial Perspective'). In its first reading in October 2005, the EP supported this figure. But EU leaders, at the Brussels European Council held two months later, decided to introduce funding cuts in the overall Financial Perspective, which signifies that the MEDIA 2007 budget will be lower than initially proposed by the Commission. Parliament will vote on the programme in October 2006 to allow it to enter into force on time (January 2007).

C. Media pluralism

The EP is worried about increasing media concentration and has called on the Commission and the Member States

to safeguard media pluralism. In a report adopted in 2003 (P5_TA(2004)0373) Parliament stressed that the EU should use its competences in specific areas (for example audiovisual policy, competition policy and citizens' rights) to 'specify the minimum conditions to be respected by the Member States to ensure an adequate level of pluralism'.

D. Film heritage

Parliament has encouraged the Member States to adopt a system of obligatory film deposit and to improve the restoration and conservation of cinematographic heritage,

while guaranteeing European citizens equal access to this shared heritage (see above).

E. Communication policy

In a report being drawn up by Spanish MEP Luis Herrero-Tejedor, Parliament will react to the Commission's White Paper on communication policy before the end of 2006.

→ Constanze **ITZEL**
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09/2006

4.16.6. Sport policy

Legal basis

In the EC Treaty:

- Articles 39–55 (free movement of people, services and capital);
- Articles 81–89 (competition policy);
- Articles 149 (education), 150 (professional training), 151 (culture), 152 (public health).

Although no article in the Treaties mentions sport explicitly, in practice many areas of EU competence have a direct impact on sport — notably on its economic aspects. These are governed, for example, by the articles on the freedom of movement of workers. However, EU leaders gave a political signal that they wished to recognise the wider role played by sport by including a declaration on sport in the 1997 Amsterdam Treaty. The Nice Treaty also included a declaration on the 'specific characteristics of sport', which recognised its important social, educational and cultural functions.

The Treaty establishing a Constitution for Europe goes even further in recognising sport as a strand of EU policy. Article I-17 includes sport among the areas in which the EU can take supporting, coordinating or complementary action. Article III-282 makes specific reference to the social and educational functions of sport and to the development of the European dimension in sport.

Due to the lack of a specific legal basis, European sports law has been shaped to a great extent by the case law of the European Court of Justice (ECJ). This situation has led to a high degree of legal uncertainty as it is not clear up to what point sporting organisations are competent to act autonomously as self regulators and where, on the other hand, the European regulator should intervene.

As a general rule, and based on the existing Treaty provisions supported by the case law of the ECJ and decisions of the European Commission, it can be stated that sport, whenever representing an economic activity, falls under the scope of EC rules. Sport in Europe, however, is characterised by a very close relationship between its professional and amateur branches. This structure, described as the European sports 'pyramid' model, is founded on local and amateur sport and ends in the highly professional leagues and respective federations. The different layers are linked by the fact that competitions are not closed (relegation is possible) and through certain redistributive measures which channel some of the profits from the top to the amateur level. Therefore, a clear separation between professional and amateur and between economic and non-economic sporting activities in practical terms would be impossible to achieve.

Objectives

In its action under the various Treaty provisions and declarations, the EU deals with the economic, social, educational and cultural aspects of sport.

Achievements

Many aspects of EU policies have an impact on the sporting world. In addition to those listed above, it is worth mentioning audiovisual policy and health policy.

A. Free movement of workers

As an economic activity under the terms of Article 2 of the EC Treaty, sport must comply with European law, in particular the provisions relating to the free movement of workers, as acknowledged by the Court of Justice ruling in

the Walrave case (1974). Since then, various cases (Dona, Deliège, Lethonen) have confirmed this approach. In December 1995 the Court, basing its reasoning on Article 48, ruled in the very important Bosman case (C-415/93) that transfer fees, directly affecting a footballer's access to the employment market in another EU country, were an obstacle to the free movement of workers and thus illegal under the Treaty. The court also ruled against any limit on the number of non-national EU players who could be fielded in a club team. In December 1998, following a number of complaints, the Commission expressed several reservations to the International Federation of Football Associations (FIFA), with regard to its transfer system and its compatibility with EU competition law and free movement of workers. After long discussions, the Commission, FIFA and UEFA (the Union of European Football Associations) and professional footballers' representatives (FIFPro) agreed in 2001 to bring the transfer system in line with EU law whilst taking account of the specific nature of football.

B. Competition policy

There are two strands to sport: on the one hand, the sporting activity itself which fulfils a social, integrating and cultural role to which the competition rules of the Treaty do not theoretically apply, and, on the other hand, a series of economic activities generated by sporting activities to which the competition rules of the Treaty do apply. The interdependence and in particular the overlap between these two strands makes the application of competition rules more complex.

Sporting federations are considered under EC law 'undertakings' and therefore fall under the scope of EC antitrust rules. Hence Articles 81 and 82 of the Treaty play an important role in the sports sector. The Commission has the task of ensuring that EU competition rules are respected. Many complaints brought before the Commission and court cases are based on the claim that a sports body has misused its power and breached antitrust rules (see for example the recent case Meca-Medina and Majcen v Commission, Case C-519/04 P).

Another competition aspect is state aid (Articles 87–89). Many sport clubs rely on subsidies granted by local community, regional or national authorities (in the form of tax breaks, preferential conditions for loans, etc), especially when it comes to financing sports infrastructure. This practice, depending on the specific circumstances, could be considered a breach of state aid rules.

C. Sports events and audiovisual policy

Television is the primary source of funding for professional sport in Europe. Some sports, such as football and Formula 1, achieve very high viewing figures, which explains the importance attached to these events by broadcasters.

Many broadcasters are willing to pay large amounts for the exclusive right to broadcast popular sports events. In this regard the 'Television without Frontiers' directive, currently being amended, is important since it sets out guarantees as regards the unencoded broadcasting of certain major sporting events. The directive allows national authorities to specify a limited number of events which must be available for broadcasting on 'free' channels.

D. Public health and the fight against drug-taking

EU Member States have national legislation to combat drug-taking in sport, but EU Sports ministers and the EU institutions have taken the view in several resolutions that the current situation can only be improved by increased cooperation at the EU and international levels. The World Anti-Doping Agency (WADA) was established on 10 November 1999 to promote and coordinate the fight against drug-taking in sport in all its forms at international level. The European Commission played an active part in setting up WADA. The conclusions of the informal meeting of EU Sports ministers on the fight against doping in February 2003 stated that the third draft of the WADA anti-doping code (which was approved during the WADA Copenhagen Conference in March 2003) should be fully binding on athletic bodies and organisations at all levels. The ministers also stressed that close cooperation between the EU, the Council of Europe and the United Nations Educational, Scientific and Cultural Organisation (Unesco) was needed in order to properly tackle the problem of doping and its international and cross-border nature.

E. Sport and education

On 6 February 2003, the European Year of Education through Sport (EYES) 2004 was established by Decision 291/2003 of the European Parliament (EP) and the Council. While this initiative had many aims, particular importance was attached to raising young people's awareness of the importance of sport in the development of personal and social skills and to encouraging the links between education and sport. EYES was very successful, making it possible to finance 161 projects (including 10 Community projects, i.e. projects that brought participants together from more than eight European countries). There was also an information campaign on the educational value of sport. This success led experts to recommend that European action in the field of education through sport should be continued.

Furthermore, sport is an important instrument to promote positive societal values such as the ideal of team spirit or fair competition. It is also a means of inclusion of socially disadvantaged people (for example immigrants) into society. An example is the Homeless World Cup, held in South Africa in September 2006.

The European Commission will address the societal role of sports in the EU in a White Paper which is due to be published in 2007.

Role of the European Parliament

The EP is very much of the view that there is a growing necessity for the EU to deal with sports matters while fully respecting the principle of subsidiarity, and is therefore in favour of including an explicit reference to sport in the Treaties. Within the EP, the development of a European sports policy falls under the competence of the Committee on Culture and Education.

A. Sport and education

As early as 1997 the EP asked the Commission to organise a European year of sport, which resulted in the establishment of EYES 2004. In the first half of 2007 the EP is expected to adopt an own-initiative report, drawn up by Hungarian MEP Pál Schmitt, on the follow-up to EYES, which will take stock of the current situation. The EP has also commissioned a study on the situation of physical education in the EU from academic experts. Their findings should be available in February 2007.

B. Drug-taking

The EP is very concerned by doping in both professional and amateur sport and strongly supports the Commission's plan to intensify cooperation to combat doping at international level. In November 2004 the Committee on Culture organised a public hearing designed to draw attention to the subject.

C. Women's sport

The EP has also called for greater recognition of the specifically female dimension of sport, in terms of both practice and access, and has called on the European Commission to support the promotion of women's sport.

D. Professional football

In May 2006 four EP committees organised a joint public hearing on 'Professional Football — Market or Society?' The hearing covered all aspects of professional football, ranging from its financial situation to its social role and was organised to contribute to an own-initiative report on the future of professional football in Europe, which the EP should adopt in early 2007. Belgian MEP Ivo Belet will draw up the report on behalf of the Committee on Culture. There is consensus that one main aspect should be how greater legal certainty for professional football can be achieved.

Another area of concern is financial transparency, linked to the question of ownership of clubs. The financial capacities of clubs are becoming increasingly unequal. This growing inequality is naturally leading to greater concentration of sporting success, meaning that the number of clubs which participate in and win European competitions is becoming smaller. A 'level playing field' for clubs is therefore needed.

The hearing underlined the fact that EU law, in the wake of the jurisprudence of the Bosman ruling, can be more in tune with the economic aspects of football than with its educational role. A well-known example lies in the fact that leagues are currently prevented from limiting the number of non-national EU players fielded by clubs, which undermines the links between clubs and local communities and their commitment to training young local players.

The EP has also been concerned by incidents of racism in professional football. In May 2006 it adopted a written declaration calling on UEFA to ensure that referees have the option, according to clear and strict guidelines, to stop or abandon matches in the event of serious racist abuse.

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4.17. Tax policy

4.17.1. General tax policy

Legal basis

Action in the general taxation field can be justified by the general aim of the EC Treaty, expressed in Article 3, of eliminating between Member States 'customs duties [...] and all other measures having equivalent effects'; and of 'ensuring that competition in the common market is not distorted'. Article 93 deals specifically with indirect taxation (VAT and excise duties). Measures in other tax fields are generally taken on the basis of Article 94 (completed by Articles 96 and 97) covering measures to prevent distortions of the market. Article 293 also recommends the conclusion of inter-State fiscal conventions in order to avoid double taxation.

Objectives

Both the creation of the single market and the completion of economic and monetary union have led to new Community initiatives in the field of general taxation. The Community is pursuing a number of objectives:

- a first, long-standing aim has been to prevent differences in indirect tax rates and systems from distorting competition within the single market. This has been the purpose of legislation under Article 93 on VAT and excise duties (→4.17.1., 4.17.2. and 4.17.3.);
- in the field of direct taxation, where the existing legal framework mostly takes the form of bilateral agreements between Member States, the primary objective of Community action has been to close the loopholes which permit tax evasion and to prevent double taxation (→4.17.5);
- the objective of more recent moves towards a general taxation policy has been to prevent the harmful effects of tax competition, notably the migration of national tax bases as firms move between Member States in search of the most favourable tax regime. Though such competition can have the beneficial effect of limiting governments' ability to 'tax and spend', it can also distort tax structures. It is argued that the proportion of total taxation accounted for by taxes on relatively mobile factors like capital (interest, dividends, corporate tax) has

fallen, while that on less mobile factors, notably labour — for example social charges — has risen. This, in turn, has raised unemployment;

- the Maastricht Treaty provisions on economic and monetary union introduced a new dimension to general taxation policy by severely limiting governments' ability to finance public expenditure by borrowing. Under the Stability and Growth Pact, Member States participating in the euro area must not at any time run budget deficits at a level above 3 % of GDP. The general aim of the pact is for Member States' budgets to be roughly in balance over the economic cycle. At any given level of GDP, higher public spending can therefore be financed only via higher tax receipts.

Despite broad acceptance of these objectives, however, national governments have been reluctant to see any major steps towards the harmonisation of taxation within the Community, or to end the Treaty provision that tax measures must be adopted by unanimity in the Council. As the Commission pointed out in a 1980 paper entitled 'The Scope for Convergence of Tax Systems in the Community' (COM(80) 139), not only is 'tax sovereignty [...] one of the fundamental components of national sovereignty', but tax systems differ widely as a result of differences in economic and social structures and 'different conceptions of the role of taxation in general or of one tax in particular'.

Average EU tax receipts rose from 34.4 % of GDP in 1970 to 40.7 % of GDP in 2004 (EU-25); but figures vary considerably between Member States. According to the latest available official data (Eurostat — 2004) overall taxation and social security contributions, for example, are just over 28 % in Latvia and Lithuania and 30 % in Ireland but nearly 51 % in Sweden. Taxes on production and imports (as % of GDP) ranged from 11.3 % in Lithuania to 17.7 % in Denmark (EU-25 arithmetic average 13.9 %). Taxes on income and wealth vary between 6.1 % in Slovakia and 30 % in Denmark (EU-15 average 12.5 %). Social security contributions vary from only 1.2 % in Denmark to just over 16 % in Germany and France (EU arithmetic average 13.1 %). The Danish figures demonstrate how the social security system can be almost entirely financed by taxes, as is the case in Denmark.

Achievements

A. General

In 1996 the Commission proposed a comprehensive review of taxation policy ('Taxation in the European Union' of 20 March (SEC(96) 487)). This highlighted the major challenges facing the Union: the need to create growth and employment, to stabilise fiscal systems, and to fully establish the single market. In June 1996 the Commission also proposed a European Confidence Pact for Employment, emphasising the need to reverse the tendency of tax systems hindering employment.

In April 1996 the Council of Finance Ministers (Ecofin) set up a High Level Group on taxation chaired by the then Tax Commissioner, Mario Monti. The Commission's initial conclusions following the meetings of this group (in which the European Parliament (EP/Parliament) was represented) appeared in October 1996: 'Taxation in the European Union: Report on the Development of Tax Systems' (COM(96) 546).

The new European fiscal strategy (the 'Monti package') was published by the Commission in October 1997 ('Towards Tax Coordination in the European Union: a package to tackle harmful tax competition', COM(97) 495). In addition to proposals on the taxation of interest and royalties, and on the taxation of savings, it outlined a Code of Conduct for Business Taxation, which was approved by Parliament and the Council, and is now in operation. Adherence to the code is monitored by a body appointed by the national finance ministers: the 'Primarolo Group' (→4.17.1.).

In May 2001 the Commission published a new communication entitled Tax policy in the European Union — Priorities for the years ahead (COM(2001) 260). This observed that 'a high degree of harmonisation is essential in the indirect tax field'. The current 'transitional' VAT system was 'complicated, susceptible to fraud and out of date'. Nevertheless, Member States' fears of losing revenue continued to make a 'definitive' system, based on the origin principle, unacceptable to them. The strategy of concentrating on improving the current system was therefore reaffirmed (→4.17.2.).

As regards personal incomes, on the other hand, 'the view is that such taxes may be left to Member States' subject to their respecting 'the fundamental Treaty principles on non-discrimination and the free movement of workers'. In the case of corporate taxation, a balance had to be found between tackling direct obstacles to the internal market and the sovereignty of the Member States (→4.17.5.).

Since the need for unanimity in Council limits the scope for legislation on tax matters, the Commission suggested other possibilities (COM(2001) 260):

- the Commission intended to 'adopt a more pro-active strategy generally in the field of tax infringement'. It

would be more ready to initiate action where it believed that Community law was being broken and would ensure the correct application of the European Court of Justice's judgments;

- instruments exist which, unlike regulations or directives, do not directly create Community law. These include recommendations, opinions, communications, guidelines, and interpretative notices;
- much recent progress in the tax field — notably the code of conduct on business taxation and the work of the Primarolo Group — has taken the form of non-legislative agreements in the Council. The Amsterdam Treaty introduced the possibility of building on such arrangements by enabling sub-groups of Member States to conclude cooperation agreements within a Community framework.

B. Administrative cooperation

Cooperation between the tax authorities of Member States has been a key element in the implementation of EU tax policy, in particular to combat tax fraud. In the field of VAT, such cooperation has been an essential part of the transitional system introduced in 1993 (→4.17.2.), together with the computerised VIES facility for verifying VAT numbers. Recent initiatives have included a proposal to computerise the movement and surveillance of excisable products (COM(2001) 466); strengthening administrative cooperation in the field of VAT (COM(2001) 294); and a Fiscalis programme to run from 2003–07, extending the work of the previous programme in improving information exchange, joint investigation, training, etc. from the field of indirect taxation to that of direct taxation.

C. The taxation of motor vehicles

In September 1997 the Commission published a study on Vehicle Taxation in the European Union (XXI/306/98). All Member States, this noted, 'rely heavily on a range of tax instruments to ensure significant budgetary receipts from both private and commercial road users'. But various pressures had resulted in 'large differences in the overall strategies followed'. Vehicle taxes were listed under three broad categories:

- taxes on the acquisition, purchase or registration of a vehicle: VAT, registration taxes (RT), and registration charges;
- taxes on the possession or ownership of a vehicle: annual circulation tax (ACT) — usually through the purchase of a sticker to be displayed on the windscreen; and obligatory third-party insurance, the premiums on which can incur tax;
- taxes on the use of vehicles: VAT and excise duties on fuel; tolls.

In September 2002 the Commission published a comprehensive strategy on the taxation of passenger cars ('Taxation of Passenger Cars in the European Union — options for action at national and Community levels', COM(2002) 431). This identified a number of fiscal obstacles to the free movement of cars — either permanently or temporarily — from one Member State to another, for example, double taxation (although ACT is sometimes reimbursed, unexpired RT is never reimbursed). The Commission accordingly proposed a gradual reduction of RT levels, with a view to total abolition, to be made up by circulation taxes. In July 2005 the Commission presented a proposal for a new Directive (COM(2005) 261).

D. The taxation of pensions

In June 1997 the Commission published a 'Green' consultation paper on Supplementary Pensions in the Single Market (DG XV). A report on the results of the consultation ('Report on pensions Green Paper', COM(1999) 134), observed that 'tax distortions are regarded by the industry and by the financial sector as the main obstacles to the establishment of a genuine single market in supplementary pensions'. The Commission accordingly published a communication, 'The elimination of tax obstacles to the cross-border provision of occupational pensions' (COM(2001) 214).

The systems of taxing pensions can be classified as follows:

- Taxed, Exempt, Exempt (TEE), where contributions must be paid out of taxed income, but neither investment returns nor benefits are in principle subject to tax. Only Germany and Luxembourg fall into this category;
- Exempt, Taxed, Taxed (ETT), where contributions can be paid out of untaxed income, but where both investment returns and benefits are subject to tax. Denmark, Italy and Sweden fall into this category;
- Exempt, Exempt, Taxed (EET), where neither contributions nor investment returns are subject to tax, but where benefits are. All other Member States fall into this category.

The Commission's preferred solution is to 'strive for alignment of Member States' pension taxation systems on the basis of the EET principle'.

Role of the European Parliament

Parliament has generally approved the broad lines of the Commission's programmes in the field of taxation, including the Monti package, the code of conduct and the work of the Primarolo Group.

Parliament's most recent report on general tax policy within the EU was adopted in March 2002. The resolution

stressed that 'tax competition is not at odds with the completion of the internal market'. It might 'in itself be an effective instrument for reducing a high level of taxation'; and could help in attaining a reduction in administrative burdens, an increase in competitiveness and a modernisation of the European social model.

As regards excise duties, the report observed that 'differing policies regarding the setting of levels of duties do not in themselves constitute a barrier to the internal market, except when they are invoked to justify exceptions to the free movement of goods'.

The report also dealt with the related issue of how far action concerning taxation should be decided at EU level. In principle, it stressed that 'the subsidiarity principle should guide EU taxation policy' and that 'decisions on levels of tax must remain within the exclusive competence of the Member States'. Where action at EU level was undertaken, 'the principle of unanimity should be retained whenever tax bases or rates of taxation are at issue [...]'.

Nevertheless, the report also drew attention to a number of areas in which action at EU level was necessary:

- increased efforts were needed 'to remove discrimination, double taxation and administrative barriers'. There was 'an urgent need for the Commission to tackle the main tax obstacles to cross-border activity by European firms', which meant action on the fiscal treatment of intra-group transfer pricing, cross-border loss relief and cross-border flows of income between associated companies;
- tax competition had to take place 'in the context of rules preventing improper conduct'. The 'Monti package' should be implemented as quickly as possible, and 'especially the removal of those rules which discriminate between residents and non-residents or leave loopholes for fraud and are thus incompatible with a single market'. Likewise, there should be support for the initiatives taken within the OECD to restrict 'the distortions produced by tax havens';
- progress towards a 'definitive VAT system which will apply, in full, the country-of-origin principle' should be a priority, since there was a danger that 'the current system, which was originally a transitional one, is increasingly becoming definitive'. Measures to improve the current system were nevertheless welcome;
- the Council should adopt the framework directive on the taxation of energy products 'without delay'. The 'polluter pays' principle should be applied more widely;
- 'A multilateral tax agreement for the EU', based on the OECD model tax agreement, should be framed to 'overcome the problems faced by companies and tax

administrations in the light of the existence of over 100 very different bilateral tax agreements [...].

The report also supported a limited extension of qualified majority voting in the Council 'for decisions concerning mutual assistance and cooperation between tax

authorities'. In any case, 'Parliament should be given co-decision powers in the taxation area'.

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09/2006

4.17.2. Value added tax (VAT)

Legal basis

Under Article 93 of EC Treaty, the Council is required to adopt measures for the harmonisation of 'turnover taxes, excise duties and other indirect taxes' where this is 'necessary to ensure the establishment and functioning of the internal market'.

Objectives

Under the First VAT directive of 11 April 1967 Member States replaced their general indirect taxes by a common system in order to achieve transparency in the 'de-taxing' of exports and 're-taxing' of imports in trade within the EEC (see below). All Member States had introduced a VAT by the early 1970s.

In April 1970 the decision was taken to finance the EEC budget from the Communities' own resources. These were to include payments based on a proportion of VAT and 'obtained by applying a common rate of tax on a basis of assessment determined in a uniform manner according to Community rules'. The primary objective of Directive 77/388/EEC of 17 May 1977 — generally known as the sixth VAT directive — was to ensure that each Member State had a broadly identical 'VAT base': i.e. levied VAT on the same transactions. Numerous subsequent amending directives have attempted to remove anomalies.

In 1985 the Commission published the 'Single Market White Paper', Part III of which covered the removal of fiscal barriers. A substantial package of proposals for legislation was published between 1987 and 1990. The need for action arose from the 'destination principle' applied to transactions between Member States. The rates of VAT and excise applied are those of the country of final consumption; and the entire revenue accrues to that country's exchequer. The method by which this system was then administered required physical frontier controls. As traded goods left one country, they were 'de-taxed' (e.g. in the case of VAT, zero-rated); and were then 're-taxed' on

entering another. Complex documentation was necessary for goods transiting Member States. The Cecchini Report concluded that frontier controls were costing intra-Community traders around ECU 8 000 million, or 2 % of their turnover.

Achievements

A. The VAT system

1. Initial proposals

The solution initially proposed by the Commission (COM(87) 322) involved a change to the so-called 'origin principle'. Instead of being zero-rated, transactions between Member States liable to VAT would bear the tax already charged in the country of origin, which traders could then deduct as input tax in the normal way. In theory, this would have resulted in goods moving between, say, England and France, or France and Germany, being treated in exactly the same way as those moving between England and Scotland or Bavaria and Hessen. There would have remained, however, one big difference: VAT paid in England and Scotland goes into the same Treasury; that paid in England and France does not. Estimates showed that there would have been substantial transfers of tax revenues, notably to Germany and Benelux from the rest. Accordingly, the Commission proposed the establishment of a clearing system (COM(87) 323) to reallocate the VAT collected in the countries of origin to the countries of consumption. This might have been based on VAT returns, on macro-economic statistics or on sampling techniques.

2. The transitional system

The Commission proposals, however, proved unacceptable to Member State governments. In the second half of 1989, a high-level working party convened by the Council outlined an alternative.

This retained the destination principle for transactions involving VAT-registered traders. This became the basis of the transitional system proposed by the Commission in the

following year, and which came into effect at the beginning of 1993 (Directives 91/680/EEC of 16 December 1991 and 92/111/EEC of 14 December 1992). Though tax controls at frontiers have been abolished, traders are required to keep detailed records of purchases from, and sales to, other countries, and the system is policed by administrative cooperation between Member States' tax authorities.

The origin principle generally applies to all sales to final consumers: that is, once VAT has been paid on goods in one country, they can be moved within the Community without further control or liability to tax. There are three 'special regimes' where this principle does not apply:

- distance sales: Internet, mail-order or similar companies having sales over a certain threshold to any Member State must levy VAT at the rate applied in that country (i.e. where the goods are delivered);
- tax-exempt legal persons (i.e. hospitals, banks, public authorities, etc.): where these buy goods over a certain threshold from another Member State they are required to pay VAT on them at their domestic rate, despite the fact that the deliveries are theoretically zero-rated (i.e. the customer rather than the vendor is accountable for the tax);
- new means of transport: boats, aircraft and cars under 6 months old are taxable in the purchaser's country, even if acquired in another Member State.

3. Towards a 'definitive' system

The original intention was that this transitional system should apply until the end of 1996. Under Article 35(a) of the amended sixth VAT directive, the Commission was required to 'submit proposals for a definitive system' before the end of 1994, and for the Council to reach a decision on it before the end of 1995. However, no formal legislative proposals appeared. Instead, the Commission published two discussion documents:

- 'A Common System of VAT: a programme for the Single Market' (COM(96) 328 final of 22 July 1996). This outlined a timetable, running from late 1996 to mid-1999, during which the new system would be introduced in stages.
- 'Description of the General Principles, Commission Services technical note' (XXI/1156/96), which was launched at a special conference on 4 and 5 November 1996. The essentials were:
 - the 'place of taxation' would no longer be where goods are located, or services provided, but where the suppliers' business was established;
 - invoicing and deduction of input tax would be according to the origin system;

- VAT rates would be harmonised 'within a rather narrow band';
- the allocation of VAT revenues would be separated from the VAT system itself, and be carried out according to national consumption statistics;
- the sixth directive would be revised to make the system simpler, with fewer derogations, exemptions, options and special regimes;
- steps would be taken to avoid differing national interpretations of VAT law; the role of the VAT Committee would be strengthened; and cooperation between tax authorities improved.

In pursuit of this final objective, a draft directive was proposed to give the Committee on Value Added Tax, which consists of national representatives and is chaired by the Commission, more powers of decision (COM(97) 325). New proposals to replace the 6th VAT directive with a system of deduction in the country of registration, together with a linked proposal on eligibility for deduction (COM(1998) 377) was published in 1998. However, all these proposals have been withdrawn by the Commission.

4. Viable strategy to improve the present system

In 2000, the Commission shifted its emphasis from a move to a 'definitive' system towards measures to improve the present 'transitional' arrangements. In June 2000 it published a communication on a Strategy to Improve the Operation of the VAT System within the Context of the Internal Market (COM(2000) 348), outlining a new list of priorities and a timetable. Improving the present system in small steps rather than aiming for the 'radical' change towards a definitive system seems to be the more viable alternative. The definitive system still remains, however, the long-term objective.

On 20 October 2003, the Commission presented a communication (COM(2003) 614) 'Review and update of VAT strategy priorities' containing an interim report on the progress made between 2000 and 2003. During that time, nine VAT-related proposals presented in 2000 had been adopted. The general assessment of the Commission on the success of the new strategy as of 2000 was positive, stating that the new strategy had provided the Council with some new impetus in VAT matters.

Several directives have amended the sixth VAT directive (77/388/EC) in recent years. In line with the revised strategy of 2000, Community action in the short term should focus broadly on simplification, modernisation, a more uniform application and administrative cooperation. Selected amendments to the sixth directive include:

(a) Simplification and Modernisation

A simplification of the 'tax representative' system (COM(1998) 660) was published in 1998 and adopted by Council in 2000. This directive annulled from the 1 January 2002 the obligation made to European operators by the VAT system to appoint a tax representative for non-established taxable persons.

A directive on harmonisation of content of invoices and electronic invoicing modernisations (COM(2000) 650) was adopted by Council in 2002. This directive defined particulars that must appear on an invoice and simplified and modernised to account for new invoicing technologies and methods.

The growing importance of information technology focused attention on the application of VAT in this area. The Commission proposed a directive on value added tax arrangements applicable to telecommunications services (COM(97) 4), following a decision by Council to apply a temporary derogation from the normal provisions of the sixth directive, and apply a 'reverse charge' procedure (which remains in force). An amendment on VAT on e-commerce (COM(2000) 349) was adopted in 2002, which created a level playing field in the taxation of e-commerce.

On 7 October 2003 the sixth directive was amended by a directive on the place of supply of gas and electricity (COM(2002) 688). Its purpose was to review the current VAT rules in order to avoid double or non-taxation by harmonising the rules governing the place of supply.

Important legislation proposed by the Commission, but pending in Council include notably the so called 'One-stop shop' (COM(2004) 782) or the Taxation of postal services (COM(2003) 243).

(b) More uniform application and administrative cooperation

A Council Regulation of 17 October 2005 (1777/2005) sets the basis for more uniform application of common EU rules under the sixth directive. As differences in the practical application of common rules was becoming a real obstacle, the regulation now gives legal force to a number of agreed approaches to elements of VAT law, ensuring transparency and legal certainty for both traders and administrations.

A proposal for simplifying VAT charging to counter tax evasion and avoidance and repealing certain decisions granting derogations was presented in (COM(2005) 89) and approved by Council in July 2006. This gives all Member States the possibility to apply special rules to simplify the application of VAT as many have proved successful. Until then, Member States could only apply such rules through individual requests, the right to which remains in force.

The administrative system for VAT requires a great deal of cooperation between administrations, as under existing

mechanisms various loopholes exist to avoid tax payments. Combating fraud is therefore a priority objective for the Community. Important amendments to the sixth directive in this respect include administrative cooperation in the field of VAT (COM(2001) 294) adopted in 2003 and mutual assistance in the recovery of claims (COM(1998) 364) adopted in June 2001. The Fiscalis programme currently running from 2003 to 2007 (Decision 2235/2005/EC) as well as the computerised VIES (VAT Information Exchange System) facility to verify VAT numbers (Regulation 638/2004) are meant to reinforce the functioning of indirect taxation systems in the EU in general.

B. VAT rates

The Commission's original proposals on VAT rates (COM(87) 321) were for 'approximation' within two tax bands: a standard rate between 14 % and 20 %; and a reduced rate between 5 % and 9 %. However, the main provisions of Directive 92/77/EEC of 19 October 1992 were:

- a minimum standard rate of 15 %, subject to review every two years;
- the option for Member States to apply either a single or two reduced rates over 5 % to any of the goods and services listed in Annex H of the amended sixth VAT directive;
- derogations for certain Member States to apply a zero rate, a 'super-reduced' rate or a 'parking' (i.e. transitional) rate, pending the introduction of a definitive VAT system;
- the abolition of 'luxury' or higher rates.

Commission reports on the results of this agreement have concluded that there have been no significant changes in cross-border purchasing patterns since 1 January 1993, nor any significant distortions of competition or deflections of trade through disparities in VAT rates. In 1995 the Commission therefore proposed (COM(95) 731) no change in the 15 % minimum, but suggested a new maximum rate of 25 %. The Council, however, only agreed to make 'every effort' not to widen the current 10 % span. A renewed proposal to fix VAT rates in a 15 % to 25 % band was made in 1998 (COM(1998) 693) which was also rejected by the Council. In December 2005, the Council extended the 15 % minimum VAT standard rate applied by the Member States until 2010 (2005/92/CE). As a derogation to this general rule, permanent reduced VAT rates for a number of goods and services are allowed for under Annex H to Directive 77/388/EEC.

Annex K of Directive 77/388/EEC allows for temporary reduced rates for a further list of labour-intensive services including small repair services, the renovation of private dwellings, window cleaning and private household

cleaning, domestic care services and hairdressing. A communication by the Commission was published in November 1997 on 'Job creation: possibility of a reduced VAT rate on labour-intensive services for an experimental period and on an optional basis' (SEC(97) 2089), and a formal proposal in 1999 (COM(1999) 62). This was originally agreed by the Council for a limited range of services and until the end of 2002. This period, however, has been extended at various occasions, most recently in February 2006 now lasting until 31 December 2010.

Much controversy has taken place concerning the continuing application of a zero VAT rate to certain goods and services, notably in the UK and Ireland. A specific derogation contained in Article 28 of the sixth directive, refers back to Article 17 of the second VAT directive of 11 April 1967. The zero rates already in force on 31 December 1975 can continue provided that they exist for clearly defined social reasons; that they benefit the final consumer; and that the 'origin principle' is still not being generally applied. Sweden and Finland have the right to continue applying a zero rate where another Member State already applies it to the same products or transactions.

Role of the European Parliament

According to Community legislation in the field of VAT (mostly based on Article 93 and 94 EC Treaty), the European Parliament's (Parliament's) role is limited to the consultation procedure (CNS).

A. The VAT system

In its resolution of 15 July 1991, Parliament accepted the transitional regime 'on the understanding that both Commission and Council are committed to the full

abolition of fiscal frontiers at the earliest possible date'. Since then, Parliament has continued to support moving to a 'definitive' system based on taxation in the country of origin, most recently in its resolution of 14 March 2002. In recent years, Parliament has also been very committed to improving the working of the transitional arrangements and has adopted numerous resolutions on VAT. In general, it is mostly supportive of the Commission's proactive stance to simplify and modernise the present system.

B. VAT rates

In June 1991, Parliament supported a 15 % minimum standard rate; but proposed that the application of a reduced rate to certain essential goods and services should be mandatory rather than optional. It also proposed that 'no reduced rate may be more than 9%', i.e. that zero might be considered a legitimate reduced rate.

At first, Parliament voted against the proposed 25 % upper limit on the VAT standard rate in 1997, but in 1998 approved a 15–25 % standard rate band under certain conditions. In December 2005, Parliament then voted for a maximum rate of 25 %. In May 1998 Parliament also urged action to ensure a uniform application of rules on reduced VAT rates. It also pressed for Member States to be given the option of applying a reduced rate to certain labour-intensive or environmentally-friendly activities — pressure which was eventually successful. The most recent resolution of Parliament confirming its support for reduced rates for certain labour-intensive services dates from 1 December 2005.

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4.17.3. Excise duties: alcohol and tobacco

Legal basis

Under Article 93 of EC Treaty, the Council is required to adopt measures for the harmonisation of 'turnover taxes, excise duties and other forms of indirect taxation' where this is 'necessary to ensure the establishment and functioning of the internal market'.

Objectives

The rates and structures of excise duties vary between Member States, affecting competition.

Levying duties on products from other Member States at higher rates than on those domestically produced is discriminatory, and forbidden by Article 90 of the EC Treaty.

Very large discrepancies in the duty on a particular product can result in tax-induced movements of goods, loss of revenue and fraud.

Attempts have therefore been made since the early 1970s to harmonise both structures and rates, but progress has been slight, in part because of considerations other than the purely fiscal. For example, high levels of duty have been

imposed in some Member States as part of general policies to discourage drinking and smoking. On the other hand, wine and tobacco are important agricultural products in some Member States.

Achievements

A. Alcoholic beverages

A further difficulty in the case of alcohol has been disagreement about the extent to which different products are in competition with each other. In 1983 the Court ruled on the levels of duty in the UK on wine and beer (Case 170/78 ECR (1985)). The Court's view was that the products could be considered substitutes since 'the two beverages are capable of meeting identical needs'. The Commission has traditionally taken the view that 'all alcoholic drinks are more or less in competition' (COM(79) 261). However, research for the Commission (see *Study on the competition between alcoholic drinks: final report*, Customs Associates Ltd., February 2001) indicates that the degree of competition varies between different products.

1. Structures

The Commission's initial proposals to harmonise excise duties on beer, wine and spirits were made in 1972 (COM(72) 225). Work on these in the Council was suspended at the end of 1974, and remained so despite communications in 1977 (COM(77) 338) and 1979 (COM(79) 261). New draft legislation (COM(85) 15) was also blocked. The single market programme of 1985, however, created a new impetus. All the existing texts on structures were eventually replaced by a new proposal (COM(90) 432), which became Directive 92/83/EEC in October 1992. It defines the products on which excise is to be levied, and the method of fixing the duty (e.g. in the case of beer by reference to hl/degree plato or hl/alcohol content).

2. Rates

The Commission's initial proposals under the single market programme (COM(87) 328) were that for each product there would be a single Community rate, fixed as the average of existing national rates. For both wine and beer this would have been ECU 0.17 per litre, and for spirits ECU 3.81 per 0.75 litre bottle. Unlike VAT, however, few national alcohol excise rates are close to the average rate. No Member State found the proposals acceptable. The Commission then proposed a more flexible approach (COM(89) 527). Instead of single, harmonised rates there would be minimum rates and target rates, on which there would be long-term convergence. Only the minimum rates were retained in Directive 92/84/EEC. The levels agreed were:

— alcohol and alcoholic beverages (i.e. spirits): ECU 550 per hl/alcohol;

- intermediate products: ECU 45 per hl;
- still wine and sparkling wine: ECU 0 per hl;
- beer: ECU 0.748 per hl/degree plato or ECU 1.87 per degree of alcohol.

Under the terms of the directive, the Council should have reviewed these rates by the end of 1994 and adopted any necessary changes. However, no Commission proposals were published. A draft text suggested raising the minimum rates on spirits, intermediate products and beer to maintain their real value, and raising the minimum for wine from zero to ECU 9.925 per hl, but the text was not adopted. A Commission report on the rates of excise duties was eventually published in September 1995 (COM(95) 285 final). Instead of suggesting new levels of minimum excise rates, this proposed that the whole issue should be examined in the course of general consultations on excise duties with national administrations and with trade and other interest groups.

Following debate in the Council, the Commission presented a proposal in September 2006 to review the minimum rates and carry out an inflation adjustment for the period after 1992. The Commission's preceding report (COM(2004) 223) was presented to the Council on 26 May 2004. However, the Commission then had not made any proposal concerning levels of alcohol taxation because there was no agreement on how a rate adjustment should be achieved. Member States have very different views on the importance of alcohol excise duty rates, reflecting their own national circumstances, cultures and traditions. In 2006, however, the inflation adjustment was strongly brought forward by the Finnish presidency.

Below are the current minimum rate levels laid down in EU legislation, which Member States are required to observe when setting their national rates. The following table shows the minimum rates for each product category expressed in euro per hectolitre per degree of alcohol, as well as the minimum rate expressed per litre of product at a degree of alcohol at which it is commonly sold.

B. Tobacco products

1. Structures

The basic structure of tobacco excise rates within the Community was established in 1972 by Directive 72/464/EEC. Between then and 1978 the directive was modified 13 times. A second directive (79/32/EEC) was adopted at the end of 1978. Finally, both directives were modified in the light of the single market programme by Directive 92/78/EEC. All these directives are now covered by a single consolidated text (COM(94) 355 of 3 October 1994). The categories of manufactured tobacco subject to taxation are defined as cigarettes; cigars and cigarillos; smoking tobacco

Product category	Minimum rate in euro per 100 litres per degree of alcohol	Minimum rate in euro per litre of product at the degree at which it is commonly sold
Wine	0	Wine (12°) 0
Beer	1.87	Beer (5°) 0.1
Fermented beverages other than wine and beer (e.g. cider and perry)	0	Cider (5°) 0
Intermediate products (e.g. fortified wines such as port wines, sherry, etc. up to 22° alcohol)	2.5	Intermediate products (18°) 0.45
Ethyl alcohol and spirit drinks	5.5	Spirits (40°) 2.2

(fine-cut for rolling cigarettes); and smoking tobacco (other).

In the case of cigarettes, the tax must consist of a proportional (*ad valorem*) excise duty, calculated as a percentage of the maximum retail selling price, combined with a specific excise duty, calculated per unit of the product. Both rates must be the same for all cigarettes, and the specific rate must be set 'by reference to cigarettes in the most popular price category'.

Establishing clear criteria has nevertheless proved an intractable problem. The directive states that 'at the final stage of harmonisation of structures' the balance between the specific element and the proportional element (including the VAT charged on top of the excise) should be the same in every Member State. The ratio should also 'reflect fairly the differences in the manufacturers' delivery prices'. The most that was achieved, however, was that the specific element 'may not be lower than 5 % nor higher than 75 % of the aggregate amount of the proportional excise duty and the specific excise duty', nor more than 55 % of the total tax burden (i.e. after VAT is added).

The difficulty in reaching a fixed ratio reflects the structure of the Community tobacco industry. A specific tax — so many euro per thousand cigarettes — benefits the more expensive products of the private companies by narrowing price differences. A proportional tax, particularly when combined with VAT, has the opposite effect, multiplying up price differences. Within the broad ratio so far laid down, some Member States have chosen a minimum specific element, others have chosen a maximum, so contributing to variations in retail prices.

2. Rates

The Commission's original proposals on excise duties within the context of the single market programme (COM(87) 325 and COM(87) 326) were for the absolute harmonisation of rates. For tobacco products, the proposed rate was the arithmetic average: in the case of cigarettes, the average

specific rate (ECU 19.5 per thousand) plus the average proportional rate (53 % including VAT). In the end, the directives on cigarettes (92/79/EEC) and other tobacco products (92/80/EEC) set only minimum rates.

- Cigarettes: 57 % of the tax-included retail price.
- Hand-rolled tobacco: 30 % of the tax-included retail price, or ECU 20 per kilo.
- Cigars & cigarillos: 5 % of the tax-included retail price, or ECU 7 per 1 000 or per kilo.
- Pipe tobacco: 20 % of the tax-included retail price, or ECU 15 per kilo.

Both directives required the Council, on the basis of a report from the Commission, to examine these rates, and to adjust them if necessary, before the end of 1994. The Commission report, eventually published in September 1995 (COM(95) 285), noted that, in the case of cigarettes, a strict application of the 57 % threshold risked widening rather than narrowing the divergences between national excise rates. However, where the earlier drafts had advocated the adoption of the solution recommended by the European Parliament (EP/Parliament) (see below), the final report merely noted that 'appropriate proposals will be brought forward' if necessary. In the case of hand-rolled tobacco, the report observes that the 'situation is giving rise to considerable fraud' but that the cause 'does not lie exclusively in the taxation domain'.

A further report published in May 1998 advocated a solution to the '57 % problem' through a technical adjustment giving Member States more flexibility in applying minimum rates. It also proposed increases in the specific minimum amounts to take account of inflation: +18.5 % for the period 1992–98 and +4.5 % for 1999 and 2000 inclusive (though no Member State actually charges below the resulting rates). Finally, it proposed that reviews of the system should in future take place every five rather than every two years. These proposals were not adopted.

A new report and draft directive (COM(2001) 133) was published in 2001. This proposed:

- a EUR 70 minimum specific excise duty in conjunction with the 57 % rule. As regards cigarettes, most Member States would have to apply a minimum excise incidence (specific and *ad valorem* together) of 57 % of the tax-inclusive retail-selling price of the most popular price category and a minimum excise duty (specific and *ad valorem* together) of EUR 70 per 1 000 cigarettes;
- a EUR 100 minimum specific excise duty as an alternative to the 57 % rule. Higher-taxing countries like Sweden, which have difficulties in complying with the 57 % rule, would have to apply either the minimum excise incidence (specific and *ad valorem* together) of 57 % of the tax-inclusive retail-selling price of the most popular price category, or a minimum excise duty (specific and *ad valorem* together) of EUR 100 per 1 000 cigarettes for the category most in demand;
- a higher minimum excise duty on very cheap (imported) cigarettes.

These proposals were rejected by the EP (see below), but in February 2002 were adopted in a modified form by the Council (Directive 2002/10/EC). The EUR 100 per 1 000 alternative threshold was reduced to EUR 95 and the EUR 70 additional threshold to EUR 60 per 1 000 from July 2002, rising to EUR 64 from July 2006. Spain and Greece were given later deadlines. The new Member States also enjoy transition periods until a final deadline of 2010 (with the exception of Malta and Cyprus that adopted the general regime).

Role of the European Parliament

A. 1987 to 1992

Parliament's Economic Affairs Committee examined the structure and rates of alcohol and tobacco excise in great detail, consulting widely with the various interests concerned. A three-day public hearing was held in April 1988. In the case of alcoholic beverages, draft reports considered various alternative approaches. Parliament's final opinion on the draft directives proposed the following minimum rates of duty: ECU 559.25 per hl/alcohol for spirits; ECU 37.4 per hl for intermediate products; ECU 4.67 per hl for wine and sparkling wine; ECU 0.374 per hl/degree plato for beer.

Parliament also called for the 1994 review to fix, for each category, 'a rate of excise duty proportional to the alcoholic strength', with the final objective of reaching two rates per unit of alcohol: one for beverages with less than 15 % alcohol content and another for those above.

On tobacco products, the opinion adopted by Parliament accepted the initial fixing of minimum rates only, but stated that the various taxes 'should be approximated stage by stage with a view to achieving single target rates'. Parliament agreed with a minimum overall rate of 57 % for cigarettes; but it suggested that there should be an alternative minimum overall rate of ECU 35 per 1 000 cigarettes, as in the case of other tobacco products.

B. 1997

In September 1997 Parliament reaffirmed that there should be no distortion of competition between different alcoholic beverages, and suggested guidelines for future action:

- the current differences in rates between wine, beer and spirits should not be increased;
- lower rates on small distillers' and brewers' products;
- a full report on the wine market, including taxation, to be produced by the Commission;
- new forms and mixtures of alcohol to be taxed;
- an assessment of the positive and negative health and social effects of alcohol consumption.

In the case of cigarettes and manufactured tobacco, Parliament called in principle for an 'upward harmonisation' of rates, but also for further studies before any changes would be made. In particular it asked the Commission to examine:

- the 'automatic trigger' problem, which widened disparities in rates between Member States;
- social costs, health risks, nicotine addiction and monopolistic practices;
- the smuggling of tobacco products;
- the relationship between duty on cigarettes and that on hand-rolled tobacco;
- the effect on employment of higher levels of duty.

C. 2002

In 2002 Parliament rejected the Commission's proposals for changes in tobacco excise rates (see above), one of the main reasons being the projected impact on the enlargement countries, where rates are significantly below even the EU minimum rates which applied at the time.

Parliament's most recent report on EU tax policy was adopted in March 2002. It stated that Parliament 'does not agree with the Commission's policy with regard to duties on tobacco and alcoholic products, particularly with regard to upwards harmonisation, through the constant raising of minimum taxation levels'.

4.17.4. Taxation of energy

Legal basis

Under Article 93 of the EC Treaty, the Council is required to adopt measures for the harmonisation of 'turnover taxes, excise duties and other forms of indirect taxation' where this is 'necessary to ensure the establishment and functioning of the internal market'.

Article 175, introduced by the Maastricht Treaty, also allows the Community to take action, including that 'of a fiscal nature', to pursue the objectives set out in Article 174: protection of the environment or of public health, and promotion of 'prudent and rational utilisation of natural resources'.

Objectives

Even before Maastricht, however, other factors had played as important a part in determining the structure and levels of duties on mineral oils as those provided for in Article 93.

Several aspects of transport policy are clearly relevant: in particular, that of competition between different forms of transport and the search for transparency in the charging of infrastructure costs.

The control of pollution caused by the burning of mineral oils has always been a major element of environment policy. This was the determining factor in the laying down of different minimum levels of duty on leaded and unleaded petrol.

General energy policy has also played a part in fixing the levels of mineral oil duties: for example, the balances between various energy sources (coal, oil, gas, nuclear, etc.) and between indigenous and imported sources.

Agricultural policy objectives have also been relevant, notably in the proposal (COM(92) 36) for a special reduced rate of excise duty on motor fuels from agricultural sources ('biofuels').

Finally, within the context of Community policy on employment, a fiscal strategy has been developed to switch from the taxation of labour to other sources of revenue, including taxing the use of raw materials and energy.

Achievements

A. Mineral oils

The basic structure of mineral oil excise duties within the Community was established by Directive 92/81/EEC. Every Member State is required to apply an excise duty to mineral

oils used as motor fuels or heating fuels, subject to certain exemptions, which were to be reviewed by no later than the end of 1997. Council Decision 92/510/EEC authorised a number of derogations for exemption or reduced rates applying to certain products in different Member States.

The duties are specific, i.e. calculated per 1 000 litres of the product, or per 1 000 kg. For excise purposes, mineral oil means leaded petrol, unleaded petrol, gas oil, heavy fuel oil, liquid petroleum gas (LPG), methane and kerosene.

The Commission's original proposals for excise duties on mineral oils, in the context of the single market programme (COM(87) 327), were for absolute harmonisation, based on average rates (for petrol and LPG the arithmetic average, for fuel oil a weighted average). Even in a revised proposal in June 1989 (COM(89) 260), the Commission argued that single rates or rate bands should be applied to mineral oils because 'the risks of competitive distortion [...] are greater in this area than for alcohol and tobacco'.

Nevertheless, as for alcohol and tobacco, only minimum rates were fixed by Directive 92/82/EEC.

- Leaded petrol: ECU 337 per 1 000 litres.
- Unleaded petrol: ECU 287 per 1 000 litres on the understanding that 'in every case the rate of duty shall be below that charged on leaded petrol'.
- Gas oil: ECU 245 per 1 000 litres with reduced rates for heating oil.
- Heavy fuel oil (diesel): ECU 13 per 1 000 kg.
- LPG and methane as a propellant: ECU 100 per 1 000 kg; other cases ECU 36 or ECU 0 per kg.
- Kerosene as a propellant: ECU 245 per 1 000 litres; otherwise ECU 18 per 1 000 litres, or ECU 0.

Every two years, 'and for the first time not later than 31 December 1994', these rates were to be reviewed 'on the basis of a report and where appropriate a proposal from the Commission'. The Commission's report, however, was not formally published until September 1995 (COM(95) 285). Though earlier drafts had proposed various changes to the minimum rates, the final report made no formal proposals.

B. The CO₂/energy tax proposal

The primary purpose of the Commission's 1992 proposals for a Community-wide tax on carbon dioxide emissions and energy was to stabilise CO₂ emissions by 2000 at their 1990 level. This in turn, was seen as a key element in

worldwide policies to reduce emissions of greenhouse gases and halt global warming. A subsidiary objective was general energy saving; and it was partly for this reason that the tax was conceived as being only 50 % on CO₂ emissions, the other half being on energy content. The proposal was also seen as part of an overall policy for fiscal reform. Since it was intended to be 'fiscally neutral', the revenue raised could be used to reduce other taxes — in particular, to shift the general burden of taxation from 'taxes on jobs' (especially non-wage labour costs) to taxes on the use of resources. This has been described as the 'double dividend'.

Following deadlock in the Council on the 1992 proposals — which were opposed both for technical reasons and for reasons of national fiscal sovereignty — the Commission published a revised version (COM(94) 127), providing for broad flexibility. The minimum rates set by the original proposal became target rates, and exemptions for various industries were allowed. But the Council did not adopt the revised proposal either. Instead, individual Member States have been pursuing their own solutions towards reducing CO₂ emissions. The environmental aspects of the situation

were outlined in a communication on 'Environmental Taxes and Charges in the Single Market' (COM(97) 9).

C. The 1997 proposals

In 1997 the Commission published new proposals for 'restructuring the Community Framework for the Taxation of Energy Products' (COM(97) 30). This sought to build on the system for taxing mineral oils by extending it to all energy products, and in particular to products directly or indirectly substitutable for mineral oils: coal, coke, lignite, bitumens and products derived from them; natural gas; and electricity.

In the case of electricity, the tax would be on the electricity itself rather than the fuel inputs, although a rebate would be possible where 'environmentally preferable' fuels were used for generation. The legislation proposed minimum excise duties. This proposal was debated in the EU's Council of Ministers and was extensively changed before being adopted as Directive 2003/96/EC of 27 October 2003. The minimum rate system for energy products is listed in the following tables:

Energy products used as motor fuels			
Leaded petrol (euro per 1 000 l)	421	Gas oil (euro per 1 000 l)	302
Unleaded petrol (euro per 1 000 l)	359	LPG (euro per 1 000 kg)	125
Natural gas (euro per gigajoule)	2.6	Kerosene (euro per 1 000 l)	302

Energy products used as motor fuels for certain industrial and commercial purposes			
Gas oil (euro per 1 000 l)	21	Kerosene (euro per 1000 l)	21
LPG (euro per 1 000 kg)	41	Natural gas (euro per gigajoule)	0.3

Energy products used as heating fuels			
Heating gas oil (euro per 1 000 l)	21	Heavy fuel oil (euro per 1 000 kg)	15
Kerosene (euro per 1 000 l)	0	LPG (euro per 1 000 kg)	0
Natural gas (euro per gigajoule)	0.15	Electricity (euro per MWh)	0.5
Coal and coke (euro per gigajoule)	0.15		

Energy products used as heating fuels (non-business use)			
Heating gas oil (euro per 1 000 l)	21	Heavy fuel oil (euro per 1 000 kg)	15
Kerosene (euro per 1 000 l)	0	LPG (euro per 1 000 kg)	0
Natural gas (euro per gigajoule)	0.3	Electricity (euro per MWh)	1
Coal and coke (euro per gigajoule)	0.3		

Directive 2004/74/EC amends the energy directive as regards the possibility for the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia to apply temporary exemptions or reductions in the levels of taxation. Additionally, Directive 2004/75/EC amends the energy directive as regards the possibility for Cyprus to apply temporary exemptions or reductions in the levels of taxation.

Council Directive 2003/96/EC provides for a mandatory exemption from the harmonised excise duty for energy products supplied for use as fuel for the purpose of air navigation other than in private pleasure-flying. However, it introduced for the first time provisions which allow Member States to tax aviation fuel for domestic flights and, by means of bilateral agreements, fuel used for intra-Community flights. In such cases, Member States may apply a level of taxation below the minimum level set out in this directive.

In 2000 the Commission also published a communication on the taxation of aircraft fuel (COM(2000) 110), which outlined five possible systems, ranging from taxing national flights only to the taxation of all flights for all carriers to all destinations. The discussions show that it will be very difficult, if not impossible, to reach an agreement on this issue. During the discussions, which preceded the adoption of Directive 2003/96/EC, all but two Member States agreed that as a matter of principle commercial aircraft fuel should be taxed on the same basis as any other fuel. However, the question of competition with third countries needs to be taken into account and any distortion of competition has to be avoided.

In the context of its drive to enhance development aid effectiveness, the Commission services put forward a working paper on 'New Sources of Financing for Development: A Review of Options' (SEC(2005) 467). This paper also deals with tax instruments such as kerosene and flight departure tax and is expected to stimulate debate at European and national levels.

D. Taxation of diesel

On 24 July 2002 the European Commission presented new proposals on the taxation of diesel, linked to that on unleaded petrol (COM(2002) 410). This has two aims:

- to harmonise, gradually, Member States' excise duty on fuel used in international commercial haulage;
- to align the minimum excise rates on diesel used non-commercially — i.e. mostly in cars — with the rates on unleaded petrol.

In order to meet these twin aims, the proposal would create two levels of taxation on diesel:

- a harmonised rate for international commercial use: by 2010, the minimum rate of excise duty on commercially-used diesel would be raised from the current EUR 245 per 1 000 litres to a higher, common 'central' rate; this would initially be set at EUR 350 in 2003 and would be adjusted thereafter for inflation on the basis of the consumer price index;
- the minimum rate applied to unleaded petrol on the rest.

The principal justification for the proposals on commercially-used diesel is to end the distortion of competition in the internal market for road haulage. Widely-differing rates of tax, the Commission argues, give hauliers based in low-tax countries but operating across national borders an unfair competitive advantage. Linked to the distortion of competition is the issue of revenue loss by higher-taxed countries. The proposal is also justified by two further considerations: protection of the environment and fuel efficiency. It is argued that trucks make unnecessary detours on commercial journeys in order to refuel in low-tax countries, so increasing journey-lengths and fuel consumption.

The Council reached an outline agreement in early February 2003 under which a minimum rate of EUR 302 per 1 000 litres would apply from the date the directive came into effect, rising to EUR 330 in 2010. However, countries needing to make tax increases would have up to seven years to reach the EUR 302 rate, and until 2012 to reach the EUR 330 rate.

On 17 December 2003 the European Parliament (EP/Parliament) rejected the proposal and asked the Commission to present a new proposal which would deal with the matter in a way that was better coordinated with recently adopted directives on energy taxation.

E. The taxation of biofuels

Biofuels are any fuels deriving from organic and renewable resources, the most obvious example being the oldest — wood. In the context of energy taxation the main specific fuels in question are: bioethanol, a form of ethanol produced largely from the fermentation of agricultural products (e.g. sugar beet and cereals); biodiesel, produced by reaction between plant oil and methanol; biogas (methane), produced from biodegradable waste; and etherised bioethanol, biomethanol and biodimethylether.

A number of reasons can be advanced for encouraging the use of biofuels. They derive from renewable resources. They can be produced domestically, reducing dependence on imported oil. Combustion results in fewer emissions of particulates and environmentally-damaging or toxic gases. They also provide the farming industry with alternative

commercial crops at a time when there is pressure to reduce aid for food production. On the other hand, biofuels cannot compete on price with established fuels.

In November 2001 the European Commission proposed a set of measures to promote the use of biofuels (COM(2001) 547), including the possibility of applying a reduced rate of excise duty. The overall aim is to achieve a minimum biofuel share of fuel consumption: 2 % by 2005 and 5.75 % by 2010. On 20 June 2002 the Council reached a political agreement on the proposal. The directive was adopted in a co-decision procedure and published in the Official Journal on 8 May 2003.

F. VAT on other fuels

Among other recent tax proposals in the energy field has been that of December 2002 on VAT applying to natural gas and electricity (COM(2002) 688). Currently, the place of taxation is the place of supply, but this is becoming increasingly difficult to determine as cross-border trading in energy increases. The proposal would make the place where the buyer was established the place of taxation for businesses. For final consumers, it would be the place of consumption.

Role of the European Parliament

Parliament's initial opinion on mineral oil excise duties was adopted in June 1991. It called both for target rates to be set for petrol — ECU 445 by the year 2000 for unleaded

petrol — and for a much higher minimum rate for heavy fuel oil (diesel): between ECU 245 and ECU 270.

The EP adopted its opinion on the Commission's 1997 proposals in April 1999. The main amendments sought to:

- abolish the list of systematic exemptions but expand the list of optional exemptions;
- index the minimum tax rates to inflation; and
- establish a procedure allowing Member States to refund the tax, in whole or in part, where firms could demonstrate that it was leading to a competitive handicap.

On the taxation of diesel proposals, Parliament has raised certain questions concerning the practicality of operating two rates of tax, and on the need for full harmonisation rather than only minimum rates.

In its resolution of April 2002 on EU tax policy in general, Parliament argued that 'the 'polluter pays' principle needs to be applied more widely, particularly in the energy products sector', and that 'it should be implemented not only through taxation but also through regulation'.

Parliament gave a favourable opinion on the biofuel proposals in October 2002 and adopted amendments designed to strengthen them.

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4.17.5. Personal and company taxation

Legal basis

There is no explicit provision in the EC Treaty for the harmonisation of direct taxes. Action in this field has therefore had to be based on more general objectives.

Legislation on the taxation of companies has usually been based on Article 94, which authorises 'directives for the approximation of such laws, regulations or administrative provisions of Member States as directly affect the establishment or functioning of the common market'. As in the case of Article 93 — and in contrast to Article 95 under which most single market legislation was adopted — unanimity and the consultation procedure apply.

Article 58, introduced by the Maastricht Treaty, qualifies the free movement of capital by allowing Member States

to 'distinguish between taxpayers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested'. However, on 14 February 1995 the Court ruled (Case C-279/93) that Article 39 is directly applicable in the field of tax and social security. This article provides that freedom of movement for workers 'shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment'. Article 293 requires Member States to 'enter into negotiations' for the abolition of double taxation within the Community and Article 294 forbids discrimination between the nationals of Member States 'as regards participation in the capital of companies'.

Most of the arrangements in the field of direct taxation, however, still lie outside the framework of Community law. An extensive network of bilateral tax treaties — involving both Member States and third countries — covers the taxation of cross-border income flows.

Objectives

Two specific objectives are the prevention of tax evasion (e.g. the proposed withholding tax on interest) and the elimination of double taxation (e.g. agreements on dividend payments to non-residents).

More generally, some harmonisation of business taxation (both corporation tax and the personal taxation of dividends) is considered necessary to prevent distortions of competition, particularly of investment decisions. Harmonisation might also be justified to prevent the undermining of revenues through tax competition (→4.17.1.) and to reduce the scope for manipulative accounting (e.g. via transfer pricing).

Achievements

A. Company taxation

Proposals for the harmonisation of corporation tax have been debated within the European Community for over 30 years. The Neumark Report of 1962 and the van den Tempel Report of 1970 both advocated harmonisation, though on different systems. In 1975 the Commission published a draft directive proposing the introduction in all Member States of yet another system, with an alignment of rates between 45 % and 55 %. This proved unacceptable; and by 1980 the Commission was arguing that, though a common system might be desirable on competition grounds, 'any attempt to resolve the problem by way of harmonisation would probably be doomed to failure' ('Report on the Scope for Convergence of Tax Systems' (COM(80) 139)).

Instead, the Commission decided to concentrate on more limited measures essential for completing the single market. The 'Guidelines for Company Taxation' of 1990 (SEC(90) 601) gave priority to three already-published proposals, which were adopted later that year:

- the Mergers directive (90/434/EEC), on the treatment of capital gains arising when companies merge;
- the Parent Companies and Subsidiaries directive (90/435/EEC), eliminating double taxation of dividends paid by a subsidiary in one Member State to a parent company in another; and
- the Arbitration Procedure Convention (90/436/EEC), which introduced procedures for settling disputes concerning the profits of associated companies in different Member States.

At the beginning of the following year, the Commission also published a proposal covering a common system of taxation applicable to interest and royalty payments made between parent companies and subsidiaries in different Member States (COM(90) 571). Despite being revised two years later (COM(93) 196) and receiving a favourable opinion from the European Parliament (Parliament), it was withdrawn as a result of failure to agree in Council. A new version appeared in 1998 (COM(1998) 67) as part of the 'Monti package' (→4.17.1.), which also included the code of conduct and the proposal on the taxation of savings income (see below).

Meanwhile, the Ruding Committee of independent experts, established in 1991, reported in March 1999 (*Report of the Committee of Independent Experts on Company Taxation*) recommending a programme of action to eliminate double taxation; harmonise corporation tax rates within a 30–40 % band; and ensure full transparency of the various tax breaks given by Member States to promote investment. The Commission published its reactions in June 1992 (SEC(92) 1118). While not agreeing with all of Ruding — notably on rates of corporation tax — it accepted the need for priority action on double taxation. In the following year it proposed amendments to enlarge the scope of the directives on mergers and parent/subsidiaries (COM(93) 293); and drew attention to two draft directives that had already been tabled: that on the carry-over of losses (COM(84) 404) and on losses of subsidiaries situated in other Member States (COM(90) 595).

In 1996, the Commission launched a new approach to taxation (→4.17.1.). In the field of company tax the main result was the Code of Conduct for Business Taxation, adopted as a Council resolution in January 1998. The Council also established a Code of Conduct Group (known as the 'Primarolo Group' after its president) to examine notified cases of unfair business taxation. Its main report was presented in November 1999, identifying 66 tax practices to be abolished within five years.

Meanwhile, at the end of 1998, the Commission was asked by Member State governments to prepare 'an analytical study of company taxation in the European Community'. It accordingly established two panels of experts, one academic and one from the business community and trade unions. The study was published in October 2001 ('Company Taxation in the Internal Market', SEC(2001) 1681). There followed a Commission communication 'supplementing and building' on the study entitled 'Towards an Internal Market without tax obstacles: a strategy for providing companies with a consolidated corporate tax base for their EU-wide activities', COM(2001) 582).

The main problem faced by companies, the documents observed, was that they were 'confronted with a single economic zone in which 15 different company tax systems apply'. The Commission proposed several approaches for providing companies with a consolidated tax base for their EU-wide activities:

- home state taxation (HST),
- an optional common consolidated tax base (CCTB),
- a European company tax,
- a compulsory, fully harmonised tax base.

In order to discuss these proposals, the Commission organised a conference on 29 April 2002, which agreed that companies operating in more than one country should be taxed on the basis of a consolidated tax base. For smaller companies (SMEs), the preference was for HST; for larger companies, CCTB.

A CCTB Working Group has been established and began its work in November 2004. In the working group experts from all 25 Member States and the Commission participate and contributions are made in a technical capacity.

B. The taxation of SMEs

In May 1994 the Commission published a 'communication on the Improvement of the Fiscal Environment of Small and Medium-Sized Enterprises' (COM(94) 206). Compared with larger firms, SMEs faced three main problems: attracting sufficient financial resources; coping with administrative complexity; and continuity when the business changed ownership. Although there was no intention to 'harmonise to any extent the purely national tax treatment of small and medium-sized enterprises', action might be needed on cross-border aspects. Annexed to the communication was a first initiative on self-financing (94/390/EC). It invited Member States to act on two matters concerning sole proprietorships and partnerships: 'to correct the deterrent effects of the progressive income tax payable [...] in respect of reinvested profits' — for example, by allowing an option for corporation tax — and 'to eliminate the tax obstacles to changes in the legal form of enterprises, in particular [...] incorporation'. Since 2001, and most recently in 2005, the Commission has presented the 'Home State Taxation' scheme (COM(2005) 702) as a possible solution for SMEs. Essentially, the scheme foresees that SMEs would be allowed to compute their profits according to their (familiar) home state rules of the parent company or the head office when doing business in another Member State.

C. Personal direct taxation

1. Income tax

The taxation of those who work in or draw a pension from one Member State, but live and/or have dependent

relatives in another, has been a source of problems. Bilateral agreements avoid double taxation in general, but fail to cover such questions as applying various forms of tax relief available in the country of residence to income in the country of employment. In order to ensure equal treatment between residents and non-residents, the Commission proposed under Article 94 (ex-Article 100) a directive on the harmonisation of income tax provisions with respect to freedom of movement (COM(79) 737). This would have applied the general principle of taxation in the country of residence, but was not adopted by the Council and was withdrawn in 1993. Instead the Commission issued a recommendation under Article 211 (ex-Article 155) covering the principles that should apply to the tax treatment of non-residents' income.

Meanwhile, the Commission brought infringement proceedings against some Member States for discrimination against non-national employees. The Court of Justice ruled in 1993 (Case C-112/91) that a country could tax its own nationals more heavily if they resided in another Member State. The Court found, however, that a country cannot treat a non-resident national of another Member State less favourably than its own nationals (see above: Case C-279/93). In general, the integration in the field of personal direct taxation can be said to evolve through ECJ rulings rather than ordinary decision-making procedure of the institutions.

2. Taxation of bank and other interest paid to non-residents

In principle, a taxpayer is required to declare such income. In practice, 'the free movement of capital [...] together with the existence of bank secrecy [...] will increase the potential for tax evasion by individuals.' (Ruding Report). Some Member States impose a withholding tax on interest income; but when in 1989 Germany introduced such a tax at the modest rate of 10 %, there was massive movement of funds into Luxembourg, and the German tax had temporarily to be abolished.

That same year the Commission published a draft directive for a common system of withholding tax on interest income (COM(89) 60), levied at the rate of 15 %. Some Member States opposed this on the grounds that it would lead to a flight of capital from the Community. The proposal was eventually withdrawn, and a new one, to ensure a minimum of effective taxation of savings income in the form of interest payments within the Community (COM(1998) 295), was presented. The rate proposed was 20 %, but there was to be an alternative system of providing information on payments to the tax authorities of the saver's home state. The European Council meeting in Helsinki in December 1999 reached an agreement to

continue discussions on the draft directive, based on the principle that 'all citizens resident in a Member State of the European Union should pay the tax due on all their savings income'. The UK Treasury then published a paper (*Exchange of Information and the Draft directive on Taxation of Savings*, February 2000) which argued that only the full exchange of information between tax authorities could achieve this.

After lengthy negotiations, a compromise was agreed at the Santa Maria de Feira European Council on 20 June 2000:

- the exchange of information model would be the ultimate objective, to be introduced within seven years of the adoption of the directive;
- meanwhile, Austria and Luxembourg — which maintain banking secrecy for non-residents — and possibly other Member States would introduce a withholding tax on interest paid to non-residents, at a rate to be decided. An 'appropriate share of their revenue' would be transferred to the investor's state of residence;
- introduction of the legislation would, however, be conditional on agreement being reached on equivalent measures with key third countries (notably Switzerland) and with the US. A decision, by unanimity, would be taken on the matter by the end of 2002.

On 3 June 2003, the Council adopted the directive on taxation of savings income in the form of interest payments. It entered into force on 1 July 2005, and contains the following provisions:

- all Member States will ultimately exchange information on interest payments to individuals resident for tax purposes in another Member State. All Member States except Austria, Belgium and Luxembourg will immediately introduce a system of information reporting;
- Austria, Belgium and Luxembourg are entitled to receive information from other Member States and will introduce a system of information reporting at the end of a transitional period during which they will levy a withholding tax of 15 % for the first three years, 20 % for

the following three years and 35 % thereafter; 75 % of this revenue is to be transferred to the Member State of residence of the saver concerned;

- the transitional period will end if and when the EC enters into agreement with Switzerland, Liechtenstein, San Marino, Monaco and Andorra to exchange information upon request and these countries continue simultaneously to apply the withholding tax, and if and when the Council agrees by unanimity that the US is committed to exchange of information.

On 2 June 2004 the Council adopted a decision on the agreement between the EC and Switzerland providing for measures equivalent to those in the directive. The agreement was signed on 26 October 2004. Its key elements also form the basis for agreements with Andorra, Liechtenstein, Monaco and San Marino:

- during the transitional period a withholding tax with revenue sharing will be applied at the same rates as by Austria, Belgium and Luxembourg;
- the individual concerned can opt to permit the disclosure of his or her income as an alternative to the withholding tax being applied;
- exchange of information can be requested in cases of fraud and similar behaviour;
- the workings of the agreements can be reviewed over time in line with international developments.

Role of the European Parliament

On tax proposals, Parliament's role is confined to the one-reading consultation procedure. Its resolutions and amendments have broadly supported all Commission proposals in the fields of both company and personal direct taxation — including all elements of the 'Monti Package' — while advocating a widening of their scope. It gave its opinion on the Ruding Report, and the Commission's reaction to it, in a report adopted in April 1994. In giving general approval to the Commission's approach on SMEs on 24 October 1994, Parliament called for a plan of action in a form that could form part of an integrated programme for SMEs.

2004–06	2007–09	2010+	Following agreement with Switzerland, the US, etc.
Austria, Belgium & Luxembourg: 15 % withholding tax. Others: automatic information exchange.	Austria, Belgium & Luxembourg: 20 % withholding tax. Others: automatic information exchange.	Austria, Belgium & Luxembourg: 35 % withholding tax. Others: automatic information exchange.	Vote by unanimity on whether to adopt automatic information exchange, depending upon Switzerland, Liechtenstein, San Marino, Monaco and Andorra adopting and US 'committed to', information exchange 'upon request as defined in the OECD agreement'.

Parliament gave its initial views on the Commission's proposals in the field of corporate taxation in its resolution of March 2002 (→4.17.2). Of the alternatives under consideration, Parliament was 'interested in the idea of home state taxation, perhaps as an intermediate stage in moving towards a common tax base', understood as 'new harmonised EU rules, existing in parallel to national rules, available to European companies as an optional scheme'.

Most recently, Parliament adopted a resolution on corporate tax on December 13 2005. In this resolution, Parliament welcomes and reiterates its support for the Commission proposals with regard to the common consolidated tax base and home state taxation for SMEs.

→ Arttu **MAKIPAA**
09/2006

Economic and Monetary Union

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5.1. The development of Economic and Monetary Union

Legal basis

- Decisions of the European Summits of The Hague (1969), Paris (1972) and Brussels (1978);
- Articles 98–124 of the EC Treaty (ECT), introduced by the Maastricht Treaty;
- Protocols annexed to the EU Treaty on the transition to the third stage, the excessive deficit procedure, the convergence criteria, the opt-out clauses for the United Kingdom and Denmark, the Statutes of the European Monetary Institute, the European System of Central Banks and the European Central Bank.

Objectives

The main aims of monetary union are:

- to finalise the completion of the internal market by removing the uncertainty and the costs inherent in exchange transactions, as well as the costs of hedging against currency fluctuation risks;
- to ensure full comparability of costs and prices throughout the Union, which should help consumers, stimulate intra-Community trade and facilitate business;
- to reinforce Europe's monetary stability and financial power by:
 - ending, by definition, any possibility of speculation between the Community currencies;
 - ensuring, through the economic and financial dimension of the monetary union thus established, that the new currency is largely invulnerable to international speculation;
 - enabling the euro to become a major reserve and payment currency.

Achievements

A. First period (1957–69): absence of a European monetary project

The Rome Treaty laid down only minor provisions for monetary cooperation. The six founding Member States of the Community were participants in the Bretton Woods international monetary system, which was characterised by fixed rates of exchange between the currencies and the possibility of adjustment. The creation of a parallel system was unnecessary.

B. Second period (1969–79): the first efforts towards integration

The demise of the Bretton Woods system, confirmed by the ending of the dollar's convertibility into gold on 15 August 1971, was followed by a general floating of the currencies. With the oil crisis of the early 1970s, the European currencies came under even greater pressure. In the face of such general monetary instability, the cause of serious economic and social difficulties, the Member States sought to put in place a framework which could provide a minimum of stability, at least at European level, and could lead to monetary union.

As early as 1969, when the international monetary system was threatening to collapse, the Heads of State and Government had already decided at the Hague Summit that the Community should progressively be transformed into an economic and monetary union.

In October 1970, the Werner Report (drawn up by the then Prime Minister of Luxembourg) proposed:

- in the first stage, a reduction of the fluctuation margins between the currencies of the Member States;
- then the achievement of complete freedom of capital movements with integration of the financial markets, particularly the banking systems;
- finally, an irrevocable fixing of exchange rates between the currencies.

On 12 April 1972 the 'snake in the tunnel' narrowed the fluctuation margins between the Community currencies to $\pm 2.25\%$ (the snake) and those operating between these currencies and the dollar to $\pm 4.5\%$ (the tunnel). To ensure that this mechanism functioned properly, in 1973 the Member States created the European Monetary Cooperation Fund (EMCF) which was authorised to receive part of the national monetary reserves (→5.2.0).

The results of this mechanism were disappointing. The Member States reacted to the disruption caused by the rise in oil prices in different ways, which led to frequent and sharp fluctuations in exchange rates. There were entrances and exits from the exchange stability mechanism and the snake, originally designed as an agreement of Community scope, was reduced to a zone of monetary stability around the German mark.

By the end of 1977, only half of the nine Member States (Germany, Belgium, the Netherlands, Luxembourg and Denmark) remained within the mechanism, the others having decided to allow their currencies to float freely. The Werner Plan was abandoned the same year.

C. Third Period (1979–87): the successful resumption of the integration process; the EMS

Instigated by the German Chancellor Helmut Schmidt and the French President Valéry Giscard d'Estaing, the Brussels Summit of December 1978 decided to set up a European Monetary System (EMS), which aimed to create a zone of monetary stability in Europe by reducing fluctuations between the currencies of the participating countries. The EMS came into operation on 13 March 1979.

1. Mechanisms of the European Monetary System

The EMS established a system of fixed but adjustable rates of exchange between the currencies of the participating countries.

(a) The ECU (European Currency Unit)

A central element of the system, this was a basket of European currencies in which the weight of each depended on the country's share of Community GDP and intra-Community trade. It was an accounting currency used as a payment instrument between the central banks and to specify the Community budget and was not legal tender.

(b) Exchange-rate mechanism

Each currency was allocated a central rate in ECUs and the central rates together determined the rates of exchange between the currencies (bilateral exchange rates).

(c) Fluctuation margins

These were permitted around the bilateral rates: 2.25 % initially (and 6 % for the Italian lira).

(d) 'Divergence indicators'

If a currency came within 25 % of its maximum fluctuation margin, it was deemed to be 'divergent' and the authorities concerned were then required to take certain measures: raising interest rates, tightening up budgetary policy, supporting the exchange rate if it fell and the reverse if it rose.

(e) Amendment of parity

Parities were not fixed permanently. They could be amended if a particular currency diverged structurally from the fluctuation margins. However, such amendments, which entailed altering the central rates, were to be made according to a common procedure.

2. Development of the EMS: the 1980s

(a) Admission of new members

When the EMS was set up, all the Community's Member States, with the exception of the United Kingdom, joined the exchange-rate mechanism.

Greece, which became a member of the Community in 1981, did not join the exchange-rate mechanism.

Spain and Portugal became Member States of the Community in 1986; Spain joined the exchange-rate mechanism in 1989 and Portugal in 1992, with a fluctuation margin of 6 %.

(b) The 1992–93 crisis

The EMS was seriously disrupted by the violent upheaval in the European exchange markets in September and October 1992, following the difficulties in ratifying the Maastricht Treaty in Denmark and France. The pound sterling and the lira had to leave the exchange rate mechanism in September 1992 and in November that year the peseta and the escudo devalued by 6 % compared with the other currencies. In January 1993, the Irish pound was devalued by 10 %; in May, the peseta and the escudo were further devalued. In the face of a further wave of speculation, the fluctuation margins were raised to 15 % (1 August 1993).

(c) Assessment of the EMS

The main aim of the EMS, to establish an internal and external area of currency stability, was achieved. The characteristic instability of the international monetary system in the 1980s was averted in the participating countries. After efforts lasting over 20 years, stability prevailed.

Monetary discipline led to economic convergence, with a reduction of inflation rates and an approximation of interest rates.

Private use of the ECU (by contrast with its official use, i.e. between central banks belonging to the EMS) developed considerably. It was used increasingly in the launch of international bond issues by the Community institutions, Member States and firms. Having become a prime international financial instrument, it replaced most of the currencies comprising it on the capital markets. In these various ways, the EMS and the ECU thus provided a strong basis for the introduction of the single currency.

D. Fourth period (1988–92): progress towards Economic and Monetary Union

The establishment of the internal market led the Community to revive the objective of monetary union. The Hannover European Council (June 1988) pointed out that 'in adopting the Single Act (which came into force on 1 July 1987), the Member States of the Community confirmed the objective of progressive realisation of economic and monetary union (EMU)'. It entrusted to a committee chaired by the Commission President, Jacques Delors, 'the task of studying and proposing concrete stages leading towards this union'.

In April 1989 the report of the Delors Committee envisaged the achievement of EMU in three stages: stepping up cooperation between central banks; the establishment of a European System of Central Banks (ESCB); progressive transfer of decision-making power for monetary policy to supranational institutions; irrevocable fixing of parities between the national currencies and introduction of the single European currency.

The Madrid European Council of June 1989 adopted the Delors Plan as a basis for its work and decided to implement the first of these stages from 1 July 1990, when capital movements and financial services would be fully liberalised.

In December 1989 the Strasbourg European Council had to take account of a new situation, the prospect of German reunification. It was decided to convene an intergovernmental conference (IGC) to prepare the amendments to the Rome Treaty in view of EMU.

Approved by the European Council of December 1991, the amendments proposed by the intergovernmental conference were incorporated into the Treaty on European Union signed in Maastricht on 7 February 1992. The Treaty's EMU project was based on the general outlines of the Delors Plan but differed from it on some significant points. In particular, the second stage did not begin until 1 January 1994 and did not include the transfer of responsibilities for monetary policy to a supranational body but simply the strengthening of cooperation between central banks, replacing the former Committee of Governors with the European Monetary Institute (→5.2.0), which would be responsible, with the Commission, for the technical preparation of EMU. Establishment of the ESCB was deferred to the third stage.

E. Fifth period: stages in Economic and Monetary Union (1990–2002)

1. First stage (1 July 1990–31 December 1993)

This consisted of:

- completion of the internal market, achieved on 31 December, entailing in particular the full liberalisation of capital;
- strengthening of economic coordination, through greater convergence on price stability and public finance reform.

2. Second stage (1 January 1994–31 December 1998)

(a) The European Monetary Institute (EMI)

Set up on 1 January 1994 (→5.2.0), this was the precursor to the future European Central Bank and was to prepare for the third stage of EMU.

(b) Financial and monetary discipline

In this stage, Member States were to:

- render their central banks independent of the political authorities (Article 116(5) of the ECT);
- discontinue their overdraft facilities with their central banks and their privileged access to financial institutions (Articles 101, 102, 103 of the ECT);
- endeavour to fulfil the following five convergence criteria:
 - an inflation rate not exceeding by more than 1.5 % the average of the three best performing countries in the year preceding the third stage;
 - a budget deficit not exceeding 3 % of GDP, or at the very least close to that level, provided that it has declined continuously;
 - government debt not exceeding 60 % of GDP, or at the very least approximating to that level owing to a sharply diminishing trend;
 - a long-term interest rate that does not exceed by more than 2 % the average of the three best performing countries in terms of price stability;
 - maintenance of national currency within the normal fluctuation margins of the European Monetary System and no devaluation for at least two years.

(c) The decision to move on to the third stage

Article 121 provided that the Council would set the date for passage to the third stage, with a minimum date and cut-off date.

The Madrid European Council (15 and 16 December 1995) decided that the third stage would begin on 1 January 1999. It gave the single currency a name, the euro, and, after consultation with the Commission and the EMI, adopted the scenario for its introduction.

The Brussels European Council (2 May 1998), acting on the recommendation of the Commission and the Council for Economic and Financial Affairs (ECOFIN) and on the opinion of the European Parliament (EP/Parliament), decided that 11 countries — Germany, Belgium, Spain, France, Ireland, Italy, Luxembourg, Austria, Netherlands, Portugal and Finland — would proceed to the next stage.

3. Third stage (1 January 1999–1 July 2002)

On 1 January 1999, EMU started with those 11 countries. Greece joined them on 1 January 2001.

- (a) The European System of Central Banks (ESCB) and European Central Bank (ECB) came into operation on 1 January 1999 (→5.2.0)

(b) The process of introducing the euro

On 1 January 1999, the euro became the sole official currency of the participating Member States.

- the parities of the participating currencies and their rate for conversion into euro were irrevocably fixed.
- the euro became a currency in its own right and the ECU basket ceased to exist.
- monetary policy and exchange-rate policy is carried out in euro and the participating Member States issue their new public-sector debt instruments in euro.

Between 1 January 1999 and 1 January 2002, the ESCB and the national and Community public authorities were to monitor the process of changeover to the single currency, particularly in the financial and banking sector, and in all sectors of the economy.

On 1 January 2002, banknotes and coins in euro began to circulate alongside national currency banknotes and coins. The period of dual currency circulation lasted for two months, after which only euro banknotes and coins were legal tender.

(c) Coordination of economic policies

From the beginning of the third stage, Member States must regard their economic policies as a matter of common concern (Articles 99 and 104 of the ECT). In order to achieve this, the Treaty provides for the adoption by the Council of broad economic policy guidelines (BEPGs) applicable to all the Member States and a mechanism for monitoring excessive public deficits (→5.4.0).

(d) The Stability and Growth Pact

Adopted by the Amsterdam European Council on 16 and 17 June 1997 (→5.5.0), its purpose is to ensure budgetary discipline by maintaining the obligation to conform to the deficit and indebtedness criteria laid down for initial access to the monetary union. On 20 March 2005, the Council adopted a report entitled 'Improving the implementation of the Stability and Growth Pact'. The report was endorsed by the European Council in its conclusions of 22 March 2005, which stated that the report updates and complements the Stability and Growth Pact, of which it is now an integral part. On 27 June 2005 the pact was complemented by two additional regulations amending the Regulations (EC) Nos 1466/97 and 1467/97.

(e) EMS II

The European Council in Amsterdam also laid down the basic principles and operational characteristics for a new exchange-rate mechanism to regulate the relationship between the single currency and the currencies of the European Union Member States that are not members of the monetary union. 'EMS II' was introduced on 1 January 1999,

when the third stage of EMU started. Unlike the EMS, in which all the currencies established central parities between them (central rates) and fluctuation margins around them, the parities and margins for the new exchange mechanism are now set solely in relation to the euro. Participation in the mechanism is optional. However, the Member States that joined the EU on 1 May 2004 will have to join EMS II as their preparations for adopting the euro advance. On 27 June 2004 the Estonian kroon, the Lithuanian lita and the Slovenian tolar joined. The Slovenian tolar will cease to participate in EMS II once Slovenia joins the euro zone on 1 January 2007. On 2 May 2005 three other Member-State currencies joined ERM II: those of Cyprus, Latvia and Malta. On 25 November 2005 the Slovak koruna joined the mechanism. Furthermore, the Danish krone is also participating in EMS II with a fluctuation margin of 2.25 % on either side of its central rate in relation to the euro.

Country (national currency)	Central rate (for EUR 1)	Fluctuation band
Cyprus (pound)	0.585274	+/- 15 %
Denmark (krone)	7.46038	+/- 2.25 %
Estonia (kroon)	15.6466	+/- 15 %
Latvia (lat)	0.702804	+/- 15 %
Lithuania (lita)	3.45280	+/- 15 %
Malta (lira)	0.429300	+/- 15 %
Slovakia (koruna)	38.4550	+/- 15 %
Slovenia (tolar)	239.640	+/- 15 %

F. Enlargement: prospects for the new Member States
(→6.3.1.)

New Member States have no opt-out clause. In order to join the euro area they have to participate in the European exchange rate mechanism (EMS II) for a minimum of two years and they must fulfil the convergence criteria.

In the first half of 2006 Slovenia and Lithuania requested that the Commission and the ECB report to the Council on the progress made by their countries in the fulfilment of the convergence criteria with a view to joining the euro area on 1 January 2007. The Commission and the ECB subsequently gave a positive assessment for Slovenia but rejected Lithuania's bid to enter the euro area. Slovenia will become the 13th Member State of the euro area on 1 January 2007.

Role of the European Parliament

The EP is consulted on the following issues:

- agreements on exchange rates between the euro and non-EU currencies;

- choice of countries eligible to join the single currency in 1999 and subsequently;
- appointment of the President, Vice-President and other members of the ECB Executive Board;
- legislation implementing the excessive deficit procedure provided for in the Stability and Growth Pact.

In its resolution on the 2003 annual report, the EP welcomed the ECB's choice of an inflation rate 'below, but

close to 2 %', adopted on 8 May 2003, as a signal of the ECB's policy to guarantee monetary stability without accepting deflationary pressures. Parliament also calls for closer involvement in the nomination and appointment of ECB Board Members.

→ Christine BAHR
09/2006

5.2. The institutions of Economic and Monetary Union

Legal basis

- Articles 105–124 of the EC Treaty (ECT);
- Protocols annexed to the Treaty on European Union (Maastricht Treaty):
 - on the European Monetary Institute (Articles 1–23);
 - on the statutes of the European Monetary Institute, the European System of Central Banks and the European Central Bank (Articles 1–53);
- Declaration on Article 10(6) of the Statute of the European System of Central Banks and of the European Central Bank (Statute), annexed to the Treaty of Nice.

Objectives

The main objectives of the institutions of economic and monetary union are:

- to finalise the completion of the internal market by removing the uncertainty and the costs inherent in exchange transactions, as well as the costs of hedging against currency fluctuation risks;
- to ensure full comparability of costs and prices throughout the Union, which should help consumers, stimulate intra-Community trade and facilitate business;
- to reinforce Europe's monetary stability and financial power by:
 - ending, by definition, any possibility of speculation between the Community currencies;
 - ensuring, through the economic and financial dimension of the monetary union thus established,

that the new currency is largely invulnerable to international speculation;

- enabling the euro to become a major reserve and payment currency.

Achievements

No monetary institution was established during the first stage of Economic and Monetary Union (EMU) (1 July 1990–31 December 1993).

A. The institutions of the second stage of EMU (1 January 1994–31 December 1998)

1. The European Monetary Institute (EMI)

(a) Role

The EMI was established at the beginning of the second stage of EMU, pursuant to Article 117 of the Treaty, and took over the tasks of the Committee of Governors and the European Monetary Cooperation Fund (EMCF). It had no say in the conduct of monetary policy, which remained the prerogative of the national authorities. Among its main tasks for the implementation of the second stage of EMU were:

- to strengthen cooperation between the national central banks;
- to strengthen coordination of the monetary policies of the Member States with a view to ensuring price stability;
- to monitor the functioning of the European Monetary System;
- to facilitate the use of the European Currency Unit (ECU) and oversee its development;

- to ascertain the state of compliance by the Member States with the convergence criteria for access to EMU and to report thereon to the Council.

For the preparation of the third stage of EMU it was required to:

- prepare the instruments and the procedures necessary for carrying out a single monetary policy;
- promote the efficiency of cross-border payments;
- promote the harmonisation of the rules and practices governing statistics;
- specify the regulatory, organisational and logistical framework necessary for the European System of Central banks (ESCB) to perform its tasks.

(b) Institutional status

The EMI, which had a legal personality, was run and managed by a Council, which:

- consisted of a president and the governors of the national central banks;
- was independent of, and could not take instructions from, Community institutions or bodies or governments of Member States (Article 8 of the Statute).

Its president was appointed by common accord of the governments of the Member States at the level of Heads of State or Government, on a recommendation from the Council of the EMI, and after consulting the European Parliament (EP/Parliament) and the Council (Article 117 of the ECT).

In accordance with Article 123(2) of the ECT, the EMI was dissolved on the establishment of the ECB, for which it had paved the way (1 June 1998).

2. The Monetary Committee

This consisted of members appointed in equal number by the Commission and by the Member States.

Set up to promote coordination of the policies of Member States to the full extent needed for the functioning of the internal market (Article 114 ECT), it had an advisory role.

It had the following tasks:

- to keep under review the monetary and financial situation of the Member States and of the Community and the general payments system of the Member States and to report regularly thereon to the Council and to the Commission;
- to deliver opinions to the Council or Commission, to contribute to the preparation of the work of the Council, and to examine, at least once a year, the situation regarding the movement of capital and the freedom of payments and report to the Commission and to the Council thereon.

It was dissolved at the start of the third stage and replaced by the Economic and Financial Committee.

B. The institutions of the third stage (beginning on 1 January 1999)

1. The European Central Bank (ECB)

(a) Organisation

Established on 1 June 1998, the ECB is a European institution with legal personality (Article 107(2) ECT and Article 9 of the ECB Statute) based in Frankfurt. It is run by three bodies that enjoy independence from Community institutions and national authorities.

(i) The Governing Council

Comprises the members of the Executive Board and the governors of the national central banks of those countries that have adopted the euro (Article 112(1) ECT and Article 10.1 of the Statute).

As the supreme decision-making body it adopts the guidelines and takes the decisions necessary to ensure the performance of the tasks entrusted to the ESCB, formulates the monetary policy of the Community including, as appropriate, decisions relating to intermediate monetary objectives, key interest rates and the supply of reserves in the ESCB, and establishes the necessary guidelines for their implementation (Article 12 of the Statute).

(ii) The Executive Board

Comprises a President, Vice-President and four other members, all appointed by common accord of the Heads of State or Government of the euro area Member States for a non-renewable period of eight years (Article 112(2) ECT).

It is entrusted with implementing monetary policy and in doing so gives the necessary instructions to national central banks. It is also responsible for the preparation of meetings of the Governing Council and for the current business of the ECB (Articles 11 and 12 of the Statute).

(iii) The General Council (Article 45(1) of the Statute)

Consists of the President and Vice-President of the ECB and the Governors of the Central Banks of all EU Member States, regardless of whether they have adopted the euro.

It contributes to the collection of statistical information, coordinates the monetary policies of those Member States that have not adopted the euro and oversees the functioning of the European exchange-rate mechanism (ERM2) ([→5.1.0.](#))

(iv) The ECB's capital

Amounts to EUR 5 565 million, of which EUR 4 089 million was fully paid up. The national central banks are the sole subscribers to and holders of the capital (Article 28 of the Statute). The key for capital subscription is established

according to a weighting that is revised every five years to reflect each Member State's proportion of the Community's population and GDP (Article 29 of the Statute).

(b) Role

Only the ECB may authorise the issue of banknotes within the Community. The ECB itself or the national central banks may issue such notes. Member States may issue coins subject to approval by the ECB of the volume of the issue (Article 106 ECT).

The ECB takes decisions necessary for carrying out the tasks entrusted to the ESCB under the latter's Statute and under the Treaty (Article 110 ECT).

Assisted by the national central banks, it collects the necessary statistical information either from the national authorities responsible or directly from economic agents (Article 5 of the Statute).

It is consulted on any proposed Community act in its fields of competence and, at the request of national authorities, on any draft legislative provision (Article 105 ECT).

It may perform specific tasks concerning policies relating to the prudential supervision of credit institutions and other financial institutions (Article 25(2) of the Statute). However, the authorities in the Member States continue to oversee the banking system, as they did before the advent of the euro.

It is responsible for the smooth running of Target (Trans-European automated real-time gross settlement express transfer system), a payment system in euro that links up the 15 national payment systems and the ECB payment mechanism.

The ECB is making the arrangements to integrate the central banks of the new Member States into the ESCB.

2. The European System of Central Banks (ESCB)

(a) Organisation

The ESCB consists of the ECB and the national central banks of all EU Member States (Article 107(1) ECT and Article 1(2) of the Statute). It is governed by the same decision-making bodies as those of the ECB (Article 107(2), ECT).

The Eurosystem comprises only the ECB and the national central banks of the Member States in the euro area.

(b) Role

The ESCB's fundamental task lies in maintaining price stability (Article 105 ECT). Without prejudice to this objective, the ESCB supports the general economic policies contributing to the achievement of the objectives of the Community. It discharges this task by carrying out the following functions (Article 105(2) ECT and Article 3 of the Statute):

- defining and implementing the monetary policy of the Community;
- conducting foreign-exchange operations consistent with the provisions of Article 111 ECT;
- holding and managing the official foreign reserves of the Member States;
- promoting the smooth operation of payment systems;
- contributing to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system.

3. The Economic and Financial Committee

Comprising not more than six members, a third of whom are appointed by the Member States, a third by the Commission and a third by the ECB, its duties are the same as those of the Monetary Committee, which it succeeded on 1 January 1999, with one important difference: notifying the Commission and Council of developments in the monetary situation is now the responsibility of the ECB.

4. The Eurogroup

Originally called Euro-11, the meeting of ministers of economics and finance of the euro area changed its name to 'Eurogroup' in 1997. This advisory and informal body meets regularly to discuss all the issues connected with the smooth running of the euro area and EMU. The Commission and, where necessary, the ECB are invited to attend these meetings. At the informal Ecofin meeting in Scheveningen on 10 September 2004, the Prime Minister and Minister of Finance of Luxembourg, Jean-Claude Juncker, was elected President of the Eurogroup. He thus became the Eurogroup's first elected and permanent president for a mandate that started on 1 January 2005 and ends on 31 December 2006. In September 2006 his mandate was renewed for a further two years.

5. The Economic and Financial Affairs Council (Ecofin)

Ecofin brings together the finance ministers of all EU Member States and is the decision-making body at European level. Having consulted the ECB, it takes decisions regarding the exchange-rate policy of the euro vis-à-vis non-EU currencies, whilst adhering to the objective of price stability.

Role of the European Parliament

A. Legislative role

1. The EP is consulted on the following issues:

- arrangements for Member States' introduction of euro coins (euro banknotes are the responsibility of the ECB);
- agreements on exchange rates between the euro and non-EU currencies;

- choice of countries eligible to join the single currency in 1999 and subsequently;
- nomination of the President, Vice-President and other members of the ECB Executive Board;
- any changes to voting arrangements within the ECB Governing Council (Article 10(2) of the Statute of the ESCB and ECB) in accordance with the Declaration on Article 10(6) of the Statute of the European System of Central Banks and of the European Central Bank, annexed to the Treaty of Nice;
- legislation implementing the excessive deficit procedure provided for in the Stability and Growth Pact.

2. The EP gives its assent

- to any changes to the powers given to the bank to supervise financial institutions;
- to the majority of changes to the statute.

B. Supervisory role

1. Under the Treaty

The ECB addresses an annual report on the activities of the ESCB and on the monetary policy of both the previous and current year to the EP, the Council and the Commission, and to the European Council (Article 113(3) ECT).

The President of the ECB must then present this report to the Council and to the EP, which may hold a general debate on that basis.

The President of the ECB and the other members of the Executive Board may, at the request of Parliament or on their own initiative, be heard by relevant committees of the EP. In accordance with Article 113(3) ECT, members of the EP question the President of the ECB at a monetary dialogue held four times a year. They discuss the monetary decisions of the ECB and the economic situation, thereby holding the ECB democratically accountable.

2. Parliament's initiative

Parliament called for the extensive powers of the ECB provided for under the Treaty — i.e. freedom to determine the monetary policy to be pursued — to be balanced by democratic accountability (resolution of 18 June 1996). To that end it instituted 'monetary dialogue' as a regular procedure. The President of the ECB, or another member of its Governing Council, appears before Parliament's Committee on Economic and Monetary Affairs at least every three months to answer questions on the economic outlook and to justify the conduct of monetary policy in the euro area.

→ Christine BÄHR
09/2006

5.3. European monetary policy

Legal basis

- Articles 98 to 124 of the EC Treaty (ECT);
- Protocol accompanying the Maastricht Treaty on the Statute of the European System of Central Banks (ESCB) and the European Central Bank (ECB) (Statute): Articles 1 to 52.

Objectives

The main objective of the ESCB is to maintain price stability in accordance with Article 105 of the ECT.

Without prejudice to this objective, the ESCB supports the general economic policies in the Community, with a view to contributing to the achievement of the objectives of the Community as laid down in Article 2 of the ECT, in particular 'a high level of employment and of social protection'. The ESCB acts in accordance with the principles

of an open market economy with free competition, favouring an efficient allocation of resources.

Achievements

A. The guiding principles of ECB action

1. The independence of the ECB

The essential principle of the ECB's independence is set out in Article 108 of the ECT and Article 7 of the Statute. When exercising powers and carrying out tasks and duties, neither the ECB, nor a national central bank (NCB), nor any member of their decision-making bodies may seek or take instructions from Community institutions or bodies, from any government of a Member State or from any other body. Respect for Article 108 is guaranteed by the nature of the mandate entrusted to the members of the Executive Board and the Governing Council (→5.2.0).

The ECB's independence is maintained by the prohibitions referred to in Article 101 of the ECT, which also apply to the NCBs: overdraft facilities or any other type of credit facility in favour of Community institutions or bodies, central governments, regional, local or other public authorities, other bodies governed by public law or public undertakings of Member States are prohibited (→5.2.0). This excludes the dependency of monetary policy on budgetary policy.

The independence of the ECB centres around the free choice of monetary policy instruments. The ECT provides for the use of traditional instruments (Articles 18 and 19 of the Statute) and allows the Governing Council to decide by a majority of two thirds on the use of other methods as it sees fit (Article 20 of the Statute).

2. The principles of responsibility and transparency of the ECB

In order to ensure the credibility of the ECB, the ECT imposes reporting commitments on the ECB (Article 15 of the Statute). The ECB draws up and publishes reports on the activities of the ESCB at least quarterly. A consolidated financial statement of the ESCB is published each week. The ECB addresses an annual report on the activities of the ESCB and on the monetary policy of both the previous and the current year to the European Parliament (EP/Parliament) (Article 113(3) of the ECT). Each month, the ECB's Monthly Bulletin is published in the 19 official languages of the European Community and provides an in-depth analysis of the economic situation and the outlook for price developments.

The ECB is also responsible to the democratic institutions. The heads of the ECB regularly appear before the EP (→5.2.0). However, the EP cannot give any instructions to the ECB and has no *a posteriori* control.

The Governing Council is the main decision-making body of the ECB. It consists of the six members of the Executive Board plus the governors of all national central banks (NCBs) from the euro area countries.

The operation of the Governing Council respects the 'one person, one vote' principle. Each member of the Governing Council has one vote. As from the date on which the number of members of the Governing Council exceeds 21, each member of the Executive Board shall have one vote and the number of governors having one vote each and being eligible to vote shall be 15. The voting rights shall be assigned and rotate as follows:

- as from the date on which the number of governors exceeds 15, until it reaches 22, the governors shall be allocated to two groups, according to a ranking of the size of the share of their national central bank's Member

State in the aggregate GDP at market prices and in the total aggregated balance sheet of the monetary financial institutions of the Member States which have adopted the euro. The shares in the aggregate GDP at market prices and in the total aggregated balance sheet of the monetary financial institutions shall be assigned weights of 5/6 and 1/6, respectively. The first group shall be composed of five governors with five voting rights and the second group of the remaining governors with the remaining votes;

- as from the date on which the number of governors reaches 22, the governors shall be allocated to three groups according to a ranking based on the above criteria. The first group shall be composed of five governors and shall be assigned four voting rights. The second group shall be composed of half of the total number of governors, with any fraction rounded up to the nearest integer, and shall be assigned eight voting rights. The third group shall be composed of the remaining governors and shall be assigned three voting rights.

The governors must not defend national interests but must act in the collective interest of the euro area. In accordance with the Treaty, the minutes of its Governing Council meetings are not published.

B. The ECB's monetary policy strategy

1. Overview

At its meeting on 13 October 1998, the ECB Governing Council agreed on the main elements of its monetary policy strategy: quantitative definition of price stability; a prominent role for the monitoring of the growth of the monetary mass identified by an aggregate; and a broadly based assessment of the outlook for price developments.

The ECB has opted for a monetary strategy based on two pillars, whose respective roles were clarified during the recent review of the monetary strategy on 8 May 2003.

The Member States that have not adopted the single currency retain their powers in the field of monetary policy.

2. Price stability

Price stability was initially defined as a year-on-year increase in the Harmonised Index of Consumer Prices (HICP) for the euro area of below 2 %. It must be maintained over the medium term.

This definition was confirmed and clarified on 8 May 2003. At the same time, the Governing Council agreed that it would aim to maintain inflation rates below but close to 2 % over the medium term. This underlined the ECB's commitment to provide a sufficient safety margin to guard against the risks of deflation. It also addressed the issue of

the possible presence of a measurement bias in the HICP and the implications of inflation differentials within the euro area.

3. The first pillar of the monetary policy strategy

The economic analysis focuses mainly on the assessment of current economic and financial developments and the implied short- to medium-term risks to price stability. The economic and financial variables that are the subject of this analysis include: developments in overall output; aggregate demand and its components; fiscal policy; capital and labour market conditions; a broad range of price and cost indicators; developments in the exchange rate, the global economy and the balance of payments; financial markets; and the balance sheet positions of euro area sectors. All these factors are helpful in assessing the dynamics of real activity and the likely development of prices from the perspective of the interplay between supply and demand in the goods, services and factor markets at shorter horizons.

The macroeconomic projections (scenarios based on the developments of key variables in the euro area in conjunction with the projections for each country) drawn up by Eurosystem staff are an important contribution to the deliberations of the Governing Council.

Overall, projections play an important, but not an all-encompassing role.

4. The second pillar of the monetary policy strategy

The ECB singles out money from within the set of selected key indicators that it monitors and studies closely. This decision was made in recognition of the fact that monetary growth and inflation are closely related in the medium to long run. This widely accepted relationship provides monetary policy with a firm and reliable nominal anchor beyond the horizons conventionally adopted to construct inflation forecasts. Taking policy decisions and evaluating their consequences, not only on the basis of the short-term indications stemming from the analysis of economic and financial conditions but also on the basis of money and liquidity considerations, allows a central bank to see beyond the transient impact of the various shocks and avoids the temptation of taking an overly activist course.

In order to signal its commitment to monetary analysis and to provide a benchmark for the assessment of monetary developments, the ECB announced a reference value for the broad monetary aggregate M3. This reference value refers to the rate of M3 growth that is deemed to be compatible with price stability over the medium term. This covers currency in circulation, short-term deposits with credit institutions (and other financial institutions) and short-term debt securities issued by these establishments.

The calculation of the reference value was based on the quantitative relationship between money and prices on the one hand, and economic activity and the velocity of circulation of money on the other. The M3 value was set at 4.5 % (in December 1998) on the basis of the medium-term trend in real GDP growth (2 % to 2.5 % per year) and the trend in the velocity of circulation of M3 (0.5 % and 1 % per year). In May 2003 the Governing Council decided to no longer review the reference value for M3 on an annual basis because experience has shown that the underlying medium-term trend assumptions cannot be expected to change frequently.

C. Implementation of the monetary policy: instruments and procedures

By establishing interest rates at which the commercial banks can obtain money from the central bank, the ECB Governing Council indirectly affects the interest rates throughout the euro area economy, and in particular the rates for loans granted by commercial banks and for saving deposits.

1. Open market operations

Open market operations play an important role in steering interest rates, managing the liquidity situation in the market and signalling the monetary policy stance through four categories of operations.

(a) Main refinancing operations

The main refinancing operations are the most important instrument of the monetary policy. They are regular liquidity-providing reverse transactions with a weekly frequency and a maturity of two weeks. They provide the bulk of liquidity to the banking system. The minimum bid rate for the main refinancing operations is the key ECB interest rate. It is within the limits of the rates of the deposit facility and the marginal lending facility. The level of these three key rates signals the orientation of the monetary policy of the euro area. These three rates were set for the first time on 22 December 1998: the interest rate for the main refinancing operations at 3 %, the marginal lending facility and deposit facility rates at 4.5 % and 2 % respectively.

(b) Longer-term refinancing operations

These are liquidity-providing reverse transactions with a monthly frequency and a maturity of three months. They represent only a limited part of the global refinancing volume and do not seek to send signals to the market.

(c) Fine-tuning operations

These ad hoc operations aim to deal with unexpected liquidity fluctuations in the market, in particular with a view to smoothing the effects on interest rates.

(d) Structural operations

These operations are mainly aimed at adjusting on a permanent basis the structural position of the euro system vis-à-vis the financial sector.

2. Standing facilities

Standing facilities provide or absorb liquidity with an overnight maturity. Their interest rates provide a ceiling and a floor for overnight market interest rates. This rate is known as the EONIA (Euro Overnight Index Average). Two standing facilities are available to eligible counterparties:

- the marginal lending facility enables counterparties to obtain overnight liquidity against eligible assets. The interest rate on this facility provides a ceiling for the overnight market interest rate;
- the deposit facility enables counterparties to make overnight deposits with the euro system. The interest rate on the deposit facility provides a floor for the overnight market interest rate.

Both of these rates aim to ensure the smooth operation of the market in situations of very high supply and demand of funds.

3. Holding of minimum reserves

In accordance with Article 19(1) of the Statute, the ECB may require credit institutions established in Member States to hold minimum reserves with the ECB and national central banks. The aim of the minimum reserves is to stabilise the short-term interest rates on the market and to create (or enlarge) a structural liquidity shortage among the banking system vis-à-vis the Eurosystem. The calculation methods and determination of the amount required are set by the Governing Council.

D. An initial assessment

The euro, a visible symbol of European identity, became the second largest currency in the world when it was launched. It has become an international currency of investment and currency on the markets alongside the dollar and the yen.

With 16 % of global GDP, the euro area comes behind the United States (21 %), but well ahead of Japan (8 %). Its economic importance will encourage the use of the euro at international level.

Since it started operating, the euro system has had to deal with the depreciation of the euro (25 % depreciation in relation to the dollar between the beginning of 1999 and the beginning of 2002) then with a lengthy appreciation in relation to the dollar from the beginning of June 2002, reaching a high in January 2005.

The 1999–2002 period was characterised by a number of shocks: e.g. the increase in food prices (beef sector crisis and climate problems) and the attacks of 11 September 2001 (fall in key interest rates and increase in banks' liquidity to limit the risk of recession).

Inflation averaged 2.1 % in 2004 and 2.2 % in 2005, a little above the levels compatible with the definition of price stability. The key interest rates in the euro area are currently the lowest they have been for more than half a century even though the ECB Governing Council started a tightening cycle in December 2005.

Role of the European Parliament

The EP considers that a 'domestic payment area' is a necessary complement to the single currency zone. As a result, in order to facilitate the operation of the internal market, steps should be taken to ensure that the costs of cross-border payments in euro are the same as the costs for payments in euro within a Member State. A measure towards this goal has been initiated through Regulation (EC) No 2560/2001 of 19 December 2001, which sets common costs for payments (both domestic and cross-border) for sums up to EUR 12 500. The same measure established a mechanism for the common description of bank accounts (IBAN for the customer's account and BIC for the banking establishment) with effect from 1 July 2003.

In its resolution on the 2003 ECB annual report, the EP welcomes the ECB's choice of an inflation rate 'below, but close to 2 %' as a signal of the ECB's policy to guarantee monetary stability without accepting deflationary pressures; the EP recognises that through price stability the ECB can contribute to achieving the objectives defined in the Lisbon agenda.

→ Christine BÄHR
09/2006

5.4. Coordination of economic policies

Legal basis

- Articles 2, 4, 98–104 introduced by the Treaty of Maastricht; and Articles 125, 126 of the EC Treaty introduced by the Treaty of Amsterdam.
- Protocol on the Excessive Deficit Procedure annexed to the Treaty.

Objectives

A. Treaty provisions

Article 98 is the basis for coordination, requiring the Member States to view their economic policies as a matter of common concern and coordinate them within the Council. Subsequent articles prescribe the areas and forms of coordination. Article 99 lays down the procedures related to the general policy recommendations (Broad Economic Policy Guidelines). Article 100 is concerned with special provisions applicable in cases of serious economic difficulties. Articles 101 to 103 rule out privileged access to financing from the European Union or the European Central Bank (ECB) to any public body. Article 104 contains the basis for subsequent secondary legislation with regard to budgetary discipline. The thresholds for the level of public debt and deficit are defined in a separate protocol to the Treaty (Protocol on Excessive Deficit Procedure). Article 104 also lays down the procedure to be followed if a Member State does not fulfil the deficit or debt criteria. The title on employment, introduced in the Treaty of Amsterdam, establishes employment policy among the fields of economic policy coordination (Articles 125 and 126). See also employment policy (→4.8.3.).

B. Aims

1. Contribute to the attainment of Treaty objectives

The overall objectives of economic policy coordination are those of the European Union, seeking to secure balanced, sustainable and non-inflationary growth, associated with high employment and competitive industry in a market economy setting. This should lead to higher standards of living and quality of life together with increasing convergence of economic performance across Member States.

2. Tune national fiscal policies to single monetary policy

The euro area is a monetary union where the currency area does not coincide with the area of budgetary sovereignty.

Policy coordination is needed to combine one monetary policy, pursued by an independent central bank, with fiscal and structural policies, for which each Member State remains responsible.

3. Draw maximum benefit from economic integration

The EU is highly integrated in terms of trade and investment flows. The high degree of interdependence between the national economies needs to be taken into account because it increases the influence of one Member State's policy decisions on the evolution of the others' economies. Successful coordination guarantees that such spillover effects are taken into account in policy design, enabling the advantages offered by a well-functioning large internal market to be fully exploited.

4. Achieve economic convergence

The coordination of structural policies, inter alia in product and labour markets, seeks to foster long-term convergence of national economies since their evolution determines the direction in which the EU economy will develop.

C. Scope of coordination

The scope of economic policy coordination is wide but not precisely defined. It can be seen as encompassing all actions aiming to provide economic conditions for balanced and sustainable growth within the European Monetary Union (EMU) and the EU. Its main elements should be:

- a common assessment of the economic situation;
- agreement on appropriate policy responses in the short run and in the long run;
- acceptance of peer pressure and, where necessary, adjustment of policies pursued.

Achievements

A. Decision-making framework

Economic policy coordination is mainly based on consensus without legally enforceable rules, except in the fiscal policy framework (→5.5.0.). In other areas the means employed consist in information exchange, discussion, peer review and, where appropriate, commonly agreed goals with common actions. The key concept of 'open method of coordination' was coined by the Lisbon summit of March 2000, with the European leaders encouraging the Member States to set benchmarks, identify best practices and implement policy in line with these.

The legal framework for economic policy coordination, developed since Maastricht, is based on:

- Council Regulation 3605/93 (amended by Regulation 475/2000) on the application of the protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community;
- Council Regulation 1466/97 (amended by Regulation 1055/2005) on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies;
- Council Regulation 1467/97 (amended by Regulation 1056/2005) on speeding up and clarifying the implementation of the excessive deficit procedure; and
- the Stability and Growth Pact (→5.5.0).

A further framework for coordination is defined by decisions taken by the European leaders in the European Council. These decisions have created a ‘soft’ legal basis for policy coordination in various areas or have made it more explicit:

- Employment: conclusions of the Luxembourg summit of November 1997.
- Structural policies: conclusions of the Cardiff European Council of June 1998.
- Strategic goals for structural reform to be reached by 2010: conclusions of the Lisbon European Council of March 2000 and their relaunch in 2005.
- The resolution of the Cologne European Council of June 1999, establishing the Macroeconomic Dialogue.
- The Code of Conduct on the content and format of the Stability and Convergence Programmes, endorsed by the Ecofin Council on 11 October 2005, incorporating the essential elements of Council Regulation 1467/97 into guidelines to assist the Member States in drawing up their programmes. It is also aiming at facilitating the examination of the programmes by the Commission, the Economic and Financial Committee and the Council.

B. Actors

The European Council sets coordinated political priorities and gives guidelines at the highest level. The Member States are in charge of national reporting, exchange of information and the implementation of recommendations and decisions adopted by the Ecofin Council. The Eurogroup (the finance ministers of EMU Member States) discusses EMU-related matters informally, usually before the Ecofin Council meeting. The ECB participates in matters linked to monetary policy. The Commission (in particular the commissioner and the

director-general in charge of economic and financial affairs) is in charge of reporting, preparing and making recommendations, as well as of the follow-up of the implementation of decisions. The Economic and Financial Committee (EFC) gives opinions and prepares the Council’s work. So does also the Economic Policy Committee (EPC), which also contributes to the Commission’s work. Finally, the social partners are involved in their fields of main interest: employment, wage developments and structural reform.

C. Main tools

1. Overall Policy Coordination — Broad Economic Policy Guidelines

(a) Nature and frequency

The Broad Economic Policy Guidelines (BEPGs) are the central, overarching policy document for different areas of economic policy coordination. They cover both macroeconomic and structural policy issues. The Ecofin Council adopts this strategic document, endorsed by the European Council, in early summer of each year on the basis of the Commission’s recommendation. As of 2003 the period for major revisions has increased to three years, reflecting the medium-term character of this strategy document. Since 2005 the BEPGs and the employment guidelines have been combined into the Integrated Guidelines for Growth and Jobs.

(b) Content

The purpose of the BEPGs is to give concrete recommendations to the Member States with regard to macroeconomic and structural policies. The document consists of two broad sections, the first devoted to orientations common to all Member States or all euro area Member States and the second containing country-specific recommendations.

(c) Legal status

The BEPGs are not legally enforceable, but peer pressure exercised by other Member States is expected to make the recommendations politically binding. To step up the pressure, the Council can issue a recommendation to non-compliant Member States and make it public.

(d) Implementation and follow-up

Since 2000 the Commission publishes an annual implementation report to enhance the follow-up of the recommendations. The report aims to give more visibility to progress made or missed, permitting results to be taken into account when preparing the BEPGs for the following year. The implementation report also constitutes an important link between the BEPGs and the coordination of budgetary policies under the Stability and Growth Pact (→5.5.0).

(e) Relationship with sectoral coordination

In order to guarantee the coherence of sectoral coordination — the so-called ‘processes’ — information must flow between them and the overall coordination based on the BEPGs. Input from the coordination in fields of budgetary policy and public finances, employment, structural reform and the general macroeconomic dialogue is used in the preparation of the BEPGs. Conversely, the recommendations issued in the BEPGs are to be applied when setting goals in other fields.

2. The Macroeconomic Dialogue — the Cologne Process

The Cologne summit of June 1999 introduced bi-annual meetings of representatives of various European institutions and the social partners, called the Macroeconomic Dialogue or the Cologne Process. Its purpose is to be a forum for an exchange of views, thereby fostering a common assessment of the economic situation at the European Union level. It is hoped that such exchanges will lead to stability-oriented wage claims and a balanced macroeconomic policy mix, supporting strong non-inflationary growth. The model for this procedure is the dialogue between management and labour organisations common in some Member States. The parties in the Macroeconomic Dialogue include the social partners, the Council, the Commission and the ECB.

3. Framework for fiscal policy — Stability and Growth Pact

The purpose of coordinating budgetary policies is to ensure a sufficient degree of coherence between the Member States’ fiscal policies, given the common monetary policy conducted by the ECB. The coordination of budgetary policies consists of multilateral surveillance and the Excessive Deficit Procedure, the rules for which are set out in detail in the Stability and Growth Pact (→5.5.0).

4. Employment — the Luxembourg Process and the Employment Guidelines

(a) Procedures

The employment guidelines constitute the centrepiece of this policy coordination process. The Council adopts this policy document on the basis of the Commission’s proposal. The Member States are requested to take the guidelines into account when formulating their national employment policies. They must submit to the Commission national action plans (NAPs) on employment, which are examined by the Commission and the Council. The NAPs are an input to the Commission’s Joint Employment Report and thereby to the following year’s employment guidelines. Apart from the Member States, the European Parliament (EP/Parliament), the Economic and Social Committee and the Committee of the Regions each provide an input to the

employment guidelines which are now combined with the BEPGs into the new integrated guidelines for growth and jobs.

(b) Legal status

Policy coordination in employment matters is a relatively weak coordination process. It is based on regular reporting, peer review and general guidelines issued to Member States. Country-specific recommendations can also be given, but they are not legally binding.

5. Structural Reform — Cardiff process and Lisbon targets

(a) Origin and content

The aim of structural reform is to make product, labour and capital markets more efficient, thus promoting a high standard of living and quality of life for the European citizen in a globalised world. Progress in these fields is monitored in the Cardiff process, named after the Cardiff European Council, which introduced the procedure.

(b) Procedures

Coordination is voluntary and based on monitoring, the exchange of best practices between the Member States and peer pressure. The centrepiece of the process is a reporting system on the measures taken in improving the functioning of product and capital markets. Member States provide national reports annually, on the basis of which the Commission prepares a ‘Cardiff report’ for the EU. This report serves as an input to the assessment of the implementation of the broad economic policy guidelines.

(c) Speeding-up structural reform — Lisbon targets

At the Lisbon summit of 2000 the Member States committed themselves to speeding up the structural reform process, in order to make the European Union the most dynamic economy in the world by 2010. Numeric goals were set to be reached by that year in areas such as employment and research and development. The progress made in five years has been disappointing and thus the Lisbon agenda was relaunched in 2005.

Since 2000 special spring summits have taken place. These are meetings of the European Council dedicated to economic policy, evaluating in particular progress on structural reforms.

6. Integrated guidelines for growth and jobs

In March 2005, the European Council judged that it was vital to relaunch the Lisbon strategy without delay and to refocus priorities on growth and employment. In this context, the Council approved the integrated guidelines for growth and jobs 2005–2008 which consist of the broad economic policy guidelines, ensuring the overall economic consistency of the three dimensions of the Lisbon strategy, and the employment guidelines.

This is a first result of the new approach defined at the Council's meeting in March 2005, which makes it possible to coordinate macro-economic policies, micro-economic policies and employment policies around 24 integrated guidelines in a dynamic and consistent fashion, in accordance with the procedures laid down in the Treaty.

To follow the new economic governance cycle, the integrated guidelines served as the basis for drawing up the national reform programmes that were presented by the Member States in autumn 2005. These programmes respond to the Member States' specific needs and reflect the approach of the integrated guidelines involving macro-economic policies, micro-economic policies, and employment.

The guidelines as well as the national programmes will be valid for the period 2005–08 and may be adjusted, where necessary, each year in line with the provisions of the Treaty. The national programmes may — within the period of their validity — also be amended by the Member States, if necessary, to take account of domestic policy requirements.

The Commission has presented its communication 'Common Actions for Growth and Employment: The Community Lisbon Programme' to run in tandem with the national programmes and covering the Community level measures to be taken to promote growth and employment.

Role of the European Parliament

The Treaty requires that EP be consulted on secondary legislation implementing the excessive deficit procedure, including the stability and growth pact.

In several resolutions Parliament has reiterated its view that it and the national parliaments should be more closely associated in the policy coordination processes, which have a significant impact on the national actions in areas of fiscal and structural policies.

→ Christine BAHR
09/2006

5.5. Framework for fiscal policies

Legal basis

- Articles 2, 4 and 98–104 of the EC Treaty, introduced by the Treaty of Maastricht;
- Protocol on the excessive deficit procedure, annexed to the Treaty;
- Protocol on the convergence criteria referred to in Article 121, annexed to the Treaty.

Objectives

A. Goals

The purpose of the framework for fiscal policies of the Member States is to fulfil the Treaty objective of securing sound public finances in the context of deeper economic integration, in particular within economic and monetary union (EMU). Rules outlining a common framework for national fiscal policies were introduced into EU Law in the Treaty of Maastricht as an essential element of the preparations for the completion of EMU. Although national sovereignty in the field of fiscal policy was maintained, the autonomy of Member States was reduced by the

convergence criteria, with which they had to comply in order to be allowed to adopt the euro (→5.2.0).

1. Fiscal prerequisites in a monetary union

In a monetary union with fiscal policy independence, a common framework for fiscal policies can be justified by the risk of moral hazard. Such a problem arises when one participant can act knowing he will not be suffering the (full) consequences of his actions. In EMU this might be the case if a Member State chose to run high budget deficits and accumulate debt, expecting to escape the full cost of this course of action. In the absence of a monetary union, a country with such imprudent policies would be subjected to a higher cost of borrowing in the form of higher interest rates. In an extreme case, the debt might swell to a level which the debtor could not sustain without help from its partners, who will be forced to pay in order to avoid damage to the common currency. If the imprudent country was one of the big economies, its behaviour might also lead to higher interest rates for the EMU as a whole. Although some economists argue that global financial markets would be efficient enough to charge individual Member States the full cost of higher borrowing, thus

persuading them not to run excessive deficits and debt, this outcome is anything but certain. Other economists convincingly argue that these market mechanisms do not work due to the moral hazard problem. Individual countries cannot be made accountable for their budgetary imprudence as the credible mechanisms to punish them do not exist. This is especially so as the non-bailout provisions in EMU (Article 103 of the European Union Treaty) are deemed not to be credible. Due to this uncertainty and given the experience of a drift towards ever-higher debt levels, the Member States have opted for a framework of rules-based fiscal policy.

Keeping public finances in balance under normal circumstances will give the Member States room for manoeuvre, allowing them to use discretionary fiscal policy to react to asymmetric economic shocks, i.e. those shocks hitting the Member State concerned but not the euro area as a whole.

Achievements

A. Framework

1. Convergence criteria

The convergence criteria define the framework for fiscal policies for EU Member States before their entry into EMU, and they therefore continue to apply to those Member States that have not yet adopted the euro. For the first 11 Member States that entered the third stage of EMU in 1999, along with Greece — which was able to join at the beginning of 2001 — the original criteria are no longer applicable. The current fiscal policy framework applicable to them, however, draws heavily on the convergence criteria and includes reporting procedures and sanctions. Council Regulation (EC) No 3605/93 on the application of the protocol on the excessive deficit procedure remains applicable.

2. The Stability and Growth Pact

The Stability and Growth Pact consists of:

- the resolutions of the Amsterdam European Council of June 1997 on stability, growth and employment;
- Council Regulation (EC) No 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies, as amended by Council Regulation (EC) No 1055/2005 of 27 June 2005; and
- Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure, as amended by Council Regulation (EC) No 1056/2005 of 27 June 2005.

These set out how the Treaty rules — in particular the excessive deficit procedure — should be implemented. The

pact is applicable to all Member States, both those that have already adopted the euro, and those still in the waiting room (Sweden, the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia) or opting out (Denmark and the United Kingdom).

With regard to the soundness of budgetary positions, the rules are the same as the convergence criteria. They limit:

- the deficit in general government finances to 3 % of GDP in any year; and
- the public debt-to-GDP ratio to 60 %.

Additionally, the section on medium-term budgetary objectives in Council Regulation (EC) No 1466/1997 requires general government finances to be close to balance or in surplus in the medium term. This combined with the nominal 3 % deficit limit which is independent of the cyclical position of the economy means that, in times of strong growth public finances should be in surplus if deficits are to be permitted during downturns. A balanced position in the medium term permits the use of 'automatic stabilisers', leading to deficits during downturns because lower growth reduces tax revenues and, at the same time, higher unemployment raises public expenditure. Council Regulations (EC) No 1055/2005 and 1056/2005 amended the original regulations in a reform of the Stability and Growth Pact. As a number of Member States were experiencing difficulties in respecting the rules of the pact, the reform essentially increased its flexibility. Most notably, the reformed pact now gives greater attention to debt developments as well as the implementation of structural policies and also allows for a more differentiated country-specific assessment in the medium-term objectives. It also allows for more leeway in the enforcement of the excessive deficit procedure (see point 3. below). The reform is often blamed to have gone too far in catering to the special needs of some Member States struggling with high budgetary deficits.

B. Enforcement

The procedures for guaranteeing that objectives are met are based on multilateral surveillance, comprising regular reporting and recommendations for corrective action, if commonly agreed targets are not met. While pecuniary sanctions are possible if the binding deficit limit is exceeded, no financial penalties are used for enforcing the limit set as regards general government debt.

1. Stability and convergence programmes

For the purposes of multilateral surveillance, all Member States are required to submit to the Council and the Commission medium-term programmes with regard to their budgetary position and the economic outlook on which the budget plans are based. These programmes are

called stability programmes for the EMU Member States and convergence programmes for those outside EMU. They must cover a period of three years following the year of submission, as well as the year prior to submission and the current year. The programmes must be updated annually. Updates are submitted in the autumn, which in most Member States coincides with the presentation of the following year's budget proposal to the national parliament.

(a) Content

The programmes must provide information on:

- how the medium-term objective of close to balance or in surplus is to be achieved, as well as on the expected development path of the government debt ratio;
- the main assumptions about economic developments on which the programme is based, and measures of budgetary and other economic policy taken to achieve the objectives set out in the programme.

(b) Assessment

The programmes are assessed by the Commission and the Economic and Financial Committee. On the basis of these assessments, the Council examines whether:

- based on the medium-term objectives set out in the programme, an excessive deficit is likely to be avoided;
- the measures taken or proposed are sufficient to achieve a balanced budget in the medium term;
- the underlying economic assumptions are realistic;
- the programme is consistent with the recommendations addressed to the Member State in the broad economic policy guidelines (→5.4.0).

The Council delivers an opinion on each programme acting on the recommendation of the Commission and after having consulted the Economic and Financial Committee (→5.4.0).

2. Early warning

(a) Failure to respect the balanced-budget requirement

If the Council finds that the development of a Member State's public finances diverges significantly from the objective of a balanced position in the medium-term or from the path towards such a position, it must issue an early warning to the Member State concerned. The early warning is given as a Council recommendation to make the policy adjustments that are necessary. To date, the Commission has recommended an early warning four times (to Germany, Portugal, France and Italy).

(b) Failure to implement the broad economic policy guidelines

The Council can also give an early warning if it considers, following a Commission recommendation, that a Member

State has not implemented in its stability or convergence programme the recommendations addressed to it in the BEPGs. This warning mechanism has so far been used once, in February 2000, when Ireland received a warning as a result of an excessively loose fiscal policy (tax cuts in times of strong inflationary pressure).

3. Excessive deficit procedure (EDP)

(a) Concept

The purpose of the procedure is to ensure that excessive deficits are promptly corrected. In normal circumstances, a general government deficit exceeding the reference value of 3 % of gross domestic product (GDP) at market prices is considered excessive. This deficit limit is not applicable in a severe recession. Before the reform of the pact in June 2006 a severe recession was defined as an annual drop in real GDP of at least 2 %. After the reform, a negative rate of GDP growth or a prolonged period of low growth suffices. The EDP may also be set aside in 'exceptional' circumstances, and the scope of these circumstances was increased in the reform in June 2005 (now called 'relevant factors'). Most importantly, additional relevant factors include circumstances where countries spend on efforts to 'foster international solidarity and to achieving European policy goals, notably the reunification of Europe if it has a detrimental effect on the growth and fiscal burden of a Member State'.

(b) Implementation

The Commission is responsible for monitoring the Member States' budgetary positions and debt levels. For this purpose, the Member States report to the Commission their planned and actual government deficits and debt levels twice a year, by 1 March and 1 September. If the Commission detects a deficit that is or risks becoming excessive, it must draw up a report. The Commission may prepare a report even where the reference values are not exceeded, if it considers that there is a risk of excessive deficit or debt. Based on a recommendation of the Commission, the Council then decides whether an excessive deficit exists. If the Council concludes that there is an excessive deficit, it will make a recommendation to the Member State establishing a deadline of six months for effective corrective action to be taken. If the Member State does not take adequate measures, the Council may require it, at the latest 10 months after the reporting of the data indicating the existence of an excessive deficit, to make a non-interest bearing deposit. However, under the reformed pact the Council may extend this period by one additional year. The payable deposit comprises a fixed component equal to 0.2 % of GDP and a variable component linked to the size of the deficit. Each subsequent year the Council may decide to intensify the sanctions by requiring an additional deposit, though the annual amount of deposits

may not exceed the upper limit of 0.5 % of GDP. A deposit is as a rule converted into a fine if, in the view of the Council, the excessive deficit has not been corrected after two years.

(c) Practice

Since the beginning of the third stage of EMU, the Commission has prepared a number of reports under the excessive deficit procedure. In September 2002, it concluded that the Portuguese government's actual deficit of 4.1 % of GDP in 2001 was excessive. In November 2002, the Commission reached the same conclusion concerning Germany's projected deficit for 2002. In April 2003, the French deficit of 3.1 % in 2002 was found to be excessive. In all cases, the Council subsequently adopted a decision on the existence of an excessive deficit and a recommendation with a view to bringing an end to the situation. In July 2004, the Council decided that Hungary, together with five other countries (the Czech Republic, Cyprus, Malta, Poland and Slovakia), had excessive deficits, as they were well in excess of the 3 % reference value laid down in the Maastricht Treaty. The deadline for the correction of the deficit was set at 2008 as the deficit was significantly above the reference value on membership date and because of the ongoing structural shift to a modern, service-oriented market economy. Annual targets were agreed according to Hungary's own convergence programme. In accordance with the excessive deficit procedure defined in the European Union Treaty and in Regulation (EC) No 1467/97, the Council also set a deadline for taking 'effective action' to reduce the deficit. In January 2005, the Council concluded that the action planned by the Hungarian government was not sufficient to reach the deficit target in 2005 and a new recommendation was issued. In October 2005, the Commission concluded that the Hungarian budgetary outlook had deteriorated considerably since the last assessment. The government's new target for this year is 6.1 % from 3.6 % initially, and 5.2 % for 2006. The Commission therefore recommended that the Council decide that Hungary had again failed to take effective action to correct its excessive deficit.

C. Evolution of deficits and debt

Despite the recent rise in the deficits of many Member States, the overall conclusion with regard to the fiscal rules remains positive: deficits and debt levels have decreased significantly since the rules were introduced in the Maastricht Treaty. After an initial clear decline, most

Member States entered EMU with a deficit, which led to time limits being set for achieving a budgetary position close to balance or in surplus. The purpose was to avoid the medium-term objective becoming a moving target which would never be reached. Most Member States used the economic upturn of the late 1990s to balance their budgets also notably driven by the motivation to qualify for the euro, the result being a significant reduction in public deficits. By the end of 2001, seven of the 12 EMU Member States had achieved the target of close to balance or in surplus. This picture is darkened by the subsequent deterioration in some Member States and by the fact that among those that have so far failed to reach a balanced position are the euro area's three largest economies (France, Germany and Italy), which account for more than 70 % of the total output.

Public debt has been decreasing in the euro area, but the average level still clearly exceeds the 60 % reference value as a result of the impact of three highly indebted countries (Belgium, Greece and Italy).

The Role of the European Parliament

The European Parliament (EP/Parliament) has certain prerogatives in the field of coordination of fiscal policies:

- the Council informs Parliament of its decisions regarding multilateral surveillance and excessive public deficit;
- Parliament is consulted on secondary legislation implementing the excessive deficit procedure, including the Stability and Growth Pact.

In several resolutions Parliament has reiterated its view that it and the national parliaments should be more closely associated in the policy coordination processes, which have a significant impact on national fiscal policy. Most recently, via its amendments to COM(2005) 71, Parliament called on the Commission to provide information on a regular basis to the EP and the Council on the programme for and work on improving the quality of statistics in the European Union, the quality of the actual data presented by the Member States and the development of Europe-wide minimum standards for the quality of statistics.

→ Christine **BAHR**
Arttu **MAKIPAA**
09/2006

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6.1. Common foreign and security policy (CFSP)

6.1.1. Foreign policy: aims, instruments and achievements

Legal basis

The Treaty on European Union (EUT) sets out the basis of the Common Foreign and Security Policy (CFSP) in Title V, Articles 11 to 28.

The CFSP is further consolidated by other provisions:

- In the EUT:
 - Title I concerning the Common Provisions, especially Articles 2 and 3;
 - Title VIII concerning the Final Provisions;
 - Protocol on Article 17, annexed to the Treaty by the Treaty of Amsterdam;
 - Declarations 27 to 30 adopted by the 1990 Intergovernmental Conference (Maastricht Treaty) and five declarations adopted by the 1996 Intergovernmental Conference (Treaty of Amsterdam): No 2 on enhanced cooperation between the EU and the Western European Union (WEU); No 3 on the WEU; No 4 on Articles 24 and 38; No 5 on Article 25 and No 6 on the establishment of a policy planning and early warning unit (→6.1.3). Declaration No 1 on the European security and defence policy, adopted by the 2000 Intergovernmental conference (Nice Treaty) is also relevant.
- In the EC Treaty: Articles 296, 297, 300 and 301.

Objectives

Article 11 of the EUT defines the following five objectives of the CFSP.

- To safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter.
- To strengthen the security of the Union in all ways.
- To preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter, as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter, including those on external borders.

- To promote international cooperation.
- To develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.

Article 2(b) of Title I EUT (Common provisions) defines the general objectives of the Union, which also apply to the framework of the CFSP;

In addition, Member States are bound by a clause of loyalty towards the EU. Article 11(2) stipulates that they shall:

- support the CFSP actively and unreservedly;
- refrain from any action which is contrary to the interests of the Union or is likely to impair its effectiveness in international relations;
- work together to enhance and develop their mutual political solidarity.

Achievements

A. European Political Cooperation (EPC)

After the failure of the 'Pleven Plan' in 1954, which aimed to create an integrated European army under joint command, the first concrete projection of political will emerged at the Hague Summit of 2 December 1969. The six foreign ministers introduced a text, known as the 'Davignon Report' which constituted the first steps towards European political cooperation (EPC); this was based on cooperation procedures between Member States outside the Community structure. Within the framework of the EPC, the Member States enhanced coordination of foreign policies and adopted a number of common positions, concerning especially the Middle East region. The EPC was further strengthened by the creation of the European Council in 1974, which defined the general orientations of the EPC agenda and by the Single European Act in 1987, which provided the legal basis for the procedure.

B. The Maastricht Treaty (1992)

The EUT introduced the three-pillar system distinguishing the different areas of EU intervention. The second pillar, covering the CFSP (like the third pillar concerning

cooperation in the fields of justice and home affairs), was based on intergovernmental procedures, as opposed to the first and main pillar, which concerned purely Community policies. In establishing the concept of CFSP, the EUT constituted a significant breakthrough.

1. Instruments

The CFSP differed from the EPC by introducing concrete strategic means, which went beyond simple verbal statements. In their original, Maastricht version, Articles 12 and 13 provided for common positions and joint actions. Both were to be decided unanimously by the Council and bind all Member States.

2. Single institutional framework

One of the most innovative aspects of the EUT is the establishment of a single institutional framework. Thus, although the CFSP is based on intergovernmental consultation, many actors participate: the European Council, the Council (in its General Affairs and External Relations configuration — GAERC), the Commission, Parliament, the Political and Security Committee.

3. Security and defence

→6.1.3.

C. The Treaty of Amsterdam (1997)

Though expected at first to introduce comprehensive institutional reform to make CFSP more coherent, in the end the Amsterdam Treaty left the established structure largely unchanged. It did however introduce a whole range of new instruments, as well as establish a much more efficient decision-making process.

1. Instruments

Expanding Article 12, the Treaty of Amsterdam gave the following instruments to the CFSP:

- principles and general guidelines (Article 13), decided by the European Council, including matters with defence implications;
- common strategies, decided by the European Council upon recommendation of the Council in cases where the Member States have important common interests, common strategies must set out the objectives, duration and means to be made available by the Union and the Member States; they are also implemented by the Council;
- joint actions (Article 14);
- common positions (Article 15);
- systematic cooperation between Member States, which must inform and consult one another within the Council on matters of foreign and security policy of general interest.

2. The policy planning and early warning unit

This was set up by a declaration annexed to the Amsterdam Treaty. Its main tasks within the CFSP are:

- to monitor and analyse developments and provide timely assessments and early warning;
- to provide assessments of the Union's interests and identify areas where the CFSP could focus in future;
- to produce argued policy-options papers as a contribution to policy formulation in the Council;
- to provide direct policy support to the High Representative.

3. Decision-making process

Article 23 stipulates that decisions shall be taken by the Council acting unanimously. In seeking to overcome the constraints that produced the rule of the unanimity, the Treaty introduced the instrument of constructive abstention (Article 23, § 1) as a means towards more flexibility. Thus, when a Member State abstains from a vote, it shall not be obliged to apply the decision but shall accept that the decision commits the Union.

Furthermore, the Treaty tried to extend the sphere of qualified majority voting (QMV). The Council can act by QMV when adopting joint actions, common positions or taking any other decision on the basis of a common strategy or when adopting any decision implementing a joint action or a common position, though not on decisions with military or defence implications. If no Member State objects or calls for a unanimous decision in the European Council ('emergency brake'), the decision is adopted by the Council by QMV (currently requiring 62 votes from at least 10 Member States).

4. Implementation

Responsibility for implementation is granted to the presidency, assisted by the Secretary-General of the Council, who acts as the High Representative for the CFSP, a function introduced at the 1999 December European Council.

5. Financing

Both operational and administrative expenditures are charged under Article 28 to the budget of the European Communities.

D. The Treaty of Nice (2003)

In response to new developments in the international relations system regarding security challenges the Member States reconsidered the institutional framework of the CFSP. The Nice Treaty, which entered into force on 1 February 2003, introduced the following changes:

1. Decision-making process

By derogation from the provisions of Article 23, § 1, the Council shall act by qualified majority when appointing a special representative.

2. Agreements with one or more States or international organisations

Article 24 stipulates that when the agreement is envisaged in order to implement a joint action or common position, the Council shall act by QMV.

3. Political and Security Committee (PSC)

The PSC, set up by Council decision in January 2001, is authorised by the European Council to exercise political control and strategic direction of a crisis management operation (Article 25).

4. Enhanced cooperation

The Treaty's Articles 27(a) through 27(e) extend the possibility for enhanced cooperation to the implementation of a joint action or a common position on CFSP issues that do not have any military or defence implications. As for other policy areas, it should be noted however that enhanced cooperation may be undertaken only as a last resort, once it is established that the intended goal cannot be achieved within reasonable time through applying the relevant Treaty provisions

Role of the European Parliament

1. Treaty provisions

Article 21 of the Amsterdam Treaty urges the presidency to consult the European Parliament (EP/Parliament) on the main aspects and the basic choices of the CFSP. The EP may ask questions to the Council or make recommendations to it.

2. Inter-Institutional Agreement

Under paragraph 40(H) of the Inter-Institutional Agreement of 6 May 1999, the Member States are required to prepare an annual Council document on the main aspects and basis choices of CFSP, including the financial implications for the general budget of the European Communities.

3. Actual action

Despite its modest formal role in the process, the EP has supported the concept of CFSP from its inception and sought to extend its scope. Bearing in mind conflicts throughout the world but especially those in the Balkans and in the Middle East, as well the changing nature of the security situation after the terrorist attacks of 11 September 2001, Parliament has repeatedly noted that the performance of the CFSP is weakened by the three-pillar structure, calling on Member States to make less systematic use of the constructive abstention mechanism. It also pushed for an EU 'Foreign Minister' and the creation of a single European diplomatic service.

Parliament's main instrument in this political dialogue is the annual report and resolution on CFSP (called the 'Brok Report' after its author, the current and long-serving chair of the Foreign Affairs Committee). This report is Parliament's direct response to the annual Council document on CFSP (see above) and feeds into the budgetary procedure, under which Parliament, as one half of the EU budgetary authority, must approve the CFSP budget.

While waiting for the Treaty establishing a Constitution for Europe to further formalise its role in CFSP, the EP has achieved a degree of informal cooperation in practice with the presidency, the Council Secretariat and the Commission. Representatives of all three entities regularly attend the meetings and hearings of Parliament's Committee on Foreign Affairs (AFET) and of the Sub-Committee on Security and Defence (SEDE), created in 2004. It has also built working relations with national parliaments in the field of foreign policy, holding an annual exchange with these on CFSP and ESDP.

→ Stefan SCHULZ
09/2006

6.1.2. Defending human rights and democracy

Legal basis

'To develop and consolidate democracy and the rule of law and respect for human rights and fundamental freedoms' is one of the 'objectives' of common foreign and security policy, as defined in Article 11 of the EU Treaty (see 6.1.1.).

Furthermore, as far as development cooperation is concerned, 'Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms' (Article 177 of the EC Treaty).

Finally, the European Union bases its action on all instruments of international law in order to promote respect for the commitments laid down therein.

Objectives

The European Union seeks to uphold the universality and indivisibility of human rights — civil, political, economic, social and cultural — as reaffirmed by the 1993 World Conference on Human Rights in Vienna. The communication from the Commission of May 2001 (COM(2001) 252) analyses these objectives.

Achievements

A. General

1. European Initiative for Democracy and Human Rights (EIDHR)

The EIDHR is the Union's primary financial instrument for promoting human rights and democracy. It enables direct financial support for NGOs working in the field of human rights and support for democracy in third countries, without the need for backing from their country's authorities. Since April 2004, EIDHR-funded projects have largely been selected and managed at local level following the process of decentralisation from Brussels to delegations in third countries, so that the ties between the EU and its partners are strengthened as far as possible.

2. The adoption of guidelines for EU policy on human rights

Since 1998 the Council of the Union has adopted five guidelines defining its priorities for the promotion of human rights. A broad consensus has been achieved among the Member States on the following themes: action against the death penalty (1998), the creation of specialised dialogues on human rights (2001), action against torture and other cruel, inhumane or degrading treatment or

punishment (2001), the protection of children in armed conflicts (2003), and finally the protection of defenders of human rights (2004). Specific EU action has been taken and recommendations have been made to Member States on each of these guidelines.

3. Appointment of a personal representative for human rights of the High Representative for the CFSP

In January 2005, following a Council decision on the creation of this position, Mr Javier Solana appointed Mr Michael Matthiessen, whose role is to ensure the coherence and continuity of European policy. Mr Matthiessen is responsible for ensuring the implementation of guidelines and EU policy at the United Nations, the Council of Europe and the OSCE, and also for monitoring political dialogue and organising relations with the European Parliament (EP/Parliament).

4. The drafting of an annual report on human rights

Since 1999 the Council has published an annual report on human rights in order to make its policy and action in this field more transparent, while Parliament has published its own annual report on human rights in the world since 1984.

B. EU initiatives in third countries

1. The 'human rights and democracy' clause in external EU agreements

Since 1995 the EU has inserted a clause under which conclusion of the agreement is conditional upon both parties' respect for international human rights standards in all its agreements with third countries. This is known as an 'essential elements' clause. Human rights breaches by a State bound by such a clause are put on the political dialogue agenda (see below), and may involve the negotiated implementation of 'measures appropriate' to the situation (blacklist, refusal of visas, suspension of the agreement, except as regards support for civil society, etc.). To date the clause has been applied chiefly to ACP countries — which are linked to the EU by a specific global agreement, the Cotonou Partnership Agreement (see 6.5.5.), but has not been used to any great extent elsewhere. It should be noted that sectoral agreements (fishing, textiles, etc.) do not include a clause of this type.

2. Common strategies, actions, positions

The EU pursues its human rights and democracy objectives by defining the general principles on which its policy is based. These principles may be reflected in 'common

strategies' when the EU and its Member States have significant common interests (Russia, the Mediterranean, for example), in 'joint actions' when an EU operational action is deemed to be necessary (appointment of special EU representatives — Moldova, Central Asia, Afghanistan, Middle East, Great Lakes, Southern Caucasus, Bosnia Herzegovina and the Republic of Macedonia — and crisis management operations), or in 'common positions' when it is a case of defining the EU's position on a particular geographic or thematic issue (e.g. common position of June 2005 on Cuba and human rights).

While these instruments are not specifically designed to defend human rights, they are regularly used for this purpose.

3. Measures and declarations

Measures taken by the EU presidency, the Troika or a Member State on behalf of all Member States vis-à-vis the authorities of a third country are a significant means of pressure. They are generally taken confidentially and involve reminding the authorities of their international human rights commitments, whether in a particular area (e.g. stoning, the death penalty), or as regards a defender of human rights or an organisation facing particular danger (e.g. Akhbar Gandji (Iran), Tunisian League for Human Rights, etc). In 2005 around 40 countries were concerned, often on several occasions.

Along the same lines, public declarations, which are no longer confidential, may be decided with the aim of calling upon a government to respect human rights (example: the detention of Daw Aung San Suu Kyi), or to welcome a positive development (e.g. the holding of elections). In 2005 some 40 countries were concerned.

4. Political dialogues

Since the 1970s the EU has been involved in a dialogue with all its partners. This dialogue, which takes different forms for different countries, is the forum in which the policies to be developed jointly by the EU and the third country are formulated and negotiated. Questions of respect for human rights and democracy, an 'essential element' of all the agreements concluded since 1995, are one of the themes addressed in these dialogues.

(a) Specific dialogues on human rights: Iran and China

In view of the human rights situation in these two countries, the EU has initiated a dialogue with them focusing exclusively on human rights. This dialogue has been continuing with China for over 10 years and with Iran since 2002. While the progress made has been far from spectacular, these dialogues, in which civil society takes part (intellectuals, NGOs, etc.), have enabled the latter at least to find a forum for meeting and discussion.

(b) Talks on human rights with Russia

During the EU–Russia summit of November 2004, it was decided to establish biannual talks on human rights; the matters debated so far (in March and September 2005) have focused on Chechnya, freedom of the press, the situation of minorities and the implementation of international human rights standards and racism in Europe. Civil society is not involved in this process.

(c) Talks between the Troika and the United States, Canada, Japan, New Zealand and candidate countries

While the content of these talks depends on the countries concerned, they in particular involve an exchange of views and information on human rights with a view to drawing up cooperation strategies or achieving a common position during sessions of the Human Rights Commission or the United Nations General Assembly.

Romania, Bulgaria and Turkey have been called upon to support EU initiatives and to report on the human rights situation in their territory. All candidate countries must, moreover, comply with the 'Copenhagen criteria' for joining the EU which focus in particular on respect for fundamental rights and freedoms.

Role of the European Parliament

For many years, defending human rights in the world has been one of Parliament's primary concerns and an area in which it has been most prominently involved in public debate.

A. Role of the Human Rights Subcommittee

Parliament's principal player in promoting human rights and democracy and protecting minorities is the Human Rights Subcommittee (DROI), a subcommittee of the Committee on Foreign Affairs. It deals with the day-to-day management of human rights dossiers, sometimes in cooperation with other parliamentary committees (such as the Foreign Affairs, Development, Civil Liberties, Women's Rights or Security and Defence Committees), or with EP delegations with the parliaments of third countries.

1. Ensuring the coherence of European Commission and Council action

The subcommittee holds a permanent dialogue with these two institutions and seeks to express its point of view on their action while monitoring how they achieve the priorities that have been set, often by common agreement, and encouraging them to act when a common strategy or joint action is required.

In the same way, the EP draws on the subcommittee's work to formulate its international position, whether in the context of United Nations' work or the ratification of new international agreements.

2. Establishing a debating chamber and platform allowing continuous dialogue with civil society

NGOs defending human rights, defenders in all countries, the families of people who have disappeared, researchers and experts, judges and MPs from Europe and elsewhere have all given evidence before the subcommittee, providing answers to Parliamentarians' questions and proposing paths for action, such as the adoption of urgent resolutions in plenary session.

3. Organising and preparing the Sakharov Prize procedure

Parliament introduced the Sakharov Prize for Freedom of Thought on 13 December 1985, at which time Andrei Sakharov was still in exile in Gorki. The prize is awarded annually in recognition of an action or achievement relating to respect for the defence of human rights. Today it helps to underscore Parliament's commitments to defend human rights and fundamental freedoms throughout the world.

→ Andrea SUBHAN
11/2005

6.1.3. Security and defence policy

Legal basis

Title V of the Treaty on the European Union (EUT) on the common foreign and security policy (CFSP) (→6.1.1.) and the five declarations on CFSP annexed to the EUT, particularly numbers 2 and 3 on the Western European Union (WEU).

Objectives

Five objectives were established for the CFSP (as modified by the Amsterdam Treaty):

- to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter;
- to strengthen the security of the Union in all ways;
- to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter, as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter, including those on external borders;
- to promote international cooperation;
- to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.

Achievements

A. The Treaty of Amsterdam

1. Content of the CFSP

(a) *The incorporation of the Petersberg tasks*

Under Article 17(4), the Treaty of Amsterdam incorporated into the EUT the so-called Petersberg tasks which include:

humanitarian and rescue tasks, peace-keeping tasks and tasks of combat forces in crisis management, including peace-making. They became part of the CFSP and the common defence policy. All of the Union Member States may participate in these tasks (except Denmark which has an 'opt out' on defence matters under Protocol 5 to the Treaty of Amsterdam).

(b) *Common strategies*

This new instrument is decided by the European Council.

(c) *EU/WEU relations*

Article 17(3) of the Treaty of Amsterdam seeks to clarify the nature of these relations, stating that the EU will avail itself of the Western European Union (WEU) to implement decisions which have defence implications, and that the EU will draw up political guidelines for such situations. However, following the European Council of Cologne in 1999 to strengthen the EU's European Security and Defence Policy, the WEU is currently under transition. At Marseille in November 2000, the WEU Ministerial Council decided to maintain a minimum secretariat in order to ensure that the functions and structures of the WEU can still serve the commitments of the Member States under the modified 1954 Brussels Treaty. The meetings of the Council of Ministers of the WEU in Oporto in May 2000 and in Marseille in November 2000 paved the way for the transfer to the EU of the WEU functions required for performing Petersberg tasks. As such the WEU's headquarters and its military staff has closed.

2. Decision-making process

(a) *Initiative*

Under Article 18 (4), the Commission is fully associated with the work carried out in the field of CFSP and has, along

with the Member States, the right of initiative. It may also, as any Member State, request the presidency to convene an extraordinary Council meeting and make suggestions to the policy unit for work to be undertaken.

(b) Decision

In order to allow a certain degree of flexibility to the general rule of unanimity in the decision-making process, the Amsterdam Treaty introduced the constructive abstention procedure, by which a Member State can choose not to apply a particular decision even though it agrees that it commits the Union as a whole. The Council acts, by derogation, by qualified majority when adopting joint actions, common positions or taking any other decision on the basis of a common strategy and when adopting any decision implementing a joint action or a common position.

(c) Implementation

The Amsterdam Treaty introduces the new office of a High Representative (HR) for CFSP. He or she will also be the Council Secretary General. Under Article 26, the HR shall assist the Council in the field of CFSP with the formulation, preparation and implementation of policy decisions and, when appropriate and acting on behalf of the Council at the request of the presidency, with conducting political dialogue with third countries. Mr Javier Solana was appointed as the first HR and took office on 18 October 1999.

The CFSP budget, which is part of the EC budget, is administered by the Commission.

B. The Nice Treaty

1. Political and Security Committee

Under Article 25 of the Nice Treaty, the Political and Security Committee (now established after being introduced as an 'interim' body at the June 2000 Feira European Council) shall exercise, under the responsibility of the Council, political control and strategic direction over crisis management operations. The Council may authorise the Committee, for the purposes and for the duration of a crisis management operation, as determined by the Council, to take the relevant decisions concerning the political control and strategic direction of the operation. This gives it an even more prominent role in the ESDP.

2. Enhanced cooperation

Enhanced cooperation shall respect the principles, objectives, general guidelines and consistency of the CFSP and the decisions taken within the framework of that policy. It shall relate to implementation of a joint action or a common position, but not to matters having military or defence implications. If no Member States object or call for a unanimous decision in the European Council, enhanced

cooperation is adopted in the Council by a qualified majority with a threshold of only eight Member States.

C. Further developments

1. Cologne European Council

At the June 1999 European Council in Cologne, as a result of the Kosovo conflict, the EU took a major step towards establishing its own military capabilities and placed the Petersberg tasks at the core of the process of strengthening the Common European Security and Defence Policy (ESDP). The aim was to create capacity for autonomous action, backed up by credible military forces, and the readiness to respond to international crises without prejudice to actions by NATO. The European Council made it clear that the integration of the WEU into the EU institutional framework was not necessary, despite the fact that it was foreseen in the Amsterdam Treaty; rather, those functions that the WEU assumed in the field of Petersberg tasks would be included in the EU.

2. Helsinki European Council

A concrete military aim was set up by the European Council, known as the 'Headline Goal': by the year 2003, in voluntarily cooperation, the Member States should be able to deploy within 60 days, and then sustain, forces capable of the full range of Petersberg tasks, including the most demanding, in operations up to corps level (up to 15 brigades consisting of 50 000–60 000 persons). This new force, to be called the European Rapid Reaction Force (ERRF), would be available for deployment to a crisis area up to 2 500 miles away within 60 days, and should be sustainable for up to one year. It is to be noted that the achievement of this goal does not involve the establishment of a European army.

3. Feira European Council

At the June 2000 Council, in Feira, Portugal, the EU formally established the interim Political and Security Committee (PSC), composed of national representatives dealing with all aspects of CFSP, including European Security and Defence Policy. Feira also introduced a body to provide military advice to the PSC in the form of an interim EU Military Committee (EMC) (supported by an interim EU military staff), composed of the chiefs of defence represented by their military delegates, which will give advice and make recommendations to the PSC. Similarly, in the area of civilian crisis management, the Feira Council welcomed the establishment of the first meeting of the committee for civilian aspects of crisis management (Civcom). It also introduced priority areas in civilian crisis management, in particular the commitment to provide by 2003 up to 5 000 police officers for international missions across the range of conflict prevention and crisis management operations; to be able to identify and deploy

up to 1 000 police officers within 30 days; and to welcome the Commission to contribute to civilian crisis management within its spheres of action. The police officers will be under the control of the PSC, while effective operational control will be in the hands of the HR. It is estimated that such a commitment would require a maximum pool of 15 000 committed and trained personnel.

4. The Capabilities Commitment Conference

On 20 November 2000 in Brussels, the Member States took part in the first Capabilities Commitment Conference, which is now an annual event. The conference provides an opportunity for the Member States to 'volunteer' specific national commitments corresponding to the military capability goals set by the Helsinki European Council. These commitments have been set out in a document known as the 'Force Catalogue'. In accordance with the guidelines of the Helsinki and Feira European Councils on collective capability goals, the Member States committed themselves to medium and long-term efforts in order to further improve both their operational and their strategic capabilities by implementing reforms in their armed forces required for autonomous EU action.

5. Nice European Council

In December 2000, the European Council in Nice assessed each Member State's undertakings in regard to forming the European Security and Defence Policy.

6. Gothenburg European Council

At the June 2001 European Council in Gothenburg, the EU was committed to developing and refining its capabilities, structures and procedures in order to improve its ability to undertake the full range of conflict prevention and crisis management tasks, making use of military and civilian means. A particular emphasis was placed on conflict prevention under an EU programme for the prevention of violent conflicts.

7. Laeken European Council

At the December 2001 European Council in Laeken, the EU adopted a declaration on the operational capability of the European security and defence policy saying that:

- the development of military capabilities does not imply the creation of a European army;
- the Union has begun to test its structures and procedures relating to civilian and military crisis-management operations;
- the Union's crisis-management capability has been strengthened by the development of consultation, cooperation and transparency between the EU and NATO in crisis management in the western Balkans.

Furthermore, on capabilities widely regarded as lacking in European inventories and essential for crisis management operations the Laeken Council approved the European Capability Action Plan (ECAP). This called on Member States to mobilise voluntarily all efforts, investments, developments and coordination measures, both nationally and multinationally, in order to improve existing resources and progressively develop the capabilities needed for the Union's crisis-management actions.

8. Seville European Council

The European Council welcomed the first crisis management exercise conducted by the Union in 2002, which tested successfully the ESDP structures and decision-making procedures.

9. Copenhagen European Council

The European Council also indicated the Union's willingness to lead a military operation in Bosnia following NATO's Stabilisation Force (SFOR). It confirmed the Union's readiness to take over the military operation in the Former Yugoslav Republic of Macedonia (FYROM) as soon as possible in consultation with NATO. Subsequently, an agreement was reached with NATO in March 2003 known as 'Berlin Plus' that paved the way for the first military ESDP operation known as Concordia. The second military operation, 'Artemis', in the Democratic Republic of the Congo (CD), was also launched in June 2003 which confirmed the EU's ability to conduct an autonomous operation under a 'framework-nation' concept, in this instance led by France.

10. Brussels European Council

At the March 2003 European Council in Brussels, the EU welcomed the police operation in Bosnia and Herzegovina (1 January 2003). In December that year a second EU police operation ('Proxima') was launched in the FYROM which followed on from the NATO military operation 'Allied Harmony'.

D. EU–NATO relations 'Berlin Plus'

'Berlin Plus' is short-hand for EU access to NATO planning and capabilities for crisis management operations. Its origins refer to the 1996 NATO Ministerial in Berlin, where foreign ministers agreed to make NATO assets available to WEU-led operations in a bid to boost European defence within NATO. At the 1999 Washington summit this provision was extended for EU-led crisis management operations under the European Security and Defence Policy. The 'Washington communiqué' said these arrangements would cover [...] operations in which the alliance as a whole is not engaged. A final agreement between the EU and NATO was held up between 1999 and December 2002 due to blocking manoeuvres by,

alternatively, Greece and Turkey. A deal, originally, brokered by the UK and concluded on the margins of the Brussels European Council of November 2002 opened the way to the 16 December 2002 'EU–NATO Declaration on ESDP'.

Therefore, the final EU–NATO 'Berlin-Plus' agreement is represented by a series of institutional arrangements between the EU and NATO that enable them to exchange information securely and to establish the manner in which NATO makes available its assets. The final institutional agreement that was necessary to formalise this relationship arrived with the 12 March 2003 'EU–NATO Agreement on Security of Information' (including 18 articles). The whole 'Berlin Plus package' could then be tied together with the so-called 'Framework Agreement' which consisted of an exchange of letters between the EU's High Representative and NATO's Secretary General dated 17 March 2003 — just in time for the EU to launch Operation Concordia on 31 March 2003 which required NATO assets and planning resources.

E. The European Security Strategy (ESS) and the new Headline Goal 2010

In December 2003, the EU Member States adopted a landmark European Security Strategy (ESS) which mapped out for the first time, in an EU framework, their collective aspirations in this policy area. The ESS has become the key reference document for policy developments under ESDP, including defining relations with the United Nations, regional organisations and strategic partnerships. At the Thessaloniki European Council, in June 2003, they acknowledged that the EU operational capability across the full range of Petersberg tasks was still limited and constrained by recognised shortfalls. Therefore a new 2010 Headline Goal was developed and adopted at the Brussels European Council in June 2004, which extended the original Petersberg tasks to also consider including joint disarmament operations, the support for third countries in combating terrorism and security sector reform, as well as extending operational demand to include the ability to conduct concurrent operations thus sustaining several operations simultaneously at different levels of engagement. The Thessaloniki European Council also paved the way for the establishment of a European Defence Agency in 2004.

Role of the European Parliament

The European Parliament (EP) has repeatedly welcomed the debate on European security and defence policy (ESDP), which began in Pörtschach in October 1998. At the beginning of the 2004 legislature, in recognition of the rapid development in ESDP, the EP set up a new Sub-Committee on Security and Defence (SEDE) within its Foreign Affairs Committee. The EP has consistently, through its resolutions, pointed to the lack of a parliamentary dimension in the development of ESDP and has noted a serious democratic deficit.

In its resolutions of 15 June 2000 and of 30 November 2000, the EP stressed the importance of developing the military assets and capabilities of the Member States as well as the civilian instruments of conflict prevention and crisis management. This was further elaborated in its resolution of 10 April 2003 on the new European security and defence architecture — priorities and deficiencies.

It believes that the UN should be the only legitimate organisation for the implementation of international law, reminding that the use of force is authorised only by the UN Security Council.

In addition, the EP proposes, in the context of the CFSP and the ESDP, regular meetings bringing together representatives of the competent committees of national parliaments and the EP, with a view to examining the development of the two policies jointly with the Council presidency, the HR for the CFSP and the Commissioner responsible for external relations.

In its resolution of 25 October 2001, the EP calls once more for a strong parliamentary dimension to the ESDP by intensifying cooperation between the EP and the national parliaments, through joint meetings and regular consultation.

Furthermore, it considers that combating terrorism must become a central component of European foreign and security policy, with aspects of external security having to be combined with those of internal security.

→ Gerrard **QUILLE**
05/2006

6.2. Economic policy and external trade

6.2.1. The European Union as a trade power

I. Trade

A. The EU's place in world trade

- The EU accounts for a fifth of world trade (2004 figures):
 - it is the second exporter after the United States with 17.7 %;
 - it is the first importer ahead of the United States with 18.0 %.
- However, its relative position has been falling in the long term. In 1980 (with only nine Member States) it

accounted for 21 % of exports and 27 % of imports. This can be compared with the situation of China, excluding Hong Kong, which during the same period rose from

- 1.3 % to 7.5 % of exports;
 - 1.3 % to 11.6 % of imports.
- It has a slight balance of trade deficit whereas the United States shows a surplus in 2004 and Japan and China have deficits (in the case of China the deficit is rapidly increasing).

Table 1 — World exports of goods (bn EUR)

	1990	1995	2002	2004 EU-25	Share of world total in 2004
EU-15	355.2	573.3	993.8	892.0	17.7 %
USA	300.5	431.9	713.6	1 124.1	22.3 %
Japan	213.7	316.4	412.9	322.2	6.4 %
China	50.2	111.3	337.5	379.5	7.5 %
World	1 849.4	2 707.8	4 841.9	5 031.3	

Source: Eurostat

Table 2 — World imports of goods (bn EUR)

	1990	1995	2002	2004 EU-25	Share of world total in 2004
EU-15	404.4	545.3	987.5	964.1	18.0 %
USA	387.7	566.2	1 235.9	686.9	12.8 %
Japan	177.7	245.8	342.2	459.5	8.6 %
China	40.9	89.5	273.1	623.5	11.6 %
World	1 943.7	2 783.8	5 289.9	5 369.6	

Source: Eurostat

Table 3 — Balance of trade (bn EUR)

	1990	1995	2002	2004 EU-25
EU-15	-49.2	28.0	6.3	-72.1
USA	-87.2	-134.3	-522.4	+437.2
Japan	36.0	70.6	70.7	-137.3
China	9.3	21.8	64.3	-244.0

Source: Eurostat

B. The nature of the EU's trade

1. Main products

The European Union primarily buys and sells manufactured goods: they represent 90 % of its exports and about three quarters of its imports.

- (a) Machines and transport equipment alone account for over 45 % of exports and over 35 % of imports.
- (b) Energy and chemical products come next.
- (c) Conversely, foodstuffs and raw materials constitute only a little over 7 % of exports and 10 % of imports.

Table 4 — Breakdown of total exports by product

	1990	1995	2003	2004 EU-25
Foodstuffs and beverages	7.5 %	6.8 %	5.1 %	5.1 %
Raw materials	2.4 %	2.4 %	2.0 %	2.1 %
Energy	3.6 %	2.3 %	2.7 %	3.3 %
Chemical products	13.0 %	12.8 %	15.8 %	15.8 %
Machines and transport equipment	42.2 %	44.6 %	45.5 %	45.2 %
Other	31.3 %	31.0 %	28.4 %	26.1 %

Source: Eurostat

Table 5 — Breakdown of total imports by product

	1990	1995	2003	2004 EU-25
Foodstuffs and beverages	8.4 %	7.9 %	5.9 %	5.7 %
Raw materials	7.8 %	7.4 %	4.5 %	4.7 %
Energy	17.9 %	11.9 %	14.6 %	17.6 %
Chemical products	6.8 %	7.9 %	8.1 %	8.5 %
Machines and transport equipment	29.9 %	31.8 %	36.1 %	34.3 %
Other	29.2 %	33.1 %	30.7 %	26.3 %

Source: Eurostat

2. Export-import balance by product

(a) The EU has a very high surplus for chemical products and a high surplus for machines and transport equipment.

(b) On the other hand, it has a considerable deficit for energy, which has almost doubled during the period.

Table 6 — Balance of trade by product (bn EUR)

	1990	1995	2003	2004 EU-25
Foodstuffs and beverages	-7.6	-4.2	-7.7	-9.5
Raw materials	-25.0	-26.6	-24.7	-27.7
Energy	-64.9	-51.4	-118.0	-149.9
Chemical products	21.3	30.4	74.0	65.6
Machines and transport equipment	34.7	82.6	88.2	84.8
Other	-5.1	-2.7	-25.3	-17.9

Source: Eurostat

C. The EU's main trading partners

1. With almost 20 % of total trade, the USA is still the EU's main trading partner, being the first customer and the first supplier. However, despite the considerable increase in absolute value, the share has declined somewhat in the last decade (1990–2003).
2. During the same period, China has moved from eighth to second place (from 2 % to 8.7 %), replacing Switzerland. Its exports to the EU have increased almost ninefold and its imports almost sevenfold.
3. Switzerland and Japan are in third and fifth place with 6.9 % and 5.9 %, but this represents a fall as in 1990 they accounted for 9.8 % and 9.1 %.
4. Russia has risen to fourth place, with a little over 6.3 %.
5. In terms of economic groupings, we may note:
 - a very strong increase in the candidate countries, whose exports and imports increased sevenfold in 2003;
 - a marked increase (by a factor of about 2.5) in trade with the newly developed Asian countries;
 - a significant increase in exports to Latin America (which have increased by a factor of 2.5) and with the southern and eastern Mediterranean countries (which have increased by a factor of over 2);
 - a relative decline in respect of EFTA, OPEC, the ACP countries and the countries of the former Soviet Union.

Table 7 — The EU's main trading partners (share of total trade: imports + exports)

1995 (EU-15)	%	ranking	2003 (EU-15)	%	ranking	2004 (EU-25)	%	ranking
USA	18.5	1	USA	18.9	1	USA	19.6	1
Switzerland	8.4	2	China	6.9	2	China	8.7	2
Japan	7.8	3	Switzerland	6.3	3	Switzerland	6.9	3
Norway	3.8	4	Japan	5.4	4	Russia	6.3	4
China	3.7	5	Russia	4.3	5	Japan	5.9	5
Russia	3.4	6	Norway	3.8	6	Norway	4.3	6
Poland	2.5	7	Poland	3.5	7	Turkey	3.4	7
South Korea	2.1	8	Czech Republic	3.1	8	South Korea	2.4	8

Source: Eurostat

Table 8 — EU exports by economic area (bn EUR)

	1990	1995	2003	2004 EU-25
USA	82.7	103.3	220.4	234.2
Candidate countries	25.3	70.7	175.0	71.9
EFTA	59.6	69.8	96.5	108.7
MEDA	36.5	50.6	81.0	116.7
DAE	31.0	65.6	73.2	81.6
Latin America	16.9	32.4	43.3	47.7
OPEC	36.6	39.0	66.4	76.6
Japan	24.5	32.9	40.0	43.2
ACP	23.8	17.6	40.2	43.6
CIS	18.5	20.8	45.3	65.8
China	5.8	14.7	40.1	48.1

Source: Eurostat

MEDA: Southern and eastern Mediterranean countries

DAE: dynamic Asian economies (Thailand, Malaysia, Singapore, South Korea, Taiwan, Hong Kong)

CIS: former USSR countries

Table 9 — EU imports by economic area (bn EUR)

	1990	1995	2003	2004 EU-25
USA	91.5	103.7	151.1	157.7
Candidate countries	22.9	55.5	155.3	53.6
EFTA	58.6	69.9	90.5	120.3
MEDA	28.6	32.1	107.2	97.0
DAE	36.3	54.4	71.1	109.4
Latin America	27.1	30.4	66.6	56.7
OPEC	45.2	38.4	95.1	81.9
Japan	51.4	54.3	66.6	73.7
ACP	28.8	19.9	62.3	44.9
CIS	22.9	24.9	47.6	100.2
China	11.4	26.3	43.3	127.0

Source: Eurostat

II. Trade in services

Alongside trade proper, in goods, mention should also be made of trade in services, which has acquired considerable importance in recent years and which now also tends to be categorised as trade.

A. General situation

1. The European Union accounts for more than a third of world trade in services. It is still the premier importer and premier exporter.

2. Balance

The EU has a stable long-term surplus but it is much lower than the USA's considerable surplus. Japan has a large and persistent deficit.

Table 10 — World exports and imports of services (bn EUR)

	2002		2003	
	Exports	Imports	Exports	Imports
EU	336.3	311.9	330.5	303.0
USA	305.3	240.5	268.8	226.5
Japan	69.5	114.2	68.6	98.5
Canada	39.3	44.9	37.9	44.7
China	42.0	49.2	41.3	48.8
World	1 301.0	1 303.0	781.4	751.8

Source: Eurostat, IMF

Table 11 — Balance of trade in services (bn EUR)

	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
EU-15	12.9	11.9	12.0	13.5	17.6	11.9	7.4	7.4	10.0	24.4	27.5
USA	52.4	56.0	59.1	67.9	78.6	72.8	77.4	80.6	74.0	64.9	42.2
Japan	36.8	40.4	43.8	49.0	47.8	44.1	50.8	51.6	48.8	44.7	29.9

Source: Eurostat, IMF

B. Type of services

Services to businesses (insurance, financial services, IT services, licences) now rank first in exports, having displaced transport and travel.

C. Main partners

33.3 % of the trade of the EU-25 is with the USA, 15.3 % with the EFTA countries, 4 % with Japan, 1.6 % with China, and 1.4 % with Australia.

→ Dominique DELAUNAY
11/2005

Table 12 — The EU-15's balance of trade by type of service (bn EUR)

	1997	1998	1999	2000	2001	2002	2003
Total services	17 637	11 905	7 413	7 415	9 690	25 012	27 515
Transport	1 665	3 801	4 418	8 115	5 028	5 034	4 191
Travel	1 120	-1 783	-9 062	-7 789	-12 965	-13 940	-20 644
Other services	14 759	9 952	12 053	7 187	17 127	33 973	43 986
Communications	-573	-1 098	-1 027	-787	-680	-1 161	-684
Construction	4 914	5 412	4 071	3 847	4 002	3 965	4 648
Insurance	3 681	2 389	5 028	4 435	5 856	12 469	9 895
Financial services	6 048	6 433	9 538	11 965	10 884	11 726	11 706
Information technology and information	1 150	1 564	2 973	3 716	4 975	7 214	9 135
Royalties and licence fees	-6 187	-8 356	-8 727	-7 847	-9 243	-9 035	-8 600
Other business services	6 795	4 541	3 200	-4 774	4 158	7 615	16 373
Personnel, cultural and recreational services	2 898	-2 779	-3 816	-3 811	-3 383	-1 890	-1 231
Services provided or received by public administrations	1 832	1 849	813	443	559	3 069	2 744
Non-classified services	93	-65	4	2	500	-56	-17

Source: Eurostat

Table 13 — The EU-25's trade in services by geographic region in 2003 (bn EUR)

	Exports	Imports	Share of total
Total	330.5	303.0	
EFTA	55.3	42.0	15.3 %
Other European countries	37.8	49.0	13.7 %
Africa	19.2	20.5	6.2 %
America	134.9	128.4	41.5 %
of which:			
Canada	6.9	6.7	2.1 %
USA	110.1	101.0	33.3 %
Asia	62.3	50.3	17.7 %
of which:			
China	6.0	4.3	1.6 %
India	2.7	2.8	0.8 %
Japan	15.9	10.0	4.0 %
Oceania	6.1	5.9	1.9 %
of which: Australia	4.9	4.4	1.4 %
Other	15.0	6.9	3.4 %

Source: Eurostat

6.2.2. The European Union and the World Trade Organisation (WTO)

Legal basis

- International: the agreement establishing the World Trade Organisation (WTO), which was signed in Marrakesh on 15 April 1994 and entered into force on 1 January 1995.
- European Common Commercial Policy: Articles 26 and 27 and 131 to 134 of the EC Treaty; conclusion of international agreements: Articles 300 and 301 of the European Community (EC) Treaty.

Objectives

The European Union is one of the most important trading regions in the world and has always played a key role in the structures responsible for facilitating global trade: the General Agreement Tariffs and Trade (GATT) then the WTO. Its ongoing objectives in this respect are:

- the liberalisation of trade in goods and services and investment in order to ensure the growth of trade and thus economic prosperity;
- the defence of European interests, particularly in certain sectors of industry, agriculture, public services and culture;
- provision of a framework for this liberalisation through rules to protect the environment, protect employees and ensure that the least developed countries have an equitable share.

Achievements

A. Decision-making competence

Principle of exclusive Community competence

In the light of the fact that, based on the Treaty of Rome, the EC forms a customs union (completed with the end of the transitional period in 1970), it has by definition exclusive competence for external trade policy. The aims of this 'common commercial policy' are to:

- establish and amend the common customs tariff;
- conclude tariff and trade agreements with third countries;
- implement an export policy;
- establish commercial defence measures (in the case of dumping for example).

Decision-making mechanism

The unilateral measures (customs tariffs, antidumping measures) are:

- proposed by the Commission;
- adopted by the Council acting by a qualified majority (Articles 133 and 301).

The agreements with third countries are:

- negotiated by the Commission on the basis of Council directives (adopted by a qualified majority);
- concluded by the Council, in general by a qualified majority (Articles 133 and 300).

The European Parliament (EP) is not involved even in a consultative role (except for association agreements which are subject to its assent, →1.4.1. and 1.3.2.).

1. Background

GATT

When the European Economic Community was set up at the beginning of 1958, its six members were also members of GATT (General Agreement on Tariffs and Trade), a body created in 1948 to ensure the development of international trade through common rules.

Since then, the Community has played an active role in GATT's work to liberalise trade, which has involved eight negotiating rounds. It has supported the principles adopted by GATT to facilitate the gradual liberalisation of global trade:

- firstly, the principle of non-discrimination, which is implemented in the form of the most-favoured nation clause;
- secondly, the elimination of quantitative restrictions, the prohibition of export subsidies, the principle that customs duties are the only instruments of protection, and the transparency of national trade legislation;
- finally, more favourable treatment for developing countries.

The Community was particularly active during the Uruguay Round, which was launched in September 1986 and proved to be the most significant round in the history of GATT due to:

- the importance of tariff and non-tariff reductions;
- the scope of the liberalisation being extended to include agriculture and new sectors not previously dealt

- with in international negotiations such as intellectual property, public procurement, services and investment;
- the systematic attention paid to trade protection measures, especially antidumping and antisubsidy measures.

2. The creation of the WTO

The Uruguay Round resulted in the creation of a new organisation, the WTO, through the Marrakesh agreements of 15 April 1994. The EC played a very active role in negotiating these agreements, which establish a new set of international trading rules and a mechanism for implementing them and for adopting new rules. It joined this organisation immediately (entry into force of the agreements: 1 January 1995). In doing so, it was agreeing to make major concessions in relation to its own commercial policy, above all by replacing the agricultural levies at its external borders (a mechanism that provided a very high level of protection for its agriculture) with customs duties and reducing export subsidies (another key element of the European preference in the area of agriculture). However, it intends to retain, through other means, the 'European social and rural model' and to this end advocates 'multifunctional' agriculture.

C. The EU's participation in the major stages of the WTO's activities

1. 1996 and 1997

Following the WTO Ministerial Conference in Singapore in December 1996, the EU played an important role over the course of 1997.

It gave considerable impetus to the conclusion of three essential agreements:

- on information technologies (26 March): it accepted tariff reductions and even the suspension of the collection of certain duties under its common customs tariff;
- on basic telecommunications services (15 February);
- on financial services (12 December).

It provided the incentive for the conference on initiatives for the least developed countries (LDCs). Integrating these countries into the global trading system is one of the EU's priorities. The conference provided in the short term for all LDCs to be treated in accordance with the provisions of the Lomé Convention (→6.5.5) and in the long term for their access to markets free from customs duties.

2. 1998 and 1999

Following the 1998 Ministerial Conference in Geneva, the EU played an important role in the WTO's General Council in preparing for the 1999 Conference in Seattle. Its objectives were:

- establishing rules governing liberalisation in various areas (investment, competition, public procurement);
- making the environment an integral feature;
- dialogue on social standards;
- consideration of the interests of the least developed countries.

As the conference (November–December 1999) was a complete failure, the EU subsequently argued for a new round of negotiations. (For details of the Union's overall approach, see the Commission communication COM(1999) 331 and the Council conclusions of 21 June, 27 September and 15 November).

3. 2000 and 2001

In the course of 2000, the EU endeavoured to restore confidence and achieved a consensus on the launch of a new round of negotiations aimed not only at continuing with the liberalisation of trade but also at establishing a more solid regulatory framework, promoting sustainable development and assisting the developing countries. It played an active role in the WTO's working groups, in particular the Committee on Technical Barriers to Trade, in which it put forward contributions on international standardisation and labelling. It supported China's accession to the organisation, which took place in 2001 along with that of Taiwan.

The EU welcomed the decision of the Doha Ministerial Conference (November 2001) to launch a new round of trade negotiations, lasting three years. The conference addressed its hopes of boosting growth through further liberalisation as well as greater regulation of the system through agreements on investment, competition and public procurement, and support for the developing countries, whose influence increased at this conference.

4. 2002 and 2003

Following the Doha Conference, the EU took the lead in terms of the initiatives to ensure the success of the new round of negotiations launched in 2001. Whilst pursuing its objectives of further liberalisation, tighter rules and the promotion of sustainable development, it concentrated in particular on technical assistance to the developing countries for implementing the rules and participating in the multilateral trading system (see the Commission communication of September 2002 'Trade and Development: Assisting Developing Countries to Benefit from Trade').

However, the 2003 Ministerial Conference (held in September in Cancun) was a complete failure due, above all, to the problem of agriculture. There was a North–South clash, in particular between the United States–European Union coalition (which had adopted a common position

on agriculture just before the conference) and the so-called Group of 21, led by China, Brazil and India, whose main aim was to put an end to the agricultural subsidies of the two major western unions.

5. 2004 to 2006

WTO members agreed a framework agreement on 31 July 2004. The agreement focuses on agriculture, non-agricultural market access (NAMA), development services, and trade facilitation. The final agreement covers also trade and the environment, dispute settlement, geographical indications (GI), and anti-dumping rules.

The conclusion of the Doha Round negotiations, also known as the Doha Development Agenda (DDA) is expected by the end of 2006.

D. Participation in dispute settlement

One of the major breakthroughs of the WTO compared with the GATT system has been the creation of a binding mechanism for the settlement of trade disputes between states, in the form of a permanent body with its own jurisdiction (the Dispute Settlement Body (DSB)), which deals with the issues referred to it by setting up special panels.

The EU has often had recourse to this body and has been responsible for around one third of the panels set up since the system began. It has won the majority of its disputes, a significant proportion of which have been directed at the United States. Its greatest success was against the US

protection measures concerning steel imports: the DSB condemned these measures and even authorised the EU to establish retaliatory measures (which amounted to USD 4 000 million); the United States finally withdrew their measures in December 2003.

Role of the European Parliament

The EP has supported the Commission in its desire to shield the health, education and audiovisual sectors from liberalisation in order to safeguard universal service and cultural diversity (resolution of 12 March 2003).

It has defended the place of social standards in the international trading system, calling for close cooperation in this area between the WTO and the International Labour Organisation (resolutions of 13 November 1996 and 13 January 1999).

It has expressed its support for the export of affordable, essential medicines to the poorest countries through an exemption from the authorisation of the patent-holder (resolution of 12 February 2003), which was eventually accepted by the WTO General Council.

It has expressed the wish that the Doha Development Agenda will place the development issue at the forefront of the negotiations (resolution of 12 May 2005).

→ Dominique DELAUNAY
06/2006

6.3. Framework for relations with certain groups of countries

6.3.1. The enlargement of the Union

Legal basis

— Articles 49 and 6 of the Treaty on European Union (EUT).

Objectives

The enlargement of the European Union is not an objective in itself. It has been, however, one of the most important and successful policies contributing to the further integration of the European continent by peaceful means, and extending a zone of stability and prosperity to new members.

Achievements

A. The legal framework

1. Conditions of accession

According to Article 49 EUT, any European State which respects the principles set out in Article 6(1) EUT may apply to become a member of the European Union. Article 6(1) describes these principles as those of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.

In the context of the fifth enlargement round, the Copenhagen European Council of June 1993 laid down the basic criteria for accession which future members would have to meet in addition to the conditions in the Treaty, namely:

- stability of institutions guaranteeing democracy, rule of law, human rights and respect for and protection of minorities;
- a functioning market economy and the ability to cope with competitive pressure and market forces within the Union;
- ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union and adoption of the common rules, standards and policies that make up the body of EU law — the *acquis communautaire*.

2. Decision-making process

The candidate country addresses its application to the Council, which acts unanimously after consulting the Commission and receiving the assent of the European Parliament (EP/Parliament), which acts by an absolute majority of its members. The conditions of accession and the adjustments to the Treaties which it entails are laid down in a treaty of accession, which is subject to ratification by the acceding country and by all the Member States (Article 49 EUT).

In practice, the European Commission prepares and adopts an opinion on the relevant application for membership, evaluating the situation of each country in relation to the accession criteria. The Commission takes into account information provided by the candidate countries themselves; assessments made by the Member States; EP reports and resolutions; the work of other international organisations and international financial institutions (IFIs); and progress made under the existing association and other agreements. The Commission opinion is usually also a forward-looking analysis of expected progress. Based on this evaluation the European Commission issues a recommendation on the eventual opening of accession negotiations.

B. Earlier enlargements

The six founder members were joined:

- in 1973 by Denmark, the Republic of Ireland and the United Kingdom;
- in 1981 by Greece;
- in 1986 by Spain and Portugal;
- in 1995 by Austria, Finland and Sweden.

C. The fifth enlargement

The fifth EU enlargement has been, in the view of the EP, a unique task of an unprecedented political and historic dimension, which provides an opportunity to further the integration of the continent by peaceful means. The EP considered that all the applicant countries have a right to be allowed to accede to the Union. However, it expressed

concerns on a number of occasions about the inadequacy of the EU's institutional framework and the additional resources which need to be made available. Throughout the subsequent negotiations it has stressed the need to evaluate the candidate countries on the basis of merit and in line with the principle of differentiation.

1. Applications for accession

Cyprus (July 1990) and Malta (July 1990, reactivated 1998), Hungary and Poland (March and April 1994), Romania and Slovakia (June 1995), Latvia and Estonia (October and November 1995), Bulgaria and Lithuania (December 1995), the Czech Republic and Slovenia (January and June 1996). (Turkey had already applied in 1987.)

2. The accession process

The Luxembourg European Council of December 1997 endorsed the Commission's opinion on the membership applications and decided to launch the enlargement process and open negotiations, initially with six applicant countries: Hungary, Poland, Estonia, the Czech Republic, Slovenia and Cyprus. It also agreed on an enhanced pre-accession strategy. The Helsinki European Council of December 1999 decided to open negotiations with Romania, the Slovak Republic, Latvia, Lithuania, Bulgaria and Malta and to recognise Turkey's status as a candidate country.

The negotiations have been guided by two fundamental principles:

- a single negotiating framework;
- separate negotiations with each country, starting in each case at the appropriate time, depending on the applicant's level of preparation, and proceeding at their own pace.

3. The pre-accession strategy

In 1994, the Essen European Council defined a pre-accession strategy to prepare the candidate countries of central and eastern Europe (CEECs) for EU membership based on implementation of the Europe agreements, the Phare programme of financial assistance and a 'structured dialogue' bringing all Member States and candidate countries together to discuss issues of common interest. The Luxembourg European Council, of December 1997, decided on an enhanced pre-accession strategy for the 10 CEECs. The strategy comprised two instruments.

- Accession partnerships, bringing all forms of EU assistance within a single framework for the purpose of implementing national programmes to prepare the candidates for accession. The programmes cover the short-term and medium-term priorities to be observed in adopting the *acquis*, and mobilise the financial resources available for this purpose.

- Community aid: the Berlin European Council of March 1999 decided substantially to increase pre-accession aid and to create two specific instruments, ISPA (for transport and environment) and Sapard (for agriculture and rural development) to supplement the Phare programme, which would now concentrate on strengthening administrative and judicial systems and aiding investment related to the adoption of the Community *acquis*. Assistance was stepped up with the adoption, in 2002, of the action plans for building administrative, judicial and institutional capacity and the special transition facility for institution-building endorsed by the European Council in October 2002.

Cyprus and Malta received pre-accession assistance under a specific Council regulation for 2000–04. Assistance has been focusing on the harmonisation process, and in the case of Cyprus, on bi-communal measures that might help to bring about a political settlement. The Helsinki European Council of December 1999 decided that Turkey, like all the candidate countries, would benefit from a pre-accession strategy to support reforms.

4. Historic accession of 10 new members in 2004

(a) Accession on 1 May 2004

The European Council in Copenhagen on 12 and 13 December 2002 concluded accession negotiations with 10 countries (Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia).

In a historic vote on 9 April 2003, Parliament adopted a resolution on the conclusion of the negotiations on enlargement in Copenhagen and formally gave its assent to the membership applications of the 10 countries which had completed the accession negotiations, thus enabling the Accession Treaty to be signed. Subsequently, members of the national parliaments of the acceding countries were already able to participate in the work of the EP as observers from 1 May 2003.

A single Accession Treaty with the 10 new Member States was signed in Athens on 16 April 2003. In all acceding countries, except Cyprus, accession to the European Union had been the subject of a national referendum, all of them positive.

The new Member States joined the EU on 1 May 2004.

(b) Monitoring after accession

Monitoring by the European Commission of the commitments undertaken by the new Member States has been intended to give further guidance to the acceding States in their efforts to assume the responsibilities of membership as well as reassuring the current Member States. In addition to a general economic safeguard clause, specific safeguard clauses concerning the operation of the internal

market and justice and home affairs were included in the Accession Treaty to deal with unforeseen developments that may still arise in the first three years after accession.

After more than one year since accession, no major integration problems have arisen, and the new Member States are positively and actively contributing to the EU's policy-making. This success can be attributed to a large extent to the EU's emphasis on thorough preparation by the acceding States, assisted and supported by the European Commission, in the period leading up to their accession. This preparation process made it possible to identify and address the main gaps before accession, obviating the need to make use of the safeguard clauses up to now.

5. Bulgaria and Romania

Accession negotiations with Bulgaria and Romania were concluded in December 2004 with a view to their accession on 1 January 2007. The agreed terms of accession are similar to those of the 10 new Member States which joined on 1 May 2004 and which, politically, are considered to be part of the same 'fifth enlargement'. The EP, on 13 April 2005, gave its assent to admit Bulgaria and Romania to the EU. Subsequently, one single Accession Treaty was signed on 25 April 2005 and is now subject to ratification by the 25 Member States. With a view to accession in early 2007, the EP has been hosting 35 Romanian and 18 Bulgarian observer MPs since 26 September 2005.

The period between the completion of accession negotiations and the date of accession is longer, and Bulgaria and Romania are at this stage considered to have considerable efforts still to make. Particular emphasis is therefore placed on enhanced monitoring of the remaining commitments so as to ensure that both countries are fully prepared for membership by the time they join. In case there are serious difficulties despite the efforts undertaken in the coming period and despite the assistance provided by the EU, the Commission can make use of a number of safeguards, including the possibility of postponing accession by one year for either of the two countries if it is manifestly unprepared for accession. This clause did not exist for the 10 new Member States.

D. Adapting the Union (institutional arrangements)

To meet the challenges of enlargement, while ensuring that it does not jeopardise the level of integration already achieved and the continuation of the integration progress, the Union has also had to adapt its institutional arrangements. In a 'Protocol on the institutions' the Amsterdam Treaty laid down the broad lines of, and the procedure for, adapting these arrangements.

The Nice Treaty (→1.1.4.) (signed on 26 February 2001 and entered into force on 1 February 2003) and its attached protocol on enlargement and declarations set out the

principles and methods for determining the number and distribution of seats in the EP, the number of votes in the Council and the thresholds for qualified majority voting and the composition of the Commission. It fixes the maximum number of seats in the EP at 732 for a Union of 27 Member States (anticipating already the accession of Romania and Bulgaria as part of the fifth enlargement round), with the possibility for this number to be exceeded temporarily according to the actual dates of accession of the various candidate countries.

In the case of Bulgaria and Romania, the April 2005 Accession Treaty for these two countries was already based on the legal environment of the Treaty establishing a Constitution for Europe, which had been scheduled to enter into force on 1 November 2006 (e.g. the accession instrument should become a protocol to the European Constitution, as was done for past accessions). However, should the Constitution not immediately enter into force, the Accession Treaty also covers the possibility that the new Member States join the 'old' Union.

In the negotiations with the 10 countries that joined in May 2004, on the 'Institutions' Chapter, the following transitional and other arrangements had been agreed with respect to their accession:

- as from the June 2004 elections to the EP, the number of seats in Parliament increased from 626 to 732; the Czech Republic and Hungary will have the same number of seats as countries of a similar size in terms of population;
- as for the voting rights in Council, for a transitional period between May and October 2004, the 25 Member States had 124 votes in total and a qualified majority was to be reached with 88 votes;
- since 1 November 2004, the Member States will have 321 votes in total and the qualified majority will be reached with 232 votes;
- all new Member States have one Commissioner each as from 1 May 2004; the same principle applies to the old Member States since the start of term of the new Commission on 1 November 2004.

E. Future enlargement of the Union

1. Turkey

Turkey had applied for EU membership in 1987. At the Helsinki European Council of December 1999 Turkey was officially recognised as a candidate state on an equal footing with other candidate states. This marked the beginning of a pre-accession strategy for Turkey designed to stimulate and support its reform process through financial assistance and other forms of cooperation. The European Council of December 2004 decided to start accession negotiations

with Turkey on 3 October 2005. This decision was based on the Commission's recommendation of October 2004 which recommended starting accession negotiations provided Turkey implemented certain key pieces of legislation in the judicial field. Following an intensive debate in the Council and the EP as well as inside Member States, the accession negotiations with Turkey were opened on 3 October 2005. On 28 September 2005, the EP had given its backing to the opening of accession talks with Turkey. However, the EP showed its dissatisfaction with Turkey's lack of formal recognition of the Cyprus government by postponing a vote on the extension of the EU–Turkey customs union to the 10 new Member States. The EP also called on Ankara to recognise the Armenian genocide.

Although Turkey has made progress as regards legislation and practical implementation, the sustainability and irreversibility of the reform process will need to be confirmed over a longer period of time. In its resolution of 15 December 2004 the EP had noted that the negotiation process with Turkey [...] by its very nature is an open-ended process and does not lead 'a priori' and automatically to accession [...]

2. Croatia

Croatia submitted its application for membership in February 2003. Following a positive opinion and recommendation by the European Commission of April 2004, the June 2004 European Council decided that Croatia was a candidate country. The December 2004 European Council decided that accession negotiations would be opened on 17 March 2005 provided that Croatia cooperated fully with the UN International Criminal Tribunal for the former Yugoslavia in The Hague (ICTY). However, the Council concluded in March 2005, as the Chief Prosecutor of the Hague Tribunal had done, that Croatia was not fully cooperating with ICTY. In an important, positive signal to Croatia, the EU adopted a negotiating framework so that the only remaining obstacle to be overcome before negotiations could begin was for Croatia to take further measures to ensure full cooperation with the tribunal. As this last remaining obstacle was later judged to be removed, accession negotiations with Croatia were formally opened on 3 October 2005. In its conclusions, the Council confirmed, however, that less than full cooperation with the ICTY at any stage could lead to the suspension of negotiations.

3. Other western Balkan countries

The other western Balkan countries (Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia and Serbia and Montenegro, including Kosovo) also have the prospect of future EU membership. This was recognised by the European Council in Feira in 2000 and in subsequent European Councils. The countries will advance towards the EU

based on their own individual merits in satisfying the criteria for EU membership (the 1993 Copenhagen criteria) and the specific criteria under the specific Stabilisation and Association Process. Full cooperation with the UN International Criminal Tribunal for the former Yugoslavia (ICTY) remains a *sine qua non* for making progress towards the EU. The Stabilisation and Association Process (SAP), as enriched by the Thessaloniki European Council in 2003, will remain the EU's policy for relations with the region until future membership.

The former Yugoslav Republic of Macedonia applied for membership to the European Union in March 2004. The European Commission adopted its opinion on this application on 9 November 2005, noting substantial progress by the country. Following the European Commission's recommendation, the European Council decided on 17 December 2005 to grant candidate status to the country. No start date for accession negotiations has been proposed or indicated yet by Commission or Council. Priorities in political, legislative, institutional and economic reforms have been identified in a European partnership adopted by the Council on 30 January 2006.

Accession negotiations will not start until the country has reached a sufficient degree of compliance with the accession criteria. The latter is to be reassessed by the Commission again at the end of 2006.

4. Potential further enlargement

Based on Article 49 EUT, the EP, in its resolution of November 2003 on a 'Wider Europe', also recognised [...] the right of countries, such as Ukraine and Moldova [...] to obtain EU membership when they fulfil [...] all the requisite political and economic criteria [...].

Role of the European Parliament

The EP's most significant power in respect of enlargement is to give its assent (Article 49 EUT) before any country joins the EU. This power is exercised only at the final stage, once the negotiations have been completed. However, in view of Parliament's key role, it has been in the interest of the other institutions to ensure its participation from the beginning. Parliament also has a significant role to play with regard to the financial aspects of accession in its capacity as one of the two arms of the budgetary authority of the EU. In the EP, it is the Committee on Foreign Affairs which is responsible for coordinating the work on enlargement and ensuring consistency between the positions adopted by the Parliament and the activities of its specialist committees, as well as those of the Joint Parliamentary Committees with the candidate countries.

→ Karsten MECKLENBURG
05/2006

6.3.2. The European Economic Area (EEA)

Legal basis

Article 310 of the EC Treaty (Association Agreements).

Objectives

The purpose of the European Economic Area (EEA) is to extend the EC's single market to include a number of countries in the European Free Trade Area (EFTA) that do not wish to join the European Union or are not yet ready to do so.

Achievements

A. Origin and background

1. Initial context

The initial context relates to the relations between the European Community (EC) and EFTA. In 1973 the accession to the Community of two of its member countries, the United Kingdom and Denmark, disrupted EFTA, which was left with only five members: Austria, Finland, Norway, Switzerland and Sweden. Trade agreements had to be concluded with each of these countries. However, the plan to create a large internal Community market, launched in 1985 and completed at the end of 1992, proved to be extremely attractive to these countries, which had in the meantime been joined by Iceland. A formula was required to allow them to play a significant part in this market without joining the Community.

2. Creation of the EEA

Negotiated in 1992, the agreement creating the European Economic Area was signed on 2 May 1992 and was to enter into force on 1 January 1994. It united the Community (which at that stage had 12 members) and the six EFTA states. The latter, however, soon saw their number reduced to five when Switzerland failed to ratify the agreement following an adverse referendum result. Switzerland retains observer status with the EEA, however, while bilateral agreements govern its relations with the EC.

3. Subsequent development

- (a) As three other EFTA countries — Austria, Finland and Sweden — joined the European Union at the beginning of 1995, the EEA now only covers Iceland, Norway and Liechtenstein (which joined EFTA in May 1995).
- (b) The 10 new Member States which joined the EU on 1 May 2004 automatically became part of the EEA.

The nature of the European Economic Area

1. A step beyond a free trade area

(a) An extension of the EC's internal market

The basic aim of the EEA is to extend the EC's internal market to cover the three EFTA countries. This market goes beyond the removal of customs duties and quantitative restrictions among the members: it seeks to remove all obstacles to the creation of an area of complete freedom of movement similar to a national market. To this end, the EEA covers:

- the four main freedoms of movement of the internal market: movement of persons, goods, services and capital;
- Community policies closely linked to achieving the four freedoms, known as horizontal policies, one of the most important being competition policy.

(b) Participation in certain flanking Community policies

The EEA Agreement stipulates that the EFTA countries may also participate in internal market flanking policies, which entails a financial contribution on their part.

In addition, these countries have decided to contribute financially to the Community structural policy.

(c) Adoption of Community legislation

Given that, unlike a free trade area, the EC internal market — rather than limiting itself to a number of initial rules — constantly produces a considerable volume of legislation, the EEA has had to establish a mechanism for extending these rules to the EFTA countries.

2. The limits of EEA

- (a) Free trade itself is limited: it does not cover certain sectors such as agriculture and fisheries.
- (b) The extension of the internal market is not complete:
 - the free movement of persons only applies to workers although it applies to all people within the European Union, particularly in the Schengen area (→2.3.0.);
 - there continue to be controls at the EU's borders with the three EFTA countries;
 - there is no harmonisation of taxation.
- (c) The EEA is not even a customs union as it does not have any common external tariff. As a result, it does not have a common commercial policy towards the rest of the world either.

- (d) Obviously, the EEA excludes the other elements of European integration:
 - economic and monetary union;
 - external and common security policy;
 - cooperation in the field of justice and home affairs.
- (e) Above all, it does not integrate the three countries into the European Union's institutional and decision-making system.

C. The initial extension of the internal market to the three EFTA states

From the outset, the EEA Agreement incorporated a significant proportion of the rules and policies of the internal market that existed at that time.

1. Basic principles (corresponding to primary Community law)

(a) *The four freedoms*

- (i) Freedom of movement of goods. The provisions in the EEA Agreement concerning the basic rules of the internal market are identical or similar to those of the EC Treaty:
 - prohibition of customs duties and any charges having equivalent effect together with quantitative restrictions and any measures having equivalent effect;
 - adjustment of commercial state monopolies;
 - simplification of border controls and customs cooperation.
- (ii) Freedom of movement of persons, services and capital
 - abolition of discrimination based on nationality as regards workers' residence and access to employment;
 - right of establishment for self-employed persons and undertakings;
 - freedom to provide services;
 - measures to facilitate the exercise of these freedoms, in particular the mutual recognition of qualifications.

(b) *Horizontal policies required to achieve the four freedoms*

- (i) The most important of these is competition policy, for which the EEA Agreement faithfully reproduces the provisions of the EC Treaty:
 - as regards undertakings: ban on agreements and abuses of dominant positions, control of concentrations;
 - as regards states: control of public undertakings and services of general economic interest.
- (ii) The other Community policies integrated into the EEA are:

- transport policy,
- public procurement,
- company law,
- intellectual property,
- social policy,
- consumer protection,
- the environment.

(c) *Participation in flanking policies (cooperation outside the four freedoms)*

(i) **Areas:** The EEA Agreement provides for the participation of the EFTA countries in the EU's activities in a number of areas:

- research and development,
- information services,
- education and training,
- youth,
- tourism,
- SMEs,
- audiovisual sector,
- civil protection.

(ii) **Forms:** in these areas, the EFTA countries participate in particular in framework programmes and projects.

(iii) **Principles**

- equal rights and responsibilities in relation to the action concerned;
- financial participation of the EFTA states.

2. Incorporation of Community legislation

The EEA Agreement does not merely extend to the EFTA countries the fundamental rules of the EC Treaty on the internal market. It also incorporates all of the implementing legislation for these rules produced by the Community at the time, the 'secondary legislation' or the 'Community *acquis*'. This legislation has been incorporated through the protocols and annexes attached to the agreement and it covers some 1 600 Community acts:

- regulations, directives, decisions and non-binding acts;
- relating for the most part to the four freedoms and related policies and, to a lesser extent, to flanking policies.

D. The continuing extension of the internal market to cover the EFTA countries

1. The continuous incorporation of Community legislation

The EU continuously produces legislation on the internal market and related policies, legislation that naturally must be extended to the three EFTA states so that the EEA

operates in an entirely homogeneous manner. The EEA Agreement therefore establishes a permanent incorporation mechanism.

(a) Decisions on the incorporation of legislation

As new texts are adopted by the EU, these decisions are taken by a Joint Committee, composed of representatives of the European Union and representatives of the three EFTA states, and meeting at regular intervals (once a month) to decide what proportion of the legislation and more generally all Community acts (actions, programmes, etc.) should be incorporated into the EEA; the legislation is formally incorporated by including the acts in question in the lists of protocols and annexes to the EEA Agreement.

In all, some 4 000 Community acts have been incorporated into the EEA Agreement since its entry into force.

An EEA Council, made up of representatives of the EU Council and the Foreign Ministers of the EFTA states, meets at least twice a year to provide a political incentive and guidelines for the Joint Committee.

(b) Transposition

Once a Community act has been incorporated into the EEA Agreement, it must be transposed into the national legislation of the three EFTA countries, if the transposition is required according to their constitutional arrangements. It may take the form of a simple governmental decision or may require parliamentary approval.

(c) Nature of the mechanism

The mechanism gives the impression that the extension of Community acts concerning the internal market to the EFTA states must be assessed by those states, initially in the form of a decision to incorporate the legislation by the Joint Committee and then in the form of a national decision on transposition. In reality, these decisions are essentially formal in nature: the Community legislation must be extended to these states; they do not have any choice. The Association Agreement also requires the Joint Committee to decide as quickly as possible so that the act in question may be applied more or less simultaneously in the Union and in the three countries; the only margin for assessment is the possibility of purely technical adjustments.

Provisions have been established to involve the EFTA countries in the preparation of Community acts. Thus, the representatives of these countries are invited, on an equal footing with their counterparts in the EU Member States, to take part in the written and oral consultations, and at times in the work of the standing committees set up for this purpose by the European Commission.

Even at the stage of the Community decision-making procedure (Commission proposal, consideration and

decision of the Council and of the European Parliament (EP)), the EFTA countries are regularly informed and even consulted.

Following the legislative decisions, the EFTA states are consulted again on the implementing measures for these decisions taken by the European Commission. They are often invited to participate in the various committees that assist the Commission in exercising its executive power ('comitology') although they do not have any voting rights.

Basically, the EFTA states clearly do not participate in the European Union's decision-making procedures themselves although many of these decisions apply to them more or less automatically. That is the consequence of remaining outside the EU. However, paradoxically, it means that with the EEA mechanism they have less sovereignty than they would if they were members of the EU.

2. Monitoring the extension of Community legislation to the EEA

Once the internal market legislation has been extended to the EFTA countries, its correct transposition and application must be monitored. Given that these countries did not have any mechanism for such monitoring, the EEA Agreement stipulated that EFTA would establish an appropriate mechanism. This consists of:

- a Surveillance Authority,
- an EFTA Court.

These bodies play the same role as the European Commission and the Court of First Instance and the Court of Justice respectively within the European Union in ensuring that the EFTA members of the EEA respect the rules in question.

Role of the European Parliament

Although first and foremost an international treaty, the EEA Agreement revolves around extending Community legislation to the partner countries. Both the EP and the national parliaments of the partner countries are therefore closely involved in monitoring its functioning. Under Article 95 of the agreement, an EEA Joint Parliamentary Committee (JPC) was established and tasked with contributing, through dialogue and debate, to a better understanding between the Community and the EFTA States in the fields covered by the EEA Agreement. The JPC meets twice a year, with the EP and the EFTA parliaments taking turns in hosting the meeting. Originally established as a 66-member body (33 MEPs and 33 EFTA MPs), it was agreed by mutual consent following the accession to the EU in January 1995 of Austria, Finland, and Sweden, to reduce the component delegations to 12 members each. The chair alternates annually between an MEP and an MP

from one of the EFTA states. Parliamentarians from the Swiss Federal Assembly attend the meetings as observers.

All EC legislation applying to the EEA, as well as its implementation, is subject to scrutiny by the EEA JPC, and members of the EEA JPC have the right to put oral and written questions to the representatives of the EEA Council and the EEA Joint Committee. The EEA JPC expresses views in the form of reports or resolutions, as appropriate. In particular, it examines the Annual Report of the EEA Joint

Committee, issued in accordance with Article 94(4) of the EEA Agreement, on the functioning and the development of the agreement. At each of its meetings, the JPC has had discussions with representatives of the EEA Council of Ministers, the EEA Joint Committee, and the EFTA Surveillance Authority (ESA).

→ Stefan SCHULZ
11/2005

6.3.3. The European Neighbourhood Policy (ENP)

Legal basis

Title V of the EU Treaty on the Common Foreign and Security Policy (CFSP). The Treaty establishing a Constitution for Europe includes a specific article (I-57) on the Union and its neighbours.

Objectives

To contribute to increased stability, security and prosperity of the EU and its neighbours to the East and South, in particular by offering the countries covered an increasingly close relationship with the EU, and to prevent the emergence of new dividing lines between the enlarged EU and its neighbours. The policy is based on commitments to common values, including democracy, the rule of law, good governance and respect for human rights, and the principles of market economy, free trade and sustainable development, as well as poverty reduction.

The reasoning on security behind the European Neighbourhood Policy (ENP) is also reflected in the European Security Strategy (→6.1.3, point E). This strategy identifies the building of security in the neighbourhood of the EU as a key strategic objective, mentions different challenges in this regard and states that the creation of new dividing lines should be avoided.

The ENP covers six eastern European countries which do not at present have any EU membership perspective, notably Ukraine, Moldova, Belarus, Georgia, Armenia and Azerbaijan; as well as 10 countries in North Africa and the Middle East which also participate in the Barcelona process: Morocco, Tunisia, Algeria, Libya, Egypt, Israel, the Palestinian Authority, Jordan, Syria and Lebanon.

Russia has chosen not to participate, and EU–Russia relations are now instead centred on a joint project to set

up four ‘Common Policy Spaces’. The EU has no formal relations with Belarus or Libya. Until this has changed, the ENP will be applied in a different and much reduced way to these countries.

Achievements

A. The emergence of the ENP and its geographic scope

Discussions on what would become the ENP, but was initially referred to as the Wider Europe — New Neighbourhood Initiative, began in early 2002. The starting point was the observation that the EU enlargement in 2004 would have significant effects on the countries on the other side of the new external borders of the EU in the East. It was argued that negative effects would have to be prevented or mitigated and that the potential to develop mutually beneficial cooperation with the new neighbours should be exploited.

In November 2002, the Council invited the Commission and the High Representative for the CFSP to prepare proposals. The European Council the next month made clear that the southern Mediterranean countries should also be included in the initiative. Candidate and potential candidate countries (the latter referring to the countries of the western Balkans, →6.4.1) remained outside, and the absence of an EU membership perspective emerged more clearly as a selection criterion.

The general character of the new policy was laid out in a Commission communication presented on 11 March 2003 (COM(2003) 104 final). The policy should, according to formulas used in the debate by the then President of the European Commission, Mr Romano Prodi, be aimed at creating ‘a ring of friends’ and these should ultimately be offered the opportunity to participate in ‘everything but the institutions’.

The latter formula was, however, criticised from different directions. Council conclusions of 16 January 2003 on the objectives of the policy and the incentives the EU should offer did not hold out any similar prospect, but still envisaged deeper cooperation in a broad range of areas. At the same time, the Council accepted the Commission's proposal to make bilateral action plans the core element of the policy.

Following the 'Rose Revolution' in Georgia in the end of 2003 and calls from the EP to include Georgia, Armenia and Azerbaijan in the ENP, the Council took a decision to this effect in June 2004. Council conclusions of 14 June 2004 also elaborated on the value base of the ENP and the status of Belarus, Libya and Russia in relation to it.

B. Instruments

The ENP builds on the Partnership and Cooperation Agreements (PCAs) and Euro-Mediterranean Association Agreements that have been concluded with most of the countries covered. The ENP does not presuppose the introduction of any new type of agreement with countries covered, but the introduction of neighbourhood agreements has been mentioned by the Commission as a possibility in the future, which Parliament has welcomed. As mentioned above, the core instrument of the ENP is bilateral action plans. The preparation of an ENP Action Plan presupposes that a PCA or Euro-Med Agreement has entered into force. Each ENP Action Plan lists a number of objectives and concrete measures to take in the context of political and economic reform. In this regard, they somewhat resemble the accession partnerships which support candidate countries' reforms and preparations for EU membership, although the EU offers no membership perspective and there is no separation into short and medium-term objectives.

The implementation is monitored by committees set up under the respective agreement. Within two years of the adoption of an action plan, a first review of its implementation will be carried out. The basis for this will be a report prepared by the Commission, with input from the High Representative for the CFSP as well as from the relevant country.

The EU provides support for the countries covered by the ENP, including for their reform efforts, through the TACIS technical assistance programme (eastern neighbours) and the MEDA programme (southern neighbours). A new assistance programme called the European Neighbourhood and Partnership Instrument (ENPI) is due to replace these programmes from 2007.

The southern neighbours also benefit from considerable loans on favourable conditions from the European

Investment Bank (EIB). Russia and recently also Ukraine, Moldova and Belarus have recently been included in the EIB's external lending mandate, but the sum available for them is only a fraction of that for the southern neighbours. The Commission has presented a proposal for a revision of the lending mandate, with an increase for the eastern neighbours and inclusion of Georgia, Armenia and Azerbaijan.

C. Current status

With the Commission in the lead and the Council providing guidance, action plans are prepared and in effect negotiated with the neighbouring countries. The action plans are then adopted by the Commission, endorsed by the Council and approved by the relevant Cooperation or Association Council (the leading joint body set up under the PCAs and Euro-Med Agreements, respectively). Parliament is not consulted at any stage.

In September 2006, action plans for Ukraine, Moldova, Morocco, Tunisia, Jordan, Israel and the Palestinian Authority had been adopted. Adoption of action plans for Georgia, Armenia and Azerbaijan were planned for early October 2006. An action plan with Lebanon was agreed in June 2006 and negotiations on such a plan for Egypt are conducted. Preparation of an action plan for Algeria had begun. A first review of the implementation of the action plan for Ukraine (which was finalised before the 'Orange Revolution' in this country) was carried out by the Commission in spring 2006 and showed that Ukraine had made good progress in many areas. Reports on the implementation of the seven action plans first adopted were due to be presented on 6 December 2006.

Role of the European Parliament

Parliament adopted a resolution on the ENP on 19 January 2006. It broadly supported the ENP, as it is being developed by Council and the Commission, but also called for the creation of a multilateral framework in which cross-cutting issues and the overall future of the ENP should be discussed (paragraph 20 of the resolution). Future Neighbourhood Agreements should encourage 'step-by-step progress towards full access to the internal market and participation in the Common Foreign and Security Policy (CFSP)', while also allowing close cooperation in the field of justice and home affairs (paragraph 8). Financial aid should be given to ENP countries, including for measures in relation to the internal market and the CFSP.

As regards the relationship between the ENP and EU enlargement, the resolution stated that 'the possibility of membership of the EU must remain the ultimate incentive for all European countries to follow the common European ideals and participate in the European integration process'

and that action plans 'should serve as a tool towards achievement of the goals of potential EU membership for those countries that are eligible and ever closer partnership for the other countries included' (paragraphs 34 and 17, respectively). At the same time, the resolution mentioned that the EU's 'absorption capacity' is one of the criteria for EU membership and that 'the Nice Treaty is not an acceptable basis for further decisions on the accession of any more new Member States' (recitals H and paragraph 4, respectively).

In a resolution on the EU's enlargement strategy adopted on 16 March 2006, Parliament returned to several of the issues just mentioned, stressing the importance of the EU's absorption capacity and requesting the Commission 'to submit a report by 31 December 2006 setting out the principles which underpin this concept' (paragraph 5). Parliament called on the Commission and the Council 'to submit, for all European countries currently without membership prospects, proposals for a close multilateral

relationship with the EU' and added that 'it is up to all countries with recognised membership prospects to join this multilateral framework as an intermediate step towards full membership' (paragraph 10).

A regulation setting up a European Neighbourhood and Partnership Instrument (ENPI), replacing the TACIS and MEDA programmes for the ENP countries, will be adopted by Parliament and Council under the co-decision procedure.

When consulted on a revision of the EIB's external lending mandate, Parliament supported the extension to Ukraine, Moldova and Belarus proposed by the Commission and advocated a bigger envelope for these countries. Parliament also considered that preparations for the inclusion of Georgia, Armenia and Azerbaijan in the next lending mandate should start.

→ Dag SOURANDER
09/2006

6.4. Relations with certain countries and regions

6.4.1. The Western Balkan countries

Legal basis

Title V of the Treaty on European Union (EUT)
Articles 133 and 310 of the EC Treaty.

Objectives

To bring peace, stability and economic development to the region and open up the prospect of integration into the EU.

Achievements

A. Approach to the region as whole

1. Until 1999

The former Yugoslavia benefited from a cooperation agreement with the EU since 1980. In June 1990 the Commission proposed measures to improve relations, but the break-up of the country in 1991 and the various

conflicts changed the situation entirely. The EU's political, trade and financial relations with the region focused on crisis management and reconstruction, reflecting the countries' emergency needs at that time. The EU's assistance programmes were substantial, totalling some EUR 5 500 million. As the region emerged from this difficult period, a more long-term approach to development was required. At the EU's initiative, the Stability Pact for South Eastern Europe (involving the countries of the western Balkans, other countries of the region, the EU and several other countries, international financial institutions and regional initiatives) was adopted on 10 June 1999 in Cologne.

2. The Stabilisation and Association Process

As its main contribution to the Stability Pact, the EU launched the Stabilisation and Association Process for the countries of the western Balkans (SAP) in 1999. It

established a strategic framework for their relations with the EU, combining a new contractual relationship (Stabilisation and Association Agreement (SAA)) and an assistance programme (CARDS). The SAP is both bilateral and regional, creating strong links between each country and the EU as well as encouraging cooperation between the countries themselves and their neighbours in the region. Stabilisation and association agreements are legally binding international agreements, which after signature require European Parliament (EP) assent and ratification by the parliament of the country concluding the agreement as well as by all EU Member State parliaments. They require respect for democratic principles, human rights and the rule of law; they foresee the establishment of a free trade area with the EU and they set out rights and obligations in areas such as competition and state aid rules, intellectual property and establishment, which will allow the economies of the region to begin to integrate with that of the EU. So far, stabilisation and association agreements with two countries (former Yugoslav Republic of Macedonia, and Croatia) have entered into force. SAA negotiations with Albania should conclude in the near future, while they have started with Serbia and Montenegro and Bosnia and Herzegovina.

The CARDS programme underpins the objectives and mechanisms of the SAP. As each country moves deeper into the process, assistance has moved from rebuilding infrastructure and fostering reconciliation, towards developing government institutions and legislation, and gradual approximation with European norms and eventually harmonisation with the EU acquis. Financial support is directed at reinforcing democracy and the rule of law, human rights, civil society and the media, and the operation of a free market economy. In addition, assistance is offered to help generate sustainable economic recovery, and promote social development and structural reform. Promoting regional cooperation between the western Balkan countries as well as between the region and EU Member States and candidate countries is a further major objective of CARDS.

For the period 2000–06, CARDS assistance to the western Balkans amounts to about EUR 5 billion. The European Councils in Feira and Nice (June and December 2000) explicitly recognised the role of the countries of the western Balkans (Albania, Bosnia-Herzegovina, Croatia, Federal Republic of Yugoslavia, Former Yugoslav Republic of Macedonia) as potential candidates for EU membership and spoke of a clear prospect of accession once the relevant conditions had been met.

In November 2000, the EU unilaterally granted almost totally free access to its markets for goods from the Balkans.

B. Relations with the individual countries of the region

1. Albania

There were no relations between the EU and Albania until the first contacts in 1980 following the collapse of communism. Current relations are based on a non-preferential agreement on trade and economic cooperation, which entered into force in December 1992. Albanian attempts to enhance its contractual relationship with the EU in 1995 and 1999 failed due to the insufficient preparedness of the country.

Albania has been participating in the Stabilisation and Association Process from the beginning, and negotiations on a draft Stabilisation and Association Agreement (SAA) began in early 2003. By summer 2005 agreement in principle had been reached on most elements of the text of the draft agreement and a completion of negotiations is expected by end 2006. However, the European Commission made clear that Albania would need to ensure tangible achievements on European partnership priorities in the fields of rule of law, land ownership, human rights, media freedom and customs before the Commission could recommend the conclusion of the agreement. As regards the 2005 parliamentary elections, the European Commission, based on OSCE/ODIHR assessment, saw a number of improvements compared with previous elections. Despite shortcomings, these parliamentary elections were fundamentally valid and led to a smooth change of government.

2. Bosnia and Herzegovina (BiH)

Since the Dayton/Paris Peace Agreement in 1995 brought the war in Bosnia and Herzegovina to an end, the EU has participated fully in the country's reconstruction. BiH has benefited from autonomous trade preferences since 1996, but institutionalised contacts with the EU started only in June 1998. With the introduction of the SAP in 1999, BiH also became a participant. In order to identify the most important issues for the country under the SAP, the EU published a roadmap, setting out 18 basic steps. This roadmap was substantially completed in September 2002, and a November 2003 European Commission feasibility study for the negotiation of a Stabilisation and Association Agreement identified the subsequent priorities for the country.

Bosnia and Herzegovina has, in the meantime, made significant progress on most of the priorities identified in the feasibility study. However, Bosnia and Herzegovina's achievements have been, so far, mainly of a legislative nature. BiH will need to increasingly focus on ensuring effective implementation and enforcement of the adopted laws. Nevertheless, in October 2005, the European Commission recommended to the Council the opening of

SAA negotiations with Bosnia and Herzegovina. Negotiations started on 25 January 2006.

Bosnia and Herzegovina has been an increasing focus of EU political interest, especially in relation to CFSP and ESDP measures. The first operation under the European Security and Defence Policy (ESDP) started in Bosnia-Herzegovina on 1 January 2003, when the European Union Police Mission (EUPM) took over from the UN's International Police Task Force.

In June 2004, the Council adopted a joint action on an EU military operation in the country (EUFOR/Althea). This decision led to the deployment of troops in December 2004. Also in June 2004, the European Council adopted a comprehensive policy with regard to Bosnia and Herzegovina as one of the European Security Strategy's initial implementation priorities. The mandate of the EU Special Representative (EUSR) to the country, whose role is to 'offer the EU's advice and facilitation in the political process and to promote overall political coordination', has been extended until the end of February 2006.

3. Croatia

Since the dissolution of the Socialist Federal Republic of Yugoslavia and until 2001, there were no global contractual relations between Croatia and the EU because of the war and the country's failure to meet the requirements of democracy. Croatia was granted trading preferences on a unilateral basis. Financial cooperation was limited to humanitarian assistance, support for democratisation and, from 1996, reconstruction assistance. After the change of government in 2000, Croatia broke out of the international isolation which the policy of the former government had caused, and became fully engaged in the SAP. In October 2001, Croatia signed a Stabilisation and Association Agreement with the EU, which entered into force on 1 February 2005. An interim agreement was signed in parallel, allowing the trade and trade-related matters of the SAA to enter into force on 1 January 2002.

On 21 February 2003, Croatia, the first country of the western Balkans to do so, submitted a formal request for EU membership. Following a positive opinion and recommendation by the European Commission of April 2004, the December 2004 European Council decided that accession negotiations would be opened on 17 March 2005 provided that Croatia cooperated fully with the UN International Criminal Tribunal for the former Yugoslavia in The Hague (ICTY). However, the Council concluded in March 2005, as the Chief Prosecutor of The Hague Tribunal had done, that Croatia was not fully cooperating with ICTY. As this last remaining obstacle was later judged to be removed, accession negotiations with Croatia were formally opened on 3 October 2005.

4. Serbia and Montenegro

Economic and trade relations were subject to an embargo for a long while, but had both resumed in some areas, when the Kosovo crisis led to the restoration of economic and financial sanctions and to NATO intervention in 1999. The end of the bombing and the Serb withdrawal from Kosovo on 21 June 1999 resulted in deployment of the NATO Kosovo Force KFOR and the establishment of the UN Interim Administration in Kosovo (UNMIK). Following the democratic change in the former Federal Republic of Yugoslavia (FRY) in October 2000, the EU re-established relations with the Belgrade administration and quickly lifted most sanctions. With effect from 1 December 2000, the EU included the FRY in the liberalised EU preferential trade regime for the region. The FRY also became a full participant in the Stabilisation and Association Process.

The FRY formally ceased to exist on 4 February 2003 and was replaced by the new Union of Serbia and Montenegro.

On 3 October 2005 the Council decided to open negotiations for a Stabilisation and Association Agreement (SAA) with Serbia and Montenegro. In line with the so-called twin-track approach, negotiations — officially opened on 10 October 2005 — have been held with the state union or the republics according to the division of competences. Negotiations have been, however suspended in early May 2006 following the repeated failure of Serbia to deliver key ICTY indictee Radko Mladic. Following the positive referendum on independence in Montenegro, on 21 May 2006, the follow-up on separate SAA negotiations will have to be decided by the Council during 2006.

5. Serbia and Montenegro/Kosovo

On 7 October 2005, UN Secretary-General (UNSG) Kofi Annan recommended to the UN Security Council to launch the process to determine the future status of Kosovo. This recommendation was delivered with the report from Ambassador Kai Eide that concluded that despite corruption and pervasive ethnic tension, enough progress had been made in creating the institutions to make a government work in Kosovo and that therefore it would be very unwise to stop the political momentum. The Security Council endorsed the UNSG's intentions. UNSG Annan appointed the former Finnish President, Martti Ahtissari, as his special representative to oversee the process. Kosovo status talks have started in February 2006 in Vienna.

While there is no common EU position on the preferred outcome of the final status discussions, there is consensus that Kosovo will not return to the pre-1999 situation. The EP's main concern would be that the status discussions take full account of Kosovo's European perspective and that the final settlement allows Kosovo to fully participate in

and benefit from the EU's Stabilisation and Association Policy, so as to facilitate its long-term political stability and socio-economic development.

6. Former Yugoslav Republic of Macedonia (FYROM)

The country declared independence from the collapsing Yugoslav federation in September 1991. A first trade and cooperation agreement with the EU entered into force in January 1998. In April 2001, FYROM was the first country of the region to sign an SAA. The agreement entered into force in April 2004. An interim agreement was signed in April 2001, which allowed the trade and trade-related matters of the SAA to enter into force on 1 June 2002.

FYROM faced a serious political crisis in 2001, due to a violent insurgency, which led to the deployment of a NATO mission. International military presence was assured by NATO until 31 March 2002, when the EU took over from NATO with its first-ever military peacekeeping mission.

The former Yugoslav Republic of Macedonia applied for membership of the European Union in March 2004. The European Commission adopted its opinion on this application on 9 November 2005, noting substantial progress by the country. Following the European Commission's recommendation, the European Council decided on 17 December 2005 to grant candidate status to the country. No start date for accession negotiations has been proposed or indicated yet by Commission or Council. Priorities in political, legislative, institutional and economic reforms have been identified in a European partnership adopted by the Council on 30 January 2006.

Accession negotiations will not start until the country has reached a sufficient degree of compliance with the accession criteria. The latter is to be reassessed by the Commission again at the end of 2006.

Role of the European Parliament

The EP had initially set up a delegation for South-East Europe, responsible for all the countries of the western Balkans and regularly sending parliamentary observers when elections took place in the region. With the entering into force of the Stabilisation and Association Agreements with the former Yugoslav Republic of Macedonia, and Croatia, Joint Parliamentary Committees between the EP and the partner country parliaments were set up in early 2005 as institutions under the agreement. Since the EP elections in 2004, the new EP Delegation for relations with the countries of South-East Europe will be the forum for interparliamentary dialogue and contacts with the other countries, i.e. Albania, Bosnia and Herzegovina (BiH) and Serbia and Montenegro (including Kosovo).

Parliament considered that the Stability Pact, initiated in June 1999 and accompanied by the EU's SAP, was decisive in fostering peace and democracy in the region. It also approved the overhaul of the financial aid arrangements for the countries of the western Balkans (the CARDS programme). It gave its assent to the SAAs concluded with Croatia and FYROM.

The EP has often highlighted the need for respect for democracy, the rule of law and the rights of minorities in the region. It has insisted on full and effective cooperation of the countries concerned with the International Criminal Tribunal for the Former Yugoslavia, the effective implementation of a policy in favour of the return of refugees and an active policy against organised crime and corruption.

→ Karsten MECKLENBURG
05/2006

6.4.2 Russian Federation

Legal basis

Title V of the EU Treaty, Articles 300 and 133 of the EC Treaty, Regulation (EC, Euratom) No 99/2000 of 29 December 1999 for the provision of assistance to the partner countries in eastern Europe and Central Asia.

Objectives

EU/EC relations with the Russian Federation are based on the Partnership and Cooperation Agreement (PCA), as well as on a CSFP Common Strategy, aimed at strengthening the strategic partnership with Russia and addressing common challenges on the European continent.

Achievements

A. Partnership and Cooperation Agreement

The PCA provides for trade liberalisation and closer relations. The Russia CSP was adopted by the Commission on 27 December 2001 and provides the strategic framework within which EC assistance will be provided for the period 2002–06.

- The Partnership and Cooperation Agreement with Russia entered into force on 1 December 1997.
- In the same vein and on the basis of Article 13 of the Treaty on European Union, the Council adopted on 14 June 1999 a common strategy which gave priority to four areas of action:
 - consolidation of democracy, rule of law and public institutions in Russia;
 - integration of Russia into a common European economic and social space;
 - cooperation to strengthen stability and security in Europe and beyond;
 - common challenges on the European continent.
- The Council has adopted an action plan for common action with Russia to combat organised crime.
- Since 2000, EU–Russia summits have been held twice a year. In May 2002, the final statement highlighted the need for greater cooperation in the fight against international terrorism.
- Two major economic projects currently in the field of energy partnership as agreed in the London summit of October 2005 and the roadmap for a common economic space, a common space of freedom, security and justice, a space of cooperation in the field of

external security and a space of research and education, including cultural aspects, as agreed in the St Petersburg summit in May 2003, are in the final stages for implementation.

- Russia is also party in the Northern Dimension which includes the EU, Norway, Iceland, Canada and the United States for implementing projects in the field of environmental protection and public health.
- In order to facilitate Russia's integration into the global economy, the EU granted Russia full market economy status in May 2002.
- The main difference relates to the Chechnyan issue: it was addressed once again at the November 2002 summit.
- The other delicate topic is the enclave of Kaliningrad; a partial solution was, however, found at the November 2002 summit involving multiple visas at a low cost. This did not cover the transit of goods for which a different solution was sought.

B. Economic relations

While the EU is Russia's main trading partner, it has a huge trade deficit with this country, originating mainly in its dependence on energy supplies from Russia. The EU has thus an important strategic and economic interest in Russia's development. The case for closer EU–Russia relations will be even greater after enlargement.

C. Aid

Since 1991, EC technical assistance has been one of the leading programmes supporting the transition process in Russia. More recently, EC assistance has been refocused on a limited number of areas, in order to support institutional reforms in Russia and achieve a systemic impact in key socio-economic fields linked to the PCA implementation process. This assistance is complemented by other EC instruments, such as the European Initiative for Democracy and Human Rights, humanitarian aid in Chechnya and cooperation in science and technology. Increased coordination at all levels is also being sought with the EU Member States, the international financial institutions and other major donors.

Role of the European Parliament

In many of its resolutions the European Parliament (EP) has stressed the importance of Russia's further democratisation, especially in terms of free and fair elections, freedom of the

media, respectful treatment of non-governmental organisations, adherence to fundamental principles in relation to rule of law, declaring its belief that Russia's possible integration into more comprehensive political,

economic and security structures are interrelated processes.

→ Maria EFTHYMIU
11/2006

6.4.3 The South Caucasus (Armenia, Azerbaijan, Georgia)

Legal basis

Title V of the EU Treaty on the common foreign and security policy (CFSP), Article 300 of the EC Treaty (international agreements).

Objectives

To stimulate the countries of the region to carry out political and economic reforms, contribute to the settlement of conflicts and facilitate implementation of such settlement, support intra-regional cooperation and develop the countries' relations with the EU.

Achievements

A. Partnership and cooperation agreements

A partnership and cooperation agreement (PCA) with each of the countries of the South Caucasus was negotiated in the mid-1990s and signed in 1996. The three agreements entered into force on 1 July 1999. They were concluded for an initial period of 10 years and therefore expire in 2009, unless the parties agree to extend their period of application.

The PCAs with the South Caucasian countries are similar to those concluded with other eastern European and central Asian states which emerged in connection with the dissolution of the Soviet Union in 1991. They provide for trade liberalisation, economic cooperation and cooperation in various other areas, including prevention of crime and illegal migration. Joint bodies, including a Cooperation Council at ministerial level and a Parliamentary Cooperation Committee, ensure a regular political dialogue. The implementation of the agreement is supported also by committees bringing senior officials and experts together.

The preamble of each agreement recognises that support for the independence, sovereignty and territorial integrity of the respective country will contribute to the safeguarding of peace and stability in Europe. Article 2 states that 'respect for democracy, principles of

international law and human rights [...] constitute essential elements of partnership and of this agreement'. If either party considers that the other party has failed to fulfil an obligation under the agreement, it can 'take appropriate measures' (including suspending the application of the agreement or a part of it).

B. Trade

The EU is by far the most important trading partner for all the countries of the region. The most important component of the trade is energy exports from Azerbaijan to the EU. Oil exports are increasing, as a result of the opening in 2005 of the Baku–Tbilisi–Ceyhan (BTC) oil pipeline, which connects the Caspian Sea with the Mediterranean. A largely parallel Baku–Tbilisi–Erzurum (BTE) pipeline was completed in autumn 2006.

C. Aid

The three countries receive technical assistance through the EU's TACIS programme, conceived shortly after the dissolution of the Soviet Union and covering the Community of Independent States (CIS) region. Following the Rose Revolution in Georgia, the assistance to this country was doubled. Macro-financial assistance is given to Armenia and Georgia, and all of the three countries are eligible for some funding for the promotion of democracy and human rights under the EU's European Initiative for Democracy and Human Rights (EIDHR) programme in 2006. The EU has supported reform of the criminal justice system in Georgia through an innovative 'rule of law mission' called Eujust Themis. It provides funding for economic rehabilitation programmes in the breakaway regions of South Ossetia and Abkhazia in Georgia with a view to facilitating the return of refugees and internally displaced persons to these regions and to facilitate peaceful resolution of these conflicts.

From the beginning of 2007, the TACIS programme should be replaced by a new European Neighbourhood and Partnership Instrument (ENPI). A proposal has been

presented by the European Commission, and the ENPI regulation will be adopted by the Council and the European Parliament (EP), applying the co-decision procedure.

D. The common foreign and security policy in relation to the South Caucasus

In 2003, the EU Council appointed a special representative for the South Caucasus: Mr Heikki Talvitie. In 2006, he was succeeded by Mr Peter Semneby. The special representative contributes to the implementation of the EU's policy objectives in the region, described above. Following a Russian veto hindering the continuation in 2005 of an OSCE mission which earlier monitored the border between Russia and Georgia, small-scale support to the Georgian Border Guard is provided through the special representative.

The EU and its special representative do not so far directly participate in mediation in relation to conflicts within the region (over the Nagorno-Karabakh and adjacent Azeri lands occupied by Armenian forces and over Abkhazia and South Ossetia).

E. The European neighbourhood policy

The EU's mainly eastward enlargement in 2004 has considerably reduced the distance between the Union and the South Caucasus, and the coming accession of Romania and Bulgaria will give the EU a coastline on the Black Sea, opposite that of Georgia. This contributes to the rising EU interest in the region.

In spite of this and of Council conclusions on the South Caucasus of 27 February 2001 according to which the EU

would step up its engagement, the region was not covered by the European neighbourhood policy (ENP) until the Rose Revolution in Georgia and calls by the EP convinced the Council of the strength of the case for extending the geographical scope of this policy. The decision to include the South Caucasus was taken in June 2004.

The main element of the ENP is bilateral action plans (see also the fact sheet on the European neighbourhood policy). Action plans for each of the countries in the South Caucasus were due to be agreed in October 2006.

Role of the European Parliament

Before the PCAs were concluded, the EP gave its assent, as required for 'agreements establishing a specific institutional framework by organising cooperation procedures' according to Article 300(3) (ex Article 228), of the EC Treaty.

Both the inclusion of the South Caucasus in the ENP and the appointment of an EU special representative for the region were preceded by calls from the EP for these measures to be taken. Major resolutions on the South Caucasus adopted in 2003 and 2004 also called for greater efforts to promote conflict resolution and stability in the region, including through a stability pact, drawing lessons from the Stability Pact for South-Eastern Europe.

The EP regularly participates in election observation, most recently of the parliamentary elections in Azerbaijan on 6 November 2005.

→ Dag SOURANDER
09/2006

6.4.4 Central Asia

Legal basis

Title V of the EU Treaty on the Common Foreign and Security Policy (CFSP); Articles 300 (international agreements) and 133(3), (specifically on international trade agreements) of the EC Treaty.

Objectives

To promote the stability and security of the countries of Central Asia, addressing sources of political and social tensions; help these countries to achieve sustainable economic development and poverty reduction, in

particular by improving the climate for trade and investment and energy supplies; foster respect for democratic principles and human rights and promote transition towards a market economy; promote good relations between the countries of Central Asia and the EU.

Achievements

A. General

In the aftermath of the 11 September 2001 terrorist attacks in New York and Washington, much attention was focused on Afghanistan, but also on the lack of stability and the

presence of extremist Islamic groups in the neighbouring Central Asia region. This led to a re-evaluation of the importance of EU engagement in Central Asia. Council conclusions of 10 December 2001, which continue to provide a basis for the EU's policy, stated that lasting stability and security can only be achieved through continuing reform and that it is important to tackle the root causes of terrorism and conflict in the region by supporting efforts to improve governance and to reduce poverty. The level of funding to the Central Asian countries, which was very modest at the time, was doubled. After a small further increase, it now tops EUR 60 million per year.

The human rights situation in some of the countries gives strong cause for concern. Mass killings of demonstrators in the Uzbek town of Andijan in May 2005 provoked international protests and calls inter alia from the EU for an independent international investigation. In October 2005, the Uzbek government's continued refusal to agree to this prompted the EU to introduce an embargo on exports to the country of arms and military equipment and to suspend all bilateral meetings at technical level. The sanctions were due to be reviewed in autumn 2006.

B. Partnership and cooperation agreements

Partnership and cooperation agreements (PCAs), similar to those with eastern European countries, were concluded with Kazakhstan, Kyrgyzstan and Uzbekistan in the mid-1990s and entered into force on 1 July 1999. Negotiations on PCAs with the two other countries of the region, Tajikistan and Turkmenistan, were concluded in 1998 and 2004 respectively. The ratification process for the Turkmenistan agreement was subsequently blocked by the European Parliament (EP/Parliament), due to large-scale human rights violations in the country. Interim agreements covering the trade aspects of the PCAs and not requiring ratification by the Member States have been prepared. The interim agreement with Tajikistan entered into force in May 2005. The EP's International Trade Committee in spring 2006 prepared a report with a draft resolution supporting the conclusion of the interim agreement with Turkmenistan. Following a strong reaction inter alia from human rights organisations, the report was put on hold and in September 2006, it remained unclear when the plenary would deal with it.

The PCAs provide for trade liberalisation, economic cooperation and cooperation in various other areas. Joint bodies, including a cooperation council at ministerial level and a parliamentary cooperation committee, ensure a regular political dialogue. The implementation of each agreement is supported also by committees bringing together senior officials and experts.

Article 2 states that 'respect for democracy, principles of international law and human rights [...] constitute essential

elements of partnership and of this agreement'. If either party considers that the other party has failed to fulfil an obligation under the agreement, it can 'take appropriate measures' (including suspending the application of the agreement, or part of it).

C. Trade

From the EU perspective, the EU trade with the Central Asian countries is only marginal. The share of total EU imports is 0.1 % or lower for all of the countries, with the notable exception of Kazakhstan. Energy imports from Kazakhstan and exports of various goods to it are now booming, with more than a 44 % increase in total imports from Kazakhstan in 2005.

From the perspective of the Central Asian countries, trade with the EU is very significant indeed. The EU is the most important trading partner for Kazakhstan and Tajikistan and the second most important for Turkmenistan and Uzbekistan.

D. Aid

The Central Asian countries receive technical assistance through the EU's TACIS programme, conceived shortly after the dissolution of the Soviet Union and covering the Community of Independent States (CIS) countries. Much of the assistance has the related objectives of improving border management and combating drugs smuggling. This is important for stability in the region and also for reducing the flow of drugs to the EU. TACIS aid is also aimed at supporting poverty reduction in the poorest countries. Macro-financial assistance is given to Tajikistan. All of the countries are eligible for funding for the promotion of democracy and human rights under the EU's European Initiative for Democracy and Human Rights (EIDHR) programme.

The TACIS programme will, as far as the Central Asian countries are concerned, be replaced by a new development cooperation and economic cooperation instrument (DCECI) in the beginning of 2007. The DCECI regulation will be adopted by the Council and the EP, applying the co-decision procedure. Limited funding from the European Neighbourhood and Partnership Instrument (ENPI), which is to replace TACIS elsewhere, may become possible for specific projects or programmes of a global, regional or cross-border nature.

E. The common foreign and security policy in relation to Central Asia

In July 2005, the EU Council appointed a special representative for Central Asia. His task is to promote good and close relations between the countries of this region and the EU, contribute to the strengthening of democracy, rule of law, good governance and respect for human rights

and fundamental freedoms in Central Asia and enhancing the EU's effectiveness in the region. The latter should be achieved inter alia through closer coordination with other relevant partners and international organisations, such as the Organisation for Security and Cooperation in Europe (OSCE). The first Special Representative for Central Asia, Mr Ján Kubiš, resigned in July 2006, after having been appointed Foreign Minister of Slovakia. At the time of the finalisation of this fact sheet, a successor had not yet been appointed.

Role of the European Parliament

Before the PCAs with Kazakhstan, Kyrgyzstan and Uzbekistan were concluded, the EP gave its assent, as required for 'agreements establishing a specific institutional framework by organising cooperation procedures' according to Article 300(3) (ex Article 228), of the EC Treaty. As mentioned above, it will in 2006 give its opinion on an

interim agreement with Turkmenistan. It is also likely to decide whether or not to give its assent to the conclusion of the PCA with Tajikistan.

Parliament has on many occasions expressed concerns in relation to human rights violations in Central Asian countries — including the mass killings in Andijan, Uzbekistan, in May 2005 — and encouraged the Council and the Commission to emphasise the human rights aspect in relations with the countries. In addition to the meetings and other activities in the framework of the parliamentary cooperation committees set up with the countries with which a PCA has entered into force, the EP has conducted election observation in some Central Asian countries.

→ Dag SOURANDER
08/2006

6.4.5. The Southern and Eastern Mediterranean countries

Legal basis

Title V of the EU Treaty;

Articles 133 and 310 of the EC Treaty.

Objectives

In accordance with the guidelines laid down by the European Council at its meetings held in Lisbon (June 1992), Corfu (June 1994) and Essen (December 1994), the European Union decided to draw up a framework for relations with the countries of the Mediterranean basin with a view to establishing a partnership.

Achievements

A. Euro–Mediterranean partnership/Barcelona process

The end of East–West rivalry paved the way for a new North–South relationship. In parallel to the process of redefining its links with the eastern part of Europe, the EU also reconsidered the policies towards its southern neighbours. The multitude of common concerns such as trade, energy supply, migration, environment and terrorism created the need to strengthen the EU's ties with its Mediterranean neighbours. The context of the mid-nineties was also marked by the Oslo agreements that were meant to lead to a solution of the Arab–Israeli conflict.

The Euro–Mediterranean Conference of Ministers of Foreign Affairs, held in Barcelona on 27 and 28 November 1995, marked the starting point of the Euro–Mediterranean Partnership, a wide framework of political, economic and social relations between the EU Member States and the 12 Mediterranean partners: Algeria, Cyprus, Egypt, Israel, Jordan, Lebanon, Malta, Morocco, the Palestinian Authority, Syria, Tunisia and Turkey. Libya has had observer status since 1999.

In the Barcelona declaration, the Euro–Mediterranean partners established the three main objectives of cooperation:

- the creation of a common area of peace and stability based on the principles of human rights and democracy through the reinforcement of political and security dialogue (political and security chapter);
- the construction of a zone of shared prosperity through the progressive establishment of free trade between the EU and its Mediterranean partners (2010) and amongst the partners themselves (economic and financial chapter);
- the improvement of mutual understanding among the peoples of the region and the development of a free and flourishing civil society (social, cultural and human chapter).

The Euro–Mediterranean partnership comprises two complementary dimensions:

- bilateral dimension: the EU carries out a number of activities bilaterally with each country. The most important are the Euro–Mediterranean association agreements which have entered into force with Algeria (2005), Egypt (2004), Israel (2000), Jordan (2002), Lebanon (2006), Morocco (2000), the Palestinian Authority (1997 interim agreement), Tunisia (1998) and Turkey (since 1996 a customs union is in force). With Syria the signature is still to be confirmed. Negotiations on the liberalisation of services and investment were opened with interested Mediterranean partners;
- regional dimension: regional dialogue represents one of the most innovative aspects of the partnership, covering at the same time the political, economic and cultural fields. Regional cooperation has a considerable strategic impact as it deals with problems that are common to many Mediterranean partners.

The MEDA programme is the EU's principal instrument for the implementation of the partnership. The programme offers technical and financial support measures to accompany the reform of economic and social structures in the Mediterranean region. The EU Council, which together with the European Parliament (EP) comprises the budgetary authority, decides the annual EU budget allocation for MEDA and other regional budget lines. MEDA is to be replaced by the New Neighbourhood Instrument by 2007.

The Euro–Mediterranean Committee for the Barcelona process is the multilateral 'steering committee'. The Committee, which meets on a quarterly basis at senior official level, is chaired by the EU presidency and consists of the representatives of EU Member States, Mediterranean partners and the European Commission. The Committee acts as an overall steering body for the regional process with the right to initiate activities to be financed in accordance with the MEDA programme. It also prepares for ministerial meetings, conferences, etc.

The establishment of the Euro–Mediterranean Parliamentary Assembly (EMPA) in December 2003, put the finishing touches to the Euro–Mediterranean partnership's institutional framework. The assembly has added transparency and visibility to the Barcelona process and strengthened its democratic accountability.

B. Development of the partnership

1. General development

Ten years after its launch, the Barcelona process finds itself at a crossroads where a number of regional and international parameters have changed: the 2004

enlargement of the EU with the initial partner countries Malta and Cyprus having joined as Member States; the opening of EU membership negotiations with Turkey, the fallback into violence in the Middle East, the Iraq crisis, the widespread outbreak of terrorism and its impact on societies and finally the increasing importance of controlling migration flows. In response to these changes, the EU launched its European neighbourhood policy (ENP) in 2004 to reinforce and complement the Barcelona process (→6.3.3). In the EU's assessment, however, the fundamental principles and values underlying the Barcelona process still remain valid in essence, but the implementation of the process needs to be adjusted and enhanced in order to face current challenges.

At the celebration of the 10th anniversary of the Barcelona declaration in November 2005, the Euro–Mediterranean partners pledged their renewed commitment to the initial objectives of the process. They agreed on a 'five-year work programme', which focuses on four fields of action: political and security partnership; sustainable socio-economic development and reform; education and socio-cultural exchanges and justice, security, migration and social integration. They also adopted a 'Euro–Mediterranean Code of Conduct on Countering Terrorism' but failed to agree on a definition of 'terrorism'. The code condemns terrorism in all its forms and calls for an exchange of information about terrorist networks.

2. Specific results

(a) In the political and security field

- creation of information and training seminars for Euro–Mediterranean diplomats;
- network of foreign policy institutes (EuroMeSCo);
- adoption of a plan for the management of natural disasters;
- cooperation on terrorism;
- the fight against organised crime;
- measures in favour of nuclear non-proliferation;
- enhanced political dialogue including sub-committees on human rights set up with various countries under the association agreements;
- Euro–Mediterranean human rights network.

(b) In the economic and financial field

- the MEDA regulation, the principal financial instrument of the partnership, was amended in November 2000 (MEDA II) introducing a more structured programming approach;
- a substantial increase in the European Union's financial assistance, consisting of Community budget resources,

European Investment Bank assistance and individual financial contributions from the Member States, totalling EUR 5 350 million for the 2000–06 period;

- on the basis of the 2000–06 budget allocation, tri-annual national indicative programmes have been drawn up at national level. A regional programme covers multilateral activities;
- since 2003 the EIB is lending to Mediterranean partners through the Facility for Euro–Mediterranean Investment and Partnership (FEMIP); its transformation into a Euro–Mediterranean development bank is under discussion;
- as an important step towards regional economic integration the Agadir agreement for free trade between Egypt, Jordan, Morocco and Tunisia, which is supported by a EU regional programme, was signed in February 2004 but is still to be implemented;
- network of economic research institutes (Femise).

(c) In the social, cultural and human field

- since the events of 11 September 2001, the dialogue between cultures and civilisations has been strengthened, including through the setting up of the ‘Anna Lindh Euro–Mediterranean Foundation for the Dialogue between Cultures’ which is to promote intellectual, cultural and civil society exchanges;
- the Euromed Heritage, Euromed Audiovisual, Eumedis (develop information society) and Euromed Youth programmes are now operating;
- the Euro–Mediterranean Civil Forum, which brings together NGOs, trade unions and regional groups, meets before each meeting of the Euro–Mediterranean ministers and will be coordinated by the EuroMed Non-Governmental Platform constituted in April 2005 to add coherence to the Civil Forum activities and enhance civil society’s participation in the Barcelona process;
- programme for the cooperation in higher education (Tempus).

Role of the European Parliament

The EP and a number of EP bodies (committees, delegations and the EP’s delegation to the EMPA) are closely involved with the evolution of the Barcelona process and have been particularly proactive in promoting the parliamentary dimension of the partnership, including through enhanced parliamentary election observation to support the democratisation process in the partner countries.

The EMPA, the parliamentary institution of the Barcelona process, contains representatives of three delegations: from the EP, EU national parliaments and parliaments of the 10

Mediterranean partners. However, as a ‘joint assembly’, EMPA consists formally of two groups: 120 MPs from national parliaments of the Mediterranean countries and 120 from the European Union ‘of whom 75 are appointed by national parliaments and 45 by the EP’.

The first session of the EMPA was held in March 2005 in Cairo. An extraordinary session took place in Rabat in November 2005 to celebrate the 10th anniversary of the Euromed partnership. The second session of EMPA met in Brussels in March 2006.

Three parliamentary committees of 80 members each prepare the work of the plenary in the partnership’s main policy areas: the Committee on Political Affairs, Security and Human Rights; the Committee on Economic, Financial and Social Affairs and Education and the Committee on Improving Quality of Life, Exchanges between Civil Societies and Culture. In 2005, the EMPA decided to create an ‘ad hoc’ Committee on women’s rights in Euromed region.

The EMPA plays a consultative role:

- it provides parliamentary impetus, input and support for the consolidation and development of the partnership;
- it expresses its views on all issues relating to the partnership, including the implementation of the association agreements;
- it adopts resolutions or recommendations, which are not legally binding, addressed to the Euro–Mediterranean conference.

On the occasion of the 10th anniversary of the Barcelona process, the EP adopted the resolution ‘The Barcelona Process revisited’ (October 2005). A main priority, according to this text, is the development of education and vocational training, with specific attention to women and underprivileged groups such as illiterate populations, female students and populations in rural and suburban areas. In order to increase prosperity, the FEMIP (EIB) should be further developed, with an emphasis on micro-credit facilities. Cooperation should be encouraged in the fight against crime and terrorism, while ensuring the respect for human rights. The EU and its Mediterranean partners should also increase their cooperation in the management of migration flows, while maintaining the principle of *non-refoulement* as laid down in the Geneva Convention and addressing root causes as well as negative effects of illegal immigration. On the issue of human rights, the EP considers that the clauses suspending Euromed association agreements should be invoked in the case of violations of human rights and democratic freedoms.

→ Stefan KRAUSS
05/2006

6.4.6. The Arabian Peninsula, Iraq and Iran

Legal basis

Title V of the EU Treaty (Common Foreign and Security Policy).

Articles 113 and 308 of the EC Treaty.

I. The countries of the Gulf Cooperation Council (GCC)

Objectives

To strengthen relations between the EU and the Gulf Cooperation Council (GCC), which includes the United Arab Emirates, Bahrain, Saudi Arabia, Oman, Qatar and Kuwait, by broadening cooperation in various economic and technical fields.

To help strengthen the process of economic development and diversification of the GCC countries.

Achievements

A. General

1. Economic aspect

For the European Union, the GCC region is of strategic economic importance. In 2005, 9.7 % of the Union's oil imports came from the area, and the GCC received 4.75 % of the total EU exports to third countries, making it the Union's fifth largest export market and principal trading partner in the Arab world. The trade balance is consistently in favour of the EU: EUR 13 010 million in 2005. Economic interdependency is at the core of EU efforts to support the process of regional integration.

2. Political aspect

The Union and the GCC have stated on a number of occasions their joint positions on the problems of the Middle East and on ways of establishing closer relations between the two organisations, in view of the stabilising influence which further integration between the Gulf States would inevitably have in that region. Since 1994 there has been a GCC delegation in Brussels, and in early 2004 the EU opened a delegation in Riyadh, the seat of the GCC Secretary-General.

B. Cooperation agreement

1. Content

Having been signed in 1989 and entered into force on 1 January 1990, its main aim is to facilitate transfers of technology through joint ventures and to promote

cooperation on standards. However, it also covers trade, agriculture and fisheries, industry, energy, science and technology, investment, and environment. The agreement is administered by a Joint Cooperation Council at ministerial level, which has met every year since 1990, alternating between Europe and the Gulf countries.

2. Implementation

After a period of relatively slow progress, the agreement has now started to produce concrete results.

(a) Standards cooperation

The Standards and Metrology Organisation of the GCC (GSMO) and the European Commission concluded a memorandum of understanding in 1996 on a standards cooperation programme. Subsequently, an expert from the EU was appointed to Riyadh to coordinate work with the GSMO from the European side, but the appointment was discontinued after the initial three-year term.

(b) Customs cooperation

The cooperation programme started in 1994 and was finalised in 1997. Cooperation continued in the light of the GCC plan to establish a customs union between its members. With the entry into force of this customs union in early 2003, the principal obstacle to the conclusion of a free-trade agreement has fallen.

(c) Energy cooperation

There has been a continuous sequence of conferences between the EU and GCC on natural gas, oil and gas technologies since 1996. On 2 and 3 April 2005 a Eurogulf energy summit was organised in Kuwait. In addition, at the end of November 2005, the third Conference on Advanced Oil and Gas Technologies took place in Kuwait followed by the 8th EU–GCC Energy Experts Group meeting. The European Commission has supported the Eurogulf research project through a grant from the Synergy programme. It aims at policy formulation to enhance security of supply to Europe

(d) Environment cooperation

Relating to environmental cooperation pursuant to Article 9 of the Cooperation Agreement, there has been some cooperation on marine pollution and hazardous waste management since 1998 up to the present.

(e) Technology information centre

In 1996, the Joint Council agreed to support the establishment of an EU–GCC Technology Information Centre, to be set up in Muscat. The EU has offered to contribute to the overall financial arrangements and to finance an implementation study for the project.

C. Free trade agreement

The Cooperation Agreement, Article 11, stipulates that the parties should start discussions on entering into a free trade agreement ultimately intended to create free trade between the two regions. Such negotiations first took place in October 1990. However, since 1991, the position of the EU was to wait until the GCC has established its customs union, which took place on 1 January 2003. Without that the EU would have to enter into agreements with each individual state, i.e. not with the GCC as such. In November 2005 negotiations were close to conclusion and the signature of the agreement is expected in the immediate future.

II. Yemen

The EU–Yemen relations are based on a cooperation agreement, signed in 1997. The agreement's objective is to enhance and develop dialogue and cooperation on development, trade, economic and cultural cooperation, environmental protection, sustainable management of natural resources and human resources development. Joint cooperation committee meetings are held annually.

A new political dialogue component, covering issues related to political reform, was added in the summer of 2004. EU officials have listed the strengthening of pluralism and democracy as a priority for 2005–06. Specific project proposals include providing support to the Supreme Election Committee in anticipation of elections in 2006 and to local NGOs and media so as to enhance civil society's role in the decision-making process.

Yemen is the poorest country in the Middle East. The European Union has allocated EUR 90 million in aid for Yemen for 2000–05.

III. Iraq

The EU Council has emphasised the central role of the UN in the process leading towards self-government for the Iraqi people and reaffirmed the EU's commitment to playing a significant role in the political and economic reconstruction of the country.

Prior to the recent military conflict, the European Parliament (EP) approved a resolution supporting the work of UN inspectors, claiming that breaches of UN resolutions on weapons of mass destruction do not justify military action and opposing any unilateral military action.

After the beginning of the conflict in March 2003, the European Commission started to provide emergency humanitarian aid through the Directorate-General for Humanitarian Aid (ECHO). At the Madrid donors' conference held on 23 and 24 October 2003, the Union

as a whole, including the acceding countries, pledged over EUR 1.25 billion for Iraq's reconstruction. On 22 June 2005, the EU and the United States co-hosted an international conference with Iraq at foreign minister level in Brussels.

After the appointment of a new Iraqi interim government and the full transfer of sovereignty and power on 30 June 2004, the EU adopted a new framework for its relations with Iraq which envisages three phases of action and is to culminate in a bilateral agreement. Its medium-term objectives include the development of a stable and democratic Iraq; the establishment of an open, stable, sustainable and diversified market economy; Iraq's economic and political integration into its region and the open international system.

Under the ESDP, the EU started an integrated rule-of-law mission for Iraq in July 2005 (EUJUST LEX). The mission provides integrated training in the fields of management and criminal investigation for senior officials and executive staff from the judiciary, the police and the prison services. For EUJUST LEX, the EU established a liaison office in Baghdad to coordinate the training activities.

In 2005 the European Commission was the major international donor to the Iraqi elections in January and December and to the constitutional referendum in October — all cornerstones of the country's political transition. In addition to support for institution building, the Assistance Programme 2005 focuses on health, employment and education; capacity building in energy and trade sectors; civil society development, democratisation and human rights.

The European Commission adopted, on 7 June 2006, a communication in which it proposes several initiatives aiming to increase the EU's commitment in favour of democratisation and economic development in Iraq. The strategy proposed defines five objectives for EU aid to Iraq in the coming years: (1) removing divisions in Iraq and building democracy whilst supporting the forthcoming revision of the constitution, in collaboration with the United Nations; (2) promoting the rule of law and human rights via actions such as police training in the field of security and developing Iraq's capacity to ensure that the rules on human rights are being correctly applied; (3) helping the Iraqi authorities to provide basic services (such as water and education) and to create more jobs; (4) supporting the reform of public administration; (5) promoting economic reform, particularly within the framework of the energy sector and in the regime of commercial trade and investments.

IV. Iran

The EU does not have any contractual relations with Iran and there is no Commission delegation in Teheran. The Iranian Embassy in Belgium is accredited to the EU.

On 7 February 2001, the Commission adopted a communication — approved by the Council in May 2001 — setting out the perspectives and conditions for developing closer relations with Iran, including the conclusion of a trade and cooperation agreement. A mandate for negotiating such an agreement was presented by the Commission to the Council in November 2001 and was adopted in June/July 2002. Progress in deepening economic and commercial cooperation with Iran should go in parallel with progress on political issues, in particular as regards the attitude to human rights, non-proliferation, terrorism and the Middle East peace process.

The non-proliferation issue has come to dominate EU–Iran relations and block the possibility of deepening these relations. Iran has signed and ratified the Nuclear Non-Proliferation Treaty (NPT) and a safeguards agreement, through which non-nuclear-weapon states undertake not to acquire nuclear weapons and accept subjecting themselves to certain controls. Reports from the International Atomic Energy Agency (IAEA) on the implementation of the Safeguards Agreement have, however, fuelled suspicions that Iran is nevertheless carrying out preparations for constructing nuclear arms.

Three EU Member States, France, Germany and the United Kingdom ('EU-3') in 2003 took the lead in efforts to reach an agreement with Iran providing guarantees of the peaceful nature of its nuclear activities. With the support of the EU High Representative for the common foreign and security policy, Mr Solana, the EU-3 on 15 November 2003 reached an agreement with Iran on full suspension of all enrichment and reprocessing activities and negotiations on long-term arrangements. This agreement is known as the Paris Agreement.

In August 2005, following the election of Mr Ahmadinejad as new President and rejection of an EU-3 proposal for a framework for a long-term agreement, Iran announced that it would resume uranium conversion — an enrichment-related activity. In the beginning of 2006, Iran proceeded to uranium enrichment. The IAEA reported the case to the UN Security Council, which called on Iran to end enrichment. In June 2006, a package of incentives and disincentives was presented to Iran by Mr Solana on behalf of the EU-3 and with the support of other major powers. A UN Security Council resolution fixed 31 August 2006 as a deadline for Iran to suspend uranium enrichment, but Iran did not

comply. EU-led efforts to reach a diplomatic solution continued.

A bad and apparently further deteriorating human rights situation in Iran also hinders the development of closer EU–Iran relations. A human rights dialogue has earlier been conducted between the parties and may at some point be resumed.

In a number of resolutions on Iran adopted in the last years, the EP has criticised the human rights situation in the country, often drawing attention to individual cases and calling for the release of certain prisoners.

Parliament supports the work of the EU-3. In a resolution of 15 February 2006, it also stated that the nuclear issue must be resolved in accordance with international law and that a comprehensive agreement, which takes account of Iran's security concerns, should be strived for.

A statement by President Ahmadinejad that Israel should be 'wiped off the map' was condemned in resolution adopted on 17 November 2005.

The EP has set up a delegation for relations with Iran. This delegation follows developments in Iran, but no organised cooperation with the Iranian parliament (Majlis) exists so far. However, a meeting with a delegation from the Iranian parliament was scheduled for early October 2006.

Role of the European Parliament

The EP covers the region through its delegation for relations with the Gulf States, including Yemen, which periodically holds interparliamentary meetings with individual Gulf States.

The EP has criticised the arrangements concerning the GCC Free Trade Agreement, firstly because the Council did not consult it before adopting a negotiating mandate and, secondly, because it believes that the agreement might have negative effects on the EU's petrochemical and fertiliser industries. It has called on the Commission to include mechanisms in the agreement which prevent any distortion of competition between the parties.

In its resolution of 10 March 2005, the EP welcomed the first-ever nationwide electoral process in Saudi Arabia, witnessed by a EP delegation. However, it called also for enhanced women's rights, the abolition of the death penalty and an upgrading of the working conditions and treatment of immigrant workers.

→ Stefan **KRAUSS**
Dag **SOURANDER** (Iran part)
11/2006

6.4.7. The United States of America and Canada

Legal basis

- For USA: Article 133 of the EC Treaty;
- For Canada: Articles 133 and 308 of the EC Treaty and Article 101 of the Euratom Treaty.

Objectives

Maintaining a free exchange of goods while protecting the European Union's interests remains one of the main objectives of the Union's important trade relations with the US. The US and the Union play a major role in international bodies such as the World Trade Organisation (WTO). Efforts to bring about closer coordination have been in evidence at world economic summits and have also had tangible results in the aid programme for the countries of eastern Europe. The framework agreement with Canada aims to establish direct links between the two parties and to consolidate and diversify economic and commercial cooperation to the greatest possible extent.

Achievements

I. United States

A. General

EU–US relations today are both multilateral and bilateral. In the multilateral context, they involve working together to advance shared goals such as democratic government, human rights and market economy. This also entails EU–US common interests in confronting global challenges such as threats to security and stability, proliferation of weapons, unemployment, environmental degradation, drugs, crime and terrorism and other issues.

B. Political cooperation

1. The Transatlantic Declaration of November 1990

The Transatlantic Declaration provides for a system of regular consultations.

- Biannual consultations between the EU presidency plus the Commission and the US President.
- Biannual consultations between the EU foreign ministers plus the Commission and the US Secretary of State.
- Ad hoc consultations between the presidency foreign ministers and the US Secretary of State.
- Biannual consultations between the Commission and the US government at cabinet level.

- Briefings by the EU presidency to US representatives on the common foreign and security policy (CFSP) at ministerial level.

2. The new Transatlantic Agenda and the Joint Action Plan (1995)

The EU–US summit of December 1995 adopted a statement of political commitment, the New Transatlantic Agenda (NTA), and a comprehensive joint EU–US action plan. The new agenda enables the two sides to join forces to achieve four broad objectives: promoting peace, development and democracy around the world; responding to global challenges; contributing to the expansion of world trade; as well as closer economic relations and building bridges across the Atlantic. The action plan identifies over 150 fields for action where the EU and the US have agreed to work together, both bilaterally and multilaterally. To promote peace and stability, the EU and the US have pledged to cooperate in creating an increasingly stable and prosperous Europe. Cooperation and joint action are focused on the reconstruction of the former Yugoslavia, on fostering democratic and economic reform in central and eastern Europe, Russia, Ukraine and other former Soviet republics, on securing peace in the Middle East and on a common approach to development and humanitarian assistance.

3. The latest developments

(a) Areas of agreement

Following sharp divisions over the conflict in Iraq during 2003 and early 2004, dialogue intensified once again with President Bush's visit to Brussels in February 2005 (the first visit by a US President to the EU institutions).

At the June 2005 summit in Washington, this renewed close cooperation resulted in joint declarations on democracy, freedom and human rights; on enhancing cooperation on non-proliferation; countering terrorism; and on Africa and the Middle East.

Both sides also launched an initiative to enhance transatlantic economic integration and growth, together with specific declarations reflecting their shared interest in combating counterfeiting and in ensuring a secure and efficient energy supply.

(b) Areas of disagreement

It cannot be ignored that transatlantic policy coordination has not always been successful in the recent past (for example policies on Cuba, Iraq, Iran and the Middle East) despite all the declarations, agendas and plans.

Disagreements remain over issues such as genetically modified crops — which the US is much keener to develop and exploit than the EU — and global competition in sectors like steel production and aircraft building (Boeing vs Airbus). Other divisions also exist on the International Criminal Court and, more generally, on the use of military force in international relations.

C. Economic cooperation

The European Union and the United States are the leading players in international trade, accounting for 37 % of world merchandise trade, and 45 % of world trade in services in 2002. They are also the largest source and destination of foreign direct investment (FDI), accounting for 54 % of total world inflows and 67 % of total world outflows in 2000.

The EU and the US are each other's biggest trading partners (→6.2.1), accounting for around 21 % of each other's total trade. For goods alone, in 2003 the US absorbed 26 % of EU exports (to a value of EUR 226 billion), while 17 % of EU imports (EUR 157 billion) came from the US. Transatlantic trade is thus worth EUR 1 billion a day. Although transatlantic trade disputes steal the headlines, trade itself accounts for less than 20 % of overall transatlantic commerce, and US–EU trade disputes account for less than 2 % of transatlantic commerce.

The EU and the US have by far the world's most important bilateral investment relationship. They are each other's most important source and destination for FDI, with accumulated two-way investment now exceeding EUR 1.5 trillion. Over the period between 1998 and 2001, the US was the destination of 52 % of EU outward FDI flows and the source of 61 % of EU inward FDI. Nearly three-quarters of all foreign investment in the US in the 1990s came from Europe. Levels of FDI flows between the EU and the US are substantially greater than trade levels.

The EU is not only a critical source of revenue for US companies, it is also a key supplier of capital or liquidity for the US economy, substantially contributing to financing its current account deficit.

All of this makes our two economies interdependent to a degree unmatched in the world, with 14 million jobs (split about equally) depending on the increasingly integrated EU–US market.

II. Canada

A. General

The European Community's relationship with Canada dates back to 1959, when an agreement was concluded between the Government of Canada and the European Atomic Energy Community for cooperation in the peaceful uses of

atomic energy (Euratom's oldest international agreement). Then, in 1976, the Framework Agreement for Commercial and Economic Cooperation between the European Communities and Canada was concluded: the Community's first cooperation agreement with an industrialised country. Since then, the EU's cooperation with Canada has spread far beyond the limited scope of the 1976 agreement, despite the fact that this agreement still provides the principal legal basis for the formal relationship between the EU and Canada. To ease cooperation across a far broader range of policy areas, political declarations were adopted in 1990 and again in 1996. In March 2004, both sides adopted a partnership agenda identifying areas for joint action on global issues.

The EU and Canada now meet in a variety of forums to take forward their cooperative agenda. Twice a year meetings take place at foreign minister level, as do regular summit meetings between the presidency of the European Council, the President of the Commission and the Prime Minister of Canada. The annual meeting of the Joint Cooperation Committee (JCC) established by the 1976 framework agreement meets back-to-back with informal meetings of senior officials in the fields of Justice and Home Affairs (JHA).

B. Economic relations

The EU remains the second most popular destination for Canadian direct investment after the US. Canada is an important trade partner for the EU both bilaterally (ninth place in 2004) and on global trade policy.

Bilateral trade patterns are characterised by an exchange of high value-added goods (machinery, transport equipment, chemicals), although agricultural products still exceed 10 % of Canada's exports to the EU.

Bilateral agreements were concluded on the recognition of conformity assessments (1998), veterinary matters (1999), competition enforcement cooperation (1999) and trade in wines and spirits (2003).

The Ottawa summit in March 2004 agreed on the framework for a Canada–EU Trade and Investment Enhancement Agreement (TIEA), negotiations for which are now under way. Its key feature will be close cooperation between EU and Canadian regulators on subjects ranging from the mutual recognition of professional qualifications, through financial services, to government procurement.

Role of the European Parliament

As with most other countries and regions of the world, the European Parliament (EP) maintains regular interparliamentary contacts with the US and Canada through standing delegations meeting with their

counterparts at least once a year. These contacts are among the EP's longest-standing external relations, dating back to 1972 and 1973 respectively.

In the case of the United States, it was soon felt that a more intense exchange was needed, and in an exception to Parliament's rules, the frequency of meetings was increased to twice yearly from 1980. In the wake of the New Transatlantic Agenda, the 50th EU–US Interparliamentary Meeting in Strasbourg agreed, on 16 January 1999, to recast the contacts in the framework of a Transatlantic Legislators' Dialogue (TLD). In addition to the twice-yearly meetings, this provides the platform for continued exchange of information through the web, liaison between specialised committees of both parliaments, teleconferences on subjects of particular importance, as well as regular meetings with the senior-level group of officials preparing the annual EU–US summits. From 2004 these options were extended via a half-day seminar added

on to each interparliamentary meeting, allowing members to debate in depth a subject of bilateral or shared interest, both among themselves and with experts. A steering committee, co-chaired by the chairs of the Delegation for Relations with the United States and the Committee on Foreign Affairs, coordinates all EP activities relating to the TLD.

In two resolutions on transatlantic relations, of 13 January and 9 June 2005, the EP noted the increasingly integrated nature of the transatlantic market and underscored the need to further develop parliamentary oversight of it. Parliament therefore called for the establishment of appropriate early warning mechanisms on pending legislation, and over the longer term, for the transformation of the TLD into a Transatlantic Assembly.

→ Stefan SCHULZ
11/2005

6.4.8. Latin America

Legal basis

Title V of the Treaty on European Union as regards general relations.

EC Treaty:

- Article 37 for fisheries agreements,
- Articles 133 and 300 for trade relations,
- Article 308 for cooperation agreements.

Objectives

- to reinforce political ties;
- to strengthen economic and trade relations;
- to support democratic development and economic and social progress in Latin American countries;
- to foster regional integration.

These objectives are reflected in particular in 'fourth-generation' agreements, which are more ambitious than previous ones, going beyond simple trade and development-aid agreements and providing for political cooperation and free-trade areas.

Achievements

A. Relations with the continent as a whole

1. Development cooperation

Since the 1960s, Latin America has benefited from financial and technical assistance from the European Union, which is its biggest provider of official development aid. The aims of the Union's development and cooperation policy are to combat poverty and social inequalities, to promote the integration of developing countries into the global economy and to consolidate the rule of law. This policy is conducted by means of regional and bilateral agreements covering all areas of commercial, technical, financial, cultural and political activity. Latin America also receives assistance under specific programmes of technical and financial aid, including ALFA for university cooperation, ALBAN, a programme of high-level scholarships, AL-Invest for cooperation between companies, ATLAS for cooperation between chambers of commerce, ALURE for cooperation in the energy sector, @LIS, the new programme designed to promote more widespread use of information technology, URB-AL for decentralised cooperation between local authorities and the project for the creation of an Observatory of EU–Latin American Relations (OREAL).

2. Relations with the Rio Group

The Rio Group, which was founded in 1986, is the principal mechanism for political consultation at continental level. It now covers the whole of Latin America and also includes representatives of the Caribbean countries. Relations between the EU and the Rio Group were placed on an official footing by a declaration made in Rome on 20 December 1990. The interregional dialogue includes an annual meeting of foreign ministers and a two-yearly summit of Heads of State and/or Government. The partnership between the two regions consists of:

- political dialogue,
- trading links,
- technical, financial and economic cooperation.

After an initial summit in Rio de Janeiro in June 1999, the Heads of State or Government of the countries of the EU, Latin America and the Caribbean met again in Madrid in May 2002, Guadalajara in May 2004 and Vienna in May 2006. At this latest summit, which was the second involving the 25-member Union, the participants emphasised the need for:

- multilateralism (support for the UN system, disarmament and global governance and for the fight against terrorism, drug-traffickers, organised crime, etc.);
- social cohesion (combating exclusion by means of effective social policies, higher budgetary appropriations and experience-sharing);
- bilateral relations (encouraging the pursuit of EU–Mercosur negotiations, developing trade liberalisation, seeking a just and lasting solution to the debt problem, supporting regional integration, more cooperation between the two regions on issues such as the environment, energy and migration, and launching more initiatives in the spheres of education, culture, science and technology).

B. Relations with regional groupings and agreements concluded

1. Central America

In September 1984, representatives of the EU and Central American countries (Costa Rica, Guatemala, Honduras, Nicaragua, Panama and El Salvador) met in San José in Costa Rica to examine the situation in the region, which at that time was in crisis. They have continued to meet annually, in a Central American or European capital, to pursue this San José dialogue. The EU relies on this dialogue to promote political stability, respect for human rights and economic and social development in the countries concerned as well as regional integration. The establishment in 1991 of the Central American Integration System (*Sistema de Integración Centroamericana* — *SICA*)

has since brought progress in the domain of regional integration.

At the ministerial conference in Madrid in 2002, the parties decided to draw up a new agreement on cooperation and political dialogue to replace the 1993 agreement. This new instrument, which was signed in Rome on 15 December 2003, formalises the political dialogue that was launched in 1984. It extends the scope of cooperation to immigration control, economic cooperation and the fight against terrorism. The new agreement, however, does not include the liberalisation of trade as the countries of Central America originally wished it to do, taking as their model the Union's agreements with Mexico and Chile. Nevertheless, it does proclaim the joint objective of 'creating conditions' for a so-called 'fourth-generation' association agreement that would include free-trade provisions and be based on the outcome of the Doha Round of WTO negotiations and on progress made in the regional integration process. The start of negotiations on this agreement was announced at the recent Vienna summit in May 2006.

2. Andean Community

The EU has maintained regular contact with Andean countries (Bolivia, Colombia, Ecuador, Peru and Venezuela) since 1969, when the Andean Group was founded (the group became the Andean Community in 1996). It concluded a first cooperation agreement with them in 1983, followed by a 'third-generation' agreement in 1993, which provided for economic and trade cooperation and development cooperation and included a most-favoured-nation clause.

At their meeting on the fringe of the Rio summit in 1999, the Andean countries raised the possibility of a new cooperation agreement, which would be wider in scope than the 1993 agreement. In Madrid in 2002, the two sides took a decision to update the agreement. The new agreement was signed in Rome in December 2003. The new provisions do not, however, include the liberalisation of trade, which the Andean countries had originally wished them to cover, citing the EU–Mexico and EU–Chile agreements as models. Nevertheless, one of the aims of the updated agreement is to 'create conditions' for an association agreement which would include free trade and would be based on the results of the Doha Round of WTO negotiations and on progress made in the regional integration process. The new agreement extends the scope of cooperation to the fight against terrorism and illegal immigration. In addition, it institutionalises the mechanisms of political dialogue that were created in 1996.

3. Mercosur

In 1991, Argentina, Brazil, Paraguay and Uruguay announced their intention of establishing a Southern Cone

Common Market (Mercosur). Relations between the EU and Mercosur were institutionalised by the framework agreement of 1995, which paved the way for political cooperation and negotiations on the establishment of free trade between the two parties. At the Madrid summit in 2002, the representatives of the EU and Mercosur relaunched the economic and trade negotiations. In particular, the two parties agreed on a timetable and negotiating procedures and defined their levels of expectation with regard to the future agreement. The global economic slump, and especially the crisis of 2001–02 in Argentina, had an adverse impact on the negotiations. At a ministerial meeting between the EU and Mercosur on 12 November 2003, it was decided to complete the negotiation of an association and free-trade agreement in October 2004 in Lisbon. The failure of this meeting in October 2004 showed that the main obstacle to the conclusion of the agreement lay in its agricultural component. Following the ministerial meeting in Brussels on 2 October 2005, the two parties decided to resume their negotiations. Despite encouragement from the Guadalajara and Vienna summits, negotiations are still far from being concluded. There will probably be no decisive progress before the outcome of the WTO negotiations which is expected in July 2006. The conditions for resuming negotiations and the timetable of work are now decided jointly by the two parties, taking account of the progress of negotiations on trade liberalisation, in view of the sensitivity of some products and in line with WTO rules.

C. Relations with individual countries

1. Mexico

The Economic Partnership, Political Coordination and Cooperation Agreement, also known as the Mexico–EU Global Agreement, was signed on 8 December 1997 and entered into force on 1 October 2000. In the framework of this agreement, the EU and Mexico concluded a free trade agreement, which entered into force on 1 July 2000 for industrial and agricultural goods and in March 2001 for services, intellectual property and investments. Mexican industrial exports have had completely free access to the EU market since 2003, and the Mexican market is to be fully opened to EU exports in 2007. This fourth-generation agreement not only created a free-trade area but also institutionalised a political dialogue for the promotion of democratic principles and respect for human rights. The volume of trade has grown since the entry into force of the Free Trade Agreement, with EU exports to Mexico increasing by 30 % and Mexican exports to the EU practically doubling. An agreement on scientific and technological cooperation was signed in 2004. The two parties are also planning to conclude an agreement in the fields of education, youth and training.

2. Chile

In 1996, a cooperation agreement was concluded between the EU and Chile. Three years later, negotiations were opened on an association agreement. The negotiations were completed in March 2002, and the agreement, also of the fourth generation, was signed on 18 November 2002. It comprises three strands — politics, trade and development cooperation. Provision is made for a political dialogue, in which civil society is also to be involved. The agreement almost completely opens the economies of both parties, with gradual liberalisation of trade in Chilean products, 97 % of which will have free access to the EU market by January 2012. In the European Parliament (EP), the deal was hailed as an agreement for the 21st century, and indeed it is the most ambitious and innovative agreement ever concluded by the EU with a country which is not an applicant for accession.

Role of the European Parliament

Following the 2004 elections, the EP, having regard to the various agreements signed by the EU with Latin American partners, established delegations for relations with Mexico, Central America, the Andean Community, Mercosur and Chile. It also maintains close contact with parliaments in the region, in particular the Latin American Parliament (Parlatino), the Central American Parliament (Parlacen), the Mercosur Joint Parliamentary Committee (*Comisión Parlamentaria Conjunta Mercosur — CPCM*), the Andean Parliament (Parlandino) and the Congress and Senate in Chile and Mexico. Joint parliamentary committees have been established between the EP and the parliaments of both countries, as envisaged in the association agreements. Since 1974, the EP has also been organising interparliamentary conferences with its Latin American counterpart, the Parlatino, and these have been the main channel of dialogue and cooperation between the elected representatives of the two regions. A total of 17 EU–Latin American interparliamentary conferences have taken place since 1974; the most recent was held in Lima in June 2005.

In its resolution of 26 April 2006, the EP repeated its call for the adoption of a common EU strategy for Latin America and the Caribbean, to 'give substance and direction to EU action in launching the strategic bi-regional partnership' agreed upon at the Rio summit of June 1999 and reaffirmed at the Madrid and Guadalajara summits. In a very detailed resolution comprising 93 operative paragraphs, the EP defines the aims of the common strategy. Foremost among these are:

- in the political sphere, creating an EU–Latin American transatlantic assembly (Eurolat) to reinforce parliamentary dialogue, signing a peace charter, setting

- up a bi-regional conflict prevention centre and launching a political and security partnership;
- in the economic, financial and commercial spheres, putting an EU–Latin American free-trade area in place by 2010, and simultaneously implementing association agreements between the EU and its regional partners
 - Mercosur, the Andean Community and Central America;
- in the social and cultural spheres, setting up a bi-regional solidarity fund, which would support the efforts of the various partners of the EU to combat

poverty and social exclusion in Latin America and would involve participation and financial support on the part of international public and private funding bodies.

The resolution also emphasises that another of the aims of reinforced cooperation should be to promote human rights, democracy, good governance, transparency and the rule of law, in a context of genuine multilateralism.

→ Pedro NEVES
06/2006

6.4.9. Japan

Legal basis

Article 133 (Article 113) of the EC Treaty.

Objectives

Common principles for the relations between Japan and the EU and its Member States were laid down in a political declaration of 1991. A Joint Declaration on Relations between the European Community and its Member States and Japan was signed on 18 July 1991. At the 9th EU–Japan Summit held in Tokyo on 19 July 2000, a 10-year action plan to reinforce the bilateral partnership and move it from consultation to joint action was agreed for 2001. This declaration on relations between the European Community and its Member States and Japan established common principles and shared objectives in the political, economic, cooperation and cultural areas and established a consultation framework for annual meetings between Japan and the EU. The action plan addresses four major objectives:

- promoting peace and security;
- strengthening the economic and trade partnership utilising the dynamism of globalisation for the benefit of all;
- coping with global and societal challenges;
- bringing together people and cultures.

Achievements

A. General

A major pillar of bilateral EU–Japan relations is the two-way dialogue on deregulation, aimed at reducing the number

of unnecessary and obstructive regulations, which hinder trade and foreign investment. Since 1995, the EU and Japan have participated actively in each other's regulatory reform efforts through dialogue. Thus the nature of the EU dialogue with Japan has changed: while in the past economic relations with Japan were dominated by trade disputes, nowadays the focus is on EU requests for deregulation and structural reforms in Japan. The EU and Japan cooperate closely in exchanging lists of deregulation proposals on an annual basis and engaging in an extensive series of high-level and expert meetings.

The regulatory reform dialogue (RRD) has taken place annually since 1994. It is a two-way process in which Japan and the EU present deregulation requests to each other. The EU presents requests to Japan in a manner designed to feed into the annual work cycle of the Regulatory Reform Committee (now succeeded by the institutionally stronger Consultative Council on Regulatory Reform), while Japan submits requests to the EU on its concerns in the EU. At the last high-level RRD meeting on 4 March 2005, discussions focused on commercial legislation, trade and customs regulations, visa and work permits, intellectual property protection, financial services, the EU chemical policy (REACH) and new environmental directives affecting products such as batteries, electrical waste and chemicals.

B. Political dialogue

The current structure of the political dialogue between the EU and Japan was set out in the joint declaration of 1991 and consists of: annual consultations between the President of the European Council, the President of the Commission and the Japanese Prime Minister; annual

meetings between the Commission and the Japanese government at ministerial level; two annual meetings between the foreign ministers of the EU–Troika including the Commissioner in charge of Foreign Relations and the Japanese Foreign Minister, and two annual meetings between the EU Political Directors Troika and the Japanese Political Director.

New developments in Japan called for a review of the EU–Japan relationship, which had been assessed in the Commission’s communication of 1992. In March 1995, the Commission completed a communication (Europe and Japan: ‘The Next Steps’, (COM(95) 73) specifying the position taken on the EU’s new Asia strategy (COM(94) 34), evaluating the developments and changes and arguing in favour of increasing the weight of the EU–Japan political relationship, as both the EU and Japan are increasingly trying to match their economic importance with a more active political role.

The 1999 Bonn summit galvanised the EU and Japan’s intent to further broaden and deepen their partnership in the new millennium and to promote peace, stability and prosperity in Asia, Europe and globally. Both sides also expressed their intention to deepen their successful two-way deregulation dialogue by focusing on priority issues of concern to both sides and providing for regular review of progress, notably at the EU–Japan Ministerial Meeting.

At the 2000 Tokyo Summit the EU and Japan launched a decade of cooperation (2001–11) which gave a decisive impetus to the overall EU–Japan relationship and which defined ambitious objectives for a comprehensive and action-oriented partnership.

The 14th EU–Japan summit took place in Luxembourg on 2 May 2005. The leaders reviewed the implementation of the Action Plan for EU–Japan Cooperation and set priorities for action to be taken by the time of the next summit. They also discussed a wide range of issues aiming at creating an effective partnership to address key international issues and strengthening the multilateral system. At the *summit* in Tokyo, on 22 June 2004, results included: (1) a Japan–EU Joint Declaration on Disarmament and Non-Proliferation; (2) the Cooperation Framework for Promotion of Japan–EU Two-Way Investment; (3) a Japan–EU Joint Initiative for the Enforcement of Intellectual Property Rights in Asia; (4) a Joint Statement on Cooperation on Information and communication Technology. Simultaneous with the summits were the annual meetings of the EU–Japan Business Dialogue Round Table.

C. Trade and investment

Trade and investment links between Japan and the EU remain strong. The Japanese market is opening more and

more to foreign competition. Yet, total foreign investment in Japan remains very low (less than 2 % of GDP), if compared with other developed countries. The EU remains the leading foreign direct investor (FDI) in Japan, but total amounts are falling. In 2003/4 Europe had a 33 % share (¥700 billion) of inward FDI to Japan (compared to ¥1 400 billion in 1999/2000). Likewise, Europe is a popular destination for Japanese investment. Japan invested ¥1 400 billion in Europe in 2003/4, representing a 35 % share of Japan’s outward FDI, with the US receiving just under 30 %.

Despite China now becoming Japan’s largest trading partner, trade between the EU and Japan remains strong. From 1999 to 2003, EU exports to Japan grew by 3.5 % on average per year. In 2004, 13 % of all Japan’s imports came from the EU (14 % from US, 21 % from China) while the EU remained Japan’s second largest market with 16 % of Japanese exports, behind the US on 22 %.

The Union is concerned at the lack of a significant increase of EU exports to Japan in certain sectors where, nevertheless, the EU seems to be competitive internationally. A striking illustration of this is EU exports of office machinery and telecommunications equipment. Food products are another category where Union exports to Japan should be larger.

Most of these trade issues are being tackled, not only in the framework of WTO but also bilaterally. Europe is determined to pursue certain unresolved matters bilaterally. In this context, a Mutual Recognition Agreement (MRA) entered into force on 1 January 2002. The MRA will cut red tape for trade and mean annual savings for exporters of up to EUR 400 million. The MRA permits acceptance of conformity assessment conducted in one party according to the regulations of the other in four product areas (telecommunications terminal equipment and radio equipment, electrical products, good laboratory practices for chemicals and good manufacturing practices for pharmaceuticals), an important step in facilitating market access.

The Agreement on Cooperation and Anti-competitive Activities (Council Decision of 16 June 2003) should facilitate bilateral cooperation in assessing competition aspects of major merger and acquisition cases.

In the WTO, the EU and Japan, as the second and third largest economies in the world, have established close policy cooperation. Developing that cooperation is one of the key initiatives in the action plan.

D. Cooperation

The EU considers industrial cooperation, and particularly investment, to be an element of major importance to strengthen bilateral relations with Japan. The EU

Commission is of the opinion that a healthier situation would be created if Europe's own investments in Japan could be increased. It is working in this direction, for example through the channel of the EC–Japan Industrial Cooperation Centre in Tokyo [1]. The establishment of a regular EC–Japan industrial policy and industrial cooperation dialogue was initiated during the ministerial meeting in 1993, creating a forum for reviewing the evolution of industrial cooperation.

Regular contacts are also maintained in the sectors of telecommunications, information technology and electronic commerce. It was agreed to deepen cooperation in the fields of environment, energy, culture, labour and social affairs and development assistance. There is also dialogue on macroeconomics and financial issues as well as transport issues.

The EU and Japan cooperate across a very broad range of subjects. There are standing forums for discussion on sectors such as industrial policy, science and technology, research, telecommunications and related services, social affairs, development aid, environmental protection, dialogue on macroeconomics and financial issues as well as transport issues. The EU and Japan are partners in the International Thermonuclear Experimental Reactor (ITER) project, for which an agreement has been reached on its location in France. Japan, the EU, the US and Korea cooperate in the Korean Energy Development Organisation (KEDO). KEDO was formed because of the need to reduce the risk of nuclear proliferation in North Korea and promote the peaceful uses of nuclear energy. The European Commission supports the *EU–Japan Business Dialogue Round Table (EUJBDRT)*, a private sector initiative to strengthen links between European and Japanese businesses, and welcomes focused private sector input to

government authorities to promote trade and investment between Europe and Japan. The EUJBDRT contributes to the identification of mutually beneficial initiatives and keeps close track of the progress achieved by both the European and the Japanese administrations.

Role of the European Parliament

Since 1979, a delegation from the European Parliament (EP) meets most years with a delegation from the Japanese Parliament, the Diet, alternating between venues within the European Union and Japan. The last EP/Japan inter-parliamentary meeting (the 26th) took place in Tokyo and Kyoto from 15 to 20 May 2005.

The EP has held several debates over the last few years on relations with Japan, some dealing with trade relations and market access, others with political issues. The following resolutions are of particular interest: resolution of 18 September 1997 on the Commission communication 'The Next Steps'; resolution of 13 April 1999 on a programme of specific measures and actions to improve access of EU goods and cross-border services to Japan; resolution of 7 October 1999 on the nuclear accident in Japan; resolution of 13 June 2002 on the abolition of capital punishment in Japan, South Korea and Taiwan; resolution of 3 July 2002 on the EC/Japan agreement concerning cooperation on anti-competitive activities.

Procedure references

[1] Consultation procedure: CSA2631

→ Xavier NUTTIN
11/2005

6.4.10. People's Republic of China and Taiwan

Legal basis

- Title V, EU Treaty
- Articles 133 and 310 EC Treaty.

Objectives

To develop trade and other relations between the European Union and the People's Republic of China (PRC):

- to raise the EU's political, commercial and economic profile in China;
- to engage China further on the world stage, through its integration into the world economy; to support China's transition to an open society based upon the rule of law and respect for human rights;
- to support the process of economic and social reform under way in the country.

Achievements

I. People's Republic of China (PRC)

A. General pattern of relations

1. Initial developments

- (a) It was not until 1975 that China and the EU agreed to establish official relations to reflect the 'open door policy' followed by China in the second half of the 1970s. A trade agreement was signed in April 1978.
- (b) In 1980 China was included in the list of countries eligible for the Community's Generalised System of Preferences. The 1978 agreement was superseded in 1985 by a broader agreement on economic and trade cooperation. In 1988 the Commission opened a delegation in Beijing.

2. A setback

- (a) The progress in relations was brought to a sudden halt by the Tiananmen Square massacre in June 1989, which was immediately condemned by the Community. The Madrid European Council of 26 and 27 June ordered the suspension of high-level bilateral meetings, the postponement of new cooperation projects and cutbacks in existing programmes. An embargo on arms sales and military cooperation was instituted.

3. The gradual resumption of relations: policy papers

- (a) Until 1994 Europe's hopes of seeing a change in Chinese human rights policy were repeatedly

disappointed since the arrest and imprisonment of opponents continued.

- (b) In June 1994 a new framework for bilateral political dialogue was set up.
- (c) In July 1995 the Commission issued a communication on A Long-Term Policy for China–Europe Relations, which was endorsed by the European Council and reflected China's rise as a global economic and political power. Ever since, EU–China relations have been pursued under the three main headings: political dialogue (including human rights), economic and trade relations and the EU–China cooperation programme.
- (d) In 1998, the European Commission adopted its communication 'Building a Comprehensive partnership with China', the main objective of which was to upgrade the EU's relationship with the People's Republic of China. Current EU policy towards China is based on the Commission's policy paper of June 2001: 'EU Strategy towards China'. A new policy paper 'A maturing Partnership: Shared Interests and Challenges in EU–China Relations' was endorsed on 13 October 2003. The 2003 policy paper suggests ways of further developing EU–China relations by enhancing the existing mechanisms and the systematic inclusion of global and regional governance and security issues. Issues to be focused upon are: the EU–China dialogue on illegal immigration; the efficiency of the human rights dialogue; cooperation on the Doha Development agenda in the World Trade Organisation (WTO) and the monitoring of China's compliance with its WTO commitments.
- (e) China released, on 13 October 2003, its first ever policy paper on the EU. China supports EU integration and called the EU to grant it 'full market economy status'. China expects the EU to become China's largest trading and investment partner.

B. Current relations

1. Political relations

- (a) Political dialogue continues within the framework established in 1994. This comprises regular meetings of ministers of the EU troika with Chinese ministers; high-level consultations between the Commission and China; ad hoc meetings between foreign ministers; two annual meetings between the Chinese foreign minister and the EU ambassador in Beijing and, equally, between the foreign minister of the country holding the EU

presidency and the Chinese ambassador to that country.

- (b) Concern about human rights has been a major theme of EU–China relations since the Tiananmen Square crackdown in 1989. A dialogue solely devoted to human rights has been established since 1996. To that effect two annual meetings are held between the EU troika and the Chinese government. Topics raised have included the ‘fundamental rights’ of political dissidents, treatment of religious faiths and the Falungong spiritual movement, freedom of expression, application of torture and the death penalty and the situation of ethnic minorities. Individual cases are also raised. The dialogue is complemented by financial support to projects such as implementation of UN human rights covenants, local democracy and judicial reform.
- (c) The first regular EU–China political summit was held in London in April 1998. As a result, the troika made its first visit to Tibet. The most recent, eighth, EU–China summit took place in Beijing on 5 September 2005. Agreements were signed in the labour, science and technology (including space exploitation), energy, and environment sectors. A joint declaration on climate change was issued. At the seventh summit agreements were signed in the field of science and technology (including nuclear research), cooperation between the customs administration and exchanges of students. On 12 February 2004, the European Community and the China National Tourism Administration signed an accord that will facilitate Chinese group tourism to the EU (except for the non-Schengen countries, Denmark, Ireland and the UK, which will seek bilateral agreements).
- (d) The handover of Hong Kong to China in 1997 did not affect EU relations with Hong Kong, where it still has a delegation.
- (e) Equally, the handover of Macao in 1999 had no effect on relations with the EU, and the trade and cooperation agreement remained valid. In November 1999 the Commission adopted a communication to the Council and the EP, entitled ‘The EU and Macao: Beyond 2000’. The communication underlined the respect for the principles set out in the Basic Law of the Macao Special Administrative Region (MSAR) and the full implementation of the concept ‘one country, two systems’ and guarantees the specific social, economic and cultural identity of Macao.
- (f) In both Hong Kong and Macao the Commission monitors the situation to ensure that democracy and human rights are respected and issues annual reports.

- (g) On Taiwan, the EU pursues a ‘one China’ policy, recognising the Government of the PRC as the sole legal government of China.

2. Trade relations

- (a) The 1985 economic and trade cooperation agreement provides a non-preferential basis for increasing bilateral trade on the basis of market prices. It is managed by a joint committee, which meets every year to monitor the progress of relations.
- (b) Trade has developed very rapidly since 1975 when it was almost non-existent. Total two-way trade has increased more than forty-fold since reforms began in China in 1978, and was worth EUR 135 billion in 2003. The EU has gone from a trade surplus at the beginning of the 1980s to a deficit of EUR 78 billion in 2004, its largest trade deficit with any partner. Overall, China is now the EU’s second largest non-European trading partner after the US, and the EU is now China’s first trading partner. In recent years, EU companies have invested considerably in China (new annual flows of utilised Foreign Direct Investment (FDI) of around USD 4.2 on average in the last 5 years), bringing stocks of EU FDI to over USD 35 billion.
- (c) Following China’s entry into the WTO, the Multifibre Agreement came to an end in 2004, after several decades which were supposed to give European producers time to prepare for increased competition. The magnitude of the onslaught in the first few months of 2005 came as a surprise however, with China’s share of EU textile imports increasing dramatically over this period. After an agreement to reintroduce temporary quotas the problem was contained.

3. EU–China cooperation

- (a) The EU supports China’s reforms and liberalisation through its cooperation programme. The present cooperation portfolio includes 40 projects for a total value of approximately EUR 260 million. Current cooperation projects concern environmental management, basic education in Gansu, village governance, forest management and financial services. Project management responsibilities have been transferred from the Commission in Brussels to the delegation in Beijing.
- (b) The 1985 agreement provided for cooperation in industry, mining, energy, transport, communications and technology. A science and technology agreement was signed in 1999. A new agreement on cooperation in the EU’s *Galileo* satellite navigation programme was signed on 30 October 2003. Another agreement covering joint research on the peaceful use of nuclear energy was concluded at the 2004 EU–China summit.

- (c) In May 2000 the EU and China signed a bilateral agreement paving the way for China's accession to the WTO, which was completed by the end of that year. In order to help the Chinese government implement commitments under the WTO, the EU worked in partnership and designed a number of WTO-oriented technical assistance projects, with a budget totalling about EUR 22 million.
- (d) In March 2000, the EU and China launched the EU–China Legal and Judicial Cooperation programme. The objectives are to develop a better understanding of the concept of the rule of law in China and to improve awareness of the Chinese legal system.

4. Humanitarian aid

Currently, five projects in China also benefit from Community support through the EU Human Rights and Democracy programme. In addition, emergency aid has been provided from the European Community Directorate-General for Humanitarian Aid (ECHO) budget, and a few projects also receive funding from the Community's Non-Governmental Organisation (NGO) budget.

II. Taiwan

The EU, like most other countries, follows a 'One China' policy and thus has no diplomatic relations with Taiwan. However, it recognises Taiwan as an economic and commercial entity, and has solid relations with Taiwan in non-political areas, such as economic relations, science, education and culture. Taiwan is the EU's third largest trading partner in Asia, after Japan and the PRC. The EU strongly supported Taiwan's accession to the WTO which took place on 1 January 2002. In March 2003, the Commission established a permanent Economic and Trade office in Taiwan. The EU supports a peaceful resolution of differences between Taiwan and the PRC.

Role of the European Parliament (Ep)

The 21st EP–China Interparliamentary meeting took place in Beijing, Shanghai, Henan from 14 to 21 March 2004 while

the 22nd meeting took place in Brussels from 10 to 13 September 2005. Working sessions took place with counterparts from the National People's Congress (NPC). The meeting agendas dealt inter alia with human rights, trade and business issues and China's membership of the WTO. In its numerous resolutions dealing with China, the EP has significantly contributed to enhancing bilateral cooperation between the EU and China (visas, WTO, science and technology, maritime transport). For example: EP resolutions of 25 October 2001, 9 February 1999, 12 June 1997 on EU–China relations; resolution of 2 September 2003 on maritime transport; resolution of 25 October 2001 on China's accession to the WTO; resolution of 4 November 1999 on EC/China technological and scientific cooperation. A resolution was adopted on 6 September 2005 on trade in textiles and clothing.

The EP has also addressed more controversial issues such as the Taiwan question (13 April 2000, 7 July 2005), the arms embargo (18 December 2003, 17 November 2004), the protection of human rights (resolution of 15 February 2001 and of 8 September 2005 on freedom of religion in the PRC), especially in Tibet (resolutions of 13 April 2000, 19 December 2002, 13 January 2005). The EP has urged the Chinese government to respond to international calls for improvement in the human rights situation and to guarantee democracy, freedom of expression, freedom of the media and political and religious freedom in China. On the question of Taiwan, the EP rejected military threats and called on both China and Taiwan to refrain from provocative actions and to find a negotiated solution to their differences. The EP has also called upon Council and the Member States to maintain the EU embargo on trade in arms with the People's Republic of China.

→ Xavier **NUTTIN**
11/2005

6.4.11. The countries of South Asia and the Indian Subcontinent

Legal basis

Under Article 133 of the EC Treaty (ECT), responsibility for commercial policy vis-à-vis third countries lies with the Community. Existing cooperation agreements are based on Article 308 ECT. The new third-generation cooperation agreements are based both on Article 133 and on Articles 181 and 300.

Objectives

The EU's objectives with regard to South Asia include strengthening its relations with the area, and consolidating the regional cooperation process represented by the South Asian Association for Regional Cooperation (SAARC).

Achievements

A. SAARC relations

Europe is the South Asian countries' most important trading partner and a major export market. Development cooperation between the EU and the countries of South Asia covers financial and technical aid as well as economic cooperation. Priorities include regional stability, the fight against terrorism and poverty reduction. SAARC was founded in 1985 and groups seven countries of the Indian subcontinent (India, Pakistan, Bangladesh, Nepal, Sri Lanka, Bhutan and the Maldives). For several reasons, SAARC has not been as successful as other similar regional groupings. Despite structural constraints, the entry into force in 1995 of SAPTA (SAARC Preferential Trading Arrangement) was a positive achievement.

In its dialogue with SAARC (Ministerial Troika, annual meetings in 1994–September 1999), the EU has consistently affirmed an interest in strengthening links with SAARC as a regional organisation. This sentiment is equally consistently reciprocated by SAARC. The EU can help consolidate the ongoing integration process through its economic influence in the region, its own historical experience of dealing with diversity, and its interest in crisis prevention. The EU remains convinced that SAARC could play a useful role in regional cooperation and dialogue, although so far SAARC development has been less than breathtaking in the economic and political arena.

Hence, the EC took the initiative in 1996 to sign a Memorandum of Understanding with the SAARC Secretariat, offering them technical assistance. The MoU was explicitly signed at the technical level to overcome political inertia. Yet, the internal problems of SAARC

largely prevented any effective implementation of the MoU. The main result of this otherwise limited cooperation is the inclusion of SAARC in the General System of Preferences (GSP).

B. Bilateral relations

1. India

India is the second most populous country in the world, the dominant political and military power in the region and one of the most dynamic economies among developing countries, with, in particular, a fast-growing information technology sector. Its democracy is healthier and more vibrant than ever and the country is an increasingly important player in global issues. Both the EU and India promote an effective multilateral approach.

EU–India relations go back to the early 1960s: India was amongst the first countries to set up diplomatic relations with the EEC.

- The first cooperation agreement concluded in 1973 between the EC and India was superseded in 1981 by a more extensive agreement covering not only trade but also economic cooperation, and then in 1994 by a 'third-generation' agreement which provides for greater cooperation, particularly in the sphere of trade. Based on adherence to the most-favoured-nation clause, it is compatible with the World Trade Organisation rules. It also includes dispute resolution and anti-dumping measures. Cooperation covers the industrial and services sector, communications, energy and private investment. The EU–India Joint Commission oversees the entire field of cooperation.
- Since 2000, the EU and India have held a summit at government level each year. A science and technology agreement was signed in November 2001.
- The agreement at the EU–India summit in November 2004 to launch a strategic partnership and to implement it through an action plan set the scene for another quantum leap in relations. The action plan as well as a new joint political statement were agreed at the 6th Summit in Delhi on 7 September 2005. The action plan spells out concrete areas where the EU and India should become active and influential collaborators in global political, economic and social developments.

Over the period 2002 to 2006 the EU will make available some EUR 225 million for development and economic cooperation with India.

2. Pakistan

After being delayed on account of the country's nuclear programme and human rights abuses, a third-generation cooperation agreement was signed in November 2001, and ratified by the European Parliament (EP) in April 2004. It is a non-preferential agreement with no financial protocol. First, it establishes respect for human rights and democratic principles as an essential basis for cooperation. Secondly, the scope of cooperation between Pakistan and the Community will be significantly enlarged. Not only does the agreement provide the framework for commercial, economic and development cooperation, but it opens up possibilities for dialogue and cooperation in important new areas including the environment, regional cooperation, science and technology, drugs and money laundering. Lastly, the agreement formalises the dialogue — providing regular meetings of a joint commission where issues in relations with this important partner can be addressed. Over the period 2002 to 2006 the EU will make available some EUR 165 million for development and economic cooperation with Pakistan.

3. Bangladesh

Relations with Bangladesh date back to 1973, shortly after the country's independence.

The commercial cooperation agreement signed in 1976 has now been replaced by a new cooperation agreement, signed in 2000, and in force since March 2001. This newer agreement aims to support sustainable economic and social development of Bangladesh and particularly of the poorest sections of its population, with special emphasis on women, taking into account its least developed country status. It focuses on trade and commercial cooperation, development cooperation, environmental policies, the establishment of a more favourable climate for private investment, science and technology, the fight against drug trafficking and money laundering, as well as activities in the field of information, culture and communication. Accordingly, the overarching objective of the EC and Bangladesh as agreed in the Country Strategy Paper 2002–06 is poverty eradication through a strategy of sustained, rapid, pro-poor economic growth. Since 1976, total humanitarian aid and NGO co-financing has amounted to EUR 1 500 million.

4. Sri Lanka

Sri Lanka first signed a cooperation agreement with the EU in 1975. A third generation agreement came into force in 1995, focusing on partnership, cooperation, and respect for human rights and democracy.

Due to the civil war, a large part of EU assistance has been through ECHO (EUR 8.3 million in 2002). Over the period 2003 to 2005, EUR 61.32 million for rural development,

economic cooperation and post-conflict assistance is programmed. In its resolution of 20 November 2003, the EU encouraged the main political parties in Sri Lanka to stick to the ceasefire agreement and urged Sri Lanka's President to do everything possible to achieve a fair and stable political situation and to further the peace process. Following the Tsunami that hit Sri Lanka on 26 December 2004 and caused massive flooding, death and devastation, major assistance was provided to the country. Initial emergency relief assistance was sent through ECHO, quickly followed by large rehabilitation/reconstruction programmes with a EUR 95 million budget allocation. Flanking measures in trade, fisheries and early warning systems were also approved.

5. Nepal

- On 20 November 1995 the European Union and Nepal signed their first cooperation agreement covering the following areas: respect for human rights and democratic principles, cooperation in trade, development, science and technology, energy, agriculture, the environment, and action to combat drugs and AIDS.
- From 1977 onwards the EU has committed EUR 160 million in development assistance, focusing on rural development, health, education, local development, refugees and water management. EUR 615 000 was made available in 2002 as a response to the growing instability in the country due to the Maoist guerrillas.
- For the period 2002 to 2006, EC cooperation strategy, with a budget of EUR 70 million, will be based on the 10th five-year plan which embraces poverty alleviation as the overriding objective. Agricultural production and infrastructures, socio-economic development, institutional strengthening and good governance, and alternative renewable rural energy are the most important objectives pursued by this strategy. Moreover, due to the present situation, special attention will be given to conflict prevention initiatives

6. Bhutan

EU assistance to Bhutan started in 1982 and totalled about EUR 46 million over the period 1982 to 2002. It focused on rural development and poverty reduction. The overall estimated EU allocation over the period 2002 to 2006 is EUR 15 million.

7. The Maldives

Since 1981, the Maldives has received EUR 5 million in EU development assistance (projects in tourism and fish inspection). The Maldives has achieved buoyant growth over the past two decades. The development of the tourism and fisheries sectors, favourable external

conditions, inflows of external aid and good economic management contributed to steady economic growth. The Maldives' social indicators have also shown significant improvements. But the Maldives still faces several key development challenges. Accordingly a further amount of EUR 2 million for regional development with a clear focus on environmental issues and capacity building in trade and economic development is programmed for 2004.

The country, also badly affected by the 2004 Tsunami, has been allocated EUR 16 million to build on the achievements of the humanitarian aid phase.

8. Afghanistan

European Union relations with Afghanistan are firmly within the wider international community's relations with, and reconstruction efforts for, Afghanistan. While the EU (Eurocorps) and its Member States have contributed militarily to Afghanistan (through ISAF), reconstruction and development aid is the pillar of political relations. The Commission is on track to deliver its 2002 Tokyo pledge of EUR 1 billion of reconstruction assistance over the period 2002 to 2006. Overall, the EU is the second-largest aid donor to Afghanistan, after the United States.

The EC's efforts also included co-hosting a March 2003 Afghanistan High Level Strategic Forum, to which the Afghanistan government invited key donors and multilateral organisations. It covered the progress and future vision for state-building in Afghanistan, as well as the long-term funding requirements for reconstruction.

In terms of security and tackling the drugs issue, the EU supplies financial aid to support Germany and Italy in their lead role on law, order and justice, as well as actively supporting the UK in its lead role in the fight against poppy production. The EC is supplying EUR 65 million to help the Afghan police impose law and order, another key component in Afghanistan's fight against drugs, while it also finances a project to strengthen controls on the Afghanistan–Iran border so the authorities are better able to interdict and stop drug smugglers.

EC Representation in Kabul has been operational since February 2002. The ECHO Afghanistan office opened in January 2002. An EU special representative has been sent to Kabul in order to implement EU policy to Afghanistan, by way of close contact with Afghan leaders and those of surrounding countries, to promote a stable government for Afghanistan.

Role of the European Parliament

1. SAARC relations

The EP has recommended the strengthening of economic, political and cultural ties between the EU and Asia in

general, particularly through increased trade and investment, and better coordination in the fields of cooperation and development with the most developed countries in the region. It has emphasised the efforts made to improve democratic freedoms, human and minority rights, social rights, and health and environmental protection regulations. An EP delegation maintains relations with the parliaments of the countries of the region.

2. Bilateral relations

The EP has passed numerous resolutions on the political developments, including human rights, in the SAAR countries.

(a) India

The EP believes that there is a considerable potential for an all-round bilateral relationship between the European Union and India, given India's values of democracy, cultural pluralism and a robust entrepreneurial spirit which are underpinned by free elections, an independent judiciary, a free national and regional press, active NGOs as well as an open and transparent civil society, and thus called for the organisation of a comprehensive dialogue that covers all aspects of bilateral relations, including issues relating to the non-proliferation of nuclear weapons. It has urged India to continue the dialogue with Pakistan and welcomed India's efforts to strengthen regional cooperation between the Member States of SAARC, in particular its efforts to promote the South Asian Free Trade Area, including the free trade agreement with Sri Lanka. In the sixth term a resolution on the EU–India strategic partnership was adopted on 29 September 2005.

(b) Pakistan

The EP reminded Pakistan of the importance that the EU attaches to respect for human rights as an integral part of its external relations and of any cooperation agreement. It reiterated its call on the Commission to institute cooperation programmes offering active support to NGOs in the human rights field (resolution of 5 April 2001). Its concerns over the fairness of the general elections of October 2002 led the Council to postpone ratification of the 2001 cooperation agreement until April 2004. A new resolution on human rights and democracy was adopted on the same day.

(c) Bangladesh

The EP has expressed concern at the human rights situation (arbitrary arrests, detention, and torture) in Bangladesh. It encouraged the Government of Bangladesh to protect human rights and apply democratic principles in all areas, including their action to deal with rising crime rates. It called on the Commission to engage with the Government of Bangladesh under the EU–Bangladesh

Cooperation Agreement to ensure that violations stop, human rights are protected and the EP is kept informed (resolution of 21 November 2002). In the sixth term a resolution on the political developments and security situation was adopted on 14 April 2005.

(d) Sri Lanka

The EP has repeatedly (18 May 2000; 14 March 2002; 20 November 2003) stated its views on the political situation in Sri Lanka, particularly drawing attention to the need for human rights to be respected and for support for the peace process in the resolution of the ethnic conflict between the Sinhalese majority and the Tamil minority.

(e) Nepal

The EP expressed its deep concern at the breakdown of the ceasefire and the recent upsurge in violence in Nepal leading to huge loss of life and injury. It urged the Government of Nepal and the Maoist rebels to declare an immediate ceasefire (resolution of 23 October 2003). On 24 February 2005 the EP condemned the seizure of power by King Gyanendra and urged him to re-establish parliamentary democracy.

(f) Afghanistan

The EP's main contribution has been budgetary, maintaining an emphasis on reconstruction, de-mining and election support. The EP sent a delegation to Afghanistan in September 2005 to observe the national legislative elections.

Afghanistan has emerged in several EP debates. MEPs, for example, have raised worries about the kidnapping of aid workers or the increase in the supply of opium in Europe, particularly from Afghanistan. The EP has passed several resolutions. Since the fall of the Taliban it has covered issues like the freezing of Taliban-linked assets, repealing embargoes on the state, etc. A recent EP resolution specifically on the situation in Afghanistan, based on the own-initiative report by André Brie (EUL/NGL, D) and the Foreign Affairs Committee, was adopted on 12 February 2004. President Karzai visited the EU institutions in May 2005. Karzai addressed the EP in Strasbourg on 10 May 2005.

→ Xavier **NUTTIN**
11/2005

6.4.12. ASEAN and the Korean Peninsula

Legal basis

Articles 133 and 308 of Treaty on European Union (EUT).

Objectives

The EU's relationship with South-East Asia has the following aims:

- to promote peace, regional stability and security through bilateral and multinational channels;
- to strengthen trade and investment relations;
- to support the development of the less prosperous countries;
- to promote human rights, democratic principles and good governance;
- to cooperate in combating transnational crime and terrorism;
- to bring together peoples and cultures.

Achievements

I. Asean

A. Evolution

Established in 1967, the Association of South East Asian Nations (ASEAN) now includes, apart from the five original member nations (Indonesia, Malaysia, Philippines, Singapore, and Thailand), Brunei, Vietnam, Laos, Burma/ Myanmar and Cambodia.

1. The 1980 Cooperation Agreement

The EU/ASEAN relationship dates from 1972, when a Special Coordinating Committee of ASEAN was set up to deal with the EU. Since then the EU has built up an extensive network of commercial, economic and political relations with ASEAN. Relations were formalised in 1980 with the conclusion of a cooperation agreement. It sets out objectives for commercial, economic and development cooperation and establishes a Joint Cooperation

Committee to promote the various cooperation activities envisaged by the two sides. Although it is a cooperation rather than a trade agreement, it provides for most-favoured-nation treatment in accordance with the WTO.

2. Developments after the 1980 agreement

When Brunei (1984), Vietnam (1995), Laos (1997) and Cambodia (1999) joined ASEAN, the EU agreed to the accession of these countries to the 1980 Cooperation Agreement. Burma/Myanmar became a member of ASEAN in 1997 but the agreement was not extended to that country.

ASEAN/EU relations have changed radically since the 1980 agreement, above all as a result of the remarkable growth of South-East Asian countries and the evolution of ASEAN towards a political and economic community. In 1980 relations were conducted on a donor-recipient basis. They have evolved towards balanced trade, development of investment, greater economic cooperation and a growing political dialogue. In 1991 it was agreed to revise the 1980 agreement, but negotiations remain blocked because of human rights concerns about East Timor. ASEAN has been given a primary role in the EU's strategy for Asia, adopted in July 1994. This strategy seeks to strengthen links between Asia and Europe and is the EU response to the changing political and economic situation in the region.

In September 2001, the European Commission presented its communication 'Europe and Asia: A Strategic Framework for Enhanced Partnerships', which identified ASEAN as a key economic and political partner of the EC and emphasised its importance as a locomotive for overall relations between Europe and Asia. The Commission communication 'A New Partnership with South East Asia', presented in July 2003, reaffirms the importance of the *EC-ASEAN partnership*.

B. Present relations

1. Political

(a) Asia-Europe meetings (ASEM)

Political and security relations between Asia and the major powers have been undergoing a gradual and profound shift, following the end of the Cold War. The new Asia strategy was given a boost with the first Asia-Europe Meeting (ASEM), an informal gathering of Heads of State, held in Bangkok in 1996. ASEM has now developed into a structure with 3 pillars: political; economic and financial; cultural and intellectual.

The third ASEM summit, in Seoul 2000, adopted a 10-year 'action framework' and declared support for 'rapprochement' between the two Koreas. At the economic level, both sides supported a new WTO negotiation round as soon as possible. As regards cultural cooperation, two

flagship projects were adopted, one for study grants, the other for creating an 'information highway' between European and Asian researchers. Both parties called for cultural links to be strengthened through the Europe-Asia Foundation in Singapore (ASEF), the only institution from ASEM dialogue charged with promoting cultural, intellectual and people-to-people contacts between the two regions.

The ASEM 5 Summit was held in Hanoi from 7 to 9 October 2004 with the participation of 39 partners. It marked ASEM's enlargement to the 10 new EU Member States as well as to three new countries from the Asian region (Cambodia, Laos and Burma/Myanmar) that were not yet part of the process. As a result, the ASEM process will now bring together 39 partners from Asia and Europe. The participation of Burma/Myanmar was accepted with the condition that the participation of the Burmese government at the ASEM Summit would be lower than Head of State/Government level. The ASEM 5 Summit reviewed international developments and global challenges, and addressed regional developments in Europe and Asia, including the human rights situation in Burma/Myanmar. A particular focus was on how to deepen the common commitment to a multilateral approach to international relations. The Asia-Europe economic partnership and recent developments at the World Trade Organisation (WTO) were discussed alongside ways to take forward the dialogue of cultures and civilisations.

(b) ASEAN-EU Ministerial Meeting (AEMM)

Attended by Foreign Ministers every second year since 1978, the AEMM is the highest institutional level providing the strategic guidance for monitoring progress in political dialogue.

After suspension due to the Burma/Myanmar problem, an AEMM held in December 2000 in Laos approved a joint declaration which called for a rapid resumption of talks between the Burmese military junta in Rangoon and the democratic opposition. The declaration also backed the joint efforts of the international community and Indonesia to quickly solve the refugee situation in East Timor, mentioned respect for human rights, and placed back on track cooperation between the EU and ASEAN in economic and regional security matters.

At the 2003 AEMM in Brussels, the ministers agreed that future cooperation should focus on non-traditional security issues, establishing channels of communication between the ASEAN and EU secretariats as well as environmental and cultural cooperation. ASEAN expressed a strong interest in drawing on EU experience in regional economic integration. The ministers adopted an EU-ASEAN joint declaration on terrorism affirming their commitment to

work together and to contribute to international efforts to fight terrorism.

At the 15th AEMM held in Indonesia in March 2005, the EU's 'New Partnership with South East Asia' strategy was confirmed as being at the origin of enhanced relations. The meeting decided to increase support for ASEAN integration by making available the EU's own experience to start negotiations with Singapore and Thailand on bilateral agreements and to develop concrete joint cooperation in the fight against terrorism. It noted the substantial progress under the TREATI (trade) initiative, and the launch of trilateral cooperation and of a joint EU–ASEAN visibility strategy. The Commission's READI (dialogue instrument for non-trade issues) principle was endorsed. The meeting also provided the Commission with an occasion to brief the region on the EC's substantial action plan for post-Tsunami reconstruction.

(c) ASEAN Regional Forum (ARF)

The EU participates as a dialogue partner in the ASEAN Regional Forum (ARF), a body established in 1994 as the main multilateral forum in the region on global and security issues. It is, in the EU's view, an appropriate forum to address key regional security issues and build a consensus among Asian countries on such issues. The recent positions taken by ARF on Burma/Myanmar and on the Korean peninsula are encouraging developments in this respect, although the ARF could be more active in addressing regional conflicts and tensions. On terrorism, the EU has participated in the last intersessional meetings and supports the view that ARF is a good forum to exchange information and for expert level cooperation. The EU as co-chair of the intersessional group in 2004–05 (together with Cambodia) plays an important role in the process.

2. Technical: the Joint Cooperation Committee (JCC)

This senior officials-level committee, supported by a wide range of sub-committees, is the only body formally established by the 1980 Cooperation Agreement responsible for its implementation. It meets every 18 months to discuss ongoing and future activities. It consists of representatives of the European Commission (though EU Member States are also represented) and the governments of ASEAN. Since 1994 it has set up five sub-committees dealing with Trade and Investment, Economic and Industrial Cooperation, Science and Technology, Forestry, Environment, and Narcotics. The functioning of the JCC was blocked for a time following Burma's accession to ASEAN, but a meeting was held in May 1999, with Burma as a 'passive presence' only. The September 2001 JCC agreed on a new approach to cooperation; a clear focus on policy dialogue where the EU can support ASEAN regional

integration and other key priority areas. Future cooperation programmes should derive from the policy dialogue and should be subject to a two-way value added test. The 2003 communication 'A New Partnership with South East Asia' confirmed that the JCC would continue to steer the implementation of the existing agreements

3. Trade relations

In 2003, the EU was ASEAN's second largest export market and the third-largest trading partner after the United States and Japan. EU exports to ASEAN were estimated at EUR 39 billion, while EU imports from ASEAN were valued at EUR 66 billion. The main exports from ASEAN to the EU are machinery, agricultural products, and textiles. In general, both EU imports and exports of goods to ASEAN between 2000 and 2003 have decreased, largely reflecting global trends, although at a slightly higher rate. In contrast, trade in services during the same period has increased for both EU imports and exports of services with ASEAN. EU investment flows to ASEAN are recovering after the fall due to the financial crisis of 1997–98.

As a region, ASEAN has benefited significantly from the EU's Generalised System of Preferences. Countries such as Thailand and Indonesia have 'graduated' a number of sectors where they have become competitive in the last few years, losing the benefit of the GSP for important products — in particular, fishery products for Thailand. Singapore, due to its advanced level of development, is excluded from the system.

C. The EU and Burma

In 1996, the European Council first imposed an embargo on export of goods which may be used for repression, refused visas for a list of junta officials and froze funds held by those officials abroad. When Burma joined ASEAN in 1997, the EU refused to allow the country to accede to the 1980 EU–ASEAN cooperation agreement, and EU–ASEAN ministerial meetings were suspended. While strengthening sanctions, the changes made in spring 2000 made possible Burma's participation in the EU–ASEAN ministerial meeting that year, in which the EU reaffirmed its willingness to pursue dialogue with all parties concerned. The meeting made it possible for the European Troika to visit Rangoon in January 2001 and to have a meeting at senior official level with the Burmese opposition leader and Nobel Prize winner, Mrs Aung San Suu Kyi. In October 2002, the EU again urged the restoration of democracy, the pursuit of national reconciliation and the protection of human rights in Burma.

On 26 April 2004, the EU Common Position on Burma/Myanmar was extended by the Council in view of the military regime's failure to make any significant progress in normalising administration of the country and addressing

any of the EU's concerns as regards human rights. On 3 September 2004 EU foreign ministers agreed to Burma/Myanmar participation in the ASEM Summit on a level below Head of State/Government (FM). At this time, ministers decided that further sanctions against the military regime would be implemented if it failed to release Aung San Suu Kyi and open the National Convention to NLD participation in advance of Burma/Myanmar's accession to the Asia–Europe Meeting (ASEM) in October 2004. As the military regime failed to meet these demands on time, the Council agreed to revise the common position and to further tighten sanctions on Rangoon. Specifically, the visa ban on senior military officials travelling to the EU has been extended while new restrictions have been authorised to prohibit EU companies from investing in Burmese state-owned enterprises. The common position was renewed for one year on 25 April 2005.

II. The Korean Peninsula

A. The Republic of Korea

1. Economic relations of the EU with South Korea are strong. From a Korean perspective, the EU was its fourth largest trading partner with EUR 39 billion of bilateral trade in 2003. The EU is the largest foreign investor too, with around EUR 3 billion of investment flowing per year into South Korea, and the EU is also the largest foreign investor in terms of cumulative total since 1962. EU investment in South Korea stood at USD 29 billion in 2003.
2. A strong attachment to democratic values in South Korea, and the rapid development of this country's market economy, have allowed the development of close political and economic links between South Korea and the EU. A new 'Framework Agreement on Trade and Cooperation' was signed in 1996 and entered into force in 2001. This agreement commits the parties to developing trade and investment and also provides for collaboration in the fields of justice, home affairs, science and culture. The agreement provides for a joint committee, regular summit meetings and a ministerial troika. Today's relationship between South Korea and the EU is founded on (1) increasingly shared political values, (2) strong economic links reflecting large bilateral trade and investment flows and (3) the EU's reiterated support for South Korea's 'sunshine' policy of engagement with the North.

The Republic of Korea–EU Summit, on 9 October 2004, was the second bilateral summit of its kind. Many issues were discussed, including the resumption of the six-Party talks, South Korea's participation in the G8 Global Partnership against WMD, and the situation in Iraq.

Economic issues also featured prominently. The EU reaffirmed its support for South Korea's economic reform course, and welcomed the intensification of bilateral economic and trade relations.

B. The Democratic People's Republic of Korea

1. Diplomatic relations with the DPRK were established in May 2001. Since 1998, there have been annual political dialogue troika meetings between the EU and the DPRK at regional director level. The last bilateral meeting was in Pyongyang in November 2004. In addition, EU–DPRK contacts are maintained through the HoMs in Pyongyang and possible ad hoc visits by North Korean authorities to Europe. On the issue of human rights, the EU had raised its concerns during this political dialogue.
2. The basis of EU–DPRK economic ties is one-way aid. The EC has provided various aid packages, including EUR 320 million in food and humanitarian aid between 1995–2004, with the humanitarian assistance programme (through ECHO) alone worth EUR 93 million since 1995. The food aid/food security programme initially concentrated on cereals, maize, sugar and oil donations, but it has been increasingly oriented towards agricultural rehabilitation since 2000 (fertilisers and agricultural inputs).
3. Another forum of discussion to which the EU acceded in 1997 is KEDO, the Korean Energy Development Organisation, set up in 1994 to oversee the dismantling of North Korea's nuclear weapons programme. The renewed DPRK nuclear crisis from 2002 has impacted on the implementation of the KEDO project. In November 2002, it was decided to stop shipments of heavy fuel oil provided to the DPRK and, in November 2003, to suspend construction activities on the site for one year until the end of November 2004, subsequently extended until the end of November 2005. In total, the Commission has contributed EUR 120 million to the KEDO project since 1997. The current five-year agreement between the EU and KEDO, which is the second one since 1996, expires on 31 December 2005. Continued membership would require a new agreement.

Role of the European Parliament

The first contacts between the European Parliament (EP) and the ASEAN countries took place in 1976, but it was only in 1979 that regular meetings between the EP and the ASEAN Inter-parliamentary Organisation (AIPO) were established. The EP continuously emphasises the need to restore the democratic process in Burma and Indonesia. Following restrictions on the freedom of movement of Mrs Aung San Suu Kyi, the EP invited the ASEAN countries to

persuade the military regime of Burma to lift their restrictions on her. Before the third Asia–Europe Summit (ASEM 3), the EP called for the continuation of the ASEP process (Asia–Europe parliamentary meetings) and for inclusion of a democratic clause in the agreement concluded with the Asian countries. The EP called on several occasions on Vietnam to undertake in-depth political reforms notably involving the abolition of the

death penalty and the end to religious persecution. The EP has also adopted many resolutions with regard to political and human rights in Cambodia and has invited the Cambodian Constitutional Council to rapidly approve the draft law for the trials of Khmer Rouge leaders

→ Xavier **NUTTIN**
11/2005

6.4.13 Australia and New Zealand

Legal basis

Article 133 of the EC Treaty (basis for the EU's common commercial policy).

Objectives

The EU maintains strong historic and economic links with Australia and New Zealand and intends to further strengthen its ties with both countries especially in view of the increasing importance of the Asia–Pacific area. EU policy towards both countries concentrates on maintaining stable trade relations and deepening cooperation. Given their historical dependence on farm exports to the UK, both countries were affected by the UK's accession to the EU: the Commonwealth preferential arrangements had to be adapted to the EU's agricultural policy.

Achievements

I. Australia

A. Basic elements of relations

1. Strong economic relations

The EU has been Australia's largest economic partner for the past 11 years and in 2001 and 2002 accounted for 20 % of all Australian overseas transactions compared with 17 % for the USA and 13 % for Japan and ASEAN. The EU was also the largest source of Australian imports (with a 22 % share of total imports, mainly medicines, cars and telecommunications equipment) and the third-largest market for Australian exports (with a 12 % share of total exports, mainly coal, iron, wool and wine). The EU remains Australia's largest partner in terms of trade in services (22 %) and is the leading investor in the country (accounting for 33 % of foreign investment in Australia). Total trade in goods and services exceeded EUR 35 billion in 2002. In

recent years bilateral agreements have been concluded on trade in wine, cooperation in the field of science and technology and standards and certification.

2. Will to cooperate

In June 1997 a joint declaration on EU–Australia relations established a partnership for dialogue and cooperation in areas of common interest bilaterally and within international organisations. Among these are bilateral negotiations in the veterinary and plant-health fields, prospects for a new round of trade negotiations, the accession of new members to the World Trade Organisation (WTO) and issues relating to climate change, the environment, marine science, biotechnology and information and telecommunication technologies. Another area of cooperation involves the coordination of development aid in the Pacific region. In January 1982, an agreement on uranium and the transfer of nuclear material to the EU was concluded for a period of 30 years.

B. Priorities for future cooperation

At consultations in Brussels in April 2002, the parties agreed to take stock of developments in the relationship since the signing of the joint declaration. The following areas were identified as high priorities over the following five years:

1. Security and strategic issues

There should be increased sharing of assessments on international and regional security developments, with particular attention to:

- intensifying cooperation on counter-terrorism and critical infrastructure protection by exchanging information on international terrorist networks and protecting information infrastructure, and by supporting counter-terrorism capacity-building in the Asia–Pacific region;

- enhancing dialogue on non-proliferation and export control issues, particularly with regard to regulating trade in dual-use items and on respective engagement with countries of concern;
- developing bilateral cooperation between Australian law enforcement authorities and Europol.

2. Trade

Commitment to resolving outstanding issues in the bilateral wine agreement.

Cooperation on the WTO Doha Development Agenda. Notwithstanding differences in some areas, joint efforts will continue to ensure an ambitious approach overall on market access issues, on rule-making issues and on issues related to development. Recognition of the importance and complexity of the negotiations on agriculture and commitment to reaching an outcome consistent with the Doha declaration. As for developing countries, the parties will work together:

- to implement and promote policies to grant duty- and quota-free market access for least-developed countries;
- to assist these countries with access to affordable medicines; and
- to deliver technical assistance and capacity-building activities.

Focus on resolving differences on bilateral agriculture and trade issues, including food safety and animal and plant health matters, through intensified consultations, particularly in the Agricultural Trade and Marketing Experts' Group.

3. Education, Science and Technology

Having successfully initiated the first Australia–EU pilot project on higher education cooperation, it was agreed that a second pilot project be established on a similar matching-funding basis when the necessary funding procedures are finalised.

Development of an action plan designed to stimulate collaborative Australia–EU scientific and technological projects within the sixth Framework Programme for Research.

Commitment to make optimal use of the Forum for European–Australian Science and Technology cooperation (FEAST) as a key vehicle in this process.

4. Transport

Development of arrangements between the Australian Global Navigation Satellite System Coordination Committee and the European Commission to enable cooperation associated with the Galileo Satellite Navigation project.

Increased cooperative activity in the fields of Intelligent Transport Systems (ITS) and sustainable transport strategies.

Close cooperation on transport, including the aviation liberalisation agenda in multilateral fora such as the International Civil Aviation Organisation, the Organisation for Economic Cooperation and Development and the WTO (General Agreement on Trade in Services) and by working towards a bilateral agreement on relaxing ownership and control rules, inward investment opportunities, and opportunities to develop intermodal services in the respective markets.

5. Environment

On the basis of the existing framework of cooperation, continuing collaboration on climate change. In particular, specific attention could be given to:

- technology development and deployment;
- climate science, impacts and adaptation;
- harmonisation of emissions monitoring, reporting, verification and certification procedures; and
- evolution of mitigation commitments.

Agreement to improve mutual understanding of respective approaches to environmental protection and how the approaches affect international policymaking and respective and joint interests.

6. Development cooperation

Pursue opportunities for further collaboration in development cooperation programmes in areas of mutual interest, including through:

- assisting the recovery and nation-building processes in East Timor and the Solomon Islands;
- gearing programmes to build good governance and economic growth in nations in the Pacific, particularly Papua New Guinea; and
- providing support and funding for the Asia Pacific Leadership Forum on HIV/AIDS and Development.

7. Migration and asylum

Enhancement of information exchange and cooperation on approaches to address the challenges posed by global migration, consulting closely in multilateral fora and bilaterally. In particular, focus on development of policymaking and practical cooperation with respect to:

- asylum-seeker and refugee readmission to countries of first asylum;
- improving capacity-building (including in border management) in third countries that are of mutual interest;
- the integration of migrants and the link between development and migration;

- exchange of information on trafficking in human beings and related transnational crime;
- exchange of information on new technologies and electronic support structures to assist in combating irregular migration and identity and document fraud.

II. New Zealand

A. General

The EU–New Zealand relationship was given a formal framework in the shape of the May 1999 joint declaration on relations between the two parties.

A number of common goals are proclaimed, such as support for democracy, the rule of law and respect for human rights, promotion of the effectiveness of the UN, cooperation on development issues in the South Pacific, promotion of sustainable development and the protection of the global environment. To this end several areas of cooperation are identified.

The joint declaration also sets up a consultative framework in which such cooperation can take place:

- regular political dialogue, including consultations at ministerial level between the EU and New Zealand;
- consultations as appropriate between officials of both sides to cover relevant aspects of the relationship.

Several sectoral agreements between the EU and New Zealand complete the picture. Most notable among them are the following:

- 1991: arrangement for cooperation in science and technology;
- 1997: agreement on sanitary measures applicable to trade in live animals and animal products;
- 1998: agreement on mutual recognition in relation to conformity assessment.

B. Economic relations

The EU is New Zealand's second-largest trading partner after Australia. While the UK remains New Zealand's first

export destination in the EU, other countries, such as France, have also become more important. Total trade in goods and services approached EUR 7 billion in 2002. The EU accounts for 17 % of foreign direct investment in New Zealand. Similarly, the EU is among the prime destinations for investments from New Zealand, accounting for 28 % of New Zealand's direct investment abroad. The importance of Europe as a reliable and stable partner has increased following the Asian financial crisis.

The Veterinary Agreement (1997) aims to facilitate trade in live animals and animal products while safeguarding public and animal health and meeting consumer expectations in relation to the wholesomeness of food products. Despite delay there is a common willingness to see the agreement fully implemented.

The Mutual Recognition Agreement (1999) facilitates trade in industrial products between the EU and New Zealand. It covers exchanges estimated at more than EUR 500 million in sectors such as medical devices, pharmaceutical goods and telecommunications terminal equipment. A parallel agreement was also signed with Australia. These agreements are the first mutual recognition agreements the EU has ever signed with a third country.

Role of the European Parliament

As with most other countries and regions of the world, the European Parliament maintains regular inter-parliamentary contacts with Australia and New Zealand, through a standing delegation for relations with both countries. The first interparliamentary meetings with both countries took place in early 1981. As a rule, bilateral meetings should now be held once per year. They are supplemented by a regular exchange of views with the respective ambassadors. Subjects discussed cover both bilateral issues, such as agricultural policy and trade, and shared global concerns ranging from environmental and climate issues to security challenges.

→ Stefan SCHULZ
11/2005

6.5. General development policy

6.5.1 A general survey of development policy

Legal basis

- Development and cooperation policy in general: Articles 177–181 of the EC Treaty (ECT).
- Cotonou Agreement and various association agreements: Article 310 of the ECT.
- Generalised Scheme of Preferences and cooperation agreements: Article 133 of the ECT.
- Financial and technical assistance to Asian and Latin American developing countries: Article 308 of the ECT.

Objectives

Article 177 of the ECT states that Community policy will contribute to the general objective of developing and consolidating democracy and the rule of law as well as fostering the sustainable economic and social development of the developing countries, their smooth and gradual integration into the world economy and the campaign against poverty in those countries.

The inclusion of development-policy provisions in the Treaty establishing the European Community is politically significant, since it establishes development policy as a Community policy in its own right. In addition to the formulation of general development policy objectives, which are adopted under the co-decision procedure, three obligations are imposed on the Community and its Member States. According to Article 178, the European Union shall take account of development objectives in the policies that it implements which are likely to affect developing countries. Article 180 requires the European Union and the Member States to coordinate their policies on development cooperation and to consult each other on their aid programmes. According to Article 181, the Community and the Member States shall, within their respective spheres of competence, cooperate with third countries and with the competent international organisations.

Achievements

The implementation of the European Union's development policy takes two main forms: first, regional agreements

granting certain privileges and, secondly, action at world level.

A. The regional agreements

These include the Cotonou Partnership Agreement (→6.5.5), concluded with 77 African, Caribbean and Pacific states, and agreements with the states of the southern and eastern Mediterranean (Algeria, Morocco, Tunisia, Egypt, Jordan, Lebanon and Syria) (→6.4.5).

This regional policy is essentially characterised by the fact that the agreements cover all forms of dialogue (commercial, technical, financial, cultural and, in the most recent agreements, political). These characteristics are enshrined in international treaties ratified by the parliaments concerned, and the countries benefiting from them can decide what use they wish to make of the various cooperation instruments. Finally, this type of cooperation is offered to the developing countries in specific geographical areas. The Trade, Development and Cooperation Agreement (TDCA) between the European Union and South Africa, which was signed in Pretoria on 11 October 1999, exemplifies this policy.

B. Action at world level

1. Scope

This action includes the trade and cooperation agreements of various types with the Latin American and Asian countries (→6.4.8), the trade regimes applicable to the developing countries (→6.5.2), financial and technical aid to Asian and Latin American developing countries, humanitarian aid (→6.5.3), special funds and funds devoted to the campaign against poverty.

It therefore covers all forms of cooperation pursued with a large number of developing countries (e.g. generalised preferences and food aid) and specific cooperation instruments designed to establish appropriate relations with each country (e.g. trade agreements with various Asian and Latin American countries) and with certain groups of countries in these two continents (in Latin America with Mercosur, the Andean Group and Central America and in Asia with ASEAN).

2. Strategic approach

UN international conferences on the environment, human rights, population, social development, the role of women and food security have demonstrated that countries can agree on common values and principles relating to key development factors. These processes have already led to significant changes in the perception of aid and its role in development. These changes fall within four main categories:

- (a) enhancement of the political dimension: human rights, democratic principles, the rule of law and good governance;
- (b) consolidation of links between relief, rehabilitation and development cooperation;
- (c) a new conception of the purpose of aid and a redefinition of the parties' respective roles: emphasis is placed on environment policy, local capacity-building and the role of civil society as well as on new ways of including other development agents, especially in the private sector;
- (d) a change in priorities, effected by reducing intervention in productive sectors and integrating new areas of activity:
 - actions to promote environmental protection, the management of natural resources and sustainable development, involving environmental-impact studies for all projects as well as financial assistance for specific environmental programmes and projects;
 - the creation of an instrument for structural-adjustment support at macroeconomic and sectoral levels;
 - institutional reforms, development of administrative capacity, building civil society, development of a more participatory approach and decentralised cooperation; a new conception of the economic role of the state, policies to foster private-sector development and support for trade development.

3. Legislative framework

In recent years the Council and Parliament have jointly adopted a series of regulations based on Article 179 of the ECT, with the aim of creating a clear legal basis for various development initiatives:

- Regulation (EC) No 2240/2004 of the European Parliament and of the Council of 15 December 2004 amending Council Regulation (EC) No 975/1999 laying down the requirements for the implementation of development cooperation operations which contribute to the general objective of developing and consolidating democracy and the rule of law and to

that of respecting human rights and fundamental freedoms (→6.1.2);

- Regulation (EC) No 625/2004 of the European Parliament and of the Council of 31 March 2004 extending and amending Regulation (EC) No 1659/1998 on decentralised cooperation;
- Regulation (EC) No 1568/2003 of the European Parliament and of the Council of 15 July 2003 on aid to fight poverty diseases (HIV/AIDS, tuberculosis and malaria) in developing countries;
- Regulation (EC) No 1567/2003 of the European Parliament and of the Council of 15 July 2003 on aid for policies and actions on reproductive and sexual health and rights in developing countries;
- Regulation 1724/2001 of the European Parliament and of the Council of 23 July 2001 concerning action against anti-personnel landmines in developing countries;
- Regulation (EC) No 2493/2000 of the European Parliament and of the Council of 7 November 2000 on measures to promote the full integration of the environmental dimension in the development process of developing countries;
- Council Regulation (EC) No 1658/98 of 17 July 1998 on co-financing operations with European non-governmental development organisations (NGOs) in fields of interest to the developing countries.

Almost all these regulations will be incorporated in the new Development Cooperation Instrument (DCI), which will come into force in 2007. Parliament and the Council adopt the DCI under the co-decision procedure.

C. The Declaration on Development Policy

In 2000, the Commission proposed a new declaration on development policy. The priorities of development policy also take account of the new international context, past experience and social and economic developments. These priorities include:

- strategies designed to bolster the fight against poverty;
- increased regional cooperation with the aim of developing regional economies and growth in recognition of their important role in conflict prevention;
- integrating developing countries into the world economy, allowing the poorest countries to benefit from special treatment with regard to trade and debt relief;
- private-sector development and economic reforms designed to achieve diversification and productivity growth;

- respect for human rights, the rule of law and democratic principles, especially women's and children's rights;
- good governance as an essential requirement of development policy and, consequently, the establishment of transparent and accountable systems of government and administration;
- ownership: if stakeholders are encouraged, they will grow in number, organise and train themselves fully autonomously, form networks and build partnerships with each other and with public entities to provide a sustainable long-term approach to development.

D. The consensus on development policy

On 20 December 2005, the three European political institutions — the Council, Parliament and the Commission — jointly adopted the first European consensus on the EU's development policy. The text of that consensus is, in fact, a revision of the Declaration on the Development Policy of the EC but primarily it is the first text common to the Community institutions and the Member States. In fact the new single set of principles is intended to guide the actions of the Commission and of the 25 Member States. It is entirely consistent with the Millennium Development Goals adopted by the United Nations in the year 2000. The priority of the new development policy is the eradication of poverty. The policy is based on promotion of good governance, democracy and human rights and on partnership with the developing countries, in line with the Commission's declaration of 2000. As this is a joint text, the consensus emphasises the consistency needed between measures by the Community and the Member States, in a spirit of complementarity, so the European Union really offers a common vision of development.

Role of the European Parliament

Development policy is a Community policy, in respect of which the European Parliament (EP/Parliament) has the power of co-decision. It is the only area of foreign policy in which the Council shares legislative powers with Parliament.

In its report on complementarity between Community and Member State policies on development cooperation, Parliament expressed the view that consistency of action on the part of the EU was a priority if the effectiveness and credibility of aid were to be enhanced.

Parliament felt the need to make a pronouncement on decentralised cooperation, which serves to bring aid closer to its beneficiaries and to take more account of the real needs of the populations of developing countries. The EP believes that the beneficiaries of aid should include social movements campaigning for democracy and human rights.

In the work of the EP, special emphasis is placed on public health. Parliament supports an increase in the amount allocated to the Global Fund to Fight AIDS, Tuberculosis and Malaria and the reinforcement of Community action to foster reproductive and sexual rights.

Parliament has secured an increase in the budget allocated to environmental-protection programmes in the framework of development policy.

→ Armelle DOUAUD
09/2006

6.5.2. Trade regimes applicable to developing countries

Legal basis

Article 133 EC Treaty (amended by the Treaty of Nice).

Objectives

- Helping the developing countries to expand sales of their products on the markets of the industrialised countries.
- Promoting the industrialisation of the developing countries through customs duty reductions or exemptions for finished or semi-finished industrial products and certain agricultural products.

Achievements

A. Historical evolution

The Community was the first to apply, with effect from 1 July 1971, the General Scheme of Preferences (GSP) to developing countries belonging to the 'Group of 77' within the United Nations Conference on Trade and Development (Unctad) and to the overseas countries and territories of the Member States. In 1995 the system covered 145 countries and independent territories and 25 territories and states dependent on the Member States of the Community or third countries. Albania, Estonia, Lithuania and Latvia were added in 1991, and the countries of the former Soviet Union in 1993.

1. The first scheme

It applied from 1971 to 1980 to developing countries belonging to the Group of 77 within Unctad. The main features were preferential tariff advantages granted unilaterally and on a non-reciprocal basis for:

- processed agricultural products (tariff reductions were allowed on a given number of scheduled products);
- finished and semi-finished industrial products (the recipient countries were able to export these products to the Community free of customs duty up to a ceiling fixed annually for each country and products. special measures were introduced for, in particular, textiles and coir and jute products).

These principles remained intact, but they were modified and adapted each year, while ensuring that the recipient countries received enough information to take advantage of the benefits offered by the GSP.

2. The second scheme

It was initially to apply for 10 years (1980–90). Provision was included, however, for an assessment to be made of its operation to allow for updates and adjustments in light of

the changing environment of the multilateral trading system. Its main features were as follows.

In the manufacturing sector, all quantitative restrictions were abolished in the case of the 36 least developed countries.

The mechanism of preferential limits applicable to 'sensitive' industrial products was modified. Under the original system, all beneficiary countries were monitored globally on an identical basis. This was replaced by a new system which, for each individual product, identified the highly competitive supplier countries; restrictions could now be imposed on these countries through the rigorous application of tariff quotas fixed by country, while access for the other supplier countries was regulated by a system of flexible/target ceilings for each country.

The 10-year revision scheduled took place on 1 January 1995, when a new scheme entered into force, based on the Commission's guidelines and approved by the Council on 19 December 1994.

B. The current GSP (1995–2004)

The EU's GSP is implemented following a cycle of 10 years. The present cycle began in 1995 and will expire in 2004. This arrangement is laid down in Council Regulation 2820/98 of 21 December 1998 which was amended in 2001 to take into account the GSP cycles (the 3rd GSP cycle was due to finish in 2001, the EU's third scheme GSP is not due to finish until 2004), so Regulation 2501/2001 extended arrangements to bridge this gap. In managing the GSP, the Commission is assisted by the Committee on Generalised Preferences, composed of representatives of Member States and chaired by the Commission. The Committee can be consulted or can express an opinion on certain draft implementation measures.

1. General rules

GSP preferences are granted to exports of specific products from individual countries. The GSP operates at two levels:

- the general arrangements providing basic trade preferences following the traditional objectives of economic development;
- other arrangements geared to fostering sustainable development and providing special incentives related to respect for social rights and environmental protection. The latter arrangements grant additional preferences upon the request of countries which respect certain social or environmental standards laid down in certain international agreements.

2. Beneficiary countries

Originally preferences had to be 'generalised', i.e. they had to be granted to all developing countries. Membership of the Group of 77, created by developing countries, is considered a criterion for being eligible for GSP treatment. China and the 'economies in transition' that emerged after the dismantling of the former Soviet Union, have been granted similar treatment to the developing countries. A country may be excluded from the benefits of the GSP if its per capita income and/or value of its manufactured exports are too high. At present, Hong Kong, Singapore and South Korea have been excluded on the basis of these criteria.

3. General arrangements

The GSP is a trade policy instrument aimed at fulfilling development objectives. The tariff modulation mechanism is based on trade policy considerations. The graduation mechanism and the special arrangements represent the development component of the general GSP arrangements.

(a) Tariff modulation

Since 1995, trade preferences under the GSP have been granted without quotas or quantitative restrictions. Instead, preferences are set according to a modulation mechanism. Depending on its sensitivity, each product is classified in one of four categories. The four categories are as follows:

- very sensitive products, for which the preferential tariff is 85 % of the normal Common Customs Tariff (CCT);
- sensitive products, for which the preferential tariff is 70 % of the CCT rate;
- semi-sensitive products, for which the preferential tariff is 35 % of the CCT rate;
- non-sensitive products, which enter the EU's market duty-free.

According to a safeguard clause, the benefit of GSP preferences may be suspended for certain products originating from certain countries in the event that those imports 'cause or threaten to cause serious difficulties to a Community producer'.

(b) Gradation

Provisions are necessary to make sure that more developed countries do not use the preferences and harm weaker economies. Therefore provisions determine whether a given sector in a given country is in a position to face international competition without benefiting from the GSP. A development index and a specialisation index apply. The former index is based on that country's income per capita and its level of exports of manufactured products. The latter index is based on that country's share of EU imports in a specific sector.

(c) Exceptions

If imports from a country in a specific sector exceed 25 % of all imports into the EU from all beneficiary countries in that sector during any given year, exports from that country in that sector do not benefit from GSP treatment regardless of its level of development. This provision is commonly known as the 'lion's share clause'. It is also to be noted that the graduation mechanism does not apply to countries whose exports to the EU in a given sector do not exceed 2 % of all beneficiary countries' annual exports to the EU in that sector. This exception is known as the 'minimal share clause'.

4. Special Arrangements

(a) Least developed countries

The EU's GSP provides more favourable treatment to least developed countries (LDCs) recognised as such by the UN. The additional advantages include duty-free access for all industrial and agricultural products listed in the regulation. Treatment for LDCs has been improved over the years: Council Regulation 602/98 of 9 March 1998 extended the coverage of both Regulation 3281/94 and Regulation 1256/96 concerning the Community's schemes of generalised tariff preferences for LDCs. In February 2001, the Council adopted Regulation 416/2001, the so-called 'Everything but Arms' (EBA) regulation, thus granting duty-free access, without quantitative restrictions, to the imports of all products from LDCs except arms and munitions. Only imports of fresh bananas, rice and sugar are not fully liberalised. Duty free access will only be granted in 2006 (bananas) and 2009 (rice and sugar). The Commission expects the preferential treatment to result in growing access to the European market and in turn reinforce the EBA's impact on investments and diversification of production in beneficiary countries.

(b) Special arrangements supporting measures to combat drugs

Since 1990 special measures, (duty-free access for agricultural and industrial exports) have been granted to countries of the Andean Community (Bolivia, Colombia, Ecuador, Peru and Venezuela) on the grounds that the development of these countries is seriously hampered by drug production. Special arrangements aim to create export opportunities for substitution crops and to improve economic and social development, in particular through industrialisation.

These special arrangements have been extended to the Member States of the Central American Common Market (Costa Rica, Guatemala, Honduras, Nicaragua, El Salvador), Panama and more recently, Pakistan.

(c) *Special incentives*

Since 1995, the EU's GSP scheme has acquired an additional development orientated dimension by providing special incentives rewarding compliance with international social and environmental standards. To qualify under the social policy incentive clause, countries must be able to provide proof of compliance with International Labour Organisation (ILO) Convention No 87 on the freedom of association, No 98 on the right to organise and to bargain collectively and No 138 on child labour. In order to qualify under the environmental clause, countries must demonstrate that they effectively apply ITTO (International Tropical Timber Organisation) standards for the sustainable management of tropical forests.

The special incentive clauses allow for a significant increase in the preferential margin. For industrial products the preferential margin could almost be doubled. The advantage is slightly less for agricultural products than for industrial products.

5. Temporary withdrawal

The benefit of GSP preferences may be temporarily withdrawn in whole or in part for products originating in a country in one of the following cases:

- practice of any form of slavery or forced labour;
- export of goods made by prison labour;
- manifest shortcomings in customs controls on export, transit of drugs, or failure to comply with international conventions on money laundering;
- fraud or failure to provide administrative cooperation as required for the verification of certificates of origin forms;
- manifest cases of unfair trading practices;
- infringements of the objectives of international conventions such as NAFO (Northwest Atlantic Fisheries Organisation) concerning the conservation of fish resources.

6. Rules of origin

Rules of origin are designed to ensure that eligible products have actually been produced in the exporting developing country. The whole of the preferential GSP scheme is subject to compliance with the conditions governing the origin of products eligible for preferences.

Determining a product's origin is particularly important where two or more countries have been involved in its manufacture. 'Regional cumulation of origin' is a special arrangement designed to foster regional economic integration between developing countries by a waiver of certain conditions pertaining to the determination of origin. 'Donor country content' is a special arrangement designed to foster industrial cooperation between the EU

and developing countries by allowing products from the EU to be considered as originating in the beneficiary country processing them.

C. The new GSP

The new GSP will come into force on 1 January 2006 although a provisional form of the GSP plus has been fast-tracked to be in place from 1 July 2005. The eligibility of countries placed in the GSP Plus incentive scheme will be confirmed by an assessment of their effective implementation of core human and labour rights, good governance and environmental conventions before the beginning of 2006.

The revised system is designed to be simpler, more transparent and more stable. The new GSP will remain unchanged until the end of 2008 hence providing stability and predictability for importers and exporters. At the end of this period, the allocation of preferences will be reviewed to better meet the evolving strengths and development needs of each country.

There will be three schemes instead of five:

- General scheme: product coverage increases from about 6 900 to about 7 200. It will incorporate 300 additional products mostly in the agriculture and fishery sectors of interest for developing countries;
- There will be a new 'GSP Plus' scheme for especially vulnerable countries with special development needs. It will cover around 7 200 products which can enter the EU duty free. The beneficiaries must meet a number of criteria including ratification and effective application of 27 key international conventions on sustainable development and good governance;
- 'Everything but Arms' will remain unchanged.

1. The 'GSP Plus': a new deal for vulnerable countries

To benefit from 'GSP Plus', countries need to demonstrate that their economies are poorly diversified and therefore dependent and vulnerable. Poor diversification and dependence is defined as meaning that the five largest sections of its GSP-covered imports to the Community must represent more than 75 % of its total GSP-covered imports.

GSP-covered imports from that country must also represent less than 1 % of total EU imports under GSP.

They also have to have ratified and effectively implemented 27 key international conventions on sustainable development and good governance.

2. A simpler mechanism for graduation

Certain products from GSP beneficiaries can be graduated from the scheme if they become competitive on the EU market. This is a sign that these products no longer need

the GSP to boost their exportations. Thus, graduation is not a penalty, but indicates that the GSP has successfully performed its function, at least in relation to the country and product in question. This ensures that the GSP focuses on the countries most in need and helps them play a greater role in international trade.

Changes will be made to the graduation mechanism to make it simpler in the new system. The current criteria (share of the GSP imports, development index and export-specialisation index) have been replaced with a single straightforward criterion: share of the Community market expressed as a share of exports from GSP countries. This share would be 15 % with 12.5 % for textiles and 12.5 % for clothing.

Graduation will be assessed at the end of 2008, except in the case of textiles and clothing which will be reviewed annually to properly reflect the possibility of sharp increases in textile and clothing exports.

Role of the European Parliament

The current treaties do not grant any legislative power to the European Parliament (EP) as regards trade policy. The

trade agreements are negotiated by the Commission on the basis of negotiating directives adopted by the Council and in consultation with a special committee appointed by the Council called 'The Article 133 Committee'. The Council then concludes these agreements without requiring EP approval.

Thus, the EP was consulted only for opinion at the time of the 2005 reform of the Council regulation on the generalised tariff preferences granted to developing countries.

The Treaty establishing a Constitution for Europe provided that the ordinary legislative procedure would apply to trade policy and that all trade agreements from now on would be subjected to EP approval (art.III-325-6) and that the EP would be kept informed of progress of the negotiations (art.III-315-3).

→ Dominique DELAUNAY
06/2006

6.5.3. Humanitarian aid

Legal basis

Article 179 of the EC Treaty.

Objectives

According to Council Regulation (EC) 1257/96 of 20 June 1996, the Community's humanitarian aid shall comprise assistance, relief and protection operations on a non-discriminatory basis to help people in third countries, particularly the most vulnerable among them, in particular:

- to save and preserve life during emergencies and their immediate aftermath and natural disasters;
- to provide the necessary assistance and relief to people affected by long-lasting crises arising, in particular, from outbreaks of fighting or wars;
- to help finance the transport of aid and efforts to ensure that it is accessible to those for whom it is intended;
- to carry out short-term rehabilitation and reconstruction work, especially on infrastructure and equipment, with a view to facilitating the arrival of relief;

- to cope with the consequences of population movements (refugees, displaced people and returnees) caused by natural and man-made disasters;
- to ensure preparedness for risks of natural disasters or comparable exceptional circumstances and use a suitable rapid early-warning and intervention system;
- to support civil operations to protect the victims of fighting or comparable emergencies, in accordance with current international agreements.

Achievements

The Community has been involved in humanitarian aid operations since the end of the 1960s. The significant amount of aid supplied since the late 1980s has made it a key element of the Community's international policy. The EU has now become the world's largest provider of humanitarian aid. Since 1992, it operates this aid through ECHO (European Office for Emergency Humanitarian Aid).

A. Purpose of ECHO

ECHO was set up with the aim of centralising the Commission's humanitarian aid operations and thereby organising them more effectively.

Beyond the funding of humanitarian aid, ECHO:

- carries out feasibility studies for its humanitarian operations;
- monitors humanitarian projects and sets up coordination arrangements;
- promotes and coordinates disaster prevention measures by training specialists, strengthening institutions and running pilot micro-projects;
- finances humanitarian landmine clearance operations and provides information for people in affected areas about the dangers of anti-personnel mines;
- organises training programmes and gives its partners technical assistance;
- raises public awareness about humanitarian issues in Europe and elsewhere.

B. Gradual improvement of the instrument

A number of measures have been adopted over the years to ensure that the aid is managed in a sound and effective manner:

- the signature of a framework partnership contract with over 200 partners providing for greater flexibility in the allocation of ECHO funding and management procedures which promote responsibility;
- the adoption of a new organisational structure of ECHO in February 1996 including the creation of three new units. ECHO is now structured so that the management of resources is separate from the evaluation of humanitarian requirements and the preparation of contracts with partners;
- the setting-up of an evaluation unit in 1996 helped to strengthen the monitoring and effectiveness of humanitarian operations;
- the financial audits of ECHO's principal partners;
- the enhancement of coordination with the Member States and other humanitarian actors;
- the development during 2001 of a local information system HOLIS (Humanitarian Office Local Information System) to integrate existing information systems such as ECHO's contract database HOPE, with sophisticated management systems currently being developed.

C. Recent initiatives to enhance efficiency

1. Capacity for urgency

On 6 June 2001, the Commission adopted a new decision procedure for 'primary emergency' humanitarian aid situations. The new procedure allows the Commission to take formal funding decisions within 24 to 72 hours of the onset of new humanitarian disasters and to release the necessary funds quickly through 'fast-track' budgetary procedures. As a result, during the tsunami that devastated South-East Asia at the end of 2004 or during the Kashmir earthquake, ECHO was able to mobilise EUR 3 million from the very first day.

In order to be able to respond to major new emergencies and crises, the Commission may also request extra funds from the EC budget's emergency reserve from the Budgetary Authority, namely the Council and Parliament. EUR 200 million is potentially available for this purpose.

2. Disaster prevention

ECHO has confirmed its readiness for greater involvement in disaster prevention and preparedness through its proactive and regional approach. The Dipecho programme, which aims to fund disaster preparedness activities, came into effect in 1998 and operates within regional frameworks. The objective of the action plans is to remedy shortcomings in disaster prevention and preparedness systems and ensure consistency. The activities cover human resource development, improvement of response capabilities and implementation of demonstration micro-projects. Action plans are being prepared for disaster-prone regions, i.e. South-East Asia and Bangladesh, Central America and the Caribbean, Andean Community, South Asia, Central Asia and sub-Saharan Africa. The plans are prepared on the basis of analysis and regional consultations. Since its creation, Dipecho has financed more than 319 projects throughout the world to the tune of EUR 78 million. In 2004, ECHO allocated EUR 13.7 million to projects in Central America, Central Asia and South-East Asia.

D. Scope and destination of the action

1. On the whole

To date, ECHO has provided almost EUR 6 500 million of humanitarian aid. ECHO is active in more than 30 conflict zones and more than 85 countries worldwide and provides an essential lifeline to 40–50 million vulnerable people. The annual budget managed by ECHO totals more than EUR 500 million.

2. In 2004

The financial resources allocated to ECHO for 2004 totalled EUR 495.5 million. Following the tsunami at the end of December, EUR 100 million of the reserve was mobilised at the beginning of January.

3. In 2005

Just under EUR 500 million was set aside under the 2005 budget, to which EUR 135 million was added from the reserve following the tsunami. The priority areas were Africa, Asia and the Northern Caucasus. ECHO continued to allocate significant resources to the rebuilding of the countries affected by the tsunami. The Commission's Humanitarian Office also gave priority to the 'forgotten crises': Thailand, Myanmar, Nepal, Indonesia, Tajikistan, Chechnya, Sahrawi refugees, Somalia and Uganda. EUR 123 million — 20 % of the 2005 budget — was allocated to these disastrous situations.

4. In 2006

The budget has remained stable. Humanitarian aid has been of fundamental importance in assisting the civilian population after international aid was withdrawn from the Palestinian Authority. EUR 50 million has been granted to victims of the war in Lebanon during the summer. Afghanistan, the African Great Lakes Region and Darfur are still large-scale areas of ECHO involvement. The Commission's humanitarian office also gives priority to the 'forgotten crises': Thailand, Myanmar, Nepal, Indonesia, Tajikistan, Sahrawi refugees, Somalia and Uganda.

Role of the European Parliament

Through its opinions and resolutions the European Parliament (EP) has always expressed its concern with regard to humanitarian aid and thus brought considerable pressure to bear for a constant improvement to, and development of, the range of instruments. The idea of creating ECHO originated in the EP.

As the institution for adopting the EU budget, the EP has insisted every year on an increase in the appropriations for humanitarian aid, not only in general but also for specific regions or countries. It has also frequently sent delegations to study the situation of local populations on the ground, to enable it to make specific proposals to improve aid.

It is also worth noting the many resolutions on the situation in various trouble spots where people are in particular need. Over the past few years the EP has concerned itself several times on the basis of current events with the Great Lakes Region, Sudan, Ethiopia and Eritrea, Niger, Zimbabwe, Haiti, Nepal and the Democratic People's Republic of Korea, among others.

→ Armelle DOUAUD
09/2006

6.5.4. Food aid and food security

Legal basis

Article 179 of the EC Treaty.

Objectives

Food aid was initially managed according to the rules of the common agricultural policy in order to dispose of surpluses. Over the years food aid policy has gradually been reformed, which has detached it from the common agricultural policy and integrated it more firmly into the Union's development policy in response to concerns about food security. In fact, food aid imported from rich countries can destroy local or neighbouring markets and does not solve food security problems in the long term.

A new multiannual financial framework will apply from 2007 (→ 1.5.2.). These new budget provisions are accompanied by a simplification of the legislative framework. The entry into force of new instruments and thematic programmes for external relations has modified previous regulations. The new thematic programme for

food security pursues the first millennium development goal: cutting extreme poverty and hunger by half before 2015. As was previously the case, humanitarian food aid is part of humanitarian aid.

Achievements

A. General principles

Regulation (EC) No 1726/2001 of the European Parliament and of the Council of 23 July 2001 amending Regulation (EC) No 1292/96 of 27 June 1996 (adopted on 15 June 2000) on food-aid policy and food-aid management and special operations in support of food security laid down the following principles:

- food aid is an important feature of the Community's development cooperation policy;
- food aid must be integrated into the developing countries' policies for the improvement of their food security, in particular through the establishment of food

strategies aimed at alleviating poverty and geared to achieving the ultimate goal of making food aid superfluous;

- food aid and operations in support of food security must be taken into account as objectives in all Community policies likely to affect developing countries, in particular from the point of view of economic reforms and structural adjustment;
- care must be taken to ensure that food aid has no adverse effects on local production, distribution, transport and marketing capacities;
- food security should help the populations of developing countries and regions to improve their own food production at household, local, national and regional levels;
- early-warning systems concerning the food situation can be supported by the Community, along with food storage programmes to improve food security in recipient countries;
- the Council is to determine the Community share of the overall amount of aid, either in tonnes of wheat equivalent or in value or in a combination of tonnage and value, laid down in the Food Aid Convention as the total contribution of both the Community and its Member States.

Food-aid operations of a humanitarian nature are carried out in the framework of the rules on humanitarian aid policy, thus they are administered by ECHO (→6.5.3).

With the new rules on development cooperation, food security will be an important link between humanitarian aid and development but also an important aspect of development policy. The principles guiding food security are similar to those of the 2001 regulation.

B. The Food Aid Convention of 13 April 1999

This Convention replaces the Food Aid Convention of 1995.

1. Objectives

(a) Types of situation

The aim of the convention is to contribute to world food security and to improve the ability of the international community to respond to emergency food situations and other food needs of developing countries by:

- making appropriate levels of food aid available on a predictable basis;
- encouraging member countries to ensure that the food aid provided is aimed particularly at the alleviation of poverty and hunger of the most vulnerable groups and is consistent with agricultural development in those countries;

- including principles for maximising the impact, effectiveness and quality of the food aid provided as a tool in support of food security;
- providing a framework for cooperation, coordination and information-sharing among members and food aid-related matters to achieve greater efficiency in all aspects of food-aid operations and better coherence between food aid and other policy instruments.

(b) Categories of beneficiaries

Food aid under the convention may be provided to:

- least developed countries;
- low-income countries;
- lower middle-income countries and other countries included in the World Trade Organisation (WTO) list of net food-importing developing countries, when food emergencies are declared or when food aid is targeted at vulnerable groups.

2. Means and methods

Under the convention (Article 3) the EU and its Member States have a global annual commitment of 1 320 000 tonnes of wheat equivalent. The total indicative value of the EU and Member States' annual commitment amounts to EUR 422 million. This figure represents the total estimated cost, including transport and other operational costs associated with food-aid operations.

EU operations in support of food security consist in either supplying food products or financing development projects relating to food security.

Among the products to be supplied as food aid the largest category is cereals. Wheat and white maize are the main cereals allocated to Africa. Rice is consumed largely in Asia but also in many other developing countries. Pulses, in particular beans, are rich in protein and often particularly suited to the diets of the recipient groups. These products were formerly included under 'other products', a category which is not accounted for in tonnes but by value, since it covers a wide variety of products such as groundnut oil, dried fish, meat, tinned foods, tomato puree, fruit and seeds. Other categories are vegetable oil, sugar, milk powder and butter oil. Vegetable oil adds fat to the diet while sugar is useful as an energy booster in food-supplement programmes for severely undernourished groups of refugees and displaced persons.

In addition to food products, seeds, fertilisers, tools and other agricultural inputs may also be supplied as part of farm-rehabilitation programmes aimed at improving the recipients' food security.

Financial allocations intended to help the countries improve their food security may be used to finance storage

programmes or early-warning systems, public information and education programmes, the purchase of tools and inputs, farm-rehabilitation projects and marketing.

C. Level and destination of aid

1. Volume of aid

(a) *In general*

2001 saw a shift in focus in the Commission's implementation of its food-aid and food-security programme. The Commission's aim was to integrate the food-security requirement more fully into the overall development strategy of the beneficiary countries referred to in the country strategy papers and poverty reduction strategy papers. The programme also focused on increased ownership of the programmes and policies by national partners — governments and civil society. The annual appropriations available in the budget for food-aid and food-security operations in developing countries amount to EUR 500 million on average.

(b) *Direct aid*

Administered by the Commission, direct aid is granted to governments in the form of financial aid and support operations.

(c) *Indirect aid*

Indirect aid is administered through international organisations like the World Food Programme (WFP) and individual NGOs. In the 2006 budget, it amounted to EUR 197 million.

2. Recipients

Intervention countries are divided by the Commission into two groups. First, those that receive structural aid, namely the least developed countries (LDCs) with a high food-insecurity index and, secondly, those in a post-crisis situation. In these countries interventions mostly involve supplying food aid, tools and seeds.

About 40 countries — 26 in Africa — were given priority for the period 2004–06, so as not to disperse resources and to make aid more effective in the beneficiary countries.

Role of the European Parliament

The European Parliament:

- adopted the regulation on the aid and food security policy in co-decision;
- called on the Commission to support the priority use of products deriving from Community agricultural production in the implementation of the Food Aid Convention (resolution of 4 May 1999);
- called for access to food in sufficient quantities and of a sufficient quality to be recognised as a fundamental human right for the people of the developing countries and issued an appeal for the implementation of the Universal Declaration of Human Rights regarding the right to food and well-being, expressing the view that national governments have a duty to honour that obligation (resolution of 3 September 2002 on trade and development for poverty eradication and food security);
- took the view that the fight against poverty and food insecurity must incorporate an attack on the structural causes of poverty in the developing countries, and, accordingly, called for measures to foster access to land, water and the resources of biodiversity and measures to foster a policy of local support for assets such as sustainable agricultural smallholdings.

→ Armelle DOUAUD
09/2006

6.5.5. Relations with the African, Caribbean and Pacific countries: from the Yaoundé and Lomé Conventions to the Cotonou Agreement

Legal basis

Article 310 of the EC Treaty.

Objectives

Following the expiry of the fourth Lomé Convention on 29 February 2000, the partnership agreement signed in Cotonou, Benin, on 23 June 2000 established a new framework for future relations between the European Union (EU) and the African, Caribbean and Pacific (ACP) countries. Just like the Lomé Convention, the Cotonou Agreement aims to improve the standards of living and economic development of the ACP countries and establish close cooperation with them on a basis of complete equality. The new agreement, however, differs from the previous conventions in that its coverage extends beyond the traditional range of development issues. Its main aim is the eradication of poverty through fuller integration of the ACP states into the world trading system. It also reinforces the institutional and political dimension of their relations, especially in crucial areas such as human rights, democracy and good governance. The first revision of the agreement, in 2005, was designed to improve political dialogue, to enshrine all parties' recognition of the jurisdiction of the International Criminal Court and to simplify procedures for the allocation of aid. References to the aims of curbing the proliferation of weapons of mass destruction and combating terrorism were also added to the agreement.

Achievements

Previous agreements

1. From Yaoundé to Lomé

Part Four of the EEC Treaty, together with an implementing convention, governed relations between the EEC and overseas countries and territories (OCTs). After these countries gained independence, the 18-member, and later 19-member, African States, Madagascar and Mauritius (ASMM) group became associated with the EEC under the two Yaoundé Conventions (1964–69 and 1971–75). At the same time, the Convention of Arusha (1971–75) established trade links with the three East African States of Kenya, Uganda and Tanzania.

Protocol 22 to the Acts of Accession of the United Kingdom, Ireland and Denmark offered the 20

Commonwealth countries in Africa, the Caribbean and the Pacific the opportunity to negotiate on the structure of their future relations with the EEC. Other African states that were not members of the Commonwealth or the ASMM group were also given the same option.

This led to the First Lomé Convention (1975–80) which was followed by three more (1981–85, 1986–90 and 1990–2000).

2. The Fourth Lomé Convention

The Fourth Lomé Convention was signed on 15 December 1989 for a period of 10 years and came into force on 1 March 1990, while the associated financial protocol was adopted for five years only. The amended convention resulting from the mid-term review and the second Financial Protocol to the Lomé IV Convention were signed on 4 November 1995 and expired on 29 February 2000.

Practically all products originating in the ACP States (99.5 %) had free access to the Community. Reciprocal arrangements were not compulsory; the ACP countries were merely required to grant the EU most-favoured-nation status. The Stabex system (stabilisation of export earnings) guaranteed the ACP countries a certain level of export earnings by protecting the latter against the fluctuations to which they would normally be subject as a result of the functioning of markets or the vicissitudes of production. The system for mineral products (Sysmin) provided subsidies to deal with temporary production or export problems in the mining sector. Under Lomé IV the system covered eight minerals.

As a result of the mid-term review, a clause (Article 366(a)) was inserted under which aid to a State might be partially or totally suspended if it breached Article 5 (human rights, democracy and the rule of law) of the convention.

The conclusion of the Cotonou Partnership Agreement

1. Process

The negotiations on the ACP–EU Partnership Agreement were concluded in Brussels on 3 February 2000. A separate agreement was signed with South Africa (→6.5.1) in pursuance of the protocol establishing South Africa's partial accession with effect from April 1997. The signing ceremony took place in Cotonou, Benin, on 23 June 2000. The first revision of the agreement was signed in Luxembourg on 25 June 2005.

The ratification process was completed on 27 February 2003, when the Council of the European Union deposited its instrument of ratification. The new agreement entered into force on 1 April 2003, but many of its provisions had already been applied since August 2000, though not the clauses relating to the Ninth European Development Fund. The new agreement has a term of 20 years and may be revised at five-yearly intervals (Article 95).

2. Main substance of the agreement (Articles 2 and 4)

The Cotonou Agreement, characterised by the term 'partnership', is all about mutual commitment and responsibility, hence the emphasis given to political dialogue, covering such issues as democracy, good governance and immigration, and to broad-based involvement of civil society. The new agreement also focuses on the sustainable economic development of ACP States and their smooth and gradual integration into the global economy through a strategy combining trade, investments, private-sector development, financial cooperation and regional integration. Development strategies focus on the reduction of poverty, which they establish as a priority objective.

The institutional and political dimension

1. Institutions

The joint institutions are the Council of Ministers, the Committee of Ambassadors and the Joint Parliamentary Assembly. The new agreement renames the former Joint Assembly 'the Joint Parliamentary Assembly' in order to emphasise the parliamentary nature of this body. Included in the tasks of the Joint Parliamentary Assembly is the organisation of regular contacts, not only with economic and social actors as in the previous Lomé Convention, but also with civil society (Article 17). The main innovation as regards the Joint Council of Ministers is the broadening of its mandate to conduct an ongoing dialogue with representatives of the social and economic partners and other members of civil society (Article 15).

2. Actors in the partnership (Articles 4 to 7)

One of the most significant innovations of the new agreement is the inclusion of a chapter on the actors involved in the ACP–EU Partnership. The ACP countries recognise the complementary role of non-governmental players in the development process. To this end, non-governmental bodies are informed and involved in consultation on cooperation policies and on the political dialogue. They are involved in the implementation of cooperation projects and provided with adequate support for capacity-building.

3. Political dialogue (Articles 8 to 10)

The parties are to engage regularly in a comprehensive and balanced political dialogue conducted in a flexible manner

at the appropriate level in order to exchange information and to establish priorities and common principles. The objectives of the dialogue include regional cooperation, conflict prevention and peaceful settlement of disputes. Through dialogue, the parties are to contribute to peace, security and stability and promote a stable and democratic political environment (Article 8(3)). Following the revision of the Cotonou Agreement, representatives of the ACP Group and the ACP–EU Joint Parliamentary Assembly can now take part in the political dialogue.

The dialogue covers all fields of cooperation laid down by the agreement as well as questions of common interest, including the environment, equality between men and women, migration and cultural matters. It devotes special attention to human rights, democratic principles, the rule of law and good governance, the arms trade, anti-personnel landmines, military expenditure, corruption, drugs and organised crime and ethnic, religious or racial discrimination. The EU provides assistance for capacity-building to promote democracy, transparency, improved access to justice and more efficient law-enforcement procedures.

4. Migration (Article 13)

The agreement establishes a framework for dealing with migration through the readmission clause: each ACP or EU State is to accept the repatriation of any of its nationals who are illegally present in the territory of an EU or ACP State and readmit them at the request of the latter without further formalities. The agreement also includes a provision establishing non-discriminatory treatment of legally employed workers from ACP countries in EU Member States or vice versa.

Trade and financial framework

1. Economic partnership agreements (Articles 36 and 37)

The agreement provides for a preparatory period of eight years before the conclusion of any new WTO-compatible trade arrangements. Formal negotiations for these trade agreements started in September 2002 and should culminate in a deal by January 2008. At the end of 2005, the negotiations entered their third phase, in which the EU is negotiating with the six ACP regions on the dismantling of non-reciprocal trade preferences in favour of economic partnership agreements based on free trade between the EU and the ACP regions. The existing system of non-reciprocal trade preferences under Lomé IV is being retained for the period between 2002 and 2008. The economic partnership agreements will serve to create an entirely new framework for the flow of trade and investment between the EU and the ACP countries. From 2008 to 2020, a reciprocal system of free trade in goods and services will be phased in as WTO-compliant trade

agreements are concluded; the ACP countries are being encouraged to accede to these agreements in regional groups once they have achieved their own regional integration.

2. Trade-related areas and investment

For the first time, the ACP–EU Agreement contains provisions (Chapter 5) on trade factors such as non-tariff barriers, including intellectual property rights and biodiversity measures, competition policy, standards, plant-health measures and environmental and labour standards. In Article 46, both parties underline the importance of the International Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) and the Convention on Biological Diversity.

The new agreement places greater emphasis on support for investment and the private sector. Cooperation in the field of investment will include:

- measures to create and maintain stable investment conditions, encouraging private investment in ACP countries;
- support for the long-term investment of financial resources; and
- investment-guarantee schemes.

3. Financial cooperation

The amount of EU financial assistance for the first five years of the agreement (2003–08) is EUR 13.5 billion. An additional sum of EUR 2.5 billion is also available from the previous European Development Fund (EDF), taking the total to EUR 16 billion, to which is added EUR 1.7 billion from the European Investment Bank (EIB) in the form of loans. A further amount of EUR 10 billion in the form of grants has been earmarked to support long-term development.

The 10th EDF (2008–13) has been set to cover at least EUR 23 billion.

The Investment Facility is designed to help businesses in ACP countries by supporting sound private companies, promoting privatisation, providing long-term finance and risk capital and strengthening local banks and capital markets. The sum of EUR 2.2 billion will be allocated to the Investment Facility to be managed by the European Investment Bank, and EUR 1.3 billion will be assigned to regional cooperation. It has been agreed that the ACP States will designate the regions eligible for aid.

4. Resource allocation and programming

The agreement introduces significant changes to programming procedures and resource allocation. ACP States must now define eligible non-governmental players and specify the amount of resources earmarked for such

players in their national indicative programmes. Resource allocation to ACP countries will be based on both needs and performance. Each ACP State and region will receive an indication of the resources it could receive over a five-year term. In addition to mid-term and end-of-term reviews of national indicative programmes, ACP and EU authorities will jointly carry out an annual review to identify the causes of any delays in implementation and propose measures to improve the situation. Following mid-term and end-of-term reviews, the EU may revise resource allocation to ACP States according to their needs and performance. The allocated resources will consist of two main elements: an allocation for macroeconomic support, programmes and projects and an allocation to cover unforeseen needs, such as emergency assistance.

5. Stabilisation of export revenue

The agreement replaces Stabex and Sysmin with a support system designed to mitigate the adverse effects of short-term fluctuations in export revenue. Resources for this system will be allocated through the national indicative programmes. Support may be provided if a worsening public deficit coincides with a loss of overall export earnings or a loss of export earnings from agricultural and mineral products. The least developed countries (LDCs) benefit from an arrangement whereby a smaller loss of export revenue triggers support payments (Article 68).

6. Debt relief

Outside the ACP–EU framework, the ACP countries agreed to an EU proposal for the use of up to EUR 1 billion from uncommitted EDF funds to support highly indebted poor countries in the ACP Group. On a case-by-case basis, uncommitted resources from past indicative programmes can be used for debt relief. Technical assistance relating to debt management will be provided to ACP States (Articles 66 and 67).

Role of the European Parliament

The European Parliament (EP/Parliament) is kept regularly informed by the Commission of the implementation of the ACP–EU Partnership Agreement. However, it has few powers in respect of the allocation of aid as the EDF is not included in the budget. Nevertheless, it must grant an annual discharge in respect of the operations financed under the EDF.

In addition, Parliament assented to the partnership agreement, and each revision is also subject to parliamentary assent. In the view of the EP, increases in aid under the Cotonou Agreement should have been sufficient to honour the pledge given by the EU to increase public development aid in order to achieve the millennium development goals.

The EP makes a significant contribution to ACP–EU cooperation through the work of its Committee on Development and Cooperation and through the ACP–EU Joint Parliamentary Assembly, the successor body of the former Joint Assembly, which has a fundamental role to play in the development and strengthening of relations between the EU and its ACP partners and brings together the elected representatives of the EU (the members of the EP) and of the ACP States twice a year. Each year Parliament adopts a resolution expressing its views and concerns

about the work of the ACP–EU Joint Parliamentary Assembly and ACP–EU cooperation.

Members of the EP pay regular official visits to ACP countries, either in connection with the Joint Parliamentary Assembly or as election observers. In 2005 and 2006 Members monitored the elections in Ethiopia, Liberia, Uganda and the Democratic Republic of the Congo.

→ Armelle **DOUAUD**
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