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Note to readers

This 2009 edition of the *Fact Sheets on the European Union* is the 12th 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 European integration and of the European Parliament's contribution to that process by keeping them simple, clear and concise and using a format that is as consistent and straightforward as possible.

The number of fact sheets (165) and structure of the publication have been modified only slightly since the previous edition. We have naturally included developments that have occurred over recent years, such as the reform of the common agricultural policy, climate change and the development of the single market.

Each fact sheet is identified by a number, the first two parts of which refer to the section and chapter to which the fact sheet belongs. This numbering scheme is also used for cross references. At the beginning of the publication, the contents pages list all fact sheets by section and chapter and indicate the start page for each.

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 has been used. Nevertheless, we also refer to the changes introduced by the Lisbon Treaty.

This new publication reflects the legislative situation as it stood in August 2008, the cut-off date for drawing up the revised texts.

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, particularly those produced by the European Parliament's Secretariat.

Regular updates are made to the English, French and German versions of the *Fact Sheets on the European Union* on the European Parliament's website (http://www.europarl.europa.eu/).

Lastly, please note that a CD-ROM containing the fact sheets in 21 official EU languages is available from the Office for Official Publications of the European Communities.

Secretariat of the European Parliament

March 2009

Fact Sheets on the European Union

The European Union at a glance

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The content of these fact sheets covers **six main areas:** how the EU works, citizens' Europe, the internal market, common policies, economic and monetary union and the EU's external relations.

1 **How the European Union works**

The European Union (EU) has its own legislature and executive and an independent judiciary, which are supported and complemented by an additional set of institutions and bodies. The EU's rules and decision-making procedures are laid down in the Treaties. In order to achieve its objectives, the Union has its own budget.

2 **Citizens' Europe**

For EU citizens, the right to travel, live and work throughout the Union can easily be taken for granted. However, in order for them to be able to enjoy this right fully, an effective system to protect fundamental rights within the EU needs to be put in place and maintained.

3 **The internal market**

Following the dismantling of previous barriers, goods, services and capital move as freely throughout Europe as inside a Member State. The removal of obstacles and the opening up of national markets means that more companies can compete with one another.

4 **Common policies**

In order to speak with one voice, the EU has developed several policies and measures that all Member States endeavour to apply. These 'common policies' concern the entire Union and are designed to achieve common objectives.

5 **Economic and monetary union**

Economic and monetary union (EMU) is the result of a long process aimed at harmonising the economic and monetary policies of the European Union Member States and introducing a single currency: the euro. So far, 16 Member States have adopted the euro, which is used on a daily basis by over half the EU's population.

6 **The EU's external relations**

The EU's economic, commercial and financial weight makes it a leading player on the international scene. It has signed a series of bilateral and multilateral agreements with most countries and regions of the world. The common foreign and security policy (CFSP) is one of the instruments of the European Union's external relations.

Contents

4 Common policies

5 Economic and monetary union

6 The EU's external relations

1

How the European Union works

The powers conferred on the EU institutions derive from the founding Treaties, which were negotiated by the Member States and ratified by each of them. The Treaty establishing the European Community mentions five European institutions in the strict sense of the term. Three of these are responsible for drafting policies and taking decisions. They are the European Parliament, the Council of the European Union and the European Commission (the 'institutional triangle'). The Court of Justice of the European Communities ensures the upholding of Community law. The Court of Auditors examines the legality and regularity of Union revenue and expenditure and ensures sounds financial management. Several other bodies and agencies are responsible for carrying out specific tasks. In order to achieve the objectives set out in the Treaties, the EU has its own budget.


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Regalis Scientiarum et nonnullor
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ANNOTATIO.
Septentrio
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NUS
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1.1. Historical evolution of European integration

1.1.1. The first Treaties

The disastrous effects of the Second World War and the constant threat of an East–West confrontation rendered Franco-German conciliation an essential priority. The sharing of the coal and steel industry by six European countries established by the Treaty of Paris in 1951 was very symbolic of the creation of a common purpose and represented the first steps towards European integration. The Treaties of Rome of 1957 strengthened the foundations of this integration and reinforced the idea of a common future for the six European countries.

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 24 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' (Article 240 of the EEC Treaty and Article 208 of the EAEC Treaty), which gives them almost a constitutional character.

— The six founding countries were Belgium, Germany, France, 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 and 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 Treaty** and **EAEC Treaty, 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;

— 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.

→ Roberta Panizza
July 2008

1.1.2. Developments up to the Single European Act

The main developments of the first Treaties are related to the creation of the own resources of the Community, the reinforcement of the budgetary powers of Parliament, the election by direct universal vote and the set up of the European Monetary System. The entry into force of the Single European Act in 1986, substantially altering the Treaty of Rome, reinforces the idea of integration by creating a large internal market.

I. 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 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.

II. First amendment of the Treaties

A. Improvements to the institutions

1. 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 single Commission of the European Communities (the ECSC, EEC and EAEC) and introducing the principle of a single budget.

2. 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).

3. 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.

4. 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).

B. 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.

C. 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.

III. 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.

A. Failure of an attempt to achieve political union

1. The Fouchet plan

At the 1961 Bonn Summit the Heads of State or 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.

2. 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 that a future political union might take continued at a more pragmatic level in a number of reports and resolutions.

3. 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 or 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 European Act entered into force.

B. 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 common agricultural policy, 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.

C. The increasing importance of European 'summits'

Meanwhile, although they were outside the Community institutional context, the conferences of Heads of State or 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.

D. 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 State or 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 (→5.1.0).

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).

E. 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.

IV. 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 or 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 3 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.

V. 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.

A. Extension of the Union's powers

1. Through the creation of a large internal market

This was 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 (→3.1.0).

2. Through establishing new powers

These were:

— monetary capability,

— social policy,

— economic and social cohesion,

— research and technological development,

— the environment, and

— cooperation in the field of foreign policy

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

Qualified majority voting

1. This 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, and

— the common sea and air transport policy.

2. It was introduced for several new responsibilities:

— the internal market,

— social policy,

— economic and social cohesion,

— research and technological development, and

— the environment.

3. It 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.

C. 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.

→ Wilhelm Lehmann
July 2008

1.1.3. The Maastricht and Amsterdam Treaties

The Treaty on European Union alters the former European Treaties and creates a European Community based on three pillars: the European Communities, the common foreign and security policy (CFSP) and cooperation in the field of justice and home affairs (JHA). Owing to enlargement of the Union, the Treaties of Amsterdam and Nice aimed to make the adjustments needed to enable a 15-member Europe to function effectively.

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 Structures

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 Parliament, the European Council, 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 European Parliament, Council, Commission, Court of Justice and Court of Auditors (strictly speaking the only Community institutions) exercise their powers in accordance with the Treaties. The Parliament, Council and Commission 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 Investment 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 Community, 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 Treaty establishing the European Community (EC) 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 EC).

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 (→4.12.1) 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;

— the creation of a European Police Office (Europol) with a system for exchanging information between national police forces;

— combating unauthorised immigration; and

— a 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 Petersburg 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 European Social Fund (ESF),

— Article 150(4): vocational training measures,

— Article 153(4): consumer protection,

— Article 156: trans-European networks ('other measures'),

— Article 162: implementation of the European Regional Development Fund (ERDF),

— 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 **European Parliament**, 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. At all events, at least a year before the 21st Member State joins, a new Intergovernmental Conference (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.

Role of the European Parliament

Consultation before an IGC is called. Parliament is also involved in the IGCs 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.

→ Roberta Panizza
July 2008

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

The 'Amsterdam leftovers' were meant to be resolved by the Treaty of Nice. However, this Treaty prepared the European Union only partially for the important enlargements to the east and south of 1 May 2004 and 1 January 2007. Hence, the European Convention, chaired by Valéry Giscard d'Estaing, made an effort to produce a new legal base for the Union in the form of the Treaty establishing a Constitution for Europe.

I. Treaty of Nice

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

A. 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, increased the total relative weight of countries with a smaller population in comparison with the most populous countries (only two of the new Member States are more populous than the previous Member State average). The Treaty of Nice thus sought to:

— make the Community institutions more efficient and legitimate;

— prepare the EU for its major enlargement to include countries from eastern Europe.

B. 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) 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.

C. 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 European Parliament;

— more flexible enhanced cooperation;

— monitoring of fundamental rights and values within the EU, and

— strengthening of the EU's judicial system.

1. 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 European Parliament, 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 was to require 169 votes out of 237, or 71.3 % of the votes. In a Union of 27, a qualified majority requires 255 votes out of 345, or 73.9 % of the votes. The previous requirement was 62

votes out of 87, or 71.27 %. In the course of the enlargement process the threshold for qualified majority voting thus became higher.

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 was fixed as follows: 29 for Germany, France, Italy and the United Kingdom; 27 for Spain and Poland; 14 for Romania; 13 for the Netherlands; 12 for Belgium, the Czech Republic, Greece, Hungary and Portugal; 10 for Bulgaria, Austria and Sweden; 7 for Denmark, Ireland, Lithuania, Slovakia and Finland; 4 for Estonia, Cyprus, Latvia, Luxembourg and Slovenia; 3 for Malta (total 345).

Although the number of votes has increased for all Member States, the share of the most populous Member States decreased: previously 55 % of the votes, it fell to 45 % when the 10 new members joined and to 44.5 % on 1 January 2005. This is where the new provisions such as the demographic 'safety net' should prove their worth.

2. Commission

a. Composition

Since 2005 the Commission has just one Commissioner for each Member State. Once the Accession Treaty is signed for the 27th Member State and if the Treaty of Lisbon does not enter into force, 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.

b. 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.

c. 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.

3. European Parliament

a. 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 was 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 European Parliament elected in 2009.

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

b. 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.

4. Reform of the judicial system

a. 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.

b. 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.

5. 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).

6. 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 TEU); 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 TEU.

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.

7. Protection of fundamental rights

A paragraph was added to Article 7 TEU, 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 European Parliament, determines the existence of the risk and addresses appropriate recommendations to the Member State in question.

D. Role of the European Parliament

As at the earlier Intergovernmental Conferences, 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 and that this debate would culminate in a Treaty reform in 2004. Apropos 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 European Parliament 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

A. 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.

B. 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.

C. Structure

1. 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 European Parliament;

— 2 Members of the European Commission.

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

2. The Convention Praesidium

In addition to the chairman and vice-chairmen, the Praesidium comprised 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 European Parliament (Mr Hänsch and Mr Méndez de Vigo);

— 2 Members of the European Commission (Mr Barnier and Mr Vitorino).

It also included 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.

3. 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 EP, Council and Commission. It provided assistance to the members of the Convention on all issues arising in the course of their work.

4. 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
July 2008

1.1.5. The Treaty establishing a Constitution for Europe

Signed by the 25 Member States on 29 October 2004, the Treaty establishing a Constitution for Europe reinforces the powers of the European institutions and brings important amendments to the distribution of competences and to several European policies. Despite the importance that this Treaty presents for the future of the European Union, it was not ratified by France and the Netherlands and could not come into force.

The Treaty, which was signed on 29 October 2004 and approved by the European Parliament 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. I.

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. Fifty declarations

B. More effective institutions

1. A European Parliament with greater powers

The European Parliament'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 6 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 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): 1 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 (→4.11.1), economic and monetary policy (→5.1 to →5.5) and the CFSP (→6.1.1).

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 European Parliament, 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.

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
November 2005

1.1.6. The Treaty of Lisbon

This chapter presents the background and essential provisions of the Treaty of Lisbon. The objective is to provide a historical context for the emergence of this latest fundamental EU text from those which came before it (→1.1.5). The specific provisions (with article references) and their effects on European Union policies are explained in more detail in the following fact sheets dealing with particular policies and issues.

Legal Base

Treaty of Lisbon amending the Treaty on the European Union and the Treaty establishing the European Community (OJ C 306, 17.12.2007).

History

The Lisbon Treaty started as a constitutional project at the end of 2001 (European Council Declaration on the Future of the European Union, or Laeken Declaration), and was followed up in 2002 and 2003 by the European Convention (→1.1.5). An important goal of this endeavour was to replace existing EU primary law with a modernised legal foundation for the European Union.

Yet after more than five years of constitutional debate and negotiations another Treaty amending the existing primary law was signed. As is well known, this change of strategy came about as a result of the negative outcome of two referendums on the Treaty establishing a Constitution for Europe (Constitutional Treaty) in May and June 2005, in response to which the European Council decided to have a two-year 'period of reflection'. In March 2007, the German Presidency was able to revive the reform effort at a celebratory event marking the 50th anniversary of the Treaties of Rome. The

Berlin Declaration, adopted by all Member States, enshrined their common resolve to agree on a new Treaty in time for the 2009 European elections.

On the basis of the Berlin Declaration, the European Council of 21 to 23 June 2007 adopted a detailed mandate for a subsequent Intergovernmental Conference (IGC) under the Portuguese Presidency. The IGC concluded its work in October 2007. The Treaty was signed at the European Council of Lisbon on 13 December 2007 and is meant to be ratified by the Member States and enter into force before the European Parliament elections in June 2009.

Content

A. Objectives and legal principles

1. Purpose of the reform

To enhance the legitimacy, efficiency and transparency of the EU, the Treaty of Lisbon returns to the traditional method of changing the existing Treaties. The Treaty establishing the European Community is renamed the 'Treaty on the Functioning of the European Union' and the term 'Community' is replaced by 'Union' throughout the text. The Union takes the place of the Community and is its legal successor. The Lisbon Treaty does not create State-like Union symbols like a flag or an anthem. Terms such as 'constitution', 'law' or 'foreign minister', used in the Constitutional Treaty, have also disappeared. Although the new text is hence no longer a Constitutional Treaty by name, it preserves most of its substantial achievements.

No additional exclusive competences are transferred to the Union by the Lisbon Treaty. However, it changes the way the Union exercises its existing powers and some new (shared) powers by enhancing citizens' participation and protection, creating a new institutional set-up and modifying the decision-making processes for increased efficiency and transparency. A higher level of parliamentary scrutiny and democratic accountability is therefore attained.

2. Supremacy of Union law

Unlike the Constitutional Treaty, the Lisbon Treaty contains no article formally enshrining the supremacy of Union law over national legislation, but a declaration was attached to the Treaty to this effect (Declaration No 17), referring to an opinion of the Council Legal Service which reiterates consistent case-law by the Court.

3. The limits of Union competences

The Lisbon Treaty for the first time organises and clarifies the powers of the Union. It distinguishes three types of competences: exclusive competence, where the Union alone can legislate, and Member States only implement the EU's legislation; shared competence, where the Member States can legislate and adopt legally binding measures if the Union has not done so; supporting competence, where the EU adopts measures to support or complement Member States' policies. Union competences can now be handed back to the Member States in the course of a Treaty revision.

4. The disappearance of the pillars

a. *Legal personality of the EU*

The Lisbon Treaty gives the EU full legal personality. Therefore, the Union obtains the ability to sign international treaties in the areas of its attributed powers or join an international organisation. Member States may only sign international agreements that are compatible with EU law.

b. *Area of freedom, security and justice (FSJ)*

The Treaty of Lisbon completes the absorption of the remaining pillar three aspects of FSJ (police and judicial cooperation in criminal matters) into pillar one. Its intergovernmental structure ceases to exist by making the acts adopted in this area subject to the ordinary legislative procedure (qualified majority and co-decision) and using the legal instruments of the Community method (regulations, directives and decisions), unless otherwise specified.

5. Revision of the Treaties

The European Parliament will be able to propose amendments to the Treaties, as is already the case for the Council, a Member State government or the Commission. Normally, such an amendment would require the convocation of a Convention. It will, however, be possible to revise the Treaties without convening an IGC, through simplified revision procedures concerning the internal policies and actions of the Union (Articles 48(6) and 48(7) TEU). The European Parliament's consent is required in order to decide not to convene a Convention if this is deemed to be justified by the scope of the proposed amendments.

B. Enhanced democracy and better protection of fundamental rights

1. Participatory democracy

The Treaty of Lisbon expresses the three fundamental principles of democratic equality, representative democracy and participatory democracy. Participatory democracy takes the new form of a citizens' initiative: 1 million European citizens from a 'significant' number of Member States (to be determined by regulation) can request the Commission to put forward a legislative proposal.

2. The Charter of Fundamental Rights

The Charter of Fundamental rights will not be incorporated directly into the Lisbon Treaty but acquires a legally binding character through Article 6(1) TEU, giving the Charter the same legal value as the Treaties. As the Charter itself makes clear, it does not extend to competences of the Union as defined by the Treaties. A protocol introduces specific measures for the United Kingdom and Poland concerning exceptions to the justiciability of the Charter before national courts.

3. The European Convention for the Protection of Human Rights (ECHR)

The EU will accede to the European Convention once the 14th protocol to the ECHR enters into force, which allows not only States but also international organisations to become

signatories of the ECHR. Still, the accession act must be ratified by all EU Member States.

C. A new institutional set-up

1. The European Parliament

Pursuant to Article 14(2) TEU the EP now 'shall be composed of representatives of the Union's citizens', not of representatives of 'the peoples of the States', as in Article 189 EC.

The EP's legislative and budgetary powers have been increased through both the new 'ordinary legislative procedure' corresponding to the former co-decision procedure, and the abolition of the distinction between compulsory and non-compulsory expenditure. Furthermore, the ordinary legislative procedure will apply to more than 40 new policy areas, raising the total number to 73. The assent procedure continues to exist as 'consent' and the consultation procedure remains unchanged.

The new budgetary procedure creates full parity between Parliament and the Council for approval of the annual budget. The multiannual financial framework has to be agreed by Parliament (consent).

The EP now elects the Commission President by a majority of its members on a proposal from the European Council, which is obliged to select a candidate by qualified majority, taking into account the outcome of the European elections. The EP continues to approve the Commission as a college.

The maximum number of MEPs has been set at 751. The maximum number of seats per Member State will be decreased to 96, the minimum number increased to six.

2. The European Council

The Lisbon Treaty formally recognises the European Council as an EU institution, responsible for providing the Union with the 'impetus necessary for its development' and for defining its 'general political directions and priorities'. The European Council has no legislative functions.

A long-term Presidency will replace the current system of six-month rotation. The President is elected by a qualified majority of the European Council for a renewable term of 30 months. This should improve the continuity and coherence of its work. The President will also represent the Union externally, without prejudice to the duties of the High Representative of the Union for Foreign Affairs and Security Policy (see below).

3. The High Representative (HR) for common foreign and security policy (CFSP)

The HR of the Union for Foreign Affairs and Security Policy will be appointed by a qualified majority of the European Council with the agreement of the President of the European Commission. The HR will be responsible for the EU's common foreign and security policy and will have the right to put forward proposals. Besides chairing the Foreign Affairs Council he or she will also be Vice-President of the Commission (double hat). The HR will set up a European External Action Service, comprising staff from the General Secretariat of the Council, the Commission and national diplomatic services, to provide the resources necessary for an effective foreign policy.

4. The Council of Ministers

The fundamental structure of the contested voting reforms provided by the Constitutional Treaty will remain in place, especially the principle of double majority (citizens and Member States). However, the current voting rules shall remain in place until 2014; between 1 November 2014 and 31 March 2017 the new rules shall apply but the use of existing voting weights can be requested by any Member State.

Qualified majority is reached when 55 % of Member States, representing at least 65 % of the population, support a proposal. When the Council is not acting on a proposal from the Commission or the High Representative, the necessary majority of Member States increases to 72 % (Article 238(2) TFEU). To block legislation, at least four countries have to vote against a proposal. A new scheme inspired by the 'Ioannina compromise' will allow 75 % (55 % from 1 April 2017) of the Member States to ask for reconsideration of a proposal during a 'reasonable time period' (Declaration No 7 attached to the Treaty).

In the future, the Council will meet in public when it deliberates and votes on a draft legislative act. To this end, each Council meeting is divided into two parts dealing respectively with legislative acts and non-legislative activities.

The Council Presidency will continue to rotate on a six-month basis but there will be 18-month group presidencies of three Member States in order to ensure better continuity of work. As an exception, the Foreign Affairs Council will be continuously chaired by the HR for Foreign Affairs and Security Policy.

5. The Commission

To make sure that decision-making runs smoothly in a larger EU, in 2014 the number of Commissioners will be reduced to two thirds of the total of Member States. According to the principle of geographical equilibrium, equal treatment of all Member States should be attained.

Since the President of the Commission will be chosen and elected by taking into account the outcome of the European elections, his or her political legitimacy will be increased. The President is responsible for the internal organisation of the college (appointment of Commissioners, distribution of portfolios, request to resign under particular circumstances).

6. The Court of Justice of the European Communities

The jurisdiction of the European Court of Justice is extended to all activities of the Union with the exception of CFSP. The number of advocates-general is increased from 8 to 11. Specialised courts can be set up with the consent of Parliament. Access to the Court is facilitated for individuals.

A European Public Prosecutor's Office is set up in order to investigate, prosecute and bring to judgment offences against the Union's financial interests.

D. More efficient and democratic policymaking

1. Increased flexibility and enhanced cooperation

Several so-called '*passerelle* clauses' allow a change from unanimous decision-making to qualified majority voting and from the consultation procedure to co-decision (Article 31(3) TEU, Article 81, 312 and 333 TFEU, plus some *passerelle*-type procedures concerning judicial cooperation in criminal matters). In order to use such a *passerelle* a unanimous decision must be taken by the European Council and a majority of the EP. Matters with military implications are excluded. Moreover, any such change can be blocked if one national parliament voices its opposition within six months of the date of notification.

In areas where the Union has no exclusive powers, at least nine Member States can establish enhanced cooperation between themselves. Authorisation to proceed with enhanced cooperation must be granted by the Council after obtaining the consent of the European Parliament. In CFSP, the Council must approve any enhanced cooperation by unanimity. Acts adopted in the framework of enhanced cooperation bind only the participating Member States.

2. The role of national parliaments

The Lisbon Treaty considerably strengthens the principle of subsidiarity by involving the national parliaments in the decision-making process. The protocol on the role of national parliaments in the European Union ensures that they are regularly informed of new legislative proposals.

The protocol on the application of the principles of subsidiarity and proportionality allows national parliaments eight weeks to study a legislative proposal and, if a parliament wishes to do so, give a reasoned opinion stating why it considers that the text does not comply with the subsidiarity principle. If one third (or one quarter, if the proposed measure concerns freedom, justice and security) consider the proposal incompatible with the principle of subsidiarity, the Commission will have to review the measure (yellow card). Should it decide to maintain it, the Commission must give a reasoned opinion to the Union legislator (Council and Parliament) as to why it considers the measure to be compatible with subsidiarity.

If a simple majority of the Member State parliaments are against the proposal, it must once again be reviewed (orange card). If the Commission decides to maintain the proposal, it must submit its opinion to the legislator, along with the opinions of the national parliaments. The legislator may then decide by a majority of 55 % of the members of the Council or a majority of the votes cast in the European Parliament that the proposal is not to be given further consideration.

3. New powers

A certain number of new or extended policies have been introduced in environmental policy, which now includes the fight against climate change, and energy policy, which makes new references to solidarity and the security and interconnectivity of supply. Furthermore, intellectual property rights, sport, space, tourism, civil protection and administrative cooperation are now the possible subject of EU lawmaking.

4. Common security and defence policy (CSDP)

In CSDP the Lisbon Treaty introduces a mutual defence clause which provides that all Member States are obliged to provide help to a Member State under attack. A solidarity clause provides that the Union and each of its members have to provide assistance by all possible means to a Member State affected by a human or natural catastrophe or by a terrorist attack.

A 'permanent structured cooperation' is open to all Member States who commit themselves to taking part in European military equipment programmes and to providing combat units that are available for immediate action. To establish such cooperation, it is necessary to have a qualified majority vote by the Council after consultation with the HR.

Role of the European Parliament

See 1.1.4 and 1.1.5 for Parliament's contributions to the European Convention and its implication in previous IGCs.

With respect to the 2007 IGC, leading to the signature of the Treaty of Lisbon, Parliament for the first time sent three representatives (no longer called 'observers') to the conference under the Portuguese Presidency. According to Parliament's President, at his inaugural speech in February 2007, ensuring 'that the substance of the Constitutional Treaty, including the chapter on values, becomes a legal and political reality by the next European Parliament elections' was one of Parliament's highest priorities for the second half of its sixth term.

→ Wilhelm Lehmann
July 2008

1.2. Main characteristics of the Community legal system

1.2.1. Sources and scope of European Union law

In the European Union there are several sources of law contributing to the creation of a Community legal order. The different nature of these sources has imposed a hierarchy among them. At the pinnacle of this hierarchy we find the primary Community law and the unwritten Community law followed by the international treaties concluded by the Community, and the secondary Community law.

Legal bases

— Treaty on European Union.

— Treaty establishing the European Community.

— Derived or secondary acts of Community law (Article 49 of the EC Treaty).

— Unwritten Community law.

— International treaties.

Objectives

Creation of a legal order for the Union to achieve the objectives stipulated in the Treaties.

Achievements

A. Primary Community law

→1.1.1 to →1.1.3.

B. Secondary Community law

1. General points

The Community's forms of action under Article 249 of the Treaty establishing the European Community (EC) 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 institutions of the Union only if they are empowered to do so by a provision of the Treaties (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 Treaties (including what are known as implied powers). If a specific power is not provided by the Treaties, in certain circumstances recourse may be had to the subsidiary rule regarding competence in Article 308 of the EC Treaty. The list of legal actions in Article 249 of the EC Treaty is not exhaustive; there are, in addition, various forms of action, such as resolutions, declarations and acts on the organisation and running of the institutions, the designation, structure and legal effects of which stem from the individual provisions of the Treaties or the overall context of law embodied in the Treaties. Furthermore, the legal character of a measure taken by an institution of the Union 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. It is through these documents that the Union institutions and more specifically the Commission usually agree on 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 law', regulations must be complied with fully by those to whom they apply (private persons, Member States, Union institutions). Regulations apply directly in all the Member States, without requiring a national act to transpose them. As soon as they enter into force (on the date stipulated or, failing this, on the 20th day following their publication in the *Official Journal of the European Union*) they become part of national legal orders.

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 legal rules which are incompatible with their substantive clauses. Implementing provisions adopted by Member States may not amend or supplement the scope and effectiveness of regulations (principle of sincere cooperation: Article 10 EC).

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 only 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 EC). 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. Regulations which have been adopted as a result of 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 Court of Justice of the European Communities, however, has nevertheless ruled that individual provisions of a directive may, exceptionally, have a direct effect in a Member State without requiring an act of transposition by that Member State beforehand (consistent case-law since 1970: ECR 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 incorrectly;

— the provisions of the directive are imperative and sufficiently clear and 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, and only the first and second conditions are satisfied, the Court's consistent 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 (see consistent case-law, *Faccini Dori* case [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 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

— 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 (judgment of the Court of Justice of 5 March 1996, *Brasserie du Pêcheur/Factortame,* Cases 46/93 and 48/93, [1996] ECR I-1029).

c. Decisions

They are binding in their entirety. Where those to whom they are addressed are stipulated, they are binding only on them. 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 law, the EC has only limited powers of enforcement itself, as EC law is usually enforced by the Member States (duty of loyal cooperation under Article 10 of the EC Treaty). In fact the Treaty of Lisbon states (Article 291(1)

of the consolidated version of the Treaty on the Functioning of the European Union) that Member States shall adopt all measures of national law necessary to implement legally binding Union acts.

c. Actual application of the various forms of action:

In many cases the Treaties lay down the required form of legal action (e.g. directive in Article 94 of the EC Treaty). In many other cases, however, no specific type of legal action is Article 71(1)(d) stipulated (e.g. 'any other appropriate provisions' in of the EC Treaty) or an alternative is at least permitted (e.g. 'directives or ... regulations' in Article 40, introductory paragraph, and Article 83 of the EC Treaty). In exercising such discretion, however, the Community institutions must take due account of the principles of proportionality and subsidiarity (→1.2.2).

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.

— In the third pillar (police and judicial cooperation in criminal affairs), 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'; 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.

The Treaty of Lisbon abolishes the pillar structure of the Union which has existed since the Treaty of Maastricht. As a result, when the Treaty of Lisbon enters into effect, the use of the legal acts described in Article 249 EC (Article 288 of the consolidated version of the Treaty on the Functioning of the European Union) shall include all Union policies, including police and judicial cooperation in criminal affairs, which constitutes the third pillar at the present time.

The only exceptions are common foreign and security and defence policies, which will continue to be subject to intergovernmental procedures. Instruments which may be adopted to achieve these policies shall retain their political nature but have a new classification: common strategies, common actions and common positions will be replaced with 'general guidelines' and by 'decisions defining' actions to be undertaken and positions to be adopted by the Union and arrangements for the implementation thereof.

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 Union level by Article 6(2) of the Treaty on European Union (TEU) 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 European Community

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) of the EC Treaty 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 of the EC Treaty 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) TEU).

G. Hierarchy within Community law

Primary Community law is at the pinnacle of the hierarchy of law. The provisions of primary law are fundamentally of equal rank; this also applies to unwritten Community law, in other words general legal principles. However, international treaties concluded by the Community rank below primary and unwritten Community law. These are duly followed by secondary Community law, i.e. to be valid, such legal acts must be compatible with hierarchically superior law.

The Treaty of Lisbon introduces a hierarchy for secondary law by drawing a clear distinction between legislative acts, delegated acts and implementing acts. Legislative acts are legal acts which are adopted through ordinary or special legislative procedures. Delegated acts for their part are non-legislative acts with a broad scope which supplement or amend certain non-essential parts of a legislative act. The power to adopt these acts may be delegated to the European Commission by the legislative act itself, which sets out the objectives, content, scope and duration of the delegated authority. Competence to adopt implementing acts is normally vested in the Commission by the legally binding act when uniform conditions are required to implement this act.

Legislative, delegated and implementing acts may be adopted as regulations, directives or decisions but the adjective 'delegated' and the word 'implementing' will be included in the title of the relevant act.

Role of the European Parliament

Under the procedures laid down in Article 250 et seq. of the EC Treaty, Parliament has certain rights to participate in the enactment of legislation (→1.4.1). However, despite the widening of its powers in the Treaty on European Union (→1.1.2), it continues to have limited influence as far as policies which are not subject to the co-decision procedure are concerned. The Treaty of Lisbon expands co-decision between the Parliament and the Council considerably, by describing it henceforth as the 'ordinary legislative procedure'. When the Treaty of Lisbon enters into effect, Parliament will be the co-legislator in 95 % of Union legislation.

Moreover, anxious to improve the application of Union 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 Union law.

→ Roberta Panizza
July 2008

1.2.2. The principle of subsidiarity

In the framework of the shared competences between the Community and the Member States the principle of subsidiarity, enshrined by the EC Treaty, defines the circumstances in which the Community is empowered to act with priority in respect of the Member States.

Legal basis

The second paragraph of Article 5 of the Treaty establishing the European Community (EC), in conjunction with the 12th recital of the preamble to and the second paragraph of Article 2 of the Treaty on European Union (TEU).

Objectives

In areas other than those in which the European Community has exclusive competence, the principle of subsidiarity seeks, on the one hand, to protect the capacity to take decisions and action of the Member States and, on the other, authorises the intervention of the Community when the objectives of an action cannot satisfactorily be achieved by the Member States 'due to the scale and effects of the proposed action'. The purpose of including it in the European Treaties is also to ensure that powers are exercised as close to the citizen as possible.

Achievements

A. Origin and history

The principle of subsidiarity was formally recognised in Community law by the Maastricht Treaty, which included it in the second paragraph of Article 5 of the Treaty establishing the European Community. However, we can see traces of this principle in Article 5 of the ECSC Treaty (1951), under which the Community shall 'take direct action with respect to production and the operation of the market only when circumstances make it absolutely necessary'. 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. The Court of First Instance of the European Communities ruled in its judgment of 21 February 1995, ECR II-289, point 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 the second paragraph of Article 5 of the EC Treaty, the Treaty of Amsterdam annexed to the EC Treaty the 'Protocol on application of the principles of subsidiarity and proportionality'. The overall approach to the application of the subsidiarity principle agreed in Edinburgh in 1992 thus became legally binding and subject to judicial review via the protocol on subsidiarity.

The Lisbon Treaty repealed Article 5 of the EC Treaty and incorporated the principle of subsidiarity into Article 5 of the EU Treaty, which, while upholding the terms of the repealed article, adds an explicit reference to the regional and local dimension of the principle of subsidiarity. Furthermore, the Lisbon Treaty replaces the 1997 protocol on the application of the principles of subsidiarity and proportionality by a new protocol with the same name, the main difference being the new role of the national parliaments in ensuring respect for the principle of subsidiarity.

B. Definition

1. 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.

2. When applied in a Community context, the principle of subsidiarity serves to regulate the exercise of shared powers between the Community and the Member States. On the one hand, it prohibits Community intervention when an issue can be regulated effectively by Member States at central, regional or local level. On the other, it means that the Community exercises its powers when Member States are unable to achieve the objectives of the Treaties satisfactorily.

3. Under the second paragraph of Article 5 of the EC Treaty there are three preconditions for intervention by Community institutions in accordance with the principle of subsidiarity.

a. It must not be an area which comes under the exclusive competence of the Community.

b. The objectives of the proposed action cannot be sufficiently achieved by the Member States.

c. 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 European 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, for example, Article 308 of the EC Treaty 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, for example, the Court has defined and recognised certain competences (stemming from, but not explicitly regulated by, 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 continues 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 Treaties 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 actual preamble to the EU Treaty.

Once it comes into force, the Lisbon Treaty should put an end to the different interpretations of the scope of application of the principle of subsidiarity. The new Treaty in fact defines the areas that come under the exclusive competence and shared competence of the Union. Article 4(2) of the consolidated version of the Lisbon Treaty lists the following policies as having shared competence: internal market; social policy; economic, social and territorial cohesion; agriculture and fisheries, excluding the conservation of marine biological resources; environment; consumer protection; transport; trans-European networks; energy; area of freedom, security and justice; common safety concerns in public health matters.

3. Where it applies

The principle of subsidiarity applies to all EU institutions. The rule has practical significance for the Parliament, Council and Commission in particular. The Lisbon Treaty strengthens the role of both the national parliaments and the Court of Justice in monitoring respect for the principle of subsidiarity..

D. Scrutiny by national parliaments

The Lisbon Treaty introduces an early warning mechanism whereby national parliaments have eight weeks in which to submit opinions to the Commission on draft legislative acts, which it must send to them at the same time as to the European Parliament and the Council. If one third of the national parliaments contest the conformity of a draft legislative act with the principle of subsidiarity, in a reasoned opinion, then the Commission must re-examine the draft and explain why it is maintaining it (the 'yellow card' procedure). This threshold must be one quarter of the national parliaments for draft legislation relating to the area of freedom, security and justice. In addition, if a simple majority of national parliaments challenges the conformity of a draft legislative act with the principle of subsidiarity ('orange card') and the Commission maintains its proposal, the matter is referred to the European Parliament and Council, which issue a decision at first reading. If they believe that the legislative proposal is incompatible with the principle of subsidiarity, they may reject it subject to a 55 % Council majority or a majority vote in the European Parliament.

This notification right is granted to all national houses of parliament.

E. Judicial reviewability

Under the second paragraph of Article 5 of the EC Treaty, the principle is in theory subject to judicial testing. Where its application is concerned, however, the EU's institutions have wide discretion regarding the form that this takes, which the Court of Justice 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, that 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 its judgments of 12 November 1996 in Case C-84/94, ECR I-5755 and of 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 of the EC Treaty. 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.

The Lisbon Treaty, in its protocol on the application of the principles of subsidiarity and proportionality, states that as part of the scrutiny of the legality of legislative acts, the Court has the power to issue rulings in proceedings for annulment for violation of the principle of subsidiarity. These proceedings may be instigated by a Member State on behalf of its parliament if necessary, 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

1. Ongoing work

Parliament has defended the principle of subsidiarity for many years, and was the instigator of this concept 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.

The European 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 Parliament, the Council and the Commission. This gave expression to decisive steps by the three institutions in this area. They 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 EC Treaty.

— 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 EU 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 34 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 the powers of the Union. 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 that it is up to EU institutions and Member States, both at central and at regional and local levels, to keep a permanent watch on the application of the subsidiarity and proportionality principles.

This early warning system was effectively incorporated within the Lisbon Treaty, as described in section D.

→ Roberta Panizza
July 2008

1.3. European Union institutions and bodies

1.3.1. The European Parliament: historical background

The ECSC Common Assembly becomes common to all the three Communities and acquires the name of 'European Parliament'. Over time, this institution recorded numerous changes that make it nowadays notably an equal partner to the Council in the legislative procedure. This institutional role will be significantly extended through the entry into force of the Lisbon Treaty.

Legal Basis

— The original Treaties (→1.1.1).

— Decision and Act concerning the election of the representatives of the European Parliament by direct universal suffrage (20 September 1976), as amended by the Council Decision 2002/772/EC, Euratom 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 and 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 and 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

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.

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.

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.

Following German unification, the composition of the European Parliament 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.

The Intergovernmental Conference in Nice introduced a new distribution of seats in the European Parliament, 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.

Since 1 January 2007, membership of the European Parliament has been as follows:

Belgium	24
Bulgaria	18
Czech Republic	24
Denmark	14
Germany	99
Estonia	6
Ireland	13
Greece	24
Spain	54
France	78
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)**

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 of Lisbon would provide for a maximum number of 751 members.

Gradual increase in powers

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).

The Single European Act enhanced Parliament's role in certain legislative areas (cooperation procedure) and made accession and association treaties subject to its consent.

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.

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.

The Treaty of Nice extended the scope of the co-decision procedure in seven provisions of the EC Treaty: measures to support antidiscrimination action of the Member States (Article 13 EC), certain measures for issuing visas (Article 62(2)(b)(ii) and (iv) EC), measures on asylum and on certain refugee matters (Article 63 EC), measures in the field of judicial cooperation in civil matters (Article 65 EC), support measures in the industrial field (Article 157 EC), actions in the field of economy and social cohesion (Article 159 EC), and regulations governing political parties at European level and in particular the rules regarding their funding (Article 191 EC).

The Treaty of Lisbon represents a further important extension of both the application of qualified majority in the Council (using a new principle) and of the application of the co-decision procedure to some 45 new legislative domains. Co-decision thus becomes the most-used decision-making procedure and would cover especially important subjects such as the common agricultural policy and justice and security policies.

→ Wilhelm Lehmann
August 2007

1.3.2. The European Parliament: powers

The assertion of Parliament's institutional role in European policymaking is a result of the exercise of its different functions. Respect of democratic principles at the European level is ensured through its participation in the legislative process, its budgetary and control powers and its right to intervene before the Court of Justice of the European Communities.

Legal basis

Articles 189 to 201 of the Treaty establishing the European Community (EC).

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 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 EC) applies to 46 legal bases in the EC Treaty 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) TEU) for the purpose of approximation of laws and regulations.

C. Cooperation

The cooperation procedure (Article 252 EC) 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 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 Fund (Article 161 EC).

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 EC).

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. EC).

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 EC).

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

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

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

The Lisbon Treaty will eliminate the distinction between compulsory expenditure and non-compulsory expenditure and put Parliament at an equal level with the Council in the annual budgetary procedure.

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. According to the Lisbon Treaty the candidate for Commission President will have to be chosen according to the results of the European elections.

B. The motion of censure

The Treaty of Rome made provision for a motion of censure against the Commission (Article 201 EC). 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 EC) 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 EC).

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 TEU). Implementation of the Interinstitutional Agreement on budgetary discipline and sound financial management (2006/C 139/01) has improved CFSP consultation procedures as far as financial aspects are concerned.

After the entry into force of the Lisbon Treaty almost all aspects of police and judicial cooperation as well as other policies in the area of freedom, justice and security will be subject to the general legislative procedure (co-decision). As to foreign policy, the creation of the new High Representative of the Union for Foreign Affairs and Security Policy will enhance Parliament's influence because (s)he will also be Vice-President of the Commission.

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* judgment (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 EC), 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 (→4.6.1).

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 EC: 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 EC thus upholds the Court's rulings in Cases 320/81, 294/83 and 70/88.

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

Petitions

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

Appointing the ombudsman

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

→ Wilhelm Lehmann
July 2008

1.3.3. The European Parliament: organisation and operation

The organisation and the operation of the European Parliament are governed by its rules of procedure. The management bodies, committees, delegations and political groups guide Parliament's activities. Its composition usually changes after treaty revisions and enlargements.

Legal basis

— Articles 189 to 201 of the Treaty establishing the European Community (EC).

— European 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, the Czech Republic, Greece, Hungary and Portugal 24; Sweden 19; Bulgaria and Austria 18; Denmark, Slovakia and Finland 14; Ireland and Lithuania 13; Latvia 9; Slovenia 7; Estonia, Cyprus 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, two 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 was 20, coming from at least six Member States (Rule 29). After the 2009 elections this threshold will rise to 25 MEPs from at least seven Member States. 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 EC, 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 ((EC) No 2004/2003), 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 EC). If the Treaties do not provide otherwise, Parliament acts by an absolute majority of the votes cast (Article 198). 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 EC. 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 and 16 December 2006. In future, this practice will be consolidated.

→ Wilhelm Lehmann
July 2008

Membership of parliament by group and Member State

	EPP-ED	PES	ALDE	UEN	Greens/ ALE	GUE/ NGL	IND/ DEM	NI	
Belgium	6	7	6		2			3	24
Bulgaria	5	5	5					3	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
Ireland	5	1	1	4		1	1		13
Greece	11	8				4	1		24
Spain	24	24	2		3	1			54
France	17	31	11		6	3	3	7	78
Italy	24	15	14	13	2	7		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			2	18
Poland	15	9	5	20			3	2	54
Portugal	9	12				3			24
Romania	15	10	6					4	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	28	19	11		5	1	10	4	78
Total	**285**	**215**	**102**	**44**	**42**	**41**	**24**	**32**	**785**

EPP-ED: Group of the European People's Party (Christian Democrats) and European Democrats
PES: Socialist Group in the European Parliament
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
NI: non-attached members

1.3.4. The European Parliament: electoral procedures

The electoral procedures in the European Parliament are governed both by European legislation defining rules common to all Member States, such as those related to incompatibilities and to the introduction of the principle of proportional representation, and by specific national provisions which vary from one State to another.

Legal basis

Article 190(1) and (2) of the Treaty establishing the European Community (EC).

Common rules

A. Principles

The **founding Treaties** stated that members of the European Parliament 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 EC Treaty 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 EC Treaty 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.

B. Application: common provisions in force

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

According to Article 19 of the EC Treaty, '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 European Parliament 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.

2. 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).

3. Incompatibilities

The office of member of the European Parliament 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, Denmark, Greece, Spain, France, Luxembourg, the Netherlands, Austria, Portugal, Finland 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 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 EC) 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 (France and Finland), or customarily to stay there (Belgium, Germany, Greece, Spain, Luxembourg, Portugal and Italy), or to be registered on the electoral roll (Denmark, Ireland, Hungary, the Netherlands, Austria, Poland, Sweden and the United Kingdom).

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 their Member State of origin, because they are resident outside that State 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. Denmark, the Netherlands, Austria and Portugal only grant the right to vote to their nationals living in an EU Member State. Belgium, Greece, Spain, France, Italy and Sweden 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

The minimum age is: 18 in Denmark, Germany, Spain, the Netherlands, Luxembourg, Austria, Portugal Finland, Sweden and most new Member States; 21 in Belgium, the Czech Republic, Ireland, Greece, 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 five years' residence is required (previously 10 years) to enable a Community national to stand for election to the European Parliament. Moreover, a list may not comprise a majority of candidates who do not have Luxembourgish nationality.

E. Nominations

In some Member States (the Czech Republic, Denmark, Germany, Greece, Estonia, the Netherlands and Sweden) 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. The next will take place on 4 and 7 June 2009.

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

In some States (Germany, Greece, Spain, France and Portugal) voters cannot alter the order in which candidates appear on a list. In others (Belgium, Denmark, Italy, Luxembourg, the Netherlands, Austria, Finland 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 or 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 the d'Hondt method, the Hagenbach-Bischoff method. In Greece seats are allocated by the weighted method of proportional representation known as *Eniskhimeni Analogiki*, in Ireland by the single transferable vote method, in Italy by the whole electoral quota and largest remainder method, 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 Belgium, Ireland, France, Italy, Austria, Finland 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 by a verification committee.

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), which also allowed the establishment of political foundations at the European level.

J. Filling of seats vacated during the electoral term

In some Member States (Denmark, France, Italy, Luxembourg, the Netherlands, Austria, Portugal and Finland) 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, Germany, Ireland and Sweden vacant seats are allocated to substitutes. In Germany and Spain, 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. Council Decision 2002/772/EC, Euratom of 25 June 2002 and September 2002 incorporates the substance of the EP's proposal but does not take over the proposal for the establishment of a single European constituency for the election of 10 % of the seats.

The continuing lack of a genuine uniform procedure for election to the European Parliament 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. The Treaty of Lisbon would provide a legal base for the adoption of a uniform procedure, requiring the consent of the European Parliament.

→ Wilhelm Lehmann
July 2008

1.3.5. The European Parliament: relations with the national parliaments

The progress of European integration has changed the role of national parliaments. Various instruments of cooperation between the European Parliament and national parliaments have been created in order to establish effective democratic control of European legislation at all levels.

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 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 their loss of influence and have come to see better national control over their governments' European activities and closer relations with the European Parliament 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 European 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 NPs' 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 national parliaments annexed to the Treaty of Amsterdam encourages greater involvement of national parliaments 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 national parliaments 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 national parliaments in the European Union, which was attached to the Treaty establishing a Constitution for Europe. In May 2006, the European Commission agreed to transfer electronically all new proposals and consultation papers to the national parliaments.

The Treaty of Lisbon would introduce a new mechanism for national parliaments to watch over the respect of the subsidiarity principle in new legislative proposals. It would give a majority of chambers the possibility to block a new Commission proposal. However, the final decision would be up to the legislative authority (European Parliament and Council of Ministers). The Treaty also contains new articles clarifying the role of national parliaments in the European institutional set-up (Articles 10 and 12 TEU).

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.

During recent years, the presidents have met every year. Important recent conferences were held in Athens, from 22 to 24 May 2003 (on the role of the European parliaments in an enlarged Europe) and in Lisbon, on 20 and 21 June 2008 (on the EU beyond the Treaty of Lisbon).

Since 1995 the EP had maintained close relations with the parliaments of the associate and accession countries. The presidents of the European Parliament and these parliaments have repeatedly met 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 Council 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 prejudge their position.

E. Cooperation

Most of the EP's standing **committees** consult their national counterparts through bilateral 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 European Parliament and exchanges of officials. Reciprocal information on parliamentary work, especially in legislation, is of increasing importance.

→ Wilhelm Lehmann
July 2008

1.3.6. The Council

Together with the European Parliament, the Council is the institution that adopts EU legislation through regulations and directives and prepares decisions and non-binding recommendations. In its areas of competence, it takes its decisions by simple majority, qualified majority or unanimity, according to the importance of the act needing its approval.

Legal basis

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

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 in accordance with Article 251 EC or alone after consultation of the European Parliament (→1.4.1). The Council also adopts individual decisions and non-binding recommendations (Article 249 EC) 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 European Parliament) 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 Parliament'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 EC) 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 now assisted in the field of the common foreign and security policy by the Council general secretariat, whose General-Secretary 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 (→4.12.1).

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 EC).

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 Council Presidency: this changes every six months, in the order decided by the Council acting unanimously (Article 203 EC). 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.

The Treaty of Lisbon would change the system of rotating presidencies. It would formalise the practice of 18-month team presidencies in a draft decision of the European Council to be adopted after the entry into force of the Treaty and create a long-term Presidency for the foreign affairs Council, which would be chaired by the High Representative of the Union for Foreign Affairs and Security Policy for the term of his or her mandate.

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) EC). 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) EC).

Before the accession of the 10 new Member States in 2004, 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, Ireland and Finland 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 to 31 October 2004). The required qualified majority was 88 (70.97 %).

From 1 November 2004, a new weighting of votes was 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 255 votes in favour, cast by at least two thirds of the members.

The Treaty of Lisbon would discard the system of weighted votes and follow a simple rule of double majority (55 % of the members of the Council, comprising at least 15 of them and representing Member States comprising at least 65 % of the

population of the Union). However, this new system would not come into force before 1 November 2014.

b. Scope

The Treaty of Nice extended the scope of decision-making by qualified majority. There are 27 provisions that change completely or partly from unanimity to qualified majority, among them Article 18 EC (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 Regions (→1.4.1 and →1.4.3). The Treaty of Lisbon increases the number of legal bases requiring qualified majority by 45, including many former third pillar areas.

3. Unanimity

Unanimity is required by the EC Treaty for only a small number of decisions, but they are 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) EC).

→ Wilhelm Lehmann
July 2008

1.3.7. The European Council

The European Council formed by the Heads of State or Government of the Member States provides the necessary impetus to the development of the European Union and defines the general political guidelines. The European Council is linked with the Commission as the Commission President is part of the European Council. The President of the European Parliament is also present at European Council's meetings.

Legal basis

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

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 Lisbon Treaty would make the European Council an institution of the European Union. Its tasks would be to

'provide the Union with the necessary impetus for its development and define the general political directions and priorities thereof' (Article 15 TEU as amended).

D. Incorporation in the Treaties

The Single European 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.

The Treaty of Lisbon will make the European Council a full institution of the European Union (Article 13 TEU as amended).

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 has been 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.

Under the Lisbon Treaty a long-term Presidency would be introduced. The President would have a mandate of 30 months, renewable once.

Role

A. Place in the Union's institutional system

Under Article 3 TEU, 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 yet a Community institution. When the Treaty establishing the European Community 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) EC;

— choosing the Member States which fulfil the conditions for access to the single currency, under Article 121(4) EC.

The same applies when the Treaty on European Union (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 Treaty is that in Article 4 TEU, 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 current 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.

Under the Lisbon Treaty the new High Representative of the Union for Foreign Affairs and Security Policy would become an additional component proposing and carrying out foreign policy on behalf of 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 TEU).

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 TEU).

It decides whether to recommend to the Member States a move 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) TEU). The same procedure can apply if Member States decide to establish enhanced cooperation in this field (Article 27c(2) TEU).

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) TEU) (→4.12.1 and →4.12.2). The Lisbon Treaty introduces several new bridging clauses enabling the European Council to change the decision rule in the Council from unanimity to majority.

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 Bulgaria, Latvia, Malta, Romania and Slovakia, 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 the 1 May 2004 of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia. Bulgaria and Romania 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 Treaty on European Union. 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).

After two and a half years of institutional stalemate the European Council of 21 and 22 June 2007 adopted a detailed mandate for the Intergovernmental Conference leading to the signature of the Lisbon Treaty.

→ Wilhelm Lehmann
July 2008

1.3.8. The Commission

The Commission is the European institution that has the monopoly on legislative initiative. It is the one executive body of the European Community and it is formed by a college of Commissioners which brings together until 2009 one Commissioner per Member State. The committees and working groups set up by the Council may be associated with the Commission's implementing powers.

Legal basis

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

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 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 the Commission has consisted 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 have 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 Lisbon Treaty would provide for a number of Commission Members of two thirds of Member States. However, this would only be applied from 1 November 2014 and the European Council would still have the right to change the number of Commissioners unanimously. 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 (Article 17 of the Treaty on European Union (TEU), as amended).

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 Lisbon Treaty stipulates that the results of the European elections have to be taken into account for the selection of the candidate. The nomination must be approved by the European Parliament.

— 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 European Parliament 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 EC)

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 EC. 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 Secretariat-General consisting of 27 directorates-general and 19 specialist departments, including the European Anti-Fraud Office, the Legal Service, Eurostat (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) EC (→1.4.3).

c. Initiative in Community relations with third countries

The Commission is responsible for negotiating international agreements under Articles 133 and 300 EC, 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 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 EC. 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) EU. The High Representative of the Union for Foreign Affairs and Security Policy provided for by the Lisbon Treaty will be Vice-President of the Commission. Hence, the Commission will have a stronger role in foreign policy. As to former third pillar areas, most of them will be transferred to the general legislative procedure

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 EC: 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 EC;

— 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 EC 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 European Act amended the EC Treaty, 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. Parliament changed its rules of procedure accordingly (resolution of 14 December 2006). This new procedure entitles Parliament and the 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.

— Pacing 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) EC.

E. Consultative powers

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

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 TEU.

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

→ Wilhelm Lehmann
July 2008

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

The European Union's jurisdiction is the responsibility of the Court of Justice of the European Communities, the Court of First Instance of the European Communities and, from 2 November 2004, the European Union Civil Service Tribunal. These bodies ensure the correct interpretation and application of primary and secondary law in the European Union.

I. Court of Justice of the European Communities

Legal basis

Articles 220, 226, second paragraph, 227, 230, 232, 234 to 237 and 300 of the Treaty establishing the European Community (EC).

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)

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)

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)

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 and statute)

Six years.

Partial replacement every three years:

— 14 and 13 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 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).

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): opportunity for the state to submit its observations, reasoned opinion (→1.3.8), or

— another Member State after it has brought the matter before the Commission (Article 227).

Role of the Court:

— to confirm 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 of the EC Treaty).

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) or, in infringement of Community law, have failed to act (failure to act: Article 232).

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).

c. Other direct proceedings

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

Actions for compensation for damages caused by the institutions or their servants (Article 235).

Actions by Community officials and servants against their institutions (Article 236) — competence currently devolved to the Civil Service Tribunal (see below).

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

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

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 (→1.5.1).

I. 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 (in a judgment of 13 September 2005 (Case C-176/03 *European Communities* v *Council of the European Union*), the Court in fact authorised the European Community to take measures relating to criminal law where 'necessary' in order to achieve the objective as regards environmental protection).

II. Court of First Instance

Legal Basis

Articles 224 and 225 of the EC Treaty, 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 EC Treaty 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 EC)

A. Composition

1. Number

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

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

2. 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.

3. Appointment procedure

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

B. 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)

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);

— actions for the reparation of damage caused by the institutions (Article 235);

— disputes concerning contracts concluded by the Community (Article 238).

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) 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. European Union Civil Service Tribunal

In order to relieve the Court of First Instance of some of its proceedings, Article 225a of the EC Treaty, 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' (OJ L 333, 9.11.2004, p. 7).

This decision stipulates that the decisions of this Tribunal are subject to appeals to the Court of First Instance. These appeals do not have suspensory effect, are limited to points of law and 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.

The Lisbon Treaty

The entry into force of the Lisbon Treaty would introduce changes 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.

— 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, the European Central Bank and other EU bodies and organisms that fail to act.

— 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 directive, 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 Statue will be subject to the ordinary legislative procedure, 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 European Parliament the right to bring before the Court actions to have decisions declared void (Article 230 EC) for the purpose of safeguarding its prerogatives under the legislative procedure.

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

→ Claire Genta
July 2008

1.3.10. The Court of Auditors

The European Court of Auditors is in charge of the audit of EU finances. As the EU's external auditor it contributes to improving EU financial management and acts as the independent guardian of the financial interests of the citizens of the Union.

Legal basis

Articles 246 to 248, 279 and 280 of the Treaty establishing the European Community (EC).

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.

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;

— on the recommendation of each Member State regarding its own seat;

— after consulting Parliament.

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. The Court's audits

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 carries out its audits in order to obtain a reasonable assurance as to:

— the reliability of the annual accounts of the Communities;

— 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. Main publications

Following its audits the Court provides Parliament and the Council with a yearly **statement of assurance** ('DAS' for *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 of the European Union* together with the institutions' replies to the Court's observations.

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

B. Advisory powers

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.

Role of the European Parliament

The Court of Auditors was created in 1977 at the initiative of the European Parliament. Since then, it has assisted the European Parliament 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 No 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 of 17 May 2006 on budgetary discipline and sound financial management (see 'the 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.'

→ François Javelle
Helmut Werner
July 2008

1.3.11. The European Economic and Social Committee

The European Economic and Social Committee is a consultative body of the European Union. It is composed of 344 members. Its opinions are required as a mandatory consultation in the fields established by the Treaties or as a voluntary consultation by the Commission, Council or Parliament. The Committee may also issue opinions on its own initiative.

Legal basis

Articles 257 to 262 of the Treaty establishing the European Community (EC) (Articles 301 to 304 of the Lisbon Treaty).

Composition

A. Number and national allocation of seats (Article 258)

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 Belgium, Bulgaria, the Czech Republic, Greece, Hungary, the Netherlands, Austria, Portugal and Sweden;

— 9 for Denmark, Ireland, Lithuania, Slovakia and Finland;

— 7 for Estonia, Latvia and Slovenia;

— 6 for Cyprus and Luxembourg;

— 5 for Malta.

B. Method of appointment (Article 259)

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 go to employers, one third to employees and one third to other categories (farmers, retailers, the liberal professions, consumers, etc.).

C. Type of mandate (Article 258)

Members are appointed for four years, renewable (five years according to the Treaty of Lisbon). The Treaty on European Union 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 the Court of Auditors).

Organisation and procedures

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

— It appoints its President and its Bureau 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 subcommittees to deal with specific subjects.

— It has its own secretariat.

Powers

The EESC 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.

A. Opinions issued at the request of Community institutions

1. Mandatory consultation

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

— 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);

— environment (Title XIX).

2. 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 from taking further action.

B. Issuing an opinion on its own initiative

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

Relations between the European 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 Presidents of the two bodies or between committee and section members; or joint conferences.

→ Hélène Calers
July 2008

1.3.12. The Committee of the Regions

The Committee of the Regions is formed of 344 members representing the regional and local authorities of 27 Member States of the Union. It gives its opinions in the cases of mandatory consultation established by the Treaty, voluntary consultation and on its own initiative, whenever it seems fit.

Legal basis

Articles 263 to 265 of the Treaty establishing the European Community (EC), 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 on the Functioning of the European Union would indeed open this possibility for the Committee.

Organisation

A. Composition (Article 263)

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 Belgium, Bulgaria, the Czech Republic, Greece, Hungary, the Netherlands, Austria, Portugal and Sweden;

— 9 for Denmark, Ireland, Lithuania, Slovakia and Finland;

— 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 of Lisbon, Article 305), by the Council acting by qualified majority on a proposal from the respective Member States (the Treaty of Lisbon stipulates that the appointment of Committee members should be based on a proposal by the Commission). The term of office is renewable. In practice those appointed are usually locally or regionally elected representatives.

B. Structure (Article 264)

The Committee elects its chairman and officers from among its members for a term of two years (two and a half years according to the provisions of the Treaty of Lisbon). 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

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

— education, vocational training and youth (Article 149);

— culture (Article 151);

— public health (Article 152);

— trans-European transport, telecommunications and energy networks (Article 156);

— economic and social cohesion:

- specific actions (Article 159),
- defining the tasks, priorities and organisation of the Structural Funds (Article 161),
- implementing decisions relating to the European Regional Development Fund (Article 162).

2. Voluntary consultation

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

When the Council or the Commission (this provision also includes the European Parliament under the Treaty of Lisbon) 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.

B. Issuing an opinion on its own initiative

1. When the Economic and Social Committee is being consulted

When the Council or the Commission are consulting the Economic and Social Committee they 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 and medium-sized enterprises (SMEs);
— trans-European networks;
— the tourist industry;
— Structural Funds;
— health (the fight against drugs);
— industry;
— urban development;
— training programmes;
— the environment.

→ Claire Genta
July 2008

1.3.13. The European Investment Bank

The European Investment Bank ensures the long-term financing of the European Union. It also represents a source of financing for the States or groups of States with which the EU has concluded an agreement. Its capital is subscribed by the Member States and by borrowing operations, mainly in the form of public bond issues.

Legal basis

— Articles 266 and 267 of the Treaty establishing the European Community (EC).
— A protocol annexed to the EC Treaty lays down the Bank's statute.

Organisation and operation

A. Legal status

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

B. Structure

Its governing bodies listed below.

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

Twenty-eight 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 eight 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. A total of 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 EC Treaty, 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 Germany and Austria.

3. Support for small and medium-sized enterprises

The Bank supports investment by 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 period 2003–06. Since it set up i2i in 2000, the EIB has advanced loans for innovative investment projects worth EUR 34.8 billion, of which EUR 10.4 billion 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 (TENs) 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 (ACP) countries 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 first operational year of the FEMIP (Facility for Euro-Mediterranean Investment and Partnership) Trust Fund was 2005. 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 other three targeted Algeria, Morocco and Syria.

d. Western Balkan countries (Albania, Bosnia and Herzegovina, and the former Yugoslav Republic 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.

e. 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
January 2007

1.3.14. The European Ombudsman

Created by the Treaty of Maastricht, the European Ombudsman conducts inquiries on the cases of maladministration by Community institutions or bodies. He acts on his own initiative or on the basis of complaints from EU citizens. Appointed by the European Parliament, his term of office corresponds to the Parliament's term.

Legal basis

Articles 21 and 195 of the Treaty establishing the European Community (EC).

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 Treaty, the regulations and duties of the Ombudsman were spelt out by the European 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 to 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.

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 a vote by 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, unwarranted delays, etc.

b. Exceptions

The following matters fall outside his terms of reference:

— action by the Court of Justice and the Court of First Instance in their judicial role, in 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 European Parliament, 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 European Parliament 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 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 to documents.

At the plenary sitting of 15 January 2003, Mr Nikiforos Diamandouros was elected European Ombudsman by the European Parliament 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 and 26 November 2002.

E. Revision of the Ombudsman's statute

On 11 July 2006, the Ombudsman submitted to the President of Parliament a proposal for adaptation of his statute of 9 March 1994. The Committee on Petitions supported this proposal in its report on the Ombudsman's annual report 2005 (EP resolution of 16 November 2006) and Parliament finally approved Anneli Jäätteenmäki's report proposing amendments to the statute on 22 April 2008. These amendments were approved by the Council on 12 June 2008.

They seek primarily to:

— allow the Ombudsman to consult any document he needs in the course of his inquiries and to lift the secrecy exception, while clarifying and strengthening the provisions for the Ombudsman to maintain the confidentiality of documents disclosed to him;

— extend the cooperation of the European Ombudsman (already established with the national ombudsmen) to the

bodies in charge of the promotion and protection of human rights in the Member States;

— amend the wording of the provision concerning the testimony of officials who do not speak on a personal basis, but as officials (the original formulation referred to speaking 'in accordance with instructions from their administrations');

— request the Ombudsman to notify the European Anti-Fraud Office (OLAF) if in the course of his inquiries he receives information that might fall within OLAF's remit.

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.

→ Claire Genta
July 2008

1.4. Decision-making procedures

1.4.1. Supranational decision-making procedures

The Member States of the European Union have agreed, as a result of their membership of the EU, to transfer some of their powers to the EU institutions in specified policy areas. Thus, EU institutions make supranational binding decisions in their legislative and executive procedures, the budgetary procedures, the appointment procedures and the quasi-constitutional procedures.

History (→1.1.1 to →1.1.6)

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 Parliament a consultative power.

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. 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.

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. The Treaty of Lisbon would be a further qualitative step towards full equality with the Council in EU legislation and finance.

Legislative procedures

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

1. 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. The Lisbon Treaty would bring about a massive extension of co-decision (which would be called the general legislative procedure) to many existing and new legal bases, in particular in the area of justice, freedom and security and in agriculture.

2. Procedure

a. Commission proposal

b. First reading in Parliament

Parliament gives its opinion by a simple majority.

c. 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.

d. 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 then returns to the Council.

e. 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.

f. 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.

g. 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.

B. 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

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.

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.

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.

C. Consultation procedure

Before taking a decision, the Council must take note of the opinion of Parliament and, if necessary, of the European 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).

D. 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: →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 of the EC Treaty) after:

  - the Council, meeting at Heads of State or 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 of the EC Treaty) 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 **European Economic and Social Committee** (Articles 259 and 263 of the EC Treaty) on a proposal by the Member States' governments (after consulting the Commission in the case of the EESC).

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 or 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).

C. Parliament appoints the Ombudsman (Article 195).

Quasi-constitutional procedures

A. Conclusion of international agreements

— The Commission presents recommendations to the Council and conducts negotiations.

— The Council defines the mandate for the negotiations.

— Proposal for conclusion: Commission.

— Parliament's role:

  - assent for agreements under Article 310 (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.

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

B. System of own resources

— Proposal: Commission.

— Parliament's role: consultation.

— Decision: Council, unanimously, subject to adoption by the Member States in accordance with their respective constitutional requirements.

C.. Provisions for election of Parliament by direct universal suffrage:

— Proposal: Parliament.

— Decision: Council, unanimously after obtaining Parliament's assent, subject to adoption by the Member States.

D. Adoption of the statute for members of the European Parliament and the statute for the Ombudsman:

— Proposal: Parliament.

— Commission's role: opinion.

— 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).

— Decision: Parliament.

E. Amendment of the protocol on the statute of the Court of Justice

— Proposal: Court of Justice.

— Commission's role: consultation.

— Parliament's role: consultation.

— Decision: Council, unanimously.

Role of the European Parliament

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. It was proposed 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. Many of these improvements would be implemented if the Lisbon Treaty came into force (→1.1.6).

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. According to the Lisbon Treaty this appointment would have to take into account the result of the European elections and would hence underline the political accountability of the European Commission.

→ Wilhelm Lehmann
July 2008

1.4.2. Intergovernmental decision-making procedures

In the common foreign and security policy and in judicial cooperation in criminal matters, as well as in several other fields, the decision-making procedure is different from the one provided in the Treaty establishing the European Community. The dominant feature in these fields is intergovernmental cooperation although this would change for former third pillar policies under the Lisbon Treaty.

Legal basis

— Articles 7, 11, 23, 24, 34, 43, 44, 48 and 49 of the Treaty on European Union (TEU).

— Article 11 of the Treaty establishing the European Community (EC).

Description

The Treaty on European Union 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.

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

— Proposal: any Member State or the Commission.

— Commission's role: consultation and participation in the Intergovernmental Conference.

— Parliament's role: consultation before the Intergovernmental Conference is convened (the conferences themselves involved Parliament on an ad hoc basis but with increasing influence: for some time it was represented either by its President or two of its members, at the last Intergovernmental Conference it provided three representatives).

— Role of the Governing Council of the European Central Bank: consultation in the event of institutional changes in the monetary field.

— 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 TEU)

— Applications: from any European State which complies with the Union's principles (see Article 6).

— Commission's role: consultation; it takes an active part in preparing and conducting negotiations.

— Parliament's role: assent, by an absolute majority of its component members.

— 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 TEU)

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.

— Parliament'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 or 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 European Parliament.

— Parliament'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 EC)

— Proposal: exclusive right of the Commission; Member States which intend to establish enhanced cooperation can apply to the Commission to that effect.

— Parliament's role: opinion only, or consent when enhanced cooperation relates to an area covered by the co-decision procedure.

— Decision: 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 40 TEU)

— Application to the Commission by the Member States concerned.

— Proposal from the Commission or not less than eight Member States.

— Consultation of the European Parliament.

— The Council acts by a qualified majority.

— 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:

— Proposal: any Member State or the Commission (Article 22 TEU).

— 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 TEU)

— Recommendation for common strategy: adopted unanimously by the Council.

— Decision on common strategy: European Council, unanimously.

— 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.

— Adoption of common positions or joint actions not covered by a common strategy: the Council, unanimously.

3. International agreements (Article 24 TEU)

— Authorisation to open negotiations: Council.

— Negotiations conducted by the Council Presidency, assisted by the Commission as appropriate.

— Agreement concluded by the Council on a recommendation from the Presidency;

— 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 TEU)

— Proposal: any Member State or the Commission;

— 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.

— 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.

Role of the European Parliament

In the run-up to the 1996 Intergovernmental Conference, Parliament had already 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.

The Lisbon Treaty would considerably extend supranational decision-making into the former third pillar (justice and home affairs) and make the qualified-majority rule and the co-decision procedure generally applicable in EU legislation (→1.1.6).

→ Wilhelm Lehmann
July 2008

1.4.3. The budgetary procedure

Since the Treaties of 1970 and 1975, Parliament's role in the budgetary process is enhanced. Parliament and the Council equally decide the adoption of the EU budget. The current distinction between the 'non-compulsory expenditure', for which Parliament has the final say, and the 'compulsory' expenditure, for which it can only make amendments, would be abolished by the Lisbon Treaty.

Legal basis

— Article 272 of the Treaty establishing the European Community (EC); 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, 16.9.2002), as amended by Regulation (EC, Euratom) No 1995/2006 of 13 December 2006 (OJ L 390, 30.12.2006)).

— Interinstitutional Agreement of 17 May 2006 on budgetary discipline and sound financial management (OJ C 139, 14.6.2006).

— EP'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.

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 67 % of commitment expenditure respectively 65 % of payment expenditure in the general budget for 2008), 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 EC Treaty, 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 1: 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 trialogue 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 and Parliament by 1 September at the latest (by the end of April, according to the pragmatic timetable). Since 2002, an annual policy strategy (APS) decision 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 2: 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 (by 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 trialogue meeting between the institutions in late June.

3. Stage 3: 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 4: 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 5: 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) (This distinction is to be abolished by the Lisbon Treaty.)

1. Compulsory expenditure (CE)

The distinction between 'compulsory' expenditure (i.e. obligatory expenditure as derived from the Treaties) and 'non-compulsory' expenditure (the rest) determines the division of power over the budget between Parliament and the Council. Parliament has the last word on non-compulsory expenditure

(67 % of the budget 2008) and the Council on compulsory expenditure (33 % of the budget 2008).

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 (67 % of the budget 2008), 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 EC Treaty, 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.

4. The new budgetary procedure according to the Treaty of Lisbon

The Treaty of Lisbon substantially modifies the budgetary procedure in the framework of the new structure it defines for the finances of the Union. The new procedure will be both simplified and rendered more transparent.

The modifications derive mainly from the elimination of the distinction between compulsory expenses and non-compulsory expenses, which allows for the treatment of all the expenditure under the same procedure.

The procedure is further simplified as there will be only one reading in each institution, based on the draft budget presented by the Commission (up to 1 September). The draft budget is first dealt with by the Council, which must adopt its position by 1 October. After the communication of the Council's position to the Parliament, the latter has 42 days to approve the Council's position (failure to act meaning approval) or to adopt amendments to it (by the majority of its component members).

Should the EP adopt amendments to the position of the Council, a conciliation committee, composed of the representatives of the Member States and an equal number of members of the EP, will be convened, unless within 10 days the Council communicates to the EP that it accepts its amendments.

The conciliation committee will have 21 days to agree on a common text. If this deadline is met, both institutions will then have 14 days to approve the common text, failure to act meaning approval. If they both reject it (or if no agreement had been reached in the conciliation committee) the procedure will be ended and a new draft budget will have to be presented by the Commission. The same will happen if just Parliament rejects it, even if the Council approves it. But if the Council rejects it, while the EP approves it, the EP will still have the possibility of confirming the amendments it had adopted in its reading (acting by a majority of its members and three fifths of the votes cast) which have not been accepted by the Council. Should it fail to do so, the amounts contained in the joint text (of the conciliation committee) will be retained and the budget deemed adopted on this basis.

Role of the European Parliament

A. The powers conferred by the 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 67 % of commitment appropriations in the 2008 budget.

Parliament's granting discharge to the Commission for year *n*-2 according to Article 276 of the EC Treaty, (→1.5.4), implies examining the implementation of the budget, and Parliament's recommendations expressed in the discharge resolution should help the Commission to improve the implementation of the budget.

The Treaty of Lisbon enhances the position of the EP as one of the two branches of the budgetary authority. In fact, due to the elimination of the distinction between compulsory and non-compulsory expenditure Parliament will decide on an equal footing with the Council on all the expenses of the Union. Indeed, the position of the EP will even be stronger than that of the Council, as the Council may never impose a budget against the will of the EP, while the EP may in some circumstances have the last word and impose a budget against the will of the Council (see Achievements C.4 above). However, this seems to be a rather exceptional situation, and it would be more appropriate to say that, in general, the new budgetary procedure is based on a real (although specific) co-decision between Parliament and the Council, on an equal footing, covering all the expenses of the Union.

B. The Interinstitutional Agreements on budgetary discipline (Interinstitutional Agreements, 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 had 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 trialogues and conciliation between the various stages of establishing the budget;

— 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.;

— limiting the role of the maximum rate of increase rule;

— 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.

The Treaty of Lisbon will institutionalise the multiannual financial framework (Article 312 of the Treaty on the Functioning of the European Union, consolidated version), which will become a legally binding act adopted through a special legislative procedure: it will be adopted by the Council by unanimity after receiving the consent of the Parliament (by the majority of its component members). This article also stipulates that, throughout the whole procedure, the institutions 'shall take any measure necessary to facilitate its adoption', which reinforces the role of the EP in relation to traditional assent procedures and enhances the possibility of a final agreement.

Moreover, the same article allows that in the future the multiannual financial framework (MFF) be approved by the Council by qualified majority, provided that a previous unanimous decision of the European Council authorises it. Regarding its content, the future legally binding MFF will be roughly similar to the present Interinstitutional Agreement. Its lifetime will be at least five years, which will allow for moving towards a rough parallelism with the term of Parliament and of the Commission, as required by the democratic principle.

The Lisbon Treaty also establishes a clear hierarchy between the basic financial acts of the Union: the MFF must respect the ceiling established in the decision on own resources; the annual budget must respect the ceilings defined in the MFF.

→ Jose-Luis Pacheco
Helmut Werner
July 2008

1.5. Financing

1.5.1. The Union's revenue and expenditure

Revenue is determined by the Council after ratification by national parliaments of the Member States. The budget expenditure is approved jointly by the Council and Parliament.

Legal basis

— Treaties:

- tax revenues: Articles 268 to 280 of the Treaty establishing the European Community (EC); Article 173 of the Euratom Treaty;
- loans: Article 308 EC; Articles 172 and 203 of the Euratom Treaty.

— Council Decision 2000/597/EC, Euratom of 29 September 2000 (OJ L 253, 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), as amended by Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006 (OJ L 390, 30.12.2006), especially Articles 40 to 47.

Objectives

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

Achievements

The 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

A. 'Traditional' own resources

These were created by the decision of 1970 and have been collected since then. In 2008 they represented 16 % of the budget. They consist of:

— agricultural levies and sugar production levies;

— customs duties.

B. 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 VAT levy accounted for 16 % of the budget in 2008.

C. 'Other' own resources

Other revenue includes taxes paid by EU staff on their salaries, contributions from non-EU countries to certain EU programmes and fines to companies that breach competition or other laws. These miscellaneous resources amount to roughly 1 % of the budget.

D. The GNI-based resource

This 'fourth own resource' was created by the decision of 1988 and consisted of the levy on the Member States' GNP of a percentage set by each year's budget. To date in 2008 it consists of a rate of 0.5896 % on the Member States' gross national income (GNI), pursuant to Article 2(1)(d) of Council Decision 2000/597/EC, Euratom of 29 September 2000. Originally it was only to be collected if the other own resources did not fully cover expenditure, but now it finances the bulk of the EU budget. In 2008, the GNI-based resource represented 67 % of the general budget of the EU.

E. 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 one quarter. The December 2005 European Council confirmed these arrangements although it

provides for a slow phasing out of the UK abatement, and foresees, for the period 2007–13 only, a reduction of the GNI contribution of EUR 605 million annually for the Netherlands and of EUR 150 million annually for Sweden. Subsequently and following a proposal of the Commission of 8 March 2006 (COM(2006) 99) the Council decided on 7 June 2007 on the system of own resources to cover these adjustments (this decision is currently in the process of ratification and is to take effect retroactively as from 1 January 2007).

F. 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

A. 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 annularity 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. Parliament in its resolutions has repeatedly requested that the EDF be integrated into the general budget.

B. 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 EC Treaty 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, and 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 (activity based budgeting).

3. The multiannual financial framework (→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 multiannual financial framework indicates the scale and composition of the Community's forecast expenditure and reflects the main budgetary priorities for the period covered (generally seven years, but 'at least five years' with the Lisbon Treaty which would allow synchronisation with the term of the Commission and the legislative term). This is important for the regulations governing the different EU programmes to be set in conformity with the MFF. These regulations are essential for

the implementation of the budget, together with the Financial Regulation (→1.5.3).

The MFF 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 and its resolution of 17 May 2006 on the Interinstitutional Agreement) drawn attention to the inadequacy of revenue and expressed its support for reform of the own resources system. 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.

The resolution of 29 March 2007 on the future of the European Union's own resources (based on the own initiative report by Mr Lamassoure, who consulted EU national parliaments with a view to reach a consensus on a coherent approach on the future of EU's own resources) provided common guidelines for the Commission's review work in 2008/09, thus giving a clear signal to the Heads of State or Government of what their parliaments' concepts for the future may be. This resolution, after pointing out the shortcomings of the current financing system, advocated a two-step approach to the reform.

— In a first phase full equality and solidarity between Member States are to be achieved.

— The second phase of the reform would see a new system of own resources, with the following principles as cornerstones: full respect for the principle of fiscal sovereignty of the Member States; fiscal neutrality; progressive phasing-in of the new system which must not increase overall public expenditure nor the tax burden for citizens.

— The Lisbon Treaty opens the way in this direction (Article 311 of the TFEU (consolidated version) replacing Article 279 EC). It maintains that the budget be financed wholly from own resources and provides that the Council adopt unanimously and after consulting Parliament a decision on the system of own resources of the Union, including the possibility of establishing new categories of own resources and abolishing existing ones. Such a decision would need to be ratified by the Member States. However, the implementing measures of such decision can be adopted by the Council only after obtaining the consent of Parliament. This can be seen as a step in the direction of a communitarian method also in the area of the Union's own resources.

B. Expenditure (→1.4.3)

From the start, Parliament has opposed the distinction between compulsory and non-compulsory expenditure, regarding it as restricting its powers. Although technical in nature, the criterion has major institutional implications because it determines the division of budgetary powers between the Council and 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 agreement on budgetary discipline of 17 May 2006 maintains the distinction between compulsory and non-compulsory expenditure but confirms and develops the principle of budgetary co-decision between Parliament and the Council.

As is further outlined in the fact sheet on the budgetary procedure (→1.4.3), the current distinction between the non-compulsory expenditure, for which Parliament has the final say, and the compulsory expenditure, for which it can only make amendments, would be abolished by the Lisbon Treaty.

→ Helmut Werner
July 2008

1.5.2. The multiannual financial framework

In order to improve the budgetary procedure, the European institutions conclude, since 1988, Interinstitutional Agreements covering the budget process and the distribution of the budget. These agreements are established for several years, and bear the name of 'financial perspective'. After Delors I, Delors II and Agenda 2000, a fourth agreement has been designed for the period 2007–13.

Legal basis

Articles 268 to 274 of the Treaty establishing the European Community (EC) 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 of Parliament, the Council and the Commission, currently:

— the Interinstitutional Agreement of 17 May 2006 on budgetary discipline and sound financial management (OJ

C 139, 14.6.2006); its Annex I was amended by Decision 2008/29/EC of the European Parliament and the Council of 18 December 2007 (OJ L 6, 10.1.2008).

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 multiannual policy programmes more consistently.

The Treaty of Lisbon recognises and confers a legally binding status to the MFF, which will 'absorb' most of the substance of the current Interinstitutional Agreement. Indeed, Article 312 of the Treaty on the Functioning of the European Union establishes the MFF 'shall ensure that Union expenditure develops in an orderly manner and within the limits of its own resources', and that '[...] the annual budget of the Union shall comply with the multiannual financial framework', thus laying down the cornerstone of financial discipline.

Moreover, that article establishes that the MFF shall 'determine the amounts of the annual ceilings on commitment appropriations by category of expenditure and of the annual ceiling on payment appropriations'. It adds that the MFF shall also '[...] lay down any other provision required for the annual budgetary procedure to run smoothly', thus largely meeting the objectives of the current Interinstitutional Agreement.

Achievements

The first Interinstitutional Agreement 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 Interinstitutional Agreement and financial perspective was positive, the institutions followed the same procedure in concluding a new Interinstitutional Agreement on 29 October 1993, with the financial perspective for the period 1993–99, 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 Interinstitutional Agreement on the financial perspective for the period 2000–06, Agenda 2000, was signed on 6 May 1999 and one of its main challenges was reconciling the common agricultural policy (→4.2.2) 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 Interinstitutional Agreement of 17 May 2006 providing for EU spending of up to EUR 864.3 billion over the period 2007–13.

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 euro — 2004 prices, figures as of 17 May 2006):

- Heading 1: Sustainable growth 382 139 (44.2 %)
- Heading 1a: Competitiveness for growth and employment 74 098 (8.6 %)
- Heading 1b: 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 3a: Freedom, security and justice 6 630 (0.8 %)
- Heading 3b: 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 (to new Member States): 800 (0.1 %)
- Total for 2007–13: EUR 864 316 million (100.0 %) (commitment appropriations)

— Part II 'Improvement of interinstitutional collaboration during the budgetary procedure' and Part III 'Sound financial management of EU funds' cover the following points.

- The qualitative elements are at least as important as the quantitative ones.
- It provides the possibility for the Commission to present a report on the Interinstitutional Agreement if it deems necessary.
- There is a possibility for the newly elected Parliament to assess the functioning of the Interinstitutional Agreement 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 are planned jointly between the Foreign Affairs/Budgets Committees of Parliament and the Council Presidencies.

- Freedom, security and justice: the Council and Commission accept a unilateral Parliament declaration to discuss the second pillar (Justice and home affairs) at each trialogue.
- Certification (internal control): The text of the Interinstitutional Agreement is a major step forward for ensuring the sound financial management of EU funds.
- Financial regulation: There is a reference in the Interinstitutional Agreement 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 Interinstitutional Agreement (Part III). It allows the Committee on Budgets to follow-up with more accuracy the impact of the legislation in force.

A major advantage of the Interinstitutional Agreements on budgetary discipline has been that they allow for consistent multiannual programming (→1.4.3). Following the agreement on the Interinstitutional Agreement the Commission adopted on 24 May 2006 a legislative package including 26 revised and 5 new proposals, covering the majority of EU programmes and policy areas.

The conclusion of this new Interinstitutional Agreement presents major achievements.

— Continuity of the EU legislative process: 90 % of Community programmes were due to terminate at the end of 2006. The functioning of the programmes is guaranteed.

— It represents the first financial framework for 27 Member States for the coming seven years.

— There is a 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.

— It provides for a review on the basis of the Commission's assessment of the current Interinstitutional Agreement in 2009 and a full involvement of Parliament in the wide-ranging mid-term review.

— It contributes to answer the EP's requests for improving the quality of implementation of the budget.

— Active use is made of new financial instruments through co-financing with the European Investment Bank (EIB).

— It safeguards Parliament's budgetary and legislative prerogatives and strengthens the democratic scrutiny in external programmes and CFSP.

— There is 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 2008/09. That review should be accompanied by an assessment of the functioning of the Interinstitutional Agreement. The European Parliament 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.

— The proposal was made by the Commission in February and July 2004.

— In September 2004, Parliament set up a temporary committee on the financial perspective which concluded and set its negotiating position by the resolution of 8 June 2005 entitled 'Policy challenges and budgetary means of the enlarged Union 2007–13'.

— The common position of the European Council was presented (conclusions of the European Council of 15 and 16 December 2005 — the summit of June 2005 having been inconclusive).

— Negotiations took place between the European Parliament, the Council and the Commission on the new Interinstitutional Agreement (trialogues 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, Parliament voted in favour on 17 May 2006, and the agreement was signed the same day.

B. 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 Interinstitutional Agreement).

— 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.

— The Parliament has played a major role in enabling the budgetary means for launching Galileo, the EU satellite navigation system (→4.8.6). Consequently, Decision 2008/29/EC of the European Parliament and the Council of 18 December 2007 (OJ L 6, 10.1.2008) amended Annex I to the Interinstitutional Agreement of 17 May 2006 (OJ C 139, 14.6.2006).

— The recognition by the Treaty of Lisbon that in the future the MFF will be a legally binding act adopted through a special legislative procedure which requires the consent of the EP by the majority of its component members implies that the role of the EP as an equal partner of the Council in the adoption of this fundamental act programming the evolution of the expenses of the Union is formally recognised. Parliament may have preferred a co-decision procedure instead of the consent procedure. However, the fact that the new Treaty stipulates that throughout the procedure the institutions 'shall take any measure necessary to facilitate its adoption' reinforces its role.

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July 2008

FINANCIAL FRAMEWORK 2007–13 (revised)

(EUR million — 2004 prices)

Commitment appropriations	2007	2008	2009	2010	2011	2012	2013	Total 2007–13
1. Sustainable growth	**51 267**	**52 913**	**54 071**	**54 860**	**55 379**	**56 845**	**58 256**	**383 591**
1a. Competitiveness for growth and employment	8 404	9 595	10 209	11 000	11 306	12 122	12 914	75 550
1b. 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 of which:	**53 478**	**54 322**	**53 666**	**53 035**	**52 400**	**51 775**	**51 161**	**369 837**
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**
3a. Freedom, security and justice	600	690	790	910	1 050	1 200	1 390	6 630
3b. 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	**119 195**	**121 971**	**123 019**	**123 518**	**124 018**	**125 496**	**127 044**	**864 261**
as a percentage of GNI	1.10 %	1.08 %	1.07 %	1.04 %	1.03 %	1.02 %	1.01 %	1.048 %
TOTAL PAYMENT APPROPRIATIONS	**115 142**	**119 805**	**112 182**	**118 549**	**116 178**	**119 659**	**119 161**	**820 676**
as a percentage of GNI	1.06 %	1.06 %	0.97 %	1.00 %	0.97 %	0.97 %	0.95 %	1.00 %
Margin available	0.18 %	0.18 %	0.27 %	0.24 %	0.27 %	0.27 %	0.29 %	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: Decision 2008/29/EC of the European Parliament and the Council of 18 December 2007 (OJ L 6, 10.1.2008) amending Annex I to the Interinstitutional Agreement of 17 May 2006 (OJ C 139, 14.6.2006).

1.5.3. Implementation of the budget

The Commission implements the budget on its own responsibility and in cooperation with the Member States following the rules of the Financial Regulation, having regard to the principles of sound financial management.

Legal basis

Articles 202, 274, 275 and 279 of the Treaty establishing the European Community (EC).

Article 179 of the Euratom Treaty.

Objectives

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. The Commission implements the budget on its own responsibility (Article 274) but is subject to the political control of the EP (→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 and 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, a decision is taken to use a particular sum from a specific budgetary line in order to finance a specific activity; then, after the corresponding legal commitments (e.g. contracts) have been established and the contractual service, work or supplies delivered, the expenditure is authorised and the sums due are paid.

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 the Member States, especially for those sections of the budget involving agriculture (EAGGF →4.2.6) and the Structural and Cohesion Funds (the European Regional Development Fund →4.5.2, the European Social Fund →4.9.2, the European Fisheries Fund (EFF) →4.4.3 and the Cohesion Fund →4.5.3), 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 EC 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), as amended by Council Decision 2006/512/EC of 17.7.2006 (OJ L 200, 22.7.2006), 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 the competent 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 means 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 by the central financial controller of each institution. This system has given way to a decentralised system of *ex ante* and *a posteriori* controls, which enables the authorising officer within the directorate-general 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), as amended by Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006 (OJ L 390, 30.12.2006), 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, 2.8.2005).

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 one of the two arms 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 in a reserve ('Provisions' title, Article 43 of the Financial Regulation). Both the EP and 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 and recommendations 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. Parliament is therefore pushing the Commission to keep these under control.

New tools are being developed that should allow for better monitoring of the implementation and to improve the '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 European Parliament has strongly supported and influenced the new revision of the Financial Regulation, as well as the Interinstitutional Agreement 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 aforementioned Interinstitutional Agreement, priority will be given to sound financial management aiming at a positive statement of assurance by the Court of Auditors (→1.3.10 and →1.5.4).

As mentioned above, the comitology decision (1999/468/EC) of 28 June 1999 was amended by Council Decision 2006/512/EC of 17 July 2006 (OJ L 200, 22.7.2006). The new 'regulatory procedure with scrutiny' entitles Parliament to scrutinise quasi-legislative measures implementing an instrument adopted by co-decision and to reject such measures by an absolute majority of MEPs. Thus it strengthens Parliament's power of control.

Article 317 of the Lisbon Treaty (consolidated version) underlines more clearly than Article 274 EC, which it would replace, the control and audit obligations of the Member States in the implementation of the EU budget.

→ Anne Vitrey
Helmut Werner
July 2008

1.5.4. Budgetary control

Budgetary control is performed in each EU institution and at Member State level. Important control work is carried out by the Court of Auditors and by the Parliament. Each year the latter examines the implementation of the budget with a view to granting discharge to the European Commission.

Legal basis

Articles 274, 275, 276, 279 and 280 of the Treaty establishing the European Community (EC).

Articles 180b 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 to the EU budget and expenditure is exercised partly by national authorities. These have kept their powers, particularly on traditional own resources (→1.5.1), for they have the necessary machinery for collecting and controlling these sums. In fact, 25 % 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, Euratom) of 29 September 2000, which came into force on 1 March 2002. Collection of traditional own resources is nevertheless a matter of great importance to EU institutions. It was in this connection that the EP established a Committee of Inquiry on Transit (see below). Operational expenditure under the European Agricultural Guidance and Guarantee Fund (EAGGF) and the Structural Funds 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

In each institution, control is exercised by authorising officers and accountants and then by the institution's internal auditor.

2. External: 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 Treaty. 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;

— specific annual reports relative to EU agencies and bodies.

The ECA also reports on lending and borrowing operations and the European Development Fund.

3. Control at political level: by the European Parliament:

Within Parliament, the Committee on Budgetary Control is in charge of:

— the control of the implementation of the budget of the Union;

— the closure, presenting and auditing of the accounts and balance sheets of the Union, its institutions and any bodies financed by it;

— monitoring the cost-effectiveness of the various forms of Community financing in the implementation of the Union's policies;

— consideration of fraud and irregularities in the implementation of the budget of the Union, measures aiming at preventing and prosecuting such cases, and the protection of the Union's financial interests in general.

It also prepares the decisions on discharge.

The discharge procedure

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 EC Treaty). 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 into 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.

Parliament considers the discharge reports in plenary in April.

Thus the votes on the granting of the discharge are taken during the April part-session and, in the event of their being held over, during the October part-session.

If a proposal to grant discharge is not carried by a majority, or if Parliament decides to defer its discharge decision, Parliament informs the institutions or agencies concerned about the reasons for refusing to grant discharge. They are required to take measures without delay to eliminate the obstacles to the discharge decision.

Then, within six months, the Committee on Budgetary Control submits a fresh report containing a new proposal to grant or refuse discharge.

4. Anti-fraud measures: by OLAF

The European Anti-Fraud Office (known as OLAF) was established in 1999 (Commission Decision 1999/352/EC, ECSC, Euratom). It is competent to carry out investigations independent of 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 Regulations (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 internal 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 EC Treaty 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.

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.

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 the fact sheet on the Court of Auditors (→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 European Parliament has fostered the development of an integrated control framework comprising also the management shared with the Member States.

C. Other instruments

Parliament's specialised committees are also contributing to ensure that Community funds are spent in an efficient way 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. The Committee on Budgetary Control has followed up on their implementation. In this context the new computerised transit system (NCTS) has been developed.

Following the fact that several EU officials who had divulged information on possible fraud, corruption or mismanagement had not been adequately protected by the aforementioned whistleblowing protection rules, the EP's Committee on Budgetary Control has suggested to the Commission that these rules be revised.

The Lisbon Treaty strengthens the control facilities **oriented on results achieved** by the EU programmes implemented using the Union's finances. Article 318 TFEU (consolidated version; replacing Article 275 EC) obliges the Commission to

submit such comprehensive evaluation report to the Parliament and the Council and in the follow-up of their indications as given in the annual discharge procedure.

→ Helmut Werner
July 2008

2

Citizen's Europe

Citizens' Europe incorporates various aspects including fundamental rights, citizenship of the Union, free movement of persons within the Union, the right to vote and stand in European and local elections and the right to petition the European Parliament.

2.1. Respect for fundamental rights in the EU

The legal basis for fundamental rights in the EU is primarily the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which reference is made in the EU Treaty. The Charter of Fundamental Rights will only becoming legally binding when the Lisbon Treaty has entered into force. Court of Justice case-law has also greatly contributed to respect for human 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 Treaty establishing the European Community (EC).

The Court of Justice of the European Communities 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 recognition of these general legal principles is now Article 6(2) of the Treaty on European Union (TEU), 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 EC Treaty to combat discrimination and Article 7 of the Treaty on European Union 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, 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) TEU).

The Lisbon Treaty enshrines the legal value of the Charter of Fundamental Rights and establishes a new legal basis for the EU's accession to the European Convention on Human Rights.

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

A. 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, point 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 (*Union syndicale, 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, VBBB* [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 (Schräder 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 EC Treaty) (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.

B. 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 European Parliament or municipal elections) and some rights are for certain categories of people (e.g. 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 was included in Part II of the Treaty establishing a Constitution for Europe.

An article in the Lisbon Treaty refers to the charter — which is not itself incorporated in the Treaty — and makes it legally binding. A protocol lays down derogations for Poland and the United Kingdom.

C. EU accession to the European Convention on Human Rights and Fundamental Freedoms

The Treaty establishing a Constitution for Europe stated that the Union would accede to the Convention (Article I-9).

The Lisbon Treaty enshrines this accession.

D. A European Union Agency for Fundamental Rights

The European Monitoring Centre on Racism and Xenophobia, created in 1997 and established in Vienna, has been converted into the European Union Agency for Fundamental Rights following the European Council decision in December 2003.

The agency's powers will be limited to Community aspects, however.

Concerning its role in dealing with areas of police and judicial cooperation in criminal matters (Title VI of the Treaty on European Union), the Council agreed that the Union institutions and Member States could, as appropriate and on a voluntary basis, make use of the agency's expertise within these areas as well. The Council will, before 31 December 2009, reconsider the possibilities for empowering the agency to pursue its activities in the areas covered by Title VI.

The Council regulation of 15 February 2007 setting up the agency entered into force on 1 March 2007.

On 28 February 2008 the Council adopted Decision 2008/203/EC establishing a multiannual framework for the agency that defines its areas of action and priorities for 2007–12 (OJ L 63, 7.3.2008). Morten Kjaerum of Denmark was appointed the director of the agency in March 2008 and took up his post on 1 June 2008.

Role of the European Parliament

1. General attitude

The European Parliament (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 (EP, Council and Commission) 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 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 EC Treaty, 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 trialogue has been set up between the European Parliament, Council and Commission to define the agency's structure and mandate.

The European Parliament has stressed the need for the agency to be able to carry out its activities in areas covered by Title VI of the Treaty on European Union and police and judicial cooperation in criminal matters.

→ Jean-Louis Antoine Grégoire
July 2008

2.2. The citizens of the Union and their rights

Consecrated by the Treaty establishing the European Community in its Article 17, European citizenship is the primary tool that assists the development of a European identity. The main difference with the citizenship of the Member States, that European citizenship completes, is that the rights granted to citizens are not yet matched with duties.

Legal Basis

Articles 17 to 22 of the Treaty establishing the European Community (EC).

Objectives

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 (TEU), 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 EC Treaty (Articles 17 to 22) 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 (third indent of Article 2 TEU).

Achievements

1. Definition of EU citizenship

According to Article 17 of the EC Treaty (the Treaty of Lisbon also makes provision for this definition to be included in Article 8 of the Treaty on European Union), 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);

— the right to vote and to stand as a candidate in elections to the European Parliament and in municipal elections in the Member State in which they reside, under the same conditions as nationals of that State (→2.4);

— 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 European Parliament and the right to apply to the Ombudsman appointed by the European Parliament concerning instances of maladministration in the activities of the Community institutions or bodies; these procedures are governed by Articles 194 and 195 of the EC Treaty (→1.3.14 and →2.5);

— 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, third paragraph, EC);

— the right to access European Parliament, Council and Commission documents, subject to certain conditions (Article 255 EC).

The Treaty of Lisbon further emphasises the principal rights of citizens of the Union by listing them in Article 20(2) TFEU (consolidated version).

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) of the Treaty on European Union 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).

Union citizenship does not as yet entail any duties for citizens of the Union, despite the wording to that effect in Article 17(2) of the EC Treaty, which constitutes a major difference between it and citizenship of the Member States.

Article 22, second paragraph, of the EC Treaty and Article 48 of the Teatry on European Union provide opportunities to develop citizenship of the Union gradually and thus provide citizens of the Union with an enhanced legal status at European level. The Treaty of Lisbon also makes provision, in Article 11 of the Treaty on European Union (consolidate verision), for a new right for citizens of the Union: 'Not less than 1 million citizens who are nationals of a significant number of Member States may take the initiative of inviting the Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties'.

Role of the European Parliament

— In electing the European Parliament 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 Treaty establishing a Constitution for Europe of 18 July 2003, drawn up by the Convention on the Future of Europe, stipulated 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. This provision is reiterated in the Treaty of Lisbon.

→ Claire Genta
July 2008

2.3. Freedom of movement for persons

The free movement of persons inside the EU involves the removal of internal border controls. It is governed by the Schengen agreements incorporated into the EC Treaty and by European Parliament and Council Directive 2004/38/EC. Several directives govern the legal regime applicable to third-country nationals.

Legal basis

— Article 14 of the Treaty establishing the European Community (EC): establishing the internal market, free movement of persons.

— Article 18 EC: 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. EC): '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.

The Schengen rules apply among most European countries, covering a population of over 400 million and a total area of 4 268 633 km^2.

a. Incorporation of the Schengen system and other parts of cooperation in the fields of justice and home affairs (CJHA) 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. EC 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 1 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 24 full Schengen members and Monaco (treated as part of France): Belgium, Germany, France, Greece, Italy, Luxemburg, the Netherlands, Portugal, Spain, Austria, Denmark, Finland, Iceland, Norway, Sweden, Poland, the Czech Republic, Slovakia, Hungary, Estonia, Latvia, Lithuania, Malta and Slovenia. For nine of the Member States joining in May 2004 (Cyprus did not meet the criteria) internal land and sea border checks on persons were abolished as of 21 December 2007, while restrictions on air borders were lifted on 30 March 2008.

Not all Schengen members are members of the EU. Ireland and the UK are not Schengen members but have an opportunity to 'opt in' to the application of selected parts of the Schengen body of law.

On 1 January 2007 two new countries (Bulgaria and Romania) became members of the EU. The two new Member States have not 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 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

Cyprus and non-EU member Switzerland hope to join this year and Romania and Bulgaria by 2011.

c. Scope

— Abolition of internal border controls for all people.

— 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) and in 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 and 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 Schengen information system (SIS) database has limited capacity. A new system, SIS II, should be in place by 31 December 2008. Due to the delays in the SIS II deployment, Portugal offered a modified version of its SIS 1+ system, which it called 'SIS one4all'. 'SIS one4all' is a temporary solution designed to enable the EU Member States who acceded in 2004 (the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia) to join Schengen.

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 of the EC Treaty, 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 of the EC Treaty 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 had 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): these 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.

In 2004, the Union adopted a directive on the right of citizens of the Union to move and reside freely within the Member States: **Directive 2004/38/EC of the European Parliament and of the Council 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.

b. Current legislation

Directive 2004/38/EC 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 administrative formalities to the bare essentials, to provide a better definition of the status for family members and to limit the scope for refusing entry or terminating the right of residence. It also broadens the definition of family to 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.

c. 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 Member States that acceded in 2004 except for the particular cases of Cyprus and Malta. The Treaty of Accession signed on 25 April 2005 allows

the EU-25 Member States to introduce those arrangements to nationals from the two EU Member States that acceded in 2007.

The transitional periods are divided into **three** different stages.

For the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovenia and Slovakia they are as follows.

— **During the first stage**, between 2004 and 2006 the free movement of workers was left exclusively in the hands of the EU-15 Member States. Ireland, the United Kingdom and Sweden have been the only three Union members not closing transitionally doors for mobility into their labour markets. As required by the Treaty of Accession, the Commission drafted a report on the first stage of the transitional arrangements, which was submitted to the Council of Ministers on 8 February 2006. Following the Council's review of the Commission's report, EU-15 Member States had until 30 April 2006 to notify the Commission whether or not they 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). Currently, 10 of the EU-15 Member States have opened their labour markets completely: Ireland, Greece, Spain, Italy, Luxembourg, the Netherlands, Portugal, Sweden, Finland and the United Kingdom. Belgium, Denmark, Germany and France have simplified their procedures or have reduced restrictions in some professions.

Hungary still applies reciprocal measures. Slovenia ceased to apply reciprocity on 25 May 2006 and Poland on 17 January 2007. None of the eight new EU Member States applied for permission to restrict access by workers from other new Member States.

— **Finally**, by 2009 all the national legislations 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 service providers from the eight new Member States who may wish to exercise fully their free movement rights and fundamental freedoms.

During a transitional period of up to seven years after accession of two Member States on 1 January 2007 (Bulgaria and Romania), certain conditions may be applied that restrict the free movement of workers:

— **Firstly,** between 2007 and 2009 access to the labour markets of the 25 Member States will depend on national measures and policies, as well as bilateral agreements they may have with the new Member States.

— **Secondly,** by 2009 the European Commission will draft a report, which will be the basis for a review by the Council of Ministers of the functioning of the transitional arrangements. The Member States must notify the Commission whether they plan to continue with national measures for the next period of up to three years or allow free movement of workers.

— **Finally,** by 2012 there should be free movement of workers. However, any of the 25 Member States can ask the Commission for authorisation to continue to apply national measures for a further two years if it is experiencing serious disturbances on its labour market. Therefore, from 2014 — seven years after accession — there will be complete freedom of movement for workers from new Member States.

d. Third-country nationals

In the provisions of the Treaty of Amsterdam, third-country nationals 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 Court of Justice of the European Communities (CJ) ruling in the *Vander Elst* case — CJ Case C-43/93 whereby the CJ 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).

The main EU legislative measures to extend free movement rights to third-country nationals are:

— Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ L 251, 3.10.2003);

— 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) of the EC Treaty (OJ L 16, 23.1.2004);

— Council Directive 2004/114/EC 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);

— a 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 of 16 March 2004);

— Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualification (OJ L 255, 30.9.2005);

— Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research (OJ L 289, 3.11.2005);

— Commission Regulation (EC) No 635/2006 of 25 April 2006 repealing Regulation (EEC) No 1251/70 on the right of workers to remain in the territory of a Member State after having been employed in that State (OJ L 112, 26.4.2006);

— Council Directive 2006/100/EC of 20 November 2006 adapting certain directives in the field of freedom of movement of persons, by reason of the accession of Bulgaria and Romania (OJ L 363, 20.12.2006);

— Council Decision of 18 December 2006 appointing Italian, Maltese and Swedish members and alternate members of the Advisory Committee on Freedom of Movement for Workers (OJ C 320, 28.12.2006);

— Commission Regulation (EC) No 1430/2007 of 5 December 2007 amending Annexes II and III to Directive 2005/36/EC of the European Parliament and of the Council on the recognition of professional qualifications (OJ L 320, 6.12.2007);

— Commission Decision 2007/172/EC of 19 March 2007 setting up the group of coordinators for the recognition of professional qualifications (OJ L 79, 20.3.2007);

— a proposal for a Council directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (SEC(2007) 1393) (SEC(2007) 1408); and

— a proposal for a Council directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (SEC(2007) 1382) (SEC(2007) 1403).

e. 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 EC). 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 EC Treaty 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 or 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 EC Treaty, for measures setting out the conditions for free circulation of non-Member State nationals legally resident on EU territory;

— Article 63 of the EC Treaty, 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 welcomed Directive 2004/38/EC as its correct and quick transposition into the national legislations of the Member States would involve 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, taking account of fundamental rights and citizens' freedoms. To this end, the European Parliament supports very much the developments which the Treaty on the Functioning of the European Union, as amended, particularly its Article 294 would bring to the field of freedom, security and justice, such as co-decision powers in almost all area of freedom, security and justice (AFSJ) matters. Moreover most decisions in the Council would be taken by qualified majority voting which would accelerate the speed of development of the AFSJ.

→ Joanna Apap
July 2008

2.4. Voting rights and eligibility

The Maastricht Treaty recognises European citizens' right to vote and stand as candidates in European Parliament elections and in local elections in the Member State in which they reside. These rights are covered by Council Directive 94/80/EC for the municipal elections and Council Directive 93/109/EC for elections to the European Parliament

Legal basis

Articles 19 and 189 to 191 of the Treaty establishing the European Community (EC).

Objectives

Since 1976 (Act of 20 September 1976, as amended by Council Decision 2002/772/EC, Euratom of 25 June 2002 and 23 September 2002), EU citizens have had the right to elect their representatives in the European Parliament in the State of which they are nationals. In addition to this, 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 European Parliament and local elections in the Member State in which they reside — whether they have its nationality or not — with the same conditions that apply to nationals of the country of residence. By abolishing the nationality condition that most Member States had previously attached to the exercise of the right to vote or stand as a candidate, this right improves the integration of Union citizens in their host country.

Achievements

A. Rights relating to municipal elections

1. Principle

Council Directive 94/80/EC of 19 December 1994 (as amended by Directive 96/30/EC of 13 May 1996) 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.

2. 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. However, Belgium has never invoked this derogation.

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 (Denmark, Ireland, the Netherlands, Sweden and Finland); and countries where this right is not recognised (Belgium, Germany, Greece, Spain, France, Italy, Luxembourg, Austria, Portugal and the United Kingdom).

B. Elections to the European Parliament (for the common rules and national provisions, see →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 European Parliament 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 European Parliament elections in the State of residence is governed by the same conditions that 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

A. 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.

B. 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 EC Treaty. This situation has not changed. However, the Lisbon Treaty would provide for the possibility of

adopting a 'uniform procedure in all Member States or a procedure in accordance with principles common to all Member States', after having been approved by the Member States in accordance with their respective constitutional requirements (Article 223 of the Treaty on the Functioning of the European Union, as amended).

Moreover, Parliament has long called for a uniform system for elections to the European Parliament, to take the place of the national electoral laws for such elections (→1.3.4).

→ Wilhelm Lehmann
July 2008

2.5. The right of petition

Under the Treaty of Maastricht, each EU citizen has the right to submit a petition to the European Parliament in the form of a complaint or a request on an issue which falls within the field of activity of the European Union. The petition will be examined by the European Parliament's Committee on Petitions, which will decide on its admissibility and which will be in charge of its treatment in collaboration with the European Commission.

Legal basis

Articles 21 and 194 of the Treaty establishing the European Community (EC), 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)

1. Those entitled to petition 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 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 European Parliament concerning the disparity of treatment afforded by EU countries to persons who have been diagnosed with multiple sclerosis. 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 multiple sclerosis 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 European Parliament 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 independent 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 (the so-called LRAU law), 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 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 July 2008).

→ Claire Genta
July 2008

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
2006	1 021	667	354
2007	1 506	980	526

The 10 general topics mentioned most frequently in petitions received in 2007

Environment, water management, etc.	288
Fundamental rights	226
Social matters and discrimination	207
Internal market and consumers	192
Urban development	131
Health	105
Education and culture	103
Justice	99
Transport and infrastructures	88
Law governing property and restitution	72

3

The internal market

In 1993, the single market was the EU's greatest achievement. In order for it to become reality, the EU institutions and the Member States put a great deal of work into drafting and adopting the hundreds of directives necessary to remove the technical, regulatory, legal and cultural barriers preventing free trade and movement within the Union. The creation of the internal market encouraged EU Member States to liberalise the monopolistic public utility markets that had been protected until that point. By aligning national legislation, the Member States set about harmonising rules and standards within the EU.

3.1. Principles and general completion of the internal market

The idea of a single market was preceded by that of a common market enshrined in the Treaty of Rome. It already aimed at liberalising trade among the Member States. The Single European Act of 1986 reinforces the elimination of the internal borders throughout the integration to the Treaty establishing the European Community of the concept of internal market.

Legal basis

Articles 3c, 14, 18, 94 and 95 of the Treaty establishing the European Community (EC).

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 contributing to 'an ever closer union among the peoples of Europe'.

The Single European Act of 1986 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. 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 an 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) (→3.4.5) were achieved before the end of the transition period (1 January 1970).

In contrast, the freedom of trade in goods and services and freedom of establishment remained restricted by continuing anti-competitive practices imposed by the public authorities, such as exclusive production or service rights and State aid aimed to maintain frontiers which were either physical (checks on persons and goods at internal customs posts), technical (a whole range of national rules), 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 that had 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 for 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 national rules method, which was to be reserved only for essential requirements (such as security and health), and introduced the mutual recognition principle.

The Single European Act, which 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 of 31 December 1992 (Article 18 EC) and gave strength to the internal market decision-making machinery by introducing qualified majority voting for subjects such as the Common Customs Tariff, free provision of services, free movement of capital, approximation of national legislation (respectively Articles 26, 49, 60, 94 and 95 EC Treaty).

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); and

— 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, such 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' action plan, launched on 24 November 1999, which 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 — 10 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 EC Treaty for prosecuting infringements by the Member States for delayed transposition of directives, incorrect transposition and 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 movements 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, (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), nevertheless rose from approximately 700 in 1992 to 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 complementariness 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 into 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, mutual recognition, the single currency and 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 regulated system for public procurement and services of public interest, as well as in the media and information society and e-commerce, company law and contract law, corporate governance, the financial markets, 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, and the creation of a free market for services (→3.2.3).

Role of 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 recent resolutions (among many others: 12 February 2006, 14 February 2006, 16 May 2006, 6 July 2006) Parliament has 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 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 checklist', 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 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 in practice the application of the legislation in question.

→ Zelio Fulmini
June 2006

3.2. The main freedoms of the internal market

3.2.1. The free movement of goods

The free movement of goods is ensured through the elimination of customs duties and quantitative restrictions, as well as through the prohibition of measures having equivalent effect to that of customs duties or quantitative restrictions. The principle of mutual recognition, the elimination of physical and technical barriers and standardisation were added to sustain the completion of the internal market.

Legal basis

Articles 3 (1)(a) and (c), 14, 23 to 31 and 90 of the Treaty establishing the European Community (EC).

Objectives

The free movement of goods originating in the Member States, or originating in third countries and in free circulation in the Member States, is one of the fundamental principles of the Treaty (Article 23, second subparagraph, EC).

At the beginning, the 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, emphasis was put 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).

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 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(1) and 25 EC

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

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 on to 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/EC 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 of the EC Treaty 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 cannot constitute a mean of arbitrary discrimination or disguised restriction on trade between the Member States. In Case C-421/04, paragraph 28, the CJ 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, 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 the environment).

Member States have to notify national exemption measures to the Commission. In order to facilitate supervision of such national exemption measures **procedures for the exchange of information and monitoring mechanism** were introduced, as stated in Articles 95 and 97 of the EC Treaty, Decision No 3052/95/EC of the European Parliament and Council of 13 December 1995 and Council Regulation (EC) No 2679/98 of 7 December 1998.

D. Harmonisation of national provisions

Since the late-1970s, 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 at both guaranteeing the free circulation of goods and products and respecting the other Treaty establishing the European Community objectives, such as the environment, consumers and competition.

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 CJ 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' (paragraph 20).

Harmonisation was then facilitated by the introduction of the **qualified majority rule**, required for most directives relating the completion of the single market (Article 95 EC as modified by the Maastricht Treaty) and by the adoption of a **new approach** aimed at avoiding 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 the Council resolution of 7 May 1985, confirmed in the 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) EC. For 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 and international levels. The European Standardisation System, originally based on two bodies (CEN, set up in 1961, and Cenelec, set up in 1962), was relatively inactive, and was revived in the early 1980s by 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 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 on to 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 in 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

Parliament supported the completion of the internal market (→3.1) 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 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 the 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 about buying a smaller volume or quantity. In this respect Parliament has always strongly supported the need for clear and complete information for 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 pre-packed goods, readable weight and volume indications on product labelling, and 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 European legislation.

→ Zelio Fulmini
May 2007

3.2.2. Free movement for workers

One of the four freedoms for European citizens is the free movement of workers. It involves workers' rights of movement and residence, right of entry and residence for family members and right to work in another EU Member State. Nevertheless, these rights are associated with restrictions, notably concerning the rights of entry and residence and the right of taking up jobs in the public service and the new Member States for some countries.

Legal basis

In general

Articles 3(1)(c), 14 and 39 to 42 of the Treaty establishing the European Community (EC).

In particular

Regulation (EEC) No 1612/68 of 15 October 1968 (as amended by Regulations (EEC) No 312/76 and (EEC) No 2434/92) and Directive 2004/38/EC.

Objectives

Freedom of movement of workers, one of the founding principles of the European Community in 1957 is laid down in Article 39 of the EC Treaty and, hence, is a fundamental right of workers. It permits nationals of one European Economic Area (EEA) country to work in another EEA country on the same conditions as that Member State's own citizens

Current data 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. Workers' mobility, in both geographic and occupational terms, has been specifically pinpointed as one of the instruments for helping to implement the Lisbon objectives. It has also been stressed in the most recent employment guidelines contributing to the strengthening of the labour markets in Europe, and as an instrument for anticipating the effects of economic restructuring.

Achievements

A. Current general arrangements on freedom of movement

Any national of a Member State has the right to look for a job in another Member State in conformity with the relevant regulations applicable to national workers. He or she will receive from the national employment offices the same assistance as nationals of the host Member State without any discrimination on the grounds of nationality.

This right is recognised to apply equally to workers on permanent contracts, seasonal and cross-border workers and those who are providing services.

1. Workers' rights of movement and residence

a. Movement

Based on the directive on residence for EU citizens (2004/38/EC) the only requirement for Union citizens is that they possess a valid identity document or passport for stays of less than three months. The host Member State may require registering their presence in the country within a reasonable and non-discriminatory period of time.

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.

b. Residence

The right of residence for migrant workers for more than six months remains subject to certain conditions.

c. Applicants

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.

Certain advantages specific to Union citizens who are workers or self-employed persons and for family members, which may allow these persons to acquire a right to permanent residence before they have resided five years in the host Member State, should be maintained as these constitute acquired rights (Regulation (EEC) No 1251/70).

To be a genuine vehicle for integration into the society of the host Member State in which the Union citizen resides, the right of permanent residence, once obtained, should not be subject to any conditions. 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

Directive 2004/38/EC has amended Regulation (EEC) No 1612/68 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 more 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.

3. Employment

a. Taking up employment and treatment at work

Workers who are nationals of a Member State may not be treated differently from national workers in the territory of the host Member State as regards working and employment conditions (in particular taking up employment, dismissal and remuneration) because of their nationality. Equal treatment also applies concerning 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 exercising trade union rights, including the right to vote and to be eligible for the administration or management posts of a trade union. They have the right of eligibility for workers' representative bodies within undertakings. However, they may be excluded from the management of bodies under public law and from the exercise of an office under public law.

b. Right to remain in the host country after stopping work

Based on the EC Treaty, this right was laid down 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 rule applies for the members of their family living with them.

B. Restrictions on freedom of movement

1. Restrictions on the right of entry and right of residence

The Treaty allows Member States to refuse an EU 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, where there are imperative grounds of public security, should an expulsion measure be taken against Union citizens who have resided in the host country for 10 or more years or if the citizen is a minor.

Procedural safeguards should be specified in detail to ensure a high level of protection of the rights of Union citizens and their family members in the event of their being denied leave to enter or reside in another Member State. The decision must be notified by giving the grounds for the decision, by informing of the appeal procedures available and the time limits applicable. In substantiated cases of urgency, the time allowed to leave the territory should not be less than one month from the date of notification.

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.

2. Restrictions on taking up jobs in the public service

According to Article 39(4) of the EC Treaty, free movement of workers does not apply to employment in the public sector. Access to the public service may be restricted to only nationals of the host Member State.

However, this derogation has been interpreted in a very restrictive way by the Court of Justice of the European Communities and, therefore, only those posts in which the exercise of public authority and the responsibility for safeguarding the general interest of the State is involved may be restricted to their own nationals (for example the internal or external security of the State). These criteria must be evaluated in a case-by-case approach in view of the nature of the tasks and responsibilities covered by the post in question (Case 66/85, 3 July 1986).

The Commission listed the activities that it considered as part of the 'public service' (statement 5 January 1988): 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; secondly, employment in government departments, regional authorities and other similar bodies, and central banks, where staff (officials and other employees) who carry out activities on the basis of a public legal power of the State or of another legal person governed by public law are involved.

3. Restrictions on the freedom of movement of nationals of the new Member States

During a transitional period of up to seven years after accession of 10 Member States to the EU on 1 May 2004 (**Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia** and **Slovakia**) and of two Member States on 1 January 2007 (**Bulgaria** and **Romania**), certain conditions may be applied that restrict the free movement of workers from, to and between these Member States. These restrictions only concern the freedom of movement for the purpose of taking up a job and may differ from one Member State to another.

Three phases of the transitional period allow the EU-15 Member States to open the labour market to workers of the aforementioned countries. However, the transitional arrangements cannot be extended beyond an absolute maximum of seven years.

For the **new Member States that acceded to the EU in 2004**: After the first phase from 1 May 2004 to 30 April 2006, the Commission published a report on the transitional provisions (February 2006) and concluded that national restrictions have little effect on controlling migration movements and depend more on factors associated with supply and demand conditions. The EU-15 Member States had to notify as to their intention for the second phase (1 May 2006 to 30 April 2009). National measures may be extended for further two years (1 May 2009 to 30 April 2011), but only if an EU-15 Member State experiences serious disturbances in its labour markets.

The timetable for **Bulgaria** and **Romania** differs by starting the first phase on 1 January 2007 and ending the third on 31 December 2013.

C. Measures to encourage freedom of movement

1. Mutual recognition of training

As a basic principle, any EU citizen should be able to freely practice his or her profession in any Member State. However, the practical implementation of this principle is often hindered by national requirements for access to certain professions in the host country.

In the past, the EU set up a system for the mutual recognition of certificates and diplomas for professional purposes between Member States to overcome these differences. A distinction was made between regulated professions (professions for which certain qualifications are legally required) and professions that are not legally regulated in the host Member State.

Recently, the system for recognition of professional qualifications was reformed to help make labour markets more flexible and encourage more automatic recognition of qualifications. The new **directive on the recognition of professional qualifications (2005/36/EC)**, which entered into force in October 2007 (→3.2.3) consolidates and modernises 15 existing directives covering all recognition rules, except those applicable to lawyers, activities in the field of toxic substances, and commercial agents. The directive distinguishes between 'freedom to provide services' and 'freedom of establishment' on the basis of criteria such as duration, frequency, regularity and continuity of the provision of services.

Recognition can take place through the **general system** for the recognition of professional qualifications, or **the system of automatic recognition** of qualifications attested by professional experience (i.e. craft, commerce and industry sector), or **the system of automatic recognition** of qualifications for specific professions (i.e. doctors, nurses, dentists, midwives, veterinary surgeons, pharmacists and architects).

2. 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 (→4.9.3).

3. Other activities to strengthen workers' mobility

The European Union has made major efforts to create an environment conducive to worker mobility:

— an action plan on skills and mobility from 2002 to 2005;

— a European health insurance card since 2006;

— the coordination of social security schemes speeded up with the adoption of Regulation (EC) No 883/2004 (→4.9.4);

— a proposal for a directive on the portability of supplementary pension rights;

— a European Year of Workers' Mobility (2006) **to raise awareness of the rights of workers** to free movement, to opportunities and to instruments which have been introduced to promote freedom of mobility (EURES);

— exchanges between young workers to encourage freedom of movement by Member States through joint programmes (PETRA programme from 1988 to 1994; now integrated in the Leonardo da Vinci strand of the lifelong learning programme from 2007 to 2013) (→4.17.1).

Role of the European Parliament

The European Parliament, 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 European Parliament 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.

Workers from other Member States should be treated in the same way as workers from the host country, in particular regarding the principle of equal pay for equal work. This fundamental principle has been challenged by the Court of Justice of the European Communities in a series of recent judgments regarding **Directive 96/71/EC on the posting of workers**, known as the *Viking*, *Laval* and *Rüffert* cases.

Already in 2006, Parliament expressed concerns in the resolution on the application of Directive 96/71/EC on the posting of workers (P6_TA(2006)0463) that the directive is not being implemented properly in some Member States to prevent social dumping. Many difficulties result from differences of interpretation of key concepts, such as worker, minimum salary and subcontracting. The Commission considered the information provided and the concerns expressed by Parliament in the communication on posting of workers in the framework of the provision of services (COM(2007) 304)

With the **Lisbon Treaty entering into force**, Articles 39, 40 and 41 of the EC Treaty on freedom of movement of workers will not be modified. They become **Articles 45, 46 and 47**, respectively.

→ Christa Kammerhofer
August 2008

3.2.3. Freedom of establishment and freedom to provide services and mutual recognition of diplomas

Provisions in the EC Treaty concerning the freedom of establishment and the freedom to provide services are reinforced by case-law, notably in the Ryners *and* Van Binsbergen *judgments. Provisions in the EC Treaty and different European decisions on the harmonisation and mutual recognition of diplomas and qualification were also adopted as a means to facilitate the effectiveness of the two freedoms.*

Legal basis

Articles 3(1)(c), 14 and 43 to 55 of the Treaty establishing the European Community (EC).

Objectives

The EC Treaty lays down the principle that the self-employed (whether working in commercial, industrial or craft occupations or the liberal professions) 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 of the EC Treaty, 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 a Member State who are established in a State of the Community other than that of the person for whom services are intended. All those services normally provided for remuneration shall be considered as 'services', 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 and banking are also affected by this freedom but are dealt with in separate fact sheets (→3.4.2, →3.4.3 and →4.5.1).

These provisions have direct effect from the end of the transition period, i.e. from 1 January 1970 (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 articles of the EC Treaty 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 of the EC Treaty. 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 of the EC Treaty cannot be interpreted as conferring on companies a right to transfer their central management and control 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 Court of Justice of the European Communities are responsible for ensuring the implementation and the respect of 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 of the EC Treaty (→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) EC). 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) EC) and retain rules for non-nationals in respect of **public policy, public security or public health** (Articles 46(1) and 55 EC).

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, such as Council Directives 73/148/EEC (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

Article 47(1) of the EC Treaty 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 the Council resolution of 28 October 1999). Article 47(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. Article 47(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 has 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 to 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/EC 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 and 80/155 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); and 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 entitled '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 and 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 abovementioned 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 of 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) and 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, came up. The new general approach changed the perspective (see the Council resolution of 10 November 2003). Before it, the 'recognition' was subordinated to the existence of EC rules concerning 'harmonisation' in the specific regulated profession or activity. After it, 'mutual recognition' is almost automatic, under the established rules, for all regulated professions concerned without any need for sector-specific secondary legislation.

From that moment, 'harmonisation' and 'mutual recognition' methods went on under a parallel system, with possible situations where they have been used under a complementary system using at the same time a regulation and a directive (see the 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.

— In 1990, higher education diplomas awarded on completion of professional education and training of at least three years' duration were recognised (Directive 89/48/EEC of 21 December 1988).

— In 1992, the system was expanded 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 1999/42/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, 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.

→ Zelio Fulmini
September 2006

3.2.4. The free movement of capital

Beginning in 1960, even before the creation of the single market, European Member States took measures in favour of instituting the free movement of capital. In 1988, Directive 88/361/EEC succeeded in the creation of a general liberalisation between the EU Member States. Economic and monetary union continued the liberalisation by the abolition of the safeguard clause inside the euro area.

Legal basis

Articles 56 to 60 of the Treaty establishing the European Community (EC).

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 that are 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 that are 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: Spain, Ireland and Portugal 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 of the EC Treaty 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 of the EC Treaty.

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 Greece and Sweden

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 EC Treaty 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 EC) 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 ECON committee and is due for first reading in October 2006 in Parliament; main points of discussion concerned the scope of the directive, its efficiency and application to payment service providers.

Role of the European Parliament

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).

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.

→ Josine Kamerling
September 2006

3.3. Rules of competition

3.3.1. General competition policy and concerted practices

Competition policy and concerted practices are governed by Regulation (EC) No 1/2003, in force since 1 May 2004. The EC Treaty regulates competition policy in its Article 81, which prohibits agreements between undertakings which have as their object or effect the restriction or distortion of competition.

Legal basis

Chapters 5 and 6 of Title I of the EAEC Treaty for the nuclear power industry.

Article 3 point (g) and Articles 81 to 85 of the Treaty establishing the European Community (EC) 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 not elaborating on the concept as such. As stated in Article 3 point (g) of the EC Treaty, 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). However, Article 81 of the EC Treaty 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)).

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)

1. Prohibition in principle (Article 81(1) and (2))

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))

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)

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), the Member States have their own concurrent powers pursuant to Article 84.

B. Implementing rules

These were the subject of Council Regulation No 17/62 of 6 February 1962, on the basis of Article 83 of the Treaty, 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 (→4.6.1 to →4.6.10). Regulation No 17/62 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 Treaty.

1. Individual decisions

The Commission can take the following decisions on concerted practices.

a. Infringements

Any infringement of the rules in Article 81(1) 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 Article 81(1) and (2) 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 directly these prohibitions 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), this company can escape penalty under Article 81(3). 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 companies' 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 companies 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). The Commission was granted this facility under several Council regulations (in particular 19/65/EEC of 2 March 1965, (EC) No 2821/71 of 20 December 1971 and (EC) No 1215/1999 of 10 June 1999), each relating to certain categories of agreement. The Commission uses block exemptions to this end.

C. Practice

On the basis of the Treaty 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); and

— 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, Commission Regulation (EC) No 772/2004 of 27 April 2004 on the application of Article 81(3) of the Treaty 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) 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 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 blacklists. 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 17/62). 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 17/62. 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);
- by consequently giving direct effect to the provisions of Article 81(3), i.e. enabling the Member States' courts and competition authorities to apply them;

— at the same time as 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 and taking over cases from national authorities;
- 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

Parliament's principal role 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
September 2006

3.3.2. Abuse of a dominant position and investigation of mergers

Article 82 of the EC Treaty and Regulation (EC) No 1/2003 prohibit abuses by companies in a dominant position on the market that may affect trade between Member States. Mergers and acquisitions of Community dimension are governed by Regulation (EC) No 139/2004 and may, in some cases, be prohibited by the Commission.

Legal basis

Article 82 of the Treaty establishing the European Community (EC) (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

I. Abuse of a dominant position

A. Basic Treaty provision

Article 82 of the EC Treaty 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 Treaty, 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 Treaty 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 EC Treaty'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, which replaced Regulation No 17/62 and came into force on 1 May 2004, also applies to the abuse of a dominant position. The aim of this reform is as follows.

— It 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:

(a) the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 5 000 million; and

(b) 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:

(a) the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 2 500 million;

(b) in each of at least three Member States, the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million;

(c) 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

(d) 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 with 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 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

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.

→ C. Ipektsidis
November 2005

3.3.3. State aid

The EC Treaty declares incompatible with the common market State aid granted in favour of certain companies or products which involve restrictions on competition. Some exemptions may exceptionally be granted.

Legal basis

Articles 87 to 89 of the Treaty establishing the European Community (EC).

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 EC Treaty 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 and even public shareholdings in companies, which:

- 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 EC

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 EC Treaty gives the Commission, if not discretionary powers, at least very wide scope for exercising its judgment 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 aid 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 EC Treaty, concerning the motor vehicle sector and the synthetic fibres sector, was issued. The criteria for exemption are shown in points i and ii below.

i. Territorial criteria

For exemption under point (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 point (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 km^2, 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 point (a) and 20 % under point (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 and 4.8.2 to 4.8.4). 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 (→4.2 and →4.6). 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 over-capacity 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, and 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 intervention 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

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. The 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 the 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
August 2006

3.3.4. Public undertakings and services of general interest

Public undertakings, public services and services of general interest are structures over which the public authority has a dominant power. Competition rules are also applicable to them. Nevertheless, competition rules may be set aside in favour of services of general economic interest (SGEIs) to the extent that such rules would hinder the accomplishment of the mission of the SGEIs.

Legal basis

Public undertakings and undertakings to which Member States have granted special or exclusive rights: Articles 31, 86 and 295 of the Treaty establishing the European Community (EC).

Public services, services of general interest and SGEIs: Articles 16, 30, 46, 73, 86(2) and (3), 87, 88 and 95 of the Treaty establishing the European Community (EC).

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, be it public or private.

Achievements

Public undertakings, undertakings to which special or exclusive rights have been granted or specific tasks of public interest (e.g. public services and services of general interest) have been assigned by public authorities, as well as public services and general interest services, are examples of fields where continuous dialogue between EU institutions and the Member States aims to carefully interpret and combine rules and objectives included in the EC Treaty with 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 consumers' 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, at ensuring 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, prior assessment of the impact of major initiatives, respect of the competence of national, regional and local authorities to define, organise, finance and monitor services of general interest, and, of course, respect of the other rules of the EC Treaty.

The Commission can address decisions and directives of a regulatory nature to the Member States and supervise them to ensure that State aid and the exercise of exclusive rights are compatible with the EC Treaty.

A. Public undertakings and undertakings to which Member States have granted special or exclusive rights

1. Notions

A **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 undertaking; or (c) are in a position to appoint more than half the members of the undertaking's administrative, managerial or supervisory body. Article 295 of the EC Treaty is neutral on the public or private nature of an undertaking's shareholders.

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 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 EC Treaty prohibits Member States from adopting or maintaining in force any measure contrary to the rules contained in the EC Treaty, particularly the rules on the internal market and the competition rules.

Nevertheless, the second paragraph of that article provides that undertakings 'entrusted with the operation of services of general economic interest 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 of the EC Treaty 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: that the application of the competition rules would prevent the performance of the particular tasks assigned to the undertaking; and that 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 **public** service does not correspond to the concept of **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) SGEIs (i.e. basic electricity, telecommunications, postal services, transport, water and waste removal services and energy). Article 86 of the EC Treaty does not apply to the categories (a) and (b).

SGEIs are not defined by EC law but 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 SGEIs and provides an opportunity to exempt them from the rules on the internal market and competition insofar as it is necessary to enable the undertakings responsible for such services to perform their tasks (Article 86(2) EC), as well as on the basis of particular aspects of general interest under Articles 30 and 46 (free movement of goods and services) and Articles 81(3) and 87 (competition rules) of the EC Treaty.

Article 16 of the EC Treaty, as 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 services of general economic interest 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 EC Treaty.

The EC Treaty 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* cases, 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 by 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 EC Treaty, and to respect activities essentially connected with public interest, within the exclusive competence of the Member States. Questions materialised in the mid-1980s when the compatibility of the modalities of accomplishing a mission of public or general interest by these subjects was scrutinised under the rules on competition and internal market and concern rose on the links existing between public authorities and the undertakings they own or control and the aid that public authorities were able to grant to such undertakings.

The Commission, using its special powers under Article 86(3) of the EC Treaty, required, with Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings (as 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 (OJ C 281, 26.9.1996 and OJ C 17, 19.1.2001) 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 or 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, as concerns 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 to encourage public authorities to be clear about the correspondence 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 in the following instances.

— **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):** This 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, 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 (*Analir* 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, and the *de minimis* aid granted to transports 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 are dealt with by the following laws: for the transport sector, Article 73 of the EC Treaty, 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 terms of 'universal service' and 'reserved service'; the directive of 10 June 2002, which opened up the market for mail weighing more than 100 g, from 2003, and more than 50 g, from 2006; Directive 2003/55/EC, which has made a significant contribution towards the creation of an internal market for gas; and the Community definition of 'universal service' in the field of communications, under which 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 and the e-Europe action plan. Horizontal consumer protection legislation, dealing with issues such as unfair contract terms and distance selling, also applies the mentioned principles related to services of general interest.

Role of the European Parliament

Parliament has linked the need to respect and support 'public services' and 'services of general interest' with the need to increase competition for the benefit of consumers and citizens.

In its resolution of 14 January 2004 on services of general interest, 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 EU must lay down common principles concerning universality and equality of access, continuity, security and adaptability, quality, efficiency and affordability, transparency, stability, duration and equitable risk-sharing, protection of disadvantaged 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; and 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 SGEIs 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 and, in particular, qualitatively oriented. 'Impact assessment' is a straightforward mapping out of the consequences on social, economic and environmental aspects, as well as a mapping out of the policy alternatives that are available to the legislator in that scenario.

Services of general interest (such as education, public health, public and social housing and SGEIs 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 and 7 June 2005) railway networks (13 January 1998, 30 May 2002 and 14 January 2003) air transport networks (19 February 1998, 15 June 1998 and 6 July 2000) telecommunications (20 February 1997, 18 September 1997 and 26 October 2000, 1 March 2001, 13 June 2001) and postal services (14 December 2000 and 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 the co-decision procedure applies.

→ Azelio Fulmini
June 2006

3.4. Approximation of legislation

3.4.1. Public procurement contracts

Public authorities conclude contracts to ensure the completion of works supply or services delivery. These contracts, concluded in exchange for remuneration with one or more traders, are called public contracts and represent an important part of the EU's gross domestic product (GDP).

Legal basis

Articles 14, 28, 47(2), 49, 50, 55 and 95 of the Treaty establishing the European Community (EC).

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 EU GDP. Prior to the implementation of Community legislation, only 2 % of public procurement contracts were awarded to non-national undertakings. These contracts 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 (who are therefore able to step up their size and develop their outlets) and reinforces the respect of the principles of transparency, equal treatment, genuine competition and efficiency, while 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 at coordinating national rules imposing obligations on publicity for invitations to tender and on objective criteria to scrutinise tenders. The Community decided, after various normative acts adopted since the 1960s, to simplify and coordinate public procurement legislation and 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, the first three of those 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 on the water, energy, transport and postal services sectors, since rectified by Directive 2005/75/EC that replaced Directive 93/38/EEC. Some annexes to both directives have been modified by Directive 2005/51/EC.

These directives 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), nevertheless, they apply to voice telephony, telex, mobile telephone, paging and satellite services; to contracts covered by State security or secrecy, national essential interests and international agreements (Decision 94/800/EC); to contracts related to services co-financed by research and development programmes; to contracts related to immovable property; to contracts related to specific audiovisual services in the field of broadcasting, but they apply to contracts related to the supply of technical equipment production and broadcasting; to contracts awarded on the basis of an exclusive right; to contracts related to arbitration and conciliation services; to contracts related to service concessions; to contracts related to central bank services and financial services; to contracts regulating simply the employment conditions; to contracts related to Regulations (EEC) No 3975/87 and (EEC) No 3976/87 (air transport); and to contracts related to those bus transport services excluded by Directive 93/38/EEC.

Concerning Directive 2004/17/EC, the 'special arrangements' provided for by Directives 93/38/EC, 94/22/EC and 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' and '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 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 consists either solely in the right to exploit the service or in this right together with payment.

A. Procedures

Calls for tender 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 and 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 with regard to transparency, non-discrimination, competition, free movement, mutual recognition, proportionality, confidentiality and 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, which has been granted by a contracting authority special or exclusive rights to carry out a public service. 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 to develop an electronic public procurement system and will propose measures in order to ensure a well-functioning internal market through the use of an electronic public procurement system, to improve the governance of the public procurement system, and to achieve 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, and 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 such as quality, price, technical merit, environmental elements, time limit on delivery, and profitability).

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, as well as the time limits, the rules applicable to communication and exchange of information and the conduct of the procedure are stated in the two directives and their annexes, as well as in Regulation (EC) No 1564/2005.

Decision 2005/15/EC stated detailed rules concerning the procedure for establishing whether a given activity is directly exposed to competition; this procedure is 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 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 the 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. The Member States shall submit a statistical report on public procurement to the Commission, by 31 October each year.

Role of 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. Many differences exist in the Member States with regard to 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 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. Consequently, problems arise on such questions as, for example, the suitable regime that 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 and public transport are not simply economic activities and it may not be suitable to simply submit them to mere principles of the internal market. The definition of 'control exercised by the public body over the undertaking' also has its critics. Parliament is interested in considering possible adjustments to the actual legislation and has organised a public hearing on these grounds for 20 April 2006.

→ Azelio Fulmini
September 2006

3.4.2. Company law

After many years of unsuccessful attempts to create a single Community framework for enterprises, two legislative instruments adopted by the Council in 2001 led to the creation of the European company. New rules were adopted for associations, cooperative and mutual societies. A European Economic Interest Grouping was also created.

Legal basis

Article 44(2)(g) of the Treaty establishing the European Community (EC) 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 of the EC Treaty, with a view to making such safeguards equivalent throughout the Community.

Article 48 enshrines in the EC Treaty 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 others.

Articles 94, 95, 293 and 308 of the EC Treaty also allow Community intervention in company law but play only a secondary role.

Objectives

— Because of its position in the text of the EC Treaty, 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 several 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/EEC 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 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. With a view to simplifying the arrangements for constituting public limited liability companies and for maintaining and modifying the capital of said companies, Directive 77/91/EEC was amended by Directive 2006/68/EC. This directive allows Member States to waive certain specific obligations, subject to certain conditions, as far as companies are concerned, which involve information disclosure and facilitating the restructuring of share ownership. It also makes provision for harmonised guarantees for creditors in the event of a reduction in the share capital.

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 (→4.9.6). 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 (as 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. Both these directives were amended by Directive 2007/63/EC regarding the requirement of an independent expert's report in the event of the merger or 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 European Parliament 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 European Parliament 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.

Directive 2006/43/EC of 17 May 2006 on statutory audits of annual accounts and consolidated accounts amends Directives 78/660/EEC and 83/349/EEC and repeals Directive 84/253/EEC. It aims to improve the reliability of the financial statements of companies by establishing minimum requirements for the statutory audit of annual and consolidated accounts. In addition, the directive widens the scope of EU legislation in force (Directive 84/253/EEC), by specifying the role of statutory auditors, the fact that they must demonstrate their independence and the code of ethics which they must adhere to, and introduces external quality assurance requirements.

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 the Member States.

Directive 2005/56/EC on cross-border mergers of companies with share capital is intended to facilitate cross-border mergers between companies with share capital. It introduces a simple framework which is strongly derived from rules for national mergers and which will avoid the liquidation of the company being taken over. The directive applies to mergers of companies with share capital which are constituted in accordance with the legislation of a Member State and whose statutory headquarters, central administration or main establishment is within the Community, if at least two of them are subject to the legislation of different Member States. It applies to all companies with share capital apart from bodies involved in collective investment in transferable securities.

Special measures also apply to cooperatives. The directive specifies the minimum content of the common cross-border merger project and in order to protect the interests both of shareholders and of third parties, provision is made, for each company involved in a merger, for both the cross-border merger project and the actual cross-border merger to be publicised in an entry in the appropriate public register.

In addition, Directive 2005/19/EC of 17 February 2005 amending Directive 90/434/EEC introduces a common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States.

Finally, Directive 2007/36/EC on the exercise of certain rights of shareholders in listed companies abolishes the main obstacles to a cross-border vote in listed companies which have their registered headquarters in a Member State, by introducing specific requirements for a certain number of shareholder rights at the general meeting.

2. The operation of European-scale companies

There has not been much development other than on tax (→4.18.5) and social rules (→4.9.6). 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 laws 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 (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 Directive 94/45/EC on European works councils (→4.9.6).

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 (2001/86/EC), both of which form an indissociable whole. Under the **regulation on the statute for a European company** ((EC) No 2157/2001, which entered into force on 8 October 2001), 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 Union*. 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, which entered into force on 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 reason.

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 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 Regulation (EEC) No 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 (→4.9.6). 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.

More recently, on 1 February 2007, Parliament adopted a resolution which included recommendations for the Commission regarding the European private company statute. Parliament is of the opinion that it should be possible for one or more natural or legal persons who do not necessarily reside in a Member State to establish a European private company (EPC) on Community territory, subject to and in accordance with a procedure which will have to be set out in a regulation. It therefore requests the Commission to submit to Parliament a legislative proposal on the statute for a European private company, which shall take into account the recommendations included in the resolution on the arrangements regarding formation, capital stock, organisation, content of articles of association, liability of the executive director, annual accounts, possibilities for conversion and dissolution, liquidation, insolvency and suspension of payments.

→ Roberta Panizza
July 2008

3.4.3. Financial services: establishment and practical application of the Lamfalussy process

The Lamfalussy process is designed to simplify and speed up EU legislation on financial services by means of a four-level approach.
Under the process, the EU institutions, with the Commission taking the lead, simply adopt framework legislation, whilst detailed technical implementing provisions are the responsibility of the Commission, assisted by four specialist committees.

Legal basis

— 11 May 1999: the European Commission adopts the financial services action plan (COM(1999) 232).

— 6 June 2001: Commission Decision 2001/528/EC establishing the European Securities Committee (ESC).

— 6 June 2001: Commission Decision 2001/527/EC establishing the Committee of European Securities Regulators (CESR).

— March 2002: the European Council approves the introduction of the Lamfalussy process for the securities sector.

— December 2002: the European Council decides to extend the Lamfalussy process to the entire financial sector.

— 5 November 2003: Commission Decision 2004/10/EC establishing the European Banking Committee (EBC).

— 5 November 2003: Commission Decision 2004/5/EC establishing the Committee of European Banking Supervisors (CEBS).

— 5 November 2003: Commission Decision 2004/9/EC establishing the European Insurance and Occupational Pensions Committee (EIOPC).

— 5 November 2003: Commission Decision 2004/6/EC establishing the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS).

— 9 March 2005: Directive 2005/1/EC of the European Parliament and of the Council amending Council Directives 73/239/EEC, 85/611/EEC, 91/675/EEC, 92/49/EEC and 93/6/EEC and Directives 94/19/EC, 98/78/EC, 2000/12/EC, 2001/34/EC, 2002/83/EC and 2002/87/EC of the European Parliament and of the Council in order to establish a new organisational structure for financial services committees.

— 17 July 2006: Council Decision 2006/512/EC amending Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission.

Establishment of the process

In July 2000, recognising that the existing legal and regulatory framework was impeding the growth and competitiveness of European securities markets, the Ecofin Council set up a Committee of Wise Men chaired by Baron Alexandre Lamfalussy to review the situation.

The committee proposed a range of reform measures, based on a four-level approach that came to be known as the Lamfalussy process. The process was introduced in order to simplify and speed up EU legislation on financial services. In March 2002, with a view to meeting deadlines for the implementation of the financial services action plan (FSAP), the European Council approved the application of the Lamfalussy process to legislation for the securities sector.

In December 2002 the Council decided to extend the Lamfalussy process to the entire EU financial sector, thus embracing banking, insurance and occupational pensions.

The specialist committees set up for the purposes of the process are composed of high-ranking representatives from the national finance ministries under the auspices of the Commission. Their function is purely consultative in relation to technical implementing measures. The work of the specialist committees is known as level 2 of the process.

The Lamfalussy process has also entailed the creation of committees of experts responsible for the exchange of supervisory information, for consistency in the implementation of European law through the introduction of standards and guidelines, and for harmonisation of supervisory practices in the European financial services market. The work of these committees of experts is known as level 3 of the process.

The committees of experts are composed of high-ranking representatives from the national supervisory authorities. The Committee of European Banking Supervisors also includes representatives from the national central banks.

	Specialist committees (level 2)	Committees of experts (level 3)
Sector		
Securities	European Securities Committee (ESC)	Committee of European Securities Regulators (CESR)
Banking	European Banking Committee (EBC)	Committee of European Banking Supervisors (CEBS)
Insurance and occupational pensions	European Insurance and Occupational Pensions Committee (EIOPC)	Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS)

Practical application

A. Level 1: framework legislation

Parliament and the Council, on a proposal from the Commission, jointly adopt legislation under the co-decision procedure (→1.4.1).

B. Level 2: implementing measures

Implementing measures are planned within the parameters laid down at level 1 and adopted — with the help of the specialist committees set up for the purpose — under the modified comitology procedure (→1.3.8).

The Commission maintains a close exchange of information with the European Parliament (EP) at this level and ensures that its interests are properly reflected.

The comitology reform of 2006 meets the EP's basic demand that measures adopted at level 2 should be subject to more effective democratic scrutiny. The EP considered this necessary because the comitology process increasingly included the adoption not only of implementing provisions but also of measures potentially at odds with the substance of basic acts.

In practice, the reform added to the existing three comitology procedures by introducing a fourth (known as 'regulatory procedure with scrutiny'), giving the EP co-decision powers in respect of implementing measures.

Before the reform, the EP had used the insertion of so-called 'sunset clauses' in framework legislation as a means of exerting influence. These clauses restricted the Commission's implementing powers by imposing a time limit for their exercise: the powers lapsed (unless they were extended by Parliament and the Council) four years after the entry into force of the framework measure.

C. Level 3: implementation of measures laid down at levels 1 and 2

The committees of experts (CESR, CEBS and CEIOPS) coordinate the consistent and fair implementation in the Member States of the rules made at levels 1 and 2: to that end they produce standards and guidelines for harmonising supervisory practices in the European market for financial services.

D. Level 4: supervising the application of measures laid down at levels 1 and 2

In the event of an infringement of Community law, the Commission will take steps to ensure compliance. This surveillance function is designated as level 4 of the Lamfalussy process.

Evaluation

There are conflicting views on experience with the Lamfalussy process so far. Its practical implementation has thrown up certain problems, which are outlined below.

A. Adhering to the FSAP timetable

In order to speed up its work at level 2, the European Securities Committee (ESC), for example, has often received its terms of

reference before the relevant framework legislation has been definitively adopted at level 1 and this means that negotiations at levels 1 and 2 have taken place simultaneously. This approach has had the effect of advancing discussions with market operators. It has come under severe criticism, however, because implementing measures cannot be planned (at level 2) before the aim, scope and substance of the framework legislation has been precisely and finally determined (at level 1).

B. Adequate consultation with market operators

Market operators take the view that the market has no effective say, that they are insufficiently involved in level 2 discussions and that they do not have enough input into the preparation of new rules. They also claim that insufficient attention is paid to the impact of such rules, especially the costs they entail.

Consultation times are often considered too short and this makes it harder to win the agreement of market operators. It is claimed that the quality of legislation suffers because too much emphasis is placed on accelerating the process.

Recently there has been more intensive consultation with market operators at levels 1 and 2. The EU institutions have many formal and informal forums for communication with market experts, and it is therefore possible to obtain information and opinions throughout the legislative process.

C. Specific legal and institutional problems (choice of legal instruments/EP influence)

Debate has focused particularly on the questions of democratic supervision and the democratic legitimacy of the level 3 committees of experts. There is concern that the division of responsibility between level 1 and the subsidiary levels could upset the balance of power among the EU institutions if the Council and Parliament are involved only in level 1 legislation whilst it is left to the Commission, with the help of the specialist committees, to determine technical details.

D. Degree of detail in framework legislation

Deciding what should fall within the respective remits of levels 1 and 2, on the basis of the degree of regulatory detail involved, is not straightforward.

In particularly technical areas the degree of detail at level 1 is growing, with the result that framework legislation may include technical aspects that might have been expected to be delegated to level 2. Including too much detail at level 1 also undermines the aim of accelerating the legislative process and making it more flexible.

The broader the formulation of framework legislation and the greater the delegation of detailed decision-making to level 2, the easier it will become — other things being equal — to adapt measures to market developments and to new demands on legislators. This implies, however, that as much of the work as possible will be removed from the ordinary law-making process, with a resulting reduction in the direct influence of the European Parliament and Member States on the shaping of legislation for the financial markets.

→ Judith Marion Braun
July 2008

3.4.4. Financial services: key legislation

In May 1999 the Commission set out the financial services action plan (FSAP), with a timetable and concrete measures for creating an effective single market in financial services. It contained a total of 42 provisions for harmonising Member States' rules on securities trading, banking, insurance, pensions and other financial services. The measures are implemented in accordance with the so-called Lamfalussy process (→3.4.3). The Council regards the FSAP as an integral part of the Lisbon Agenda.

Legal basis

— 11 May 1999: the Commission adopts the financial services action plan (COM(1999) 232).

— 21 April 2004: Directive 2004/39/EC on markets in financial instruments, amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council, and repealing Council Directive 93/22/EEC.

— 14 June 2006: Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions.

— 13 November 2007: Directive 2007/64/EC on payment services in the internal market, amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Council Directive 97/5/EC.

Banking

A. Capital requirements directive (CRD)

1. Aim

The CRD aims to introduce a modern risk-sensitive framework for credit institutions and investment companies in the EU, in accordance with the Basel II rules on capital adequacy.

Implementation of the directive is intended to assist the EU economy and also to create greater financial stability, with benefits for both companies and consumers.

2. Content

The CRD transposes the Basel II framework accord on credit institutions' capital adequacy into EU law.

A component of the financial services action plan, the directive brings European capital-adequacy rules up to date, making them more comprehensive and risk sensitive by promoting tighter risk management on the part of financial institutions. For example, it provides for the first time for the explicit measurement of operational risk, and makes improvements in risk management more visible through an authorisation scheme for internal rating systems. Flexibility is a key characteristic of the new framework: institutions are thus allowed to choose the approach that best suits their specific circumstances and the level of development of their risk-management systems.

B. Payment services directive (PSD)

1. Aim

This directive aims to facilitate electronic payments throughout the EU and to pave the way for a single euro payments area (SEPA). Improving consumer protection is also an important consideration. As well as establishing an EU-wide payments area, the directive seeks to make the banking sector more competitive by opening up financial markets, to create a harmonised framework for new entrants to the payments market from outside the banking sector, and to introduce a range of information obligations. The intention is to offer a consistent, technology-neutral legal environment for payment-service providers in the EU and to promote the modernisation of infrastructure.

2. Content

The directive's provisions are organised in a two-pillar structure.

The first pillar is concerned with the introduction of 'payment institutions' as a new category of payment-service providers, aiming to give them equal access to the market and thus to promote competition. In practical terms this means that, as well as banks and post-office giro services, any individual or legal entity licensed to provide financial services in the EU may operate as a payment institution.

The directive also provides for the introduction of the so-called 'single passport' system. This means that provided a payment institution is licensed by the authorities in one Member State it can operate throughout the Community.

Payment institutions may offer payment services as well as operational and closely related ancillary services (ensuring the execution of payment transactions, foreign exchange services, etc.) but they are not entitled to take deposits or to issue electronic money.

The directive's second pillar introduces standard obligations with regard to information, harmonised rules on the rights and duties of payment-service users and providers, and technical minimum standards to improve transparency and legal certainty in the payments sector.

3. Evaluation

Critics of the new legislation say that it complicates monetary movements in the EU and makes them less secure. For example, payment recipients are identified by an IBAN number and banks are no longer required to check the number with the name of the account holder. This means that under the SEPA rules a transfer may go ahead even if the recipient's name and account number do not match. Nor does the system entitle customers to place an upper limit on direct-debit authorisations. Similarly, a customer cannot countermand a payment once it has been approved by the payment-service provider. There is also a real concern that the shortened deadline for effecting payment transactions (transfers must be credited to the recipient's account on the next business day) will result in new charges being imposed on customers.

Securities market

A. Markets in financial instruments directive (MiFID)

1. Aims

This directive aims to introduce uniform Europe-wide standards for securities trading, to boost competition and to afford investors greater protection. It therefore includes new stipulations on investor protection, greater transparency regarding commission payments to investment advisors and better integration in the way financial services are provided.

MiFID stipulates that investors must be advised about all the charges associated with a transaction and, before concluding a contract, must receive information about the product in question and its risks. It is hoped that this regulatory framework will help to boost investors' confidence and thus increase the inflow of international capital to Europe.

2. Content

— 'Best execution': securities firms and bank advisors engaging in securities contracts must seek out the marketplace where the best possible result can be achieved for the customer in terms of both costs and the probability and rapidity of executing the order.

— Advisors must document and record all investment advice given, so that they can prove compliance with the rules on advising customers.

— Securities firms and bank advisors must disclose investment companies' or other product suppliers' commission and bonus payments.

3. Evaluation

Investor-protection bodies complain, for example, that investors bear the burden of proof in cases where banks have given misleading or incomplete advice, although it is the investment advisor who is required to document such advice. Also, breaches of regulatory provisions cannot give rise to a

claim under civil law, so investors are not entitled to compensation.

Insurance and occupational pensions

A. Solvency II

1. Aim

This directive will radically overhaul the financial supervision of insurance firms, replacing the former static model of supervision with a dynamic, risk-based approach in order to afford consumers and companies better protection. It will promote deeper integration of the EU insurance market and protect insurance firms and claimants more effectively. Ultimately this should make EU insurance and reinsurance companies more able to compete internationally.

2. Content

a. Ratio of capital to risk-weighted assets

Under the Solvency I rules there was a static system of calculating a company's solvency margin: it was assessed against overall trading volume, and the calculation simply reflected the size of the balance-sheet or profit and loss figures.

By contrast, the Solvency II system is more concerned with actual risk and the focus of supervision will be the individual risk level of each company. The principle is that calculation of the solvency margin should reflect all relevant and quantifiable risks, and at least the four major categories: market risk, credit risk, technical insurance risk and operational risk. The new supervisory system will thus mean that insurance firms' capital resources are adequate for meeting their risks.

Although it is so strongly risk orientated, Solvency II also includes safety mechanisms. A key concept here is the minimum capital requirement (MCR), a safety-net level below which a company's available capital should never fall.

b. Capital management

Under the Solvency II rules, an insurance company's board will be responsible for developing and implementing its investment strategy. The aim will be to manage assets so prudently that obligations such as capital adequacy or a specific risk/return profile are met at all times.

3. Evaluation

Solvency II offers practical benefits to companies with relatively large sums of money at their disposal, helping them to invest and to compete in increasingly global markets. Supervisory authorities fear, however, that a livelier market will intensify competition, leading in turn to a higher incidence of bankruptcy and a decline in customer confidence.

In the short term, Solvency II could also result in reduced insurance protection for those branches of the industry that cover long-term high risks, because the demands placed on them will be greater in quantitative terms. It is possible, too, that insurers will decide to restrict cross-subsidising, with the result that some types of premium will rise. There is a further risk that the planned system of supervision will accelerate the already established trend towards consolidation, increasing the current pressure of competition on small and medium-sized insurers.

Supervision

The Lamfalussy process (→3.4.3) changed the way that the supervision of Europe's financial market is structured, by introducing committees of experts at level 3 with the aim of achieving uniform supervisory practice and regulation throughout the EU.

A high level of convergence in supervisory practice in all the EU Member States is a basic precondition for completion of the internal market.

There is a problem, however, with the transposition of European directives into national law and the quality of the implementation process. There is a risk that market operators will be treated differently in different Member States, with damaging consequences for fair competition and effective integration of financial services markets.

Role of the European Parliament

The European Parliament (EP) has shown a particularly high degree of commitment in the most recent rounds of legislation for financial services markets. Not only has its pursued its co-legislative role, but it has also steadily supported the work of the Commission, moving discussions forward on many occasions and taking its own initiatives to make its position clear.

By virtue of its proactive approach, the EP is prominently involved both in current discussions at the Council, the Commission and other international institutions about development of the supervisory structure for financial markets at EU level and in exploring how to avoid systemic risk.

→ Judith Marion Braun
July 2008

3.4.5. Intellectual, industrial and commercial property

Consisting of trade marks, patents, designs and models, designations of origin and copyrights, intellectual property is protected through various Community regulations. The fight against counterfeiting has become one of the priorities of the Office for Harmonization in the Internal Market and of the European Patent Office.

Legal Basis

Article 30 of the Treaty establishing the European Community (EC) 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 EC) insofar as it may give rise to concerted practices or abuse of a dominant position.

The Treaty of Lisbon introduces a new legal basis which legitimises direct intervention by the Union in the field of intellectual property. According to Article 118 of the consolidated version of the Treaty on the Functioning of the European Union, the European Parliament and the Council shall establish measures for the creation of European intellectual property rights to provide uniform intellectual property rights protection throughout the Union and for the setting up of centralised Union-wide authorisation, coordination and supervision arrangements.

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 and designs

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 Harmonization in the Internal Market (Trade Marks and Designs)'; the Office, which was established in Alicante, became operational in 1996. Regulation (EC) No 40/94 was amended by Council Regulation (EC) No 422/2004 of 19 February 2004, which contributes to improving the operation of the Community trade mark system.

Directive 98/71/EC of 13 October 1998 approximates national legislation on the legal protection of designs.

Regulation (EC) No 6/2002 of 12 December 2001 institutes a Community system for the protection of designs.

Council Decision 2006/954/EC of 18 December 2006, approving the accession of the European Community to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs, adopted in Geneva on 2 July 1999, and Council Regulation (EC) No 1891/2006 of 18 December 2006 amending Regulations (EC) No 6/2002 and (EC) No 40/94 to give effect to this accession aim to link the Union system for the registration of designs to the World Intellectual Property Organisation international registration system for industrial designs.

2. Copyright

a. Main Community measures

Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs (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 radio broadcasting and cable retransmission.

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 of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.

Directive 2001/84/EC of 27 September 2001 on the resale right for the benefit of the author of an original work of art.

Directive 96/9/EC of 11 March 1996 on the legal protection of databases.

Directive 2004/48/EC of 29 April 2004 on the enforcement of intellectual property rights.

Directive 2006/115/EC of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property.

Directive 2006/116/EC of 12 December 2006 on the term of protection of copyright and certain related rights.

b. Approval of international treaties

On 16 March 2000 the Council approved the World Intellectual Property Organisation (WIPO) Copyright Treaty and the WIPO 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.

b. Partial improvements

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 Union and promote the manufacture of technically improved products;

ii. Community protection of certain sectors

Council Directive 87/54/EEC of 16 December 1986 on the legal protection of topographies of semiconductor products.

Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs (amended by Council 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 the European Parliament and of the Council 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 content, 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 and design rights and unfair competition.

Protection of biotechnological inventions by Directive 98/44/EC of 6 July 1998.

Directive 98/84/EC of the European Parliament and of the Council 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 the requirements of Regulation (EC) No 2100/94 and 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 at its second reading on 6 July 2005.

The Commission has proposed an amendment to Directive 98/71/EC with the aim of freeing up the trade in component parts for motor vehicles. On 12 December 2007 the European Parliament amended the draft directive which was intended to amend Directive 98/71/EC at first reading of the co-decision procedure. Specifically, Parliament approved an amendment requiring consumers to be informed of the source of parts through the use of a trade name or any other appropriate form to enable them to make an informed choice from rival products offered for the repair. The amended proposal is awaiting first reading by the Council.

c. New plan for a Community patent

On 1 August 2000 the Commission presented a new draft regulation on the Community patent (COM(2000) 412). According to this draft, the Community patent will coexist with the national patents. Legal protection will be guaranteed by a special court. The European Parliament 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. The Council has not yet secured the unanimous approval required for this draft.

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 submitted 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 of 29 April 2004 on the enforcement of intellectual property rights, which provides for measures, procedures and compensation solely under civil and administrative law.

However, the Commission has withdrawn the draft framework decision and has presented an amended proposal for a directive of the European Parliament and of the Council on criminal measures aimed at ensuring the enforcement of intellectual property rights (COM(2006) 168). On 25 April 2007 the European Parliament approved this proposal for a directive at first reading of the co-decision procedure although first reading by the Council is still pending.

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 exclude 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 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, trade-related aspects of intellectual property rights).

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 SMEs free access to software created by major international developers.

→ Roberta Panizza
July 2008

4

Common policies

These policies are the lines of action the Community decides to follow in certain areas in order to achieve the general objectives it has set. They are known as 'common' policies because they concern all Member States of the Union. This harmonised action provides a leverage effect that makes it possible to obtain better results.

Such policies include: the common agricultural policy (CAP), regional transport policy, social and employment policy, environment policy a and technological development.

4.1. The Lisbon strategy

At the Lisbon European Council on 23 and 24 March 2000, the Heads of State or Government resolved to make Europe's economy the most competitive knowledge in the world, working on increasing jobs and on economic growth until 2010. The disappointing results of the mid-term review of this strategy has required its revitalisation and refocusing in 2005.

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 and 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 and 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 or 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 EU's efforts on two principal tasks — delivering stronger, lasting growth, and more and better jobs. From that point on, the institutions of the EU began to turn the new momentum for a relaunch into concrete action. The European Council of March, as well as the European 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 EU 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 2005–08 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 European Parliament adopted a resolution, after the Feira European Council meeting, welcoming the consensus on the policy-mix set out by the Council conclusions but calling for an interinstitutional agreement. The following year, Parliament examined the 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 of 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 Coordination Group on the Lisbon Strategy 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 European Parliament adopted a resolution on the 'Mid-term review of the Lisbon strategy' (P6_TA(2005)0069) supporting an effective refocusing 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 European Parliament 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 European Parliament places great importance on the role of national parliaments and focuses on the strengthening of a bilateral dialogue. Debates at the second joint parliamentary meeting between the European Parliament and the national parliaments, 'The parliaments on the way to Lisbon', on 31 January and 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 European Parliament 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 European Parliament 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
September 2006

4.2. Common agricultural policy

4.2.1. The Treaty of Rome and the foundations of the CAP

Following the entry into force of the Treaty of Rome, mechanisms for national agricultural policy were replaced by intervention mechanisms at Community level. Articles 33 and 131 of the EC Treaty laid the foundations of the common agricultural policy, which has since been amended on numerous occasions.

Legal basis

Articles 32 to 38 of the Treaty establishing the European Community (EC), based on the new numbering introduced by the Treaty of Amsterdam (1997).

Objectives

A. Reasons for the CAP: background and specific characteristics of agricultural supply and demand

When the Treaty of Rome established the common market in 1958, agriculture in the six founding Member States was strongly affected by State intervention, particularly with regard to the orientation and control of supply, price guarantees, direct income support for farmers, marketing and/or agricultural structures. For agricultural produce to be included in the free movement of goods while maintaining State intervention in the agriculture sector, national intervention mechanisms which were incompatible with the common market had to be removed and transferred to Community level; this is the fundamental reason for the creation of the common agricultural policy.

Several Member States and all the farmers' professional organisations wanted to maintain strong State intervention in agriculture. In addition, intervention in agriculture was based on the principle, widespread at the time, of the specific nature of this sector, with its dependence on climate and geography and systemic imbalances between supply and demand leading to strong fluctuations in prices and income.

Agriculture is in fact characterised by its relationship with natural resources. It derives products from these resources as part of a natural cycle designed to satisfy that most basic human need: to eat. Agriculture is thus an economic activity existing within the natural environment. It maintains and cultivates the land, but is also penalised by a wide range of climate conditions and geographical constraints.

Agriculture must also cope with market instability: on the one hand, the length of production cycles and fixed inputs make the global supply of farming produce very rigid; on the other, food demand is inelastic, in other words, it reacts little to price fluctuations. Since supply is inflexible in the short term, it is demand that determines market prices, but because demand is inelastic, an abundant supply will bring down prices, whereas a short supply will force them up. All of these factors create permanent market instability. In this situation, governments have always tended to regulate agricultural markets and to support farming income, a tendency inherited by the CAP.

Although agriculture today accounts for only a small part of developed economies, even in the EU (→4.2.10, Table II), State intervention has increased of late with agro-rural policies which have added new dimensions to support for the traditional function of the primary activity, namely food production. These new dimensions include sustainable development, land management, town and country planning, diversification and renewal of the rural economy and the production of energy and biomaterials. Support for non-market aspects of agriculture — in other words, those not rewarded by the market — has thus become a key strand of today's agricultural and rural policies, including the CAP.

B. Objectives

Article 33 of the EC Treaty sets out the **specific objectives** of the CAP:

a. to increase agricultural productivity by promoting technical progress and ensuring the optimum use of the factors of production, in particular labour;

b. to ensure a fair standard of living for farmers;

c. to stabilise markets;

d. to assure the availability of supplies;

e. to ensure reasonable prices for consumers.

These objectives are both **economic** (a, c and d) and **social** (b and e) and are intended to safeguard the interests of producers and consumers. In practice, the objectives of the CAP have

remained unchanged since the Treaty of Rome, worded in such a way as to prove extremely flexible and able to embrace the countless reforms witnessed since the 1980s (→4.2.2). It is noteworthy that, as evidenced by existing case-law, the objectives of the CAP cannot all be fully achieved at the same time. The Community legislator therefore has considerable room for manoeuvre when it comes to choosing the instruments and scope of the reforms, depending on the market and the priorities set by the Community institutions at any given time.

Alongside the specific objectives of the CAP set out in Article 33, several provisions of the Treaty have added other objectives **applicable to all policies** and actions of the European Union. In this respect, **public health** (Article 152(1)), **consumer protection** (Article 153(2)), **economic and social cohesion** (Article 159) and **environmental protection** (Article 175) are becoming objectives of the CAP in their own right. Furthermore, at a time of market liberalisation and globalisation, Article 133 sets out the principles of the **common commercial policy** applicable to trade in agricultural products. Finally, the principles of **competition policy** make an exception for the production of and trade in agricultural products, in view of the unique structure of the primary sector (Article 36).

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 due to a number of reasons: huge technical advances, price guarantees for producers, the ongoing enlargement of the EU and, finally, increasing market liberalisation. Financial constraints as well as changes in Community and world agriculture during the 1980s led to a root-and-branch reform of the CAP. 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 European Act (1986), decisions adopted by the Council in February 1988 and the 1992 and 1999 reforms (Agenda 2000) (→4.2.2), under the aegis of the World Trade Organisation's 1994 Agreement on Agriculture (→4.2.7), new tools were provided for the CAP.

In Luxemburg on 26 June 2003, the Council of Agricultural Ministers of the European Union reached an agreement on a radical reform of the CAP, based on the Commission proposals presented on 23 January 2003 (→4.2.2). 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 bring farmers and taxpayers together again by involving them in a joint project characterised by more acceptable costs and less bureaucratic management, to improve the economic efficiency of the instruments of agricultural policy and, finally, to seek to achieve compatibility with the WTO agreements, thereby ensuring a greater degree of legitimacy at international level.

Current instruments of the CAP

1. Overall view

Since the major CAP reform in 2003, implemented in several stages (see →4.2.2), the main instruments of the CAP are based on five basic texts:

— Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (OJ L 270, 21.10.2003) (→4.2.4);

— Council Regulation (EC) No 1783/2003 of 29 September 2003 amending Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ L 270, 21.10.2003) (→4.2.5);

— Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ L 209, 11.8.2005) (→4.2.6);

— Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ L 277, 21.10.2005) (→4.2.5 and →4.2.6);

— Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets which codified the regulatory mechanisms of 21 previous sectoral OCMs (OJ L 299, 16.11.2007) (→4.2.3).

2. The agricultural decision-making process: the most prominent bodies playing a role in applying the CAP

Article 37(2) and (3) of the EC Treaty sets out the procedure for the preparation and implementation of the CAP, based on a proposal of the Commission, the opinion of the European Parliament and if necessary the Economic and Social Committee and the decision of the Council by qualified majority vote. This is a simple **consultation** procedure for the European Parliament which, despite the new procedures (cooperation and co-decision) introduced by the Single European Act, the Maastricht Treaty and the Amsterdam Treaty, has never been modified.

However, there are other bodies which are involved in the implementation of the CAP as part of the '**committee procedure**'. Since 1961, when the first common organisations of the market were established, several **committees** have been set up. 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 common agricultural policy: management committees (dealing with market organisation), regulatory committees (dealing with rules to be applied in general areas)

and other committees (socioeconomic advisory committees or scientific committees).

As part of the consultative committee procedure, **professional organisations in the EU**, through the Committee of Professional Agricultural Organisations (COPA) of the European Union and the General Committee for Agricultural Cooperation in the European Union (Cogeca), are indirectly involved in the Community decision-making process.

Role of the European Parliament

A. Scope for action

As mentioned earlier, since the origin of the CAP, Parliament has only had advisory powers on agriculture. However, according to European case-law, the opinion of the European Parliament is an essential requirement and failure to obtain it invalidates the instrument concerned. In addition, the European Parliament, according to the cooperation principle, cannot delay issuing an opinion on an agricultural proposal from the Commission which it knows to be urgent.

B. Influence

Having no decision-making powers, Parliament has exercised a strong influence over the CAP since the Treaty of Rome by using non-binding methods like use of own initiative reports and resolutions through mainly consultation procedures.

Since the European Council declaration in 1997 in favour of a **European agricultural model,** the European Parliament has on several occasions demonstrated its commitment to a multifunctional European agricultural (and food) model, spread across the entire territory of the enlarged Union and compatible with the liberalisation and globalisation of the markets. This is evident by the recent CAP reform (resolutions of 30 May 2002 and of 7 November 2002) and multilateral negotiations on agriculture within the WTO (Doha Round), which are still ongoing (resolutions of 13 March 2001, 25 October 2001, 13 December 2001 and 12 February 2003) (→4.2.8).

In this context, the European Parliament has also indicated that it is in favour of the integration of new objectives within the CAP with a view to responding to the new challenges of agriculture, such as product quality, public health, sustainable development, economic and social cohesion, environmental protection and tackling climate change.

→ Albert Massot Martí
August 2008

4.2.2. Reform of the common agricultural policy

The common agricultural policy has undergone over time four major reforms, the most recent of which occurred in 2003. Since November 2007, a new reform has been under way (the 'health check'), which should culminate in a Council agreement by December 2008.

Legal basis

Articles 32 to 38 of the Treaty establishing the European Community (EC).

Objectives

The objectives laid down for the CAP in the Treaty are still perfectly valid (→4.2.1). However, the following CAP reforms adapted different mechanisms and principles used in order to attain those goals more successfully. The latest reforms initiated by Agenda 2000, particularly with the 2003 mid-term review, introduced some **new objectives** into the CAP:

— improving competitiveness by gearing agriculture more to the market;

— producing safe, good quality food in line with the expectations and needs of society;

— stabilising farmers' incomes while covering budgetary costs (→4.2.4);

— maintaining a sustainable agricultural sector, incorporating environmental and planning objectives;

— strengthening rural development (→4.2.5), allowing the creation of additional income and jobs in agriculture and contributing to the economic and social cohesion of the Union;

— increasing the EU's negotiating position during World Trade Organisation (WTO) talks (→4.2.7 and →4.2.8);

— simplifying administrative provisions relating to market management and payments made to producers;

— incorporating the agricultural sectors of the new Member States into the single market.

Achievements

A. First steps: the limited success of combating surpluses

From the time it was introduced in 1962 the CAP has fulfilled its objectives for ensuring secure food supplies. Then, with its

policy of support 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. In the early 1980s, priority was given to closing the widening gap between supply and demand and controlling the burden of agricultural expenditure on the EU budget. To improve the situation, the Commission published a Green Paper (COM(85) 333) recommending a more restrictive pricing policy to bring EU prices into line with world prices, to freeze spending and to accommodate the lower prices caused by surpluses. Measures aimed at controlling supply and budgetary 'stabilisers' were introduced into several markets (with milk quotas first of all in 1984, followed by co-responsibility levies on cereals in 1986, and the introduction of guaranteed maximum quantities (GMQs) for herbaceous crops in 1987 and 1988).

In **February 1988**, the **Brussels 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 a framework of budgetary discipline for the period 1988–92, limiting the rise in agricultural spending to growth in GDP; extension of the budgetary stabilisers to virtually all sectors (reduction in prices and aid once production reaches a predetermined ceiling); voluntary set aside of arable land; incentives for the extensification of production and conversion of surplus products; direct income support for small producers who are the worst affected by the reforms.

B. The 1992 reform: the great turning point

In view of the persistence of surpluses and the burden on the budget, in 1991 the Commission published two discussion papers on the future of the CAP (COM(91) 100 and COM(91) 258). In addition, the resolution of the GATT panel on oilseeds (contrary to European interests) and ongoing negotiations in the Uruguay Round (→4.2.7) called for a reorganisation of existing market mechanisms. On **21 May 1992**, the Council reached a political agreement on the proposed reform. This brought about **radical changes** in the CAP, replacing a system of protection through prices with a **system** of **compensatory income support**. The reform was phased in from 1993 onwards, but only applied to certain products: herbaceous crops (cereals, oilseeds and proteins), beef and, to a lesser extent, sheepmeat and goatmeat and tobacco. The Council's decisions were based on three strands.

— There were specific measures for **crop production**, which included a significant reduction in guaranteed cereal prices and the abolition of institutional prices for oilseeds and proteins, and compensation for the resulting loss of income by **direct aid per hectare** of herbaceous crops. This aid, which was not calculated based on quantity produced but by surface area multiplied by a fixed yield, was entered in the WTO's 'blue box' (→4.2.7). These payments were also conditional, except for small producers, on a compulsory set aside of 15 %.

— There were specific measures for **livestock production**, which included a significant reduction in the price of beef and a **headage payment** compensating livestock farmers for loss of earnings, again entered in the WTO's 'blue box' (→4.2.7). Payment of beef premiums was subject to a maximum number of livestock per hectare of forage area to encourage extensive farming.

— There were **accompanying measures** which supplemented the market-related measures, an optional early retirement scheme for farmers over the age of 55, agro-environmental measures for farmers committed to using environment-friendly methods, and afforestation aid for farmland.

C. Agenda 2000: a new stage in the 1992 reform

At the end of the 1990s, following the completion of the 1992 reform, the prospect of EU enlargement triggered fears that the adoption of the CAP by new members would translate by the return of surpluses and by an explosion in agricultural expenditure. In this context, the WTO's 1994 Agreement on Agriculture (→4.2.7) governed the management instruments of the CAP and limited the possibility of reorientation and of subsidised exports. In addition, the financial framework for the Union from 2000–06 had made the stabilisation of the CAP budget a priority.

On this basis, the Commission proposed reducing production incentives by lowering guaranteed prices further (COM(97) 2000). By approximating world prices, this would also reduce export subsidies. In addition, Agenda 2000 had adopted the conclusions of the Cork Conference in 1996 in favour of strengthening rural development policy, on the one hand to make agriculture contribute more towards land use planning, and on the other to reconcile agriculture with the environment and encourage complementary or alternative activities to farming.

The **1997 Luxembourg European Council**, which declared that agriculture in Europe had to be multifunctional, sustainable, competitive and located throughout the territory, set the strategic objective for the reform. Following the agreement reached at the end of the **Berlin European Council (24 and 25 March 1999)**, the reform mainly concerned the following aspects:

— a new **alignment of EU prices** with world prices, partly offset by direct aid;

— on a voluntary basis, the introduction by Member States of **environmental cross-compliance** as a condition for granting aid and the option of reducing this **(modulation)** to finance rural development measures;

— an increase in existing socio-structural and accompanying measures, particularly agro-environmental measures, within a new **rural development policy**, from now on known as the **'second pillar of the CAP'** (→4.2.5);

— a six-year, three-part **financial framework**: EUR 40.5 billion on average per year for the **first pillar** of the CAP (market

policy and aid); EUR 14 billion earmarked for financing the **second pillar** (new rural development policy) and veterinary and plant health measures; EUR 250 million for the Instrument for Structural Policies for Pre-Accession (ISPA).

D. The reform of June 2003: towards a new CAP

At the 1999 Berlin Summit, the 15 Member States, adopting the proposals of Agenda 2000, invited the Commission to carry out a **mid-term review in 2002** to assess the impact of the latest CAP reform, which, in principle, would cover the period 2000–06.

This mid-term review would end up becoming **the most ambitious reform** of the CAP thus far, with four **key objectives**: linking European agriculture to global markets; preparing for EU enlargement; satisfying the new demands of society in terms of environmental protection and product quality (public opinion having been troubled by a series of food crises such as bovine spongiform encephalopathy — so-called 'mad cow disease' — and foot-and-mouth disease); making the CAP more compatible with the demands of third countries in the context of the Doha Round negotiations launched in 2001 (→4.2.8).

Based on the Commission proposals (COM(2002) 394 and COM(2003) 23), on 26 June 2003 EU agriculture ministers meeting in Luxembourg reached an agreement on seven texts (Regulations (EC) No 1782/2003 to (EC) No 1788/2003, OJ L 270, 21.10.2003) which effectively overhauled the CAP and introduced a series of new principles and/or mechanisms:

— the **decoupling** of aid from the volumes produced in order to have market-oriented production and to reduce distortions in production and agricultural markets; this decoupled aid would from now on be a single fixed payment, aimed at guaranteeing income stability and calculated according to direct aid received in the past (historical base);

— **cross-compliance**, which made the single payments conditional on a whole series of criteria concerning the environment, public health, animal welfare, etc., in response to the expectations of European citizens;

— **compatibility with WTO rules,** insofar as the decoupling of aid had the end goal of allowing the single payment scheme to be entered in the 'green box' of the WTO Agreement on Agriculture (→4.2.7);

— public **redistribution** of payment entitlements allocated to farms on historical bases using three mechanisms: **modulation**, allowing funding to be transferred between the two pillars of the CAP to increase rural development covered by the new Feader; **national reserves** of payment entitlements, established on the basis of a percentage of national single payment budgets, to cope with exceptional problems or special situations; the potential application of a **regional decoupling model** to allow harmonisation of payments per hectare allocated according to regional criteria;

— **flexible management** of the CAP, with the possibility of Member States applying a whole series of parameters of the new CAP in a variety of different ways: the introduction of the new single payment scheme; partial decoupling for some production to avoid abandonment in the most vulnerable regions and prevent imbalances in certain sectors; percentage of payments to be allocated to the national reserve; application of the historic decoupling model or regional model, with the option of introducing hybrid models, and so on;

— **financial discipline**: a principle subsequently enshrined in the 2007–13 financial perspective (OJ C 139, 14.6.2006), whereby, faced with the challenges of enlargement, the budget of the first pillar of the CAP was frozen and annual compulsory ceilings imposed; to comply with these, Community institutions could make linear reductions in existing aid;

— finally, **progressivity**: the 2003 reform was the first milestone in a gradual process unfolding under the aegis of the 2007–13 financial perspective. In fact, once the basic principles had been established (decoupling, cross-compliance, flexible management, financial discipline, etc.), it was used as a reference to carry out further sector reforms. The first reform in 2003 covered the main common market organisations (CMOs) (→4.2.3), particularly in the cereals, rice, dried fodder, and milk and milk products sectors; the second reform, in April 2004, covered the so-called 'Mediterranean package' for olive oil, raw tobacco, hops and cotton sectors (Regulations (EC) No 864/2004 and (EC) No 865/2004, OJ L 161, 30.4.2004); the third major reform took place in 2006 (Regulations (EC) No 318/2006 to (EC) No 320/2006, OJ L 58, 28.2.2006) and 2007 (Regulations (EC) No 1260/2007 to (EC) No 1264/2007, OJ L 283, 27.10.2007) in the sugar sector; the reform of the fruit and vegetables sector was then implemented in 2007 (Regulation (EC) No 1182/2007, OJ L 273, 17.10.2007); and, finally, the reform of the wine sector was approved in 2008 (Regulation (EC) No 479/2008, OJ L 148, 6.6.2008). The '**health check**', in the process of being adopted in 2008 and which deepens the 2003 reform for all sectors, is the final stage in this ongoing reform process.

Role of the European Parliament

On the whole, the European Parliament (EP) has supported all of the CAP reforms. It adopted most of the Commission guidelines for the 2003 reform while declaring itself in favour of partial decoupling and rejecting the idea of degressive aid (T5-0256/2003 of 5 June 2003, OJ C 68, 18.3.2004). The European Parliament recommended a partial decoupling of aid for two sectors only: arable crops and male cattle. MEPs also modified the Commission proposals on modulation and degressive aid, agreeing to some reduction in direct payments for farmers receiving more than EUR 7 500 a year. These reductions should vary from 6 % a year in the most vulnerable regions to 8 % in other areas. Conversely, the concept of degressive modulation

was rejected. Finally, Parliament renewed its calls for full co-decision on agricultural policy, an aim which will only be achieved once the Lisbon Treaty comes into force (→4.2.9).

The EP also emphasised, in its resolution of 22 April 2004 (T5-0367/2004, OJ C 104, 30.4.2004) that it is not bound by the decision taken by the Brussels Council on agricultural spending until 2013, and reaffirmed its support for strengthening rural development policy. Furthermore, it expressed reservations concerning the seven-year period for the 2007–13 financial perspective.

During the preparatory debate on the 'health check', Parliament on the whole supported the key themes of the mid-term review proposed by the Commission in its communication of 20 November 2007 (P6_TA-PROV(2008)0093 of 12 March 2008). The final decision of the Council on the legislative proposals is expected by the end of 2008.

→ Albert Massot Marti
August 2008

4.2.3. The first pillar of the CAP: I. The single common market organisation

The common market organisations (CMOs) govern the production and sale of European products. Since 2003, direct support for these products has fallen under Regulation (EC) No 1782/2003, outside the CMOs. In addition, in 2007 a single CMO replaced all the market regulation schemes in force with a single text.

Legal basis

The market policy — based on Article 32 of the Treaty establishing the European Community (EC) and on basic regulations founded on that article governing the various common market organisations (CMOs) — was the oldest instrument in the CAP and, until the 2003 reform, it was the most important. Since then, the majority of the direct aid schemes for CMOs have been transferred to Regulation (EC) No 1782/2003 (OJ L 270, 21.10.2003) (→4.2.4). In 2007, as part of the CAP simplification process that was then under way, a **single common market organisation** for all agricultural products was put in place to replace the existing 21 CMOs (Regulation (EC) No 1234/2007, OJ L 299, 16.11.2007). This made it possible to repeal about 50 Council instruments.

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 had been set out in basic regulations for each product until the entry into force of the single CMO, which codified the market regulation systems in force.

With regard to the sectoral reforms following the establishment of the single CMO: the provisions adopted in the 2007 reforms of the fruit and vegetable sector (Regulation (EC) No 1182/2007, OJ L 273, 17.10.2007) and the 2008 reforms of the wine market (Regulation (EC) No 479/2008, OJ L 148, 6.6.2008) will soon be incorporated into Regulation (EC) No 1234/2007; on the other hand, the cotton sector, which is governed by protocols annexed to the Accession Treaties for Greece and Spain, will remain outside the regulation; the same applies to bananas, since the most recent reform in this sector removed the regulation of banana production from the CAP and inserted it into the programmes for the outermost regions (POSEI) (Regulation (EC) No 2013/2006, OJ L 384, 29.12.2006).

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:

— an **internal** or 'internal market' **heading**, with common price systems, measures to control supply and stocks, measures to support production and measures for the organisation or regulation of the market;

— an **external heading**, with an external system of protection against third countries, rules for the administration of tariff quotas, safeguard clauses and, possibly, export refunds (for cereals, rice, sugar and animal products).

Thus, for the most important products, the CMOs are a combination of common price systems, direct aid (whether decoupled from or coupled to production), a system of trade with third countries, supplemented, in some cases, 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 direct aid scheme or a border protection system.

B. The process of reforming the CMOs

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 1988, 1992 and 1999 (→4.2.2) in favour of a progressive reduction in institutional prices offset by the granting of direct aid and the establishment of stabilising mechanisms, in some cases giving entitlement to production quotas (through the consolidation of national quotas for sugar and dairy products) or guaranteed prices for producers (through maximum guaranteed quantities (MGQs) or maximum guaranteed areas (MGAs)).

When the new reform of the CAP decided on by EU farm ministers on 26 June 2003 was implemented, most forms of direct aid were made subject to the principle of decoupling (single farm payment (SFP)), which Member States will be able to apply, either in full or in part, in certain sectors and subject to certain conditions (→4.2.4). This aid has been taken out of the corresponding CMOs. At the same time, the **2003 reform** modified certain CMOs:

— milk sector: asymmetric price cuts (the intervention price for butter was reduced by 25 % over four years, which is an additional price cut of 10 % compared with the Agenda 2000 reform; a 15 % reduction over three years was decided on for skimmed milk powder); increases in the milk quotas approved for certain countries;

— cereals: reduction of the monthly increments for storage by half; the intervention price was maintained, except for rye; special payments were established and incorporated into Regulation (EC) No 1782/2003 (→4.2.4);

— rice: single reduction of the intervention price for rice by 50 % with a maximum intervention amount;

— other: special payments were established for nuts (with a maximum area), starch potatoes (with a part decoupled from and another part coupled to production) and dried fodder (once again, with a part decoupled and a part coupled); the first two have been incorporated into Regulation (EC) No 1782/2003; aid for fodder has remained in the single CMO.

The **sectoral reforms** which followed in 2004 (for cotton, tobacco, olive oil and hops) adopted the total or partial decoupling system of aid in these sectors (Regulations (EC) No 864/2004 and (EC) No 865/2004, OJ L 161, 30.4.2004). The 2006 sugar reform reduced the price support to the sector and significantly altered the national production quotas system, in order to take account of the commitments in the CMO (Regulations (EC) No 318/2006 to (EC) No 320/2006, OJ L 58, 28.2.2006).

Developments in the contribution made by the EAGGF Guarantee Section show the extent to which the CAP was transformed as a result of these reforms, and is now an income support policy (with direct aid, decoupled from or coupled to production).

Table 1 — Contribution of the EAGGF Guarantee Section (%)

Measures		1989	2006
Direct aids	(reforms of 1992, 1999 and 2003)	—	69
Market support	Export refunds	38	5
	Intervention	62	11
Other (accompanying measures — rural development)		—	15

A reform of the **fruit and vegetable sector** was adopted in 2007. It brought in:

— the inclusion of the existing aid for processed fruit and vegetables in the SFP;

— a simplification and strengthening of the producer organisations system, in which they are given responsibility for crisis management under a co-financing system;

— the introduction of measures to promote consumption, including encouragement for the consumption of fruit and vegetables in educational establishments.

The most recent reform adopted was the reform of the **wine sector**, in 2008. The broad outlines of the reform were as follows:

— the phasing-out of distillation schemes;

— the introduction of a decoupled single farm payment for each wine grape holding; it will also be possible for aid for the use of must to be changed into decoupled payments;

— the implementation of a voluntary grubbing-up scheme;

— the abolition of planting rights by the end of 2015 (or, possibly, 2018, at national level);

Table 2 — Products listed by type of intervention price (Regulation (EC) No 1234/2007: single CMO) and direct support system (Regulation (EC) No 1782/2003)

Support \ CMO	1. Products with CMOs at common prices with automatic intervention	2. Products with CMOs at common prices and conditional intervention	3. Products without regulated prices and direct aid only	4. Products with customs CMOs or without CMOs
A. Products with decoupled aid (SFP)	Cereals (except rice, durum wheat and rye)	Exceptional measures to support markets in cases of animal diseases for all livestock production (Article 44) Beef and veal (male bovine animals)	Rye, sheepmeat and goatmeat, oilseeds, processed fruit and vegetables, regional premiums, hops, seeds, flax and hemp	
B. Products with decoupled aid (SFP) and aid coupled to production		Rice	Protein crops, dried fodder, durum wheat, olive oil, cotton, legumes, tobacco, starch potatoes	
C. Products with direct aid coupled to production	Sugar and milk (sectors with national production quotas)	Wine products (distillations), fresh fruit and vegetable (withdrawals)	Nuts, silkworms, red fruits, bananas, energy crops, apiculture, drying aid, quality products	Poultry and eggs (health crises)
D. Products without direct support		Pigmeat		Processed agricultural products (PAPs), live plants and cut flowers, some fresh fruit and vegetables, potatoes, ethyl alcohol

NB: This classification does not take into account private storage measures or products with partial optional decoupling.

— the creation of national aid allocations for adjusting the sector to changing demand;

— the transfer of distillation funds to the rural development of wine-growing regions;

— the revision of existing wine-making practices and the improvement of labelling rules.

C. CMO classification by support mechanism

Changes in the aims and means of organising the markets resulting from the 1992, 1999 and 2003 reforms have changed the design of the CMOs, which may now be classified in four categories according to the price mechanisms of the single CMO used, on the one hand, and the direct support regimes established for the same products by Regulation (EC) No 1782/2003, on the other hand (Table 2).

1. CMOs with reference prices and automatic intervention

All **cereals** still apply common prices under an automatic intervention scheme, complemented by SFPs. **Sugar** and **dairy products** also have a reference price system paid to producers by public intervention agencies in exchange for delivery of their products, where market prices are too low. These two sectors, which at the same time still have national production quota systems, receive specific compensatory aid (linked to production).

2. CMOs with common prices and conditional intervention

These CMOs lay down a guaranteed price scheme, although it is applicable only in the event of a serious market crisis, to be initiated by the Commission. The sectors concerned are **wine** (in distilled form), **animal products** in the event of health crises or to **some fresh fruits and vegetables** (from 2008 in the form of withdrawals for which producer organisations are responsible). In terms of direct support, some of these sectors receive SFPs (beef and veal); others are entitled to aid coupled to production. There are also products with mixed support schemes (decoupled and coupled).

3. CMOs with direct production aids only

There is a long list of products that only receive aid (coupled, decoupled or mixed), following the latest reforms.

4. CMOs without support

Certain products (flowers and plants, some fresh fruit and vegetables, and processed agricultural products) only receive customs protection. Other products, such as poultry and eggs, also have customs CMOs but, exceptionally, can receive aid for serious market crises. Finally, there are products without CMOs (in particular, ethyl alcohol and potatoes).

→ Albert Massot Marti
August2008

4.2.4. The first pillar of the CAP: II. Direct aid to farms

The 2003 reform decoupled the majority of direct aid and transferred it to the new single payment scheme (SPS). Regulation (EC) No 1782/2003 brings together in a single document the SPS and other specific aid schemes, still linked to the area cultivated or to production.

Legal basis

Articles 32 to 38 of the Treaty establishing the European Community (EC).

Council Regulation (EC) No 1782/2003 (OJ L 270, 21.10.2003).

Objectives

Citing a mid-term review of the CAP adopted at the Berlin Summit in 1999 (Agenda 2000, →4.2.2), in 2002 the Commission proposed an ambitious reform designed to shake up the CAP in its entirety. A key point in the final compromise, adopted in June 2003 (→4.2.2), was the introduction of a **new horizontal regulation** dealing with the common provisions applicable to **direct aid schemes** for European farmers. The new text (Regulation (EC) No 1782/2003), which repealed and replaced Regulation (EC) No 1259/1999, became the nucleus of the 2003 reform and the obvious reference point for the sectoral reforms that followed up until 2008 (→4.2.2 and →4.2.3).

Content of Regulation (EC) No 1782/2003

A. Overview

Support from the CAP has traditionally been linked to the amounts produced by farms, and was thus based on a production-oriented philosophy. The 2003 reform of the CAP consisted in converting the majority of direct market aid, previously granted by the hectare and/or head of livestock, into a **single farm payment (SFP)** defined using a historical approach (the amounts received in the past for each product) and decoupled from the selection of products and amounts offered. The main aim of the SFP is to provide greater income stability to farmers. It has now become the primary aid scheme in the new CAP (29 % of total expenditure by the EAGGF Guarantee Section in 2006, →4.2.6). In addition to the SFP, **specific aid schemes**, still linked to production, have been maintained for various products.

All these direct support schemes are governed by Regulation (EC) No 1782/2003, which has thus become something akin to a single, complete code in this sphere. In addition, the text also lays down: a **cross-compliance** regime, mandatory for the receipt of aid; a **budgetary discipline** mechanism designed to keep CAP expenditure below the annual ceilings set in the multiannual financial framework (→4.2.6); a scheme for the **modulation** of aid with a view to strengthening rural development policy (→4.2.5); a **farm advisory system**; and an **integrated administration and control system**.

B. Measures

1. The single payment scheme (SPS) and methods of application

Aid for production received in the past constitutes a reference amount for each Member State, subject to a ceiling (national single payment envelopes). On the basis of this amount, firstly the unit value of a **single payment entitlement (SPE)** was calculated — one entitlement per hectare — and secondly the number of SPEs — the number of hectares eligible. The Member States must set up a **national reserve** by applying a linear deduction percentage (up to 3 %) to their national single payment envelope. The national reserves are used on a priority basis for farmers without any entitlements (newly established) and those with unusually low entitlement amounts.

A farmer from a Member State now has a single payment entitlement that corresponds to the aid he received during a past reference period and to the number of hectares that he farmed and which entitled him to direct payments during that period. However, permanent crops, fruit and vegetables and potatoes are excluded from single payments. Farmers in receipt of single payments can determine their production in line with the needs of the market, while being assured they will receive the same amount of aid as in the past, regardless of the quantity they produce. This decoupling model, known as the **historic** model, has been chosen by Belgium, Ireland, Greece, Spain, France, Italy, the Netherlands, Austria, Portugal and, within the United Kingdom, Scotland and Wales.

In some countries (Malta, Slovenia), the reference amounts have been calculated on a regional and not an individual basis. They correspond to the total aid received by the farmers in the relevant region during the reference period. All the farmers in the region therefore receive the same aid per hectare (fixed rate or basic aid). This approach, known as the **regional** decoupling model, involves a certain amount of redistribution of payments between farmers, in contrast to the historic model.

The Member States also have the choice of a **hybrid model**: they can apply different calculation systems in different regions of their territories (as, for example, in the United Kingdom). They can also calculate the single payments using an approach that is partially historic and partially based on a fixed rate. Finally, these systems may vary over time, beginning with an application of the SPS and its full implementation, and then leading to **dynamic** hybrid models (as in Denmark, Germany, Finland and England) or **static** hybrid models (as in Luxembourg, Sweden and Northern Ireland).

Since the new Member States did not have any historic reference points for setting the single payments, a **simplified single area payment scheme** (**SAPS)** was set up and 10 of the 12 new Member States have applied it. It involves the payment of uniform amounts per eligible hectare of agricultural land, up to a national ceiling that derives from the accession agreements, which is gradually increased during the transitional period, until the aid of the 12 new Member States is fully aligned with the level of aid of the EU-15.

Full decoupling is the general principle of the 2003 reform. However, the Member States have the option to maintain a percentage of support for production within the framework of the SPS in order to avoid production abandonment or severe market disturbance as a result of moving to the SPS. This **partial decoupling**, which is optional, applies to arable crops (up to 25 % of single payments remain coupled to the hectare), beef and veal (a proportion of the premiums per head of livestock), sheep and goats (up to 50 % of the premiums), olive oil (40 % of aid remains coupled), cotton (35 % of aid is coupled), seeds (for certain varieties), tobacco (within the framework of the move towards full decoupling) and hops (up to 25 % remaining coupled).

The Member States may keep up to 10 % of the national envelopes for granting to particular types of agriculture considered to be important in terms of environmental protection or product quality. This is therefore a kind of '**recoupling**' of the single payments to provide specific support to some sectors. This system has been used by Greece (for durum wheat, quality beef, sheep's milk and goats' milk, quality tobacco and olive oil), Spain (for beef and veal, aid for the dairy sector, tobacco, cotton and sugar), Italy (for durum wheat, beef and veal, sheepmeat, sugar and energy crops), Portugal (for cereals, beef and veal, sheepmeat, olive oil and sugar), Slovenia (for beef and veal), Sweden (for the improvement of quality certification systems), Finland (for winter cereals and beef and veal) and the United Kingdom (for quality beef).

2. Maintenance of support systems linked to production

Alongside products that may be subject to partial decoupling, Regulation (EC) No 1782/2003 maintains a range of **specific support systems**, still linked to production: quality premium and supplement for durum wheat, premium per hectare for protein crops, area aid for rice, aid for nuts, aid for seeds, aid for energy crops, aid for starch potatoes, dairy premiums, aid for grain legumes, aid for the drying of cereals, aid for flax and hemp and aid for sugar beet.

3. Cross-compliance

The provisions on cross-compliance are one of the key new elements of the 2003 reform, which made the single payments subject to compliance by farmers with: (a) **environmental and agricultural conditions** laid down by the Member States (whether or not they actually produce from their land) designed to restrict soil erosion, maintain soil structure and soil organic matter levels and ensure a minimum level of maintenance; (b) **Community standards in force** relating to public health, animal health, the environment and animal welfare (19 standards in total listed in Annex III to Regulation (EC) No 1782/2003).

If a farmer does not abide by the cross-compliance rules, the direct payments he can claim will be partially reduced or totally removed.

4. Farm advisory system

An agricultural audit system is provided for farmers, who receive information on how to apply certain standards and good practices to production processes. The service, which is optional for the Member States, should help producers to abide by the cross-compliance rules.

5. New financial instruments: the budgetary discipline mechanism and modulation

A **budgetary discipline mechanism** applies in order to keep expenditure on the first pillar of the CAP below the annual budget ceilings set within the multiannual financial framework (→4.2.6). An adjustment to the direct payments will be proposed when forecasts indicate that the total forecast expenditure has been exceeded in a given financial year.

Within the framework of the Agenda 2000 reform (→4.2.2), the Member States had the option to apply a modulation of direct aid, on an optional basis, in order to reinforce the second pillar of the CAP (→4.2.5). With the entry into force of Regulation (EC) No 1782/2003, the **modulation becomes compulsory**. It applies to all farmers in the 15 older Member States, apart from small farmers (receiving less than EUR 5 000). With a view to reinforcing the Member States' rural development programmes, all the direct payments (single payments and other aid coupled to production) have been reduced (by 3 % in 2005; by 4 % in 2006; and by 5 % from 2007 until 2012).

Each Member State receives at least 80 % of the appropriations that it has acquired through modulation (for Germany, 90 %, because of the crisis in the rye sector). The remaining amounts are distributed between the 15 Member States in line with objective criteria: area farmed, agricultural employment and GDP per capita in terms of purchasing power.

Two countries, Portugal and the United Kingdom, may add to this an **optional modulation**.

6. Integrated administration and control system

Each Member State creates an integrated administration and control system which includes the following elements: a computerised database, an identification system for agricultural parcels, a system for the identification and registration of single payment entitlements, aid applications, an integrated control system and a single system to record the identity of each farmer who submits an aid application.

C. Reform of Regulation (EC) No 1782/2003: the 2008 'health check'

As part of the 'health check' of the CAP (to be adopted, in principle, by January 2009), the Commission proposed that

existing coupled aid be eliminated (partial decoupling plus specific support systems) by making it part of the single payment system. Exceptions are, however, envisaged in relation to the suckling cow premium, the premiums in the sheepmeat and goatmeat sector and aid for cotton. In these cases, the proposal is to allow the Member States to maintain coupled aid (as it is) in order to support economic activity in regions where there are few opportunities for economic diversification.

The proposals are also intended to: **simplify the cross-compliance system**; **extend the scope of recoupling** to sensitive production in certain regions (in particular, milk, rice, beef and veal and sheepmeat), to areas undergoing restructuring and/or agricultural development programmes, and to measures to manage risk (harvest and animal disease insurance); and **reinforce modulation** in favour of rural development.

Role of the European Parliament

The European Parliament put forward significant amendments to the reform proposals submitted by the Commission in January 2003 (T5-0256/2003, 5.6.2003, OJ C 68, 18.3.2004). In particular, it developed the concept of 'partial decoupling', which was in the end adopted by the Council. It also changed the modulation system and repeated its demand for full co-decision in the realm of agricultural policy.

The European Parliament rejected the proposal regarding the rules applicable to optional modulation up to 20 %. MEPs opposed the proposal for the following reasons: it would jeopardise the survival of many farms; it would result in large national and regional disparities in the calculation of the single payments, leading to distortions of the market; it would bring about the renationalisation of the CAP; and it would be detrimental to Parliament's prerogatives, since, without any real participation by Parliament, the Member States might increase the amounts allocated to rural development, which are classified as non-compulsory expenditure and over which the European Parliament has a high level of decision-making power (→4.2.6). MEPs also considered that the Commission ought to submit new proposals regarding the financing of the second pillar as part of the 2008 CAP 'health check' (T6-0036/2007 of 14 February 2007).

As the Commission refused to withdraw its proposal, it was referred back to the committees. In addition, Parliament suspended 20 % of the allocations entered in the 2007 budget for rural development pending the withdrawal of the proposal. Following a unanimous political agreement, which restricted optional modulation to two countries (the United Kingdom and Portugal), the reserve was lifted and the regulation was adopted (Regulation (EC) No 378/2007, OJ L 95, 5.4.2007).

With regard to the 'health check', still under negotiation, Parliament suggested a progressive modulation model, distinct from that put forward by the Commission in its communication of 20 November 2007 (P6_TA-PROV(2008)0093, 12.3.2008). This idea was taken up by the Commission in the legislative proposals of May 2008.

→ Albert Massot Marti
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4.2.5. The second pillar of the CAP: rural development policy

Rural development, now the second pillar of the CAP, has undergone several reforms over time. These reforms were intended to make agriculture and forestry more competitive, to strengthen the links between primary activity and the environment, to improve the quality of life in rural areas and to promote a diversification of the economy in rural communities.

Legal basis

Articles 36 and 37 of the Treaty establishing the European Community (EC).

Regulations (EC) No 1257/1999 (OJ L 160, 26.6.1999), (EC) No 1783/2003 (OJ L 270, 21.10.2003) and (EC) No 1698/2005 (OJ L 277, 21.10.2005) and Council Decision 2006/144/EC (OJ L 55, 25.2. 2006).

Objectives

The aim of the CAP reform adopted by the Berlin Summit under Agenda 2000 (→4.2.2) was to establish 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 (→4.2.10, Table II). Agricultural and rural policy plays a key role nowadays in the territorial, economic and social cohesion of the Union and in the protection of the environment (→4.2.10, Table III). Alongside market measures (**first pillar**), rural development policy (**second pillar**) has become an essential component of the European agricultural model.

The 2003 reform only confirmed its indispensable role in the new CAP. Its main aim is to create a cohesive and sustainable

framework safeguarding the future of rural areas, based in particular on agricultural multifunctionality — in other words, its ability to provide 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 social and 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 **co-financed** by the Guidance Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) and by the Member States.

B. The 1988 reform of the Structural Funds

Since that reform, structural agricultural policy has been part of a regional policy where rural development is no longer financed solely by the EAGGF Guidance Section but also by the other Structural Funds (→4.1). The Community structural measures had several objectives at that time, of which **Objective 1** (regions whose development is lagging behind), **Objective 5a** (adjustment of agricultural structures) and **Objective 5b** (development of rural areas) were directly applicable to rural development.

C. The 1992 reforms

1. The reform of the CAP

The 1992 reform of the CAP emphasised the environmental dimension of agriculture, a sector characterised by its links with natural resources, which is the biggest user of land and water, as well as the number-one producer of biomass for energy purposes (→4.2.10, Table III). The reform introduced major changes in the system of support for CAP sectors (→4.2.2) and **measures** (**known as accompanying measures** because they supplemented the market policy) to offset the reduction in farmers' income as a result of the reform. The measures concerned conservation of the environment, reforestation and the 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. Indeed, the 1992 reform broke with the traditional notion of the CAP based on a clear distinction between price and market policy and structural policy. From then onwards, structural measures were regarded as supplementary to guarantee mechanisms.

2. The reform of the Structural Funds

The 1992 reform of the Structural Funds introduced, in Objectives 1 and 5b, 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. Like the earlier measures, they were supported by the EAGGF Guidance Section through co-financing.

D. Agenda 2000

1. General objective

Despite attempts to merge the Community's structural agricultural policy with economic and social cohesion, Agenda 2000 retained its specific identity within an integrated framework, now known as 'rural development', and remained anchored within the CAP. The primary aim of Agenda 2000 was to adapt agriculture increasingly to the market (→4.2.2). However, although direct income support was increased, the changes to the market support mechanisms affected the economies of rural areas generally and not just farmers' resources. In addition, the diversification of activities in rural areas could be used to supplement farm incomes (through the development and marketing of high-quality products, rural tourism, conservation of the environment or cultural heritage) and could also open up new prospects for rural life.

Agenda 2000 therefore altered the existing approach and created an **integrated and sustainable rural development policy** that would make rural development (**second pillar of the CAP**), price policy and market policy (first pillar of the CAP) more cohesive. That new approach was established by Council Regulation (EC) No 1257/1999 (OJ L 160, 26.6.1999), which, moreover, replaced a dozen or so former regulations.

2. Implementation

The new Regulation (EC) No 1257/1999 made provision for **nine distinct measures**, most of them already in force and amended on several occasions, with the Community contributing a varying percentage of the financing according to the type of measure and geographical location:

— investments in agricultural holdings to help improve agricultural incomes and living, working and production conditions;

— setting-up aid for young farmers;

— support for vocational training;

— support for early retirement;

— 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;

— promoting the adaptation and development of all the Community's rural areas: a residual scheme comprising a broad range of measures (land reparcelling, setting up of farm relief and farm management services, encouragement for tourist and craft activities, restoring agricultural production potential damaged by natural disasters, etc.) 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 5b) and which did not fit into any of the other eight measures provided for under Regulation (EC) No 1257/1999.

Under the new Structural Funds regulation ((EC) No 1260/1999 (OJ L 161, 26.6.1999)), the source of Community funding for rural development measures differed according to the territory concerned:

— in Objective 1 areas they were integrated into the measures aiming to promote regional development, financed by the EAGGF Guidance Section;

— in Objective 2 areas they accompanied the support measures, financed by the EAGGF Guarantee Section; and

— in the remaining territory they were to be integrated into the planning for rural development schemes (except in the case of 'accompanying measures', which were financed by the EAGGF Guarantee Section throughout the Community).

Mention should also be made of the Leader+ community initiative, financed by the EAGGF Guidance Section, which promoted the implementation of integrated local development strategies.

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 would be about EUR 4 300 million.

E. The 2003 reform of the CAP: Regulation (EC) No 1783/2003

The reform passed in June 2003 (→4.2.2) confirmed that rural development was one of the fundamental elements of the CAP. Consequently, the Council legislated to strengthen it by increasing the total amount of funding and extending the scope of the second pillar.

— **In addition to** the specific sums allocated to rural development under Objective 2 of the economic and social cohesion policy, it was decided to transfer funds from the first pillar of the CAP to the second pillar by means of a progressive reduction (**modulation**) in direct payments to large farms (those receiving more than EUR 5 000 in direct payments). By applying a progressive rate of 3 % in 2005, 4 % in 2006 and 5 % from 2007 onwards, an additional overall amount of EUR 1 200 million was released as from 2007 and allocated to Member States to provide funding for new accompanying measures.

— Irrespective of the modulation, the 2003 reform placed particular emphasis on the **content** of the second pillar by **extending the scope of the instruments** contained in Regulation (EC) No 1257/1999. **Six categories of measures** were therefore either introduced or improved within new **Council Regulation (EC) No 1783/2003** (OJ L 270, 21.10.2003). They are listed below.

a. Food quality

The first measure envisaged relates to improving food quality, which is of course greatly encouraged by the European Union but did not previously benefit from any specific aid scheme. 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 is 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 is 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 is 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 is subject to a maximum amount of EUR 500 per livestock unit per year.

e. Areas with environmental restrictions

Regulation (EC) No 1783/2003 makes provision for the allocation of aid to areas with environmental restrictions in the context of the Natura 2000 programme (→4.2.10, Table III) for the protection of birds and their habitats.

f. Young farmers

There has been a substantial increase in both the amount of aid given to help young farmers enter the profession and the intensity of support.

F. The financial and planning framework for rural development for the period 2007–13

The enlargement of the European Union in 2004 increased the diversity of circumstances in rural areas while enhancing the scale and intensity of rural development. The utilised agricultural area (UAA) of the 25 Member States has risen to

163 million ha (compared with 145 million ha for the EU-15). The number of farms has risen by more than a million with the 10 new countries, most of them operating on a semi-subsistence basis. The number of farmers has also risen, by a total of 3 million (→4.2.10, Table II).

With a view to meeting these new challenges, and as part of the preparatory work on the new financial perspective for 2007–13, the European institutions established in 2005 a **single fund** for the second pillar of the CAP, the **EAFRD** (European Agricultural Fund for Rural Development), bringing together all the previous measures (Regulation (EC) No 1698/2005, OJ L 277, 21.10.2005) (→4.2.6).

In addition to the 2007–13 multiannual financial framework, Council Decision 2006/144/EC set out Community **strategic guidelines** for rural development in the new programming period (Decision 2006/144/EC, OJ L 55, 25.2.2006). These guidelines identify key actions for achieving the Community's priorities, particularly as concerns the Gothenburg sustainable development objectives and the renewed Lisbon strategy for growth and employment established by the Gothenburg European Council (15 and 16 June 2001) and the Thessaloniki European Council (20 and 21 June 2003) respectively. Four new axes are set out:

— improving the competitiveness of the agricultural and forestry sectors (axis 1);

— improving the environment and countryside (axis 2);

— improving the quality of life in rural areas and encouraging diversification of the rural economy (axis 3);

— building local capacity for employment and diversification (axis 4 — Leader).

Key actions for each axis are suggested to the Member States for their national or regional rural development programmes for 2007–13. In addition, the Council decision establishes some **programming criteria**.

— When drawing up their national or regional strategy, the competent domestic authorities must adopt an integrated approach that makes appropriate use of spatial planning and maximises the synergy between and within the different axes.

— Complementarity must likewise be ensured between the various Community instruments, promoting synergy between structural, employment and rural development policies.

The national and regional rural development programmes for the period 2007–13 were approved by the Commission during the first half of 2008.

Role of the European Parliament

The European Parliament has always maintained that rural development policy should reinforce, supplement and adapt the CAP to protect the European agricultural model. In 2005 the EP welcomed the establishment of a single fund for rural development but it proposed a different financial distribution for the priority axes (T6-0215/2005 of 7 June 2005, OJ C 124, 25.5.2006). The Members stated in the same resolution that the desire to incorporate Natura 2000 into the new Regulation (EC) No 1698/2005, without earmarking additional funds, was highly problematical. They therefore called for the resources available for commitment under the EAFRD to be raised to EUR 95 750 million at 2004 prices for the new 2007–13 programming period (→4.2.10, Table I).

As far as the rural development policy strategic guidelines are concerned, the European Parliament approved the broad thrust of the Commission's proposals but pointed out that more emphasis should be placed on the modernisation of the agricultural sector and the needs of young farmers (T6-0062/2006 of 16 February 2006).

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4.2.6. Financing of the CAP

The CAP has traditionally been financed by a single fund, the EAGGF (European Agricultural Guidance and Guarantee Fund). The Guarantee Section was mainly used to finance market support measures and income aid whilst the Guidance Section financed measures involving structural improvements and rural development. The EAGGF was replaced on 1 January 2007 by the EAGF and the EAFRD.

Legal basis

Article 34 (3) of the Treaty establishing the European Community (EC) .

Regulations (EC) No 1290/2005 (OJ L 209, 11.8.2005) and (EC) No 1698/2005 (OJ L 277, 21.10.2005).

Development of the agricultural financial framework

Since January 1962, the CAP has been implemented via the **European Agricultural Guidance and Guarantee Fund (EAGGF)**. In 1964 this was split into two sections: the

Guarantee Section and the **Guidance Section**, which were governed by different rules.

— The **Guarantee Section**, which was by far the larger of the two, had the purpose of funding expenditure resulting from application of the market and price policy. The chief characteristic of such expenditure was its unpredictability (insofar as the amount depended on numerous variables such as the vagaries of climate and health, changing demand, and international prices) and, consequently, it was amended during the course of the financial year so that forecast appropriations could be adjusted to meet actual requirements, through supplementary or amending budgets. The **Guarantee** Section was one of the **compulsory expenditures** in the Community budget (Article 272 EC), directly resulting from the Treaty or acts formulated pursuant thereto. The Council, the top level of the Community budget authority, still has the last word on compulsory expenditures today in the procedure to determine the annual budget. As a general rule, the EAGGF Guarantee Section financed market intervention measures in full.

— The **Guidance Section** helped to finance operations involving the structural policy and the development of rural areas. All this expenditure was classified as **non-compulsory**. The European Parliament still has decision-making powers today for non-compulsory expenditure within the limits of a maximum threshold of increase calculated by the Commission on the basis of economic parameters. Unlike the EAGGF Guarantee Section, the EAGGF Guidance Section is based on the principle of co-financing.

Since 1988, in order to curb the increase in CAP expenditure, the funds available have been subject to strict budgetary discipline following the introduction of a multiannual **agricultural guideline** (Decision 88/377/EEC, supplemented by the Interinstitutional Agreement of 22 June 1988, as part of the Delors Package I) (→4.2.2).

Following the Treaty of Maastricht and the Edinburgh European Council (December 1992), the financial framework was overhauled (Delors Package II). The Interinstitutional Agreement of 1988 was superseded by a new agreement on budgetary discipline for the period 1993–99 (OJ C 331, 7.12.1993). It extended the principles of 1988 whilst at the same time improving the position of the European Parliament as far as compulsory expenditure was concerned. Since then the EP has had a right of scrutiny guaranteed by a conciliation procedure prior to the budget being passed. For its part, Decision 88/377/EEC was superseded by Decision 94/729/EC (OJ L 293, 12.11.1994), which confirmed the principle whereby financial discipline would apply to all common policies. Agenda 2000 (→4.2.2) extended the agricultural guideline within the 2000–06 financial perspectives (OJ C 172, 18.6.1999). In parallel, the financing of the CAP was laid down in a new **regulation ((EC) No 1258/1999)** (OJ L 160, 26.6.1999).

The latest multiannual financial framework for 2007–13 was approved in 2006 (OJ C 139, 14.6.2006). It includes the heading '**Preservation and management of natural resources**', which includes the agricultural and rural budget, the environment and fisheries. The regulation of **agricultural markets and direct payments** represents **33.9 %** of total planned **commitments**, in other words EUR 293 billion for the EU-27 (→4.2.10, Table I(A)(1)). In addition, **rural development measures** represent **8 %** thereof, EUR 69 750 billion in other words (→4.2.10, Table I(A)(2)). Thus the planned agricultural and rural budget for 2013 stands at EUR 49.8 billion, equivalent to 39.3 % of the total, below the percentage allocated to the CAP at the start of the financial perspectives (44.5 % in 2007) (→4.2.10, Table I(B)). The CAP budget is in fact strictly controlled by budgetary discipline and any reform must therefore be financed as part of a financial allocation which is more or less unchanging.

A review of provisions for financing the common agricultural policy is also included in the context of preparatory debates on the 2007–13 perspectives.

— **Regulation (EC) No 1290/2005** (OJ L 209, 11.8.2005) has replaced Regulation (EC) No 1258/1999. On the basis of this new regulation, on 1 January 2007 the EAGGF became two separate funds, the **European Agricultural Guarantee Fund (EAGF)** to finance market measures and revenue support, and the **European Agricultural Fund for Rural Development (EAFRD)**. The **EAGF**, with an annual budget in the region of EUR 41 billion for the period 2007–2013 (→4.2.10, Table I(A)(1)), finances or occasionally co-finances the following with the Member States:

  • single CMO expenditure (→4.2.3): export refunds and interventions to regulate agricultural markets;

  • direct payments under Regulation (EC) No 1782/2003 (→4.2.4);

  • the Community's financial contribution to initiatives to provide information about and to promote agricultural products on the internal market and in third countries;

  • the Community share of the following actions: veterinary, collection and the use of genetic resources and also agricultural accounting information systems, among other ad hoc expenditure.

— Regulation (EC) No 1290/2005 was accompanied by **Regulation (EC) No 1698/2005** (OJ L 277, 21.10.2005) on support for rural development by the **EAFRD**, because of the financial and programming characteristics of the second pillar of the CAP (→4.2.5). The EAFRD has taken over part of the EAGGF Guarantee Section budget (involving support measures), the EAGGF Guidance Section and the Leader+ initiative (which plays an important role in rural development by encouraging local strategies based on partnership and experience-sharing networks). The EAFRD co-finances measures to improve competitiveness in the agricultural and forestry sectors, agricultural and

environmental measures, measures to improve the quality of life in rural areas and encourage the diversification of the rural economy and establish local capabilities (→4.2.5).

Legal framework of Regulation (EC) No 1290/2005

The new regulation ((EC) No 1290/2005) stipulates the conditions which allow the Commission to manage the agricultural budget and also clarify the cooperation obligations incumbent on Member States. Provision is made within this framework for Member States to agree to **paying agencies**, as well as **coordination bodies** responsible for centralising information which has to be provided to the Commission.

The filing of annual accounts must be accompanied by a statement of assurance from the head of the paying agency as well as a document certifying that the accounts which have been filed are complete, accurate and truthful. Commission oversight involves **an accounts clearance procedure** in two stages (accounting and compliance). In order to protect the financial interests of the Community, the Commission ensures that sums paid out erroneously are recovered. Without prejudice to checks carried out by the domestic authorities, the Commission can arrange for checks to be performed *in situ*.

The new regulation includes rules on **budgetary discipline**, which involves determining the amounts available on an annual basis for EAGF expenditure, forecasts regarding compliance with payment timescales which States must abide by and rules on the possible reduction and suspension of monthly or quarterly payments. In order to ensure that budget ceilings are not exceeded, the Commission is relying on a **warning system** which monitors EAGF expenditure on a monthly basis.

In order to carry out Fund activities, Commission departments are assisted by the **Committee on the Agricultural Funds** whose members include representatives of Member States. Post-auditing of the management of agricultural credits is carried out by the **Court of Auditors** and also by the European Parliament's **Committee on Budgetary Control**.

The changing nature of agricultural and rural expenditure

A. General overview

The share of agricultural expenditure in the European Union budget has decreased constantly in recent years. Whereas the CAP represented 66 % of the Community budget in the early 1980s, it is likely to account for just 39 % of it in 2013 (→4.2.10, Table I). Since 1992, the date of the first significant overhaul of the CAP and the explosion in direct aid, agricultural expenditure has remained stable in real terms, apart from in 1996 and 1997 (because of the BSE crisis and the accession of three new Member States). The budget cost of the CAP compared with the GDP of the EU has therefore decreased, from 0.54 % in 1990 to 0.47 % in 2007 (0.44 % forecast for 2013) (→4.2.10, Table I).

B. Allocation by expenditure category and by sector

The expenditure for the first pillar (EUR 49.8 billion in 2006) (→4.2.10, Table IV.1) consists of 80.7% of direct aids to farmers (EUR 34 billion). The sharp increase in direct aids since 1992 has resulted in a parallel decrease in other EAGGF Guarantee Section expenditure: export subsidies stand at just 5.9 % (EUR 2.4 billion) and the other market subsidies (buying at guaranteed prices, guidance aids, distillations) stand at just EUR 5.6 billion (11.3 % of the total). However, support measures for the rural development policy, which is the responsibility of the EAGGF Guarantee section stands at 15.4 % (EUR 7.7 billion).

In the past the top three sectors which benefited from the EAGGF Guarantee Section were arable crops (cereals, oilseed and proteins), beef and milk products. After the 2003 reform (→4.2.2 and →4.2.4) and the resultant decoupling of aids in relation to production, the top expenditure item was single payments to farms (29.1 % of the EAGGF Guarantee Section total in 2006), followed by direct aids once again linked to the production of arable crops (17.5 %), beef sector subsidies (6.6 %), direct aids for the production of olive oil (4.6 %) and direct aids to the dairy sector (2.9 %).

C. Distribution by country

As shown in Table IV(1) for the 2006 financial year (→4.2.10), France is the largest beneficiary of the EAGGF Guarantee Section in absolute terms (20.1 %), followed by Spain (13.3 %), Germany (13.1 %), and Italy (10.9 %). As far as the EAGGF Guidance Section is concerned, Spain is the top beneficiary (22.15 %), followed by Italy (14.0 %) and Germany (13.1 %). The little influence new Member States have had on the EAGGF Guarantee Section should be noted (8.9 %) given the gradual alignment process of direct payments which is still in progress. However, the new Member States already receive a significant share of the EAGGF Guidance Section (22.1 %) in accordance with the priority given to the modernisation of agricultural facilities and the development of rural areas in these countries.

Table IV(2) (→4.2.10) also shows the uneven distribution of CAP direct aid at farm level: 82.12 % of CAP recipients in the EU-25 receive less than EUR 5 000 per year, with a total amount equivalent to 15.5 % of the total for direct aid paid out by the EAGF. Yet the percentage of farms that receive more than EUR 100 000 is very small (23 000 of a total of 7.3 million, 0.31 % in other words), with a total amount equivalent to EUR 4.4 billion (13.3 % of the total for direct aid paid in 2006). Countries with a higher percentage of large farms which benefit from the CAP are the Czech Republic, the United Kingdom, eastern Germany and Slovakia. This situation obviously raises certain issues as far as the legitimisation of CAP aid is concerned given the values of European citizens as a whole.

Role of the European Parliament

The Interinstitutional Agreements of 1988, 1993, 1999 and 2006 have enabled the European Parliament to somewhat

increase its impact on compulsory expenditure. As part of a consultation procedure, 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 (T6-0193/2005 of 26 May 2005, OJ C 117, 18.5.2006). Parliament's Committee on Agricultural 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 also 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. It has also requested that Commission financial reports be submitted to the Council at the same time as to Parliament and it suggested that the planned timescales for recovering expenditure provided for in Regulation (EC) No 1290/2005 be amended.

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4.2.7. External aspects of the CAP: WTO Agreement on Agriculture

At an external level the CAP is now governed by WTO rules and more specifically by its Agreement on Agriculture of 15 April 1994, which provided for a programme of gradual liberalisation involving agricultural production and trade.

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 (OJ L 336, 23.12.1994), the European Union and its Member States are governed by the following articles of the consolidated Treaty establishing the European Community (EC).

— 133 (common commercial policy);

— 300 (negotiation and conclusion of international agreements);

— 310 (agreements establishing an association involving reciprocal rights and obligations, common actions and special procedures).

External aspects of the CAP — General framework

On this legal basis the entire CAP has been subject to WTO discipline since 1995. A **Dispute Settlement Body (DSB)** with a stringent procedure for disputes has also been set up to ensure that signatory States comply with the new multilateral rules.

In addition, the CAP is influenced by agricultural concessions which a wide range of countries are entitled to under several **multilateral and bilateral agreements** (with the ACP countries, Mercosur, the Euro-Mediterranean area, the European Economic Area, Chile, Mexico, etc.) and also by **unilateral waivers** granted under the generalised system of preferences (GSP). These preferential agreements must also be compatible with WTO rules and they explain the high quality of EU agricultural imports from developing countries (→4.2.10, Table V).

WTO agreement on Agriculture

The GATT of 1947 did apply to agriculture, but it was incomplete. So much so that signatory States (or 'contracting parties') actually excluded this sector from the scope of the principles stated in the general agreement in practice. The so-called Uruguay Round, which began in Punta del Este in 1986, included this sector in multilateral trade negotiations. After 8 years of tough talks and the signing of the Marrakesh Agreement, a new multilateral framework to encourage the gradual liberalisation of agriculture was set up within the World Trade Organisation.

All of the WTO's agreements and memoranda of understanding on trade in goods signed in 1994, which entered into force on 1 January 1995, apply to agriculture. However, agriculture is special in that it has its own specific agreement, the **Agreement on Agriculture**, whose provisions prevail. In addition, some provisions of the **Agreement on the Application of Sanitary and Phytosanitary Measures** (SPS) and of the **Agreement on Trade-Related Aspects of Intellectual Property Rights** (TRIPS) also involve agricultural production and trade.

It should be pointed out that 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).

On the basis of the Agreement on Agriculture, WTO Member States have undertaken to implement a programme for the reform of agricultural policies in force (over the period 1995–2000 for developed countries and 1995–2004 for developing countries). This programme lays down specific binding commitments in **three major areas** which have had a significant impact on the CAP.

A. Market access

The Agreement on Agriculture seeks to improve access to markets by requiring:

— the conversion of all border protection measures into customs duties (**tariff equivalents**) and to then gradually reduce them (by **36 % in 6 years**, 1995–2000, compared with the reference period of 1986–88);

— for specific products which are not subject to tariffication, undertakings for '**minimum access**' to third countries by opening up tariff quotas to be established, representing 5 % of the 1986–88 base period consumption for each group of products by the end of 2000;

— maintenance of the so-called '**current access**': import tariff concessions which were already in force in 1995 must be kept at least at their 1986–88 level;

— the introduction of a **safeguard clause**, which is triggered either when the volume of imports exceeds a certain threshold or import prices fall below a certain level.

B. Domestic support

The Agreement on Agriculture makes provision for a reduction in support volumes which varies depending on the nature of the aid, which is categorised in different '**boxes**' depending on the effect they have in terms of distorting trade on agricultural markets, measured by the degree of '**decoupling**' involved in relation to production.

— The '**orange box**', also known as the **aggregate measure of support** (AMS), combines price support and aid coupled with production which is not exempt from reduction obligations. It must be reduced by 20 % over 6 years compared with the reference period 1986–88. In addition, all WTO members may apply the '***de minimis* clause**', which allows any support amounting to less than 5 % of the value of the product under consideration (specific aids) or of total agricultural production (non-specific aids) to be excluded from the current AMS. This ceiling is set at 10 % for developing countries.

— The '**blue box**' includes aids linked to supply control programmes which are exempt from reduction undertakings, e.g. direct aids based on area and output which are fixed and allocated for a quantity of heads of cattle (in the case of '**compensatory aids**' approved by the CAP in 1992) (→4.2.2). They were moreover protected from any challenge before the WTO Dispute Settlement Body (DSB) by a 'peace clause' lasting 9 years, which expired on 31 December 2003. However, the amount of support under the AMS and aid in the blue box category ('total AMS') for each product must not exceed total support granted during the 1992 marketing year.

— The '**green box**' includes two support groups. The first involves **public services** programmes (e.g. research, training, extension, inspection, marketing, promotion, infrastructures, domestic food aid or public food security stocks). The second involves direct payments to producers which are fully **decoupled from production**. These mainly involve income guarantee and security programmes (natural disasters, State financial contributions to crop insurance and so on), programmes directed at adjusting structures (incentives for the cessation of farming, withdrawal of production resources, investment aid) and environmental protection programmes. All green box aid which is deemed to be compatible with the WTO framework is totally exempt from reduction commitments.

C. Export subsidies

The Agreement on Agriculture allows agricultural exports to receive subsidies. Permission is only granted once WTO members have undertaken to reduce their subsidies, however. Export support measures must therefore be reduced by 21 % in terms of volume and 36 % in terms of budget over 6 years compared with the 1986–90 base period level (except for beef products where the period covers 1986–92). In the European Union this linear reduction was carried out for 20 groups of products. For processed products only the budgetary reduction applies.

Impact of the Agreement on Agriculture on the CAP

The aim of the CAP reform in May 1992, in addition to its domestic objectives, was partly to facilitate the signing of the Agreement on Agriculture as part of the Uruguay Round. As a result the European Union has to a large extent complied with the undertakings signed in Marrakesh.

A. Market access

Undertakings involving EU **consolidated rights** involve 1 764 tariff lines. The average consolidated customs duty for food products, which stood at 26 % at the start of the implementation period, was only 17 % at the end of the period. In addition, the EU applied zero or minimal duty to 775 lines out of the total 1 764. Only 8 % of the tariff lines have a customs duty in excess of 50 %. These tariff peaks apply to dairy products, beef, cereals and cereal-based products, sugar and sweeteners. Negotiations which are currently in progress for the Doha Round (→4.2.8) are likely to focus on these products in particular.

As far as tariff quotas are concerned, the European Union has established a total of 87 quotas, 37 of which come under 'minimum access' and 44 under 'current access'.

B. Subsidised exports

About 90 % of subsidised exports notified to the WTO originate from the European Union. But it should be borne in mind that a number of practices used by our main competitors involving food aid, export credits and commercial State enterprises, which involve substantial sums, are not subject to WTO discipline. In addition, the European Union has deployed considerable efforts to reduce this type of support, which has a strong agricultural trade-distorting capacity. The share of export refunds in the Community agricultural budget (EAGGF Guarantee Section) decreased from 29.5 % in 1993 (EUR 10 159 billion), when there were 12 Member States, to 5 % (EUR 2 494 billion) in 2006, when there were 25 Member States. Undertakings have been stringent for some Community products: these include butter, rapeseed, cheese, fruit and vegetables, eggs, pork, beef, poultry and wine.

C. Domestic support

Domestic support has changed considerably during the course of the implementation period for the Agreement on Agriculture. The orange box (AMS) has decreased sharply, from EUR 81 billion at the start of the period covered by the agreement to EUR 30.8 billion in 2003. Some of this support was initially converted to the blue box. But the CAP reform in 2003, which decoupled most of the existing direct aid, and retrospective reforms (on olive oil, tobacco, cotton, sugar, fruit and vegetables and wine) have allowed most of the blue box to be converted to the green box. In addition, the full implementation of these reforms could result in the AMS being reduced by up to EUR 20 billion in the next few years.

It should be pointed out that although Europe has actually reduced its support, the United States, has increased agricultural aid with strong trade distorting effects, whilst using support measures which are not covered by an actual WTO framework (e.g. aids to counter the trade round, granted on the basis of a very loose interpretation of the '*de minimis* clause').

Role of the European Parliament

The European Parliament (EP) has always watched the progress of multilateral negotiations in general and agricultural negotiations in particular extremely closely. Several resolutions demonstrate this interest: those of 15 December 1999 on the third WTO Ministerial Conference in Seattle (OJ C 296, 18.10.2000), 25 October 2001 on openness and democracy in international trade (OJ C 112, 9.5.2002), 13 December 2001 on the WTO meeting in Doha (OJ C 177, 25.7.2002), 25 September 2003 on the fifth WTO Ministerial Conference in Cancún (OJ C 77, 26.3.2004), 12 May 2005 on the assessment of the Doha Round (OJ C 92, 20.4.2006), 1 December 2005 on the preparations for the sixth WTO Ministerial Conference in Hong Kong (OJ C 285, 22.11.2006), 4 April 2006 on the assessment of the Doha Round (OJ C 293, 2.12.2006) and 24 April 2008 on towards a reform of the World Trade Organisation (P6_TA-PROV(2008)0180)

The 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). In 1999, at the start of the so-called Millennium Round, it expressed its support for the approach adopted by the Community's negotiators in championing the European agricultural model based on the multifunctionality of the agricultural business. The resolutions of 2001 reiterated this support by also highlighting the importance of expressly acknowledging non-trade concerns and taking into account the public's demands regarding food safety, environmental protection, food quality and animal welfare.

The EP also expressed regret about the failure of the Seattle, Cancún and Hong Kong Conferences by supporting the efforts made by the EU to pursue Doha Round negotiations.

Finally, in the latest EP resolution of 24 April 2008, MEPs emphasised the need for a large scale overhaul of the WTO. In particular they felt it was necessary to improve the coordination of WTO activities with those of other international organisations such as the ILO, FAO, UNEP, UNDP and WHO.

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August 2008

4.2.8. The DOHA Round and agriculture

Today, multilateral agricultural trade is governed by the Uruguay Round agreements, and in particular the Agreement on Agriculture. The Doha Ministerial Conference of 14 November 2001 established a new comprehensive negotiating agenda. At present, it is unlikely that these negotiations will produce a short-term consensus, but an agreement remains possible.

Legal basis

The framework for the present agricultural negotiations was defined by **Article 20 of the Marrakesh Agreement on Agriculture.** Under the terms of this article, WTO members confirmed that reducing agricultural support and protection was an ongoing and gradual process. They also agreed that negotiations for continuing the process would begin on 1 January 2000. Furthermore, Article 20(c) specifies that the negotiations should take account of non-trade concerns (such as environmental protection, food safety, rural development and animal welfare) and special and differential treatment for developing countries.

Objectives

The talks began in March 2000, in line with the provisions of Article 20 of the Agreement on Agriculture. However, it was **the fourth WTO Ministerial Conference, held in Doha (Qatar) in November 2001**, that truly launched the agricultural negotiations.

The Conference's final declaration confirmed the aims of the preparatory work, clarified the general framework for negotiations — which are now held as part of the **Doha Development Agenda (DDA)** — and established a new timetable.

— The **objective** of the negotiations continues to be the establishment in the long term of a fair and market-orientated trading system through a programme of fundamental reform comprising strengthened rules and specific commitments on agricultural support and protection by the State, the aim being to correct and prevent restrictions and distortions in world agricultural markets.

— To achieve this, and without prejudging the outcome, WTO **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 into account the non-trade concerns mentioned in the proposals for negotiations submitted by WTO members. The negotiations take place at special sessions of the WTO Committee on Agriculture.

— There were three key **deadlines** in this process: 31 March 2003 for establishing the 'modalities' (the methods to be applied in the ultimate aim of bringing members to reduce their tariffs and cut back subsidies and to make a binding commitment to the WTO to do so); the fifth session of the Ministerial Conference (held in Mexico in September 2003) for the presentation of the comprehensive draft commitments; and 1 January 2005 for the conclusion of the negotiating agenda as a whole.

The current negotiations

A. Progress

Thus far, the deadlines agreed upon have barely been met.

1. 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. In the meantime, members launched negotiations more modest in remit with a view to reaching an agreement on the modalities at the Cancún Ministerial Conference in September 2003.
2. Under the Doha mandate, the **fifth Ministerial Conference held in Cancun** from 10 to 14 September 2003 was supposed to mark a point much closer to the end of the negotiations. It was intended to assess the progress made since the Doha Conference on the 20 or so chapters on the negotiating table (including agriculture). Moreover, on the basis of an agreement on the modalities, members were to table their offers or 'comprehensive draft commitments'. In the end, the Cancún Conference also ended in failure. This was due to several factors: the delay in agreeing the modalities of the negotiations; the lack of political will to reconcile members' positions and the controversy surrounding the 'Singapore issues' (trade and investment, competition policy, transparency in government procurement and trade facilitation). However, if agricultural issues (including the cotton initiative tabled by four African countries) were a major 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. After Cancún, the negotiations on agriculture were suspended until the end of 2003, along with proceedings regarding all the matters included on the Doha agenda.
3. The process was resumed at the beginning of 2004, with a number of political initiatives from Australia, Brazil, India, the United States and the EU. In May of that year, the EU announced some substantial concessions, agreeing, in particular, to negotiate a date for the abolition of all forms of export subsidy for agricultural products. The result was the **General Council Framework Agreement of 1 August**

2004, which set out the key **principles** for the negotiation modalities. This decision also removed three of the 'Singapore issues' from the DDA: trade in relation to investment, competition policy and transparency in government procurement.

4. Having failed to meet the original deadline of 1 January 2005, WTO members set themselves the unofficial goal of concluding the negotiations before the end of 2006, a goal that, once again, they failed to meet. The **Hong Kong Ministerial Conference of December 2005** went some way towards smoothing out the differences between members, but on some points they remained irreconcilable and the Director-General, Pascal Lamy, suspended the negotiations in 2006. At the beginning of 2007, a new set of draft modalities was circulated by the chairman of the Negotiating Group on Agriculture, Crawford Falconer, and amendments were made to it in August 2007. The negotiations that followed led to the drafting of several working documents by the chairman. Finally, three new revised sets of draft modalities were tabled (on 8 February, 19 May and 10 July 2008), providing an outline pending the final agreement to be decided in Geneva at the meeting of the Trade Negotiations Committee at the end of July.

5. The so-called **July 2008 package**, based on the revised draft document of 10 July produced by Mr Falconer (TN/AG/W/4/Rev.3), concerned the following matters.

a. Domestic support

— **'Trade-distorting domestic support'** (amber box + blue box + *de minimis* provision) (→4.2.7) would be reduced by 75–85 % for the EU, by 66–73 % for the United States and Japan and by 50–60 % for other members (over a period of 5 years for developed countries and 8 years for developing countries). An immediate reduction of 33 % would be applied in the case of the United States, the EU and Japan, and 25 % for all other countries.

— The **'amber box'** (or AMS) (→4.2.7) would be reduced by 70 % overall for the EU, 60 % for the United States and Japan and 45 % for other countries. Prices and support for individual products would be capped at the average amber box support recorded for the 1995–2000 period.

— The **'blue box'** (→4.2.7) would be expanded, but would be restricted to 2.5 % of production for developed countries and 5 % for developing countries, with caps set for each product.

— The **'de minimis provision'** (→4.2.7) would remain capped at 2.5 % of production for developed countries and 6.7 % for developing countries (but there would be no cuts for support provided mainly to subsistence or resource-poor farmers).

— The **'green box'** condition (→4.2.7) would be tightened.

b. Market access

— **Tariffs** would be cut according to a formula prescribing steeper cuts on higher tariffs. For developed countries, the cuts would range from 50 % for tariffs under 20 % to 66–73 % for tariffs higher than 75 %, meaning an average minimum cut of 54 %, and from 33.3 % to 44–48 % for developing countries. The least developed countries (LDCs) would be exempt from any cut.

— **'Sensitive products'** (for all countries) and **'special products'** (for developing countries) would be subject to smaller cuts. However, the reductions for sensitive products could be offset by preferential tariff quotas and special products could be exempt from all cuts.

— The **'special safeguard clause'** (→4.2.7) would gradually be abolished in developed countries. Developing countries would benefit from a new special safeguard mechanism (SSM) applicable to 2.5 % of tariff lines, which would allow customs tariffs to be increased temporarily to help them cope when import volumes rise or prices fall.

c. Export competition

— **Export subsidies** (→4.2.7) would be abolished by the end of 2013, including those subsidies disguised as export credits in areas such as State trading export enterprises and food aid in non-emergency situations. Half of all export subsidies would be abolished by 2010.

— On 29 July 2008, after nine days of talks, the WTO Director-General, Pascal Lamy, confirmed the failure of the discussions on the draft modalities for the negotiations on agriculture. There had in fact been an alignment of positions on most of the points discussed, but differences over the **special safeguard mechanism (SSM)** for the developing countries, which would allow them to offset a rise in food imports, proved insurmountable.

— Roughly speaking, the disagreement was between those (the United States, in particular) who wanted a higher trigger threshold (40 %, making a sharp increase in imports necessary to trigger the additional customs tariffs) to prevent the mechanism being activated by normal trade growth, and those (China and India in particular) in favour of a lower trigger threshold (10 %) to make the SSM easier to use.

— Other matters besides the SSM remained unresolved when the negotiations were suspended: **cotton** (a strategic product for some African exporting countries); issues related to **geographical indications and biodiversity** (intellectual property proposals on designations of origin and patent reforms with regard to genetic materials and traditional knowledge); and **bananas** (which, in theory, was to be settled by a separate agreement between the EU, Latin American suppliers and the ACP States).

— In principle, negotiations aimed at overcoming these obstacles should resume in 2009, following the elections in the United States and India.

B. Positions

The latest failure in Geneva in July 2008 demonstrates that the current multilateral negotiations are as delicate as those under the Uruguay Round, subject to the interplay of oppositions and alliances and in which the EU, the Cairns Group and United States and the developing countries are the key players.

1. The European Union

Relying at times on the group of countries that share some of its ideas (the 'friends of multifunctionality'), the EU is seeking a better organised and more market-oriented multilateral trading system, but is concerned about social, economic and environmental sustainability. It refers to efforts made and to be made in future in the areas of domestic support (1992, 1999 and 2003 CAP reforms (see (→4.2.2)) and market access ('Everything but arms' initiative, →6.5.2).

The latest EU proposals on the modalities for commitments agree to an average tariff reduction of 60 % to improve market access, which is undoubtedly the most sensitive area for Union agriculture. EU proposals on 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 commitments on the reform of their State trading enterprises. The EU also seeks real discipline on the most trade-distorting US farm payments (counter-cyclical payments).

Moreover, the EU reaffirmed its desire for balance in the continued reform of the agricultural trading system by ensuring special treatment for developing countries, specific commitments for sensitive products and due regard for non-trade concerns (environmental considerations, rural development, animal welfare and effective protection of designations of origin).

2. The United States

The USA is campaigning within the WTO for a fundamental reform of world agricultural trade. Ignoring the criticisms concerning the level and forms of its domestic support policy, it seems to be prepared to reduce trade-distorting domestic support substantially.

The most recent US proposal aims to cut agricultural subsidies to less than USD 15 billion a year, a slight improvement on its previous offer of USD 17 billion. Crawford Falconer has asked the United States to bring down its subsidies to between USD 13 billion and USD 16.4 billion dollars. Brazil, representing the emerging countries, considers that US subsidies would still be too high at that level. In 2007 the United States paid its farmers some USD 8 billion in subsidies. The US offer would therefore allow Washington to increase its domestic support by USD 7 billion. However, the US negotiators insist that the relatively low level of support granted last year was down to the rocketing prices of primary agricultural products on the world markets. US subsidies are largely counter-cyclical and are used to pay the difference between world prices and the price producers receive. This means that the US government may have to pay out more money to its farmers should prices fall.

3. 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 developed 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 keen to see the elimination of export subsidies, and very reluctant about the concept of agricultural multifunctionality favoured by Europe.

4. 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 Cancún Ministerial Conference, they organised themselves into new alliances in order to promote their interests more successfully.

— The alliance of 20 countries (**G20**) formed in 2006 has grown to 22, led by Brazil, China and India, and strives to protect both the millions of peasant farmers in their countries and their flourishing industry from too sharp a reduction in customs tariffs. Also opposed to agricultural subsidies, the group is calling in particular for the abolition of export subsidies and stricter rules for food aid and export credits.

— A new alliance was formed in 2003 among the African Union, the ACP countries and the least-developed countries (G90) over a range of common negotiating positions on agriculture, market access for non-agricultural products, the Singapore issues and development. 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 (G33) 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.

Role of the European Parliament

The European Parliament (EP) has voiced its opinion on the Doha Round negotiations on several occasions. In ensuring compliance with the negotiating mandate granted to the Commission, the EP has always supported the efforts of European representatives to aid progress in the negotiations in the aim of producing a balanced agreement ([1]).

→ Albert Massot Marti
August 2008

([1]) Resolutions of 13 December 2001 (OJ C 177 E, 25.7.2002, p. 290), 25 September 2003 (OJ C 77 E, 26.3.2004, p. 393), 12 May 2005 (OJ C 92 E, 20.4.2006, p. 397), 1 December 2005 (OJ C 285 E, 22.11.2006, p. 126) and 4 April 2006 (OJ C 293 E, 2.12.2006, p. 155).

4.2.9. The CAP and the Treaty of Lisbon

The Treaty of Lisbon was signed on 13 December 2007. It contains some significant changes on agriculture with respect to the existing Treaties and secondary legislation. However, the new agricultural provisions will not come into force until the texts proposed by all the Member States of the Union have been ratified.

Introduction

The Treaty of Lisbon is a complete and exhaustive reformulation of the two 'founding' Treaties, namely the Treaty on European Union (TEU) and the Treaty establishing the European Community (EC), renamed the '**Treaty on the Functioning of the European Union**' (**TFEU**) (OJ C 115, 9.5.2008) (→1.1.6).

The new TFEU introduces some formal changes to the **agricultural chapter** of the EC Treaty. In the first instance, without changing its structure, it renumbers the provisions in force (ex Articles 32 to 38 become **new Articles 38 to 44**). It also introduces the concept of the 'internal market' to replace references to the 'common market'. On the other hand, the new Treaty does not decouple the 'common agricultural policy' from the 'common fisheries policy'. Also, it does not go so far as to adapt the objectives and founding principles of the common agricultural policy (CAP) to the new demands of citizens on agricultural activity (as regards sustainable development, product quality, public health and consumer protection, rural development and land use, consolidation of a multifunctional agriculture throughout the Union or, finally, the contribution of agriculture to combating climate change). Nevertheless the new TEU opens the door to the future updating of the agricultural chapter by way of a 'simplified revision' procedure (**Article 48(6) TEU**). And, despite its insufficiencies, the TFEU will involve major changes to the CAP, in particular at the **legislative, implementing** and **financial** levels.

Changes to the legislative procedure

A. The new 'nature' of the CAP: competence shared between the Union and the Member States

A general classification of **competences** into three categories has been incorporated into the TFEU (Title I). These are exclusive competences, shared competences, coordination competences and support actions. In this context, **Article 4(2d)** recognises **competence shared** between the Union and the Member States in the field of agriculture, contrary to general opinion in the doctrine and legal services of the Commission (SEC(1992) 1990 of 27 October 1992) which hitherto have regarded policy on markets (first pillar of the CAP) as an exclusive competence of the Union.

New Article 4(2d) of the TFEU will have effects on legislative work in the field of agriculture to the extent that the European institutions will apply the **subsidiarity principle** in areas which do not fall within the exclusive competence of the Union (Article 5(3) and Article 12 TEU). In this connection it should be noted that the **national parliaments** will be able to send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion regarding the compliance of a draft legislative act on agriculture with the subsidiarity principle.

B. Introduction of the co-decision procedure in the field of agriculture

The agricultural chapter of the TFEU (in the **first paragraph of Article 42 and Article 43(2)**) recognises co-decision as the 'ordinary legislative procedure' for the CAP, replacing the current consultation procedure (→4.2.1). That represents a major change in the CAP since it assigns to the European Parliament a real role as joint legislator on agriculture.

Nevertheless, the new Treaty raises major problems of interpretation to the extent that **exceptions** to the ordinary procedure are introduced in favour of the Council. Indeed, the **second paragraph of Article 42**, in the context of competition rules, provides that the 'Council, on a proposal from the Commission, may authorise the granting of aid: (a) for the protection of enterprises handicapped by structural or natural conditions; (b) within the framework of economic development programmes'. In addition, **Article 43(3)** stipulates that the 'Council, on a proposal from the Commission, shall adopt measures on fixing prices, levies, aid and quantitative limitations'.

In the absence of a clear delimitation of the legislative competences of the European Parliament and the Council on agriculture, legal and political problems may arise, even if case-law eventually establishes a restrictive interpretation of the exceptions. Currently, it is unthinkable for the European Parliament to accept general implementing reservations in favour of the Council which could qualify, indeed effectively invalidate, the co-decision powers acquired under the new Treaty, particularly in the context of fundamental reforms of the CAP in which the fixing of aid levels and prices would play a key role. An interinstitutional legislative cooperation agreement is thus needed in order to clarify the decision-making levels and structure of agricultural acts.

Changes at the level of implementation

A. The new distinction between delegated powers and implementing powers

According to the new **Article 290 of the TFEU**, a legislative act may **delegate** to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain **non-essential elements** of the legislative act. In that case, the legislative act will explicitly define the objectives, content, scope and duration of the delegation and will lay down the conditions under which it can be revoked by Parliament or

the Council. There is a distinct risk of a profusion of delegated acts in the field of agriculture, in particular in the context of the single market organisation (→4.2.3), especially if the institutions do not get round to clarifying the limits of legislative competence between the European Parliament and the Council.

Article 291 of the TFEU makes provision for **implementing powers** to be conferred on the Commission or the Council where uniform conditions for implementing legally binding Union acts are needed. In this context, amendments will need to be made to the existing regulatory provisions on 'comitology' (Decision 1999/468/EC, OJ L 184, 17.7.1999) (→4.2.1) after the entry into force of the new Treaty.

Agricultural financial aspects of the TFEU

The Treaty of Lisbon contains significant changes at the financial level with respect to the existing Treaties and secondary legislation. It introduces a new Title II in the TFEU with six chapters and 15 articles. Most of the new financial provisions are general in scope. However, they have specific effects on the area of agricultural expenditure which, it should be remembered, even now still accounts for the major part of the Community budget (→4.2.10, Tables I and IV).

A. Removal of the distinction between compulsory expenditure and non-compulsory expenditure

In order to simplify the procedure for the adoption of the annual budget, the TFEU eliminates the distinction between 'compulsory expenditure' (CE) and 'non-compulsory expenditure' (NCE) (→4.2.6) in its new **Articles 314 and 315** (replacing Articles 272 and 273 TEC). Henceforth, the two arms of the budgetary authority (European Parliament and Council) will jointly decide on all budgetary expenditure. Hence the Council acquires decision-making powers on NCE and the European Parliament acquires them on CE (in particular, agricultural expenditure). Nevertheless, the distinction between CE and NCE remains in the Interinstitutional Agreement on budgetary discipline and sound financial management (OJ C 139, 14.6.2006) and in the general financial regulations (Regulation (EC) No 1605/2002, OJ L 248, 16.9.2002), which will have to be adjusted after the ratification of the Treaty of Lisbon.

B. The new annual budgetary procedure

The TFEU introduces a new Chapter 3 'The Union's annual budget' in Title II 'Financial provisions', which amends and simplifies the existing budgetary procedure. New **Article 314 TFEU** replaces Article 272 TEC and creates a special legislative procedure for the adoption of the annual budget jointly by the European Parliament and the Council. Following the abolition of the preliminary draft budget (PDB), the two current readings will be replaced by a **single reading**: the Commission presents its proposed **draft budget (DB)** not later than 1 September, and the Council subsequently adopts its **position** and forwards it to the EP not later than 1 October stating the reasons which led it to adopt its position. It must be remembered that currently the Council gives no reasons for the reductions it adopts. From then on, the new procedure provides for **three votes in Parliament**:

1. The **first vote**, by a qualified majority, concerns the amendments to the DB. The TFEU says nothing about the conduct of this vote in plenary, which would establish the **position of the EP** on all appropriations and would conclude the **first reading** stage.
2. The **second vote**, by a simple majority, concerns the outcome of the **Conciliation Committee**, grouping representatives of the Council and an equal number of members representing the European Parliament, which is convened in the event of disagreement on the amended draft budget. The Conciliation Committee is one of the main innovations in the annual budgetary procedure of the TFEU. It embodies the dialogue between the two arms of the budgetary authority. If the EP and the Council do not succeed in approving a 'joint text' in 21 days, the Commission is obliged to present a new draft budget (DB). The TFEU does not define the exact number of members or the level of representation of the Council: two very sensitive subjects which will need to be negotiated by the EP and the Council and to be formalised through an Interinstitutional Agreement. Otherwise, some decisions to be taken only concern the European Parliament: for example, the scope of the mandate from the plenary for the EP representatives on the Conciliation Committee and the margin of discretion conferred in the negotiation process; the leadership of the European Parliament delegation; the election of its representatives; or relations between the Conciliation Committee and the EP Committee on Budgets and the other specialised committees (in our case, in particular, the Committee on Agriculture and Rural Development).
3. A **third vote option** should be added for the specific eventuality of the rejection of the joint text by the Council. In this latter hypothesis, the EP vote would decide to confirm all or some of the amendments adopted during the single reading. That said, the EP would, by dint of a reinforced qualified majority (majority of members plus three fifths of the votes cast), have the last word on the annual budget.

C. Consolidation of the multiannual financial framework and budgetary discipline

The provisions on budgetary discipline are introduced in a new **Article 310(4) TFEU**, which also mentions the 'multiannual financial framework'. In fact the Treaty repeats and updates most of the provisions on the multiannual financial perspectives in force under the Interinstitutional Agreement on Budgetary Discipline and Sound Financial Management. That said, the 'multiannual financial framework' and its rules are integrated for the first time in primary legislation by way of **Article 312 TFEU**.

These provisions of the Treaty of Lisbon confirm the duration of the multiannual financial framework (five years). They establish the 'special legislative procedure' for the adoption of the regulation which will set the amounts of the annual ceilings for appropriations and, finally, they formalise the content of the financial perspectives on the basis of expenditure categories representing the main sectors of the

Union's activity. It should be remembered that the CAP remains the leading Community policy in financial terms, despite the freezing of its budget and the compulsory annual ceilings imposed. Within the framework of the last financial perspectives for 2007–13 (→4.2.10, Table I), the first pillar of the CAP (market policy and aid) amounts to 33.9 %. The second pillar (rural development) accounts for 8 % of the total in the same period. Moreover, the scope of the 'budgetary discipline' principle is well known in the agricultural field, where it has even been integrated in secondary legislation (Article 11 of Regulation (EC) No 1782/2003, OJ L 270, 21.10.2003).

Role of the European Parliament

The European Parliament was one of the driving forces behind the Convention which drew up the Treaty establishing a Constitution for Europe. However, following its rejection by France and the Netherlands, the approach based on replacing the Treaties with a Constitution was abandoned in favour of the amendment of the existing Treaties. The draft Treaty of Lisbon is the fruit of that effort and continues to enjoy the support of Parliament (P6_TA-PROV(2008)0055) pending its ratification by the Member States.

Once the TFEU comes into force, the European institutions will take steps to formulate the new legislative procedures, to determine any interinstitutional cooperation procedures necessary and to revise the relevant texts in force.

→ Albert Massot Martí
August 2008

4.2.10. The CAP in figures

The tables below present the basic figures of Community agriculture (II) and the main indicators of the agriculture–environment relationships (III). Tables I and IV relate to the common agricultural policy (CAP) financing and Table V relates to agri-food trade by geographical zone.

Table I — The CAP in the 2007–13 financial framework

Commitment appropriations (million EUR at 2004 constant prices)	2007	2008	2009	2010	2011	2012	2013	Total 2007–13
A. Total multiannual commitment appropriations EU-27, of which:	120 702 (100 %)	121 473 (100 %)	122 564 (100 %)	122 952 (100 %)	124 007 (100 %)	125 527 (100 %)	127 091 (100 %)	864 316 (100 %)
1. Agriculture — policy on markets and direct aid, of which:	43 120 (35.7 %)	42 697	42 279	41 864	41 453	41 047	40 645 (32 %)	293 105 (33.9 %)
EU-15	39 928 (33.0 %)	38 710	37 723	36 735	35 775	34 828	33 826 (26.6 %)	257 525 (29.7 %)
EU-12 (new members)	3 192	3 987	4 556	5 129	5 678	6 219	6 819	35 580 (4.1 %)
2. Agriculture — rural development, of which:	10 710 (8.8 %)	10 447	10 185	9 955	9 717	9 483	9 253 (7.3 %)	69 750 (8.0 %)
EU-15	—	—	—	—	—	—	—	36 740 (4.2 %)
EU-12 (new members)	—	—	—	—	—	—	—	33 010 (3.8 %)
B. Total agriculture (1 + 2)	53 830 (44.5 %)	53 144 (43.7 %)	52 464 (42.8 %)	51 819 (42.1 %)	51 170 (41.2 %)	50 530 (40.2 %)	49 898 (39.3 %)	362 855 (41.9 %)
Total multiannual commitment appropriations (A) as a percentage of GNP (EU-27)	1.10 %	1.08 %	1.07 %	1.04 %	1.03 %	1.02 %	1.01 %	1.048 %
Total commitment appropriations for agriculture (B) as a percentage of GNP (EU-27)	0.49 %	0.47 %	0.46 %	0.43 %	0.42 %	0.41 %	0.39 %	0.44 %

Sources: Prepared on the basis of the following documents: European Commission, Working Document of the Commission Services: Indicative breakdown of expenditure within individual headings and sub-headings, after the trilogue of 4 April 2006 (Fiche No 94 REV1, 11 April 2006); Interinstitutional Agreement on budgetary discipline and sound financial management (OJ L 139, 14.6.2006, Annex I); and Council Decision 2006/493/EC laying down the amount of Community support for rural development (OJ L 195, 15.7.2006).

Table II — Basic figures of Community Agriculture

	Number of farms (1 000 farms)	UAA per farm (ha)	Employment in the sector (agriculture, forestry, hunting, fishing) (1 000 people)	Production of the sector of agricultural activity (million EUR)	Share of agriculture of GDP/GVA (%)	UAA classed as less-favoured area (%)
	2006	2005	2006	2006	2006	2000–03
BE	1 382.0	52	26.9	83	6 827	0.7	20.4
BG	5 190.0	535	5.1	252	3 471	6.2	—
CZ	3 566.0	42	84.2	182	3 567	0.8	50.4
DK	2 699.0	48	53.6	87	8 133	1.1	1.1
DE	16 951.0	390	43.7	844	40 070	0.6	49.6
EE	762.0	28	29.9	32	542	1.7	39.8
EL	3 254.0	834	4.8	533	10 470	3.1	82.7
ES	25 359.0	1 079	23.0	944	37 327	2.3	81.3
FR	29 538.0	567	48.6	977	60 645	1.4	44.0
IE	4 307.0	133	31.8	117	5 498	0.9	52.8
IT	14 710.0	1 729	7.4	982	43 076	1.7	51.0
CY	169.0	45	3.4	15	618	2.3	90.5
LV	1 856.0	129	13.2	122	851	1.9	72.7
LT	2 791.0	253	11.0	187	1 612	2.3	43.7
LU	129.0	2	52.7	4	244	0.3	100.0
HU	5 809.0	715	6.0	188	6 001	2.5	19.2
MT	10.0	11	0.9	3	127	1.2	100.0
NL	1 899.0	82	23.9	259	22 110	1.7	11.1
AT	3 240.0	171	19.1	217	5 699	1.0	75.3
PL	15 957.0	2 477	6.0	2 304	16 173	2.4	51.2
PT	3 767.0	324	11.4	604	6 767	1.8	86.7
RO	14 117.0	4 256	3.3	2 843	14 365	7.2	—
SI	491.00	77	6.3	92	1 064	1.5	73.9
SK	1 939.0	69	27.4	101	1 770	1.1	50.2
FI	2 301.0	71	32.1	114	3 756	0.5	100.0
SE	3 150.0	76	42.1	98	4 382	0.4	52.1
UK	16 761.0	287	55.4	382	21 558	0.4	47.1
EU-15	145 404.0	5 843	21.4	6 244	276 562	1.1	57.4
EU-25	162 796.0	9 688	16.0	9 468	308 888	1.2	55.1
EU-27	182 103.0	14 479	11.9	12 564	326 725	1.2	—

Sources: European Commission, 'Agriculture in the European Union — Statistical and economic information — 2007'; European Commission, 'Rural development in the European Union — Statistical and economic information — Report 2007', November 2007.

Table III — Basic agri-environmental indicators

	(a) UAA classed as Natura 2000 area (%)	(b) Territory classed as nitrate vulnerable zone (%)	(c) Risk of erosion (loss of land from water) (t/ha/year)	(d) UAA used for organic farming (%)	(e) Production of renewable energy from agriculture (kTe)	(f) Production of renewable energy from forests (wood and residues) (kTe)	(g) UAA of extensive grazing (%)
	2006	2005	2004	2005	2005	2005	2005
BE	3.07	23.6	1.07	1.66	0.9	423.0	0.0
BG	—	—	0.56	0.52	0.0	743.0	0.0
CZ	n.a.	36.6	1.31	7.17	119.8	1 537.0	31.7
DK	7.57	100.0	2.29	5.18	64.0	1 282.0	0.0
DE	4.07	100.0	0.89	4.74	1 595.2	6 906.0	6.4
EE	4.84	7.0	0.16	7.21	6.3	706.0	53.5
EL	25.68	10.6	5.77	7.25	2.7	957.0	2.4
ES	24.03	12.6	2.41	3.25	234.3	4 176.0	31.2
FR	5.01	44.1	1.55	2.00	523.3	9 430.0	8.6
IE	6.26	100.0	0.11	0.83	0.0	215.0	0.0
IT	12.15	8.3	3.11	8.42	361.2	1 790.0	25.5
CY	0.42	8.1	—	1.12	0.9	9.0	0.0
LV	11.98	12.5	0.11	6.97	11.2	1 987.0	58.4
LT	0.13	100.0	0.33	2.31	10.8	722.0	47.5
LU	6.94	100.0	0.54	2.45	0.0	15.0	0.0
HU	0.51	46.5	0.41	3.01	19.5	1 000.0	17.2
MT	4.78	100.0	—	0.14	1.8	n.a.	0.0
NL	5.93	100.0	0.08	2.49	4.4	505.0	0.0
AT	7.58	100.0	0.46	11.03	76.6	3 507.0	43.5
PL	0.75	1.7	0.67	0.56	125.7	4 166.0	10.3
PT	22.26	1.2	4.59	6.34	0.9	2 713.0	55.6
RO	—	—	0.44	0.63	0.0	3 229.0	37.5
SI	n.a.	100.0	0.87	4.84	7.2	469.0	69.2
SK	n.a.	33.6	1.29	4.80	70.3	398.0	32.6
FI	34.05	100.0	—	6.52	7.2	6 672.0	20.3
SE	48.02	15.2	—	6.98	86.0	7 937.0	49.9
UK	4.01	38.4	0.31	3.82	45.9	604.0	25.1
EU-15 (1)	12.22	44.9	1.00	4.28	3 002.6	46 917.0	19.3
EU-25 (2)	10.47	41.4	1.64	3.97	3 376.0	58 126.0	20.1
EU-27 (3)	10.47	41.4	1.52	3.65	3 376.0	62 099.0	21.2

(1) **(c)** EU-15 except SE and FI; **(f)** Except MT.

(2) **(a)** Except CZ, SI and SK; **(b)** EU-10, 2007 data; **(c)** except CY, MT, FI and SE; **(f)** except MT.

(3) **(a)** Except BG, RO, CZ, SL, SK; **(b)** EU-10 2007 data; **(c)** except CY, MT, FI and SE; **(f)** except MT.

Sources: European Commission 'Rural development in the European Union —Statistical and economic information — Report 2007', November 2007.

Table IV — CAP spending by Member State (2006)

Member States (EU-25)	1. Distribution by Member State Aid and markets/rural development				2. % of farms benefiting from direct aid under the EAGGF — Guarantee		
	EAGGF Guarantee (million EUR)	% of EU-25 total	EAGGF Guidance (million EUR)	% of EU-25 total	With aid ≤ EUR 5 000	With aid ≤ EUR 20 000	With aid ≥ EUR 100 000
BE	943.7	1.89	8.6	0.20	44.3	84.53	0.16
CZ	517.3	1.04	75.3	1.79	74.1	87.83	3.51
DK	1 162.2	2.33	3.5	0.08	52.5	79.58	1.08
DE	6 543.4	13.12	552.4	13.19	51.0	83.92	1.33
EE	87.7	0.17	25.1	0.59	94.9	98.69	0.05
EL	3 070.6	6.15	505.9	12.08	90.6	99.51	0.00
ES	6 654.5	13.34	927.7	22.15	77.3	94.76	0.30
FR	10 044.6	20.14	143.0	3.41	34.0	67.69	0.84
IE	1 723.2	3.45	26.2	0.62	45.9	88.97	0.19
IT	5 461.0	10.95	586.7	14.01	91.3	98.37	0.13
CY	50.9	0.10	0.0	0.0	99.3	99.97	0.00
LV	160.7	0.32	34.8	0.83	98.9	99.81	0.00
LT	346.1	0.69	49.2	1.17	99.1	99.84	0.01
LU	44.7	0.09	0.4	0.0	25.0	68.00	0.50
HU	826.1	1.65	135.3	3.23	94.4	98.80	0.22
MT	11.2	0.02	1.8	0.04	99.0	100.0	0.00
NL	1 209.6	2.42	18.8	0.44	66.7	91.62	0.14
AT	1 271.5	2.55	21.8	0.52	66.9	97.05	0.05
PL	2 033.5	4.08	515.9	12.32	99.3	99.86	0.01
PT	946.4	1.89	326.3	7.79	92.5	98.08	0.23
SI	142.6	0.28	10.2	0.24	99.6	99.98	0.00
SK	294.0	0.58	78.3	1.87	84.8	91.52	1.89
FI	817.1	1.63	44.8	1.07	47.9	93.22	0.05
SE	923.9	1.85	25.6	0.61	63.0	89.12	0.37
UK	4 287.2	8.59	69.5	1.65	49.4	74.11	2.89
EU (1)	291.5	0.58	6.0	0.14	—	—	—
EU-10	4 470.2	8.96	925.8	22.11	—	—	—
EU-25	49 865.2	100.0	4 187.0	100.0	82.12	94.52	0.31

(1) Commission spending.

Sources: **1.** European Commission, *EU budget 2006 Financial Report*; **2.** European Commission, 'Indicative figures on the distribution of aid, by size-class of aid, received in the context of direct aid paid to the producers according to Council Regulation (EC) No 1259/1999 and Council Regulation (EC) No 1782/2003 (Financial year 2006)'.

Table V — Trade in agricultural and food products in the EU-25 by geographical zone (2006)

Country / Group of countries	(a) Imports (million EUR)	% of 3	(b) Exports (million EUR)	% of 3	alance (b – a)
1. Total (2 + 3)	278 806	—	285 835	—	7 029
2. Intra-EU	211 068	—	213 570	—	2 502
3. Extra-EU	67 738	100.0	72 265	100.0	4 527
Candidate countries (2006) (1)	4 633	6.8	4 331	6.0	– 302
Switzerland	2 417	3.6	4 683	6.5	2 266
Norway	372	0.5	2 142	3.0	1 770
Russia	607	0.9	6 641	9.2	6 034
Mediterranean Basin (2)	7 235	10.7	8 396	11.6	1 161
Gulf Arab States (3)	249	0.4	3 255	4.5	3 006
India	1 396	2.1	348	0.5	– 1 048
China	2 862	4.2	1 375	1.9	– 1 487
Japan	138	0.2	4 083	5.7	3 945
ASEAN (4)	5 565	8.2	2 529	3.5	– 3 036
NAFTA (5)	8 407	12.4	17 503	24.2	9 096
United States of America	6 496	9.6	14 624	20.2	8 128
Mercosur (6)	14 552	21.5	805	1.1	– 13 747
Brazil	9 129	13.5	630	0.9	– 8 499
Argentina	4 830	7.1	107	0.1	– 4 723
ACP (Lomé Convention)	8 905	13.1	5 048	7.0	– 3 857
Australia	1 821	2.7	1 438	2.0	– 383
New Zealand	2 203	3.3	196	0.3	– 2 007

(1) Romania, Bulgaria, Croatia, Turkey.
(2) Morocco, Algeria, Tunisia, Turkey, Egypt, Israel, Lebanon, Syria, Libya, Jordan, West Bank and Gaza Strip, Canaries, Ceuta, Melilla, Yugoslavia, Albania, Croatia, Bosnia and Herzegovina, Serbia and Montenegro, former Yugoslav Republic of Macedonia.
(3) Saudi Arabia, Kuwait, Bahrain, Oman, Qatar, United Arab Emirates.
(4) Myanmar, Thailand, Laos, Vietnam, Indonesia, Malaysia, Brunei, Singapore, Philippines and Cambodia.
(5) Signatory countries to the North American Free Trade Agreement (NAFTA).
(6) Brazil, Paraguay, Uruguay and Argentina.

Source: European Commission, 'Agriculture in the European Union — Statistical and economic information, 2007'.

→ Albert Massot Martí
August 2008

4.3. Forestry policy

4.3.1. The European forestry strategy: framework

The European Union (EU) has substantial forest resources, which have increased with every new accession. At present the Treaty does not provide a specific legal basis for this policy but its legal status is established under the provisions applicable to neighbouring policies and various European action plans and rules.

The EU has the sixth largest forest area in the world and has varied, well-managed forests with a strong economic potential. The lack of an appropriate legal basis for forestry in treaties does, however, hamper the development of a genuine European forestry policy. The European forestry strategy, which has developed despite the absence of its own legal basis, emphasises sustainable management and calls upon various instruments which are part of other Community policies such as rural development, environmental protection, development cooperation, the harmonisation of legislation, research and statistics.

The importance of forestry in the European Union

The EU is one of the main players in world forestry. The accession of Austria, Finland and Sweden in 1995 doubled its forest area (which rose to 113 million ha, 87 million ha of which were productive forest), while the average rate of afforestation increased from 21 % to 31 %. With the enlargement of 2004, the EU-25's forest area increased by 20 % and exceeded 148 million ha, taking only productive forests into account. It exceeded 160 million ha if all forests and other woodland areas are taken into account. The EU-25 represents the sixth world forest area, the equivalent of China or Indonesia. Romania and Bulgaria, which joined the EU in 2007, brought the EU-27 about 10 million ha of additional forest.

The simple division between non-coniferous (55 % of the total) and coniferous (45 % of the total) species indicates the variety of ecological conditions with a gradient depending on the latitude and altitude. From the Arctic Circle to the forests in French Guiana, most of the great forest ecosystems in the world (temperate, boreal, alpine, Mediterranean, subtropical, tropical, etc.) are represented within the EU. Reflecting natural conditions, agricultural, grazing and forestry practices and social pressures, the structure of forest stands and their place in the landscape indicates the changing social demands and multifunctional needs in goods and services. The variety of ownership patterns — with 35 % in private ownership and 65 % in public ownership — allows a large range of management and silvicultural options.

The average size of public forests in the EU-15 is over 1 000 ha, whereas private forests have an average size of 13 ha. Private forests are managed by over 15 million owners; these are mostly small non-industrial owners who manage their forests on the basis of **sustainability**. The forestry–wood–paper sector represents 4.3 % of jobs in the primary sector and 3.7 % of jobs in the secondary sector, or 2.5 % of the total number of jobs in the EU, the equivalent of the main industrial sectors (chemical, mechanical, construction, transport, etc.). It provides more than 3.5 million jobs, often in rural areas, which make a decisive contribution to maintaining the vitality of rural areas that are often disadvantaged and which have very limited economic options. The forestry–wood–paper sector contributes 2.2 % of the European GDP and has an annual turnover of over EUR 300 billion, although this figure is probably an underestimate in view of the wide range of wood-processing industries.

The forest cover shows an overall increase in the enlarged EU (contrary to the trend in agricultural land, which is steadily decreasing): more than 450 000 ha of additional forest every year. This is the result of forestation and reforestation policies implemented a few decades ago and an undeniable European *savoir faire* in forestry. This surplus of forest resources makes the EU an exception as far as the rest of the world is concerned, given that forests in the world are regressing at an alarming rate of some 15 million ha a year (traditionally tropical forests and more recently boreal forests).

The EU-25 represents 20 to 25 % of world production and consumption of timber and derived products, depending on the product. The EU is the world's second largest consumer of tropical wood in the world after Japan. The EU traditionally has a trade deficit in timber with the rest of the world; its trade deficit has fallen from EUR 21 billion to EUR 7 billion with recent enlargements.

The EU is also an important player in international forestry cooperation. The EU is the first world contributor in development cooperation in the forestry sector (over EUR 600 million a year — in terms of the contribution by European

funds (EDF) and headings in the EU annual budget and the Member States' budgets) — or 40 % of public development aid for sustainable forestry management. Furthermore, with 33 % of the votes, it is the leading group in the International Tropical Timber Organisation.

Overall the EU's forestry resources are healthy and represent the wealth of several centuries of complex relations between man and nature. Over 85 % of European forests are managed and 50 % of them are certified. Over two thirds of European forests are classified as semi-natural, almost 12 % of them are considered to be protected, and 30 % of the Natura 2000 areas are forest. Europe's celebrated forestry schools have helped train a great number of foresters and technicians. They in their turn have imparted their knowledge of **sustainable forest management** all over the world.

The EU plays an active role in the Strasbourg and Helsinki pan-European process for the protection and **sustainable** management of forests. It is also — directly or through its Member States — a partner in all international agreements on the environment: UN Intergovernmental Forum on Forests, United Nations Framework Convention on Climate Change (FCCC) and the Kyoto Protocol annexed to the aforementioned Convention. The EU ratified the Kyoto Protocol on 31 May 2002 and each Member State undertook to comply with objectives to reduce greenhouse gas emissions. In order to achieve this, the EU set up the greenhouse gas emission allowance trading scheme, which requires certain sectors to restrict their emissions to a certain number of allowances (Directive 2003/87/EC of 13 October 2003). However, although deforestation on a global scale is responsible for approximately 20 % of global greenhouse gas emissions, at present the greenhouse gas emission allowance trading scheme does not take the forestry sector into account and does not make provision for carbon storage by forest ecosystems to be promoted in any way either.

The Commission recently proposed an amendment to Directive 2003/87/EC to improve and extend the greenhouse gas emission allowance trading system (COM(2008) 16 of 23 January 2008), a proposal which continues to exclude the forestry sector from the scope of that directive. Finally, the EU took part in the work undertaken at the conference of parties to the UNFCCC, which was held from 3 to 14 December 2007 in Bali. The issue of introducing a mechanism to reward efforts to combat deforestation and for the sustainable management of forests was widely debated at the conference, although a consensus on the issue could not be reached.

Legal basis

The lack of an appropriate legal basis for forestry in the Treaty of Rome (with the exception of cork, timber and other forestry products are not mentioned in Annex II of the Treaty) has been the main obstacle to the creation of a common forestry policy, contrary to the situation for agriculture (common agricultural policy) and fisheries (common fisheries policy).

This has not prevented the European Community from taking action in relation to forests. However, various Community measures on behalf of forestry since 1957 have found their legal basis in relation to other policies, such as the common agricultural policy, regional policy, industrial policy, environment policy and development cooperation policy. The following EC Treaty provisions have been used:

— for Community forests:

  • Articles 37, 158 to 162 and 174;

— for tropical forests:

  • Article 310 for cooperation with the African, Caribbean and Pacific countries and the Asian and Latin American countries associated with the Community,

  • Article 133 for Community participation in the International Tropical Timber Agreement.

Role of the European Parliament

On several occasions the European Parliament has tried to remedy this deficit, notably in 1993 with the 'Eurofor' project that resulted in the publication of the study *Europe and the forest*. This study was behind the European Parliament's first legislative initiative pursuant to Article 138b of the Maastricht Treaty (Thomas report as amended and adopted at the January 1997 plenary in Strasbourg). Following this Parliament initiative, in 1998 the Commission presented a report and at the end of 1998 the Council adopted Resolution 1999/C 56/01 of 15 December 1998 on a forestry strategy for the European Union (OJ C 56, 26.2.1999, p. 1).

This EP resolution also made provision for a 'forestry' subcommittee to be set up under the aegis of Parliament and for the Commission to report to the Council and the European Parliament on the implementation of the forestry strategy within five years. On 3 December 2003 the Commission presented a guidance document and questionnaire for preparation of this report and on 13 August 2004 the Commission launched a consultation procedure with professional bodies and other players in the forestry sector on the same subject.

On 10 March 2005 the Commission presented its report on the implementation of the EU forestry strategy (COM(2005) 84 final), accompanied by a Commission working document (SEC(2005) 333), which described in detail the measures and initiatives implemented during the period 1999–2004. The Commission communication is based on the legal framework defined by Council Resolution 1999/C 56/01 of 15 December 1998 and highlights the importance of good governance for the protection and sustainable management of forests and the need to improve intersectoral cooperation, coordination and consistency between forestry policy and other policies that have repercussions on forests and forestry. Moreover, the Commission working document analyses the contribution of forests and forestry to the objectives of sustainable economic growth and competitiveness formulated in Lisbon and the

Gothenburg objectives of safeguarding the quantity and the quality of the natural resource base.

In its communication, the Commission proposed establishing an EU action plan for the sustainable management of forests from 2006. At its meeting of 30 and 31 May 2005, the Council supported the Commission proposals, particularly with regard to the need for an action plan and it stressed that this plan should offer a framework capable of ensuring consistency between the various measures in support of forests and should act as a coordination instrument.

The Parliament's evaluation study of the Commission report, entitled 'European forestry strategy: outlook' (PE 355.366 of 4 July 2005), presented to the Committee on Agriculture in July 2005, recommended a clarification and renovation of the legal basis for the European forestry strategy and put forward 10 specific proposals for a genuine Europe of forests. Parliament's study also emphasised the fact that the Commission report fell short on the analysis of certain topical matters such as the sharp increase in forest fires in southern EU Member States and the alarming decrease in tropical forests.

The Kindermann report (INI/2005/2054), adopted in plenary on 16 February 2006 in Strasbourg, also recommended that the Council and Commission should give objective consideration to the possibilities of creating a specific legal basis for forests in the EU Treaties or in the draft European Constitution and proposed 11 'strategy elements' based on the study's conclusions.

In the 'Capoulas Santos report' (INI/2005/2195) — see also the 'Estrela report' (INI/2005/2192) and the 'Galeote report' (INI/2005/2193) — on natural disasters (fires, droughts and floods), the European Parliament stressed the need for a specific Community forest protection programme, based on prevention and management of the risk of forest fires and tailored to the specific nature of forests in the Member States. Parliament regretted that the Commission communication on the implementation of the EU forestry strategy did not devote special attention to the issue of fires, ignoring the fact that they are the main cause of the deterioration of forests. Parliament called for the forestry action plan to 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.

The forestry action plan was finally adopted on 15 June 2006. Over a period of five years (2007–11), the action plan defines a common vision, general and specific principles and objectives to be achieved by 18 key actions, divided into four groups, which the Commission proposes to implement jointly with the Member States. It also makes provision for additional measures that may be carried out by the Member States in the light of their specific requirements and priorities with the aid of existing Community instruments, even if the national instruments may also prove necessary. However, the action plan does not have a financial statement and consequently has been criticised for being an 'empty' plan by professionals in the forestry sector. The 2007 progress report on the implementation of the forestry plan (internal Commission document) reports on certain advances which are for the most part limited to the launch of studies (on forest dieback for example), the holding of conferences (on timber industry competitiveness) and the creation of new working groups. Cooperation with the Subsidiary Body for Scientific and Technical Advice of the United Nations Framework Convention on Climate Change has, however, been stepped up.

→ Angel Angelidis
June 2008

4.3.2. European forestry strategy: principles and action

The European forestry strategy, established from 1999 onwards, is based on a few fundamental principles and it is embodied in actions and measures in several areas.

Principles

The basic principles of the European forestry strategy as set out in the Council Resolution 1999/C 56/01 of 15 December 1998, are:

— subsidiarity (given that the Treaty establishing the European Community makes no provision for a specific common forestry policy and that responsibility for forestry policy lies with the Member States);

— recognition of the multifunctional role of forests and the need for 'sustainable forest management';

— consideration that forestry and forest-based commercial activities fall within the open sector of the economy and that their commercial functions should be guided primarily by market forces;

— active participation by the EU and the Member States in all international processes related to the forest sector;

— the implementation of international commitments, principles and recommendations through national or sub-national forest programmes or appropriate instruments developed by the Member States;

— the need for coordination at administrative level (Commission, Member States) and by those working in the sector.

Action

The main activities and measures of the European forestry strategy, as set out in Council Resolution 1999/C 56/01 of 15 December 1998, are in the following main areas.

— rural development (rural development programmes put forward by Member States which promote investment in forests with the aim of preserving and enhancing their economic, social and ecological value, promoting reforestation and forestry development, etc.);

NB: **1.** In the period 2000–06, EAGGF expenditure on forestry amounted to EUR 4 800 million or about 10 % of the overall budget for rural development. During the same period, expenditure under the Sapard programmes for forests in seven central and east European countries (Bulgaria, Estonia, Latvia, Poland, Romania and Slovakia) reached EUR 167 million or about 5 % of the total.

2. Since 2005, the rural development policy has been governed by Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ L 277, 21.10.2005, pp. 1–40). EUR 88.29 billion was awarded to rural development for the period 2007–13 (OJ L 142, 5.6.2007, p. 21). However, the funds allocated to forestry and to the forest-based sector are not specified.

— the environment (protection of forests against fires and air pollution, protection and conservation of biodiversity, promotion of eco-certification, the Natura 2000 network, EU involvement in the pan-European process and international debates for the protection of forests, etc.);

— the competitiveness of forest-based industry (support for SMEs and other action under the EU industrial policy);

— the harmonisation of legislation (forest reproductive material, forestry tractors, etc.);

— research;

— statistics (EFICS, Eurostat, etc.);

— development cooperation (programmes and projects for the conservation and sustainable management of tropical forests in the ACP and DCLAA countries, PFLEGT, etc.).

NB: Regulation (EC) No 2494/2000 of the European Parliament and of the Council of 7 November 2000, which is based on the conservation and sustainable development of tropical forests, followed on from Regulation (EC) No 3062/95 and provided a budget of EUR 249 million for the period 2000–06. Regulation (EC) No 2494/2000 was repealed by Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation (OJ No L 378, 27.12.2006, pp. 41–71), which makes provision for a budget of EUR 16 897 million for implementation from 2007–13. However, the total specifically allocated to forestry was not specified.

→ Angel Angelidis
June 2008

4.4. Common fisheries policy

4.4.1. The common fisheries policy: origins and development

Fisheries policy has been inserted in the Treaty of Rome. Initially it was linked to agricultural policy, but over time it became increasingly independent. The common fisheries policy (CFP), as reformed in 2002, has the primary goal of operating in a sustainable fisheries and to guarantee incomes and stable jobs to fishermen. The Treaty of Lisbon makes several amendments to the fisheries policy.

Legal basis

Articles 32 to 37 of the Treaty establishing the European Community (EC); Articles 38 to 43 of the Lisbon Treaty (not yet in force).

The Lisbon Treaty provides some innovations concerning the involvement of Parliament on legislation in the field of common fisheries policy (CFP) resulting from the new Article 37 and Article 188N.

The most important element is that legislation necessary for the pursuit of the objectives of the CFP shall be adopted with the **legislative ordinary procedure** (this is the co-decision procedure from now on). Parliament then will become co-legislator. However, there is an exception for 'measures on fixing prices, levies, aid and quantitative limitations and on the fixing and allocation of fishing opportunities' (Article 43(3) of the Lisbon Treaty) that will remain as in the EC Treaty, where they have to be adopted by the Council on a proposal from the Commission.

With regard to the ratification of international fisheries agreements, the Lisbon Treaty provides that they will be ratified by the Council after **consent** of the Parliament (Article 188N(10) of the Lisbon Treaty).

Objectives

Fisheries are a natural, renewable, movable and common property that are part of our common heritage. The Treaty of Rome made provisions for a common fisheries policy: Article 33(1) sets out the objectives for the common agricultural policy, which are shared by the common fisheries policy, 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'. Fisheries are a common policy, meaning that common rules are adopted at EU level and applied to all Member States. The CFP's original objectives were to preserve fish stocks, protect the marine environment, to ensure economic viability of European fleets and to provide consumers with quality food. The 2002 reform added to these objectives the sustainable use of living aquatic resources from an environmental, economic and social point of view in a balanced manner. Sustainability has to be based on sound scientific advice and on the precautionary principle (in line with Article 174 of the EC Treaty). The new CFP basic rules came into force on 1 January 2003.

Achievements

A. Background

The common fisheries policy originally formed part of the common agricultural policy, but it gradually developed a separate identity as the Community evolved due to the adoption of exclusive economic zones (EEZ) by Member States since 1970 and the new membership of countries with substantial fleets. The Community had to tackle specific fisheries problems, such as access to common resources, conservation of stocks, structural measures for the fisheries fleet and international relations.

1. Beginnings

It was not until 1970 that the Council adopted legislation to establish a common organisation of the market 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 Denmark Ireland and the United Kingdom joining the EC in 1972. This resulted in a move away from the fundamental principle of freedom of access; exclusive coastal fishing rights were extended from a 12-mile to a 200-mile zone. Member States agreed to leave the management of their fisheries resources in the hands of the European Community.

3. Reforms of the CFP

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 unification 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 through an effective **licensing system**.

c. 2002 reform

However, these measures were not effective to halting overfishing and the depletion 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 **impact on marine ecosystems**, significant **economic losses** for the industry, the **fish supply to EU markets** 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:

a. 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);

b. 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);

c. 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. Long-term approach to fisheries management and emergency measures if necessary

The long-term approach was set out in **multiannual recovery plans** for stocks outside safe biological limits and of **multiannual management plans** for other stocks. In this way fishermen could also plan their activities better. Multiannual plans 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 six months which may be renewed for a further six months. If a Member State disagrees with the measures, it may refer the matter to the Council. Member States can also establish, under certain conditions, conservation and management measures in their 12-mile zone for a period of three months.

b. Reorientation of public aid to the fleet

In order to avoid aggravating the imbalance between the overcapacity of the fleet and the actual fishing possibilities, as from 2005 aid was to be used exclusively to improve **safety and working conditions on board** and **product quality**, or to switch to **more selective fishing techniques**, or to equip vessels with satellite **vessel monitoring systems** (VMS). 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. A 'scrapping fund' was created to 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). Financial aid is also available for the **permanent transfer of EU vessels** to third countries including through the creation of joint enterprises with third-country partners. 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. Socioeconomic measures to support 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.

d. Access to waters and resources

In order to preserve the most sensitive areas under the traditional fisheries, there is a restricted 12-mile zone lasting until 2012 when the regime will be evaluated. Other access restrictions are for example the Shetland Box. The principle of relative stability, based on a defined share of the stocks for each Member State, has been maintained.

e. 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, and is based in Vigo (Spain).

f. More direct involvement of fishermen in the decisions that affect them

To this end, regional advisory councils (RACs) consisting of fishermen, scientific experts, representatives of other sectors related to fisheries and aquaculture, regional and national authorities, environmental groups and consumers from the maritime or fishing zone in question were 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 Sea and the North Sea, the Atlantic Ocean, the high seas and pelagic stocks.

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 (IUU) 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; and

— the creation of a single inspection structure, the **Community Fisheries Control Agency**.

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; as well as

— a compliance work plan and scoreboard to comply with the rules of the CFP.

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 and opinions on Commission's proposals for new legislation and policies have given Parliament the opportunity to express its own model for the CFP.

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4.4.2. Fisheries resources conservation

Conservation of fisheries resources involves the need to ensure sustainable exploitation of these resources, and a long-term viability for the sector. To achieve this objective, several European standards govern access to Community waters, the allocation and use of resources, the total allowable catches and effort limitations.

Legal basis

Articles 32 to 37 of the Treaty establishing the European Community (EC); Articles 38 to 43 of the Lisbon Treaty (not yet in force).

Objectives

The main objective is to guarantee the long-term viability of the sector through sustainable exploitation of resources.

Achievements

A. Basic principles on access to waters and resources

1. Access to Community waters

a. The principle of equal access

The general rule is that Community fishing vessels have equal access to waters and resources in all Community waters.

b Restrictions in the 12-nautical-mile zone

This is an exception to the principle of equal access to Community waters that falls within 12 nautical miles from

the baselines, where Member States may retain exclusive fishing rights. This derogation is based on preserving the most sensitive areas by limiting fishing effort and protecting traditional fishing activities on which the social and economic development of certain coastal communities depends. The measures establishing the conditions of access to waters and resources are adopted on the basis of the biological, socioeconomic and technical information available. A review of the current provisions is due to take place in 2012 (Article 17 of Regulation (EC) No 2371/2002).

c. Other access restrictions beyond the 12-nautical-mile zone

The Commission issued a communication in 2005 (COM(2005) 422) on the review of certain access restrictions in the common fisheries policy, referring to the Shetland Box and the Plaice Box. The communication is a response to the obligation to assess the justification for restrictions on access to waters and resources outside of the 12-nautical-mile zone.

The Shetland Box was set up to control access to species which are of special importance in the region and which are biologically sensitive, while the Plaice Box was established to reduce the level of discards of flatfish, particularly plaice in North Sea fisheries.

According to the aforementioned communication, the Shetland Box will keep the restricted access measures for another three years, while no date has been set for the Plaice Box as there is uncertainty over the length and extent of the study needed.

2. Allocation of resources and sustainable exploitation

a. The principle of relative stability

Fishing opportunities are allocated among the Member States in such a way as to ensure the relative stability of the fishing activities of each Member State for each stock concerned. This principle of relative stability is based in particular on historical catch levels and implies the maintenance of 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.

b. Sustainable exploitation

Conserving resources by **adjusting fishing capacity to catch possibilities** is one of the priorities of the common fisheries policy (CFP). To achieve sustainable exploitation, fish stocks have to be managed applying the **maximum sustainable yield** (MSY). 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. Sustainable exploitation also means to progressively implement the **ecosystem-based approach** to fisheries management.

B. Fisheries resource conservation

1. Total allowable catches (TACs) and effort limitations

a. Limiting 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.

b. 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 possibly the power of the vessel. With a view to ensuring greater flexibility, the Member State may transfer these days among the various units of their fleet.

c Technical measures

In general terms, they 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 types of **technical measures** are related to:

— fishing gear; the setting of minimum mesh size for nets, structure and number on board;

— the composition and limit of accidental catches of by-catches on board;

— the use of selective fishing gear to reduce the impact of fishing activities on marine ecosystems and non-target species;

— delimitations of zones and periods in which fishing activities are prohibited or restricted, including for the protection of spawning and nursery areas; and

— setting a minimum size for species that may be retained on board and/or landed.

In the case of a serious threat to the conservation of living aquatic resources, or to the marine ecosystem resulting from fishing activities and requiring immediate action, the Commission and the Member States (or the latter on their own initiative) may adopt **emergency measures** to protect fish stocks and to restore the balance of marine ecosystems that are in danger.

Alternatively, 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.

Also, when these measures are no less stringent than Community legislation, Member States may apply them **solely to fishing vessels flying their flag** in waters under their sovereignty and jurisdiction.

Finally, it is worth mentioning that **experimental fishing** projects serve to promote conservation and the investigation of selective fishing techniques to be implemented.

2. Long-term strategy for fisheries resources management

a. 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. Multiannual 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'.

3. Fleet management

Fleet management is a way of adjusting fishing capacity in order to bring about a stable and enduring balance between such fishing capacity and their fishing opportunities. Some ways to achieve this are:

— fixing the number of vessels and type authorised to fish (e.g. by fishing licences);

— fleet register as a means to control and monitor fishing capacity;

— entry:exit schemes and overall capacity reduction;

— reduction of fishing effort;

— reference levels;

— Member States' obligation to report on their fleet capacity;

— European Fisheries Fund (EFF) instruments to adjust fishing capacity.

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 following subjects.

— The Johannesburg Summit on Sustainable Development, that laid down a worldwide goal of 'reducing the rate of loss of biodiversity by 2010'; one of the basic demands of this strategy was the elimination of **destructive fishing practices**. Although this problem requires a specific approach in the fisheries sector, the EP in its report A6-0183/2008, supports the approach of tackling the problem in an integrated manner, in the light of the conclusions of the Green Paper on European maritime policy.

— The report on the communication from the Commission on the review of the **management of deep-sea fish** stocks (A6-0103/2008): the EP calls for more protection of deep sea species starting by improving the available scientific information.

— The report on a policy to **reduce unwanted by-catches and eliminate discards** in European fisheries (A6-0495/2007), where the EP sees as a positive change the expansion of the definition of discards to include both commercial and non-commercial species that are dumped over the side.

— Other important aspects where the EP has given its opinion, such as, inter alia, in report A6-0408/2007 on the proposal for a Council regulation establishing a multiannual **recovery plan for blue fin tuna** in the eastern Atlantic and Mediterranean.

— The proposal for a Council regulation on the **conservation and sustainable exploitation of fisheries resources under the common fisheries policy** (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).

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4.4.3. Fisheries structural assistance

Initially funded by the Financial Instrument for Fisheries Guidance (FIFG), the European fisheries policy will be funded by the European Fisheries Fund (EFF) for the period 2007–13. In fulfilling its objective, the EFF takes into account the environmental aspect and the necessity of diversifying the activities of fishermen. Other financial instruments, such as State aid, are also used for the funding of this policy.

Legal basis

Articles 32 to 37 and 158 of the Treaty establishing the European Community (EC); Articles 38 to 43 of the Lisbon Treaty (not yet in force).

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 European Agriculture Guidance and Guarantee Fund (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 5a (adaptation of fisheries structures), and its own financial instrument, the **FIFG**, by Council Regulation (EEC) No 2080/1993. As a response to the socioeconomic implications of restructuring in the sector, additional measures were adopted in parallel with the FIFG. 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 and premiums for young fishermen.

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 established the **new FIFG framework** for intervention for the period 2000–06, with a view to achieving a sustainable balance between fisheries 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, 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 were amended by Regulations (EC) No 2371/2002, (EC) No 2369/2002, (EC) No 179/2002, (EC) No 1421/2004 and (EC) No 485/2005. 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 and replaced the FIFG. It is intended to facilitate implementation of sustainable fishing measures and diversification of economic activities in fishing areas.

B. Structural policy instruments

1. **The multiannual guidance programmes (MAGP)**, ran from 1983 to 2002 in four phases and was a key element of structural policy. It was intended to adjust the size of the fleet in the EU Member States and adapt fishing effort to available resources. To achieve this goal each Member State had to calculate the reduction of capacity (tonnage and engine power) and, later, fishing effort (capacity times activity) for each segment of the fleet according to an established method of weighting targeted stocks. The Council approved the MAGP's reduction objectives and the Commission then approved the national programmes. However, the MAGP system to restructure the fleet proved to be ineffective mainly due to:
   - — the very low ambition of the objectives agreed by the Council;
   - — the inconsistency with the parallelism of aid to exit and aid to construction;
   - — the difficulties to measure engine power of vessels;
   - — no account being taken of the impacts of technological progress; and
   - — the introduction of fishing effort reduction (the weighting of effort reduction objectives was overly complex and led to perverse effects). Further, reduction objectives were watered down since Member States could achieve their targets by either the permanent withdrawal of vessels or by the temporary cessation of fishing activities (vessel tie-ups).
2. **Vessel scrapping** accounted for 94 % of the total number of vessels withdrawn with assistance from the FIFG during the period 1994–97, and around two thirds

of the total tonnage and engine power was withdrawn. The remainder has been withdrawn through assistance to joint enterprises or export of vessels to third countries.

3. **The 2002 CFP reform** spelled out an end to the MAGP and a simpler system was introduced for limiting the capacity of the European fleet. This system gave the Member States more responsibility for the management of their fleets. There are four main aspects.

   — the capacity of the fleet of each Member State must comply with a reference level (based on the final MAGP objectives of each fleet in 2002);

   — the use of strict entry:exit ratios for capacity of fleets: the applicable ratio depends on whether public aid is involved or not and the size of the vessel;

   — the conditions for granting public aid to the fleet are reviewed;

   — aid for construction of vessels: export to third countries and setting up of joint ventures was discontinued at the end of 2004.

   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).

   Member States only receive indirect encouragement to adjust fleets (capacity or effort) in relation to effort management regimes under recovery plans or to reduction in fishing opportunities (TACs).

C. The European Fisheries Fund (EFF)

The EFF has replaced the FIFG and will run during 2007–13. However, many FIFG measures are included in the new fund.

1. 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 common fisheries policy (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 environment-friendly fishing and production methods;

— providing adequate support for those employed in the sector;

— facilitating diversification of economic activity in areas dependent on fishing.

2. 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.

3. 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.

D. Other financial aid to the fisheries sector

a. **State aid:** General State aid guidelines for all industries are not a subsidy according to WTO rules. This includes grants and tax exemptions.

b. ***De minimis* aid:** A type of State aid implying EUR 30 000 per company over a three-year period. It has no distortive effect on the internal market or competition.

c. **Fuel aid:** A type of State aid addressed to alleviate fuel crises.

d. **Fisheries partnership agreements:** EU to third-country payment for access to fisheries. Some costs are recoverable from vessels owners. The main beneficiary is Spain.

e. **Minimum fish price guarantee:** A common market organisation instrument meaning direct aid in the case of government intervention, or self-financed when supported by producers' organisations.

Role of the European Parliament

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 FIFG, 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, and improvement of distribution channels (Resolutions: A4-0298/1997, A5-0396/2002, A5-0162/2003).

— 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 and 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. Finally, concerning the current fuel crisis, on 19 June 2008, MEPs passed a resolution supporting the fishermen and suggesting ways to help the beleaguered industry. In particular the EP called on the EU Commission to reconsider its rules of State aid (outlawed by EU law) and allow a maximum of EUR 100 000 for aid per boat rather than per fishing company.

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4.4.4. International fisheries relations

To gain access to key fishing areas of the world or to combat illegal fishing, the European Union (EU) has concluded 20 international fisheries agreements for 2007. The European Community (EC) concludes bilateral agreements such as partnership or reciprocity agreements, or multilateral agreements, such as international conventions or agreements, with regional fisheries organisations.

Legal basis

Articles 32 to 37 and 300 of the Treaty establishing the European Community (EC); Articles 38 to 43 of the Lisbon Treaty (not yet in force). On the basis of Articles 37, 300 and 310 of the EC Treaty**, Parliament's assent** is required for the adoption of international fisheries agreements. In addition, the European Parliament (EP) must be immediately and fully informed of any decision concerning the provisional application or the suspension of agreements. With regard to the ratification of international fisheries agreements, the Lisbon Treaty provides that they will be ratified by the Council after consent of the Parliament (Article 188N(10) of the Lisbon Treaty).

Objectives

— To ensure appropriate EU **access** to the world's main fishing zones and resources.

— To enhance bilateral and regional cooperation.

— To provide fish supply to European markets and to provide employment.

— To contribute to the sustainable development of world fisheries.

— To tackle destructive fishing practices.

— To improve scientific research and data collection.

— To combat illegal, unregulated and unreported (IUU) fishing.

— To strengthen control and inspections under the regional fisheries organisations.

Achievements

A. Role and importance

1. *Raison d'être*

Bilateral and multilateral fishing agreements became necessary after many non-member countries established exclusive economic zones (EEZs) of 200 nautical miles in the mid-1970s.

Later, in 1982, the United Nations adopted the Convention on the Law of the Sea (Unclos), aimed at being a constitution for the oceans, recognising coastal States' rights to control the fish harvest in adjacent waters. Although EEZs cover only 35 % of the total area of the seas, they contain 90 % of the world's fish stocks. Not only EEZs but the high seas are governed by the Unclos and that encourages States to cooperate with each which other in the conservation and management of living resources (including marine mammals) in the high seas by the establishment of regional fisheries organisations (RFOs). Unclos implied that distant water fishing fleets (DWFF) ´needed to enter into international agreements and/or other arrangements in order to get access to fisheries resources in either third countries' EEZs or in the high seas covered by an RFO. The principle of the freedom of the seas was over.

2. Financial investment and benefits for the European fleet

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). The high level of 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 was planned in the 2004 budget. In 2002, catches under the international agreements accounted for 20 % of all Community catches and were valued at approximately EUR 1 billion. The agreements provide for direct employment for about 30 000 people and generate considerable economic activity in sectors and regions heavily dependent on fishing. At the moment the most important agreement in terms of financial compensation and access rights is with Mauritania with EUR 86 million/year giving access to about 200 European vessels. Spain is historically the biggest beneficiary of external fishing agreements.

3. Geographical extension

Since the first agreement was signed with the United States in 1977, 29 agreements have been signed in all, 26 of which were in force in the period 1993–99, 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. In 2007, the EC had 20 fisheries agreements in force with coastal States in Africa (13), the Pacific (3) and northern countries (Iceland, Faroe Islands, Greenland and Norway). Regarding high seas fishing, the European fleet operates in the Atlantic, Mediterranean, Indian Ocean, Pacific Ocean and Antarctic, through arrangements with RFOs covering these areas.

B. Types of fishing agreement

1. Bilateral fisheries agreements

a. Fisheries partnership agreements (FPAs)

FPAs are an outcome of the 2002 reform of the CFP and the Johannesburg Summit on Sustainable Development. They were adopted by the Council conclusions (11485/1/04) on the Commission communication on an integrated framework for fisheries partnership agreements with third countries. The underlying idea is to become a partner with the third country for the development of sustainable and responsible fisheries and for the enhancement of the value of fisheries products. FPAs are also meant to underpin coherence with other policies such as development cooperation, environment, trade and health. All FPAs consist of a fisheries agreement and a protocol (e.g. defining the conditions of the agreement).

Under these agreements the European fleet gets access rights to the fisheries surplus in the EEZ of mostly ACP countries (also Greenland). In December 2007 the EU had 17 FPAs in force. The financial terms are based on a lump sum paid by the EC and fees from private shipowners. In addition to the financial compensation, agreements can include access to the European market at lower customs tariffs. The Community's financial contribution is justified by a mutual interest of the two parties to invest in sustainable fisheries policy and not just as a payment for access rights. Under current WTO rules this arrangement is not considered a subsidy. The contribution mainly covers expenses linked to management costs, scientific assessment of fish stocks, fisheries management, control and monitoring of fishing activities, and expenses for the follow-up and evaluation of a sustainable fishing policy. Unilateral commercial preferences granted by the EU under the Cotonou Agreement to ACP countries (and authorised by the WTO) terminated at the end of 2007. A new scheme called economic partnership agreements (EPAs), focusing mainly on commercial aspects (e.g. rules of origin, market access and sanitary and phytosanitary standards), was introduced as from 1 January 2008.

FPAs are particularly important for tuna fisheries (Cape Verde, Comoros, Côte d'Ivoire, Gabon, Kiribati, Madagascar, Mauritius, Micronesia, Mozambique, São Tomé and Príncipe, Seychelles and the Solomon Islands). Other agreements for mixed fisheries are in force with Greenland, Guinea, Guinea-Bissau, Mauritania and Morocco. In general, the duration of the protocol varies, from country to country, from two to six years.

b. Reciprocal agreements

These agreements involve an exchange of fishing opportunities between EU fleets and third countries. Norway, the Faroe Island and Iceland have had this type of agreement over the years. The reference base to guarantee an equal exchange is the 'cod equivalent' (one tonne of cod represents *x* tonnes of another species in exchange).

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, Sweden and the United Kingdom share 15 % of the volume. The agreement

with Norway represents more than 60 % by value, followed by Greenland (27 % of the total).

2. Multilateral agreements

a. Agreements with regional fisheries organisations (RFOs)

The aim of these agreements is to strengthen regional cooperation to guarantee conservation and sustainable exploitation of fish resources on high seas, and straddling stocks. Importantly, they also aim to deter IUU fishing. RFOs are varied in nature; some were created under the FAO, others independently; some manage biological resources in a certain zone, while others focus on a stock or groups of stocks. Some apply only on the high seas, some in exclusive economic zones and others in both areas.

When the EU Commission enters into negotiations with RFOs, its actions are twofold: becoming a member of the organisation (either as a contracting party or observer) and issuing regulations implementing into Community law the conservation and management measures adopted by the organisations. RFOs generally set up a commission responsible for scientific research and publish the results and recommendations for managing stocks. These may remain as recommendations or become mandatory if no objections are made within a certain period.

They generally act in:

— limiting catches by two methods: a global quota or national quotas;

— introducing prohibited zones of periods;

— banning or regulating fishing gear.

RFOs are also very active in establishing measures for the control and monitoring of fishing activities such as the adoption of joint inspection schemes in the North-East Atlantic Fisheries Commission (NEAFC), North-West Atlantic Fisheries Commission (NAFO) and the Commission for the Conservation of Antarctic Marine Living Resources (CCMALR).

The EU is contracting party in: **NAFO** (North-West Atlantic Fisheries Organisation); **NEAFC** (North-East Atlantic Fisheries Commission); **NASCO** (North Atlantic Salmon Conservation Organisation); **ICCAT** (International Commission for the Conservation of Atlantic Tunas); **CECAF** (Fishery Committee for the Eastern Central Atlantic); **WECAFC** (Western Central Atlantic Fishery Commission); **SEAFO** (South-East Atlantic Fisheries Organisation); **IOTC** (Indian Ocean Tuna Commission); **GFCM** (General Fisheries Commission) for the Mediterranean); **WCPFC** (Western and Central Pacific Fisheries Commission); **CCAMLR** (Commission for the Conservation of Antarctic Marine Living Resources).

The EU only has observer status in conventions agreed between individual Member States.

b. International conventions

Conventions and other agreements are used to create a legal order for the seas and oceans and promote their peaceful use, the equitable and effective utilisation of their resources, the conservation of their living resources, and the protection and preservation of the marine environment. The EU is party to the Unclos and has also collaborated in the development of other instruments to further develop the Unclos, including:

— the FAO agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas (1993);

— the FAO code of conduct for responsible fisheries (1995);

— the FAO New York Agreement on straddling fish stocks and highly migratory fish stocks.

Role of the European Parliament

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. Furthermore, Parliament has addressed the question of 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.

→ Ana Olivert-Amado
July 2008

4.4.5. Fisheries control and enforcement

Fisheries control and enforcement aims to ensure good application of regulations regarding fisheries and to impose compliance with these rules where necessary. In this respect, competences and responsibilities are shared among Member States, the Commission and the operators. Member States which do not comply with these rules can be prosecuted in accordance with the infringement procedure.

Legal basis

Article 32 to 37 of the Treaty establishing the European Community (EC); Articles 38 to 43 of the Lisbon Treaty (not yet in force).

Objectives

The control policy seeks to ensure fisheries regulations are observed and where necessary to enforce compliance. 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.

Achievements

A. Background

1. Control and enforcement systems before the 2002 common fisheries policy (CFP) reform

The control and enforcement of fishing activities by Member States before the 2002 reform was hindered by poor enforcement of the rules, modest compliance and overfishing. This was the result of an ineffective control system, the main problem being the lack of uniformity in the way Member States were enforcing the CFP, e.g. different administrative services, legislation and judicial proceedings. At the EU level there were some bottlenecks as well; there was no list of sanctions to be applied by Member States in the case of serious infringements of CFP rules, nor did the Commission inspectors have powers beyond the inspectors of the Member States. At the international level, there was a need to better define the competences of the Commission and the Member States within regional fisheries organisations (RFOs).

2. Control and enforcement systems after the 2002 CFP reform

The reformed CFP (Regulation (EC) No 2371/2002) brought new changes aiming at overcoming these deficiencies by the adoption of the following measures.

a. Greater cooperation in enforcement and creation of a joint inspection structure (JIS): This was provided for in the action plan for the uniform and effective implementation of the CFP (COM(2003) 130). The JIS was to ensure the pooling of Community and national inspection and monitoring resources through the Community Fisheries Control Agency (CFCA).

b. Clarification of competences of the players in the fisheries sector

- **Member States** are responsible for the implementation of CFP rules on their territory and in their waters and also for the vessels flying their flags operating outside these waters. Member States are also responsible for placing observers on board and taking decisions, including the prohibition of fishing activities.
- **The Commission** must ensure that the Member States meet their obligations equally in terms of equity and effectiveness. Every three years, it shall draw up an evaluation report to be submitted to the European Parliament and the Council on its action on the application of the CFP rules by the Member States.
- **The operators** involved in all fisheries activities, from catching to marketing, transporting and processing, must comply with the specifications of domestic law in each stage of the production.

c. More harmonised application of the rules: Sanctions within Member States continue to vary and this acts as a constraint to the uniform achievement of common level of compliance. The Council shall draw up a list of sanctions to be applied by Member States for serious infringements.

d. Ensuring commitment by Member States: The reform has granted more autonomy to the Commission in the control of Member States' fishing activities (e.g. Community inspectors can now undertake inspections on fishing vessels and premises of businesses or other bodies related to the CFP without being accompanied by an inspector of the Member State concerned and the Commission can deduct fishing quota when Member States have failed to cease overfishing). There is another measure (the CFP compliance scoreboard) that, by raising public awareness on the performance of Member States in their control and enforcement activities, aims to achieve better compliance.

B. Cooperation, control and inspection

EU fishing vessels operate in EU waters, in the waters of third countries and on the high seas. Member States are responsible to enforce CFP rules on all vessels fishing in their waters and on vessels flying their flag outside their waters. Member States shall cooperate with EU inspectors and with other Member States to ensure compliance with the rules of the CFP.

1. Cooperation between Member States and the Commission

Member States may collaborate with EU inspectors in the undertaking of their duties and shall report to the Commission on diverse aspects such as resources allocated to monitoring, breakdown of surveillance activities and number and types of violations and sanctions applied.

2. Cooperation between Member States in inspection

Member States shall be authorised to:

— exchange inspectors;

— inspect vessels flying their flag in all Community waters except the 12-mile zone of another Member State;

— inspect 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 34c of Regulation (EEC) No 2847/93);

— inspect vessels of another Member State in international waters.

In other cases, Member States must authorise each other to carry out inspections.

3. Joint inspection structure

Access to Community waters and resources is limited to fishing vessels in possession of a fishing licence and authorisation to fish. They are also required to have tracking devices properly installed and functioning on board, such as a vessel monitoring system (VMS). Masters of fishing vessels shall report catches and landings. They shall cooperate with inspectors on board their vessels and comply with conditions for landing, trans-shipment, marking and identification of vessels and fishing gear among others. Regarding the marketing of fisheries products, they can only be sold from fishing vessels to registered buyers or auctions. All these activities are to be controlled and inspected by Member States and Commission inspectors. The JIS aims at organising a joint deployment of national means of control and inspection according to an EU strategy to tackle enforcement of fisheries rules.

a The Community Fisheries Control Agency (CFCA): This was set up in 2005 as a key element to improve compliance with the CFP rules. It will improve uniform and effective enforcement by pooling EU and national means in the control, inspection and monitoring of fishing activities and coordinating them (joint deployment plans). This operational coordination will help tackle the shortcomings in enforcement resulting from the disparities in the means and priorities of the control systems in the Member States. The CFCA does not affect the distribution of competences of the Member States and the Commission, where Member States remain responsible for control and enforcement of the CFP rules.

C. Enforcement and infringement procedures

1. Harmonisation of the rules

Setting up common obligations to be applied to all Member States is a step towards better enforcement. These are some of the measures in place.

a. Traceability: In order to reduce infringements during fishing operations or after landing, it also provides consumers with extra information on the fisheries products at every stage of the distribution chain. There are some obligations related to traceability, thus, a number of **documents** shall accompany fisheries products for their identification from the net to the plate. Fishing vessels, including third-country vessels, operating in EU waters shall be equipped with satellite tracking devices such as a **VMS** to facilitate stricter monitoring of their activities.

b. List of types of behaviour that seriously infringe the rules of the CFP: The breaking of fisheries rules is not only limited to fishing activities at sea, but also includes those involved in landing, selling, storing, transporting and importing fish. Types of behaviour that seriously infringe EU rules are listed in Regulation (EC) No 1447/1999. In the NAFO area, there is an agreement between the contracting parties on what constitutes serious violations.

2. Enforcement by Member States

In line with their reporting obligations, enforcement achieved by Member States on fisheries rules is public via the CFP compliance scoreboard. The yearly reports submitted to the Commission by the Member States are related to:

— catch reporting obligations;

— quota overruns;

— fishing effort declarations;

— fleet register, compliance with entry:exit regime framed by the reference levels and other obligations related to fishing vessels;

— the use of structural aid;

— environmental issues (e.g. authorised vessels using driftnets, shark finning).

3. Infringement procedures

This heading covers any procedure adopted by the Commission and formally initiated against a Member State for failure to comply with Community law. The most procedures common are due to:

— overfishing, quota overruns, unauthorised fishing;

— misreporting of data on catch and fishing effort;

— lack of control of technical conservation measures (e.g. use of driftnet to catch tuna after the ban and the catch and marketing of undersized fish);

— ineffective control and inspection of the fishing industry.

Role of the European Parliament

The European Parliament has always supported the adoption of effective control and enforcement measures and the **reports** indicated below concern these matters.

— Report on the proposal for a Council regulation establishing a Community **system to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing** (A6-0193/2008). The EP made a number of demands, such as: improved implementation of the CFP provisions to reduce IUU fishing by EU vessels; a ban on trade in IUU fish; the requirement that the legal origin of fish be demonstrated before being offloaded or imported into the EU; the creation of a Community register of IUU vessels; common minimum penalties for infringements; and a ban on the entry into EU ports of IUU vessels and their fish.

— Report on the proposal for a Council regulation concerning **authorisation for fishing activities** of Community fishing vessels outside Community waters and the access of third-country vessels to Community waters (A6-0072/2008). The EP supports this proposal, which is part of the 'simplification' of the CFP, setting up general rules for applying/issuing licences to fish, clarifying the responsibilities of the Commission and the Member States and specifying the reporting requirements of fishing activities. It also contains innovative ideas that would improve compliance with the terms of fisheries agreements and bring greater transparency to the activities of EU vessels in third-country waters. Although it is not clear to what extent the proposal will be modified in the Council, and whether certain aspects will end up included in the 'control regulation', Parliament considers that the provisions of this proposal are very important to maintain.

→ Ana Olivert-Amado
July 2008

4.4.6. The European fishing industry in figures

In 2005 the EU was in third place in the world, after China and Peru, in terms of fishing production and aquaculture, with 4 % of world production. However, the EU makes 6 % of world catches. Five Member States (Denmark, Spain, France, the Netherlands and the United Kingdom) take 60 % of EU catches but Denmark uses most of its production to manufacture fishmeal. The Community fleet is gradually declining in size. Aquaculture production seems to have levelled off although the production of new species may still grow. In spite of its own production level the European Union is a net importer of fisheries products.

Catches

Following a period of continuous growth, world **catches** seem to have reached a ceiling, at 145 million tonnes. Despite the European Union's enlargement EU production has been gradually declining (by 21 % between 1992 and 2006) 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 2005, Community production accounted for only 6 % of world catches. In 2006, 75 % of Community catches were caught in the North-East Atlantic, 11 % in the Mediterranean and Black Sea, 8 % in the mid-eastern Atlantic and 3 % in the western Indian Ocean.

In 2006 five Member States (Denmark, Spain, France, the Netherlands and the United Kingdom) accounted for 60 % of Community production. There are structural differences between these five countries. In Denmark, 69 % of production is for industrial use, mainly the production of fishmeal, 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. Of the catches by the 10 States which acceded to the European Union in 2004, 97 % are shared by the four countries which border the Baltic Sea. Of these four States, only in Lithuania had catches remained stable over the previous decade. In contrast, catches in Poland had fallen by 54 %, those in Estonia by 34 %, and those in Latvia by 21 %.

The fleet

In spite of the 2004 enlargement, between 1997 and 2004, the EU's fishing fleet has been reduced by 15 %, from 102 404 to 87 004 vessels. The reduction in the fleet's tonnage was 3 % and the reduction in its engine power was 12 %.

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 % belonged to the four countries bordering the Baltic, and those same four countries accounted for 85 % of the tonnage and 66 % of the engine power of the fleet of the new Member States.

In 2006, Greece owned 21 % of the total number of fishing vessels, followed by Italy (16 %), Spain (15 %) and Portugal (10 %). Those four countries plus France and the United Kingdom represented 62 % of the fishing vessels of the European Union of 27 Member States.

Spain represents 25 % of the total **tonnage** of the Community fleet (481 000 tonnes), followed by the United Kingdom (216 000 tonnes or 11 %), France (209 000 tonnes or 11 %), Italy (206 000 tonnes or 10 %), and the Netherlands (195 000 tonnes or 9 %). Member States in the south represent 57 % of the total tonnage but 74 % of the number of vessels, owing to 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 Greece, Ireland, France, Poland and the United Kingdom more than 50 % 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, after the 2004 enlargement the number of EU vessels was 16 % and tonnage 21 % of the figure for the fishing fleet as a whole However, the total engine power for vessels less than 12 metres long increased by 3 %.

Aquaculture

Between 1993 and 2005 Community aquaculture production increased by 27 %, 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 2005 aquaculture represented 24 % of the volume of catches. Community aquaculture is mostly concentrated on four species: mussels, trout, salmon and oysters. However, the production of species such as sea bass, sea bream and turbot is growing. Five countries (France: 20 %, Spain: 17 %, Italy: 14 %, UK: 14 % and Greece: 8 %) account for 74 % of Community aquaculture production by volume. 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 for aquaculture. France represents 19 % of the value of aquaculture production, while Italy and the United Kingdom each represent 17 %, Greece 12 % and Spain 10 %.

External trade

The European Union is a net importer of fishery products, with a negative trading balance which in 2006 amounted to 3.9 million tonnes, with a value of EUR 13.8 billion. Both imports and exports are showing a tendency to rise, though this is more pronounced in the case of imports. In 2006, the European Union imported 6 236 330 tonnes with a value of EUR 17.298 billion. In the same year, the EU exported 1 328 390 tonnes with a value of EUR 2.525 billion. The average unit price of exports was EUR 1.5/kg, while that of imports was EUR 2.8/kg.

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
July 2008

4.5. Regional and cohesion policy

4.5.1. Economic and social cohesion

The EU's regional policy began in 1975 with the creation of the ERDF, although solidarity mechanisms such as the ESF and the EAGGF have existed since the Treaty of Rome. This policy has been financed by several instruments including the ERDF, the Delors I package, the Delors II package and Agenda 2000; its aim is to reduce differences between regional development levels.

Legal basis

Articles 158 to 162 of the Treaty establishing the European Community (EC) (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; European Regional Development Fund) and the creation of a Cohesion Fund.

Achievements

A. Background

The Treaty of Rome makes no provision for regional policy but only for solidarity mechanisms in the form of two Structural Funds: the European Social Fund (→4.9.2) and the European Agricultural Guidance and Guarantee Fund — Guidance Section (→4.2.5).

Regional policy was only put in place after the Community's first enlargement (1973), with the creation of the European Regional Development Fund (ERDF) in 1975. But for a long time it had only modest resources, which prevented it from having any real impact.

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, which entailed a reform of their operational rules.

That reform was introduced by way of Council Regulation (EEC) No 2052/88 (the implementing provisions being laid down in Regulation (EEC) No 4253/88). The fundamental principles of the new rules were the following.

— 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.

— The additionality of Community and national 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 provided for a doubling of the amount allocated to the Structural Funds over the following five years (see the summary table at the end of the text).

2. Developments following the Maastricht Treaty

a. Contribution of the Treaty

The Maastricht Treaty provides for:

— submission by the Commission of a report to the Council and Parliament every three years on the progress made towards achieving economic and social cohesion (second paragraph of Article 130b);

— the possibility of 'specific actions' outside the Structural Funds (third paragraph of Article 130b);

— the creation of a Cohesion Fund (second paragraph of Article 130d).

It also reformed the decision-making procedures, making the vote on the general rules subject to the assent procedure (first paragraph of Article 130d).

b. A new and substantial increase in the amount of the Structural Funds

Just after the Maastricht Treaty was signed, the Commission proposed a considerably higher level of funding, known as the '**Delors II package**'. The European Council, meeting in Edinburgh in December 1992, approved only part of the proposals and planned to stagger the expenditure. 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), this reform had a twin scope: integration of all structural measures into the overall strategy to combat unemployment and development of 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 5b;

— 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

This Fund, which is provided for under the Maastricht Treaty, was set up in March 1994 (→4.5.3).

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 (Council Regulation (EC) No 1260/99). This reform aimed to:

— concentrate aid further;

— simplify and decentralise the way the Funds operated;

— increase their efficiency through better evaluation and monitoring;

— consolidate the principle of additionality.

On the same occasion, the Financial Instrument for Fisheries Guidance (FIFG, →4.4.3) became a separate fund — the European Fisheries Fund.

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, including EUR 7 billion for the new 'Instrument for Structural Policies for Pre-Accession' (ISPA). This instrument was approved by the Council in December 1997 in the context of Agenda 2000, which was intended, inter alia, to help the central and east European applicant countries to adapt to the requirements of EU membership (→6.3.1).

D. Strategic guidelines for cohesion policy after 2007 (→4.5.2)

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 (Lisbon and Gothenburg commitments on a competitive and sustainable knowledge-based economy and European employment strategy);

— more focused on the least favoured regions, while anticipating developments in the rest of the EU;

— more decentralised and implemented more simply, transparently and effectively.

E. Changes introduced by the Lisbon Treaty

The Treaty signed in Lisbon on 13 December 2007, which has yet to be ratified, introduces the following changes (as reflected by the consolidated versions of the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU)):

— introduction of the concept of 'territorial cohesion' and recognition of this as an objective of the Union (third paragraph of Article 3 TEU);

— inclusion of 'territorial cohesion' among the shared responsibilities of the Union (Article 4(2)(c) TFEU);

— substitution of the assent procedure with the ordinary legislative procedure (co-decision) (Article 177 TFEU) for the vote on the general rules on the Structural Funds;

— recognition in the Charter of Fundamental Rights (although this was not taken over in the Treaty) of the 'national identities of the Member States and the organisation of their public authorities at national, regional and local levels';

— application of the principle of subsidiarity not only in the definition of relations between the European institutions and Member States, but also to local and regional authorities (Article 5(3) TEU);

— introduction of a provision concerning actions before the Court of Justice for violation of the principle of subsidiarity, which lays down that 'the Committee of the Regions may also bring such actions against legislative acts for the adoption of which the Treaty on the Functioning of the European Union provides that it be consulted' (Article 8 of Protocol No 2 on the application of the principles of subsidiarity and proportionality);

— strengthening of the provisions relating to the outermost regions (Article 107(3)(a) TFEU) in view of their structural, economic and social situation.

Role of the European Parliament

The European Parliament (EP) has invariably supported economic and social cohesion as an essential precondition for solidarity in order to maintain EU values, and has thereby facilitated consolidation of its position as an essential aspect of European integration, on a par with the single market and monetary union. In this connection, it has promoted the idea that the amounts allocated must be of a sufficiently high level to ensure its effectiveness. The EP has always vigorously supported the proposals, which it considers the minimum necessary, to increase allocations to the Structural Funds.

It therefore took a hand in the **1993 reform**, stressing the need for sufficient funding. It persuaded the European Commission in July 1993 to accept a code of conduct on implementing structural policy which binds it closely to the establishment of 'Community support frameworks' (→4.5.2) 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 irregularities.

Parliament was also able to influence the **1999 reform** thanks to its new power to give assent for the general rules on the Structural Funds. It expressed its position in particular in its resolution of 19 November 1998, and the 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 vote on the implementing measures, it secured in advance application of the co-decisional powers granted to it by the Amsterdam Treaty. The code of conduct with the Commission has been extended to include all the structural instruments (6 May 1999).

Thanks to its cooperative approach, the EP 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 ((EEC) No 1083/2006) 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.

The EP played an active role in all the preliminary phases leading up to the signing of the **Lisbon Treaty**. It obtained satisfaction on many issues, including:

— introduction of the concept of 'territorial cohesion';

— substitution of the assent procedure with co-decision for the vote on the general rules on the Structural Funds;

— fleshing-out of the definition of the principle of subsidiarity;

— strengthening of the specific provisions relating to the outermost regions.

The EP has therefore managed to consolidate its **legislative powers**, which have increased over time:

— Single Act: cooperation with the Council for the vote on the general rules on the Structural Funds;

— Maastricht Treaty: assent procedure for the vote on the general rules;

— Amsterdam Treaty: co-decision with the Council for the vote on the implementing measures applicable to the general rules;

— Lisbon Treaty: co-decision with the Council for the vote on the general rules.

→ Ivana Katsarova
July 2008

Trend in the allocation to the structural funds

	1988–92 (EU-12)	1993–99 (EU-12/EU-15 (1))	2000–06 (EU-15/EU-25 (2))	2007–13 (EU-25/EU-27 (3))
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

(1) Accession of Austria, Finland and Sweden in 1995.
(2) Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia in 2004.
(3) Accession of Bulgaria and Romania in 2007.

4.5.2. The European Regional Development Fund (ERDF)

The ERDF is the main regional policy instrument; it is intended to reduce regional imbalances. It has been reformed several times. It has three main objectives for the period 2007–13: convergence, regional competitiveness and employment and European territorial cooperation.

Legal basis

Articles 158 to 162 of the Treaty establishing the European Community (EC).

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 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 (→4.5.1). '**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 (→4.5.1) 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 5b, development of rural regions;

— Objective 6, fostering the Arctic regions (this objective was included when Sweden and Finland joined).

In all, 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 (→4.5.1)

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 to two objectives.

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 5b 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

— Regions 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 region for Objective 2: 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 5b in 1999 but are no longer eligible in 2000.

4. Community initiatives

The relevant sectors are:

— 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 proposal for a regulation on the ERDF, which was adopted in July 2006. The new regulation ((EC) No 1080/2006) came into force 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 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 2 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 3 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. In all, 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 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.

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
January 2007

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: European employment strategy	ERDF
—	ESF		ESF
Objective 3	ESF		—
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

4.5.3. The Cohesion Fund

The Cohesion Fund was set up in 1994. It provides funding for environmental projects and trans-European network and transport infrastructure projects. It also finances preparatory studies associated with these projects and technical support measures.

Legal basis

Article 161 of the Treaty establishing the European Community (EC), 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 (EEC) No 1164/94, modified by Regulations (EC) No 1264/99 and (EC) No 1265/99).

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 104c of the Treaty; this concerns excessive government deficits in the context of coordinating economic policies as part of economic and monetary union. Four Member States qualify: Ireland, Greece, Spain 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 (130r) 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 (ex Article 130s) and are in line with the priorities given to Community environmental policy by the fifth programme of policy and action in relation to 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 (ex Article 129c) of the Treaty; however, other **trans-European network** projects contributing to achieving the objectives of Article 154 (ex Article 129b) of the Treaty may be financed until the Council adopts appropriate guidelines (→4.7.2).

— **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 Parliament, the Council, the Economic and Social Committee and the Committee of the Regions.

C. Volume of aid

1. The Fund's resources

a. 1993–99

The total volume of resources that could be committed under the Fund was just over ECU 15 billion.

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. 2000–06:

Regulation (EC) No 1264/1999 set the total resources available for commitments at EUR 18 billion at 1999 prices.

Following the Union's enlargement on 1 May 2004, the Cohesion Fund applied 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 period 2000–06 (Greece, Spain and Portugal). Spain was no longer eligible after 1 January 2007.

The act concerning the conditions of accession of the 10 new Member States granted a total of EUR 7.59 billion in commitment appropriations at 1999 prices for those countries between 1 May 2004 and 31 December 2006. How the overall resources of the Fund were allocated among the Member States depended on a number of criteria: each country's population and area, its per capita GNP and socioeconomic factors such as its infrastructure. However, the total amount that these Member States received from the Cohesion Fund each year, together with the assistance they received from the Structural Funds, could not exceed 4 % of their GDP.

c. Programming period 2007–13

The new regulation ((EC) No 1084/2006) sets out the general provisions for the operation of the Cohesion Fund and lays down that it contributes to the convergence objective (→4.5.2) 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 billion (for the period 2000–06) to EUR 61 billion for the new programming period (EUR 58 billion plus EUR 3 billion 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 130d). 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 European Parliament was actively involved in drawing up the new regulation ((EC) No 1084/2006), which covers 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 these proposals.

→ Ivana Katsarova
January 2007

4.5.4. The Solidarity Fund

The Solidarity Fund enables the EuropeanUnion to provide financial support to a Member State or region in the event of a major natural disaster. Under the new Commission proposal setting up a new EU Solidarity Fund, Commission assistance may not exceed 50 % of the total cost of eligible actions.

Legal basis

The third paragraph of Article 159 and Article 308 of the Treaty establishing the European Community (EC).

Objectives

The Solidarity Fund is intended to provide a Member State or a region with speedy, effective and flexible support in dealing with the damage caused by a disaster that has entailed public expenditure.

Achievements

The Solidarity Fund was set up under Council Regulation (EC) No 2012/2002 of 11 November 2002 to deal with natural disasters.

A. Scope

The Solidarity Fund is used mainly in cases of major natural disasters with serious repercussions on living conditions, the natural environment or the economy in one or more regions of a Member State or a country applying for accession. A natural disaster is considered as 'major' if:

— in the case of a State, it results in damage estimated either at over EUR 3 billion (2002 prices), or at more than 0.6 % of its gross national income;

— in the case of a region, if the 0.6 % threshold is not reached, it results in damage affecting the major part of its population, with serious and lasting repercussions on living conditions and economic stability; in this context, particular attention is paid to remote and isolated regions, for example the outermost and island regions.

In these specific cases, the annual amount available is limited to no more than 7.5 % of the annual amount allocated to the Solidarity Fund (i.e. EUR 75 million).

B. Assistance mechanism

1. Eligible actions

Assistance from the Fund takes the form of a single and global grant, with no necessary co-financing,

complementing the public efforts of the beneficiary State. Intended to finance measures alleviating non-insurable damage in principle, the urgent actions eligible for the Fund are:

— immediate restoration to working order of infrastructure and plant in the fields of energy, drinking water, wastewater, telecommunications, transport, health and education;

— providing temporary accommodation and funding rescue services to meet the immediate needs of the population concerned;

— immediate securing of preventive infrastructures and measures of immediate protection of the cultural heritage;

— immediate cleaning up of disaster-stricken areas, including natural zones.

2. Submission of the application

No later than 10 weeks after the first damage caused by the disaster, the State affected should submit an application to the Commission for assistance from the Fund. It should provide all possible information on the damage caused by the disaster and its impact on the population and the economy. It must estimate the cost of the foreseen assistance and indicate any other sources of national, Community and/or international funding.

3. Payment of the subsidy and recovery

Beneficiary Member States must seek all possible reimbursement from third parties. On the basis of this information, the Commission will decide if the Solidarity Fund may be mobilised and, if that is the case, to accord a grant to be paid immediately and in a single instalment. If the final estimation of the damage is substantially lower than the first forecasts on the basis of which the State demanded the grant, the Commission will ask for reimbursement of the difference.

4. Implementation

The beneficiary State is responsible for the implementation of the grant and, where applicable, for the coordination with other Community funds in order to ensure their complementarity. However, it is not possible for the actions undertaken by the Solidarity Fund to be double financed by the Structural Funds, the Cohesion Fund, the European Agricultural Guidance and Guarantee Fund (EAGGF), ISPA or Sapard.

5. Use of the subsidy

The grant must be used within one year of the date on which it has been disbursed. The beneficiary State must reimburse any part of the grant remaining unused. Six months after the expiry of this period, it is to present a report on the financial execution to the Commission. This document should detail the expenditure eligible for the Solidarity Fund as well as all other funding received, including insurance settlements and compensation from third parties.

6. Insufficient financial resources

On 1 October each year, at least one quarter of the annual amount allocated to the Solidarity Fund should remain available in order to cover needs arising at the end of the year. In exceptional cases and if the remaining financial resources of the Fund prove insufficient, the Commission may decide to use part of the amount foreseen for the following year.

C. Amount of aid

At 15 June 2006, the following amounts had been mobilised under the Solidarity Fund:

— EUR 728 million for regions devastated by floods, divided in the following way: EUR 444 million for Germany, EUR 134 million for Austria, EUR 129 million for the Czech Republic and EUR 21 million for France (Decision 2002/1010/EC of the European Parliament and of the Council of 21 November 2002);

— EUR 48.539 million for regions in Portugal affected by fires (Decision 2003/786/EC of the European Parliament and of the Council of 9 October 2003);

— EUR 56.25 million for regions in Italy (affected by a natural disaster) and regions in Spain (damage caused by the *Prestige* oil tanker) (Decision 2003/785/EC of the European Parliament and of the Council of 9 October 2003);

— EUR 21.9 million for regions struck by fires in Spain and regions affected by floods in Malta and France (Decision 2004/323/EC of the European Parliament and of the Council of 30 March 2004);

— EUR 5.67 million for Slovakia, following a storm that had catastrophic effects (Decision 2005/706/EC of the European Parliament and of the Council of 7 September 2005);

— EUR 92.88 million for Estonia, Latvia, Lithuania and Sweden following a storm that had catastrophic effects (Decision 2006/12/EC of the European Parliament and of the Council of 17 November 2005).

D. New Commission proposal

The proposal for a European Parliament and Council regulation of 6 April 2005 establishing the European Union Solidarity Fund (COM(2005) 108 final) is intended to provide a more appropriate response to acts of terrorism and public health emergencies. The Commission drew up this proposal in response to the revision clause in Regulation (EC) No 2012/2002 scheduled for the end of 2006. The new regulation was due to enter into force in January 2007.

1. Scope

The new financial instrument provides financial assistance to the Member States and the countries currently negotiating EU membership. The use of the Fund to assist countries that are not (yet) Member States is based on a specific provision in the Treaty of Nice governing economic and financial cooperation with non-EU countries.

Community financial assistance is provided in cases where the extent of the damage caused by a disaster is such that it hampers a country's ability to respond effectively. The extent of a disaster is determined according to:

— a quantitative criterion, when the amount of direct damage is estimated to be either EUR 1 billion or more (in 2007) or 0.5 % of the affected country's gross national income; regional and local disasters causing damage at a level below this threshold are the responsibility of the Member State concerned, although they may be eligible for assistance from other Community funds;

— a political criterion, which will allow the Commission to propose the Fund be used for emergencies in cases where the material damage alone would not normally qualify for assistance; this is particularly useful for dealing with the consequences of acts of terrorism.

Having a single fund focusing solely on large-scale disasters will ensure the aid is as effective as possible.

2. Assistance mechanism

a. Eligible actions

Assistance is granted to finance emergency measures by public authorities or bodies in Member States. Eligible actions include:

— restoring essential infrastructure for power generation, water supplies and sewage, telecommunications, transport, health and education;

— immediate medical assistance and measures to protect against imminent health threats, mainly by providing drugs, medical products and vaccines;

— providing temporary accommodation and immediate disaster-relief measures for victims;

— setting up emergency preventive systems;

— emergency measures to protect the local culture and environment;

— emergency clean-up operations in the disaster area;

— medical, psychological and social assistance for direct victims of terrorism and their families.

b. Making a request and payment of the aid

To receive aid, eligible countries must send a request to the Commission within 10 weeks of the disaster.

The Commission will determine the appropriate amount of aid, which can never be more than 50 % of the total cost of the eligible operations, and ask the budgetary authority to release these funds. They can be paid as soon as the amounts have been entered in the Community budget and an implementation agreement concluded between the beneficiary country and the Commission.

c. Advance

There is also a new fast-track relief mechanism by which an advance of 5 % of the estimated amount (no more than EUR 5 million) can be paid for the most urgent measures.

d. Annual report

Before 1 July every year, the Commission will present a report to the Parliament and the Council setting out the activities of the Solidarity Fund.

Role of the European Parliament

The European Parliament gave its views at first reading on 18 May 2006 (T6-0218/2006). It made the following improvements to the original proposal.

— **Definition of the term 'disaster':** any major destructive event that occasions serious harm to the population and the environment, including events, such as terrorist attacks, caused by people.

— **Reducing the damage threshold**: reducing the damage threshold from 0.6 % of the GNI to 0.5 %, or from EUR 3 billion to EUR 1 billion.

— **Financing**: under the Interinstitutional Agreement on the financial perspective, the Solidarity Fund should be financed outside the financial framework with a maximum amount of EUR 7 billion over seven years. It should also should be included in the flexibility reserve.

— **Political assessment**: the Commission may, in exceptional and duly justified circumstances, recognise that a major disaster has occurred on a specific territory of an eligible State.

— **Scope**: Parliament extended the scope of the financial assistance to: essential operations to restore the operation of infrastructure and installations relating to energy, drinking water and wastewater, telecommunications, transport, health and education; immediate medical assistance and measures to protect the population in the event of a major health crisis; essential emergency operations for the immediate tackling of natural disasters; immediate medical assistance to the direct victims of major disasters and terrorist attacks.

— **Time limit**: in view of the difficulties of assessing all the damage rapidly, Parliament asked that in certain cases the time limit should be extended to 10 weeks.

— **Polluter pays principle**: the Solidarity Fund should not be used to relieve those responsible of their responsibility for a disaster. The Member States should therefore be advised to create an effective legal framework and legal system to ensure that, as far as possible, those responsible are held liable for industrial accidents.

It also asked that particular attention should be given to isolated, island or outlying regions.

The European Parliament is awaiting the common position of the Council. A majority of the Council currently opposes a revision of the current rules and negotiations have not been resumed since the first quarter of 2006, during the Austrian Presidency.

→ Ivana Katsarova
January 2007

4.6. Transport policy

4.6.1. Transport policy: general principles

Transport policy is one of the first policies included in the Treaty of Rome. Alongside the opening of transport markets and the creation of fair conditions of competition, the model of 'sustainable mobility' in particular has increasingly gained significance in recent years.

Legal basis

Article 3(1)(f) and Title V of the Treaty establishing the European Community (EC) (Treaty of Lisbon: Article 4(2)(g) and Part Three, Title VI, of the Treaty on the Functioning of the European Union).

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 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** entitled '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 seriously threatened endangering 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 transports' 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. Among the announced measures was a plan of action for improving road transport safety, improvement of user rights and 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 proceedings initiated against the Council because of its failure to act. In the 22 May 1985 judgment in Case 13/83, the Court of Justice of the European Communities 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, or it had already put such measures in place. 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; and (e) a programme for environmentally friendly fuels in road transport.

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.

The Treaty of Lisbon will not result in any substantial changes to the European transport policy.

2. General attitude

A 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 European Parliament 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 European Parliament 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: 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.

In its resolution of 12 July 2007 on the mid-term review of the transport White Paper, the European Parliament acknowledged the achievements in some transport policy fields and welcomed in principle the further measures envisaged by the Commission in this mid-term review. However, it also pointed out numerous existing challenges for the EU transport policy and drew up a comprehensive list of measures.

In its resolution of 11 March 2008 the European Parliament drew up numerous recommendations for environment-, climate- and energy-policy action under the European transport policy. Parliament proposed a policy mix of technological improvements, market-based instruments and flanking measures to reconcile environmental, transport and energy policies. Among other things, it called for demand management measures (for example congestion charges and road pricing), emissions-based differential take-off and landing charges at airports, and the reduction of CO_2, SO_2 and NOx emissions from shipping.

On 9 July 2008 the European Parliament adopted a resolution on the Commission Green Paper 'Towards a new culture for urban mobility'. Parliament called for the development at European level of an integrated global approach to urban mobility intended to serve as a common frame of reference for European, national, regional and local players (municipalities, citizens, businesses and industry). Parliament highlighted the following areas, among others: the importance of integrated and comprehensive sustainable urban mobility plans (SUMPs) with an emphasis on long-term city planning and spatial planning; **research and development in the field of sustainable transport;** and the EU's role in the development and promotion of intelligent transport systems (ITS) and in funding innovative technologies.

→ Nils Danklefsen
July 2008

4.6.2. Land transport: market access

Land transport concern the fields of road transport, railways, urban, suburban and regional transport. Numerous regulations and directives were adopted at EU level to create a single European market for transport.

Legal basis

Title V of the Treaty establishing the European Community (EC), and in particular Article 71 (Treaty of Lisbon: Title VI, and in particular Article 91 of the Treaty on the Functioning of the European Union).

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 (EEC) 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 entitles companies holding a Community licence granted by a Member State to provide freight transport services in another Member State — albeit on condition that these services be provided only temporarily. However, in the case of Member States acceding in 2004 (with the exception of Malta, Cyprus and Slovenia), the Accession Treaties provided for staggered transitional periods of up to five years.

c. New Commission proposals

The above legal framework created the conditions for a liberalised road freight transport market in the European Union. However, in order to create fair conditions of competition, further harmonisation was needed in terms of social, technical and fiscal conditions (see 4.6.3).

Owing to difficulties in implementing and controlling the concept of temporary cabotage and a degree of legal uncertainty arising from the unequal application of certain national rules, the Commission proposed, in May 2007, a recast of the rules for access to the international road haulage market (COM(2007) 265). The substantial modifications proposed by the Commission include:

— a simpler, clearer and enforceable definition of 'cabotage' (three transport operations consecutive to an international journey and within seven days);

— a simplified format for the Community licence;

— enhanced procedures for communication between Member States with regard to infringements by carriers and the obligation on the part of Member States to issue a warning in the case of serious infringements or repeated minor infringements. The option of deciding to withdraw Community licences, certified copies or driver attestations is also provided.

At the same time, the Commission proposed completing and further harmonising the rules concerning the conditions to be complied with to pursue the occupation of road transport operator, in order to prevent distortions of competition and to guarantee more effective, more uniform application of the rules (COM(2007) 263).

The Commission proposals are currently going through the legislative procedure between the Council and Parliament.

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 (EEC) 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. 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.

c. New Commission proposal

In May 2007 the Commission proposed a simpler, faster procedure for the authorisation of international regular services and for a simplified, standardised Community licence (COM(2007) 264). The proposal is currently being discussed in the Council and Parliament.

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;

— 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 three so-called **'rail 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 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, should have taken place from 1 January 2007. The agreement on the second rail infrastructure package included a declaration by the European Parliament and the Council of Ministers that the aim was to open up the market for international rail passenger services by 2010. The necessary legal bases for this opening of the market were created by Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007 in adopting the so-called **third rail package**. The opening of the market for international passenger transport services until the 1 January 2010 also includes the right to convey passengers between any train station located on the route of an international transport service, including stations located in the same Member State. Under certain circumstances, however, the Member State may limit this right.

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. The **third rail package,** through Directive 2007/58/EC, added a number of provisions to Directive 2001/14/EC that should facilitate long-term investment, for example, in high-speed railway lines.

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 three 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. The Commission should present a report on the implementation of the abovementioned Directive 2007/58/EC in 2012. This report should propose, if appropriate, complementary measures and further steps in relation to the opening of the national rail passenger transport markets.

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 was 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 the recasting of this regulation. This was 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). In May 2007, the Council of the European Union and the European Parliament finally agreed on the restructuring of public passenger transport in the form of Regulation (EC) No 1370/2007. In addition to the tendering of transport services this regulation permits, in certain circumstances, the direct awarding of services to small and medium-sized enterprises as well as the so-called 'in-house businesses'. Hence cities and regions may

decide to provide public passenger transport services themselves. The principle of subsidiarity was clearly emphasised throughout. In addition, the new regulation covers further elements, including: (a) the prohibition of service providers from protected markets operating in other markets; (b) provisions for the establishment of social standards and quality criteria; and (c) provisions in order to limit the duration of public service contracts.

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 all of the three 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 and shaped 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;

— in its resolution of 12 July 2007 on the implementation of the first rail package, the Parliament urged the full implementation of this package and called for prompt legislative steps to be taken against Member States who fail to comply with their obligations of implementation. The Parliament also considered the separation of railway networks and railway operations to be a key issue of rail policy and stressed the need for an independent and transparent regulating body. Furthermore, it drew attention in this resolution to numerous examples of distortion of competition that still exist in rail transport.

Regarding the opening up of the market for urban, suburban and regional services, Parliament, in November 2001, substantially amended the Commission proposal concerning such services by placing stronger emphasis on the subsidiarity principle and freedom of choice in favour of direct award and the self-provision of transport services locally by the competent authorities and softening the compulsory tendering requirement. The Commission subsequently submitted a new proposal (COM(2005) 319) in July 2005. In the subsequent legislative procedure to the new regulation ((EC) No 1370/2007), Parliament succeeded in carrying through substantial parts of its original position.

→ Nils Danklefsen
July 2008

4.6.3. Land transport: harmonisation of legislation

A single European market for transport cannot be created without harmonisation of the legal provisions in the Member States. These alignments are, in particular, fiscal, social, technical, administrative and political.

Legal basis

→4.6.1.

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

A. 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 1999/62/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. On 8 July 2008 the Commission presented a package of initiatives to make transport greener ('greening transport' package) (COM(2008) 433). This brought it into compliance with a stipulation of the infrastructure charging directive that, two years following entry into force, it was 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. In addition to a strategy for the internalisation of external costs for all modes of transport (COM(2008) 435) and further initiatives, the Commission proposed an amendment of the infrastructure charging directive as a key element (COM(2008) 436). This envisaged the establishment of a framework enabling Member States to calculate and vary tolls according to traffic-based air and noise pollution and traffic volume.

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 harmonised the format of licences and categories of vehicles, introduced the principle of mutual recognition and laid down basic requirements in respect of health and competence. Directive 96/47/EC of 23 July 1996 provided for an alternative 'credit card' format for driving licences. The recast directive on driving licences, Directive 2006/126/EC of 20 December 2006, makes this credit card format compulsory from 2013 for all new Community driving licences. In addition, at the latest 26 years after the directive comes into force, all existing driving licences must also comply with the new plastic card format. Throughout the EU there are at present approximately 110 different driving licence formats. This harmonisation should improve transparency for the public, police services and driving licence authorities, and make driving licences more difficult to forge. The directive also contains elements aiming to combat the widespread phenomenon of driving licence tourism. It stipulates that each individual can hold only one driving licence, and that issue of a licence must be refused if the applicant's licence has been restricted, suspended or withdrawn in another Member State.

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 (EC) 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 (EC) 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.

B. 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. Directive 2008/57/EC combines Directive 96/48/EC on the interoperability of the trans-European high-speed rail system and Directive 2001/16/EC on the interoperability of the trans-European conventional rail system. **The core element of the directive is the principle of mutual recognition**. When a vehicle has already been placed in service in one Member State, other Member States can only invoke national rules to impose additional requirements and further verifications if this is strictly necessary for verifying or guaranteeing the technical compatibility of the vehicle with the relevant network. The national authorities can only refuse an authorisation for placing in service if the existence of a 'substantial safety risk' can be demonstrated. 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, was 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 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. A proposal to extend the competences of the Agency in the field of interoperability (COM(2006) 785) is currently going through the legislative procedure between the Council and Parliament.

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.

Directive 2007/59/EC, adopted as part of the third railway package, aims to harmonise the minimum qualification

requirements and thus the certification of locomotive drivers in the EU. A train driver's licence issued by one Member State must be recognised by the other Member States. This mutual recognition of harmonised train drivers' licences is regarded as an essential component in creating a European railway area. The directive specifies the tasks for which the competent authorities of the Member States, train drivers and other stakeholders in the sector, in particular railway undertakings, infrastructure managers and training centres, are responsible.

The directive states that all train drivers must hold a licence demonstrating that they satisfy minimum conditions as regards medical requirements, basic education and general professional skills. They must also hold additional certificates attesting that they have received specific training relating to the routes 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, in autumn 2007 the Council and Parliament adopted Regulation (EC) No 1371/2007 on rail passengers' rights and obligations. This regulation establishes rules on such matters as compensation in the event of substantial delays and undertakings' liability for passengers and their luggage in the event of accidents. When the regulation comes into force at the end of 2009, passengers who suffer delays will be entitled to a 25 % reduction on the ticket price for a 60 minute delay, and a 50 % reduction for a delay of 120 minutes or more. Railway undertakings will also be responsible for providing comprehensive information to passengers on such matters as passenger rights, timetables, fastest journeys, lowest fares, accessibility, access conditions and availability of facilities for the disabled. Railway undertakings must also introduce non-discriminatory access rules for the transport of disabled people and people with reduced mobility. However, under certain conditions, national long-distance rail services and urban, suburban and regional services may be exempt from the regulation.

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

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. The new Commission proposals on greening transport are in large part due to the pressure exerted by the European Parliament in the field of environmental policy.

— 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.

— With regard to the rights of rail passengers, extending the scope of the directive was among Parliament's achievements. Apart from the possible exemptions described above, this will give passengers clear rights and entitlement to compensation not only on cross-border rail services but also on domestic services.

— In its resolution of 15 June 2006, Parliament expressly supported the introduction of the ERTMS/ETCS rail signalling system and put forward many proposals on the transition to this system and its financing.

— In its resolution of 12 July 2007 on implementation of the first railway package, Parliament called for further revision of the directive on HGV charges and took the view that, to achieve fair intermodal competition, tariffs for road transport should be adjusted in line with the rail route pricing system, tolls should be made mandatory for all lorries over 3.5 tonnes on all roads in the EU without loopholes, and external costs should be internalised.

→ Nils Danklefsen
July 2008

4.6.4. Road traffic and safety provisions

Improving road safety is a prime objective of EU transport policy. Technical measures taken by the EU include regulations and directives on making vehicles safer, safer transport of dangerous goods, and road infrastructure safety.

Legal basis

Article 71 Treaty establishing the European Community (EC) (Treaty of Lisbon: Article 91 of the Treaty on the Functioning of the European Union).

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 2003–10'**. 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 standardised system for fixing child seats, improved crash protection in vehicles, using modern communications and information technologies ('eSafety') to develop traffic management 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 the **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 points.

— **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 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. In mid-2008, the Council of Ministers and the European Parliament agreed another regulation to increase protection for cyclists and pedestrians even further (not yet published in the Official Journal). In addition to passive safety features such as an improved design of the frontal structure on motor vehicles, the new regulation also includes provisions for the introduction of **brake assist systems**.

— 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'. Directive 2007/38/EC provides for many HGVs that are already registered to be fitted with these mirrors.

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.

In December 2006 the Commission submitted a proposal to update and harmonise the existing legislation (COM(2006) 852).

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.

In mid-2008, the Council of Ministers and the European Parliament agreed a directive on the **safety management of road infrastructure** (not yet published in the Official Journal). The directive obliges the Member States to evaluate the transport safety of road construction schemes and to carry out safety audits. The new directive also contains regulations on safety management in the road network and on road safety checks. The directive also lists various measures for making sections of roads with accident black spots safer.

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 has underlined the importance of road safety in the Community. 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 its resolution of 18 January 2007 on the mid-term review of this programme, Parliament once more adopted an extensive list of demands.

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
July 2008

4.6.5. Air transport: market access

Since 1997 the EU enjoys an internal European market of air transport. The Community aviation policy aims at harmonising access to professions relating thereto, ensuring free access to the market and concluding agreements with third countries for opening airspaces. In 2007 an 'open skies' agreement has been signed between the EU and the USA.

Legal basis

Article 80 of the Treaty establishing the European Community (EC) (Treaty of Lisbon: Article 100 of the Treaty on the Functioning of the European Union).

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. The third package consisted of three regulations. Regulation (EEC) No 2407/92 of 23 July 1992 set out requirements for awarding air carrier licences. In particular, air operators must be based in an EU 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 activity.

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. Regulation (EEC) No 2409/92 also regulated the liberalisation of air fares. In July 2006, the Commission proposed a revision of the third liberalisation package (COM(2006) 396), the aim being to adapt the existing regulations (outlined above), which date from 1992, to the current circumstances of the aviation sector, and to consolidate them into one single regulation. In mid-2008 the Council and the European Parliament agreed on the new regulation (not yet published in the Official Journal). This regulation covers areas such as the financial conditions for granting an operating licence and also the regular assessment of the financial performance of air carriers. It sets out criteria for the suspension and revocation of operating licences, as well as rules on traffic distribution between airports, and covers the proper application of social legislation and the imposition of public service obligations. Furthermore, it improves price transparency for the passenger by prohibiting the practices of false bait advertising and confusing price information.

B. 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 Court of Justice of the European Communities Cruled on 5 November 2002 that sections of the bilateral 'open skies' agreements 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. A horizontal agreement aligns the provisions of all agreements between EU Member States and a given third country in a single agreement. In the last few years, several agreements of this kind have been signed or concluded (for instance with Australia, Chile, Croatia, Georgia, Lebanon, Malaysia, Mexico, Morocco, New Zealand, Singapore and Ukraine).

After more than four years of negotiations, the EU and the USA signed an 'open skies' agreement at the end of April 2007. This pivotal aviation agreement aims to provide European airlines with better access to the US market by lifting restrictions on route rights. The same applies to US airlines wishing to land at an EU airport. Following approval by the European Parliament, the agreement entered into force on 30 March 2008. Negotiations on a second phase of this agreement began in May 2008.

A central pillar of the EU's external aviation policy currently focuses on concluding further 'open skies' agreements with other important countries (for example Canada, India, China and Australia). 'Open skies' agreements aim at much closer cooperation than normal aviation agreements. They cover not only cooperation in the fields of competition rules and market opening but also other areas such as aviation safety and environmental impact.

C. Additional achievements

1. Access to the ground-handling market

The ground-handling market is governed by Directive 96/67/EC of 15 October 1996. Prior to this, the provision of ground-handling 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 ground-handling services. Furthermore, for certain categories of service there must be a choice of at least two providers at the larger airports in the EU. The Commission presented a report on the application of the directive (COM(2006) 821) in January 2007.

2. Reservation systems

a. Computer reservation systems (CRS)

Computer reservation systems (hereinafter 'CRS') 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. The code of conduct was established to promote transparency and to prevent any market abuses or distortions of competition. Council Regulation (EC) No 323/1999 of 8 February 1999 adapted the code of conduct to new market conditions. The code of conduct regulates how travel bookings are managed by air carriers and rail transport operators, CRS and travel agents. In November 2007 the most recent developments in the aviation market and information technology, and also the development of alternative distribution channels, led the Commission to propose further adapting this code of conduct for CRS to promote greater competition (COM(2007) 709).

Role of the European Parliament

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 European Parliament. 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.

The European Parliament played a crucial role in shaping the recast of the regulation on common rules for the operation of air transport services in the Community (not yet published in the Official Journal). One of Parliament's particular achievements was to put an end to the practices of false bait advertising and confusing price information (on the Internet, for example). In future, the final price payable, including all applicable taxes and charges, surcharges and fees, must be displayed at the start of the booking process. Furthermore, 'optional price supplements', such as for checking in additional hold baggage, must be communicated in a clear, transparent and unambiguous way at the start of any booking process, and their acceptance by the customer must be on an 'opt-in' basis.

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4.6.6. Air transport: competition and passenger rights

In order to ensure fair competition in the air transport field, several regulations were adopted governing relevant areas such as business practices, State aid, prices, emissions trading and airport charges. Passenger rights are also protected by the equivalent legislation.

Legal basis

Article 80(2) of the Treaty establishing the European Community (EC) (Lisbon Treaty: Article 100(2) of the Treaty on the Functioning of the European Union), completed by the general provisions on consumer protection, competition 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). 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 time slots 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 time slots were to be made available to them.

5. Airport capacities and charges

As part of the 'airport package', the Commission presented a draft directive in January on airport charges, which is currently being discussed in the European Parliament. In the proposal, the Commission puts forward a range of mandatory principles governing the setting of airport charges (COM(2006) 820).

In the same context of the 'airport package', the Commission has presented a communication setting out an action plan for airport capacity, efficiency and safety at European airports (COM(2006) 819). The communication concentrates in particular on: (a) optimising the use of existing airport capacities; (b) encouraging complementarity between air and rail transport; (c) airports' environmental dimension, particularly as regards flight noise; and (d) the development of cost-effective technological solutions.

6. Emissions trading in air transport

In its proposal of 20 December 2006 (COM(2006) 818), the Commission calls for aviation activities to be included in the scheme for greenhouse gas emissions trading within the Community. The emissions trading system operates as follows: enterprises receive certificates, which entitle them to discharge a precise volume of greenhouse gases. If they achieve the targets with their own measures, enterprises can sell certificates they do not require on the market. Alternatively, they must buy extra certificates on the market if they discharge more greenhouse gases than are covered by certificates. In June 2008 the European Parliament and Council of Ministers were able to agree a compromise on a 'directive on including aviation activities in the scheme for

greenhouse gas emission allowance trading within the Community'. All flights landing at and taking off from European airports are accordingly to be included in this scheme from 2012. Distortions of competition should therefore be eliminated and the environmental efficiency of air transport improved. Unlike the situation to date, allocation is no longer based on historic emissions, but on a uniform European benchmark. Airlines already using efficient aircraft today are thus being rewarded. In the initial period (2012), emissions should be reduced by 3 % compared with the period 2004–06 and by 5 % in the second period (from 1 January 2013).

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 4 February 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 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 on 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 it has been determined. Passengers have the right to reimbursement or an equivalent flight, in the event of the reserved airline being added to the black list after the booking was made.

3. Rights of passengers with reduced mobility

The Council of Ministers and the European Parliament 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 European Parliament (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 and overbooking 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 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.

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4.6.7. Air transport: air traffic and safety rules

Several actions relating to the rules of traffic and safety of air transport were taken at the European level. The Galileo and SESAR project and the creation of the single European sky are among the most important in this area.

Legal basis

Article 80(2) of the Treaty establishing the European Community (EC) (Treaty of Lisbon: Article 100(2) of the Treaty on the Functioning of the European Union).

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 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** (EC) No 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. Regulation (EC) No 216/2008 extended the EASA's tasks to cover air operations, pilots' licences and — within the limits set by the Chicago Convention — the safety of third-country aircraft.

4. Galileo and SESAR

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)), was due to be ready for use by 2008. Because of difficulties in the negotiations on the Galileo concession, the Council of Ministers called on the Commission in June 2007 to present alternative proposals for the financing of the project by September 2007.

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 (EEC) 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**. 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 September 2005, the Commission presented a proposal to revise the regulation (COM(2005) 429). In early 2008 the European Parliament and the Council agreed on the new regulation ((EC) No 300/2008 of 11 March 2008). This regulated, among other things, in-flight security measures, such as entry to the flight crew compartment, the carriage of weapons on board and the deployment of in-flight security officers ('sky marshals').

9. Dealing with accidents

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.

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.

10. New Commission proposals: single European sky II

In June 2008 the Commission presented the second single European sky package (COM(2008) 389). It has four

components. Firstly, it proposes several additions to the original legislation on the single European sky (COM(2008) 388). These include, in particular, binding performance targets for air navigation service providers, a European network management function and binding deadlines for improving Member States' performance on 'functional airspace blocks'. A further priority is the SESAR programme: the introduction of the second phase of SESAR (development phase, 2008–13). Thirdly, the Commission proposes extending the competence of the EASA to aerodromes and air traffic management and air navigation services (COM(2008) 390). Fourthly, the Commission proposes to tackle the problem of insufficient airport capacity and infrastructure. The airport slots allocated to aircraft operators should be better coordinated with air traffic management operations, and an observatory on airports capacity should be set up.

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 European Parliament 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 emphasised the technical and industrial importance of the Galileo programme for European aeronautics and telecommunications.

In the negotiations on the new air safety regulation, Regulation (EC) No 300/2008, the European Parliament was able to push through, among other things, strict rules on the deployment of in-flight sky marshals.

→ Nils Danklefsen
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4.6.8. Sea transport: access to the market and competition

European regulations for sea transport focus on the application in this sector of the principle of free movement of services and the correct application of competition rules. The purpose of the application of these rules is to ensure a fair competition at the Community level in the sea transport field.

Legal basis

Article 80(2) of the Treaty establishing the European Community (EC) (Treaty of Lisbon: Article 100(2) of the Treaty on the Functioning of the European Union), supplemented by the Treaty's general provisions on competition and the 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 transhipment 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 (EEC) 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 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 (COM(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 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 European Parliament also rejected the new proposal, this time at first reading, on 18 January 2006, and some time later the Commission withdrew it.

The Commission then carried out a comprehensive consultation process, which resulted in its submission in October 2007 of the considerably broader 'Communication on a European ports policy' (COM(2007) 616). In it the Commission again discusses the framework conditions of competition law within and between the ports and announces guidelines for State aid to ports, for example. In addition, the communication also deals with other challenges, however, such as efficiency and future capacities required by the ports, as well as the necessary connections with the hinterland, environmental concerns and the far-reaching change in sea transport.

D. Working conditions

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.

The International Labour Organisation (ILO) accepted the Maritime Labour Convention on 23 February 2006 to create a single, self-contained instrument comprising all the current standards relating to maritime labour. The convention combines in a single consolidated text the current agreements and recommendations on maritime labour accepted to date by the ILO. According to the convention, all seafarers have the right to a safe, secure job in accordance with current safety standards, as well as to appropriate employment conditions, humane working and living conditions and health protection, medical care, social measures and other forms of social protection. The convention obliges the Member States to ensure that seafarers' employment and social rights are fully implemented in line with the convention's requirements. The agreement should serve as a basis for the first International Maritime Labour Code.

In July 2008 the Commission put forward a proposal for implementing the agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006 (COM(2008) 422).

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 European Parliament 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 European Parliament (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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4.6.9. Sea transport: traffic and safety rules

A number of EU directives and regulations have recently improved the standards for safety in the field of sea transport. These include the legislative packages Erika I and Erika II in particular, which were adopted after the disasters involving the ships Erika *and* Prestige.

Legal basis

Title V of the Treaty establishing the European Community (EC), and in particular Article 71(1)(c) and Article 80(2) (Treaty of Lisbon: Title VI, and in particular Article 91(1)(c) and Article 100(2) of the Treaty on the Functioning of the European Union).

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

the **IMO** (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. A proposal to recast this directive (COM(2007) 610) is currently going through the legislative procedure between the Council of Ministers and the European Parliament.

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 2003/75/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 shipowners 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** (SafeSeaNet). 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, which aims to monitor compliance with the international regulations by ships sailing under the flag of a Member State more effectively; the proposal is regarded as a first step towards a future European flag;

— a recasting of the directive on port state control with the aim of ensuring more effective and more frequent inspections, particularly of ships at risk, through new monitoring mechanisms subject to risk profiles;

— an amendment to the directive on the Community's vessel traffic monitoring and information system, which focuses, among other things, on improving the legal framework conditions relating to emergency moorings for ships in distress and the further development of the SafeSeaNet;

— an amendment to the directive on classification societies, particularly with regard to the introduction of an independent quality control system for eliminating the flaws that still exist in the inspection and certification procedures for the world fleet;

— a directive on investigations after accidents at sea containing the common principles for carrying out investigations at sea as well as a system for pooling the results;

— a regulation on liability and compensation for personal injury caused by accidents at sea;

— a directive on the third-party liability of shipowners.

These proposals are currently passing through the legislative procedure at the Council and the European Parliament. The Council of Ministers and the European Parliament are expected to reach an agreement by the end of 2008/beginning of 2009.

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, which contains precise definitions of the infringements and also stipulates that these are 'subject to effective, proportionate and dissuasive penalties, which may include criminal or administrative penalties'. Acting upon a judgment of the Court of Justice of the European Communities of October 2007, in March 2008 the Commission proposed defining certain infringements across the EU as offences and inflicting penalties for these offences with effective, appropriate and dissuasive

sanctions (COM(2008) 134). This harmonisation should ensure that ships committing pollution offences are penalised in the same way in all the Member States and that offences within the EU are not able to escape prosecution.

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 European Parliament (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 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 many of these requests in its proposed third package of measures to promote safety at sea. In the subsequent legislative procedure, Parliament issued a reminder that this package should be dealt with speedily at the Council of Ministers.

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4.6.10. Inland waterway transport, intermodality and logistics

The promotion of what is referred to as intermodal transport logistics is a key element of European transport policy. It involves the creation of technical, legal and economic framework conditions as well as innovative concepts relating to logistics for the optimum integration of the different modes of transport for a 'door-to-door' service. It particularly concerns the integration of environmentally friendly modes of transport, such as rail, inland waterways and short-haul maritime links, into the transport chain.

Legal basis

→4.6.1.

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 (RIS) on inland waterways in the Community

Directive 2005/44/EC of the European Parliament 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 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. This will also open 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 inland waterway transport promotion and development network;

— **provision of appropriate infrastructure** through the improvement and maintenance of the European waterway network and development of transhipment 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 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 European Parliament 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 was 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.

Regulation (EC) No 1692/2006 of the European Parliament and of the Council of 24 October 2006 establishes a '**Marco Polo II**' programme. 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 transhipment and make intermodal transport more competitive. An amended proposal by the Commission has now been published after the European Parliament, but not the Council, gave its opinion on this proposal.

3. Freight transport logistics

In June 2006, the Commission published its communication entitled **'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 European Parliament 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 European Parliament 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 TENs 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 river information services (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 European Parliament on 12 February 2004, subject to certain amendments.

In its resolution of 26 October 2006, the European Parliament supported the Commission's initiative for an integrated European action programme for inland waterway transport ('NAIADES'). In addition, Parliament called in particular for: (a) further development of national measures to stimulate inland waterway transport; (b) improved access to financial resources — particularly risk capital for start-ups; (c) particular attention for the development of connections with the new Member States in central and eastern Europe; (d) stricter Community limits for SOx, particulate matter (PM), NOx and CO_2 emissions in 2007; and (e) also in 2007, a proposal for a European Waterway Transport Innovation Fund for the financing of new demand-based investments and innovative concepts in the area of logistics, technology and the environment.

The Commission communication on freight transport logistics is currently being examined by Parliament. In a proposed resolution for plenary, in July 2008 the European Parliament's Committee on Transport and Tourism unanimously advocated giving higher priority to freight transport and reserving at least 40 % of the respective EU funds for the rail transport infrastructure.

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4.7. Trans-European networks

4.7.1. Trans-European networks — guidelines

The Maastricht Treaty provides for the implementation of trans-European networks in transport, energy and telecommunications in order to connect islands, landlocked and peripheral regions to the central regions of the EC. The networks are tools that should contribute to the development of the internal market, while respecting environmental issues and sustainable development goals.

Legal basis

Title XV of the Treaty establishing the European Community (EC) or Titles XVI and XXI of the Lisbon Treaty.

Objectives

The Maastricht Treaty gave the Union the task of establishing and developing infrastructure for the **trans-European networks (TENs) 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 Union. The establishment of the TENs 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 developing, financing or building the infrastructures. The main responsibility for these tasks continues to lie with the Member States. Nevertheless, the Union 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.

Article 154 of the EC Treaty, incorporated in Article 170 and Article 194(1)(d) (which relate to energy) of the Lisbon Treaty, provides a solid legal basis for the TENs. To this end, the Union lays down **guidelines** under the co-decision procedure or the ordinary legislative procedure (Lisbon Treaty) between the European Parliament and the Council, 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 TENs 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, eight for energy and nine 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 the European Councils of Corfu and Essen in 1994 (foreseeing 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. The TEN-T encompasses all modes of transport and the entire territory of the Union and they may extend to the EFTA countries, the countries of south-eastern Europe and the Mediterranean countries. Initially, this decision incorporated 14 projects of common interest that were adopted by the Essen Council.

Decision No 1346/2001/EC of 22 May 2001 amending the TEN-T guidelines with regard to **seaports, inland ports and intermodal terminals** subsequently 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 enlargements of the EU in 2004 and 2007, 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 TENs guidelines. On the basis of proposals made by a specially appointed working group headed by former European Commissioner Karel van Miert, this revision was eventually adopted in the form of Decision No 884/2004/EC of 29 April 2004, amended by Council Regulation (EC) No 1791/2006 of 20 November 2006. The revision comprised the following main elements.

— A list of priority projects (PP) was increased to approximately 30, 18 of which relate solely to rail transport, 3 to road transport, 4 to multimodal transport, primarily rail and road, 2 to internal waterways and 1 to the so-called 'motorways of the sea'. Some of the projects have already been completed, e.g. the Øresund fixed link (between Sweden and Denmark, 2000), Malpensa airport (Italy, 2001) and the Betuwe railway line (between Rotterdam and the German border, 2007). Significant sections of some of the other projects have also been completed: the Nürnberg–Ingolstadt section of PP 1 in 2006; the first phase of the TGV Est in France of PPs 4 and 17 entered into service in 2007; and in 2008 the Madrid–Barcelona high-speed railway line.

— The transport projects were forced to comply with EU environmental legislation, particularly through a strategic environmental impact assessment as a complement to the conventional environmental impact assessment.

— The new concept of motorways of the sea, based on intermodality, was introduced to make certain sea routes more efficient and to integrate short sea shipping with rail transport, by providing high-quality and frequent alternatives to road transport. Four corridors were defined for the implementation of the motorways of the sea project to 2010 (Baltic Sea, western Europe via the Atlantic, eastern and western Mediterranean).

— Six 'European coordinators' for particularly important projects were appointed in July 2005. They are important European figures who act as mediators in order to facilitate the contacts with the national decision-making authorities, transport operators and users, and representatives of civil society. They also lay the groundwork for the EIB's investment decisions.

— A Trans-European Transport Network Executive Agency, based in Brussels, was set up in October 2006. It is responsible for the technical and financial preparation and monitoring of the decisions on the projects managed by the Commission.

— By 2020 the TEN-T should cover 100 345 km of roads and 106 845 km of railways, including 30 000 km of high-speed railways (at least 200 km/h). In addition, 14 630 km of inland waterway networks, 120 inland waterway ports, 23 inland/seaports and 264 Class A seaports (of international importance), as well as 407 airports are part of the trans-European network. Completion of the TEN-T implies the construction of the 'missing links', i.e. building or improving on the road network that existed in 2005 with 20 300 km of motorways or high-quality roads, and 18 975 km of high-speed railway lines (new or improved conventional lines). In addition, 3 500 km of roads, 12 300 km of railways and 1 740 km of inland waterways are to be modernised.

— In May 2008 the Commission estimated the total costs at around EUR 900 billion for the period 1996–2020, EUR 500 million of which has yet to be invested between 2007 and 2020. On the basis of the latest data provided by the Member States in April 2008, the costs of the priority sections of 28 PPs — excluding the Galileo project and the motorways of the sea — amount to EUR 397 billion, an increase of 16.8 % compared with the 2004 estimate of EUR 340 billion (for more on the financing of the TENs, see fact sheet 4.7.2.).

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 (TEN-E). 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

The Union adopted new guidelines to update the trans-European energy networks through Decision No 1364/2006/EC of 6 September 2006, thereby repealing the old guidelines of 1996 and 2003.

The objectives of the new guidelines are to diversify supplies, to increase security of supply by strengthening links with third countries (accession countries or other countries in the Mediterranean Sea, Black Sea and Caspian Sea basins, and in the Middle East and the Gulf) and to incorporate networks in the new Member States. In addition, access to the TEN-E by insular, landlocked and peripheral regions strengthens in particular territorial cohesion within the EU.

With these new guidelines, the EU has indicated the projects that are eligible for Community financing and divided them into three categories: projects of common interest relating to electricity and gas networks displaying potential economic viability; priority projects, which are given priority when Community funding is granted; and projects of European interest, which are also priority projects and are of a cross-border nature or have a significant impact on cross-border transmission capacity.

The priorities for the trans-European energy networks must be compatible with the goals of sustainable development. These priorities include: (a) using renewable energies and ensuring better connections between the facilities that produce them; (b) using more effective technologies that limit the environmental losses and risks; (c) establishing energy networks in island and ultraperipheral regions through diversification and renewable energy sources; and (d) interoperability of EU networks with the networks of the new Member States and third countries. Annex I to the decision identifies 32 projects of European interest for electricity and 10 for gas, while Annexes II and III list 164 projects of common interest for electricity and 122 for gas.

In the 2007–13 financial perspective a total of EUR 155 million has been allocated to the TEN-E.

Four European coordinators were appointed in September 2007 to monitor a project of European interest and help to resolve any technical, political and financial problems relating to the most complex projects, such as the high-voltage line between France and Spain (former Commissioner Monti).

The new title on energy in the Lisbon Treaty (Article 194(1)(d)) provides a solid legal basis for promoting energy network interconnections.

3. Telecommunications (→4.8.7 and →4.8)

Decision No 2717/95/EC of 9 November 1995 established a series of guidelines for the development of the Euro-ISDN (integrated services digital network) 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 with a view to a future European broadband communications network.

Decision No 1336/97/EC of 17 June 1997 laid down guidelines for the trans-European telecommunications networks (TEN-Telecom). 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 identified projects of common interest as well as the procedure and criteria for their selection. In the same context, the Community programme eTEN, a key instrument of the *e*Europe 2005 action plan 'An information society for all', built on the Euro-ISDN programme. Completed in 2006, it sought to support the trans-European deployment of services based on the telecommunications networks.

Community investment is currently focusing on modernising the existing networks. In addition, the Commission, while underlining the disparities between urban and rural areas, has invited the Member States to 'bridge the broadband gap' by 2010.

Role of the European Parliament

The European Parliament (EP) has strongly supported the trans-European network policy and, at the same time, 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 (TEN-T). The EP has ensured that priority is 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 TEN-T, particularly in rail and combined transport. Parliament also called for a range of administrative changes to improve implementation of the TENs. 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 TEN-T, 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 as an added incentive for Member States to ensure prompter realisation of projects.

With the adoption of the own-initiative report 'Keeping Europe moving — sustainable mobility for our continent' on 12 July 2007, the EP took stock of the situation and laid down new objectives in the TEN-T sector. It stressed in particular that the completion of the entire trans-European network is the best way to create the conditions needed to make the most of the different modes of transport through an approach called 'co-modality', and that a redistribution of the balance between the modes of transfer ('modal transfer') is needed to reduce the environmental impact of transport. In this regard, the EP encourages transfers to rail, bus and maritime transport, which still have only a small share of the market.

When the decision establishing new guidelines for the TEN-E was being adopted in 2006, the EP pointed out that the declaration of European interest and the possibility of appointing coordinators were essential tools for achieving a genuine internal gas and electricity market and ensuring security of supply, and it called for an improvement in network interconnections. Moreover, it emphasised that in order to obtain Community funding the priority projects should be compatible with the objectives of sustainable development and improve the EU network's security of supply.

→ Piero Soave
July 2008

4.7.2. Financing the trans-European networks

The trans-European networks (TENs) are partly funded by the European Community and partly by the Member States. Financial support from the Community serves as a catalyst, the Member States being required to provide the bulk of the aid. The financing of TENs can also be complemented by Structural Fund assistance, aid from the EIB or contributions from the private sector.

Legal basis

Title XV of the Treaty establishing the European Community (EC) and Title XVI of the Treaty of Lisbon. Under Article 155 of the EC Treaty, incorporated by Article 171 of the Treaty of Lisbon, EU 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 (TENs) in the fields of transport, energy and telecommunications through targeted EU support (→4.7.1).

Results

A. Direct financing through the Community budget

Generally, EU funding serves as a catalyst for starting up projects. Member States must raise most of the funding, except in the case of Cohesion Fund aid, where the EU makes a substantial contribution.

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 a study);

— contributions towards fees for guarantees for loans from the European Investment Fund or other financial institutions;

— interest subsidies for loans granted by the European Investment Bank or other public or private financial bodies;

— direct grants to investments in duly justified cases;

— possibly in a combination of forms; 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;

— for the telecommunications and energy networks, aid must not cause distortions of competition between businesses in the sector concerned.

b. Selection criteria

The following project criteria must be applied:

— the degree of help in achieving the networks' objectives;

— demonstration that the project is 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, for example, in the case of cross-border projects;

— compliance 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 1995–2000 and has been amended by, among others, Regulation (EC) No 1655/1999 of 19 July 1999 for the period 2000–06, as well as by Regulation (EC) No 788/2004 of 21 April 2004 and Regulation (EC) No 807/2004 of 21 April 2004. Regulation (EC) No 680/2007 of 20 June 2007 lays down general rules for the granting of Community financial aid for the period 2007–13. The latest regulations introduced a range of new elements, notably:

— multiannual and annual programmes in the fields of transport and energy for granting Community financial aid to the selected projects;

— the amount of Community aid granted to studies is 50 %, irrespective of the project of common interest concerned, and the amount granted to priority projects is from 10 % to 30 % in the field of transport (with a maximum of 30 % for cross-border sections of priority projects);

— each year, the Commission shall submit a report on the activities undertaken; in the implementation of the regulation, it is assisted by a normative committee, composed of representatives of the Member States, which meets in the appropriate composition for the subject being discussed (transport, energy or telecommunications);

— inclusion of risk capital in EU financial aid;

— the financial contribution to the provisioning and capital allocation for guarantees must be issued by the EIB from its own resources under the loan guarantee instrument;

— the financial framework for the period 2007–13 allocates EUR 8 168 million to the TENs, EUR 8 013 million of which is for transport (TEN-T) and EUR 155 million for energy (TEN-E) (see Section C);

— taking into account that the estimated TEN-T investment in priority projects far exceeds the amount of financial aid for transport for the period 2007–13, the Commission should, with the help of European coordinators, support and coordinate Member States' efforts to finance and complete the TEN-T network in line with the timetable laid down. It should also study and solve the long-term financial problem, bearing in mind that the TEN-T building period comprises at least two seven-year budget periods and the expected life of the new infrastructure is at least a century.

B. Other financing possibilities

1. EU Structural and Cohesion Funds

In the period 2000–06, these funds contributed approximately EUR 26 billion to TEN projects — particularly through the Cohesion Fund in Greece, Ireland (until 2003), Portugal and Spain and in the Member States that joined in 2004. These new Member States that joined the EU in 2004 were allocated EUR 2.48 billion in pre-accession aid. In addition, for the period 2004–06 these countries were allocated EUR 4.24 billion from the Cohesion Fund and EUR 2.53 billion from the other Structural Funds (→4.5.2 and →4.5.3). Of this total, approximately 50 % of the pre-accession aid and aid from the Cohesion Fund in 2004–06, or EUR 39 billion, was allocated to TEN-T projects.

2. European Investment Bank (EIB) 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 TENs projects totalling approximately EUR 65 billion.

Regulation (EC) No 680/2007 introduces the loan guarantee instrument as a form of Community financial aid for guarantees to be issued by the EIB on its own resources. The EIB itself manages the Community contribution to the loan guarantee instrument (Article 6(1) and Annex).

3. Private sector contribution

On 30 April 2004, the Commission published a Green Paper (COM(2004) 327) on public–private partnerships (PPPs), which examines PPPs in the light of Community law on public contracts and concessions .

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) 76). 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 20.35 billion 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 TENs 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 European Parliament and the Council therefore agreed a revision of Regulation (EC) No 2236/95 laying down general rules for the granting of Community financial aid in the field of trans-European transport and energy networks. The new regulation

((EC) No 680/2007), applicable from 1 January 2007, stipulates that, in order to complement national (public or private) sources of financing, these limited Community 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).

In addition, the contribution to TEN-T made by the cohesion policy operational programmes adopted by the Commission was EUR 43 billion, including the contribution for ports and airports (approximately EUR 34.6 billion comes from the Cohesion Fund and EUR 8.3 billion from the Structural Fund).

As well as trans-European networks, the satellite navigation systems (EGNOS and Galileo programmes) are also financed by the EU. The amount allocated to the deployment phase of the Galileo programme in particular is EUR 3 405 million for the period 1 January 2007 to 31 December 2013.

Role of the European Parliament

The European Parliament has the right of scrutiny over the Commission's financing proposals. 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 2007–13, 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 TENs 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 TENs.

In its resolution of 12 July 2007, the EP calls on the Commission to make proposals about the possible extension of new alternative and innovative ways of financing and to provide extra resources for transport and the related research during the review of the financial framework in 2008 (paragraph 6).

→ Piero Soave
July 2008

4.8. Industrial policy

4.8.1. General principles of EU industrial policy

Industrial policy was incorporated into EU legislation by the Maastricht Treaty. This policy is governed by co-decision and it affects many aspects of environmental policy, the policy relating to the single market and competition policy. Several communications adopted by the Commission also aim to establish conditions favourable to industrial competitiveness.

Legal basis

Since the Treaty of Maastricht, Article 157 of the Treaty establishing the European Community (EC) 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, gives 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** reinforces the knowledge base and focuses 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 and 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) 310), 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.

The **1990** Commission **communication** entitled **'Industrial policy in an open and competitive environment'** (COM(90) 556) 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) 700) 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 on the implementation of Council resolutions and conclusions on industrial policy'** (SEC(95) 437 final) 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) 528) 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) 688 final), which identified factors that 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 **'The competitiveness of European enterprises in the face of globalisation'** (COM(98) 718) 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** entitled **'Industrial policy in an enlarged Europe'** (COM(2002) 714) 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) 274) follows on from the December 2002 communication entitled 'Industrial policy in an enlarged Europe' and the November 2003 communication entitled '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) 474). 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 Parliament which helped stimulate the reorganising of the steel sector and called for a more dynamic industrial policy. Parliament adopted numerous resolutions, including those listed below.

— The 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.

— The 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.

— The resolution of 13 June 2002 assessed the Commission communication of 8 November 2001 entitled 'Sustaining the commitments, increasing the pace' (COM(2001) 641) 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'.

— The 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.

— The 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
September 2006

4.8.2. The steel industry

Since the expiry of the ECSC Treaty, the trade of coal and steel is governed by the provisions of the EC Treaty. Currently, the EU is the second largest steel producer in the world, after the USA. It holds the group Arcelor, which is the largest steel company in the world in terms of revenue and production.

Legal basis

Fifty years after entering into force, the Treaty on the European Coal and Steel Community, as the legal base for 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 (TEU, 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 Parliament the role of co-legislator.

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 USA 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 steelmaking group, with 5 % of the market. In 2006 following a bid of Mittal Steel, based in The Netherlands, a new group called ArcelorMittal 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

disappeared 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 steelmaking 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 steelmakers. 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, an 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 USA. 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 points.

— The USA 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 USA 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 USA excluded imports from certain WTO members from the measures, in a manner incompatible with relevant WTO provisions.

— The USA 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 USA. Retaliatory sanctions from the EU towards the USA could amount to as much as EUR 378 million. Pascal Lamy, the EU Trade Commissioner at the time, said the decision on whether to retaliate or not would depend on how many European steel companies gained exemptions from the tariffs.

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 increased 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 (CO_2), accounting for around 30 % of all industrial CO_2 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 1990s there was a reduction of 20 % in CO_2 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 with 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 has 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.

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 policymakers and the industry. In 2003, Regulation (EC) No 48/2004 of the European Parliament and of the Council established a common framework for the statistics on the production of 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 European Parliament 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 USA 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 US-imposed tariffs.

Council Regulation (EC) No 1031/2002 established additional customs duties on imports of certain products originating in the USA. Additional duty of 100 % was imposed on certain products such as some dried vegetables, fruits, juices and clothing. 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 countries such as Russia, India, Ukraine, China and other major non-European producers by introducing a set of anti-dumping duties.

Role of the European Parliament

The European Parliament 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 USA 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 invited 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 called 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
September 2006

4.8.3. Shipbuilding

The European shipbuilding industry is governed by Article 157 of the EC Treaty, related to the industrial policy. Japan, followed by South Korea, is currently the largest shipbuilding country. On a European level, the Norwegian group Aker Yards stands at fourth place in the world.

Legal basis

Since the Treaty of Maastricht, Article 157 of the Treaty establishing the European Community (EC) 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 Parliament the role of co-legislator also serves as the legal basis for the shipbuilding industry.

Objectives

In 2004, Japan was the world's largest shipbuilding country, followed by South 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 (LNG) carriers 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, 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 South 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 South 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 South 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 South 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 South 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 the TBR in order to eliminate certain trade practices caused by the subsidising of commercial shipbuilding in South 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 South 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 with 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 South Korean rivals through mergers and strategic partnerships. Still, the South 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, South 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 South Korea, after the USA. 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 many 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 east 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 Latvia and Lithuania, with the four Lithuanian yards expanding beyond their traditional east 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, and had revenue worth EUR 300 million in 2005.

Achievements

As regards the Republic of Korea and the EU, the Commission is claiming that the South Korean shipbuilding industry is contravening the WTO's 1994 Subsidies Agreement. Also in 1994, Council Regulation (EC) No 3286/94 (the TBR) was adopted. This regulation sought to establish the necessary EU procedures in the field of 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 TBR.

With a view to achieving a quick settlement of the dispute, on 18 and 19 July 2000 the EU and Korea held a first round of consultations on shipbuilding in Seoul. The EC and South 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 South Korean government agreed to refrain from any direct or indirect intervention to underwrite loss-making South Korean shipyards and to apply internationally accepted financial and accounting principles to ensure that South 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 South 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. Mario Monti, Competition Commissioner at the time, 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 Denmark, Finland, Sweden 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 South 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 (sixth report) of November 2002 that it had again initiated WTO action against South 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 South 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 the industrial policy in an enlarged Europe. LeaderSHIP 2015, which seeks to promote safe and environment-friendly shipbuilding together with a European approach to the needs of the shipbuilding industry, is the equivalent of 'G10 medicines' for the pharmaceuticals 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 South Korea in the WTO and that it should apply only for the duration of the WTO proceedings.

→ Miklos Györffi
September 2006

4.8.4. The automobile industry

The automobile industry is not currently regulated by specific provisions of the Treaty establishing the European Community (EC). This area is indirectly regulated by the provisions relating to the environment, competition, State aid or the internal market. However, a number of EU directives have been adopted to govern the functioning of motor vehicles.

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 to 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 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 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 under-run protection of heavy goods vehicles (Directive 2000/40/EC), liquid-fuel tanks and rear under-run 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 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 South 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 (UNECE) 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 UNECE, a new global agreement of 1998 to allow non-contracting parties to the 1958 global agreement, such as the USA, to be associated more closely with the international harmonisation process. Both instruments have the same scope with regard 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 (NOx).

— 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 with 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 CO_2 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 CO_2 emission figure for all passenger cars of 120 g CO_2/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 CO_2 emission figure for new passenger cars of 140 g CO_2/km by 2008/09;

— labelling of cars with information on fuel economy and CO_2 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 Directive 2005/64/EC of the European Parliament 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 European Parliament 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
September 2006

4.8.5. The chemicals and pharmaceuticals industries

European Treaties do not currently contain a specific legal basis for the chemicals industry, pharmaceuticals or cosmetics. These areas are regulated by the existing provisions regarding competition, public health or completion of the internal market. The REACH directive, the European Chemicals Agency and the European Medicines Agency are instruments that treat directly this area.

Legal basis

The Treaty of Rome does not contain any specific provisions for the chemicals and pharmaceuticals industries. However, the EU may undertake certain actions within the framework of competition policy (Articles 81 to 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. Chemicals 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 chemicals industry was the world's largest, followed by that of the USA, with 34 % of production value and a trade surplus of EUR 60 billion.

The chemicals 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 1999/45/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 chemicals 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 chemicals 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 chemicals 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 chemicals 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 chemicals 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 chemicals 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 chemicals 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. Pharmaceuticals 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 (EMEA) 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/EEC 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 pharmaceuticals 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 cosmetics 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/EEC 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 EP has stressed that the restructuring of the European petrochemicals 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 chemicals industry stressing the elimination of excessive regulations and the conclusion of multinational agreements for the protection of investment.

Parliament also adopted a resolution on the REACH proposal on 17 November 2005 in which it 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 pharmaceuticals 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 fourth 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 pharmaceuticals 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
September 2006

4.8.6. The aerospace industry

The innovations in the European aerospace industry as well as the further development and exploitation of European flagship space initiatives such as Galileo and GMES (global monitoring for the environment and security), and satellite communication applications allow the EU to position itself as a global leader in this field. The EU is now moving forward rapidly on the development of its European space policy coordinating more effective space programmes between the EU, ESA and their respective Member States and bringing in industrial players, other space stakeholders and end users.

Legal basis

Air transport policy is based on Article 80(2) of the Treaty establishing the European Community (EC), (Article 100(2) of the Treaty on the Functioning of the European Union (TFEU)). Aircraft construction is based on Article 308 EC (Article 352 TFEU), 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 EC (Article 173 TFEU) is the legal basis generally used for actions in the field of industrial policy. The Lisbon Treaty foresees a new legal basis (Article 189 TFEU) for a coherent space 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 new European space policy aims to foster better coordination of space activities between the EU, ESA and their respective Member States, thus enabling Europe to exert a global leadership in the space sector.

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.

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, the following features give the industry its distinctive character:

— close links between civil and defence activities;

— the 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) 600), which proposes a coherent framework for the aerospace industry.

The '**Clean Sky' joint technology initiative for aeronautics and air transport,** one of the first of the new JTIs to get off the ground under FP7, is a public–private partnership that will bring together EU-funded projects and major industrial stakeholders in the aeronautics and aerospace sectors with the goal of providing a step forward in the technology capability of ATS environment-friendly systems. Clean Sky received a positive vote from the European Parliament and was formally adopted by the Council of Ministers in December 2007. Clean Sky is the largest European research project ever, at EUR 1.6 billion equally shared between the European Commission and industry, over the period 2008–13. For the implementation of the Clean Sky JTI, Council Regulation (EC) No 71/2008 sets up a joint undertaking (based in Brussels) for the period up to 31 December 2017 (Clean Sky Joint Undertaking) which will contribute to the implementation of the seventh framework programme and in particular Theme 7, Transport (including aeronautics), of the specific programme 'Cooperation'. The members of the Clean Sky Joint Undertaking will be the European Community represented by the Commission as public representative, the leaders of integrated technology demonstrators (ITDs) and the associate members of the individual ITDs. It is also open to new members. The Clean Sky Joint Undertaking will rely on a number of external advisory bodies, involving national States and the ACARE European technology platform for aeronautics. The maximum Community contribution to the Clean Sky Joint Undertaking covering running costs and research activities will be EUR 800 million paid from the budget appropriation allocated to the theme 'Transport' of the FP7 specific programme 'Cooperation'.

A. The 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 the 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 was too fragmented to face up to international competition and that restructuring was 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) 714) 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.

Following the United States' withdrawal from the 1992 bilateral EU–US agreement and the initiation of WTO dispute settlement procedures against the EU, the EU for its part on 6 October 2004 decided to mirror the US steps by initiating WTO dispute settlement procedures regarding various US federal, State and local subsidies benefiting Boeing. A WTO panel was set up thereafter.

Following a broad consultation process including an open consultation, in January 2007 the Commission presented **'An agenda for sustainable future in general and business aviation'** (COM(2007) 869) through which the Commission is calling on all interested stakeholders to pursue a dialogue on the future of this sector in Europe. The Commission will, in particular, focus on the following actions: building a basic set of data regarding European general and business aviation; being particularly vigilant to proper application of the principles of proportionality and subsidiarity; taking into consideration the needs of all airspace and infrastructure users in capacity planning and optimisation; promoting new technologies allowing the European industry to maintain its competitive edge and to untap regional and local capacity in a cost-efficient way; facilitating general and business aviation access to foreign markets; ensuring environmental sustainability of general and business aviation.

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 focused on a programme of cooperative research and development. 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 sixth (2002–06) and seventh (2007–13) R & D framework programme.

B. The space industry

1. Towards a European space policy

European governments began cooperating in the space sector through the European Space Agency (ESA) with 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 depended on European cooperation, since no European country had 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 (the 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 the sector, including also large parts of the aerospace industry. Since 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 were to further develop and implement the European strategy for space, reporting to the EU and ESA Councils and the European Parliament 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) 17), 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) 673)).

As a follow-up to the publication of the Green Paper and the White Paper on the European space policy, a framework agreement (Council Decision 2004/578/EC) between the European Community and the European Space Agency was adopted in 2003 which set the origin of European institutional cooperation in outer space affairs. The cooperation under this framework agreement aims at:

— securing Europe's independent and cost-effective access to space and the development of other fields of strategic interest necessary for the independent use and application of space technologies in Europe;

— ensuring that the overall European space policy takes into particular account the general policies pursued by the European Community;

— supporting Community policies by using space technologies and space infrastructures where appropriate and promoting the use of space systems in support of sustainable development, economic growth and employment;

— optimising the use of expertise and available resources and contributing to the consolidation of the close cooperation between the European Community and the ESA, thereby

linking the demand and supply of space systems within a strategic partnership;

— achieving greater coherence and synergy of research and development in order to optimise the use of resources available in Europe, including the network of technical centres.

It also made provision for joint and concomitant meetings of the Council of the European Union and the ESA Council at ministerial level. Since then, the so-called 'Space Council' has met several times (25 November 2004, 7 June 2005 and 28 November 2005) for the adoption of jointly-endorsed orientations for space. In May 2005 the Commission set out the preliminary elements of Europe's space policy in a communication (COM(2005) 208). On 22 May 2007 the European Space Council adopted the resolution on the European space policy through which the European Union, ESA and their Member States have for the first time a common political framework for space activities in Europe that will benefit all citizens and keep European industry strong and competitive. The new European space policy highlights the importance of the space sector as a strategic asset for the independence, security and prosperity of Europe, makes specific reference to defence and security applications, aiming to support increasing synergies between military and civil space programmes, calls for ensuring sustainable funding for space applications and provides for a specific coordination mechanism for such international cooperation.

At a time when new world players, such as China or India, are now becoming significant competitors in establishing space projects, the **Lisbon Treaty foresees** a new legal basis (Article 189 TFEU) for a coherent space policy to promote scientific and technical progress, industrial competitiveness and the implementation of its policies. To this end, the Union will promote joint initiatives, support research and technological development, coordinate the efforts needed for the exploration and exploitation of space and establish any appropriate relations with ESA. The European Parliament and the Council will have shared competences and will adopt the necessary measures in accordance with the so-to-be-called 'ordinary legislative procedure' excluding any harmonisation of the laws and regulations of the Member States.

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 the sixth and seventh EU research framework programmes. The seventh framework programme (FP7) (2007–13) is supporting a European space programme focusing on applications such as:

— global monitoring for environment and security (GMES) — a European initiative to combine satellite and other observation data in order to provide value-added information services dealing with environment and security; under FP7 the development of the GMES space component is managed by the ESA and the Commission manages the development of GMES services through FP7 and assures optimal integration of data from in-situ monitoring.

— 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).

The EU Member States have earmarked EUR 1.43 billion for funding the space element over the duration of FP7.

3. Galileo — the flagship EU satellite navigation system

Finding your way around a large building, tracking pollutants and dangerous goods, monitoring animal migration, allowing the location of stolen property, or lost pets or individuals or allowing near real-time reception of messages in case of emergency are only a few examples of the benefits Galileo could provide. The **Galileo satellite radio navigation system** is an initiative launched by the European Union and the European Space Agency which aims to be the first satellite positioning and navigation system in the world specifically designed for civil purposes. The **EGNOS programme**, which is also a part of the European satellite radionavigation policy, aims to improve the quality of signals from the American GPS and the Russian Glonass systems to ensure reliability over a vast geographical area. In light of the changes in the course of the Galileo programme since the start of 2007 and in particular the fact that the European Community will now assume responsibility for the deployment of the system and the resulting additional cost for the Community budget during the 2007–13 financial framework, the Commission put forward a proposal for a regulation on the further implementation of the European satellite radionavigation programmes (EGNOS and Galileo) to amend its initial proposal (COM(2004) 477). The current proposal abandons the concession contract with the private sector and the principle of public–private partnership for the deployment phase. The European Parliament realises the technological, political and economic importance of the programme and has consistently given its full support. The main innovations which will strengthen the role of the EP are: the application of the regulatory procedure, with scrutiny on the most important aspects of the decision-making, and the introduction of a new institutional mechanism for monitoring the programmes: the Galileo Interinstitutional Panel (GIP).

Role of the European Parliament

In January 2002 Parliament 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 stated that the European Union must make a supreme financial effort, including in particular the development of space applications relating to global security.

In July 2008 Parliament adopted a resolution on space and security where it notes the importance of the space dimension to the security of the European Union and the need for a common approach necessary for defending European interests in space. It also underlines the need for space assets in order that the political and diplomatic activities of the European Union may be based on independent, reliable and complete information in support of its policies for conflict prevention, crisis management operations and global security, especially the monitoring of proliferation of weapons of mass destruction and their means of transportation and verification of international treaties, the transnational smuggling of light weapons and small arms, the protection of critical infrastructure and of the European Union's borders and civil protection in the event of natural and man-made disasters and crises. The resolution welcomes the endorsement of the European space policy and draws attention to the fact that the EGNOS and Galileo programmes should be considered as one of the major pillars of the future European space programme.

→ Maya Gadzheva
August 2008

4.8.7. The audiovisual industry

The switchover from analogue to digital broadcasting brings many advantages: a better image and sound quality, lower transmission costs, more efficient spectrum usage, fully interactive applications. At the same time digital technology allows for the convergence of broadcasting with traditionally separate media such as telecommunications and the Internet into a single multimedia product combining text, sound, video and voice. Mobile TV and access to TV broadcasting on the Internet are already nowadays a reality and the process of convergence is expected to accelerate over the coming decade.

Legal basis

— Article 157 of the Treaty establishing the European Community (EC) (industry), (Article 173 of the Treaty on the Functioning of the European Union (TFEU) (proposed)).

— Articles 23, 25, 28 and 29 EC (free movement of goods, including audiovisual products), (Articles 28, 30, 34 and 35 TFEU).

— Articles 39 to 60 EC (free movement of people, services and capital), (Articles 45 to 66 TFEU).

— Articles 81 to 89 EC (rules on competition), (Articles 101 to 109 TFEU).

— Article 95 EC (approximation of laws), (Article 114 TFEU).

— Article 149 EC (education), (Article 165 TFEU); Article 151 EC (culture), (Article 167 TFEU).

Objectives

— To strengthen the internal market for broadcasting and audiovisual services.

— To establish a more competitive European audiovisual sector through support mechanisms in the form of different EU actions and programmes; easier access to finance, in particular for SMEs and the distribution of the audiovisual content in a converging market (that includes telecoms, digital radio and TV and next generation networks).

— To promote cooperation and facilitate discussion between EU and other international organisations concerning the audiovisual sector.

Achievements

A. Regulation of audiovisual content

Under the Treaty of Rome the audiovisual field was not defined as a separate policy. The growing economic importance of the audiovisual sector over the years and its very great sociological and cultural implications prompted the first attempts to open up the audiovisual market to competition in the Member States at the beginning of 1980s. In 1984 the Commission adopted a 'Green Paper on the establishment of a common

market in broadcasting, especially by satellite and cable' and in 1987 a 'Green Paper on the development of the common market for telecommunication services and equipment'. It was in 1989, with the adoption of the Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities — known as the **TV without frontiers directive** — that a common audiovisual policy began to take shape. The Maastricht Treaty or the Treaty on European Union, which was signed in 1992 and entered into force on 1 November 1993, added a specific reference to the audiovisual sector in Article 128, which deals with culture: 'Action by the Community shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action' in such fields as 'artistic and literary creation, including in the audiovisual sector'. Furthermore, the Community should take cultural aspects into account in its action under other provisions of this Treaty. The Treaty of Amsterdam, which was signed on 2 October 1997 and entered into force on 1 May 1999, was accompanied by a protocol on the system of public broadcasting. It confirmed the importance attached by the Member States to the role of public broadcasting, which is linked to the democratic, social and cultural needs of each society as well as to the need to safeguard plurality in the mass media.

Television without frontiers directive (TVWF directive)

The 1989 TWF directive was modified in 1997 to clarify certain of its provisions and to bring it up to date with technological developments such as teleshopping and sponsoring. It regulates television broadcasting services and includes traditional TV, pay-per-view and near-video-on-demand but not video-on-demand and on-demand information services. The directive's current version contains provisions, inter alia, on the country of origin principle, promotion of European works (the so-called 'quotas' regime), advertising and sponsorship, broadcasting of major events of major importance for society and the right to reply. The directive set up a contact committee which is composed of representatives of the responsible authorities from the Member States.

The audiovisual media services directive

Meanwhile the new and fast developing information and communication technologies combined with other developments in the broadcasting markets are set to transform the European audiovisual landscape. Consequently on 13 December 2005 the Commission proposed a directive on audiovisual media services amending the TVWF directive (COM(2005) 646). Directive 2007/65/EC adopted on 11 December 2007 amends the television without frontiers directive and renames it '**audiovisual media services directive' (AVMSD).** It entered into force on 19 December 2007 and the deadline for implementation by the Member States is 19 December 2009 at the latest. In the meantime the TVWF directive remains fully applicable. The scope of the new directive is extended to cover on-demand services (i.e. nonlinear audiovisual media services) which are defined as 'an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider'. The aim of the directive is to deepen the internal market for nonlinear/on-demand audiovisual services (minimum harmonisation with regard to protection of minors, hate speech, commercial communication) and to modernise the rules, especially advertising rules, for linear/broadcast services. Jurisdiction will continue to be determined on the basis of the country-of-establishment principle but the directive contains a procedure which allows a Member State to oblige a television broadcast directed wholly or mostly towards a Member State other than the one where the broadcaster is established to comply with its own national rules. The directive keeps the basic principles of the current directive as well as amending and introducing new rules including those listed below.

— **Access to short news reports:** Member States must ensure that any broadcaster established in the Community has access on a fair, reasonable and non-discriminatory basis to events of high interest to the public which are transmitted on an exclusive basis for the purpose of short news reporting.

— **European works in on-demand audiovisual media services**: Member States shall ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction promote, where practicable and by appropriate means, the production of and access to European works.

— **Product placement:** In principle it is prohibited but exemptions to this principle are provided for certain types of programme (films, series, sports, light entertainment) subject to certain conditions. In any event programmes for children are not allowed to contain product placement.

— **Protection of minors in on-demand audiovisual media services**: Programmes which might seriously impair the physical, mental or moral development of minors should only be made available in such a way that ensures that minors will not normally hear or see such on-demand audiovisual media services.

— **Co- and self-regulation**: Member States must encourage media service providers to develop codes of conduct towards children, for example to preclude junk food commercials aimed at children.

— **Advertising:** A core of 'qualitative' rules on audiovisual commercial communication is applied to all audiovisual media services. The rules which apply only to linear services have been simplified and streamlined. Commercial breaks are only allowed once every 30 minutes in TV films (excluding series, serials and documentaries), cinematographic works and news programmes. In children's programmes, commercial breaks will be allowed

provided that the scheduled duration of the programme is greater than 30 minutes. Religious services cannot be interrupted. The proportion of television advertising spots and teleshopping spots is not allowed to exceed 20 % of one hour.

— **Right of reply**: There is no change from the TVWF directive. Recital 53 stresses that the right of reply could also be applied as a legal remedy in the online environment and recalls the recommendation on the protection of minors and human dignity and on the right to reply.

— **Report:** The Commission must submit a report to the European Parliament, the Council of the European Union and the European Economic and Social Committee on the application of the directive not later than 19 December 2011, and every four years thereafter.

Media programmes

MEDIA 2007: A successor to four previous programmes, it was established by Decision No 1718/2006/EC, has a budget of EUR 755 million and covers the period 2007–13. In contrast to MEDIA II (1996–2000) and MEDIA Plus/MEDIA Training (2001–06), it is conceived as a single programme. Like its forerunners, MEDIA 2007 is intended to strengthen the audiovisual sector economically, thereby enabling it to play a more effective cultural role. The global objectives of the programme are: to preserve and enhance European cultural and linguistic diversity as well as Europe's cinematographic and audiovisual heritage and to guarantee its accessibility to the public; to increase the circulation and viewing of European audiovisual works inside and outside of the European Union; to strengthen the competitiveness of the European audiovisual sector within an open and competitive framework and to promote links between audiovisual professionals. In order to achieve these objectives the programme will support the acquisition and improvement of skills in the audiovisual field and the development, distribution and promotion of European audiovisual works and pilot projects to ensure that the programme adjusts to market developments.

Previous programmes include: the **MEDIA programme (1991–95)**, **MEDIA II (1996–2000)**, **MEDIA II Training (1996–2000)**, **MEDIA Plus — Development, Distribution and Promotion (2001–06)** and **MEDIA Training (2001–06)**.

Bodies and agencies

The **Education, Audiovisual and Culture Executive Agency (EACEA)** was established by Decision 2005/56/EC of 14 January 2005 for the management of more than 15 Community funded programmes and actions in the fields of education and training, youth, active European citizenship, cultural and audiovisual fields. The agency is located in Brussels and will be operational for a fixed period running from 1 January 2005 to 31 December 2015. It is managed by a steering committee and a director appointed by the Commission. The agency reports to three parent Directorates-General: Education and Culture (responsible for the majority of the programmes entrusted to the agency), Information Society and Media (responsible for the MEDIA Plus and MEDIA Training programmes), EuropeAid Co-operation Office (responsible for EU external cooperation programmes).

With Council Decision 1999/784/EC of 22 November 1999 the Community decided to become a member of the **European Audiovisual Observatory**. Based in Strasbourg and established in 1992 within the legal framework of the Council of Europe, it is a unique non-profit public service body which contributes to the strengthening the competitiveness of the audiovisual industry by collecting and disseminating information on the audiovisual sector in Europe. Decision No 2239/2004/EC extended the Community's participation in the Observatory until the end of 2006. Subsequently, the Community's participation was further extended until 2013 with Decision No 1718/2006/EC, which established the MEDIA 2007 programme, to cover the whole duration of the programme.

B. The EU regulatory framework for electronic communications networks and services — Implications for broadcasting

The EU regulatory framework for electronic communications networks and services apply to all transmission infrastructures, irrespective of the types of services carried over them (the so-called 'horizontal' approach). It covers all electronic communications networks, associated facilities and electronic communications services, including those used to carry broadcasting content such as cable television networks, terrestrial broadcasting networks and satellite broadcasting networks. Of particular importance or specific to the broadcasting sector are provisions that provide the links between transmission and content regulation, concerning, inter alia: allocation and assignment of radio spectrum; authorisation of networks and services; must-carry obligations; access to networks and associated facilities, including access to application programme interfaces (API) and electronic programme guides (EPG) for interactive digital television (4.8.8.).

C. Switchover to digital broadcasting

The transition from analogue to digital technology constitutes the next major revolutionary change after the transition from black and white to colour TV broadcasting. Digital broadcasting means huge advantages in terms of more efficient spectrum usage and increased transmission possibilities. Digital convergence and multiplatform access have revolutionised the transmission of information and are still subject to a process of continuous evolution and improvement affecting all segments of society as they will lead to wider consumer choice, greater flexibility and enhanced competition. Consumers will benefit from new and improved broadcasting services such as additional programming, programme-related enhancements, better audio and picture quality including features such as widescreen and high definition TV, interactive digital television

services, mobile TV and future new services that differ from today's fixed or mobile offerings. The digital switchover will have a significant impact on the EU economy, driving innovation, job growth and productivity.

The switchover from analogue to digital TV broadcasting in Europe, expected by 2012, will release significant spectrum known as the 'digital dividend'. In its communication of 13 November 2007 entitled **'Reaping the full benefits of the digital dividend in Europe: A common approach to the use of the spectrum released by the digital switchover'**, the European Commission defines the digital dividend as 'the spectrum over and above the frequencies required to support existing broadcasting services in a fully digital environment, including current public service obligations' — meaning part of the frequency bands from 174 to 230 MHz (VHF) and from 470 to 862 MHz (UHF). Due to digital compression systems the same amount of spectrum needed for one analogue TV channel can be used for six to eight standard digital TV channels. The 27 Member States do not have a common timetable to switch to fully digital broadcasting. In many Member States plans for the digital switchover are hardly developed, while in a few others, Sweden and Finland, the switchover has already taken place.

The Commission also proposed freed-up frequencies to be arranged into clusters for the three most common types of networks.

— **Unidirectional high power networks** (i.e. mainly for fixed broadcasting services): This part of the UHF should be used both to ensure the **continuation of existing TV programmes** in digital format (which is formally outside of the scope of the digital dividend) as well as to deploy appropriate resources to accommodate **new broadcasting needs** fitting this traditional structure of networks.

— **Unidirectional medium to low power networks** (i.e. typically for mobile multimedia services, and newer forms of converged broadcasting and communications services).

— **Bi-directional low power networks** (i.e. typically for fixed and mobile broadband access services): This cluster could also possibly include other applications such as innovative low power broadcasting services.

A different degree of spectrum planning coordination is envisaged: national management for unidirectional high power networks; national management combined with optional EU coordination for unidirectional medium to low power networks; and EU harmonisation on a flexible basis for bi-directional low power networks.

Considering both the amount of spectrum available after the switchover and the desirability of UHF spectrum for a variety of applications for both broadcasters and telecom operators, the Commission's proposals for the digital dividend will be the focus of intense debate in the European Parliament and in the Member States regarding to which services the freed spectrum will bring the greatest benefits and which actions need to be taken at EU level.

Related acts

— Communication of 2 February 2006 from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on reviewing the interoperability of digital interactive television services pursuant to communication COM(2004) 541 of 30 July 2004 (COM(2006) 37).

— Communication of 29 September 2005 from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on EU spectrum policy priorities for the digital switchover in the context of the upcoming ITU Regional Radiocommunication Conference 2006 (RRC-06) (COM(2005) 461).

— Communication of 24 May 2005 from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on accelerating the transition from analogue to digital broadcasting (COM(2005) 204).

— Communication of 30 July 2004 from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on interoperability of digital interactive television services (COM(2004) 541).

— Communication of 17 September 2003 from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the transition from analogue to digital broadcasting (from digital 'switchover' to analogue 'switch-off') (COM(2003) 541).

Mobile TV is a product of the convergence of media, telecom and information technologies and it has the potential to provide personalised, time-shifted and on-demand audiovisual content, anytime, while on the move. Several bearer technologies currently dominate the mobile TV landscape with DVB-H being a clear contender to become a single standard in the EU market. The potential market for mobile TV is substantial but the take-up of services in Europe remains slow in comparison with the USA and Asia as multiple technical standards may hamper the emergence of a strong internal market for mobile TV. In response, in its communication entitled 'Strengthening the internal market for mobile TV' (COM(2007) 409 of 18 July 2007) the European Commission identified the Digital Video Broadcasting Handheld (DVB-H) standard as the most suitable for the future development of terrestrial mobile TV in Europe and announced its intention to push for a single standard and a consistent regulatory regime across Member States to achieve economies of scale and flexibility for users. The Commission communication on the digital dividend proposes that one of the identified sub-bands 'unidirectional medium to low power

networks' could provide an opportunity for cost-effective deployment of mobile TV.

Role of the European Parliament

Several resolutions have been adopted by the European Parliament (EP) on the implementation of the TVWF directive in general and on the implementation of its provisions on the promotion of distribution and production of television programmes. The most recent ones have systematically stressed the need to revise the directive to take account of technological developments and changes in the structure of the audiovisual market and in particular of media convergence. The EP also affirms that the new audiovisual technologies should allow the broadcasting of pluralist information and quality programmes, accessible to an ever increasing number of citizens. The discussions in the EP call for the need for a wide-ranging public debate on the subject, ensuring the best social, cultural and economic value in terms of an enhanced and geographically wider offer of services to citizens, and in particular broadband applications designed to overcome the so-called 'digital divide'.

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4.8.8. Information technologies

The introduction and rapid development of information and communications technologies (ICTs), such as the Internet, mobile phones and fibre optics and the convergence of computing, telecommunication and satellite technology in recent years alters the way in which people interact with each other, companies conduct their business and societies set their economic and human development agendas. ICT research takes up the single largest share (over EUR 9 billion) of the EU's seventh framework programme for research (2007–13), paving the way for Europe's global leadership in ICT.

Legal basis

The Treaties (and the proposed Lisbon Treaty will not bring any change) do not contain any special provisions for information technology (IT), although Article 157 of the Treaty establishing the European Community (EC) (Article 173 of the Treaty on the Functioning of the European Union (TFEU)) 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 to 89 EC, Articles 101 to 109 TFEU), trade policy (Articles 131 to 134 EC, Articles 206 to 207 TFEU), trans-European networks (TENs) (Articles 154 to 156 EC; Articles 170 to 172 TFEU), research and technological development (Articles 163 to 173 EC), research and technological development and space (Articles 179 to 190 TFEU) and approximation of laws (Article 95 EC; Article 114 TFEU).

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 recent years and the converged communication and service infrastructure will gradually replace the current fixed, mobile, Internet and broadcasting networks. The ubiquitous nature of IT will be critical to improve the competitiveness of the European industry and to meet the demands of Europe's citizens, businesses and governments. A key element of the renewed Lisbon agenda for growth and jobs in Europe, ICT is at the very core of the knowledge and information-based society and a key enabler for productivity, growth and better quality of life.

Achievements

A. Internal market

1. The current European regulatory framework for electronic communications networks and services

Directive 96/19/EC 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 April 2002 of a new regulatory package for the broadened scope of electronic communication services, whilst substantially reducing the number of regulatory measures.

The revised regulatory framework has been applied in all Member States since 25 July 2003 and consists of one general and four specific directives, namely: Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (**framework directive**); Directive

2002/20/EC on the authorisation of electronic communications networks and services (**authorisation directive**); Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities (**access directive**); Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services (**universal service directive**); Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (**e-privacy directive**). Directive 2002/77/EC on competition in the markets for electronic communications networks is also considered part of the regulatory framework. So are the radio spectrum decision (No 676/2002/EC) and the amended decision (2004/641/EC) establishing the European Regulators Group for Electronic Communications Networks and Services (2002/627/EC).

2. The 2007 review

Article 25 of the framework directive requires that a review of the framework has to commence no later than 25 July 2006. The Commission launched the consultation process in two phases — at the end of 2005 as a 'call for input' which paved the way for a second consultation launched by the Commission on 29 June 2006. According to the Commission, despite improved competition in some areas a substantial reform of the 2003 regulatory framework is considered necessary as its assessment shows that there is a continued lack of a single market for electronic communications and increasing divergence of regulatory approaches in the enlarged EU.

The Commission's proposals were adopted on 13 November 2007 and include: a proposal for a directive amending the framework, access and authorisation directives (**better regulation directive**); a proposal for a directive amending the universal service and e-privacy directives (**citizens rights directive**); a proposal for a regulation establishing the European Electronic Communications Market Authority (**EECMA regulation**). In addition, the three legislative reform proposals are accompanied by an impact assessment, a communication setting out the outcome of the review and summarising the reform proposals and a second edition of the recommendation on relevant product and service markets according to which the number of markets susceptible to *ex ante* regulation is reduced from 18 to 7. The Commission has also presented a communication entitled 'Reaping the full benefits of the digital dividend in Europe: A common approach to the use of the spectrum'.

The main proposed changes to the current framework are, inter alia, the following: a spectrum management reform, including the introduction of the principles of technological and service neutrality, and spectrum trading; a stronger control role for the Commission in remedies and the introduction of functional separation (forced separation of activities without divestiture of assets) as a possible remedy for national regulatory authorities (NRAs); measures aimed at strengthening and improving consumer protection and user rights, basic access and quality of service ('net neutrality and freedoms'), one day number portability, access to freephone numbers from abroad; more responsibility to operators and NRAs with respect to the security and integrity of networks and services; and the establishment of a new telecoms body.

To become law, the Commission's proposals will need to be approved by the European Parliament and the Council of the European Union.

3. Other initiatives

In light of the excessive roaming charges that consumers and business travellers have so far endured while abroad in other EU countries, on 12 July 2006 the Commission launched a proposal for a separate regulation for roaming charges on public mobile networks within the Community, to reduce roaming charges (COM(2006) 382). The **EU roaming regulation ((EC) No 717/2007)** became binding law in all 27 Member States on 30 June 2007. It only applies to voice calls within the EU and expires on 30 June 2010. Consumers will benefit from the **'Eurotariff'** that sets a maximum limit for calls made and received when abroad in an EU country and carriers are expected to compete below this cap. The Eurotariff rates will gradually decrease from 2007 to 2009. Wholesale charges (the prices that operators charge each other for roaming) are also capped. The Commission shall review the functioning of this regulation and report to the European Parliament and the Council no later than 30 December 2008. On 7 May 2008 the Commission launched a public consultation on the functioning and effects of the EU roaming regulation as well as on specific issues such as inadvertent roaming, the effect of the regulation on smaller operators and on domestic prices, the issue of actual and billed minutes, the need for a regulation for data roaming services and SMS and the duration of the EU roaming regulation.

Radio frequency identification (RFID) is an emerging technology with great potential for the European industry, citizens and society in general and the forerunner of the emerging 'Internet of Things', a vision of the future where everyday objects have individual digital presence and are networked. From March to October 2006 the Commission conducted a series of high-level workshops and a first public consultation. In November 2006 the Commission issued a decision on harmonisation of the radio spectrum for RFID devices operating in the ultra-high frequency (UHF) band. In March 2007 the Commission adopted a communication entitled 'Radio frequency identification (RFID) in Europe: steps towards a policy framework' (COM(2007) 96). An RFID Expert Group was established in June 2007. From 21 February to 25 April 2008 the Commission launched a public consultation, in the form of an online questionnaire on the draft text of a Commission recommendation on the implementation of privacy, data protection and information security principles in applications supported by RFID. As part of the review of the e-privacy directive in the context of the 2007 EU telecom reform the Commission proposed amendments to the e-privacy directive with respect to RFID

applications. By mid-2008 the Commission expects to adopt a legal instrument on RFID.

In June 2007 the European Parliament commissioned a study on **RFID and identity management in everyday life — Striking the balance between convenience, choice and control**.

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. The EU strategic framework **i2010 — A European information society for growth and employment** is a key element of the renewed Lisbon partnership for growth and jobs and builds upon the **eEurope 2002** and **eEurope 2005 action plans**. Through regulatory actions, policy coordination actions and support through financial instruments at Community level the i2010 strategy aims at three priorities for Europe's information society and media policies: the completion of a single European information space; strengthening innovation and investment in ICT research; and achieving an inclusive European information society, better public services and quality of life.

During 2007, two years after the launch of i2010 on 1 June 2005, the Commission reviewed the i2010 approach and the results were published in April 2008. The Commission communication 'Preparing Europe's digital future — i2010 mid-term review' (COM(2008)1999) identifies a new set of actions for 2008–09 which aim to address further remaining challenges such as the transition to next-generation networks and the future Internet of Things, more efficient spectrum management, the launch of joint technology initiatives as the first true Europe-wide public–private research partnerships and addressing consumer concerns for privacy and data protection stemming from new converging services in the future ubiquitous information society.

The **World Summit on the Information Society (WSIS)** was originally endorsed in a UN General Assembly resolution in 2001 (567183) 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 European Parliament participated in the Tunis Summit and is actively taking part in the **Internet Governance Forum (IGF)** proposed in the Tunis Agenda for the Information Society and defined as a non-binding forum for multi-stakeholder policy discussion. As was the case in the first Internet Governance Forum in Athens in 2006 the European Parliament sent an ad hoc delegation to the second meeting of the IGF in Rio de Janeiro in November 2007, which focused on the themes of critical Internet resources, access, diversity, openness, security and Internet development. The European Parliament resolution of 17 January 2008 on the second Internet Governance Forum highlights several important issues: the need to secure an open and independent Internet in the future, based on the initiatives and needs of the stakeholders as well as freedom of expression; the means of making the Internet more accessible to more people, e.g. competition between operators and service providers, technology neutrality and development of ICT; the importance of raising the parliamentary profile of the IGF process; the importance of 'local' IGFs whereby the President of the EP is requested to offer facilities for a preparatory event to a 'European IGF' before mid-2009 to reinforce the European dimension of the whole IGF/WSIS process. The European Parliament calls on the EU institutions concerned to take the Tunis Agenda for the Information Society into consideration in their legislative work, such as the revision of the electronic telecommunications framework, the revision of the i2010 initiative and any upcoming ICT legislative proposals.

Information society-related programmes

— '**Safer Internet plus'** (2005–08) is a four-year programme 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. In February 2008 the Commission adopted a proposal for a new Safer Internet programme (2009–13) to further enhance the safety of children using the Internet and other communication technologies. It will have to undergo a process of co-decision in the European Parliament and the Council of the European Union. It takes into account the results of a public online consultation carried out by the Commission between April and June 2007 and includes recommendations made on the Safer Internet Day in February 2008.

— '**eContent plus'** (2005–08) is a four-year programme aiming to make digital content in Europe more accessible, usable and exploitable (Decision No 456/2005/EC). The programme succeeds the eContent programme which ran from 2001 to 2004.

— **IDABC** (2005–09) stands for interoperable delivery of European e-government services to public administrations, businesses and citizens (Decision 2004/387/EC). The programme builds on the previous IDA programmes.

— **The competitiveness and innovation framework programme (CIP)** (2007–13) will bring together specific

Community support programmes into a common framework (COM(2005) 121). 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 **eContent** programmes and will support the objectives of the integrated strategy **i2010 — European information society 2010.** The ICT programme has a budget of EUR 730 million and 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.

— The **'e-Inclusion: be part of it!' campaign** was formally launched in December 2007 following the adoption on 8 November 2007 of the communication 'European i2010 initiative on e-Inclusion — to be part of the information society'. The communication also proposes a strategic framework for action to implement the Riga ministerial declaration 'ICT for an inclusive society' of June 2006, by enabling the conditions for everyone to take part in the information society by bridging the broadband, accessibility and tackling competences gaps, accelerating effective participation of groups at risk of exclusion and improving quality of life and integrating e-Inclusion actions to maximise lasting impact.

— **Intelligent car initiative — 'Raising awareness of ICT for smarter, safer and cleaner vehicles'** is a programme launched in February 2006 by the Commission to remove bottlenecks in rolling out intelligent systems and to speed the development of smarter, safer and cleaner transport for Europe. It is a flagship initiative of the EU's i2010 strategy and is intended to promote the use of ICTs in cars and transport infrastructure. On 19 June 2008 the first 'Intelligent car' report, entitled 'Towards Europe-wide safer, cleaner and efficient mobility', was discussed and voted on by the European Parliament plenary in first reading.

On 3 January 2008 the Commission adopted a communication on creative content online in the single market, which launched a public consultation in preparation for the adoption of a recommendation on **creative content online**. A stakeholders' discussion and cooperation platform, the so-called 'Content online platform', will work on the four main, horizontal challenges identified by the Commission: availability of creative content, multi-territory licensing for creative content, interoperability and transparency of digital rights management (DRM) systems, legal offers and piracy.

On 7 April 2008 the **EU top-level domain** celebrated its second anniversary since it became available to the general public within the EU (Regulation (EC) No 733/2002). With more than 2.8 million registered .eu domain names, and approximately 2 500 new .eu domain names being registered each business day, the EU top-level domain is a real promoter of an EU Internet identity.

The 112 single European emergency call number was established by Council Decision 91/396/EEC of 29 July 1991 and reinforced through Article 26 of the universal service directive. Today 112 is available in all but one EU Member State. Member States are also obliged to make sure that emergency services are able to establish the location of the person calling 112. From 2010 onwards all new cars should be equipped with an e-call system that will send accident data, including the car's location in the case of emergency.

On 15 February 2007 the Commission adopted Decision 2007/116/EC on reserving the national numbering range beginning with '**116**' for harmonised numbers for harmonised services of social value such as the 116000 hotline to report missing children. In October 2007 the decision was amended to include the numbers 116111 and 116123. which should be used as helplines for children and adults in need of support (2007/698/EC).

C. ICT and research

In the context of the research framework programmes (FPs) information technologies have been given substantial attention. The **seventh framework programme (FP7) (2007–13)**, as a natural successor of the **fifth framework programme (FP5) (1998–2002)** and the **sixth framework programme (FP6) (2002–06)**, again includes ICT as one of the 10 central thematic areas under 'Cooperation', one of the four specific programmes, and again proposes ICT as one of the most highly prioritised areas as regards budget allocation. A total of EUR 9.1 billion is earmarked for funding ICT over the duration of FP7, making it the largest research theme in the 'Cooperation' programme, which is itself the largest specific programme of FP7, with a budget of EUR 32 billion. The aim is to enable the EU to master and shape future developments in ICT to meet the demands of the society and the economy, drive growth and sustainable development and boost innovation, creativity and industry competitiveness. 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. The joint technology initiatives (JTIs), which stem primarily from the work of European technology platforms (ETPs), are a new concept in FP7. They are proposed as a new way of realising public–private partnerships in fields of key importance for industrial research and development at European level and would have particular relevance in the ICT domain.

Role of the European Parliament

The European Parliament advocates a robust and advanced ICT policy. As the area is largely subject to co-decision, the European Parliament has been very active in the adoption of legislative acts. However, it 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 for the development of pan-European services, enhanced EU support for ICT research and more attention to consumer issues. As ICT can make it easier to respond to future social service needs the European Parliament considers that more investment is necessary in the exploitation of ICT in public sector services such as health, education and government. The European Parliament stresses the importance of ICT as a vital component to narrow social differences, to prevent the digital divide within the EU, to encourage social and territorial cohesion and to promote democratic discourse and pluralism in Europe.

→ Maya Gadzheva
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4.8.9. The biotechnology industry

The biotechnology industry is not directly regulated by the provisions of the EC Treaty. The industrial policy provisions are sometimes used as a legal basis in this area. By virtue of its great economic, social and environmental potential, this policy occupies an important place among the European policies.

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 to 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), 2007–13, based on the proposal by the Commission, proposal for a decision of the European Parliament and of the Council establishing a competitiveness and innovation framework programme (2007–13).

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 micro-organisms (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 (EMEA) 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 Direrctive 2001/18/EC, which replaced Directive 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 micro-organisms (GMM) (within the scope of Directive 90/219/EEC) 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/EEC on contained use of genetically modified micro-organisms. 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 sylvicultural 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 Directive 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 EMEA, which would also have to perform an environmental risk assessment equivalent to that under Directive 2001/18.

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 pharmaceuticals 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 pharmaceuticals 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 USA.

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 (2002–2006) 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 European Parliament 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.

→ Marcelo Sosa Iudicissa
November 2005

4.8.10. The defence industry

The defence industry is governed by Articles 157 and 308 of the EC Treaty and it presents economic and technological components that are important factors in the competitiveness of the European industry. Created in 2004, the European Defence Agency contributes actively to the development of this 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(1) of the Treaty establishing the European Community (EC) 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 US 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/CFSP 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 '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 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(2004) 608), 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

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 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, began 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 made progress to establish a security/defence research programme under a new preparatory action (OJ L 67, 5.3.2004, pp. 18–22). Between 2004 and 2006, a budget of EUR 65 million was earmarked for the Preparatory Action, which, the Commission hoped, would 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 meet 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.

Role of the European Parliament

In a resolution in April 2002 on European defence industries, the EP 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 pays 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.

→ Gerrard Quille
May 2006

4.9. Social and employment policy

4.9.1. Social and employment policy: general principles

The social dimension of European integration has been greatly developed through the years and is a key aspect of the Lisbon strategy, which aims at boosting European competitiveness and economic growth while creating 'more and better jobs and greater social cohesion'.

Legal basis

— Article 2 of the Treaty on European Union (TEU).

— Articles 2, 3, 13, 39 to 42, 125 to 130 and 136 to 148 of the Treaty establishing the European Community (EC).

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 are the common objectives of the Community and the Member States in the social and employment fields, as described by Article 136 of the EC Treaty.

Achievements

A. From the Treaty of Rome to the Maastricht Treaty

In order to allow workers and their families to take full advantage of the right to move and seek employment freely throughout the common market, Article 42 (originally Article 51) of the Treaty of Rome already provided for the Council to adopt the necessary measures for the coordination of the social security systems of the Member States. This was the legal basis for the adoption of two Council regulations in 1958, replaced later by Regulation (EEC) No 1408/71, which has been for long time the main EC law instrument in this field (→4.9.4). Social aspects connected with the integration of European labour markets were also dealt with in Title III of Part III of the Treaty of Rome. Under Articles 136 and 140

(ex Articles 117 and 118) Member States expressed the belief that improved working and living conditions would arise from the functioning of the common market and they committed themselves to cooperate in the areas of employment, labour law and working conditions, vocational training, social security, occupational health and safety, and social dialogue. Article 141 (ex Article 119) enshrined the principle of equal pay for men and women for an equal work and it was to be recognised with direct applicability by the Court of Justice. The European Social Fund, provided for in Articles 146 to 148 (ex Articles 123 to 125), should be devoted to improving workers' mobility and professional opportunities (→4.9.2).

The expectations of general well-being spreading from the common market were very soon reversed by a growing awareness of the structural unbalances and unevenness of growth that affected the employment situation in Europe, which led to a more proactive social policy at Community level. In 1974, the Council adopted the first programme of social action. A number of directives on health and safety at work, equal treatment between women and men and employment protection rights were subsequently adopted, but unanimity voting in the Council paralysed progress in other areas.

The Single European Act (SEA) introduced Article 137 (118A), which provided for the harmonisation of health and safety conditions at work, mainly with a view to avoiding 'social dumping'. Acting by qualified majority in cooperation with the European Parliament, the Council adopted some directives laying down minimum requirements in this area. The SEA also introduced the possibility for social partners at European level to negotiate collective agreements and established a Community policy for economic and social cohesion.

As December 1992 approached, consensus grew around the need to pay more attention to the social aspects connected with the completion of the internal market. After long debates, the Community Charter of the Fundamental Social Rights of Workers (Social Charter) was adopted at the Strasbourg Summit in December 1989 by the Heads of State or Government of 11 Member States, with the United Kingdom opting out. Based on the Council of Europe's Social Charter and the conventions of the International Labour Organisation (ILO), it was adopted in the form of a political declaration, but required the Commission to set out a social action programme to accompany it. The action programme, which proposed 47 separate initiatives, was implemented slowly, particularly as regards binding legal acts. Council Directive 91/533/EEC on the obligation of employers to inform employees of the conditions applicable to their employment relationship and some directives concerning the health and safety of employees at work (→4.9.5) are worth recalling.

With the signature of the Maastricht Treaty, the promotion of a high level of employment and social protection was officially introduced as one of the tasks conferred to the European Community by the Member States. During the Intergovernmental Conference, however, it proved impossible to come to an agreement by all 12 Member States on the innovations to be introduced in the chapter on social policy in the EC Treaty. The UK, in particular, was not in favour of significant changes. The other 11 Member States decided to move ahead by concluding an agreement on social policy and signing, together with the UK, Protocol No 14 of the Treaty on European Union to which the agreement was annexed and which stated that '11 Member States [...] wish to continue along the path laid down in the 1989 Social Charter', thereby exempting the UK from participation. The agreement contained some significant innovations, such as a more ambitious formulation of the objectives of social policy and a major boost for the role of social partners at Community level (→4.9.6). The Council was endowed with the power to adopt directives laying down minimum requirements in several new sectors. It was to act in accordance with the cooperation procedure in the areas of 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, while unanimous decision was required while deciding on social security and social protection of workers, protection of workers where their employment contract is terminated, representation and collective defence of the interests of workers and employers, conditions of employment for third-country nationals legally residing in the Community and financial contributions for promotion of employment and job-creation, without prejudice to the provisions relating to the Social Fund.

B. The Amsterdam and Nice Treaties

The uncomfortable situation of a double legal basis for action in the area of social policy within the European Community was finally overcome by the signing of the Amsterdam Treaty, when all Member States, including the UK, agreed upon the integration of the agreement on social policy in the text of the EC Treaty with some slight changes (Articles 136 to 145). The co-decision procedure replaced cooperation in Article 137. Under a new paragraph in Article 137(2), measures designed to encourage cooperation between Member States in order to combat social exclusion could be adopted by co-decision. The scope for Community action promoting equal opportunities between men and women was expanded.

The co-decision procedure was also extended to provisions relating to the European Social Fund (→4.9.2), the free movement of workers and social security for Community migrant workers (→4.9.4).

The new Article 13 of the EC Treaty conferred on the Community the competence to 'take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation', requiring the Council to act unanimously after consulting the European Parliament. On this basis, two directives were soon adopted:

Directive 2000/43/EC on implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78/EC on establishing a general framework for equal treatment in employment and occupation.

Among major innovations introduced by the Amsterdam Treaty was also the launch of the European employment strategy (EES). In the early 1990s several Member States had experienced very high levels of unemployment, which threatened to develop into a persistent feature of European labour markets. Heads of State or Government had then realised the need to look jointly for solutions and during the European Council meeting in Essen in December 1994 they had committed themselves to better coordinate their national policies. The Amsterdam Treaty added the promotion of a high level of employment to the list of the EU objectives and conferred on the European Community the responsibility to support and complement the activities of the Member States, to encourage cooperation between them and to develop a 'coordinated strategy'.

The EES (Articles 125 to 130 EC) is based on an open method of coordination whose key components are the common employment guidelines (adopted by the Council on a Commission proposal following conclusions of the European Council on the employment situation in the Community and after Parliament's consultation), the national programmes on the implementation of such guidelines, a joint annual report by the Council and the Commission on the employment situation and on the implementation of the employment guidelines and, if considered appropriate, Council recommendations to Member States (→4.9.3). During the Amsterdam Summit in June 1997 it was decided that the new provisions on the EES would be immediately applied, without waiting for the entry into force of the whole amending Treaty and the employment guidelines for 1998 were adopted by the Council after the special Luxembourg 'Job summit' in November 1997.

The signature of the Nice Treaty was quite deceiving for those expecting major progress in the social sector. In fact, a Social Protection Committee was created (Article 144) to promote cooperation on social protection policies between Member States and with the Commission, but all proposals to expand the co-decision procedure were rejected. Only a few minor changes were introduced, including the so-called *passerelle* clause under Article 137 allowing the Council to unanimously decide to apply co-decision to the fields of the protection of workers where their employment contract is terminated, the representation and collective defence of the interests of workers and employers, and the conditions of employment for third-country nationals legally residing in Community territory. The modernisation of social protection systems was added to the list of sectors where the Community shall encourage cooperation between the Member States.

During the Nice Summit, moreover, a Charter of Fundamental Rights of the European Union, drafted by a special convention, was proclaimed by EU leaders, the European Commission and the European Parliament. The summit also marked an important step in the development of a European Union strategy against poverty and social exclusion.

C. The social and employment policy within the Lisbon agenda

While agreeing upon a strategy aimed at making the European Union the most competitive economy in the world and achieving full employment by 2010 during the extraordinary meeting of the European Council in Lisbon in March 2000, the Heads of State or Government also recognised that economic growth was not in itself sufficient to fight against poverty or the danger of social exclusion and committed themselves to improve cooperation in this area; they decided that suitable objectives should be set by the Council by the end of the year and agreed that policies for combating social exclusion should be based on an open method of coordination combining national action plans and a programme presented by the Commission to encourage cooperation in this field. At the same time, the European Council underlined that European social protection systems should be modernised so as to ensure their sustainability and called for greater cooperation in the area of pensions.

Later that year, at the Nice Summit, a European social policy agenda was adopted up to 2005, based on Commission communication COM(2000) 379, with a view to converting the political commitments made at Lisbon into concrete action and modernising the European social model. At the heart of the agenda was the idea to 'ensure the positive and dynamic interaction of economic, employment and social policy'. It was decided that progress on implementation of the agenda should be examined by the European Council every year at its spring meeting. The Heads of State or Government also approved the objectives adopted by the Council in the fight against poverty and social exclusion and invited the Member States to submit by June 2001 their national action plans covering a two-year period and to define indicators and monitoring mechanisms capable of measuring progress.

In 2003 it was decided to extend the open method of coordination to health and long-term care and to endeavour to streamline the three cooperation processes ongoing in the field of social protection into one single exercise, the social protection and social inclusion process, with one comprehensive annual report and some overarching objectives.

Following the mid-term review and the reform of the Lisbon strategy, the social and employment policies have also undergone some adaptations. From 2005 the employment guidelines were streamlined into the integrated guidelines for growth and jobs together with the broad economic policy guidelines. The process was reorganised around a three-year cycle, during which guidelines stay unchanged in order to allow for a medium-term approach.

With a view to enhancing the quality and the coherence of the overall socioeconomic governance of the EU, the timetable of the social protection and social inclusion process has also been re-oriented around the schedule set for the Treaty-based instruments for economic and employment policy coordination, with full synchronisation starting from 2006. National strategies on social protection and social inclusion will now cover the same three-year time span as the national reform programmes, starting from 2008–10.

A new social agenda 2006–10 was adopted in order to accompany the revamped Lisbon strategy and promote the social dimension of economic growth (COM(2005) 33). The agenda focused on two priority areas: moving towards more and better jobs (through the EES, the ESF, social dialogue and modernising Community legislation in the areas of information and consultation of workers, social security and health and safety at work) and realising a more cohesive society (by strengthening the effectiveness of the open method of coordination (OMC), fighting social exclusion and promoting diversity and non-discrimination).

D. The latest developments

Steps have also been taken in the context of the relaunched Lisbon strategy for growth and jobs to introduce greater consistency in EC funding in the field of employment and social affairs. A Community programme for employment and social solidarity, called Progress, has been established for the period 2007–13 to support the implementation of the objectives of the European Union in the social field through analytical activities, mutual learning, awareness and dissemination projects or support to actors whose work contributes to the implementation of the European social policy. Progress covers the following five areas of intervention: (i) employment, (ii) social inclusion and protection, (iii) working conditions, (iv) anti-discrimination and (v) gender equality, with an overall allocation of EUR 743.25 million for the indicated period. It has replaced pre-existing Community programmes and budget lines in these sectors and it complements the European Social Fund action by supporting initiatives with a clear European dimension or added value.

In 2007 a European Globalisation Adjustment Fund was created to provide support for workers who have been made redundant due to changing global trade patterns; it co-finances active employment measures such as job search and mobility allowances, counselling, training and aid for self-employment or business creation.

At the 2008 spring European Council (Brussels, 13 and 14 March 2008) the second cycle of the renewed Lisbon strategy was launched and both pre-existing integrated guidelines for growth and jobs and common objectives of the OMC for social protection and social inclusion were confirmed for the period 2008–10.

In July 2008 the European Commission published a proposal for a renewed social agenda for 2008–10, 'Opportunities, access and solidarity in 21st century Europe', with a view to adapting the European social policy to emerging challenges (COM(2008) 412). Seven priority areas are identified where the means of Community action should be revised: children and youth, especially as concerns education and protection from the risk of poverty; the promotion of employment in an international global context; mobility; equal access to quality healthcare for an ageing population; combating poverty and social exclusion through active measures; fighting discrimination and promoting gender equality; defending European values on the international scene. The communication was accompanied by a proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation outside the field of employment and a proposal for a directive on the application of patient's rights in cross-border healthcare.

It should be recalled that 2007 was celebrated as the European Year of Equal Opportunities for All, while 2010 has been declared the European Year of Combating Exclusion and Poverty.

The Lisbon Treaty would allow for further progress in consolidating the social dimension of European integration. The draft Treaty on the European Union emphasises the key role of human rights and democratic values in the EU (Article 2), as well as its social objectives, among which full employment, solidarity between generations and protection of the rights of the child are mentioned (Article 3); Article 6 recognises the Charter of Fundamental Rights with the same binding force as the Treaties. In the Treaty on the Functioning of the European Union a 'horizontal social clause' is introduced which reads: 'In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health' (Article 9).

Role of the European Parliament

The European Parliament (EP) has always been active in the development of Community action in the field of employment and social policy, with a view to strengthen the European capacity to combat unemployment, improve working and living conditions for the poor and the socially excluded and ensure equal opportunities for women and men. Although the EP's role has long been only a consultative and supervisory one, it adopted many resolutions during the 1960s, 1970s and 1980s. Parliament supported the Commission's different proposals while calling for a more active Community policy in the social field to counterpart the increasing Community importance in the economic area. The EP was more closely involved in the preparation of the Treaty of Amsterdam than in previous Treaty revisions. 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.

In 2003, when the Commission presented the third scoreboard on implementing the social policy agenda, the EP 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, drafting a directive on social protection for new forms of employment and adopting an initiative making it easier to reconcile work and family life.

The EP has often called on the Commission and Member States to ensure the correct, full and timely implementation of EC anti-discrimination legislation.

The EP played an active role in the mid-term review of the Lisbon strategy. In its resolution of 9 March 2005, Parliament insisted on detailed consultation and on the establishment of joint programming with the European Commission. It recalled that a high level of social protection was central to the Lisbon strategy and that it is unacceptable that people should be living below the poverty line and in a position of social exclusion; the EP called for the reinforcement of policies to combat poverty and social exclusion, with a view to renewing the commitment for the elimination of poverty by 2010, and asked for an ambitious social agenda.

In May 2005 the EP adopted an own-initiative report on the social agenda 2006–10, which criticised the lack of practical measures in the programme presented by the Commission and expressed concerns that 'the attainment of the ambitious Lisbon strategy is not being tackled as vigorously as has been claimed elsewhere'; it therefore invited the Commission to draw up a genuine social policy agenda, with specific policy proposals, a timetable and a procedure for monitoring its implementation and insisted on the specification of clear targets and indicators to measure the results of the social inclusion strategy. The EP also considered that the agenda should provide for the annual monitoring of the safeguarding of fundamental social rights by the Union. Parliament took the view that, although having employment is the most important element in people's integration into society, a sound social policy is nonetheless needed to safeguard the right of all to social protection and the cohesion of the societies of the Member States.

In October 2005, in a own-initiative report on the OMC on social protection and social inclusion, Parliament called on the Council and Commission to open negotiations for an interinstitutional agreement setting out the rules for selecting the areas of policy to which the open method of coordination is to be applied and for Parliament's participation in the setting of objectives and indicators and access to documents, participation in meetings, observation and supervision of progress, as well as information on reports and best practices. In the same year, the EP approved an own-initiative report on a 'European social model for the future' and, after identifying the values associated with such model (equality, solidarity, individual rights and responsibilities, non-discrimination and redistribution with access for all citizens to high-quality public services, and the high social standards already achieved), recognised that 'there is no alternative to urgently reforming economic and social systems where they fail to meet the criteria of efficiency and socially sustainable development, and where they are inadequate to tackle the challenges of demographic change, globalisation and the IT revolution'.

In a resolution on the social dimension of globalisation of November 2005, the European Parliament called for a social policy agenda aimed at developing an inclusive and cohesive society, based on gender equality and the combating of all forms of discrimination and taking account of all groups. The report on 'social reality stocktaking' approved in November 2007, reminded the Member States of the need to make optimal use of the social OMC and encouraged them to introduce a decent living minimum wage. The EP had also asked the Council of the European Union to strengthen the social dimension of the employment guidelines for 2008–10.

→ Moira Andreanelli
August 2008

4.9.2. The European Social Fund

The European Social Fund (ESF) was set up by the Treaty of Rome with a view to improving workers' mobility and employment opportunities in the common market through financial support for vocational training programmes to be organised by the Member States. Its tasks and operational rules have subsequently been revised so as to reflect the developments in the economic and employment situation in the Member States, as well as the evolution of the political priorities defined at Community level.

Legal basis

Articles 146 to 148, 158 to 159, 161 and162 of the Treaty establishing the European Community (EC).

Objectives

Regulation (EC) No 1081/2006 describes the European Social Fund's role as twofold: it shall strengthen economic and social cohesion by improving access to quality employment for all and trying to reduce national, regional and local employment disparities, while at the same time supporting the implementation of the European employment strategy.

Achievements

A. Background

1. The early stages

The ESF was the first Structural Fund. During the transitional period (until 1970), it reimbursed the Member States 50 % of the costs of vocational training and resettlement allowances for workers affected by economic restructuring. In total, it assisted over 2 million people during this period.

In 1971 a Council decision increased the Fund's resources substantially and reviewed the system by replacing retroactive funding with new rules requiring applications for assistance to be submitted in advance by the Member States.

In 1983 a new reform (Council Decision 83/516/EEC of 17 October 1983) produced greater concentration of the Fund's interventions, which were to be directed mainly to the fight against youth unemployment and to the regions most in need.

By including in the EC Treaty the objective of economic and social cohesion within the Community, the Single European Act (1986) set the scene for a comprehensive reform (regulations of 24 June and 19 December 1988), which was basically intended to introduce a coordinated approach in the programming and operating of the Structural Funds. For the period 1989–93 co-financing by the ESF supported vocational training measures, aids for employment and the creation of self-employed activities throughout the Community to combat long-term unemployment (Objective 3) and integrate young people into working life (Objective 4). In the eligible regions, the Fund could also co-finance interventions under the other objectives of the cohesion policy.

2. 1994–99

The Treaty of Maastricht expanded the scope for ESF support as described in Article 146 in order to include 'adaptation to industrial changes and to changes in production systems'.

For the following programming period 1994–99, funding allocated for economic and social cohesion was doubled (ECU 141 billion); the ESF resources contributed throughout the Community to the achievement of Objective 3 (supporting the occupational integration of unemployed persons exposed to long-term unemployment, young people and persons exposed to exclusion from the labour market and promoting equal opportunities for men and women) and Objective 4 (training and support for workers affected by industrial change and changes in production systems). In addition, when the Fund granted assistance in the eligible regions under Objectives 1, 2 and 5b, it could be called upon to support employment growth and stability, boost human potential in research and, limited to Objective 1 areas, facilitate the strengthening of education and training systems or contribute to development through the training of public officials.

After some pilot experience in the previous programming period, Community initiatives were confirmed and allocated a more substantial budget (9 % of the total resources of the Funds). The ESF co-financed two such programmes aimed at supporting innovative transnational projects: Adapt, which was meant to help employers and workers anticipate industrial change and deal with its effects, and Employment, whose four strands promoted labour market integration for vulnerable groups (Horizon for disabled people, Now for women, Youthstart for young workers and Integra for the most disadvantaged).

3. 2000–06

In the context of Agenda 2000, the overall framework of the Structural Funds was simplified for the programming period 2000–06.

As far as the ESF is concerned, for the first time it was entrusted with the responsibility of contributing both to the cohesion policy and to the implementation of the European employment strategy (→4.9.3) and its scope of intervention was redesigned accordingly:

— developing active labour market policies to:

- combat unemployment,

- prevent long-term unemployment,
- 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, with a view to supporting employability and mobility;

— **promoting a skilled and adaptable workforce, innovation and adaptability in work organisation, developing entrepreneurship and job creation and boosting human potential in research and technology;**

— improving women's access to the labour market.

The ESF, endowed with a EUR 60 billion allocation, could provide assistance under each of the three new objectives of the cohesion policy, including ESF-specific Objective 3 (supporting the adaptation and modernisation of policies and systems of education, training and employment in areas not covered by Objective 1).

The Fund should mainly finance assistance to persons in the form of education and vocational training measures, support for rehabilitation in employment, measures to promote employability, employment aids, aids for self-employment and aid to the development of new sources of employment; co-financing by the Fund could also be envisaged in order to support the strengthening of education, training and employment structures and systems, as well as for accompanying measures such as information and publicity.

EQUAL was the only Community initiative co-financed by the ESF in the programming period 2000–06 and it fostered transnational cooperation to promote new means of combating all forms of discrimination and inequalities in connection with the labour market.

B. The current programming period

For the programming period 2007–13 the European Social Fund has an overall allocation of about EUR 76 billion. The legal texts setting the framework and scope for ESF intervention are Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and Regulation (EC) No 1081/2006 of the European Parliament and of the Council of 5 July 2006 on the European Social Fund and repealing Regulation (EC) No 1784/1999.

The Council decision of 6 October 2006 on 'Community strategic guidelines on cohesion', which is the basic programming document guiding Member States while drafting their national strategic reference frameworks and operational programmes, stresses the double role of the ESF by recalling that 'in the sphere of employment and human resources the priorities of the Community strategic guidelines on cohesion are those of the European employment strategy supplemented by the EU employment recommendations which provide country-specific priorities'.

The Fund co-finances seven-year national or regional operational programmes, proposed by the Member States and approved through a Commission decision, to be implemented in areas falling under the convergence or competitiveness and employment objectives.

According to Regulation (EC) No 1081/2006, the ESF can contribute to the achievement of both objectives by supporting actions in the Member States under the following priorities:

a. increasing adaptability of workers, enterprises and entrepreneurs;

b. enhancing access to employment for job seekers and inactive people by supporting active and preventive measures and favouring the participation of women and migrants in the labour market;

c. reinforcing the social inclusion of disadvantaged people, through the promotion of pathways to integration and re-entry into employment and the fight against discrimination in the workplace;

d. enhancing human capital by supporting the design and introduction of reforms in education and training systems and the networking of higher education institutions and research centres;

e. promoting partnerships, pacts and initiatives through networking of relevant stakeholders in order to mobilise for reforms in the field of employment and labour market inclusiveness.

In addition, under the convergence objective alone, the ESF can also co-finance operations aimed at:

a. expanding and improving investment in human capital, by promoting the implementation of reforms in education and training systems, increased participation in education and training throughout the life cycle and the development of human potential in research and innovation;

b. strengthening institutional capacity of public administrations and, where relevant, social partners and non-governmental organisations, aimed at improving policy and programme design and delivery in the relevant sectors.

Under the new 'one programme, one fund' rule, an operational programme is only concerned with one of the three objectives and only benefits from the funding of a single fund. To allow for more flexibility, however, the ESF, as well as the ERDF, can finance in complementary and limited ways activities related to the scope of assistance of the other fund (within 10 % of the credit facilities allocated by the Community to each operational programme's key priorities).

The co-financing by the ESF may vary between 50 % and 85 % of the total cost of interventions. Transnational cooperation is now an integrated feature of the ESF.

At the end of the programming exercise in May 2008 the breakdown of the ESF appropriations by priority under the new operational programmes was reported as follows (COM(2008) 301): about EUR 14 billion have been allocated to help strengthen the ability of companies and workers to anticipate and manage change and nearly EUR 26 billion will be invested in improving the quality and availability of education and training; some EUR 19 billion will be spent to assist in removing barriers to employment, in particular for women, young people, older and low-skilled workers, while support for migrants will profit from a EUR 1.2 billion contribution; EUR 10 billion will be invested to help those facing poverty and social exclusion and having the biggest difficulties in returning to the job market and EUR 2 billion in improving public administration and services; some EUR 1.2 billion have been allocated in the convergence regions to improve the social partners' role and an additional EUR 1 billion will support the development of employment pacts and networking initiatives; finally, an allocation of some EUR 3 billion will co-finance for transnational cooperation initiatives building on the EQUAL programme.

With the Lisbon Treaty entering into force, the ordinary legislative procedure would be required for the adoption of general rules applicable to the Structural Funds.

Role of the European Parliament

The EP's influence over the European Social Fund has been growing through the years: since the Treaty of Maastricht it has to give its assent to the general provisions governing the Funds, whereas since the Treaty of Amsterdam the adoption of implementing rules for the ESF is subject to the co-decision procedure.

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 often criticised the complexity of the Funds, which, especially in the past, involved too many objectives and too many Community initiatives together with burdensome management, resulting in complications and delays in payment of support to beneficiaries.

While approving the Commission proposal for a regulation on the European Social Fund in 2005, the European Parliament emphasised the need for the social mandate of the ESF not to be neglected and stressed the role of the Fund in combating inequalities between men and women, discrimination and social exclusion. The EP also expressed strong support in favour of the capitalisation of the lessons learned through the 'Equal Community' initiative as regards partnership, innovation and the participation of the target groups and asked for a higher co-financing rate for innovative and transnational actions. Parliament called for simpler legislation and procedures, which could improve the effectiveness and quality of ESF interventions. The report also stressed the need for information and awareness-raising measures to be implemented by the Member States in order to fight discrimination in the workplace and society.

→ Moira Andreanelli
August 2008

4.9.3. Employment policy

Improving employment policy and tackling unemployment are among the main goals of the Lisbon strategy. The European employment strategy with employment guidelines and programmes, as Progress and EURES, are designed to contribute to growth and jobs.

Legal basis

Articles 2, 3, 125 to 130, 136, 137, 140, 143 and 145 to 148 of the Treaty establishing the European Community (EC).

Objectives

Important principles, objectives and activities mentioned in the Treaty include promotion of a high level of employment throughout the Community 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 early stages

1. The Coal and Steel Community Treaty

Workers have benefited from **re-adaptation 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** (→4.9.2), 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 SMEs). In the same period a number of **observatory and documentation systems** were established. The European Commission and the ministries of 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 and renamed EURES (European employment services) in 1992.

EURES is a cooperation network designed to facilitate the free movement of workers within the European Economic Area (EEA) and Switzerland. The reform (2002) improves EURES' institutional framework by decentralising decisions to the members of the network. Partners in the network, which is coordinated by the European Commission, include public employment services, trade unions and employers' organisations.

Based on the EURES Charter and three-year activity plans, EURES' main objectives are to inform, guide and provide advice to potentially mobile workers on job opportunities and living and working conditions in the EEA, to assist employers to recruit workers from other countries, and to provide advice and guidance to workers and employers in cross-border regions.

In this context, **2006** was proclaimed as the **European Year of Workers' Mobility** (→3.2.2) 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 employment policy

1. The White Paper on growth, competitiveness and employment (1993)

The high level of unemployment in most EU countries contributed to release the **White Paper on growth, competitiveness and employment** under President Jacques Delors (1993). It launched the debate on the European economic and employment strategy by bringing 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) to invest in vocational training; (ii) to increase employment intensive growth; (iii) to reduce non-wage labour costs; (iv) to increase active labour market policies; and (v) to fight youth and long-term unemployment. Member States should ensure they translate these recommendations into multiannual 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)

The new '**Employment' title** in the Amsterdam Treaty set up the **European employment strategy** and the permanent, Treaty-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 sole competence for employment policy, but the Member States have committed themselves to coordinate 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 European Parliament has been involved more closely into the decision-making process, too. The responsibilities of the social partners and their possibilities to contribute are also enhanced through the inclusion of the social protocol into the Treaty.

C. The European employment strategy (EES) 1997–2004

The extraordinary Luxembourg job summit in November 1997 anticipated the entry into force of the Amsterdam Treaty in 1998 and launched the EES, the so-called 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. The strategy was built around the following components.

— Employment guidelines: based on a proposal from the Commission, the Council agreed every year on a series of guidelines setting out common priorities for Member States' employment policies.

— National action plans: each Member State drew 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 jointly examined the national action plans and presented a joint employment report to the European Council. Based on this analysis, the Commission presented 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 is committing 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 in 1997, was set at 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 (OMC).** The OMC 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 was adopted in 1998 and organised around the **four pillars of employability**, **entrepreneurship and job creation, adaptability, and equal opportunities**.

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 was 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. The renewed EES since 2005

1. Relaunch of the EES in 2005

The EES was reviewed in 2002, five years after its launch. Despite the Commission's assessment 'Taking stock of five years of the European employment strategy' (COM(2002) 416) that the EES fostered convergence of national employment policies towards the employment guidelines and that it supported a new proactive labour market policy with preventive measures, the Employment Taskforce's 'Jobs, jobs, jobs — Creating more employment in Europe' report, 2003, the so-called 'Kok-report', identified economic and social problems with a low overall rate of economic growth and a high unemployment rate on the eve of enlargement and recommended focusing on implementation of the strategy.

As progress was insufficient and intermediate employment rate targets for 2005 were missed, the Lisbon strategy was relaunched in 2005 with a focus on growth and jobs, and with the aim of simplifying and streamlining it.

The proposal led to a complete revision of the EES, based on a multiannual time framework (the first cycle 2005–08) and a more streamlined presentation of the strategy in form of the implementation package. The new process is as follows.

— The Commission presents in January 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.

— 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 (→5.4), the employment guidelines and, possibly, employment recommendations. Subsequent to further consultation of the European Parliament, the relevant Council formations adopt the broad economic policy guidelines, the employment guidelines and recommendation, and the June European Council draws up conclusions.

— The new cycle starts when Member States present their national reform programmes to the European Commission in autumn.

2. The employment guidelines 2005–08 and 2008–10

The integrated guidelines 2005–08 and 2008–10 contain a total of 23 guidelines, of which eight are devoted specifically to employment, i.e. guidelines 16 to 23, to boost the Lisbon strategy. 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; and (iii) increase investment in human capital through better education and skills. The main target is to increase the employment rate to 70 % by 2010.

The employment guidelines 2008–10 remain unchanged compared with the previous cycle. They shall contribute to foster full employment, to improve quality and productivity at work and to strengthen social and territorial cohesion by keeping the three priorities for action and quantitative targets as agreed for the cycle 2005–08. The EU and its Member States must better adapt its existing policies and instruments to face globalisation and fast changing social realities (demographic change, longer working lives, increasingly diverse family structure, and new patterns of mobility and diversity).

Role of the European Parliament

A. General

The EP considers **employment as one of the most important priorities for the EU** and believes that the EU and Member States have to coordinate their efforts. Working towards full employment should be made an explicit goal of the Member States and the EU. Since April 1983, the EP has adopted many resolutions on the issue.

The role of the European Parliament has been gradually further developed and, since the Amsterdam Treaty, Parliament has to be consulted on the employment guidelines (Article 128(2)) before being drawn up annually by the Council, regardless of the multiannual cycle.

B. Detailed actions

In 1994, a special **Temporary Committee on Employment** was created. The EP stressed in the report in 1995 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 ensured that employment policy got a much higher priority in the Amsterdam Treaty by calling for a specific employment chapter in the Treaty. Many of the EP's proposals on employment policy were considered in the Treaty of Amsterdam and by the **Luxembourg European Council on Employment** in October 1997.

Already in its **resolution of June 2003 on the employment guidelines**, the EP called for streamlining and better coordination between broad economic policy guidelines, employment guidelines, social inclusion strategy and sustainability strategy. It also stressed the need for better involvement of all relevant actors (e.g. social partners and national parliaments) and quantitative targets to be developed to measure progress on quality at work. An integrated approach on equal opportunities and gender equality in the labour market should be developed and all Member States should aim at halving the number of working poor by 2010.

The new employment guidelines 2005–08 were backed by Parliament. It supported 'the economic and social principles that define the integrated guidelines' but called on the Member States to adopt ambitious national reform programmes that are coherent with the guidelines. The EP insisted repeatedly in involving more national parliaments in the Lisbon strategy. The open method of coordination should enhance the role of parliaments, not the European Parliament, but also national parliaments, which play a full role in setting and achieving national targets ('Report on a European social model for the future' (A6-0238/2006)). Furthermore, it called on Member States to fully implement the revised strategy and to set **concrete targets** for employment.

Regarding the **employment guidelines 2008–10** Parliament shares the view that the renewed Lisbon strategy is beginning to deliver results. The employment guidelines do not need a complete revision but rather need to be amended on very particular points, in particular related to strengthening the social dimension of the Lisbon strategy and the quality of employment. The Lisbon strategy is not delivering for all European citizens as it may have delivered more jobs but not always better jobs. The fact that there are 14 million working poor in the EU shows that the Lisbon strategy for growth and jobs is not delivering on social inclusion. The common social objectives of Member States should be better taken into account within the Lisbon agenda, in order to ensure the continuing support for European integration by the Union's citizens. Parliament recommends integrating a balanced 'flexicurity' approach in the employment guidelines.

The Lisbon Treaty will raise the employment objective by introducing full employment and social progress as a goal (Article 3(3)).

Title VIII, Articles 145 to 150, will become the employment chapter but remain unchanged except in Article 130(1) where the Employment Committee will be established by simple majority in the Council.

The Charter of Fundamental Rights will become legally binding by respecting the principle of subsidiarity according to general provisions of Title VII of the Charter and contribute to strengthen employment and social policies.

The social clause in the draft Lisbon Treaty (Article 5(a)) will contribute to strengthen the employment policy as it states 'In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.'

→ Christa Kammerhofer
August 2008

4.9.4. Social security cover in other Member States of the Union

The regulation of social protection is needed to support the free movement of people within the territory of the EU. Two regulations adopted in 1971 and 1972 have been governing the regime applicable to employees and other categories of persons residing lawfully on the territory of a Member State but a ***fundamental reform*** *of the whole legislative system is ongoing at the moment.*

Legal basis

Articles 42, 63 and 308 of the Treaty establishing the European Community (EC).

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. In 2004, the coordination regulation **((EC) No 883/2004)** was adopted to replace Regulation (EEC) No 1408/71. However, the new regulation can only be applied when its implementing regulation (replacing Regulation (EEC) No 574/72) will have been adopted (expected in 2009).

A. The four main principles of Regulation (EEC) No 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 does 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) 779).

2. Towards better coordination of social security systems

The European Parliament and the Council approved **Regulation (EC) No 883/2004** in order to replace Regulation (EEC) No 1408/71. It is still based on the same four principles of Regulation (EEC) No 1408/71. However, 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 them. 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 (in a case where the insured person has worked in several Member States), how the institutions will exchange information to ensure that the insured person's full career is taken into account, and how each institution will 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 the implementing regulation ((EEC) No 574/72).

The **proposal to revise the implementing regulation** was tabled by the Commission in January 2006 **(COM(2006) 16)**. The EP adopted the first reading in July 2008 and the Council is still in the process of negotiation. It is expected that the implementing regulation will be adopted by the European Parliament and the Council in 2009.

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:** There is the 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.

— **The general principle of equal treatment:** This will be strengthened.

— **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:** There is an 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 for students.

Since 1 January 2006, the European health insurance card is replacing the aforementioned paper forms and is recognised by all EU-27 Member States, three EFTA countries (Iceland, Liechtenstein and Norway) and Switzerland.

The card is issued for free 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.

Role of the European Parliament

The European Parliament 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 European Parliament 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).

Regarding the implementing regulation ((EC) No 883/2004), the EP underlined in the first reading the importance and need for **proportionate data collection** and urges reinforcement of the requirements regarding **data protection**.

With the **Lisbon Treaty entering into force**, the **ordinary legislative procedure** will be applied and social security rights for workers will be voted by **qualified majority in Council** the first time. It will become **Article 48**.

However, one Member State can ask to refer the draft legislative act to the European Council if the Member State 'declares the draft legislative act would affect important aspects of its social security systems, including its scope, cost or financial structure, or would affect the financial balance of that system'.

The draft legislative act will thus be suspended. The European Council shall, within four months of this suspension, either (i) refer the draft back to the Council, which shall terminate the suspension of the ordinary legislative procedure, or (ii) take no action, or (iii) request the Commission to submit a new proposal; in that case, the act originally proposed shall be deemed not to have been adopted.

Another important change is the **explicit inclusion of self-employed** as beneficiaries of the provisions on social security in the framework of the freedom of workers' movement.

→ Christa Kammerhofer
August 2008

4.9.5. Health and safety at work

Improving health and safety at work has become a priority concern of European authorities since the 1980s. Legislation standards for minimal protection for workers have been set at the European level but the provisions adopted shall not prevent any Member State from maintaining or introducing more stringent measures for the protection of workers. The Charter of Fundamental Rights reinforces the importance of this policy in European legislation.

Legal basis

Articles 71, 94, 95, 136, 137 and 308 of the Treaty establishing the European Community (EC).

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. Background

1. The early stages

Within the framework of the European Coal and Steel Community (ESCS), created by the Treaty of Paris in 1951, various research programmes were carried out in the field of health and safety at work. The initial aim of reducing the significant number of explosions and fires in coalmines was extended to other extractive industries, for example to surface and underground mineral-extracting industries, in subsequent years.

The need for a global approach to occupational health and safety became more manifest with the establishment of the European Economic Community (EEC) by the Treaty of Rome in 1957. This area received Community attention through recommendations on occupational medicine and on the adoption of a European list of occupational diseases.

The Advisory Committee for Safety, Hygiene and Health Protection at Work was set up in 1974 to assist the Commission in the preparation and implementation of activities in this field. The aim to complete the single European market enforced the need to complement the single market by minimum requirements for occupational health and safety leading to the adoption of a few directives, for example Directive 82/605/EEC (replaced by Directive 98/24/EC) on protection against the risks associated with **metallic lead**, Directive 83/477/EEC (as last amended by Directive 2003/18/EC) on **asbestos**, and Directive 86/188/EEC (as last amended by Directive 2003/10/EC) on **noise.**

2. The Single European Act

With the adoption of the Single European Act in 1987, health and safety at work was introduced for the first time in the EEC Treaty in its new Article 118a laying down minimum requirements and allowing the Council to adopt occupational health and safety directives by qualified majority. The provisions adopted under Article 118a shall not prevent any Member States from maintaining or introducing more stringent measures for the protection of workers. The main objective of Article 118a was to improve workers' health and safety at work, to harmonise conditions in the working environment; to prevent 'social dumping' as the internal market was completed, and to prevent companies from moving to areas with a lower level of protection to gain a competitive edge.

Article 100, also relevant for occupational health and safety, was the complementary side aiming at removing barriers to trade in the single market and at ensuring the placing of safe products on the market, 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 so-called **'Social Charter'** (i.e. **'The Community Charter of the Fundamental Social Rights of Workers'** of 1989), though not legally binding, affirms that 'the same importance must be paid to the social aspects as to the economic aspects of the single market'.

3. Contribution of the Treaty of Amsterdam (1997)

The Amsterdam Treaty 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 the first time in co-decision with the European Parliament. The scope of the notion of 'working conditions' in Article 118 A was a highly controversial issue and diverging approaches were taken by Parliament, the Council, the Commission and the Member States. In its judgment of 12 November 1996 (Case No C-84/94) the Court of Justice of the European Communities ruled that Article 118 A should **not** be interpreted restrictively.

B. Main steps

1. Framework Directive 89/391/EEC

Since the Treaty of Nice of 2003, Article 137 is the basis for the improvement of the working environment to protect workers'

health and safety. One of the cornerstones in the development of the safety and health of work was the adoption of the **framework directive (89/391/EEC)** with a particular focus on the principles of prevention. 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. It 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 in total 19 'daughter directives' on:

— requirements for **working places** (Directive 89/654/EEC);

— the use of **work equipment** (Directive 89/655/EEC, as amended by Directive 2001/45/EC);

— the use of **personal protective equipment** (Directive 89/656/EEC);

— work with **display screen equipment** (Directive 90/270/EEC);

— **manual handling** (Directive 90/269/EEC);

— **exposure to carcinogens** (Directive 90/394/EEC);

— **temporary or mobile construction sites** (Directive 92/57/EEC);

— provision of **safety and health signs at work** (Directive 92/58/EEC);

— **pregnant workers** (Directive 92/85/EEC);

— mineral-extracting industries (drilling) (Directive 92/91/EEC);

— mineral-extracting industries (Directive 92/104/EEC);

— **fishing vessels** (Directive 93/103/EC);

— **chemical agents** (Directive 98/24/EC, as amended by Directive 2000/39/EC);

— minimum requirements for improving the safety and health protection of workers potentially at **risk from explosive atmosphere** (Directive 1999/92/EC);

— the protection of workers from risks related to exposure to **biological agents** at work (Directive 2000/54/EC);

— the protection of workers from the risks related to exposure to **carcinogens or mutagens at work** (Directive 2004/37/EC);

— the minimum health and safety requirements regarding the exposure of workers to the risks arising from **physical agents** on **vibration** (Directive 2002/44/EC), **noise** (Directive 2003/10/EC), **electromagnetic fields** (Directive 2004/40/EC) and **artificial optical radiation** (Directive 2006/25/EC).

The framework directive has had an impact on other legislative acts, and in particular on: the Commission's proposal to amend Directive 91/383/EEC on **temporary agency workers**; the proposal to amend Directive 2003/88/EC on certain aspects of the **organisation of working time**; Directive 1999/95/EC on working time provisions in **maritime transport**; Directive 2000/34/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; and Council Regulation (EC) No 2062/94 establishing the **European Agency for Health and Safety at Work**.

2. European Agency for Health and Safety at Work

The agency, set up in 1996 in Bilbao (Spain), aims to bring together and share knowledge and information and to contribute to promoting a culture of risk prevention. It is represented through a network of focal points in Member States. Among other tasks, the agency is in charge of the **European Week for Safety and Health at Work**. This annual information campaign is backed by all Member States, Parliament and the European Commission, 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.

In 2008, the campaign focused on the healthy workplace initiative: 'Good for you. Good for business'; in 2007 it focused on musculoskeletal disorders 'Lighten the load'; in 2006 on 'Safe start' to raise awareness in young workers; in 2005 on noise at work, with the slogan 'Stop that noise!'; and in 2004 on safety in the construction sector.

C. Community action programmes and strategies on health and safety at work

Since the early stages with the European Coal and Steel Community, research programmes (from 1951 to 1997) were established in the field of safety and health at work. They focused on, for example, industrial hygiene and safety in the mining industry, the control of nuisances and ergonomics in steel plants.

The Advisory Committee played a major role in drawing up the first action programme of the European Communities on safety and health at work from 1978 to 1982, with the agreement of both sides of industry, focusing on the causes of occupational accidents and diseases; the second programme (1983–87) dealt with training, information statistics and research; the third (1988–92) with social aspects of the development of the internal market; the Community programme (1996–2000) with the impact of rapid change in the way people work through the revolution in information technology.

The **European Social Agenda** (adopted in 2000) contributed to a more strategic approach **on health and safety at work** at EU level with the objectives of: consolidating, adapting and, where appropriate, simplifying existing standards; promoting the application of legislation in small and medium-sized enterprises (SMEs) — taking into account the special

constraints to which they are exposed — by means of a specific programme; developing from 2001 onwards, exchanges of good practice and collaboration between labour inspection institutions.

Subsequently, the **Community strategy 2002–06** adopted a global approach to well-being in the workplace. It emphasised the culture of risk prevention, the combination of a variety of political instruments and the building of partnerships between all the players on the safety and health scene. It pointed at 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 current **Community strategy for the period 2007–12** focuses on prevention. It aims to achieve a continuous, sustainable and homogeneous reduction of occupational accidents and diseases in the EU, in particular through defining and implementing national strategies based on a detailed evaluation of the national situation and improving and simplifying existing legislation as well as enhancing its implementation in practice through non-binding instruments such as the exchange of good practices, awareness-raising campaigns and better information and training. The Commission's target to reduce 25 % of work accidents across the EU was welcomed by the European Parliament.

Role of the European Parliament

The European Parliament has frequently emphasised the need for optimal protection of workers' health and safety. In many resolutions, it has called for all aspects directly or indirectly affecting the physical or mental well-being of workers to be covered. Until now, the European Parliament has had significant influence on directives improving working conditions.

The European Parliament 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 new emerging risks not yet covered by current legislation, e.g. stress, burnout, violence and harassment in the workplace.

Parliament called on the Commission to amend the directive on the protection of workers from risks related to exposure to biological agents at work (Directive 2000/54/EC) to protect health workers from blood-borne infections due to needle-stick injuries (resolution of 6 July 2006, P6_TA(2006)0305) and to amend the directives related to musculoskeletal disorders.

The **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 is another key request. It also calls for a directive laying down minimum standards for the recognition of occupational diseases.

Repeatedly, Parliament has been pleading for better implementation of existing directives.

With the **Lisbon Treaty entering into force**, the **ordinary legislative procedure** will be applied, but the characteristics of the co-decision procedure remain unchanged. Furthermore, the Charter of Fundamental Rights will become legally binding by respecting the principle of subsidiarity according to the general provisions of Title VII of the Charter.

→ Christa Kammerhofer
August 2008

4.9.6. Social dialogue, information, consultation and participation of workers

Social dialogue and employee participation are fundamental components of the European social model that have gained full recognition in the EC Treaty with the Amsterdam reform. Social partners thus contribute actively to design the European social policy and the Community shall complement Member States' activities in the areas of information and consultation of workers.

I — SOCIAL DIALOGUE

Legal basis

Articles 136 to 140 of the Treaty establishing the European Community (EC).

Objectives

Under Article 136 of the EC Treaty, the promotion of dialogue between management and labour is recognised as a common objective of the European Community and the Member States. Social dialogue also improves European governance through

the involvement of social partners in decision-making and in the implementation process.

Achievements

A. Bipartite social dialogue

According to the original wording of Article 140 of the EC Treaty as it appeared in the Treaty of Rome (Article 118), one of the Commission's tasks in the social field was to promote close cooperation between Member States in regard to the right of association and collective bargaining between employers and workers.

It was only after many years, however, that this provision started to be implemented.

Set up in 1985 at the initiative of the Commission's President Jacques Delors, the Val Duchesse social dialogue process aimed to involve the social partners, represented by the European Trade Union Confederation (ETUC), the Union of Industrial and Employers' Confederations of Europe (UNICE) and the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP), in the internal market process. A number of joint statements on employment, education and training and other social issues resulted from the meetings of the social partners' representatives. In 1992, the Social Dialogue Committee (SDC) was established as the main forum for bipartite social dialogue at European level; the SDC currently meets three to four times a year and comprises 64 members (32 employers and 32 workers) either from European secretariats or national organisations.

Meanwhile, Article 118b was incorporated into the EC Treaty by the Single European Act, creating a legal basis for the development of a 'Community-wide social dialogue': the promotion of such dialogue became one of the Commission's official tasks and collective agreements at Community level were made possible.

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 at Community level. This request was acknowledged in the agreement annexed to the Maastricht protocol on social policy, which was signed by all Member States with the exception of the United Kingdom.

At national level, the social partners were thereby given the opportunity of implementing directives by way of collective agreement.

At Community level, the Commission must consult the social partners before taking any action in the social policy field. On such occasions, the social partners may express their willingness to negotiate among themselves an agreement on the subject of the consultation and stop the Commission's initiative. 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.

From 1998, following a Commission decision of 20 May 1998 (98/500/EC) to establish specific bodies, sectoral social dialogue was also strongly developed. Several committees were created in the main economic fields and they produced valuable results, including collective agreements such as those in the transport sector.

The incorporation of the agreement on social policy into the EC Treaty (Articles 137 to 145), following the Treaty of Amsterdam, finally allowed for a unique framework to apply to social dialogue within the European Union.

Cross-industry results of this process were the adoption of framework agreements on parental leave (1995), on part-time working (1997) and on fixed-term work (1999). Sectoral social dialogue produced three European agreements: on the organisation of working time for seafarers (1998); on the organisation of working time of mobile workers in civil aviation (2000); and on certain aspects of the working conditions of mobile workers assigned to interoperable cross-border services in the railway sector (2005). These agreements were implemented by Council decision, monitored by the Commission.

The agreement on telework concluded in May 2002 was implemented for the first time in accordance with the procedures and practices specific to the social partners and the Member States. 'Autonomous agreements' were also concluded by the social partners on work-related stress and on the European licence for drivers carrying out a cross-border interoperability service in 2004, as well as on harassment and violence at work in April 2007.

Negotiations between the social partners on a framework agreement on temporary agency work ended in failure in May 2001. Thus, in March 2002 the Commission adopted a proposal for a directive based on the consensus which emerged among the social partners. Similarly, the pending proposal on the revision of Directive 2003/88/EC concerning certain aspects of the organisation of working time was adopted by the European Commission after the social partners had expressed their unwillingness to engage in negotiations.

The 'agreement on workers' health protection through the good handling and use of crystalline silica and products containing it', signed in April 2006 was the first multi-sector outcome of the European social partners' negotiations.

In May 2008 employers' and workers' representatives from the maritime shipping industry signed an agreement on labour standards in the sector, which aims to apply certain provisions of the International Labour Organisation's 2006 Maritime Labour Convention and, upon request, the European Commission proposed in July 2008 that the Council adopt a directive for the implementation of the agreement.

Following the changes introduced by the Treaty of Amsterdam, the consultation process has become even more important, since it covers all the fields now falling under Article 137.

With the entry into force of the Lisbon Treaty, a new article (Article 152 TFEU) would be inserted between current Articles 137 EC (151 TFEU) and 138 EC (153 TFEU), stating: 'The Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy.' Article 153 TFEU would also give the Member States the possibility to entrust the social partners with the implementation of a Council decision adopted on ratification of a collective agreement signed at European level.

B. Tripartite social dialogue

From the very start of the European integration process, it was considered important to involve economic and social stakeholders in drawing up Community legislation. The Consultative Committee for Coal and Steel and the European Economic and Social Committee bear witness to this.

Since the 1960s a number of advisory committees have existed whose role is to support the European 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 unions' organisations, as well as representatives of the Member States.

From 1970 the key tripartite social dialogue forum at European level was the Standing Committee on Employment, composed of 20 representatives of the social partners, equally divided between trade unions and employers' organisations. Reformed in 1999, the Committee was fully integrated into the coordinated European employment strategy.

On the basis of a joint contribution of the social partners to the Laeken Summit in December 2001, the Council launched a tripartite social summit for growth and employment in March 2003 (2003/174/EC). The tripartite social summit has replaced the Committee on Employment and facilitates ongoing consultation between the Council, the Commission and the social partners on economic, social and employment questions. It meets at least once a year and one of its meetings must be obligatorily held before the spring European Council.

Formalising a process that had been developing since 1997, the summit consists of the current EU Council Presidency and the two subsequent Presidencies, the European Commission and the social partners. The three Council Presidencies are normally represented by the Heads of State or Government and the ministers in charge for labour and social affairs; the European Commission has also two representatives, who are usually its President and the member responsible for employment and social affairs. The social partners' members are divided into two delegations of equal size, comprising 10 workers' representatives and 10 employers' representatives, with special attention to be paid to the need to ensure a balanced participation between men and women. Each group shall consist of delegates of European cross-industry organisations either representing general interests or more specific interests of supervisory and managerial staff and small and medium-sized businesses at European level.

Technical coordination is provided for the workers' delegation by the European Trade Union Confederation (ETUC) and for the employers' delegation by the Union of Industrial and Employers' Confederations of Europe (UNICE).

If ratified, the Lisbon Treaty would entail inclusion of the Tripartite Social Summit for Growth and Employment in the Treaty on the Functioning of the European Union under the new Article 152.

Role of the European Parliament

The European Parliament (EP) 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 relevant proposals. The EP considers it vital to promote and ensure the broadest possible participation by organisations representing the social partners, particularly at the level of small and medium-sized enterprises.

The EP has also often reminded the Commission of the need for a coherent industrial policy at European level, in which the social partners should play a key role.

It must be recalled that the Lisbon Treaty has foreseen a clear right for the EP to be informed on the implementation of collective agreements concluded at Union level (Article 155 TFEU) and on the initiatives taken by the Commission to encourage cooperation between the Member States under Article 156 TFEU, including matters relating to the right of association and collective bargaining between employers and workers.

II — INFORMATION, CONSULTATION AND PARTICIPATION OF WORKERS

Legal basis

Articles 44, 94, 95 and 137 of the Treaty establishing the European Community (EC).

Objectives

The Community supports and complements Member States' activities relating to the information and consultation of workers with a view to contributing to the achievement of the core objectives of the European social policy set out in Article 136 of the EC Treaty.

Achievements

A. Background

Information, 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. It should be remembered that the EC Treaty only provides a proper legal basis for Community legislation in the field of information and consultation of workers since the Amsterdam Treaty has integrated the agreement on social policy into the text of the EC Treaty (Article 137, with co-decision applying). Previously adopted legislation was mainly based on either Article 44 or Articles 94 to 95 of the EC Treaty, providing for Community measures aimed at attaining freedom of establishment or the approximation of laws in the common or internal market.

Council Directive 94/45/EC was adopted in accordance with the agreement on social policy and extended to the United Kingdom in 1997.

B. Legislation in force

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 economic performance, the financial soundness and plans on the company's future developments that could affect employment. However, these directives do not contain any provision conferring on employees the right to participate in decision-making.

— Council Directive 75/129/EEC of 17 February 1975 on collective redundancies, as amended by Directives 92/56/EEC and 98/59/EC: Under this directive, employers must enter into negotiations with workers in the event of mass redundancy, with a view to identifying ways and means of avoiding collective redundancies or reducing the number of workers affected and mitigating the consequences.

— Council Directive 2001/23/EC of 12 March 2001 on the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (consolidating Directives 77/187/EC and 98/50/EC): Under this, workers must be informed of the reasons for the transfer and its consequences.

— Council Directive 78/855/EEC of 9 October 1978 on mergers of public limited liability companies: Pursuant to this directive workers in companies which merge are protected to the same extent as laid down in the directive on the transfer of undertakings.

— Council Directive 94/45/EC of 22 September 1994 on the introduction of European works councils: This directive was adopted in accordance with the agreement on social policy and extended to the United Kingdom in 1997. It introduced an innovation in that, unlike previous directives in this area, it does not address specific situations but contains general rules to ensure that workers in large multinational companies and merging undertakings are informed and consulted. Workers have also been recognised certain rights to information and consultation in regard to the working environment. A proposal for revising this directive has been adopted by the European Commission on 2 July 2008.

— Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community: This directive lays down minimum common requirements for national provisions on protecting the right of workers to be informed and consulted on the economic and employment situation affecting their workplace.

— Council Directive 2001/86/EC of 8 October 2001 supplementing the statute for a European company with regard to the involvement of employees: The statute for a European public limited-liability company, adopted by Council Regulation (EC) No 2157/2001, is complemented by an indissociable directive establishing rules on the participation of workers in decisions concerning the strategic development of the company.

— Council Directive 2003/72/EC of 22 July 2003 supplementing the statute for a European cooperative society (Council Regulation (EC) No 1435/2003) with regard to the involvement of employees: This directive sets rules on the mechanisms to be foreseen in European cooperative societies to ensure that employees' representatives may exercise an influence on the running of the undertaking.

The proposals for Council regulations on a 'European association' and a 'European mutual society', together with the proposals for Council directives containing supplementary provisions on the involvement of workers (COM(93) 252) were finally withdrawn by the European Commission in 2006.

Role of the European Parliament

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

irrespective of their 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.

In a resolution of 5 June 2003 on the Commission communication on a framework for the promotion of employee financial participation (COM(2002) 364), the EP reaffirmed its support for the participation of employees in profits and enterprise results.

More recently, in a resolution on strengthening European legislation in the field of information and consultation of workers of 10 May 2007 (P6_TA(2007)0185) the European Parliament called on the Commission to review and update Community legislation concerning information and consultation of workers, especially on collective redundancies and safeguarding employees' rights in the event of transfers of undertakings and, in particular, it insisted on the need to speed up the long-awaited revision of the European works council directive (94/45/EC).

Parliament also asked the Commission to take action to ensure that Community legislation on information and consultation of workers is fully implemented in the Member States, especially as regards Directive 94/45/EC.

→ Moira Andreanelli
August 2008

4.9.7. Equality between men and women

Equality between women and men is one of the objectives of the European Union. Over time, legislation, jurisprudence and modifications to the Treaties have contributed to reinforce this principle and its implementation in the EU.

Legal basis

Since 1957 and the Rome Treaty, the principle that men and women should receive equal pay for equal work has been enshrined in the EC Treaties. However, the first directives implementing this principle were not adopted on this basis but on the basis of Article 308 (supplementary powers), Article 94 (the approximation of laws) and Article 137 (workers' health and safety).

The Treaty of Amsterdam made the principle of equality between men and women an objective and a fundamental Community principle (Article 2). Article 3(2) also gives the Community the task of integrating equality between men and women into all its activities (also known as 'gender mainstreaming'). The Treaty of Amsterdam also expanded the legal basis for promoting equality between 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 Treaty of Lisbon reinforces the principle of equality between women and men by including it in the values and objectives of the Union (Articles 2 and 3(3) of the Treaty on European Union) and by providing for gender mainstreaming in all EU policies (Article 8 of the Treaty on the Functioning of the European Union).

Objectives

To ensure equal opportunities and treatment for men and women through legislation, mainstreaming and positive actions.

Achievements

A. The first directives on equality

From the mid-1970s, the European Community adopted legislation aimed at ensuring equality between men and women in the workplace:

— 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, as 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 Court of Justice of the European Communities (CJ)

The CJ has played an important role in the promotion of equality for men and women. The most notable judgments are listed below.

— ***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 European Union's most recent actions in the field of equality between men and women are indicated below.

1. The financial framework

a. The Progress programme (2007–13)

The EU actions in the field of gender equality are funded under the Community programme for employment and social solidarity (Progress). Gender equality is one of the five fields of activity of this programme. A minimum of 12 % of its almost EUR 658 million budget will be devoted to actions in this field over the period 2007–13.

b. The Daphne III programme (2007–13)

The Daphne programme is a Community programme aimed to prevent and combat violence against children, young people and women and to protect victims and groups at risk. It follows on from the Daphne (2000–03) and Daphne II (2004–06) programmes and has a budget of EUR 116.85 million for the period 2007–13.

2. Legislation recently adopted

— 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.

— 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.

— Directive 2004/113/EC of 13 December 2004 provides for implementing the principle of equal treatment between women and men in the **access to and supply of goods and services**.

— **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):** In order to contribute to legal certainty and clarity in the implementation of the principle of equal treatment, this directive merges:

- Directive 75/117/EEC on equal pay,
- Directive 76/207/EEC, as amended by Directive 2002/73/EC,
- Directive 86/378/EEC, as amended by Directive 96/97/EC, on equal treatment in social security schemes, and
- Directive 97/80/EC on the burden of proof in cases of discrimination based on sex.

3. A roadmap for equality between women and men (2006–10)

In March 2006, the Commission presented its **'Roadmap for equality between women and men' (COM(2006) 92)**. It 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; and promotion of gender equality in external and development policies. The roadmap represents the Commission's commitment in the field of equal opportunities between women and men.

4. The 2006 European Pact for Gender Equality

The European Pact for Gender Equality, initiated by the Czech, Danish, Spanish, French, Finnish and Swedish governments was adopted by the spring European Council in March 2006. Its main purpose is to encourage actions by the Member States and the EU to enhance women's participation in the labour market, to improve work–life balance for women and men, and to promote gender mainstreaming. The pact builds on already existing objectives, targets and instruments within the Lisbon process and reinforces the implementation of national reform programmes (→4.9.3) to raise the employment rate of women.

5. The European Institute for Gender Equality

The European Parliament and the Council established in December 2006 a **European Institute for Gender Equality** 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 by collecting, analysing and disseminating data and methodological tools.

Role of the European Parliament

The European Parliament 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 the extension of 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 EC Treaty, 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 EC Treaty, as amended by the Treaty of Amsterdam); the 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 EC Treaty, as amended by the Treaty of Nice).

The Treaty of Lisbon extends further the application of co-decision to the adoption of measures in combating trafficking in women and children.

In addition, Parliament contributes not only to the overall policy development on equality between women and men (for example by adopting resolutions on the report the Commission presents each year to the spring European Council on developments in gender equality in the EU), but also to the development of Community policy in more specific areas.

The European Parliament has notably focused, through its own-initiative reports which allow it to draw the attention of other institutions to specific problems, on the following issues over recent years:

— the fight against trafficking in women (see the resolution of 17 January 2006);

— the fight against violence against women (see the resolution of 2 February 2006); and

— gender equality in external relations (see for example the resolution of 1 June 2006 on the situation of women in armed conflicts or the resolution of 16 November 2006 on women in international politics).

Through its Committee on Women's Rights and Gender Equality, the European Parliament has also developed dialogue and cooperation with 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.

→ Hélène Calers
July 2008

4.9.8. Anti-discrimination and social inclusion of vulnerable groups

By supporting the Member States in the fight against discrimination and social exclusion, the European Community aims to reinforce the inclusiveness and cohesion of European society and to allow all citizens to enjoy equal access to available opportunities and resources.

Legal basis

Articles 13, 125 to 130 and 136 to 145 of the Treaty establishing the European Community (EC).

Objectives

Article 13, which is listed among the 'principles' on which the EC Treaty is based, allows the Community to take action to fight discrimination by both offering juridical protection for potential victims and establishing incentive measures. The general prohibition of discrimination on the grounds of sex, race, religion or other personal conditions is a provision common to all national legal systems and international agreements based on or aiming at the safeguard of human rights.

The combating of social exclusion of the most disadvantaged is one of the specific goals of the Community and the Member States in the social policy field.

Achievements

A. Anti-discrimination

Based on the experience of contrasting sex discrimination, a consensus emerged in the mid-1990s around the need for the European Community to tackle discrimination on a number of additional grounds. The result of this process was the inclusion of a new Article 13 in the EC Treaty, following the entry into force of the 1997 Amsterdam Treaty. Article 13 empowered the Council, acting unanimously, to take action to deal with discrimination on a whole new range of grounds, including racial or ethnic origin, religion or belief, age, disability and sexual orientation. This article was subsequently modified by the Nice Treaty, in order to allow for the adoption of incentive measures by co-decision and qualified majority voting in the Council.

In 1999 the European Commission took the necessary steps to implement Article 13 and came forward with a package of proposals. This led to the adoption by the Council in 2000 of two directives.

— Council Directive 2000/43/EC (the 'racial equality directive') bans direct and indirect discrimination, as well as harassment and instructions to discriminate, on grounds of racial or ethnic origin. It covers employment, training, education, social security, healthcare, housing and access to goods and services.

— The second directive (2000/78/EC), the 'employment equality directive', focuses on discrimination in employment and occupation, as well as vocational training. It deals with direct and indirect discrimination, as well as harassment and instructions to discriminate, on the grounds of religion or belief, disability, age and sexual orientation. It includes important provisions concerning reasonable accommodation, with a view to promoting the access of persons with disabilities to employment and training.

Many of the definitions and legal concepts used in the two directives have been inspired by gender equality legislation and/or the case-law of the Court of Justice of the European Communities in the field of gender equality.

In July 2008 the European Commission adopted a proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation outside the field of employment. The proposal covers access to goods and services, social protection, healthcare and education. It only addresses commercial transactions and does not cover purely private transactions between individuals. This proposal was accompanied by a communication entitled 'Non-discrimination and equal opportunities: A renewed commitment' (COM(2008) 420) that proposes actions to give new impetus to the dialogue on non-discrimination policy and to make more effective use of the instruments available, both in general and with particular emphasis on promoting the social inclusion of Roma.

B. Anti-discrimination and social inclusion of vulnerable groups within the Lisbon agenda

Fighting discrimination and promoting participation of the most vulnerable groups is a key component of European employment and social policy within the Lisbon strategy.

1. The European employment strategy

If the EU is to attain the Lisbon strategy goals by 2010, it needs to dramatically raise the employment levels of groups that are currently under-represented in the labour market, which means raising the employment rate of older workers and women, as well as achieving a significant reduction in the unemployment gaps for people at a disadvantage, such as people with disabilities, ethnic minorities and migrants. As has often been recalled by all players involved, including the European Parliament, fighting discrimination keeping people

away from the labour market is not only a matter of safeguarding human rights, but it also contributes to enhancing productivity and growth.

This was already acknowledged in the employment guidelines for 1999, where the 'employability pillar' focused on 'promoting a labour market open to all' and, based on the consideration that 'many groups and individuals experience particular difficulties in acquiring relevant skills and in gaining access to, and remaining in, the labour market' and that 'a coherent set of policies promoting the integration of such groups and individuals into the world of work and combating discrimination is called for', asked the Member States to 'give special attention to the needs of the disabled, ethnic minorities and other groups and individuals who may be disadvantaged, and develop appropriate forms of preventive and active policies to promote their integration into the labour market' (guideline 9).

The employment guidelines for 2005–07 and 2008–10 further clarify the relationship between the economic and social implications of open labour markets: they underline that 'equal opportunities and combating discrimination are essential for progress [...] Member States should aim towards active inclusion of all through promotion of labour force participation', recall that 'raising employment levels is the most effective means of generating economic growth and promoting socially inclusive economies' and therefore ask the Member States to 'increase the employment rates of older workers and young people' and promote the 'active inclusion of those most excluded from the labour market' (guideline 17).

2. The open method of coordination in the social sector

Building on the conclusions of the Lisbon Council in March 2000, later that year the Nice European Council decided that the cooperation on policies designed to combat social exclusion should be based on an open method of coordination (OMC) combining national action plans and Commission initiatives promoting cooperation. The method is built around: (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. Member States agreed to regularly prepare national action plans against poverty and social exclusion starting in June 2001. These were to be informed by the objectives identified by the Council, namely: to facilitate participation in employment and access by all to resources, rights, goods and services; to prevent the risks of exclusion; to help the most vulnerable; to mobilise all relevant players.

The OMC was also applied in parallel to other social protection sectors, i.e. on providing adequate and sustainable pensions and on ensuring accessible, high-quality and sustainable healthcare and long-term care. In 2005, the European Commission proposed to streamline the ongoing processes into a new framework for the OMC of social protection and inclusion policies, with three general objectives and specific targets for each of the three existing strands.

The overarching objectives of the OMC for social protection and social inclusion are to promote: (a) social cohesion, equality between men and women and equal opportunities for all through adequate, accessible, financially sustainable, adaptable and efficient social protection systems and social inclusion policies; (b) effective and mutual interaction between the Lisbon objectives of greater economic growth, more and better jobs and greater social cohesion, and with the EU's sustainable development strategy; and (c) good governance, transparency and the involvement of stakeholders in the design, implementation and monitoring of policy.

The current goals specific to the OMC on eradication of poverty and social exclusion are described as follows: access for all to the resources, rights and services needed for participation in society, preventing and addressing exclusion, and fighting all forms of discrimination leading to exclusion; the active social inclusion of all, both by promoting participation in the labour market and by fighting poverty and exclusion; ensuring that social inclusion policies are well-coordinated and involve all levels of government and relevant actors, including people experiencing poverty, and that they are efficient and effective and mainstreamed into all relevant public policies.

Interaction between the three OMC strands is, however, especially evident when considering social policies to support the most vulnerable target groups such as the elderly and the disabled. Cooperation on 'adequate and sustainable pensions' is meant to guarantee adequate retirement incomes for all and access to pensions which allow people to maintain, to a reasonable degree, their living standard after retirement and the financial sustainability of public and private pension schemes. The third OMC strand on 'Accessible, high-quality and sustainable healthcare and long-term care' aims to ensure access for all to adequate health and long-term care and that the need for care does not lead to poverty and financial dependency.

As foreseen by the EC Treaty, under Article 144, a Social Protection Committee has been established to promote cooperation between Member States and with the Commission on social protection policies. The Committee is composed of two delegates from each Member State and the Commission.

C. Incentive measures

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 and exclusion. This first programme was followed by two others (1985–89 and 1989–94). Community action in this area, however, was continually being contested in the absence of a legal basis.

Such a problem was solved 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 December 2002, the European Parliament and the Council adopted Decision No 50/2002/EC establishing a programme of Community action encouraging cooperation between Member States to combat social exclusion. The programme covered the period 2002–06 and was allocated a budget of EUR 75 million.

Meanwhile, a specific Community action programme to combat discrimination had been established, based on Article 13(2); it covered all of the grounds set out in Article 13 with the exception of sex, which was dealt with separately by the European Community's gender equality programme.

In 2007 all EC funding programmes existing in the area of employment and social affairs were integrated into a unique framework with the adoption of the new Progress programme: covering a period of seven years, Progress is meant to rationalise expenditure and improve the impact of actions supported by the European Community. Progress has a global budget of EUR 743.25 million, of which 30 % is allocated to social inclusion and social protection and 23 % to non-discrimination.

While Progress is meant to support projects with a clear European dimension or added value, the European Social Fund (ESF) makes Community funding available to co-finance actions aimed at combating discrimination and help the most disadvantaged access the labour market.

It should also be recalled that 2010 has been declared the 'European Year of Combating Exclusion and Poverty'.

D. European strategies for specific groups: the disabled and the elderly

The EU follows a double approach in supporting the social inclusion of vulnerable groups, by both fighting all forms of discrimination and designing targeted strategies.

1. The disabled

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 communication COM(96) 406 in July 1996. 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.

In 1996, a High-level Group on Disability was set up to monitor national policies and priorities, to pool information and experience and to advise the Commission. 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 Decision 2000/750/EC establishing the Community action programme to combat discrimination for the period 2001–06.

The year 2003 was nominated the European Year of People with Disabilities (Council Decision 2001/903/EC). As a follow-up, a disability action plan was established to ensure a coherent policy for people with disabilities. It constitutes an operational framework for actions to be developed at EU level between 2004 and 2010. Regular, biannual updates of the disability action plan and continual dialogue with the main stakeholders ensure that actions carried out by the Commission are relevant and targeted. The communication 'Situation of disabled people in the European Union: the European action plan 2008–09' (COM(2007) 738) is the most recent update of the EU disability action plan.

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 and in the national strategies for social protection and social inclusion.

2. The elderly

In 2000, more than 60 million people (16.4 % of the EU population) were aged 65 or over and this rate is expected to increase to 25 % by 2020. The rise in life expectancy is set to continue; combined with falling birth rates, this will accelerate the ageing of the population. Recent data demonstrate that the elderly are specially hit by poverty.

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 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.

Two communications from the European Commission, 'Towards a Europe for all ages — Promoting prosperity and intergenerational solidarity' (COM(99) 221) and 'Europe's response to world ageing — Promoting economic and social progress in an ageing world' (COM(2002) 143), identify the following priorities: 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. The Green Paper 'Confronting demographic change: a new solidarity between the generations' (COM(2005) 94) underlines that the EU is facing unprecedented demographic changes that will have a major impact on the whole of society. To meet this challenge, the Lisbon agenda needs to be implemented and people should work longer; it is also necessary to continue modernising social protection systems, especially pensions, to ensure their social and economic sustainability and to enable them to cope with the effects of demographic ageing.

In March 2008 the European Commission organised a conference on 'Protecting the dignity of older persons — The prevention of elder abuse and neglect', bringing together experts and policymakers to raise awareness and trigger an open debate on a widespread problem.

Role of the European Parliament

The European Parliament (EP) was an active player in the debate that led to the inclusion of Article 13 in the EC Treaty. The Lisbon Treaty would endow the Parliament with a power of consent when adopting non-discrimination legislation under Article 13(1) (new Article 19 of the Treaty on the Functioning of the European Union).

It has often called on the Commission and Member States to ensure the correct, full and timely implementation of the directives adopted on the basis of Article 13 of the Treaty: the Commission should not hesitate in pursuing infringement actions against Member States in this regard.

An own-initiative report on progress made in equal opportunities and non-discrimination in the EU, approved by the EP on 20 May 2008, called for a commitment by the Commission to carry out a substantial review of the implementation of Directives 2000/43/EC and 2000/78/EC and to issue a proposal for a new directive which should be relating to all areas not already covered by instruments adopted on the basis of Article 13 of the Treaty and should cover 'all the areas that fall within the Community's competence as well as education, lifelong learning, social protection including social security, housing and healthcare, images of discriminated groups in the media and advertising, physical access to information for people with disabilities, telecommunication, electronic communication, transport modes and public spaces, social advantages and access to and supply of goods and services which are available to the public'. The report also called on the Commission and the Member States to mainstream equal opportunities and non-discrimination in the Lisbon strategy for growth and employment, the guidelines for the open method of coordination on social inclusion, and national reform programmes and the regulations governing the Structural Funds.

The EP has often 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.

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 European parliament of disabled people. Together with the Commission, Parliament has celebrated 3 December as the European Day of Disabled People every year since 1993.

In an own-initiative report on social reality stocktaking of November 2007, the EP stressed that access to goods and services should be a right for every EU citizen. The EP also invited the Commission and the Member States, in cooperation with organisations representing the disabled, to develop national, regional and local initiatives to promote feasible employment opportunities for people with a disability. The report also asked the Commission and the Member States to provide adequate resources to facilitate access to lifelong learning programmes as a means of limiting the exclusion of elderly people, among others, from employment and to foster their continuous participation in social, cultural and civic life.

→ Moira Andreanelli
August 2008

4.10. Environment policy

4.10.1. Environment policy: general principles

Created in 1972, environmental policy is governed by Articles 174 and 176 of the Treaty establishing the European Community. The sixth action programme for the environment, 'Environment 2010: our future, our choice' establishes a strategic framework for this policy until 2012. Several instruments, such as: EEA, LIFE+, eco-labelling and eco-audit, and SCALE, have also been set up for the protection of the environment.

Legal basis

European environmental law dates back to a conference of Heads of State or Government in October 1972 which decided that a Community environmental policy was essential. Since 1972 the Community has adopted some 250 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 (EC), 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 130r to 130t) of the EC Treaty. Under Article 174(2) (ex Article 130r) of the EC Treaty, Community environment policy rests on the principles of precaution, prevention, rectifying pollution at source and 'polluter pays'. Commission communication COM(2000) 1 establishes clear and effective guidelines for the application of the precautionary principle, as it had not been defined in the EC Treaty or in other Community instruments.

Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage establishes a framework of environmental liability based on the 'polluter pays' principle. 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.

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 (ex Article 3c) of the EC Treaty 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.

Article 95(3) (ex Article 100a) of the EC Treaty 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 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

1. Community environment programmes

The sixth Community environment action programme 'Environment 2010: our future, our choice' (Decision No 1600/2002/EC), provides a strategic framework for the Community's environmental policy for 2002–12 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. The Commission publishes annually a review of environmental policy; the last review was the '2005 environment policy review' (COM(2006) 70).

The programme required the European Commission to prepare thematic strategies (TS) covering seven areas. All seven TS were adopted in the course of 2005 and 2006: air pollution, prevention and recycling of waste, protection and conservation of the marine environment, soil protection, sustainable use of pesticides, sustainable use of resources, and urban environment.

The TS represent the next generation of environment policy. They work with themes rather than with specific pollutants or economic activities as has been the case in the past and 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.

2. Impact assessment

An impact assessment is defined as a mapping out of the potential consequences of a decision across its social, economic and environmental aspects, its potential short-term and long-term costs and benefits, and its regulatory as well as budgetary implications. It explores a range of legislative and non-legislative options available to policymakers in order to meet clear defined objectives. 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 (EEA)

In 1990 the Council adopted a regulation establishing the 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 and eco-audits

According to Regulation (EEC) No 880/92 (revised by Regulation (EC) No 1980/2000) 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-Labelling 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 Union*.

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. In February 2006 the Commission adopted a decision establishing the Community eco-label working plan. In June 2007 the Commission adopted a decision of establishing the ecological criteria for the award of the Community eco-label to soaps, shampoos and hair conditioners..

Regulation (EC) 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. The EMAS was 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 'European Parliament environmental statement' which expresses that the European Parliament will ensure that its activities are consistent with current best practice in environmental management.

5. LIFE+: a financial instrument for the environment

In 2004, the Commission 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 2007–13. In March 2007, political agreement was reached between Parliament and the Council on LIFE+, bringing the total funding to nearly EUR 2 billion for the period 2007–13 (see →4.10.8).

6. International environmental cooperation

The European neighbourhood policy strategy paper (COM(2004) 373) contains recommendations on the development of regional cooperation and integration, as a means to address certain issues arising at the enlarged EU's external borders, including environmental issues.

Cooperation with Latin-America, Russia and Asia on environmental aspects is being promoted through the EU–Latin America–Caribbean partnership, the EU–Russia partnership and cooperation agreement (in force since 1997, including a joint work programme on the environment) and the Europe–Asia cooperation strategy. Furthermore, there is cooperation with the Danube Sea region and a Euro-Mediterranean partnership, both contributing to the conservation of the marine ecosystem (see →4.10.5).

Commitment of the EU to global environmental problems was shown by the major role and the active contributions of the Community during the UN World Summit on Sustainable Development in Johannesburg 2002 (see →4.10.3) to 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; and to minimise harmful effects on human health from the production and use of chemicals by 2020).

7. European environment and health strategy

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. In June 2004 the Commission presented a European environment and health action plan 2004–10 (COM(2004) 416), comprising points aimed at improving coordination between the health, environment and research sectors. In June 2007, the EC published a mid-term review of the action plan (COM(2007) 314).

8. Lisbon partnership for growth and jobs and simplification of EU environmental law

The EU's sustainable development strategy calls for economic, social and environmental policies to complement and reinforce each other (see →4.10.3). Communication COM(97) 592 on environment and employment, entitled 'Building a sustainable Europe', encourages new and clean technologies, thereby promoting new business opportunities. The '2005 environment policy review' (COM(2006) 70) highlights how eco-innovation, environmental technologies and better regulation can contribute to achieving the Lisbon strategy objectives (COM(2000) 330).

The Commission's 'better regulation' exercise is aimed at facilitating growth and job creation, while maintaining high levels of both social and environment protection, in line with the EU's sustainable development strategy. This was underlined in 'Better regulation for growth and jobs in the EU' (COM(2005) 97), a contribution to the effective implementation of the Lisbon strategy. A major effort in this context has been the preparation and adoption of the seven thematic strategies (TS). In those areas where there is existing policy and legislation, such as air and waste, the TS aim at simplification, clarifying definitions, removing ambiguities and suggesting ways to facilitate improved implementation. To the extent possible, the TS use existing instruments and policies, rather than new policy proposals, to bring about new policy goals.

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 environment-friendly products.

In its resolution of July 1998, the EP recognised that the use of environmental levies could distort competition between those Member States which introduced environmental taxes and those which did not, thus making it desirable for such levies to be introduced by all Member States together.

At Parliament's request, the 6EA programme (2001–10) 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 has been and/or will be adopted by co-decision. In addition, targets are being 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 policymaking, which Parliament called for, and special attention will be devoted to increasing environmental awareness among the general public and local authorities.

In response to the communication on the precautionary principle, the European Parliament adopted in December 2000 a report calling for clearer guidelines on the application of the principle, believing it should be invoked whenever a provisional objective scientific evaluation of the risks shows that there are justified fears of potentially dangerous effects on the environment or human, animal or plant health that are incompatible with a sufficiently high level of protection of the Community. Parliament's resolution covers not only the

definition and scope of the precautionary principle but also risk assessment, risk management, risk communication and the burden of proof.

In January 2005, Parliament adopted an own-initiative report on the European environment and health action plan 2004–10. 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. In addition, Parliament is currently assessing the mid-term review of the action plan.

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 ('Enlargement and environment' workshop, November 2003).

With a view to improving legislative assistance to members, Parliament's Environment Committee has concluded three 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.

→ Yanne Goossens
July 2008

4.10.2. Implementation of Community environmental law

The Århus Convention, in force since 2001, aims at involving the public in environmental activities, enabling access to information, participation in decision-making and access to justice in this field. The electronic register of releases and transfers of pollutants is already accessible to the public. Since 2007 the European Community also aims to regulate the protection of the environment through criminal law.

Legal basis and objectives

→4.10.1.

Achievements

A. Århus Convention: access to information, public participation and access to justice

In 1998 the European Community, together with the 15 Member States, signed the UNECE Convention on Access to Information, Public Participation in decision-making and Access to Justice in Environmental Matters (better known as the 'Århus 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 signing of the Århus Convention obliges the European Community to bring its legislation in line with the requirements of the convention. Decision 2005/370/EC approves the Århus Convention on behalf of the Community. In 2003 the Commission proposed a regulation to guarantee that the provisions and principles of the Århus Convention are applied by Community institutions and bodies (COM(2003) 622). After a conciliation procedure, Regulation (EC) No 1367/2006 was adopted, containing the provisions necessary to apply the Århus Convention to Community institutions and bodies from 28 June 2007.

1. Public access to information

The first pillar of the convention, on public access to environmental information, was implemented at Community level by Directive 2003/4/EC, setting out the basic terms and conditions for granting access to environmental information held by or for public authorities and aiming at achieving the widest possible systematic availability and dissemination to the public.

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 and to the Council, including any proposals for revision which it may consider appropriate.

2. Public participation in decision-making

The second pillar, which deals with public participation in environmental plans and programmes, was transposed by Directive 2003/35/EC. This directive contributes to the implementation of obligations arising from the Århus 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 Århus Convention.

3. Access to justice

A proposal for a directive (COM(2003) 624) 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.

B. Establishment of a European pollutant release and transfer register

In May 2003 the European Community signed the UNECE protocol on pollutant release and transfer registers (the PRTR protocol) within the framework of the fifth ministerial conference 'Environment for Europe'. The protocol aims to establish, for each Member State, a coherent, integrated and publicly accessible pollutant release and transfer register at national level.

In 2004, the Commission adopted a proposal for a regulation aiming at enhancing public access to environmental information through the establishment of a coherent, integrated, Europe-wide PRTR (COM(2004) 634). Council Decision 2006/61/EC approves the protocol on behalf of the European Community. Regulation (EC) No 166/2006 sets up a pollutant release and transfer register (PRTR) at European Union (EU) level in the form of a publicly accessible electronic database. The public will be able to access this register free of charge on the Internet and will be able to find information using various search criteria (type of pollutant, geographical location, affected environment, source facility, etc.).

C. Implementation and enforcement of Community environmental law

The Dublin European Council of 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, Parliament called on the Commission to produce and publicise an annual report on progress in adopting and implementing Community environmental law. The Commission 'implementation task forces' identify four priorities: bad/non-transposition of directives; lack of compliance with fundamental secondary obligations under directives; structural or systemic problems of bad implementation and recurrent, large-scale implementation problems; and bad implementation cases relating to big infrastructure projects, particularly projects with EU funding. The seventh annual survey (SEC(2006) 1143), which covers the year 2005, follows on previous surveys by providing up-to-date information on the state of application of Community environmental law.

The infringement proceedings under Articles 226 and 228 of the Treaty provide a powerful tool to address implementation problems. Complaints on the implementation of environmental legislation often take the form of written questions and petitions to the European Parliament. 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.

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.

In February 2007, the Commission proposed a directive on the protection of the environment through criminal law (COM(2007) 51). This proposal replaces the proposal for a directive of the Parliament and the Council on the protection of the environment through criminal law (2001/0076(COD)) as amended after the first reading of the European Parliament, in order to implement the findings of the Court of Justice of the European Communities in its judgment of 13 September 2005 (C-176/03, *Commission* v *Council*) which annulled Framework Decision 2003/80/JHA on the protection of the environment through criminal law.

Role of the European Parliament

The European Parliament 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 and on that information being disseminated using the latest technology available, enabling Community legislation to be brought into line with the Århus Convention.

The European Parliament 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 addition, the European Parliament 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 European Parliament stressed (see Decision No 1600/2002/EC on the sixth Community environment action programme; →4.10.1) 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 European Parliament strongly supports the objective of prompt, uniform and effective implementation of EU environmental law. As an example, in 1997 the European Parliament passed a resolution calling on the Commission to produce and publicise annual reports on progress in adopting and implementing EU environmental legislation. The Commission now publishes annual surveys on the implementation and enforcement of Community environmental law in response to the European Parliament 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.

→ Yanne Goossens
July 2008

4.10.3. Sustainable development and environmental concerns

Sustainable development is a global concern and has been on the political agenda since 1992. To deal with the challenges of our growing economy and our changing environment, the EU has developed a sustainable development strategy covering economic, social, environmental and financial aspects. Promoting new, more environment-friendly technologies connects the objectives of the Lisbon strategy to those of the Gothenburg European Council. In addition, European legislation aims at integrating environmental considerations to the other EU policies.

Legal basis and objectives

→4.10.1.

Achievements

A. Introduction

In 1987, the Brundtland report 'Our common future' was published, dealing with sustainable development and the change in politics needed for achieving this. The 1992 United Nations Conference on Environment and Development (UNCED) led to the adoption of Agenda 21, the Rio Declaration on Environment and Development, the statement of principles for the sustainable management of forests, and the legally binding conventions on biological diversity and on climate change. The UN Commission on Sustainable Development (CSD) was established to ensure effective follow-up of the UNCED of 1992. National, regional and global commitments were defined at the World Summit on Sustainable Development (WSSD) in Johannesburg in 2002.

B. Global partnership for sustainable development

Globalisation acts as a powerful force for sustaining global growth and providing ways of dealing with international

problems. 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.

The EU sustainable development strategy (SDS) sets out a roadmap for implementing sustainable development in the European Union and covers economic, social, environmental and financial aspects, as well as the 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 communication entitled 'The 2005 review of the EU sustainable development strategy: initial stocktaking and future orientations' (COM(2005) 37) represents the Commission's first step in reviewing the SDS, providing an initial assessment of the progress made since 2001 and outlining a number of future orientations. COM(2005) 658 reviews and further develops the SDS of 2001, with the goal of better integrating the domestic and international dimensions of sustainable development. The new SDS identifies seven key challenges with corresponding targets and actions: climate change and clean energy; sustainable transport; sustainable consumption and production; conservation and management of natural resources; public health; social inclusion, demography and migration; and global poverty and global sustainable development challenges.

Following the review of the EU SDS in 2005 and on the basis of contributions from other EU institutions, 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. The Commission adopted on 22 October 2007 the 'Progress report on the sustainable development strategy 2007' (COM(2007) 642), addressing in particular progress achieved on climate change, clean energy and health.

C. Environmental technology for sustainable development

At the European Council in Lisbon in March 2000, resulting in the ambitious Lisbon strategy, 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 (→4.1) 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, thus freeing-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. The communication 'Stimulating technologies for sustainable development: an environmental technologies action plan for the EU' (COM(2004) 38) presents an action plan to improve the development and wider use of environmental technologies. In July 2008, the Commission adopted a package of proposals (COM(2008) 397) related to sustainable production and consumption (see →4.10.10).

D. Integration of environmental dimension into other policies

In June 2004, the Commission adopted the working document 'Integrating environmental considerations into other policy areas — a stocktaking of the Cardiff process' (COM(2004) 394) as a follow-up from the Cardiff Summit of June 1998 and from the 2003 spring European Council, to complement the 2003 environment policy review (EPR) adopted in December 2003.

Since then, the European Commission adopts yearly its environment policy review and looks in detail at EU and Member States' environmental trends and policy performance.

1. Environment and the single market

Environmental standards are often perceived as barriers to market access, 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. Economic instruments such as taxes (environmental taxes and charges) can be an appropriate way of implementing the 'polluter pays' principle.

2. Environment and 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) recognises the need to develop and strengthen policies in the area of sustainable production. Communication COM(2006) 136 on corporate social responsibility (CSR) aims at integrating social and environmental concerns into business operations on a voluntary basis.

3. Environment and energy policy

Directive 2006/32/EC on energy end-use efficiency and energy requires Member States to draw up national action plans (NAPs) to achieve 1 % yearly energy savings in the retail, supply and distribution of electricity, natural gas, urban heating, and other energy products including transport fuels. The target is only indicative but the NAPs will have to be submitted to the Commission for approval and will be reviewed every three years. The process will be spread over nine years, starting in January 2008. This directive complements existing energy legislation such as the energy performance of buildings directive, the combined heat and power directive and the directives on the energy labelling of appliances.

In January 2007, the Commission presented an 'energy and climate change package', focusing on the use of renewable energy and a reduced and more efficient use of energy. This was followed by the climate and energy package of January 2008 (see →4.10.7 and →4.13).

4. Environmental and sustainable agriculture

The agri-environmental strategy of the common agricultural policy (CAP) 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. Simplification of the CAP in 2003 lead — amongst others — to the introduction of a new system of direct payments, known as the single payment scheme (SPS), under which aid is no longer linked to production (decoupling).

While the 2003 reform modernised the CAP, the 2007/08 CAP health check proposals (COM(2007) 722) present an opportunity to review this policy. This includes how to master new challenges, from climate change to growth in biofuels and water management, and ongoing ones, such as biodiversity, by adapting to the new risks and opportunities.

5. Integration of the environmental dimension in developing countries

Regulation (EC) No 2493/2000 promotes 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 or 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 2000–06 was EUR 93 million. The communication COM(2004) 629 presents the specific objectives and the conditions governing the implementation of the financial instrument for development cooperation and economic cooperation for the period 2007–13.

6. Integrating environmental protection requirements into the common fisheries policy (CFP)

A communication from the Commission (COM(2002) 186) set out a Community action plan to integrate environmental protection requirements into the common fisheries policy. Regulation (EC) No 2371/2002 sets measures to ensure the conservation and sustainable exploitation of fisheries resources. COM(2004) 438 promotes environment-friendly fishing methods, focusing on bringing fishing effort down to viable levels and maintain it there; optimising the catch of target species and minimising unwanted catches; and minimising the impact of fishing on marine habitats.

7. Integrating the environmental dimension into sustainable development of the urban environment

In January 2006, the European Commission adopted the thematic strategy on the urban environment (COM(2005) 718). The strategy 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. In July 2008 the European Parliament adopted an own-initiative report on a recent Commission Green Paper to tackle the negative effects of urban transport on climate change and the environment.

8. Integration of the environment into economic policy

The Commission communication 'Bringing our needs and responsibilities together — integrating environmental issues with economic policy' (COM(2000) 576) of September 2000 on integrating environmental issues into economic policy was the basis for the Ecofin Council's 'First step toward a strategy' report of 27 November 2000 to the Nice European Council. 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. The best strategy for integrating the environment into economic policy is to create or improve the functioning of markets for environmental goods and to create and assign well-defined property rights for environmental goods and services which are enforceable by law and tradable.

9. Integration of the environment into transport

The European strategy on transport and environment (Council report of 6 October 1999 to the European Council of Helsinki)

defines the objectives for integrating environmental requirements into transport policy. It provides guidelines for a range of measures in various transport sectors (road, air, rail and maritime) and aims to ensure that environment is taken into account when drawing up and implementing transport policy.

The thematic strategy on air pollution (COM(2005) 446; see →4.10.6) fixes targets for the reduction of certain pollutants and reinforces the legislative framework to combat atmospheric pollution. Following the Commission's communication 'Reducing the climate change impact of aviation' (COM(2005) 459), the European Parliament adopted a resolution on 4 July 2006. 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 (see →4.10.7 for more information).

Role of the European Parliament

In May 2002, the European Parliament adopted a resolution on a Commission communication entitled 'Towards a global partnership for sustainable development' (COM(2002) 82) in view of the 2002 WSSD in Johannesburg. As decided by the UN Commission on Sustainable Development, the political focus for 2004 and 2005, was on water, sanitation and human settlements. The cycle 2006/07 deals with energy, industrial development, air pollution and climate change. The cycle 2008/09 focuses on agriculture, rural development, land, drought, desertification and Africa.

In July 2005, the European Parliament adopted a resolution (2004/2131(INI)), on the Commission's environmental technologies action plan. 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.

The European Parliament's contribution to the debate on the review of the EU sustainable development strategy of 2005, was the ENVI Committee's own-initiative report on the environmental aspects of sustainable development, adopted in plenary in January 2006, underlining 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. The final report asked the Commission to step up its action in many fields, including: the transfer of a large proportion of road transport to more environment-friendly modes of transport; the promotion of the use of biofuels; the reversal by 2010 of the current loss of biodiversity; the reduction at source of the production of waste; the increase of resource and energy efficiency; the reinforcement of the environmental and social aspects of the impact assessments for all its legislative proposals; and the new proposals for a first European eco-tax. The Environment 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.

In its joint resolution, adopted in Strasbourg on 15 June 2006, the European Parliament 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 policymakers behind the vital tasks that lie ahead and considered that the 2005–10 strategy concentrated too much on economic growth to the detriment of the environmental and social pillars. Parliament welcomed, however, the valuable work of the Austrian Presidency in seeking to relaunch the SDS.

In March 2008 the European Parliament adopted a resolution on sustainable agriculture and biogas (INI/2007/2107), which recognises that biogas is a vital energy resource contributing to sustainable economic, agricultural rural development and environmental protection.

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July 2008

4.10.4. Natural resources and waste

Past and current patterns of resource use have led to high pollution levels, environmental degradation and depletion of natural resources. The EU has agreed on a thematic strategy on the sustainable use of natural resources and on the recycling and prevention of waste. Furthermore, several specific pieces of legislation were established to manage waste in a more sustainable way.

Legal basis and objectives

→4.10.1.

General background

All products used have a natural resource base. European economies depend highly on **natural resources**, including raw materials such as minerals, biomass and biological resources; environmental media such as air, water and soil; flow resources such as wind, geothermal, tidal and solar energy; and space (land area). In using resources and transforming them, capital stocks are built up which add to the wealth of present and future generations. However, if current patterns of resource use are maintained in Europe, environmental degradation and depletion of natural resources will continue. The dimensions of our current resource use are such that the chances of future generations — and the developing countries — to have access to their fair share of scarce resources are endangered. The sustainable use of resources, involving sustainable production and consumption is hence a key ingredient of long-term prosperity, both within the EU and globally.

European society has grown wealthier through the use of these natural resources; however, not without repercussions on the environment such as air pollution (→4.10.6), global warming (→4.10.7) and the production of waste. Total **waste generation** in the EU is about 1.8 billion tonnes per year (excluding the 700 million tonnes of agricultural waste). This means that approximately 3.5 tonnes per capita of waste is produced in the EU every year. This consists mainly of waste from households, industry, commercial activities, agriculture, construction and demolition projects, mining and quarrying activities and from energy generation. This amount is growing faster than GDP and less than a third of it is recycled. The European Environment Agency (EEA) identifies the following six major waste streams in the EU: manufacturing waste (26 %), mining and quarrying waste (29 %), construction and demolition waste (22 %) and municipal solid waste (14 %).

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. 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 EU's sixth environment action programme identifies **waste prevention and management** as one of four top priorities. Its primary objective is to decouple waste generation from economic activity, so that EU growth will no longer lead to more and more rubbish. **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.

Achievements

A. Natural resources: thematic strategy on the sustainable use of natural resources

In December 2005, the Commission presented a communication on the thematic strategy on the sustainable use of natural resources (COM(2005) 670) to decouple economic growth from environmental degradation. The strategy focuses on improving knowledge, developing monitoring tools and fostering strategic approaches in specific economic sectors and is closely linked with the thematic strategy on waste which was adopted the same day.

B. Waste management

1. The thematic strategy on the prevention and recycling of waste

The thematic strategy on the prevention and recycling of waste, as adopted by the European Commission in December 2005, deals with substantial environmental impacts (COM(2005) 666). EU policy has several main objectives, including avoiding waste by promoting environment-friendly and less waste-intensive technologies and processes and by producing environmentally sound and recyclable products; promoting reprocessing, and 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.

The strategy provides for existing legislation to be simplified by proposing a revision of the 1975 waste framework directive. This will mainly be done by merging the framework directive on waste with the hazardous waste directive and the waste oil directive by removing any overlap between the framework directive on waste and the IPPC directive (see →4.10.6), for example regarding the award of permits, as well as by consolidating the three directives on waste from the titanium dioxide industry. The proposal for the new directive (COM(2005) 667) links the waste hierarchy (prevention, reuse, recycling, incineration and, finally, disposal in landfills) with its objectives of reducing the environmental impact of the generation and management of waste.

Directives 75/442/EEC and 91/689/EC 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.

In the meantime, Directive 2006/12/EC, codifying the waste framework directive, has entered into force. No legal or political changes are made to the text during the codification process. This directive will remain until the substantive proposal for a revision is adopted. In February 2007, the Commission published an interpretative communication on waste and by-products (COM(2007) 59) clarifying the definition of waste and non-waste in a production-process context. In line with the action plan of the Commission 'Simplifying and improving the regulatory environment', the Commission proposes in its waste thematic strategy to codify and simplify the three more than 15-year-old titanium dioxide directives.

2. Hazardous waste

a. Controlled management of hazardous waste

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 polychlorinated biphenyls (PCBs) and polychlorinated terphenyls PCTs). Regulation (EC) No 166/2006 establishes a European pollutant release and transfer register (PRTR), harmonising the rules on the regular reporting of information on pollutants, including waste, by Member States to the Commission (see →4.10.2).

b. Disposal of PCBs and PCTs and environmental issues of PVC

Directive 96/59/EC approximates the Member States' laws on the controlled disposal of **PCBs and PCTs**, the decontamination or disposal of equipment containing PCBs and/or the disposal of used PCBs in order to eliminate them completely. In 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 into the food chain. **PVC** is one of the most widespread plastics used today (the building sector accounting for 57 %). In July 2000, the Commission published a Green Paper on environmental issues of PVC (COM(2000) 469).

c. Disposal of spent batteries and accumulators

In 2003, the Commission proposed a new directive on batteries and accumulators (COM(2003) 723). During conciliation in May 2006, compromises were made on a minimal ban on cadmium in batteries as well as a recycling target of 50 % by 2016. In September 2006, the new directive (2006/66/EC), repealing Directive 91/157/EEC, entered into force.

3. Shipments of waste

In June 2003, the Commission proposed a revision (COM(2003) 379) of the 10-year-old waste shipment regulation ((EEC) No 259/93) 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. On 14 June 2006, the European Parliament and Council issued a new regulation ((EC) No 1013/2006) on shipments of waste (with effect from 12 July 2007). The new regulation is a step towards greater international harmonisation of waste shipments, as it fully implements the UN Basel Convention (signed by the Community in 1989), which regulates shipments of hazardous waste at international level, and strengthens the current control procedures, simplifying and clarifying them to the benefit of both the environment and waste shipment companies.

C. Vertical waste legislations

1. End-of-life vehicles

At the moment, 75 % of end-of-life vehicles (ELV) are recycled (metal content). The aim of the ELV 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. Commission Decision 2005/293/EC lays down detailed rules on monitoring and reporting on achievement of the targets set out in the ELV directive. The ELV directive provides that the European Parliament and the Council shall re-examine the 2015 targets on the basis of a report from the Commission. In January 2007, the Commission published COM(2007) 5 assessing the environmental, economic and social impacts of the targets included in the ELV directive and alternative options. In March 2008 the European Parliament and the Council adopted Directive 2008/33/EC amending Directive 2000/53/EC on end-of-life vehicles, as regards the implementing powers conferred on the Commission.

2. End-of-life ships: ship dismantling

On 22 May 2007, the Commission approved, following its orientation debate of 28 March 2007, a Green Paper on better ship dismantling (COM(2007) 269), which analyses the problems posed by this activity, sets out the options for action at EU level and poses questions to the stakeholders. The Commission bases its analysis on the fact that the dismantling of European ships nowadays often takes place in developing countries under dangerous and environmentally harmful conditions, and contrary to Community waste shipment law. On this basis, a consultation process of the stakeholders was launched until 30 September 2007. In May 2008 the European Parliament adopted a resolution on the Green Paper on better ship dismantling (2007/2279(INI)).

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 European Parliament (EP). This directive 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. 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 environment-friendly alternatives as soon as new scientific evidence is available, on the basis of a new proposal from the Commission. In 2008, two acts were adopted amending Directive 2002/95/EC: Directive 2008/35/EC establishing maximum concentration values for certain hazardous substances and Commission Decision 2008/385/EC on adapting to technical progress the annex on exemptions for applications of lead and cadmium.

Directive 2002/96/EC on waste electrical and electronic equipment (WEEE) was also adopted after a long and controversial debate in the EP. It was later amended by Directive 2008/34/EC and aims at protecting soil, water and air against pollution, through better disposal of WEEE.

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. From 25 December 2008, Directive 2006/117/Euratom on the supervision and control of shipments of radioactive waste and spent fuel will replace Directive 92/3/Euratom. The provisions of this directive prohibit the export of radioactive waste to the ACP countries, in line with the Cotonou Convention signed in 2000, 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

The packaging and packaging waste directive (94/62/EC) 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. The directive requires Member States to take measures, which may include national programmes, to prevent the formation of packaging waste, and to develop packaging reuse systems. Directive 2004/12/EC (amending Directive 94/62/EC) establishes criteria clarifying the definition of the term 'packaging'.

6. Directive on the management of waste from extractive industries

In 2006, Directive 2006/21/EC on the management of waste from extractive industries was adopted, 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.

D. Waste treatment

1. Use of sewage sludge in agriculture

The progressive implementation of the urban wastewater treatment directive (91/271/EEC) in all Member States is increasing the quantities of sewage sludge requiring disposal. 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 reincinerate 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 has applied to existing plants since 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 called for more flexibility in the waste hierarchy to allow waste to be treated in a cheaper and more energy-efficient way. The Commission had 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, and an estimated number of facilities which would then qualify as 'recovery' or 'disposal' operations. However, Parliament rejected this reclassification in its February 2007 resolution.

Role of the European Parliament

On 25 April 2007, the European Parliament adopted a resolution based on the own-initiative report in response to the Commission communication on a **thematic strategy for sustainable use of natural resources**. Parliament considered that it should be seen as a first step in a process eventually leading to a comprehensive strategy for the sustainable use of natural resources. The Commission's action platform for the study of the sustainable development strategy was too cautious and limited in scope and, in its present form, it would not be able to persuade the public or political decision-makers to pursue the crucial goals for which it provides. The Commission was also urged to set binding targets and timetables for natural resources by developing and implementing best practices for every production chain and by achieving a quantitative greenhouse gas reduction of at least 30 % by 2020 and 80 % by 2050 against 1990 levels. Moreover, the thematic strategy failed to pursue the objectives of the EU's sixth environment action programme (EAP).

In June 2008 the EP adopted, in second reading, new **EU waste legislation** with binding targets for 2020. Waste prevention targets will be considered by the Commission in the future. Incineration of waste will be categorised as a recovery operation rather than disposal, provided it meets a certain energy efficiency standard. By 2020 reuse and recycling must apply to 50 % of waste materials such as paper, metals and glass from households and similar waste stream, and 70 % of non-hazardous construction and demolition waste. The new directive will oblige Member States to establish waste management plans and waste prevention programmes with waste prevention objectives five years after entry into force of the directive. Further to this duty, the compromise includes a new article on waste prevention. The Commission shall propose, if appropriate, by the end of 2014 the setting of waste prevention and decoupling objectives for 2020.

In a resolution adopted in January 2001 the EP recommended improving implementation of **Directive 96/59/EC** on the disposal of **PCBs** and **PCTs** rather than redrafting it. This contributed to the adoption of a Community strategy on dioxins, furans and PCBs. In another resolution in April 2001 Parliament made a series of recommendations concerning the Green Paper on environmental issues of PVC. The EP called for the 'polluter pays' principle, for a separate waste collection of PVC and for a ban on cadmium and lead-based stabilisers. Furthermore, the EP criticised the Commission for not having performed any life-cycle 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.

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 compromises on a recycling target of 50 % by 2016 and, on 4 July 2006, Parliament adopted a resolution on a joint text. A few months later, the new directive came into force. In March 2008 the European Parliament and the Council adopted Directive 2008/12/EC amending Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators, as regards the implementing powers conferred on the Commission.

During conciliation for the two directives in 2001 on WEEE, 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 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 WEEE 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. In March 2008 the European Parliament and Council adopted Directive 2008/34/EC, amending Directive 2002/96/EC on WEEE, and Directive 2008/35/EC, amending Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipments as regards the implementing powers conferred on the Commission.

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4.10.5. Water protection and management

The EU water framework directive aims to prevent and reduce pollution and promote sustainable use of water. It is supplemented by international agreements and various pieces of specific legislation related to water pollution, water quality and water quantity.

Legal basis and objectives

→4.10.1.

Achievements

A. Framework directive in the field of water policy

The objective of the water framework directive (WFD) (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. River basins covering the territory of more than one Member State are assigned to an international river basin district.

By 2007 Member States must have completed 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 m^3 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.

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.

The objectives of the WFD are to be achieved no later than 15 years after its entry into force (2015), although this deadline may be extended or relaxed under certain conditions, and the first review of the river basin management plan should take place in 2021. The 2007 implementation report 'Towards sustainable water management in the EU' (COM(2007) 128), as presented on the EU Water Conference 2007, shows that significant progress has been made; however, there are still a number of shortcomings. Simultaneously with the report, the Commission presented the new Community instrument **WISE** (water information system for Europe) which contains data and information collected at EU level, allowing for exchange of data through its public web portal and rapid reaction to deal with for example reporting of pollution.

B. EU international agreements on regional waters

The **Helsinki Convention on the protection and use of transboundary watercourses and international lakes** (Council Decision 95/308/EC) was signed on behalf of the EU in Helsinki in 1992. Actions of the parties are guided by the precautionary principle, the 'polluter pays' principle and the principle of sustainability.

The EU signed the **Convention on the protection of the Rhine** in April 1999 in Berne (Council Decision 2000/706/EC). The convention is designed to preserve and improve the ecosystem of the Rhine, strengthening cooperation between the Community and the Rhine riparian States.

The Convention on cooperation and protection and sustainable use of the Danube River and the Convention on the protection of the Black Sea against pollution are the current instruments for environmental cooperation. The Commission communication COM(2001) 615 outlines a strategy for **environmental cooperation in the Danube–Black Sea region.**

Today, 20 Mediterranean coastal States and the EU are the contracting parties to the **Barcelona Convention**, signed in 1976 by all Member States and amended in 1995 to establish the precautionary principle and to 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, and pollution by transboundary movements of hazardous waste. The Commission communication COM(2006) 475 establishes a **strategy for the Mediterranean basin** to protect the marine environment and the coastline of this region and to reduce pollution by 2020.

The Helsinki Convention on the protection of the Baltic Sea, signed in March 1974 by all States bordering the Baltic and in force since 1980, 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.

The **Paris Convention for the protection of the marine environment of the north-east Atlantic**, signed in 1992, requires the parties to observe the precautionary and the 'polluter pays' principles.

C. Conservation and protection of the marine environment

1. Thematic strategy on the conservation and protection of the marine environment

In October 2005, the European Commission adopted a thematic strategy on the conservation and protection of the marine environment (COM(2005) 504), 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 Council adopted its common position on 23 July 2007. The European Parliament adopted its position on second reading in December 2007.

The principal threats to the marine environment identified, are over-fishing, the discharge of pollution from land-based sources, oil spills, discharges from offshore oil and gas exploration, pollution from ship dismantling, noise pollution, climate change, nutrient enrichment and associated algal blooms, the illegal discharges of radionuclides 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. Marine pollution

Decision No 2850/2000/EC sets up a Community framework for cooperation in the field of accidental or deliberate marine pollution for the period 2000–06. This decision was designed to improve the control and reduction of pollution, EU information systems, and task forces to provide practical assistance in the event of accidental marine pollution, and integrate them into a single framework for cooperation. In December 2006, the Commission presented a communication (COM(2006) 863) on cooperation in the field of accidental or deliberate marine pollution after 2007.

3. Compensation for oil pollution damage occurring in European waters

A compensation fund for oil pollution in European waters (the COPE fund) is 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 grossly negligent behaviour.

4. Maritime policy

The Green Paper 'Towards a future maritime policy for the Union: a European vision for the oceans and seas' (COM(2006) 275) sets out several aspects of a future EU maritime policy. It highlights Europe's maritime identity and leadership, which is worth preserving at a time when environmental pressures are threatening the future of maritime activities.

D. Water quality legislation

1. Groundwater and surface water 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. 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.

Directive 98/83/EC, which repealed and replaced Directive 80/778/EEC as of 25 December 2003, defines the essential quality standards for water intended for human consumption. This directive takes into account scientific and technological progress and reduced the limit value on lead from 50 to 10 micrograms/litre. It was claimed that this would have serious financial implications because of the need to replace pipes. The directive requires Member States to regularly monitor the quality of water intended for human consumption by using the sampling points method and to draw up monitoring programmes.

The previous directive (75/440/EEC) on reduction and prevention of pollution of surface waters intended for the abstraction of drinking water and Directive 79/869/EEC on harmonisation of national rules on the monitoring of surface freshwater quality were repealed by the WFD with effect from 22 December 2007.

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 directive. Directive 2006/116/EC on the protection of groundwater against pollution and deterioration was put forward following Article 17 of the WFD, which 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.

2. Bathing water

In 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 Århus 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. 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 fresh waters which support certain fish species and shellfish. These are provided for in Directive 79/923/EEC on the quality required of shellfish waters and Directive 78/659/EEC on the quality of fresh waters needing protection or improvement in order to support fish life. In accordance with the EU's policy to simplify legislation, the Commission proposed a codification of Directive 79/923/EEC on shellfish waters and its subsequent amendments into a single text (COM(2006) 205). The new directive (2006/113/EC) was adopted by Parliament and the Council in December 2006. By 2013, the codifying directives on this subject will be repealed by the WFD.

4. Urban wastewater treatment

Directive 91/271/EEC (amended by 98/15/EC) deals with urban wastewater treatments. Aid under the Structural Funds and the Cohesion Fund may be allocated and the Commission also intended 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, limit values and nitrate

EU legislation has introduced a system of strict limit values for dangerous substances discharged into the aquatic environment, 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 specific directives prescribing limit values and quality objectives for cadmium, hexachlorocyclohexane (HCH), mercury and titanium dioxide. Directive 2006/11/EC codifies and replaces this directive and its subsequent amendments.

Decision No 2455/2001/EC establishes a list of priority substances in the field of water policy for which quality standards and emission control measures will be set at Community level, amending the WFD. In July 2006, the Commission adopted a proposal for a new directive on environmental quality standards in the field of water policy (COM(2006) 397), amending the WFD. The proposed directive will set limits on concentrations in surface waters of 41 dangerous chemical substances (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 emission reduction programmes, as mentioned in the old directive (76/464/EEC), will remain place until 2013.

The protection of waters against pollution caused by nitrates from agricultural sources is laid down by Directive 91/676/EEC, as amended by Regulation (EC) No 1882/2003. The nitrates directive requires Member States to submit every four years a report to the Commission containing information on codes of good agricultural practice, designated nitrate vulnerable zones (NVZ), the results of water monitoring and a summary of the relevant aspects of action programmes drawn up in relation to nitrate vulnerable zones.

F. Flood protection management and water scarcity

Over the past 30 years droughts have dramatically increased in number and intensity in the European Union and, in 2003, one of the most widespread droughts affected over 100 million people and about a third of the EU land. In January 2006 the European Commission proposed a directive on the assessment and management of floods (COM(2006) 15). In November 2007, Directive 2007/60/EC on the assessment and management of flood risks entered into force. Its aim is to reduce and manage the risks that floods pose to human health, the environment, infrastructure and property. Under the proposed directive Member States need to carry out a preliminary assessment to identify the river basins and associated coastal areas at risk of flooding. For such zones they need to draw up flood risk maps and flood risk management plans focused on prevention, protection and preparedness.

Further to the request of a number of Member States to initiate a European action on water scarcity and droughts made during the Environment Council of March 2006, the Commission agreed to analyse this and to present a first report for the June 2006 Environment Council. In recognition of the acuteness of the water scarcity and drought challenges in Europe, the Commission launched in early 2007 a study in order to quantify the water saving potential across Europe. On 5 June 2007 the Impact Assessment Board adopted an opinion on the draft version of the impact assessment of the communication. In May 2008 the Commission presented a communication 'Addressing the challenge of water scarcity and droughts' in the European Union.

Role of the European Parliament

The European Parliament (EP) has frequently taken the initiative in the field of water protection. 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*.

Moreover, 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.

In November 2006, Parliament adopted an own-initiative report on the thematic strategy for the conservation and protection of the marine environment and a first reading report on the marine strategy directive. Parliament called for a directive with clear, measurable targets to be achieved within shorter deadlines than in the proposal, and introduced the obligation of the establishment of 'marine protected areas' in EU legislation. The establishment of marine protected areas is often seen as a valuable tool for improving both fishery management and marine environmental protection. In December 2006, the Council reached political agreement on a draft directive establishing a framework for Community action in the field of marine environmental policy. The Council adopted its common position on 23 July 2007. Parliament adopted its position in second reading on 11 December 2007.

Concerning the Green Paper on an EU maritime strategy, the EP stresses the importance of biodiversity, eco-innovations, the effects of climate change on the seas, and the target of achieving good ecological status. In May 2008, the EP adopted its resolution on an integrated maritime policy for the European Union.

In April 2007 the EP and the Council reached an agreement on the proposal for a directive on the assessment and management of flood risks, leading to its entry into force in November 2007. The main compromises concerned greater emphasis on floodplains and sustainable land use practices, climate change adaptation, and better international cooperation in shared river basins.

In June 2008 Parliament voted by a large majority in support of new EU water quality rules based on a compromise agreement reached earlier with the Council on the proposed directive on environmental quality standards in the field of water. The directive will set harmonised quality standards for a list of currently 33 priority substances and will repeal five existing directives (82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC, 86/280/EEC and 2000/60/EC). Through requiring a revision of the list of priority substances within two years after the entry into force, Parliament has ensured the possibility of expanding the list of toxic substances. Furthermore, the objective of ceasing or phasing out emissions of 13 'priority hazardous substances' within 20 years was reinforced.

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4.10.6. Air and noise pollution

Atmospheric pollution has three main sources: transport, emissions from stationary sources and emissions caused by the production of electricity. The air quality directive and the thematic strategy on air pollution aim to prevent harmful effects on the environment and health.

The 'Clean air for Europe' programme and the Inspire initiative aim at reducing such pollution by 2020. The reduction of atmospheric pollution, such as that caused by transportation, also means a reduction of noise pollution.

Legal basis and objectives

→4.10.1.

General background

Community activities to protect the air concern 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); emissions from immobile sources (businesses, homes, farms and rubbish dumps); and emissions caused by power generation. High concentrations of these gases and pollutants arising from them 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 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. 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. Between 1990 and 2002, emissions decreased by 43 % in the EU-15 and by 58 % in the EU-10, despite increased economic activity.

Achievements

A. Management and quality of ambient air

The 'old' air quality framework directive (96/62/EC) set 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 was supplemented by four so-called **'daughter' directives,** relating to specific pollutants, which were merged (except for the fourth daughter directive) into a new air quality directive in May 2008 (see subsection B):

— the first directive (1999/30/EC) on sulphur dioxide, nitrogen dioxide and nitrogen oxides, particulates (PM_{10}) and lead in ambient air;

— the second directive (2000/69/EC), which introduced specific limit values for benzene and carbon monoxide;

— the third directive (2002/3/EC), which established an information threshold, an alert threshold (higher than information threshold), target values and long-term aims for ozone concentration in ambient air;

— the fourth directive (2004/107/EC), which establishes target values for concentrations of arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbon.

B. Thematic strategy on air pollution and the 'Clean air for Europe' programme

In 2001, a 'Clean air for Europe' (CAFE) programme (COM(2001) 245) was adopted by the Commission. In September 2005 a thematic strategy on air pollution (COM(2005) 446) and a proposal for a CAFE directive (COM(2005) 447) were adopted.

The objectives proposed in the **thematic 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 SO_2 emissions by 82 %, NOx 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 O_3, 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.

1. New directive on ambient air quality and cleaner air for Europe

The **new directive on ambient air quality and cleaner air for Europe** (Directive 2008/50/EC) was adopted in May 2008. This new directive merges most of existing legislation into a single directive (except for the fourth daughter directive) with no change to existing air quality objectives. It sets new air quality objectives for $PM_{2.5}$ (fine particles) and includes the possibility to discount natural sources of pollution when assessing compliance against limit values.

2. National emission ceilings for certain atmospheric pollutants

Directive 2001/81/EC on national emission ceilings for certain atmospheric pollutants is part of the follow-up to the Community strategy to combat acidification (COM(97) 88 final), which sought to establish national emission ceilings for sulphur dioxide (SO_2), nitrogen oxide (NOx), volatile organic compounds (VOC) and ammonia (NH_3). The Commission adopted a proposal for the revision of the national ceilings directive in summer 2007, which was built upon the work performed under the CAFE programme and the thematic strategy on air pollution.

C. Reduction of transport emissions

Passenger transport volumes and freight transport have respectively risen by 20 % (period 1990–2003) and 43 % (since 1992) while GDP has increased by 30 %. Road and aviation were estimated to increase by 36 % and 105 % respectively between 2000 and 2020 in the EU-25, with the strongest growth taking place in the EU-10.

While emissions from most sectors, such as energy supply, industry and agriculture, dropped between 1990 and 2004 in the EU-15, greenhouse gas emissions from transport rose by 26 %. 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. These actions at Community level have had positive results, but the progress achieved to date is threatened by the rising number of vehicles on the road and vehicle use, leading to an increase of fuel consumption.

1. Road vehicles: petrol and diesel engines

Road transport generates about one fifth of the EU's CO_2 emissions, with passenger cars responsible for around 12 %. Motor vehicle emissions are regulated by Directive 70/220/EEC (light vehicles) and 88/77/EC (heavy vehicles). In cooperation with the oil and motor-vehicle industries, the Commission has drawn up an 'auto-oil' programme to reduce exhaust gas emissions. A review of the Oil programme, running from 1997 until 2000, was published by the Commission in October 2000 (COM(2000) 626).

Under the auto-oil programmes, several measures have been adopted to tackle air pollution from motor-vehicle emissions and to address the quality of petrol and diesel fuel through banning lead in petrol and setting emission limit values (Directives 98/70/EC, 98/69/EC, 98/77/EC, 1999/96/EC and 2003/17/EC).

Within the context of the European climate change programme (see →4.10.7), the Commission proposed in January 2007 a renewed Community strategy to reduce CO_2 emissions from light-duty vehicles (passenger cars and light-commercial vans), with a view to reaching the EU objective of 120 g CO_2/km by

2012, a reduction of around 25 % from current levels, by improving fuel efficiency (COM(2007) 19). In addition, the Commission proposed a revision of EU fuel quality standards (COM(2007) 18), encouraging the development of lower-carbon fuels and biofuels by obliging suppliers to reduce the greenhouse gas emissions caused by the production, transport and use of their fuels by 10 % between 2011 and 2020. This will cut emissions by a cumulative total of 500 million tonnes of carbon dioxide by 2020.

During the next few months, following close consultation with key stakeholders, it was concluded that progress was slower than expected and that the 120 g CO_2/km target would not be met by 2012. Therefore, in December 2007, the Commission proposed a new strategy and new measures and legislation. The new regulation proposed aims at ensuring the proper functioning of the internal market for passenger cars by laying down harmonised rules to limit the average CO_2 emissions from the new car fleet in the Community to 130 g CO_2/km by 2012 (COM(2007) 856). Complementary measures, such as efficiency improvements (e.g. for tyres and air conditioning systems) and a gradual reduction in the carbon content of road fuels (e.g. through greater use of biofuels), would contribute a further emissions cut of up to 10 g/km, thus reducing overall emissions to 120 g/km. Furthermore, the new measures foresee support for research efforts aimed at further reducing emissions from new cars to an average of 95 g CO_2/km by 2020 and foresee promotion of fuel efficient vehicles through, for example, more effective car labelling.

2. Non-road mobile machinery and tractors: gaseous pollutants

Emissions and type-approval procedures for engines from non-road mobile machinery (such as excavators, bulldozers and chainsaws) are regulated through Directive 97/68/EC, as amended by Directive 2002/88/EC. Emissions of agricultural and forestry tractors are regulated through Directive 2000/25/EC, amending Council Directive 74/150/EEC, particularly concerning the definition of type-approval procedures by type of engine and type of vehicle. By 31 December 2009 at the latest, the maximum permissible sulphur content of gas oils intended for use by non-road mobile machinery and agricultural and forestry tractors, including inland waterway vessels, shall be 10 mg/kg.

3. Emissions from ship and rail transport

Directive 2004/26/EC extends the scope of Directive 97/68/EC to cover locomotives and inland waterway vessels. It reinforces the emission standards applicable, provides for means of improving the methods of testing new engines prior to marketing, and introduces a label for greater market visibility for those manufacturers able to comply with the requirements before the deadline.

In 2005, shipping contributed 39 % of sulphur dioxide emissions in the EU-15. Directive 2005/33/EC, amending Directive 1999/32/EC, aims at limiting the sulphur content of marine fuels to 1.5 % by 2007. This should be reduced to 0.5 % in port areas, where ships will be required to switch off all engines and use shore-side electricity while at berth in ports (Recommendation 2006/339/EC of May 2006). Whilst the European Parliament Environment Committee had hoped to fix a second phase for new limits to come in by 2010, following negotiations with the Council, a revision clause has been introduced. In March 2008 the Commission proposed to amend Directive 2005/35/EC on ship source pollution and on the introduction of penalties for infringements (COM(2008) 134).

4. Emissions from aviation

COM(1999) 640 sets out a strategy to put in place a coherent and environment-friendly policy in the field of air transport. The strategy includes improvement of technical environmental standards on noise and gaseous emissions, leading to reduced fuel consumption, and the introduction of economic and regulatory market incentives to promote environment-friendly technologies. In December 2007 the Council reached political agreement on a draft directive (COM(2006) 818) to include aviation activities in the greenhouse gas emission allowance trading scheme within the Community (EU ETS) (see also →4.10.7).

D. Reduction of industrial emissions

1. Integrated pollution prevention and control (IPPC)

The former IPPC framework directive (96/61/EC) concerning highly polluting industrial activities, defined the basic obligations to be met by all the industrial installations concerned, whether new or existing, covering a list of measures for preventing the pollution of water, air and soil by industrial effluent and other waste and served as the basis for drawing up operating licences or permits for industrial installations. In January 2008, the IPPC directive and its amendments were codified into Directive 2008/1/EC.

In the meantime, the Commission adopted in December 2007 a package to improve the EU policy on industrial emissions, including a proposal for a directive on industrial emissions. The proposal recasts seven existing directives related to industrial emissions into a single clear and coherent legislative instrument. The recast would include the IPPC directive, the large combustion plants directive, the waste incineration directive, the solvents emissions directive and three directives on titanium dioxide.

The Commission's proposal will lead to significant benefits to the environment and human health by reducing harmful industrial emissions across the EU, in particular through better application of best available techniques. For the large combustion plants alone it will achieve net benefits of EUR 7 billion to EUR 28 billion per year, including the reduction of premature deaths and years of life lost by 13 000 and 125 000 respectively.

2. Pollution from large combustion plants (LCP)

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, and aims at gradually reducing the annual emissions of SO_2 and NOx from existing plants and lays down emission limit values 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.

3. Volatile organic compounds (VOCs)

Council Directive 1999/13/EC on the limitation of emissions of 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 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 (2004/42/EC).

E. Management of noise pollution

The Green Paper on action against noise (COM(96) 540) sought to develop a new approach to the problem of noise and a first step towards an integrated programme for combating noise (mainly 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 development and the purchase of quieter products; a legal requirement to provide information on products; noise levies in accordance with the 'polluter pays' principle; and the introduction of noise licences.

1. 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 at harmonising noise indicators and assessment methods, gathering noise exposure information in the form of 'noise maps', and making this information available to the public. Furthermore, it required the Member States to draw up action plans by no later than 18 July 2008. In 2004 the Commission submitted a report to the Council and the EP on existing EU measures relating to sources of environmental noise (COM(2004) 160).

2. Sectoral legislations

a. Road traffic

Directives 70/157/EEC and 97/24/EC set limits on the permissible sound level of **motor vehicles** (with a maximum speed of more than 25 km/h) and of **mopeds and motorcycles** respectively. Complementing legislation on vehicles themselves, Directive 2001/43/EC provides for the testing and limiting of **tyre** rolling noise levels, and for their phased reduction.

b. Air traffic

Directive 92/14/EEC was adopted in 1992, based on standards of the International Civil Aviation Organisation (ICAO), in order to **limit the operation of aeroplanes** and ban the noisiest aircraft from European airports. Directive 2002/30/EC established rules and procedures with regard to the introduction of noise-related operating restrictions at Community **airports**. In COM(2001) 74 the Commission proposes a directive on the establishment of a framework for noise classification of civil subsonic aircraft for the purpose of **calculating noise charges**, aiming at promoting the use of less noisy aeroplanes.

c. Railway traffic

Directive 96/48/EC and Directive 2001/16/EC provide a legislative framework for technical and operational harmonisation of the rail network for high-speed rail and conventional rail respectively. 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. 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.

d. Airborne noise emitted by household appliances and equipment used outdoors

Directive 86/594/EEC covers provisions related to measuring methods determining and monitoring the airborne noise emitted by household appliances. The 1996 Commission Green Paper on future noise policy highlighted the increase in noise pollution in urban areas. Directive 2000/14/EC, as amended by Directive 2005/88/EC, is a framework directive designed to control noise emissions and labelling of more than 50 types of equipment used outdoors.

e. Industrial noise and construction plants

Large industrial and agricultural installations covered by the IPPC directive are subject to receiving permits, following the use of best available techniques (BATs) as references. Since industrial environmental noise is a local issue, measures to be taken depend on the location, which makes it hard to establish BATs for noise prevention and control. Noise emitted by **construction plants** such as excavators, loaders, earth-moving machines and tower cranes is regulated by several directives and regulations at EU level.

f. Recreational craft

Directive 2003/44/EC, amending Directive 94/25/EC, concerns recreational motorboats, including personal watercraft, and complements its design and construction requirements with environmental standards regarding exhaust and noise emission limit values.

Role of the European Parliament

The European Parliament has played a decisive role in the formulation of a progressive environmental policy to combat air pollution. Parliament welcomed the Commission's **thematic strategy on air pollution**, but noted with concern that the strategy does not show how the objectives of the sixth Environmental action programme could be attained and

does not include any legal requirement to reduce particulate emissions, but simply confines itself to suggesting indicative targets. Parliament called for a strategy with more ambitious reduction targets for NOx, VOC and $PM_{2.5}$ while maintaining a balanced approach between costs and benefits. For particles with a diameter of less than 2.5 micrometres ($PM_{2.5}$), in December 2007 Parliament and the Council agreed on an initial target value of 25 µg/m^3 from 2010. From 2015, this figure would become a binding limit. Parliament successfully argued for a second limit value — an indicative one — of 20 µg/m^3 to be achieved by 1 January 2020, five years after the first limit. The European Commission must review this indicative figure in 2013 to confirm the value laid down (20 µg/m^3) or to propose that it be altered. No modification of the annual PM_{10} limit value is included in the compromise package. The new directive on air quality was adopted in May 2008.

In October 2007 the European Parliament adopted a report on the **Community strategy to reduce CO_2 emissions from passenger cars and light-commercial vehicles**, which aims to achieve the 120 g CO_2/km emission target (2007/2119(INI)). Parliament calls for binding annual emission targets to be set with effect from 2011 to ensure that average emissions from all passenger cars placed on the EU market in 2015 do not exceed 125 g CO_2/km. Parliament insisted that, from 1 January 2020, average emissions should not exceed 95 g CO_2/km, and believed that the EU should provide support for the necessary promotion of innovation through the seventh framework programme for research. The report proposes the introduction, in 2011, of a new closed market mechanism, the carbon allowance reductions system (CARS), through which manufacturers and importers will be required to pay financial penalties in proportion to any excess over the emission limits per car sold.

In addition, Parliament is currently looking at the revised strategy, put forward by the Commission in December 2007, to limit CO_2 emissions from cars to help fight climate change, reduce fuel costs and increase European competitiveness (COM(2007) 856).

Parliament has repeatedly stressed the need for further cuts in limit values and improved measurement procedures with regard to **environmental noise**. Parliament has called for the setting of EU values for noise around airports (including an eventual ban on night flying) and also for noise reduction measures to be extended to cover military subsonic jet aircraft.

→ Yanne Goossens
June 2008

4.10.7. Climate change and the environment

In the Kyoto Protocol, the contracting parties have committed to reduce greenhouse gas emissions of 8 % below 1990 levels between 2008 and 2012. The EU has agreed to reduce its emissions by 20 % in 2020, while improving energy efficiency by 20 % and increasing its share of using renewable energy sources by 20 %. A key mechanism in meeting this goal is the EU emission trading scheme.

Legal basis and objectives

→4.10.1.

General background

Over the past 100 years global mean temperature has increased by 0.7 °C and in Europe by about 1.0 °C. Temperatures are projected to increase further by 1.4 to 5.8 °C by 2100, with larger increases in eastern and southern Europe. There is increased evidence that most of this warming can be attributed to the emission of greenhouse gases (GHGs) and aerosols by human activities. The most important issue is the large rise in concentrations of GHGs in the atmosphere. These gases trap heat that is radiated from the earth's surface and prevent it escaping into space, causing 'global warming'. Human activities that contribute to climate change include in particular deforestation and the burning of fossil fuels (such as coal, oil and natural gas) and other fuels, which leads to the emission of carbon dioxide (CO_2), one of the most important GHGs. Other important contributors to the recent climate change are methane, nitrous oxide and fluorocarbons.

1. Impacts of climate change

Global warming has led to: more extreme weather events such as floods, droughts, heavy rain, heatwaves, forest fires; water availability issues; disappearance of glaciers and less snowfall; adaptation and sometimes shifts in the distribution patterns or even the extinction of fauna and flora; promotion of certain plant diseases and pests; a rising sea level; and intensified photochemical smog, causing health problems. Ecosystems are known to have a certain capability ('resilience') to adapt to disturbances, and should therefore be able to cope with the climate changes by means of 'moving' into new relatively

steady states. However, once the disturbances pass a certain stress level, the ecosystem's resilience might be 'lost', causing the ecosystem to jump from the one steady state to the other in just a few years. Scientific evidence exists saying that the risks of irreversible and possibly catastrophic changes would greatly increase if global warming exceeded 2 °C above the pre-industrial levels. The EU's position is therefore that the objective of global action must be to keep the temperature rise within this 2 °C limit.

2. Cost of action versus cost of non-action

The Stern review on the economics of climate change, commissioned by the UK government and published in October 2006, said that managing global warming and thus reducing GHG emissions would cost +/– 1 % of global GDP every year, while inaction could cost the economy 'at least 5 %' of GDP each year and up to 20 % in the worst-case scenario. In its impact assessment accompanying COM(2007) 2, the Commission shows that taking action to limit climate change is fully compatible with sustaining global economic growth. Around 0.5 % of total global GDP would be required to invest in a low-carbon economy for the period 2013–30, leading to a 0.19 % decrease in global GDP growth per year up to 2030 (only a fraction of the expected annual GDP growth rate of 2.8 %). And this is without taking into account associated health benefits, greater energy security and reduced damage from avoided climate change. Tackling climate change has been on the agenda of the EU for the past few years and is being integrated into other policy areas, outside of environment policies, as well.

Helped by the EU-level policies and measures, as well as by national initiatives, the EU has succeeded in 'decoupling' its greenhouse gas emissions from economic growth. By 2004, the EU-15 had collectively reduced its emissions by 0.9 % while the economy grew by 32 % (compared to the base year of 1990 in most cases); the EU-25 achieved a 7.3 % reduction.

Models developed under the fourth IPPC assessment report (2007) show that if no action is taken to further reduce greenhouse gas emissions, the global mean temperature would increase by about 3.4 °C by 2080 compared to 1990 levels, affecting negatively nearly all European regions.

Achievements

A. The Kyoto Protocol

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: CO_2, methane, nitrous oxide, hydrofluorcarbons, perfluorcarbons and sulphur hexafluoride. The European Community committed itself to achieving an overall reduction in CO_2 emissions of 8 % in the period 2008–12 compared with 1990 levels.

The protocol entered into force in February 2005, after being ratified by 55 contracting parties, accounting for 55 % of total CO_2 emissions in 1990. The 'burden-sharing agreement' further redistributes the overall 8 % reduction target among the EU Member States, as can be found in Annex II to Council Decision 2002/358/EC. Decision No 280/2004/EC of the European Parliament and of the Council provides for a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol.

At the Montreal world climate conference in December 2005, the Commission and EU Member States pressed for, and successfully obtained, a decision that international talks should start on future action to combat climate change after 2012, when the Kyoto Protocol commitments expire ('**post-2012 strategy**').

B. Efforts within the EU

1. European climate change programme (ECCP)

The 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. Within the context of its first phase (ECCP I), working groups have investigated the possibilities of and the issues related to: market-based mechanisms such as an emission trading scheme (ETS), joint implementation and clean development mechanism; energy supply and consumption (including the use of renewable energy and the improvement of the energy performance of buildings); transport; industry; agriculture and forestry (including their use as carbon sinks); and research. The second phase (ECCP II) was launched in October 2005. ECCP II consists of several working groups: ECCP I review (with five subgroups: transport, energy supply, energy demand, non-CO_2 gases and agriculture); aviation; CO_2 and cars; environmentally safe use of carbon capture and storage; adaptation; and EU ETS review.

2. The climate and energy package

In 2005, the Commission issued a communication entitled 'Winning the battle against global climate change' (COM(2005) 35), which recommends a number of elements to be included in the EU's further climate change strategies and proposals to prepare the EU's position for future international negotiations.

In **January 2007**, the European Commission presented its **'Climate and energy package'**. It includes a communication 'Limiting global climate change to 2° Celsius: the way ahead for 2020 and beyond' (COM(2007) 2) setting out proposals and options for keeping climate change to manageable levels.

In March 2007, EU leaders agreed on a binding target to reduce the overall EU greenhouse gas emissions by 20 %, compared with 1990 levels, by 2020. This target would be raised to 30 % should other industrialised nations, including the USA, take similar steps. In addition, global emissions would have to be cut by 50 % by 2050, implying reductions in developed countries by 60 to 80 %.

Furthermore, the EU summit endorsed the Commission roadmap on a 20 % renewables target for energy consumption

(see below). In addition, halting tropical deforestation completely within the next two decades and then reversing it through reforestation and/or afforestation schemes, would be essential, considering the fact that deforestation currently contributes around 20 % of global greenhouse emissions; more than transport. The Environment Council also underlined the important contribution of eco-innovation in achieving both the Lisbon objectives and the objectives set in the energy-climate package. In March 2007, the Commission adopted a Green Paper (COM(2008) 140) on the use of market-based instruments for environment and energy related policy purposes ('green taxes').

In response, on 23 **January 2008**, the European Commission proposed a **package of measures related to 'climate change and renewable energies'** to put those goals into practice and to adopt measures for the transition towards a low carbon economy. In its communication '**20 20 by 2020**' (COM(2008) 30), the EU aims to achieve by 2020:

— a reduction of at least 20 % below 1990 levels in greenhouse gas emissions, which will be scaled up to as much as 30 % under a new global climate change agreement if other developed countries make comparable efforts;

— a share of 20 % of renewable energies in energy consumption and savings of 20 % of energy consumption through energy efficiency.

The package features guidelines for revised EU State aid for environmental protection (2008/C82/01) and legislative proposals on:

— CO_2 'burden sharing' (COM(2008) 17),

— the post-2012 period of carbon trading under the EU ETS (COM(2008) 16),

— carbon capture and storage (CCS) (COM(2008) 18), and

— renewable energies, including biofuels (COM(2008) 19).

A key mechanism in meeting this goal will remain the EU's emissions trading scheme (EU ETS), initially launched in 2005 in order to help achieve the Union's Kyoto goal of cutting greenhouse gases by 8 % by 2012, by imposing caps on emissions from energy-intensive industries such as steel, cement and power generation.

3. Greenhouse gas emissions trading

a. EU emission trading scheme

The EU ETS, as established by Directive 2003/87/EC, aims to ensure overall emission reductions with the lowest reduction costs by giving emission reductions a market value. The systems would cover some 10 000 industrial plants across the EU — such as power plants, refineries, steel mills — accounting for almost half of the EU's CO_2 emissions.

The **'cap and trade'** system sets an overall cap or maximum amount of emissions per compliance period per country. Each country set up national allocation plans (NAPs) for the first two phases of the ETS (2005–07 and 2008–12), followed by the allocation of emission allowances to the companies which can be traded between companies covered under the scheme.

The EU ETS aims at becoming an important building block for the development of a global network of emission trading systems. Linking other national or regional cap-and-trade emission trading systems to the EU ETS can create a bigger market, potentially lowering the aggregate cost of reducing greenhouse gas emissions. A fine of EUR 40 per excess tonne of CO_2 emitted will be imposed on plants exceeding their individual target, rising to EUR 100 in 2008.

In December 2006, the Commission presented a proposal for legislation to **include aviation into the EU ETS** (COM(2006) 818). In June 2008, MEPs and national governments, represented by the Slovenian Presidency, reached a compromise on the details of plans to include aviation in the EU ETS as of 2012. The compromise agreement reached still needs to be formally endorsed by the full Council and put to a second reading vote at Parliament's July 2008 plenary session in Strasbourg.

The **reformed ETS**, as proposed by the Commission in January 2008, would enter into force in 2013 and run until 2020. The main elements are indicated below.

— An EU-wide cap would be set at 21 % below 2005 levels instead of national cap-setting. To achieve this, the total number of emissions allowances circulating at the end of 2012 will be cut by 1.74 % annually.

— New sectors (aviation, petrochemicals, ammonia and the aluminium sector) and new gases (nitrous oxide and perfluorocarbons) would be included. Road transport, shipping, waste, agriculture and forestry remain excluded.

— Industrial GHGs prevented from entering the atmosphere through carbon capture and storage (CCS) technology (see below) are to be credited as not emitted under the EU ETS.

— Smaller installations, emitting under 10 000 tonnes of CO_2 per year, will be allowed to opt out from the ETS, provided that alternative reduction measures are put in place.

— The proposal foresees a huge increase in auctioning as early as 2013, up to around 60 % of the total number of allowances in 2013, followed by full auctioning from 2013 onwards for the power sector, while in other sectors free allocations will gradually be completely phased-out on an annual basis between 2013 and 2020. Exceptions to this are certain energy-intensive sectors, subject to 'carbon leakage', which will continue to get all their allowances for free. However, the sectors to be concerned by this measure are yet to be determined (expected by 2010). The distribution method for free allowances will be developed at a later stage through comitology. Furthermore, some sort of 'carbon equalisation system' might be introduced in 2011 in case of no international agreement to neutralise any distorting effects from imports from countries with less stringent climate laws.

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 ETS with the other Kyoto flexible mechanisms: joint implementation (JI) and the clean development mechanism (CDM). CDM projects involve investment by rich nations in 'clean' projects in the developing world in exchange for CO_2 emissions credits. The basic rationale for the CDM is that abatement of GHGs in developing countries can be achieved at lower costs than in developed countries. JI projects are similar and allow for emission credits obtained through projects in other developed countries.

c. Sources outside of the EU ETS: burden/effort sharing

Road transport, shipping, waste, agriculture and forestry remain excluded from the EU ETS. In order to achieve an average 10 % reduction of greenhouse gases from sectors not covered by the ETS, the Commission has set national targets, in relation to the 2005 levels, according to countries' per capita GDP (COM(2008) 17).

The use of credits obtained through financing emission reduction projects in countries outside the EU through the CDM will be limited to 3 % of Member States' emissions from sources outside the ETS in the year 2005.

4. Energy efficiency and renewable energy

In order to increase the share of renewable energy in Europe and to reduce oil-dependency, the European Commission adopted the EU biomass action plan (COM(2005) 628) and a communication on the EU strategy for bio fuels (COM(2006) 34) to improve the production and use of bio-energy in Europe and in third countries.

Following the energy–climate package of January 2007, European leaders signed up in March 2007 to a binding EU-wide target to source 20 % of their energy needs from renewables such as biomass, hydro, wind and solar power by 2020 while increasing energy efficiency by 20 %. As part of the overall target, a binding minimum target was set for each Member State to achieve at least 10 % of their transport fuel consumption from biofuels. However, the binding character of this target is 'subject to production being sustainable' and to 'second-generation biofuels becoming commercially available'. On 23 January 2008, the Commission put forward differentiated targets for the share of energy from renewable sources in final energy consumption in 2020 for each EU Member State, based on the per capita GDP of each country (COM(2008) 19).

5. Carbon capture and storage (CCS)

CCS technology separates CO_2 from atmospheric emissions (resulting from industrial processes), compresses the CO_2 and transports it to a location where it can be stored in geological or mineral formations and/or oceans. According to the UN Intergovernmental Panel on Climate Change, CCS could remove 80 to 90 % of CO_2 emissions from power plants if successful, and could reduce the costs of stabilising the CO_2 concentrations in the atmosphere by up to 30 %. The EU set up a technology platform on zero emission fossil fuel power plants at the end of 2004 and has proposed a regulatory framework to commercialise and subsidise this new technology.

On 23 January 2008, the European Commission issued a communication on CCS demonstration projects and a proposal for a directive on the legal framework for CCS as part of the larger package on renewable energies and climate change (COM(2008) 18).

C. International policy on climate change

In addition to its firm independent commitment to a 20 % reduction by 2020, the EU commits itself to a 30 % reduction in greenhouse gas emissions by 2020 provided that other developed countries commit themselves to comparable emission reductions and economically more advanced developing countries contribute adequately according to their responsibilities and respective capabilities.

The EU played an important role in Bali in securing the agreement on the roadmap towards a new comprehensive agreement on cutting emissions to be reached by 2009, and is convinced that developed countries can and should commit themselves to a 30 % cut in emission levels by 2020. The EU will continue to take the lead in the negotiation of an ambitious international agreement, the next steps being the COP14 meeting in Poznan in December 2008 and COP15 in Copenhagen 2009.

The **main issues within the climate negotiations** are:

— carbon trading versus a carbon tax;

— the need for predictable carbon prices and a possible future global carbon market;

— sectoral approaches: auctioning versus free allocation;

— the possibility of imposing a carbon import tax on foreign goods produced by energy-intensive industries operating in countries that do not have tough restrictions on CO_2 emissions; a similar option would be a WTO-wide deal on the full elimination of tariffs on 43 products identified by the World Bank as environment friendly;

— technology financing and development of clean and environment-friendly technologies;

— adaptation;

— energy efficiency;

— forest conservation: agreements were made in Bali to expand on existing mechanisms under the Kyoto Protocol that provide incentives for developing countries to prevent deforestation on their territories.

D. Adaptation to climate change and the clean development mechanism

The climate policy based on emission reduction needs to be complemented with an efficient response to the unavoidable

consequences of climate change, which are already happening today. There is a wide range of concrete actions for adaptation, from soft and relatively inexpensive measures (water conservation, changes in crop rotation, sowing dates and the use of drought tolerant crops, public planning, and awareness raising) to costly defence and relocation measures (increasing the height of dykes; relocating ports, industry, cities and villages from low-lying coastal areas and flood plains; building new power plants because of failing hydropower stations etc.).

In June 2007 the Commission issued a Green Paper on adaptation (COM(2007) 354). A European Advisory Group for Adaptation to Climate Change will work on the development of Community adaptation policies to be put forward by the end of 2008. Early action at the EU level could include integrating adaptation when implementing existing and upcoming legislation and policies, integrating adaptation into existing Community funding programmes and developing new policy responses.

Efforts to adapt to the unpreventable effects of climate change were given a boost when negotiators in Bali 2007 agreed to allocate 2 % of the proceeds from Kyoto CDM projects into a **climate change adaptation fund** designed to help developing nations deal with threats such as rising sea levels, desertification and biodiversity loss. If CDM projects flourish, the fund could grow between USD 1 billion and USD 5 billion annually by 2030, according to UN projections.

Role of the European Parliament

The European Parliament is still playing 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.

At the end of April 2007, Parliament established, for an initial period of 12 months, a **Temporary Committee on Climate Change**, comprising 60 members. The mandate has now been renewed for an additional period of nine months, with effect from 10 May 2008. Its aim is to coordinate Parliament's position on climate change-related policies and to formulate proposals on the EU's future integrated policy on climate change. It also intends to play a key role in awareness raising and in ensuring this important issue remains high on the international agenda. The temporary committee may make recommendations as to measures or initiatives to be taken and will contribute to shape the EU's approach to developing the future integrated climate change policy and influence the negotiations for the post-2012 international climate change framework.

In the report on **winning the battle against climate change**, Parliament highlighted the importance of reducing emissions at home, adopting a proactive approach to engage other main actors, developing strategic partnerships, promoting research and energy efficiency and encouraging citizens to become directly involved. A future regime should be based on 'common but differentiated responsibilities', based on recent science and aiming at not exceeding 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 strongly supported an EU 30 % **emission reduction target** by 2020, regardless of post-Kyoto international negotiations, and the cutting of global emissions by 50 % in 2050 as proposed by the Commission in its climate and energy package of January 2007.

In May 2008, the Committee on the Environment, Public Health and Food Safety (ENVI) adopted a report in second reading on the **inclusion of aviation into the EU ETS.** In June 2008, Parliament and the Council reached an 'informal' deal of auctioning 15 % of the allowances, although Parliament had initially demanded 25 %. Furthermore, MEPs from the ENVI Committee pushed for the number of pollution permits allocated to airlines to be capped at 90 % of average greenhouse gases emitted in 2004–06 while the Member States were demanding 100 %. A compromise was made at 97 % and will be lowered to 95 % for the 2013–20 period unless there is agreement on an ETS. Parliament reports on the **reform of the EU ETS** and on **effort sharing** are expected to be adopted in first reading in the ENVI Committee by October 2008.

In September 2006, Parliament adopted an opinion on the strategy on biomass and biofuels, asking for a mandatory environmental certification for sustainable production and use of biofuels. At this moment, the ENVI Committee is investigating the **renewables** targets set in the '20 20 by 2020' package and the required GHG savings for 'sustainable biofuels' within the context of the revision of the renewables directive.

The Parliament report on **carbon capture and storage** (CCS) is expected to be adopted in the ENVI Committee by September 2008. The rapporteur wants all existing fossil fuel power plants to be retrofitted with CO_2 capture and storage technology by 2025, and is calling for a moratorium on new plant constructions after 2015 unless the facilities are able to prevent 90 % of their CO_2 emissions from entering the atmosphere.

→ Yanne Goossens
July 2008

4.10.8. Biodiversity, nature and soil

The contributions of the UNCED of 1992 represent a major step forward for the conservation of biodiversity and the protection of nature. Other objectives foreseen in the habitat directive or CITES remain to be achieved. Since 2007, LIFE+ with its three components represents the most important financial instrument for the protection of biodiversity in the EU.

Legal basis

→4.10.1.

Achievements

The EU and its Member States have played an important international role in seeking solutions to global problems such as biodiversity loss, 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 and a statement of forest principles and the 'Agenda 21' programme. At the Gothenburg Summit in 2001, EU Member States agreed to halt biodiversity loss 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'. The millennium ecosystem assessment (2005) assessed biodiversity loss as one of the facets of the degradation of ecosystem services: 60 % of the ecosystems were found to be degraded or used unsustainably.

Furthermore, on 29 January 2000, the Conference of the Parties to the Convention on Biological Diversity (COP-MOP) adopted a supplementary agreement to the convention known as the Cartagena Protocol on Biosafety. The protocol seeks to protect biological diversity from the potential risks posed by living modified organisms resulting from modern biotechnology. It establishes an advance informed agreement (AIA) procedure for ensuring that countries are provided with the information necessary to make informed decisions before agreeing to the import of such organisms into their territory.

1. Biodiversity action plans

In 1998, the European Commission adopted a communication on a European biodiversity strategy (COM(98) 42). In 2002 the Council adopted the 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 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 2004, the EU biodiversity strategy was reviewed in Malahide (Scotland), followed by a report presenting 18 priority objectives for halting biodiversity loss in the EU. In May 2006, the Commission adopted a communication entitled 'Halting the loss of biodiversity by 2010 — and beyond — Sustaining ecosystem services for human well-being' communication (COM(2006) 216), which provides an EU action plan with concrete measures, and which outlines the responsibilities of EU institutions and Member States. The action plan includes four key policy areas for actions and related 10 priority areas for the EU and Member States to focus on. The German Environment Minister recently supported, at the G8 + 5 meeting in Potsdam in March 2007, the idea of publishing a report on the economic impact of biodiversity loss, along the lines of the Stern review on the economics of climate change, and the costs of non-action. An interim report was published at the ninth Conference of the Parties of the Convention of Biological Diversity (COP-MOP-9) in Bonn in May 2008.

2. International conventions for the protection of fauna and flora

The United Nations Environment Programme (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 European Union is a party to the following conventions:

— the Ramsar Convention on the Conservation of Wetlands of 1971;

— the Washington Convention (CITES) of 3 March 1973 on International Trade in Endangered Species of Wild Fauna and Flora;

— the Bonn Convention of 23 June 1979 on the Protection of Migratory Species of Wild Fauna;

— the Bern Convention on the Protection of European Wildlife and Natural Habitats of 1982;

— the Rio de Janeiro Convention on Biological Diversity of 1992; and

— more regional conventions such as the Helsinki Convention on the Baltic Sea (1974), the Barcelona Convention on the Mediterranean (1976) and the Convention on the Protection of the Alps (1991).

3. Financial instruments

Until the end of 2006, LIFE was the financial instrument supporting several projects in the areas LIFE–Nature, LIFE–

Environment and LIFE–Third countries. In March 2007, political agreement was reached between Parliament and the Council on its successor, LIFE+, bringing the total funding to nearly EUR 2 billion for the period 2007–13. The definitive LIFE+ regulation, resulting from the conciliation procedure between the European Parliament and the Council was established in May 2007. LIFE+ has several funding programmes and consists of three components: LIFE+ nature and biodiversity, LIFE+ environment policy and governance, and LIFE+ information and communication. Other possible funding opportunities for the Member States to support the biodiversity targets could be taken up under the CAP, the CFP, the Cohesion and Structural Funds, and the seventh framework programme. Programmes financed through LIFE+ will be open to the participation of third countries notably: EFTA States, candidate countries for accession to the EU, and western Balkan countries.

Objectives

1. Conservation of natural habitats and of wild fauna and flora

The habitat directive (92/43/EEC) on the conservation of natural habitats and of wild fauna and flora (amended by 97/62/EC) established a European ecological network known as 'Natura 2000'. The network comprises 'sites of community interest/special areas of conservation' designated by Member States in accordance with the habitat directive, and 'special protection areas' classified pursuant to Directive 79/409/EEC on the 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. The birds directive covers the protection, management and control of (wild) birds, including the rules for sustainable hunting.

In February 2008, the European Commission made a proposal for a regulation amending Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein as regards the implementing powers conferred on the Commission.

2. Exploitation and trade of wild fauna and flora

In 1975 the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) entered into force, regulating international trade in specimens of species of wild fauna and flora, i.e. (re-)export and import of live and dead animals and plants and of parts and derivatives thereof, based on a system of permits and certificates which can be issued if certain conditions are met. 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 CITES. The species covered by the regulation are listed in four annexes.

Regarding the protection of marine fauna, Regulation (EEC) No 348/81 sets common rules for imports of whales or other cetacean products and Decision 1999/337/EC on the signature by the EU of the agreement on the international dolphin conservation programme helps to reduce incidental dolphin mortality during tuna fishing. Directive 83/129/EEC prohibits the import of seal pup products into the EU, initially applying only until October 1985, but extended indefinitely by Directive 89/370/EEC.

In 1991, the Council adopted the 'leghold trap regulation' ((EEC) No 3254/91) banning the use of leg-hold 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. Commission Decision 98/596/EC allows the import of furs into the EU from Canada, the Russian Federation and the USA as a result of the commitment of those countries to implement humane trapping standards (agreements have been approved by Council Decisions 98/42/EC and 98/487/EC). In July 2004, the Commission adopted a proposal for a directive introducing humane trapping standards for certain animal species, which will implement commitments and obligations arising from the international engagements. Rules and guidelines for sustainable hunting of (wild) birds can be found in the birds directive.

3. Biodiversity related to animal welfare

Directive 1999/22/EC 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 was 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. Furthermore, the Commission has set up a Community action plan on the protection and welfare of animals 2006–10 (COM(2006) 13).

4. Marine biodiversity

Marine biodiversity is covered within the scope of the biodiversity action plans for natural resources and fisheries. The review of the EU biodiversity strategy stresses the importance of 'good ecological status' of seas and coastal areas to support biodiversity. Furthermore, the EU marine strategy of 2002 (COM(2002) 539) proposes an ecosystem-based approach to ensure conservation and sustainable use of biodiversity (see →4.10.5).

5. Forests

Forests make up to 30 % of the surface area of the 'Natura 2000' network. Several measures aim at the protection of forests. 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). Council Regulation (EEC) No 1615/89 established the European forestry information and communication system

(EFICS), setting up a system to collect, coordinate, standardise, process and disseminate information concerning the forestry sector and its development. Council resolution of 15 December 1998 on EU forestry strategy established a framework for forest-related actions in support of sustainable forest management (SFM). In June 2006, a communication on an EU forest action plan was adopted (COM(2006) 302). Regulation (EC) No 2494/2000 on measures to promote the conservation and sustainable management of tropical forests and other forests in developing countries includes the protection or restoration of biodiversity and ecological functions of forest ecosystems. Currently, the use of biofuels is under debate following possible negative impacts such as rainforest depletion and increased competition with wood and food production. A communication and a legislative proposal from the Commission to prevent the placing on the EU market of illegally harvested timber or timber products and a communication on measures to reduce deforestation are expected for the end of 2008.

6. Soil protection

In September 2006 the Commission adopted COM(2006) 231 on a thematic strategy for soil protection together with a proposal for a directive (COM(2006) 232) and an impact assessment. The thematic strategy for oil protection builds on a stakeholder consultation process of 2003 and covers erosion, organic matter loss, contamination, landslides, compaction, salinisation, sealing and other aspects of soil degradation. The proposal for a soil framework directive is subject to the co-decision procedure. The European Parliament adopted its first reading opinion on 13 November 2007.

7. Climate change and biodiversity

Climate change has led to the adaptation of several plant and animal species, leading in some cases to shifts in distribution patterns or even the extinction of fauna and flora. Changing ocean currents and sea level rise affect marine (wild) life and marine ecosystems such as coral reefs and mangroves. Furthermore, climate change and the related temperature increases are promoting certain plant diseases, pests and invasive plant/animal species, having implications, amongst others, on agriculture, food production, nature and biodiversity. Approximately 20 to 30 % of plant and animal species assessed so far are likely to be at increased risk of extinction if increases in global average temperature exceed 1.5 to 2.5 °C.

On 29 June 2007 the European Commission adopted its first policy document on adapting to the impacts of climate change. This Green Paper, entitled 'adaptation to climate change in Europe — options for EU action', builds upon the work and findings of the European climate change programme. In April 2008 the European Parliament adopted its resolution.

8. Genetically modified organisms (GMOs)

In June 2006, the Commission adopted a proposal for a directive (COM(2006) 286), codifying Directive 90/219/EEC, which laid down common measures for the contained use of genetically modified micro-organisms for the purposes of protecting human health and the environment. Furthermore, in accordance with Directive 2001/18/EC introducing a new efficient and transparent regulatory system on the deliberate release of GMOs into the environment, it adopted (proposals for) decisions on the placing on the market of certain genetically modified products or, where applicable, on a temporary ban on the sale and use of such products. In March 2008 European Parliament and the Council adopted a resolution and made some amendments to the Commission's proposal to amend Directive 2001/18/EC on the deliberate release into the environment of GMOs by introducing a reference to the new regulatory procedure with scrutiny.

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. 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. The European Parliament and the Council adopted on 11 March 2008 Regulation (EC) No 298/2008, amending Regulation (EC) No 1829/2003 on genetically modified food and feed, as regards the implementing power conferred on the Commission.

Recommendation 2003/556/EC sets guidelines for the development of national strategies and best practices to ensure the coexistence of GMOs with conventional and organic farming, in order to help Member States develop national (legislative) strategies for coexistence. In March 2006, the Commission adopted a report on the implementation of such national measures (COM(2006) 104).

Role of the European Parliament

The European Parliament has always played a decisive part in establishing EU systems concerning the protection of nature and biodiversity.

In May 2007, Parliament adopted an own-initiative report on the Commission communication entitled 'Halting the loss of biodiversity by 2010 — and beyond — Sustaining ecosystem services for human well-being' (COM(2006) 216). Parliament felt that the 'EU action plan to 2010 and beyond' would be insufficient to conserve biodiversity and sustain ecosystem services in the longer term. Biodiversity should be one of the main principles of the 'health check' on the common agriculture policy (CAP) due to be carried out in 2008.

On 24 April 2008, Parliament adopted a resolution on preparations for the COP–MOP meetings on biodiversity and biosafety in Bonn, Germany. Parliament expressed its deep concern at the continued loss of biodiversity and at the

European Union's ever increasing ecological footprint, which extends 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.

A Commission proposal on LIFE+ (COM(2004) 621) originally included two components: 'implementation and governance' and 'information and communication'. The EP proposed adding a third component, 'nature and biodiversity'. During the conciliation procedure of adopting the new LIFE+ regulation, the European Parliament has pushed for a larger budget for the programme, bringing the total LIFE funding to EUR 1.95 billion. Besides the budget, Parliament also focused on the management of the programme, battling against the 'renationalisation' of the LIFE+ funds. Agreement was reached for a centralised management in which the Commission controls and approves the proposed projects and delegates 22 % of the budget to cover administrative costs, while 78 % comes under the responsibility of the Member States.

In November 2007 the European Parliament adopted a report on the proposal for a regulation amending Regulation (EC) No 1829/2003 on genetically modified food and feed. In addition, the European Parliament adopted a resolution to the Commission's proposal to amend Directive 2001/18/EC on the deliberate release into the environment of genetically modified organisms, by introducing a reference to the new regulatory procedure with scrutiny.

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June 2008

4.10.9. Chemicals

The guidelines adopted in the EU aim at protecting the population and the environment against the potential effects of chemicals. The REACH directive regulates the registration, evaluation and authorisation of such substances and the restrictions applicable to them. The Seveso directive aims to prevent and reduce serious industrial accidents while the pesticides and biocides directives deal with the environmental and health risks of plant protection products.

Legal basis and objectives

See 4.10.1.

Achievements

A. Registration, evaluation, authorisation and restriction of chemicals (REACH)

Regulation (EC) No 1907/2006 of the European Parliament and of the Council was adopted on 18 December 2006 and entered into force on 1 June 2007. It concerns the registration, evaluation, authorisation and restriction of chemicals (REACH).

The aim of the REACH regulation is better protection of humans and the environment from the possible risk of chemicals and to promote sustainable development. Although EU legislation already prohibited some harmful chemicals (asbestos, for example), there have been gaps with regard to existing chemical substances. There has been a lack of information on the effects of many existing substances which were 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. The Commission considered a strategy to guarantee the protection of human health and the environment in a sustainable development context including substances which were placed on the market prior to 1981.

The REACH regulation established a **European Chemicals Agency (ECHA)**, inaugurated in Helsinki on 3 June 2008, to take a central role in the implementation of this regulation. The agency's main initial job is to negotiate a six-month pre-registration exercise in which firms must send basic substance and company details and expected registration dates. The information will be used to launch a registration phase that will last until 2018. Firms that do not pre-register must register their substances by 1 December 2008. Furthermore, the REACH regulation amended Directive 1999/45/EC concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations.

Council Regulation (EEC) No 793/93 on the evaluation and control of the risks of existing substances and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC on the restriction of the use of other dangerous substances and preparations are repealed. Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC are repealed by the REACH regulation.

Directive 67/548/EEC aims: 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; and to reduce as far as possible the number of experiments on animals. As the REACH regulation does not include rules for classification, labelling and packaging of dangerous substances, Directive 67/548/EEC will therefore continue to apply in its relevant parts. But in order to adapt it to Regulation (EC) No 1907/2006 (REACH) it has been amended by **Directive 2006/121/EC** of the European Parliament and of the Council of 18 December 2006. As the new regulation on REACH introduced the same registration requirements for new chemicals as for the existing substances, the rules for notification of new chemicals in Directive 67/548/EEC had to be amended.

Directive 2004/10/EC (amending and repealing Directives 87/18/EEC and 88/320/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.

B. Major accidents: Seveso directives

After the accident at Seveso, the EU took steps to legislate in order to prevent major accidents and to limit their consequences as highlighted in the following directives.

— **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, e.g. 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.

C. Vertical legislations

1. 'Europe against cancer'

The 'Europe against cancer' programme within the framework for action in the field of public health, adopted by Decision No 646/96/EC of the European Parliament and of the Council, as extended by Decision No 521/2001/EC of the European Parliament and of the Council of 26 February 2001, comprises an improving of health information and tackling lifestyle-related health determinants in certain settings. **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. PCPs

Production and use of pentachlorophenol (PCP) and its compounds has been restricted in the EU since the 1980s. Directive 76/769/EEC (ban on the production in the EU) has since been repealed by Regulation (EC) No 1907/2006 (REACH). Directive 91/173/EC restricts its use to a concentration equal to or greater than 0.1 % by mass, except in substances and preparations intended for use in industrial installations: treatment of wood; impregnation of heavy-duty textiles; and as a synthesising and/or processing agent in industrial processes.

3. Asbestos

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 cm^3 as an eight-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. In a case where its provisions are more favourable, Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work ('the carcinogens directive') will apply.

4. Plant protection products (pesticides)

Two measures apply to pesticides: a European Parliament and Council regulation on maximum residue levels (MRLs) 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. Complementail, 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). In order to establish a transparent system for reporting and monitoring the progress made towards the objectives of the strategy, including the development of suitable indicators, it is necessary to enhance and harmonise the current data collection and reporting systems and to put them on a legal footing. Therefore the Commission adopted on 11 December 2006 a proposal for a regulation of the European Parliament and of the Council concerning statistics on plant protection products (COM(2006) 778). The proposed regulation creates a legal framework and lays down harmonised rules for the collection and dissemination of data concerning the placing on the market and use of plant protection products. In particular, it instructs the Member States: to collect data regularly; on how to collect data, whether by representative surveys, statistical estimation procedures on the basis of expert judgments or models, reporting obligations imposed on the distribution chain for plant protection products, reporting obligations imposed on professional users, from administrative sources or by a combination of these means; and on how to transmit data to the Commission. It also entrusts the Commission with the tasks of adapting some technical aspects and defining the quality evaluation criteria and the data transmission format.

5. Biocides products

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. Council Directive **76/769/EEC** on the restriction of the use of other dangerous substances and preparations is also in force.

6. Detergents

Regulation (EC) No 907/2006 of 20 June 2006 amends Regulation (EC) No 648/2004 on detergents, in order to adapt Annexes III and VII. Regulation (EC) No 648/2004 ensures the free circulation of detergents on the internal market while at the same time providing a high level of protection to the environment and to human health by laying down rules for the ultimate biodegradation of surfactants for detergents, and for the labelling of detergent ingredients. It expands 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.

In April 2007 the Commission submitted the report on phosphates in detergents to the Council and the European Parliament. The report is pursuant to Article 16 of Regulation (EC) No 648/2004 on detergents, concerning the use of phosphates.

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.

7. Mercury

On 28 January 2005, the Commission adopted the communication to the Council and the European Parliament on a Community strategy concerning mercury (COM(2005) 20 final). The strategy addresses all aspects of the mercury life cycle. It proposes 20 actions, two of them implemented by the present proposal. To the extent that mercury is considered as waste, it falls within the scope of existing Community legislation on waste: Directive 75/442/EEC on waste, Regulation (EEC) No 259/93 on waste shipments and, given the wide definition of 'landfill' in Article 2(g), Directive 1999/31/EC on the landfill of waste.

D. Export and import of dangerous substances

Regulation (EC) No 304/2003 concerning the export and import of dangerous chemicals was adopted on 28 January 2003. The current Community rules relating to the export and import of dangerous chemicals are laid down in Regulation (EC) No 304/2003, as most recently amended by Commission Regulation (EC) No 777/2006. Regulation (EC) No 304/2003 aims to implement the Rotterdam convention of 1998 (which entered into force on 24 February 2004) and to establish import and export notification procedures for dangerous chemicals.

E. Classification, labelling and packaging of substances and mixtures

There are three Commission proposals which aim to implement an international, UN-level agreed system of classification, labelling and packaging of hazardous substances and mixtures ('globally harmonised system' (GHS)) into EU legislation. The main Commission proposal establishes a general classification and labelling criteria. The existing EU legislation on the classification and labelling of chemicals has developed over a long period of time. REACH does not include criteria for classification and labelling but has links to them. The Commission provides for a three-year transition period for substances and a five-year transition period for mixtures. It takes up all GHS hazard classes as well as EU 'leftovers' which are not yet covered by GHS.

In June 2007 the Commission launched a decision amending Council Directive 67/548/EEC and Regulation (EC) No 1907/2006. The purpose is to establish a new system on classification and labelling of hazardous substances and mixtures by implementing in the EU the international criteria agreed by the United Nations.

Role of the European Parliament

The European Parliament played a key role in the developing of the promising regulation on REACH. The most controversial areas within the **REACH** discussions have been 'registration' and 'authorisation/substitution'. In the first reading the EP made amendments on registration, authorisation, substances in articles, SMEs and the agency. In particular, in the registration chapter, it introduced a targeted approach on data requirements for existing substances produced at lower tonnages (1 to 10 tonnes) and introduced the 'one substance, one registration' (OSOR) approach to minimise costs, with an opt-out in specific conditions where it can be justified. On the authorisation chapter, Parliament was in favour of always considering available substitutes, favouring innovation through time-limited authorisations (five years) and certainty through a list of the most hazardous substances. Parliament also strengthened the European Chemicals Agency's role for evaluating dossiers and substances, while at the same time maximising the use of Member States' expertise on substance evaluation.

In its common position, the Council adopted an approach very similar to Parliament's on registration and evaluation; while significant differences between the position of Parliament and the Council on the authorisation chapter remained. In second reading, Parliament focused on the issues of duty of care, again on role of the Parliament in the agency, SMEs, and communication of information, comitology, again on registration/data sharing, again on authorisation/substitution, and on animal testing. At the end of the legislative procedure, the agreement achieved between Parliament and the Council on the controversial issue of authorisation/substitution includes the obligation to always present a substitution plan if suitable safer alternatives exist (although a substitution plan will not be necessary in this case for granting the authorisation). The length of the review period — to which all authorisations will be subject — will be determined on the basis of the substitution plan.

In December 2007, the Council reached political agreement on a common position following its first reading of a draft directive establishing a framework for Community action to achieve a 'sustainable use of pesticides'. In March 2008 the Commission modified the legislative proposal of the placing of plant protection products on the market. In addition, in March 2008 the European Parliament adopted the report on statistics on plant protection products. It aims at establishing a transparent system for reporting and monitoring the progress made towards the objectives of the **'thematic strategy on sustainable use of pesticides'**.

In March 2008 the European Parliament and the Council of the European Union adopted Regulation (EC) No 396/2005 on maximum residue levels of pesticides in or on food and feed as regards the implementing powers conferred on the Commission.

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June 2008

4.10.10. Integrated product policy and industrial technologies

In terms of products and industrial technology, European legislation promotes the use of environmental technologies that can increase growth and improve the environment. Particular attention is also paid to the biotechnology that may contribute to the improvement of environmental quality and food and to nanotechnology.

Legal basis and objectives

→4.10.1 and Articles 174 to 176 of the Treaty establishing the European Community (EC).

Achievements

A. Integrated product policy (IPP)

1. Green Paper on integrated product policy

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. The Green Paper on integrated product policy (COM(2001) 68) presents 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.

a. 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 (see →4.10.1).

b. 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 environmentally 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.

c. Eco-design of products and EMAS

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.

Directive 2005/32/EC establishes a framework for the setting of eco-design requirements for energy-using products, amending previous directives (92/42/EEC, 96/57/EC and 2000/55/EC) on energy efficiency requirements for, respectively, new hot-water boilers fired with liquid or gaseous fuels, for household electric refrigerators, freezers and combinations thereof, and for ballasts for fluorescent lighting. In December 2006 the Commission made a proposal to amend Directive 2005/32/EC (COM(2006) 907).

Eco-management and environmental audit schemes, such as the EU's EMAS, 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. Voluntary participation by organisations to EMAS is regulated by Regulation (EEC) No 761/2001, promoting environmental performances in the industrial sector (see →4.10.1). The European Commission published revised rules for the EU's EMAS in autumn 2007 (Decision 2007/747/EC). The 2008 sustainable consumption and production plan (see further) includes an extension of EU eco-design legislation and a review of the bloc's eco-label.

2. 'Integrated product policy — Building on environmental life-cycle thinking'

Commission communication COM(2003) 302 entitled 'Integrated product policy — Building on environmental life-cycle thinking' 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 dimensions: 'life-cycle thinking'; flexibility of policy measures to be used; and stakeholders' involvement.

The communication proposes two approaches: to improve existing tools, and to take action towards a better environmental performance. In 2004, The Commission has published a handbook on green public procurement helping public administrations to use environmental criteria when buying products or services. In 2007, the Commission identified a first set of products with the greatest potential for environmental improvement.

3. Integration of environmental considerations into public procurement

New public procurement directives (Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts and Directive 2004/17/EC coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors) were adopted in 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 and they stress the possibilities indicated by the Commission in its interpretative communication COM(2001) 274 on the possibilities for integrating environmental considerations into public procurement.

In February 2004, the Commission adopted COM(2004) 130 on the integration of environmental aspects into European

standardisation. This enables contracting authorities to ask for products with environmentally friendly production methods or to award extra points for products manufactured as such. Other relevant provisions on 'green' public procurement relate to:

— environmental considerations and characteristics as award criterion;

— environmental characteristics in terms of performance or functional requirements;

— information on obligations related to environmental protection;

— environmental management measures as a means to prove a tenderer's capacity to execute a specific works or service contract;

— 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.

B. Action plan for sustainable consumption, production and industry

Current consumption and production patterns have led to increased emissions of greenhouse gases, pollution and the depletion of natural resources. More sustainable consumption and production could be achieved in Europe without additional costs for companies and households, while bringing benefits. In July 2008, the EC proposed a package of actions and proposals (COM(2008) 397) to improve the environmental performance of products and stimulate the demand for more sustainable goods and production technologies. EU industry will be encouraged to take up new opportunities and innovate in order to ensure its continued leadership in environmental performance. The action plan also explores means for promoting sustainable production and consumption internationally.

C. Environmental technology action plan (ETAP)

Environmental technologies constitute an important bridge between the Lisbon strategy and sustainable development, having the potential to contribute to growth while at the same time improving the environment and protecting natural resources. The environmental technology action plan (ETAP), as adopted in January 2004 (COM(2004) 38), aims at supporting innovation in, and developing and using, environmental technologies. It consists of: a survey of promising technologies that could address the main environmental problems; identification, with stakeholders, of the market and institutional barriers that are holding back development and use of specific technologies; and an identification of a targeted package of measures.

D. Biotechnology

New biotechnology techniques have the potential to deliver improved food quality and environmental benefits through, amongst others, agronomically enhanced crops. Genetically modified organisms (GMOs) may be linked to reduced use of fertilisers and pesticides, disease prevention, increased harvest, etc. However, GMOs have raised widespread public concern about their possible impact on human health and the environment. The Community has adopted several directives, aiming at the safe use of GMOs, including a regulatory system on the deliberate release of GMOs into the environment and procedures for the authorisation, supervision and labelling of genetically modified food and feed (see →4.10.8). Regulation (EC) No 258/97 on novel foods and novel food ingredients was adopted after a long process of conciliation.

E. Nanotechnology

Nanotechnology deals with the manipulation of atoms or molecules to produce materials, devices and new technologies. It involves the 'nano-scale' construction, atom by atom and molecule by molecule, of new devices possessing extraordinary properties. Nanotechnology uses the individual atoms directly and, through their manipulation and through the application of assembly processes, groups of atoms are formed with a view to manufacturing nanomaterials.

In 2004, the Commission presented an communication entitled 'Towards a European strategy for nanotechnology' (COM(2004) 338). In 2005, the Commission published COM(2005) 243 'Nanosciences and nanotechnologies: an action plan for Europe 2005–09', defining actions for the 'immediate implementation of a safe, integrated and responsible strategy for N & N [nanosciences and nanotechnologies]'. This action plan complements the Commission's strategy on life sciences and biotechnology.

Recent concern on lack of toxicity data on nanomaterials and its impacts on health and the environment have become a challenge to the safe commercialisation of nanotech products, requiring an increased investment and coordination of research and development in the EU. The Commission published a scientific opinion on the appropriateness of the EU technical guidance documents for chemicals with regard to nanomaterials in August 2007 and adopted in February 2008 a recommendation on a code of conduct for nanotechnology. Furthermore, in June 2008 the Commission published a communication on regulatory aspects of nanomaterials (COM(2008) 366 final).

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 European Parliament (as underlined on various occasions). The European Parliament 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 European Parliament also played a strong role in the introduction of provisions allowing greener procurement in public procurement directives.

In March 2008 the European Parliament and the Council adopted a report on the Commission proposal of December 2006, amending the eco-design directive.

→ Yanne Goossens
July 2008

4.11. Consumer protection and public health

4.11.1. Consumer policy: principles and instruments

Consumer protection in the EU is taking shape with the Council resolution of 1975 and it is becoming an increasingly important European policy, especially since the completion of the internal market. Educating and providing the consumer with legal protection has become one of the greatest challenges.

Legal basis

Articles 95 and 153 of the Treaty establishing the European Community (EC).

Objectives

Article 95 is the legal basis for the measures of harmonisation which have as their object the establishment of the internal market. It also 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 also states 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 resolution 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 major instruments.

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 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:

— a 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 involving nowadays 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 actions 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 consumers' interests representatives.

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, such as the support for the creation of Master courses on consumers' 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; 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 to bring wider scientific experience and overview into questions related to consumers by Decision 2004/210/EC. The advice of

the scientific committees are 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; the Solvit network (the internal market problem solving system). An internal market 'product warning system' exists now in the Commission and is at the disposal of consumers for complaints.

Role of the European Parliament

The strong and persistent pressure exerted by the 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 the 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 Parliament the power to increase Community action in this area.

Parliament has been particularly active in ensuring higher budgetary provisions for:

— information and the 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.

→ Azelio Fulmini
June 2006

4.11.2. Consumer protection measures

European measures for consumer protection aim to protect the health, safety and economic and legal interests of European consumers, wherever they live or travel and wherever they buy in the EU. Several areas, such as drugs, GMOs, the tobacco industry, cosmetics, toys and explosives, are subject to EU regulation in this regard.

Legal basis

Articles 95 and 153 of the Treaty establishing the European Community (EC).

Objectives

— To ensure that all consumers in the Union, wherever they 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 action in the field of public health

Directive 2001/37/EC and Decision 2003/641/EC harmonised national rules on **tobacco products**.

Decision No 1786/2002/EC adopted a **2003–08 programme** (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 the environment). The decision of 15 December 2004 and Regulation (EC) No 58/2003 set up an **executive agency**.

2. Foodstuffs safety legislation and genetically modified organisms (GMOs)

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 EC rules on the release of **GMOs** into the environment and improved the efficiency and transparency of the authorisation procedures for placing them on the market. It introduced a common methodology for risk assessment, a mandatory public consultation safety

mechanism and GMO 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 states rules concerning advertising medicinal products for human use.

Set up in 1993, the **European Medicines Agency (EMEA)** 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, and 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, 1999/45/EC and 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/EEC and 93/580/EEC established a **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 for 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, 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 euros (cross-border credit transfers, cross-border electronic payment transactions and 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 to 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 effect 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 un-encoded 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, programmes involving pornography or extreme violence are prohibited. Events of major importance for society are to be broadcast freely in un-encoded 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/EEC, 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; period for which the offer or the price remains valid and the minimum duration of the contract; 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 1999/44/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 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 by 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 that effective action is taken at court, or before a competent administrative body, in the case of 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 trademark or trade-name goods or services.

6. Liability for defective products and price indication

Directive 85/374/EEC, modified by Directive 1999/34/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 for 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) also concern 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 is 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 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 an equal basis) and for the carriers (to communicate with equal care, and simultaneously, 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 9/11 (11 September 2001).

10. European consumer centres network (Euroguichets)

In the European consumer centres network **(ECC-Net),** Euroguichets give 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 the 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 litigation 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 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 as the injunctions, in the case of intra-Community infringements.

Role of 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
June 2006

4.11.3. Public health

The Treaty of Rome did not put in place a health policy. This matter was addressed by provisions relating to health or safety. Health policy has played an increasingly important role since the end of the past century so the Directorate-General for Health and Consumers was created. A new programme for 2003–09 will replace the eight previous programmes in the public health field.

Legal basis

The **EC Treaty establishing the European Community** (EC), 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 the 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 20th century, put health and consumer protection high on the political agenda. As a result, DGXXIV (renamed the Health and Consumers DG) 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. These included those listed below.

— **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:** This is provided in the event of a disaster or 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 1987 'Europe against cancer' and the 1991 'Europe against AIDS' programmes. 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 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 the labelling of tobacco products with obligatory health warnings as well as tar and nicotine yields, and also banning oral tobacco products (1989, 1992), and a directive on the maximum tar yield of cigarettes (1990);

— agreement being reached by Parliament and the Council 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

Drugs 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 EU population. It is intended to create an EU database and information exchange to improve early detection and identify possible 'clusters', as well as encourag 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 their disease-by-disease approach. Calls were made for a more horizontal, inter-disciplinary 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, as listed below.

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. It will entail, in particular, working closely with other EU policy areas such as the 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 as well as 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).

→ M. Sosa
November 2005

4.12. An area of freedom, security and justice

4.12.1. An area of freedom, security and justice: general aspects

The areas of visa, asylum and immigration are now included in Title IV of the EC Treaty and are applied by the Community method. However, police and judicial cooperation in criminal matters are handled by the method of intergovernmental decision. The Treaty on the Functioning of the European Union brings other important changes to this policy.

Legal basis

Title IV (Articles 61 to 69) of the Treaty establishing the European Community (EC) 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 EC Treaty by the Treaty of Amsterdam and to some extent come under the Community decision-making system.

Title VI of the Treaty on European Union 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.

The AFSJ embarked upon a new stage in its development with the signature of the Constitution in October 2004 and 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 includes free movement of persons, asylum and legal immigration;

— justice includes both civil and criminal matters;

— security 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 B.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 EC)

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 Article 67(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 (Article 67(2)).

— A few areas become subject to co-decision (between Parliament and the Council) (Article 67(4)), and the Council may decide (but only unanimously) to apply this system to other areas (Article 67(2)).

b. Jurisdiction of the Court of Justice (Article 68)

The Court's jurisdiction is restricted in relation to ordinary law under the EC Treaty.

c. **Police and judicial cooperation in criminal matters** *remain outside the EC Treaty and thus in the intergovernmental sphere, although they are 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 calendars for implementation and the option to engage in closer cooperation. It is thus extremely difficult to implement.*

B. 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;

— judicial cooperation in civil matters with the exception of aspects relating to family law.

2. Slow rate of progress

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.

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.

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 as a whole 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.

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.

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.

The **Hague** European Council of 4 and 5 November 2004 adopted the **Hague programme which aims to build upon the work achieved during the Tampere programme**, which has now expired. The Hague programme sets ambitious objectives for the next five years, taking into account the objectives set by the Constitution for the creation of the area of freedom, security and justice. The main steps forward concern the adoption of measures for:

— completion of the second phase of the common asylum policy by 2010;

— the start-up of debate on the possible creation of a European corps of border guards;

— creation of the Schengen information system (SIS II), due to be up and running by 2007, and the visa information system (VIS);

— creation of the Internal Security Committee as set out in the Constitution;

— creation of the European evidence warrant by 2005;

— creation of 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 was updated at the end of 2006. It brought out these objectives:

— mutual recognition in civil and criminal matters;

— creation of a comprehensive EU migration policy;

— improvement of police cooperation and more extensive operational cooperation;

— fight against terrorism and organised crime;

— development of the external dimension of justice and home affairs;

— establishment of the new-generation Schengen information system;

— enlargement of the Schengen area.

3. List of the main legal texts

a. *Action plan of the Council and the Commission on how to best implement the dispositions in the Amsterdam Treaty concerning the creation of the area of freedom, security and justice. (OJ C 19, 23.1.1999 p. 1)*

b. **Conclusions of the European Council of Tampere**, *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 EC)

— external frontiers

— 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 the European Union** *(consolidated version) (OJ C 325, 24.12.2002)*

Third pillar (Title VI, Articles 29 to 42)

— police cooperation

— judicial cooperation in penal matters

— fight against organised crime

— fight against trafficking in human beings

e. **Treaty establishing a Constitution for Europe.** *(OJ C310, 16.12.2004)*

f. **The Hague programme**

Role of the European Parliament

In accordance with Article 39 of the Treaty on European Union, the European Parliament (EP) holds a debate each year on the progress made in the area of police and judicial cooperation in criminal matters. In actual fact, its annual report covers all of the progress made in establishing an area of freedom, security and justice.

Parliament 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 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. Parliament supports very much the developments which the Treaty on the Functioning of the European Union, particularly its Article 294, would bring in the field of freedom, security and justice as it would have co-decision powers in almost all AFSJ matters. Also most decisions in the Council would take place by qualified majority voting (QMV), which would increase the speed of development of the AFSJ.

It is critical of the current system, which encourages the random initiatives proposed by the 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 within the framework of 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 relative to the progresses realised in 2002 toward the creation of 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)

— 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 EU Treaty)

— Resolution of 30 November 2006 on the progress made in the EU towards the area of freedom, security and justice (AFSJ) (Articles 2 and 39 of the EU Treaty)

— Resolution of 21 June 2007 on an area of freedom, security and justice: strategy on the external dimension, action plan implementing the Hague programme (2006/2111(INI))

→ Joanna Apap
July 2008

4.12.2. Asylum and immigration policies

The policies on asylum and immigration are aimed at harmonising asylum procedures of Member States and the establishment of a balanced approach to the treatment of legal migration and illegal immigration. The Treaties of Amsterdam and Nice have, one after the other, amended these policies, which are also governed by the Hague programme, in force since 2005.

Legal basis

Article 63 of the Treaty establishing the European Community (EC).

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' and gives the EU institutions new powers to develop legislation on immigration and asylum matters. For the first time it has become possible to talk meaningfully of a European asylum policy and a European migration policy.

1. Scope

The scope of Article 63 EC 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 the first pillar, except for police and judicial cooperation in penal 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 transitional period — five years after the entry into force of the Treaty — before majority voting is introduced.

a. Decision-making procedure (Article 67 EC)

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 Article 67(3).

— 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 (Article 67(2)).

— A few areas become subject to co-decision (between Parliament and the Council) (Article 67(4)), and the Council may decide (but only unanimously) to apply this system to other areas (Article 67(2)).

b. Jurisdiction of the Court of Justice (Article 68)

The Court's jurisdiction is restricted in relation to ordinary law under the EC Treaty.

B. Developments since Amsterdam

1. Contributions of the Treaty of Nice

Under the Treaty of Nice visa (see →1.1.4), asylum and immigration policies are to be decided mainly by the co-decision procedure. The shift to qualified majority voting is provided for under Article 63 of the EC Treaty 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 have taken place as of 1 May 2004 (without

the need for a unanimous decision as initially foreseen by Article 67 EC);

— 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 a Community competence in asylum and immigration matters. However, in matters of regular immigration the Council will continue to act unanimously and the European Parliament 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) EC)

i. Relevant international legal texts

— 1951 **Convention of Geneva** relating to the status of refugee 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)

— 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 of 28 February 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 (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)

— Council 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, 5.9.2003, p. 3)

— Council Decision 2004/904/EC of 2 December 2004 establishing the second European Refugee Fund for the period 2005–10 (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 (OJ L 304, 30.9.2004, p. 12)

— Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ L 326, 13.12.2005)

— Council Decision 2006/167/EC of 21 February 2006 on the conclusion of a protocol to the agreement between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway (Text with EEA relevance) (OJ L 57, 28.2.2006)

— Council Decision 2006/188/EC of 21 February 2006 on the conclusion of the agreement between the European Community and the Kingdom of Denmark extending to Denmark the provisions 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 and Council Regulation (EC) No 2725/2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention (OJ L 66, 8.3.2006)

— Commission Decision 2006/401/EC of 20 January 2006 laying down detailed rules for the implementation of Council Decision 2004/904/EC as regards Member States management and control systems, and rules for the administrative and financial management of projects co-financed by the European Refugee Fund (notified under document number 2006/C 51/3) (OJ L 162, 14.6.2006)

— Council Decision 2006/688/EC of 5 October 2006 on the establishment of a mutual information mechanism

concerning Member States' measures in the areas of asylum and immigration (OJ L 283, 14.10.2006)

— Decision No 573/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Refugee Fund for the period 2008 to 2013 as part of the general programme 'Solidarity and management of migration flows' and repealing Council Decision 2004/904/EC (OJ L 144, 6.6.2007)

— Decision No 575/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Return Fund for the period 2008 to 2013 as part of the general programme 'Solidarity and management of migration flows' (OJ L 144, 6.6.2007)

— Council Decision 2007/435/EC of 25 June 2007 establishing the European Fund for the integration of third-country nationals for the period 2007 to 2013 as part of the general programme 'Solidarity and management of migration flows' (OJ L 168, 28.6.2007)

— Proposal for a Council directive amending Directive 2003/109/EC to extend its scope to beneficiaries of international protection (COM(2007) 298 final — CNS 2007/0112)

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 in partnership with the third countries concerned and in close consultation and cooperation with UNHCR' (see COM(2005) 388 final).

Also, according to the action plan implementing the Hague programme, the Commission is to present a proposal before the end of 2005 extending the so-called 'EC long-term resident status' to refugees.

b. Regular immigration (Article 63(3)(a) and (4) EC)

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)

— 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 of 16 March 2004)

— Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualification (OJ L 255, 30.9.2005)

— Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research (OJ L 289, 3.11.2005)

— Proposal for a Council directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (SEC(2007) 1393, SEC(2007) 1408)

— Proposal for a Council directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (SEC(2007) 1382, SEC(2007) 1403)

ii. Other relevant EU legal measures

— Council Directive 2000/43/EC of 19 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.7.2000)

— 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)

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 of 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)

— 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, pp. 1–4)

— Proposal for a directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (SEC(2005) 1057, COM(2005)391 final — COD 2005/0167)

— Commission Decision 2007/675/EC of 17 October 2007 setting up the Group of Experts on Trafficking in Human Beings (OJ L 277, 20.10.2007)

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, was presented at the end of 2005. This was built on the results of the discussions on the Green Paper on an EU approach to managing economic migration (COM(2004) 811 final of 11 January 2005, Brussels). 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 so-called 'external dimension of asylum and immigration' has become a principal focus within the programme.

List of readmission agreements

— Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the European Community on the readmission of persons residing without authorisation (OJ L 17, 24.1.2004)

— Agreement between the Democratic Socialist Republic of Sri Lanka and the European Community on the readmission of persons residing without authorisation (OJ L 124, 17.5.2005)

— Agreement between the European Community and the Macao Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation (OJ L 143, 30.4.2004, p. 97)

— Agreement between the Republic of Albania and the European Community on the readmission of persons residing without authorisation (OJ L 124, 17.5.2005)

— Agreement between the European Community and the Russian Federation on readmission (OJ L 129, 17.5.2007)

— Agreement between the European Community and the Republic of Moldova on the readmission of persons residing without authorisation

— Proposal for a Council decision on the signature of the agreement between the European Community and Ukraine on the readmission of persons (COM(2007) 197)

— Agreement between the European Community and the former Yugoslav Republic of Macedonia on the readmission of persons residing without authorisation (OJ L 334, 19.12.2007)

— Agreement between the European Community and the Republic of Montenegro on the readmission of persons residing without authorisation (OJ L 334, 19.12.2007)

— Agreement between the European Community and Serbia on readmission of persons residing without authorisation (OJ L 334, 19.12.2007)

— Agreement between the European Community and Bosnia and Herzegovina on the readmission of persons residing without authorisation (OJ L 334, 19.12.2007)

In view of the next steps on immigration, on 1 September 2005 the Commission published a 'migration package' consisting of four communications.

On 6 June 2007 the Commission presented the Green Paper on the future common European asylum system (CEAS) as a constituent part of an area of freedom, security and justice, emanating from the idea of making the European Union a single protection area for refugees, based on the full and inclusive application of the Geneva Convention and on the common humanitarian values shared by all Member States. The Hague programme action plan foresees the adoption of the proposal for CEAS by the end of 2010.

Role of the European Parliament

The European Parliament (EP) supports very much the developments which Article 294 of the Treaty on the Functioning of the European Union, as amended, would bring about in this field because of the extension of its co-decision powers as well as qualified majority voting (QMV) to all matters under Article 63 EC.

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. Parliament supports 'controlled immigration' and considers that the EU 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 26 October 2005 on economic migration. Parliament regretted that the Council had decided to maintain unanimity and the consultation procedure in the whole area of legal immigration. Parliament felt that only by means of the co-decision procedure will 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 European Parliament:

— supports the Commission's idea of civic citizenship; it calls for the grant 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 that Member States must not misuse integration policy as a way of rendering immigration impossible in practice.

Main European Parliament resolutions on migration and integration

— Resolution of 9 June 2005 on the link between legal and illegal migration and the integration of immigrants

— Resolution of 26 October 2005 on an EU approach to managing economic migration

— Resolution of 6 July 2006 on the integration of third-country nationals

— Resolution of 6 July 2006 on development and migration

— Resolution of 28 September 2006 on the EU common immigration policy

— Resolution of 24 October 2006 on women's immigration: the role and place of immigrant women in the European Union

— Resolution of 26 September 2007 on legal migration, including admission procedures capable of responding to fluctuating information regarding asylum and immigration matters

— Resolution of 26 September 2007 on the fight against illegal immigration of third-country nationals

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' on asylum.

— 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 of reception of asylum seekers.

Parliament supports the idea of greater solidarity:

— between Member States.

In a resolution passed on 11 April 2000, Parliament called for the introduction of a system allowing a sharing of resources in proportion to the relative efforts made by each Member State.

In a resolution of 6 July 2006, Parliament approves the Commission proposal on the establishment of a mutual information procedure concerning Member States' measures in the areas of asylum and immigration.

In a resolution of 21 June 2007, Parliament called for practical cooperation, quality of decision-making in the common European asylum system:

— 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'.

→ Joanna Apap
July 2008

4.12.3. Management of the external borders

EU legislation aims to establish common standards for the management of the external borders of the EU. The visa information system and visa 'L' contribute to the control of those borders. In 2002 an action plan was drawn up for the management of the external borders of EU Member States. The European Agency 'Frontex' was formed in 2004 and based at Warsaw.

Legal basis

Article 62 of the Treaty establishing the European Community (EC).

Objectives

To establish common standards with regard to border management and controls at the Union's external borders to enable thus 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 of the EC Treaty 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 [… or] 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 within 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 border

a. Decision-making procedure (Article 67)

During a transitional period of five years:

— for all the other measures related to Article 62 of the EC Treaty (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) of the EC Treaty (rules on visas for intended stays of no more than three months) co-decision is used and decisions were adopted by the Council acting by qualified majority since the entry into force of the Amsterdam Treaty.

b. Jurisdiction of the Court of Justice (Article 68)

The Court's jurisdiction is restricted in relation to ordinary law under the EC Treaty.

B. Developments since Amsterdam

The Member States have developed a set of rules on border control and surveillance. These rules cover the control of external border crossing points and their surveillance. A new agency, set up on 26 October 2004, is meant 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.

1. 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 EC) are addressed under co-decision from 1 January 2005. Therefore decisions are taken in the Council by qualified majority voting.

2. 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 areas of 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 on the Functioning of the European Union enshrines this concept and provides as already stated in the Tampere conclusions and later reified 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' (Laeken conclusions).

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 expects 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** [the second generation of the Schengen information system])'. Due to the delays in the SIS II deployment, Portugal offered a modified version of its SIS 1+ system called 'SIS one4all' as a temporary solution designed to enable nine of the Member States in 2004 to join Schengen). The project of setting up the 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.

The Council adopted on 12 December 2003 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 **visa information system** (**VIS**) will constitute a new instrument intended to improve external border control. The VIS 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. The latest element in this evolution is Council Regulation (EC) No 2252/2004 of 13 December 2004, which 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. On 2 December 2004 the Council carried out an evaluation and drew up new recommendations.

The Hague programme, adopted by the Hague Council on 4 November 2005, which set out the objectives for the following five years' developments of the area of security and justice, building upon the previous five years of the Tampere programme, represented 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;

— strengthening of controls at and surveillance of external borders.

a. Controlling the external border

Crossing external borders is only allowed at border crossing points called '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 20 December 2006, the European Parliament and the Council adopted a regulation that defines an applicable legal framework on crossing the external borders: Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention (OJ L 405, 30.12.2006). 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 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 includes 26 Member States, excluding the United Kingdom and Ireland but including Norway, Iceland and Switzerland. The 10 new countries that joined the EU in 2004 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 new Member States. For the nine Member States that joined in May 2004 (Cyprus did not meet the criteria) internal land and sea border checks on persons were abolished as of 21 December 2007, while restrictions on air borders were lifted on 30 March 2008. Cyprus and the non-EU member Switzerland hope to join Schengen next year and Romania and Bulgaria by 2011. 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 and 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 offering 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 Border Management Agency, to oversee operational cooperation along the EU's external borders. The agency, called **Frontex**, which is based in Warsaw, shall coordinate and assist Member States' various actions in managing (controlling) the common EU frontier.

The tasks allocated to the EU's new Border Management Agency are:

— 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 operational 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)

— Decision No 895/2006/EC of the European Parliament and of the Council of 14 June 2006 introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia of certain documents as equivalent to their national visas for the purposes of transit through their territories

— Decision No 896/2006/EC of the European Parliament and of the Council of 14 June 2006 establishing a simplified regime for the control of persons at the external borders based on the unilateral recognition by the Member States of certain residence permits issued by Switzerland and Liechtenstein for the purpose of transit through their territory

— Council Regulation (EC) No 1932/2006 of 21 December 2006 amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement

— Proposal for a regulation of the European Parliament and of the Council of […] amending Regulation (EC) No 562/2006 as regards the use of the visa information system (VIS) under the Schengen borders code

Role of the European Parliament

The European 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 Border Management Agency. 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.

→ Joanna Apap
July 2008

4.12.4. Judicial cooperation in civil and criminal matters

The European Community's third pillar, judicial cooperation in civil and criminal matters, was established under the Treaty of Maastricht. The Treaty of Amsterdam incorporated judicial cooperation in civil matters into Title I of the EC Treaty, although it did not make it subject to Community decision-making procedures. The Treaty of Nice provides for use of the procedure under Article 251 of the EC Treaty in relation to judicial cooperation in civil matters.

Legal basis

Judicial cooperation in civil matters: Article 65 of the Treaty establishing the European Community (EC).

Judicial cooperation in criminal matters: Articles 29 and 31 of the Treaty on European Union.

These provisions are supplemented by Article 293 of the EC Treaty.

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.

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, and 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 EC Treaty, in co-decision with the European Parliament, 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. The Treaty of Lisbon

Legal cooperation on civil matters is being developed in accordance with the ordinary legislative procedure. However, family law is subject to a special legislative procedure: the Council takes decisions unanimously once it has consulted Parliament.

The Council may decide that certain aspects of family law can be the subject of suitable regulations in accordance with the ordinary legislative procedure. In this case the proposal is notified to national parliaments. If a single national parliament is opposed then this will prevent it from being adopted.

5. Main legislation adopted

— Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings;

— 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 2001/470/EC 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/EC 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 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 Treaty on European Union, 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 essentially integrated judicial cooperation in criminal matters into the common procedures. It made provision 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. The Treaty of Lisbon

Legal cooperation in criminal matters now comes within the scope of the Community. This implies the use of the ordinary legislative procedure — co-decision and qualified majority in Council — but also the adoption of conventional Community legal instruments that benefit from direct effect and enhanced legal monitoring. International agreements will be subject to the joint procedure, which requires the assent of Parliament.

However, a certain number of specific features remain: Member States — at least a quarter of them — may present legislative initiatives, a special legislative procedure — unanimity in Council, consultation or, depending on the case, the assent of Parliament — applies in certain cases. If a Member State believes that a legislative proposal could infringe fundamental aspects of its criminal justice system, it can request that the matter be referred to the European Council.

The powers of the Court of Justice will remain unchanged for a transitional period of five years.

6. A new body for cooperation: Eurojust

Council Decision 2002/187/JHA 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. The Treaty of Lisbon integrates Eurojust within it. It makes provision for the possibility of establishing a European Public Prosecutor's Office from Eurojust.

7. 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;

— the Council has adopted a draft decision on the European evidence warrant for use in proceedings in criminal matters and a draft framework decision whereby Member States would take account of decisions concerning convictions.

In April 2007 the Council reached political agreement on adoption of a framework decision on combating racism and xenophobia.

8. Consequences of the Court of Justice judgment in case C-176/03 (13 September 2005)

It authorises the legislator, within the framework of the EC Treaty, to take measures relating to the criminal law of the Member States that 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 EC Treaty, 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

1. Civil law

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.

2. 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 European Parliament 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.

→ Jean-Louis Antoine-Grégoire
July 2008

4.12.5. Police and customs cooperation

Police and customs cooperation is intended to ensure a high level of protection for EU citizens. The foundations for cooperation were laid by the creation of the Trevi group in 1976. Cooperation was consolidated later, in particular in Tampere and by The Hague programme.

Legal Basis

Police cooperation: Articles 29 and 30 of the Treaty on European Union.

Customs cooperation: Article 135 of the Treaty establishing the European Community (EC).

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. The Schengen agreements (1985–1990)

Formal police cooperation between the Member States' representatives began in 1976.

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.

2. 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.

3. The Treaty establishing a Constitution for Europe (2004)

Police cooperation was integrated into EU policies and Europol was integrated into the institutional framework.

4. 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.

The exchange of information, when available, should begin in 2008.

5. The Lisbon Treaty

Police cooperation has been incorporated into the Community system. This implies the extension of the co-decision procedure, qualified majority voting in the Council, the use of Community legislative instruments with direct effect and a stronger role for the Court of Justice subject to a five-year transitional period (see judicial cooperation in criminal matters, 4.12.1.).

In the area of operational cooperation between police authorities and law enforcement services, the Council takes decisions under the special legislative procedure, in other words a unanimous decision following consultation of Parliament. In the absence of unanimity, a group of at least nine Member States may request that the matter be referred to the European Council. If no agreement is reached, at least nine Member States may enter into enhanced cooperation. The Court of Justice does not have any jurisdiction, in particular, to verify the validity or the proportionality of operations carried out by the police or other law enforcement bodies in a Member State.

The Treaty brings Europol within the Community system. Its structure, functioning, area of action and tasks will be laid down in a regulation in accordance with the ordinary legislative procedure.

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.

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 have now come into 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 70.5 million (2007).

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.

3. Europol to become an EU agency

In December 2006 the Council agreed to replace the Europol Convention by a Council decision. At the end of December 2006 the Commission presented a proposal whereby Europol would become an EU agency financed by the Community budget.

C. The European Police College (CEPOL)

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 been meeting 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 2008.

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 aimed at combating terrorism.

The European Council appointed a counter-terrorism coordinator in 2004 (Mr Gijs de Vries). He coordinates the Council's work and ensures effective monitoring of its decisions. The coordinator stepped down in March 2007 and a new coordinator, Mr Gilles de Kerchove, was appointed in September 2007.

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 concerning the retention of telecommunications data in the fight against terrorism and organised crime was adopted in February 2006.

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. Currently in the process of being ratified, some Member States have already decided to apply it among themselves.

A European 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 EU Treaty.

The European Parliament 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 European Parliament emphasises that it is necessary to reinforce the legitimacy of the area of freedom, security and justice by deciding — in accordance with the spirit of the Constitution — to make use of the present Article 42 of the EU Treaty.

→ Jean-Louis Antoine-Grégoire
July 2008

4.13. Energy policy

Even if energy also comes under the scope of Community action, energy policy remains the responsibility of the Member States, under the principle of subsidiarity. Currently, the EU is dependent on imports of oil and gas. But we can see the constant concern of the EU for increasing the use of renewable energy and reducing the greenhouse effect.

Legal basis

— Coal: the Treaty establishing the European Coal and Steel Community (ECSC), and in particular Articles 3 and 57 to 64 (expired in 2002).

— Nuclear energy: the Treaty establishing the European Atomic Energy Community (EAEC) or Euratom, and in particular Articles 40 to 76 (investment, joint undertakings and supplies) and 92 to 100 (the nuclear common market).

— Overall energy policy and energy policy in other fields: the Treaty establishing the European Community (EC), and in particular Articles 100 (supply difficulties) and 308.

The most recent revision of the EC Treaty has still not managed to include a separate chapter on energy. Energy policy has simply been incorporated in the list of objectives (Article 1(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 to 156 in connection with Article 158).

The EC Treaty 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(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 — An 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). Parliament, the Council and the Commission 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 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 *Report on the Green Paper on energy: four years on European initiatives* (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 better use of all energy sources (COM(2005) 265). 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 the 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 Council and the Commission to prepare a set of actions with a clear timetable enabling it to adopt a prioritised action plan at its meeting in spring 2007.

The 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, and implementing the biomass action plan counting on support from research, development and demonstration.

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.

Parliament, the Council and the Commission are agreed that an effort should be made to a 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 has increased, but at a slower pace in the last few years — approximately 0.8 % per year currently). This trend, 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, Regulation (EC) No 1228/2003, which sets rules for cross-border exchanges of electricity, was adopted in 2003. In addition, Directive 2003/54/EC sets common rules for the internal market in electricity, and Directive 2003/55/EC 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. Furthermore, 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 (EC) No 1775/2005 addresses conditions for access to the natural gas transmission networks and Directive 2004/67/EC addresses 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 the 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 (CO_2). 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 and self-reliance). Many Member States have coal reserves, a situation that 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 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 days' 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).

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 as to 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(2003) 32). In 2004, the Commission put forward a revised proposal (COM(2004) 526) based inter alia on European Parliament 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/EC). Decision No 1230/2003/EC '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 European Parliament (EP) and the Commission argued for much more money.

Directive 2002/91/EC on the energy performance of buildings (in particular insulation, air conditioning and the use of renewable energy sources) was adopted in 2002 (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 EP and the Council and is mainly concerned with establishing a uniform definition for electricity produced in CHP plants. The directive (2004/8/EC) was adopted in co-decision in February 2004.

Directive 2003/30/EC on the promotion of the use of biofuels or other renewable fuels for transport was adopted in May 2003. 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.

Directive 2006/32/EC on energy end-use efficiency and energy services (repealing Council Directive 93/76/EEC) was adopted on 5 April 2006. This aimed to boost energy efficiency in the EU and promote the market for energy services (such as lighting, heating, hot water, ventilation).

In May 2004, the Commission adopted a communication to the Parliament and the Council 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 European Parliament 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 policymakers, 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 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 on 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 roadmap**.

C. Research, development and demonstration projects (→4.14)

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, and 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 carried out 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 →4.14).

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') was agreed on 25 July 1996 (Directive 96/92/EC). Directive 98/30/EC 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/EC) and gas (2003/55/EC) — together with Regulation (EC) No 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. Directive 2005/89/EC (concerning measures to safeguard security of electricity supply and infrastructure investment) was adopted on 18 January 2006 in order to strengthen competition in the internal electricity market and promote investment in energy infrastructure and security of supply. This was 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/EC 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/EC 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 a directive (COM(2003) 739) setting targets for a more effective end-use of energy and energy services. This proposal was adopted by the 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) 226) 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 CO_2) became clear at the UN Kyoto conference in December 1997. The EU has promised to reduce its CO_2 emissions by 8 % from 1990 levels by 2008–12. After long and controversial debate, the directive on greenhouse gas emissions (2003/87/EC) was accepted in July 2003. By 2005, one of the largest emissions trading schemes (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 in 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 EU 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 CO_2 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 action 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, Parliament 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, Parliament adopted a joint resolution on security of energy supply in the EU, urging the Council and the Commission 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 European Parliament proposed the creation of an energy efficiency fund by which local energy and environment agencies would receive financial support.

The European Parliament 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
September 2006

4.14. Policy for research and technological development

European policy for research and technological development has occupied an important place in European legislation since the establishment of the European Coal and Steel Community (ECSC) in 1952. The Single European Act introduced multiannual framework programmes for research. Currently, FP7 covers the period 2007–13 and is structured around five specific programmes.

Legal basis

Community research and technological development (RTD) policy was originally based on Article 55 of the Treaty establishing the European Coal and Steel Community (ECSC) (expired in 2002), Articles 4 to 11 of the Treaty establishing the European Atomic Energy Community (EAEC) (Euratom: nuclear research), and Articles 35 and 308 of the Treaty establishing the European Community (EC). 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 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 multiannual 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). With the entry into force of the Maastricht Treaty on 1 November 1993 co-decision by Parliament and the Council was introduced for the adoption of the EC FP, while maintaining the requirement for unanimity in the Council. Article 7 of the Euratom Treaty (unanimity in the Council, with no formal requirement to consult the 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 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 fourth and fifth FPs, and by EP and Council regulation (co-decision procedure) for the sixth 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 EC Treaty).

Article 164 of the EC Treaty specifies: 'In pursuing these objectives, the Community shall carry out the following activities, complementing the activities carried out in the Member States:

(a) implementation of research, technological development and demonstration programmes, by promoting cooperation with and between undertakings, research centres and universities;

(b) promotion of cooperation in the field of Community research, technological development and demonstration with third countries and international organisations;

(c) dissemination and optimisation of the results of activities in Community research, technological development and demonstration;

(d) 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 multiannual 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 first FP (1984–87), Community RTD activities were for the first time coordinated as part of a single, structured framework. The main aim of the second 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 third 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, Parliament and the Council (in the first ever co-decision) adopted the fourth FP (1994–98). This programme built on the previous initiatives, but contained several important innovations, such as a new programme on targeted socioeconomic research. The fifth FP (1998–2002) marked a shift from research concentrating largely on technical performance towards research and innovation addressing targeted socioeconomic objectives.

B. Implementation of RTD 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 sixth framework programme (2002–06)

1. Background

The sixth RTD framework programme (FP6) was adopted on 27 June 2002 (Decision No 1513/2002/EC of the European Parliament and of 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 increasing 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 EC Treaty 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 Union* 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. *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 FPs 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 (INCO)

International cooperation is implemented in FP6 through: (i) opening 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 intergovernmental 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 the USA and Japan), EU research and development spending is insufficient (1.93 % of GDP in 2003, compared with 2.59 % in the USA 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 or Government agreed to raise investment in research and development to 3 % by 2010.

E. The seventh 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 the international thermonuclear experimental reactor (ITER) together with the China, Japan, Russia, the USA and South Korea.

F. European Institute of Technology (EIT)

The European Commission in its communication from President Barroso to the spring European Council 'Working together for growth and jobs — A new start for the Lisbon strategy' (COM(2005) 24 of 2 February 2005) noted the Commission's intention to submit a proposal on the establishment of a European Institute of Technology. The EIT had been proposed by the Commission communication 'Implementing the renewed partnership for growth and jobs — Developing a knowledge flagship: the European Institute of Technology' (COM(2006) 77 of 22 February 2006) 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, was very well received by the stakeholders. A second Commission communication 'The European Institute of Technology: further steps towards its creation' (COM(2006) 276 of 8 June 2006) 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 provide 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
Socioeconomic 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.

There is a broad political consensus in the Parliament on the priorities among the different elements of FP7. The EP assigns greatest priority to the 'European Research Council' ('Ideas' objective), 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'.

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September2006

4.15. Small and medium-sized enterprises

SMEs constitute 99 % of companies in the EU, and they account for roughly 70 % of jobs and EU GDP. Various action programmes have been adopted to support SMEs. The most recent, the Small Business Act (SBA), sums up all these programmes and aims to create a comprehensive policy framework.

Legal basis

Small and medium-sized enterprises (SMEs) operate mainly at national level, as relatively few SMEs are engaged in cross-border business within the EU. However, independently of their scope of operations, SMEs are affected by EU legislation in various fields, such as taxation (Articles 90 to 93 of the Treaty establishing the European Community (EC)), competition (Articles 81 to 89 EC) and company law (right of establishment — Articles 43 to 48 EC), regional and social policy (Articles 136 to 145 EC) and customs formalities (Articles 25 to 27 EC), to mention a few areas.

Various regulations, such as Council Regulation (EEC) No 2137/85 on the European economic interest grouping, Regulation (EC) No 2157/2001 on the European company statute and Directive 2001/86/EC on the involvement of employees or Regulation (EC) No 70/2001 on State aid are examples of secondary legislation that have a tangible impact on SMEs in the EU.

The Commission adopted a new definition of SMEs in Recommendation 2003/361/EC. The staff thresholds used are the following: 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.

Objectives

Micro, small and medium-sized enterprises make up 99 % of all enterprises in the EU. SMEs are about 23 million in number, employing about 100 million and are an essential source of entrepreneurial spirit and innovation, which is crucial for the competitiveness of European companies. EU policy for SMEs aims to ensure that Community policies and actions are small-business friendly and contribute to making Europe a more attractive place for setting up a company and doing business.

Achievements

A. General SME policy

Current SME policy in the EU largely falls within the scope of the Lisbon strategy, which aims to make the EU the most competitive and dynamic knowledge-based economy in the world. SMEs play a crucial role in this objective.

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 and a fourth multiannual programme initially ran for the period 2001–05 with a budget of EUR 450 million (extended to 2006 with an increase in the financial reference amount by EUR 88.5 million). The five prime objectives of the fourth programme: enhancing growth and the competitiveness of business in a knowledge-based economy; promoting entrepreneurship; simplifying and improving the administrative and regulatory environment for business; improving the financial environment for business; and giving business easier access to EU support programmes.

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. Since 2000 the Commission has produced annual implementation reports on the state of implementation of the charter.

Various subsequent initiatives of the Commission have had a tangible impact on SMEs. For example, in 2001 the Commission launched a 'Go digital' awareness campaign to demonstrate to SMEs the potential benefits of adopting and efficiently using e-business. 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.

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). This resulted in the Commission communication 'Action plan: the European agenda for entrepreneurship' (COM(2004) 70). Decision No 1639/2006/EC of the European Parliament and of the Council of 24 October 2006 establishing a competitiveness and innovation framework programme (2007–13) was the follow-up to this initiative.

The CIP is especially directed at SMEs and brings 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. It is composed of sub-programmes, such as the entrepreneurship and innovation programme, the ICT policy support programme and the 'Intelligent energy — Europe' programme.

The Commission communication on better regulation for growth and jobs (COM(2005) 97) adopted by the Commission in 2005 aims to reform the way in which the European institutions, individually or jointly, legislate at European level, and how the Member States implement and apply this legislation at national level. There have been two strategic reviews of this package. Under the better regulation initiative, all EU legislation is also to be assessed as to its impact on SMEs, and if necessary to be made more SME friendly.

Also in 2005, the European Commission adopted its 'Modern SME policy for growth and employment' communication. This communication proposed action in five key areas, namely: promoting entrepreneurship and skills; improving SMEs access to markets; cutting red tape; improving SMEs growth potential; and strengthening the dialogue and consultation with SME stakeholders. The initiative aimed to ensure that all aspects of EU policy to help SMEs are coordinated, and that the needs of SMEs are more fully assessed in drawing up such policies.

B. The Small Business Act (SBA)

The most comprehensive and encompassing initiative on SMEs to date was brought forward by the Commission as a communication (COM(2008) 394) in June 2008 in the form of the Small Business Act (SBA).

The SBA consists of various different initiatives and principles. It is named an 'Act' to symbolically underline the political will behind it in the absence of a binding legislative nature. The SBA aims to create a new policy framework integrating the existing instruments and building on the European Charter for Small Enterprises and the 'Modern SME' policy. In this, it takes a 'political partnership approach with Member States' rather than proposing a fully fledged Community approach. The SBA aims to improve the overall approach to entrepreneurship in the EU by 'thinking small first'. With the SBA, the Commission attempts to establish a genuine partnership within the EU for SMEs' benefit.

At the core of the SBA are 10 common guiding principles, such as creating a more entrepreneur-friendly environment or improving SMEs access to finance, which should be implemented through policy measures both at the EU and Member State levels. These principles are supplemented by the announcement of four legislative proposals to follow at a later date: the European private company statute; a late payment directive; a new exemption regulation on State aid; and a directive on reduced VAT rates.

C. SMEs in the single market

The Commission's communication on the single market for 21st century Europe (COM(2007) 724 of 20 November 2007) stresses the need for the continuous improvement of the framework conditions for businesses in the single market. Various initiatives and measures exist or are planned to facilitate the establishment and operation of SMEs in the internal market. SMEs have been granted derogations in many areas, for example the approximation of company law, competition rules and taxation.

1. Company law

The 'European company' is regarded as one of the key elements for the completion of the internal market. Since 2001 there exists a possibility for a public limited company to be set up in the EU (*Societas Europaea* (SE)) which allows enterprises to operate throughout the EU subject to the EU legislation directly applicable in all Member States.

With the SBA, the European Commission adopted a proposal for a European private company statute (also known as the '*Societas Privata Europaea* (SPE)' COM(2008) 396/3), in June 2008. The SPE statute contains a set of uniform company law rules that would apply to any private company incorporated as SPE across all Member States, wider than those contained in the SE statute. This, if adopted, will bring considerable benefits for SMEs, saving time and reducing costs, especially when setting up business across different Member States.

2. Competition policy

The EU's State aid policy has, for a long time, treated SMEs favourably, recognising the special difficulties they face due to their size. With the Small Business Act, the Commission proposes a new exemption regulation (general block exemption regulation (GBER)) on State aid, which consolidates into one text and harmonises the rules previously existing in five separate regulations, and enlarges the categories of State aid covered by the exemption. Under the new rules, SMEs can receive investment aid of up to EUR 7.5 million for a given project without having to notify the Commission. The initiative also aims to facilitate environmental protection projects and promote female entrepreneurship.

In the past, the Commission made some efforts to modernise its competition rules, make procedures more efficient, increase their transparency and facilitate their application. Aid for SMEs has been on the agenda repeatedly. In January 2001, Regulation (EC) No 70/2001 on the application of Articles 87 and 88 of the Treaty to State aid to SMEs replaced the guidelines from 1996. It exempted investment aid (15 % of eligible costs for small and 7.5 % for medium-sized enterprises), aid for consultancy (50 % of eligible costs), and aid for participation in fairs and exhibitions (50 % of eligible costs).

3. Taxation

The open consultations leading to the SBA contained the question on the most common problems that SMEs faced in the internal market. There, taxation was named among the three single most important issues. Although the rules in indirect taxation are to some extent harmonised under a Community framework, direct taxation (including company taxation) remains a full national competence. This has a

considerable impact on the compliance costs and the administrative burden in cross-border business, bearing unproportionally highly on SMEs as they tend to have fewer resources than bigger companies.

Since 2001, communications (e.g. COM(2001) 582) and studies have addressed the problem of 'Company taxation in the internal market' (SEC(2001) 1681), but no solution has really been found. The Commission is expected to present a legislative proposal for a common consolidated corporate tax base in September 2008, which will remain optional for both Member States and companies. For the specific needs of SMEs, the proposal of Home State taxation (COM(2005) 702) has been put forward by the Commission. It foresees that Member States allow SMEs to compute their company tax profits according to the tax rules of the Home State of the parent company or head office. An SME wishing to establish a subsidiary or branch in another Member State would as a result be able to use the familiar tax rules of its Home State when calculating its taxable profits. However, no legislative progress has been made in this area.

D. EU programmes and networks for SMEs

Examples of SME policies and networks aimed at SMEs include, firstly, general support services for SMEs in the EU, for example the 'Enterprise Europe network', 'Solvit', 'Your Europe — business', 'SMEs and the environment' as well as 'Dealing with chemicals: national REACH helpdesks'. Secondly, support for innovation and research includes the 'IPR helpdesk', 'SME Techweb', 'Network of FP7 national contact points (NCPs) for SMEs', 'China IPR helpdesk for SMEs', 'European business and innovation centres (BIC) network — EBN', 'Innovation networks', 'Gate2Growth', 'CORDIS incubators service', 'CORDIS European innovation portal' and 'Electronic marketplaces'.

E. SMEs and research

Research and development (R & D) is often much harder for SMEs than it is for large companies. Nevertheless R & D and innovation are crucial to the sustainable success and growth of SMEs in the EU.

The sixth framework programme (FP6) included measures to assist SMEs' access to new technologies through close coordination between enterprise policy and R & D policy. 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. The present seventh research framework programme (FP7), running from 2007 to 2013, also contains significant support dedicated to SMEs. Out of its total budget of EUR 54 billion around 15 % is devoted to SMEs.

Programmes under FP7 help SMEs with no research facilities to outsource research, extend their networks, better exploit research results and acquire technological know-how. To this end, the Commission has also simplified the application procedures for research funding. Best practices of FP7 projects for SMEs include USEandDiffuse targeting the health and ICT sectors, or ECOinno2SME focusing on the eco-innovation segment.

F. Most important challenges for SMEs

1. Administrative burden

The administrative and regulatory burden was the single most important obstacle named in the open consultations for the SBA. Cutting red tape and bureaucracy is a high priority for the Commission in the SBA. Making public administrations more responsive to SMEs' needs can make a major contribution to the growth of SMEs, notably through e-government and one-stop shop solutions, thus saving time and money and freeing resources for innovation. The ongoing implementation process of the services directive should contribute to this goal, reducing regulatory barriers to cross-border service activities.

2. Access to finance

Financial markets have often failed to provide SMEs with the finance they need. Some 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.

However, the SBA still identifies access to finance as the second largest problem that individual SMEs face. More than EUR 1 billion will be available between 2007 and 2013 in the CIP programme. This, the Commission calculates, should enable financial institutions to provide a total of EUR 30 billion to an estimated 475 000 SMEs. Moreover, the improved availability of micro-loans (loans of less than EUR 25 000) is also foreseen.

Role of the European Parliament

As early as 1983 the European Parliament (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 are listed below.

— 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 entitled '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.

— In September 2005 the EP published an own-initiative report on the implementation of the Charter for Small Enterprises (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 EP adopted the CIP (in first reading) on 1 June 2006. The EP's main concern was 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 was essential that the focus was shifted from where it currently lies, with the authorities, to the real engine of innovation, which is SMEs.

→ Arttu Makipaa
July 2008

4.16. Tourism

So far, the tourism policy has not been granted a place in the Treaties. As tourism is an area that can contribute to achieving the goals of the Lisbon strategy, it has become an increasingly important part of the European policies. In the event of ratification of the Treaty of Lisbon this policy will benefit from a specific legal basis.

Legal basis

The Treaty establishing the European Community has not contained a specific chapter on tourism until now, but Article 3(u) of the Treaty has allowed 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. With the coming into force of the new Treaty of Lisbon, which is yet to be ratified by the Member States, the Community's tourism policy shall have a clear legal basis in the form of the new Title XXI 'Tourism'. The new Article 176 B states, amongst other things, that the Union shall complement the action of the Member States in the tourism sector, in particular by promoting the competitiveness of Union undertakings in that sector.

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 also provides 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 →4.6.1 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 entitled '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 entitled '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 entitled **'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 Expert Group was set up in 2004.

On 17 March 2006, the Commission published a communication entitled **'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 were adopted on the protection of **air passenger rights** (→4.6.6).
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 European Social Fund 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** in the field of tourism. 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 European Parliament has made vital contributions to the development of Community tourism and has often given momentum to concrete measures.

— The European Parliament called for 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.

— Moreover Parliament proposed the 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 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.

— 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 European Parliament passed a resolution on **new prospects and new challenges for sustainable European tourism**, consisting of 70 paragraphs. The European Parliament set out its position and demands on the different aspects of an EÚ 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.

— In its resolution of 29 November 2007 on '**A renewed EU tourism policy: towards a stronger partnership of European tourism'** the European Parliament dealt with, among other things, the effect the visa policy has on tourism. It highlighted the need to simplify visa application procedures and to reduce the costs of tourist visas for entry into any Member State. It called on the Member States that are party to the Schengen Agreement to establish common consular desks for the grant of visas to third-country applicants, to ensure that these desks have the same working methods and apply the same visa criteria and to improve the reception given to visa applicants. Furthermore, it advocated greater harmonisation of quality standards for tourist accommodation in Europe as well as the further development of quality management schemes in this area.

→ Nils Danklefsen
December 2007

4.17. Culture and education

4.17.1. Education and vocational training policy

Education policy and vocational training is one of the areas in which decision-making is done by the co-decision procedure. According to the principle of subsidiarity, this policy is primarily the responsibility of Member States. However, the EU has adopted several programmes of European and international dimension in order to promote exchanges, mobility and intercultural understanding.

Legal basis

Articles 3, 140, 146, 149 and 150 of the Treaty establishing the European Community (EC).

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 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. With the Amsterdam Treaty, this was extended 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.

The **Lisbon Treaty** does not bring any significant changes in the field of education and vocational training policy (see Articles 149 and 150 of the new 'Treaty on the Functioning of the European Union'). The Union's role in these areas is specified as follows: 'The Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States**'** (Article 6 TFEU). A new horizontal **'social clause'** ensures that in defining and implementing its policies the Union takes account of 'a high level of education [and] training' (Article 9 TFEU). It should also be pointed out that with the Treaty's entry into force, the **Charter of Fundamental Rights** becomes legally binding (Article 6 TEU).

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 or 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.

As a consequence, the Council and Commission adopted a 10-year work programme, 'Education and training 2010' (2002/C 142/01). 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. This programme provides a new and coherent strategic framework incorporating all action in the field of education at European level, including vocational training. It is implemented through the 'open coordination method', which means defining common objectives and translating them into national policies.

Since the adoption of the work programme, experts from 31 European countries, international organisations and EU institutions have been meeting regularly in working groups to support the implementation of the objectives 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 consisted of eight actions.

— Action 1, Comenius (from pre-school to secondary education), sought to improve the quality and the European dimension of school education, in particular by encouraging transnational cooperation between schools.

— Action 2, Erasmus (higher education), encouraged transnational cooperation between universities and mobility of university students and teachers.

— Action 3, Grundtvig (adult education and other educational pathways), sought to encourage the European dimension of lifelong learning.

— Action 4, Lingua (language teaching and learning), promoted cooperation in developing innovative materials for use in language teaching and supported projects which encourage language learning.

— Action 5, Minerva (open and distance learning, information and communication technologies in education), supported transversal measures relating to open and distance learning.

— Actions 6, 7 and 8 were innovations and experimental programmes entitled 'Observation and innovation', 'Joint actions with other EU programmes' and 'Accompanying Measures'.

The Socrates programme was a great success, with the result that a second phase was agreed with a total budget amounting to EUR 1 850 million for the period 2000–06. For the period post-2007, most of the actions were incorporated into the new lifelong learning programme (see below). Erasmus proved particularly popular: to date, it has enabled more than 1.5 million students to spend a study period abroad, with 31 European countries participating in this programme.

2. Leonardo da Vinci

The European dimension of vocational training was promoted by the **Leonardo da Vinci** programme, which was first established in 1994 and which is intended to support and supplement action by the Member States. The programme promoted transnational mobility, placement and exchange projects, study visits, pilot projects, transnational networks, language skills and cultural awareness and the dissemination of good practice. In Phase II, which ran from 1 January 2000 to 31 December 2006, the programme had a budget of EUR 1 150 million.

3. Tempus

The first **Tempus** (Trans-European mobility scheme for university studies) programme was adopted by the Council in May 1990 after the fall of the Berlin Wall. Tempus is a trans-European cooperation scheme involving higher education establishments in the EU and in partner countries in eastern Europe, the western Balkans, the Middle East, north Africa and Central Asia. The programme encourages cooperation projects in the areas of curriculum development and modernisation, teacher training, university management, and structural reforms in higher education. It puts special emphasis on the mobility of academic and administrative staff. Tempus is now in its fourth phase and covers 27 countries.

4. Erasmus Mundus

It was established in July 2003 to promote cooperation with third countries in higher education (Decision No 2317/2003/EC). 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 increased the budget from EUR 200 million to EUR 230 million. The programme runs from 2004 to 2008. In the first three academic years (2004–06), more than 2 300 students took part. A Commission proposal to extend the programme for the period 2009–13 is currently under discussion in the European Parliament and the Council.

5. The new lifelong learning programme

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 further 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.

An important step in this process was the launch in May 2007 of the new **'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 (Decision No 1720/2006/

EC of 15 November 2006). The programme will comprise four sub-programmes which, in the main, formed part of the 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, the promotion of language learning, e-learning and the dissemination of best practice). The final aspect is the Jean Monnet programme, supporting activities in the field of European integration and institutions and associations carrying out such work. The programme's budget for the period 2007–13 is EUR 6.97 billion.

The challenges currently on the agenda are to improve adult education and 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. A Commission communication (COM(2006)614) and the subsequent **action plan on adult learning** (COM(2007)558) set out recommendations for the development of more efficient and better quality adult learning systems and for greater participation in adult learning initiatives. The recommendation of the European Parliament and of the Council on **key competences for lifelong learning** (2006/962/EC of 18 December 2006) establishes a European framework covering eight key competences, including communication in a person's mother tongue, communication in foreign languages, competence in mathematics and science, 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 the above-mentioned programmes, include programmes such as **USA–EU**, **Canada–EU**, **ALFA** and **ALßAN** (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 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 was 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. The action programme's aims have been incorporated into the new lifelong learning programme (see above) for the period 2007–13.

Other EU initiatives

1. Quality education

Quality education at all levels is a high priority for all EU Member States. Much importance is attached to this, particularly for achieving the Lisbon objectives. 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 all Member States in this context (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 already taking part, is aimed at 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 adopted the **Copenhagen Declaration** on enhanced European cooperation in the area of 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, inter alia, with a view to fulfilling the Lisbon objectives.

The Commission outlined its work on a quality European education in a recent communication (COM(2006) 481) in which it recommended promoting **efficiency and fairness** in equal measures in the education systems. Quality is also a key issue in the context of mobility. A **European Quality Charter for Mobility** (2006/961/EC) was adopted in 2006 with the aim of ensuring that knowledge acquired abroad fits in as much as possible with the personal learning pathways.

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 ten 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. Quality assurance in higher education is

also the focus of a recommendation on further European cooperation in this area (2006/143/EC). It calls on universities and quality assurance agencies to introduce stringent quality controls and advocates the establishment of a European register of these agencies.

Europass was set up by Decision No 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. Comparability of skills is also the objective of the recently established **European qualifications framework** (COM(2006)479). It is intended to facilitate the transfer and recognition of qualifications acquired in various systems of education and training by defining various levels of knowledge and thus enabling qualifications to be classified and compared.

3. eLearning

Despite a high level of education, the EU remains behind the USA 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. 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, promoting further teacher training and transversal actions for the promotion of e-learning in Europe. Since 2007 the support measures for e-learning have been part of the new **'integrated action programme in the field of lifelong learning'** (see above).

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 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. The European University Institute in Florence (set up in 1976) contributes to the development of the cultural and scientific heritage of Europe. The Eurydice network (set up in 1981), collects information on education systems in the Member States which is then disseminated via an internet portal (www.eurydice.org).

Role of the European Parliament

The European Parliament 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, Parliament gained considerable influence over the policies carried out, since all decisions are now taken under the co-decision procedure and with qualified majority voting in Council. Therefore the 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 also called for a clear increase in the budget allocated and for easier access to these actions. In the negotiations with the Council, MEPs were successful in increasing the monthly amount paid to students by EUR 50 to the current figure of EUR 200.

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
July 2008

4.17.2. Youth policy

Youth policy is one area where the decision-making is done by co-decision. Several European programmes encourage exchanges of young people within the EU and with third countries.

Legal basis

Articles 149 and 150 of the Treaty establishing the European Community (EC).

Article 149 of the EC Treaty provides for youth exchanges and exchanges between socio-educational instructors. 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 adopts recommendations here.

The **Lisbon Treaty** adopted by the European Council in October 2007, assuming that it comes into force, adds to the tasks of the Union in relation to young people that of promoting participation by young people in democracy in Europe (see Articles 149 and 150 of the new 'Treaty on the Functioning of the European Union').

Attention is also drawn to the **Charter of Fundamental Rights**. It includes an article on children's rights (Article 24) and an article forbidding child labour and providing for protection of young people in the workplace (Article 32). With the entry into force of the Treaty, the **Charter of Fundamental Rights** would acquire the force of law (Article 6 TEU).

Objectives

The Treaty article on young people is explicitly aimed at encouraging the development of youth exchanges and exchanges of youth workers. With the Lisbon Treaty, the promotion of increased participation by young people in democratic life in Europe will be added to the objectives. In addition to this article, children and young people benefit from EU objectives in other fields, such as education and training, health, or in relation to the rights of children and young people.

Achievements

A. Action programmes

1. 'Youth' and 'Youth in action'

The Community has promoted youth exchange in Europe for the last 20 years. By 1988 the Community had already established the 'Youth for Europe' programme to promote exchanges between young people. In 1996 the Commission then additionally proposed a Community action programme for a European voluntary service for young people. In 2000, these two programmes were merged to form the **Community action programme for youth** (2000–06). The programme was supplemented by other actions such as 'Initiatives for Youth', which aimed 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(→4.17.1) and 'accompanying measures'. The Youth programme also supported cooperation activities with third countries through the **Euro-Med Youth Programme I**, which was aimed at young people in 31 participating countries. The Youth programme also supported cooperation with countries in South-east Europe (SEE), the Commonwealth of Independent States (CIS) and Latin America (LA).

In November 2006, with Decision No 1714/2006/EC, the 'Youth in action' programme was adopted as the successor to 'Youth' for the period 2007–13. The aim of the programme is to strengthen young people's active citizenship, develop their solidarity and promote European cooperation on youth policy. These aims are based on the White Paper 'A new Impetus for European youth' (see below). The five areas for action include European voluntary service, exchanges between young people and political cooperation. The programme has a budget of EUR 885 million.

2. Action programme to promote bodies active at European level in the field of youth

Decision No 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**. The programme ran from 2004 to 2006, with a budget of EUR 13 million. It supported the activities of organisations which contribute to strengthening Community action and increasing its effectiveness, inter alia 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.

With the launch of the new generation of support programmes on 1 January 2007, support for bodies working in the youth field was brought under the umbrella of the new 'Youth in Action' programme.

Other EU initiatives

1. Towards youth policy cooperation in Europe

a. White Paper on Youth

On 21 November 2001 the Commission adopted a White Paper entitled **'A new impetus for European youth'** (COM(2001)681), thus setting out a framework for cooperation

in the field of youth. Its priorities are to promote participation, active citizenship and voluntary activities by young people. It is also intended to improve the information available to young people on European issues and increase knowledge of youth-related issues.

The White Paper provided the impetus for the development of European cooperation in the youth field. This takes place on the basis of the 'open coordination method', which means defining common objectives and translating them into national policies.

b. 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 main objective is to improve school education and vocational training, mobility, integration of Europe's young people into the workplace and social inclusion. At the same time, the aim is to make for a better work–life balance. The Commission also calls for initiatives in the various areas to be organised in a more coherent way.

The Commission subsequently adopted a communication (COM(2005)206) setting out how the pact could be implemented. The Commission believes that the pact's objectives should be integrated into the European employment strategies and the Education and training 2010 work programme (→4.17.1) and has identified measures and programmes that can support the pact's objectives.

Three years after the adoption of the pact, issues relating to young people's education and labour market integration are still on the political agenda. In a recent communication on 'Promoting young people's full participation in education, employment and society' (COM(2007)498), the Commission takes as its theme the issues of youth unemployment and the unsatisfactory schooling received by numerous young people. In view of the current situation, the Commission calls for closer coordination between all the policy areas that have repercussions for young people. It proposes a series of new initiatives intended to build bridges between education and employment. Young people's participation in European decision-making processes is also to be improved.

c. European Youth Week

The third European Youth Week took place in June 2007. The central event was held in Brussels. Here, more than 150 young people from 35 European countries took part in seven workshops on issues such as European identity, intercultural dialogue, enlargement, equality and discrimination. A number of decentralised events also took place. During the fourth European Youth Week in November 2008, numerous debates about current challenges and the future direction of youth policy in Europe will be organised in all the participating countries.

In light of the success of the European Youth Week, the European Parliament had called for European Youth Week to be made a permanent part of European youth policy. With European Youth Week now forming part of the Youth in action programme, this has been achieved.

d. Structured dialogue

In a resolution adopted in 2005 the Council of Ministers called for the development of a **structured dialogue** with young people, reiterating this goal frequently in subsequent years. Structured dialogue means that the EU institutions and national governments discuss selected themes with young people. The theme for 2008 is 'Future challenges for young people'. The dialogue is conducted at national and European level and is coordinated by the Commission.

The structured dialogue also facilitates the evaluation of European cooperation in the field of youth policy, which is currently under way. In a consultation process, the experiences gained are evaluated and reviewed. Based on the outcomes of this consultation, the Commission is planning to propose new priorities and methods for Europe's future youth policy in early 2009.

2. Protecting the rights of children and young people

a. EU strategy on the rights of the child

On 4 July 2006 the European Commission adopted the communication 'Towards an EU strategy on the rights of the child' (COM(2006)367). The communication aims to introduce a comprehensive EU strategy to promote and effectively protect the rights of the child in internal and external European Union measures, as well as to support efforts by the Member States in this area. The planned measures include the attribution of single telephone numbers within the EU for a helpline for children in need and missing and abused children. As one outcome of the communication, the European Forum on the Rights of the Child was created in 2007 to provide the European institutions, national governments, international organisations, non-governmental organisations, civil society and other stakeholders the opportunity to exchange information about best practice and to work together to improve the situation of children in Europe.

b. Preventing and combating violence against children and young people

Since 2000 the EU has funded projects and actions to combat violence against children, young people and women via the **Daphne** programme. The target groups are children and young people under 25 years of age, and women. Since 2007 the Daphne programme has formed part of the general programme 'Fundamental rights and justice'. The aim of the programme is 'to contribute to the protection of children, young people and women against all forms of violence and to attain a high level of health protection, well-being and social cohesion' (Decision No 779/2007/EC). The programme also extends to the fight against trafficking in human beings and sexual exploitation. Funding totalling EUR 116 million is available for the programme for the period 2007–13.

c. Youth and media

Youth protection is a key element of audiovisual policy at European level and has acquired new topicality in connection with the development of non-linear media services.

(See 4.17.5: 'Audiovisual and media policy').

Role of the European Parliament

The European Parliament (EP) has always supported close cooperation between the Member States in the youth field. Parliament led the way in the setting up of European voluntary service and the promotion of exchanges between young people. Indeed, the EP was advocating programmes to promote European voluntary service and exchanges between young people as early as 1983. It was also an advocate for the establishment of a solid legal basis for youth policy. Following the adoption of the Maastricht and Amsterdam Treaties, the EP has gained considerable influence over policies in this field, since all decisions are now taken under the co-decision procedure and with qualified majority voting in Council.

In the process of adopting the 'Youth in action' programme, Parliament called for a significant increase in the budget allocated and simplified access to these actions. Parliament also stressed that young people with disabilities must be included on an equal footing, in order to prevent discrimination.

The European Parliament has also played an important role in relation to child rights. In a written declaration in 2005, 367 MEPs called on the Commission to create a single telephone number in Europe for children's helplines and emergency hotlines, a step which has now been taken with the adoption of the EU strategy on the rights of the child.

To encourage young people to pursue European projects of their own, the European Parliament and the Foundation of the International Charlemagne Prize of Aachen launched the **European Charlemagne Youth Prize** in 2008. The Prize is awarded to projects which promote European and international understanding, foster the development of a shared sense of European identity and integration and offer practical examples of Europeans living together as one community.

→ Constanze Itzel
July 2008

4.17.3. Language policy

The EU pursues a multifaceted policy of promoting multilingualism. Multilingualism in this context means, firstly, languages as a source of wealth that is integral to Europe's cultural diversity and, secondly, individuals ability to express themselves in various languages.

Multilingualism, in the EU's view, is an important element of Europe's competitiveness. One of the objectives of the language policy of the EU is therefore that every European citizen should master two other languages in addition to their mother tongue.

Legal basis

Articles 3, 21 and 149 of the Treaty establishing the European Community (EC).

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)), while fully respecting cultural and linguistic diversity (Article 149(1)).

The **Charter of Fundamental Rights** adopted in 2000 also places an obligation on the Union to respect linguistic diversity (Article 22) and prohibits discrimination on 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 and openness towards other cultures.

The EU institutions also take the principle of linguistic diversity into account in their correspondence with citizens. Therefore each citizen of the Union has the right, '[to] write to any of the institutions or bodies referred to in this Article or in Article 7 in one of the languages mentioned in Article 314 and have an answer in the same language' (Article 21 of the EC Treaty).

The **Lisbon Treaty** further enhances the respect for language diversity. Hence Article 3(3) of the EU Treaty on the tasks of the Union shall now read: 'It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.' The Charter of Fundamental Rights shall also become legally binding with the entry into force of the Reform Treaty (see Article 6 of the EU Treaty).

Objectives

The aim of European Union language policy is to promote the teaching and learning of foreign languages in the EU and 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 (2005/C 141/04).

In the context of the **Lisbon strategy** adopted by the European Council in March 2000, the importance of foreign language learning in raising competitiveness 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 goal of improving foreign language teaching, encouraging language learning from an early age, and making learning a foreign language more popular. The European Commission, in designing and implementing the multilingualism policy, shall be supported by an expert group, established in 2002 under the 'Education and training 2010' work programme.

For the 2004–2009 legislative term, a Commissioner whose responsibilities expressly include multilingualism — Jan Figeľ from Slovakia — was appointed for the first time. Under Commissioner Figeľ, the Commission presented its New framework strategy for multilingualism (COM(2005)596) in November 2005, 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. Following the entry of Romania and Bulgaria into the EU on 1 January 2007, the Romanian Leonard Orban was appointed the first Commissioner for Multilingualism. One of the new Commissioner's aims is to improve workers' foreign language skills and foreign language skills within small and medium-sized enterprises, and he has launched the Business Forum for Multilingualism for this purpose. The Commission has also announced a Communication on Multilingualism for September 2008, which will define a new framework for the EU's policy on multilingualism.

Achievements

A. Support programmes

1. Education and vocational training

The main financial support for foreign language learning has so far been provided under the Socrates and Leonardo da Vinci educational and vocational training programmes. This support will be continued in the period 2007–13 with the new lifelong learning Programme (→4.17.1).

a. Socrates: action programme in the field of education

The Socrates programme, launched in 1995, consisted of ***eight areas of action, four of which included measures to promote language learning.***

i. Lingua: promoting language teaching and language learning

Lingua has supported projects which raise citizens' awareness of the European Union's linguistic diversity, encourage people to learn languages throughout their lifetime, and improve access to foreign language learning resources across Europe. It also supported the development and dissemination of innovative techniques and good practice in language teaching. Lingua also aimed to improve language teaching by ensuring that sufficient high-quality language learning tools and tools for assessing linguistic skills were made available.

ii. Comenius: European cooperation on school education

Comenius included several measures to promote language learning. Firstly, Comenius supported various types of school partnerships, one aim being to encourage language learning. Training grants were also available to teachers. Those eligible to apply were 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 was 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 was targeted especially at courses in less widely used 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 was 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 supported 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 had to be specifically targeted at a target group in the area of vocational training. They were 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 was provided for exchange projects between businesses, on the one hand, and vocational training establishments, on the other, which were designed to contribute to developing and improving methods used in vocational training in the area of language and intercultural skills.

c. The new action programme for lifelong learning

Decision No 1720/2006/EC of 15 November 2006 established a new **'integrated action programme in the field of lifelong learning'** for the 2007–13 period to provide financial support for education in Europe. The new integrated programme combines current EU education programmes and therefore covers the four sub-programmes referred to above: Comenius (school education), Erasmus (higher education), Leonardo da Vinci (vocational training) and Grundtvig (adult education). In this new programme languages will also be covered by a **transversal programme** aimed, inter alia, at promoting language learning and linguistic diversity. Complementing the four sub-programmes described above, the transversal programme will also support initiatives which transcend individual programme boundaries and are relevant to several target groups. Eligible measures include, for example, multilateral projects to develop new materials for language learning, the development of instruments and courses to train language teachers, or the preparation of studies on language learning and linguistic diversity.

2. 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 is provided for the translation of books and manuscripts under the EU's cultural programme **Culture**. 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.

The EU has adopted various measures for the preservation and promotion of regional and minority languages. They include the provision of financial support to the European Bureau for Lesser-Used Languages (EBLUL), an independent non-governmental organisation (NGO) which promotes and disseminates information about regional and minority languages on a network basis, and Mercator, a documentation and information network which aims to improve the accessibility and exchange of information about minority languages and cultures. The EU has also provided project funding for practical initiatives for the promotion and preservation of regional and minority languages. Moreover, at the initiative of the Commission, a detailed study on regional and minority languages in the European Union was undertaken. Entitled 'Euromosaic', the study investigates the status and situation of these languages in the various EU Member States.

B. Other EU initiatives

1. Action plan and framework strategy

In response to a European Parliament resolution (T5-0718/2001) and a Council resolution (2002/C 50/01), in July 2003 the Commission adopted an action plan 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. The three areas are: lifelong language learning, improving the teaching of foreign languages, and creating a language-friendly environment. In 2005, the Action Plan was supplemented by the New Framework Strategy for Multilingualism (COM(2005)596, see above). The results of the action plan on national and European levels were summed up by the Commission in a report (COM(2007)554) in autumn 2007. This report is intended to serve as the basis fur further measures in the field of multilingualism policy.

2. 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 many language projects took place, 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 also aimed at raising awareness among citizens of the many languages spoken in Europe and encouraging them to learn languages.

3. Comparability of data on language competence

In August 2005 the Commission proposed to the Council and the European Parliament 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 (T6-0184/2006) the European Parliament 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. Multilingualism initiatives

From the outset of the process of integration, the European Parliament has been an advocate for recognising the importance of, and promoting, linguistic diversity in the European Union. It was at the European Parliament's initiative that the European Bureau for Lesser-Used Languages (EBLUL) was established back in 1982; this is a non-governmental organisation which promotes and disseminates information about regional and minority languages on a network basis.

During the current legislative term, Parliament has already produced own-initiative reports on a number of occasions to give fresh impetus to the development of language policy in Europe. In particular, the Committee on Culture and Education, in its reports, has identified the need for action in certain areas and called 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 (T6-0385/2005). The European Parliament has also 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).

B. Principle of multilingualism applying to Parliament's work

On 1 January 2007, the number of **official languages** of the EU institutions rose to 23. The EU believes that using the different languages spoken by its citizens is a major 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 an official language of his or her home country to the European Parliament, other EU institutions and advisory bodies and the European Ombudsman, and to receive a reply in that language. This EU commitment to multilingualism in law-making and administration is unique throughout the world.

As regards interpreting, the European Parliament 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. In the case of less widely used languages, it is ascertained prior to the meetings of smaller bodies whether MEPs speaking these languages will be attending the meeting. An individual MEP's right to interpretation of debates into his or her own mother tongue and interpretation of his or 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 European Parliament is the very embodiment of linguistic diversity in the EU.

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4.17.4. Cultural policy

The European Union's action in the field of culture supplements Member States' cultural policy in various areas: for example, the preservation of European cultural heritage, cooperation between various countries' cultural institutions, or the promotion of mobility of those working creatively and of collections. The cultural sector is also affected by provisions of the EC Treaty which do not explicitly pertain to culture.

Legal basis

Article 151 Treaty establishing the European Community (EC).

Articles 3, 30, 87(3)(d) and Article 133 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 at present still 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 **Lisbon Treaty** gives greater significance to culture: 'Drawing inspiration from the cultural, religious and humanist inheritance of Europe', states the Preamble to the Treaty on European Union. One of the EU's aims, stated in the Treaty, is to 'respect its rich cultural and linguistic diversity, and […] ensure that Europe's cultural heritage is safeguarded and enhanced' (Article 3 TEU). The EU's competences in the field of culture are stated as follows: 'The Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States' (Article 6 of the Treaty on the Functioning of the European Union). An important innovation is that decisions in the Council pertaining to the field of culture are now to be taken by qualified majority rather than unanimity (Article 151(5) TFEU). In addition it must be noted that when the Treaty comes into force the Charter of Fundamental Rights will become legally binding (Art. 6 TEU).

Objectives

According to the definition in the EC Treaty, 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.

In May 2007 the Commission adopted an important communication on culture, entitled '**a European agenda for culture in a globalising world**' (COM(2007)0242). This communication sets out new strategic objectives for the EU's activities in the field of culture. The main objectives are:

— promotion of cultural diversity and intercultural dialogue;

— promotion of culture as a catalyst for creativity in the framework of the Lisbon strategy for growth and jobs;

— promotion of culture as a vital element in the Union's international relations.

These objectives are to be achieved through new methods. The Commission proposes that cooperation between EU institutions and the Member States be organised through the 'open coordination method', which means defining common objectives and translating them into national policies. A further key proposal is that the cultural sector should be more closely integrated into the EU's activities through a cultural Forum.

The Commission communication is an innovative and important strategy paper for cooperation at European level. On 16 November 2007, EU culture ministers welcomed the proposed objectives and the methods and defined five priority areas for action for the period 2008–10. These include improving the conditions for artists and other professionals in the cultural field; developing data and statistics in the cultural sector and improving their comparability; and maximising the potential of cultural and creative industries. Progress made in respect of cooperation towards the objectives set should be reviewed after three years. In a work plan for culture 2008–10 (2008/C 143/06), the Council lists specific measures to be taken in the Member States, in working groups and by the Commission over the next few years.

The European Parliament endorses the objectives of the new agenda for culture. In its resolution on this topic (P6-TA(2008)0124), however, it highlights the fact that the cultural sector plays an important part in attaining the objectives of the renewed Lisbon strategy but points out that it is important not to lose sight of the issue of culture as a value in itself. Members also request further measures from the Commission; among other things, Parliament calls on the Commission to propose specific programmes to preserve European cultural heritage and to employ the means needed to enforce and protect literary and artistic property rights, especially in the digital environment.

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. This began with three programmes.

— The **Kaleidoscope programme** was set up in 1996 and aimed to encourage artistic creation and to promote 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

On the basis of the experiences of this first phase of programmes, a first EU framework programme in support of Culture was established in 2000 with a total budget of EUR 167 million for a five-year period (2000-2004). 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. The new Culture programme (2007–13)

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 continues the cultural actions referred to above. After long negotiations about the financial perspective, during which Parliament called for a substantial increase in the funding provision, the budget was set at EUR 400 million (Decision No 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.

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 was to support the activities of bodies whose work programme or actions pursue aims of general European interest. After the programme expired, this support was incorporated in the new culture programme. The support has been set at about 10 % of this programme's budget, and is likely to amount to around EUR 40 million.

B. Other activities

1. The situation of workers in the cultural sector in Europe

The EU has approximately 7 million people professionally active in the cultural sector. Apart from pure support for them through EU programmes such as Culture and MEDIA, these people's lives and professions are affected by many provisions of the EU Treaty. The EU has adopted directives on copyright, intellectual property and legislation concerning resale rights, and rental and lending rights (→3.4.4). 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 (minimum standard rate: 15 %, reduced rate: 5 %).

The EC Treaty also guarantees workers' freedom of movement. In the case of workers in the cultural sector; however, this right, and therefore artists' mobility, is often hampered by national administrative barriers, which still need to be removed.

In June 2007 Parliament adopted a report on the social status of artists (T6-0236/2007), which highlights the fact that many artists working for a short time in various Member States face problems with visas, health insurance, unemployment benefits and pensions. Among various other measures, it proposes devising a practical guide for European artists. In addition, it calls for a pilot project to introduce a European electronic social security card, a European professional register and a European mobility fund, on the lines of the Erasmus programme, which would help to promote exchanges of teaching staff and young artists.

2. Cultural industries

The cultural industries such as cinema, audiovisual media, publishing, craft industry and music contribute to job creation and economic prosperity in Europe, as recently confirmed by a study carried out for the Commission. 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.

The cultural industries have become an increasing focus of attention in European policy for some years. For example, the important role of innovative cultural industries in promoting Europe's competitiveness was underlined as an objective of

the Lisbon strategy. Promoting cultural industries is also part of the current Agenda for culture (see above), which is now to be implemented in a three-year work plan.

3. Cultural goods

According to Article 30 of the EC 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 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. European Capital of Culture

The European Capital of Culture was launched in Athens in 1985 and has been a genuine success. In 1999, Decision No 1419/1999/EC laid down the selection procedure for European Capitals of Culture from 2005. These are designated by the Council according to a set order of Member States, acting on a recommendation from the Commission, which takes the opinion of a selection panel into consideration. The decision also provides for the possibility of designating an additional city from a third country.

After enlargement, Decision 649/2005/EC came into force, enabling the new Member States also to propose candidate cities. This means that now at least 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.

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 (2004-2006). 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). (→4.17.7). 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 (No 1983/2006/EC).

Recently the European institutions have increasingly organised initiatives concerned with dialogue with the representatives of various religions. This dimension will become more significant when the new Lisbon Treaty comes into force. This states: 'Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations.' (Article 15b TFEU).

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 budgetary resources for culture to be increased, 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 (T6-0386/2005), 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 (T6-0346/2007)

As regards cultural heritage, in a resolution on this issue Parliament advocated better protection of cultural heritage in rural and island communities (T6-0355/2006). In addition, in

talks on the new Culture programme and the European agenda for culture (see above), Parliament called for greater attention to be paid to protection of the European cultural heritage.

The European Parliament has also considered the specific nature of cultural industries on various occasions. In its resolution of 4 September 2003 it supported unanimity in the Council in the field of trade regarding cultural and audiovisual services, which is also recommended by the Constitutional Treaty. In a recent report of 10 April 2008 on cultural industries in Europe (T6-0123/2008), the European Parliament calls for a task force for culture to be set up, along with a programme to promote the cultural industries. Other proposed measures include innovative funding methods and a reduction in VAT.

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4.17.5. Audiovisual and media policy

Audiovisual policy is mainly governed by Articles 151 and 157 of the Treaty establishing the European Community. The key piece of legislation in EU audiovisual policy is the audiovisual media services directive, which entered into force in December 2007. The main community instrument to help the industry (especially film) continues to be the MEDIA programme. The Charter of Fundamental Rights states that the 'freedom and pluralism of the media shall be respected'.

Legal basis

In the Treaty establishing the European Community (EC):

— Articles 23, 25, 28 and 29 (free movement of goods);

— Articles 39 to 55 (free movement of people, services and capital);

— Articles 81 to 89 (competition policy);

— Article 95 (technical harmonisation, including advanced television services);

— Articles 149 (education), 150 (professional training), 151 (culture) and 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 Chapter II, Article 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 (HDTV). 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.

Important Community legislation was introduced in the late 1980s and 1990s to introduce common technical standards for the audiovisual industry. Examples include Council Decisions 89/337/EEC and 89/630/EEC concerning HDTV and 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. This industrial policy has seen further developments.

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.

B. The television without frontiers directive

1. The 1989 directive

The adoption in 1989 of the television without frontiers (TVWF) directive (89/552/EEC) marked a new departure. This directive, revised in 1997, 2002 and 2007, established the legal framework for the free movement of television broadcasting services in the EU, based on the so-called 'country of origin' principle, meaning that programmes can circulate in the internal market if they respect the legislation of the Member State from where they originate. This is possible because national rules are themselves to some extent harmonised by the directive. It also provides rules on: (a) advertising and sponsorship; (b) protection of minors; (c) availability to all of broadcasting of events of major importance to the public; (d) 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 TVWF directive (COM(2005) 646). This was necessary in order to take into account developments in the sector, particularly in '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 'nonlinear' 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, not just broadcasting, which is now known as 'audiovisual media services' (AVMS), irrespective of the technology used to carry them or how they are viewed.

The new directive (see later) does not lay down specific requirements for the presence of European works in nonlinear services. It essentially leaves the issue in the hands of Member States, who shall ensure the production and access to European works in on-demand services, 'where practicable and by appropriate means' (new Article 3i).

C. The MEDIA programmes

The European film landscape is characterised by strong American market dominance. According to figures from the European Audiovisual Observatory, Hollywood companies enjoyed a market share of 63 % in the EU in 2007. 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). It has been followed by a series of successor programmes, whose budgets have gradually increased. MEDIA II (1996–2000) was allocated EUR 310 million, MEDIA Plus (2001–05) EUR 400 million, and the most recent, MEDIA 2007, provides a total of EUR 755 million to Europe's film industry up to 2013 (75 % of resources go to development and distributors).

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.

Since January 2006, the newly created Education, Audiovisual and Culture Executive Agency has taken over the operational management of the MEDIA 2007 programme.

D. 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 to producers, distributors and exhibitors. This 'i2i' initiative forms part of the new MEDIA 2007 programme.

E. Other initiatives

1. Film heritage

In November 2005 the European Parliament and the Council adopted Recommendation 2005/865/CE [*sic*] on film heritage and the competitiveness of related industrial activities. 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 directors who have followed MEDIA-sponsored training.

In May 2006 EU audiovisual ministers endorsed the European Film Online Charter 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 subsectors should not be liberalised (the so-called 'cultural exception'). The Commission 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'. The convention entered into force in

March 2007, after achieving the required 30 ratifications by Unesco Member States.

4. Protection of minors and human dignity

The protection of minors is an important element of audiovisual policy, for which the AVMS directive contains specific provisions. In September 1998, the Council adopted Recommendation 98/560/EC on the protection of minors and human dignity in audiovisual and information services, 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 final report on this issue in December 2006 (P6_TA(2006)0537). The rapporteur responsible was French MEP Marielle de Sarnez.

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 Decision No 276/1999/EC of the European Parliament and of the Council of 25 January 1999.

5. State aid to cinema

In May 2008, Commissioners Kroes and Reding announced that current rules which allow cinema to be subsidised under derogation from State aid rules will remain in force until 2011. This exception is based on the 2001 communication on the future of cinema and the audiovisual industry in Europe (COM(2001) 534 final), which allows public authorities to subsidise up to 50 % of a film's budget, under certain conditions.

6. Media literacy

In December 2007 the European Commission published a communication where it stressed the importance of promoting a common European approach to media literacy (COM(2007) 833 final). 'Media literacy' means, in simple terms, the ability to understand the workings of the media, to critically evaluate its messages and to create one's own communications, combining pictures, words and sound. Many believe that such skills are vital, not only for practical reasons such as finding a job, but also to fully exercise citizenship.

7. Creative content online

The Commission has also recently published a communication on creative content online in the single market (COM(2007) 836 final), which is expected to be rapidly followed by a recommendation on the same subject in the autumn of 2008. This document sets out what the Commission believes are the major obstacles to the growth of the internal market in online creative goods, for example musical downloads. It selects a number of areas where an EU regulatory response is necessary, for example on 'multi-territory licensing' and digital rights management systems (DRMs).

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 for HDTV.

A. Television without frontiers directive

1. Background

The EP has strongly supported the TVWF 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'.

2. Current situation

In November 2007, the EP approved the 'audiovisual media services' directive in second reading, making no changes to the political agreement reached in the Culture Council of Ministers on 24 May of the same year. The rapporteur responsible for this 'dossier' was German MEP Ruth Hieronymi. The European Parliament negotiated an 'early' agreement with the Council, in order to secure approval of the new legislation, which it saw as urgent, as quickly as possible.

Member States have until December 2009 to transpose the new directive into national legislation.

The main elements in the new legislation are listed below.

a. Product placement

Product placement shall in principle be forbidden. However, Member States are left the choice to decide to authorise product placement in cinematographic works, films and series, sports programmes and light entertainment programmes. TV audiences must be clearly informed on any product placement, at the beginning and at the end of a TV broadcast.

In all cases, product placement is subject to some obligations, for example:

— no product placement may take place in news, current affairs and children's programmes;

— the placement of some goods, like tobacco and prescription medicines, is forbidden.

b. Advertising

Advertising cannot exceed 15 % maximum of the daily transmission time and 20 % maximum within a given one-hour period.

Advertising should not infringe upon gender, disability, age or sexual orientation, nor violate human dignity.

Minors should be protected from the advertising of unhealthy or 'junk' food products.

The directive also contains other important elements such as an obligation to encourage media service providers to improve access for people with visual and hearing impairments.

B. MEDIA 2007 programme

The EP's amendments have been important in ensuring that the budget for the various MEDIA programmes was increased. 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. The EP supported this figure, but EU leaders later decided to introduce funding cuts in the overall 'financial perspective'. In the end, the budget allocated to MEDIA 2007 amounts to EUR 755 million, a little over EUR 100 million per year.

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) it 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'.

Parliament has recently returned to the issue, in the form of an own-initiative report being drawn up by Estonian MEP Marianne Mikko. The report, which will only be adopted in the autumn of 2008, suggests the creation of independent media ombudsmen or comparable institutions in the Member States in which they do not already exist.

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. Media literacy

The EP is currently preparing an own-initiative report on media literacy, drawn up by Austrian MEP Christa Prets, which is expected to be adopted in the winter of 2008.

→ Gonçalo Macedo
July 2008

4.17.6. Sports policy

Sports policy has no specific legal base and is therefore currently governed by general provisions of the Treaty on the internal market and by the jurisprudence of the Court of Justice. In the event of entry into force of the Lisbon Treaty, sport will become an EU policy, although the Community would primarily play a supporting role to Member States.

Legal basis

In the Treaty establishing the European Community (EC):

— Articles 39 to 55 (free movement of people, services and capital);

— Articles 81 to 89 (competition policy),

— Articles 149 (education), 150 (professional training), 151 (culture) and 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 went even further in recognising sport as a strand of EU policy. It included sport among the areas in which the EU can take supporting, coordinating or complementary action and again made specific reference to its social and educational functions. The Lisbon Treaty, should it come into force, contains very similar wording (Article 165).

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 Court of Justice of the European Communities (CJ). 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 CJ 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* and *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.

Many argue that under current arrangements the training of young sportspersons is not sufficiently taken into account. Especially in team sports, notably football, young talent is increasingly 'imported' from outside national or EU borders to the detriment of young local players. Two models exist to tackle the problem. The 'Home-grown players rule', currently applied by UEFA, imposes that each professional football club should have at least eight players trained at the club or in the same country **in its squad of 25**. The other model is the FIFA sponsored '6 + 5' proposal, under which in every professional team 6 of the 11 players **actually taking the field** would have to be nationals of the country they are playing in. The Commission has criticised this idea for being discriminatory against non-nationals, which runs counter to the free movement of workers, whereas it gave cautious support to the 'Home-grown players rule'.

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 as 'undertakings' and therefore fall under the scope of EC anti-trust 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 anti-trust 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 to 89). Many sport clubs rely on subsidies granted by local, 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 audiovisual media services (AVMS) directive, 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 code was updated in September 2007. Ministers have also stressed that close cooperation between the EU, the Council of Europe and United Nations Educational, Scientific and Cultural Organisation (Unesco) is needed in order to properly tackle the problem of doping and its international and cross-border nature.

E. Sport and education

In 2003 the EP and the Council established the European Year of Education through Sport (EYES) 2004 through Decision No 291/2003/EC. 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.

F. White Paper on sport

After two years of consultations, the European Commission adopted a White Paper on sport in July 2007, which is its first comprehensive document setting out its vision for the sector. The White Paper aims at:

— providing strategic orientation on the role of sport in the EU;

— encouraging debate between the EU and sport bodies on specific problems;

— enhancing the visibility of sport in EU policymaking;

— raising awareness of the needs and specificities of the sector;

— identifying the appropriate level of further action at EU level.

The White Paper also proposes concrete actions in a detailed action plan known as 'Pierre de Coubertin'. The action plan concerns social and economic aspects of sport, such as public health, education, social inclusion and volunteering, external relations and financing.

Role of the European Parliament

The European Parliament (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 November 2007 it returned to this question on adopting an own-initiative report, drawn up by Hungarian MEP Pál Schmitt, on sport and education, which emphasises the importance of values transmitted by sport, such as self-discipline, challenging personal limitations, solidarity and respect for others. Parliament called on Member States to promote body awareness and health through a higher degree of integration between physical education and academic subjects in school. Prior to this, the EP commissioned a study on the situation of physical education in the EU from academic experts.

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. In July 2008 it heard an academic expert on the current situation of the fight against doping.

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 the EP organised a joint public hearing on professional football. Subsequently, in March 2007, Parliament adopted an own-initiative report, drawn up by Belgian MEP Ivo Belet, on the future of professional football in Europe, where it underlines that greater legal certainty is needed in the sector, avoiding that its development continues to be determined on a case-by-case basis by the CJ. The report also stresses the importance of fostering young talent and promoting better balanced competitions. It therefore supports UEFA measures to encourage the training of young players by requiring a minimum number of home-grown players in club squads (see above) and advocates the introduction of a cost-control system as a way of enhancing financial stability and the competitive balance between teams.

The European Parliament 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.

E. The White Paper on sport

In May 2008, Parliament reacted to the White Paper on sport on adopting a report drawn up by Greek MEP Manolis Mavromatis (P6_TA(2008)0198), which stressed the need for the EU to only complement the actions of Member States in the sports field and to respect the autonomy of the sports movement. Parliament also called for more consistency and legal certainty in EU policy, suggesting the setting up of a 'structured partnership and dialogue between the Commission and the sports movement'.

→ Gonçalo Macedo
July 2008

4.17.7. Communication policy

Communication policy is not governed by specific provisions in the Treaties, but flows naturally from the EU's obligation to explain its functioning and policies. It is also based on the Charter of Fundamental Rights, which provides citizens with a right to information. In recent years, the EU institutions have made major changes to communication policy, especially in the light of the 'no' votes in various national referendums.

Legal basis

The Treaties do not contain any specific chapter or article concerning communication policy.

At present the EU's communication policy is therefore based on the Charter of Fundamental Rights: Article 11 (right to information and freedom of expression, as well as freedom and diversity of the media), Article 41 (right to be heard and right of access to documents relating to oneself), Article 42 (right of access to the documents of the European institutions) and Article 44 (right of petition). For actions for which there is no separate legal basis in the EC Treaty, a reference to Article 308 of the Treaty establishing the European Community (EC) is necessary.

Objectives

Even before the 'no' votes in the referendums on the European Constitution in France and the Netherlands, and more recently on the Lisbon Treaty in Ireland, the EU had set itself the objective of improving communication between the institutions and the citizens of the Union. It felt this to be necessary because members of the public are insufficiently informed on EU policies and of how these have an impact on their everyday lives. More recently, the EU has stressed that communication must be 'two-way': on one hand, the quality and quantity of information provided to citizens must be improved; on the other, better informed citizens should exert more influence on the political debate at the EU level.

Achievements

A. Strategies and action plans

1. 'Debate Europe'

Since 2005, the European Commission has submitted numerous policy documents on communication — which reflects the recent high profile of this policy — the latest of which is 'Debate Europe' (COM(2008) 158/4), published in April 2008. In it, the Commission clarifies that it wishes to pursue 'Plan D' (see below), focusing now on 'D for democracy'. The objective is to enable ordinary citizens to summarise their views and discuss them with policymakers, including the media.

So far, about 40 000 people have taken part in Plan D projects in person and hundreds of thousands have participated via the Internet.

2. 'Communicating Europe in partnership'

In October 2007 the Commission reformulated its communication strategy in 'Communicating Europe in partnership' (COM(2007) 568), which emphasises the need for more pooling of efforts between the European institutions and the Member States, in order to improve the information offered to citizens at European, national and local levels. It also proposed, in the same spirit, greater coordination between the three main EU institutions on communication, which would involve them signing an interinstitutional agreement for that purpose.

3. The White Paper on a European communication policy

In February 2006, the European Commission published a White Paper on a European communication policy (COM(2006) 35

final). The main significance of this third document on communication policy to be published by the Commission within seven months lay in its shift of emphasis from a Brussels-based to a 'going local' approach.

The White Paper announced a six-month consultation of civil society, after which the responses were summarised with the aim of then proposing appropriate measures.

The main purpose of the White Paper was to involve all major stakeholders (Community institutions and bodies, Member States, regional and local authorities, political parties and civil society) in the process. It defined five fields for practical measures to be taken:

— defining common principles for communication measures relating to European policies;

— empowering citizens, enabling them to get to grips with European affairs;

— working with the media and new audiovisual services to develop a European 'public arena';

— understanding public opinion;

— doing the job together, in partnership.

4. Plan D for democracy, dialogue and debate of October 2005

The Commission's 'Plan D' (COM(2005) 494 final), proposed after the 'no' votes in the referendums on the Treaty establishing a Constitution for Europe, in which the 'D' stands for democracy, dialogue and debate, creates a common framework for launching a public debate at the national and European levels. The purpose is to think about the future of the European Union and to strengthen democracy in Europe. Plan D was intended to breathe life into the 'reflection period' on which the EU had embarked and which was to run for a limited time.

The measures taken comprised a comprehensive programme of visits to Member States by Commissioners and regular visits by them to national parliaments, support for European citizens' projects, providing more information about Council meetings, establishing a network to promote a wide-ranging debate on the future of the European Union and efforts to increase turnouts in European elections.

5. The action plan to improve communicating Europe

This Commission action plan (SEC(2005) 985) was launched in July 2005. It aims to bring about a genuine dialogue with the public and to take better account of their concerns in the Commission's communication work.

The three principles of the communication strategy are:

— **listening**: so that EU citizens are not only informed but also have their views and concerns taken into account;

— **communicating** information about how European policies affect the everyday lives of citizens;

— **establishing contact at local level**: national and local forums and certain media to which priority is assigned are to be used as communication channels.

The strategy is to be implemented in two stages:

— by means of an **internal action plan** with practical measures to be initiated within the Commission;

— by means of the **White Paper** (see above), which takes account of all parties concerned and in which the EU decisions and initiatives are described which the Commission plans jointly with the other EU institutions and with authorities of the Member States.

The **action plan for better communication** also aims to:

— make greater efforts to consult the public;

— coordinate communication work within the Union in order to put the existing means of communication to more efficient use, inter alia by means of more professional communication work using specific training for EU staff;

— make use of the means of communication which particular target groups favour, engaging in communication work primarily through regional and local media;

— formulate Commission proposals for political initiatives clearly, so that the general public can understand them and that the advantages of the proposed measures are made clear to the public;

— develop the Commission's representations in the Member States in order to make contact with the public more effectively and thus enter into a communication partnership with the EU institutions.

6. Changeover to the euro

By means of its information and communication strategy (COM(2004) 552 final) of August 2004, the Commission adopted the objective of supporting the changeover to the euro in the new Member States, persuading the public of the benefits of the euro and of economic and monetary union (EMU).

The fundamentals of the strategy are decentralisation and subsidiarity, coherence and flexibility of messages, partnership agreements with Member States and a multidisciplinary multimedia approach.

B. Practical implementation

1. Internet forum on the future of Europe

This Internet discussion, which took place in 20 languages and in which all members of the public could participate, was part of Plan D (see above).

During the first stage, the debate focused on three main sets of themes:

— Europe's economic and social development;

— feeling towards Europe and the Union's tasks;

— Europe's borders and its role in the world.

2. The Europe Direct information centres

The 400 new Europe Direct information centres which were set up on 1 May 2005 provide information, advice and assistance to citizens of the EU and answer their questions about EU legislation, policies, programmes and sources of financing. This initiative supports the Europe Direct contact centres, which can be telephoned free of charge from any Member State on 00800 6 7 8 9 10 11.

3. The Prince programme

The Prince programme (information programme for the citizens of Europe) supplements and consolidates the deployment of communication instruments in connection with important EU topics. The information measures adopted under the programme are based on the principle of partnership between the EU institutions and the authorities and civil-society organisations in Member States. The information campaign launched by means of Prince has the purpose of cultivating public awareness of the benefits of the EU and the challenges facing it.

4. The European transparency initiative

The main purpose of this initiative was to make the work of the EU institutions more transparent and accessible. One practical measure for this purpose is the Commission's intention of publishing on its Europa website the names of those who receive EU funding. Since 10 October 2006, it has in addition been possible to access information about EU grants and contracts.

A consultation exercise was launched based on the **Green Paper on the European transparency initiative**. Participants were invited to express their opinion on the following aspects of transparency in the European Union.

— Transparency and representation of interests: This is concerned with lobbying in the EU.

— The Commission's minimum standards for consultation of interested parties: This part provides a structured framework for feedback on the application of standards.

— Announcement of the names of recipients of EU funding: This part was to be used for a debate on publication of the names of recipients of money from various EU funds administered by the Commission in cooperation with the Member States, particularly the Structural Funds and the funds earmarked for the common agricultural policy.

5. The 'Citizens for Europe' programme (2007–13) (COM(2005) 116)

The low turnout in the 2004 elections to the European Parliament was one of the reasons why the European Union decided to promote active participation by citizens, to place citizens at centre stage and to give them the opportunity to act on their responsibilities as European citizens. The main purpose of the programme is to promote cross-border involvement of citizens and thus cultivate a stronger European awareness.

6. The 'Youth in action' programme (2007–13) (COM(2004) 471)

The new programme is aimed at young people between the ages of 13 and 30 in the Member States and in third countries, particularly those covered by the new neighbourhood policy. 'Youth in action' comprises five measures, including European voluntary service, youth exchange measures and the 'Youth of the world' programme to promote projects with third countries.

The main proposed objectives are:

— promoting young people's active citizenship in general and their European citizenship in particular;

— developing young people's solidarity, in particular in order to reinforce social cohesion in the European Union;

— fostering mutual understanding between peoples through young people;

— contributing to developing the quality of support systems for youth activities and the capabilities of civil society organisations in the youth field;

— promoting European cooperation in youth policy.

Role of the European Parliament

Over the years, the European Parliament has critically examined the Commission's proposals in the field of communication. As the representative of the interests of Europe's citizens, it also itself has a duty to communicate what Europe is about and to articulate and act upon citizens' interests in Europe. In its reports, Parliament has repeatedly made detailed proposals for improving the relationship between the EU and its citizens, although in many cases the Commission has only accepted them to a limited extent. As a result, members of the European Parliament have become very critical of Commission initiatives. However, there is no dispute as to the fact that the EU's communications capacity needs to be significantly improved.

Parliament takes the view that, in its communication with citizens and the media, the EU must express itself in a way that is easy to understand, as EU jargon widens the gulf between the EU institutions and citizens.

For this reason, it believes that the methods used to communicate with the public should be assigned high priority. A two-way exchange of information and ideas is called for, that is, a dialogue between the EU and its citizens at all levels.

In its report on the White Paper on a European communication policy, drawn up by Spanish MEP Luis Herrero-Tejedor and approved in November 2006 (P6_TA(2006)0500), the EP called for the following measures.

— In order to 'decentralise the message', the EP advocated communicating European issues at national, regional and local level. It also stressed the importance of local European

administration, to facilitate important direct contacts between the institutions and the public and simplify access to European initiatives and programmes.

— The financial support granted by Union should be made as publicly visible as possible.

— As the public often tended to regard the EU as a single entity, despite its various institutions, the EP considered it necessary for all the institutions to adopt a joint approach to communication policy.

— Active participation by the Member States was felt to be a decisive factor in successful communication. One of the principal challenges was getting the Member States to contribute technically and financially to the EU's common communication work and provide objective, reliable and impartial information about European policies. The Committee of the Regions also had an important role to play here.

— National, regional and local media should be involved more in communication policy.

— In order to implement communication policy, the EP stressed the need for greater cross-border cooperation on European political themes between regional and local media. For this purpose it called upon the Commission to establish a 'European Fund for (Investigative) Journalism that would support projects in which journalists from several Member States together explored a European subject in depth and considered it in relation to the differences in local and regional situations.

In the absence of a specific legal basis in the Treaties, the EP has been unable to exercise powers of co-decision over communication policy, which has in the past caused tensions with the European Commission. As an elected body, the EP feels that it should have a decisive voice in deciding on a common EU approach in this field. The proposed interinstitutional agreement may provide a solution to this problem.

→ Cristina Spinei
July 2008

4.18. Tax policy

4.18.1. General tax policy

Tax policy plays a significant role in the internal market. However, the EU has relatively little competence in taxation. Direct taxation is regulated almost entirely through bilateral agreements, while the EC Treaty contains some provisions and harmonisation in indirect taxation. The jurisprudence of the Court of Justice and the cooperation between the tax authorities of Member States remains a key element of European fiscal policy.

Legal basis

Action in the general taxation field can be justified by the general aim of the Treaty establishing the European Community (EC), 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 (→4.18.2 and →4.18.3).

— 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 ambitions 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.

— The Maastricht Treaty provisions on economic and monetary union introduced a new dimension to general taxation policy by 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 39.9 % of GDP in 2006 (EU-27); but figures vary considerably between Member States. According to the latest available official data (Eurostat, 2006) overall taxation and social security contributions, for example, are just over 28 % in Romania (28.6 %), Slovakia (29.3 %) and Lithuania (29.7 %), but almost 50 % in Denmark (49.1 %) and Sweden (48.9 %). Social security contributions vary from only 1.2 % in Denmark to just over 16 % in Germany and France (EU arithmetic average 13.1 % in 2004). The Danish figures demonstrate how the social security system can be almost entirely financed over taxes, as is the case in Denmark.

The average taxes on consumption are moderately on the rise while those on labour are moderately decreasing, in accordance with a rather global trend. However, the average implicit tax rate on labour is still the highest with 34.8 % of GDP (EU-27), followed by consumption (22.1 %) and capital (29 %). As to differences between Member States, labour taxes range from 21.5 % in Malta to 44.5 % in Sweden. Consumption was effectively taxed at 34.0 % in Denmark, while the lowest implicit consumption tax rates were registered in Spain (16.4 %). The highest implicit tax rates on capital were recorded in Ireland (42.5 %), and the lowest in Estonia (8.4 %).

Achievements

A. General

In 1996 the Commission proposed a comprehensive review of taxation policy in 'Taxation in the European Union' (SEC(96) 487 of 20 March). 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 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 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 (→4.18.5).

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 (→4.8.2).

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 (→4.8.5).

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 judgments of the Court of Justice of the European Communities.

— 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 (→4.18.2), together with the computerised VIES facility for verifying VAT numbers. Initiatives in the last decade 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 the first phase of which ran from 2003–07 with the second phase, decided in 2007, running until 2013. Fiscalis extends 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 latest 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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July 2008

4.18.2. Value added tax (VAT)

VAT has been applied in Member States since 1970. The EU legislative activities are aimed at coordinating and harmonising VAT legislation for the purpose of a proper functioning of the internal market. Directive 2006/112/EC seeks a harmonisation of regulations on VAT around two tax bands.

Legal basis

Under Article 93 of the Treaty establishing the European Community (EC), 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 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. Finally, Directive 2006/112/EC (the 'VAT directive'), adopted in 2007, brings together various amendments to the sixth VAT directive over the years in a single piece of legislation, thus simplifying and clarifying the legislation in this field.

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 re-allocate the VAT collected in the countries of origin to the countries of consumption. This might have been based on VAT returns, on macroeconomic 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 six 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 35a 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.

In pursuit of this final objective, a draft directive was proposed in 1997 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 **sixth VAT directive** with a system of deduction in the country of registration, together with a linked proposal on **eligibility for deduction** (COM(1998) 377) were published in 1998. However, all these proposals were withdrawn by the Commission as there would have been no realistic chances for adoption.

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 entitled **'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.

On 20 October 2003, the Commission presented the communication **'Review and update of VAT strategy**

priorities' (COM(2003) 614) 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 had amended the sixth VAT directive (77/388/EC) since 1977. The most important recent piece of EU VAT legislation is **Directive 2006/112/EC. This 'VAT directive' is effectively a recast of the sixth VAT directive as amended over the years**, bringing together various provisions (see points a and b below) in a single piece of legislation, thus providing more clarity.

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.

a. Simplification and modernisation

A simplification of the 'tax representative' system (COM(1998) 660) was published in 1998 and adopted by the Council in 2000. This directive annulled from 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 the 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 the 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.

Two directives were adopted in February 2008, one on the place of supply for services (Directive 2008/8/EC), and the other on VAT refunds (2008/9/EC). The new rules will ensure that VAT on (business to business) services will accrue to the country of consumption, with some exceptions, such as restaurant and catering services. The directive on VAT refunds will ensure a quicker processing of VAT refund claims.

Important legislation proposed by the Commission, but pending in the Council include notably the so called 'one-stop shop' (COM(2004) 782) or the taxation of postal services (COM(2003) 243). Moreover, in terms of pending procedures, in November 2007 the Commission proposed to modernise the current legislation for insurance and financial services (COM(2007) 746 and 747).

b. More uniform application and administrative cooperation

Council Regulation (EC) No 1777/2005 of 17 October 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 the 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 in 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, the first phase of which ran from 2003 to 2007 (Decision No 2235/2005/EC), and the second phase of which is currently running until 2013 (Decision No 1482/2007/EC), as well as the computerised VAT information exchange system (VIES) facility to verify VAT numbers (Regulation (EC) No 638/2004) are meant to reinforce the functioning of indirect taxation systems in the EU in general. As the measures to improve the present system continue, in March 2008 the Commission proposed a package of measures to tackle VAT evasion connected with intra-Community transactions more effectively (COM(2008) 147).

B. VAT rates

The current structure of the VAT rates is in essence a snapshot of the actual VAT rates prevailing in the Member States at the moment the 1993 VAT harmonisation was undertaken.

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 to 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/EC). In 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 to 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 entitled '**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, now lasting until 31 December 2010 and applying also for most new Member States.

Reduced VAT rates have repeatedly caused some controversy between Member States, some of which have different preferences in terms of their application. As a result, in July 2008, the Commission put forward a proposal (COM(2008) 428) to allow a more systematic use of reduced rates for locally supplied services including labour-intensive services and restaurant services. However, the required unanimity in the Council remains uncertain in this area.

In the past, some controversy has also 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.

Role of the European Parliament

According to Community legislation in the field of VAT (mostly based on Articles 93 and 94 of the EC Treaty), Parliament's role is limited to the consultation procedure.

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; later, in 1997, Parliament voted **against** the proposed 25 % upper limit on the VAT standard rate but in 1998 it approved a 15 to 25 % standard rate band under certain conditions. 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 environment-friendly activities — pressure which was eventually successful.

In December 2005, Parliament then voted for a maximum rate of 25 %. Also, Parliament confirmed its support for reduced rates for certain labour-intensive services. In December 2007, Parliament supported the extension of the temporary derogations for some new Member States; however, urging the Council to find a long-term solution on the structure of rates until the end of 2010. Parliament also underlined that locally supplied services do not affect the single market and Member States should therefore be allowed to apply reduced rates, or even zero rates, in this area.

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July 2008

4.18.3. Excise duties: alcohol and tobacco

In order to ensure the good functioning of the internal market and of its competition, European legislation provides for harmonisation of excise duties on tobacco and alcohol. Typically, the applicable rates are minimum rates or target rates on which there would be long-term convergence.

Legal basis

Under Article 93 of Treaty establishing the European Community (EC), 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 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 of pure 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 hl/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 euros 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.

Product category	Minimum rate in euros per 100 litres per degree of alcohol	Minimum rate in euros 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

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 (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 euros 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 and 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 (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 observed 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) were published in **2001** and 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 European Parliament (see below), but in February 2002 were adopted in a modified form by 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, which adopted the general regime).

Role of the European Parliament

A. 1987–92

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'.

→ Arttu Makipaa
September 2006

4.18.4. Taxation of energy

Various fees were set at European level in the field of energy, in particular to protect the environment, public health or to ensure a prudent and rational utilisation of natural resources. In this context, various regulations and minimum excise duties have been established for mineral oils, diesel, fuels and biofuels.

Legal basis

Under Article 93 of the Treaty establishing the European Community (EC), 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 CO_2/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 CO_2 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 CO_2 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 CO_2 emissions. The environmental aspects of the situation were outlined in a communication entitled '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 (EUR per 1 000 l)	421	Gas oil (EUR per 1 000 l)	302
Unleaded petrol (EUR per 1 000 l)	359	LPG (EUR per 1 000 kg)	125
Natural gas (EUR per gigajoule)	2.6	Kerosene (EUR per 1 000 l)	302

Energy products used as motor fuels for certain industrial and commercial purposes			
Gas oil (EUR per 1 000 l)	21	Kerosene (EUR per 1 000 l)	21
LPG (EUR per 1 000 kg)	41	Natural gas (EUR per gigajoule)	0.3

Energy products used as heating fuels			
Heating gas oil (EUR per 1 000 l)	21	Heavy fuel oil (EUR per 1 000 kg)	15
Kerosene (EUR per 1 000 l)	0	LPG (EUR per 1 000 kg)	0
Natural gas (EUR per gigajoule)	0.15	Electricity (EUR per MWh)	0.5
Coal and coke (EUR per gigajoule)	0.15		

Energy products used as heating fuels (non-business use)			
Heating gas oil (EUR per 1 000 l)	21	Heavy fuel oil (EUR per 1 000 kg)	15
Kerosene (EUR per 1 000 l)	0	LPG (EUR per 1 000 kg)	0
Natural gas (EUR per gigajoule)	0.3	Electricity (EUR per MWh)	1
Coal and coke (EUR 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, Slovenia and Slovakia** 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 entitled '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 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 on 8 May 2003 and published in the *Official Journal of the European Union* (OJ L 123, 17.5.2003).

F. VAT on other fuels

Among other recent tax proposal is 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 European Parliament 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.

→ Arttu Makipaa
September 2006

4.18.5. Personal and company taxation

The field of direct taxation is not directly regulated by European legislation. Nevertheless, several directives and the jurisprudence of the Court of Justice are helping to establish harmonised standards for corporate tax and income tax. Moreover, communications and guidelines emphasise the concern to prevent tax evasion and double taxation within the EU.

Legal basis

There is no explicit provision in the Treaty establishing the European Community (EC) for legislative competences in the area 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 tax-payers 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, 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 (→4.18.1) 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 Parliament, it was withdrawn as a result of failure to agree in the Council. A new version appeared in 1998 (COM(1998) 67) as part of the 'Monti package' (→4.18.1), 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; to harmonise corporation tax rates within a 30 % to 40 % band; and to 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 (→4.18.1). 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 begun its work in November 2004. Experts from all 25 Member States and the Commission participate in the working group 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 (CJ) 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 CJ 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 USA. 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 Andorra, Liechtenstein, Monaco, San Marino and Switzerland 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 USA 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.

2004–06	2007–09	2010+	Following agreement with Switzerland, the USA, etc.
Belgium, Luxembourg and Austria: **15 %** withholding tax. Others: automatic information exchange.	Belgium, Luxembourg and Austria: **20 %** withholding tax. Others: automatic information exchange.	Belgium, Luxembourg and Austria: **35 %** withholding tax. Others: automatic information exchange.	Vote by unanimity on whether to adopt **automatic** information exchange, depending upon Andorra, Liechtenstein, Monaco, San Marino and Switzerland adopting and the USA being 'committed to' information exchange 'upon request as defined in the OECD agreement'.

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**.

Parliament gave its initial views on the Commission's proposals in the field of corporate taxation in its resolution of March 2002 (→4.18.2). 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 13 December 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
July 2008

5

Economic and monetary union

Economic and monetary union means greater coordination of the Member States' economic policies at European level and a commitment to avoid excessive budgetary deficits (Stability and Growth Pact). EMU has led to the introduction of a single currency: the euro. Since 1 January 1999, the European Central Bank (ECB) has been responsible for steering European monetary policy.


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5.1. The development of economic and monetary union

The completion of the internal market also involves a monetary union between the EU Member States. Monetary union became a reality through the introduction of a single European currency, the 'euro'. The common currency is currently used in 16 EU Member States. New Member States must also adopt the euro after a minimum of two years' participation in EMS II and fulfilment of the convergence criteria.

Legal basis

— Decisions of the European Summits of The Hague (1969), Paris (1972) and Brussels (1978).

— Articles 98 to 124 of the Treaty establishing the European Community (EC), introduced by the Maastricht Treaty.

— Protocols annexed to the EU Treaty on the transition to the third stage of economic and monetary union, 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 exchange rate fluctuations and the costs inherent in exchange transactions, as well as the costs of hedging against currency fluctuation risks;

— to ensure comparability of costs and prices within the Union, which helps consumers, stimulates intra-Community trade and facilitates 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 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 policy

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 period of flexible exchange rates. With the oil crisis of the early 1970s, the European currencies came under even greater pressure. In the face of such general 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 or Government had already decided at **the Hague Summit** that the Community should progressively be transformed into an economic and monetary union.

In October **1970**, **Pierre Werner,** the then Prime Minister of Luxembourg, proposed the following.

— In the first stage, that the fluctuation margins between the currencies of the Member States should be reduced.

— Then the complete freedom of capital movements should be achieved with integration of the financial markets, particularly the banking systems.

— Finally, exchange rates should be fixed irrevocably between the currencies.

On **12 April 1972** the **'snake in the tunnel'** narrowed the fluctuation margins between the Community currencies to ± 2.25 % (the snake) and those operating between these currencies and the dollar to ± 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).

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 five of the then nine Member States (Belgium, Denmark, Germany, Luxembourg and the Netherlands) 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. The latter did not join the exchange rate mechanism until 1990.

Greece, which became a member of the Community in 1981, did not join the exchange-rate mechanism, but became a member of EMS II when it joined the common currency in 1999.

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 1992-1993 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 guarantee a higher degree of internal and external 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, a certain 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 and became an international financial instrument. 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 (EMU)

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 'by 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 that had emerged owing to 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 (EMI) (→5.2), 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 to 31 December 1993)

This consisted of:

— **completion of the internal market**, 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 to 31 December 1998)

a. The European Monetary Institute (EMI)

Set up on 1 January 1994 (→5.2), this was the precursor to the future European Central Bank and was to prepare for the third stage of EMU.

b. Budgetary and monetary discipline

In this stage, Member States were to:

— render their central banks independent of the political authorities (Article 116(5) of the EC Treaty);

— discontinue their overdraft facilities with their central banks and their privileged access to financial institutions (Articles 101, 102, 103 of the EC Treaty);

— endeavour to fulfil the following five convergence criteria (Article 121 of the EC Treaty):

- an inflation rate not exceeding more than 1.5 % the average of the three Member States achieving the best result on price stability 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 close to that level owing to a substantially diminishing trend,
- a long-term interest rate that does not exceed more than 2 % the average of the three best performing countries in the area of price stability,
- maintenance of the normal fluctuation margins in the exchange-rate mechanism of the European Monetary System and no devaluation against the currency of another Member State 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, decided that 11 countries — Germany, Belgium, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal and Finland — would proceed to the next stage.

3. Third stage (1 January 1999 to 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)

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 EC Treaty). 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).

d. The Stability and Growth Pact

Adopted by the Amsterdam European Council on 16 and 17 June 1997 (→5.5), 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) No 1466/97 and (EC) No 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 in 2004 and 2007, as well as Sweden, 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 EMS II. The Slovenian tolar ceased to participate in EMS II as Slovenia joined the euro area on 1 January 2007. On 2 May 2005 three other Member-State currencies joined EMS II: those of Cyprus, Latvia and Malta. After Cyprus and Malta joined the euro area on 1 January 2008, the Maltese lira and Cypriot pound ceased participating in EMS II. On 25 November 2005 the Slovak koruna joined the mechanism. The Slovakian koruna will no longer participate in EMS II once Slovakia joins the euro zone on 1 January 2009. 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 1 euro)	Fluctuation band
Denmark (krone)	7.46038	+/- 2.25 %
Estonia (kroon)	15.6466	+/- 15 %
Latvia (lat)	0.702804	+/- 15 %
Lithuania (lita)	3.45280	+/- 15 %
Slovakia (koruna)	30.1260	+/- 15 %

F. Enlargement of the euro area

The new Member States which joined the EU in 2004 and 2007, as well as Sweden, have no opt-out clause. In order to join the euro area they have to participate in the exchange rate mechanism for a minimum of two years and they must fulfil all further nominal convergence criteria. Every two years the European Commission and the European Central Bank submit a convergence report, verifying fulfilment of the criteria in these countries. Convergence reports must also be issued if requested by a Member State in the interim period between the routine reports.

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 thus became the 13th member state of the euro area on 1 January 2007. At the beginning of 2007, Cyprus and Malta requested verification of convergence for their national economies. Both countries were given the green light to join the euro area on 1 January 2008. In the spring of 2008, the European Commission and the ECB submitted their routine convergence report, which concluded that Slovakia fulfilled the convergence criteria. Slovakia will become the 16th Member State of the euro area on 1 January 2009.

Role of the European Parliament

The European Parliament 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.

Parliament calls for closer involvement in the nomination and appointment of ECB Board members and is of the opinion that the democratic *ex -ante* reporting and transparency would be improved if a candidate proposed by Council were to face a vote of approval in Parliament. Parliament is calling for improvements to the procedure for enlargements of the euro area since the tight timetable of this consultation process is making it very difficult to verify the content of convergence reports objectively.

→ Christine Bahr
July 2008

5.2. The institutions of economic and monetary union

The institutions of the European monetary union are largely responsible for establishing the European monetary policy, the rulings on the issue of the euro and the price stability within the EU. These institutions are the ECB, the ESCB, the Economic and Financial Committee, the Eurogroup and the Economic and Financial Affairs Council (Ecofin).

Legal basis

— Articles 105 to 124 of the Treaty establishing the European Community (EC).

— Protocols annexed to the Treaty on European Union (Maastricht Treaty):

- on the European Monetary Institute (Articles 1 to 23),
- on the statutes of the European Monetary Institute, the European System of Central Banks and the European Central Bank (Articles 1 to 53);
- 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.

Objectives

The main objectives of the institutions of economic and monetary union are:

— to finalise the completion of the internal market by removing exchange-rate fluctuations and abolishing the costs inherent in exchange transactions, as well as the costs of hedging against currency fluctuation risks;

— to ensure comparability of costs and prices within the Union, which helps consumers, stimulates intra-Community trade and facilitates 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 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 to 31 December 1993).

A. The institutions of the second stage of EMU (1 January 1994 to 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 and the Council (Article 117 of the EC Treaty).

In accordance with Article 123(2) of the EC Treaty, 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 EC), it had an advisory role.

It had the task of:

— keeping 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 reporting regularly thereon to the Council and to the Commission;

— delivering opinions to the Council or Commission, contributing to the preparation of the work of the Council, and examining, at least once a year, the situation regarding the movement of capital and the freedom of payments and reporting 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 not a European institution, but does have legal personality (Article 107(2) EC and Article 9 of the ECB Statute). It is based in Frankfurt-am-Main. It is run by two bodies that enjoy independence from Community institutions and national authorities, the ECB Governing Council and the Executive Board and — for certain tasks — by the ECB General Council, which is not itself a decision-making body of the ESCB.

i. The Governing Council

This 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) EC 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

This 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) EC).

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

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 (→5.1).

b. Role

Only the ECB may authorise the issue of banknotes within the euro area. 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 EC).

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 EC).

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 EC).

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 the trans-European automated real-time gross settlement express transfer system (Target), a euro payment system that links up the national payment systems and the ECB payment mechanism.

The ECB is making the arrangements to integrate the central banks of the Member States joining the euro area into the ESCB.

2. The European System of Central Banks (ESCB) and the euro system

a. Organisation

The ESCB consists of the ECB and the national central banks of all EU Member States (Article 107 paragraph 1 EC and Article 1 paragraph 2 of the Statute). It is governed by the same decision-making bodies as those of the ECB (Article 107 paragraph 2 EC).

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 EC). 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) EC 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 EC;

— 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 European Parliament 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 paragraph 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 European Parliament, the Council and the

Commission, and to the European Council (Article 113(3) EC Treaty).

The President of the ECB must then present this report to the Council and to the European Parliament, 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 European Parliament. In accordance with Article 113(3) EC, Members of the European Parliament question the President of the ECB during the monetary dialogue held four times a year. They discuss the monetary decisions of the ECB and the economic situation, thereby ensuring that the ECB remains 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'. The President of the ECB, or another member of its Governing Council, appears before Parliament's Committee on Economic and Monetary Affairs at least once every three months to answer questions on the economic outlook and to justify the conduct of monetary policy in the euro area. In addition, Parliament routinely delivers an opinion on the ECB's annual report in the context of an own-initiative report.

Amendments introduced by the Treaty of Lisbon

A. The European Central Bank

The Treaty of Lisbon manages the ECB as a body of the European Union (Articles 282 to 284 of the Treaty on the Functioning of the European Union), whereas it has no status whatsoever according to the provisions of the EC Treaty, although it does have legal personality. The ECB is of the opinion that its classification as a body contravenes its independence. The Treaty of Lisbon states in addition that the members of the ECB Executive Board are selected and appointed by mutual consent by a qualified majority in the European Council (Article 283 of the Treaty on the Functioning of the European Union) and not as stipulated in the EC Treaty.

On the other hand, Parliament welcomes the status of the ECB as an EU body and believes that the recognition of the ECB as such bolsters Parliament's responsibility as an institution accountable to the ECB with regard to monetary decisions. In addition, Parliament argues that its role in appointing members of the ECB Executive Board should be broadened given the status of the ECB as a body.

B. The Eurogroup

The role of the Eurogroup is enhanced by the Treaty of Lisbon with the aim of increasing coordination in the euro area. The term 'Eurogroup' is also first mentioned in the Treaty. Official innovations include the election by the majority of the Member States represented in the Eurogroup of a chairman of the Eurogroup for a term of two and a half years (Article 2, Protocol 14 of the Treaty on the Functioning of the European Union).

Parliament recognises the Eurogroup's growing contribution to determining a major part of the economic agenda in the European Union and welcomes the official amendments introduced by the Treaty of Lisbon in relation to the Eurogroup.

→ Christine Bahr
July 2008

5.3. European monetary policy

The ECB and ESCB ensure the achievement of the primary goal of European monetary union, which is to maintain price stability. The main instruments of the single monetary policy for the euro area are the open market operations, the standing facilities and the holding of minimum reserves.

Legal basis

— Articles 98 to 124 of the Treaty establishing the European Community (EC).

— Protocol accompanying the Maastricht Treaty on the statute of the European System of Central Banks (ESCB) and the European Central Bank (ECB): Articles 1 to 52.

Objectives

The primary objective of the ESCB under Article 105(1) of the EC Treaty is to guarantee price stability.

Without prejudice to this objective, the ESCB supports the general economic policy in the Community, with a view to contributing to the achievement of the Community objectives laid down in Article 2 of the EC Treaty. The ESCB acts in

accordance with the principles of an open market economy with free competition, favouring an efficient use 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 EC Treaty and Article 7 of the Statute of the ESCB. 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 form of the mandate entrusted to the members of the Executive Board and the Governing Council (→5.2).

The ECB's independence is also maintained by the **prohibitions** referred to in Article 101 of the EC Treaty, 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).

The independence of the ECB centres around the free choice of monetary policy instruments. The Treaty 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 accountability and transparency of the ECB

In order to ensure the credibility of the ECB, the Treaty (Article 113(3) EC) and the Statute (Article 15) impose reporting commitments. 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. In practice the ECB publishes Monthly Bulletins which provide an in-depth analysis of the economic situation and the outlook for price developments.

The ECB is also accountable to the European Parliament. Members of the ECB's Executive Board regularly appear before the European Parliament (→5.2). However, the EP cannot give any instructions to the ECB and has no *a posteriori* control.

3. Voting rules in the ECB Governing Council (Article 11 of the Statute)

Voting in the Governing Council respects the 'one member, one vote' principle. Each member of the Governing Council therefore has one vote. Monetary policy decisions are taken by a simple majority of members eligible to vote; in the event of a tie, the ECB President has the casting vote.

As from the time when the number of members of the Governing Council exceeds 21, each member of the Executive Board will have one vote and the number of governors of national central banks eligible to vote, and thus the number of voting rights held by the NCBs, will be 15. The voting rights will be assigned and rotate as follows:

— as from the time when the number of governors of national central banks exceeds 15 and until it reaches 22, the NCB governors will be allocated to two groups, according to a ranking of the size of their Member State's share 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 will be assigned weights of 5/6 and 1/6, respectively. The first group will be composed of five governors with five voting rights and the second group of the remaining governors with the remaining votes.

— As from the time when the number of NCB governors is 22, the governors will be allocated to three groups according to a ranking based on the above criteria. The first group will be composed of five governors and will be assigned four voting rights. The second group will be composed of half of the total number of NCB governors, with any fraction rounded up to the nearest integer, and will be assigned eight voting rights. The third group will be composed of the remaining governors and will be assigned three voting rights.

— The Governing Council will adopt all the necessary measures to implement the rotation of voting rights by a majority of two thirds of its members, both eligible to vote and not eligible to vote. In particular, the Governing Council may decide to defer the start of the rotation system until such time as the number of NCB governors is more than 18.

When carrying out their activities in the Governing Council, the governors of the national central banks must not defend national interests but must act in the collective interest of the euro area. The minutes of the Governing Council meetings and the breakdowns of votes cast 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; an important 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 clearly defined once again during the review of the monetary strategy on 8 May 2003.

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 on 8 May 2003 and one important point was clarified: inflation rates **below but close to 2 %** are to be achieved over the medium term. This underlined that a sufficient safety margin downwards was to be provided to guard against the risk of deflation and to allow for a possible measurement bias in data collection and differences in inflation rates within the euro area.

3. The first pillar of the monetary policy strategy

The first pillar of the ECB's monetary policy strategy is economic analysis. This 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, among others: 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.

4. The second pillar of the monetary policy strategy

The second pillar of the ECB's monetary policy strategy is monetary analysis. In this, 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 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 provide a benchmark for the assessment of monetary developments, the ECB announced a reference value for the monetary aggregate M3. This reference value refers to the annual rate of M3 growth that is deemed to be compatible with price stability over the medium term, and has stood at 4.5 % since the start of the EMU.

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.

The ECB uses a range of monetary policy instruments to implement its monetary policy.

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 rates. 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.

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 bound 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 money market in situations of very high money supply and demand.

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 euro system, making it easier to control money market rates through regular allocations of liquidity. The calculation methods and determination of the amount required are set by the Governing Council.

D. 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.

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 new highs as a result of the global financial crisis that began in August 2007.

Inflation averaged 2.1 % in 2007, a little above the level compatible with the definition of price stability. Since the end of 2007 inflation has showed a marked increase as a result of the global economic situation. The ECB has not resorted to short-term voluntarism in response to this increase, however, but is working to maintain price stability in the medium term, in accordance with its mandate.

Role of the European Parliament

In its resolution on the ECB's 2007 annual report the EP points out that it has called for greater transparency in the ECB, and it also emphatically demands improvements in the ECB's communications policy. As regards the ECB's monetary policy strategy the EP takes the view that the two-pillar model is an appropriate method for measuring price stability.

Changes resulting from the Lisbon Treaty

The Lisbon Treaty does not provide for any significant changes to the implementation of Europe's monetary policy.

→ Christine Bahr
July 2008

5.4. Coordination of economic policies

The coordination of economic policy is a necessary step to achieve the objectives of the Treaty. Such coordination is essential notably in the fields of tax policy, budget policy and employment. One of the procedures used for coordination is the open method of coordination which permits the identification and the application to other Member States of the best practices used in one Member State.

Legal basis

— Articles 2, 4 and 98 to 104, introduced by the Treaty of Maastricht; and Articles 125, 126 of the Treaty establishing the European Community (EC), 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. The areas and forms of coordination are prescribed in subsequent articles. Article 99 lays down the procedure 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) and the national central banks to any public body. Article 104 prescribes the procedure to be followed in cases of excessive deficit. The thresholds for the level of public debt and deficit are defined in a separate protocol to the Treaty (Protocol on excessive deficit procedure). The Title on employment, introduced in the Treaty of Amsterdam, establishes employment policy among the fields of economic policy coordination (Articles 125 and 126) (→4.9.3).

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 the 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 external 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, i.e. in product and services markets, seeks to foster long-term convergence of national economies since their evolution determines the direction in which the EU economy as a whole 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 economic and 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). 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 (EC) No 3605/93 (amended by Regulation (EC) No 475/2000) on the application of the protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community;

— Council Regulation (EC) No 1466/97 (amended by Regulation (EC) No 1055/2005) on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies;

— Council Regulation (EC) No 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).

A further framework for coordination is defined by decisions taken 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 EC No 1467/97 into guidelines to assist the Member States in drawing up their programmes. It also aims to facilitate 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 the Member States that have introduced the euro currency) discusses EMU-related matters informally, usually before the Ecofin Council meeting. The ECB participates when matters are linked to monetary or exchange rate policy. The Commission (in particular the Commissioner and the Directorate-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 gives opinions and prepares the Council's work, as does 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 (BEPGs)

a. Nature and frequency

The 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. In 2003 the period for major revisions was 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 there is an emphasis on peer pressure exercised by other Member States making 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 has been publishing an annual 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 also constitutes an important link between the BEPGs and the coordination of budgetary policies under the provisions relating to the Stability and Growth Pact (→5.5).

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).

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, the Economic and Social Committee and the Committee of the Regions each provide an input to the employment guidelines which are combined with the BEPGs into the new integrated guidelines for growth and jobs (→4.9.3).

b. Legal status

Policy coordination in employment matters uses the open method of coordination. 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 reforms — Cardiff process and Lisbon targets

a. Origin and content

The aim of structural reforms is to make product, services and capital markets more efficient, thus promoting a high standard

of living 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 to improve 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 reforms — Lisbon targets

At the Lisbon European Council 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 2010 in areas such as employment and research and development. The progress made in five years has been disappointing and thus the Lisbon agenda was re-launched in 2005.

Since 2000 the spring summit of the Heads of State or Government has focused specifically on economic policy, in particular evaluating 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, 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 restructuring of coordination instruments is a first result of the new approach defined at the Council's meeting in March 2005, which makes it possible to coordinate macroeconomic policies, microeconomic policies and employment policies around integrated guidelines in a dynamic and consistent fashion, in accordance with the procedures laid down in the Treaty.

In the continuation of the new economic governance cycle, the integrated guidelines serve as the basis for drawing up the national reform programmes that are presented by the Member States. These programmes respond to the Member States' specific needs and reflect the approach of the integrated guidelines involving macroeconomic policies, micro-economic policies, and employment.

The guidelines as well as the national programmes will be valid for the period 2008–10 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 a 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 in the 2008–10 period.

Role of the European Parliament

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. Parliament meets this requirement through a number of annual meetings with members of the national parliaments.

Parliament adopts a non-legislative resolution on the broad economic policy guidelines shortly before the spring summit of the Heads of State or Government so that its views are included in the process of economic governance. Parliament is consulted every year on the employment guidelines.

Changes resulting from the Treaty of Lisbon

The Treaty of Lisbon does not make provision for any significant changes in the area of economic policy coordination.

→ Christine Bahr
July 2008

5.5. Framework for fiscal policies

The framework for fiscal policies of EU Member States is primarily intended to monitor and supervise the deficits and debts of each member country. The aim is to achieve balanced budgetary positions over the economic cycle. The Commission is the institution responsible for the monitoring.

Legal basis

— Articles 2, 4 and 98-104 of the Treaty establishing the European Community (EC), 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).

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 because the other EMU members would bear some of the cost. 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 would 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 EC) cannot really be used as an effective threat. 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 only 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 — and all other countries that have since adopted the euro, the original criteria are no longer applicable. The 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, Latvia, Lithuania, Hungary, Poland and Slovakia (Slovakia is to adopt the euro on 1 January 2009)) 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 deficit limit of 3 % of GDP 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 (EC) No 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 B.3). Particularly immediately after its introduction, the reform was criticised for having gone too far in catering to the special needs of some Member States struggling with high budgetary deficits. However developments since 2006 can be interpreted as indicating that the increased flexibility and country-specific assessment have generally brought positive results and have led to a reduction in 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 they base their budget plans. 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 carried out 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).

The Council delivers an opinion on each programme acting on the recommendation of the Commission and after having consulted the Economic and Financial Committee.

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.

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.

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 2005 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 Treaty on European Union 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 original 2005 target of 3.6 % was revised upwards to 6.1 % and a deficit target of 5.2 % was set for 2006. The Commission therefore recommended that the Council decide that Hungary had again failed to take effective action to correct its excessive deficit. The deadline for Hungary to correct the deficit has now been set at 2009. In the meantime, it has been possible to conclude the procedures against Cyprus (2006), Malta (2007), Slovakia, Poland and the Czech Republic (all 2008). In 2008 a new procedure was initiated against the United Kingdom, which is to correct its excessive budget deficit by the 2009–10 financial year.

C. Evolution of deficits and debt

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 in deficits in the run-up to EMU, many Member States entered EMU with a slightly excessive 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. However, 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 then 12 EMU Member States had achieved the target of close to balance or in surplus. This picture was darkened at times 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. Following the reform of the Stability Pact, however, a slight improvement in average budgetary positions

has in fact been observed since 2006, although this should by no means be taken to indicate that the pact is working perfectly.

Public debt has been decreasing in the euro area, but the average level still somewhat exceeds the 60 % reference value as a result of the impact of three highly indebted countries (Belgium, Greece and Italy).

Role of the European Parliament

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.

Changes resulting from the Treaty of Lisbon

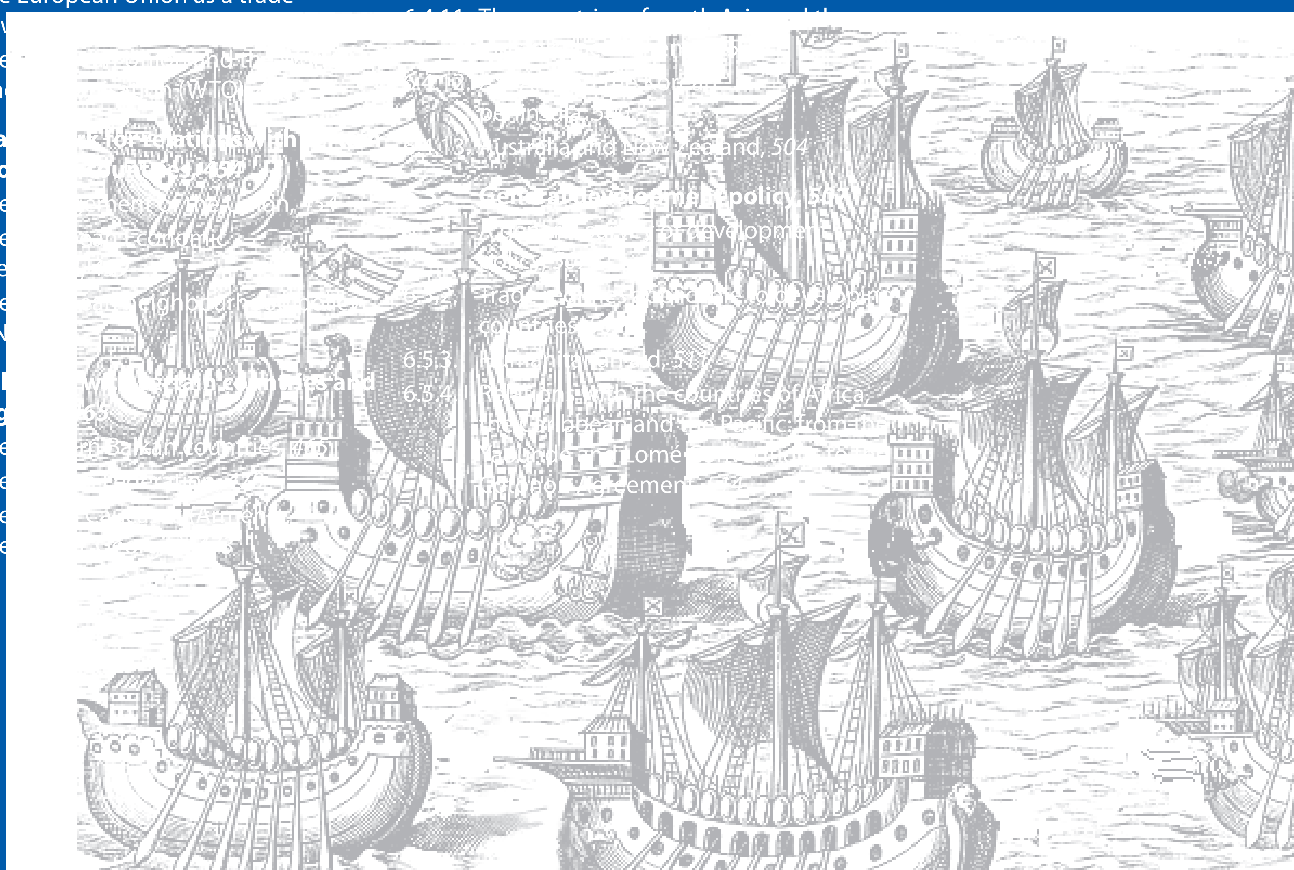
The Treaty of Lisbon does not make provision for any significant changes to the framework for fiscal policies.

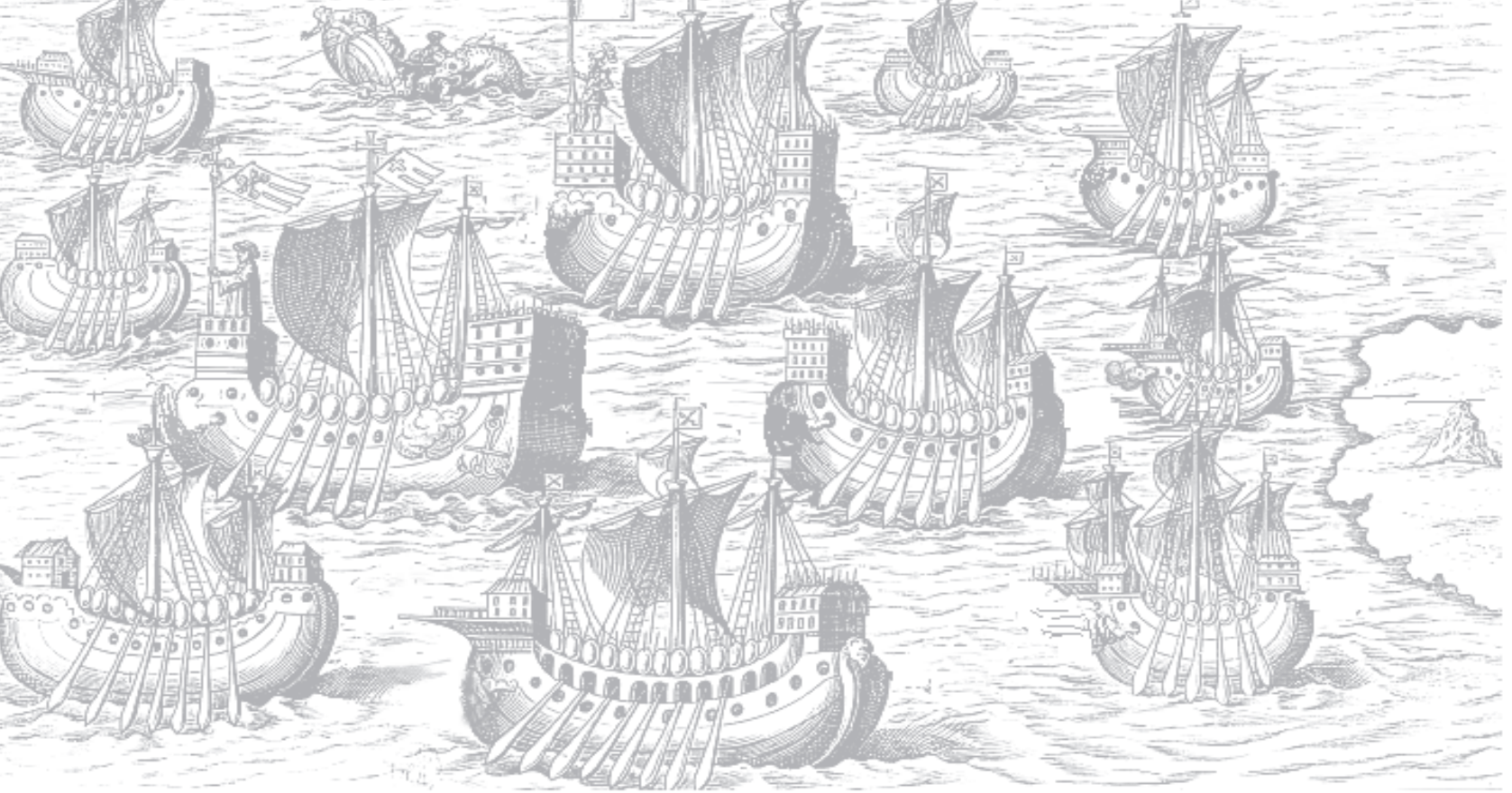
→ Christine Bahr
Arttu Makipaa
July 2008

6

The EU's external relations

In order to broaden and enhance its relations with other countries and regions of the world, the EU regularly holds summits with its main partners, which include Canada, Japan and the United States and, more recently, China, India and Russia. There are many agreements governing cooperation, trade and political dialogue between the EU and the countries of the Mediterranean, the Middle East, Asia, Latin America, eastern Europe, central Asia and the western Balkans. Within its common foreign and security policy (CFSP), the Union has also developed a European security and defence policy (ESDP) that could eventually, subject to further agreement, lead to the creation of a common defence structure.





6.1. Common foreign and security policy (CFSP)

6.1.1. Foreign policy: aims, instruments and achievements

The foundations of EU foreign policy were built in 1969 with the Davignon report which was the first step towards a European political cooperation. The Treaty on European Union then creates the concept of CFSP that the Treaties of Amsterdam and Nice reformed and expanded.

Legal basis

The Treaty on European Union (TEU) 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 TEU:

- 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 Treaty on European Union 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 TEU (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 Treaty on European Union (TEU) introduced the three-pillar system distinguishing the different areas of EU intervention. The second pillar, covering the common foreign and security policy (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 TEU 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 TEU 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, the 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 the 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

It was set up by a declaration annexed to the Amsterdam Treaty. Its main tasks within 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-option 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 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) to 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 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.

E. The Treaty of Lisbon (2009?)

After the failure of the EU Constitution project in 2005, its key institutional provisions were recast in a further reform treaty, which was signed in Lisbon on 19 October 2007. If this Treaty of Lisbon — despite being rejected in the Irish referendum on 12 June 2008 — is ultimately ratified, major changes would ensue in the foreign policy arena:

1. High Representative

The office of the European Union's High Representative for Foreign Affairs and Security Policy, currently combined with the role of Secretary-General of the Council, would be substantially enhanced as the new High Representative (originally called the EU Minister for Foreign Affairs in the Constitution) would also be a Vice-President of the Commission, thus increasing the impact, coherence and visibility of the EU's external action.

2. European External Action Service

A new European External Action Service would be established, composed of officials from the Council the Commission and the Member States, to provide back-up and support to the High Representative, in conjunction with the diplomatic services of the Member States, in the implementation of the CFSP.

3. Legal personality

A single legal personality for the Union would strengthen its role in external affairs and make it a more visible partner for third countries and international organisations. This would enhance its effectiveness in multilateral forums and in bilateral negotiations.

4. Enhanced cooperation

Although special decision-making rules would continue to apply in the ESDP, the way would be clear for enhanced cooperation among smaller groups of Member States in this policy area as well.

Role of the European Parliament

A. Treaty provisions

Article 21 of the Amsterdam Treaty urges the Presidency to consult the Parliament on the main aspects and the basic choices of the CFSP. The European Parliament may ask questions to the Council or make recommendations to it.

B. Interinstitutional Agreement

Under paragraph 40 of the Interinstitutional 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.

C. Actual action

Despite its modest **formal** role in the process, the European Parliament 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 Constitutional Treaty to further formalise its role in CFSP, the European Parliament 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
July 2008

6.1.2. Defending human rights and democracy

The European Union is committed to a policy in support of democracy and human rights in its external relations, based on its founding principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law. In practice, the European Union's human rights policy includes various instruments to mainstream human rights concerns into all EU policies and programmes, and financing specific projects through EU financial instruments to promote and protect human rights.

Background

Article 6 of the Treaty on European Union (TEU), which is the underlying legal provision concerning human rights, states: 'The Union is founded on the principle of liberty, democracy, respect for human rights and fundamental freedoms'.

Article 2 of the Lisbon Treaty on European Union (consolidated version, pending ratification) deepens this commitment by stating: 'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities'. Regarding the Union's external relations, the same article affirms the Union's commitment to 'eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter'.

Objectives

Article 11 of the TEU further specifies that one of the objectives of the common foreign and security policy (CFSP) is 'to develop and consolidate democracy and rule of law, and respect for human rights and fundamental freedoms'.

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 Treaty establishing the European Community (EC)).

Article 21 of the Lisbon Treaty on European Union (consolidated version, pending ratification) confirms and deepens these statements: 'The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.'

Instruments

A. General

1. Common foreign and security policy decision-making

Human rights issues arising in the EU's external relations through the common foreign and security policy (CFSP) or through the European Community's trade or development policies are generally dealt with by EU foreign affairs ministers in the General Affairs and External Relations Council, which meets every month. At working level within the Council, human rights issues in the EU's external relations are the responsibility of officials who meet in a thematic Working Party on Human Rights (COHOM). This working party is composed, as a general rule, of the heads of human rights divisions of the ministries of foreign affairs of each of the Member States, as well as of a representative of the Commission.

2. Appointment of a personal representative of the High Representative on Human Rights in the area of the CFSP

On 29 January 2007, the Secretary-General/High Representative for Common Foreign and Security Policy (CFSP), Javier Solana, appointed Dr Riina Kionka as his personal representative for human rights in the area of common foreign and security policy. Dr Kionka is the second person, following Mr Michael Matthiessen, to take up this position created by the Council in December 2004, 'as a contribution to the coherence and continuity of the EU human rights policy'.

3. Mainstreaming human rights and democratisation policies in the external relations of the EU

Mainstreaming is the process of integrating human rights and democratisation issues into all aspects of EU policy decision-making and implementation, including external assistance. The European Commission first outlined measures to this effect in its communication of May 2001 on the EU's role in promoting human rights and democracy in third countries. In 2006 the Political and Security Committee of the Council of the European Union endorsed recommendations on further measures on mainstreaming, such as a more systematic use of reports and recommendations by UN special rapporteurs and Treaty monitoring bodies as well as addressing systematically the protection of human rights in all phases of European security and defence policy (ESDP) operations.

4. Adoption of guidelines for EU policy on key human rights concerns

The EU guidelines on human rights are policy documents adopted by the Council of the EU. Guidelines are a practical instrument of EU human rights policy for the different EU actors allowing for a sustained action in a number of key areas of concern: 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), the protection of human rights defenders (2004), compliance with international humanitarian law (2005), and most recently the guidelines on the rights of the child in December 2007. Specific EU action has been taken and recommendations have been made to Member States on each of these guidelines.

5. European Instrument for Democracy and Human Rights (EIDHR)

On 1 January 2007, a new regulation for the European Instrument for Democracy and Human Rights (EIDHR) entered into force. It is the key EU financial assistance instrument in human rights and democracy promotion. In practice this is often done by supporting civil society actors working for human rights and democracy in third countries. It follows an earlier European Initiative for Democracy and Human Rights (between 1994 and 2006) during which an average of some EUR 120 million was allocated annually to projects related to the improvement of the human rights situation and democracy in third countries worldwide.

According to EIDHR strategy for the years 2007–10, the particular focus of EIDHR funding will be on the following areas:

— enhancing respect for human rights and fundamental freedoms in countries and regions where they are most at risk;

— strengthening the role of civil society in promoting human rights and democratic reform;

— support to areas covered by EU guidelines on key human rights concerns;

— supporting the international framework for human rights;

— EU election observation missions.

6. 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, bilateral trade agreements and the various types of association and cooperation agreements between the EU and third countries or regional organisations have included a human rights clause. This is formalised as an 'essential clause', a provision stipulating that respect for human rights and democratic principles underpins the internal and external policies of the parties and constitutes an essential element of the agreement. It is often followed by an additional clause on non-execution of the agreement in the case of breaches of such an essential element of the agreement. Measures taken under the human rights clause may take different forms, from reduction or suspension of cooperation to more serious sanctions.

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 (e.g. Russia, the Mediterranean), in 'joint actions' when an EU operational action is deemed to be necessary (e.g. appointment of special EU representatives 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. While these instruments are not specifically designed to defend human rights, they are regularly used for this purpose.

3. Démarches and declarations

Diplomatic démarches taken by the Presidency of the EU Council, 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. In 2007 over 90 démarches were made related to concerns on torture and ill treatment. General démarches on the death penalty were carried out in almost 30 countries. Along the same lines, public declarations can be used to call upon a government to respect human rights or to welcome a positive development (e.g. the holding of elections). Along the same lines, public declarations can be used to call upon a government to respect human rights or to welcome a positive development (e.g. the holding of elections).

4. Political dialogue and specific human rights dialogues

Human rights are systematically addressed within the political dialogue that the European Union conducts with third countries or regional groups, in the framework of the common foreign and security policy (CSFP). In addition, the European Union has engaged in dedicated human rights dialogues with a growing number of countries, the first being created with China and Iran. In 2001 the Council adopted the 'European Union guidelines on human rights dialogues'. Based on these guidelines, human rights dialogues should include discussions enhancing cooperation on human rights, registering the concern felt by the EU at the human rights situation in the country concerned, and endeavouring to improve the human rights situation in that country. In 2007 it was agreed that an EU–AU human rights dialogue should be an integral part of

the EU–Africa strategic partnership. That was the first time that the EU as an entity entered into a human rights dialogue with another entity, other than a State. A key challenge is for the human rights dialogues to go beyond recitation of well-known positions and to lead to concrete improvement of the human rights situation on the ground.

Current situation

EU human rights policy seeks to promote respect for all human rights and fundamental freedoms — civil, political, economic, social and cultural. However, within the wide range of human rights issues which the EU tackles, there are some thematic concerns of human rights and democracy promotion that have received special attention from the European Union recently.

A. The fight against the death penalty

The European Union is actively advocating the abolition of the death penalty, based on agreed 'Guidelines on EU policy towards third countries on the death penalty' which were adopted in June 1998. The EU calls on the countries which maintain capital punishment to take all necessary measures to abolish the death penalty and, as a minimum, to introduce a moratorium as a first step towards abolition. The available financial instruments have been utilised to provide concrete project support to this policy. By 2008, the European Commission had funded around 30 projects against the death penalty worldwide since 1994, with an overall budget of around EUR 15 million. EU action in this area also includes the 'Annual EU statement on the death penalty' on the World Day against the Death Penalty held on 10 October.

B. The fight against torture and other cruel, inhuman and degrading treatment or punishment

In line with the EU guidelines against torture, which were adopted in April 2001, the EU is heavily engaged in the global struggle against torture. The EU has actively pursued this policy on bilateral, regional and multilateral levels. At the United Nations, the European Union played a leading role in the adoption of the optional protocol to the UN Convention against Torture, in December 2002, which entered into force on 22 June 2006. This protocol institutes a system of national and international visiting mechanisms to inspect places of detention with a view to the prevention of torture. On the United Nations International Day in Support of Victims of Torture, 26 June 2008, the European Union underlined again the priority which it attaches to the global eradication of torture and other cruel, inhuman or degrading treatment or punishment, and to the full rehabilitation of torture victims.

C. International criminal justice and the fight against impunity

The EU has set itself the task of convincing countries through diplomatic démarches, awareness-raising initiatives, and financial support to ratify the Rome statute of the International Criminal Court, which entered into force in 2002. The EU policy towards the ICC is contained in a common position agreed in 2003, supplemented by an action plan in 2004. As a consequence, a provision on ratifying and implementing the Rome statute was already included in the revision of the Cotonou Agreement with the African, Caribbean and Pacific (ACP) countries signed in 2005. This reflects the commitment of the EU and the ACP States to the institutions of global governance. Similar provisions have since been included in all partnership agreements with third countries.

D. Rights of the child

In December 2007 a new set of EU guidelines for the promotion and protection of the rights of the child were adopted by the Council of the EU. The importance attached by the EU to the promotion of the rights of the child was already reflected in the earlier guidelines on children and armed conflict (2003) addressing the short-, medium- and long-term impact of armed conflict on children.

E. Women's rights and gender equality

Since the 1995 World Conference on Women, in Beijing, the EU has played a substantive role to promote women's human rights and gender equality both within the Union and towards third countries. Following a policy of gender mainstreaming, the European Union seeks to integrate the priorities and needs of women and men in all key policies. On 8 March 2007 the Commission adopted a communication entitled 'Gender equality and women's empowerment in development cooperation', as part of a series of EU policy initiatives aiming to coordinate and harmonise the development assistance of Member States and the Commission.

F. Racism, xenophobia and the protection of minorities

The fight against racism and xenophobia is both an internal and external priority for the EU. At the international level, the EU strongly supports the universal ratification of the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD), and has worked actively to ensure appropriate follow-up to the landmark Durban World Conference against Racism, Racial Discrimination Xenophobia and Related Intolerance (WCAR) held in 2001. In 2007 EU Member States voted unanimously in favour of the UN Declaration on the Rights of Indigenous Peoples.

G. Election assistance and observation

Since 2000 over 60 election observation missions and 10 election support missions have been deployed to countries in Africa, the Middle East, Central and South America and Asia, involving the participation of some 5 000 experts and observers in these missions. The aims of election observation are to deter fraud and violence and to build confidence in the electoral process among political contestants, civil society and the wider electorate. EU election observation missions are usually headed by a member of the European Parliament. As such EU election observation missions represent a very significant democracy-building tool, thus contributing also to the respect for human rights.

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. Powers

The European Parliament has become an important voice on human rights and democracy issues. It contributes to the drafting, implementation and evaluation of policies in the field of human rights through its resolutions, reports, missions to third countries, human rights events, inter-parliamentary delegations and joint parliamentary committees with third countries, oral and written questions, special hearings on specific issues and its annual Sakharov Prize. Through public discussions in plenary, committees, subcommittees and working groups, it holds the Council and the Commission to account. The President of the European Parliament also regularly takes up human rights issues with the representatives of third countries, in direct talks or in correspondence.

B. Activities

1. Ensuring the coherence of European Commission and Council action

The European Parliament holds a permanent dialogue with the Council of the EU and the European Commission, monitoring how they achieve the agreed policy priorities. Parliament also seeks to express its point of view on their action and encourage all the institutions to act when a common strategy or joint action is required.

Parliament's principal organ 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 European Parliament delegations to the parliaments of third countries. The European Parliament also adopts an annual report on human rights in the world and the EU's human rights policy.

2. Continuous dialogue with the international community and civil society

The Subcommittee on Human Rights is the centre of discussions on human rights in Parliament. It takes parliamentary initiatives in this policy sphere and provides a permanent forum for discussions on the human rights situation and the development of democracy in non-EU countries. The subcommittee meetings regularly feature dialogues with other EU institutions, the UN special rapporteurs and other representatives of the UN or its agencies, the Council of Europe, government representatives, human rights activists and relevant NGOs. It also conducts delegation visits to individual third countries, including the candidate countries to the European Union (e.g. Turkey). This ongoing exchange of information allows for appropriate action in rapidly changing circumstances, and opens up, for example, the possibility 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.

→ Jarmo Oikarinen
July 2008

6.1.3. Security and defence policy

Many advances have been made in the field of the European security and defence policy since the failure of the European Defence Community. Nevertheless, there is still room for significant progress in this area, and the European security strategy is a step towards that progress.

Legal basis

Title V of the Treaty on the European Union (TEU) on the common foreign and security policy (CFSP) (→6.1.1) and the five declarations on CFSP annexed to the TEU, particularly Nos 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 Petersburg tasks

Under Article 17(4), the Treaty of Amsterdam incorporated into the TEU the so-called Petersburg 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 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 Petersburg 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 European security and defence policy (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 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 Petersburg 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 voluntary cooperation, the Member States should be able to deploy within 60 days, and then sustain, forces capable of the full range of Petersburg tasks, including the most demanding, in operations up to corps level (up to 15 brigades consisting of 50 000 to 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 the ESDP. 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 with 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 made to conflict prevention under an EU programme for the prevention of violent conflict.

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 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), which was launched in June 2003,

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 former Yugoslav Republic of Macedonia 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 (crisis management) which mapped out for the first time, in an EU framework, their collective aspirations in this policy area. The crisis management 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 Petersburg 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 Petersburg 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.

Subsequently capabilities have been further developed with **an EU Operations Centre** and the so-called **battlegroups** (with two on stand-by for deployment from January 2007), **being declared fully operational**, i.e. they had reached full operational capacity (FOC) on 1 January 2007. In addition to the established military chain of command, the civilian chain of command has been strengthened recently by the creation of the civilian planning conduct capability (CPCC). Both the civilian and military command could take advantage of the Operations Centre in Brussels which has been available since January 2007 but can only be activated following a decision by the European Council. In addition, ongoing work continues on **civilian capability development** which is managed under the so-called civilian headline goal 2010 process.

In summary: Since the first EU civilian crisis management mission, the EU Police mission (EUPM) in Bosnia and Herzegovina, in January 2003 there has been a rapid increase in the number of operations conducted under the ESDP in support of the CFSP. The first civilian operation was soon followed by the first military crisis management mission, Operation Concordia, in the former Yugoslav Republic of Macedonia in April 2003. In total there have been 10 completed missions and nine are still ongoing (eight of the 19 have been, at least in part, military related).

Of these 19 passed or current operations five have been purely military operations with the remainder civilian or a mix of civilian and military components such as in the DRC (security sector reform mission named EUSEC) and in the African Union-owned and -led AMIS II (which interestingly draws upon EDF funds under the so-called African Peace Facility). All civilian missions (including the recent large police missions to Kosovo and Afghanistan) have been funded from the CFSP budget and as such the European Parliament (along with the Council) is called upon as a budgetary authority (i.e. decision-maker) in the context of the multiannual (financial perspectives) and annual budget.

Role of the European Parliament

The European Parliament has repeatedly welcomed the debate on European security and defence policy (ESDP), which began in Pörtschach in October 1998 and was elaborated in the bi-lateral Franco-British St Malo Declaration before being confirmed by the 1999 Cologne European

Council. At the beginning of the 2004 legislature, in recognition of the rapid development in ESDP, the European Parliament sep up a new Subcommittee on Security and Defence (SEDE) within its Foreign Affairs Committee. The European Parliament 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. Subsequently the EP has adopted specific resolutions on the European security strategy and in 2008 on the implementation of the European security strategy and European security and defence policy (ESDP). In addition, following discussions within SEDE on the scrutiny of ESDP, the European Parliament has adopted resolutions approving the deployment of ESDP operations in BA (EUFOR Althea), the DRC (EUFOR RD Congo) and in Chad (EUFOR Tchad/CAR).

European Parliament resolutions have underlined 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 2008 on the implementation of the European security strategy and ESDP, the European Parliament called once more for a strong parliamentary dimension to the ESDP by intensifying cooperation between the European parliament and the national parliaments, through joint meetings and regular consultation. It also called for a revision of the European security strategy to include important issues such as immigration, energy security, the international security implications of climate change and security-development nexus of issues.

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
July 2008

6.2. Economic policy and external trade

6.2.1. The European Union as a trade power

The EU is a major trading power since it is currently the second largest exporter after the United States and the largest importer in the world. Trade in services also tend to be considered as trade in the EU.

I. Trade

A. The EU's place in world trade

1. In 2006, the EU accounted for almost a **fifth of world trade**:

— it is the **first exporter ahead of the United States** with 19.2 %.

— it is the **second importer** after the United States with 19.0 %;

2. 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 11.2 % of exports;

— 1.3 % to 7.9 % of imports.

3. In the period 2002-2006, the EU's trade balance was slightly in deficit, whereas the United States is showing a growing deficit. China is showing a growing surplus while Japan's trade surplus is constantly diminishing...

Table 1 — World exports of goods (billion EUR)

	2002	2003	2004	2005	2006	% (2006)
EU-27	891.9	869.2	952.9	1 053.2	1 159.3	19.2 (*)
United States	713.6	624.4	639.0	709.1	804.8	12.0
China	337.5	379.6	466.1	599.5	752.8	11.2
Japan	412.9	389.5	421.1	443.0	478.3	7.1
World	4 689.1	4 519.1	5 026.8	5 851.2	6 718.2	100.0

(*) not including intra-Community trade

Source: IMF, Eurostat-COMEXT (EU)

Table 2 — World imports of goods (billion EUR)

	2002	2003	2004	2005	2006	% (2006)
EU-27	937.0	935.2	1 027.5	1 179.8	1 351.7	19.0 (*)
United States	1 235.9	1 124.7	1 197.3	1 363.3	1 491.6	21.0
China	272.1	321.3	399.3	470.7	559.2	7.9
Japan	342.2	325.9	352.2	399.6	443.2	6.2
World	4 976.8	4 796.7	5 353.4	6 200.1	7 094.1	100.0

(*) not including intra-Community trade

Source: IMF, Eurostat-COMEXT (EU)

Table 3 — Balance of trade (billion EUR)

	2002	2003	2004	2005	2006
EU-27	-45.1	-66.0	-74.6	-126.7	-192.5
United States	-522.4	-500.3	-558.3	-654.2	-686.8
China	65.3	58.2	66.9	128.8	193.6
Japan	70.7	63.6	68.9	43.4	35.1

Source: IMF, Eurostat-COMEXT (EU)

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 44 % of exports and over 30 % of imports.

b. Energy and chemical products come next.

c. Conversely, **foodstuffs** and **raw materials** constitute only a little over 5 % of exports and 5.3 % of imports.

Table 4 — Breakdown of total exports by product

	2000	2007
Foodstuffs and beverages	5.6 %	5.0 %
Raw materials	2.1 %	2.5 %
Energy	3.4 %	5.0 %
Chemical products	14.0 %	15.9 %
Machines and transport equipment	46.3 %	43.8 %
Other	28.6 %	27.7 %

Source: Eurostat

Table 5 — Breakdown of total imports by product

	2000	2007
Foodstuffs and beverages	5.5 %	5.3 %
Raw materials	5.0 %	4.9 %
Energy	16.2 %	23.3 %
Chemical products	7.1 %	8.4 %
Machines and transport equipment	37.4 %	29.1 %
Other	28.8 %	29.0 %

Source: Eurostat

2. Export-import balance by product

In 2007 the EU had a high surplus for chemical products and a very high surplus for machines and transport equipment. On the other hand, it has a considerable deficit for energy, which almost doubled during the period 2000–07.

Table 6 — EU-27 balance of trade by product (billion EUR)

	2000	2007
Foodstuffs and beverages	7.1	-13.4
Raw materials	-31.4	-39.7
Energy	-131.9	-269.1
Chemical products	48.4	77.4
Machines and transport equipment	21.9	129.2
Other	-42.7	-69.6
Total	-142.9	-185.3

Source: Eurostat

C. The EU's main trading partners

With more than 16 % of total trade during the period 2000–07, the **United States** remained the EU's main trading partner, being the first customer and the first supplier. However, this share has declined somewhat since 2000.

During the same period **China** moved from fourth to second place, replacing Japan. Its exports to the EU increased fourfold and its imports tripled.

During this period Japan fell from second to fifth place behind Russia and Switzerland. Russia has made considerable progress, moving from fifth to third place.

Finally, India and Brazil have taken the places of Taiwan and Canada respectively**. During the period 2000–07, EU exports to the major economic areas** had varied success. There was:

— **no change** with Latin America, ASEAN, the dynamic Asian economies (DAE) and Japan;

— **a slight increase** with the United States;

— **a relative increase** with the ACP countries, EFTA, the southern and eastern Mediterranean countries (MEDA) and the European Economic Area (EEA);

— **a significant increase** with China, the countries of the Commonwealth of Independent States (CIS) and the OPEC countries, as well as the candidate countries (Croatia, Macedonia and Turkey);

In spite of this progress, and with the exception of the United States, the EU candidate countries and the Southern and Eastern Mediterranean countries (MEDA), the EU's **trade balance** continues to show a **deficit** with most of the economic areas, notably China.

Table 7— Main trading partners of EU-27 (as a % of total imports+exports)

2000		2007	
1/USA	24.1 %	**1/USA**	16.6 %
2/Japan	7.5 %	**2/China**	11.4 %
3/Switzerland	7.3 %	**3/Russia**	8.7 %
4/China	5.5 %	**4/Switzerland**	6.4 %
5/Russia	4.7 %	**5/Japan**	4.6 %
6/Norway	4.0 %	**6/Norway**	4.5 %
7/Turkey	2.7 %	**7/Turkey**	3.7 %
8/South Korea	2.4 %	**8/South Korea**	2.4 %
9/Taiwan	2.4 %	**9/India**	2.1 %
10/Canada	2.2 %	**10/Brazil**	2.0 %

Source: Eurostat

Table 8 — EU exports by economic area (billion EUR)

Zone or Country	2000	2007	Variation 2007/2000 (as a %)
United States	238.2	261.6	+8.9
Candidate countries	39.5	67.9	+41.8
EFTA	101.6	140.4	+27.6
ACP countries	40.4	61.7	+15.1
OPEC	55.3	102.2	+45.8
MEDA	90.8	119.6	+24.0
ASEAN	41.8	54.5	+0.2
Latin America	55.6	71.3	+0.2
EEA	1 693.9	2 649.0	+36.0
CEECs	148.0	29.2	-80.2
DAE	83.6	98.9	+0.1
CIS	33.8	128.6	+73.7
China	25.8	71.7	+64.0
Japan	45.4	43.7	+3.7

Source: Eurostat

(1) Croatia, former Yugoslav Republic of Macedonia, Turkey

(2) MEDA: southern and eastern Mediterranean countries

(3) EEA: European Economic Area

DAE: Dynamic Asian economies (Thailand, Malaysia, Singapore, South Korea, Taiwan, Hong Kong)

CIS: Commonwealth of Independent States (countries of the former USSR)

Table 9 — Imports by economic area (billion EUR)

Zone or Country	2000	2007	Variation 2007/2000 (as a %)
United States	206.2	181.1	-12.1
Candidate countries	22.4	53.7	+58.2
EFTA	112.3	157.2	+28.5
ACP countries	44.6	61.7	+27.7
OPEC	87.2	126.3	+30.9
MEDA	67.3	107.1	+37.1
ASEAN	75.3	80.2	+6.1
Latin America	51.2	88.7	+42.2
EEA	1 656.6	2 624.7	+36.8
CEECs	122.5	13.3	-89.1
DAE	116.6	129.3	+9.8
CIS	76.5	184.6	+58.5
China	74.6	231.4	+67.7
Japan	92.0	78.1	-15.1

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.

A. General situation

The European Union accounts for more than a third of world trade in services. It is still the premier importer and premier exporter.

During the period 2004–07 the EU saw an increase in its surplus, which is now higher than that of the United States. Japan has a persistent deficit.

Table 10 — Exports, imports and balance of trade in services (billion EUR)

	2004	2005	2006	2007
		EU-27		
Credit	368.1	402.8	441.5	501.4
Debit	321.7	349.9	373.0	413.0
Balance	46.3	52.8	68.4	88.3
		United States		
Credit	278.3	309.1	333.5	346.6
Debit	234.9	253.7	273.0	271.6
Balance	43.4	55.4	60.5	75.0
		Japan		
Credit	78.5	88.8	93.4	ng
Debit	109.0	108.1	107.9	ng
Balance	-30.5	-19.3	-14.5	ng

Source: Eurostat, IMF

B. Type of services

Services (insurance, financial services, IT services, licences) now rank first in exports, having displaced transport and travel.

Table 11 — Trade in services of EU-27 (billion EUR)

	2004			2007		
	Credit	Debit	Net	Credit	Debit	Net
Total services	368.1	321.7	46.4	501.4	413.0	88.4
Transport	93.5	79.5	14.0	118.5	102.0	16.5
Travel	62.1	79.5	-17.4	76.7	94.1	-17.3
Communication services	6.4	7.1	-0.7	9.8	10.7	0.9
Construction	9.6	5.8	3.8	15.9	7.9	8.0
Insurance	10.7	8.4	2.3	14.3	7.7	6.5
Financial services	29.6	11.9	17.7	54.3	21.3	33.0
Information technology & information	16.3	8.1	8.2	23.6	10.3	13.2
Royalties and licence fees	20.4	29.4	-9.0	25.5	36.1	-10.6
Other business services	102.4	77.5	24.9	147.8	107.6	40.2
Personal, cultural and recreational services	5.1	6.3	-1.2	5.0	5.9	-0.9
Administrative services	9.1	5.5	3.7	7.7	7.2	0.7
Non-classified services	2.9	2.9	0.1	2.5	2.2	0.3

Source: Eurostat

C. Main partners

In 2007, 48 % of the trade of the EU-27 was with the United States, 20 % was with Switzerland, 6.6 % with Japan, 6.2 % with Russia and 6.1 % with China.

Table 12 — The EU's main trading partners (billion EUR)

	2005			2006			2007		
	Credit	Debit	Net	Credit	Debit	Net	Credit	Debit	Net
Switzerland	49.4	38.1	11.3	52.7	37.8	15.0	60.6	41.8	18.9
Russia	12.3	9.1	3.2	14.2	10.8	3.4	18.1	11.5	6.7
Canada	9.0	7.6	1.3	10.2	8.2	2.0	11.3	9.5	1.8
United States	123.2	118.2	4.9	134.7	122.1	12.6	139.0	127.8	11.2
Brazil	4.6	4.0	06	5.2	4.6	0.5	6.6	4.8	1.8
China	12.3	9.6	2.7	12.8	11.3	1.4	17.7	13.1	4.6
Hong Kong	8.3	5.6	2.6	6.9	6.7	0.2	8.3	7.8	0.7
India	5.4	4.8	0.6	7.0	5.5	1.4	9.0	6.6	2.4
Japan	19.6	12.3	7.3	18.9	12.9	6.0	19.3	13.3	6.0

Source: Eurostat.

→ Dominique Delaunay
July 2008

6.2.2. The European Union and the World Trade Organisation (WTO)

As a result of its commercial exclusive competence, the European Community is involved in global trade through its own trade policy, but also through active participation in the structures responsible for facilitating global trade such as the GATT and, since 1955, the 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 Treaty establishing the European Community (EC); conclusion of international agreements: Articles 300 and 301 of the 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

1. 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).

2. 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 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).

3. Changes proposed by the Lisbon Treaty

In terms of commercial policy, Article 188 C of the Lisbon Treaty incorporates the provisions of Article 133 of the Treaty of Nice, with amendments. The main changes concern:

— the extension of the exclusive competence of the EU to all trade agreements;

— an increase in the role of the European Parliament.

It mainly provides that:

— the ordinary legislative procedure (co-decision) will from now on apply to all autonomous commercial policy instruments (basic regulations relating to trade protection, GSPs, antidumping, rules of origin, etc.) (cf. Article 188 C(2);

— all trade agreements will from now on be subject to the approval of the European Parliament (Article 188 N(6) concerning the procedure for the negotiation and conclusion of international agreements between the EU and third countries or international organisations) and that consequently this will be kept informed of the progress of the negotiations (Article 188 N(110)), which was not the case under earlier treaties.

The extension of the co-decision procedure should thus increase the democratic legitimacy of European legislation on commercial policy.

B. Background

1. 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 their 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 (→6.5.4) 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 to 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. 2000–01

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. 2002–03

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 Cancún) 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. 2004–06

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.

In December 2005, WTO members assembled in Hong Kong agreed to abolish all subsidies for agricultural exports by 2013.

6. 2007–08

Formally suspended since 23 July 2006, the Doha Round negotiations resumed in February 2007 following the Davos Summit. However, differences still persist to this day on the main points under discussion. Little progress has been made on the most sensitive issues, such as access to agricultural and industrial markets and liberalisation of the services market. The EU wants to maintain some tariff protection for its producers, while the USA is reluctant to cut subsidies for its farmers. The new Farm Bill passed by Congress in June 2008 made provision for a sharp rise in farming subsidies of around USD 290 million over five years. Finally, emerging countries, particularly Brazil and India, are calling for more progress to be made on these points, although they are reluctant to lower customs duty on industrial goods in return.

7. The breakdown of the negotiations (Geneva, 21–29 July 2008)

a. The draft compromise of the Director-General of the WTO

In a bid to save the negotiations from running aground and bringing the entire Doha Round to a standstill in 2008, the Director-General of the WTO, Pascal Lamy, convened a ministerial meeting on 21 July 2008 of the 153 members of the WTO in Geneva, where he proposed a draft compromise on the key aspects under discussion.

The draft compromise stipulated the following points.

— In terms of **domestic support**, the United States would reduce its **agricultural subsidies** by 70 % to USD 14.5 billion (EUR 9.3 billion) and that the European Union would cut its subsidies by 80 % to EUR 24 billion. In addition, **agricultural subsidies** would be reduced over a period of five years, by 80 % for the EU, 70 % for the US and Japan, and 50 % to 60 % for other developed countries.

— In terms of **market access**, the EU would reduce its highest **agricultural import tariffs** by 70 %, compared with a 36 % decrease for developing countries. The least developed countries (LDCs) would not have to reduce theirs.

— The draft compromise allowed some **exceptions**: in order to offset the effects of lower customs duty, developed countries would be allowed, in certain circumstances, to protect 4 % of their 'sensitive' products from this decrease, developing countries 5.3 %. Developing countries would also be able to limit the fall in duty to 12 % of all of their products, of which 5 % would be exempt from any decrease. A '**special safeguard mechanism**' would also allow these countries to protect certain products in case of a sharp rise in imports.

— In terms of **industrial products**, customs duty would be between 11 % and 12 % for India and Brazil, compared with 3 % for developed countries. Emerging countries would be able to protect up to 14 % of their 'sensitive' products. An 'anti-concentration' mechanism would however be introduced to prevent countries from protecting entire sectors. Developed countries would have five years to apply these measures, emerging countries 10 years and China 13 to 14 years as the newest member of the WTO.

b. The breakdown of the negotiations

After nine days of intense negotiations, these failed mainly as a result of a disagreement between the United States, China and India on agricultural imports. The disagreement was over the safeguard clause for agricultural imports; in other words, the introduction of a threshold above which importing countries would be allowed to increase customs tariffs on goods in response to a sudden rise or fall in prices. India and China want the threshold for applying the safeguard mechanism to be as low as possible to protect their agriculture, while the USA believed that this was a dangerous system which risked being used for protectionist ends.

Other differences also contributed to the breakdown of the negotiations.

— China reneged on its commitments by refusing to lower agricultural customs duty on three key products (cotton, rice and sugar) or participate in industry agreements on tariff reductions for industrial products. This U-turn has caused a major problem for developing countries dependent on a small number of exports, such as Thailand (rice), African countries and India (cotton) and Brazil (sugar).

— The **cotton problem**, where African producers (Benin, Burkina-Faso, Mali and Chad) and China are ranged against the US, the former calling for a 82 % drop in US domestic production subsidies;

— The **banana problem**: South American producers are critical of the EU for applying prohibitive taxes on their bananas. The EU has said that it would be willing to lower the tax from EUR 176 per tonne to EUR 144 per tonne in 2016. An agreement in principle was reached. However, ACP countries, which have preferential treatment with regard to access to the European banana market, threatened to block any global agreement in the absence of financial compensation;

— Finally, South Africa, Argentina and China continue to oppose the opening up of their industrial markets.

The failure of the Doha Round negotiations reflects the difficulty in establishing a strong multilateral, rule-based commercial system. At this stage, it is difficult to predict when negotiations might resume. In the meantime, the breakdown in talks risks encouraging a proliferation of bilateral agreements, which could penalise the poorest countries.

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).

Finally, it has spoken out in favour of a reform of the World Trade Organisation (resolution of 3 April 2008).

→ Dominique Delaunay
July 2008

6.3. Framework for relations with certain groups of countries

6.3.1. The enlargement of the Union

So far, and since its inception, the European Community has recorded six waves of accessions. The sixth came into force on 1 January 2007 when Romania and Bulgaria joined the EU. Nevertheless, the prospect of membership of the EU remains open, notably to countries of the western Balkans.

Legal basis

Articles 49 and 6 of the Treaty on European Union (TEU).

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.

Background

A. The legal framework

1. Conditions of accession

According to Article 49 TEU, any European State which respects the principles set out in Article 6(1) TEU 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;

— the 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, 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 TEU).

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; European Parliament 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.

Following the **unanimous decision of the Council** to set a negotiating mandate, accession **negotiations** may be opened between the candidate and all the Member States. Each candidate country is set a negotiating framework, which establishes the general guidelines for the accession negotiations. Before the actual negotiation starts the Commission and the candidate country, in a joint exercise known as 'screening', determine how well the candidate country is prepared. Each candidate country draws up an **action plan** setting out what it will do, and when, to bring its administration and judiciary to the level required for accession. The EU, using the instrument of accession (or European) partnerships identifies the reforms and adaptations that the candidate country must undertake in order to join. Negotiations take place at the level of ministers and

ambassadors. They focus on the conditions and timing of the adoption, implementation and enforcement of all the EU rules already in force (the *acquis*, which is not negotiable) by the candidate country. For the purpose of the accession negotiations the EU legislation is divided into 35 subject-related chapters. The Commission keeps the Council and the European Parliament informed about the candidate countries throughout the process, through regular **progress reports** and **strategy papers**. It monitors fulfilment of benchmark requirements, and progress made by the candidate country in applying EU legislation and respecting undertakings.

When negotiations on all the chapters are completed to the satisfaction of both sides, the detailed terms and conditions are incorporated into a **draft accession treaty**, which lists all transitional arrangements and deadlines, as well as details of financial arrangements and any safeguard clauses.

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 European Parliament, 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 required for the financing of the enlarged Union. 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: the Czech Republic, Estonia, Cyprus, Hungary, Poland and Slovenia.

It also agreed on an enhanced pre-accession strategy. The **Helsinki European Council** of December 1999 decided to open negotiations with Bulgaria, Latvia, Lithuania, Malta, Romania and Slovakia 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 — the instruments

In 1994, the Essen European Council defined a pre-accession strategy to prepare the candidate countries of central and eastern Europe 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 central and east European countries (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 focused 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 Member States in 2004

a. Accession on 1 May 2004

The **European Council in Copenhagen on 12 and 13 December 2002** concluded accession negotiations with to

countries (the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia).

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 European Parliament 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. 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.

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 were similar to those of the 10 new Member States which joined on 1 May 2004. This accession was, politically, considered to be part of the same 'fifth enlargement'. The European Parliament on 13 April 2005 gave its assent to admit Bulgaria and Romania to the EU. One single Accession Treaty was signed on 25 April 2005 and was, subsequently, ratified. With a view to accession in 2007, the European Parliament hosted 35 Romanian and 18 Bulgarian observer MPs from 26 September 2005.

The period between the completion of accession negotiations and the date of accession was longer, since Bulgaria and Romania had still considerable efforts to make. Particular emphasis was therefore placed on **enhanced monitoring** of the remaining commitments so as to ensure that both countries were fully prepared for membership by the time they joined. In case serious difficulties were identified despite the efforts undertaken by the two countries and the assistance provided by the EU, provision was made enabling the Commission to make use of a number of **safeguards**, including the possibility of **postponing accession by one year.** This clause did not exist for the 10 new Member States. The two countries eventually joined on 1 January 2007.

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) (which was signed on 26 February 2001 and entered into force on 1 February 2003) and its attached protocol on enlargement and its declarations set out the principles and methods for determining the number and distribution of seats in the European Parliament, 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 European Parliament at 732 for a Union of 27 Member States (anticipating already the accession of Romania and Bulgaria as part of the fifth enlargement), 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. However, in case of complications in the ratification process of the Treaty establishing a Constitution for Europe, which eventually materialised through the French and Dutch negative vote in the respective referendums held in May and June 2005 regarding its approval, the Accession Treaty also covered the possibility that the new Member States join the 'old' Union.

On 19 October 2007 in Lisbon, the Member States of the European Union agreed upon the text of the **Draft Treaty amending the Treaty on European Union and the Treaty Establishing the European Community** henceforth known as the **'Lisbon Treaty'**. The new Lisbon Treaty was formally signed by the Heads of State or Government at the European Council on 13 December 2007. This is the latest step in ongoing efforts to reform the institutions of the European Union as launched in February 2002 with the European Convention and which continued with the ill-fated Treaty establishing a Constitution for Europe. The Lisbon Treaty should enter into force on 1 January 2009, once ratified by the 27 Member States. However, there is some uncertainty as regards the Treaty's ratification process following the Irish 'No'

in the June 2008 referendum for its approval. It is quite unlikely that the 1 January deadline will be met.

While the main articles of the TEU (Articles 49 and 6(1)) concerning enlargement conditions are not substantially modified, the Lisbon Treaty incorporates the main foreign policy innovations contained in the Treaty establishing a Constitution for Europe. Among those it provides for the High Representative for Foreign Affairs and Security Policy who will be both Chairman of the Foreign Affairs Council and Vice-President of the European Commission and, in this capacity, will be assisted by a European External Action Service.

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 country on an equal footing with other candidate countries. 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 European Parliament as well as inside Member States, the **accession negotiations** with Turkey were **opened on 3 October 2005**. On 28 September 2005, the European Parliament 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 European Parliament 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 [...]'.

In its most recent resolution of 21 May 2008 on the Commission's report concerning Turkey's progress in 2007, the European Parliament reiterated that accession negotiations are 'an open-ended process' and stressed that 'modernisation is first and foremost in Turkey's own interest,' while it also noted that further delays in reform plans 'will seriously affect the pace of negotiations. MEPs added that 'a new constitution is the only way the government can ensure separation of State and religion, and all civil society representatives need to be involved in this process'. The new constitution should also 'ensure gender equality, [...] and reaffirm women's human rights as their individual rights'.

As regards freedom of expression the EP took the view that the repeal of Article 301 of the Turkish Constitution and other legal provisions 'representing an illegitimate restriction on freedom of expression as guaranteed by international law would be the best solution'.

The report also called for the armed forces to 'fully and unambiguously acknowledge civilian control'.

The EP urged the Turkish government to launch 'a political initiative favouring a lasting settlement of the Kurdish issue', including a 'comprehensive master plan to boost the socioeconomic and cultural development of the south-east of Turkey while, at the same time, it also urged Turkey 'not to engage in any disproportionate military operations violating Iraq's territory'.

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 the 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.

In its most recent resolution of 10 April 2008 on the Commission report concerning Croatia's progress in 2007, the European Parliament recalls that 'the future of all western Balkan countries lies effectively in the European Union' and says that 'Croatia is well on the way to full membership of the European Union', provided that it continues to meet the necessary conditions. The EP congratulates Croatia on the progress it has made so far with regard to the opening of negotiating chapters, in meeting the benchmarks for opening new chapters and in alignment of Croatia's corpus of law with EU standards. But the resolution also highlighted some concerns over judicial reform, administrative capacity and corruption, as well as the country's outstanding border issues with its neighbours, especially Slovenia and Bosnia and Herzegovina, which have to be resolved. The European Parliament 'shares with the Commission the view that, with increased efforts on the part of Croatia and continuous support by the EU institutions, accession negotiations should, in any event, be concluded in 2009'.

3. Other western Balkan countries

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 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 the Council or Commission. 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 reassessed by the Commission in its progress report again at the end of 2006.

In its most recent resolution of 10 April 2008 on the Commission report concerning progress of the former Yugoslav Republic of Macedonia in 2007, the European Parliament reiterates that the bilateral name dispute of the former Yugoslav Republic of Macedonia with Greece should not obstruct the EU accession process of the former Yugoslav Republic of Macedonia. The report welcomes the government's achievements 'in the implementation of the Ohrid framework agreement', which deals with the political aspects of inter-ethnic relations in the country, while noting the 'continuing discrimination against the Roma community'. The EP also commended the government's economic performance, and the adoption of several crucial laws on prosecutors.

Members regret the signing of a bilateral immunity agreement between the USA and the former Yugoslav Republic of Macedonia, granting exemption from the jurisdiction of the International Criminal Court in The Hague, which 'contradicts EU standards and policies'.

On the consistently contentious issue of the country's bilateral name dispute with Greece, the report welcomes the increased bilateral cooperation, as well as people-to-people contacts between Greece and the former Yugoslav Republic of Macedonia.

The report notes with satisfaction that bilateral talks have been held in the region, under the auspices of the UN and assisted by Special Envoy Matthew Nimitz, with a view to finding a mutually acceptable solution to the difference that has arisen over the name of the country. The EP calls on both sides to seize the opportunity to reach a compromise solution, so that the issue does not continue to represent an obstacle to membership of international organisations for the former Yugoslav Republic of Macedonia, as provided for in the Interim Accord of 1995, which is still in force.

The other western Balkan countries (**Albania, Bosnia and Herzegovina, Serbia and Kosovo (under the UN Security Council resolution 1244/1999) and Montenegro)** also have the prospect of future EU membership. This was recognised by the European Council in Feira in 2000 and confirmed in subsequent European Councils. The countries will advance towards the EU, based on their own individual merits in satisfying the 1993 Copenhagen criteria for EU membership and the specific criteria under the specific **stabilisation and association process** (SAP). 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 SAP, as enriched by the Thessaloniki European Council in 2003, will remain the framework of EU policy for relations with the region until future membership.

Role of the European Parliament

The EP's most significant power in respect of enlargement is to give its assent (Article 49 TEU) 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 European Parliament, 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.

In its most recent position, adopted on **10 July 2008**, on the Commission's **'Enlargement strategy and main challenges 2007–08'**, the European Parliament reiterates its 'firm commitment to all candidate countries and to those which have been given clear membership prospects', but also notes that 'the Union must make efforts to strengthen its integration capacity and that this capacity should be fully taken into account'. It also insists that more substantive policies are needed to bridge the gap between the Union's neighbourhood and enlargement policies.

In that own-initiative report Parliament notes that 'past enlargements have been a great success, benefiting the old as well as the new EU Member States' and recalls that 'every enlargement must be followed by adequate consolidation and political concentration' within the Union itself, if the EU is to be able to continue functioning effectively.

The House therefore takes the view 'that the success of the enlargement process (and thus the success of the EU political integration process) can only be ensured if there is clear and long-lasting support for the EU membership of each candidate country.' The EP resolution 'reminds the governments and parliaments of the Member States that it is their responsibility adequately to inform public opinion about the positive achievements of former enlargements'.

On the issue of future enlargements, the report insists that 'the Union must make efforts to strengthen its integration capacity'. Parliament 'recalls in this context the need to undertake the necessary internal reforms, aimed, among other things, at increasing efficiency, social cohesion and strengthening democratic accountability'. Members are also 'convinced that any acceding State should resolve its main internal problems, particularly concerning its territorial and constitutional set-up, before it can join the Union'. Parliament emphasises that the guiding principles of the EU enlargement strategy should be 'consolidation, conditionality and communication'.

MEPs note that the EU's 'integration capacity is linked with the Union's ability at a given point in time to decide and thus to achieve its political objectives', and define the term 'integration capacity' as having four elements: accession countries should contribute to and not impair the EU's political objectives, the Union's institutions should be efficient and effective, its financial resources should be adequate, and a communication strategy should be set up to inform public opinion about the implications of enlargement.

The report affirms that 'participation in the European neighbourhood policy (ENP) does neither in principle nor in practice constitute a substitute for membership or a stage leading necessarily to membership'. Nevertheless, it argues that there is a conceptual and legal gap between the European neighbourhood policy and the Union's enlargement policy, which needs to be bridged. MEPs therefore argue that the EU should 'establish an area based on common policies' related to democracy, human rights and the rule of law.

Parliament supports further regional cooperation in the Black Sea region by calling for a 'Black Sea cooperation agreement, which should include the EU, Turkey, and all Black Sea littoral States as equal partners, while seeking the full involvement of Russia, and which could, at a later stage, develop into a Union of the Black Sea'.

→ Georgios Ghiatis
July 2008

6.3.2. The European Economic Area (EEA)

Existing since 1994, the EEA has been created essentially for the purpose of extending the application of the EU internal market to the three EFTA countries. All EU legislation relating to the internal market is constantly inserted in the EFTA countries' legislation and its proper implementation and enforcement are monitored by specific EFTA bodies.

Legal basis

Article 310 of the Treaty establishing the European Community (EC) (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 developments

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 that joined the EU on 1 May 2004 automatically became part of the EEA, as did Bulgaria and Romania, on the date they joined.

B. 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);

— 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;

— the 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 3 000 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), 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 European Parliament 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
July 2008

6.3.3. The European neighbourhood policy (ENP)

As a consequence of its enlargement, the EU has new neighbours. The ENP provides a framework for relations with neighbours — old and new, in the east and in the south — to which the EU has not given any EU membership perspective, but with which it nevertheless wishes to have closer relations. The European Parliament supports the ENP.

Legal basis

For the EU's policy: Title V, on the common foreign and security policy (CFSP), of the Treaty on European Union (TEU); Articles 133(3) (trade) and 300 (international agreements) of the Treaty establishing the European Community (EC).

For the bilateral relationships: partnership and cooperation agreements (with east European countries) and Euro-Mediterranean Association agreements (with Mediterranean countries).

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.

The ENP should 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.

Through the ENP, the EU strives inter alia to counteract or prevent the emergence of 'soft security' threats such as large-scale illegal immigration, disruption of energy imports, environmental degradation, penetration by organised crime and terrorism. A part of the rationale of the ENP is also reflected in the European security strategy (→6.1.3, point E).

Background and geographic scope

In the run up to the 2004 'big bang' enlargement which gave the European Union 10 new Member States, it was widely

recognised that this enlargement would have significant effects on the countries on the other side of the EU's new external border in the east. It was argued that negative effects should be prevented or mitigated and that the potential to develop mutually beneficial cooperation with the new neighbours must be exploited. Discussion on a wider Europe — a new neighbourhood initiative — started.

In November 2002, the Council invited the Commission and the High Representative for the Common Foreign and Security Policy, Mr Javier Solana, 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) remained outside and the absence of an EU membership perspective thus emerged more clearly as the main selection criterion.

The general character of the new policy was laid out in a March 2003 Commission communication. The new policy should according to the Commission President at the time, Mr Romano Prodi, be aimed at creating 'a ring of friends' and these should ultimately be offered participation in 'everything but the institutions'. The latter formula was not accepted by the Council, but in conclusions adopted in June 2003, the Council largely followed the Commission's proposals.

Following the 'Rose Revolution' in Georgia in the end of 2003, the Council a few months later decided to include Georgia, Armenia and Azerbaijan in the new policy, henceforth called the European neighbourhood policy (ENP). The ENP therefore covers six countries in the east: Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. In the south, it covers 10 countries: Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, the Palestinian territories, Syria and Tunisia. The southern ENP countries also participate in the Barcelona process (→6.4.5).

The EU has no formal relations with Belarus or Libya and the ENP is applied in a different and very limited way to them. Russia at an early stage made clear that it did not wish to participate in the emerging ENP. EU–Russia relations are instead centred on four 'common policy spaces'.

Instruments

The ENP builds on the partnership and cooperation agreements (PCAs) and Euro-Mediterranean association agreements that have been concluded with 13 of the 16 the countries covered. It does not presuppose the introduction of any new type of agreement, but as the initial periods of application of the PCAs are running out, the question as to what should be the future legal basis of the bilateral relations with eastern neighbours has to be answered. Negotiations with Ukraine for what is currently referred to as a new enhanced agreement began in spring 2007.

The core instrument of the ENP is bilateral a ENP action plan. The preparation of an ENP action plan presupposes that a PCA or Euro-Med agreement has entered into force. The Commission elaborates a draft action plan, which is then negotiated with the relevant neighbouring country. The leading joint body set up under the respective PCA or Euro-Med agreement thereafter endorses the action plan.

Each ENP action plan lists a number of political and economic reform objectives and concrete measures. In this regard, they resemble the accession partnerships which support candidate countries' reforms and preparations for EU membership. In the ENP context, the EU does, however, not seek any general adaptation to its laws and jurisprudence (the *acquis communautaire*) and the absence of the incentive to reform that a membership perspective represents is clearly felt.

ENP action plans are valid five years (those agreed with Israel, Moldova and Ukraine, however, three years). The implementation is monitored by committees set up under the respective agreement. Within two years of the adoption of an action plan, the Commission presents a **progress report**. Since April 2008, this reporting is annual.

The EU will soon start to provide aid through the **European Neighbourhood and Partnership Instrument** (ENPI). It replaces the Tacis technical assistance programme (for eastern neighbours) and the MEDA programme (for southern neighbours). According to the ENPI regulation, EUR 11.181 billion are available for this instrument over the period 2007–13. This is about 32 % more than what was available for the ENPI beneficiary countries in the earlier instruments during 2000–06.

The **European Instrument for Democracy and Human Rights** (EIDHR) is also used, including for supporting relevant civil society organisations through Commission delegations in the ENP countries (except Libya, Syria and Tunisia, where necessary conditions do not exist and other ways of promoting democracy and human rights will be looked for). In several ENP countries, actions financed through the **Instrument for Stability** and the **Nuclear Safety Instrument** are also carried out. Thematic programmes under the Development Cooperation Instrument, e.g. for cooperation on migration and asylum and for support to non-State actors and local actors, are also available, but the relevant sums are very small. The Humanitarian Assistance Instrument and macro-financial assistance can also be used.

The ENP countries also benefit from loans on favourable conditions from the **European Investment Bank** (EIB). In the period 2007–13, EUR 8.7 billion is available for ENP/South and EUR 3.7 billion for ENP/East (including the South Caucasus countries, which were not included in the previous lending mandate of the EIB) and Russia.

Current status

In July 2008, ENP action plans for the following countries had been adopted: Israel, Jordan, Moldova, Morocco, Tunisia, Ukraine, the Palestinian territories (formal adoption January to July 2005), Armenia, Azerbaijan and Georgia (November 2006), Lebanon (January 2007) and Egypt (March 2007). The action plans for Israel, Moldova and Ukraine, which were originally

intended to be valid for three years only, were at the beginning of 2008 rolled-over for one more year.

Algeria has shown an interest in the preparation of an ENP action plan. For Belarus, Libya and Syria, the requisite of an existing bilateral agreement was not fulfilled. The Commission presented reports on the implementation of all the action plans in April 2008 and intends to publish new such reports in spring 2009.

A December 2006 Commission communication concluded that the credibility and impact of the ENP needed to be enhanced. Neighbours should receive a more attractive EU offer of support for reform policies. This should be achieved in particular through the pursuit of a new generation of 'deep and comprehensive free trade agreements' and this would be 'consistent with a longer-term vision of an economic community emerging between the EU and its ENP partners'. The Commission also proposed visa facilitation, increased people-to-people contacts and greater EU involvement in addressing conflicts in its neighbourhood. Regional cooperation, including in the Black Sea region, should be promoted and the Commission called for exploration of the case for developing a multilateral dimension of the ENP. The Commission also suggested the creation of a governance facility, whereby additional funds would be given each year to the country or countries which had made the most progress on governance-related reforms, as well as a Neighbourhood Investment Fund to leverage funds from international financial institutions. Such a facility and fund were created the following year. A December 2007 follow-up communication noted progress in some of the areas earlier dealt with and commented on a number of thematic and operational issues.

A cooperation initiative for the Black Sea region was launched by the EU in 2007. The so-called Black Sea synergy covers inter alia all the eastern ENP countries, except Belarus, in spite of the fact that of these countries only Georgia and Ukraine have a Black Sea coastline.

Reacting in particular to Polish–Swedish proposals on an eastern partnership, the European Council in June 2008 tasked the Commission with presenting proposals in spring 2009. Through the eastern partnership, EU policy towards eastern ENP partners could be enhanced in bilateral as well as multilateral formats.

Role of the European Parliament

A. Powers

Parliament is not consulted at any stage of the preparation of action plans. Its extensive legislative, budgetary and control powers nevertheless allow it to play a role.

The regulation setting up the European Neighbourhood and Partnership Instrument (ENPI) was adopted by the Council and Parliament under the co-decision procedure in autumn 2006. Parliament defines the relevant budget lines (the 'nomenclature', in EU budget speak) and the amounts on them in the annual EU budgets. After each budget year, Parliament grants (or not) the Commission discharge for its implementation of the budget. Furthermore, under an agreement with the Council and the Commission concluded before the adoption of the ENPI regulation, Parliament has the right to scrutinise documents guiding the implementation of the ENPI before they are adopted (a procedure known as 'democratic scrutiny').

B. Activities

The Foreign Affairs Committee regularly prepares own-initiative reports on the ENP. This committee also carries out democratic scrutiny of ENPI implementation.

Parliamentary cooperation committees have been set up with all the eastern ENP countries, except Belarus. These meet once a year and, in between, the EP's delegations to these committees regularly meet to discuss topical issues in relation to the respective countries. In a similar way, an interparliamentary meeting between an EP delegation and each southern ENP country (except Libya) is normally held once a year and the relevant EP delegations meet also in between. In addition, the Euro-Mediterranean Parliamentary Assembly, which provides a parliamentary dimension to the Euro-Mediterranean Partnership ('the Barcelona process') holds a plenary session once a year and its committees work on a continuous basis.

An ENP/East conference was held in the European Parliament in June 2008. Delegations from the Armenian, Azerbaijani, Georgian, Moldovan and Ukrainian national parliaments, the Belarusian opposition and the European Parliament adopted a joint statement that inter alia called on the parliaments represented in the conference to consider the setting up of an EU–Neighbourhood East Parliamentary Assembly. In this assembly, mutual assistance for closer integration with the EU could be provided.

The EP frequently participates in election observation in ENP countries.

C. Positions

Parliament called for the inclusion of the South Caucasus in the ENP long before the decision on this was taken by the Council. A January 2006 resolution on the ENP broadly supported this policy, as it was being developed by the Council and the Commission, and this support was confirmed in a November 2007 resolution on the ENP. The January 2006 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' (recital H and paragraph 4, respectively). In its November 2007 resolution, the EP called for association agreements with Moldova and Ukraine which open a possibility of EU membership (paragraph 26). Belarus should have the same perspective, 'once it embraces democracy, respects fundamental human rights and freedoms and enhances the rule of law' (paragraph 29).

The EP 'doubts [...] the meaningfulness of the ENP's geographic scope, as it involves countries which geographically are European together with Mediterranean non-European countries' (paragraph 2 of the November 2007 ENP resolution). The same resolution affirms that 'civil society in all ENP countries must be strongly supported' (paragraph 5) and welcomes 'the longer-term aim of establishing a neighbourhood-wide free trade area' (paragraph 11). The budget of the ENPI should be increased (paragraph 21). When consulted on the most recent revisions of the EIB's external lending mandate, Parliament supported the extension to Belarus, Moldova and Ukraine, and actively sought the further extension to Armenia, Azerbaijan and Georgia.

→ Dag Sourander
July 2008

6.4. Relations with certain countries and regions

6.4.1. The western Balkan countries

In June 2008, the European Council conclusions reaffirmed its full support for the European perspective of the western Balkans — as set out in the Thessaloniki agenda and the Salzburg Declaration — which remains essential for the stability, reconciliation and the future of the region. The European Council also stressed that remaining western Balkans potential candidates should achieve candidate status with EU membership once the necessary conditions and requirements will be satisfied.

Legal basis

Title V of the Treaty on European Union (TEU).

Articles 133 and 310 of the Treaty establishing the European Community (EC).

Objectives

To bring peace, stability and economic development to the region and open up the prospect of integration into the EU.

Background

The former Yugoslavia benefited from a cooperation agreement with the EU from 1980. In June 1990 the Commission proposed measures to improve relations, but the break-up of the country in 1991, the war 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. As its main contribution to the Stability Pact, the EU launched the **stabilisation and association process** (SAP) for the countries of the western Balkans in 1999. The European Councils at Feira and Nice (June and December 2000) recognised that the countries of the western Balkans (Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia and the Federal Republic of Yugoslavia) all had a vocation to be potential candidates for EU membership. It was stated that the western Balkan countries had clear prospects of future accession once the relevant conditions had been met. Subsequent European

Council meetings reiterated that the future of the western Balkans is within the EU. The 'Thessaloniki agenda', adopted in 2003 by the EU and the countries of the western Balkans, reflected the evolution in the relationship. These countries moved, progressively from stabilisation and reconstruction towards consolidating stability, sustainable development, association and integration into European structures. The EU confirmed its determination to support the countries in their efforts to implement reforms aimed at consolidating democracy and stability and promoting economic development and regional cooperation. Thus, the Union's policy of stabilisation and association, including the stabilisation and association agreements enriched with elements from the enlargement process, constitutes to date the overall framework for the European course of the western Balkan countries towards their future accession.

Instruments

From the Stability Pact to the Regional Cooperation Council

The stabilisation and association process (SAP) established a strategic framework for the relations of the western Balkan countries 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 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. Further to Albania, Croatia, the former Yugoslav Republic of Macedonia, Montenegro and Serbia, on 16 June 2008 Bosnia and Herzegovina is the latest country to sign the stabilisation and association agreements.

The CARDS programme, which underpinned the objectives and mechanisms of the SAP, amounted for the period 2000–06 to about EUR 5 billion in order to provide assistance to this region. As each country moved further in the stabilisation process, assistance shifted, progressively, 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 was directed at reinforcing democracy and the rule of law, human rights, civil society and the media and the operation of a free market economy.

Since 2007, EU pre-accession funding is channelled through a single, unified instrument (the Instrument for Pre-Accession Assistance (IPA)) designed to deliver focused support to both candidate and potential candidate countries. The total pre-accession funding for the current financial framework (2007–13) is EUR 11.5 billion. In order to achieve each country's objectives in the most efficient way, IPA consists of the following five components: (i) transition assistance and institution building; (ii) cross-border cooperation (with EU Member States and other countries eligible for the IPA); (iii) regional development (transport, environment and economic development); (iv) human resources development (strengthening human capital and combating exclusion); (v) rural development.

The IPA places more focus on ownership of implementation by the beneficiary countries, on support for cross-border cooperation, and on 'learning by doing'. It also prepares candidate countries to implement the Regional, Social, Rural Development and Cohesion Funds upon accession.

Intensified efforts are also expected on regional cooperation, enhancing good neighbourly relations, notably through the new Regional Cooperation Council. This structure, which succeeded the Stability Pact, promotes mutual cooperation and European and Euro-Atlantic integration of south-eastern Europe in order to reinvigorate economic and social development in the region to the benefit of its people.

Current status

In June 2008, the European Council conclusions reaffirmed its full support for the European perspective of the western Balkans — as set out in the Thessaloniki agenda and the Salzburg Declaration — which remains essential for the stability, reconciliation and the future of the region. The European Council also stressed that remaining western Balkan potential candidates should achieve candidate status with EU membership once the necessary conditions and requirements are satisfied.

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 since the beginning, and signed the stabilisation and association agreement (SAA) with the EU on 12 June 2006. This country has made some progress on democracy and the rule of law; however, democratic culture and in particular constructive dialogue between parties need to be developed to enable the political system to function

effectively and transparently. The Albanian parliament needs to make considerable further progress in pushing forward reform. The fight against corruption and organised crime represents a major challenge.

Albania has continued to play a positive role in maintaining regional stability fostering good relations with other western Balkan and neighbouring EU countries, both multilaterally and bilaterally.

2. Bosnia and Herzegovina (BA)

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. Bosnia and Herzegovina 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, Bosnia and Herzegovina 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 (SAA) 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. Bosnia and Herzegovina 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. The negotiations on an SAA were launched in November 2005. The SAA was initialled on 4 December 2007, and the agreement was signed on 16 June 2008 following progress in addressing four key priorities: notably police reform, ICTY cooperation, public broadcasting and public administration reform.

Bosnia and Herzegovina has been an increasing focus of EU political interest, especially in relation to common foreign and security policy (CFSP) and the European security and defence policy (ESDP) measures. The first operation under the ESDP started in Bosnia and 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. Following the improved security situation in Bosnia and Herzegovina, the EU defence ministers decided in December 2006 on a force reduction of EUFOR/Althea from some 6 000 to 2 500 troops. The mandate of the EUPM has been extended by two years until the end of 2009. The EUPM continues to be focused on police reform and the fight against organised crime.

The EU has continued to deploy considerable resources in Bosnia and Herzegovina in the framework of the CFSP and the ESDP. A new EU Special Representative (EUSR), who is also the High Representative, took office in July 2007. The mandate of the EUSR is to offer the EU's advice and facilitation in the political process and to promote overall political coordination in Bosnia and Herzegovina.

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 submitted a formal request for EU membership, the first country of the western Balkans to do so. 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 the ICTY. As this last remaining obstacle was later judged to be removed, accession negotiations with Croatia were formally opened on 3 October 2005.

Following the completion of the screening process in October 2006, 16 negotiation chapters have been opened and two were provisionally closed by February 2008. Croatia's progress sends a signal to the other western Balkan countries on their own membership prospects, once they fulfil the necessary conditions. For Croatia to make 2008 a decisive year in its accession process, the country needs to make further progress with, among others, judicial and administrative reforms, fighting corruption, minority rights, and refugee return.

4. Serbia (Kosovo) 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 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 former Federal Republic of Yugoslavia in the liberalised EU preferential trade regime for the region. The former Federal Republic of Yugoslavia also became a full participant in the stabilisation and association process.

The former Federal Republic of Yugoslavia 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. However, since the country did not meet its commitments on cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY) the Commission decided to call off the SAA negotiations on 3 May 2006.

On 21 May 2006 Montenegro organised a referendum on independence, in line with the provisions of Article 60 of the Constitutional Charter of Serbia and Montenegro. Following the referendum and the subsequent declaration of independence by the Montenegrin parliament the EU Council adopted on 12 June 2006 conclusions stating that 'the EU and its Member States decided to develop further their relations with the Republic of Montenegro as a sovereign, independent State'.

4.1. Serbia

Serbia has a key role to play in the region from an economic and political point of view, which would benefit from a stable and prosperous Serbia fully integrated into the family of European nations.

The country is currently faced with strategic choices regarding its future. The presidential elections held in February 2008 confirmed Serbia's European aspirations. On 29 April 2008, Serbia signed a stabilisation and association agreement with the European Union, usually the first step towards membership. On 7 July 2008 a new pro-European government was formed in Belgrade. The EU encouraged the new Serb government to maintain positive relations with the European Union and its Member States and to take a constructive approach towards the EU's efforts to contribute to peace and stability in the Balkan region. The President of the European Parliament, Hans-Gert Pöttering, welcoming the arrest of Bosnian Serb war crimes suspect Radovan Karadzic (21 July) said 'The arrest of Mr Karadzic is a clear indication that the new Serbian government is committed to meeting its international obligations, in particular with respect to the UN War Crimes Tribunal in The Hague'.

Kosovo

On 7 October 2005, UN Secretary-General (UNSG) Kofi Annan recommended 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 started in February 2006 in Vienna.

On 17 February 2008 the Kosovo Assembly adopted a resolution which declared Kosovo to be independent, confirming its acceptance of the Ahtisaari plan, its willingness for the EU to deploy new missions and for NATO to keep its force there. On 16 February 2008, the Council approved the sending of the EU Rule of Law Mission to Kosovo, known as EULEX Kosovo. EULEX Kosovo has a broad mandate ranging from the maintenance and promotion of the rule of law, public order and security to ensuring that cases of war crime, terrorism and organised crime are investigated and prosecuted.

As confirmed by the Thessaloniki Summit in June 2003, Kosovo is firmly anchored in the framework of the stabilisation and association process, the EU policy which applies to the western Balkans. On 20 April 2005 the European Commission adopted the communication on Kosovo to the Council 'A European future for Kosovo', which reinforces the Commission's commitment to Kosovo. Furthermore, on 20 January 2006, the Council adopted a European partnership for Serbia and Montenegro including Kosovo as defined by UNSCR1244. The European partnership is a means to materialise the European perspective of the western Balkan countries within the framework of the stabilisation and association process.

4.2. Montenegro

In June 2006, the EU recognised the independence of Montenegro, which became later a potential candidate for EU membership. On 15 October 2007 Montenegro signed the stabilisation and association agreement (SAA) with the European Community and its Member States. The SAA will enter into force once its ratification process is completed. An interim agreement on trade and trade-related issues, which was signed on the same day, entered into force on 1 January 2008. The adoption of a new constitution, broadly in line with European standards, and the signing of the SAA were major steps for Montenegro and its relations with the EU. The constitution provides a satisfactory general framework for the judiciary, human rights and minority rights. However, Montenegro is expected to step up preparations to ensure implementation. Judicial independence and accountability need to be fully respected and efforts to fight corruption and organised crime need to be enhanced.

5. The former Yugoslav Republic of Macedonia

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, the former Yugoslav Republic of Macedonia was the first country of the region to sign a stabilisation and association agreement (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.

The former Yugoslav Republic of Macedonia 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. The European partnership, adopted by the Council on 30 January 2006, identified as priorities reforms in political, legislative, institutional and economic fields. However, while the pace of reforms has, on the whole, been slow during the past two years, there have recently been signs of reforms gaining momentum. The accession partnership adopted by the Council on 18 February 2008 identifies eight key priorities for progress in the accession process by the former Yugoslav Republic of Macedonia. These cover proper implementation of all commitments undertaken under the SAA, dialogue between political parties, implementation of the law on police and anticorruption legislation, reform of the judiciary and public administration, as well as measures in employment policy and for enhancing the business environment. The former Yugoslav Republic of Macedonia needs to meet these key priorities in order to demonstrate its readiness to undertake accession negotiations. The Commission considers that, with sufficient political will and cross-party cooperation, the necessary progress can be made in 2008. The Commission will assess these key priorities as benchmarks in its autumn regular report. A recommendation on the start of accession negotiations will depend on the results achieved.

Role of the European Parliament

The European Parliament (EP) had initially set up a delegation for south-eastern 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 Croatia and the former Yugoslav Republic of Macedonia, joint parliamentary committees between the European Parliament 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 delegations for relations with the countries of south-eastern Europe have been the forum for interparliamentary dialogue and contacts with the other countries, i.e. Albania, Bosnia and Herzegovina, Montenegro and Serbia (including Kosovo).

Inter-parliamentary meetings, to which the representatives of the Presidency in office of the Council of the EU, the government of the concerned country and the European Commission are regularly invited, have allowed, due to their continuity and to the relative good knowledge of participants among themselves, frank debate and have focused more and more on the importance of raising the standards of democracy and human rights (e.g. media-related legislation, property restitution) and of improving measures needed to combat criminal activity, trafficking and corruption. Preparing the various countries for the association and stabilisation process and the need for not just administrative and judicial reforms but also economic reforms (infrastructures, energy and privatisation) and appropriate legislation on a number of new issues such as the environment, public health or education were among the topics for discussion. Thematic seminars and meetings with members of the European Parliament (MEPs) and staff from the parliaments of candidate and potential candidate countries are also organised by the European Parliament's secretariat. (The joint parliamentary meeting on the western Balkans was held in Brussels on 26 and 27 May 2008. This event brought together MEPs and parliamentarians from EU Member States and the countries of the western Balkans to share experiences on EU integration and debate economic, security and justice issues).

In general, the EP often highlights the need for respect for democracy, the rule of law and the rights of minorities in the region when addressing the western Balkans . 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.

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July 2008

6.4.2. The Russian Federation

A strategic partnership with Russia is one of the EU's top foreign policy priorities. In recent years Russia's assertive foreign policy has presented additional challenges for EU–Russia relations. The legal basis underpinning current relations is a partnership and cooperation agreement (PCA) that came into force in 1997 initially for 10 years and that has been renewed automatically. Negotiations for a new agreement started in July 2008 but may take a long time to conclude.

Background

The Russian Federation is a key partner for the European Union. Building a strategic partnership with Russia is of vital importance for the EU for several reasons. First of all, Russia is the largest neighbour of the EU, with a growing importance also due to the EU's enlargement in 2004 and 2007. The 2003 EU security strategy highlights Russia as a key player in geo-political and security terms at both the global and regional level. Russia is a key actor in the UN Security Council and one of the key players in the common European neighbourhood. Energy security is also a defining element of EU–Russia relations, given that Russia is a major supplier of energy to the EU and its exports are predicted to increase further in the coming years. Trade and investment relations with Russia represent another area of dynamic growth. Russia is a large market for EU goods and services, with considerable expansion and growing purchasing power, making Russia the third largest trade partner of the EU. The EU's market, on the other hand, is by far the most important destination for Russian exports. Companies from the EU are the main investors in Russia.

The fundamental values and principles of democracy, human rights, the rule of law and the market economy underpin the EU–Russia bilateral relationship and its legal basis, the partnership and cooperation agreement (PCA). Russia and the EU are committed to work together to combat new threats to international security, such as terrorism, organised crime, illegal migration and trafficking in people as well as drugs. Russia is also a key country in combating climate change.

Russia remains a major geopolitical player. Therefore The EU and Russia have an extensive dialogue on political issues around the world, including the resolution of conflicts such as those in the Middle East, Afghanistan and the western Balkans and preventing the proliferation of weapons of mass destruction and the relevant technologies, as in the cases of Iran and North Korea.

Energy issues created significant tensions between Russia, its immediate neighbours and the EU. Recent times have seen significant divergences on foreign policy issues, such as Kosovo and the so-called frozen conflicts in the former Soviet Union republics. The armed conflict between Georgia and Russia over South Ossetia may have important ramifications for EU–Russia relations.

Objectives

EU relations with the Russian Federation are based on the partnership and cooperation agreement (PCA), aimed at strengthening the strategic partnership with Russia and addressing common challenges on the European continent and globally.

Instruments

A. The partnership and cooperation agreement (PCA)

The PCA came into force in 1997 for an initial duration of 10 years, which is automatically extended beyond 2007 on an annual basis. It sets the principal common objectives, establishes the institutional framework for bilateral contacts, and calls for activities and dialogue in a number of areas.

The partnership and cooperation agreement is based upon the following principles and objectives: the promotion of international peace and security; and support for democratic norms as well as for political and economic freedoms. It is based on the idea of mutual partnership, aimed at strengthening political, commercial, economic and cultural ties.

The provisions of the PCA cover a wide range of policy areas including political dialogue, trade in goods and services, business and investment, financial and legislative cooperation, science and technology, education and training, energy, cooperation in nuclear and space technology, environment, transport and culture.

Complementing the PCA, in June 1999 the European Council adopted a common strategy — the first application of this instrument under the common foreign and security policy introduced by Article 13 of the Treaty on the European Union. The strategy 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 PCA established an institutional framework for regular consultations between the European Union and the Russian Federation. This includes summits of Heads of State and of

Government, which take place twice a year and define the strategic direction for relations. At ministerial level in the Permanent Partnership Council (PPC) meetings are held as often as necessary to discuss specific issues. Meetings are also held at senior officials and expert level.

Political dialogue takes place at regular foreign ministers meetings, meetings of senior EU officials with their Russian counterparts, monthly meetings of the Russian Ambassador to the EU with the troika of the Political and Security Committee and at expert level on a wide range of topical international issues. Since 2005, regular consultations have been held on human rights matters.

Members from the European Parliament and the Russian Parliament (State Duma and Federation Council) meet in the EU–Russia **Parliamentary Cooperation Committee** on a regular basis and exchange views on current issues.

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 socioeconomic fields linked to the PCA implementation process. Previous Tacis funding is now gradually replaced by funds through the European Neighbourhood and Partnership Instrument (ENPI), even if relations with Russia fall outside the framework of the European neighbourhood policy. ENPI funds are linked to the implementation of the four common spaces (see below). This assistance has been 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 been sought with the EU Member States, the international financial institutions and other major donors.

B. Complementary agreements and mechanisms

1. Trade and economic cooperation

To complement the provisions of the PCA, a number of sectoral and international agreements exist, as well as other mechanisms for cooperation. Steel and textiles are the main sectors covered by bilateral trade agreements. The latest steel agreement covers the years 2007–08 and will come to an end if Russia becomes a member of the WTO. In 2002, the EU granted 'market economy status' to Russian exporters, which has some significance for trade defence measures, though anti-dumping is not a major aspect in EU–Russia trade at present.

Bilateral EU–Russia negotiations for Russia's accession to the WTO were concluded in 2004 and negotiations at multilateral level are still ongoing.

2. The Northern Dimension and cooperation with the Baltic Sea Region

The Northern Dimension (ND) covers a broad geographic area from the European Arctic and Sub-Artic areas to the southern shores of the Baltic Sea, including the countries in its vicinity and from north-west Russia in the east, to Iceland and Greenland in the west. In its scope, the ND is increasingly focusing on north-west Russia, forming the largest territory covered by this policy. The Baltic Sea, the Kaliningrad Oblast with its opportunities for development given its particular geographical situation, as well as the extensive Arctic and sub-Arctic areas including the Barents Region, are priority areas for the Northern Dimension policy. It will help to ensure that no dividing lines are established in the north of Europe. The ND partners are the European Union, Iceland, Norway, and the Russian Federation; others, notably the regional organisations, participate.

3. Black Sea cooperation

With the accession of two Black Sea littoral States, Bulgaria and Romania, the prosperity, stability and security of this region has become even more important. The European Commission, therefore, proposed to complement existing policies at a regional level, such as the European neighbourhood policy (ENP), the pre-accession process with Turkey and the strategic Partnership with Russia, with a Black Sea cooperation initiative. Cooperation may take place within existing regional mechanisms (such as the Commission for the Protection of the Black Sea aiming at environmental protection), while cooperation with the Black Sea Economic Community (BSEC) will also be strengthened.

C. The common spaces

At the St. Petersburg Summit in May 2003, the EU and Russia agreed to reinforce their cooperation by creating in the long term **four common spaces** in the framework of the PCA and on the basis of common values and shared interests.

The common economic space aims to make the EU and Russia's economies more compatible to help boost investment and trade. The ultimate objective is an integrated market between the EU and Russia, on the basis of regulatory convergence, even if it does not necessarily imply the harmonisation of Russian norms and standards with the EU *acquis*. Energy cooperation and the environment also fall within the common economic space. On this latter point, the EU welcomed Russia's ratification of the Kyoto Protocol. Another area of discussion is the development of pan-European networks of transport (e.g. motorways; rail links), energy (e.g. pipelines, links between electricity grids) and telecommunications.

The common space on freedom, security and justice covers the area also known as justice and home affairs. This is a growing area of cooperation between the EU and Russia, based on respect for human rights, as the two face the pressing common challenges of terrorism, illegal migration, cross-border crime, including trafficking in human beings and drugs. The EU and Russia need effective judicial and police cooperation to tackle these problems.

At the same time the pursuit of increased security and safe borders should not create barriers to the legitimate interaction

between the economies and societies of the EU and Russia. Citizens should be able to travel more easily. This is the rationale behind the recent visa facilitation agreement. This may pave the way to further facilitation of travel and, in the longer term, the possibility of mutual abolition of visa restrictions.

The common space on external security aims to enhance cooperation on foreign policy and security issues, while underlining the importance of international organisations such as the UN, OSCE and Council of Europe. There is much scope for Russia and the EU to combine their efforts in conflict prevention, crisis management and post-conflict reconstruction. This is especially the case with regard to 'frozen' regional conflicts in the common neighbourhood.

The common space on research, education and culture aims to promote scientific, educational and cultural cooperation, particularly through exchange programmes. These will foster people-to-people ties and promote better understanding among societies.

The Moscow Summit in May 2005 adopted roadmaps to act as the short and medium-term instruments for the implementation of the four common spaces. These build on the ongoing cooperation as described above, set out further specific objectives, and specify the actions necessary to make the common spaces a reality. They thereby determine the agenda for cooperation between the EU and Russia for the medium term.

Concrete projects (both under Tacis and ENPI) are defined through a multi-step process. First The EU sets out the priorities agreed on with the Russian partner in a country strategy paper for Russia. Then, based on the country strategy paper, the European Commission and the Russian government work together to determine the financial resources to be allocated to the priority objectives and develop the national indicative programme (NIP), which covers up to four years. The current national Indicative programme covers the period 2007–10. Finally, based on the NIP, the European Commission adopts annual programmes, called action programmes. These programmes establish the specific, detailed projects that match the objectives set forth in the strategy paper and indicative programme. As projects become ready for implementation, the European Commission selects contractors for the projects through a competitive tendering process.

Current status

At the EU–Russia summit organised in Khanty-Mansiisk in June 2008 the parties agreed to launch negotiations on a new agreement to replace the existing PCA. The new agreement will reflect political, economic and social changes both in the EU and Russia since the entry into force of the PCA in 1997. The EU negotiating mandate was adopted at the end of May 2008, following significant reservations earlier on from Poland and Lithuania due to tensions in their bilateral relations with Russia.

The aim of the new agreement will be to provide a durable and comprehensive framework for EU–Russia relations based on respect for common values and will provide the basis for the relationship in the coming years. It is worth noting that Russia insisted on a brief framework agreement supplemented by a system of sectoral agreements while the EU aims at a comprehensive agreement based on common values. The negotiations may take several years to conclude.

Role of the European Parliament

A. Powers

According to the Treaties the European Parliament (EP) must give its assent to a new agreement, as in the case of the previous PCA. Though the EP does not participate directly in defining the strategic needs and the concrete action programmes, it had an important role to play in establishing the framework for financial cooperation by the ENPI regulation that was adopted by co-decision. Furthermore, under an agreement with the Council and the Commission concluded before the adoption of the ENPI regulation, Parliament has the right to scrutinise documents guiding the implementation of the ENPI before they are adopted (a procedure known as 'democratic scrutiny').

B. Activities

The EU–Russia Parliamentary Cooperation Committee is the institutionalised framework for interparliamentary relations. Its rules of procedure provide for two meetings a year; however, for some years members of the European Parliament also visited Russia regularly in a smaller working group format, ensuring more frequent contacts. The EP's delegation to the PCC meets regularly to discuss topical issues and it regularly receives visits from Russian government officials, including Russia's EU Ambassador and other institutions. In 2002–03 an ad hoc delegation was actively following developments in Chechnya.

Parliament's regular resolutions on Russia are linked to the EU–Russia summits. Parliament also states its position with regard to Russia in several other own-initiative reports on energy issues, human rights (including on the occasion of the last parliamentary and presidential elections in Russia), the Baltic Sea and Black Sea regions.

C. Positions

The European Parliament's numerous resolutions on Russia, including the 2008 own initiative report on EU–Russia relations, reflect that Parliament is in favour of a comprehensive new agreement with Russia that has to be underpinned by common values and interests. Human rights concerns have been repeatedly raised in various contexts. Parliament asked for stepping up the EU–Russia human rights consultation to make it more effective and results oriented and

reminded Russia of its commitments and responsibilities as a member of the OSCE and the Council of Europe.

In its report on EU–Russia economic and trade relations (September 2007), Parliament supported more integrated economic ties, including a possible free trade agreement in the future. The report emphasised the importance of Russia's accession to the WTO and, in this context, the need to resolve the problem of export duties on timber, dual energy pricing and rail fees.

The European Parliament called for a suitable Treaty basis for energy and the security of energy supply, emphasised the need of speaking with one voice in energy matters and proposed a possible High Official for Foreign Energy Policy in its report entitled 'Towards a common European foreign policy on energy' (September 2007). MEPs also expressed concerns about the environmental and various other risks in the Baltic Sea area related to the Nord Stream pipeline.

→ Levente Császi
July 2008

6.4.3. The South Caucasus (Armenia, Azerbaijan, Georgia)

The EU's enlargements, its energy interests and growing attention to security issues have stimulated it to conduct an increasingly active policy in relation to the countries of the South Caucasus. The European Parliament was in the vanguard of calls for several EU initiatives later taken, including the appointment of an EU Special Representative for the region and the inclusion of the three countries in the European neighbourhood policy.

Legal basis

For the EU's policy: Title V, on the common foreign and security policy (CFSP), of the Treaty on European Union (TEU) and Articles 133(3) (trade) and 300 (international agreements) of the Treaty establishing the European Community (EC).

For the bilateral relationships: partnership and cooperation 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.

Background

The South Caucasus earlier attracted relatively little EU interest, but this is no longer the case. Since 2003, the EU has a Special Representative for the South Caucasus. Since 2004, the three countries are included in the European neighbourhood policy (ENP). EU aid to the region has been increased and in 2006, it was decided to add Armenia, Azerbaijan and Georgia to the list of countries in which the European Investment Bank can extend loans. A modest but steady trend towards deeper EU engagement remains in place and this trend also encompasses efforts to solve the conflicts in the region.

There are several reasons for the growing EU interest. Through its enlargements, the EU has got closer to the South Caucasus geographically and gained new members to which this region matters more. With the Rose Revolution in Georgia in 2003–04, new prospects for the spread of democracy and economic reforms suddenly appeared. Soon after, when Russia interrupted energy supplies to Ukraine and Georgia, quite possibly for political reasons, the EU was gripped by a new sense of urgency to limit its own dependency on Russian energy. Attention was quickly turned to the oil and gas resources in the Caspian basin and the transit possibilities in the South Caucasus. The EU's new energy interest in the region gave it an additional reason to feel concerned about the unresolved conflicts there, on top of the reasons mentioned in the then newly adopted European security strategy to regard regional conflicts as a key threat. At the same time, there was, and still is, considerable reluctance in some EU Member States to let the EU get deeply involved in security matters in the South Caucasus, not least because of links to Russia.

Instruments

A **partnership and cooperation agreement** (PCA) with each of the countries of the South Caucasus entered into force on 1 July 1999. The initial period of application is 10 years and each agreement will then remain in force as long as neither party takes any action.

The PCAs with the South Caucasian countries are similar to those concluded with other States which emerged in eastern

Europe and central Asia 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 of a part of it).

An **EU Special Representative** (currently Mr Peter Semneby) contributes to the implementation of the EU's abovementioned policy objectives in the region.

The South Caucasus countries are covered by the **European neighbourhood policy** (ENP) (→6.3.3). The main element of the ENP is action plans. Action plans for each of the countries in the South Caucasus were adopted in November 2006. The European Commission prepares annual progress reports, the most recent of which were published in April 2008.

The ENP is supported by EU aid, mainly through the **European Neighbourhood and Partnership Instrument** (ENPI). Democracy and respect for human rights are promoted through the **European Instrument for Democracy and Human Rights** (EIDHR). The **Instrument for Stability** (IfS) is also used. In addition, the **European Investment Bank** (EIB) can extend loans to the South Caucasus countries.

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 gas pipeline (BTE, also called the South Caucasus pipeline, SCP) was opened in the beginning of 2007.

Role of the European Parliament

A. Powers

Before the PCAs were concluded, the European Parliament (EP) gave its assent, as required for 'agreements establishing a specific institutional framework by organising cooperation procedures' according to Article 300 (ex Article 228), third paragraph, of the EC Treaty.

The ENPI and IfS regulations were adopted by Parliament and Council under the co-decision procedure in autumn 2006. The implementation of these regulations is subject to democratic scrutiny by Parliament, meaning in particular that Parliament gets the opportunity to express its views on drafts of important documents before these documents are adopted.

B. Activities

A comprehensive resolution on the EU's policy on the South Caucasus was adopted on 17 January 2008 on the basis of a Foreign Affairs Committee report (see below). The EP gives rapid reactions to particularly serious human rights developments by adopting resolutions under a special urgency procedure.

Democratic scrutiny of the ENPI and IfS implementation is carried out by the Foreign Affairs Committee.

In accordance with the PCAs, the EP has set up a Parliamentary Cooperation Committee (PCC) together with each of the national parliaments of the South Caucasus States. These committees meet once a year. In between, the EP's delegation to the PCCs, commonly referred to as the EP's South Caucasus Delegation, regularly meets to discuss topical issues in relation to the three countries.

Parliament regularly participates in election observation led by the Organisation for Security and Cooperation in Europe (OSCE) and the Office for Democratic institutions and Human Rights (ODIHR) of this organisation.

C. Positions

In its South Caucasus resolution of 17 January 2008, Parliament points to the complex geopolitical situation in the region and 'considers it of the utmost importance, therefore, that cooperation with the South Caucasus be given the highest priority, not least in matters relating to energy' (paragraph 4). The EU's policy towards Armenia, Azerbaijan and Georgia in the framework of the ENP is broadly supported, but 'more incentives are needed to motivate Armenia, Azerbaijan and Georgia to advance on the path of reforms' (recital C). The EU should assume the role of security and stability actor (recital D). Moreover, a regional policy for the South Caucasus should be developed (paragraphs 4 and *6*) and civil society should actively be included (paragraphs 6, 21, 24 and 50). The importance of trade policy as an instrument for ensuring political stability and economic development leading to poverty reduction is stressed (paragraph 8).

In relation to the conflicts of the region, Parliament 'advocates the use of cross-border programmes and dialogue among civil societies as tools for conflict transformation and confidence-building' and 'welcomes especially the Commission's efforts to give aid and spread information to Abkhazia and South Ossetia'. The resolution calls for 'the same kind of aid and information dissemination to Nagorno-Karabakh'
(paragraph 29). The 'contradiction between the principles of self-determination and territorial integrity [...] can be

overcome only through negotiations on the basis of the principles enshrined in the UN Charter and in the Helsinki Final Act and within the framework of regional integration' (paragraph 31). The EP reiterates its support for the territorial integrity and internationally recognised borders of Georgia (paragraph 32) as well as Azerbaijan (paragraph 33), but adds in the latter case a new reference to the principle of self-determination.

The 'further internationalisation of the unresolved post-Soviet conflicts must be one of the key issues of EU relations (recital H) and 'dialogue and coordination between the EU, Russia and the United States should help to promote democracy, to enhance energy security and to strengthen regional security in the South Caucasus' (K).

Parliament rejects 'all attempts by foreign powers aimed at creating exclusive spheres of influence' (paragraph 30) and suggests 'the setting up of a 3 + 3 Conference on security and cooperation in the South Caucasus', with the three States of the region plus the EU, the USA and Russia (38).

In a resolution on Georgia of 5 June 2008, the EP strongly criticised steps taken by Russia to develop official relations with the breakaway-regions Abkhazia and South Ossetia in Georgia. This resolution states that Russian troops in these regions 'have lost their role of neutral and impartial peacekeepers' and 'calls for a deeper European involvement [...] to move the peace processes forward'.

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 European Parliament 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.

→ Dag Sourander
July 2008

6.4.4. Central Asia

The EU is increasing its engagement with central Asia. The European Parliament welcomes this, but wants a shift in tone. Although very important, energy and trade goals should not be pursued at the expense of human rights, good governance and social development. While, for example, counter-terrorism, migration and water management require a regional focus, EU policies towards the five countries individually should more strongly reflect the marked differences between them on key issues such as human rights and energy. The EP believes that massive repression, corruption and exploitation, together with absence of political rights, heighten the risks of extremism and terrorism. A cautious approach to security cooperation is necessary as regimes use the fight against these phenomena as a pretext for general repression.

Legal basis

Title V of the Treaty on European Union (TEU), on the common foreign and security policy (CFSP); and Articles 300 (international agreements) and 133(3) (specifically on international trade agreements) of the Treaty establishing the European Community (EC).

Objectives

The EU's central Asia strategy, adopted in 2007 and available via the Commission's central Asia website, affirms that the EU has a strong interest in a peaceful, democratic and economically prosperous central Asia and that these aims are interrelated. Strengthening central Asian States' commitment to international law, the rule of law, human rights and democratic values, as well as to a market economy, will promote security and stability, the strategy notes.

Concrete measures announced in the strategy include a regular political dialogue at foreign minister level, a European education initiative, a rule of law initiative, a regular and result-oriented human rights dialogue with each of the central Asian States and a regular energy dialogue. The rule of law initiative should address specific priorities identified by each country. The strategy mentions judicial reform and administrative and commercial lawmaking as areas where the EU will provide support. This could help to pave the way for investments by EU companies and dovetails with the aim to promote development of energy, transport and trade infrastructure.

A section of the strategy about common threats and challenges mainly discusses the importance of border management. Much of the EU's assistance to central Asia goes to this. It is mentioned in passing that the EU 'will step up cooperation with the central Asian States to combat international terrorism', but no indication of what this could mean in practice is given.

Background

A number of developments in recent years have sparked increased EU interest in central Asia. The first of these developments started with the 11 September 2001 (9/11) terrorist attacks in New York and Washington. In the aftermath of these attacks, 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 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. EU aid to central Asia began to be increased from this time.

Since 2005–06, the EU's new keenness to diversify the sources of its energy supply has also stimulated engagement. Kazakhstan's oil and gas and Turkmenistan's gas attract much attention. Bringing it westwards without passing Russia would help to limit Russia's control of the EU's energy imports. EU and US efforts to achieve this have, however, so far largely failed.

Events within the region have also brought it into focus. This goes in particular for the Tulip Revolution in the Kyrgyz Republic in March 2005 and the massacre of demonstrators in the city of Andijan, Uzbekistan, less than two months later. Moves by Turkmenistan to relax the policy of self-isolation that prevailed under its former leader raise the question as to how the EU should react. And Kazakhstan's failure so far to honour a number of its OSCE commitments now presents a special challenge in view of the fact that this country will chair the OSCE in 2010.

The EU's growing interest in central Asia can to some extent be explained also by its 2004 and 2007 enlargements. They somewhat reduced the geographical distance to central Asia and triggered the launch of the European neighbourhood policy (ENP) (→6.3.3). This policy covers, inter alia, the South Caucasus and has therefore made the westernmost central Asian countries 'neighbours of our neighbours'.

Instruments

Partnership and cooperation agreements (PCAs), similar to those with east 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, 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 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 also supported 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).

An **EU Special Representative**, currently Mr Pierre Morel, is tasked with promoting good and close relations between the countries of central Asia and the EU, contributing 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).

EU aid is given mainly through the **Development Cooperation Instrument** (DCI), which is taking over from the Tacis programme. A central Asia strategy paper (not to be confused with the central Asia strategy mentioned above) and a regional indicative programme provide a framework for the assistance. Much of the assistance has the related objectives of improving border management and combating drug smuggling. The main aims are to promote stability in the region and to reduce the flow of drugs to the EU. EU aid should also support poverty reduction in the poorest countries. Slightly less than EUR 80 million per year is allocated to central Asia in the years 2007–10. About a third of this amount should go to regional cooperation and the rest to national programmes. Tajikistan and Kyrgyzstan (the poorest countries) receive the highest sums. Limited funding from the European Neighbourhood and Partnership Instrument (ENPI) may be given for specific projects or programmes of a global, regional or cross-border nature.

Through the **European Instrument for Democracy and Human Rights** (EIDHR), support is given to relevant civil society organisations (except in Turkmenistan and Uzbekistan, where government policies make it almost impossible for such organisations to survive and foreign support to them is being blocked). The **Instrument for Stability** (IfS) is used in Kyrgyzstan.

The Commission has a delegation to Kazakhstan, with offices also in the Kyrgyzstan and Tajikistan. It plans to open a delegation to Uzbekistan and a Europa House in Turkmenistan.

Trade

From the EU perspective, EU trade with the central Asian countries is minuscule. The share of total EU imports is 0.1 % or lower for all of the countries, with the notable exception of Kazakhstan, which approaches 1 %. Energy imports from Kazakhstan and exports of various goods to it are now booming, with roughly 40 % increases in total imports from, as well as exports to, Kazakhstan in 2006.

For Kazakhstan the EU is the most important trading partner. For Tajikistan and Uzbekistan the EU is in second position, for Turkmenistan it is in third, and for Kyrgyzstan the EU is in fifth position. Further trade data is available in the bilateral trade data section of the Commission's external trade website.

Role of the European Parliament

Powers

The EP's assent is necessary for the conclusion of 'agreements establishing a specific institutional framework by organising cooperation procedures' (Article 300(3) (ex Article 228) of the EC Treaty). Partnership and cooperation agreements (PCAs) fall within this category. PCAs with Kazakhstan, Kyrgyzstan and Uzbekistan are in force, a PCA with Tajikistan is at the ratification stage and a corresponding agreement with Turkmenistan has been negotiated.

The DCI regulation was adopted by Parliament and the Council under the co-decision procedure in autumn 2006. DCI implementation is subject to democratic scrutiny by Parliament, meaning in particular that Parliament gets the opportunity to express its views on draft documents (strategy papers, indicative programmes, annual action programmes, 'project fiches') before they are adopted.

Activities

A comprehensive resolution on the EU's central Asia strategy was adopted on 20 February 2008 on the basis of a Foreign Affairs Committee report. The EP gives rapid reactions to particularly serious human rights developments by adopting resolutions under a special urgency procedure.

Democratic scrutiny of DCI implementation is carried out by the Development Committee, with the help of working groups set up by this committee.

Because of the huge scale of the human rights violations in several of the central Asian countries, the EP's Subcommittee on Human Rights frequently discusses the situation there, not least with human rights organisations.

Parliamentary cooperation committees (PCCs) have been set up with the central Asian States with which a PCA is in force. PCCs normally meet once a year. Interparliamentary meetings (IPMs) are held with the other two States of the region. The EP delegation to the PCCs and IPMs regularly meets to discuss topical issues in relation to the region. The EP has participated in election observation missions in Kazakhstan and Kyrgyzstan.

Positions

The EP's resolution on the EU's central Asia strategy of 20 February 2008 stresses that social reforms, the fight against corruption and fair and sustainable economic development are crucial to ensuring long-term stability, security and prosperity in central Asia (paragraph 10). It states that 'it follows from the EU's security and other interests, as well as from its values and support for the MDGs (millennium development goals), that the hardship and lack of opportunities faced by many people in this region [...] must be placed at the very core of the EU's approach to central Asia' (recital I).

Parliament considers 'the strategy to be insufficiently ambitious with regard to bilateral cooperation on **human rights**, the rule of law, good governance and democratisation' (paragraph 19). Human 'rights issues should carry equal weight with the EU's robust approach to energy, security and trade' (paragraph 4). The resolution condemns 'the persecution of human rights defenders in Uzbekistan and Turkmenistan' (paragraph 22). Other problems that are mentioned are abuse of women (paragraphs 28 and 29), child labour (paragraph 30) and extradition of asylum seekers (paragraphs 33 and 34). The Council and the Commission are called upon 'to set clear benchmarks, indicators and targets [in the areas of democracy, good governance, the rule of law and human rights], in consultation with the central Asian partner countries' (paragraph 21). Specific references are made to political prisoners, the media, the climate for human rights defenders and the level of cooperation with UN special rapporteurs and mechanisms (paragraphs 20 and 21).

In relation to **extremism and terrorism**, the resolution states that 'examples of massive repression, corruption and exploitation, and the denial of people's fundamental rights and opportunities to improve their lives, together with the absence of accepted channels for expressing grievances and participating in political processes, heighten the risks that extremism and terrorism will grow' (recital AD). It is also noted that 'in some cases, the "fight against terrorism" is used as a cover for repressive actions against those who criticise the government, human rights defenders, religious movements and ordinary businesspeople' (recital V). While recognising the need for regional cooperation on counter-terrorism (paragraph 5), the EP emphasises 'that EU contacts with security structures or EU support for security cooperation involving highly repressive States should be minimised, and that any such contacts should always be conducted transparently' (paragraph 23).

Given the huge differences between the central Asian States, the EU must differentiate its policies accordingly (recital T). The **differentiation of the EU policy** between the countries should 'be based in particular on the human rights situation in each country, their government's respect for OSCE commitments, their development needs and their government's commitments to improving the welfare of citizens, their current and potential importance to the EU as partners in trade, cooperation on energy and in other areas,

and dialogue on international issues, and the prospects for success of EU actions, including various forms of assistance' (paragraph 6). The Commission is called upon 'to provide regular and detailed information to Parliament on the way in which bilateral and regional assistance will relate to individual MDGs and on the budget planned for the health and basic education sectors' (paragraph 9).

The EP considers 'that cooperation on the EU's external **energy** policy is of the greatest importance in the context of its central Asia strategy' and 'supports, therefore, efforts by the EU to boost gas and oil imports from Kazakhstan and Turkmenistan and to diversify transit routes'. It also 'calls for active EU energy cooperation with the region, especially with Kyrgyzstan, Tajikistan and, if possible, Uzbekistan, in order to address energy problems of particular importance to their huge human and economic development needs, difficult inter-State relations and precarious security of supply' (paragraph 81).

Economic issues, including accession to the World Trade Organisation of further countries in the region, are commented upon (paragraphs 11 to 18) and **environmental issues**, including water issues, are dealt with in a specific section (paragraphs 74 to 79).

The resolution also includes a section on each of the central Asian countries. The EP supports 'the decision to let **Kazakhstan** assume the Chairmanship of the OSCE in 2010, made possible by Kazakhstan's pledges to defend the current mandate of the ODIHR and to democratise and liberalise the political system in Kazakhstan' (paragraph 48). Commenting on the new constitution of **Kyrgyzstan** adopted in October 2007, the EP 'urges the Kyrgyz authorities to safeguard the appropriate checks and balances' in its political system (paragraph 54). According to the EP resolution, the president of **Tajikistan** 'has systematically repressed all opposition' (paragraph 56). The ratification of the EU–Tajikistan partnership and cooperation agreement (PCA) should nevertheless be accelerated and the EP aims to give its approval 'in the near future'.

'**Turkmenistan** must make progress in key areas in order for the EU to be able to move ahead with the interim agreement, inter alia, by allowing the International Committee of the Red Cross free and unfettered access, by unconditionally releasing all political prisoners and prisoners of conscience, by abolishing all government impediments to travel, and by allowing all NGOs and human rights bodies to operate freely in the country' (paragraph 64).

Through the resolution, the EP also 'confirms its support for the sanctions against **Uzbekistan** imposed by the EU after the Andijan massacre' (paragraph 67), supports 'the establishment of a human rights dialogue' and 'rejects every tendency to use the mere existence of this dialogue as an excuse for lifting sanctions' (paragraph 68). The Commission is urged to 'lay down concrete obligations and establish more efficient monitoring mechanisms' (paragraph 69).

→ Dag Sourander
July 2008

6.4.5. The southern and eastern Mediterranean countries

The Euro-Mediterranean Partnership (EMP), established at the Barcelona Conference in November 1995, forms the basis for cooperation between the EU and the Mediterranean countries. The EMP, enhanced since 2004 by the southern dimension of the European neighbourhood policy, has a bilateral and a regional component. Financial support for the EMP is provided through the European Neighbourhood and Partnership Instrument (ENPI), which came into force on 1 January 2007. At the Paris Summit in July 2008, the 'Union for the Mediterranean' was launched in an effort to give fresh impetus to the EMP.

Legal basis

Title V of the Treaty on European Union.

Articles 133 and 310 of the Treaty establishing the European Community (EC).

(Articles 188 and 217 of the Lisbon Treaty)

Background

The end of East-West rivalry paved the way for a new North–South relationship. In parallel to the process of redefining the EU's links with the eastern part of Europe, it became necessary to strengthen its relations with its Mediterranean neighbours as well. The prospect of a solution of the Arab-Israeli conflict with the Oslo Agreements in the mid-1990s dominated the hopes for cooperation with the Mediterranean that were initiated in 1995 with the Barcelona process.

Since then, the regional and international parameters have undergone a number of changes: 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).

Objectives

The Euro-Mediterranean Conference of Ministers of Foreign Affairs, held in Barcelona on 27 and 28 November 1995, established 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).

instruments

— The EU carries out a number of activities **at bilateral level** with each country. The most important are the **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, signature is still pending. Negotiations on the liberalisation of services and investment were opened with interested Mediterranean partners. Since 2007, Mauritania and Albania have advanced from observer status to full membership of the Barcelona process but do not have an association agreement with the EU.

— **At multilateral level**, regional dialogues and activities take place under all three chapters of the Barcelona Process. The Euro-Mediterranean Committee for the Barcelona Process consists of representatives of EU Member States, Mediterranean partners and the European Commission. It meets on a quarterly basis at senior official level and is chaired by the Presidency of the EU Council. The Committee acts as a multilateral steering body for the entire regional process with the right to initiate activities to be financed by the EU. It also prepares ministerial meetings, conferences etc.

— As of 1 January 2007 the new European Neighbourhood and Partnership Instrument (ENPI), within the European neighbourhood policy, has replaced the MEDA regulation as the principal financial instrument for the implementation of the partnership. The following allocations have been made for 2007–10 (in millions of euros): Regional Programme — South (343), Algeria (220), Egypt (558), Israel (8), Jordan (265), Lebanon (187), Morocco (654), Syria (130), Tunisia (300), West Bank and Gaza Strip (632).

Results

A. In the political and security field:

— information and training seminars for Euro-Mediterranean diplomats;

— network of foreign policy institutes (EuroMeSCo);

— adoption of a plan for the management of natural disasters;

— ***adoption of a code of conduct*** on countering ***terrorism;***

— enhanced political dialogue including subcommittees on human rights set up with various countries under the association agreements;

— Euro-Mediterranean human rights network;

— judicial cooperation

B. In the economic and financial field:

— on the basis of the 2007–10 budget allocation of EUR 2 630.3 million, tri-annual national indicative programmes have been drawn up at national level; a regional programme covers multilateral activities;

— since 2003 the EIB has been lending to Mediterranean partners through the Facility for Euro-Mediterranean Investment and Partnership (FEMIP); its transformation into a Euro-Mediterranean Development Bank has been under discussion for some time;

— as an important step towards regional economic integration, the Agadir Agreement for free trade between Egypt, Jordan, Morocco and Tunisia entered into force in March 2007;

— 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 is 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).

Further development

At the instigation of French President Nicolas Sarkozy, the Barcelona process was politically enhanced by the launch of the Union for the Mediterranean at the Paris Summit for the Mediterranean on 13 July 2008. It comprises the 27 members of the European Union, the 10 countries of the Barcelona process (Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, the Palestinian Authority, Syria, Tunisia and Turkey) and Albania, Bosnia and Herzegovina, Croatia, Monaco, Montenegro and Mauritania.

With a new leadership structure (summits of the Heads of State or Government to be held every two years, a co-presidency of one president from the north and another from the south, a Joint Permanent Committee in Brussels and a small secretariat), the aim is to drive forward a number of practical regional projects. Once the Lisbon Treaty enters into force, the co-presidency on the EU side will comprise the President of the European Council and the Commission President (at the level of the Heads of State or Government) and the High Representative/Vice-President of the Commission (at foreign minister level).

At the Paris Summit, six key initiatives were identified: de-pollution of the Mediterranean (building on the current 'Horizon 2020' programme); expansion of maritime and land highways; more intensive use of solar energy; development of regional research programmes through the Euro-Mediterranean University in Slovenia; civil protection; and the Mediterranean Business Development Initiative.

Financing: besides contributions from the EU budget (in particular the EU regional programmes, as project funding must not take place at the expense of bilateral allocations) and partner countries' contributions, new sources of financing must be tapped, e.g. private sector participation, international financial institutions and contributions from other countries.

Role of the European Parliament

The EP and a number of EP bodies (committees, delegations and the EP's delegation to the Euro-Mediterranean Parliamentary Assembly (EMPA)) are closely involved with the development of the Barcelona process and have been particularly proactive in promoting the parliamentary dimension of the partnership, including through election observation to support the democratisation process in the partner countries.

As the parliamentary institution of the Barcelona process, the EMPA has since 2003 brought together representatives of the European Parliament, EU national parliaments and parliaments of the Mediterranean partners. Its 260 members consist of 130 MPs from national parliaments of the Mediterranean countries and 130 from the European Union, of whom 81 are appointed by national parliaments and 49 by the European Parliament. With the expansion of its membership through the 'Union for the Mediterranean' process, the allocation of EMPA seats will have to be adjusted, but the total of 260 seats will be maintained.

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 the EMPA met in Brussels in March 2006, the third was held in Tunis in March 2007, and the fourth session took place in Athens in March 2008. In October 2008, the EMPA will convene again for an extraordinary plenary session in Jordan.

Four parliamentary committees 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; the Committee on Improving Quality of Life, Exchanges between Civil Societies and Culture (each with 70 members); and the Committee on Women's Rights in the Euro-Mediterranean countries, newly established in 2008 (50 members).

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.

In its resolution of 5 June 2008, the European Parliament welcomed the initiative to establish the Union for the Mediterranean as a means to give fresh impetus to the multilateral relations of the EU with its Mediterranean partners, but emphasised that the achievements of the Barcelona process should be duly taken into consideration. The EP has been critical from the outset about the creation of parallel structures or structures which overlap with the Barcelona process. In particular, the EP underlines the fact that greater democratic legitimacy is necessary, as is a stronger role for the EMPA, the only parliamentary assembly uniting the EU and the Mediterranean, and it considers that the EMPA should have the right to make proposals and assessments.

In its Declaration on the Union for the Mediterranean, issued on 12 July 2008, the EMPA Bureau takes up these demands and calls for the EMPA, as a legitilately elected assembly, to hold the new institutional structure of the Barcelona process: Union for the Mediterranean to account.

→ Stefan Krauss
July 2008

6.4.6. Arabian peninsula, Iraq and Iran

The EU has concluded a cooperation agreement with the countries of the Gulf Cooperation Council and a cooperation agreement with Yemen. Relations between the EU and Iraq are limited to humanitarian assistance and the launching by the EU of an integrated mission for the rule of law in Iraq. Currently the EU has no contractual relations with Iran and the Commission does not have a delegation in Tehran.

Legal basis

Title V of the Treaty on European Union (TEU) (common foreign and security policy).

Articles 133 and 308 of the Treaty establishing the European Community (EC).

Article 188N(6) and Article 188C(2) of the Lisbon Treaty.

I. The countries of the Gulf Cooperation Council (GCC)

Background

The oil-rich Gulf countries, where approximately 20 % of the EU's energy needs are sourced, are witnessing considerable social and political dynamics, albeit reforms progress at an uneven pace. GCC countries like Saudi Arabia and Qatar have also been ever more active as key diplomatic players in the Middle East. While the EU has the ambition to become a significant political agent in the region, EU–GCC relations have been largely defined by economic and trade ties. Trade volumes between the two sides have steadily increased since the 1980s. The GCC is the Union's sixth largest export market and principal trading partner in the Arab world. Economic interdependency is also at the core of EU efforts to support the process of regional integration.

The GCC was established on 25 May 1981, with six countries as members: Saudi Arabia, Bahrain, Kuwait, Oman, Qatar and the United Arab Emirates sharing common points of culture and language. The GCC's monetary union project (initially scheduled for 2010) bears similarities with the euro area experience and offers many possibilities for comparison.

The EU 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.

Objectives

— To contribute to strengthening stability in a region of strategic importance.

— To secure European energy supplies.

— To facilitate political dialogue.

— To broaden cooperation in various economic and technical fields, including through strengthening the process of economic development and diversification of the GCC countries.

Instruments

A. Cooperation agreement

The agreement was 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. Working groups have been established in the fields of energy and the economy.

B. Free trade agreement

Negotiations on a free trade agreement started in 1990 but faced a standstill pending the decision from the GCC in 1999 to move towards a customs union by March 2005. Without that the EU would have to enter into agreements with each

individual State, i.e. not with the GCC as such. The EU adopted a new set of negotiating directives in July 2001, including services and other areas included in recent FTAs. New clauses on human rights, non-proliferation and counter-terrorism confer the agreement a clear significance beyond trade. However, these clauses are also a major stumbling block in the negotiations which resumed in March 2002 and have been continuing since.

C. Financing instruments

Since 1 January 2007 funds from the financing instrument for cooperation with industrialised and other high-income countries and territories (ICI) are available for financing measures to implement the EU–GCC cooperation agreement. This includes the:

— promotion of cooperation, partnerships and joint undertakings between economic, academic and scientific actors;

— the stimulation of bilateral trade, investment flows and economic partnerships;

— the promotion of dialogues between political, economic and social actors and other non-governmental organisations in relevant sectors;

— the promotion of people-to-people links, education and training programmes and intellectual exchanges;

— the promotion of cooperative projects in areas such as research, science and technology, energy, transport and environmental matters (including climate change), customs and financial issues. The GCC countries also benefit from the Erasmus Mundus programme.

Current status

Whereas the conclusion of the agreement has many times been announced as being imminent, few but crucial issues remain to be tackled. The EU–GCC Joint Council at its 18th session in Brussels on 26 May 2008 encouraged negotiators from both sides 'to prepare the agreement for initialling before the end of 2008'.

Increased efforts are under way to raise awareness among GCC countries of the EU, its policies and its role as an international actor. A first information day on research and development cooperation was held in Riyadh. Experts meetings on environment and climate change took place and the potential cooperation between the EU and the GCC in the field of sustainable and clean energy policies and technologies is being explored.

II. Yemen

Yemen is the poorest country in the Middle East. EU–Yemen relations are based on the 1997 cooperation agreement, covering trade, development cooperation, culture, communication and information, environment and management of natural resources. Relations were strengthened in 2004 when the European Commission opened a Delegation in Sana'a and a political dialogue between the EU and Yemen was established.

The EU deployed an elections observation mission for the 20 September 2006 presidential and local elections that found the elections open and genuinely contested, but identified a series of democratic shortcomings related to the publication of results, the participation of women, and the use of State funds in the campaign.

Cooperation remains the main component of the EU's relations with Yemen. Since Yemen's unification in 1990 to 2006, the country was allocated EUR 200 million. The 2007–10 assistance strategy focuses on good governance, private sector development and human capital development. It is accompanied by a EUR 60 million aid package. Beyond the bilateral assistance, Yemen can also benefit from thematic programmes, such as food security, the European Instrument for Democracy and Human Rights, the migration and asylum programme, the 'Investing in people' programme, non-State actors and local authorities in development, and the environment programme as well as the renewed Erasmus Mundus programme to facilitate exchanges of students.

Role of the European Parliament

Under the Lisbon Treaty, Article 188N.6 the consent of the European Parliament is required for all trade agreements and co-decision applies to all autonomous commercial policy instruments (Article 188C.2). Hence, Parliament will have a greater say, including on trade relations with the GCC.

The EP covers most of the region through its Delegation for relations with the Gulf States, including Yemen, which periodically holds interparliamentary meetings with individual Gulf States. Latest EP Delegation visits took place to Bahrain at the beginning of the 1980s, to Qatar in 1990 and to the UAE in 2007.

In January 2007, Qatar's Second Deputy Prime Minister and Minister of Energy and Industry, Abdullah Bin Hamad Al-Attiyah visited the EP and met with the Committee on Industry, Research and Energy (ITRE).

Qatar's Amir Shaikh Hamad bin Khalifa Al-Thani addressed the Plenary in Strasbourg in November 2006 criticising in particular the international community's boycott of the Palestinian government.

Bahrain's Vice-Prime Minister Shaikh Mohammed bin Mubarak Al-Khalifa visited the EP on 3 May 2007 expressing Bahrain's wish to closer cooperate in terms of exchange and capacity building.

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 European Parliament 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.

There are no specific resolutions on Yemen.

III. Iraq

Background

Since the end of the war against Iraq, the EU, through the European Commission has been a major aid with the implementation of the IRFFI (International Reconstruction Fund Facility for Iraq) in the process of making Iraq slowly but surely viable. The IFFRI has two distinct trust funds working independently:

— the United Nations Development Group Iraq Trust Fund;

— the World Bank Iraq Trust Fund.

The European Commission granted the amount of EUR 829 million from 2003 to 2007. Those funds have been divided through various sectors such as basic services (education, health, infrastructure, water and sanitation), human development (agriculture, rural development, poverty reduction, durable solution for refugees), political process (elections, constitutional process) and capacity building (civil society, human rights, trade and customs, technical assistance, justice and the rule of law). With a 44 % share the EC is first in the IRFFI donors' contributions list.

An integrated EU rule of law mission (EU-JUST LEX), launched on 1 July 2005 under the scope of the ESDP, contributes to enhance the rule of law, providing training for almost 800 Iraqi judges, police and prison officers. The positive impact of the EUJUST LEX programme has repeatedly been highlighted by the Iraqi authorities. In September 2007, the EUJUST LEX mission was extended for another 18 months until 30 June 2009.

Negotiations for a trade and cooperation agreement (TCA) between the EU and Iraq started on 20 November 2006. Talks cover trade, especially of goods and services, but also deal with issues such as combating poverty, protecting the environment and education. Human rights issues, counter-terrorism and the proliferation of weapons of mass destruction will also be tackled. A third round of talks took place in February. The signing of the TCA could materialise in early 2009.

Role of the European Parliament

In order to strengthen its relations with the Iraqi Council of Representatives, the EP set up a permanent ad hoc Delegation for the relations with Iraq in February 2008. The Delegation aims to contribute to parliamentarian exchanges, to capacity building and training/information on the work of parliamentary structures and legislative procedures.

High-ranking visits to the EP related to Iraq include Kurdish President Barzani in May 2007, Speaker Mashhadani in October 2008, Deputy Speaker Sheik Khalid al-Attiya in February 2008, the UN Secretary General's Special Representative for Iraq, Staffan de Mistura, on 10 April 2008, and Iraqi Prime Minister Nuri al-Maliki on 16 April 2008.

The EP resolution on the EU's role in Iraq of 13 March 2008 following the report of Ana Maria Gomes (PSE) recommends 'a new reinforced strategy for action', based on respect for human rights. One of the cornerstones of the report is the suggestion to engage more fully with Iraqi parliamentarians.

The reinforced strategy would include:

— using existing EU financial instruments to channel European financial assistance, rather than multilateral trust funds (see the EP's continued requests to the European Commission for more transparent information related to the discharge exercise 2006);

— encouraging the Iraqi government to commit more funds to helping refugees and displaced persons;

— supporting the Commission's negotiations of a trade and cooperation agreement;

— persuading European businesses to return to Iraq;

— engaging with Iraq's neighbours, including Iran, Syria, Saudi Arabia and Turkey.

IV. Iran

The EU's relations with Iran are dominated by the nuclear issue, meaning Iran's suspected pursuit of nuclear weapons capability and the international community's attempts to make Iran halt the most sensitive nuclear activities. The EU's High Representative for the Common Foreign and Security Policy, Mr Javier Solana, also represents China, France, Russia the UK and the USA (i.e. the permanent members of the UN Security Council, also referred to as 'the P-5'), as well as Germany, when seeking the start of negotiations with Iran on a settlement of the nuclear issue.

A further obstacle to closer EU relations with Iran is the Iranian regime's massive and further increasing violations of human rights.

The EU does not have any contractual relations with Iran. In 2001, the Council approved a Commission communications on EU relations with Iran which set out perspectives and conditions for developing closer relations with Iran, including the conclusion of a trade and cooperation agreement. The EU Council adopted a negotiating mandate for such an agreement the following year. 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.

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.

The three EU Member States, Germany, France and the United Kingdom (the '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 sensitive activities. In June 2006, a package of incentives and disincentives was presented to Iran by Mr Solana on behalf of the EU, the P-5 and Germany. Against the background of continued failure to reach a diplomatic solution, the UN Security Council in UNSC resolution 1737 of 27 December 2006 decided that limited sanctions should be imposed on Iran. The scope of these sanctions was widened in UNSC resolution 1747 of 24 March 2007 and UNSC resolution 1804 of 3 March 2008. While implementing these and some additional sanctions, the EU continues to seek a negotiated settlement. Mr Solana, still acting on behalf of the EU, the P-5 and Germany, in June 2008 presented an updated and somewhat expanded package of incentives to Iran.

Meanwhile, the human rights situation in Iran has further deteriorated. The EU strongly criticises, inter alia, the frequent use of the death penalty.

Role of the European Parliament

The Iran nuclear issue is regularly discussed by the European Parliament (EP) with Mr Solana, his personal representative on non-proliferation of weapons of mass destruction, Ms Annalisa Giannella, representatives of the Presidency-in-office of the Council of the EU and other interlocutors, occasionally including an Iranian representative at top level. These discussions mainly take place in the EP plenary, the Foreign Affairs Committee and the Subcommittee on Security and Defence.

An EP Delegation for relations with Iran follows developments in this country and in Iran's international relations. EP–Iran interparliamentary meetings were held in Brussels in 2006 and in Tehran in 2007. Human rights issues in relation to Iran are also dealt with by the EP's Subcommittee on Human Rights.

In a number of resolutions on Iran adopted in recent years (to find them, click this link and search for the word 'Iran'), the European Parliament has criticised the human rights situation in the country, often drawing attention to individual cases and calling for the release of certain prisoners. The most recent such resolution was adopted on 16 November 2006.

Parliament supports the work of the EU-3. In a resolution of 15 February 2006, it 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 (paragraphs 8 and 9 respectively). A zone free of weapons of mass destruction (WMDs) in the Middle East could, according to this resolution, be an important step towards meeting security concerns of the countries of the region (paragraph 14). A resolution of 31 January 2008 clearly rejected the idea of military action and regime change policies (paragraph 5).

Aggressive statements on Israel by President Ahmadinejad prompted the adoption of a specific resolution of 17 November 2005, condemning these statements.

→ Stefan Krauss
Dag Sourander (Iran parts)
July 2008

6.4.7. Transatlantic relations: the USA and Canada

The EU–US relations are based on political cooperation marked by the Transatlantic Declaration of November 1990, on the New Transatlantic Agenda and the joint action programme of 1995 as well as on a strong economic cooperation. The EU-Canada relations are very old and date back to 1959. These linkages are also based on the framework agreement for trade and economic cooperation of 1976.

Legal basis

— For the USA: Article 133 of the Treaty establishing the European Community (EC).

— 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 USA. The USA 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 Presidency of the EU Council 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 Minister and the US Secretary of State;

— biannual consultations between the Commission and the US government at cabinet level;

— briefings by the Presidency of the EU Council 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 USA have agreed to work together, both bilaterally and multilaterally. To promote peace and stability, the EU and the USA 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). This was followed by the June 2005 summit in Washington, which adopted 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

Disagreements remain over issues such as genetically modified crops — which the USA is much keener to develop and exploit than the EU — and global competition in sectors like steel

production and aircraft building (Boeing v. Airbus). Other differences of opinion also exist towards the International Criminal Court , the use of military force in international relations generally, and the balance of human and civil rights v. intelligence in the struggle against international terrorism.

C. Economic cooperation

The EU and the USA are each other's main trading partners, accounting for about two fifths of world trade. Trade flows across the Atlantic are running at around EUR 1.7 billion a day. The much-publicised trade disputes in reality only concern some 2 % of EU–US trade. The overall 'transatlantic workforce' is estimated at up to 14 million, split about equally, illustrating the high degree of interdependency of the two economies. Transatlantic trade relations define the shape of the global economy as a whole since either the EU or the US is also the largest trade and investment partner for almost all other countries.

The EU–US summit in Washington on 30 April 2007 adopted the **'Framework for advancing transatlantic economic integration between the USA and the EU'.** Key elements of this framework were the adoption of a work programme of cooperation and the establishment of the Transatlantic Economic Council to oversee, guide and accelerate the implementation of this work programme. The **Transatlantic Economic Council (TEC)** is a political body, chaired by European Commission Vice-President **Günter Verheugen**, and **Dan Price**, Assistant to the US President for International Economic Affairs. The TEC also brings together those Members of the European Commission and US Cabinet Members who carry the political responsibility for the policy areas covered by the framework. On the European side, the permanent members of the TEC are the Commissioners for External Relations (Benita Ferrero-Waldner), for External Trade (Peter Mandelson) and for Internal Market and Services (Charlie McCreevy). In addition, other Commissioners can participate upon invitation by the co-chairs or upon their own request. The first meeting of the TEC was held on 9 November 2007 in Washington D.C. and the second took place in Brussels in May 2008. There are plans to hold a further meeting in October 2008 in order to safeguard the continuity of the process during the critical period of the US elections.

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). 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 USA. Canada is an important trade partner for the EU both bilaterally (place in 2006) and on global trade policy.

Bilateral trade patterns are characterised by an exchange of high value-added goods (machinery, transport equipment, chemicals), while agricultural products dropped to 7.8 % of Canada's exports to the EU in 2006.

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), which would provide for close cooperation between EU and Canadian regulators on subjects ranging from the mutual recognition of professional qualifications, through financial services, to government procurement. After a first round in 2005/06, negotiations are currently on hold pending the outcome of the Doha Development Round of WTO negotiations.

Role of the European Parliament

As with most other countries and regions of the world, the European Parliament maintains regular interparliamentary contacts with the USA and Canada through standing delegations meeting with their counterparts at least once a year. These contacts are among the European Parliament'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 upgraded twice-yearly meetings, the TLD 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. 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 European Parliament activities relating to the TLD.

In the context of the Transatlantic Economic Council above, the co-chairs of the TLD (along with those of the Transatlantic Consumer Dialogue and Transatlantic Business Dialogue) are ex-officio members of the Group of Advisers, mandated to reach out to the broader stakeholder community and to give a voice to their concerns.

The European Parliament has welcomed this inclusion of legislators in the new structure, but noted that it falls short of its resolutions of 1 June 2006 and 25 April 2007, which reiterated the need to strengthen the parliamentary dimension of the transatlantic framework and called for transforming the TLD into a transatlantic assembly.

→ Stefan Schulz
July 2008

6.4.8. Latin America

The EU's relations with Latin America take different forms: multilateral relations, as with the Rio Group, bilateral relations, as with Central America, the Andean Community and Mercosur, bilateral agreements, such as those with Mexico and Chile and, finally, the regular organisation of summits of the Heads of State or Government of both regions (EU/LAC).

Legal basis

Title V of the Treaty on European Union as regards general relations.

Treaty establishing the European Community (EC):

— 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). The EU will contribute a total of EUR 2 700 million to Latin America until 2013 within the framework of the cooperation policy.

2. Relations with the Rio Group and summits of Heads of State or Government

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 biregional dialogue includes an annual meeting of foreign ministers and a two-yearly summit of Heads of State 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, Vienna in May 2006 and Lima in May 2008. At this latest summit, which was the first involving the 27-member Union, the participants emphasised the need for:

— multilateralism: consolidating the multilateral system by making it more effective and more democratic, under the auspices of the UN, thanks to greater LAC–EU coordination and cooperation;

— social cohesion: combating exclusion by means of effective social policies, higher budgetary appropriations and experience-sharing;

— sustainable development: need to work to promote sustainable development and to integrate economic and social development with environmental protection focusing in particular on climate change, desertification, energy, water, biodiversity, forests, etc.;

— regional integration: strengthening regional integration and other forms of association, as well as biregional processes for political dialogue, cooperation and trade, taking into account the imbalances between both regions.

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 Vienna Summit in May 2006 and it is due to be signed in 2009.

2. Andean Community

The EU has maintained regular contact with Andean countries (Bolivia, Colombia, Ecuador and Peru) 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 2003 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. Finally, in December 2006 the Commission asked the Council for a mandate to open EU–Andean Community negotiations for the signing of an association agreement. These negotiations are continuing and the Commission hopes to conclude them in 2009.

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 showed that the main obstacle to the conclusion of the agreement lay in its agricultural component. Despite encouragement from the Guadalajara, Vienna and Lima Summits, the negotiations are still far from being concluded. The conditions for resuming negotiations and the timetable of work are now linked to the progress of the WTO negotiations on trade liberalisation.

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. It 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 has been fully open to EU exports since 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, 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 European Parliament, 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 (CPCM), the Andean Parliament (Parlandino) and the Congress and Senate in Chile and Mexico. Joint parliamentary committees have been established between the European Parliament and the parliaments of both countries, as envisaged in the association agreements. Since 1974, the European Parliament 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 European Parliament 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, Guadalajara and Vienna Summits. In a very detailed resolution comprising 93 operative paragraphs, the European Parliament 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 an EU–Latin American peace and security 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 2012, 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.

On 8 November 2006 the first of the three objectives mentioned above was achieved: the new EU–Latin American Transatlantic Assembly (EuroLat), the parliamentary showcase of the EU–Latin America strategic and regional association, came into being in Brussels. The Assembly has 120 members from the European Parliament, the Latin American Parliament, Parlacen, Parlandino, the Mercosur Parliament and Members of the Mexican and Chilean parliaments. The new Assembly, which is on similar lines to the ACP–EU Joint Parliamentary Assembly and the Euro-Mediterranean Parliamentary Assembly, has three standing committees: Political Affairs, Security and Human Rights; Economic and Commercial Affairs; Social Affairs, Human Exchanges, Environment, Education and Culture.

Meeting in Lima a few days before the summit of Heads of State or Government, the EuroLat Assembly sent a message to those participating in the summit, calling for reaffirmation of the principles and values at the root of the strategic partnership uniting the two geographical blocs: enhancing multilateralism in economic and political affairs at international level, greater regional integration within the geographical sub-regions (Central America, Andean Community and Mercosur), unreserved support for the priority topics of the Lima agenda, i.e. poverty eradication, social inequalities and integration, the fight against climate change and sustainable development. The EuroLat Assembly also recommends that the EU–Central America and EU–Andean Community partnership agreements be concluded 'by mid-2009 at the latest', that the negotiations aimed at concluding an EU-Mercosur partnership agreement be concluded 'as soon as possible', and that the specific agreements linking the EU and Chile and Mexico be applied 'more comprehensively'.

→ Pedro Neves
July 2008

6.4.9. Japan

The foundations of EU–Japan relations have been established by the political statement of 1991. Their relations are based notably on deregulation which aims to limit the number of unnecessary regulations that impede trade and foreign investment, but also on the promotion of trade and investment.

Legal basis

Article 133 (ex Article 113) of the Treaty establishing the European Community (EC).

Objectives

After the largely trade-related focus of relations between Japan and the EC/EU in the 1970s and 1980s, more far-reaching common principles for the relations between Japan and the EU and its Member States were laid down in a political declaration of 1991. This declaration also contains a list of common objectives in the fields of politics, the economy, cooperation and culture and provides a consultation framework for the annual meetings between Japan and the EU. Moreover, since 2001, a 10-year action plan has been in place to reinforce the bilateral partnership and enable it to move from consultation to joint action. 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.

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 17th EU–Japan summit took place in Tokyo on 23 April 2008. 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 a more effective partnership to address key international issues (especially climate change, development issues and the world trade system) more effectively and identify constructive solutions to bilateral issues.

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 2003/04 Europe had a 33 % share (JPY700 billion) of inward FDI to Japan (compared to JPY1 400 billion in 1999/2000). Likewise, Europe is a popular destination for Japanese investment. Japan invested JPY1 400 billion in Europe in 2003/04, 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 m. 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 in other sectors

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 meets most years with a delegation from the Japanese Parliament, the Diet, comprising members of the Upper and the Lower House,

and alternating between venues within the European Union and Japan. The last EP/Japan inter-parliamentary meeting (the 29th) took place in Brussels in early June 2008, after which the Japanese delegation visited Vienna. The agenda included reciprocal information about political developments at national and regional level, an exchange of views on climate change and energy policy, and a discussion of economic cooperation. Furthermore, in February 2008, the President of the European Parliament, Hans-Gert Pöttering, paid an official visit to Japan, during which he was received not only by the parliament and government but also by the Emperor.

The EP has held several debates over recent 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.

→ Stefan Schulz
July 2008

6.4.10. The People's Republic of China and Taiwan

EU–China relations, suspended following the massacres of Tiananmen Square in 1989, resumed in 1994 with a new framework for the organisation of a bilateral political dialogue. Being committed to the 'One China' principle, the EU has no diplomatic relations with Taiwan.

Legal basis

— Title V of the Treaty on European Union (TEU).

— Articles 133 and 310 Treaty establishing the European Community (EC).

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. Peoples' 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

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 entitled '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.

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.

The Commission produced in late 2006 two separate but coordinated communications to define the overall future approach to the relationship. 'EU–China: closer partners, growing responsibilities' takes stock of EU–China relations in the context of China's re-emergence as a global economic and political power. It signals the EU's wish to continue and further intensify its comprehensive engagement with China. The communication pursues a five-pronged strategy that focuses on the support for China's transition towards a plural society, the promotion of sustainable development, the improvement of our trade and economic relations, the strengthening of our bilateral cooperation as well as the fostering of regional and international cooperation. More generally, the communication stresses that increased responsibilities and expectations should go hand in hand with China's stronger influence and position in the world. Released the same day as the communication, the working paper on EU–China trade and investment, 'Competition and partnership', further elaborates on policy options to ensure mutually beneficial trade relations.

d. 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.

e. In December 2005 the Council gave a mandate to the Commission to replace the 'EEC–China trade and cooperation agreement', agreed in 1985, with a comprehensive partnership and cooperation agreement (PCA) setting out the agenda for EU–China relations in the 21st century. Negotiations were launched in January 2007 and will include an updating of the 1985 trade agreement.

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 Presidency of the EU Council 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. The situation in Tibet and 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.

The first regular EU–China political summit was held in London in April 1998. The most recent summit, the 10th, took place in Beijing on 28 November 2007. Leaders took stock of the progress achieved over the decade in EU–China relations, and called it historical. They discussed the full range of bilateral and international issues, with particular focus on strengthening cooperation on some of today's key global challenges, such as climate change and energy security and supporting development in Africa. Apart from discussions on bilateral issues — including the state of play on negotiations for a PCA, and concerns about exchange rate/trade deficit — EU and Chinese leaders also exchanged views on regional and international issues, including Burma/Myanmar, non-proliferation in North Korea and Iran, and the Middle East peace process. Both sides agreed to establish a high-level economic and trade dialogue to discuss strategies in EU–China trade, investment and economic cooperation, and the EIB signed a EUR 500 million framework loan to support projects that contribute to combating climate change. On the other hand progress has been limited since the last summit on the main contentious issues of the arms embargo, market economy status and human rights.

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, which will seek bilateral agreements).

c. The handover of Hong Kong to China in 1997 did not affect EU relations with Hong Kong, where it still has a Delegation.

d. Equally, the handover of Macau 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 European Parliament entitled 'The EU and Macau: 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 Macau.

e. In both Hong Kong and Macau the Commission monitors the situation to ensure that democracy and human rights are respected and issues annual reports.

f. On Taiwan, the EU pursues a 'One China' policy, recognising the Government of the PRC as the sole legal government of China.

g. On 24 and 25 April 2008, the President of the European Commission and nine Commissioners travelled to China to open a dialogue with the Chinese government, focusing on climate change and sustainable development (trade, economic cooperation, energy).

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.

Trade has developed very rapidly since 1975 when it was almost non-existent. Total two-way trade has increased more than 60-fold since reforms began in China in 1978, and was worth EUR 254 billion in 2006. The EU has gone from a trade surplus at the beginning of the 1980s to a deficit of EUR 128 billion in 2006, its largest trade deficit with any partner. Overall, China is now the EU's second largest non-European trading partner after the USA, and the EU is now China's first trading partner. In recent years, EU companies have invested considerably in China (EU inward investment to China amounted to EUR 6 billion in 2006).

b. 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. The problem was contained after an agreement to reintroduce temporary quotas. China remains the second largest beneficiary of the EU's generalised system of preferences (GSP) scheme, under which the EU grants autonomous trade preferences to imports from developing countries.

3. EU–China cooperation

a. The EU supports China's reforms and liberalisation through its cooperation programme. 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. The current strategy for EC cooperation with China is defined in the 'Country strategy paper 2007–13' (CSP), which proposes a concentration of activities in three areas: providing support for China's reform programme in areas covered by sectoral dialogues; assisting China in tackling global concerns and challenges over the environment, energy and climate change; and supporting China's human resource development. Indicative funding for the seven-year period amounts to EUR 224 million (for the first period, 2007–10, a budget of EUR 128 million has been made available).

e. Humanitarian aid: China also benefits from Community support through the EU human rights and democracy programme and a few projects also receive funding from the Community's non-governmental organisation (NGO) budget. In addition, emergency aid has been provided from the European Community Directorate-General for Humanitarian Aid (ECHO) budget. In May 2008 ECHO provided emergency relief funding of EUR 2 million to help victims of the earthquake that struck the Sichuan province.

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

The 26th European Parliament–China Interparliamentary Meeting took place in Brussels on 2 and 3 June 2008. Working sessions took place with counterparts from the National

People's Congress (NPC). The meeting agenda dealt with, inter alia, global security issues, human rights, EU–China relations, the world financial situation and agricultural development. In its numerous resolutions dealing with China, the European Parliament has significantly contributed to enhancing bilateral cooperation between the EU and China (visas, the WTO, science and technology, maritime transport), for example, European Parliament resolutions of 7 September 2006, 25 October 2001, 9 February 1999 and 12 June 1997 on EU–China relations; a resolution of 2 September 2003 on maritime transport; a resolution of 25 October 2001 on China's accession to the WTO; a 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; on 17 January 2006 on farming of bear bile; on 17 January 2006 on EU–China relations in the field of transport; on 26 September 2007 on the safety of products, and toys in particular; on 11 October 2007 on the conclusion of the relevant agreements under Article XXI GATS and on 13 December 2007 on the EU–China summit and the EU/China human rights dialogue. Recently, in 2008, three more resolutions were adopted by the European Parliament (EP): a resolution of 23 April 2008 on China's policy and its effects on Africa; a resolution of 22 May 2008 on the natural disaster that struck Sichuan province; and a resolution of 10 July 2008 on the situation in China after the earthquake and before the Olympic Games.

The European Parliament has also addressed more controversial issues such as the Taiwan question (13 April 2000, 7 July 2005 and 18 May 2006), the arms embargo (18 December 2003 and 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, 27 October 2005, 15 December 2005 jointly with concerns over democracy in Hong Kong, 26 October 2006 and 10 April 2008).

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 the Council and the Member States to maintain the EU embargo on trade in arms with the People's Republic of China.

→ Xavier Nuttin
July 2008

6.4.11. The countries of south Asia and the Indian subcontinent

The EU maintains bilateral relations with each of the eight South Asian Association for Regional Cooperation (SAARC) countries that form the SAARC regional organisation in the Indian subcontinent. At the 13th SAARC summit held in 2005 SAARC leaders agreed on the membership of Afghanistan. The entry into force of the preferential trade agreement SAPTA on 1 January 2006 represents a positive achievement.

Legal basis

Under Article 133 of the Treaty establishing the European Community (EC), responsibility for commercial policy vis-à-vis third countries lies with the Community. Existing cooperation agreements are based on Article 308 EC. 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 bilateral relations with the countries of the area, and consolidating the regional cooperation process represented by the South Asian Association for Regional Cooperation (SAARC). SAARC is the only regional organisation for cooperation in south Asia. It aims to promote peace, trade and development in the region through dialogue and cooperation. The agenda of the organisation is mainly driven by efforts at promoting trade facilitation. SAARC has no vocation to address bilateral politically contentious issues although regular summits and ministerial meetings provide opportunities for informal 'corridor talks'.

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, Afghanistan 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 2006 of the SAARC preferential trading arrangement **(SAPTA)** was a positive achievement.

In its dialogue with SAARC 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 obtained observer status in 2006 and can help consolidate the ongoing integration process through its economic presence 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 (MoU) with the SAARC Secretariat, offering them technical assistance. 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 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. A science and technology agreement was signed in November 2001.

— Since 2000, the EU and India have held a summit at government level each year. The eighth summit took place in Delhi on 30 November 2007. The meeting focused on a new legal framework agreement for EU–India relations, FTA negotiations, and cooperation in energy and in tackling climate change. The WTO/DDA negotiations, cooperation in civil nuclear energy and a more active involvement of India in its neighbourhood (particularly Burma/Myanmar and Sri Lanka) were also on the agenda. Negotiations on civil aviation and maritime agreements were ongoing and a European Business and Technology Centre was established.

— 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 and new joint political statement were agreed at the sixth 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.

On 23 April 2007 the Council approved a mandate for the negotiation of a free trade agreement (FTA) with India. In the same decision the Council requested the Commission to engage with India in exploratory talks for the possible negotiation of a partnership and cooperation agreement (PCA) which would replace the 1994 agreement. It is also worth noting that India joined the ASEM process in 2006.

The EU–India **'Country strategy paper 2007–13'** will make EUR 470 million available to support India's efforts in economic and social development, a substantial increase compared to funding provided in the past. The CSP aims to make EU cooperation gradually shift away from traditional development assistance to address the most recent challenges of India's economic transition process. It proposes to mobilise EU funds in support of the implementation of the joint action plan (JAP), notably economic cooperation and sectoral dialogues/regulatory convergence, as well as in helping India achieve its millennium development goals in the health and education sectors.

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 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. However, since mid-2004, the EU has not gone ahead with full implementation of the agreement because of stalled negotiations on readmission (return of illegal migrants).

The EU is Pakistan's largest trading partner, accounting for more than 20 % of Pakistan's total trade.

Since the start of its cooperation with Pakistan in 1976, the Commission has committed more than EUR 500 million to projects and programmes. Over 2007–13 the EU will make available some EUR 398 million for development and economic cooperation with Pakistan.

In line with Pakistan's policy priorities, the 'Country strategy paper 2007–13' has identified poverty reduction as the key objective. The first focal area for assistance will be rural development and natural resources management in North-West Frontier Province (NWFP) and Baluchistan with a view to reducing regional disparities and promoting stability in Pakistan's sensitive provinces bordering Afghanistan. The second focal area will be education and human resources development, which is a critical ingredient for developing a well-trained workforce and creating a moderate and stable Pakistan. Other areas of assistance are trade development, democratisation and human rights and anti-money-laundering.

In response to the October 2005 earthquake in Azad Kashmir, the Commission proposed an assistance package of EUR 98.6 million, consisting of both humanitarian aid and reconstruction support.

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, and activities in the field of information, culture and communication.

The EC's 'Country strategy paper 2007–13' for Bangladesh addresses the challenges contained in the government's poverty reduction strategy paper with an indicative budget allocation of EUR 403 million. At the same time, the EC strategy seeks to strike a balance between social and economic development commitments; while providing support for economic growth and contributing towards the country's integration in the world market, issues of exclusion and poverty remain priorities. In order to increase the impact of the measures and to promote greater efficiency in the use of resources, the EC will concentrate the scope of its development commitments on three focal areas: human and social development; good governance and human rights; economic and trade development.

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, the same year that the Commission opened a Delegation in Colombo. The Joint Commission met in Colombo on 10 and 11 June 2008, after a four-year delay.

The EU is one of the four co-chairs that were appointed by the June 2003 Tokyo conference to support Norway's facilitation effort and monitor progress in the peace process. The European Union decided on 29 May 2006 to include the Liberation Tigers of Tamil Eelam (LTTE) on the EU list for the application of specific measures to combat terrorism and issued on 7 January 2008 a statement deeply regretting the government's decision to terminate the ceasefire agreement with the LTTE. Since 1 July 2005 Sri Lanka has been benefiting from the new GSP+ preferential trade system, which offers specific incentives for countries having ratified certain conventions on sustainable development and good governance. A review of the GSP+ scheme is, however, taking place in 2008.

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.

The 2007–13 EU–Sri Lanka 'Country strategy paper' (CSP) for which an envelope of EUR 112 million has been set aside is in line with the EC's established strategy of focusing on conflict prevention and poverty reduction. The priority sector will be support to the peace process and poverty reduction in the north and east through sustainable integrated district development. In addition, the CSP includes a smaller allocation to support two non-focal sectors: first, trade facilitation including assistance to Sri Lanka to take maximum advantage of the significant trade concessions offered by the EU, specifically under the generalised system of preferences (GSP+) scheme. The second non-focal sector is the promotion of good governance through electoral reform, human rights monitoring and advocacy and conflict resolution.

The political and security situation in the country has, however, led the EC to start implementation of the CSP according to the 'full scale war' scenario, meaning that support focuses on the communities and people who have been uprooted and is

delivered through the UN and NGOs outside the government channels. Particular emphasis needs indeed to be put on offering potential 'peace dividends' through aid programmes and on encouraging conflict resolution and dialogue.

5. Nepal

The EU established diplomatic relations with Nepal in 1975 and signed the EC–Nepal cooperation agreement on 20 November 1995 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. An EC Delegation was established in Kathmandu in April 2002. Direct cooperation with the government was put on hold after the 2005 royal coup but has now resumed.

EC assistance to Nepal started in 1977 and by 2006 it amounted to some EUR 240 million, all aid included. The EC has gradually expanded its cooperation areas, which now include renewable natural resources (energy), rural development, education, health, environment, human rights, conflict mitigation and export diversification. The EU sent an election observation mission to Nepal in April 2008 to support the peace process.

In an effort to support the government's development objectives, the EC's assistance to Nepal during the period 2007–13 will have an estimated budget of EUR 120 million and will target the following three areas: education (EUR 72 million); stability and peace building (EUR 36 million); and trade facilitation and economic capacity building (EUR 12 million). The 2007–13 CSP is bringing about a policy shift from individual rural development projects (that were the priority under the previous EC-funded programmes) towards supporting the government's reform agenda through a sector-support programme in education and support to the peace process.

6. Bhutan

European Commission aid to Bhutan started in 1982 and has provided some EUR 80 million in assistance since then.

Within the overarching objective of poverty alleviation and taking into account other donors' interventions, EC cooperation in Bhutan for the period 2007–13, will focus on the renewable natural resource sector (with environment as a cross-cutting issue) and on good governance and democratisation (to develop and strengthen the long-term human resource capacity of key governance institutions). A budget of EUR 8 million has been earmarked for those two programmes during the period 2007–10. A continuation of the activities carried out under the ongoing trade project is foreseen for the period 2011–13.

7. The Maldives

Diplomatic relations between the Maldives and the EC were established in 1983.

From 1981 to 2004, the Maldives 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.

The 26 December 2004 tsunami created a disaster of national proportion. Although the human toll was relatively small, the tsunami affected almost the entire country. Of the 199 inhabited islands in the archipelago, 14 were destroyed and about 15 000 people were displaced. The country has been allocated EUR 16 million by the EC to build on the achievements of the humanitarian aid phase that was implemented by ECHO.

The Maldives-EC 'Country strategy paper 2007–13' has set aside an envelope of EUR 10 million. The EC strategy in the Maldives will focus on **environmental sustainability through regional development**, to help the government to promote larger, safer, more economically and environmentally sustainable islands, where the population will be better protected from natural disasters and have improved job opportunities. Good governance, human rights and democratisation are also key concerns of EC development policy in the Maldives and constitute a non-focal sector of assistance.

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 2002–06. Overall, the EU is the second-largest aid donor to Afghanistan, after the USA.

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. On 30 January 2006, the Council welcomed the launch of the Afghanistan Compact, based on a partnership between the Afghan government and the international community, seen as a step towards Afghan-led reconstruction efforts.

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 in 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

A. SAARC relations

The European Parliament (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. In April 2007, the EP Delegation for relations with SAARC countries was split into a Delegation for relations with India and a Delegation for relations with south Asia covering Pakistan, Bangladesh, Nepal, Bhutan and the Maldives.

B. Bilateral relations

The European Parliament has passed numerous resolutions on the political developments, including human rights, in the SAARC countries.

1. 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.

The first meeting between the European Parliament and the Lok Sabha, the lower chamber of the Indian parliament, took place in 1981 and parliamentary exchanges between the EP and India have been institutionalised for several years under the EP Delegation for relations with the countries of south Asia and the South Asian Association for Regional Cooperation (SAARC). On 12 April 2007 the EP decided to set up a specific Delegation for relations with India distinct from the SAARC Delegation. The objective of the new Delegation is to enhance political, economic and cultural relations with this new strategic partner with a particular emphasis on parliamentary diplomacy.

In the sixth term a resolution on the EU–India strategic partnership was adopted on 29 September 2005 and another on economic and trade relations on 28 September 2006. Resolutions on Kashmir were voted on 17 November 2005 and 24 May 2007. The EP also voted on 1 February 2007 a resolution on the human rights situation of the Dalits.

2. 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. It has also expressed concern over Pakistan's nuclear status, calling on it on 17 November 2005 to join the Nuclear Non-Proliferation Treaty (NPT). The EP adopted a resolution on country strategy papers and indicative programmes (15 February 2007) and three resolutions on the humanitarian and political situation on 12 July 2007, on 25 October 2007 and on 15 November 2007.

3. 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. Since then, the EP has addressed the political and humanitarian situation in Bangladesh every year (resolutions of 16 November 2006, 6 September 2007 and 10 July 2008).

4. Sri Lanka

The EP has repeatedly (18 May 2000, 14 March 2002 and 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 Singhalese majority and the Tamil minority. On 14 December 2004, a resolution was adopted supporting the EC–Sri Lanka agreement on the readmission of persons residing without authorisation. In 2006, two resolutions on the political situation in Sri Lanka were adopted, on 18 May and on 7 September.

5. 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. On 29 September 2005, the EP welcomed the ceasefire and on 18 May 2006 saluted the then favourable turn in Nepalese politics. The EP participated in the EU election observation mission in April 2008 with a specific delegation of seven MEPs.

6. 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, the problem of landmines 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 and repealing embargoes on the State. 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 and addressed the European Parliament in Strasbourg on 10 May 2005. An EP resolution on the situation in Afghanistan was adopted on 18 January 2006 and the EP, in October 2007, made recommendations to the Council of the EU on the production of opium for medical purposes in Afghanistan. Most recently, on 8 July 2008, a resolution was approved on the stabilisation of Afghanistan, stressing challenges for the EU and the international community.

→ Xavier Nuttin
July 2008

6.4.12. ASEAN and the Korean peninsula

Relations between the EU and ASEAN are based on the cooperation agreement of 1980 and cover the political, technical and commercial fields. Burma/Myanmar, however, is excluded from this cooperation because of its failure to move towards a democratic regime and its lack of respect for human rights. The EU maintains diplomatic and economic relations with the Republic of Korea and the Democratic People's Republic of Korea.

Legal basis

Articles 133 and 308 of Treaty on European Union (TEU).

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. 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. The ASEM brings together the EU Member States with the 10 Member States of ASEAN but also with China, Japan and Korea and has developed into a structure with three pillars: political; economic and financial; cultural and intellectual. The ASEM 6 summit held in September 2006 in Helsinki decided to admit Bulgaria and Romania on the European side, and India, Mongolia, Pakistan and the ASEAN Secretariat on the Asian side to the ASEM process. The decision means that ASEM will now bring together in a single forum countries from south-east Asia, north-east Asia, south Asia and an enlarged EU, as well as the ASEAN Secretariat and the European Commission. It will consist of 45 partners and encompass nearly 60 % of the world's population.

The third ASEM summit, in Seoul 2000, adopted a 10-year 'action framework' and declared support for 'rapprochement' between the two Koreas. 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 6 summit was held in Helsinki in September 2006 and held comprehensive, in-depth and fruitful discussions on various topical issues of common interest under the overarching theme: 'Ten years of ASEM: global challenges joint responses'. The summit adopted the **Helsinki Declaration on the future of ASEM**, identifying the key areas where ASEM should focus its work in the second decade. These include strengthening multilateralism and addressing global threats, globalisation and competitiveness, sustainable development and intercultural and interfaith dialogue. The declaration also proposes, in its annex on ASEM working methods and institutional mechanisms, improvements to ASEM's institutional mechanisms, while stressing its informal nature.

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 military junta of Burma/Myanmar in Rangoon/Yangon 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 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 and to develop concrete joint cooperation in the fight against terrorism. The meeting also provided the Commission with an occasion to brief the region on the EC's substantial action plan for post-tsunami reconstruction.

The 16th ASEAN–EU Ministerial Meeting took place in Nuremberg on 14 and 15 March 2007. There was a shared perception that the EU and ASEAN, together representing around 1 billion people and committed to the same principles of regional and multilateral cooperation, had a very great potential to work together to address global challenges. The meeting discussed the progress made in the EC–ASEAN cooperation programmes, the negotiations of partnership and cooperation agreements, the various sector dialogues between the two regions, and the strengthening of the economic relations. The ministers discussed regional developments in the EU and ASEAN and a range of international issues. The meeting marked a step change in EU–ASEAN relations, reflecting a wish by both sides to increase engagement at a time when ASEAN accelerates the pace of its own integration and the EU seeks an enhanced role in south-east Asia.

c. A first-ever EU–ASEAN summit took place on 22 November 2007 in Singapore. The event was organised to celebrate 30 years of formal relations between the EU and ASEAN. The summit meeting discussed the achievements and prospects of the EU–ASEAN partnership, as well as regional and global issues such as the process of ASEAN integration, energy, climate change and environmental sustainability, and the situation in Burma/Myanmar. A joint declaration covering these and other issues was issued following the event. a plan of action detailing cooperation activities in the mid-term was also endorsed by the summit.

d. 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.

e. Technical: the Joint Cooperation Committee (JCC)

This senior-officials-level committee, supported by a wide range of subcommittees, 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 subcommittees dealing with trade and investment, economic and industrial cooperation, science and technology, forestry, environment, and narcotics. 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. The last EC–ASEAN Joint Cooperation Committee took place on 4 May 2007.

2. Trade relations

The enlarged EU is currently ASEAN's second largest trading partner, ahead of China and Japan, and accounting for 11.7 % of ASEAN trade in 2006. ASEAN as a bloc is the EU's fifth largest overall trading partner, ahead of Japan, Norway and Turkey. Despite the current level of trade, the enormous potential from enhancing the economic partnership led the EU and ASEAN in 2007 to launch negotiations on a free trade agreement. The main EU exports to ASEAN in 2006 were chemical products, machinery and transport equipment. The main imports from ASEAN to the EU were machinery and transport equipment, as well as chemicals, textiles and clothing. The EU is by far the largest investor in ASEAN countries: 27 % of total FDI inflows from 2001 to 2005 came from the EU, compared with 15 % from the USA.

As a region, ASEAN has benefited significantly from the EU's generalised system of preferences (GSP). 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.

In October 2006, the Commission issued the communication 'Global Europe, competing in the world', where ASEAN emerged as a priority FTA partner. Such an FTA would need to be comprehensive and ambitious in coverage, aiming at the highest possible degree of trade liberalisation including far-reaching liberalisation of services and investment. On 23 April 2007 the Council authorised the Commission to start negotiating an FTA with ASEAN (and also with India and Korea) and negotiations were officially launched on 4 May 2007. Both sides, however, confirmed that a successful conclusion of the DDA round of multilateral trade negotiations remains their priority.

The negotiating process between EU and ASEAN is based on a region-to-region approach. It is clearly more complicated and time-consuming to negotiate an agreement with 10 independent countries than an agreement with a single country, particularly when there is wide variation of development level. Those different levels of development and capacity of individual ASEAN members have to be recognised and taken into account. Laos and Cambodia already benefit from the EBA system while Burma/Myanmar's political situation means that the EU objects to its full participation in the negotiations unless a credible democratisation process begins.

C. The EU and Burma/Myanmar

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/Myanmar joined ASEAN in 1997, the EU refused to allow the country to accede to the 1980 EU–ASEAN cooperation agreement, and ASEAN–EU Ministerial Meetings (AEMMs) were suspended. While strengthening sanctions, the changes made in spring 2000 made possible Burma/Myanmar's participation in the AEMM 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 Daw Aung San Suu Kyi, the opposition leader of Burma/Myanmar and Nobel Prize winner. In October 2002, the EU again urged the restoration of

democracy, the pursuit of national reconciliation and the protection of human rights in Burma/Myanmar.

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. Specifically, the visa ban on senior military officials travelling to the EU was extended while new restrictions have been authorised to prohibit EU companies from investing in State-owned enterprises of Burma/Myanmar. Following the monks' uprising in September 2007 the EU Council decided on 15 October 2007 to increase direct pressure on the regime through additional restrictive measures on exports, imports and investments in the sectors of logs and timber and mining of metals, minerals, precious and semi-precious stones. The EU also calls for the immediate release of all political prisoners and for an international embargo on arms exports to the regime. Targeted financial sanctions to prevent access to international banking services by leading military officials and their business partners are also on the books.

The common position has been renewed again on 29 April 2008 but at the same time the EU follows a balanced policy that combines pressure with incentives to change (humanitarian assistance and support to health and education programmes) and where sanctions are part of a broader toolkit. The EU is ready to review or amend these measures in light of developments on the ground.

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 has become its second largest export partner (after China). The total volume of bilateral trade has grown by an average of 10 % per annum in recent years, and exceeded EUR 60 billion in 2006. The EU is also the largest foreign investor, both on an annual base, where it accounts for a third of the total inflow into South Korea, and in terms of cumulative total since 1962.

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. These are currently based on the framework agreement on trade and cooperation, which 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. In April 2007, the Council of the EU called for an updating of the framework agreement as part of a wider strengthening of relations. Negotiations on this are due to begin in 2008. In parallel to the trade and cooperation agreement, an agreement on cooperation and mutual administrative assistance in customs matters has been in force since 1997. Additionally, the EU has established a permanent forum for consultation, sharing experience and views on competition policy as well as its enforcement, and is currently negotiating a more specific cooperation agreement concerning the application of competition laws to anti-competitive activities.

3. In view of the rapidly growing economic partnership, South Korea was designated a priority partner for a free trade agreement (FTA) in the 'Global Europe' trade policy strategy of 2006. A comprehensive and ambitious FTA with South Korea, including far-reaching liberalisation of services and investment, is deemed to lie in the interests of both sides. Launched in Seoul in May 2007, negotiations went into their seventh round in May 2008. Despite divergence on issues such as industrial tariffs and rules of origin, and the popular backlash against trade with the USA over beef, both sides believe it is possible to complete negotiations in 2008.

4. Today's relationship between South Korea and the EU is founded on: (i) increasingly shared political values; (ii) strong economic links reflecting large bilateral trade and investment flows; and (iii) the EU's reiterated support for South Korea's 'sunshine' policy of engagement with the north. On the global scene, the EU and South Korea cooperate closely in a number of multilateral frameworks apart from cooperation in the framework of the WTO; both parties also have a close relationship within the Asian–Europe Meeting (ASEM). The 'Trans-Eurasia information network', launched in 2001, is one of the joint EU–Korea initiatives.

B. The Democratic People's Republic of Korea

1. Diplomatic relations with the Democratic People's Republic of Korea (North Korea) were established in May 2001. Since 1998, there have been annual political dialogue troika meetings between the EU and North Korea at Regional Director level. In addition, EU–North Korean contacts are maintained through the heads of missions 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, as well as in UN forums.

2. The basis of EU–North Korea economic ties is one-way aid. The EC has provided various aid packages, including EUR 344 million in food and humanitarian aid since 1995, with the humanitarian assistance programme (through ECHO) alone worth EUR 93 million. 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. Although not a participant of the Six-Party Talks, the EU strongly supports the process, in line with its long-standing support to all efforts aimed at reducing tensions in the Korean peninsula and fostering direct dialogue as a means to inter-Korean reconciliation.

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. Relations are conducted by the EP Delegation for relations with ASEAN and are now developing along two fronts: through bilateral visits to member countries of ASEAN to maintain contacts with the national parliaments in the region and through participation as observer at the annual general assembly of AIPO (now called AIPA). The EP continuously emphasises the need to restore the democratic process in Burma/Myanmar and to release all political prisoners. During 2004–09, no less than 10 resolutions were voted on concerning Burma/Myanmar. The EP also 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.

The EP adopted on 8 May 2008 a resolution on trade and economic relations with ASEAN that supports an ambitious trade agreement that would greatly benefit both sides. The EP also expresses its concern about the slow pace of negotiations but refuses to sacrifice the quality of the agreement in search of a quick deal. The EP also insists that negotiations with ASEAN remain complementary to the WTO–DDA, which remains the Union's trade priority.

As a result of an initiative of the EP, the Asia–Europe Parliamentary Partnership (ASEP) offers the opportunity for parliamentarians from the EP and from the national parliaments of the EU Member States to meet their counterparts from China, Japan, Korea and the ASEAN countries. The initial ASEP meeting was held on 1 April 1996, in Strasbourg. Subsequent ASEP meetings took place in Manila in August 2002, Hue in March 2004, Helsinki in May 2006 and Beijing in June 2008. ASEP has become the parliamentary arm of the Asia–Europe Meeting (ASEM) by giving parliamentary guidance to the ASEM process and involving parliaments in the implementation of ASEM initiatives.

Since September 2004, the European Parliament's Delegation for relations with the Korean peninsula maintains annual contacts both with the South Korean National Assembly and with the Supreme People's Assembly of North Korea. (Prior to this date, relations with South Korea were covered by the ASEAN Delegation while North Korea was dealt with directly by the Foreign Affairs Committee). Recent encounters with South Korea have focused on the outstanding issues in the FTA negotiations, as well as progress in the Six-Party Process, and delegation visits to North Korea regularly include consultation and debriefing stops in Seoul.

→ Xavier Nuttin
Stefan Schulz
July 2008

6.4.13. Australia and New Zealand

The EU was the first economic partner of Australia 12 years ago. The EU's policy towards the country aims to maintain stable trade relations and deepen cooperation. Relations between the EU and New Zealand received a formal framework in 1999 and now the EU is the second largest trading partner of New Zealand, after Australia.

Legal basis

Article 133 of the Treaty establishing the European Community (EC) (basis for the EU's common commercial policy).

Council Regulation (EC) No 1934/2006 (the Industrialised Countries Instrument (ICI), which is the basis for cooperation with industrialised and other high-income countries and territories in North America, the Asia–Pacific region and the Gulf region)

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 12 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.

5. 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 forums 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.

6. 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 policy-making and respective and joint interests.

7. 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.

8. Migration and asylum

Enhancement of information exchange and cooperation on approaches to address the challenges posed by global migration, consulting closely in multilateral forums and bilaterally, in particular, focus on development of policy-making 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.

The general objectives set out in the joint declaration were translated into practical activities by the action plan 'Priorities for future cooperation' adopted in 2004. The Joint Declaration on relations and cooperation between the European Union and New Zealand was signed in September 2007. Combining the 1999 Joint Declaration and the 2004 Action Plan, the new Declaration runs for a period of five years.

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
July 2008

6.5. General development policy

6.5.1. A general survey of development policy

Development policy is a key area of the European Union's external relations. Ever since its creation, the European Community has supported the development of many of the world's regions: the Africa, Caribbean and Pacific (ACP) countries and, later, developing countries as a whole, either through development assistance or preferential trade arrangements. The overriding objective of European development policy is poverty eradication. Each year, the Community and its Member States provide 55 % of international development assistance.

Legal basis

— Development and cooperation policy in general: Articles 177-181 of the Treaty establishing the European Community (EC).

— Cotonou Agreement and various association agreements (particularly with Asia and Latin America): Article 310 of the EC Treaty.

— Generalised scheme of preferences and cooperation agreements: Article 133 of the EC Treaty.

Objectives

Article 177 of the EC Treaty 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.

The Lisbon Treaty does not significantly amend development policy (Articles 208 to 210 of the TFEU). It does, however, take over the *acquis* of the European consensus on European Union development policy, making poverty eradication the overriding objective of development policy (Article 208-1(2) TFEU). The principles that are defined as development principles in the current EC Treaty (since foreign policy is not part of the Community pillar) become the EU's external action principles (Article 21-2 TEU).

Achievements

The priorities for implementing the European Union's development policy have changed in recent years. The

political framework has been redefined to place poverty eradication at the heart of European policy and the financial framework has been simplified around a single instrument, the Development Cooperation Instrument (DCI), although development cooperation with ACP countries continues to be financed through an intergovernmental instrument (the European Development Fund) and not the EU's general budget (→6.5.4).

A. The political framework

On 20 December 2005 the three institutions — Council, Parliament and Commission — jointly adopted the first European consensus on European Union development policy. This text is, in fact, a revised version of the EC's development policy dating from 2000. It is, however, the first text common to the Community institutions and the Member States. This new single body of principles will guide the future action of the Commission and its 27 Member States and is firmly in line with the Millennium Development Goals adopted by the United Nations in 2000.

The EU's development policy makes poverty eradication its overriding objective. It is based on promoting good governance, democracy and human rights as well as on a partnership with the developing countries. Being a joint text, the consensus emphasises the need for consistency between Community and Member State actions, out of a spirit of complementarity, such that the European Union offers a truly common development vision.

In order to implement its policy, the EU has undertaken to increase its aid budgets to 0.7 % of gross national income (GNI) by 2015, with an intermediary objective of 0.56 % by 2010. Half of this increased assistance will be directed at sub-Saharan Africa and will need to be focused on the least developed countries as a priority. In addition to the amount of assistance, the EU will also pay particular attention to the effectiveness of this assistance. For this, greater coordination will be needed with the beneficiary countries and other donors.

An improved division of work between the EC and its Member States is essential if the effectiveness of the EU's assistance is to be strengthened. The consensus establishes the areas in which the EC's value added is greatest, given its global presence in particular. The Community will therefore focus its activity on regional trade and integration, the environment and natural resource management, infrastructure; water and energy; rural development; agriculture and food security; governance, democracy and human rights, and support for economic and institutional reform; conflict prevention and State fragility; human development, social cohesion and employment.

B. The legislative and financial framework

1. Scope

At the end of 2004 the European Commission proposed a new 'simplified architecture' for external relations. The dozens of existing legislative texts were replaced by seven instruments, the majority of them adopted at the end of 2006. Along with the Development Cooperation Instrument, other instruments are important for the development of the partner countries in question, particularly the European neighbourhood policy. The Humanitarian Aid Instrument, the European Democracy and Human Rights Instrument and the Stability Instrument also enable specific Community assistance to be provided to developing countries.

2. The Development Cooperation Instrument

The Development Cooperation Instrument simplifies the previous financial cooperation framework by amalgamating the different geographic and thematic instruments into one. It replaces the previous regulations adopted on the basis of Article 179 of the EC Treaty.

The Development Cooperation Instrument comprises:

— geographic programmes: country strategy papers for Asia and Latin America, South Africa and the Middle East;

— five thematic programmes: investing in human resources; environment and sustainable natural resource management, including energy; the role of non-State players and local authorities in development; food security; migration and asylum.

— a programme of support measures for the 18 ACP signatories to the Sugar Protocol, in order to help them following reform of the Community's sugar regime.

Through the DCI, the EC finances measures aimed at supporting cooperation with developing countries on the list of countries benefiting from the support of the OECD's Development Assistance Committee. The ACP countries are, however, eligible for thematic programmes. The scope of the thematic programmes is thus greater than that of the accompanying geographic cooperation.

Community assistance may be granted to countries or regions but also to decentralised bodies within beneficiary countries, international organisations, EU agencies and non-governmental organisations. A significant proportion of community assistance is given to UN agencies.

The budget for 2007–13 is EUR 16.987 billion, including EUR 10.057 billion for geographic programmes, EUR 5.596 billion for thematic programmes and EUR 1.244 billion for ACP signatories to the Sugar Protocol.

Role of the European Parliament

Development policy is a Community policy, in respect of which the European Parliament has the power of co-decision. It is, according to the current Treaties, the only area of foreign policy in which the Council shares legislative powers with Parliament.

The DCI was adopted by the EP on 12 December 2006, within the framework of the co-decision procedure. Parliament was initially strongly opposed to the text proposed by the Commission. Members of the European Parliament considered that the proposed version of the regulation would weaken

Parliament's powers, given that it conferred vast implementing powers on the Commission and the Council, at the expense of Parliament's legislative and budgetary powers. Negotiations came to a satisfactory conclusion at the end of 2006, however, and the EP obtained a right of oversight with regard to country (CSPs) and regional (geographic programmes) strategy papers, as well as with regard to thematic programmes. In terms of content, the EP secured education and health as priority sectors for the Community's development assistance: 20 % of all assistance must go to these sectors in 2009.

→ Armelle Douaud
July 2008

6.5.2. Trade regimes applicable to developing countries

The generalised system of preferences (GSP) scheme is an autonomous trade arrangement through which the EU provides non-reciprocal preferential access to the EU market to developing countries and territories in the form of reduced tariffs for their goods when entering the EU market. The EU's GSP system is one of the most significant trade-related development instruments operated by any developed country.

Objectives

The primary objective of the GSP is to contribute to the reduction of poverty through increased trade, as well as to promote sustainable development and good governance. Tariff preferences on the EU market enable developing countries to participate more fully in international trade and generate additional export revenue to support implementation of their own sustainable development and poverty reduction policy strategies.

Instruments and historic evolution

The European Community started offering preferential access to its market in 1971 with the aim of enhancing developing countries' participation in international trade. The GSP scheme has been revised several times, with the most recent system running until the end of 2008 and the new Council regulation adopted in July 2008 for the period 2009–11. The scheme's successive revisions increased the number of tariff lines eligible for preferential access and established a more efficient mechanism of evaluation and adjustment.

In 2001 the Council adopted the 'Everything but arms' (EBA) initiative, granting duty-free access to imports of all products from least-developed countries (LDCs), except arms and ammunitions, without any quantitative restrictions. The only exceptions were bananas, sugar and rice for a limited period. EBA was incorporated in the GSP scheme.

In 2005 the EU also set up a GSP+ scheme, which is a special incentive arrangement for sustainable development and good governance, offering additional tariff privileges. This new GSP+ scheme also replaced earlier special arrangements supporting measures to combat drugs in the Member States of the Andean Community, the Central American Common Market and Pakistan.

The GSP scheme is implemented by a Council regulation applicable for a period of three years at a time. It covers three separate preference regimes:

— the standard GSP, which provides preferences to 176 developing countries and territories on over 6 300 tariff lines;

— the special incentive arrangement for sustainable development and good governance, known as GSP+, which offers additional tariff reductions to support vulnerable developing countries in their ratification and implementation of relevant international conventions in these fields; and

— the EBA arrangement, which provides duty-free, quota-free access for the 50 least-developed countries (LDCs).

There has been a significant increase in recent years in the value of preferential imports under GSP. Imports under the scheme totalled EUR 51 billion in 2006 (an increase of 10 % over 2005) and EUR 57 billion in 2007 (an increase of 12 % over 2006). The current regulation especially focused preferences on those countries most in need of the benefits from trade. In this regard, imports from LDCs increased by 35 % in 2006 and then remained broadly stable in 2007, while GSP+ beneficiaries saw a rise in their exports to the EU of 15 % in 2006 and a further 10 % in 2007.

On the basis of trade data for 2007, the overall volumes of EU imports under each of the three GSP regimes and the rough value of the preferences provided in terms of nominal duty loss if the same products had been imported and duties paid under the EU's standard MFN conditions of access were as shown in the following table.

2007	GSP preferential imports (million EUR)	Nominal duty loss (million EUR)
Standard GSP	47 848	1.542
GSP+	4 900	0.501
EBA	4 302	0.505
Total	57 050	2.548

The new GSP regulation for 2009–11

With the current three-year phase of GSP set to expire at the end of 2008, the European Commission made a proposal for a successor regulation on 21 December 2007. Following the opinion of the European Parliament, the EU General Affairs and External Relations Council adopted a regulation on 22 July 2008 applying a new GSP scheme for the period 1 January 2009 to 31 December 2011.

Two countries (Burma/Myanmar and Belarus) remain temporarily withdrawn from GSP preferences on the basis of Council Regulations (EC) No 552/97 and (EC) No 1933/2006 respectively, as the reasons for their withdrawals still persist. Moldova was already removed from the beneficiary list of the current GSP regulation at the same time as the EC granted it more far-reaching autonomous preferences under a separate legal instrument in March 2008.

In response to desires expressed by users of GSP to ensure continued stability, predictability and transparency, the scheme remains broadly unchanged. However, it does implement some technical changes, in particular taking account of evolutions in trade flows.

A. Graduation and de-graduation

Whenever an individual country's performance on the EU market over a three-year period exceeds or falls below a set threshold, preferential tariffs are either suspended or re-established. These calculations are made on the basis of product sections established in the harmonised system for classification of goods for trade. This graduation mechanism is not relevant for EBA. Graduation is triggered when a country becomes competitive in one or more product groups and is therefore considered no longer to be in need of the preferential tariff rates. As a result of the re-calculations made on trade data for the period 2004–06, GSP preferences will be re-established for six countries and suspended for one, in the following beneficiary country and product group combinations:

1. De-graduation (re-establishment of preferences):

Algeria, Section V (Mineral products)

India, Section XIV (Jewellery, pearls, precious metals and stones)

Indonesia, Section IX (Wood and articles of wood)

Russia, Section VI (Products of the chemical or allied industries) and Section XV (Base metals)

South Africa, Section XVII (Transport equipment)

Thailand, Section XVII (Transport equipment)

2. Graduation (suspension of preferences)

Vietnam, Section XII (Footwear, headgear, umbrellas, sun umbrellas, artificial flowers, etc.)

The net effect of these adjustments is worth at least EUR 160 million to beneficiary countries in terms of import duties that would otherwise be imposed.

B. GSP+

Under the current scheme 14 beneficiary countries qualified to receive the additional preferences offered under the GSP+ incentive arrangement (Bolivia, Columbia, Costa Rica, Ecuador, El Salvador, Georgia, Guatemala, Honduras, Mongolia, Nicaragua, Panama, Peru, Sri Lanka and Venezuela). Any country, including current GSP+ beneficiaries, which wishes to receive GSP+ preferences from January 2009, has to submit an application before 31 October 2008.

According to the qualifying criteria, any GSP+ beneficiary country must be considered 'vulnerable' and have ratified and effectively implemented 27 specified international conventions in the fields of human rights, core labour standards, sustainable development and good governance. For countries that do not yet meet the GSP+ qualifying criteria this year, the new regulation provides an additional opportunity for applications in mid-2010. This is an added advantage under the new rules, so that potential applicants that do not yet meet all the criteria are not obliged to wait three years before being able to re-apply.

C. EBA

Currently for 41 tariff lines concerning rice and sugar, duty-free quotas are established until full liberalisation is achieved in September 2009 (rice) and October 2009 (sugar). The new regulation incorporates a minimum price arrangement for sugar in order to ensure coherence with the results of EPA negotiations. This minimum price arrangement will apply from 1 October 2009 to 30 September 2012.

Role of the European Parliament

The current Treaties do not grant any legislative power to the European Parliament in the area of trade policy. The European Parliament was consulted only for opinion at the time of the GSP reviews, including in 2008. Among other things Parliament asked for a thorough evaluation and impact assessment, increased transparency and predictability and the possibility to submit applications for the GSP+ scheme by interested countries on an annual basis. Following the opinion of the European Parliament, the EU General Affairs and External Relations Council adopted a regulation on 22 July 2008 applying a new GSP scheme for the period from 1 January 2009 to 31 December 2011.

If it enters into force, the Lisbon Treaty will substantially increase Parliament's competences in trade policy. It provides that the ordinary legislative procedure shall apply to most areas of trade policy, including the GSP system and autonomous trade measures.

→ Levente Csaszi
July 2008

6.5.3. Humanitarian aid

Since 1960, the European Commission grants humanitarian assistance to people affected by conflicts or disasters, both natural and man-made, in third countries. The large number of such operations undertaken since the late 1980s has made it a key element of the Community's external action. Since 1992, EC humanitarian aid is managed by the Directorate-General for Humanitarian Aid (ECHO), which has adjusted itself over the years to the growing and changing nature of humanitarian challenges. Today the European Union — i.e. the European Commission and the Member States, collectively — is the world's leading humanitarian donor.

Legal basis

Article 179 of the Treaty establishing the European Community (EC).

Objectives

The regulatory framework of EC humanitarian operations is Council Regulation (EC) No 1257/96 of 20 June 1996. According to the regulation, the Community's humanitarian aid shall comprise assistance, relief and protection operations, conducted on a non-discriminatory basis to help people in third countries, and especially the most vulnerable among them. In particular, the principal objectives of EC humanitarian aid operations shall be:

— to save and preserve life during emergencies, natural disasters and their immediate aftermath;

— 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 — the European Commission and the Member States, collectively — has now become the world's largest provider of humanitarian aid, contributing in 2006 with over EUR 2 billion (more than 40 % of official international assistance). Since 1992, EC humanitarian aid is managed by the Directorate-General for Humanitarian Aid (ECHO).

A. Role of ECHO

ECHO was established with the aim of centralising the Commission's humanitarian aid operations and thereby organising them more effectively. ECHO does not implement assistance programmes itself; it funds operations through more than 200 partners (NGOs, UN agencies, international organisations — such as the Red Cross/Red Crescent Movement).

ECHO's main task is to ensure that humanitarian goods and services get through these partners to vulnerable populations in crisis zones **effectively** and **rapidly**, that they are delivered according to **real needs,** and to ensure **sound financial management**.

The rapidity of aid delivery is facilitated by special provisions in the Financial Regulation and its implementing rules, thus allowing the Commission to take emergency decisions on financing relief. These decisions can inject up to EUR 3 million

within 72 hours and up to EUR 10 million within 10 days into humanitarian operations through fast-track budgeting procedures at the onset of a humanitarian disaster. In addition, ECHO's partners (over 200 of them) have signed either a framework partnership agreement (FPA) (for NGOs and international organisations) or a financial and administrative framework agreement (FAFA) (for UN agencies). These *ex ante* contractual arrangements have facilitated and expedited the allocation of resources, promoting at the same time ECHO's partners' accountability.

ECHO allocates financial assistance exclusively on the basis of humanitarian needs assessments, in full respect of the basic humanitarian principles of humanity, neutrality, impartiality and independence. For this purpose ECHO has developed its own methodology based on a double approach: analytical ranking of third countries according the their overall vulnerability, matched with the evaluation in the field by ECHO's experts, who are also instrumental in the rapid identification of suitable partners and projects to meet the needs.

The implementation of humanitarian operations is then followed up by ECHO's on-the-spot monitoring of its partners and projects in order to ensure a sound financial management and that the allocated resources have been used for their intended purpose. ECHO's evaluation unit, set up in 1996, has helped to strengthen the monitoring and effectiveness of the EC humanitarian operations.

ECHO's assistance also aims at facilitating, together with other aid instruments, the return of populations to self-sufficiency wherever and whenever possible, and to permit the phasing out of humanitarian funding in good conditions. In that perspective, ECHO is actively engaged in implementing a linkage strategy between relief, rehabilitation and development (LRRD).

Beyond its core task of funding humanitarian interventions, ECHO deals with related issues aimed at supporting the delivery and quality of humanitarian aid. ECHO:

— pursues its active relationship with other institutions, Member States and international organisations to enhance humanitarian policy;

— promotes the respect for international humanitarian law and humanitarian principles and the defence of the humanitarian space;

— has developed a security and safety policy for ECHO's staff involved in the delivery of humanitarian aid;

— cooperates with training programmes, such as the network on humanitarian assistance (NOHA), and gives its partners technical assistance;

— raises public awareness about humanitarian issues in Europe and elsewhere.

To fulfil its various tasks, ECHO has grown over the years and it currently has 200 officials working at its Brussels headquarters, plus 100 field experts and 250 local staff working in its approximately 40 support offices in third countries.

B. General policy framework: the European Consensus on Humanitarian Aid

Over recent decades, the magnitude, strength and number of natural and man-made disasters have increased and become more complex and protracted in time. The number of people affected has also increased and the poorest people have been affected disproportionately. The international context in which humanitarian aid takes place has become increasingly challenging, with new State and non-State actors on the scene, blatant violations of the international humanitarian law, and the security of humanitarian workers often put at risk.

In this context, the three EU institutions (the European Parliament, Council and Commission) signed in December 2007 a European Consensus on Humanitarian Aid, after six-months of negotiations. The consensus is a collective effort by the European Union (including its Member States) to shape the future of the EU's humanitarian aid, tackling the new challenges and responding, for the first time, with a single, more effective voice. It represents a significant landmark for EU humanitarian aid.

The consensus reconfirms the EU commitment to humanitarian principles, international humanitarian law and the need for enhanced coordination at EU level, while respecting the central coordinating role of the United Nations. It also emphasises the need for more resources and that the aid should be delivered by dedicated professionals. It also clearly delimits the role of State actors and, in particular, their armed forces, which should be used only as a last resort in meeting critical humanitarian needs.

The consensus was followed in 2008 by an action plan presented by the Commission, including concrete and measurable actions in each of the areas, which was welcomed by both the Council and the European Parliament. From its side, the Council decided to extend and adapt the mandate of its Working Parting on Food Aid, to be referred as from 1 January 2009 as the 'Working Party on Humanitarian Aid and Food Aid'. This important decision, which should be seen as one of the immediate consequences of the adoption of the consensus, will at last establish an appropriate forum for regular policy debate in the Council.

C. Treaty of Lisbon

Should the Lisbon Treaty finally enter into force, it would entail a number of novelties for EU humanitarian aid, including humanitarian aid as **a policy in its own right** in the EC Treaty. Currently humanitarian aid is based, by default, on Article 179 of the EC Treaty (development policy).

The provisions of the Treaty of Lisbon would confirm, on the whole, current objectives, basic principles and procedures (co-decision), and would insert EU humanitarian policy under the overall provisions of EU external action. In addition, the Treaty provides for the creation of a **European Voluntary Humanitarian Aid Corps —** a framework for joint contributions from young Europeans to the humanitarian aid operations of the Union.

D. Sources and destination of ECHO funds

1. The budget

ECHO has two primary sources of funds: the general budget of the European Union and the European Development Fund (EDF), to be used for exceptional humanitarian assistance to ACP countries (countries of Africa, the Caribbean and the Pacific). The Commission applies the same principles and guidelines for aid financed from the EDF and aid from the general budget.

In order to be able to respond rapidly to specific aid requirements resulting from events which could not have been foreseen when the budget was established, ECHO may also call on an Emergency Aid Reserve. For this to be mobilised, there needs to be trilateral agreement between the Commission, the Council and the Parliament. The year 2007 was exceptional in that no major unexpected crises or disasters occurred and, subsequently, ECHO did not have to draw on the Commission's Emergency Aid Reserve.

ECHO, like all other Commission departments, is accountable to the Parliament and the Council, notably through annual reports detailing its activities. Its budget management is also subject to ongoing auditing by the Court of Auditors, which reports to Parliament and the Council. Every year, Parliament and the Council are invited to give their opinion on the discharge of past budgets.

Since 1992 to date, ECHO has provided over EUR 7 billion of humanitarian aid in more than 85 countries worldwide. ECHO's budget was modest at the outset, but it rose rapidly to reach a level similar to the assistance provided bilaterally by the EU Member States. Between 2000 and 2005, ECHO's average annual budget was EUR 543 million (including the Emergency Aid Reserve). For the period 2007–13, this budget will gradually increase to an annual budget of EUR 875 million in 2013, though a large part of this increase is due to the transfer of the humanitarian food aid budget line to ECHO as of 1 January 2007 (previously managed by EuropeAid together with food security operations). ECHO's allocations in 2007 amounted to almost EUR 769 million.

2. Allocation of funds

a. Country/region interventions

In terms of **geographical distribution** of humanitarian interventions, the relative share of the funding to ACP countries has continuously increased, apart from 2005, when two big crises in Asia received most of the funding: the Indian Ocean tsunami and the earthquake in Kashmir. In 2007 ACP countries received EUR 422.7 million (i.e. 55 % of the total final ECHO budget), followed by Asia (EUR 110 million or 14 % of the budget), the Middle East and North Africa (EUR 99 million or 12.8 % of the budget), Latin America (EUR 32 million or 4 % of the budget) and, finally, eastern Europe and the new independent States (NIS) — including Chechnya (EUR 25.8 million or 3.3 % of the budget).

The largest single funding allocations in 2007 were devoted to Sudan, the Palestinian territories and the Democratic Republic of the Congo.

ECHO's aid strategy remains continuously focused on **'forgotten crises'**: situations where major humanitarian needs receive little attention on the part of the donors — reflected by the low level of aid received compared to the needs — and the media. The forgotten crises identified in 2007 were: Sahrawi refugees, Chechnya, Jammu and Kashmir (India), Nepal, Burma/Myanmar and Colombia. Apart from Colombia, all these crises were already identified as 'forgotten crises' in 2006. The amount of funds allocated to 'forgotten crises' has been decreasing over the recent years: EUR 89 million in 2005 (18.7 % of the budget), EUR 65 million in 2006 (14 % of the budget) and EUR 60.7 million in 2007 (13 % of the budget).

b. Disaster preparedness

Natural disasters are mostly impossible to avert. However, their negative impact can often be substantially reduced or prevented. In line with its mandate, ECHO promotes disaster preparedness through coordination, advocacy and Dipecho, its specific programme on disaster preparedness, which has been operational since 1998. Dipecho finances community-based projects aimed at enhancing the prevention and response capacities of vulnerable communities, emphasising training, capacity building, awareness raising, the establishment or improvement of local early warning systems and contingency planning. Dipecho now covers six disaster-prone regions (Central America, South America, the Caribbean, central Asia, south Asia and south-east Asia). Since its creation, Dipecho has financed more than 400 projects worldwide, worth over EUR 119 million. In 2007 an amount of EUR 19.5 million was allocated to the Dipecho programme (2.5 % of the total budget).

Furthermore, ECHO actively cooperates with the main development cooperation actors, aiming to better integrate disaster risk reduction into development activities and ensure a stronger linkage with efforts relating to climate change adaptation in high-level risk countries.

c. Thematic funding

The EU commitment to working closely with international institutions in improving global humanitarian response capacity is demonstrated through ECHO's thematic funding programme. In 2007, a total of EUR 27.5 million was allocated to supporting the reinforcement of institutional capacities of UN agencies and the Red Cross/Red Crescent Movement.

Role of the European Parliament

Through its opinions and resolutions, the European Parliament (EP) has always expressed its concern with regard to humanitarian aid, thus bringing considerable pressure to bear for a constant improvement to, and development of, a range of instruments. In particular, the idea of creating ECHO originated in the EP.

As the institution for adopting the EU budget, the EP has insisted regularly on an increase in the appropriations for humanitarian aid, not only in general but also for specific regions or countries, including the increase of disaster preparedness activities and the use of emergency funds to deal with the food price crisis. The EP 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 worth noting that the EP regularly adopts resolutions on the situations in various troubled spots around the globe. Over the past few years the EP has concerned itself with the humanitarian crises in the Great Lakes Region, Sudan, Somalia, the Palestinian Territories, Burma/Myanmar, Ethiopia and Eritrea, Niger, Zimbabwe, Haiti, Nepal and the Democratic the People's Republic of Korea, among others.

In order to enhance its position on humanitarian aid issues, the EP created in 2006 the post of Standing Rapporteur for Humanitarian Aid, whose mandate includes preserving humanitarian aid budget interests, monitoring the implementation of Community's humanitarian programmes and keeping close contacts with the humanitarian community.

The firm positions taken by the EP during the negotiations of the European Consensus on Humanitarian Aid were instrumental in order to achieve some tangible results, such as the commitment by the Council to create an appropriate forum for humanitarian aid policy discussions.

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July 2008

6.5.4. Relations with the countries of Africa, the Caribbean and the Pacific: from the Yaoundé and Lomé Conventions to the Cotonou Agreement

Relations between the EU and the ACP countries were formalised over time through the conclusion of several agreements or conventions. These are the conventions of Yaoundé, Lomé and Cotonou. These agreements had as their primary goal the eradication of poverty through increased integration of the ACP countries into the world trading system and have gradually integrated significant elements of good governance, political dialogue and economic cooperation.

Legal basis

Article 310 of the Treaty establishing the European Community (EC).

Objectives

Following the expiration of the fourth Lomé Convention on 29 February 2000, the partnership agreement signed in Cotonou, Benin, on 23 June 2000 established a new 20-year 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 spirit of true partnership. 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 ACP–EU 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

A. 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 366a) 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.

B. 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 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). The first revision of the agreement was concluded on 25 June 2005.

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 migration issues, 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.

3. The institutional and political dimension

a. 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).

b. 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.

c. 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 2005 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.

d. 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.

4. Trade and financial framework

a. The economic partnership agreements (Articles 36 and 37) *(→6.5.2)*

The Cotonou Agreement foresees the finalisation of the long standing non-reciprocal trade preferences granted to ACP countries since the first Yaoundé Convention. The agreement provides for a preparatory period of eight years towards the conclusion of new WTO- compatible trade arrangements (the economic partnership agreements — EPAs), by January 2008. During this preparatory period the trade preferences granted under Lomé IV should be retained. The economic partnership agreements were initially designed to create an entirely new framework for the flow of trade and investment between the EU and the ACP countries, encouraging, amongst other positive factors, regional integration between ACP countries.

Formal negotiations for these trade agreements started in September 2002. At the end of 2005, the negotiations entered their third phase, in which the EU started negotiations on economic partnership agreements with the six ACP regions. The process was seriously delayed, however, due to principle disagreements between the parties about the timing and coverage of trade liberalisation, compensation measures for lost revenues and the degree of asymmetry in its implementation. As a result only one 'full' EPA was concluded by the end of 2007, with the Cariforum. A series of interim agreements, covering almost exclusively goods liberalisation, were concluded with a number of individual countries and small regions in Africa and the Pacific, with a view to negotiate full EPAs in 2008.

b. 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.

c. Financial cooperation

The amount of EU financial assistance for the first five years of the agreement (2003–08) was EUR 13 500 million (ninth EDF). An additional sum of EUR 2 500 million was also available from the previous European Development Fund (EDF), taking the total to EUR 16 000 million, to which EUR 1 700 million were added from the European Investment Bank (EIB) in the form of loans. A further amount of EUR 10 000 in the form of grants was earmarked to support long-term development. The 10th EDF for the subsequent six-year period (2008–13) has been set at EUR 22 682 million. From these funds, a total of EUR 21 966 should be allocated to ACP States, while EUR 286 million should be allocated to the OCTs (overseas countries and territories), and EUR 430 million to support Commission expenditures linked to EDF programming and implementation. Contrary to the past, balances from the ninth EDF or from previous EDF funds can no longer be recommitted, unless the EU Council decides otherwise by unanimity. The 10th EDF entered into force on 1 July 2008, after six months of delay.

In addition to EDF funds, ACP States should benefit from EUR 2 000 million under the Investment Facility, managed by the European Investment Bank. 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.

d. Resource allocation and programming

The Cotonou 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.

The implementation of the 10th EDF will be regulated by Council Regulation (EC) No 617/2007, adopted by the Council on 14 May 2007. The regulation indicates as primary and overarching objective of cooperation the eradication of poverty in the context of sustainable development, including pursuit of the millennium development goals.

Additional novelties introduced in the implementation of the 10th EDF are:

— the 'incentive tranche', i.e. resources to be added to national indicative allocations on the basis of good governance performance criteria;

— a significant increase in budgetary support, linked to positive progress towards achievement of MDGs;

— substantial funding for regional integration, especially in the framework of the EPA process;

— the possibility of co-financing development projects with Member States or other donors;

— funding of the Africa Peace Facility (EUR 300 million).

e. 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).

f. 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 have been used for debt relief. Technical assistance relating to debt management will be provided to ACP States (Articles 66 and 67).

C. EU regional strategies

In 2006 the Commission presented concept papers for EU strategic relationships with individual ACP regions: the Caribbean, the Pacific, Africa and a separate one to deal with South Africa.

The objective of the proposed EU regional strategies is to highlight how the challenges facing each of the regions can be transformed into opportunities by focusing on the right 'policy-mix', in parallel with full optimisation of the opportunities of the Cotonou Agreement. These objectives are to be achieved through a new enhanced partnership composed of a set of interrelated facets: shaping political partnership and helping the region address its economic, social and environmental vulnerabilities.

Furthermore, the second EU–Africa summit was finally held in Lisbon in December 2007, after several delays. During this summit, which signalled a qualitative leap in EU–Africa relations, the joint Africa–EU strategy was adopted. The associated action plan (2008–10) establishes eight partnerships:

— peace and security,

— democratic governance and human rights,

— trade, regional integration and infrastructure,

— millennium development goals,

— energy,

— climate change,

— migration, mobility and employment,

— science, information society and space.

Role of the European Parliament

The European Parliament is kept regularly informed by the Commission of the implementation of the ACP–EU partnership agreement. The powers of the EP in respect of the allocation of aid are though very reduced as the EDF is not included in the EC budget. Nevertheless, it must grant an annual discharge in respect of the operations financed under the EDF. The EP has regularly requested the inclusion of the EDF into the EC budget, and the Commission presented a communication in this sense in 2003. Should the Treaty of Lisbon be finally ratified, this debate may be reopened since the new treaty eliminates the explicit exclusion of the EDF from the area of EC competence (Article 179.3 EC).

In addition, Parliament assented to the partnership agreement, and each revision is also subject to parliamentary assent, as well as each economic partnership agreement. In the view of the European Parliament, increases in aid under the Cotonou Agreement should have been important enough to honour the pledges given by the EU to increase public development aid in order to achieve the millennium development goals.

The European Parliament makes a significant contribution to ACP–EU cooperation through the work of its Committee on Development 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 European Parliament) and of the ACP States twice a year. The European Parliament has also established a delegation in charge of relations with the Pan-African Parliament (PAP), with a programme of regular meetings and field visits. 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 European Parliament pay regular official visits to ACP countries, either in connection with their work in the Committee on Development and in the Joint Parliamentary Assembly or as election observers. In 2005–07 Members monitored the elections in Ethiopia, Liberia, Uganda, the Democratic Republic of the Congo, Mauritania, East Timor and Togo.

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