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FACT SHEETS ON THE EUROPEAN UNION

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TO THE READER

This 2004 edition of Fact Sheets is the tenth since the publication was created in 1979 for Parliament's first direct elections. As in the previous ones, this edition tries to fulfil the original purpose of the Fact Sheets: to provide non-specialists with a general view of the process of European integration. We have thus kept things simple, clear and concise and preserved a format that is as consistent and straightforward as possible.

We have made only very slight changes to the document's length (at 147 sheets) and structure. We have naturally included the developments that have taken place in recent years, particularly the changes introduced by the Treaty of Nice and the proposals for a constitutional treaty put forward by the Convention on the future of Europe. Treaty articles (Treaty establishing the European Community and Treaty on European Union) are now referred only on the basis of the numbering introduced by the Treaty of Amsterdam.

Whilst updating the publication, we hope that we have continued to improve its readability and thus also its value to readers as a rapid but adequate review of progress on the main points of European integration. Readers wishing to go into greater detail are referred to more specialist works, including those produced by the General Secretariat of the European Parliament.

As before, each fact sheet is identified by a three-figure number. The first two digits refer to the part and chapter to which the fact sheet belongs. This numbering system is used for cross-references to other fact sheets, indicated by an asterisk. At the beginning of the collection a contents section lists all the fact sheets numbered in this way and arranged in parts and chapters.

Fact Sheets are also available in electronic form on Parliament's internet site, http://www.europarl.eu.int

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THE FIRST TREATIES

LEGAL BASIS

- The Treaty of the European Coal and Steel Community (ECSC), or Treaty of Paris, was signed on 18 April 1951 and came into force on 25 July 1952. For the first time, a group of states agreed to work towards integration. The Treaty made it possible to lay the foundations of the Community by setting up a 'High Authority', a Parliamentary Assembly, a Council of Ministers, a Court of Justice and a Consultative Committee.
- 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. Although the EAEC Treaty was concluded for 50 years (Art. 97), the Treaties of Rome were concluded 'for an unlimited period' (Art. 240 of the EEC Treaty and Art. 208 of the EAEC Treaty), which gives them almost a constitutional character.
- The six founding countries were Belgium, France, Germany, Italy, Luxembourg and the Netherlands.

OBJECTIVES

- The avowed intentions of the founders of the ECSC were that it should be merely a first stage towards a 'European Federation'. The common market in coal and steel was to be an experiment which could gradually be extended to other economic spheres, culminating in a 'political' Europe.
- The aim of the European Economic Community was to establish a common market based on the four freedoms of movement of goods, persons, capital and services and the gradual convergence of economic policies.
- The aim of Euratom was to coordinate the 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 EEC TREATY TAKES THE LEAD

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.

1. 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 still seen as 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 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.

2. 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.

3. Efforts to get the process of European integration under way again following the failure of the EDC took the form of specific proposals at the Messina Conference (in June 1955) on a customs union and atomic energy. They culminated in the signing of the **EEC and EAEC Treaties**.

a. 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).

b. 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.

4. 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 agreement of 9 April 1965 thereby completed the unification of the institutions.

From that time onwards, the EEC became more prominent than the ECSC and the EAEC (the sectoral Communities). It represented a triumph for the general purpose and institutions of the EEC over the two coexisting sectoral organisations.

DEVELOPMENTS UP TO THE SINGLE EUROPEAN ACT

A. Main achievements in the first stage

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

B. First amendment of the Treaties

1. Improvements to the institutions

a. The first institutional change came about with the **Merger Treaty** of **8 April 1965**, which merged the executive bodies. This took effect in 1967, setting up a single Council and Commission of the European Communities (the ECSC, EEC and EAEC) and introducing the principle of a single budget.

b. The Council **Decision** of **21 April 1970** set up a system of the Community's **own resources**, replacing financial contributions by the Member States (*1.5.1.).

c. Budgetary powers

- The **Treaty** of Luxembourg of **22 April 1970** granted the European Parliament certain budgetary powers (*1.3.1.).
- The **Treaty** of Brussels of **22 July 1975**, gave the EP the right to reject the budget and to grant the Commission a discharge for implementing the budget. The same Treaty set up the Court of Auditors, a body responsible for scrutinising the Community's accounts and financial management (*1.3.10.), which began work on 25 October 1977.
- The EP systematically used its budgetary powers to develop the Community's action.

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

2. Enlargement

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

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

C. Developments in comprehensive plans for integration

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

1. Failure of an attempt to achieve political union

a. The Fouchet Plan

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

b. After the failure of the Fouchet proposals there were no further attempts at a fundamental review of the Community Treaties until the Spinelli initiative in 1984. The debate on the form a future political union might take continued at a more pragmatic level in a number of reports and resolutions.

c. In the absence of a political community, its substitute took the form of European Political Cooperation, or EPC (*6.1.1.). At the summit conference in The Hague in December 1969 the Heads of State and Government decided to look into the best way of making progress in the field of political unification. The Davignon report, adopted by the foreign ministers in October 1970 and subsequent-

ly amplified by further reports, formed the basis of EPC until the Single Act entered into force.

2. The 1966 crisis

A serious crisis arose when the tricky issue of moving on to the third stage of the transition period (due on 1 January 1966) began to emerge. At this stage voting procedures in the Council were to change, with a move from unanimous to qualified majority voting in certain areas. The change of voting method reflected greater emphasis on a supranational approach in the Community. France opposed a range of Commission proposals, which included measures for financing the 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.

3. The increasing importance of European 'summits'

Meanwhile, although they were outside the Community institutional context, the conferences of Heads of State and Government of the Member States were induced to provide some political impetus and settle the problems that the normal Council could not handle. After early meetings in 1961 and 1967 the conferences took on increasing significance with the Hague Summit of 1 and 2 December 1969, which allowed negotiations to begin on enlarging the Community and agreed on the Community finance system. The October 1972 Paris summit went on to reach the decision to use the Treaty provisions, including Article 235 (now Article 308), as widely as possible in the fields of environmental, regional, social and industrial policy; while the Fontainebleau summit in December 1974 took major political decisions on direct elections, the European Regional Fund and the Council's decision-making procedure. At that point it also decided to meet three times a year as the 'European Council' to discuss Community affairs and political cooperation (*1.3.7.).

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

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

To solve the problem of monetary instability and its adverse effects on the CAP and cohesion between Member States, the Bremen and Brussels European Councils in 1978 set up the European Monetary System (EMS). Established on a voluntary and differentiated basis (the UK decided not to participate in the exchange-rate mechanism) the EMS depended on the existence of a common accounting unit, the ECU (*5.1.0.).

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).

5. The Spinelli Project

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

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

D. Developments up to the Single European Act

Having settled the Community budget dispute of the early 1980s, the European Council decided at its Fontainebleau meeting in June 1984 to set up an ad hoc committee of the personal representatives of the Heads of State and Government, known as the Dooge committee after its chairman. The committee was asked to make proposals for improving the functioning of the Community system and of political cooperation. It drew up an interim report for the European Council meeting in Dublin in December 1984. The report proposed a major step forward in qualitative terms, particularly in the institutional sphere. The Dublin European Council said the committee should continue to work towards a consensus, as three of the

ten representatives had expressed serious reservations about the text of the report. But the European Council in Milan in June 1985 decided by a majority vote (of 7 to 3, an exceptional procedure in that body) to convene an intergovernmental conference to consider the powers of the Institutions, the extension of Community activities to new areas and the establishment of a 'genuine' internal market.

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

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

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

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

1. Extension of the Union's powers

a. Through the creation of a large internal market

to be completed by 1 January 1993. The creation of the internal market consisted in taking up and broadening the objective of the common market introduced in 1958 (*3.1.0.).

b. Through establishing new powers

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

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

Qualified majority voting

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

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

b. was introduced for several new responsibilities:

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

c. formed the subject of an amendment to the Council's internal rules of procedure, so as to comply with the Presidency's declaration on Article 149(2) of the EEC Treaty in the Final Act of the SEA. This states that in future a vote may be called in the Council not only on the initiative of its President, but also at the request of the Commission or a Member State if a simple majority of the Council's members are in favour. They must receive two weeks' notice of such a request.

3. Growth of the role of the European Parliament

The EP's powers were strengthened by:

- making Community agreements on enlargement and association agreements subject to Parliament's assent;
- introducing a procedure for cooperation with the Council (*1.4.1.) which gives Parliament real, if limited, legislative powers. It applied to about a dozen legal bases at the time and marked a crucial point in the transformation of the EP as co-legislator, on an equal footing with the Council.

THE MAASTRICHT AND AMSTERDAM TREATIES: PROSPECTS FOR THE EUROPEAN UNION

I. THE MAASTRICHT TREATY

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

THE UNION'S STRUCTURE

By instituting a European Union, the Maastricht Treaty marks a new step in the process of creating an 'ever-closer union among the peoples of Europe'. The Union is based on the European Communities (*1.1.1. and 1.1.2.) and supported by policies and forms of cooperation provided for in the Treaty on European Union. It has a single institutional structure, consisting of the European Council, the European Parliament, the Council, the Commission, the Court of Justice and the Court of Auditors. The European Council's task is to define general political guidelines. The 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 Council, Commission and Parliament are assisted by an Economic and Social Committee and a Committee of the Regions, which both have advisory powers. A European System of Central Banks, a European Central Bank and a European Investment Bank have been set up under the provisions of the Treaty.

THE POWERS OF THE UNION

The Union is commonly described as being based on three pillars.

- The first pillar consists of the European Communities, providing a framework within which the Member States, through the Community Institutions, can jointly exercise their sovereignty in the areas covered by the Treaties.
- The second pillar is the common foreign and security policy laid down in Title V of the Treaty on European Union.
- The third pillar is cooperation in the fields of justice and home affairs laid down in Title VI of the Treaty on European Union.

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

A. The European Community (first pillar)

The Community's task is to promote throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women, sustainable and non-inflationary growth, a high degree of competitiveness and convergence of economic performance, a high level of environmental protection, the raising of the standard of living and quality of life, economic and social cohesion and solidarity among Member States. The Community pursues these objectives, acting within the limits of its powers, by establishing a common market and related measures set out in Article 3 of the EC Treaty 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 (*4.11.1.) to provide citizens with a high level of safety within an area of freedom, security and justice.

It covers the following areas:

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

II. THE AMSTERDAM TREATY

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

A. Increase in EU powers

1. European Community

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

2. European Union

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

B. A stronger position for Parliament

1. Legislative power

a. **The codecision procedure has been extended** to 15 legal bases which were in the EC Treaty:

- Article 12, prohibition of discrimination;
- Article 18, free movement of EU citizens;
- Article 42, free movement of workers;
- Article 47(1), recognition of qualifications;
- Article 67, visa procedures;
- Article 71, transport policy, including air transport;
- Article 141(3), implementation of equal pay for equal work;
- Article 148, implementation of the Social Fund;
- Article 150(4), vocational training measures;
- Article 153(4), consumer protection;
- Article 156, trans-European networks ('other measures');
- Article 162, implementation of the Regional Development Fund;
- Article 172, implementation of framework research programmes;
- Article 175(3), environment protection measures;
- Article 179, development cooperation;

and to eight new legal bases:

- Article 129, measures to promote employment;
- Article 135, customs cooperation;
- Article 137 (2), social policy;
- Article 152(4), health protection, veterinary and plant health measures;
- Article 255, principles governing access to documents;
- Article 280, combating fraud;
- Article 285, Community statistics;
- Article 286, establishment of a body to monitor protection of individuals with regard to data processing.

It therefore applies to most areas of legislation.

b. Excepting only agriculture and competition policy, the codecision 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 codecision 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 codecision (qualified majority decisions are now required under Article 166 on framework research programmes, which was previously subject to unanimity).

c. Under the simplified codecision 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 commitology.

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 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.

CURRENT PERSPECTIVES FOR THE EUROPEAN UNION: TREATY OF NICE AND THE CONVENTION ON THE FUTURE OF EUROPE

I. TREATY OF NICE

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

OBJECTIVES

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

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

BACKGROUND

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

The Cologne European Council (3 and 4 June 1999) had thus decided that a further intergovernmental conference (IGC) would have to be convened in early 2000 and completed by the end of that same year. Its remit would be those institutional questions still unresolved after Amsterdam and the new treaty amendments which would be necessary in this context. Further to this decision and on the basis of a report by the Finnish Presidency, the Helsinki European Council set the agenda for the IGC as follows: the three items of 'Amsterdam leftovers' plus all the changes required in preparation for enlargement.

CONTENT

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

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

A. Weighting of votes in the Council

Right from the start of the IGC it was clear that the key to any other agreement would be the nature of the qualified majority voting system to be used in future in the Council. Taking together the system of voting in the Council, the composition of the Commission and, to some extent, the distribution of seats in the 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 will require 169 votes out of 237, or 71.3% of the votes. In a Union of 27, a qualified majority will require 255 votes out of 345, or 73.9% of the votes. The current requirement is 62 votes out of 87, or 71.27%. Once the enlargement process is completed, the threshold for qualified majority voting will thus be higher than it is at present.

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

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

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

B. Commission

1. Composition

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

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

2. Nominations

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

3. Internal organisation

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

C. European Parliament

1. Composition

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

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

Since new Member States will be joining the Union in the course of the 2004-2009 parliamentary term, a temporary exceeding of the maximum number of 732 seats in the EP will be permitted in order to accommodate MEPs from the new countries entering Parliament after the European elections in 2004.

2. Powers

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

Following a proposal by the Commission, Article 191 is transformed into a legal base for operations enabling regulations governing political parties at European level and the rules regarding their funding to be adopted using the codecision 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 codecision procedure and by the requirement that the EP must give its assent to the establishment of enhanced cooperation in areas covered by codecision. The EP will also be asked for its opinion when the Council pronounces on the risk of a serious breach of fundamental rights in a Member State.

D. Reform of the judicial system

1. Court of Justice

The Court of Justice will have one judge for each Member State, as in the past. But it will henceforth meet in a number of different ways: it may sit in chambers (consisting of 3 or 5 judges), in a Grand Chamber (11 judges) or as a full Court. The Council, acting unanimously, may increase the number of advocates-general, which remains at eight. The Court of Justice retains jurisdiction over questions referred for a preliminary ruling, but it may under its Statute refer types of matters other than those listed in Article 225 of the EC Treaty to the Court of First Instance.

2. Court of First Instance

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

E. Legislative procedures

Although a considerable number of new policies and measures (27) now require qualified majority voting in the Council, codecision has been extended only to a few

minor areas (Articles 13, 62, 63, 65, 157, 159 and 191 of the EC Treaty; assent is required for Article 161).

F. Enhanced cooperation

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

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

As before, enhanced cooperation must be a last resort. On this point, however, the Treaty of Nice make 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 codecision procedure.

G. 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.

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. This debate will culminate in a treaty reform in 2004. A propos of this, Parliament insisted that the next IGC should proceed along lines radically different from the traditional model: it should be a transparent process, with the involvement of members of the 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

BASIS

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

OBJECTIVES

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

STRUCTURE

A. The Convention

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

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

B. The Convention Praesidium

In addition to the chairman and vice-chairmen, the Praesidium comprises 9 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 includes an 'invited representative' chosen by the applicant countries to attend meetings of the Convention (Mr Peterle, member of the Slovene Parliament).

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

C. The Convention Secretariat

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

ORGANISATION OF THE WORK OF THE CONVENTION

The work of the Convention comprised three phases:

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

The first phase began with the launch of the Convention in February 2002 and ended on 14 June 2002 with thecreation 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.

SOURCES AND SCOPE OF COMMUNITY LAW

LEGAL BASIS

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

OBJECTIVES

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

ACHIEVEMENTS

A. Primary Community law

*1.1.1.-1.1.3.

B. Secondary Community law

1. General points

The Community's forms of action under Article 249 of the EC Treaty (ECT) are regulations, directives, decisions, recommendations and opinions. These are independent legal instruments in Community law, with no connection to national legal instruments. These legal actions may be undertaken by the competent institutions with legal effect only if they are empowered to do so by a provision of the Treaty (principle of attribution of powers). Individual legal acts (with the exception of recommendations and opinions, which have no binding force) must be based on actual provisions of the Treaty (including what are known as implied powers). If a specific power is not provided by the Treaty, in certain circumstances recourse may be had to the subsidiary rule regarding competence in Article 308 ECT. The list of legal actions in Article 249 is not exhaustive; there are, in addition, various forms of action, such as resolutions, declarations, organisational and internal actions, the designation, structure and legal effects of which stem from the individual provisions of the Treaty or the overall context of law embodied in the Treaty. Furthermore, the legal character of a measure taken by a Community Institution does not depend on its official designation, but on its object and material content. As preliminaries to the adoption of legal acts, white papers, green papers and action programmes are also significant. They are mostly agreed upon by Community Institutions as a way of promoting longer-term objectives (e.g. the White Paper on the Single Market).

2. The various legal acts under secondary Community law

a. Regulations

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

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

b. Directives

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

- Possible direct applicability

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

. the period for transposition has expired and the directive has not been transposed or has been transposed inadequately,

. the provisions of the directive are imperative and sufficiently precise,

. the provisions of the directive confer rights on individuals.

If these requirements are fulfilled, individuals may cite the provisions of the directive against all agencies in whom State power is vested. Such agencies are organisations and establishments which are subordinate to the State or on which the State confers rights that exceed those arising from the law on relations between private persons (Court judgment of 22 June 1989 in Case 103/88 Fratelli Costanzo). The case-law is mainly justified on the grounds of *'effet utile'*. But even when the provision concerned does not seek to confer any rights on the individual, the Court's current case-law says the Member State authorities have a legal duty to comply with the untransposed directive. This case-law is mainly justified on the grounds of *'effet utile'*, the penalisation of violations of the Treaty and legal protection. On the other hand, an individual may not directly invoke against another individual (the 'horizontal effect') the direct effect of an untransposed directive (case-law, see Faccini Dori [1994] ECR I-3325 et seq. at point 25).

- **Responsibility for failure to transpose a directive**

According to Court case-law ('Francovich' case, [1991] ECR I-5357 et seq., Faccini Dori op, cit., at point 27 et seq.), an individual citizen is entitled to claim compensation from a Member State which has not transposed a directive or has done so inadequately where:

. the directive is intended to confer rights on individuals,

. the substance of the rights can be ascertained on the basis of the directive,

. and where there is a causal connection between the breach of the duty to transpose the directive and the loss sustained by the individual.

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

c. Decisions

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

d. Recommendations and opinions

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

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

a. Legislative competence, right of initiative and legislative procedure: *1.3.6., 1.3.8. and 1.4.1.

b. Enforcement of legislation

Under primary Community law, the EC has only limited powers of enforcement itself, and EC law is therefore usually enforced by the Member States (obligation under Article 10 ECT).

c. Actual application of the various forms of action

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

C. Unwritten Community law

These are the non-codified rules of Community law, including general legal principles (particularly fundamental rights at Community level, Article 6, second paragraph, of the Treaty on European Union (TEU), the Charter of Fundamental Rights of the EU (*2.1.0.) and principles of rule of law) and customary law.

D. International treaties concluded by the EC

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

E. Ancillary Community law

This is made up of rules contained in international treaties which have been concluded between the Member States and which further the objectives of the Community (e.g. the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters). The conclusion of such international treaties is partly provided for in Article 293 ECT.

F. Hierarchy within Community law

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

ROLE OF THE EUROPEAN PARLIAMENT

Under the procedures laid down in Article 249 et seq. ECT, Parliament has certain rights to participate in the enactment of Community legislation (*1.4.1.). However, despite the widening of its powers in the Treaty on European Union (*1.1.2.), it continues to have limited influence (negative competence). With the aim of improving the application of Community law in the Member States and of increasing the acceptance of Community law by its citizens, Parliament is taking action to simplify the legislative process, improve the drafting of legislation and secure more effective penalties for those cases where Member States fail to comply with Community law. It has made proposals to replace the present system of legislation by a more transparent and more manageable system (resolutions on the Maastricht Treaty and on the 1996 Intergovernmental Conference).

THE PRINCIPLE OF SUBSIDIARITY

LEGAL BASIS

Article 5, second paragraph ECT, in conjunction with Article B, last paragraph, and the 12th recital in the preamble to the EUT.

OBJECTIVES

The subsidiarity principle pursues two opposing aims. On the one hand, it allows the Community to act if a problem cannot be adequately settled by the Member States acting on their own. On the other, it seeks to uphold the authority of the Member States in those areas that cannot be dealt with more effectively by Community action. The purpose of including it in the European Treaties is to bring decision-making within the Community as close to the citizen as possible.

ACHIEVEMENTS

A. Origin and history

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

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

The principle in Article 5(2) ECT merely distinguishes, as regards the exercise of a given competence, between Member State and Community levels. But the Declaration on subsidiarity by Germany, Austria and Belgium (of which the Amsterdam Summit took note) clearly points out that 'action by the European Community in accordance with the principle of subsidiarity not only concerns the Member States but also their entities, to the extent that they have their own law-making powers conferred on them under national constitutional law'.

B. Definition

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 means that the Member States remain responsible for areas which they are capable of managing more effectively themselves, while the Community is given those powers which the Member States cannot discharge satisfactorily.

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

a. The area concerned must not fall within the Community's exclusive competence.

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 Community responsibility, the principle does not create additional competence (no allocation of powers).

2. Demarcation problems

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

In a number of decisions stemming from the Treaties, for example, the Court has defined and recognised certain competences (which are not explicitly regulated in the Treaties) as exclusive, but it has not laid down a definitive list of such competences. The lack of any clear dividing-line for applying the principle of subsidiarity will continue to result in different interpretations of this principle. At the same time, however, the Community clearly has the aim of limiting Community action to the objectives of the Treaty

and ensuring that decisions on new action are taken as closely as possible to the citizen. Particular emphasis is also placed on this connection between the principle of subsidiarity and closeness to the citizen in the preamble to the EU Treaty.

3. Where it applies

The principle of subsidiarity applies to all the Community Institutions. The rule has practical significance for the Council, Parliament and Commission in particular. The Court's decisions are also bound by Article 5, second paragraph, ECT. Citizens of the Union cannot derive any rights directly from this provision.

D. Judicial reviewability

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

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

ROLE OF THE EUROPEAN PARLIAMENT

1. Ongoing work

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

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

2. Agreement on interinstitutional cooperation

The debate triggered by Parliament (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 resulted in the conclusion of an interinstitutional agreement between the Council, Parliament and the Commission. This gave expression to decisive steps by the three Institutions in this area. All three Institutions are thus required to respect the principle of subsidiarity.

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

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

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

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

In its resolution of 13 May 1997 on the Commission reports on application of the subsidiarity principle in 1994, 1995 and 1996, Parliament drew attention to the binding, constitutional nature of the subsidiarity principle, which was subject to interpretation by the Court, and pointed out that it should not obstruct the legitimate exercise of

Community powers. Neither should it in any way be used as pretext to call into question the acquis communautaire. In its resolution of 8 April 2003, Parliament considers that differences with regard to implementing the principles of subsidiarity and proportionality should preferably be settled at the political level, on the basis of the Interinstitutional Agreement of 25 October 1993, but notes the proposals currently under consideration by the Convention on the Future of Europe, whereby national parliaments should take on a role in monitoring subsidiarity issues through an 'early warning' system. It underlines the importance of Community Institutions and Member States, through regional and local authorities as well as at central ministerial level, keeping a permanent watch on the application of the subsidiarity and proportionality principles.

THE EUROPEAN PARLIAMENT: HISTORICAL BACKGROUND

LEGAL BASIS

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

THREE COMMUNITIES, ONE ASSEMBLY

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

FROM APPOINTED ASSEMBLY TO ELECTED PARLIAMENT

- Before direct election MEPs were **appointed** by each of the Member States' national parliaments. All Members thus had a dual mandate.
- The Summit Conference in Paris on 9-10 December 1974 decided that **direct elections** 'should take place in or after 1978' and asked Parliament to submit new proposals to replace its draft Convention of 1960. In January 1975 Parliament adopted a new draft, on the basis of which the Heads of State or Government, after settling a number of differences, reached agreement at their meeting of 12-13 July 1976.
- The Decision and Act on European elections by direct universal suffrage were signed in Brussels on 20 September 1976. After ratification by all the Member States, the text came into force on 1 July 1978. The first elections took place on 7 and 10 June 1979.

SUBSEQUENT ENLARGEMENTS

1. When Denmark, Ireland and the United Kingdom joined the European Communities on 1 January 1973 (the first enlargement), the number of MEPs was increased to 198.

2. For the second enlargement, with the accession of Greece on 1 January 1981, 24 Greek Members were delegated to the EP by the Greek Parliament, to be replaced in October 1981 by directly elected Members. The second direct elections were held on 14 and 17 June 1984.

3. On 1 January 1986, with the third enlargement, the number of seats rose from 434 to 518 with the arrival of 60 Spanish and 24 Portuguese Members, appointed by their national parliaments and subsequently replaced by directly elected Members. The third direct elections were held on 15 and 18 June 1989.

4. Following German unification, the composition of the 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.

5. Since 1 January 1995, membership of the European Parliament has been as follows:

Belgium	25	
Denmark	16	
Germany	99	
Greece	25	
Spain	64	
France	87	
Ireland	15	
Italy	87	
Luxembourg	6	
Netherlands	31	
Austria	21	
Portugal	25	
Finland	16	
Sweden	22	
United Kingdom	87	
Total	**626**	(absolute majority: 314)

6. The Intergovernmental Conference in Nice has introduced a new distribution of seats in the European Parliament which will be applicable as from the next European elections in 2004. The maximum number of Members (currently set at 700) will rise to 732. The number of seats allocated to the current Member States has been brought down by 91 (from the current 626 to 535). For the European elections 2004 the 197 remaining seats to reach the number of 732 will be distributed among all old and new Member States on a pro rata basis. When Bulgaria and Rumania accede the European Union - which is expected to take place during the 2004-2009 term-, the number of seats in the European Parliament will temporarily rise to 786 in order to accommodate MEPs from these countries. After the 2009 elections the number of seats for MEPs will again be reduced to 736.

GRADUAL INCREASE IN POWERS

1. Replacement of Member States contributions by the Community's own resources (*1.5.1.) led to a first extension of Parliament's budgetary powers under the Treaty of Luxembourg, signed on 22 April 1970. A second treaty on the same subject, strengthening Parliament's powers, was signed in Brussels on 22 July 1975 (*1.1.2.).

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

3. The Maastricht Treaty, by introducing the codecision procedure in certain areas of legislation and extending the cooperation procedure to others, marked the beginning of Parliament's metamorphosis into the role of co-legislator. It gave Parliament the power of final approval over the membership of the Commission, which was an important step forwards in Parliament's political control over the European executive.

4. The Treaty of Amsterdam extended the co-decision procedure to most areas of legislation and reformed the procedure, putting Parliament as co-legislator on an equal footing with the Council. With the appointment of the President of the Commission being madesubject to Parliament's approval, Parliament further increased its control over the executive power.

5. The Treaty of Nice extended the scope of the co-decision procedure in seven provisions of the EC Treaty: measures to support antidiscrimination action of the Member States (Art 13 EC), certain measures for issuing visas (Article 62 (2) (b) (ii) and (iv) EC) measures on asylum and on certain refugees matters (Article 63 EC), measures in the field of judicial cooperation in civil matters (Article 65 EC), support measures in the industrial field (Art 157 EC), actions in the field of economy and social cohesion (Article159 EC) and regulations governing political parties at European level and in particular the rules regarding their funding (191 EC).

THE EUROPEAN PARLIAMENT: POWERS

LEGAL BASIS

Articles 189 to 201 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 codecision 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 codecision on an equal footing with the Council.

A. Codecision

Since the Treaty of Nice came into force, the simplified codecision 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), most aspects of creating an area of freedom, security and justice, and adoption of general rules and principles for 'comitology'. This procedure also applies to a new 'framework-decision' instrument created by the Amsterdam Treaty under the third pillar (Article 34(2)(b) EU) 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, in so far 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 codecision procedure under the Amsterdam Treaty. It survives only in four provisions of the Economic and Monetary Policy (Articles 98 et seq.).

D. Assent

Since the Maastricht Treaty, the assent procedure applies to the few legislative areas in which the Council acts by unanimous decision, limited since the Amsterdam Treaty to the Structural Funds and Cohesion (Article 161 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 (*1.4.2.)

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).

CONTROL OVER THE EXECUTIVE

Parliament has several powers of control.

A. Investiture of the Commission

Parliament began informally approving the investiture of the Commission in 1981 by approving its programme. However, it was only when the Maastricht Treaty came into force (1992) that its approval was required before the Member States could appoint the President and Members

of the Commission as a collegiate body. The Amsterdam Treaty has taken matters further by requiring Parliament's specific approval for the appointment of the Commission President, prior to that of the other Members.

B. The motion of censure

The Treaty of Rome made provision for a motion of censure against the Commission (Article 201 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 seven motions of censure since the beginning and none has been adopted, but the number of votes in favour of censure has steadily increased. The last motion (vote on 14 January 1999) obtained 232 votes to 293, with 27 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 EU). Implementation of the interinstitutional agreement on financing the CFSP, attached to the Amsterdam Treaty, is expected to improve CFSP consultation procedures.

APPEALS TO THE COURT OF JUSTICE

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

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

B. 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 (*4.5.1.).

C. 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 codecision 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.

D. It is finally now able to seek a **prior opinion** from the Court of Justice on the compatibility of an international agreement with the Treaty (Article 300 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.).

THE EUROPEAN PARLIAMENT: ORGANISATION AND OPERATION

LEGAL BASIS

- Articles 183-201 EC;
- European Parliament's Rules of Procedure.

MEMBERSHIP

There are at present 626 Members, allocated as follows: Germany - 99; Italy, France and the United Kingdom - 87; Spain - 64; The Netherlands - 31; Portugal, Greece and Belgium - 25; Sweden - 22; Austria - 21; Denmark and Finland - 16; Ireland - 15 and Luxembourg - 6.

ORGANISATION

A. Management bodies

They comprise the Bureau (the President and 14 Vice-Presidents); the Conference of Presidents (President and political group chairmen); the 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 17 committees, 20 interparliamentary delegations and 14 delegations to joint parliamentary committees. There is also the Joint Assembly set up under the agreement between the African, Caribbean and Pacific States and the EU.

Each committee or delegation elects its own 'bureau' comprising a chairman and two or 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 the minimum number of Members required to form a political group is 29 if they come from one Member State, 23 if from two, 18 if from three and 14 if from four or more Member States (see table in annex). 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 and the European Liberal Democrat and Reform Party. They work in close cooperation with the corresponding political groups within Parliament. 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 in 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 allows the adoption via the codecision procedure of a statute of European level political parties and particularly of rules concerning their funding.

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

1. 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).

2. 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.

3. 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.

4. Parliament draws up its annual calendar of part-sessions on the proposal of the Conference of Presidents. In 2003 Parliament held 12 one week part sessions in Strasbourg and 6 two day part sessions in Brussels. The official calender for 2004 provides for 12 part sessions in Strasbourg and 5 two day part sessions in Brussels.

MEMBERSHIP OF PARLIAMENT BY GROUP AND MEMBER STATE

	B	DK	D	GR	E	F	Irl	I	L	NL	A	P	FIN	S	UK	Total
EPP-DE	5	1	53	9	28	21	5	35	2	9	7	9	5	7	37	233
PES	5	2	35	9	24	18	1	16	2	6	7	12	3	6	29	175
ELDR	5	6			3	1	1	8	1	8			5	4	11	53
GUE/NGL		3	7	7	4	15		6		1		2	1	3		49
Green/ ALE	7		4		4	9	2	2	1	4	2		2	2	6	45
UEN		1				4	6	10				2				23
EDD		3				9				3					3	18
NI	3				1	10		10			5				1	30
Total	25	16	99	25	64	87	15	87	6	31	21	25	16	22	87	626

THE EUROPEAN PARLIAMENT: ELECTORAL PROCEDURES

LEGAL BASIS

Article 150(1) and (2) of the EC Treaty.

COMMON RULES

A. Principles

1. 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)).

2. 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.

3. 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.

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 of 25 June 2002 adopted following the EP's opinion).

3. Incompatibilities

a. 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.

b. 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 5% of the vote in Germany or France, and 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).

B. Constituency boundaries

1. Until 2003, in 11 Member States (Germany, Austria, Denmark, Spain, Finland, France, Greece, Luxembourg, the Netherlands, Portugal and Sweden) the whole country formed a single electoral area. In four Member States (Belgium, Ireland, Italy and the United Kingdom) the national territory was divided into a number of constituencies.

2. Since the 2002 Council Decision, a number of national laws have been amended or are being amended. France has abandoned the use of a single electoral constituency and has established eight large regional constituencies: Northwest, West, East, Southwest, Southeast, Massif Central, Île-de-France and Overseas. In Great Britain, the territory of Gibraltar, whose population does not vote in the European elections due to the disagreement on the issue between the Spanish and British Governments, should be incorporated in one of the existing 12 constituencies. In Germany, although the electoral legislation will not be changed, parties are allowed to present lists of candidates at either *Land* or national level. Similarly, in Finland parties may present their lists at either constituency or national level.

C. Entitlement to vote

1. Vote of non-nationals in the host country

Voting age is 18 in all the Member States. Citizens of the Union residing in a Member State of which they are not nationals now have the right (Article 19 ECT) 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.

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

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

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

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

18 in Finland, Sweden, Denmark, Germany, Spain, the Netherlands and Portugal, 19 in Austria, 21 in Belgium, Greece, Ireland, Luxembourg 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 five Member States (Denmark, Germany, Greece, 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 the other countries.

The next elections will therefore be held on 10 and 13 June 2004.

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

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

H. Allocating seats

Of the 14 Member States that use proportional representation, eight have adopted the d'Hondt rule for allocating seats (Austria, Belgium, Denmark, Spain, Finland, France, the Netherlands and Portugal). Germany uses the Hare-Niemeyer method and Luxembourg a variant of this method, the 'Hagenbach-Bischoff' method. In Italy seats are allocated by the whole electoral quota and largest remainder method, in Ireland by the single transferable vote method, in Greece by the weighted method of proportional representation known as 'Eniskhimeni Analogiki', and in Sweden by the Sainte-Laguë method (division by successive odd numbers but modified to make the largest common divisor 1.4).

I. Verification of the result and rules on election campaigns

1. There is provision for the EP to **verify the election results** in Denmark, Germany and Luxembourg, and for the courts to do so in Austria, Belgium, Finland, France, Italy, Ireland and the United Kingdom, while both are

provided for in Germany. In Spain the result is verified by the 'Junta Electoral Central'; in Portugal and Sweden a verification committee does so.

2. Contrary to the practice in national elections, no special rules on election campaigns have been laid down, except for a restriction on campaign expenditure. Political parties receive no government allowances for election campaigns. However, the Council and the EP recently agreed to establish a system for the funding of political parties from 2004 which will include election campaign expenditure (resolution of 19 June 2003 on European political parties: statute and financing).

J. Filling of seats vacated during the electoral term

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

ROLE OF THE EUROPEAN PARLIAMENT

1. 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.

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

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

The continuing lack of a genuine uniform procedure for election to the 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 EUROPEAN PARLIAMENT: RELATIONS WITH THE NATIONAL PARLIAMENTS

OBJECTIVES

A. Continuing reasons for cooperation

1. 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 the powers that would have enabled it to play a full parliamentary role in Community affairs. There is thus a structural 'democratic deficit'.

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

- The NPs have gradually become concerned at this loss of influence and have come to see better national control over their governments' European activities and closer relations with the 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

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

2. 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 ten 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.

3. 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.

4. 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.

ACHIEVEMENTS: THE INSTRUMENTS OF COOPERATION

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

1. 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.

2. Over the last years, the presidents met every year. Recent conferences were held in Stockholm in November 2001 (discussing the role of National Parliaments in the European Structure) and in Athens, on 22-24 May 2003 (on the role of the European Parliaments in an enlarged Europe: the political and institutional dimension).

3. Since 1995 the EP has maintained close relations with the parliaments of the associate countries, in view of the enlargement of the Union. The presidents of the European Parliament and the Central and Eastern European countries' parliaments have met to discuss accession strategies and other topical questions. The 13th meeting was held in May 2002 in Riga and the 14th in November 2002 in Brussels.

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 data bases) and coordinating research so as to avoid duplication. It centralises and circulates research and has created a web site 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

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

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

- Proposed by the President of the French National Assembly, the conference has met every six months since 1989, bringing together the NPs' bodies specialising in European Community Affairs and six MEPs, headed by the two vice-presidents responsible for relations with national parliaments. Convened by the parliament of the country holding the presidency of the Community and prepared jointly by the EP and the parliaments of the presidency 'troika', each conference discusses the major topics of European integration.
- COSAC is not a decision-making but a consultation and coordination body that adopts its decisions by consensus. The Protocol to the Treaty of Amsterdam on the role of the national parliaments in the European Union particularly states that COSAC may make any contribution it deems appropriate for the attention of the institutions of the European Union. However, contributions made by COSAC in no way bind national parliaments or prejudge their position. At its latest meeting (XXIXth COSAC, 4th - 6th May 2003, Athens), COSAC reflected on the creation of a permanent secretariat in Brussels and introduced some significant changes to its rules of procedure, such as majority voting.

E. Cooperation

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

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

3. 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.

THE COUNCIL

LEGAL BASIS

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

ROLE

1. 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.

2. Budget

The Council is one of the two branches (the other being the European Parliament) of the budgetary authority which adopts the Community budget (*1.4.2.).

3. Other powers

a. 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).

b. Appointments

The Council, acting by a 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.

c. 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.

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

In these fields of competence, created by the Treaty on European Union, the Council does not act as a Community institution but according to specific intergovernmental rules.

- In the field of Foreign and Security Policy, it adopts common positions and joint actions and also draws up conventions. The Troika formula has changed after the Treaty of Amsterdam: the presidency of the Council is assisted in the field of the common foreign and security policy by the Council secretariat general whose vice-secretary general exercises the functions of High Representative for common foreign and security 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.
- Since the Treaty of Amsterdam, the Council has also adopted framework decisions on approximation of legislation in the fields of justice and home affairs.

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

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).

- Up to the accession of the ten new Member-states, the situation is the following: Germany, France, Italy and the United Kingdom have 10 votes; Spain 8 votes; Belgium, Greece, the Netherlands and Portugal 5 votes; Austria and Sweden 4 votes; Denmark, Finland and Ireland 3 votes and Luxembourg 2 votes. The total is 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 ten Member States.

- With the accession of the ten new Member States, the total number of votes in the Council will rise to 124 during a transitional period (1 May 2004 - 31 October 2004). The required qualified majority will be 88 (70,97%).

- As from 1 November 2004, a new weighting of votes will be introduced and qualified majority will be obtained if
  - . the decision receives at least 232 votes of a new total of 321 (72,27%),
  - . 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 232 votes in favour, cast by at least two-thirds of the members.

- In an EU of 27 Member States, the qualified majority will be fixed at 255 of a total of 345 (73,91%).

b. Scope

The Treaty of Nice extended the scope of decision-making by qualified majority. 27 provisions 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 Committe of Regions. (*1.4.1 and 1.4.2)

3. Unanimity

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

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

COREPER

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

The Treaty of Nice does not change this six-monthly rotation. In order to give new Member States the time to prepare for their Presidency the present rotation order will continue until the end of 2006.

THE EUROPEAN COUNCIL

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.

D. Incorporation in the Treaties

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

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

ORGANISATION

A. Composition

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

B. Operation

The European Council meets at least twice a year. It is chaired by the Head of State or Government of the country holding the Council Presidency. It normally takes decisions unanimously. Since 2002 one European Council meeting per presidency is held in Brussels. When the Union comprises 18 members, all formal European Council meetings will be held in Brussels. The presidencies are nevertheless free to organise informal European meetings wherever they like.

ROLE

A. Place in the Union's institutional system

1. 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.

2. It is *not* 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.

3. 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 the practice,

. by the resolutions it adopts on items on the agenda for meetings, on the outcome of meetings and on the formal reports submitted by the European Council.

C. Powers

1. General

The European Council provides the Union with 'the necessary impetus for its development' and defines the 'general political guidelines' (Article 4 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 moving towards a common defence, under Article 17 (1).
- If a Member State opposes to 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)). The same procedure can apply if Member States decide to establish enhanced cooperation in this field (Article 27c (2)).

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).

ACHIEVEMENTS

A. General assessment

1. 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.

2. 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.

3. 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 and disarmament;
- transatlantic relations;
- relations with Russia;
- relations with Latin America;
- relations with Asia;
- relations with the Mediterranean countries;
- the settlement of conflicts in the former Yugoslavia and the Middle East.

On 3 and 4 June 1999 in Cologne, the European Council appointed Mr Solana as High Representative for the CFSP and decided on a common EU strategy with regard to Russia.

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.

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. Meetings in subsequent years defined the criteria for admission and the institutional reforms required beforehand. The Luxembourg European Council in December 1997 took decisions enabling accession negotiations to be launched with the countries of Central and Eastern Europe and Cyprus.

The Helsinki European Council (December 1999) decided to begin accession negotiations with Romania, Slovakia, Latvia, Bulgaria and Malta and to recognise Turkey as an applicant country, thus marking the transition to a new phase of enlargement.

The Copenhagen European Council (held on 12 and 13 December 2002) decided the accession as from the 1 May 2004 of Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republik and Slovenia. Rumania and Bulgaria are expected to accede in 2007.

The European Council will decide in December 2004, whether the European Union is going to open accession negotiations with Turkey.

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. 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.

THE COMMISSION

LEGAL BASIS

Articles 211 to 219 TEC.

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 is composed of 20 Members, at least one and not more than two per Member State. In practice the five most populous countries return two Commissioners and the others one.

From 1 November 2004 onwards the Commission will consist of one Commissioner per Member State. When the Union reaches the number of 27 Member States the number of the Commissioners will be smaller that 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.

B. Method of nomination

1. 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.

2. The **Treaty of Nice** introduced the following changes:

- It is the Council, acting by a qualified majority, which nominates the person it intends to appoint as President of the Commission; the nomination must be approved by the European Parliament.
- 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)

a. 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.

b. 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 organization

- The Commission works under the political guidance of its President, who decides on its internal organisation in order to ensure that the Commission acts consistently, efficiently and on the basis of collegiality.
- The President allocates the sectors of its activity among the Members. This gives each Commissioner responsibility for a specific sector and authority over the administrative departments concerned.
- After obtaining the approval of the College, the President appoints the Vice-Presidents from among its Members. A Member of the Commission has to resign, if the President so requests and after obtaining the approval of the College.
- The Commission has a general secretariat consisting of 23 directorates-general and 14 specialist departments, including the Legal Service, Statistical Office and 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.

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 treatie***s.* 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 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). Parliament has repeatedly criticised the adverse effects of this 'comitology', which was increasingly inappropriate as the codecision 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.
- However, there is one area in which Council regulatory acts have conferred considerable implementing powers on the Commission. This concerns the competition rules applying to companies — concerted practice and abuse of a dominant position (*3.3.1. and 3.3.2.).

D. Regulatory powers

The treaties seldom give the Commission full regulatory powers.

1. In the '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. In 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 EU.
- Lastly, the Commission is consulted on the Statute for MEPs and the Statute for the Ombudsman.

THE COURT OF JUSTICE AND THE COURT OF FIRST INSTANCE

1. COURT OF JUSTICE

LEGAL BASIS

- Articles 220, 226, second paragraph, 227, 230, 232, 234-237 and 300 of the EC Treaty;
- 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 15.
- 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;
  - . eight and seven judges replaced alternately,
  - . half of the advocates-general replaced alternately.

  (Retiring judges and advocates-general may be reappointed.)

2. Privileges and immunities (Statute)

- Judges and advocates-general are immune from legal proceedings. After they have ceased to hold office, they continue to enjoy immunity in respect of acts performed by them in their official capacity.
- Their immunity may only be waived by a unanimous decision of the Court.

3. Obligations (Statute)

Judges and advocates-general:

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

ORGANISATION AND OPERATION (Article 223 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 3 or 5 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 by another Member State after it has brought the matter before the Commission (Article 227).

Role of the Court:

- confirming that the state has failed to fulfil its obligations, in which case the state is required to take

the necessary measures to comply with the Court's judgment;

- if the Commission considers that the Member State concerned has not taken such measures, it may (after a preliminary procedure, as provided for above) bring the case back to the Court of Justice, which may then impose a lump sum or penalty payment on the Member State in question.

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);
- 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.

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 such as the 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 which it upholds (*1.5.1.).

2. In specific matters

a. The right of establishment: judgment of 8 April 1976 in the Royer case, in which the Court upheld the right of a national of a Member State to stay in any other Member State independently of any residence permit issued by the host country;

b. The free movement of goods: judgment of 20 February 1979 in the Cassis de Dijon case, in which the Court ruled that any product legally manufactured and marketed in a Member State must in principle be allowed on the market of any other Member State;

c. The external jurisdiction of the Community: 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 which have failed to transpose directives into national law or failed to do so in good time;

e. Various judgments relating to social security and competition;

f. Rulings on **breaches of Community law by the Member States**, which are vital for the smooth running of the common market.

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

II - COURT OF FIRST INSTANCE

LEGAL BASIS

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

A. Composition

1. Number

- One judge per Member State, so there are currently 15;
- 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 at first instance (Article 225)

1. 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):

- disputes between the institutions and their servants and officials (Article 236);
- 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).

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

3. 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.

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.

THE COURT OF AUDITORS

LEGAL BASIS

Articles 246 to 248, 279 and 280 ECT. The Treaty of 22 July 1975 amending certain financial provisions of the Community treaties added these provisions to the Treaties of Paris and Rome. The Treaty on European Union raised the Court of Auditors to the rank of Community institution by amending Article 7 of the EC Treaty accordingly. The Treaty of Nice introduced some minor changes to its composition and role.

STRUCTURE

1. Composition

a. Number

One per Member State (the Treaty of Nice formalised what had hitherto only been recognised procedure), so currently 15.

b. 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.

c. Nomination

Members of the Court are appointed:

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

2. Type of mandate

a. Term

Six years, renewable.

b. Status

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

c. 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;
- if they infringe these conditions the Court of Justice can remove them from office.

3. Organisation

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

POWERS

A. Examining accounts

1. Scope

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

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

2. Methods of investigation

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

b. 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.

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

3. Further action

a. Each year the Court provides Parliament and the Council with a **statement of assurance** as to the reliability of the accounts and the legality and regularity of the underlying transactions.

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

B. Advisory powers

1. Opinions issued at the request of other institutions

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

b. 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, under Article 279;
- determines the methods and procedure whereby the Community's own resources are made available to the Commission, under Article 279;
- lays down rules concerning the responsibility of financial controllers, authorising officers and accounting officers, under Article 279;
- or adopts anti-fraud measures, under Article 280.

2. Submitting its observations

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

THE ECONOMIC AND SOCIAL COMMITTEE

LEGAL BASIS

Articles 257 to 262 EC.

COMPOSITION

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

a. The Committee currently has 222 members, divided between the Member States as follows: 24 for Germany, France, Italy and the United Kingdom; 21 Spain; 12 for Austria, Belgium, Greece, the Netherlands, Portugal and Sweden; 9 for Denmark, Finland and Ireland; 6 for Luxembourg.

b. It will have 317 members after the accession of the 10 new Member States, which will have the following seats: 21 for Poland, 12 for Hungary and the Czech Republic; 9 for Lithuania and Slovakia; 7 for Estonia, Latvia and Slovenia; 6 for Cyprus; 5 for Malta.

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

3. Type of mandate (Article 258)

Four years, renewable. 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 Court of Auditors).

ORGANISATION AND PROCEDURES

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

POWERS

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

1. Opinions issued at the request of Community institutions

a. Mandatory consultation

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

- agricultural policy (Article 37);
- free movement of persons and services (Part Three, Title III);
- transport policy (Part Three, Title V);
- harmonisation of indirect taxation (Article 93);
- approximation of laws for the internal market (Articles 94 and 95);
- employment policy (Part Three, Title VIII);
- social policy, education, vocational training and youth (Part Three, Title XI);
- public health (Article 152);
- consumer protection (Article 153);
- trans-European networks (Article 156);
- industrial policy (Article 157);
- economic and social cohesion (Part Three, Title XVII);
- research and technological development (Part Three, Title XVIII);
- the environment (Title XIX).

b. Voluntary consultation

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

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

2. Issuing an opinion on its own initiative

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

RELATIONS BETWEEN PARLIAMENT AND THE COMMITTEE

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

THE COMMITTEE OF THE REGIONS

LEGAL BASIS

Articles 263 to 265 of the EC Treaty introduced by the Treaty of Maastricht (which entered into force in 1993).

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 is a significant aspect 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 the next revision of the Treaty will confer this right.

ORGANISATION

1. Composition (Article 263)

a. Number and national allocation of seats

The Committee of the Regions is made up of 222 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;

12 for Belgium, Greece, the Netherlands, Austria, Portugal and Sweden;

9 for Denmark, Ireland and Finland;

6 for Luxembourg.

b. Nomination

Members are appointed for four years, by the Council acting unanimously on a proposal from the respective Member States. The term of office is renewable. In practice those appointed are usually local and regional elected representatives.

2. Structure (Article 264)

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

POWERS

1. Opinions issued at the request of other Institutions

a. Mandatory consultation

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

- education, vocational training and youth (Article 149);
- 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 theStructural Funds (Article 161),
  - . implementing decisions relating to the European Regional Development Fund (Article 162).

b. Voluntary consultation

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

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

2. Issuing an opinion on its own initiative

a. When the Economic and Social Committee is being consulted

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

b. General practice

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

c. The Committee has issued opinions on its own initiative in the following areas:

- small businesses (SMEs);
- trans-European networks;
- the tourist industry;
- Structural Funds;
- health (the fight against drugs);
- industry;
- urban development;
- training programmes;
- the environment.

THE EUROPEAN INVESTMENT BANK

LEGAL BASIS

- Articles 266 and 267 EC Treaty;
- 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 of the EC Treaty) and an administrative structure separate from that of the other Community Institutions.

B. Structure

Its governing bodies are:

1. The Board of Governors

a. Composition

Fifteen 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

- 25 members are appointed by the Board of Governors for five years, one nominated by the Commission and 24 by the Member States, as follows:
  - . 3 each for France, Germany, Italy and the United Kingdom,
  - . 2 for Spain,
  - . 1 for each of the other Member States.
- Once the ten new countries join, there will be 26 members, 1 from each state and 1 Commission representative.

b. Role

Meeting around ten 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

1 president and 7 vice-presidents appointed for a period of six years by the Board of Governors on a proposal from the Board of Directors. An eighth vice-president will be added after enlargement.

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 the prospect of the future accession of two further states resulted in an increase in the EIB's capital from EUR 100 000 million to EUR 150 000 million from 1 January 2003, the increase being financed by the Bank's reserves rather than budget resources.
- The intention is that the 10 new Member States will subscribe to the Bank's capital when the accession treaty enters into force, according to the subscription key applied to the current Member States. Once the operations have been completed, the Bank's subscribed capital will total over EUR 163 000 million.

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 2002 borrowing totalled EUR 38 000 million after swaps and had been achieved through 219 bond issues in 14 currencies.
- The Bank plays a key role in the development of the capital markets of the 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

Supporting the development of the least favoured regions in order to contribute to the economic and social cohesion of the Union is the EIB's primary role. To achieve this, it has chosen the areas of action of the Community Structural Funds. In 2002, it granted EUR 12 500 million in individual loans to projects contributing to the development of regions that were underdeveloped from an economic point of view or grappling with structural difficulties (Objectives 1 and 2 of the Structural Funds) and EUR 3 100 million in loans to the candidate countries in order to reduce the regional disparities that existed between them and the current EU Member States. The EIB also cooperates with the Commission (cofinancing regional operational programmes eligible under the Community support framework for 2000-2006).

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. The EIB also aims to promote the environmental policies adopted within the framework of international commitments, such as the policies that encourage a reduction in greenhouse gases, the promotion of renewable energy sources and the 'Water for Life' initiative launched by the Union in 2002 at the Johannesburg World Summit.

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. These loans amounted to EUR 12 200 million in 2002, almost EUR 6 200 million of which was granted to 30 000 SMEs. The loans were allocated to regions whose development was lagging behind or to specific areas of intervention: the environment, energy reduction and the audiovisual sector. In addition, EUR 471.5 million was used in 2002 by the EIF (European Investment Fund), which concentrates all of the investment in specialised risk-capital funds (support for the creation and development of technological enterprises in the Union and candidate countries).

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 17 000 million. An additional EUR 20 billion has been earmarked for the 2003-2006 period.

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. In 2002, loans for TENs and infrastructure of Community interest totalled EUR 7 500 million for transport and telecommunications networks within the Union and EUR 1.6 billion in the accession countries. The EIB offers long and very long-term loans (EUR 50 000 million to 2010) for TENs, *inter alia* through the development of public/private partnerships.

c. Education and health

As part of the individual loans for the Union's regional development, education and health received EUR 873 million in 2002 while EUR 230 million was granted to the candidate countries. Within the framework of the 'Innovation 2010' initiative, educational projects accounted for 26% of loans in 2002, with a high innovative component, either through the use of ICT or through the application of research from fundamental R&D (universities, hospitals).

B. Outside the EU

1. Scope

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

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

The Cotonou Agreement, which replaced the Lomé Convention with effect from 1 April 2003, provides the framework for EIB financing. An 'investment facility' totalling EUR 2 200 million has been agreed by the

Member States for the next five years. This will be supplemented by investment from the Bank's own resources (EUR 1 700 million).

b. South Africa

EUR 50 million have been granted to finance small and medium-sized investments.

c. Latin American and Asian countries

In 2002 loans totalling EUR 84.6 million and EUR 89.6 million were distributed to Latin America and Asia respectively.

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

In 2002 lending totalled EUR 1 600 million (to which should be added EUR 220 million for Cyprus and Malta). The Euro-Mediterranean Investment and Partnership Facility (FEMIP), launched in Barcelona in October 2002, represents a new dimension to EIB financing. Its priorities are private sector development, assistance for the process of reforms and enhanced support for regional cooperation projects and investment with a social dimension (health, education and the environment), and the provision of innovative financial products, risk capital and technical assistance.

e. Balkan countries (Albania, Bosnia-Herzegovina, FYR of Macedonia)

EUR 425 million in loans was granted in 2002, including EUR 380 million for transport and energy networks and EUR 45 million for private sector development.

f. Accession countries (Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Czech Republic, Slovakia and Slovenia)

The EIB gives priority to projects that comply with the EU's policies and standards. It provides loans from budgetary resources with a maximum loan authorisation of EUR 8 680 million for the 2000-2006 period.

g. Bulgaria and Romania

Pre-accession aid will increase over the years 2004 to 2006.

2. Forms of intervention

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

C. The EIB Group

Established following the Lisbon European Council (March 2000), the EIB Group is composed of the EIB and the EIF (European Investment Fund). Created in June 1994, the EIF's majority shareholder is the EIB (60.5% of the capital), the other shareholders being the European Commission (30%) and various 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.

THE EUROPEAN OMBUDSMAN

LEGAL BASIS

Articles 21 and 195, EC Treaty.

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 Chapter XXIV of Parliament's Rules of Procedure.

A. Regulations

1. Appointment

a. Requirements

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

b. Procedure

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

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 fulfills the conditions required for the performance of his duties or is guilty of serious misconduct.

B. Role

1. Scope

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

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

b. Exceptions

The following matters fall out:

- action by the Court of Justice and the Court of First Instance in their judicial role, cases that are being or have been considered before a court of law,
- any cases which have not previously been through the appropriate administrative procedures with 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

1. The first Ombudsman, Mr Jacob **Söderman**, served two terms of office from July 1995 to 31 March 2003.

a. In over **seven years**, 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.

b. In **2002**, the total annual number of complaints rose above 2 000 (2 211). All but four inquiries were closed within one year. 75% of the complaints that led to an inquiry were against the European Commission. 21 complaints were made against the European Parliament and 12 against the Council. Among the Ombudsbman'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) and the abolition of age limits in recruitment to the institutions and bodies.

2. 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 25-26 November 2002.

On 25 September 2003, Mr. Diamandouros addressed the Parliament for the first time as European Ombudsman and presented the Annual Report for 2002. In his address, Mr. Diamandouros described his chief task as strengthening the democratic life of the Union by promoting the rule of law, good administration and respect for human rights in the existing and future Member States of the European Union.

In order to achieve this, he undertook to:

- carry on the first Ombudsman's work by maintaining and further developing the capacity of the institution to serve all Union citizens as efficiently and effectively as possible;
- work to increase public awareness of citizens' rights to complain through various activities, such as up-to-date press releases on the Ombudsman's website and the 2002 'Guide for Citizens';

- work closely with a network of national and regional ombudsmen to enhance the role of non-judicial remedies.

ROLE OF THE EUROPEAN PARLIAMENT

Athough entirely independent in the performance of his duties, the Ombudsman is a parliamentary ombudsman. He has very close relations with Parliament which, as we have seen, is exclusively responsible for his appointmentand dismissal, regulates his duties, assists with his investigations and receives his reports.

On the basis of its own annual report on the activities of the European Ombudsman for the year 2002, 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.

SUPRANATIONAL DECISION-MAKING PROCEDURES

HISTORY (*1.1.1. to 1.1.4.)

1. The Treaty of Rome gave the Commission powers of proposal and negotiation, mainly in the fields of legislation and external economic relations, and allocated powers for decision-making to the Council or, in the case of appointments, representatives of the Member States' governments. It gave Parliament a consultative power.

2. Parliament's role has gradually grown, in the budgetary domain with the reforms of 1970 and 1975, in the legislative domain with the Single European Act, and in the area of appointments with the Treaty of Maastricht. The Single European Act also gave Parliament the power to authorise ratification of accession and association treaties; Maastricht extended that power to other international treaties of certain kinds.

3. The Treaty of Amsterdam made substantial progress down the road to democratising the Community, by simplifying the codecision procedure, extending it to new areas and strengthening Parliament's role in appointing the Commission.

4. Following this approach, the Treaty of Nice considerably increased Parliament's powers. On the one hand, the codecision procedure (in which Parliament has the same powers as the Council) will apply to almost all new areas where the Council decides by qualified majority. On the other hand, Parliament now has the same powers as the Member States in terms of referring matters to the Court of Justice.

LEGISLATIVE PROCEDURES

A. Codecision 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.

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 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

a. At a first reading Parliament delivers an opinion on the Commission proposal. The Council, acting by a qualified majority, then adopts a common position and forwards it to Parliament, enclosing all the information required and its reasons for adopting the common position.

b. Parliament has three months to take a decision: it can adopt, amend or reject the common position. In the latter two instances it must do so by an absolute majority of its Members. If Parliament rejects the proposal the Council can only take a decision at second reading unanimously. Within a period of one month, the Commission reconsiders the proposal on which the Council adopted its common position and forwards the reconsidered proposal to the Council. It has discretion to incorporate or exclude the amendments proposed by Parliament.

c. Within a period of three months, which can be extended by a maximum of one month, the Council may, acting by a qualified majority, adopt the proposal as reconsidered by the Commission or, acting unanimously, amend the reconsidered proposal or adopt amendments not taken into account by the Commission. As long as the Council has not acted, the Commission may alter or withdraw its proposal at any time.

C. Consultation procedure

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

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 and Government level, has nominated the Commission President by qualified majority;
  - . Parliament has approved the nomination;
  - . the Council, acting by qualified majority and by common accord with the nominated President, has nominated the other Members of the Commission;
  - . Parliament has approved the College of Commissioners;
- the members of the Court of Auditors (Article 247 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 **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 ESC).

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

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

C. Parliament appoints the Ombudsman (Article 195).

QUASI-CONSTITUTIONAL PROCEDURES

A. Conclusion of international agreements

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

2. The Council defines the mandate for the negotiations.

3. Proposal for conclusion: Commission.

4. Parliament's role:

- assent for agreements under Article 310 (association agreements) and for agreements creating a special institutional framework, having significant budgetary implications or involving the amendment of an act adopted under the codecision procedure;

- consultation in other cases.

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

B. System of own resources

1. Proposal: Commission.

2. Parliament's role: consultation.

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

C. Provisions for election of Parliament by direct universal suffrage

1. Proposal: Parliament.

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

D. Adoption of the Statute for Members of the European Parliament and the Statute for the Ombudsman

1. Proposal: Parliament.

2. Commission's role: opinion.

3. Council's role: assent (by qualified majority except in relation to rules or conditions governing the tax arrangements for Members or former Members in which case unanimity applies).

4. Decision: Parliament.

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

1. Proposal: Court of Justice.

2. Commission's role: consultation.

3. Parliament's role: consultation.

4. Decision: Council, unanimously.

PROSPECTS

- At the 2000 IGC, Parliament made several proposals to extend the areas to which the codecision procedure would apply. Parliament also repeatedly voiced its opinion that, if there was a change from unanimity to qualified majority, codecision should apply automatically. The Treaty of Nice endorsed this position but did not fully align qualified majority and codecision.
- As a result, the issue of simplifying procedures was one of the key elements addressed at the Convention on the Future of Europe. Many members of the Convention highlighted the excessive number of procedures currently in use. It was proposed quite simply that the cooperation and consultation procedures be abolished, that the codecision procedure be simplified and extended to cover the entire legislative field, and that the assent procedure be limited to the ratification of international agreements.
- In the field of appointments, the Treaty of Nice failed to put an end to the unjustifiably wide range of different procedures, the continued general insistence on unanimity, which is always likely to provoke political disputes, or the lack of genuine legitimation by Parliament. However, some progress has been made with the move from unanimity to qualified majority for the appointment of the Commission President.

INTERGOVERNMENTAL DECISION-MAKING PROCEDURES

LEGAL BASIS

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

DESCRIPTION

The Treaty on European Union 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)

1. Proposal: any Member State or the Commission.

2. Commission's role: consultation and participation in the intergovernmental conference.

3. European Parliament's role: consultation before the intergovernmental conference is convened (the conferences involved Parliament on an ad hoc basis; at the last three it was represented either by its President or two of its Members, depending on the case).

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

5. Decision: common accord of the governments on amendments to the Treaties, which are then put to the Member States for ratification in accordance with their constitutional requirements.

B. Accession procedure (Article 49 TEU)

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

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

3. European Parliament's role: assent, by an absolute majority of its component Members.

4. Decision: by the Council, unanimously; the agreement between Union Member States and the applicant State, setting out the terms of accession and the adjustments required, is put to all the Member States for ratification in accordance with their constitutional requirements.

C. Sanctions procedure for a serious and persistent breach of Union principles by a Member State (Article 7 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.
- European 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 and Government level, unanimously, without the participation of the Member State concerned, after inviting the State in question to submit its observations on the matter.
- Decision to suspend certain rights of the State concerned: adopted by the Council by a qualified majority (without the participation of the Member State concerned).

2. The Treaty of Nice supplemented this procedure with a **precautionary system**:

- Proposal for a decision determining a clear risk of a serious breach of Union principles by a Member State: on the initiative of one third of the Member States, of the Commission or of the European Parliament.
- European 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 ECT)

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

b. European Parliament's role: opinion only, or assent when enhanced cooperation relates to an area covered by the codecision procedure.

c. Decision: by the Council, acting by a qualified majority. However, a member of the Council may request that the matter be referred to the European Council, after which the Council will in turn act by a qualified majority.

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

a. Application to the Commission by the Member States concerned.

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

c. Consultation of the European Parliament.

d. The Council acts by a qualified majority.

e. The procedures for the Council's decision and, if necessary, for referral to the European Council are similar to the preceding case.

E. Procedure for decisions in foreign affairs

1. In general

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

b. European Parliament's role: regularly informed by the Presidency and consulted on the main aspects and basic choices. Under the interinstitutional agreement on financing the CFSP this consultation process is an annual event on the basis of a Council document.

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

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

b. Decision on common strategy: European Council, unanimously.

c. Adoption of joint actions, common positions or other decisions on the basis of a common strategy, adoption of decisions implementing a joint action or common position: by the Council, acting by a qualified majority, unless a Member State opposes it for important reasons of national policy. If so the Council, acting by a qualified majority, may request referral of the matter to the European Council for a unanimous decision.

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

3. International agreements (Article 24 TEU)

a. Authorisation to open negotiations: Council.

b. Negotiations conducted by the Presidency of the European Union, assisted by the Commission as appropriate.

c. Agreement concluded by the Council on a recommendation from the Presidency.

d. Where the agreement relates to a matter on which unanimity is required for the adoption of internal decisions, the Council acts unanimously. In the reverse case or where the agreement relates to implementing a joint action or common position, the Council acts by a qualified majority in accordance with Article 23.

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

1. Proposal: any Member State or the Commission.

2. Parliament's role: consulted before the adoption of framework decisions, decisions (excluding common positions) or conventions; the Presidency and the Commission must regularly inform Parliament of the progress in these areas.

3. Decision: by the Council, unanimously, or by a qualified majority when adopting measures to implement 'decisions'. Measures implementing conventions can be adopted by a majority of two-thirds of the contracting parties.

PROSPECTS

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

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

THE BUDGETARY PROCEDURE

LEGAL BASIS

- Article 272 of the EC Treaty, Article 177 of the Euratom Treaty;
- Interinstitutional Agreement of 6 May 1999 on budgetary discipline and improvement of the budgetary procedure.

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. (*1.5.2. for details on implementation and *1.5.3. for details on control).

ACHIEVEMENTS

1. Background

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

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

b. 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.

c. Generally speaking, then, budgetary decisions have to be taken jointly by Parliament and the Council although Parliament has a decisive role to play: it finally adopts the budget and can also reject it as a whole, and it has the last word on non-compulsory expenditure, which now accounts for a majority of all expenditure (currently approximately 55%).

2. The stages in the procedure

The budgetary procedure is dependent on the setting of a maximum rate of increase of non-compulsory expenditure, which is calculated by the Commission on the basis of macro-economic parameters (evaluation of the GNP of the EU as a whole, average variation in the Member States' budgets and evaluation of the cost of living in the Member States). The maximum rate of increase cannot be exceeded unless there is agreement between Parliament and the Council.

a. Stage one

The Commission draws up the **preliminary draft budget**, taking into account the guidelines laid down by Parliament and the Council in the course of a trialogue on the priorities for the budget and an ad hoc conciliation procedure on compulsory expenditure. It then forwards the preliminary draft to the Council by 1 September at the latest.

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.

b. Stage two

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.

c. Stage three

Parliament has 45 days in which to state its position.

- Within that period, it may adopt the draft or decline to state a position, in both of which cases the budget is deemed finally adopted.
- It may, on the other hand, call for changes:
  - . either in the form of proposed modifications to compulsory expenditure; these must be adopted by an absolute majority of the votes cast;
  - . or in the form of amendments to non-compulsory expenditure; these must be adopted by a majority of the component Members of Parliament;
  - . thus altered, the draft is then referred back to the Council.

d. Stage four

The Council has 15 days in which to conduct its second reading.

- Within that period, it may accept all of Parliament's amendments and proposed modifications, in which case the budget will be deemed adopted.
- It may, on the other hand, not accept them, in which case:
  - . it takes a final decision on the proposed modifications: 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 alters the amendments, which are then referred back to Parliament.

e. Stage five

Parliament has 15 days in which to conduct the second and last 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, however, 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.
- 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 on the basis of monthly appropriations equal to one twelfth of the budget for the previous financial year (known as the 'provisional twelfths' system).

3. The distinction between compulsory expenditure and non-compulsory expenditure

This determines the respective budgetary powers of Parliament and the Council.

a. Compulsory expenditure (CE)

Compulsory expenditure is expenditure necessarily resulting from the Treaties or from acts adopted in accordance with them. As far as this type of expenditure is concerned, Parliament may only propose modifications, 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.

Compulsory expenditure, currently approximately 45% of the budget, consists mainly of:

- agricultural price support expenditure (EAGGF-Guarantee Section);
- various items of expenditure connected with structural agricultural policy (EAGGF-Guidance Section) and the common fisheries policy;
- flat-rate refunds to the Member States, in particular of costs incurred in collecting own resources;
- part of development aid expenditure.

b. Non-compulsory expenditure (NCE)

Parliament has the last word on this type of expenditure, 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**. As a result, Parliament cannot add to the draft budget adopted by the Council a volume of non-compulsory expenditure equivalent to more than half this rate. Nonetheless, if the Council has already increased expenditure by more than half the rate, Parliament may still make use of the remaining half.

4. The Interinstitutional Agreement on budgetary discipline and improvement of the budgetary procedure (IIA)

a. Background

Following the budget crises in the 1980s, the European Institutions adopted an agreement to improve the procedure for drawing up the budget and ensure that expenditure was contained. Within this framework, the Institutions set the budget priorities and agree on the financial perspective, which indicates the maximum authorised amount and the breakdown of expenditure for the period concerned.

An initial agreement was concluded in 1988 to implement the Single Act, and a second agreement in October 1993 for the period 1993-1998 after the Edinburgh European Council. The positive results of this attempt to rationalise the budget encouraged the Institutions to sign a new agreement on 6 May 1999 covering the period 2000-2006.

b. Tighter control

The various headings for expenditure comprise a maximum ceiling which all the Institutions must respect. The financial perspective, expressed as a percentage of the Community's GNP, makes it possible to ensure consistency with the own resources ceiling, which is set by reference to the same parameter (1.27% of GNP).

The ceilings are binding. The financial perspective is therefore not just an exercise in indicative programming. Similarly, it is not a multiannual budget; the annual budgetary procedure remains obligatory to set the level of expenditure and its breakdown under the various headings. In the case of new requirements not initially envisaged, the financial perspective may be adjusted although the maximum ceiling may not be exceeded.

ROLE OF THE EUROPEAN PARLIAMENT

1. The impact of enlargement

Paragraph 25 of the IIA of 6 May 1999 stipulates that the financial perspective may be adjusted following agreement between the two arms of the budgetary authority in order to take account of the requirements resulting from enlargement. The Committee on Budgets has pointed out that the positive outcome of the accession negotiations at the Copenhagen summit (December 2002) did not mean that agreement had already been reached on the amounts indicated for the adjustment of the financial perspective for the 2004-2006 period. The European Parliament therefore hopes that this procedure will be fully respected in order to ensure that its current provisions are preserved.

2. Simplifying the budgetary procedure

The European Parliament is at present considering a reform of the budgetary procedure based on an own-initiative report by the chairman of the Committee on Budgets and the work of the Convention on the future of Europe: abandoning the distinction between compulsory

expenditure and non-compulsory expenditure, codecision as regards both revenue and expenditure (in case of disagreement, the Council would have the final say on revenue and Parliament would have the final say on expenditure), integrating the financial perspective into the Treaty, the need to reform the current own resources system, integrating the European Development Fund into the general budget of the Union, aligning the period covered by the financial perspective and the mandate of Parliament and the Commission, codecision for any changes to the Financial Regulation.

THE UNION'S REVENUE AND EXPENDITURE

LEGAL BASIS

1. Treaties:

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

2. Decision of 22 April 1970, as replaced by the Decisions of 7 May 1985, 24 June 1988 and 31 October 1994.

3. Interinstitutional Agreement of 6 May 1999 on budgetary discipline and improving the budgetary procedure.

4. Interinstitutional Agreement of 13 October 1998 on the legal bases and implementation of the budget.

OBJECTIVES

To provide the Community with a certain degree of financial autonomy.

ACHIEVEMENTS

I. REVENUE

A. 'Traditional' own resources

These were created by the Decision of 1970 and have been collected since then. They consist of:

1. agricultural duties and sugar production levies, which in 2003 brought in approximately EUR 1 400 million (1.5% of the budget);

2. customs duties, which are collected at the Union's external borders and amounted to approximately EUR 10 700 million in 2003 (11.0% of the budget).

B. The VAT levy

Although provided for in the 1970 Decision, this levy could not be applied until 1979, when the VAT systems of the Member States were harmonised. It consists in the transfer to the Community of a percentage of the VAT collected by the Member States. The rate was initially set at 1% of the VAT base and then raised to 1.4% in 1984, before being brought back down to 1% in 1999. The VAT base has been capped since 1988, initially at 55% of each Member State's GNP, reduced to 50% in 1999. The VAT levy in 2003 brought in approximately EUR 24 100 million (24.7% of the budget).

C. The fourth resource

This 'fourth own resource' was created by the Decision of 1988 and consists of the levy on the Member States' GNP of a percentage set by each year's budget. However, it is only collected if the other own resources do not fully cover expenditure. In 2003, the levy amounted to EUR 59 400 million (60.9% of the budget).

The 1988 Decision also placed an overall ceiling on own resources, expressed as a percentage of the total of the Member States' GNP. This ceiling was initially set at 1.15%, before being raised to 1.2% in 1992 and 1.27% in 1999. The 'fourth own resource' therefore cannot exceed the difference between the maximum authorised percentage of GNP (1.27%) and the other own resources.

D. Loans

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

II. EXPENDITURE

A. Basic principles

1. The Community budget is based on the traditional budgetary rules of annuality, unity, universality, no contraction between expenditure and receipts and the specification of expenditure (each appropriation is allocated to a particular kind of expenditure).

2. Nonetheless, application of the annuality rule is circumscribed by the concept of dissociated appropriations which distinguish:

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

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

B. Budget structure based on the characteristics of the appropriations

1. Operating expenditure/administrative expenditure

The general budget is divided into eight sections, one for each Institution. While the other Institutions' sections consist of administrative expenditure only, the Commission section (Section III) comprises both a Part A (administrative expenditure) and a Part B (operational expenditure), which accounts for about 94.6% of the general budget.

2. Compulsory expenditure/non-compulsory expenditure

(*1.4.3.)

3. Breakdown by sector (commitment appropriations for the 2003 financial year)

- Agriculture: EUR 44 780 million = 44.9%
- Structural Funds: EUR 33 980 million = 34.1%
- internal policies: EUR 6 796 million = 6.8%
- external actions: EUR 4 949 million = 4.9%
- administration: EUR 5 360 million = 5.4%
- reserves: EUR0 434 million = 0.4%
- pre-accession aid: EUR 3 386 million = 3.4%

C. Budget structure based on activity

As part of its administrative reform, the Commission has introduced a new budget nomenclature by establishing individual activity budgets. The aim is essentially to improve management transparency by grouping together expenditure on a particular measure, thus making it easier to assess the cost and effectiveness of each Community policy. These changes do not, however, mean an end to the traditional framework that distinguishes between Part A (administrative appropriations) and Part B (operational appropriations) of the Commission section (Section III).

D. Introduction of the 'financial perspective'

Since 1988, the Council, the Commission and the European Parliament have periodically concluded 'interinstitutional agreements on budgetary discipline and improvement of the budgetary procedure'. They establish multiannual financial perspectives for each main category of expenditure: five years in 1988, seven years in 1993 and 1999 (last agreement to date).

These forecasts are in fact binding ceilings, and the Institutions undertake to treat them as annual ceilings for each budget heading. A flexibility margin (0.04% of overall Community GNP) is provided to deal with substantial changes in the economic situation. (*1.4.3.)

ROLE OF THE EUROPEAN PARLIAMENT

1. Revenue

Parliament has in several resolutions drawn attention to the inadequacy of revenue and called for Community activities to be funded from own resources. Taking the view that the third and fourth resources cannot, in their present form, be regarded as genuine own resources, it has proposed a fifth resource and suggested a number of ways of ensuring that the Union is financially independent, in particular in a resolution of 11 March 1999.

During this period, Parliament's desire for changes with regard to the possible creation of a fifth resource has not yet been taken into account.

With a view to adjusting the current rules on own resources, the Berlin European Council of 24 and 25 March 1999 instructed the Commission to consider this issue in general, taking particular account of the effects of enlargement up to 1 January 2006. It was also decided not to change the rate of 1.27% of GNP before 2006.

2. Expenditure (*1.4.3.)

Parliament has from the start opposed the distinction between compulsory and non-compulsory expenditure, regarding it as artificial and restricting the powers of Parliament.

It has made several appeals to the Court of Justice. However, the Institutional Agreement on budgetary discipline of 6 May 1999 and the agreement on legal bases of 13 October 1998 confirm the extension of Parliament's budgetary powers by means of the flexibility instrument, preparatory activities and pilot projects.

3. Perspective (*1.4.3.)

Financial perspective, 2000-2006
Commitment appropriations (EUR millions)

		2000	2001	2002	2003	2004	2005	2006
1.	Agriculture	41 738	44 530	46 587	47 378	46 285	45 386	45 094
2.	Structural measures	32 678	32 720	33 638	33 968	33 652	33 384	32 588
3.	Internal policies	6 031	6 272	6 558	6 796	6 915	7 034	7 165
4.	External policies	4 627	4 735	4 873	4 972	4 983	4 994	5 004
5.	Administration	4 638	4 776	5 012	5 211	5 319	5 428	5 536
6.	Reserves	906	916	676	434	434	434	434
7.	Pre-accession aid	3 174	3 240	3 328	3 386	3 386	3 386	3 386
	Total commitment appropriations	93 792	97 189	100 672	102 145	100 974	100 046	99 207
	Total payment appropriations	91 322	94 730	100 078	102 767	99 533	97 659	97 075
	Ceiling on payment appropriations (as % of GNP)	1.10%	1.10%	1.12%	1.10%	1.04%	1.00%	0.97%
	Margin(%)	0.17%	0.17%	0.10%	0.09%	0.13%	0.15%	0.15%
	Ceiling on own resources (as % of GNP)	1.27%	1.27%	1.27%	1.27%	1.27%	1.27%	1.27%

N.B.: In the light of the date on which this table was drawn up, it does not include the figures resulting from the adjustment of the financial perspective following enlargement. For the period 2000-2002, the appropriations are expressed as current prices; for the period 2003-2006, they are expressed as 2003 prices.

IMPLEMENTATION OF THE BUDGET

LEGAL BASIS

- Articles 274, 275 and 279 EC;
- Article 179 Euratom.

OBJECTIVES

1. Revenue raising and expenditure must be in conformity with budgetary decisions.

2. They have also to be made with due regard to the principles of "sound financial management". This applies both to the European Commission (Article 274) and to each of the Members States since both bear responsibility for implementing the budget.

ACHIEVEMENTS

1. Basic mechanism

Implementation of the budget involves two main operations: firstly, commitment of expenditure, i.e. a decision to allocate a certain amount from a specific budget line to finance a specific action; secondly the authorisation and payment of the sums due. The Commission must comply with the Treaties, of which it is the guardian, and with provisions and instructions set out in regulations, decisions or directives. But within this framework there is margin for manoeuvre. It is therefore important that expenditure be undertaken within policy guidelines. Where the Commission, which is accountable to the EP through the discharge procedure, must accept guidelines laid down by the Council, the EP's powers of control over the implementation of the budget are reduced. This applies in particular to 'obligatory expenditure' arising from legislation specified in the Treaty - especially in regard to agriculture.

2. Implementing authorities

a. In practice, a very high proportion of the budget is implemented on a day-to-day basis by Member States, especially for those sections of the budget involving agriculture (EAGGF-Guarantee, *4.1.6.) and the structural funds (European Regional Development Fund, *4.4.2.; European Social Fund, *4.8.2.; EAGGF-Guidance, *4.1.6.; and Financial Instrument of Fisheries Guidance (FIFG) - *4.3.3.), and by candidate States in the framework of pre-accession aids (*6.3.1.).

b. In principle, formal responsibility belongs to the Commission (article 274). 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.

c. Implementation may also give rise to **difficulties between Council and EP**. The Council may decide to reserve for itself the right to commit expenditure or the power to amend the Commission's commitment decision, should a regulatory committee consisting of representatives of the Member States deliver an opinion conflicting with that decision.

d. Implementation of the budget in particular sectors has been a subject of frequent criticism by the Court of Auditors (*1.3.10.). In response the Commission introduced the programme SEM 2000 in 1997 to raise standards of **financial management**, both within its own services and in the agencies of Member States responsible for EU expenditure. Since the resignation of the Commission in response to the first report of the Committee of Independent Experts in March 1999, further emphasis has been given to raising standards of financial management within the Commission. Such efforts form an important part of current proposals for reform of the European Commission.

3. Rules of implementation

a. The Financial Regulation

This lays down the rules governing expenditure for all EU institutions. A major change was the introduction of a new regulation in 2002 (25 June, entered into force on 1 January 2003). The previous regulation (dating back to 1977) was based on the system of prior control, under which each institution's financial controller had to approve every item of expenditure before it could be carried out. This has been replaced by a system of control *a posteriori,* by which the authorising officer may make the expenditure without preliminary approval by the financial controller but subject afterwards to different modes of control, including those of "internal audit". Detailed provision for its implementation are contained in a Commission regulation of 23 December 2002.

b. The procurement rules

An important aspect of budgetary implementation is compliance with EU legislation applicable to public procurement contracts (supply, works and services, *3.4.1).

ROLE OF THE EUROPEAN PARLIAMENT

1. In the first place, the EP influences the (future) implementation of the Community budget through the **budgetary procedure** (*1.4.3) "beforehand". It is open to the EP to make use of the **reserve mechanism** of the budget to influence the process of implementation. During the budgetary process the EP may decide to place in a reserve funds for expenditure of whose justification it is unconvinced. Both EP and Council are required to approve proposals for transfers between budget lines, including transfers from the reserve, proposed by the Commission in accordance with Treaty Article 275.

2. In contrast, the **discharge procedure** (*1.5.3), although concerning the financial year two years previous, allows the EP to control and influence current budgetary implementation. A lot of the questions asked by the Committee on Budgetary Control to the Commission in the framework of the discharge procedure concern the implementation of the budget, and the discharge resolution which is an integral part of the discharge decision contains many obligations addressed to the Commission - the proper execution of which is monitored in follow-up reports.

3. The EP influences the implementation of the budget in virtually all policy areas by its legislative and non- legislative activities, e.g. by **reports and resolutions** or simply by addressing **questions** to the Commission. The latter can be formal questions from MEPs according to the Rules of Procedure of the EP, or can be asked, for example, during parliamentary committee meetings to Commissioners or high officials of the Commission.

4. The major tool of the Commission for implementing the budget and for monitoring its execution is its **accounting system**. It is a complex computerised system with thousands of access points. Both technical and organisational weaknesses of this system have been the objective of repeated criticism in the annual reports of the Court of Auditors. The EP's Budgetary Control Committee has regularly taken up these and further criticisms of the Commission's accounting system. The Commission has undertaken to solve these problems, and to adjust the system to the obligations laid down in the new Financial Regulation, by the beginning of 2005. This should include the transition from "cash oriented" accounting to modern "accrual" accounting which will allow recording of accounting events when they occur, rather than when the cash is received or paid. Furthermore, by 2005 the Commission intends to meet the highest international accounting standards, in particular the International Public Sector Accounting Standards (IPSAS) established by the International Federation of Accountants (IFAC).

BUDGETARY CONTROL

LEGAL BASIS

- Articles 275, 276, 279 and 280 EC;
- Articles 180b and 183 Euratom.

OBJECTIVES

To check the lawfulness, correctness and financial soundness of the budgetary operations in the larger sense.

ACHIEVEMENTS

A. Control at national level

Initial control of both income and expenditure is exercised partly by national authorities. These have kept their powers, particularly on own resources (*1.5.1.), for they have the necessary machinery for collecting and controlling these sums. 25% of traditional own resources are retained by Member States as a collection fee (this portion had been 10% before the "own resources decision" 2000/597 of 29 September 2000 entered into force on 1 March 2002). Collection of own resources is nevertheless a matter of great importance to EU institutions. It was in this connection that the EP established a Committee of Inquiry on Transit (see below). Operational expenditure under the EAGGF, the Social Fund and the Regional Fund is also controlled in the first instance by the authorities of the Member States which often have to bear part of the cost of such interventions.

B. Control at Community level

1. Internal

At Community level, control is exercised in each institution by authorising officers and accountants and then by the internal auditor.

2. External

a. By the Court of Auditors (*1.3.10)

External control is mainly carried out by the Court of Auditors, 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.

On occasion, the Court also reports on lending and borrowing operations and the European Development Fund.

b. By OLAF

The Office for the Fight against Fraud (known as OLAF) was established in 1999 (Commission Decision 1999/352). It is now formally independent from the Commission. It has been reinforced at the instigation of the EP. Its role is to protect the Union's financial interests, with a responsibility for fighting fraud involving EU funds in all institutions and for co-ordinating the bodies responsible in the Member States.

In the framework of Regulations 1073/1999 and 1074/1999 concerning investigations conducted by OLAF, Parliament, Council and Commission signed on 25 May 1999 an Interinstitutional Agreement concerning internal investigations. This agreement stipulates that each institution establish common rules ensuring the smooth operation of the investigations carried out by OLAF. These rules oblige staff to cooperate with OLAF and provide a certain protection of staff disclosing information concerning possible fraud or corruption.

Article 280 EC concerns fraud and the EU's financial interests; it requires close and regular co-operation between Member States and the Commission, as well as opening the way to specific Council measures to afford equivalent and effective protection in the Member States for the EU's financial interests.

c. By the European Parliament: the discharge procedure (*1.5.2.)

Once a year Parliament gives discharge to the Commission for implementation of the budget of year n-2, acting on a recommendation from the Council, and after examining the annual report by the Court of Auditors, the replies of the Commission to this report, the statement of assurance by the Court of Auditors, and the replies of the Commission and the other institutions to its own questions (Article 276 EC). The Commission and the other institutions are obliged to act on the observations of the Parliament (Article 147 of the Financial Regulation).

ROLE OF THE EUROPEAN PARLIAMENT

1. Evolution 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 1977, 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.

2. Use of 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. The 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 college of

Commissioners then resigned en bloc on 16 March 1999.

- Because of the complexity of the Community budget, individual members of the Committee on Budgetary Control specialise in particular Community policies and prepare the EP's response to the Court of Auditors' special reports in their field, often in the form of working papers for the guidance of the general rapporteur on the discharge.

3. Other instruments

- Parliament's specialist committees are also encouraged to play a positive role in ensuring that Community funds are spent economically in the best interest of the European taxpayer.
- On a number of occasions, 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 38 recommendations of the Inquiry Committee received wide support and following up their implementation has been the responsibility of the Committee on Budgetary Control. This led to the implementation of the New Computerised Transit System NCTS by the end of 2003.

RESPECT FOR FUNDAMENTAL RIGHTS IN THE EU

LEGAL BASIS

1. The protection of fundamental rights is one of the basic tenets of European Community law. However, neither the EC Treaty nor the EU Treaty 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 141 of the EC Treaty.

2. The European Court of Justice recognised the existence of fundamental rights at Community level at an early stage, and has steadily extended them. Under the Court's continuing case-law, fundamental rights form part of the general principles of Community law and are equivalent to primary law in the Community legal hierarchy.

3. The source of recognition of these general legal principles is now Article 6(2) of the EU Treaty, 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.

4. The Treaty of Amsterdam introduced a provision in Article 7 of the TEU 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).

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 at 41). The main specific rights recognised so far by the Court are:

- human dignity (Casagrande [1974] ECR 773);
- equal treatment (Klöckner-Werke AG [1962] ECR 653);
- non-discrimination (*Defrenne v Sabena* [1976] ECR 455);
- freedom of association (Gewerkschaftsbund, Massa et al. [1974] 917, 925);
- freedom of religion and confession (Prais [1976] ECR 1589, 1599);
- privacy (National Panasonic [1980] ECR 2033, 2056 et seq.);
- medical secrecy *(Commission v Federal Republic of Germany* [1992] ECR 2575);
- property (Hauer [1979] ECR 3727, 3745 et seq.);
- freedom of profession (Hauer [1979] 3727);
- freedom of trade (Internationale Hansdelsgesellschaft [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.; *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).

Because the Court of Justice does not provide an abstract definition of the scope of protection for individual basic rights, problems arise in particular in distinguishing one fundamental economic right from another and distinguishing them from the 'fundamental freedoms' defining the internal market that are explicitly covered by the EC Treaty (free movement of persons, free movement of goods, freedom to provide services and freedom of establishment).

2. Scope of protection

a. 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.

b. 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).

c. 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).

d. 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.

C. 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 (for example, children's rights and some social rights of workers).
- The Charter aims only to protect the fundamental rights of individuals with regard to action undertaken by the EU institutions and by the Member States in application of the EU Treaties.

3. Scope

The question of the legal status of the Charter for the Member States and the Community institutions has yet to be resolved even though the Commission and Parliament have stated that they consider it to be binding and the Court of Justice has already invoked some of its provisions. The Declaration on the future of the Union, annexed to the Treaty of Nice, mentions the status to be conferred upon the Charter as one of the issues to be dealt with as part of the process it seeks to implement, which should lead to the establishment of the European Constitution. There is currently a consensus that the Charter should be incorporated into the Constitution.

ROLE OF THE EUROPEAN PARLIAMENT

1. General attitude

The EP has always given priority to respect for fundamental rights in the Union. Since 1993, it has held a debate and adopted a resolution on this issue every year on the basis of a report by its Committee on Citizens' Freedoms and Rights, Justice and Home Affairs.

2. Specific actions

The EP has in particular upheld the importance of codifying fundamental rights in a binding document:

a. It was responsible for the declaration of principle on the definition of fundamental rights adopted by the EU's three political institutions (Commission, Council and EP) on 5 April 1977 and expanded in 1989.

b. In 1994, it drew up a list of the fundamental rights guaranteed by the Union.

c. It has given special attention to the drafting of the Charter:

- by making it 'one of its constitutional priorities',
- and by stipulating its requirements, notably that:
  - the document should have fully binding legal status by being incorporated into the Treaty on European Union ('A Charter … constituting merely a non-binding declaration and … doing no more than merely listing existing rights would disappoint citizens' legitimate expectations'); it thus called for the Charter to be incorporated into the Treaty of Nice and for it now to be incorporated into the new constitutional treaty;
  - 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)

d. 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.

THE CITIZENS OF THE UNION AND THEIR RIGHTS

LEGAL BASIS

Articles 17 to 22 of the EC Treaty.

OBJECTIVES

1. Inspired by the freedom of movement for persons envisaged in the Treaties, the introduction of a European citizenship with precisely defined rights and duties was considered as long ago as the 1960s. Following preparatory work which began in the mid-1970s, in 1990 this project was placed in the context of the European Union. As a result of the Treaty on European Union, Article B of which (now Article 2) refers to 'citizenship of the Union' as an objective, this became a new part of the EC Treaty (Articles 17-22 ECT).

2. 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.

3. Moreover, there is to be stronger protection of the rights and interests of Member States' nationals (Article 2, third indent, TEU).

ACHIEVEMENTS

1. Definition of EU citizenship

According to Article 17 of the EC Treaty, every person holding the nationality of a Member State is a citizen of the Union. Nationality is defined according to the national laws of that state. Citizenship of the Union is complementary to national citizenship but does not replace it, and it comprises a number of rights and duties in addition to those stemming from citizenship of a Member State.

2. Substance of citizenship

For all citizens of the Union, citizenship implies:

- the right to move and reside freely within the territory of the Member States (*2.3.0.);
- the right to vote and to stand as a candidate in elections to the European Parliament and in municipal elections in the Member State in which they reside, under the same conditions as nationals of that State (*2.4.0.);
- the right to diplomatic protection in the territory of a third country (non-EU state) by the diplomatic or consular authorities of another Member State, if their own country does not have diplomatic representation there, to the same extent as that provided for nationals of that Member State;
- the right to petition the 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 ECT (*1.3.14. and 2.5.0.);
- the right to write to any Community institution or body in one of the languages of the Member States and to receive a response in the same language (Article 21(3) ECT);
- the right to access European Parliament, Council and Commission documents, subject to certain conditions (Article 255 ECT).

3. Scope

a. 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.

b. 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) TEU states that the 'Union' will 'respect' fundamental rights in accordance with the European Convention on Human Rights and the 'constitutional traditions common to the Member States', as general principles under Community law but it does not make any reference to the legal status of Union citizenship (for fundamental rights in the European Union, *2.1.0.).

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

d. Article 22(2) ECT and Article 48 TEU provide opportunities to develop citizenship of the Union gradually and thus provide citizens of the Union with an enhanced legal status at European level.

ROLE OF THE EUROPEAN PARLIAMENT

- In electing the 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 codecision procedure that applies to the measures has made it easier to exercise the rights associated with EU citizenship (Article 18(2)).
- In accordance with Parliament's requests, the Draft Treaty establishing a Constitution for Europe of 18 July 2003, drawn up by the Convention on the Future of Europe, stipulates that any natural or legal person may institute proceedings against an act addressed to that person or which is of direct and individual concern to him or her, and against a regulatory act which is of direct concern to him or her and does not entail implementing measures.

FREEDOM OF MOVEMENT FOR PERSONS

LEGAL BASIS

- Article 14 ECT: establishing the internal market, free movement of persons;
- Article 18 ECT: Union citizens have the right to move and reside freely within the territory of the Member States;
- Title IV (Article 61 et seq ECT): 'Visas, asylum, immigration and other policies related to free movement of persons'.

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. Present situation

1. The Schengen area

The most significant development in setting up the internal market without obstacles to the free movement of persons has been the conclusion of the two **Schengen agreements**, the Schengen Agreement of 14 June 1985, and the Schengen Implementing Convention of 19 June 1990 which came into force on 26 March 1995.

a. Participating countries

- The Convention has to date been signed by 13 EU Member States; Ireland and the UK are not members but have an opportunity to 'opt in' to the application of selected parts of the Schengen body of law. Since the Convention took effect for Italy and Austria on 1 April 1998, frontier controls have been scrapped at the internal borders of all the signatory states **except Greece.**
- Observer status has been granted to the five Nordic Passport Union Members. Denmark, Finland and Sweden, as EU Member States, became full members of the Agreement at the end of 1996, while Iceland and Norway have an associate status.

b. 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;

  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.

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

With the aim of transforming the Community into an area of genuine freedom and mobility for all Community citizens, the Council has guaranteed rights of residence to persons other than workers:

- retired persons: employees and self-employed persons who have ceased their occupational activity (Directive 90/365),
- students: exercising the right to vocational training (Directive 90/366),
- others: all persons who do not already enjoy a right of residence (Directive 90/364).

These Directives require Member States to grant the right of residence to those persons and to certain of their family members, 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.

b. Family members (spouses and children under 21)

Irrespective of their nationality, family members have the right to reside with a national of a Member State who is employed in the territory of another Member State (Regulation 1612/68, Directive 73/148/EEC, Directive 90/364/EEC, Directive 90/365/EEC, Directive 93/96/EEC). 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.

c. Restrictions on freedom of movement

Freedom of movement for people is subject to limitations justified on grounds of public policy, public security or public health (Articles 39(3), 46(1) and 55 ECT). These exceptions must be strictly interpreted and the limits to their exercise and scope are set out by the general principles of law such as the principles of non-discrimination, proportionality and protection of fundamental rights.

3. External aspect of the freedom of movement

a. Arrangements concerning third country nationals

Matters of immigration are dealt with on an inter-governmental basis, but will shortly also be covered by the provisions in the TEU on justice and home affairs. On crossing an internal Community frontier, third country nationals are currently subject to controls by each Member State, and their right of entry and residence in the territory of the Member States is currently governed by the different Member States' domestic laws; a visa may thus be required. Pursuant to Articles 300 and 310 ECT, a number of agreements have been concluded with third countries with a view to facilitating the movement of their nationals in the Community.

b. The Dublin Convention on the right of asylum

The Dublin Convention, defining the country responsible for considering applications for asylum submitted in an EC Member State, entered into force in the oldest 12 EU states on 1 September 1997, in Austria and Sweden on 1 October 1997 and in Finland on 1 January 1998. It establishes the principle that a single Member State is responsible for considering asylum applications.

c. Visa policy

Article 100c ECT requires the Council to determine the third countries whose nationals must be in possession of a visa when crossing the external borders of the European Union. An important step towards the harmonisation of Community visa policy was taken by the adoption of Regulation 2317/95 determining the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States and Regulation 1683/95 laying down a uniform format for visas.

d. Other measures

The Commission submitted a communication to the Council and the European Parliament on the 'integrated management of external borders'. Measures have been adopted to combat illegal immigration, illegal employment, the sexual exploitation of children, etc. (see Framework Decision 2002/946 of 28 November 2002 on the strengthening of the penal criminal framework to prevent the facilitation of unauthorised entry, transit and residence and Directive 2003/9 of 27 February 2003 laying down minimum standards for the reception of asylum-seekers in the Member States).

C. Measures in preparation

1. Incorporation of the Schengen system and other parts of cooperation in the fields of justice and home affairs (CJHA) in the 'Community pillar'

a. Changes introduced by the Treaty of Amsterdam

Initially, the Schengen implementing convention formed part of cooperation in the fields of justice and home affairs (CJHA) within the European Union. This meant that it was not part of Community law but took the form merely of intergovernmental cooperation. A protocol to the Amsterdam Treaty provides for transfer of the 'Schengen acquis' into a new Title IV, comprising Articles 61 et seq. ECT on 'Visas, asylum, immigration and other policies related to free movement of persons'. Many of the areas covered by Schengen have therefore now been transferred to the Community sphere. However, CJHA in criminal matters continues to be conducted at intergovernmental level. The Treaty also includes protocols in which Denmark, Ireland and the United Kingdom express reservations as to the new Title IV. Ireland has subsequently agreed to participate in part in some Schengen provisions, as laid down by the Council in its Decision of 28 February 2002 (2002/192).

b. Institutional consequences

- With the entry into force of the Treaty of Amsterdam, the Council replaces the Executive Committee of the Schengen Convention. The Council will also, in the words of the new Title IV ECT, adopt measures within a period of five years 'to establish progressively an area of freedom, security and justice' in the field of visas, asylum, immigration and other policies related to free movement of persons, to ensure that Union citizens and third country nationals are not checked when crossing internal borders. It is also responsible for regulating standard measures for checks on persons at external borders and standard rules for issuing visas and granting freedom of travel within the Member States' territory to third country nationals. The Council focused on these accompanying measures of secondary legislation in its Resolution of 18 December 1997 laying down the priorities.
- Following the transfer of parts of CJHA to the Community sphere, the **Court of Justice** has received new powers, as measures under the new

Title IV ECT are actionable in the Court, provided that they do not concern the abolition of frontier controls, the maintenance of law and order or the safeguarding of internal security under Article 68(2).

2. Proposed Council directive abolishing checks on persons at internal borders

The proposal aims to scrap checks on persons at internal borders beyond the domain of the Schengen Convention, irrespective of nationality and at all frontier crossings. Member States will only be allowed to demand the resumption of checks in specific and exceptional situations. The ban includes the abolition of border formalities and the requirement on 'delegated' transport companies to carry out checks. Contrary to original planning, the directive did not enter into force in late 1996; an amended Commission proposal was put to the Council in March 1997.

3. Proposed Council directive on freedom of travel within the Community for third country nationals

The proposal aims to grant nationals of non-member countries who are lawfully in the territory of one Member State freedom of travel throughout the Community. Unlike in the case of Community nationals, this right does not at present exist: journeys by third country nationals may only be authorised in accordance with the laws of the Member States. In order to remove this obstacle, the visas and residence permits issued by these countries must be recognised and a uniform Community visa must be established. The directive will thus tackle such cases as discrimination between family members of differing nationality who wish to travel together within the EU and will also help to overcome the problems of workers with third country nationality legally working in a Member State and seconded to another Member State.

4. Recent Commission proposals

- Proposal for a Council directive relating to the conditions in which third country nationals shall have the freedom to travel in the territory of the Member States for periods not exceeding three months, introducing a specific travel authorisation and determining the conditions of entry and movement for periods not exceeding six months.
- Proposal for a Council Regulation amending Regulation 1683/95 laying down a uniform format for visas.
- Proposal for a Council Regulation on a uniform format for forms for affixing the visa issued by Member States to persons holding travel documents which are not recognised by the Member State drawing up the form.
- Proposal for a Council Regulation laying down a uniform format for residence permits for third country nationals.

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. There should be no distinction within the internal frontiers between freedom of travel for Community nationals and that of third country nationals. Freedom of travel is one of the fundamental human rights; any restriction of 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 frontiers. To underline its views, for instance, in 1993 Parliament initiated proceedings against the Commission for failure to act, under Article 232 ECT (Case C 445/93), because it had failed to put forward suitable proposals for the free movement of persons in the European Union, as stipulated in Article 14. These proceedings facilitated the development of the legislation on freedom of movement.

VOTING RIGHTS AND ELIGIBILITY

LEGAL BASIS

- Article 19 and 189-191 of the EC Treaty (ECT).

OBJECTIVES

Since 1976 (Act of 20 September), EU citizens have had the right to elect their representatives in the European Parliament in the state of which they are nationals. In addition to this right, the Treaty of Maastricht gave all citizens of an EU Member State the right to vote and stand as a candidate in elections to the European Parliament and local elections in the Member State in which they reside – whether they have its nationality or not – in the same conditions as apply to nationals of the country of residence. By abolishing the nationality condition that most Member States had previously attached to exercise of the right to vote or stand as a candidate, this right improves the integration of Union citizens in their host country.

ACHIEVEMENTS

1. Rights relating to municipal elections

a. Principle

Directive 94/80/EC of 19 December 1994 on rights relating to municipal elections grants all citizens of the Union the right to vote and to stand as a candidate in municipal elections in the Member State in which they reside, without substituting this for electoral rights in their state of origin, which naturally gives them greater freedom.

b. Limitations

- In order to protect their own sovereign interests, Member States may stipulate that only their own nationals are eligible to be elected to offices within the executive body of a basic local government unit. Under some national election provisions, this participation in executive bodies includes ballots in individual referendums, which are seen as distinct from general elections to the local authority. However, the opportunity for nationals of other Member States to exercise their right to stand as a candidate must not be unduly affected. As far as participation in municipal elections is concerned, all citizens of the Union are basically treated as nationals.
- Derogations – e.g. a longer minimum period of residence as a condition for participation in municipal elections – may be invoked by Member States in which the proportion of non-national EU citizens who are eligible to vote and to stand as candidates exceeds 20% of the total electorate; this currently applies in Luxembourg and to certain local government units in Belgium.
- At national level, there are ongoing debates concerning third country nationals' right to vote. Since the Treaty of Maastricht, two situations have coexisted within the Union: countries where third country nationals have the right to vote in municipal elections (Ireland, Denmark, Finland, the Netherlands, Sweden) and countries where this right is not recognised (Austria, Belgium, France, Germany, Greece, Italy, Luxembourg, Portugal, Spain, United Kingdom).

2. Elections to the European Parliament (For the common rules and national provisions, *1.3.4.)

Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in elections to the 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 as apply to nationals of that state. Derogations may be invoked by Member States in which the proportion of non-EU nationals is substantially above the average (around 20% of the total electorate). In this case a longer period of residence may be required than for nationals.

ROLE OF THE EUROPEAN PARLIAMENT

1. Rights relating to municipal elections

In its resolutions on the draft directive on rights relating to municipal elections, Parliament endeavoured to keep to a minimum the permitted exceptions to the rule of equal treatment with nationals regarding the right to vote and to stand as a candidate

2. Elections to the European Parliament

- In several resolutions, Parliament had expressed its regret that it only had the right to be consulted, and had no power of codecision, concerning the legal acts to be adopted pursuant to Article 19(2) of the EC Treaty. This situation has not changed.
- 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.).

THE RIGHT OF PETITION

LEGAL BASIS

Articles 21 and 194 EC Treaty, 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 174 to 176 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.

During the last parliamentary year (from March 2001 to March 2002) the Committee declared 744 petitions admissible and 293 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.

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

a. A Portuguese national who had completed her training as a medical-technical assistant in Germany, had not received the recognition of her qualification and authorisation to work in Portugal within the Portuguese legal deadline of four months. The Commission had already initiated infringement proceedings against Portugal for non-implementation of the relevant directives in this case (general systems directives for the paramedical professions). Following several interventions by the Commission, the petitioner obtained recognition of her qualification in Portugal (423/99).

b. An Irish petitioner complained that the Irish authorities had failed to carry out an environmental impact assessment (EIA) in relation to a road improvement scheme which had received Community funding. Following representations by the European Commission, the Irish Minister of the Environment ordered an EIA to be carried out which resulted in two modifications to the project (Petition 865/97).

TABLE 1
PETITIONS LISTED BY NATIONALITY AND COUNTRY WHERE THE PROBLEM OCCURRED
MARCH 2001 - MARCH 2002

	Nationality of petitioners	Country
Germany	298	241
Austria	15	19
Belgium	34	39
Denmark	2	4
Spain	161	144
Finland	25	18
France	129	125
Greece	77	61
Ireland	52	26
Italy	161	127
Luxembourg	3	8
Netherlands	51	57
Portugal	52	42
United Kingdom	159	120
Sweden	19	20
Non-community	41	

TABLE 2
SUBJECTS OF PETITIONS SUBMITTED
MARCH 2001 - MARCH 2002

Agriculture	14
Social affairs	90
Customs	6
Environment	162
Taxation	45
Freedom of movement	27
Recognition of diplomas	43
Various	487

TABLE 3
PETITIONS RECEIVED BY PARLIAMENT

Parliamentary year*	Number	Percentage rise or fall over previous year
1985-1986	234	+ 38
1986-1987	279	+ 19
1987-1988	484	+ 73
1988-1989	692	+ 43
1989-1990	774	+ 12
1990-1991	785	+ 1
1991-1992	694	- 12
1992-1993	900	+ 30
1993-1994	1 083	+ 20
1994-1995	1 352	+ 25
1995-1996	1 169	- 14
1996-1997	1 107	- 5
1997-1998	1 311	+ 18
1998-1999	1 005	- 24
1999-2000	958	-5
2000-2001	886	-7
2001-2002	1283	+45

* beginning in March

PRINCIPLES AND GENERAL COMPLETION OF THE INTERNAL MARKET

LEGAL BASIS

- Principles: Articles 3c, 14 and 18 of the EC Treaty (ECT);
- Approximation of legislation: Articles 94 and 95 ECT.

OBJECTIVES

1. 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;
- contributing to 'an ever closer union among the peoples of Europe', as envisaged by the authors of the Treaty.

2. A lack of progress led the Community in the mid-1980s to consider a more thorough approach to the objective of removing trade barriers, with more effective methods: the **internal market**. This was primarily set out in the celebrated Commission White Paper of June 1985 and incorporated in the Treaty by the 1986 Single European Act. The internal market was:

- intended to create 'an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured';
- accompanied by changes in the Community legislative system, designed to encourage adoption of the measures needed for its completion.

ACHIEVEMENTS

A. The uncompleted common market of 1958

1. Aim of the common market

The common market, as the Treaty of Rome's main objective, was intended to liberalise exchanges of goods and services between Member States as far as possible by:

- a customs union, i.e. removing customs duties between Member States and establishing a common external tariff;
- eliminating quantitative restrictions (quotas) and measures having equivalent effect, to ensure completely free movement of goods;
- free movement of persons, especially employed persons, services and, to a certain extent, capital.

2. Implementation

The programme was not fully completed.

a. Some objectives were achieved in the early years, certainly before the end of the transition period (1 January 1970). This was true of:

- the customs union proper, which was achieved on 1 July 1968 (*3.2.1.);
- abolition of quotas;
- free movement of employed persons, enabling any national of a Member State to go freely to another Member State to take a job under the same conditions as the nationals (*3.2.2.);
- some tax harmonisation with the general introduction of VAT (1970) (*3.4.5.).

b. However, **other objectives remained pending**; they were not even attained in the following 15 years. By the mid-1980s:

- there had been no substantial reduction in measures having an effect equivalent to quantitative restrictions: national technical rules for products, which had increased along with economic difficulties (*3.2.1.);
- except in certain professions such as doctors, the free movement of services, either by free provision of services across frontiers or freedom of establishment in another Member State, had been instituted only as non-discrimination on the grounds of nationality: in practice it was still coming into conflict with national regulations with which those providing services had to comply and which varied considerably from one country to another;
- freedom in trade in goods and in services was also restricted by continuing anti-competitive practices imposed by the public authorities (exclusive production or service rights, state aids);
- in fact, all these trade barriers pointed to a **maintenance of frontiers**, which were either physical (checks on persons and goods at internal customs posts), technical (a whole range of national rules) or tax-related (maintenance of indirect taxes at very varied rates, leading to slow and costly cross-border formalities).

c. Failure to complete the common market had a considerable **economic cost** - 'the cost of non-Europe' - which was the subject of a very detailed Commission study, the Cecchini report, presented in March 1988. The loss of revenue was estimated at a minimum of 4.25% and possibly as much as 6.5% of GDP.

d. This stagnation in the achievement of the common market was largely attributed to the choice of detailed legislative harmonisation as the **method** of removing the obstacles of national technical regulations, when harmonisation was in fact extremely difficult to achieve as it required Council decisions, most of which had to be taken unanimously.

B. The launching of the internal market in the 1980s

1. The concept of the internal market

This was a return to the ambitions of 1958, and sought to add the common market components that were still outstanding. However, it went further by pushing this ambition to the limit: totally removing the **frontier** concept to create an area where human and material resources can move freely to ensure optimum use.

The internal market programme: the 1985 White Paper

a. The idea of the internal market was supported immediately by the Member State governments: their support was affirmed in 1982 and regularly confirmed thereafter until the green light was given in Brussels in March 1985, when the European Council:

- set the end of 1992 as the completion date;
- asked the Commission to prepare a programme and timetable for implementation.

b. The Commission responded with its **White Paper**, approved in June 1985 by the European Council in Milan. This listed most of the legislative measures to be taken, approximately 300, grouping them under three main objectives:

- the elimination of physical frontiers, by abolishing checks on goods and persons at internal frontiers;
- the elimination of technical frontiers: breaking down the barriers of national regulations 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 timetable for adoption was spread out to the end of 1992. The new approach proposed was to get away from the systematic harmonisation of national rules, which would be reserved for essential requirements (such as security and health) and to settle for mutual recognition.

2. Inclusion of the internal market in the Treaty: the Single European Act

The Single European Act (which was signed in February 1986 and came into force on 1 July 1987) was a revision of the Treaty of Rome. It had two objectives:

- incorporation of the specific concept of the internal market in the Treaty defining it as 'an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured' and setting a precise deadline for its completion: 31 December 1992 (Article 18 (8a));
- giving the completed internal market effective decision-making machinery, by introducing qualified majority voting for most subjects concerned, instead of the unanimity that had hitherto been required, such as:
  - amendment of the common customs tariff (Article 26(28)),
  - free provision of services (Article 49 (59), second paragraph),
  - free movement of capital (Article 70, repealed subsequently),
  - approximation of national legislation (Articles 94 and 95 (100 and 100a).

C. Completion of the internal market

1. The situation in early 1993

a. By the deadline, **most of the 1992 target had been met**. Over 90 % of the legislative projects listed in the 1985 White Paper had been adopted, largely by using the majority rule. They included:

- full liberalisation of capital movements (*3.2.4.);
- total abolition of checks on goods at internal frontiers (*3.2.1.);
- abolition of routine checks on people at internal frontiers (*2.3.0.);
- major progress in the practical aspects of introducing freedom of establishment and freedom to provide services, through harmonisation and mutual recognition of rules in vital industries such as banking and insurance, mutual recognition of diplomas for access to the regulated professions, and by opening up public markets.

b. Though generally successful, there were some serious **failures**:

- legislative omissions: the 10 % or so measures not adopted included some very important ones, 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 as necessary for completion of the internal market, such as liberalisation of public service sectors, telecommunications, electricity, gas, postal services and the establishment of trans-European networks;
- failures to transpose legislation: a significant part of the adopted directives that formed the backbone of legislation on the internal market were not transposed into national law, or were badly transposed;
- failures in implementation (highlighted by the Sutherland report in October 1992, drawn up at the Commission's request): acts that had been properly transposed as scheduled were sometimes badly implemented by national administrations, either because some of their provisions were overlooked in administrative practice, or because they were differently interpreted from one country to another; moreover operators and consumers affected by these failures did not always have access to rapid and effective means of redress.

2. New efforts

After 1992 the Commission stepped up its efforts to secure full completion of the internal market.

a. It regularly submitted **reports** reviewing the results obtained and launched **action programmes** to complete projects that were 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, which formed the basis of the strategic programme of 22 December 1993 on making the most of the single market;
- the Communication of 30 October 1996 entitled 'The impact and effectiveness of the single market', which served as the basis for the **'Action plan for the single market'** of 4 June 1997. The latter set out to make good all the failings in completion of the internal market, whether in legislation or national transposition and implementation of the law, by the date for launching the single currency, 1 January 1999. To do so it proposed a series of 62 'actions', to be carried out according to a timetable with precise deadlines monitored every six months on a progress chart. This method proved to be effective and many of the objectives were achieved. The progress chart continues to be published twice a year, most recently in May 2003;
- the '**The strategy for Europe's internal market**', launched on 24 November 1999 in the form of a communication to the European Parliament and the Council. This action plan combines medium- and short-term perspectives, laying down strategic objectives to be achieved over the next five years (up to 2004) by means of 'targeted measures' to be taken over 18-month periods and reviewed annually;
- the Commission document of 7 January 2003, 'The internal market – ten years without frontiers';
- lastly, the Commission communication 'Internal market strategy priorities 2003-2006', continuing the work done under the 1999 'Strategy'.

b. While providing this impetus the Commission also took repressive action by stepping up its powers under Article 226 (169) of the EC Treaty for **prosecuting infringements** by the Member States which were:

- delaying transposition of directives;
- transposing them incorrectly;
- implementing them badly.

The number of current prosecutions (at various stages of the infringement proceedings, which start with a default notice, may continue with a reasoned opinion and then referral to the Court of Justice) has risen from approximately 700 in 1992 to the current figure of over 1 600 (May 2003).

3. The situation in summer 2003

The European internal market, the world's largest in terms of the purchasing power of its almost 380 million consumers, has become a reality, strongly contributing to the prosperity and integration of the European economy: increasing intra-Community trade (by about 10 % a year over ten 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): this has generated extra growth of between 1.1 and 1.5% and the creation of around 2.5 million more jobs, while bringing the income levels of different countries closer together.

Particularly worth noting are:

- substantial progress in completing the legislative programme: texts adopted have brought about the complete opening up of transport and telecommunications services, a significant opening up of other 'public service' sectors (electricity, gas and postal services), supervision of mergers and the protection of biotechnological inventions;
- progress in **transposition**, measured by the 'transposition deficit' which is the percentage of directives not yet transposed in all the Member States; totalling more than 20% in 1992 and still 6.3% in 1997, this deficit fell to 1.8% in May 1992 (and has since risen to 2.4%).

Some serious gaps remain:

- essential legislative projects are still pending: full freedom of movement for persons, tax harmonisation;
- certain directives not yet transposed in all Member States include public contracts, transport and intellectual property;
- the protection of business people from misapplication (or even infringement) of the rules still has room for improvement.

D. From internal market to home market

The requirements of European integration suggest that the internal market should eventually culminate in a fully integrated market on national lines: what might be termed the **'European home market'**. Its features would comprise:

- a single currency;
- a harmonised tax system;
- integrated infrastructure;
- complete freedom of movement for persons;
- legal instruments to enable businesses to operate effectively throughout the market.

Since monetary union is now a fait accompli, completion of the European home market would require:

- the harmonisation of indirect taxation, especially the establishment of an integrated VAT system based on adjacent rates from one country to another and the principle of payment at the place of origin;

- completion of the trans-European transport, energy and telecommunications networks;
- total abolition of frontier controls on persons and an unconditional right of residence throughout the Union.

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, whichurged the Commission to present a programme to the Council without delay. It vigorously supported the programme when it appeared as a White Paper in 1985; since then it has regularly supported the Commission's efforts and reminded the Council of its responsibilities. 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 on the action plan for the single market).

FREE MOVEMENT OF GOODS

LEGAL BASIS

Articles 3 (1)(a) and (c), 14, 23 to 31 and 90 ECT.

OBJECTIVES

- Freedom of movement applies to products originating in the Member States and products from third countries which are in free circulation in the Member States (Article 23, second subparagraph ECT).
- To start with, free movement of goods was seen as part of a customs union of 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, the emphasis was laid on eliminating all remaining obstacles to free movement with a view to creating the internal market – an area without internal frontiers, in which goods (among other things) could move as freely as on a national market.

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.

On the other hand, this deadline was not met in the case of the supplementary objectives – the prohibition of measures having an effect equivalent to that of customs duties and of quantitative restrictions, and harmonisation of the relevant national laws. These came to be the central objectives of an ongoing effort to achieve freedom of movement, to which 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 ECT

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 it is called and whatever its mode of application, (…) which, if imposed specifically 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' may be regarded as a charge having equivalent effect. The Court is thus not interested in the nature or form of the charge, but only in its effect (CJ Cases 2 and 3/62, 14 December 1962, and 232/78, 25 September 1979).

B. Prohibitions of measures having an effect equivalent to quantitative restrictions: Article 28 ECT

1. The **concept** of a measure equivalent to a quantitative restriction is much vaguer than that of a charge of equivalent effect. The Court of Justice has therefore defined it in very broad terms. In the **Dassonville judgement** it takes 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' (CJ Case 8/74, 11 July 1974).

2. The measures in question are generally those which affect only imported products. However, in the **Cassis de Dijon judgement** (CJ Case 120/78, 20 February 1979), the Court ruled that a measure could be deemed to have equivalent effect even without discrimination between imported and domestic products. In particular, imposing the technical rules of the importing State on products from other Member States is tantamount to introducing an equivalent measure since the imported products are penalised by being forced to undergo costly adjustments. The fact that there is no Community harmonisation of the rules cannot be used to justify this attitude, which effectively hinders freedom of movement, and the Court therefore laid down the principle that any product legally manufactured and marketed in a Member State in accordance with the fair and traditional rules and manufacturing processes of that country must be allowed onto the market of any other Member State. This is the principle of **mutual recognition** by the Member States of their respective rules in the absence of harmonisation.

3. To prevent the emergence of further obstacles a directive was adopted in 1983 (now replaced by Directive 98/34 of 22 June 1998) requiring Member States to inform the Commission of all projected technical regulations. National standardisation bodies are for their part required to forward their work programmes and draft standards.

C. Exceptions to the prohibition of measures having an effect equivalent to that of quantitative restrictions

1. Article 30 ECT allows Member States to take measures having an effect equivalent to quantitative restrictions when these are justified by **general, non-economic considerations** (public morality, public policy or public security, the protection of health and life of humans, animals or plants, the protection of national treasures and the protection of industrial and commercial property).

Control over the use made of this possibility is of course exercised by the Court of Justice. Such an exemption, constituting as it does an exception to a principle, must be strictly interpreted: it can be based only on the restricted list of reasons set out in Article 30. Exceptions are no longer justified if Community legislation has come into force in the same area. 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).

2. The Court of Justice has recognised (Cassis de Dijon case) that, over and above the considerations 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 and consumer protection).

3. To facilitate supervision of national exemption measures a **procedure for the exchange of information** has been devised (decision of the European Parliament and Council of 13 December 1995), which requires the Member States to notify any such measure to the Commission.

D. Harmonisation of national provisions

The adoption of Community laws enables the obstacles created by national provisions to be removed by rendering these inapplicable when they clash with Community law. This is, indeed, the only course available when the national provisions are justified by Article 30 or the concept of a 'mandatory requirement'. Since the mid-sixties, the Community has made considerable efforts in this respect: more than 250 directives on a great variety of subjects have been adopted. Harmonisation was often an extremely arduous process, since the directives incorporated all the technical specifications and required unanimity in the Council (Article 94 ECT).

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 taken.

1. Elimination of checks at internal borders (physical barriers)

a. Customs formalities

These were simplified during the period 1985-1992 (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 Member States, in the same way as such checks are made on domestic products moving within the States, i.e. without discrimination based on the origin of the goods or the mode of transport.

2. Elimination of technical barriers

After the removal of customs formalities and border controls, technical barriers are 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 by means of Article 28 ECT.

b. Legislative harmonisation

- This facilitated not only the qualified majority requirement for most directives relating the completion of the single market (Article 95) but by the adoption of a **new approach** to avoid an onerous total harmonisation. This approach, set out in the Commission White Paper of June 1985, has the following implications in practice:
  - . Since the guiding principle is that of mutual recognition of national rules, Community harmonisation is only justified when these rules cannot be considered equivalent.
  - . Harmonisation must be restricted to essential requirements of health, safety and environmental protection, rather than covering detailed technical specifications. For technical specifications, harmonisation directives refer to the industrial standards. However, such standards must not be national ones, because the latter's diversity obstructs manufacturers and impedes the freedom of movement, without leading to mutual recognition because they are not mandatory since they are not laid down by the national governments. Manufacturers will thus refer to European standards, laid down by European standardisation bodies. As with the other standards, they will not be mandatory but manufacturers who comply with them will automatically comply with the legal requirements.

  Many directives have been adopted following the new approach. They include those dealing with simple pressure vessels, toys, building materials, machines, gas appliances and telecommunications terminal equipment.
- The **need for European standards** arising from the new approach and the more general need to deal with national barriers has led to major development of the European standardisation system. This was originally based on two bodies – CEN, a general-purpose organisation set up in 1961, and Cenelec, set up in 1962 for the electrotechnical field – but was relatively inactive during the 1960s and 1970s. It was revived on the initiative of the Community authorities in the early 1980s. Under Directive 83/189 (replaced by Directive 98/34 referred to above), the Commission would allocate standardisation mandates to the standardisation bodies, which were thus much in demand during the ensuing period for the production of the standards required by the 'new approach' directives. The production of European standards has by and large expanded considerably, but the process is still hampered by its slowness and the practice of transposing European standards into national ones. In the course of further discussion

(see especially its Green Paper of January 1991, its Communications of December 1991 and October 1996 and its reports of 13 May 1998 and 7 July 2000 to the Council and Parliament), the Commission has proposed ways of increasing the quality and efficiency of European standardisation, in particular by replacing consensus with majority voting as the normal method for adopting standards and by directly applying European standards (to avoid national transposition). The Council has generally supported it (for instance, in the Resolutions of June 1992, 28 October 1999 and 1 March 2002).

ROLE OF THE EUROPEAN PARLIAMENT

Apart from its general supporting role in the completion of the internal market (*3.1.0.), Parliament has 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 directives on the subject and taken a close interest in the work of the European standardisation bodies (it debated the Commission Green Paper on the subject in depth).

FREE MOVEMENT FOR WORKERS

LEGAL BASIS

Articles 3(1)(c), 14 and 39 to 42 ECT.

OBJECTIVES

- Increasing the Community's workers' chances of finding work and adding to their professional experience;
- encouraging the mobility of workers, as a way of stimulating the human resource response to the requirements of the employment market;
- fostering contacts between workers throughout the Member States as a way of promoting mutual understanding, creating a Community social fabric and hence 'an ever closer union among the peoples of Europe', the main aim of the Treaties.

ACHIEVEMENTS

Following two provisional schemes (regulations and directives of 16 August 1961 and 25 March 1964), **permanent arrangements** on freedom of movement were introduced with Regulation 1612/68 of 15 October 1968 (amended by Regulations 312/76 and 2434/92) and Directive 68/360 of the same date.

In addition to this legislation, it is worth mentioning the extensive case law of the Court of Justice, particularly the Van Duyn judgment of 4 December 1974 (41/74), which affirmed **the direct applicability of freedom of movement** when the transitional period ended (1 January 1970).

A. Current general arrangements on freedom of movement

Any citizen of a Member State has the right to move freely with his or her family to other Member States in order to take up employment and to work under the same conditions as citizens of those countries.

1. Workers' rights of movement and residence

a. Movement

Community citizens are entitled to leave their country of origin (which may not insist that they have an exit visa) in order to go to another Member State; the latter may not require them to hold an entry visa; an identity card or a passport is sufficient. As part of efforts to scrap all checks on people at internal Union frontiers (*2.3.0.), the Commission has proposed amending Directive 68/360 to remove the requirement to produce an identity document when crossing the frontier.

b. Residence

The right of residence is regarded as being linked to the right to take up a job (under Article 39(3)(a) ECT, as it entails the right 'to accept offers of employment actually made') and so should not be exercised simply in order to look for work. After three months, which is considered sufficient time to find a job, the right of residence should result in the issuing of a permit (other than the residence permit for 'ordinary' foreigners) called a 'Residence Permit for a National of a Member State of the EEC' (Article 4 of Directive 68/360): it is issued on production of the identity card with which the person in question crossed the border and of a statement of engagement from the employer or a certificate of employment. It is issued automatically (whereas other foreigners receive 'permission' to reside, which implies that the national authorities have discretionary powers). The permit is valid for at least five years and is automatically renewable even if holders have lost their job.

2. Rights of entry and residence for family members

a. The spouse of a worker who is a Community national, their children who are under 21 or dependants, and their dependants in the ascending line have the right to settle with the worker (Regulation 1612/68, Article 10(1)), provided the worker has housing that is considered suitable (Article 10(3)).

b. If they are citizens of a Member State they may not be required to hold an entry visa and are also themselves entitled to be issued with a Residence Permit for a National of a Member State of the EC. If they are nationals of a third country, they may need to have a visa but they receive a residence permit with the same validity as that of the worker.

3. Work

a. Taking up employment

Nationals of a Member State have the right to take up employment within the territory of another Member State on the same terms as national workers (Article 1 of Regulation 1612/68). National provisions which are restrictive (limiting the number or percentage of foreigners who may be employed per company or per sector at regional or local level or reserving certain jobs for nationals) or discriminatory (subjecting foreigners to procedures or conditions which do not apply to nationals, e.g. work permits) are not, therefore, applicable to Community citizens. Spouses and children of workers are also entitled to work even if they are not Community citizens (Article 11 of Regulation 1612/68).

b. Treatment at work

Community workers must be treated in the same way as national workers:

- in respect of any conditions of employment or work, especially as regards remuneration, dismissal and reinstatement or re-employment (Regulation 1612/68, Article 7(1) and (4));
- in the case of benefits not directly connected with employment, i.e. social and tax advantages, including vocational training, housing benefits, aid intended to ensure a minimum subsistence level

and family allowances (Article 7(2) and (3) and Article 9 of Regulation 1612/68);

- in respect of trade union responsibilities and staff representation duties in their undertaking, although they may not be allowed to take part in the management of bodies governed by public law (they may not be elected to social security authorities).

4. Right to remain in the host country after working there

Laid down in the EC Treaty (Article 39(3)(d)), this right was spelled out in the Commission Regulation of 29 June 1970 (1251/70) which allows workers to remain permanently in the state where they last worked, provided they have worked and lived there for three years or have reached the age of retirement or suffer from permanent disability. The same goes for those members of their family who live with them.

B. Restrictions on freedom of movement

1. Restrictions on the right of entry and residence

The EC Treaty (Article 39(3)) entitles Member States to refuse to allow Community nationals to enter or live in their territory on grounds of **public policy**, **public security** or **public health**. A directive of 25 February 1964 (64/221) however, attaches certain conditions to this power and the Court of Justice has kept a careful watch to ensure they are fulfilled.

a. The reservation on the grounds of public health is well defined as it applies only to the diseases or disabilities listed in the directive (Article 4). The concepts of public policy and public security are not well defined but the directive (Articles 2 and 3) sets limits to them: if they are cited, an appeal may not be based on economic grounds but solely on the personal conduct of the individual concerned: the mere existence of criminal convictions or the simple expiry of the identity card will not constitute sufficient grounds.

b. In the absence of a definition in Community law, the Court of Justice has assumed the right to monitor Member States' interpretation of what public policy means. According to jurisprudence:

- States may only have recourse to the public policy reservation exceptionally and in a limited way;
- measures may not be collective or reflect a wish to achieve general exclusion;
- finally, in accordance with the principle of equality of treatment, the conduct in question must also be punishable when exhibited by nationals.

2. Restrictions on taking up jobs in the public service

The EC Treaty (Article 39(4)) ruled out freedom of movement in the case of 'employment in the public service'.

a. In order not to leave the assessment of this concept to the discretion of Member States, where the legal situation of public service employees varies so much and the Member States could abuse this exemption, the **Court of Justice** was obliged to define it. It rejected the description of the legal relationship between the worker and the public service (manual worker, non-manual worker or official; public law or private law relationship, see Case 66/85, 3 July 1986) as a criterion and adopted a functional view: jobs in the public service were those 'which involve direct or indirect participation in the exercise of powers conferred by public law' as characterised by exercise of a power to constrain individuals or by association with higher interests, such as the internal or external security of the State.

b. In a statement on 5 January 1988, the **Commission** listed the activities which it considered formed part of the 'public service': these were, firstly, the specific functions of the State and allied bodies, such as the armed forces, the police and the other forces of order, the judiciary, the tax authorities and the diplomatic service and, secondly, employment in government departments, regional authorities and other similar bodies, and central banks, where this involved staff (officials and other employees) who carried out activities organised on the basis of a public legal power of the state or of another legal person governed by public law.

C. Measures to encourage freedom of movement

1. Mutual recognition of training

Freedom of movement is often hampered by differences in training from one Member State to another.

a. This is true particularly in the case of **regulated professions** for which states have prescribed purely national certificates and diplomas which they require the citizens of other states to possess, thus restricting considerably the practical significance of the freedom to take up employment without formally contravening the rule of non-discrimination on the basis of nationality. Not being able to harmonise the training concerned, the Community has followed the course of **mutual recognition of certificates and diplomas**:

- firstly for specific professions;
- then on the basis of general systems of equivalence.

Such mutual recognition was introduced primarily so that the professions covered could be practised on a self-employed basis (for details, *3.2.3.) but it also applies, of course, to employed persons.

b. The problem also exists in the **non-regulated professions** where failure to possess national professional qualifications, which are often the only ones known to employers, may hamper chances of finding work. Here the Community has introduced **comparability of vocational qualifications**: on the basis of a Council decision of 16 July 1985, comparability has been ensured for skilled workers in 19 vocational sectors; the result was

published in the form of tables in the Official Journal (The work was carried out by a specialised body, Cedefop, and completed in 1993).

2. Exchanges between young workers

To encourage freedom of movement, the EC Treaty (Article 41) stipulated that Member States should encourage the exchange of young workers within the framework of a joint programme. This was first carried out through the PETRA programme, which lasted from 1988 to 1994: it was aimed at young people between 16 and 28 undergoing non-university vocational training, and provides grants to enable them to spend from three weeks to three months doing vocational training in another Community country. Some 45 000 young people benefited. After 1994 the PETRA machinery was integrated in the wider framework of the Leonardo da Vinci programme (*4.16.0.).

3. The EURES (European Employment Services) network

This was set up by Commission Decision 93/569/EEC of 22 October 1993 implementing Regulation 1612/68 mentioned above, to facilitate access to information by workers seeking a job in a Member State other than their own. This network is a data bank of job vacancies and applications (incorporating data from national administrations) and on living and working conditions in the Member States.

FREEDOM OF ESTABLISHMENT, FREEDOM TO PROVIDE SERVICES AND MUTUAL RECOGNITION OF DIPLOMAS

LEGAL BASIS

Articles 3(1)(c), 14 and 43 to 55 ECT.

OBJECTIVES

The intention is to ensure that the self-employed (whether working in commercial, industrial or craft occupations or the liberal professions) are free to exercise their profession throughout the Community, in terms of both freedom of establishment and freedom to provide services, especially with regard to the best economic location. This implies eliminating discrimination on the grounds of nationality and, if these freedoms are to be used effectively, 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. The principle

The EC Treaty lays down the principle that the self-employed may freely exercise an activity in two ways: the person or firm may set up in another Member State (freedom of establishment: Art. 43) or offer their services across frontiers in other Member States while remaining in their country of origin (freedom to provide services: Art. 49). Any new restrictive measures have been prohibited since the Treaty came into force, and existing restrictions were to be abolished by Council directives before the end of the transition period under a general stage-by-stage programme (Arts. 44 and 52).

2. The beneficiaries

These are in the first instance natural persons who are nationals of the Member States: those engaged in small-scale industry and the liberal professions. Then come 'legal persons' established in the territory of a Member State, particularly companies: their activities (insurance, banking, etc.) are also affected by this freedom but are dealt with in separate fact sheets because of their importance (*3.4.2. and 3.4.3.).

3. The exceptions

a. The Treaty excludes **activities connected with the exercise of official authority** from freedom of establishment and provision of services (Art. 45, first paragraph ECT). But this exclusion is limited by the Court of Justice's restrictive interpretation: for exclusion to cover a whole profession, the latter's entire activity must be dedicated to the exercise of official authority, or the part that is so dedicated must be inseparable from the rest.

b. It also enables Member States to exclude the **production of or trade in war material** (Art. 296(1)(b) ECT) and retain rules for non-nationals in respect of **public policy, public security or public health** (Arts. 46(1) and 55 ECT).

B. Implementation of liberalisation until the decision that it had direct effect

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, the work was far from complete in 1974 when the Court decided that, despite omissions, under the terms of the Treaty the two freedoms had 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. There was thus no need to continue the work to abolish restrictions and the pending directives were withdrawn.

C. Significance and extent of liberalisation since the declaration that it had direct effect

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 conditions of access to and exercise of the activities continue to apply, which still leaves barriers for non-nationals, since they are obliged to engage in further studies to obtain the qualifications required. To diminish these obstacles, Community measures to facilitate the exercise of the two freedoms are still worthwhile; these measures aim to secure mutual recognition of the national rules and possibly their harmonisation.

D. Measures to facilitate exercise of the two freedoms: mutual recognition of qualifications and diplomas

Measures provided by the Treaty (Art. 47(1)) to facilitate freedom of establishment and provision of services include, firstly, the mutual recognition of the diplomas and other qualifications required in each country for access to the professions. Next (Art. 47(2)) it 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. But since such harmonisation is a difficult process the Treaty only insists on it as a precondition for mutual recognition in the case of the medical professions (Art. 47(3)). 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 begun to adopt a more general approach.

1. The sectoral approach (by profession)

a. Mutual recognition after harmonisation

The results have gone furthest 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), so that it was not difficult to harmonise them. Thus most health professions benefit from full mutual recognition of national access diplomas in that the qualifications listed in Community directives can be exercised in any Community country with regard to establishment and freedom of services. The qualifications are:

- doctors: Directives 75/362 and 363 of 16 June 1978 (codified by Directive 93/6 of 5 April 1993, modified by Directive 97/50 of 6 October 1997);
- dentists: Directives 78/686 and 687 of 24 August 1978;
- nurses: Directives 77/452 and 452 of 27 June 1977;
- veterinary surgeons: Directives 78/1026 and 1027 of 23 December 1978;
- midwives: Directives 80/154 and 155 of 21 January 1980;
- pharmacists: Directives 85/432 and 433 of 16 September 1985.

b. Mutual recognition without harmonisation

For **other professions**, the major differences between national rules have prevented harmonisation and, as a result, mutual recognition has made less progress. In particular:

- lawyers. 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. This has been feasible only in the case of freedom to provide occasional services (Council Directive 77/249 of 22 March 1977); free establishment otherwise required the host country's diploma. Directive 98/5 of 16 February 1998 was a significant step forward: with the diploma of any Member State lawyers 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;
- road haulage operators: Directives 74/561 and 562 of 12 November 1974 and 77/796 of 12 December 1977 (freedom of establishment of road haulage operators), among a number of other texts;
- insurance agents and brokers: Directive 77/92 of 13 December 1976 (freedom to provide services and freedom of establishment);
- hairdressers: Directive 82/489 of 19 July 1982 (freedom to provide services and of establishment);
- architects: Directive 85/384 of 10 June 1985 (freedom to provide services and of establishment);
- self-employed commercial agents: Directive 86/653 of 18 December 1986 (coordination of the laws of the Member States).

2. The general approach

Drafting of legislation for mutual recognition sector by sector, sometimes with more extensive harmonisation of national rules, is always a long and tedious procedure. The resulting difficulties have led to consideration of a general system of recognition of the equivalence of diplomas, by level, which is valid for all regulated professions that have not been the subject of specific Community legislation.

The system has been set up in three stages:

- 1990, recognition of higher education diplomas awarded on completion of professional education and training of at least three years' duration (Directive 89/48 of 21 December 1988).
- 1992, expansion of the system to diplomas, certificates and qualifications that are not part of long-term higher education, with two levels:
  . horte post-secondary or professional courses,
  . secondary courses (Directive 92/51 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 that are not yet covered by the previous directives (textiles, clothing, leather, wood etc.) (Directive 99/42 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 a certain length of professional experience if the training they received was of a shorter duration than in the host country. If the training differs substantially, it may require an adaptation period or aptitude test, at the discretion of the applicant, unless the occupation requires a 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: this case, brought in January 1983, led to a Court judgment (13/83 of 22 May 1985) condemning the Council for failing, in breach of the Treaty, 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. The Council was thus obliged to adopt the necessary legislation (*4.5.1.).

The role of Parliament has grown with the application of the codecision procedure (as provided for in the Maastricht Treaty) to most aspects of freedom of establishment and provision of services.

FREE MOVEMENT OF CAPITAL

LEGAL BASIS

Articles 56 to 60 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

1. First endeavours (before the single market)

a. The first Community measures

These were limited in scope.

A 1960 Directive amended in 1962 unconditionally
- liberalised:
- direct investment;
- short- or medium-term lending for commercial transactions;
- purchases of securities dealt in on the stock exchange.

b. 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.

2. Further liberalisation and its completion under the single market

a. Further progress

It was not until the single market was launched, almost 20 years later, that the progress begun in 1960-62 was resumed. Two directives, in 1985 and 1986, extended unconditional liberalisation to:

- long-term lending for commercial transactions;
- purchases of securities not dealt in on the stock exchange.

b. General liberalisation

- Liberalisation was completed by **Directive 88/361** of 24 June 1988, which scrapped all remaining restrictions on capital movements between residents of the Member States on 1 July 1990. As a result, liberalisation was extended to monetary or quasi-monetary transactions, which were likely to have the greatest impact on national monetary policies, such as loans, foreign currency deposits or security transactions.
- The directive did include a **safeguard clause** enabling Member States to take protective measures when short-term capital movements of exceptional size seriously disrupted the conduct of monetary policy. But such measures only applied to restrictively identified transactions and could not last for more than six months.
- It also allowed some countries to maintain **permanent restrictions**, mainly on short-term movements, but only for a specific period: Ireland, Portugal and Spain until 31 December 1992, and Greece until 30 June 1994.

3. The definitive system

Principle

a. 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.

b. **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.

c. The only **restrictions on capital movements in general**, including movements within the Union, that 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.

4. Consequences of the Economic and Monetary Union

a. 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 zone.

b. Harmonisation of the cost of domestic andcross-border payments

Regulation 2560/2001 of 19 December 2001 harmonised the costs of domestic and cross-border payments within the eurozone. Bank charges must be the same:

- for cash withdrawals up to 12 500 euros from 1 July 2002;
- for money transfers up to 12 500 euros from 1 July 2003;
- the ceiling to be raised to 50 000 euros from 1 January 2006.

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).

GENERAL COMPETITION POLICY AND CONCERTED PRACTICES

LEGAL BASIS

- Chapters 5 and 6 of Title I of the EAEC for the nuclear power industry;
- Articles 3(g) and 81 to 85 EC for all other industries.

OBJECTIVES

1. The Community's competition rules are **not an end in themselves**; they are primarily a condition for achieving the common (or internal) market. As stated in Article 3(g) of the EC Treaty, the aim is 'a system ensuring that competition in the internal market is not distorted'. Thus in the three areas of application of these 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 only affect trade within a State. Thus prohibited practices are those 'which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market' (Art. 81 EC).

2. However, in the market economy, which is the reference point for the economic policy pursued by the Community and its Member States, competition is also valued as **a factor for economic success**, not only as the best way of fulfilling the needs of European consumers but also of ensuring that European companies, products and services are competitive on the world market. Hence the acceptance in Article 81 of anti-competitive practices if they benefit the economy.

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 are given:

- 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 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 (*4.5.6. and 4.5.8.).

1. Individual decisions

The Commission can take three types of decision 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 penalty payments of up to 20% of daily receipts, until the infringement has ended.
- National bodies (specialised authorities and courts) may also impose penalties for infringements, as the provisions of the first two paragraphs of Article 81 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.

b. Negative clearance

This means that the dealings in question (agreement, decision or practice) do not infringe the prohibition in Article 81(1). Certificates are issued exclusively by the Commission at the company's request.

c. Exemptions

This means that although the company's dealings infringe the prohibition in Article 81(1), they can escape penalty under Paragraph 3 of the same article. Exemptions also 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 of 2 March 1965, 2871/71 of 20 December 1971 and 1215/99 of 10 June 1999), each relating to certain categories of agreement. The Commission uses block exemption to this end.

C. Practice

On the basis of the Treaty and the implementing rules, over some 40 years the Commission has developed a substantial policy on concerted practices.

1. It has made wide use of **block exemptions**.

a. Among the **horizontal or co-operation agreements** (between companies in competition), the main beneficiaries have been:

- specialisation agreements (Regulation 2658/2000);
- research and development agreements (Regulation 2659/2000).

The Commission is currently (since January 2002) evaluating the functioning of Regulation 240/96 concerning application of competition rules to technology transfer agreements.

b. 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 2790/99 of 22 December 1999).

A notable block exemption concerns motor vehicles. Commission Regulation 1400/2002 of 31 July 2002, replacing Regulation 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. 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 co-operation 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 raised 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;
- co-operation agreements;
- sub-contracts.

3. Despite this complex provision, designed to ease the restrictions on companies and not hinder practices favourable to the economy or without substantial market impact, **certain types of agreement** are still considered by the Commission as harmful to competition and thus **prohibited without exception**. They are usually presented in public black lists. They include:

a. Among the horizontal agreements:

- price fixing;
- joint sales offices;
- production or delivery quotas;
- sharing of markets or supply sources.

b. 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.

D. Reform of the implementing rules

1. The Commission has conducted a review of the system for applying the rules on competition, which have been in existence since 1962 (Regulation 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 great many 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. A Commission White Paper of 28 April 1999 examines this basic problem, which will only get worse as the single market progresses and the EU expands.

2. On the basis of this analysis, the Commission has proposed radical changes:

a. 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 (Art.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.

b. At the same time, ensuring that the rules are **applied uniformly**:

- only those practices which may affect trade between Member States would be subject to Community law;
- the Commission would retain the power of decision on important matters, such as block exemptions, individual decisions (rulings on infringement or inapplicability), formulating guidelines, taking over cases from national authorities, etc.;
- the Commission's ability to carry out on-site inspections would be increased;
- there is provision for systematic co-operation between national authorities and between them and the Commission.

After consultation with Parliament (resolution of 6 September 2002), the Council adopted on 16 December 2002 Regulation 1/2003, replacing Regulation 17/62. The Regulation comes into force on 1 May 2004.

ABUSE OF A DOMINANT POSITION AND INVESTIGATION ON MERGERS

LEGAL BASIS

- Article 82 EC (abuse of a dominant position);
- Articles 81, 82 and 235 EC (mergers);
- Article 83 EC (adoption of regulations and directives);
- Article 85 EC (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' perception.

3. The concept of abuse

a. 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.

b. In its judgement 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.

c. 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

Regulation 17/62 (*3.3.1.) also applies to the abuse of a dominant position.

a. The Commission acts in response to complaints or notifications or on its own initiative. It can request information, make industrial investigations and carry out spot checks.

b. If it finds that an infringement has occurred, it takes a decision to order its cessation, and may also impose a fine or penalty.

c. But it can also issue a 'negative clearance' at a company's request if it considers that the practice concerned does not infringe the Treaty.

d. However, the Treaty does not provide any exemption, either on an individual or industrial basis, from penalties for abusing a dominant position.

1. The reform

The reform of the implementing procedures of rules on concerted practices (*3.3.1.) (Council Regulation 1/2003 of 16 December 2002, replacing Regulation 17/62 and coming into force on 1 May 2004) also applies to the abuse of a dominant position. The aim of the reform is to:

a. 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 introduces 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 will no longer issue "negative clearances".

b. At the same time ensure 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 co-operation among the national authorities and between them and the Commission.

II. MERGER INVESTIGATION

A. The problem and initial legal vacuum

1. 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 judgement 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.

2. 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 4064/89 of 21 December 1989, subsequently amended by Regulation 1310/97 of 30 June 1997, which took effect on 1 March 1998.

B. The present regulations

The rules under Council Regulation 4064/89, as amended by Regulation 1310/97 and Commission implementing Regulation 447/98 of 1 March 1998, allow prior investigation and thus prevent mergers that would give rise to an abuse of a dominant position on the Community market. These rules are currently the object of a review by the Commission which issued a Green Paper in December 2001 and a proposal for revision of the Merger Regulation in December 2002.

1. Scope

Investigation applies to:

a. Companies in all economic sectors.

b. When they are proposing a **concentration**, which means an operation to integrate previously separate companies:

- by merger;
- by acquisition;
- or by creating a joint company having the nature of an autonomous economic entity; even if such a company falls more readily in the category of a strategic agreement, it is now first to be considered from the merger control aspect.

c. Provided that such a concentration has a **Community dimension,** and so is likely to affect the European market. This dimension obtains in two cases:

- **Case one: global thresholds**

  This was the only case covered by Regulation 4064/89, which has not been amended in this respect. The Community dimension obtains when the following criteria are fulfilled:

  . the companies concerned have a combined world-wide turnover of at least ECU 5 000 million,

  . at least two of the companies concerned have a minimum Community-wide turnover of ECU 250 million,

  . each of the companies concerned generates no more than two-thirds of its aggregate Community-wide turnover in one Member State.

  This definition has proved inadequate in the light of experience, as many cross-frontier concentrations (which have proliferated) have remained below the thresholds in spite of their significance to the Community market and have often come under several national authorities at the same time (multiple registration).

  To remedy these difficulties the Commission proposed, in its Green Paper of 31 January

1996 and its subsequent proposal to amend the regulation, that the thresholds should be cut back:

. to a world-wide turnover of EUR 2 000 million,

. and a Community-wide turnover of EUR 100 million.

The Council rejected this proposal.

- **Case two: separate national thresholds**

The Council accepted an alternative suggestion from the Commission, which was incorporated in Regulation 4064/89 by the Regulation of 30 June 1997. This states that it will now consider as having a Community dimension, and hence subject to control by the Commission alone, mergers of companies with:

. a combined world-wide turnover of more than EUR 2 500 million and a turnover of more than EUR 100 million in each of at least three Member States,

. individually, for at least two of the companies concerned, a turnover of more than EUR 25 million in each of the three Member States and more than 100 million in the Community as a whole.

The two-thirds rule also applies to this second category of Community mergers.

2. Commission 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.

b. Procedure

The Commission has one month to take a decision; the time limit is prolonged by a further four months if it decides to carry out a detailed investigation. The proposed mergercannot go ahead until the Commission's final decision has been taken (an innovation in the 1997 regulation; before then the operation was only suspended for three weeks after notification, with the option of prolonging the period until the final decision).

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 277 in 2002. Most of these cases end in authorisation. Outright prohibitions are very rare, since 1990 they represent under 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 (1997).

At the end of 2002, the Commission announced a comprehensive reform of EU merger control including:

- a draft regulation, which proposes a reduction of "multiple filing" (notification to numerous competition authorities), a flexibility into the timeframe for the merger investigations, the strengthening of the fact-finding powers of the Commission and the application of substantive standards for the analysis of mergers;
- draft guidelines for horizontal mergers;
- a series of non-legislative measures intended to improve the Commission's decision making process, including the creation of a post of chief Competition Economist.

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 review of Council Regulation 4064/89 (the merger regulation); this report accepts most of the Commission's proposals, especially in regard to the division of responsibility between the Commission and the Member States. The Parliament is consulted on the draft merger regulation which should come into force on 1 May 2004.

STATE AID

LEGAL BASIS

Articles 87 to 89 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 Treaty: the ground rules (Article 87 EC)

1. General prohibition, under Article 87(1)

An extremely wide-ranging ban covers:

a. 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.

b. 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).

c. 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

a. 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 (now obviously rendered void by German reunification, apart from residual cases).

b. 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 main the 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, which suspends application of the measures proposed until there is a final decision.

3. Infringement proceedings, under Article 88(2)

a. The Commission formally serves notice on the Member State charged with the offence, requiring it to comment within a given period (normally one month).

b. 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).

c. If the Member State fails to comply with the Commission decision by the deadline, the Commission, or any other interested State, may refer the matter to the Court of Justice.

d. The State concerned may itself apply to the Court within the specified period.

e. 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 judgement in applying its provisions, both with regard to the basic rules (the exemptions allowed under Article 87(3)) and to procedure (Article 88). It states, however, that Council regulations may be introduced to implement the provisions. This option was not taken up until very recently, with the result that implementation of the aid procedure was for a long time an entirely administrative and judicial matter.

Until the early 1970s the issue of State aids did not take on special importance. It began to do so after the recession of 1974 and 1975, and particularly after 1980, when the considerable growth of aid led to a very marked rise in cases referred to the Commission. The Commission tried to ease this increasing workload by establishing criteria for application of the ground rules and procedures, which it decided should be made public in the form of various types of texts: framework documents, communications, guidelines, sometimes just letters, but also directives and regulations. But this piecemeal approach at the purely administrative level did not provide sufficient legal certainty or clear and effective administrative management. Legislation was therefore needed, and was adopted in 1998 for the ground rules and 1999 for the procedural rules.

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 in 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 also 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. The criteria for exemption are:

- **territorial criteria**

  For exemption under Paragraph (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 Subparagraph (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 under 12 inhabitants per km2, or to regions eligible under the Structural Funds, all within an overall ceiling for the number of aid recipients laid down at Community level and divided between the Member States;

- **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 Paragraph (a), and 20% under Paragraph (c).

b. Sectoral aid

- The exemption criteria have been laid down in several texts, for each of the main sectors: steel, shipbuilding, automobiles and synthetic fibres (*4.7.2-5). These are 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 particular legal system involving Articles 87 to 89 and ad-hoc provisions (*4.1.1. and 4.5.1.). The same is true for State enterprises and public services (*3.3.4.).
- These texts have one common theme: to be acceptable, aid must not tend to preserve the status quo by maintaining 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, 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 (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 to SMEs, research and development, environmental protection, employment and training and to certain regional aid. The exempting regulations must specify the purpose of the aid, the categories of beneficiaries and the thresholds. The Commission adopted in January 2001 three new regulations on the application of the competition rules to training aid, on the 'de minimis' rule and on State Aid to small and medium-sized enterprises. The commission in November 2002 adopted a further block exemption for employment aid.

3. Procedure

a. In order to guarantee coherence, stability and efficiency, as laid down in Article 89 of the Treaty, the Commission has adopted a numberof procedural rules, for example with regard to deadlines or to reimbursement of aid which had not been notified. Regulation 659/99, adopted on 22 March 1999, 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 co-operate (in particular through annual reports on all existing aid systems).

b. 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 Aids 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.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has adopted many reports in the area of State aids (e.g. resolutions of 21 November 2002, 6 February 2002, 24 October 2000). The publication of the State Aid Scoreboards and Surveys on State Aid has provided the focus for Parliament's work in this area, which comes within the competence of the Committee on Economic and Monetary Affairs. 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.

PUBLIC UNDERTAKINGS AND SERVICES OF GENERAL ECONOMIC INTEREST

LEGAL BASIS

- Public undertakings: Article 86(1) and Article 295 EC;
- Services of general interest: Articles 16, 30, 46, 73 and 86(2) EC;
- Special or exclusive rights: Article 31(1) and Article 31 (2) EC.

OBJECTIVES

Public undertakings and undertakings to which governments grant special rights, for instance to help them perform tasks assigned to them in the public interest, such as public services, may pose difficulties for certain articles of the EC Treaty, particularly those concerning freedom of movement and competition.

Article 86 confirms that public undertakings are also subject to all rules contained in the Treaty. But it does provide some opportunities for exempting such undertakings if necessary to enable them to perform the particular tasks assigned to them. The Treaty gives the Commission a special responsibility to ensure that the provisions of Article 86 are complied with and gives it the power to take decisions and adopt directives. As the Court of Justice has confirmed, such directives may be of a regulatory nature.

ACHIEVEMENTS

A. Public undertakings

1. The principle of general arrangements

As a matter of principle the Treaty provides for no special treatment for public undertakings.

a. It is neutral on the public or private nature of undertakings and on nationalisation or privatisation, as a result of Article 295.

b. Public undertakings are subject to the same rules as other businesses, particularly the rules on national non-discrimination and competition, and Member States are expressly required not to take any measure that would exempt them from such rules, under Article 86(1).

2. The policy of special supervision

However, the links between governments and the businesses that they own are such that special attention is needed to ensure that public undertakings comply with the Treaty rules. The Commission has been particularly concerned about the public aid which such undertakings were able to obtain.

a. This concern was first reflected in Directive 80/723 of 25 June 1980 on the transparency of financial relations between Member States and public undertakings. The Commission, using its special powers under Article 86(3), required Member States to provide information on financial assistance granted to public undertakings. Such information may facilitate court proceedings to challenge the assistance on the basis of the State aid rules. The Directive was amended in July 2000 by Directive 2000/52 specifying the nature of the financial and other information which Member States must pass on concerning activities of public undertakings.

b. The Commission amended the 1980 directive in 1993 and 2000 to include explicitly the requirement for Member States to submit annual reports of all public undertakings in the manufacturing sector with a turnover of more than 250 million.

B. Services of general interest

1. Concept and place in the original Treaty

a. Definition

Public services (also known as services of public interest or public utility) are economic activities of general interest set up by the public authorities and operating under their responsibility, even if their management is delegated to a (public or private) operator separate from the administrative function. The concept applies mainly to 'network' activities, in particular electricity, gas and water supply, public transport, postal services and telecommunications.

b. Place in the Treaty of Rome

Where public services organised by the Member States were assigned special or exclusive rights, creation of the common market was bound to challenge them as obstructing freedom of movement for goods and services. However, the Treaty of Rome does grant them a place, usually under the designation of 'services of general economic interest', and provides an opportunity to exempt them from the rules on liberalisation and competition:

- either on the basis of general interest considered globally, in so far as is necessary to enable the undertakings responsible for such services to perform their tasks, an exemption under Article 86(2);
- or on the basis of particular aspects of general interest (public health and safety) permitting exemption from the free movement of goods and services under Articles 30 and 46, and considerations of general interest justifying exemption from the rules on competition under Articles 81(3) and 87, to which the Single Act and the Maastricht Treaty added:
  - . economic and social cohesion,
  - . consumer protection, and
  - . trans-European networks.

The provisions applicable to the transport sector (Article 73) allow State aid intended to compensate for 'the discharge of certain obligations inherent in the concept of

a public service'. This is the only place in the Treaty where this precise expression is used.

2. Development of Community policy

a. Initial indifference

For a long time Community Institutions took no interest in public service activities. This lack of interest was due to a twofold concern:

- not to be seen to infringe the requirement of neutrality on the ownership of undertakings, as laid down by Article 295 of the Treaty, by attacking activities that were regarded as essentially connected with public interest, and
- not to antagonise Member States which might regard public services as falling within their exclusive competence.

b. Start of interest

A strong Community interest in public services only began when the internal market was launched in the **mid-1980s**. Full implementation of the free movement of goods and services brought into question barriers set up by the special or exclusive rights which the Member States had assigned to their public service undertakings. But for several years the challenge was localised and incomplete.

The Commission has put forward the view that it is desirable to create competitive conditions for the supply of goods and services provided through networks. Even if the infrastructure itself remains in exclusive ownership, the monopolist owner must grant access to third parties wishing to compete in regard to supply of transport, services or energy via that network (e.g. telephone communications or electricity).

c. Beginning of a real policy

From the **early 1990s** Community action has been systematic and widespread.

- The Commission has regularly challenged special and exclusive rights, either by taking administrative action under Article 226 or by proposing that Community law should apply the principles of liberalisation of the internal market to the sectors at issue.
- At first the Court appeared to support the Commission's liberal approach, but, in the *Corbeau* and *Almelo* judgements of 1993 and 1994, it had recourse to the exemption laid down in Article 86(2) to protect public service activities from the rules on liberalisation and competition. In its ruling of 22 November 2001 in the Ferring case, the Court found that compensation granted to certain firms entrusted with the operation of a service of general economic interest was not a State aid within the meaning of Article 87 (1) of the Treaty.
- Community legislation on network activities, such as telecommunications, electricity, gas and railways, has sought to open up markets by abolishing special or exclusive rights or at least cutting them back substantially, only conserving the public service in the form of a social obligation, or a 'universal service' of limited scope.
- The Commission adopted a general position on public services in its Communication of 11 September 1996 on services of general interest in Europe in which it acknowledged the concept of public services, as well as their justification and principles. With a view to establishing a European public service policy, the paper proposed inserting the concept in the Treaty and establishing instruments to evaluate and co-ordinate national regulatory bodies and to develop trans-European networks. A further communication of 20 September 2000 on services of general interest confirmed this line, in particular setting out the Commission's view on the position of public services within the single market.
- The Amsterdam Treaty included the concept of public services in the principles of the Community, adding a new Article 16 on the subject in the EC Treaty, which reads:

'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'.

- A directive on postal services (97/67) began to open up the sector to competition but also required Member States to provide a minimum level of services for users' benefit under the term of 'universal service', allowing them to reserve some activities to one or more operators ('reserved service'). A further directive of 10 June 2002 has opened the market for mail weighing more than 100g from 2003 and that more than 50g from 2006.
- The attempt to liberalise access to networks has continued to arouse opposition in some quarters. Electricity supply in particular remains restricted despite Commission proposals for a single energy market by 2005, adopted on 13 March 2001.

C. Special or exclusive rights

These are restrictions on the number of operators authorised to exercise a given economic activity, in which authorisation might be granted to several operators (generally referred to as special rights) or one only (referred to as an exclusive right or monopoly). Such privileges can of course be granted to private as well as public undertakings.

1. Adjustment of commercial monopolies

a. Article 31 of the Treaty provided for national monopolies of a commercial character to be adjusted to ensure that there was no discrimination between nationals of Member States in the conditions under which a State controlled imports from and exports to other Community countries, whether the monopoly was exercised by the State itself or delegated to one or more organisations or businesses. The adjustment had to be completed by the end of the transitional period.

b. The first six Member States accordingly made the necessary changes by 1970. After each enlargement the new Member States did the same. Thus, following the latest enlargement:

- exclusive rights in Austria for the import and wholesale marketing of alcoholic beverages from the other Member States were abolished (from 1 January 1996);
- exclusive rights for the retail sale of alcohol in Sweden and Finland have been ruled acceptable after minor adjustments;
- the Austrian tobacco monopoly has also been ruled acceptable.

2. General ban on other special or exclusive rights, and exceptions

Article 86 stipulates that special or exclusive rights in general cannot contravene the rules in the Treaty. This particularly applies to the various freedoms of movement (of workers, goods, services and capital) and the rules on competition. The only exceptions are those for:

- undertakings responsible for a service of general economic interest;
- undertakings having the character of a revenue-producing monopoly.

In these two cases the rights may be maintained even if they do contravene the Treaty's rules, on two conditions:

- the application of the competition rules would obstruct the performance of the particular tasks assigned to the undertaking;
- trade is not disrupted to an extent that would be contrary to the Community's interests

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has steadfastly upheld the concept of public services but has also supported increases in competition of benefit to consumers.

1. In connection with the **sectoral legislation** on network activities its recent resolutions include:

- electricity and gas: 6 July 2001, 20 December 2001, 13 March 2002;
- railway networks: 13 January 1998, 30 May 2002, 14 January 2003;
- air transport networks: 19 Feb 1998, 15 June 1998, 6 July 2000;
- telecommunications: 20 February 1997, 18 September 1997, 26 October 2000, 1 March 2001, 13 June 2001;
- postal services: 14 December 2000, 13 March 2002.

2. **General statements of position** in regard to public services include:

- resolutions of 6 May 1994, 17 December 1997, 13 January 2001, 13 November 2001 and 21 November 2002;
- 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).

OPENING UP PUBLIC PROCUREMENT CONTRACTS

LEGAL BASIS

Articles 28, 47(2), 49 and 50 EC.

OBJECTIVES

1. To apply the principles of the internal market (in particular freedom to provide services and freedom of competition) to transactions:

- of major economic significance since they account for some 16.2% of Union GDP (i.e. contracts concluded by public authorities plus contracts concluded by public sector firms vested with exclusive or special rights);
- having a determining effect on certain sectors: construction and public works, energy, telecommunications and heavy industry;
- traditionally characterised by a near-total exclusive trading in favour of national suppliers, particularly on account of very considerable statutory or administrative barriers to intra-Community trade (prior to the implementation of Community legislation, only 2% of public procurement contracts were awarded to non-national undertakings).

2. To secure a better allocation of economic resources:

- through the more rational use of public funds: public authorities obtaining products and services of the highest available quality at the best price;
- by giving preference to the best-performing undertakings across the European market and, in so doing, encouraging the increased competitiveness of European industry vis-à-vis its rivals (stepping up the size of undertakings by developing their outlets and keener competition);
- by reducing the risks of fraud and corruption.

ACHIEVEMENTS

In order to attain the above objectives, the Community equipped itself with legislation to co-ordinate national rules imposing obligations to publicise invitations to tender and rules on objective scrutiny of tenders so as to increase non-national suppliers' chances of winning contracts. This has been a step-by-step development, and has not as yet produced a totally satisfactory situation.

A. Modest beginnings

The initial legislation, such as the Commission Directive of 17 December 1969 (70/32) on supply contracts, spelled out practices outlawed by the Treaty (national discrimination, measures having equivalent effect to quantitative restrictions on imports, etc.). But this did not address the disparities in national legislation and did not bring about the effective implementation of the Treaty's principles on liberalisation: what was needed were positive obligations necessitating a co-ordination of national rules.

B. First efforts towards legislative co-ordination

These were made in the form of Council directives for contracts relating to:

- **works:** 71/305 of 26 July 1971;
- **supplies:** 77/62 of 21 December 1976.

1. This legislation constituted an advance since it imposed obligations:

a. For competition between undertakings, by making calls for tenders the rule and direct-agreement procedures the exception.

b. Of publicity:

- at least as far as supplies were concerned, contract notices had to be published in the Official Journal of the European Communities;
- the accompanying documentation had to include the technical specifications of the contract, which could refer to national or European standards.

2. But it was **insufficient**.

a. Firstly, it contained inherent shortcomings:

- excessively high application thresholds, which were easily circumvented by under-evaluation or division of invitations to tender;
- non-coercive character of obligations for the choice of procedures, technical specifications and criteria for awarding contracts;
- shortness of time limits for tendering, which handicapped non-national tenderers in particular;
- absence of obligation to give reasons for the rejection of tenders.

b. Secondly, it was limited in scope since it did not include:

- service contracts;
- contracts for defence equipment;
- economic 'public service' contracts (public transport, water, energy and telecommunications) 'excluded' from the legislation because they involved both public and private contracting authorities.

c. Finally, it did not contain provisions for appeal, although the national systems of appeal differ greatly and are often inadequate, and the Community procedure for failure to fulfil obligations (Article 226) is cumbersome.

C. Current legislation

The establishment of a complete legislative structure only became possible in the context of the internal market policy launched by the 1985 White Paper, which made the opening up of public procurement contracts one of its

priorities. Further information was given in a Commission communication of 19 June 1986.

1. The various legislative texts

These are intended:

a. Either to improve the existing texts:

- Directive 88/255 of 22 March 1988 amending Directive 77/62 on supplies procurement contracts;
- Directive 89/440 of 18 July 1989 amending Directive 71/305 on works procurement contracts.

b. Or to deal with sectors not yet covered:

- services: Directive 92/50 of 18 June 1992;
- 'excluded' public service sectors: Directive 90/531 of 17 September 1990.

c. Or to provide for means of redress:

- in general: Directive 89/665 of 21 December 1989;
- for formerly excluded sectors: Directive 92/13 of 25 February 1992.

d. Or, finally, to consolidate the various texts for each sector, in the three consolidating directives of 14 June 1993:

- 93/36 for supplies contracts;
- 93/37 for works contracts;
- 93/38 for formerly excluded sectors.

2. The common substance of the sectoral directives

The key principle is to ensure equal opportunities for national and non-national undertakings by organising the most effective competition possible. This principle is implemented by provisions contained in the legislation applicable to the four sectors (supplies, works, services and public service activities: water, energy, transport and telecommunications).

a. Procedure for awarding contracts

In general the call for tenders is obligatory, the only options open to the contracting authorities being the open form or the restricted form; it is only in strictly defined cases that they may use the negotiated procedure, and then sometimes only if they have first issued a tender notice.

b. Technical rules

The requisite technical specifications (which must be supplied to interested undertakings) must be defined by reference to national standards implementing European standards or by reference to European technical approval or common technical specifications.

c. Prior information measures

The contracting authorities must publish in the Official Journal of the European Communities:

- all contract notices (on the basis of a model notice);
- at regular intervals, a notice summarising the most important information on the contracts planned for the twelve months ahead.

d. Criteria for the award of the contract

A choice is allowed between:

- the lowest price, and
- the most economically advantageous bid (a criterion containing several elements: price, time limit on delivery, profitability, etc.).

e. Advertising obligations subsequent to conclusion of the contract

- There must be a written report on each contract, including at least the names of the candidates or tenderers admitted, of those rejected and of the contracting authority, with in all cases the reasons for the decisions taken. This report will be communicated to the Commission at its request.
- A summary of the conditions under which the contract was awarded must be published in the Official Journal: date of award of contract, criteria for award, number of tenders received, name and address of the contracting authority and price or range of prices paid.
- Finally, any candidates or tenderers who so request must be informed, within fifteen days, of the reasons for rejection of their application or tender.

3. The rules specific to each sector

These relate to the scope of the legislation.

a. Definition of the activities covered.

b. Contracting authorities concerned: thus, in the case of the previously 'excluded' sectors, such authorities comprise not only the public authorities but also undertakings, whether public or private, engaged in public service activities and duly vested with special or exclusive rights (*3.3.4.).

c. Exemptions.

d. Thresholds: i.e. the minimum amount (applicable from 1 January 2002) below which a contract is not subject to Community legislation:

- supplies and services: 200 000;
- works: 5 million;
- supplies and services for telecommunications: 600 000;
- supplies and services for other public service sectors: 400 000.

4. Review procedures

a. The **general system** (Directive 89/665) requires the Member States to provide for review procedures which:

- are accessible to any person having or having had an interest in obtaining a contract and who has been or risks being harmed by an infringement of the existing rules;
- are effective and rapid;
- allow for interim measures setting aside decisions taken unlawfully, including discriminatory specifications, and the award of damages.

b. The system governing the public service sectors (Directive 92/13) includes comparable obligations and provides for, in addition:

- an attestation procedure whereby independent experts certify that the contracting entity's contract award practices are in conformity with Community law;
- a conciliation procedure whereby conciliators who have the approval of the parties concerned (the contracting authority and a complainant undertaking) propose a solution to the dispute.

c. Under both systems the **Commission** can act, even before the conclusion of the contract, if it establishes a manifest infringement of Community provisions, by requesting the authorities concerned to correct it. Should it not be satisfied with the final result of these proceedings, it can always open the procedure provided for in Article 226 of the Treaty.

D. Assessment and future perspectives

1. Review of the legislation

a. The Community is now equipped with **comprehensive legislation** on public procurement contracts which, it seems quite likely, has begun to push up the number of contracts awarded to non-national undertakings. But its impact is difficult to assess because the result of the contract award procedures is not always communicated to the Commission, contrary to obligations prescribed by the legislation, or the nationality of the contracting authority is not made sufficiently clear. In any event, it appears that the participation of non-national tenderers in the procedures is still very low.

b. Major problems persist:

- the legislation still contains some weaknesses and, in particular, excessively high thresholds;
- transposition into national law is highly deficient;
- application of the rules by the contracting authorities is often flawed: excessive recourse to the negotiated procedure, insufficient quality of notification to the Official Journal, excessively short time limits for participation, extremely narrow selection criteria.

2. Proposal for a single Directive

In a Green Paper dated 27 November 1996 entitled 'Public procurement in the European Union: Exploring the way forward' the Commission identified these difficulties and proposed remedies that it detailed further in a communication dated 11 March 1998. In May 2000 the Commission submitted a proposal for a directive to simplify and clarify the legislation, in particular by merging the three directives on supplies, works and services. This proposal is presented in the form of a single, amended text for the three types of contract. With this approach it will be easier to maintain consistency during the legislative process and it also offers real advantages for users. In addition the proposal contains a number of substantive amendments concerning:

- the introduction of electronic purchasing mechanisms,
- the use of negotiated procedure,
- the possibility for public purchasers of concluding framework contracts,
- clarification of provisions relating to technical specifications,
- strengthening of the provisions relating to award and selection criteria,
- simplification of the thresholds and the introduction of a common procurement vocabulary.

In May 2002 the Council reached a political agreement on the contents of the Directive. On 2 July 2003 the Parliament voted some amendments in its second reading. The proposal is now awaiting second reading in Council.

COMPANY LAW

LEGAL BASIS

- Principal basis: Article 44(2)(g) of the EC Treaty, in which the Council and Commission provide the necessary degree of coordination of the safeguards which, for the protection of the interests of shareholders and others, are required by Member States of companies or firms within the meaning of the second paragraph of Article 48 with a view to making such safeguards equivalent throughout the Community. This allows only for the adoption of directives. Its main interest is that it requires only a qualified majority within the Council.
- Articles 94, 95, 293 and 308 of the EC Treaty also allow Community intervention in company law but play only a secondary role.

OBJECTIVES

- To require all companies subject to the jurisdiction of the Member States to fulfil a minimum set of common obligations to further the establishment of an undistorted system of competition.
- To ensure in all the Member States some protection for people in business relations with companies and thus assist the companies' economic development.
- 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 fifteen national legal systems being removed.

ACHIEVEMENTS

A. A minimum set of common obligations

1. Setting up a company

a. Certain conditions must be complied with when a company is set up.

- A first Council directive (68/151 of 9 March 1968) laid down substantial publicity 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 for nullity of companies that have been constituted irregularly in certain cases.
- This was supplemented by a second Council directive (77/91 of 13 December 1976) which however concerns only 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.

b. The Commission is currently considering the extent to which amendments to these two directives are necessary to introduce a modern and simplified system of company registers at European level which should allow easier access to information on companies, and thereby guarantee improved legal protection, and make it easier to establish branches in other Member States.

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 twelfth Council directive (89/667 of 21 December 1989) on single-member private limited liability companies, is so far covered only by proposals.

Adoption of the third proposal for a fifth directive in 1991 on the structure of public limited liability companies and the powers and obligations of their bodies has been blocked because of its provisions on worker participation (*4.8.6.). The ninth directive on affiliated undertakings, i.e. under law relating to groups of companies, has not even reached the proposal stage.

3. Company restructuring

Efforts were made to give shareholders and third parties the same guarantees during restructuring in the third Council directive (78/855 of 9 October 1978) on national mergers of public limited liability companies and the sixth directive (82/891 of 17 December 1982) on the division of public limited liability companies.

An amended proposal for a thirteenth directive on takeover bids was rejected by Parliament in July 2001. A new proposal presented in October 2002 is currently under legislative discussion.

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 of 25 July 1978, 83/349 of 13 June 1983 and 84/253 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.

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. The next goal was to facilitate development by companies on a Community scale: a proposal for a tenth directive on cross-border mergers of public limited companies is intended to remove legal barriers that currently make such mergers impossible and would thus supplement the directive on the common system of taxation applicable to mergers (*4.19.5.). These mergers are of course subject to rules on the monitoring of concentrations (*3.3.2.).

2. The operation of European-scale companies

There has not been much development other than on tax (*4.19.5.) and social rules (*4.8.6.). The eleventh Council directive (89/666 of 21 December 1989) on disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State or even a non-Community country enables persons resident in a country where a branch is established to obtain a minimum amount of information on branches in other Member States. An international bankruptcy convention was signed on 23 November 1995, under which European-scale undertakings will be declared bankrupt at European level, instead of undergoing the multiple bankruptcies that were hitherto the case.

3. Community statutes

a. Aim: To allow companies that want to act or establish themselves beyond their national frontiers the option of being subject to one set of legislation and not several as is the case at present.

b. Long period of stalemate

- The efforts to bring about this Community legislation are not new, as the Commission presented its first proposal for a regulation on a statute for a **European company** in 1970, but this proposal (which has been amended on numerous occasions) became permanently stalled because of its provisions on worker participation; some Member States totally rejected such participation, while others made it a condition for accepting the very idea of a European company.
- In order to break the deadlock, the Commission presented (1989) a new proposal which had a legal basis providing for adoption by the Council acting by a qualified majority, and no longer unanimously, and which was divided into two parts so as to split off the provisions on worker participation:
  . a proposal for a regulation on the operation of the European company (based on Article 96),
  . a proposal for a directive on the role of workers (Article 44).
- The deadlock persisted, however. It was not even broken, as the Commission had hoped, with the adoption on 22 September 1994 of the directive (94/95) on European works councils (*4.8.6.).

c. Breaking the deadlock

- The Commission therefore made a fresh effort. Within the framework laid down by a communication of November 1995 (COM(95)547), a group of experts chaired by Étienne Davignon proposed a system allowing considerable freedom of choice as to the method of worker participation.
  On the basis of their report (May 1997) the Council resumed its work and an agreement on the involvement of employees reached during the Nice European Council in early December 2000 enabled the deadlock to be broken after 30 years of negotiation.
- In October 2001 the Council adopted definitively the two legislative instruments necessary for the establishment of a European company, namely the Regulation on the Statute for a European company (2157/2001) and the directive supplementing the Statute with regard to the involvement of employees in the European company (2001/86), both of which form an indissociable whole.
- Under the Regulation on the Statute for a European company (2157/2001, entry into force 8 October 2004), a company may be set up within the territory of the Community in the form of a public limited-liability company, known by the Latin name 'Societas Europaea' (SE). The SE will make it possible to operate at Community level while being subject to Community legislation directly applicable in all Member States. Several options are made available to undertakings of at least two Member States which want to set themselves up as an SE: merger, establishment of a holding company, formation of a subsidiary or conversion into an SE. The statute will enable a public limited-liability company with a registered office and head office within the Community to transform itself into an SE without going into liquidation. The SE will be entered in a register in the Member State in which it has its registered office. Every registered SE will be published in the Official Journal of the European Communities. The SE will have to take the form of a company with share capital. In order to ensure that such companies are of reasonable size, a minimum amount of capital is set at not less than EUR 120 000.
- The directive on the involvement of employees in the European company (2001/86, entry into force 8 October 2001) is aimed at ensuring that the establishment of an SE does not entail the disappearance or reduction of practices of employee involvement existing within the companies participating in the establishment of an SE. In view of the great diversity of rules and practices in the Member States as regards the manner in which employees' representatives are involved

in decision-making within companies, there are no plans for a single European model. Employee information and consultation procedures at transnational level are nevertheless ensured. If and when participation rights exist within one or more companies establishing an SE, they are preserved through their transfer to the SE, once established, unless the parties involved decide otherwise within the 'special negotiating body' which brings together the representatives of the employees of all the companies concerned.

d. **The draft statutes for a European association, cooperative society and mutual society** (proposals for regulations and directives, July1993) have undergone the same fate as the statute for a European company for the same reasons. Regulation 1435/2003 on the Statute for a European Cooperative Society (SCE) and Directive 2003/72 supplementing the Statute with regard to the involvement of employees were adopted by the Council on 22 July 2003. The legislative procedure has still to be completed as regards the statutes for a European association and mutual society.

e. On the other hand, the Council was able to adopt the regulation (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. It came into force on 1 July 1989 and has been very successful since, by the beginning of 1999, 1 000 EEIGs had been set up.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has been able to get some of its amendments incorporated in legislation. It has strongly defended worker participation in companies (*4.8.6.). It was for this reason that it refused to deliver an opinion on the proposal for a tenth 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.

FINANCIAL SERVICES

LEGAL BASIS

Articles 43-48 (right of establishment), 49-54 (services), 56-60 (capital and payments) and 94-97 (approximation of laws) EC.

OBJECTIVES

1. The financial services (banking, insurance, securities) have traditionally been subject to strong government supervision, resulting in generally stringent national regulation of access to the profession and its exercise, in rules that vary from one Member State to another. The direct effect of freedom of establishment and freedom to provide services, the status quo since 1970 (* 3.2.3.), has been to prevent discrimination on grounds of nationality but it has not done away with the requirement to comply with national regulations.

2. Hence, in order to complete the internal market in these sectors, major efforts were needed to bring these rules into line and secure their mutual recognition, so as to enable the two freedoms to be exercised. A further obvious requirement in these financial industries (and one laid down by the Treaty of Rome) was the freedom of movement of capital.

ACHIEVEMENTS

A. General overview

1. Basic conception

The main target of legal approximation was the rules in commercial law applying to companies, taking the same approach in all three sectors:

- harmonisation of the basic rules on company formation and management;
- **-** responsibility for supervision entrusted to the country of origin;
- **-** mutual recognition of controls carried out in the country of origin.

However, the harmonisation and mutual recognition of conditions for access to the professions (the requirement for diplomas and other qualifications), mainly affecting the liberal professions and employees (* 3.2.3**.** and 3.2.2.), may often also apply to the financial sector.

2. The Financial Services Action Plan (FSAP)

The construction of the single market in financial services had gone one since 1973 but was accelerated by the Financial Services Action Plan. Proposed by the Commission in 1999, it was endorsed by the European Council in March 2000 (Lisbon) and March 2002 (Barcelona). It involves a series of regulatory and legislative measures designed to achieve, among other things, a single wholesale European financial market, open and secure and state-of-the art prudential rules and supervision. In all, it called for 42 measures, 34 of which had been achieved by June 2003.

3. The Lamfalussy procedure

On a proposal from the committee of wise men chaired by Mr Lamfalussy, Commission and Parliament agreed in February 2002 on a simplified legislative procedure for adopting legislation on financial services:

- framework legislation under the co-decision procedure (Parliament and Council) to define principles and implementing process;
- **i**mplementing measures adopted by the Commission after consulting the European Securities Committee (ES), made up of Member States representatives) and the European Securities Regulators Committee;
- cooperation among securities regulators;
- enforcement of Community law by the Commission.

B. Banking

1. Harmonising access rules

a. The first coordinating directive (77/780 of 12 December 1977).

It makes the establishment of a credit institution subject to government authorisation; to obtain it, certain conditions must be met and a programme of operations submitted.

b. The second coordinating directive (89/646 of 15 December 1989).

Entered into force on 1st January 1993, it was the quantum leap in liberalisation (provided for in the White Paper on the single market). It introduces the principle of a single Community authorisation, granted by a Member State to a credit institution, allowing it to pursue all basic banking business throughout the Community, either by setting up subsidiaries or by providing its services directly from the country in which it is established. The home Member State carries out overall supervision of the banking institution, while the host Member State supervises branches established on its territory.

2. Harmonising protection and control rules

a. Common basic rules for all credit institutions

Directive 89/299 of 17 April 1989, as amended by Directives 91/633 and 92/16.

b. Solvency ratios: Directive 89/647 of 18 December 1989 (see also Directives 91/15, 94/7 and 95/15) harmonises prudential supervision and tightens up solvency standards to protect depositors and investors. It has been reinforced by Directive 95/26.

c. Monitoring and control of major risks: Directive 92/121 of 21 December 1992 harmonises the basic rules on supervision.

d. Deposit guarantees: Directive 94/19 of 16 May 1994 aims to provide Community-wide protection for depositors in credit institutions, particularly by making guarantee schemes set up in one Member State applicable to depositors in subsidiaries set up in other Member States.

e. The fight against financial crime: Directives 91/308 of 10 June 1991 and 2001/97 require the Member States to prohibit money-laundering and introduces appropriate penalties.

3. Consolidating directive 2000/12 (20 March 2000)

It groups together the key aspects of the legislation.

C. Insurance

The insurance sector is even more highly regulated than the banking industry, out of a concern to protect its clients, especially private individuals. In endeavouring to coordinate the national rules, Community law has taken account of this concern, while seeking to ensure that freedom of establishment and freedom to provide services are exercised effectively so that consumers can enjoy the widest and most attractive range of products possible. These aims are difficult to reconcile, which explains why freedom of movement has in practice taken so long to introduce.

1. Freedom of establishment

It was the first to be tackled as it aroused fewer misgivings.

a. The first coordinating directive on non-life insurance (i.e. insurance other than life assurance) (73/239 of 24 July 1973). It made it necessary to obtain authorisation in order to establish a company or set up branches or agencies. Sectoral authorisation for a class of insurance, based on a programme of operations, could be refused if the conditions governing the taking up of business, laid down by national legislation, were not met.

b. Similar arrangements were laid down for **life assurance** by Directive 79/267 of 5 March 1979.

2. Freedom to provide services (conclusion of cross-border contracts)

a. General

Two Court of Justice judgements of 4 December 1986 (*Commission v Germany* and *Commission v France*) provided legal certainty. The Court ruled that the host State (in which the risk is situated and the service is provided) may require a company to obtain authorisation in view of the need to protect consumers, in particular in connection with small risks. Authorisation must be granted, however, to any company established in another Member State which meets the conditions laid down by the legislation of the State in which the service is to be performed. Those conditions may not duplicate conditions that have already been fulfilled in the home State, and the controls carried out for this purpose by the latter must be taken into consideration. This precedent speeded up the legislative process.

b. The second coordinating directive on non-life insurance (88/357 of 22 June 1988)

It aims to facilitate the exercise of freedom to provide services, making a distinction between 'large risks' (concerned with large undertakings) and 'small risks' (concerned with private individuals). In the case of large risks, an insurance company may provide its services in another Member State (the State in which the risk is situated) without authorisation from that State and under the supervision of the State in which its head office is located (Member State of establishment), which applies its own legislation. In the case of small risks, the State in which the risk is situated retains a significant supervisory role: it may require authorisation for the provision of services and approval for contract forms, and its legislation (including tax law) is applicable. But the authorisation procedure must take account of controls already carried out by the Member State of establishment.

c. The second coordinating directive on life insurance (90/619 of 8 November 1990)

It achieves the effective exercise of freedom to provide service. Policies taken out on the initiative of the insured party ('passive commitment') are governed by the Member State in which the insurer is established ('State of establishment'). Policies taken out on the insurer's initiative ('active commitment') are deemed to require greater protection for the consumer and are subject to regulation and supervision by the State in which the risk is situated ('State of commitment'). In both cases, however, the tax regime applicable to policies is that of the State of commitment.

3. Completion of the liberalisation

Finally, in 1992 **definitive arrangements** were introduced to complete the liberalisation of insurance operations, as provided for in the White Paper, with regard to the two aspects of freedom of establishment and freedom to provide services.

a. The third coordinating directive on non-life insurance (92/49 of 18 June 1992). It introduces the single authorisation arrangement. Authorisation (the conditions for the granting of which are harmonised) granted by a Member State to an insurance company to operate on its territory permits that company to operate throughout the Community either on a freely established basis or as a service provider.

b. The third coordinating directive on life assurance (92/96 of 10 November 1992). It also lays down a single authorisation, valid throughout the Community, by the State in which the company has its head office.

c. It should be stressed that general legislation on non-life insurance does not cover **motor vehicle third party liability insurance**; this is governed by special

rules (Directive 90/618 of 8 November 1990), under which an insurer established in one Member State must, in order to insure a vehicle registered in another Member State (freedom to provide services), appoint a representative in that State.

d. Alongside the directives to safeguard the right of establishment and freedom to provide services, other Community directives have been adopted in the insurance sector: motor vehicle liability (2000/26), supervision of insurance undertakings (95/26 and 98/78), solvency of life-insurance and non-life insurance companies (2002/12 and 13), winding-up of insurance undertakings (2001/17).

e. The Directive of 13 May 2003 on occupational pensions will create an internal market for occupational retirement pensions under a prudential framework to protect the rights of future pensioners.

D. Marketable securities

1. Stock exchange listing

a. Admission to official listing

The first measures date back to the early 1980s with the adoption of three directives, covering the conditions for admission of securities to official stock exchange listings (79/279 of 5 March 1979, amended by 88/627 of 12 December 1988), the listing particulars required for admission to the stock exchange (80/390, amended by 94/18) and the reporting requirements by companies quoted on the stock exchanges (82/121). Directive 88/627 dealt with publication requirements, when a major holding in a listed company is acquired or is disposed of. For clarity and rationality, the above directives have been grouped in a single text (Directive 2001/34).

b. Prospectuses

The revised directive of 15 July 2003 on prospectuses, amending Directive 2001/34/EC, will make it easier and cheaper for companies to raise capital throughout the EU, while reinforcing protection for investors by guaranteeing that all prospectuses provide them with the clear and comprehensive information they need to make investment decisions.

2. Investment services

a. Undertakings for collective investment in transferable securities (UCITS)

Directive 85/611 of 20 December 1985 (amended by Directives 2001/107 and 108) reconciles the conditions for competition between UCITS and for shareholder protection, enabling UCITS to operate throughout the Community on the basis of a single authorisation granted by the Member State of origin while remaining exclusively subject to the law of that Member State. In 2001, the Directive's field of application was extended to bodies investing in financial assets other than transferable securities.

b. Investment firms

- Directive 93/22 of 10 May 1993 "Investment Services Directive" (amended by Directives 95/26 and 97/9) enables investment firms to carry on their business throughout the Community on the basis of a single authorisation granted by the Member State of origin.
- Directive 93/6 of 15 March 1993 (amended by Directive 98/31) harmonises the rules on capital adequacy required for the formation of firms and the pursuit of their business.
- Directive 97/9 of 3 March 1997 requires the Member States to put in place a system to compensate investors in the event of the failure of a firm.

3. Insider dealing

Directive 89/592 of 13 November 1989, updated by Directive 2003/6 of 28 January 2003, prohibits insider dealing and coordinates the regulations applying to it.

ROLE OF THE EUROPEAN PARLIAMENT

Involved as co-legislator in the process emanating from the Financial Services Action Plan, the EP welcomed this plan and the Lamfalussy proposals to create a genuine service single market for financial services. It supports the need to reform how the EU regulates financial markets so legislation can be enacted speedily and kept up to date. Its concern has been to ensure that any new approach respects the parallelism of the legislative roles of Parliament and Council and that transparency and democratic control are ensured in the co-decision process. In this context it has two nominees on the Inter-institutional (EP, Council and Commission) Monitoring Group set up to monitor the functioning of the 4-level regulatory process, as part of the Lamfalussy proposals.

INTELLECTUAL, INDUSTRIAL AND COMMERCIAL PROPERTY

LEGAL BASIS

- Article 30 of the EC Treaty includes '... the protection of industrial and commercial property' in the grounds for exemption from the free movement of goods. 'Industrial and commercial property' is applicable to all rights of industrial or intellectual property, including copyright, patents, trade marks, designs and models and designations of origin.
- Industrial or intellectual property also comes under the provisions on free competition (Articles 81 and 82 of the EC Treaty) in so far as it may give rise to concerted practices or abuse of a dominant position.
- The Paris and Berne Conventions signed in the late 19th century, to which the Member States are parties, did not establish international rights to intellectual property.

OBJECTIVES

As exclusive rights, intellectual, industrial and commercial property rights are still dependent on the various national laws. The Member States have never seriously envisaged the prospect of total and absolute unification of such laws. They settled for a compromise of setting up rights at Community level to which undertakings could have recourse as a complement or alternative to national rights.

ACHIEVEMENTS

A. Legislative harmonisation

1. Trade marks, designs and models

- Directive 89/104 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 40/94 of 20 December 1993 created a Community trade mark alongside national trade marks and set up a Community trade mark office, the Office for Harmonisation in the Internal Market (trade marks and designs); the Office, which was established in Alicante, became operational in 1996.
- Directive 98/71 of 13 October 1998 approximates national legislation on the legal protection of designs and models.
- Regulation 6/2002 of 12 December 2001 institutes a Community design-protection system.

2. Copyright

a. Main Community measures:

- Directive 92/100 of 19 November 1992, on the borrowing and lending of works of art;
- Directive 93/83 of 27 September 1993 on cable distribution and satellite broadcasting;
- Directive 93/98 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 on the harmonisation of certain aspects of copyright and related rights in the information society.

b. Approval of international treaties

On 16 March 2000 the Council approved the World Intellectual Property Organisation (WIPO) Treaty on copyright and the Performances and Phonograms Treaty (WPPT). These treaties will help to ensure a balanced level of protection for works of art and other protected objects and allow public access to content available on networks.

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. However, this agreement has never come into force as not all the Member States have ratified it.

b. Partial improvement

- **Harmonisation of national rules**

  Commission Regulation 240/96 of 31 January 1996 harmonised and simplified the rules applicable to patent licences and know-how licences, to encourage the dissemination of technical know-how in the Community and promote the manufacture of technically improved products;

- **Community protection of certain sectors**

  . Supplementary protection certificate for plant protection products created by Regulation 1610/96 of 23 July 1996,

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

  . Directive on the patentability of computer-implemented inventions proposed by the Commission on 20 February 2002 (co-decision process now under way).

c. New plan for a Community patent

On 1 August 2000 the Commission presented a new draft regulation on the Community patent (COM(2000) 0412). According to this draft, the Community patent will coexist with the national patents. Legal protection will be

guaranteed by a special court. The proposal is awaiting a final decision following approval by the European Parliament in April 2002.

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 (cases 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 (case 24/67 of 29 February 1968). The distinction was made between matters covered by the 'existence' of industrial property rights, governed by Article 30, and matters relating to the 'exercise' of such rights, which could not elude the principle of free movement (see also the Deutsche Grammophon judgment, case 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, case 15/74 of 18 October 1974).
- It took longer to define the 'specific subject-matter' of a trade mark. In the Terrapin judgment (case 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' (case 102/77 of 23 May 1978).

2. Theory of the 'exhaustion' of rights

a. Definition

This is the theory that the proprietor of an industrial and commercial property right protected by the law of one Member State cannot invoke that law to prevent the importation of products which have been put into circulation in another Member State (see its application to designs and models in the judgment in *Keurkoop v Nancy Kean Gifts*, case 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, case 3/78 of 10 October 1978).

b. Limits

The theory of exhaustion of Community rights does not apply in the case of marketing of a counterfeit product, or of products marketed outside the European Economic Area. This is stipulated in Article 6 of the agreement on intellectual property rights concluded under the Uruguay Round (TRIPS, Agreement on intellectual property rights affecting trade).

In July 1999 the Court ruled, in its judgment in *Sebago et Ancienne Maison Dubois et Fils v. GB-Unic SA* (C-173/98) that the Member States may not provide in their domestic law for exhaustion of the rights conferred by the trade mark in respect of products put on the market in non-member countries.

ROLE OF THE EUROPEAN PARLIAMENT

In its various resolutions on intellectual property rights, and particularly on the legal protection of databases, biotechnological inventions and copyright, Parliament has argued for the gradual harmonisation of intellectual, industrial and commercial property rights. It has also opposed the patenting of parts of the human body.

THE TREATY OF ROME AND THE FOUNDATIONS OF THE CAP

LEGAL BASIS

Articles 32 to 38 in Title II of the EC Treaty.

OBJECTIVES

1. Basic raison d'être

When the Treaty of Rome established the Common Market in 1958, agriculture in the six Member States at the time was strongly affected by State intervention, particularly with regard to what was produced, setting prices, marketing products and farm structures. If agricultural produce was to be included in the free movement of goods while maintaining State intervention in the agriculture sector, national intervention mechanisms which were incompatible with free movement had to be removed, and at least some of them transferred to Community level; this is the basic reason on which the common agricultural policy is founded. Some Member States and all the farmers' professional organisations wanted to maintain strong State intervention in agriculture.

2. Particular objectives

a. Article 33 of the EC Treaty sets out the **internal objectives** of the CAP:

- to increase agricultural productivity by promoting technical progress and ensuring the optimum use of the factors of production, in particular labour;
- to ensure a fair standard of living for farmers;
- to stabilise markets;
- to assure the availability of supplies;
- to ensure reasonable prices for consumers.

b. Article 131 sets out the **objectives of the common commercial policy** applicable to trade in agricultural products.

ACHIEVEMENTS

Overall results

The CAP produced spectacular results. The Community was soon able to overcome the food shortages of the 1950s, achieving self-sufficiency and then generating cyclical and structural surpluses. There were a number of technical, economic and political reasons, in particular the gradual decline of Community preference and the replacement of local products on European markets by products imported on preferential terms. Changes in Community and world agriculture during the 1980s led to the establishment of new priorities. Under guidelines proposed in 1985 in the Green Paper (the Commission's discussion paper on the prospects for the CAP), the measures introduced by the Single Act (1986), decisions adopted by the Council in February 1988 and the 1992 and 1999 reforms (Agenda 2000) (*4.1.2.), new foundations were laid for the CAP.

Instruments of the CAP

1. Overall view

The main instruments of the CAP are the policy on markets and prices, based on common organisations of the market (COMs) and governing the production and marketing of agricultural products during the marketing year (*4.1.3. and 4.1.4.), and the rural development policy (*4.1.5.), coordinating the process of adapting farm structures (covering production techniques, farm sizes, training for farmers etc.). The CAP also makes use of the external trade policy (*4.1.7.) and the harmonisation of legislation (see below). It has a financing fund (*4.1.6.) and implementing machinery (see below).

2. Legislative harmonisation

The diversity of national laws related to production of or trade in agricultural and food products, for example with regard to the use of colouring agents and preservatives, the control of diseases or hormone use, etc., was a potential obstacle to intra-Community trade. Community harmonisation of these provisions was therefore essential. This has been achieved partly by laying down common rules, but mainly through mutual recognition of the rules in force in the Member States. It has not yet been completed.

3. Bodies playing a role in applying the CAP

a. The **'committees'** date back to 1961, when the first common organisations of the market were established. The Commission had proposed to give itself wide decision-making powers for running the COMs; some Member States felt, however, that this power should remain with the Council. The committees were a compromise between the two positions: management was entrusted to the Commission, but it had to consult a committee consisting of representatives of the Member States, using the qualified majority procedure. There are three types of committee: advisory, management and regulatory, depending on the different extents to which they allow freedom of decision to the Commission or give the Council a more or less binding role in the procedure (*1.3.8.).

b. Of the **professional organisations,** the most important are the Committee of Agricultural Organisations of the EU (COPA) and the General Committee for Agricultural Cooperation in the EU (Cogeca).

ROLE OF THE EUROPEAN PARLIAMENT

1. Scope for action

- Since the beginning (Treaty of Rome), Parliament has had only advisory powers on agriculture, and some Council decisions do not even require it to be consulted.
- The only area in which it has decision-making power is the impact of agriculture on human health,

since the Amsterdam Treaty gave it the power of codecision with the Council on public health matters.

2. Influence

Having no decision-making powers, Parliament has exercised a strong influence over the CAP since the beginning by using non-binding methods.

a. Own-initiative reports and resolutions

Following the Stresa conference in 1958, Parliament drew up own-initiative reports marking out the foundations of a common agricultural policy and it has continued to use this method since then, adopting an increased number of reports since it has been directly elected.

b. Conciliation procedures

The procedure for budgetary conciliation with the Council, introduced in 1975, has been used on a number of occasions in the agricultural context, particularly on structural policy, in some cases prompting substantial changes to the Council's 'common position' for example in 1985 in connection with reform of the wine-growing sector, in 1987 on the new structural policy, in 1988 on the package of agricultural stabilising measures, the proposal for cessation of farming and set-aside, and in 1988 on the reform of the Structural Funds and budgetary discipline applicable to the CAP, which led to an interinstitutional agreement between Parliament, the Council and the Commission.

c. Consultation procedures

From 1991 onwards, Parliament has concentrated on reform of the CAP. In its resolution adopted that year on the proposals for the 1992 Reform regulation, it approves the proposed reform while regretting that products from the Mediterranean are not covered by it. In 1994 the Committee on Agriculture debated the proposal to reform the wine-growing sector, which Parliament considered very unpromising, since it over-extended the principle of subsidiarity and was unsupportive in attempting to co-finance structural measures from income when other already reformed sectors were receiving 100% Community funding. The opinion resulted in a better proposal being tabled during negotiations on Agenda 2000 in 1999.

THE REFORMS OF THE CAP

LEGAL BASIS

Articles 32 to 38 EC.

OBJECTIVES

The objectives laid down for the CAP in the Treaty are still perfectly valid (*4.1.1.). The first CAP reforms simply adapted the mechanisms used in order to achieve those objectives more successfully. However, the reform initiated by Agenda 2000, whilst affirming the validity of the CAP objectives set by the Treaty, introduces further objectives:

- improving competitiveness by gearing agriculture more to the market;
- enhanced food safety and security;
- stabilisation of incomes, with 'modulation' and redistribution of aid between farmers;
- maintenance of a viable agricultural sector, incorporating environmental objectives;
- creation of additional income and employment sources;
- contribution to the economic and social cohesion of the Union.

ACHIEVEMENTS

A. First steps

1. From the time it was introduced in 1962 the CAP has fulfilled its objectives, notably the objective of ensuring secure supplies. Then, with its policy of guaranteed prices that were very high compared with the world market prices and an unlimited buying guarantee, the CAP started to produce more and more surpluses, which by the 1970s were already becoming structural in the case of certain products. When the heavy burden the CAP was starting to impose on the Community budget became untenable at the beginning of the 1980s, the Commission submitted COM(83) 0500 and the Green Paper [COM(85) 0333], which proposed the first measures to restrict institutional prices (prices determined by the public authorities) and the guarantee mechanisms specific to the Common Organisations of the Market (COM), such as the introduction of milk quotas and certain 'stabilisers' in the cereal and wine markets.

2. In February 1988, on the basis of the Commission document 'The Development and Future of the CAP', the European Council decided to take further steps, since the previous action had not been successful in reducing expenditure and surpluses. The most important measures were: the application of stricter budgetary discipline than had been established in 1984, extension of the budgetary stabilisers to virtually all sectors (exceeding a certain production level is penalised by a reduction in prices, aid and other institutional payments) and measures to reduce supply (such as the arable land set-aside system and a scheme for the extensification of production and conversion of surplus products, in which producers who agree to reduce their production volume are awarded premiums). To offset the resulting loss of income to farmers, a direct income aid system was introduced.

B. The 1992 reform

In view of the persistence of surpluses and the burden on the budget, in 1991 the Commission produced two discussion papers (COM(91) 0100 and COM(91) 0258) on the development and future of the CAP. On 21 May 1992, the Council reached a political agreement on the proposed reform. The reform brought about radical changes in the CAP, replacing a system of protection through prices with a system of direct income support, calculated specifically for each agricultural sector. From 1993 onwards, the reform was applied in the herbaceous crops, beef, sheep and goat meat, dairy products and tobacco sectors. It was gradually introduced in other sectors, such as dried fodder, cotton and sugar. In the wine and olive sectors it remained in abeyance, pending the new policies that would emerge from Agenda 2000.

C. Agenda 2000

1. The Commission communication

Agenda 2000, a financial framework for the Union from the year 2000 submitted by the Commission in July 1997 (COM(97) 2000), makes budget stabilisation a priority for the CAP and, whilst reporting that the 1992 agricultural reform has been highly successful, stresses the need to consolidate it by continuing the alignment with world prices, coupled with direct income support. That approach is justified by the need to avoid further market imbalances, the prospect of a further cycle of trade negotiations in the WTO, the wish to make agriculture more environmentally friendly and quality-conscious and, lastly, the prospect of enlargement. In that context, the need for a rural development policy is becoming increasingly urgent.

Agenda 2000 advocates further institutional price reductions, coupled with further direct support. For instance, it proposes a 20% reduction in the intervention price for cereals, offset by an increase in direct support, and alignment of the oilseed system to the arrangements for cereals; a 20% reduction in the price of beef and veal, with increased support; an average 10% price reduction in the dairy sector, whilst introducing new annual support and maintaining the quota system until 2006. Those measures will be accompanied by a ceiling for all direct income support and, in addition, States may introduce criteria for the differentiation of support, i.e. 'optional modulation'. To help farmers who might face difficulties, all the measures are accompanied by a consolidation of rural development (*4.1.5.).

2. The Council decision

The Berlin European Council on 24 and 25 March 1999 set as the objective for the reform a multifunctional, sustainable and competitive agriculture throughout Europe, including regions facing particular difficulties. It will be able to maintain the landscape and the

countryside, make a key contribution to the vitality of rural communities and respond to consumer concerns and demands regarding food quality and safety, environmental protection and maintaining animal welfare standards. The Council considers it can be implemented within a financial framework of an average level of EUR

40 500 million, plus 14 000 million for rural development and veterinary and plant health measures. The Commission is invited to submit a report before the first enlargement as a basis for a review of the agricultural guideline.

D. The mid-term review of the common agricultural policy (MTR)

The MTR (COM(2002) 394) of 10 July 2002 confirms that the **objectives for reform** are still the same as those set in Berlin and stated at the Göteborg Summit in 2001:

- a competitive agricultural sector, by making intervention a safety net and allowing producers to respond to market signals;
- production methods that support environmentally friendly products that correspond to society's expectations as regards the protection of the environment, animal health and welfare, and food safety and quality;
- the reform has the additional purpose of facilitating the enlargement process and the defence of the CAP in WTO talks.

1. It proposes **sustainable and market-oriented agriculture** based on:

- the decoupling and ecoconditionality of aid, by: switching from product support to direct producer support, based on a system of aid granted independently of production and conditional upon cross-compliance with mandatory environmental standards;
- the optional modulation of aid, the introduction of a specific instrument authorising Member States to reduce aid;
- degressive aid, by reducing direct payments to large farms to deal with the problems arising from the social distribution of direct support and the need to strengthen rural development, the second pillar, by transferring funds from the first pillar, price and market policy.

The MTR also proposes that the reduction in institutional prices for cereals and rice be continued and analyses the advantages and disadvantages of four different options for the dairy sector in relation to the quota system and asymmetric cuts in intervention price for butter and skimmed milk powder.

2. The Brussels European Council (meeting in October 2002) fixed a ceiling for expenditure on the first pillar of the CAP (market support and direct payments under heading 1A) for the EU of 25. These maximum amounts, which were laid down for the period from 2007 to 2013, were established on the basis of the maximum amounts for expenditure under heading 1A for 2006, which was laid down in Berlin for the EU of 15, and the maximum amounts for the expenditure of the new Member States for 2006.

E. The reform of the CAP in June 2003

The agriculture ministers of the EU reached agreement, on 26 June 2003 in Luxembourg, on an in-depth reform of the CAP based on the Commission's proposals submitted on 23 January 2003 (COM(2003) 0023). The different elements of the reform will come into force in 2004 and 2005. The key element of the reform, **the single farm payment,** is set to come into force in 2005, but Member States may delay its application until 1 January 2007 at the latest.

1. Objectives

The new reform of the CAP is intended to:

- enhance the competitiveness of a sustainable and more market-oriented European agriculture;
- stabilise the income of farmers while at the same time ensuring the stability of budgetary costs;
- produce high-quality foods which meet the public's expectations and demands;
- strengthen the negotiating position of the EU in World Trade Organization (WTO) discussions (*4.1.7.).

2. Measures proposed

The principal measures proposed to achieve those objectives are the following.

a. Introduction of a **decoupled single farm payment**, calculated on the basis of the amount of direct aid received during the reference period (2000 to 2002). In some cases, however, and subject to certain conditions, Member States will be able to retain limited coupling in order to avoid the abandonment of production.

b. This payment to be conditional upon cross-compliance with environmental, public-health and animal-welfare standards, and the requirement that all land is maintained in good agricultural condition (**ecoconditionality**).

c. Enhancement of rural development policy (*4.1.5.).

d. Reduction of direct payments **(modulation)** for farms receiving more than EUR 5 000 in direct aid, in order to fund rural development policy (by 3% in 2005, 4% in 2006 and 5% from 2007 to 2013).

e. Introduction of a financial-discipline measure in order to guarantee compliance with the agricultural budget set for the period up to 2013 by the Council, meeting in Brussels in October 2002.

f. Changes in CAP market policy (*4.1.4.):

- cereals: the intervention price will be retained but monthly increments will be reduced;

- dairy sector:
  - . reduction in the intervention price of 25% over four years for butter and 15% over three years for skimmed milk powder,
  - . extension of quota system to 2014/2015;
- reform of rice, durum wheat, nut, starch potato and dried fodder sectors;
- aid for energy crops (carbon credit);
- a formal undertaking to reform the olive oil, tobacco and cotton sectors; in September 2003, the Commission submitted its reform proposals for these three sectors, proposals which form part of the single farm payment system.

g. Introduction of a new farm advisory system.

ROLE OF THE EUROPEAN PARLIAMENT

The EP has supported all the CAP reforms, whilst expressing some concerns:

- it approved the 1992 reform, whilst critical of the shortcomings, in particular the fact that Mediterranean production had been overlooked (resolution of 11 December 1991);
- it then called for the completion of reform in sectors where it was in abeyance: wine, fruit and vegetables, olive oil (resolution of February 1996);
- it supported Agenda 2000 (reports A4-0368 of 1997 and A4-0219 of 1998);
- it had certain reservations on the mid-term review (resolution of 7 November 2002);
- it supported the proposals for reform submitted by the Commission in January 2003, whilst expressing an opinion in favour of partial decoupling and again calling for full codecision powers on agricultural policy (resolution of 5 June 2003).

COMMON ORGANISATIONS OF THE MARKET (CMOs): GENERAL CONCEPT

LEGAL BASIS

The Treaty of Rome defined the legal basis of an agricultural policy for the whole Community. The market policy – based on Article 32 and on basic regulations founded on that Article governing the various common market organisations (CMOs) (*4.1.4.) – is the oldest instrument of that policy and, until the 1992 reform, it was the most important.

OBJECTIVES

The market policy aims to guide agricultural production and stabilise markets. It works by placing products or groups of products under a particular regime, the common market organisation (CMO), in order to govern their production and trade, in compliance with the basic principles of the CAP (i.e. the single market, Community preference and financial solidarity) and in accordance with common rules and appropriate mechanisms. The latter are defined in basic regulations for each product, under two main headings: the internal regime, which is intended to protect Community production, and the regime governing trade with third countries, which is intended to manage the opening up of the markets.

ACHIEVEMENTS

A. Scope of the CMOs

The first CMOs, and the instrument that funds them, the EAGGF, were introduced in 1962. Shortly afterwards, the range of products placed under CMOs was expanded to cover all the agricultural products listed in Annex II toe Treaty, the two major exceptions being alcohol and potatoes. Although the CMOs are often similar in structure, they vary in organisational detail. They offer guarantees which vary according to the special economic and agricultural characteristics of the products concerned and are grouped under two main headings, i.e. internal market regulations and an external system of protection against third countries. Thus, for the most important products, the CMOs are a combination of common price systems, guarantee mechanisms and a system of trade with third countries, which in some cases are supplemented by instruments for organising production and marketing via producer groups or professional agreements, or various measures relating to quality standards and marketing. For other products, the CMOs contain only a system of direct aid or protection at the border.

When the new reform of the CAP decided on by EU farm ministers on 26 June 2003 is implemented, most forms of direct aid will be made subject to the principle of decoupling, which Member States will be able to apply, either in full or in part, in certain sectors and subject to certain conditions.

The market support policy and the mechanisms associated with it, having suffered the effects of currency fluctuations and of difficulties resulting from the structural production surpluses which had occurred in most sectors, were reformed in 1992 and 1999, in favour (*4.1.2.) of a progressive reduction in institutional prices (*4.1.3.) offset by the granting of direct aid and the generalised application of supply control measures.

Developments in the contribution made by the EAGGF Guarantee Section show the extent to which the CAP has been transformed into an incomes policy consisting of compensatory direct aids.

Contribution of the EAGGF Guarantee Section

Measures	%	1989	1999
Direct aids	(reforms of 1992 and 1999)	-	72
Market support	Export refunds	38	14
	Intervention	62	13
Other			1

Moreover, consolidation of restrictions on supply as a result of continuing surpluses, greater openness of the markets and reduction of subsidised exports following the Uruguay Round Agreement have led to the establishment of stabilising mechanisms sector by sector, which in some cases entitle European farmers or industrialists to guaranteed prices or production quotas.

B. CMO classification by support mechanism

Changes in the aims and means of organising the markets resulting from the 1992 and 1999 reforms have changed the design of the CMOs, which may now be classified in five categories according to the support mechanisms they use (Table I).

1. CMOs with guaranteed prices and automatic intervention

These still apply to **sugar** and **dairy products**. Minimum or guaranteed prices are paid to farmers by public intervention agencies in exchange for delivery of their products, where market prices are too low. The CMO for sugar, which the Commission had considered reforming by 2002, was extended for five years. However, in September 2003 the Commission submitted options for reform (*4.1.4.). The Agricultural Council, meeting on 26 June 2003 in the context of the new reform of the CAP, decided in favour of a review of market policy for the dairy sector (*4.1.4.).

2. CMOs with guaranteed prices and conditional intervention

These apply to wine, pigmeat and some fresh fruit and vegetables. They involve a guaranteed price scheme, although it is applicable only in the event of a serious market crisis.

3. **Mixed CMOs with guaranteed prices and additional direct production aids**These apply to cereals, rice, sheepmeat, bananas, milk and beef

(although from 2002 a conditional intervention scheme with a 'safety net' was set up). This category has grown since the CAP reform packages adopted in 1992 and 1999.

4. CMOs with direct production aids only

These involve aids at a flat rate or proportional to the quantities produced or yields. They apply to oilseeds, protein crops, feeding stuffs, tobacco, textiles, pulses, hops, processed fruit and vegetables, some fresh fruit and vegetables (asparagus and nuts), olive oil and olives.

5. CMOs without direct production support

These apply to poultry, eggs, processed agricultural products, flowers and plants, some fresh fruit and vegetables and other marginal or exotic products (ethyl alcohol, coffee, tea, etc.). These products receive only customs protection.

C. CMO classification by supply control mechanism

Since the most recent CAP reforms, there are four coexisting mechanisms for controlling production quantities (Table II):

1. Production quotas as such

Quotas are fixed at national level for milk and sugar and allocated to farms or enterprises. Producers exceeding the quotas in each Member State face penalties.

2. National guaranteed production quotas

These quotas, which are Maximum Guaranteed Quantities (MGQs), Maximum Guaranteed Areas (MGAs) and premiums per head of livestock, cover a long list of products. They are equivalent to direct aid to producers, reduced proportionally if predetermined thresholds are exceeded.

Table I
Products listed by market organisation mechanism after the Berlin Summit (Agenda 2000)

CMOs with guaranteed prices and automatic intervention	CMOs with guaranteed prices and conditional intervention	Mixed CMOs with guaranteed prices and additional direct production aids	CMOs with direct aids	CMOs with no support (customs CMOs)
. Sugar . Milk (until 2004)	. Wine . Pigmeat . Fresh fruit and vegetables	. Cereals . Rice . Sheepmeat . Bananas . Milk (2004) . Beef and veal (before July 2002)	. Oilseeds . Protein crops . Fodder . Tobacco . Cotton . Other textiles . Pulses . Processed fruit and vegetables . Hops . Asparagus . Nuts . Olives . Olive oil . Beef and veal (2002)	. Poultry . Eggs . Processed farm products . Flowers and plants . Some fresh fruit and vegetables . Potatoes . Ethyl alcohol . Other marginal and exotic products

NB. This table does not take into account the decisions of 26 June 2003 on the decoupling of aid. (*4.1.4.)

Table II
Sectoral mechanisms for controlling supply
after the Berlin Summit (Agenda 2000)

National production quotas	National guaranteed production quotas	Community guaranteed production quotas	National surplus quotas
. Sugar and isoglucose (A and B quotas) . Vines (ban on planting) . Milk	. Rice (MGA) . Cotton (MGQ) . Feeding stuffs (MGQ) . Tobacco (MGQ) . Potato starch . Processed tomatoes . Cattle (per head) . Suckler cows (per head) . Sheep and goats (per head) . Herbacea (MGA) . Milk (2005/2006) . Olive oil . Olives	. Some processed fruit and vegetables(guarantee threshold for pears and peaches;processing threshold for citrus fruit; MGA for dried grapes) . Pulses (MGA) . Bananas (MGQ)	. Wine products (voluntary and conditional distillation volumes) . Fresh fruit and vegetables (producer organisation withdrawal thresholds)

3. Guaranteed production quotas at Community level

These quotas, which are calculated on the basis of overall EU production, are being phased out and at present onlyapply to some processed fruit and vegetables, pulses and bananas.

4. National quotas for surpluses

These quotas are for some Mediterranean products (wine, using approved distillation volumes) and some fresh fruit and vegetables (using thresholds for withdrawal from the market).

COMMON ORGANISATIONS OF THE MARKETS (CMOs): SECTORAL APPLICATIONS

A. CMO FOR CEREALS

Reform of arable crops (cereals, oilseed and protein crops or COP) is covered by Council Regulations (EC) Nos 1251/1999, 1252/1999 and 1253/1999 of 17 May 1999. In the past the core of the CMO was a State intervention system based on guaranteed prices, but since the 1993/1994 marketing year its main support mechanism has been a system of area payments, calculated per hectare and at regional level, not exceeding a maximum base area (established at national level or regional level within a Member State). The payment is calculated using basic amounts per tonne and historical reference yields. The basic amounts for arable crops were aligned from 2002/2003 at the level of EUR 63/tonne subject to specific provisions covering protein crops and durum wheat and traditional production zones. The average yields are determined in the regionalisation plan drawn up by each Member State. They may be adapted according to the specific structural characteristics of the producing regions, and differentiated for maize and for irrigated areas. This right to area payments, designed to compensate for the progressive fall in intervention prices (currently set at EUR 101.31/tonne), to bring them into line with world market prices, is subject to farmers withdrawing a percentage of their COP land from production. However, this set-aside requirement, fixed at 10% from 2000/2001, does not apply to small farmers (output of less than 92 tonnes), since the set-aside land may be used, under certain conditions, for non-food production.

The scheme at the borders has been adapted since the WTO Agreement on Agriculture (*4.1.7.) with in particular, since 1995, the establishment of fixed customs duties and respect for GATT Uruguay Round commitments that limit both the value and volume of export refunds. However, import duties for certain cereals are fixed in accordance with the intervention price (155% of the intervention price including monthly increases).

The debates on the next reform, intended by the Commission as part of the Mid-Term Review of the CAP and presented in January 2003 (COM/2003/0023 final), were finally resolved by the EU Agriculture Ministers on 26 June 2003. The principal measures are:

- maintenance of the intervention price of cereals (rye is excluded from the intervention regime but receives special compensation based on the funds released by modulation);
- 50% reduction in monthly increases;
- gradual decrease in the current supplement for durum wheat (from EUR 313/ha in 2004 to EUR 285/ha from 2006) in traditional production zones, with the application of decoupling from 2005, and gradual elimination outside these zones;
- maintenance of the basic amount for arable crops, accompanied by decoupling of direct payments which the Member States may, within predefined conditions and limits, apply partially. In order to prevent the risk of land being abandoned, they may decide either to maintain up to 25% of the current direct payments per hectare or maintain the production-based payments for durum wheat up to 40%. Decoupled aid will be provided in the form of a single farm payment calculated on the basis of historical references from the last three years; the new decoupling system is due to be introduced between 1 January 2005 and 1 January 2007 at Member States' discretion.

B. CMO FOR OILSEED CROPS

The CMO for oilseed crops was established in 1966. Since then, it has been restructured significantly due to the reforms of the CAP and multilateral trading restrictions (agreement known as the Blair House Agreement concluded as part of the GATT between the EEC and the United States). The 1991 reform thus resulted in the elimination of intervention and the establishment of a specific compensatory payment per hectare that was fixed at Community level and varied according to the traditional yield of each region. From 1994/1995, the Blair House Agreement imposed a framework on this specific aid in the form of a maximum guaranteed area (*4.1.7.). The reform of the arable crops sector approved as part of Agenda 2000 (Council Regulation (EC) No 1251/1999) envisaged a gradual alignment of the oilseeds payment per hectare with that of cereals.

C. CMO FOR PROTEIN CROPS

Following the example of the CMO for cereals and oilseeds, this CMO has provided compensatory aid per hectare since 1994/1995, subject to the set-aside requirement. In accordance with Council Regulation (EC) No 1251/1999, protein crops are eligible for a basic compensatory payment of EUR 72.5/tonne from the 2000/2001 marketing year onwards to ensure that their profitability in relation to other arable crops is guaranteed. On the basis of the proposals for the Mid-Term Review of the CAP presented by the European Commission, the EU Agriculture Ministers decided to convert the EUR 9.5/tonne supplement into a specific area payment of EUR 55.57 per hectare, within the limits of a new maximum guaranteed area (MGA) of 1.4 million hectares.

D. CMO FOR RICE

The CMO for rice involves a system of prices for the internal market and trade with third countries. The 1995 reform initiated by Council Regulation (EC) No 3072/1995 introduced a support system for Community rice producers similar to that in place for arable crops. Direct payments per hectare were introduced for the production of rice (*indica* and *japonica*) in exchange for a 15% decrease in the intervention price between 1996/1997 and 1999/2000. Intervention was also limited to the April-July period. At the same time, the CMO provides for a maximum guaranteed area (MGA) of 427 000 hectares, allocated among the producing Member States. If this is exceeded, the level of support is reduced. The intervention price is now EUR 298.35/tonne (paddy rice) while the direct payment per hectare within the limit of

the MGA is EUR 52.65/tonne (amount multiplied by the average national yield of 6 tonnes/hectare).

As part of the Mid-Term Review of the CAP, the Commission set out principles for the reform of the CMO designed to stabilise the market, especially in light of the expected impact of the 'Everything But Arms' initiative (proposal to open up the markets to the benefit of the least developed countries presented by the European Union in 2001. *6.4.2.). On this basis, the EU Agriculture Ministers decided on 26 June 2003 to set the intervention price at EUR 150/tonne, limit intervention to 75 000 tonnes per year and increase the direct payment to EUR 177/tonne (EUR 102/tonne of this payment is integrated in the single farm payment, allocated on the basis of historical rights). The Council also called on the Commission to begin discussions in the WTO on the modification of the bound duties applicable to imports.

E. CMO FOR SUGAR AND ISOGLUCOSE

This CMO is based on a system of guaranteed prices for sugar and sugar beet (Council Regulation (EC) No 1785/1981). Intervention is provided for limited quantities corresponding to a production quota for which there is an almost total guarantee (Quota A) and a quota with a partially guaranteed price (Quota B). These production quotas are divided between the Member States but allocated to enterprises. The quantities of sugar in question are sold on the Community market or exported with refunds. In addition to the guaranteed quantities, sugar also comes under Quota C, which can be exported without a refund. The CMO includes a system of levies on production and storage to ensure a neutral effect on the budget. To prevent repercussions on prices inside the EU from fluctuations in the price of sugar on the world market, there are plans for a scheme at the borders based on import levies and export refunds, although the value and volume of subsidised exports are limited.

The CMO for sugar was renewed in May 2001 for a period of 5 years (until 2005/2006), in accordance with Council Regulation (EC) No 1260/2001, subject to several changes to the system, including a reduction in Quotas A and B. However, in September 2003 the Commission presented its options for reform (extension of the CMO as a whole; elimination of quotas, reduction in prices and introduction of a form of single farm payment; end to the current system to encourage a liberalisation of the sector).

F. CMO FOR OLIVE OIL

1. General development

This CMO came into force in November 1966 (Council Regulation (EEC) No 136/66) with a mixed system of support, intervention prices and aid for production and consumption. In addition to the olive areas eligible for production aid within the limit of the maximum guaranteed area, the CMO established minimum prices, protection at external borders, a mechanism for public and private storage, and export refunds. There have been several reforms since then.

2. The 1998 reform

Presented as part of Agenda 2000 and implemented through Council Regulation (EC) No 1638/1998, this reform established a transitional system applicable to the 1998/1999 to 2000/2001 marketing years based on:

- an increase in the maximum guaranteed quantities (MGQ) (from 1 350 000 to 1 777 261 tonnes), divided up into quantities for each producing country;
- the establishment of a single production aid based on the quantity of oil actually produced (EUR 132.25/tonne), reserved for areas that were planted before 1 May 1998 (subject to derogations);
- the abolition of consumption aid and aid for small farmers, and replacement of the buying-in system with a private storage system implemented when there is serious disturbance of the market;
- maintenance of the principle of export refunds (but with a zero rate);
- levies on production aid to finance measures to improve the quality of production and the operation of producer organisations.

3. The 2001 reform

Implemented through Council Regulation (EC) No 1513/2001, this reform extended the transitional system until the end of the 2003/2004 marketing year. However, it envisages limiting production aid for olive oil to those olive trees included in a geographic information system. It also includes new measures concerning quality (definition of categories of olive oil, analysis method, marketing standards, etc.).

4. Latest proposals

As part of the second series of measures concerning the reform of the CAP, in September 2003 the Commission presented proposals involving decoupling of the majority of support and integration of the single farm payment into the legal framework. In order to prevent olive groves from being abandoned in important producing regions, which could result in the current system of production aid being simply converted into a single farm payment, it proposed that the Member States should retain 40% of the production aid allocated to this sector under national envelopes and that producers should be granted a premium calculated on the basis of the number of trees or hectares.

G. CMO FOR FRUIT AND VEGETABLES

1. The CMO for **fresh fruit and vegetables** comprises the following instruments:

- a classification system for products by reference to common, compulsory standards;
- an intervention system;
- a mechanism for recognition of producer organisations (POs) and an aid system for them;
- regulation of organisations and interprofessional agreements;
- a system of national and Community controls;
- a system of trade with non-member states.

The initial provisions of the common market organisation for fruit and vegetables were drawn up in 1962. The latest reform, which took place in 1996 with Council Regulation (EC) No 2200/1996, ensured better organisation of supply by strengthening the POs and their technical resources. This improvement is characterised by stricter criteria for the recognition of POs and the creation of an operational fund cofinanced by the EU and by contributions from member producers. It is used to finance the measures set out in the POs' multiannual operational programmes (in particular promoting the quality of products and environmental actions) and withdrawals not covered by Community compensation (set, with this reform, at an unprofitable level so as not to encourage production). A five-year transitional period was established for the adaptation of the POs' programmes on the basis of commercial criteria and for the reduction of withdrawal compensation and the promotion of crop conversion. Specific solutions were also drawn up to resolve the problems affecting certain products of economic importance at local or regional level. In order to encourage concentration of supply, which was still considered to be insufficient, new measures were adopted on 4 December 2000 (Regulation (EC) No 2699/2000) aimed mainly at simplifying the methods for financing the operational funds for POs.

2. There is a specific scheme for **processed fruit and vegetables**, the main provisions being set out in Council Regulation (EC) No 2201/96, which established a mechanism for processing aid and measures concerning trade with third countries. This system was modified by Regulation (EC) No 2699/2000. The system of processing aid for POs for certain products supplied for processing (tomatoes, peaches and pears) requires processing contracts to be drawn up. Community aid depends on the weight and the product supplied (EUR 34.5/tonne for tomatoes; EUR 47.70/tonne for peaches; EUR 161.70/tonne for pears). Community and national processing thresholds were established. If these are exceeded, penalties are applied. The basic Regulation also provides for a production aid scheme for dried figs and prunes derived from dried 'd'Ente' plums (granted to processors subject to conclusion of a processing contract and payment of a minimum price to producers), a system of aid for land cultivated for the production of certain varieties of dried grapes, and various measures to promote certain processed products. Finally, an aid scheme for producers of certain citrus fruits was established on the basis of Council Regulation (EC) No 2002/1996, amended in 2000 by Regulation (EC) No 2699/2000. This system also operates on the basis of contracts between POs and processors, Community aid for POs for the quantities supplied for processing, and Community processing thresholds divided among the Member States and fixed for each product, which, if overrun, result in the application of sanctions in the form of a reduction in aid.The Commission was due to present proposals for a further reform of this sector in 2003.

H. CMO FOR THE WINE SECTOR

Management of the wine sector, which has been covered by a CMO since 1970, is based on two types of measures:

- withdrawals from the market (storage and distillation) determined during each marketing year;
- a system of premiums for grubbing up vines, supplemented by the prohibition on new plantings, the objective being to reduce production potential in order to achieve market balance.

The system distinguishes between quality wines (QWPSR) and table wines. The mechanisms of this CMO apply only to the former, with the exception of the measures concerning the grubbing-up programmes and the distillation of the by-products of vinification. Following an initial, unsuccessful attempt in 1993, in 1998 the Commission presented, as part of Agenda 2000 (COM(98)182 and 370), new proposals for reform designed to encourage European production to adapt to the increased demand for quality wine through restructuring and conversion measures. Approved by the Council in May 1999 (Regulation (EC) No 1493/1999), the new CMO entered into force on 1 August 2000. It sets out provisions for the entire sector, including:

- control of wine production potential (framework for planting rights until 2010, plan to restructure production, abandonment premium);
- market mechanisms (aid for private storage, for distillation, for new markets, etc.);
- producer organisations and interbranch organisations;
- trade regime with third countries influenced by the provisions of the WTO Agreement on Agriculture (reduction in customs duties and export refunds).

Some provisions relating to labelling and monitoring of production, adopted provisionally, will apply from 2003 whilst new proposals for reform were expected at the end of the year.

I. CMO FOR TOBACCO

The measures implemented as part of this CMO, created in 1970, confirm the Community's commitment to tobacco growers, whose income is in general largely dependent on premiums. They also take account of the importance of the jobs in this sector and the difficulty of converting the some 130 000 hectares currently dedicated to this labour-intensive crop without running the risk of abandonment, and thus desertification, of certain rural areas that are often situated in the least developed regions of the Union. In this context, several important reforms have taken place, including the 1992 reform (Council Regulation (EEC) No 2075/1992), which established premium and production limitation systems (overall Community threshold, specific guarantee thresholds for each variety group, processing quota scheme), and abolished intervention and export refunds, and the 1998 reform, launched as part of Agenda 2000 (Council Regulation (EC) No 1636/1998). This reform aimed to:

- encourage the production of quality tobacco by linking part of the premium paid to producers to the quality of their production determined by the purchase price;
- give greater consideration to public health and environmental requirements by deducting 2% of the premiums paid to enable the sector to help finance the tobacco research and information fund and ensuring that producer groups finance actions

aimed at increasing respect for the environment from the specific aid they receive;

- allow producers to switch away from tobacco, through a system for the buying-back of quotas to benefit producers who wish to give up tobacco cultivation;
- add flexibility to the quota system by facilitating transfers between varieties and transfers between producers of their production quotas;
- simplify management of the sector by replacing the current distribution of quotas to individual producers with a three-year distribution to producer groups.

Council Regulation (EC) No 546/2002 adapted the levels of the premiums and the guarantee thresholds (by variety group and by Member State) for the 2002, 2003 and 2004 harvests and increased the deduction for the Community tobacco fund. Continuing the implementation of the reform of the CAP based on decoupling and the single farm payment, in September 2003 the Commission outlined measures for reform: total decoupling of the premium introduced gradually over three years and phasing-out of the tobacco fund, accompanied, during the transitional period, by the establishment of a financial envelope under the second pillar of the CAP for the restructuring of tobacco-producing regions.

J. CMO FOR BANANAS

The CMO for bananas (Regulation (EEC) No 404/1993) entered into force in 1993 and aimed to fulfil a number of, often contradictory, requirements of the Member States and third countries. It thus sought to reconcile:

- the free movement of bananas within the single market, whilst maintaining reasonable prices for consumers;
- respect for the EU's commitment to the ACP banana producers concerning access to traditional Community markets;
- maintenance of the preference for EU producers situated in outermost regions (the Canaries, Madeira, Martinique, Guadeloupe and Crete);
- respect for the commitments made within the WTO.

To achieve this, the CMO established an income support scheme for Community producers (compensation for loss of income from marketing and single premium for producers ceasing production) and a common system for trade with third countries (customs protection for the Community market based on tariff quotas).

Following complaints on three occasions (in April 1993 to the GATT organisations, in 1997 and in 1999 to the WTO) and having been condemned due to their incompatibility with the multilateral trading rules, some aspects of the Community banana import system thus had to be amended. In November 1999, the Commission therefore proposed the introduction of a system based on tariffs alone over a six-year transitional period during which a tariff quota system, accompanied by a preferential tariff for the ACP countries, would apply. At the same time, it sought to resolve the tricky issue of the distribution of import certificates among operators, and in particular the definition of the reference period taken into account. The lack of agreement with its trading partners also led it in July 2000 to propose a quota system based on the 'first come, first served' principle. Under pressure from the trade sanctions imposed by the Americans, the Commission reached an agreement with the United States and Ecuador giving preference to the option of historical references. New provisions on the management of quotas were thus adopted in July 2001 (phase I – Council Regulation (EC) No 896/2001; phase II – Council Regulation (EC) No 2587/2001):

- Quotas A (2.2 million tonnes, consolidated quota) and B (453 000 tonnes), subject to a customs duty of EUR 75/tonne, open to 83% of traditional operators on the basis of historical references (1994-1996) and 17% of non-traditional operators;
- Quota C, totalling 750 000 tonnes, reserved for imports from ACP countries.

In November 2001, the EU obtained derogations in the WTO guaranteeing the ACP banana-producing countries preferential market access. An overall assessment of the CMO is to be presented by the Commission by the end of 2004.

K. CMO FOR MILK AND DAIRY PRODUCTS

This CMO is governed by Regulation (EC) No 1255/1999. It is based on a system of quotas at national level. If the quotas are exceeded, penalties are applied in the form of additional levies. It also includes a system of public intervention, private storage, production aids for using milk in animal feedingstuffs and processing milk into casein, special measures to reduce stocks, and some aids to reduce and/or cease production. Import levies and export refunds are also applied. The reform of the mechanisms of the CMO for dairy products began with the Agenda 2000 proposals. The 1999 Berlin Council agreed to reduce institutional prices (by 15% in three stages from 2005/2006) in exchange for a direct premium based on the quota by producer and calculated on the basis of a flat rate per tonne.

Giving priority to the decisions for reform taken as part of Agenda 2000, the Council has not fully abided by the proposals to extend and accelerate the reform of the milk sector proposed by the Commission in January 2003. It has opted in favour of:

- extending the system of milk quotas to the 2014/2015 marketing year;
- phasing-in direct aid by 2007, which will be part of the single farm payment from 2008, unless the Member States decide to introduce decoupling at an earlier date (payments set at EUR 11.81/tonne for 2004; EUR 23.65/tonne for 2005 and EUR 35.50/tonne from 2006);
- a further 25% reduction in the intervention price for butter between 2004 and 2007 together with a decrease in intervention purchases (volume of 70 000 tonnes in 2004, falling by 10 000 tonnes per year to reach 30 000 tonnes in 2007);
- maintaining the Agenda 2000 provisions concerning the reduction in the intervention price for skimmed milk (5% decrease over three consecutive years between 2004 and 2006);
- the general increase in quotas decided on as part of Agenda 2000 from 2006 (gradual increase in quotas of 1.5%).

L. CMO FOR BEEF

1. General development

The current structure of the CMO for beef includes intervention mechanisms, a system of direct premiums and arrangements for trade with third countries. However, the system of direct payments to producers has now overtaken the traditional market management mechanisms (protection at borders, export refunds, system of public intervention/aid for private storage), absorbing over three quarters of the funds allocated to the sector (apart from the direct aid linked to bovine spongiform encephalopathy – BSE). Following a policy to encourage production with a view to meeting the Community beef shortfall, the destabilisation of the market (caused in particular by the establishment of dairy quotas in 1984 and heightened by the competition in the white meat sector made more competitive by the fall in the price of animal feedingstuffs) led the Community to adopt various measures to improve the situation (adjustment of intervention in 1986, modification of the buying-in scheme in 1989) and, finally, to carry out an in-depth review, in 1992 and 1999, of the CMO for beef. The Community beef market has for several years been hampered by structural difficulties aggravated by the recent health and veterinary crises (BSE in 1996 and 2000, foot and mouth disease in 2001), which precipitated the trend towards a fall in consumption, caused a significant reduction in exports and resulted in a substantial decrease in prices.

2. First reform

Presented in a context of overproduction and restriction of the European agriculture budget, this reform aimed to adjust beef supply to meet demand by limiting production through the dual mechanism of lowering intervention prices and providing direct aid linked to control of supply, and by integrating the desire for production that was more environment-friendly.

3. Second reform

Established by Council Regulation (EC) No 1254/1999, this reform reaffirmed these guidelines by imposing a further 20% reduction in institutional prices (to be applied in three stages during the marketing years 2000/2001 to 2002/2003). To offset this, head of stock premiums paid to producers were adjusted and increased as were the relevant ceilings (special premium for male bovine animals, premium for suckler cows, slaughter premium, extensification premium, deseasonalisation premium, additional payments from national envelopes). In order to limit encouragement to intensive production, the mechanism is restricted, on the one hand, by quotas on animals on which premiums are payable for each holding (based on ceilings for each premium) determining the number of animals eligible for premiums in the territory of the Member States and the number of premium rights and, on the other hand, by stockage density thresholds expressed as a number of livestock units per hectare of forage area. In light of the serious disruption of the market caused by the second BSE crisis in October 2000, new regulations were drawn up (Council Regulation (EC) No 1512/2001) in the form of stricter conditions for eligibility for the premiums applicable for 2002 and 2003. Moreover, in accordance with Agenda 2000, the intervention system was modified from July 2002. Since then, in order to stabilise market prices, private storage aid may be granted where the average Community market price recorded is less than 103% of the basic price, set at EUR 2 224 per tonne for carcasses of male bovine animals. However, a safety net enables the Commission to launch invitations to tender for buying-in where the average market price in a Member State or region of a Member State falls below EUR 1 560 per tonne over two consecutive weeks (i.e. 70% of the basic price).

4. 2003 reform

On the basis of the proposals for reform presented by the Commission in January 2003, the Agriculture Ministers agreed to introduce the principle of decoupling and the single farm payment but with an *à la carte* approach. This allows the Member States to decide to keep:

- either up to 100% of the current premium for suckler cows and up to 40% of the slaughter premium;
- or up to 100% of the slaughter premium;
- or up to 75% of the special premium for male bovine animals.

Member States can also choose when to introduce the new decoupling system (on either 1 January 2005 or 1 January 2007).

M. CMO FOR SHEEPMEAT AND GOATMEAT

1. The CMO for sheepmeat and goatmeat, established in 1980 and revised in 1989 and 1992, was reformed in 2001 on the basis of Council Regulation (EC) No 2529/2001. This CMO is based on measures concerning the internal market (system of premiums and private storage) and arrangements for trade with third countries. The last reform notably replaced the system of variable premiums for ewes (compensatory premium for sheep) with a system of flat-rate premiums, irrespective of changes in the market price (ewe premium, goat premium, supplementary premium to producers in less-favoured areas, amounting to EUR 21, EUR 16.8 and EUR 7 per unit respectively). These premiums are granted within the limits of individual ceilings and subject to respect for national ceilings for individual rights totalling 79.164 million. The reform also introduced national envelopes, considered to be flexible, for the allocation of additional aid on the basis of common guidelines. Intervention measures have, finally, been maintained in the form of private storage aid.

2. A Commission report on the environmental consequences of breeding sheep and goats in certain regions of the Community, the impact of the premium scheme and the operation of the additional payments system, taking into account the consequences of the improvement in the identification and registration of sheep and goats, should be presented by 2005.

3. The sheep and goat sector did not escape the agreement on reform reached on 26 June 2003 or the application of the decoupling principle. However, the

Member States may decide, within predefined conditions and limits, to apply decoupling only partially, opting instead to maintain up to 50% of production aid for sheep and goat premiums, including the supplementary premium in less-favoured areas.

N. CMO FOR PIGMEAT

The CMO for pigmeat, established by Council Regulation (EEC) No 2759/75, is a very liberal organisation which, in practice, involves only two market support measures: export refunds and private storage aid (the latter to be implemented when the market price is less than 103% of the basic price). While refunds have had to be reduced in line with the WTO Agreement on Agriculture, external protection has been guaranteed through customs duties.

The plan to create a Pigmeat Regulatory Fund, put forward by the Commission in 2000 and approved by the European Parliament, proved unsuccessful.

O. CMO FOR POULTRY AND EGGS

The CMO for poultry and eggs (Regulation (EEC) No 2771/75) does not include any market support measures (thus no guaranteed prices or direct aid), only protection at borders with a very low customs duty in accordance with the agreement reached during the GATT Uruguay Round. Minimum access quotas have been instituted, for which customs duties are limited to a percentage of the basic tariff. Moreover, a special safeguard clause provides for additional duties where the volume of imports rises too sharply or the price of imports falls too low. This safeguard clause has been invoked regularly. Poultry exports receive export aid based on quotas, largely used for the period of application of the WTO Agreement on Agriculture.

RURAL DEVELOPMENT POLICY

LEGAL BASIS

Articles 36 and 37 EC.

OBJECTIVES

The aim of the CAP reform adopted by the Berlin European Council under Agenda 2000 is to develop a model for European agriculture (*4.1.2.). The future of the model is closely linked to the balanced development of rural land, which covers 80% of the Community's territory. Agricultural and rural policy plays a key role in the territorial, economic and social cohesion of the Union and in the protection of the environment. Alongside market measures (**first pillar)**, rural development has become the **second pillar** of the CAP as an essential component of this European agricultural model. Its aim is to create a cohesive and sustainable framework safeguarding the future of rural areas, based in particular on agriculture that is multifunctional, i.e. capable of providing a range of services going beyond the mere production of foodstuffs, and on the ability of the rural economy to create new income and employment sources whilst conserving the culture, environment and heritage of rural areas.

ACHIEVEMENTS

A. Embryo of a rural development policy - first structural measures

The first Community rural development measures were the three 1972 directives on farm modernisation, on 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 No 797/85 on improving the efficiency of agricultural structures, which introduced measures to promote investment in agricultural holdings, installation of young farmers, afforestation, land use planning and support for mountain and hill farming and less-favoured areas. All those measures were to be backed by a programme and financed jointly by the Community (EAGGF Guidance Section, *4.1.6.) and the Member States. But until the 1988 reform of the Structural Funds the budget allocation for all those structural agricultural programmes was somewhat limited.

B. The 1988 reform of the Structural Funds

Since that reform (*4.4.1., 4.4.2. et 4.4.3.) structural agricultural policy has been part of a regional and rural development policy that is financed by the other Structural Funds and no longer solely by the EAGGF Guidance Section. The Community structural measures have several fundamental objectives, of which regions whose development is lagging behind (objective 1), adjustment of agricultural structures (5a) and development of rural areas (5b) are 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, the biggest user of land. It introduced major changes in the CAP protection system (*4.1.2.) and measures (known as accompanying measures because they accompanied the market policy) to offset the reduction in farmers' income as a result of the reform. The measures concerned conservation of the environment, afforestation and an early retirement scheme. It should be noted that for the first time the Guarantee Section of the EAGGF is starting to finance measures that are not directly market-related.

2. The reform of the Structural Funds

The 1992 reform of the Structural Funds (*4.4.1., 4.4.2. and 4.4.3.) 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. They are supported by the EAGGF Guidance Section.

D. Agenda 2000

1. General objective

The aim of Agenda 2000 is to adapt agriculture to the changes required by the new, more market-oriented policy since, although direct income support is to be increased, the changes will affect the economies of the rural areas generally and not just farmers' incomes. In addition, the diversification of activities in rural areas can be used to supplement agricultural income, and some activities (such as the development and marketing of high quality products, rural tourism, conservation of the environment or cultural heritage) might open up new prospects for rural life.

2. Overall concept

The idea is to create an integrated and sustainable rural development policy through a single legal instrument which will make rural development and the price and market policy more cohesive and support all the components of rural development flexibly and transparently. That approach was established by Council Regulation No 1257/1999 on support for rural development from the EAGGF.

3. The start of the measures

a. The rural development measures introduced by the new regulation, with the Community contributing a varying percentage of the financing according to the type of measure and geographical location, are as follows:

- investments in agricultural holdings to help improve agricultural incomes and living, working and production conditions;

- human resources development:
  - . setting-up aid for young farmers,
  - . support for early retirement,
  - . support for vocational training;
- compensation for less-favoured areas and for areas with environmental restrictions;
- support for farming practices designed to safeguard the environment;
- rationalisation of processing and marketing of agricultural products to help increase their competitiveness and added value;
- support to improve the economic, ecological and social functions of forests;
- lastly a wide range of different measures to develop all the Community's rural areas, based on experience with the programmes implemented in the regions whose development is lagging behind or rural areas with conversion difficulties (former Structural Funds objectives 1, 6 and 5b).

b. The rural development measures:

- in objective 1 areas are integrated into the measures aiming to promote development;
- in objective 2 areas accompany the support measures; and
- in the remaining territory are to be integrated into the planning for rural development schemes (except in the case of accompanying measures).

Under the new Structural Funds regulation (*4.4.2.), the Community financing source for rural development measures differs according to the territory concerned, except for the 'accompanying measures' which are financed by the EAGGF Guarantee Section throughout the Community.

Mention should be made of the Leader+ Community initiative, financed by the EAGGF Guidance Section, which promotes the implementation of original strategies for integrated sustainable development.

It was decided by the Berlin European Council (*4.1.2.) that the average maximum amount available each year for rural development and for accompanying measures in the period 2000-2006 is about EUR 4 300 million.

E. The mid-term review and prospects for rural development

1. The mid-term review (MTR) (*4.1.2.) is based on the idea that the rural development policy approach introduced by Agenda 2000 will remain limited for as long as resources are not geared to needs and only 16% of total EAGGF expenditure (and 10% of EAGGF Guarantee Section expenditure) goes to rural development. It is essential to increase those resources if agricultural and rural policy is to succeed in its task of promoting territorial, economic and social cohesion and conservation of the environment.

2. The MTR therefore proposes:

- that funds be transferred from the first pillar of the CAP to the second pillar by means of a progressive reduction in direct payments (modulation) from 2004;
- that the second pillar be consolidated by extending the scope of the accompanying measures: by adding new rural development measures to the four existing measures in Regulation 1257/99, via the introduction of two new chapters, 'Food Quality' and 'Meeting Standards'.

F. The reform of the CAP in June 2003

The reform decided on in June 2003 (*4.1.2.) confirms that rural development is one of the fundamental elements of the CAP and consequently includes the following legislative measures to strengthen it.

1. Increase in the total amount of funding, paid for out of the funds released by the modulation of aid to large farms (a 5% modulation rate should make it possible to release an additional EUR 1 200 million from 2007).

2. Extension of the scope of rural development instruments from 2005 onwards in the following areas.

a. Food quality

Farmers taking part in approved programmes to improve product quality and production processes will receive, provided certain guarantees are given to consumers, 'quality' aid up to a maximum amount of EUR 3 000 per farm per year. Information and promotion campaigns by producer groups will be able to receive funding for up to 70% of eligible costs.

b. Compliance with standards

It will be possible to give temporary and degressive support to farmers to help them to adapt to the introduction of strict Community standards regarding the environment, public health, animal and plant health, animal welfare and safety in the workplace. This aid will be payable for five years and will be subject to a maximum amount of EUR 10 000 per farm per year.

c. Farm advisory service

Farmers will be able to receive support at the rate of 80% of the cost of this type of service, up to a maximum amount of EUR 1 500.

d. Animal welfare

Aid will be granted to farmers who undertake to improve the welfare of their farm animals beyond the level required by normal good farming practice, based on the additional costs and loss of earnings. This aid will be subject to a maximum amount of EUR 500 per livestock unit per year.

e. Young farmers

There will be an increase in the Community aid given to young farmers to finance their investments.

ROLE OF THE EUROPEAN PARLIAMENT

Apart from the reports adopted by the EP in relation to the CAP reforms (*4.1.2.), in June 1998 its Committee on Agriculture and Rural Development produced a report on the reform of the CAP in the context of Agenda 2000.

The report stressed that rural development policy should reinforce, supplement and adapt the CAP to protect the European agricultural model.

In May 2002, the committee produced report A5-0164 on rural development in the framework of Agenda 2000, setting out its views on the rural development policy adopted by the Berlin European Council in the framework of Agenda 2000 and proposing guidelines for the next MTR. It also called for codecision powers for the European Parliament on agriculture.

FINANCING THE CAP: THE EAGGF

LEGAL BASIS

Article 34(3) of the EC Treaty.

OBJECTIVES

The European Agricultural Guidance and Guarantee Fund finances the common agricultural policy or CAP. Set up in January 1962, it split in 1964 into two sections: the **Guarantee Section** and the **Guidance Section**. The Guarantee Section, which is much larger, has the purpose of funding expenditure resulting from application of the market and price policy. The second is used to finance structural policy measures. Under Articles 2 and 3 of Regulation 729/70 of 21 April 1970, such expenditure consists partly of refunds for exports to third countries granted under the common organisation of the markets and partly of intervention payments to regularise agricultural markets. Since 1993, however, following reform of the CAP, the Guarantee Section of the EAGGF has had to finance all or part of measures which are not strictly speaking to do with the management of agricultural markets (set-aside of land, income support, environmental protection, action to combat fraud, etc.). The Agenda 2000 decisions, transferring to the EAGGF Guarantee Section all structural measures at present in force outside Objective 1 regions, are the latest development in this direction.

ACHIEVEMENTS

The EAGGF forms an integral part of the Community budget, so the budget procedure determines its funds in the same way as other Community expenditure.

A. General development of the Fund

1. Guarantee Section

- The volume of payments made by the Guarantee Section rose from EUR 8 700 million in 1978 to 42 000 million in 2001, as shown in Table II (*4.1.9.). It has thus quintupled over the past 23 years, as much for internal reasons, such as the accession of new Member States, as for external ones such as the saturation of world markets. In spite of this growth, the percentage of the Community budget represented by Guarantee Section expenditure has declined, falling from 67% to 45% between 1988 and 2001. This long anticipated trend (Delors Packages I and II) is mainly due to the imposition from 1988 of a budgetary discipline, the 'agricultural guideline' (see D.1 below). That guideline has been strictly followed in the case of the Guarantee Section. In 2001 expenditure was actually EUR 2 500 million below the limit set. In the period 2000-2006, the ceiling is 44.1% of the Community budget.
- At the same time it developed plans under the farm structures and rural development policy (set-aside of land, conversion to other sectors, programmes for extensive production, etc.), most of them financed by the EAGGF Guarantee Section. Hence in real terms the reduction in Guarantee Section spending appears even greater.

2. Guidance Section

The appropriations allocated to the EAGGF Guidance Section are smaller: EUR 2 960 million in 2001, or only about 6.7% of the Guarantee Section. Nevertheless, the EAGGF Guarantee Section includes EUR 4 600 million allocated for rural development, bringing the total to EUR 7 560 million, 19.1% of the EAGGF Guarantee Section excluding rural development.

3. Agricultural expenditure still accounts for 51% of the Community budget in total (in 1988 the figure was 70%).

B. Distribution of expenditure

1. By country

- Tables I and II (*4.1.9.) show that France is the largest beneficiary of the EAGGF Guarantee Section in absolute terms, followed by Spain, Germany and Italy. However, it is clear from Table 1 (*4.1.9.) that, proportionally, the agricultural sectors in Finland, Sweden and Austria receive the greatest support from the EU, since EAGGF Guarantee spending accounted for between 76 and 144% of their agricultural net value added (NVA) in 2001.
- Table III (*4.1.9.) shows the spending trend for each Member State. It should be noted that all the States now obtain most of their benefits through direct aid. France is the Member State that receives the most in refunds, followed by the Netherlands and Germany. The countries receiving the least in refunds are Portugal, Greece, Austria and Sweden.

2. By sector

Table III (*4.1.9.) shows the distribution of Guarantee Section expenditure by sector in 2001, broken down by type of expenditure (refunds, intervention payments through prices and direct aids). The first three areas of expenditure are arable crops (cereals, oil-seed and proteins), beef and milk products.

C. Nature of EAGGF Guarantee Section expenditure

1. Characteristics

Spending in this section under the common organisations of the market (COMs):

- falls into the **compulsory** category (Article 272 EC), which means that it arises from the content of the relevant regulations (hence the importance of this section for agricultural incomes);
- is **difficult to predict**, as its volume depends on a number of variables: production levels, international prices, etc.;
- is **adjusted** during a marketing year to bring appropriations into line with requirements by adopting amended or supplementary budgets (supplementary and amending budget).

2. Categories

In addition, such spending is **classified** in terms of the economic nature of the measures put in place for the COMs.

a. Export refunds: as a result of the trend in world prices and the 1993 GATT agreements, they amounted to almost 7% of Guarantee Fund appropriations in 2001 (Table III, *4.1.9.).

b. Intervention payments through prices (aid for public or private storage): amounted in 2001 to 6% of appropriations (Table III, *4.1.9.).

c. Direct aids to producers or industries: amounted in 2001 to 87% of appropriations (Table III, *4.1.9.).

D. Structure and operating mechanisms of the EAGGF

To carry out the Fund's activities the Commission receives assistance from the EAGGF Committee comprising the representatives of the Member States. The Court of Auditors and Parliament's Committee on Budgetary Control provide a retrospective review. The Brussels European Council of February 1988 was of major importance in reaching agreement on the adoption of crucial measures whose principles are still in operation now, including the following:

1. Budgetary discipline

- To curb the rise in farm spending, the funds available were subject to 'budgetary discipline' through the establishment of an **agricultural guideline** laid down for the period 1988-1992 and set at ECU 27 500 million in 1988, with an annual growth rate of 74% of the rate of increase of EU GNP.
- The agricultural guideline was extended until 1999 by the Edinburgh European Council in December 1992, then until 2006 under Agenda 2000.

2. Early warning system

Each month the Commission presents a working document on the budgetary situation, to improve the information available to the budgetary authority. This makes it possible to monitor Guarantee Section expenditure month by month and chapter by chapter for each common organisation of the market to ensure that spending does not exceed the funds available.

3. Monetary reserve

This is a budgetary mechanism to amortise exchange-rate fluctuations in the market between the euro and the US dollar in relation to the exchange rate used for implementing the budget. The reserve receives funds from the Guarantee Section when the dollar goes up and finances Guarantee Section expenditure when it goes down.

- The reserve is not included in the financial guideline. Its initial value is EUR 500 million; funds are not transferred to or from the reserve below a threshold of EUR 200 million.
- Under decisions taken at the Edinburgh European Council the reserve may also cover possible cost increases of agri-monetary origin, even if this increases the risk of its depletion, in which case the Council has to take special measures to reprovision the EAGGF Guarantee Section.

4. Obligatory scheme to finance the depreciation of surplus stocks

The EU is required to depreciate stocks at the time of purchase or twice a year, and not at the time of sale as used to be the practice.

5. Fraud

There has been a significant increase in fraud in recent years. The number of infringements has risen steadily. To deal with the situation, the Commission has decided to tighten up inspection arrangements (e.g. more on-the-spot investigations and inspections) as well as administrative and criminal penalties.

ROLE OF THE EUROPEAN PARLIAMENT

The October 1993 interinstitutional agreement enabled Parliament to somewhat increase its impact on compulsory expenditure. Parliament decides on the total amount of EAGGF appropriations and how they are allocated by product and activity, though the Council has the final word. Parliament's main contributions to the operation of the EAGGF include its firm support for the amendment of Regulation 729/70 on the funding of the CAP, as a way of preventing the disputes arising from dialogue exclusively between the Member States' national departments and those of the regions concerned. Parliament's Committee on Agriculture and Rural Development argues that there is a need to set up a conciliation body in each Member State, with representatives of the regions on it, to facilitate dialogue between the regions and the Member State. Parliament takes the view that the Commission's estimates of expenditure for the budget are not precise enough, and it therefore intends to take a closer look at this area of the EAGGF Guarantee Section to monitor the level of discrepancy between estimated and actual spending. In this connection the debates on the agricultural section of Agenda 2000 have had a major impact on the future of the CAP, stabilising agricultural spending and, at the same time, reducing the Commission's margin for manoeuvre within the guideline.

EXTERNAL AGRICULTURAL POLICY: AGRICULTURAL AGREEMENTS UNDER WTO

LEGAL BASIS

In the context of the General Agreement on Tariffs and Trade (GATT), signed in Geneva in 1947, and the Agreement establishing the World Trade Organisation (WTO), signed in Marrakesh in 1994, the actions of the European Union and its Member States are governed by the following articles of the EC Treaty:

- 133 (common commercial policy);
- 300 (negotiation and conclusion of international agreements);
- 310 (agreements establishing an association involving reciprocal rights and obligations, common action and special procedure).

OBJECTIVES

The fourth WTO Ministerial Conference, held in Doha (Qatar) in November 2001, launched new trade negotiations on a broad range of subjects, including agriculture. In the area of agriculture, the talks had already begun in March 2000, in accordance with the provisions of Article 20 of the Agreement on Agriculture and in response to the requirements of the WTO agenda, to which the member countries had committed themselves at the previous negotiations.

The Conference's final Declaration confirmed the aims of the initial work, clarified the general framework for negotiations – which are now held as part of the Doha Development Agenda – and established a new timetable:

- the **objective** of the negotiations continues to be the establishment of a fair and market-oriented trading system through a programme of fundamental reform comprising strengthened rules and specific commitments on support and protection in order to correct and prevent restrictions and distortions in world agricultural markets;
- to achieve this, the **members have committed themselves to negotiations** aimed at substantial improvements in market access, reducing, with a view to phasing out, all forms of export subsidies, and substantial reductions in trade-distorting domestic support, by ensuring that special and differential treatment for developing countries is an integral part of all elements of the negotiations and by taking non-trade concerns into account;
- there are three key **deadlines** in this process: 31 March 2003 for establishing the details of the scheme; the Fifth Session of the Ministerial Conference (due to be held in September 2003) for the presentation of the comprehensive schedules; and 1 January 2005 for the conclusion of the negotiating agenda as a whole.

ACHIEVEMENTS

A. The legal framework

All of the WTO's agreements and memorandums of understanding on trade in goods apply to agriculture, which is also covered by certain provisions of the WTO agreements on trade in services (GATS) and on trade-related aspects of intellectual property rights (TRIPS).

However, agriculture is special in that it has its own specific agreement, the Agreement on Agriculture, whose provisions prevail.

1. The Agreement on Agriculture

The Agreement on Agriculture entered into force on 1 January 1995. Attached to the General Agreement on Tariffs and Trade (GATT) for goods, it is based on the general principles and specific provisions set out in the GATT. It is also based on the commitments made by each country in the schedules annexed to the Marrakesh Protocol (including, as part of the EU's commitments, the Memorandum of Understanding on Oilseeds between the European Economic Community and the United States as part of the GATT – Blair House Agreement). The Ministerial Decision on 'Measures concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries' and the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) supplement it.

The Agreement implements a programme for the reform of trade in agricultural products (over the period 1995-2000 for developed countries and 1995-2004 for developing countries), which lays down specific binding commitments in three major areas: market access, domestic support and export competition. There is a certain degree of flexibility as regards implementation for both developing country members (special and differential treatment) and least-developed and net food-importing developing countries (special provisions). Finally, the Agreement contains a clause on due restraint aimed at decreasing the risk of disputes (Article 13), preventing support measures implemented as part of the reform from being challenged before the WTO and its Dispute Settlement Body (DSB) until 2003.

2. Content of the reform programme

a. Market access

- 'Tariffication' programme (replacing various protection mechanisms with customs tariffs) and reduction in customs duties (average of 36% with a minimum of 15% for each product) accompanied by special safeguard provisions.
- Minimum access tariff quotas (at 3% - and up to 5% by the end of the implementation period - of domestic consumption over the base period 1986-1988).

b. Domestic support

- Reduction in certain domestic subsidies (Aggregate Measure of Support: AMS), which disrupt production of, and trade in, agricultural products (average of 20% in relation to the base period 1986-1988).
- Under the Blair House Agreement, limit on the total oilseed plantings for food purposes (5.128 million hectares in addition to a minimum 10% set-aside for producers receiving specific payments) and on the output from the processing of oilseeds planted on set-aside land for industrial purposes, up to a maximum of 1 million tonnes of soybean meal equivalent annually.

c. Export subsidies

Commitment to a 21% reduction in volume and 36% reduction in value.

d. Special and differential treatment for developing countries

- Fewer restrictions in terms of reduction or implementation period and exemption from reduction commitments for the least-developed countries.
- Specific provisions on food security and significant improvement in the opportunities and conditions for access for agricultural products of particular importance for these countries.

B. The current negotiations

1. Progress

The deadlines agreed upon up to now have barely been met.

a. The negotiations on the modalities for the commitments were not concluded by the deadline of 31 March 2003. The substantial differences between the WTO members resulted in them rejecting the compromise text presented by the chairman of the agriculture negotiations, Mr Stuart Harbinson. Since the beginning of the negotiations, little real progress had in fact been made. Several elements contributed to this situation, especially the mixed results of the Agreement on Agriculture, the significant differences between the members as regards, in particular, whether or not to recognise an agricultural exception, or even the way in which non-trade concerns should be taken into account in the multilateral rules, not to mention the contentious trade issues (hormones, bananas, GMOs) that had been brought before the WTO (at the expense of the EU in the case of the first two).

b. The Ministerial Conference held in Cancun from 10 to 14 September 2003, which was to assess the progress made since the last Ministerial Conference in November 2001 on the twenty or so chapters on the negotiating table (including agriculture) in accordance with the Doha work programme, also ended in failure. This was due to several factors, in particular the initial debate based on the discussions, the lack of political will in the preliminary negotiations and the controversy surrounding the so-called Singapore issues. However, although agriculture was the main stumbling block, in the end it was the refusal of the developing countries to discuss the Singapore issues that left its mark on the Conference. In addition to the criticism of the positions of the EU on the Singapore issues and those of the United States on the 'cotton' initiative put forward by four African countries, this failure was also attributed to the clumsiness of the revised draft ministerial text and the ill-adapted structures of the WTO.

2. Positions

The previous negotiations, held as part of the Uruguay Round, had proved to be particularly difficult. Launched in September 1986 at the instigation of the United States by the Punta del Este Declaration, they were in fact only concluded in December 1993 after a long bout of arm wrestling between the EC and the United States and a series of important events (failure of the Heysel Conference in December 1990; rejection by the EC of the Final Act presented in December 1991 by the GATT Director-General, Mr Dunkel; reform of the common agricultural policy (CAP) in May 1992; preliminary Blair House Agreement in November 1992).

The current negotiations are proving to be just as delicate, subject to the game of oppositions and alliances, in which the EU, Cairns Group and United States and the developing countries are the key players.

a. The European Union

Relying at times on a group of countries (known as the 'Friends of Multifunctionality') that share some of its ideas, the EU is mainly seeking a multilateral trading system that is better organised and more market-oriented but is also concerned about social, economic and environmental sustainability (in accordance with the overall negotiating proposal and specific documents: G/AG/NG/W/90; G/AG/NG/W/34 – Export competition; G/AG/NG/W/19 – Animal welfare and trade in agriculture; G/AG/NG/W/18 – Food quality; G/AG/NG/36/ Rev.1 – Notes on non-trade concerns). It refers to the efforts made and to be made in the future in the areas of domestic support (1992 and 1999 CAP reforms, agricultural agreement of 26 June 2003 introducing the decoupling of direct payments) and market access ('Everything But Arms' initiative, *6.4.2.) The proposal it recently presented on the modalities for the commitments reaffirmed its desire for balance in the continued reform of the agricultural trading system by ensuring special treatment for developing countries, due regard for environmental considerations, rural development and animal welfare, and fair distribution of the burden, especially among developed countries. However, these measures are to a large extent dependent on several conditions, in particular consideration of non-trade concerns, strict regulation of export credits for agricultural products, food aid, certain export practices of state-owned enterprises, and negotiation of specific commitments to guarantee fair access for certain agricultural products (such as wine and spirits).

b. The United States

Within the WTO the United States is busy trying to achieve a fundamental reform of the global trade in agricultural

products. Ignoring the criticisms concerning the level and forms of its domestic support policy, it seems to be prepared to reduce domestic support substantially, which will result in trade disruption (it is proposing, in particular, to lower the Aggregate Measure of Support to 5% of the value of production before eliminating it altogether).

c. The Cairns Group

Bringing together 18 exporting countries whose common interest is to reduce obstacles that are harmful to agriculture, this Group is very bitter towards the wealthy countries, which maintain a high level of subsidies. It is especially critical of the EU, which it holds responsible for the detrimental effects of the CAP on the agricultural world and the limited access to Community markets. It is hot on eliminating export subsidies, and very lukewarm about the concept of agricultural multifunctionality. In the belief that the disciplined approach agreed in the area of export competition is insufficient, **Japan** shares its view concerning the elimination of export subsidies, although it supports the EU's aim of giving greater consideration to non-trade concerns in the reform process.

d. The developing countries

Representing three quarters of WTO members, developing countries have become distrustful and seek to defend their own agricultural production and non-trade concerns (food security, means of subsistence, poverty, rural employment, etc.). They also call for special and differential treatment adapted to their specific situation (exemptions from the reduction commitments for the least-developed countries, special modalities or flexibility for small, developing island states or net food-importing developing countries). During the Cancun Ministerial Conference, they organised themselves into new alliances in order to promote their interests more successfully.

- Around 20 countries (G21), led by Brazil, India and China, came together to thwart the compromise on agriculture concluded on 13 August 2003 between the EU and the United States. Opposed to agricultural subsidies, the group called in particular for the abolition of export subsidies and stricter rules for food aid and export credits.
- A new alliance was formed during the second day of negotiations among the African Union, the ACP countries and the least-developed countries (**G90**) over a range of common negotiating positions on agriculture, market access for non-agricultural products, the Singapore issues and development issues. The African countries denounced, in particular, the poor access for their products to the markets of developed countries and the importance of tariff and non-tariff barriers. They also criticised the agricultural subsidies in developed countries (United States, EU and Japan), stating that they were one of the most questionable aspects of the Doha Round.
- Finally, an alliance of developing countries (**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 always called on the Commission to safeguard the interests of European producers and consumers as well as the interests of producers in those countries with which the EU has historically had particularly close relations (the ACP countries).

Its resolution of 18 November 1999 on the Commission communication on the EU approach to the WTO Millennium Round (COM(1999)331) expressed its support for the approach adopted by the Community's negotiators in championing multifunctionality and defending the European agricultural model. The resolution of 13 March 2001 containing the EP's recommendations to the Commission on the WTO Built-In Agenda negotiations reiterated this support and highlighted the importance of expressly acknowledging non-trade concerns and taking account of the public's demands regarding food safety, environmental protection, food quality and animal welfare. The EP has also given consideration to the negative judgements of the WTO's special groups (resolutions of 26 June 1997 on the 'hormones panel' and of 15 May and 18 September 1997 on the 'bananas panel').

THE AGRICULTURAL IMPLICATIONS OF ENLARGEMENT

LEGAL BASIS

Agricultural relations between the EU and the Central and Eastern European countries (CEECs), Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovak Republic and Slovenia, are governed by agreements that came into effect on 1 July 2000 (1 January 2001 for Poland and Lithuania), entered into under association agreements based on Article 238 EC.

OBJECTIVES

- To bring the candidate countries up to Community acquis level in the technical, economic and legal spheres.
- To that end, trade in agricultural goods is to be gradually liberalised through mutual tariff concessions and agricultural pre-accession aid will help the CEEC applicants transform and modernise their agricultural sector and rural regions in order to enable them to adopt the CAP acquis at the time of accession.

ACHIEVEMENTS

A. Problems arising from the situation of agriculture in the accession countries

As was made clear in a discussion paper produced by the Commission in 1995 (CSE(95)607), the situation of agriculture in the CEECs makes integrating them into the common agricultural policy a delicate task.

1. Importance of agriculture in those countries

a. Whereas the combined gross domestic product of the ten CEECS equals about 4% of that of the EU (see table), their agricultural output is 30% of the agriculture of the Fifteen. Their accession will result in a marked increase in the proportion of the EU's GDP represented by agricultural production.

b. The agricultural production of the CEECs might also increase after accession, due to the adoption of Western technologies and the incentive that will be provided by the high level of agricultural prices in the Union. Several CEECs are likely to become net exporters of agricultural products in the near future.

c. In the CEECs, agriculture is the dominant form of land use, covering on average more than 55% of total land area. In several countries a net migratory flow to the countryside has been noted as general economic conditions worsened during transition and agriculture played the role of buffer.

2. Consequences for the Union

a. The integration of the CEECs' agriculture into the present CAP will have significant **budgetary and trade implications** due to the extension of direct payments for income subsidies and export refunds. According to the forecasts and the methods of analysis used, the additional costs of management of the agricultural markets in an enlarged Union are estimated to be within the EUR 5 000 to 50 000 million range.

b. It will also create problems arising from the obligations the EU and the CEECs have entered into **under the GATT and the WTO**.

c. It will cause tensions on the markets.

d. Lastly, underemployment and hidden unemployment related to subsistence farming pose future challenges for a balanced development of rural economies.

B. Union responses to these problems

The European Commission has several times expressed the view that immediate implementation of the system of direct payments to the CEECs would fail to take account of the specific characteristics of the structural changes in those countries and might create social tension. It would be preferable to use the available resources to finance rural development and restructuring in the first instance.

1. Adopting those proposals, the European Council in Copenhagen (13 December 2002) decided that **direct aid** to future Member States would be introduced progressively over 10 years, rising from 25% of the Community rate in 2004 to 100% in 2013. They would, on the other hand, be eligible immediately for **market support measures** (export refunds and intervention).

2. The new **Community support** for pre-accession measures for agriculture and rural development (Sapard) (Council Regulation (EC) No 1268/1999) to prepare enlargement and solve priority problems in agriculture and rural development in the CEECS can be considered the temporary equivalent to the new second pillar of the CAP, which relates to rural development. Its annual budget is EUR 520 million for the period 2000-2006.

The countries have negotiated the programmes with the European Commission, which has approved them. The programmes incorporate the commitments entered into in order to reach the Community standard, with particular reference to food safety standards. Management of the programmes has been delegated to the national agencies, as has their financial management, which is to be undertaken by the financial agencies, the last of which were approved by the Commission in 2002.

3. A general set of guidelines is introduced by the regulation on coordinating aid to the applicant countries in the framework of the pre-accession strategy and an **instrument for structural policies for pre-accession** (ISPA) which is similar to the Cohesion Fund allocates EUR 1 000 million p.a. as aid for infrastructure.

4. The Commission has furthermore reoriented the PHARE Programme towards two priority objectives - strengthening administrative and judicial capacity and investments connected with the adoption and implementation of the acquis.

5. Lastly, to deal with the structural problems the Copenhagen Council adopted a reinforced rural development strategy with an overall budget of EUR 5 100 million for the period 2004-2006.

ROLE OF THE EUROPEAN PARLIAMENT

The EP has paid close attention to the agricultural implications of enlargement, through its Committee on Agriculture and Rural Development and in the Parliamentary Association Committees on which it is represented alongside Members of Parliament of the associated countries.

1. Parliament has urged that enlargement should not call into question the current level of support towards the agriculture of the Fifteen or the principles of the CAP (subsidiarity, financial solidarity, Community preference and the unity of the market) (see, for example, its resolutions of December 1996 (report C4-0023/96) and 4 October 2000). It has stressed that the Community's legislative acquis, particularly on veterinary, phytosanitary and animal welfare matters, must be transposed by the candidate countries in its entirety.

2. It supported the idea that the CAP in its present form should not be extended to the new members in full or immediately, with particular support for the proposal by the European Commission for progressive application of direct payments spread over 10 years (resolutions of 4 December 1997 and 13 January 2002).

3. However, it urged action by the Union to promote restructuring of the CEECs' agricultural sectors:

- regretting that the Commission had not developed a specific policy framework for, *inter alia*, the whole rural community (resolution of 4 December 1997);
- calling for an increase in EU aid for restructuring in the pre-accession phase (above-mentioned resolution of December 1996).

4. It has demanded powers of codecision on agricultural policy and the agricultural budget before any new member state is admitted to the EU (resolution of 4 October 2000).

5. Subject to those reservations, it unanimously adopted the policy proposed by the Commission in Agenda 2000 in its entirety (6 May 1999, *4.1.2.) and has even asked the Commission and the candidate countries to speed up the pre-accession operations (resolution of 13 January 2002).

THE CEECs COMPARED WITH THE EU (1999)

	Gross Domestic Product		Population	Employment	Agric. Surface
	million euro	% of agric.	million	% of agric.	million ha
Czech Rep.	50 000	3.4	10.29	5.2	4.28
Hungary	*45 400	*4.5	10.07	7.1	5.74
Poland	145 400	3.3	38.65	18.1	18.41
Slovak Rep.	18 300	4.1	5.39	7.4	2.44
Slovenia	18 600	3.2	1.98	10.2	0.49
Bulgaria	*11 700	*17.6	8.21	26.6	5.52
Romania	31 900	13.9	22.46	41.7	14.79
Estonia	4 800	5.1	1.44	8.8	1.00
Latvia	5 600	3.6	2.43	15.3	2.49
Lithuania	100 000	7.9	3.70	20.2	3.50
CEEC-10	345 500	5.1	104.63	22.0	58.66
EU-15	7 983 100	1.8	375.35	4.5	135.82
CEEC/EU	4%		28%		43%

* 1998

Source: *The agricultural situation in the European Union (2000 report).*

THE CAP IN FIGURES

TABLE I

Basic figures on Community Agriculture

	% AAU[1]		% FAP[2]		% AWU[3]		% EAGGF-Guarantee by MS[4]		% EAGGF-Guarantee/ NVAfc[5]		% GAV/ GDP[6]	
	1996	**2001**	**1996**	**2001**	**1996**	**2001**	**1996**	**2001**	**1996**	**2001**	**1996**	**2001**
B	1,0	1,1	2,6	2,6	1,1	1,2	2,9	2,2	50,2	41,6	1,3	1,1
DK	2,1	2,1	3,2	3,2	1,3	1,2	3,5	2,6	43,7	35,2	2,8	2,3
D	12,8	13,2	16,0	15,7	10,0	10,1	15,5	14,0	59,9	47,3	0,9	0,9
GR	3,7	3,0	3,9	4,0	8,9	9,2	7,2	6,2	37,4	32,0	8,4	6,7
E	21,6	19,7	11,7	12,3	15,6	15,5	10,3	14,7	20,4	30,0	4,6	3,6
F	21,7	23,0	22,4	22,5	16,0	16,8	24,4	22,0	40,4	38,4	2,5	2,2
IRL	3,2	3,5	2,2	2,1	3,3	2,9	4,3	3,8	63,9	72,3	5,5	2,5
I	11,1	11,6	14,8	15,1	20,0	20,2	10,8	12,7	20,6	25,1	2,8	2,4
L	0,1	0,1	0,1	0,1	0,1	0,1	0,1	0,1	23,0	42,4	0,9	0,6
NL	1,4	1,5	7,1	7,3	3,3	3,5	3,9	2,7	21,5	16,7	2,9	2,2
A	2,5	2,6	2,1	1,9	2,7	2,8	3,1	2,5	77,1	76,1	1,6	1,3
P	2,9	2,9	2,1	2,2	9,1	7,9	1,7	2,1	28,8	36,1	3,2	2,6
FIN	1,6	1,7	1,4	1,4	2,0	1,8	1,7	1,9	96,9	144,4	1,4	0,9
S	2,3	2,3	1,7	1,6	1,2	1,2	1,6	1,9	59,7	89,2	0,8	0,6
UK	11,9	11,8	8,8	8,3	5,5	5,5	8,9	10,4	35,6	57,4	1,3	0,7
EU-15	100,0	100,0	100,0	100,0	100,0	100,0	100,0	100,0	34,9	36,9	2,1	1,7

1 Agricultural Area in Use

2 Final Agricultural Production

3 Agricultural Work Unit

4 EAGGF Guarantee Section by Member State

5 % represented by EAGGF Guarantee Section in Net Value-Added at factor cost

6 % Gross Value Added of agriculture in the total economy

Sources:

31st Financial Report concerning the EAGGF Guarantee Section, Commission.

New Cronos, Eurostat.

TABLE II

EAGGF Guarantee Section expenditure by Member State in 1995, 1998 and 2001

(in ECUm/EURm and as a % of the total)

MEMBER STATES	1995		1998		2001	
	ECUm	% of EU-15 total	ECUm	% of EU-15 total	ECUm	% of EU-15 total
B	1 622,1	4,70	851,3	2,20	938,6	2,23
DK	1 389,4	4,03	1 154,0	2,98	1 114,2	2,65
D	5 380,0	15,59	5 553,0	14,33	5 880,1	13,97
GR	2 438,8	7,07	2 556,8	6,60	2 616,6	6,22
E	4 562,3	13,22	5 293,5	13,66	6 193,7	14,72
F	8 376,6	24,28	9 007,2	23,25	9 248,0	21,98
IRL	1 417,5	4,11	1 632,6	4,21	1 599,4	3,80
I	3 364,3	9,75	4 129,2	10,66	5 347,9	12,71
L	14,0	0,04	17,4	0,04	29,5	0,07
NL	1 929,7	5,59	1 372,7	3,54	1 155,5	2,75
A	86,1	0,25	842,5	2,17	1 054,7	2,51
P	705,7	2,05	637,4	1,64	881,6	2,09
FIN	61,9	0,18	575,7	1,49	816,1	1,94
S	75,1	0,22	770,1	1,99	780,3	1,85
UK	2 954,0	8,56	4 314,2	11,13	4 380,3	10,41
EU[1]	125,2	0,36	40,3	0,10	46,9	0,11
Total	34 502,7	100,00	38 747,9	100,00	42 083,4	100,00

1 paid directly by the Commission

Source:

31st Financial Report concerning the EAGGF Guarantee Section, Commission.

TABLE III

EAGGF Guarantee Section expenditure by product and Member State in 2001 (in EUROm)

Products	B	DK	D	GR	E	F	IRL	I	L	NL	A	P	FIN	S	UK	EU	Total Member States
COP products[1]	165,9	665,6	3 739,2	482,5	1 934,3	5 181,0	120,0	1 919,6	10,6	250,8	379,4	241,8	353,0	419,9	1.602,5		17 466,2
Sugar	281,2	86,0	236,7	7,9	61,6	356,9	4,0	143,0		49,6	28,3	21,2	10,0	23,2	187,2		1 497,1
Olive oil		0,0	0,0	586,7	1 030,2	4,9		848,3		0,0		53,6	0,0	0,0	0,0	1,0	2 523,8
Dry fodder and dry vegetables	0,1	10,0	23,2	4,9	186,3	82,8	0,3	48,3		13,5	0,2	0,7	0,0	0,4	4,1		374,8
Textile plants and silkworms	9,4	0,0	2,0	543,2	212,3	42,2	0,0	0,4	0,0	3,8	0,5	3,1	0,4	0,1	8,9		826,3
Fruit and vegetables	36,9	0,7	16,8	234,7	522,1	294,3	2,0	348,2		39,5	1,7	42,2	0,1	1,7	17,0		1 558,0
Wine growing	0,0	0,0	40,7	15,9	469,8	221,8		379,7	0,4	0,0	13,6	54,1		0,0	0,5		1 196,7
Tobacco	3,1		33,6	376,4	115,4	77,0		338,8			1,0	18,8				9,2	973,4
Other vegetable products	2,8	31,5	18,4	24,1	52,3	26,4	0,0	117,6	0,1	10,3	0,2	5,2	2,0	2,3	4,1		297,3
Sub-total (vegetable products)	**499,4**	**793,8**	**4 110,6**	**2 276,3**	**4 584,3**	**6 287,3**	**126,3**	**4 143,9**	**11,1**	**367,8**	**424,9**	**440,7**	**365,5**	**447,6**	**1 824,3**	**9,2**	**26 713,5**
Milk and dairy products	181,1	127,7	186,3	-2,5	28,9	499,6	144,4	91,6	0,1	478,5	-27,2	-3,4	46,4	28,4	126,8		1.906,6
Beef and veal	168,8	83,1	743,6	61,4	734,5	1.467,6	826,9	296,5	8,1	86,3	172,0	125,9	61,8	101,2	1 116,4		6 054,0
Sheep and goat	1,2	1,5	34,2	200,6	389,8	144,3	90,0	143,2	0,1	12,4	4,0	48,2	0,6	3,4	374,0		1 447,3
Pig meat/eggs/poultry	5,1	25,8	4,6	1,5	11,5	52,0	0,6	7,7		19,4	3,9	2,5	0,3	0,6	1,7		137,1
Fisheries	0,1	0,3	0,0	0,0	6,3	3,3	0,7			0,0		1,4	0,0	0,3	0,6	0,3	13,4
Sub-total (animal products)	**356,3**	**238,4**	**968,7**	**261,0**	**1 171,0**	**2 166,8**	**1 062,6**	**539,0**	**8,3**	**596,6**	**152,7**	**174,6**	**109,1**	**133,9**	**1 619,5**	**0,3**	**9 558,4**
Rural development	31,5	35,4	708,1	75,5	540,2	609,5	326,6	660,0	9,6	54,8	453,2	197,4	326,7	150,8	184,2		4 363,2
Total EAGGF guarantee section 2001	**938,0**	**1 114,2**	**5 878,8**	**2 616,6**	**6 193,0**	**9 248,0**	**1 599,4**	**5 349,6**	**29,5**	**1 155,3**	**1 054,7**	**881,6**	**816,1**	**780,3**	**4 380,8**	**46,9**	**42 083,3**

1 for definitions, see Annex 13 of the 31st Financial Report on the EAGGF

Source:

31st Financial Report on the EAGGF Guarantee Section, Commission.

TABLE IV

Geographical breakdown of the EU trade in agricultural and food products, 2001 (EUROm)

Countries/Group of countries	Imports	Exports	Balance
1. Total (2+3)	196 506	200 891	4 385
2. Intra EU trade	134 692	142 191	7 499
3. Extra EU trade	61 814	58 700	-3 114
CEEC[1]	4 418	6 208	1 790
Switzerland	1 408	3 679	2 271
Norway	323	1 369	1 046
Russia	465	3 287	2 822
Mediterranean basin[2]	5 127	7 590	2 463
Turkey	2 192	715	-1 477
Israel	917	634	-283
SAARC[3]	1 619	453	-1 166
India	1 191	176	-1 015
China	1 997	600	-1 397
Japan	174	4 121	3 947
ASEAN[4]	4 175	2 077	-2 098
NAFTA	9 767	12 957	3 190
USA	8 102	10 779	2 677
Canada	1 208	1 596	388
Mercosur[5]	12 027	884	-11 143
Brazil	8 113	600	-7 513
Argentina	3 504	179	-3 325
Chile	1 017	108	-909
ACP[6]	7 009	3 868	-3 141
Australia	2 175	847	-1 328
New Zealand	2 061	125	-1 936

1 Poland, Czech Rep., Hungary, Slovenia, Estonia, Slovakia, Romania, Bulgaria, Latvia and Lithuania

2 Malta, Cyprus, Morocco, Algeria, Tunisia, Turkey, Egypt, Israel, Lebanon, Syria, Jordan and West Bank/Gaza

3 India, Pakistan, Bangladesh, Maldives, Sri Lanka, Nepal and Bhutan

4 Myanmar, Thailand, Laos, Vietnam, Indonesia, Malaysia, Brunei, Singapore and Philippines

5 Brazil, Paraguay, Uruguay and Argentina

6 Lomé Convention

Source:
Comext, Eurostat

FORESTRY POLICY

LEGAL BASIS

1. Although Article 32 of the Treaty of Rome stipulates that the rules of the common market apply to agricultural products, no mention is made of forestry products and, apart from cork, the detailed list in Annex II of the Treaty does not include wood.

Under the terms of this article, the Commission may propose to the Council that it add other products to the list. However, this provision applied only for the two years following entry into force of the treaty, and the Commission did not take advantage of this possibility. This has prevented the development of a genuine common forestry policy.

2. All action in this area since 1957 has been carried out under legal bases relating to other policies, such as the common agricultural policy, regional policy and trade policy. The following provisions of the EC Treaty have been applied:

- for Community forests: Articles 37, 158 to 162 and 174;
- for tropical forests:
  - . Article 310 for cooperation with African, Caribbean and Pacific countries and the associated countries of Asia and Latin America,
  - . Article 133 for Community participation in the International Tropical Timber Agreement.

OBJECTIVES

The lack of a specific legal basis in the Treaties has meant that all measures in this area have developed without predetermined objectives. Objectives have been established on an ad-hoc basis.

1. Community forests

In 1988 the Commission published its communication COM(88) 255 on a Community strategy and action programme for the forestry sector, which set out the following objectives:

- to encourage participation by the whole forestry sector in planning land use, thus contributing to rural development;
- to provide the Community with a measure of security of supply of timber;
- to help conserve and improve the environment;
- to give the forestry sector the dynamism it needs to carry out its various functions better;
- to safeguard the Community's forests and protect them from major causes of damage;
- to extend the role of forests as natural settings for recreation.

2. Tropical forests

In 1989 the Commission communication COM(89) 410 established the following objectives:

- to strengthen cooperation between the Community and developing countries that produce tropical timber;
- to provide more funding to protect tropical forests;
- to support measures designed to regulate the trade in timber;
- to help find solutions to general problems which have indirect repercussions on tropical forests;
- to promote and coordinate forestry research;
- to participate in international initiatives on tropical forests.

ACHIEVEMENTS

A. Community forests

1. 1964-1988

The European Community took certain measures to develop the forestry sector, but these lacked a systematic approach and were always directly linked to the common agricultural policy, in particular the policy on improving agricultural structures. The measures concerned harmonisation of legislation, the development of forests and forestry, the protection of forests against atmospheric pollution and fires and forestry research.

2. 1988-1992

The Community adopted a more coherent approach to its forestry projects. In September 1998 the Commission presented to the Council a Community forestry strategy and a **forestry action programme**. This was adopted by the Council in 1989 and focused on five main areas:

- afforestation of agricultural land;
- development and optimum use of forests in rural areas;
- cork;
- forest protection;
- accompanying measures.

3. The 1992 changes

In 1992 Community measures in the forestry sector entered a more ambitious phase. Decisions in two main areas fundamentally modified the 1985 action programme:

a. Measures to protect forests from atmospheric pollution and fires were strengthened through Regulation No 2157/92 (which completely revised the previous Regulation No 3528/86 of 17 November 1986) and Regulation No 2158/92 of 23 July 1992 (both later amended, most recently in 1997 by Regulations Nos 207/97 and 208/97). These regulations included the following measures:

- on pollution: periodic inventories of damage caused to forests and intensive monitoring of forestry ecosystems and pilot projects for improving awareness of the effects of atmospheric pollution on forests and for restoring damaged forests;
- on fires: Community measures to be concentrated in high-risk areas, Member States to draw up forest fire protection plans including analysis of the causes of fires, a Community information system and EU support for protection measures.

b. On 30 July 1992 three regulations aimed at supporting **forestry measures in agriculture** were adopted as part of the measures accompanying the reform of the CAP. These included Regulation No 2080/92 instituting a Community aid scheme for forestry measures in agriculture, which provided for:

- aid to cover afforestation costs;
- a premium to cover maintenance costs;
- annual premiums to cover loss of income as a result of afforestation;
- aid for the improvement of woodlands.

Since 1992, other Community measures in the forestry sector have included:

- the European Forestry Information and Communication System (EFICS), as reconstituted in 1994 (Regulation No 400/94);
- forestry research cofinanced under the EU's research and development programmes in the field of agricultural and environmental research.

4. Recent developments

The Commission's communication of 18 November 1998 (COM(1998) 649) opened up new prospects for an overall, integrated forestry policy, and was incorporated point by point in the Council Resolution of 15 December 1998 (99/C 56:01) on a forestry strategy for the European Union. It reaffirmed in particular the principles that forests have a multifunctional role, that the rules of the market economy should apply to them and that, in accordance with subsidiarity, the strategy should be implemented at the lowest possible level. It called on the Commission to report to the Council on implementation of the forestry strategy within five years, i.e. before the end of 2003.

Pending that crucial date, most of the measures have focused on the monitoring of forests and their interaction with the environment and on action against forest fires.

B. Tropical forests

1. Aid made available under development cooperation

Community aid to tropical forests has primarily been made available under the development cooperation programme. It has been granted either under specific budget headings (Asia and Latin America) or under the European Development Fund (African, Caribbean and Pacific (ACP) States with which the Community has signed conventions (*6.4.5.). Funding has been granted to 256 individual projects or projects forming part of larger programmes. During the period 1980-1988, total aid was more than ECU 350 milion. Since 1988 Community funding has increased considerably, with more European funding devoted to international measures such as the FAO's Tropical Forestry Action Plan (TFAP). Thus the EU committed EUR 494 million to over 450 tropical forest development projects between 1992 and 1996.

2. Research

Since 1983 the Community has financed the Science and Technology for Development (STD) programme, and in 1992 it launched the European Tropical Forestry Research Network (ETFRN) to facilitate the dissemination and use of information on organisations, researchers, projects and research findings.

3. Towards an overall strategy

In 1989 an important step was taken towards an overall strategy with the publication of the aforementioned Commission communication COM(89) 410, which examined in detail the causes of the destruction of tropical forests and proposed measures to tackle the problem. On 20 December 1995 the Council adopted Regulation No 3062/95 which set out objectives and procedures for action at Community level, complementing action by Member States, to contribute to the conservation and sustainable management of tropical forests. It covered the period 1996-1999.

In its communication of 4 November 1999 to the Council and the European Parliament, the Commission reviewed that period and put forward proposals for a sustainable development strategy which was set out in Regulation No 2494/2000 of the EP and of the Council of 7 November 2000, focusing on conservation and the sustainable management of tropical forests. It follows on from the above-mentioned Regulation No 3062/95 and is on similar lines; a total appropriation of EUR 249 million is allocated for the period 2000-2006.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has repeatedly expressed concern at global deforestation and has criticised the Commission for not doing enough to develop the Community's forestry potential, as a means of reducing its timber deficit or to protect the environment. On 30 January 1997 it adopted a resolution on the EU's forestry strategy, and the Commission responded to its demands in its Communication of 18 November 1998, which was incorporated in the Council Declaration of 15 December 1998. This resolution represented Parliament's first use of the right granted to it by the Maastricht Treaty (Article 192 EC) to ask the Commission to submit a legislative proposal.

COMMON FISHERIES POLICY: ORIGIN AND GENERAL EVOLUTION

LEGAL BASIS

Articles 32 to 37 of the EC Treaty.

OBJECTIVES

The Treaty of Rome made provision for a **common fisheries policy**: Article 33(1) sets out the objectives for the common agricultural policy (CAP), which are shared by the common fisheries policy (CFP) since Article 32 defines agricultural products as 'the products of the soil, of stock-farming and of **fisheries** and products of first-stage processing directly related to these products'. These objectives are: to increase productivity, stabilise markets and ensure availability of supplies at reasonable prices for the consumer. The 2002 reform added the sustainable use of resources to these initial objectives.

ACHIEVEMENTS

A. Background

The common fisheries policy (CFP) originally formed part of the common agricultural policy (CAP), but it gradually developed a separate identity as the Community evolved, with the entry of countries with substantial fleets and fish stocks, and in order to tackle specific fisheries problems, such as conservation of stocks and international relations after the economic exclusion zones (EEZs) were introduced.

1. Beginnings

It was not until 1970 that the Council adopted legislation to establish a common organisation of the market (CMO) for fisheries products and put in place a Community structural policy for fisheries.

2. First development

Fisheries played a significant role in the negotiations leading to the United Kingdom, Ireland and Denmark joining the EC in 1972. This resulted in a move away from the fundamental principle, enshrined in the Treaty of Rome, of freedom of access to the sea; exclusive coastal fishing rights up to 12 miles were established and have been upheld ever since.

3. The new generation CFP

a. 1983 Regulation

In 1983, after several years of negotiations, the Council adopted Regulation 170/83, establishing the new generation CFP, which enshrined commitment to EEZs, formulated the concept of relative stability and provided for conservatory management measures based on total allowable catches (TACs) and quotas. After 1983, the CFP also had to adapt to the withdrawal of Greenland from the Community in 1985, the accession of Spain and Portugal in 1986 and the reunification of Germany in 1990. These three events have had an impact on the size and structure of the Community fleet and its catch potential.

b. 1992 Regulation

In 1992, Regulation 3760/92, which determines fisheries policy until 2002, attempted to tackle the serious imbalance between fleet capacity and catch potential. The remedy it advocates is to reduce the Community fleet and alleviate the social impact with structural measures. A new concept of 'fishing effort' has been introduced, with a view to restoring and maintaining the balance between available resources and fishing activities. Access to resources should be regulated more effectively by the gradual introduction of fishing licences in order to reduce surplus capacity.

4. Towards a new reform

However, these measures were not effective and the deterioration of many fish stocks continued at an even faster rate. The major challenge of the reform was tackling simultaneously the risk of collapse of certain stocks, the disappearance of the most exploited species, significant economic losses and the loss of jobs. This critical situation resulted in a new reform being adopted at the end of 2002.

B. The new common fisheries policy

1. The legislative dimension of the reform

This consists of three regulations which were adopted by the Council in December 2002 and entered into force on 1 January 2003:

- **Framework Regulation 2371/2002** on the conservation and sustainable exploitation of fisheries resources (repeals Regulations 3760/92 and 101/76);
- **Regulation 2369/2002** laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector (amending Regulation 2792/1999);
- **Regulation 2370/2002** establishing an emergency Community measure for scrapping fishing vessels.

2. Reorientation of the objectives

The primary objective of **the new CFP reform** is to ensure a sustainable future for the fisheries sector by guaranteeing stable incomes and jobs for fishermen while preserving the fragile balance of marine ecosystems and supplying consumers. The new CFP is an integral part of the Community's policy on sustainable development and gives equal priority to the environmental, economic and social aspects.

3. Details of the innovations of the reform

a. A more long-term approach to fisheries management, accompanied by emergency measures if necessary

Multiannual management and stock recovery plans will be established with a view to enabling fish stocks to

reproduce and fishermen to plan their activities better. They will take a precautionary approach and will be based on the recommendations of competent scientific bodies. If there is a serious threat to the conservation of resources, emergency measures may be taken by the Commission for a period of six months, renewable for a further six months. If a Member State disagrees with the measures, it may refer the matter to the Council.

b. Reorientation of public aid to the fleet

In order to avoid aggravating the imbalance between the overcapacity of the fleet and the actual fishing possibilities, from 2005 aid will be used exclusively to improve safety and working conditions on board and product quality or to switch to more selective fishing techniques or equip vessels with satellite vessel monitoring systems. This new system will gradually replace the old Multiannual Guidance Programmes (MAGPs), which have not solved the problem of the overcapacity of the Community fleet. The Member States will be entrusted with greater responsibilities in order to achieve a better balance between the fishing capacity of their fleet and the available resources.

c. More flexible socio-economic measures to support those in the industry during the transition period:

- **aid for the temporary cessation of activities**, designed to support fishermen and vessel owners who have to stop their fishing activity temporarily, has been extended;
- **aid for early retirement and the retraining of fishermen** in other professional activities allows them to continue fishing on a part-time basis if they wish to do so;
- a **'scrapping fund'** will help the sector to achieve the reductions in fishing effort required under the stock recovery plans. It will allocate premiums that are 20% higher than those available for decommissioning under the FIFG.

d. More effective, transparent and fair controls

These will be carried out by national and Community inspectors as part of the new Community control and enforcement system. Member States will continue to be responsible for the application of sanctions for infringements but cooperation among them will be strengthened. To this end, the Commission proposes the creation of a Joint Inspection Structure and a Community Fisheries Control Agency (CFCA).

e. More direct involvement of fishermen in the decisions that affect them

Regional Advisory Councils (RACs) consisting of fishermen, scientific experts, representatives of other sectors related to fisheries and aquaculture as well as local, regional and national authorities and environmental groups and consumers from the maritime or fishing zone in question will be set up. The RACs may be consulted by the Commission, submit recommendations and suggestions or inform the Commission or the Member State concerned about problems concerning the implementation of CFP rules in their area. Each RAC will cover sea areas under the jurisdiction of at least two Member States. It will establish its own procedures.

4. Accompanying measures

a. As part of the reform, the Commission also presented a series of **Community action plans** which aim to clarify some aspects of the CFP and which will be implemented from 2003:

- a Community Action Plan on **fisheries in the Mediterranean**;
- a Community Action Plan to integrate **environmental protection** requirements into the CFP;
- a Community Action Plan for the **eradication of illegal, unreported and unregulated fishing (IUU)**;
- 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**.

b. In addition, two important Commission **communications** complement the new CFP:

- a communication on **fisheries partnership agreements with third countries**, and
- a communication on **improving scientific advice for fisheries management**.

ROLE OF THE EUROPEAN PARLIAMENT

1. Competence

- Fisheries legislation: consultative role.
- EU membership of international conventions and conclusion of agreements having significant financial implications: assent.

2. Role

a. **The reports on the Commission communications** on various aspects of the CFP have given Parliament the opportunity to express opinions which go beyond the dictates of the economic situation and develop its own model for the CFP. This is the case for the following reports:

- report A5-0392/2002 on the proposal for a Council regulation on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy;
- report A5-0362/2002 on the Commission communication on the Community Action Plan for the eradication of illegal, unreported and unregulated fishing;
- report A5-0360/2002 on the Commission communication setting out a Community Action Plan

to integrate environmental protection requirements into the common fisheries policy;

- report A5-380/2002 on the Commission communication on the reform of the common fisheries policy ('Roadmap').

b. Parliament has also adopted **own-initiative reports** that have gone into greater detail on the main aspects of the CFP:

- report A5-0365/2000 on the common fisheries policy and the challenge of economic globalisation;
- report A5-0446/2002 on fisheries in international waters in the context of external action under the common fisheries policy;
- report A5-0448/2002 on aquaculture in the European Union: present and future;
- report A5-0162/2003 on the Commission communication to the European Parliament and the Council on the Action Plan to counter the social, economic and regional consequences of the restructuring of the EU fishing industry;
- report A5-0171/2003 laying down a Community Action Plan for the conservation and sustainable exploitation of fisheries resources in the Mediterranean Sea under the common fisheries policy;
- report A5-0163/2003 on a Community Action Plan to reduce discards of fish.

FISHERIES RESOURCES POLICY

LEGAL BASIS

Articles 32 to 37 of the EC Treaty.

OBJECTIVES

The main objective is to guarantee the long-term viability of the sector through sustainable exploitation of resources.

ACHIEVEMENTS

A. Basic principles

1. Relative stability

Fishing opportunities are allocated among the Member States in such a way so as to ensure the relative stability of the fishing activities of each Member State for each stock concerned. This principle of relative stability, based in particular on historical catch levels, means maintaining a fixed percentage of authorised fishing effort for the main commercial species for each Member State. Fishing effort should be generally stable in the long term, taking account of the preferences to be maintained for traditional fishing activities and regions that are most dependent on fishing.

2. Conservation of resources

Conserving resources by constantly adjusting fishing capacity to take account of catch possibilities is a priority of the common fisheries policy (CFP). To this end, the CFP bases its decisions on the best scientific advice available and applies the precautionary approach, whereby the absence of sufficient scientific information should not be used as a reason for postponing or failing to take measures to conserve species on the brink of collapse.

3. Freedom of access to waters and resources

The principle concerned is that of equal access to waters and resources in all Community waters. An exception is made for coastal zones (up to 12 miles): states may retain exclusive fishing rights in these areas. The measures establishing the conditions of access to waters and resources are adopted on the basis of the biological, socio-economic and technical information available. A review of the current provisions is due to take place in 2012 (Article 17 of Regulation (EC) 2371/2002).

B. Details of the measures

The new CFP entered into force on 1 January 2003 and contains specific measures on resource conservation and management:

1. Access to waters and resources

a. Maintaining the current regime restricting access to 6 to 12-mile zones to vessels that traditionally fished in those waters. These restrictions have been effective in limiting fishing effort in the most sensitive areas and in preserving traditional fishing activities on which the social and economic development of certain coastal communities depends.

b. Maintaining the principle of relative stability, taking into account the precarious economic situation facing the fisheries sector.

c. Maintaining other access arrangements, such as those restricting access to the Shetland Box (zone in northern Scotland) until the Commission reviews the situation of the stocks concerned in 2003. The Council will then take a decision that is valid until the end of 2004.

d. Access for Spanish, Portuguese and Finnish vessels to unregulated or unallocated resources in certain zones of the North Sea from 1 January 2003.

2. A long-term strategy for fisheries resources management

a. Multiannual stock recovery and management plans

- **Stock recovery plans** will be implemented for fish stocks that are in danger. They are based on scientific advice and provide for limits on the fishing effort (that is, the number of days vessels are at sea). They ensure 'that the impact of fishing activities on marine ecosystems is kept at sustainable levels'.
- **Multiannual stock management plans** seek to maintain the volume of stocks within safe biological limits. These plans lay down maximum catches and a series of technical measures, taking into account the characteristics of each stock and fisheries (species targeted, gear used, state of stocks concerned) and the economic impact of the measures on the fisheries in question.

b. Emergency measures

In the case of serious and unexpected problems, the Commission and the Member States may adopt emergency measures to protect fish stocks and to restore the balance of marine ecosystems that are in danger. In particular, the Member States may adopt conservation and management measures applicable to all fishing vessels within their 12-mile zone provided that these measures are not discriminatory and that consultations with the Commission, other concerned Member States and the relevant Regional Advisory Council (RAC) have taken place.

c. Adjusting the fishing effort to the available resources

In order to reduce the fishing pressure on fish stocks, the new CFP has established a range of complementary management tools:

- **Limiting catches**. The total allowable catches (TACs), based on the scientific opinions of the International Council for the Exploration of the Sea (ICES) and the Scientific, Technical and Economic Committee on Fisheries (STECF), continue to be calculated **annually** so that they can be readjusted in accordance with the development of stocks. However, within the framework of the multiannual management of resources, they will be more stable and will enable fishermen to plan their activities better.
- **Technical measures**. These aim to prevent catches of juveniles, non-commercial species and other marine animals. They are determined in relation to the target species (and associated species in the case of mixed fisheries), the operating zone and the type of gear used. The most current are: the setting of a minimum mesh size for nets, the use of selective fishing gear, the delimitation of zones and periods in which fishing activities are prohibited, the setting of a minimum size for species that may be landed, and the limiting of accidental catches or by-catches.
- **Limiting the fishing effort**. These measures may be applied as part of the plans for the recovery of stocks that are at risk. They will consist, for example, of an authorised number of fishing days per month. This number may vary according to the gear used, the fishing zone visited (according to the ICES divisions), the species targeted, the state of the stock and/or possibly the power of the vessel. With a view to ensuring greater flexibility, the Member States may transfer these days among the various units of their fleet.

3. An enhanced control policy

The control policy seeks to ensure respect for the fisheries regulations. In short, adoption of the measures is the responsibility of the Community bodies while the Member States are responsible for implementing the measures and applying sanctions in cases of infringements in their area of jurisdiction. The new CFP (Regulation 2371/2002) provides for enhanced control and enforcement through greater cooperation among the Member States within the framework of a Community control and enforcement system:

a. Improved cooperation among Member States

Without prejudice to the primary responsibility of the coastal Member State, Member States are authorised to inspect:

- vessels flying their flag in their waters, outside Community waters, and in all Community waters, except within the 12-mile zone of another Member State;
- vessels of another Member State in all Community waters, after authorisation of the coastal Member State concerned or where a specific monitoring programme has been adopted (Article 34(c) of Regulation 2847/93);
- vessels of another Member State in international waters.

In other cases, Member States must authorise each other to carry out inspections.

b. **Surveillance and monitoring reports** drawn up by Community inspectors, inspectors of another Member State or Commission inspectors will constitute admissible evidence in administrative or judicial proceedings of any Member State.

c. Extension of the competences of national and Community inspectors

- National inspectors may, in addition to their national fleet, inspect any EU vessel with the authorisation of the coastal Member State or where a specific monitoring programme has been set up.
- Community inspectors may carry out an inspection on fishing vessels and places of first landing and first sales, without the assistance of national inspectors, on condition that the person inspected (fisherman, vessel owner, fish wholesaler, etc.) is not opposed to it.

d. A catalogue of sanctions to be applied by Member States in the event of serious infringements

This will be drawn up by the Council in order to reduce the disparities relating to the sanctions applied by the various Member States (Article 25(4) of Regulation 2371/2002).

e. Use of satellite-based vessel monitoring systems (VMS)

This will be extended to cover vessels over 18 metres from 1 January 2004 and vessels over 15 metres from 1 January 2005. This measure provides greater safety for those on board as they can be located quickly in the case of an accident or breakdown.

f. In addition, in its communication entitled 'Towards uniform and effective implementation of the CFP' (COM(2003)130), the Commission proposed:

- the pooling of national inspection and surveillance resources through the establishment of a Joint Inspection Structure;
- the creation of a Community Fisheries Control Agency (CFCA) whose mission would be to ensure that the inspection and surveillance resources that have been pooled are deployed in accordance with Community strategies.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has always been concerned about respect for the principles of precaution and sustainable resources.

Of note are its recent reports on:

- the Commission communication to the Council and the European Parliament on **behaviour which seriously infringed the rules of the common fisheries policy** in 2000 (A5-0228/2002);

- 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);
- the proposal for a Council regulation on the **management of the fishing effort relating to certain Community fishing areas and resources** and modifying Regulation (EEC) 2847/93 (A5-0165/2003);
- the proposal for a Council regulation for the **conservation of fishery resources through technical measures for the protection of juveniles of marine organisms** (A5-0168/2003).

FISHERIES STRUCTURAL POLICY

LEGAL BASIS

Articles 32 to 37 and 158 of the EC Treaty.

OBJECTIVES

The main objective of the fisheries structural policy is to adjust fleet capacity to potential catches in order to relieve the problem of overfishing so that the sector has a long-term future. To this end, efforts are being made to modernise the fleet and make it competitive by removing surplus capacity and orienting the industry towards support for and full development of coastal regions which are heavily dependent on fisheries.

ACHIEVEMENTS

A. Background

1. The fisheries structural policy originated in 1970 with the decision to apply to the EAGGF - Guidance Section for support for construction, modernisation, marketing and processing within the fisheries sector.

2. 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 Financial Instrument of Fisheries Guidance (FIFG). As a response to the socio-economic 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 1994-1999, together with accompanying measures such as early retirement, premiums for young fishermen, etc.

3. Agenda 2000 introduced new approaches, including bringing the structural problems of fisheries-dependent areas into the new Structural Funds Objective 2 (Council Regulation 1260/99 of 21 June 1999) and not renewing the PESCA initiative in 2000. Council Regulation 1263/1999 establishes the new FIFG framework for intervention for the period 2000-2006 with a view to achieving a sustainable balance between fishery resources and their exploitation, strengthening the competitiveness of fisheries structures and the development of viable enterprises, promoting fisheries and aquaculture products, and revitalising areas dependent on these sectors.

4. As part of the CFP reform, the new Regulations 2371/2002, 2369/2002 and 179/2002 replace Regulations 1263/1999 and 2792/1999 laying down the detailed rules and arrangements regarding **Community structural assistance in the fisheries sector.** A simpler system to limit the fishing capacity of the Community fleet in order to match it with the available resources was adopted.

B. Current instruments of the structural policy

1. A new fleet management system

Multiannual Guidance Programmes (MAGPs) were for a long time the key element of structural policy, yet they failed to achieve their goals of reducing the size of the fleet. They were eliminated through the CFP reform of January 2003.

The new CFP does away with financial assistance for the renewal of vessels from 2005 and proposes a simpler system to limit the capacity of the European fishing fleet. This system gives the Member States greater responsibilities with regard to management of their fleet. Emphasis is no longer placed on reducing the fishing capacity (in other words the tonnage of the vessel and the engine power) but on **limiting the fishing effort** (calculated by multiplying the capacity by the number of days spent at sea). It has three main elements.

a. The capacity of the fleet of each Member State must comply with a reference level. This reference level (global ceiling for fishing capacity applicable to the national fleets in order to prevent the expansion of fishing fleets) complies with the MAGP objectives set out for each national fleet on 31 December 2002.

b. Member States are free to decide how to manage their capacity: either permanent withdrawal of vessels (or scrapping) or temporary cessations of activities. However, they are obliged to achieve a sustainable balance between their capacity and the available resources.

c. The conditions for granting the various forms of public aid to the fleet are reviewed.

- **Aid for the renewal of vessels will disappear at the end of 2004**. Until 31 December 2004, its use is limited:
  - . to Member States that have met their overall capacity reduction targets envisaged for 31 December 2002 as part of the previous system (MAGP IV),
  - . to vessels under 400 GT (gross registered tonnes) which meet the following conditions: vessels under 100 GT Member States must decommission, without aid, an equivalent amount of capacity to each tonne introduced in the fleet with aid; vessels over 100 GT Member States must decommission, without aid, 1.35 tonnes (GT) for each new tonne introduced in the fleet with aid.

  Over the period 2003-2004, Member States that grant public aid for the renewal of vessels will have to reduce the overall capacity of their fleets by a minimum of 3%. It will be up to Member States to ensure that the total fishing capacity of new vessels entering the fleet does not exceed the capacity of those being permanently removed.

- **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).

2. The Financial Instrument of Fisheries Guidance (FIFG)

The FIFG is one of the EU's four Structural Funds. It has existed since 1993 (Council Regulation 2080/93) and is continued in the new CFP.

a. Objectives

The FIFG aims to:

- help achieve a sustainable balance between resources and exploitation;
- promote the development of economically viable enterprises in the fisheries sector;
- improve market supply and increase the added value of fish and aquaculture products through processing;
- contribute to revitalising industries which depend on fisheries and aquaculture.

b. Types of action

Under certain conditions, the FIFG can help to finance the following measures:

- Adjustment of fishing effort;
- Fleet renewal and modernising fishing vessels;
- Small-scale coastal fishing;
- Inland fishing;
- Protection and development of aquatic resources;
- Fishing port facilities;
- Development of aquaculture;
- Processing and marketing of fisheries and aquaculture products;
- Search for and promotion of new market outlets;
- Social measures to accompany restructuring;
- Collective initiatives of the profession;
- Temporary cessation of activities.

c. Resources

The FIFG budget for the period 2000-2006 is EUR 3 700 million.

C. The socio-economic consequences of the new CFP

1. For the time being, it is difficult to quantify the impact on local employment of the systems to limit the fishing effort. However, based on the experience of the restructuring of the Spanish and Portuguese fleets fishing in Moroccan waters, the Commission considers that a maximum of 28 000 fishermen (+/- 11% of all those employed at sea) could be affected by this limitation (an average of 8 000 jobs have been lost annually in the fisheries sector in recent years).

2. In order to manage the structural adjustment required as a result of the decrease in job opportunities in the fisheries sector, while guaranteeing an improvement in living and employment conditions in the sector, the Commission proposes the following strategy:

- bilateral consultations of the Member States to assess the likely socio-economic impact of fishing effort limitation schemes;
- on the basis of these consultations, preparation of an action plan to counter the socio-economic consequences of the restructuring of the fishing industry;
- reprogramming of the Structural Funds to make good use of the existing instruments;
- development of a long-term strategy for the integrated coastal development of fisheries-dependent sectors (in particular promoting the recognition of the role of fishermen in preserving the social and cultural heritage of coastal areas and encouraging the development of complementary coastal activities likely to provide replacement jobs);
- improved sectoral dialogue (e.g. including the social clause in Community fisheries agreements; improving the sector's image among young people; enhancing the role of women by improving their status and social protection);
- assessment of working and safety conditions in the context of fishing and fish processing.

ROLE OF THE EUROPEAN PARLIAMENT

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 theStructural 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, improvement of distribution channels, etc.
- Similarly, it urged that the FIFG's opportunities for intervention and financial endowment should at least match those of the instruments it replaced.
- In its resolution on the CFP after 2002 (A4-0298/1997), Parliament stressed the need for an integrated approach to developing coastal areas and gradual regionalisation of fisheries structural policy.
- Finally, as part of the new reform of the CFP, the European Parliament prepared in particular:
  . a report on the proposal for a Council regulation amending Regulation 2792/1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector (A5-0396/2002). In this report, the European Parliament states that

the ultimate goal of the CFP is 'to ensure a fair standard of living for fishermen and all other operators in the sector in accordance with the provisions of Article 33 of the Treaty' and strongly criticises the European Commission for not having drawn up in advance a report on the economic and social situation in the regions heavily dependent on fisheries as required by Community legislation (Article 14 of Regulation (EC) No 3760/1992).

. an own-initiative report on the Commission communication to the European Parliament and the Council on the Action Plan to counter the social, economic and regional consequences of the restructuring of the EU fishing industry (A5-0162/2003), in which it 'reaffirms the social, cultural and economic role of the fishing industry, particularly small-scale fisheries in fisheries-dependent regions, and calls on the Commission to ensure that the necessary economic and social measures are taken to guarantee economic and social cohesion in areas dependent on fisheries, including the outermost regions**,** with an aim to become financially self-reliant.' In this same report, Parliament calls on the Commission to consider 'quality employment and health and safety conditions at work as one of the objectives of the common fisheries policy'.

INTERNATIONAL FISHERIES RELATIONS

LEGAL BASIS

Articles 32 to 37 and 300 of the EC Treaty.

OBJECTIVES

- To ensure appropriate EU access to the world's main fishing zones;
- to contribute to the sustainable development of world fisheries;
- to enhance bilateral and/or regional sectoral political dialogue;
- to strengthen control and inspections under the regional fisheries organisations;
- to improve scientific research.

ACHIEVEMENTS

A. International fishing agreements

1. Role and importance

a. Raison d'être

Bilateral and multilateral fishing agreements became necessary after many non-member States established exclusive economic zones (EEZs) in the mid-1970s. Although EEZs cover only 35% of the total area of the seas, they contain 90% of the world's fish stocks. Thus, these stocks came under the control of the countries closest to them, and the Member States' fleets, which had traditionally fished these waters, no longer had access. In order to regain access and extend it to new areas, the Community concluded fishing agreements with the countries concerned.

b. Geographical extension

Since the first agreement signed with the United States in 1977, 29 agreements have been signed in all, 26 of which were in force in the period 1993 to 1999, mainly with African and Indian Ocean countries (15) and countries in the North Atlantic (10); only one was signed with a Latin American country (Argentina). At the end of 2002, 21 fishing agreements were in force.

c. Financial investment

The budget allocated to international fishing agreements increased from EUR 5 million in 1981 to almost 300 million in 1997 (0.31% of the total Community budget and nearly 30% of the resources allocated to the fisheries sector). Investment was maintained in 1998 and 1999, but slackened off when the agreement with Morocco (totalling about EUR 90 million) was not renewed. In 2003, the amount allocated for fishing agreements was less than EUR 200 million and no increase is planned in the 2004 budget.

d. Benefits for the EU

In 2002, catches under the international agreements accounted for 20% of all Community catches and were valued at approximately EUR 1 000 million. They provide direct employment for about 30 000 people and generate considerable economic activity in sectors and regions heavily dependent on fishing.

2. Types of fishing agreement

a. Reciprocal agreements (access to resources/ access to resources)

- **Principle**

  These involve an exchange of fishing opportunities between EU fleets and those of non-EU countries. The reference base to guarantee an equal exchange is the 'cod equivalent' (one tonne of cod represents x tonnes of another species in exchange.

- **Geographical application**

  Norway, the Faeroes and Iceland have concluded this type of agreement. The agreements with the Baltic States combine the reciprocal principle with financial compensation from the EU.

b. Agreements involving financial compensation (access to resources/financial compensation)

- **Principle**

  These are concluded with non-member States wishing to concede part of their fishing rights in their own EEZ without acquiring reciprocal access rights. The main object of such agreements is to allow fishing (by a certain number of vessels or a certain volume of gross register tonne, or grt). The financial compensation is in the form of a contribution by the Union and fees paid by private shipowners benefiting from the access rights.

- **Geographical application**

  All the fishing agreements with the African and Indian Ocean countries (14 countries in Africa, the Caribbean and the Pacific) are of this type, as is the agreement with Greenland (although the latter does not include private fees). In addition to the financial compensation, agreements can include access to the European market at lower customs tariffs (e.g. Greenland).

c. 'Second generation' agreements

(establishment of joint ventures)

These are based on encouraging the establishment of joint ventures to operate in a non-member State's EEZ, together with a guaranteed quota allocation for the particular species listed in the agreement. At present there is only one agreement of this type, with Argentina.

3. Geographical distribution of catches

a. For fishing agreements with countries in the South, catch landings amounted to a yearly average of almost 2 040 000 tonnes over the period 1993-1997 (average calculated over five years despite the temporary suspension of the agreement with Morocco during that period). With more than 87% of catches, Spain caught far more (not including tuna) than the other Member States under agreements with countries in the South. Morocco, with more than 74%, was the main supply country, far ahead of Mauritania, Guinea Bissau, Senegal and Angola (25% between the four of them).

b. For fishing agreements with countries in the North, catch landings by the Community fleet fluctuated over the period 1993-1997 between 300 and 370 000 tonnes per year. The main 'industrial' species (used primarily for the manufacture of fishmeal) made up more than 70% of catch landings; the main species in terms of value is cod. Denmark, with 82% of the catch, is the biggest producer. Germany, United Kingdom and Sweden share 15% of the volume. Catches by other countries are less than 5% of the total.

The agreement with Norway represents more than 60% by value, followed by Greenland (27% of the total); the other agreements represent less than 2% of the total value of catches.

4. The new CFP reform proposes new types of agreement which will gradually replace the previous agreements:

a. Continuity Agreements

The purpose of these is to consolidate cooperation with third counties, in particular adjacent coastal States with which the EU traditionally shares fishing interests, by implementing responsible fishery management systems.

b. Fisheries Partnership Agreements (FPAs)

These are aimed at strengthening cooperation with developing third countries to ensure sustainable and responsible fishing in the mutual interest of the parties concerned. Sustainable impact assessments will be carried out with a view to negotiating further Fisheries Partnership Agreements.

B. International conventions

1. Role

As well as bilateral agreements concerning coastal waters, the United Nations Conference on the Law of the Sea (Unclos) recognises the principle of international conventions for the exploitation of resources on the high seas. Although some of these conventions date back to the period before the Second World War, most of them were concluded afterwards. They generally set up commissions responsible for scientific research, publication of the results and recommendations for managing stocks, which may remain as recommendations or become mandatory if no objections are made within a certain period.

They generally act in the following ways:

- limiting catches by two methods: a global quota or national quotas;
- introducing prohibited zones or periods;
- banning or regulating fishing gear.

2. EU participation in bodies set up by conventions

a. The EU has **member status** in the following international organisations:

- **NAFO** (Northwest Atlantic Fisheries Organisation**)**, set up under an international convention approved by Council Regulation 3179/78 of 28 November 1978 which came into force on 1 January 1979;
- **NEAFC** (North-East Atlantic Fisheries Commission), convention approved by Council Decision 81/608 of 13 July 1981 which came into force on 12 August 1981;
- **NASCO** (North Atlantic Salmon Conservation Organisation), approved by Council Decision 82/886 of 31 December 1982 which came into force on 1 October 1983;
- **IBSFC** (International Baltic Sea Fisheries Commission), convention approved by Council Decision 83/414 of 25 July 1983 which came into force on 18 March 1984;
- **IOTC** (Indian Ocean Tuna Commission), approved by Council Decision 95/399 of 18 September 1995;
- **CCAMLR** (Commission for the Conservation of Antarctic Marine Living Resources), convention approved by Council Decision 81/691 of 4 September 1981 which came into force in 1982;
- **ICCAT** (International Commission for the Conservation of Atlantic Tunas), approved by Council Decision 86/238 of 9 June 1986 which came into force on 14 November 1997;
- **GFCM** (General Fisheries Council for the Mediterranean), approved by Council Decision 98/416 of 16 July 1998;
- **CECAF** (Fishery Committee for the Eastern Central Atlantic), set up by the FAO in 1967; the EU has been a member since 1991;
- **WECAFC** (Western-Central Atlantic Fishery Commission);
- **IOFC** (Indian Ocean Fisheries Commission), set up by the FAO in 1967; the EU has been a member since 1991.

b. The EU only has **observer status** in conventions concluded by individual Member States:

- **ISEAFC** (International Southeast Atlantic Fisheries Commission);
- **IWC** (International Whaling Commission);

- **NAMCO** (North Atlantic Marine Mammal Commission);
- **IATTC (**Inter-American Tropical Tuna Commission) (set up in 1949).

c. In addition, the EU is a **member** of the following international organisations:

- **MHLC** (Multilateral High Level Conference);
- **SEAFO (**South-East Atlantic Fisheries Organisation);
- **SWIOC (**South-West Indian Ocean Fisheries Commission).

ROLE OF THE EUROPEAN PARLIAMENT

1. Role in the procedure for concluding agreements

On the basis of Articles 37, 300 and 310 of the EC Treaty, **Parliament's assent** is required for

- accession by the EC to international fisheries conventions or the conclusion or amendment of agreements having important financial implications;
- agreements concluded with one or more states or international organisations establishing an association involving reciprocal rights and obligations, common action and special procedures;
- agreements establishing a specific institutional framework by organising cooperation procedures.

In addition, the EP must be 'immediately and fully informed of any decision … concerning the provisional application or the suspension of agreements' (Article 300(2)).

2. Basic position

Parliament has several times stressed the importance of international fisheries agreements for Community fish supplies, for the EU regions most dependent on fishing and for employment in the sector (notably in its resolution of 15 May 1977).

In addition, Parliament has addressed itself to the consistency of the agreements with other EU external policies (environment and development cooperation). It has declared its support for the eradication of vessels flying flags of convenience and condemned the growing use of private agreements outside the control of the EU authorities (resolution of 20 November 2002).

FISHERIES POLICY IN FIGURES

Table 1 – Community fleet in engine power (kW)

Year	1998	1999	2000	2001	2002
EU15	**7 797 787**	**7 734 172**	**7 547 034**	**7 442 857**	**7 261 816**
Belgium	63 941	63 453	63 355	66 347	66 699
Denmark	370 419	368 256	371 866	363 997	347 476
Germany	159 711	163 305	167 206	167 043	163 912
Greece	649 201	622 802	626 881	633 634	606 188
Spain	1 405 795	1 381 529	1 330 931	1 298 412	1 257 221
France	1 125 034	1 113 444	1 107 214	1 101 090	1 111 330
Ireland	191 935	194 533	193 651	209 455	210 624
Italy	1 506 647	1 482 333	1 396 679	1 326 959	1 289 681
Netherlands	470 384	487 877	507 759	494 165	470 031
Portugal	389 166	393 755	395 851	401 060	401 186
Finland	211 168	203 695	196 173	190 188	188 800
Sweden	236 713	217 110	236 622	227 515	224 450
United Kingdom	1 017 673	1 042 080	952 846	962 992	924 218

Source: New Cronos, September 2003

Table 2 – Community fleet in tonnage (gross registered tonnes: GRT)

Year	1998	1999	2000	2001	2002
EU15	**1 984 251**	**1 996 162**	**1 995 615**	**1 997 783**	**1 963 537**
Belgium	22 767	22 838	23 054	24 091	24 276
Denmark	98 020	98 443	101 565	100 138	99 339
Germany	68 230	69 783	71 419	71 248	69 490
Greece	106 604	114 699	106 148	110 860	104 255
Spain	553 256	538 724	525 832	527 523	519 878
France	210 533	213 885	222 218	230 560	229 749
Ireland	56 944	60 071	60 434	65 597	72 661
Italy	247 066	241 614	231 964	221 477	215 242
Netherlands	177 309	189 857	209 697	204 313	200 068
Portugal	116 525	116 954	115 472	116 688	116 734
Finland	22 734	21 481	20 773	19 976	19 883
Sweden	47 794	45 169	52 277	46 011	45 373
United Kingdom	256 469	262 644	254 762	259 301	246 589

Source: New Cronos, September 2003

Table 3 – Number of vessels

Year	1998	1999	2000	2001	2002
EU15	**100 035**	**97 800**	**95 163**	**92 662**	**90 595**
Belgium	139	128	127	130	130
Denmark	4 375	4 228	4 149	4 050	3 874
Germany	2 309	2 313	2 314	2 275	2 247
Greece	20 496	19 818	19 972	20 265	19 747
Spain	17 521	17 312	16 660	15 408	14 887
France	8 537	8 310	8 181	7 959	8 088
Ireland	1 278	1 212	1 193	1 489	1 448
Italy	18 779	18 365	17 503	16 599	16 045
Netherlands	1 053	1 073	1 076	994	932
Portugal	11 114	10 863	10 718	10 465	10 427
Finland	3 881	3 763	3 661	3 611	3 571
Sweden	2 123	1 889	1 943	1 847	1 820
United Kingdom	8 430	8 526	7 666	7 570	7 379

Source: New Cronos, September 2003

Table 4 – Number of fishermen

Year	1997	1998	1999	2000	2001
EU15					
Belgium	579	564	544	691	710
Denmark	7 130	6 999	6 711	6 564	6 338
Germany	4 422	4 335	4 363	4 358	4 400
Greece	18 379	18 007	19 620	19 847	19 817
Spain	75 434*	:	:	:	64 700
France	21 162	21 018	:	:	29 700
Ireland	8 263	8 478	:	:	:
Italy	40 224	:	:	48 770	42 137
Netherlands	3 711	3 743	:	:	3 435
Austria	2 300	2 300	2 300	2 300	:
Portugal	27 347	27 197	26 660	25 021	:
Finland	6 180	5 928	5 718	5 711	5 660
Sweden	3 287*	:	2 880	2 782	2 791
United Kingdom	18 604	:	:	14 894:	14 645

* 1996 data

Source: New Cronos, September 2003

Table 5 - Catches (in million tonnes)

Year	1998	1999	2000	2001
EU15	**6 711 010**	**6 292 524**	**6 044 682**	**6 086 913**
Belgium	30 836	29 876	29 799	20 317
Denmark	1 557 330	1 404 912	1 534 074	1 510 486
Germany	266 626	238 921	205 245	211 287
Greece	108 591	118 783	99 292	94 394
Spain	1 263 110	1 187 620	976 013	1 087 496
France	594 016	675 817	690 469	604 333
Ireland	324 739	283 622	282 925	335 594
Italy	317 796	294 160	299 955	310 403
Netherlands	536 627	514 615	495 804	518 163
Austria	451	432	859	362
Portugal	223 969	210 143	188 935	191 090
Finland	155 637	144 520	156 480	150 085
Sweden	410 886	351 345	338 537	311 828
United Kingdom	920 397	837 757	746 294	741 075
United States	4 957 189	5 061 822	5 083 292	5 363 115
Chile	3 462 878	5 280 731	4 547 536	4 031 399
Peru	4 340 087	8 430 334	10 659 932	7 991 608
China	17 400 401	17 455 239	17 191 615	16 792 259
Japan	5 378 421	5 321 060	5 107 907	4 833 146

Source: New Cronos, September 2003

Table 6 – National data in percentages

	Vessels	Power (kW)	Tonnage (GRT)	Catches (tonnes)	Jobs
	2002	2002	2002	2001	2001
Belgium	0.14%	0.92%	1.24%	0.52%	0.37%
Denmark	4.28%	4.78%	5.06%	26.06%	3.26%
Germany	2.48%	2.26%	3.54%	3.64%	2.26%
Greece	21.80%	8.35%	5.31%	1.63%	10.20%
Spain	16.43%	17.31%	26.48%	18.76%	33.29%
France	8.93%	15.30%	11.70%	10.43%	15.28%
Ireland	1.60%	2.90%	3.70%	0.61%	0.0%.
Italy	17.71%	17.76%	10.96%	5.35%	21.68%
Netherlands	1.03%	6.47%	10.19%	8.94%	1.77%
Portugal	11.51%	5.52%	5.95%	3.30%	0.00%
Finland	3.94%	2.60%	1.01%	2.59%	2.91%
Sweden	2.01%	3.09%	2.31%	5.38%	1.44%
United Kingdom	8.15%	12.73%	12.56%	12.78%	7.54%
Austria	0.00%	0.00%	0.00%	0.01%	0.00%

Source: New Cronos, September 2003

ECONOMIC AND SOCIAL COHESION

LEGAL BASIS

Articles 158 to 162 of the EC Treaty (Title XVII), established by the Single European Act.

OBJECTIVES

1. Main aims

Economic and social cohesion, as defined by Article 158, is needed for the Community's 'overall harmonious development' and requires a reduction of the 'disparities between the levels of development of the various regions', i.e. the 'backwardness of the least favoured regions', which include rural areas.

2. Means

In order to achieve these aims, the Treaty makes provision for:

- coordination of economic policies;
- implementation of Community policies, in particular the single market;
- use of the existing Structural Funds (European Agricultural Guidance and Guarantee Fund, Guidance Section; European Social Fund; European Regional Development Fund) and creation of a Cohesion Fund.

ACHIEVEMENTS

A. Background

1. The **Treaty of Rome** made no provision for regional policy but only solidarity mechanisms in the form of two Structural Funds: the European Social Fund (*4.8.2.) and the European Agricultural Guidance and Guarantee Fund, Guidance Section (*4.1.5.).

2. Regional policy was not put in place until after the Community's **first enlargement** in 1973, with the creation of the European Regional Development Fund (ERDF) in 1975. But for a long time it had only modest resources, which limited the level of regional policy activities.

3. The **additionality** principle was adopted right at the beginning of regional policy. This means that projects receiving Community aid must be new projects which the Member States would not have undertaken by themselves. But national funding must predominate; Community aid complements it. Similarly, the national and regional authorities are responsible for selecting projects and managing them, within the general Community criteria.

B. The growth of regional policy (1988-1999)

1. Impetus given by the Single Act

a. The Single Act (1986) gave the Community **new competence** for economic and social cohesion and set its objectives and means. The foremost of these means was systematic use of the Structural Funds; this entailed a reform of their operational rules.

- The reform required:
  - . a Commission proposal,
  - . a unanimous Council decision,
  - . consultation of the European Parliament.
- It was to be governed by the cooperation procedure which enables the Council to decide by qualified majority and gives Parliament a degree of control.

b. The Council carried out this **reform** by Regulation 2052/88 of 24 July 1988; Regulation 4253/88 of 19 December 1988 laid down the implementing provisions for coordinating the use of the Funds. The principles of the new rules are as follows:

- funds are concentrated under objectives and regions;
- the Commission, the Member States and the regional authorities work in partnership to plan, implement and monitor use of the Funds;
- measures are programmed;
- additionality of Community contributions is observed.

c. These new rules went together with a major **financial boost**. During the same year, 1988, the Council gave its agreement in principle to a series of economic measures known as the 'Delors I package', which planned to double the amount of the Structural Funds for the following five years (up to 1993).

2. Developments following the Maastricht Treaty

a. Contribution of the Treaty

The Maastricht Treaty:

- stipulated that the Commission must submit a report to the Council and Parliament every three years on the progress made towards achieving economic and social cohesion (Article 130b(2));
- provided for the possibility of 'specific actions' outside the Structural Funds (Article 130b(3));
- provided for the creation of a Cohesion Fund (Article 130d(2));
- reformed the decision-making procedures:
  - . the tasks, objectives, organisation, general rules and coordination of the Funds are still determined on the basis of the Commission's proposal and a unanimous decision of the

Council but are subject to the assent of Parliament (Article 130d(1)),

. implementing decisions relating to the ERDF are governed by the cooperation procedure (Article 130e(1)). Since the Treaty of Amsterdam, they have been governed by the codecision procedure involving the Council and Parliament.

b. A favourable context

- Economic and monetary union required regional policy to move forward: the reduction in public expenditure needed to join EMU could increase the disparities between countries if financial support were not granted to the least developed economies.
- Moreover, the legislation resulting from the new Community competences, particularly in the field of the environment, imposes very heavy costs on the less developed countries.

c. A new and substantial increase in the amount of the Structural Funds

Just after the Maastricht Treaty was signed, the Commission had proposed a considerably higher level of funding, known as the 'Delors II package'. The Council, meeting in Edinburgh in December 1992, approved only part of these proposals and planned to spread the expenditure over a longer period. Nevertheless, it signed up to a sizeable increase. The budget allocated to the whole package of structural measures for the six years 1994-1999 was set at ECU 208 000 million. This was an increase of 41% over the previous period (1988-1993). In 2000, commitment appropriations for structural policy, at EUR 32 000 million, represented almost a third of the Community budget, compared to slightly more than half for agriculture.

d. A major reform of the Structural Funds

Adopted through a Council decision in July 1993 (Regulation 2081/93 amending Regulation 2052/88 and Regulation 2082/93 amending Regulation 4053/88 for coordinating measures), this reform was intended to do two things: to integrate all structural measures into the overall strategy to combat unemployment and to develop the least favoured regions. It included the following changes:

- adjustment of the Funds' priority objectives to current economic change and revision of the ESF in respect of political guidelines and adoption of a strategic approach;
- revision of the procedure for establishing lists of areas eligible under Objectives 2 and 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.

e. Creation of the Cohesion Fund

Provided for by the Maastricht Treaty, the Fund was set up in March 1994 (*4.4.3.).

C. Recent decisions and prospects

1. A new reform of the Structural Funds

On the basis of the Commission's broad guidelines set out in 'Agenda 2000' (July 1997) and detailed in its March 1998 proposals, the Council meeting in Berlin in March 1999 approved a **new reform of the Structural Funds**. This reform aimed to concentrate aid further, to simplify and decentralise the way the Funds operated, to increase their efficiency through better evaluation and monitoring and to stress additionality. At the same time the Cohesion Fund (*4.4.3.) was maintained and the Financial Instrument for Fisheries Guidance (FIFG *4.2.3.) was made a separate fund. The Council formally adopted the reform with Regulation 1260/99 of 21 June 1999.

2. A new financial effort

At the same time, the Berlin Council approved the **allocation of EUR 213 000 million** to structural measures for the period 2000-2006, EUR 7 000 million of which are destined for the new 'Instrument for Structural Policies for Pre-Accession' (ISPA), which the Council had approved in December 1997 (Luxembourg) in the context of Agenda 2000, with the aim of helping the Central and Eastern European applicant countries to adapt to the requirements of EU membership (*6.3.1.).

ROLE OF THE EUROPEAN PARLIAMENT

1. Parliament's **basic position** is that economic and social cohesion is an essential precondition for solidarity in order to maintain a consensus among the citizens in the regions and various social groups concerning their commitment to the EU itself. As such, it must remain an essential aspect of European integration, on an equal footing with the single market and monetary union. The appropriations allocated must remain at a sufficiently high level to ensure that it is effective. Parliament has always vigorously supported the proposals, which it considers the minimum necessary, to increase allocations to the Structural Funds.

2. Parliament has made use of its **new powers** in this area:

the Single Act introduced cooperation with the Council for implementing decisions regulating the Structural Funds;

the Maastricht Treaty introduced the assent procedure for decisions on regulations;

the Amsterdam Treaty introduced codecision with the Council for implementing measures.

a. It endeavoured to affect the **1993 reform**, stressing the need for sufficient funding. It persuaded the Commission (July 1993) to accept a code of conduct on implementing structural policy which binds it closely to the establishment of 'Community support frameworks (*4.4.2.) and to their implementation and evaluation. The code of conduct has given rise to an ongoing dialogue in which Parliamenthas given its support to two Commission projects: a system for publicising Structural Fund measures and a regulation on recovery of sums invested in the event of irregularity.

b. Parliament was able to affect the **1999 reform** on the basis, firstly, of its new power to give assent to general rules on the Structural Funds. It expressed its position in particular in its resolution of 19 November 1998, and the Council took most of its views into account, so that Parliament was able to give its assent on 6 May 1999. With regard to the implementing measures, it was even able to obtain legislative codecision, anticipating the entry into force of the Amsterdam Treaty. The code of conduct with the Commission has been extended to include all the structural instruments (6 May 1999).

THE EUROPEAN REGIONAL DEVELOPMENT FUND (ERDF)

LEGAL BASIS

Articles 158 to 162 of the EC Treaty.

OBJECTIVES

To help redress regional imbalances through participation in:

- the development and structural adjustment of regions whose development is lagging behind;
- the conversion of declining industrial regions (Article 160).

ACHIEVEMENTS

A. History

The ERDF was set up in 1975 and has become the main instrument of the Community's regional policy.

1. Main operating principles

The main principles by which it currently operates were laid down by the general reform of the Structural Funds in 1988 (*4.4.1.). '**Community support frameworks**' negotiated between the Commission, the Member States and the regional authorities lay down the broad outline of the measures that commit the Member States and the Community jointly and provide a reference framework for operational programmes submitted by the Member States. The Commission has the final decision on cofinancing these programmes.

2. The four objectives of 1993

The regulations reforming the Structural Funds in 1993 (*4.4.1.) gave the ERDF the following **four objectives** for the period 1994-1999:

- 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).

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 new Regulation of 1999 (*4.4.1.)

1. Objectives

The regulation adopted in 1999 for the period 2000 – 2006 (Council Regulation 1261/99 of 21 June 1999) limits the ERDF's objectives to two:

a. Objective 1

This remains unchanged: development and structural adjustment of regions whose development is lagging behind. However, it now includes the areas which were eligible under Objective 6 and the very remote regions.

b. Objective 2

This is new: economic redevelopment and development of areas with structural problems. It covers the former Objectives 2 and 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

- Those whose GNP is less than 75% of the Community average, a list of which is drawn up by the Commission;
- Very remote regions (French overseas territories, the Azores, Madeira and the Canary Islands);
- Regions covered by Objective 6.

All these regions represent about 20% of the EU population.

b. Under Objective 2

There are four types of Objective 2 region: industrial, rural, urban and fishery-dependent. The Commission in close cooperation with the Member States concerned will draw up a list of these regions. They cover about 18% of the EU population.

3. Transitional arrangements

There are transitional assistance arrangements for regions which were eligible under Objectives 1, 2 and 5b in 1999 but are no longer eligible in 2000.

4. Community initiatives

Relevant sectors

- Transfrontier, transnational and interregional cooperation to stimulate development and coordinated, balanced planning;
- rural development;
- transnational cooperation on new practices to deal with any kind of discrimination or inequality in access to employment.

5. Programmes

The number of programmes has been reduced to four: INTERREG, URBAN, LEADER and EQUAL. Their funding has been cut back to about 5% 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.

ROLE OF THE EUROPEAN PARLIAMENT

*4.4.1.

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.

THE COHESION FUND

LEGAL BASIS

Article 161 of the EC Treaty, introduced by the Maastricht Treaty.

OBJECTIVES

The Treaty states that the Fund 'shall provide a financial contribution to projects' in the fields of:

- environment;
- trans-European networks in the area of transport infrastructure.

ACHIEVEMENTS

Initially the Council set up (1 April 1993) a 'cohesion financial instrument' (Regulation 792/93/EEC). The Cohesion Fund replaced it on 16 May 1994 (Regulation 1164/94 modified by Regulations 1264/99 and 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 EMU. Four Member States qualify: Spain, Greece, Ireland and Portugal.

2. Eligible projects

In the two areas of action laid down by the Treaty, the Fund may assist:

a. 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 (130s) and are in line with the priorities given to Community environmental policy by the Fifth Programme of Policy and Action in relation to the Environment and Sustainable Development.

b. Transport infrastructure projects of common interest financed by Member States, within the framework of the guidelines referred to in Article 155 (129c) of the Treaty; however, other **trans-European network** projects contributing to achieving the objectives of Article 154 (129b) of the Treaty may be financed until the Council adopts appropriate guidelines (*4.6.2.).

c. Preparatory studies related to eligible projects.

d. 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. For the period 1993-99, the total volume of resources that could be committed under the Fund was just over ECU 15 billion, broken down annually as follows:

- 1993: 1 500 million;
- 1994: 1 750 million;
- 1995: 2 000 million;
- 1996: 2 250 million;
- 1997: 2 500 million;
- 1998: 2 550 million;
- 1999: 2 600 million.

b. For the period 2000-2006,

the Fund has EUR 18 000 million, broken down as follows:

- 2000-2003: 2 650 million per year;
- 2004-2005: 2 515 million per year;
- 2006: 2 510 million.

2. Allocation by country

Regulation 1264/99 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% (from 2003 Ireland is no longer eligible).

ROLE OF THE EUROPEAN PARLIAMENT

1. The creation of the Cohesion Fund in 1994 was Parliament's first opportunity to use the **new power of assent** on the Structural Funds conferred on it by the Maastricht Treaty (article 130 (d)). It was able to ensure that regional and local authorities were involved in monitoring projects financed by the Fund; its assent also had a bearing on the way the Fund operates.

2. In subsequent years, **Parliament's influence on cohesion policy increased**.

a. 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.

b. 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 17 100 indirectly in 1996, according to Commission estimates

TRANSPORT POLICY: GENERAL PRINCIPLES

LEGAL BASIS

Article 3f and Title V CE.

OBJECTIVES

1. The policy must first fulfil the **objectives laid down by the Treaty**, as listed under 'Legal basis', and which broadly deal with **completing the internal market**.

2. Apart from this objective, which always was part of the policy and has now largely been fulfilled (except with regard to railways, for which legislation is being drawn up), it now aims to set up a system of '**sustainable mobility**'. This means organising transport so as to make optimum use of energy consumption and transport times, routes and conditions. The need for sustainable mobility implies in turn a need to 'internalise' the costs of infrastructure. This will involve eliminating distortion of competition between modes of transport as a result of mistakenly allocating costs to carriers; combined transport; and interoperability.

ACHIEVEMENTS

A. General policy guidelines

1. The **1985 White Paper** on completing the internal market made recommendations for guaranteeing freedom to provide services and set out the guidelines for the common transport policy. In November 1985 the Council of Ministers adopted three main guidelines: creating a free market (without quantitative restrictions) by 1992; increasing bilateral and Community quotas; and eliminating distortion of competition. It also adopted a 'Master Plan' of objectives to be achieved by 31 December 1992 for all forms of transport (by land, sea and air): developing infrastructure of Community interest, reducing border controls and formalities and improving safety.

2. On **2 December 1992** the Commission adopted the **White Paper** on the future development of the common transport policy. This document marks a turning point in the policy, as it shifted from an approach organising the different transport modes by sector to an integrated one based on sustainable mobility.

3. The **Commission Green paper** of **20 December 1995**, 'Towards fair and efficient pricing in transport' (COM(95)691) sets out the details of a fiscal policy on transport. It analyses the external factors and includes taxation as one of the ways in which the State can have an impact on this sector. The Commission estimates the external costs at EUR 250 billion, 90% in connection with road traffic. Internalising these costs would produce savings of EUR 28 to 78 billion by reducing traffic congestion, accidents and CO2 emissions, the latter by an average of approximately 12%. The **Commission White Paper** of **2 July 1998**, 'Fair payment for infrastructure use; a phased approach to a common transport infrastructure charging framework in the EU', adopted subsequently, sets out a phased approach to run until 2004 for internalising infrastructure costs. The aim is to replace the variety of charging systems currently in force in the various Member States and transport modes with a harmonised, Community approach to transport charging.

4. The **White Paper** "European Transport Policy for 2010: Time to decide", adopted by the Commission on **12 September 2001** advocates a qualitative change of direction in transport policy. The development of an environmentally friendly mix of transport services in Europe must go hand in hand with an efficient, high-quality and safe service for citizens. Some 60 measures were presented and designed to bring about a substantial improvement in the above named areas. Implementation of the measures in the White Paper should contribute to achieving the objective of breaking the link between economic growth and growth in transport, as requested by the Gothenburg European Council. The Commission therefore proposes firstly, in conformity with the sustainable development strategy adopted by the Gothenburg European Council, to shift the balance between transport modes by 2010, primarily by means of a policy of revitalising the railways, promoting sea and inland waterway transport to reduce levels of congestion on the roads and controlling the growth of air transport. Among other things the Commission also stresses the need to link up the various transport modes in order to make intermodality a real option, including the setting-up of the new Community support programme "Marco Polo" as well as technical harmonisation and interoperability measures. Secondly the Commission proposes concentrating Community action with regard to Trans-European Networks on eliminating bottlenecks. Thirdly the Commission stresses the intention of placing users at the heart of transport policy by devoting attention to unsafe roads, real costs and the need to rationalise car use in urban areas. Fourthly and finally, the Commission stresses the need to manage the effects of transport globalisation. In order to better secure the interests of the EU, it proposes in particular to strengthen the Community role in international organisations such as the International Maritime Organisation and the International Civil Organisation.

B. Implementation

1. Despite the Commission's efforts, little was achieved in the common transport policy until the second half of the 1980s. The way forward to Community legislation in the transport sector opened up with the Court of Justice ruling of 22 May 1985 in Case 13/83, on the proceedings instituted by Parliament against the Council for its failure to adopt the measures laid down in the Treaty.

2. Practical measures

They are now under way to implement the above objectives.

a. One of them deals with the **intermodality**. Intermodality contributes to the objective of shifting the balance between modes - apart from reducing congestion it also improves road safety and reduces pollution. The aim of the Community policy on intermodal freight transport is to support the efficient door-to-door movement of goods, using two or more modes of transport in an integrated transport chain. Actions will focus on supporting alternatives to road transport particularly for the "long haul" section of journeys. Short term priorities are technical harmonisation, research into promising technologies and the new Community support programme "Marco Polo". On 4 February 2002 the Commission adopted the proposal on establishing Marco Polo. The programm will provide financial support to commercial activities on the freight services market, modal shift projects in all segments of the freight market and finance projects, preferably of an international character, involving the candidate countries for accession. It therefore features three main types of action: aid to the start-up of new, non-road freight services, support to the launch of services or systems of strategic interest to Europe ("catalyst actions") and stimulation of cooperative attitudes on the freight logistics market ("common learning actions"). The common position was reached on 25 April 2003.

b. The objective of intermodality is assisted by the **new technologies**, in particular telecommunications and information technology. Here the Commission Communication on telematics applications for transport in Europe (COM(94)469) is significant, as it outlines a Community action programme for the required infrastructure based on the idea of open network architecture, which it considers best suited to ensuring interaction between the various elements in the system. This provides operators with information, radio-navigation and telecommunications services, organised to suit the various modes of transport but designed for operational integration.

c. In a communication of February 1999 (COM(1999)54) the Commission presented **Galileo**, a programme on satellite radio navigation. Galileo is a joint initiative by the EU as the European Space Agency. It is to be developped in two phases: definition in 2000, development and validation until 2005 and deployment by 2007.

ROLE OF THE EUROPEAN PARLIAMENT

1. Powers

They have increased with application to most aspects of the CTP first of the cooperation procedure, under the Treaty of Maastricht, and then the codecision procedure, under the Treaty of Amsterdam.

2. General attitude

A large majority of MEPs have advocated a global approach to the common transport policy, believing this to be the key to any progress towards greater economic integration.

Parliament's legal action against the Council (see above) did much to bring the common policy into being. Its resolution of 18 January 1994 on the future development of the common transport policy is particularly concerned with the environment, and the associated need to internalise costs. The resolution of 6 June 1996 on the Commission communication on the Common Transport Policy Action Programme 1995-2000 takes the same approach. It highlights the need for Community-level planning, every two years, with clear objectives for restoring the balance between modes of transport, a specific cost-benefit analysis and coordination between implementation of the CTP, infrastructure guidelines and Structural Fund measures.

On 12 February 2003, Parliament adopted a resolution on the Commission's White Paper "European Transport Policy for 2010: Time to decide". Parliament wanted to see transport given the political and budgetary weight warranted by its strategic character and its role asgeneral interest service. A European transport policy must cover both passenger and freight transport as well as all modes of transport, infrastructures and systems, as well as harmonisation. Parliament supports all forms of public transport and improved mobility for pedestrians, including those facing barriers to accede to transport, in particular, disabled and elderly persons. Also, Parliament stresses that switching freight transport from roads to short sea shipping and inland waterways could play an important part in the EU strategy for meeting climate protection obligations under the Kyoto Protocole. Finally Parliament calls for a better coordination between environment policy and transport policy.

3. Fair and effective charging

In its resolution of 30 January 1997 on the Green Paper of 20 December 1995, Parliament points out that internalisation should aim not to make transport more expensive but to ensure that existing costs are apportioned rationally, and that external costs must be apportioned among all modes of transport at the same time to avoid fresh distortions of competition. In its resolution of 15 April 1999 on the White Paper, it also calls for the charging system to include car traffic and to encourage the use of environment-friendly technology by such means as taxes on kerosene in air transport and on fuel for pleasure boats. It points out that the public has to be won over to the need for charging.

INLAND TRANSPORT: MARKET ACCESS AND COMPETITION

LEGAL BASIS

Title V EC, especially Article 71.

OBJECTIVES

To create a single transport market, by easing the practical exercise of freedom of establishment and freedom to provide services throughout the Community.

ACHIEVEMENTS

A. Road transport

1. Harmonisation and mutual recognition of the rules on access to the profession

The common rules on access to the occupation of road haulier or passenger carrier and the mutual recognition of diplomas were recast in one law, Directive 96/76 of 29 April 1996, amended by Directive 98/76 of 1 October 1998. This stipulates that:

- those wishing to take up the occupation must fulfil specific conditions, such as creditworthiness and financial and professional proficiency;
- the Member States must accept as sufficient evidence documents issued by another Member State certifying that these conditions have been met. According to Regulation 484/2002/EC a uniform driver attestation, certifying that a driver engaged in international carriage of goods is employed legally, applies.

2. Opening up the goods market

a. International transport (for journeys involving several Member States).

- In 1988 the Council adopted a regulation abolishing all quantitative restrictions, from 1 January 1993: quotas are still in practice between the Community and certain Eastern European countries, according to Regulation 893/2002/EC to facilitate transit by way of authorizations for carriage of goods by road.
- Regulation 3916/90 of 21 December 1990 introduced a 'crisis mechanism' for serious disruption of the market.
- Finally, Regulation 881/92 of 26 March 1992 laid down the definitive arrangements, based on wide-scale liberalisation.

b. Access for non-resident carriers to national transport services (for journeys within one Member State, known as *cabotage*). The Council established unrestricted access by Regulation 3118/93 of 25 October 1993.

3. Opening up the passenger market

a. International transport was substantially liberalised by Regulation 684/92 of 16 March 1992.

b. National transport (*cabotage*)

- Regulation 12/98 of 11 December 1997 has opened the market for occasional services (coaches), regular special services covered by a contract between the organiser and the carrier, such as for the transport of workers or students and regular normal services supplied as part of an international service.
- At the moment the following have not been opened up and are thus likely to be excluded from non-resident carriers: national services supplied independently of an international service and urban and suburban services, even when supplied as part of an international service. The Commission proposal of 26th July 2000 intends to develop competition in public transport.

B. Inland Waterways

1. Harmonisation and mutual recognition of the rules on access to the profession

- The mutual recognition of boat masters' certificates was introduced by Directive 91/672 of 16 December 1991.
- Directive 96/50 of 23 July 1996 harmonised the conditions for obtaining such certificates.

2. Access to the international transport market

This was secured by Regulation 1356/96 of 8 July 1996, whereby any carrier duly established in a Member State may carry goods or passengers between Member States or in transit through them.

3. Access of non-resident carriers to transport services (*cabotage*)

a. This was obtained by Regulation 3921/91 of 16 December 1991. From 1 January 1995 any carriers duly established in a Member State may carry out national passenger or goods transport operations on the territory of a Member State in which they are not established.

b. But the special situation in the industry has required **measures to correct** certain distortions**.**

- First there was a need to **reabsorb existing overcapacity**. This "structural reform" was tackled by Regulation 1101/89 of 27 April 1989. It comprised:
  - . the granting of premiums for scrapping boats,
  - . an "old for new" scheme, in which a company building new craft is required to scrap an

equivalent capacity of existing craft or pay compensation into a special "scrapping fund".

From 29 April 1999, a coefficient applies to the equivalent capacity which will gradually reduce to zero. Regulation 336/2002 introduces new ratios between vessels to be scrapped and newly built crafts in order to maintain a general balance without undoing the structural improvement.

- Precautionary measures also had to be taken concerning the **admission of third-country carriers**. Thus Regulation 2919/85 of 17 October 1985 laid down the conditions giving such carriers (mainly from eastern European countries) access to navigation on the Rhine. Negotiations are under way to settle a similar problem on the Danube. A memorandum of understanding concerning a cooperation framework with non-member states in the Danube corridor was signed on 5/6 September 2001.

4. Competition rules

Directive 96/75 of 27 November 1996 introduced total freedom to conclude contracts and negotiate prices putting an end, from 1 January 2000, to the practice of obligatory minimum tariffs.

C. Rail transport

1. Legislation

a. Access to infrastructure

Directive 91/440 of 29 July 1991 requires the Member States:

- to grant the rail companies independence from government and introduce commercial management techniques;
- to separate the management of infrastructure from transport management.

It establishes the principle entitling the rail company of one Member State to have access to the infrastructure of other Member States.

b. Access to the occupation (licences)

- Directive 95/18 of 19 June 1995 stipulates that, to be entitled to accede to the infrastructure of all the Member States, a rail company must hold a licence, which is issued subject to compliance with certain common conditions (a clean record, financial viability and proficiency) by the Member State in which the company has its registered office and applies throughout the Community.
- Directive 95/18 was amended by Directive 2001/13 extending the provisions of the previous Directive on the system of licensing to all railway undertakings with some exceptions (e.g. some undertakings with local and regional activity).

c. Allocation of infrastructure capacity

- Directive 95/19 of 19 June 1995 guarantees fair and non-discriminatory access to infrastructure, particularly by requiring companies to set up a user fee scheme, based on actual costs; the fees are levied by an independent body, which may be the network manager if this is separate from the rail companies.
- Directive 2001/12 makes compulsory a separate balance sheet and profit and loss accounts for the infrastructure managers and the service operators. In addition, an independent body was established to guarantee fair and non-discriminatory access to infrastructure.
- In a proposal for a directive amending Directive 91/440 (COM(2002) 25) it is intended to permit *cabotage* in the rail transport and to accelerate the process of opening up the international trade market on the Community's railways.
- Directive 95/19 was replaced by Directive 2001/14 providing a more precise definition of the rights of railway undertakings with regard to capacity allocation and establishes a procedure for resolving capacity shortages. It stipulates that the charging for the use of infrastructure will be based on the marginal costs.

2. Prospects: revitalising the railways

However, opening up the market through access to infrastructure remains incomplete. The rail freight market on the TEN is opened by March 2003, while the rest of the freight market is to be opened only by 2008. Meanwhile the railways' share of the transport market has been declining and running large deficits, although rail is technically and socially a transport mode that ought to be developed. In view of these failings, in a White Paper of 12 September 2001 the Commission proposed a strategy to revitalise the Community's railways, comprising the following main points:

- the opening up of national freight markets for *cabotage*;
- the establishment of a high safety level;
- the development of interoperability;
- the step-by-step opening up of transfrontier passenger services;
- the promotion of measures concerning quality of services and customer rights;
- the creation of a common agency for safety.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has repeatedly called for opening up of the inland transport market. In particular, it has:

- advocated extending the common rules on access to the road haulage occupation to companies using vehicles under 3.5 tonnes;
- supported the liberalisation of the railways, as long as it is a gradual process and maintains public service provision (Resolution of 10 March 1999); and
- approved the revitalisation policy.

INLAND TRANSPORT: TRAFFIC AND SAFETY REGULATIONS

LEGAL BASIS

Following amendment by the Maastricht Treaty, Article 71 of the EC Treaty includes transport safety as a one of the Community's competences.

OBJECTIVES

The principle of sustainable mobility (*4.5.1.) implicitly covers safety, for both passengers and goods. The concept of safety has two separate areas: one is the safety of people (passengers and employees) or goods in transit; the other, the people and environment put at risk.

ACHIEVEMENTS

1. General policy

a. On 17 March 2000 the Commission put forward a **Communication on the priorities for road safety**. The present action programme is pending until the completion of a cost-benefit study, evaluating road safety measure by comparing its cost with the figures for the damages and social costs caused by accidents. The Commission reckons that the total cost of accidents in the EU, where 41 000 people die on the roads each year, is EUR 160 billion. The Commission aims to reduce the figure by at least 18 000 by the year 2010.

b. Council Directive 96/35 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, requires any undertaking concerned to appoint one or more specially trained safety advisers to ensure the regulations are complied with.

2. Road safety

a. Roadworthiness of vehicles

Harmonisation of the national laws on the technical condition of vehicles was one of the Community's most remarkable achievements. It included:

- Roadworthiness tests for motor vehicles (Directive 77/143 of 29 December 1976, amended several times).
- Making the use of safety belts compulsory in vehicles of less than 3.5 tonnes (Directive 91/671 of 16 December 1991). A new directive amending Directive 91/671, making the use of safety belts compulsory for children, is in preparation.
- Making speed limiters compulsory for vehicles of more than 3.5 tonnes, in Directive 92/6 of 10 February 1992. Directive 2000/30 introduced the possibility of roadside technical inspections of commercial vehicles. Directive 2002/85 amending Directive 92/6 extends to all vehicles over 3.5 tons the obligation to use speed limitation devices for safety and environmental protection reasons.

b. Transport of dangerous goods

Directive 94/55 of 21 November 1994 extends to national domestic transport the provisions laid down for international transport by the European agreement concerning the international carriage of dangerous goods by road (ADR). Directive 95/50 of 6 October 1995 governs standard checking procedures. A future directive is to amend Directive 95/50 to establish uniform procedures for checks on the transport of dangerous goods by road, taking into account the latest adaptations to technical progress of Directive 94/55.

c. R&D policy

The section on transport in the Sixth Framework Programme for research 2003-2007 aims at coordinating research activities and exchange results on technological developments. In the case of road transport, it deals in particular with telematics applications. Community action on this aspect was the subject of a Commission communication in 1994 (COM(94)469), (*4.5.1.) and a report in 1997 on telematics in road transport (SEC(97)475). The policy covers the following points: demand management and traffic monitoring and control, information on routes and traffic, electronic tolls, payment and reservation, use of goods vehicles, public transport services and advanced vehicle safety systems.

d. Miscellaneous

- The Commission has set up an accident database, CARE, for the comparative study of situations in which accidents happen, assisting the dissemination of information and solutions. In accordance with the Commission communication on "Priorities in EU Road Safety: Progress Report and Ranking of Actions (COM(2000) 125) the Commission issued a recommendation 2001/115 to Member States in order to adopt a legal maximum blood alcohol content.
- The 1997-2001 road safety programme sets out a three-point strategy: collection and dissemination of information and best practice; accident prevention measures; equipment to reduce the effects of accidents. Each of these points covers the whole range of accident factors (vehicles, people and infrastructure). The Commission's White Paper on the common transport policy, adopted in September 2001 (COM(2000)37), contains a specific chapter on road safety and proposes two measures for the Trans-European Network to improve road safety: harmonisation of signs at particularly dangerous black spots and of the rules governing checks and penalties with regard to speedy and drink-driving.

3. Rail safety

Directive 96/49 of 23 July 1996 on approximating the Member States' laws on the transport of dangerous goods by rail harmonises the laws of the Member States in order to guarantee a fairly high level of safety in national and international transport by extending to domestic rail transport the provisions laid down for international

transport by rail of dangerous goods in the convention concerning the international carriage of dangerous goods by rail (COTIF). The Commission communication "Towards an integrated railway aera" (COM(2002) 18) contains proposals for legislative measures on rail transport safety in order to develop a common approach on safety. The establishment of a European Railway Agency is envisaged to develop common safety standards and to monitor safety perfomance. A future directive will set out a work programme addressing the problems posed by enlargement in the railway sector. It deals in particular with certain social standards (professional qualifications and safety at work).

4. Safety of inland waterways

There are at present three different sets of regulations governing technical standards for inland waterway vessels: the Rhine Central Commission's regulation on inspection of vessels on the Rhine, revised in 1995, which applies to vessels using the inland waterways covered by the revised Mannheim Convention; Directive 82/714 laying down technical requirements for inland waterway vessels, which applies to inland waterways in the EU apart from the Rhine, and the 1981 recommendation by the United Nations Economic Commission for Europe on uniform technical standards applicable to inland waterway vessels, which also applies to vessels from European non-member States. The Commission has also submitted a proposal for a directive on harmonising the Member States' laws on the transport of dangerous goods by inland waterway vessels (COM(97)367) which updates Community provisions by amending the 1982 directive.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has drawn attention in numerous resolutions, including that of 18 January 1984 on the future development of the common transport policy (*4.5.1.), to the vital importance of safety as the main criterion for any action in this area. In the case of road safety, it has commented on the various Commission programmes, including the 1997-2001 programme in its resolution of 11 March 1998. While it supports the Commission programme, this resolution highlights the following priorities: legislation on the technical characteristics of vehicles with a view to the safety of pedestrians and cyclists, and the provision of financial support for technological development in this area; improving the safety of infrastructure; limiting the blood alcohol level to 0.5 mg/ml, as recommended in an old proposal still pending in the Council; harmonising speed limits throughout the Community; point-style driving licences; banning mobile phones while driving, unless they are hands-free sets; improving checks on professional drivers' compliance with rest and driving-time regulations and extending the directive on working time to the transport sector; and promoting public transport. In this resolution of 11 March 1998 on the Commission Communication 'Promoting road safety in the EU - Programme for the period 1997-2001', Parliament welcomed the Commission initiative but stressed the importance of setting target figures for reducing the number of accident victims.

In its Resolution of 18 September 2001 on the Commission's communication concerning the priorities for road safety, Parliament pointed out that 95% of all accidents happen on the road and that the large differences between Member States suggest opportunities for reducing the number of accidents.

INLAND TRANSPORT: HARMONISATION OF LEGISLATION

LEGAL BASIS

*4.5.1.

OBJECTIVES

A common transport policy, with the aim of establishing fair competition, implies the need to harmonise Member States' transport laws so as to avoid differences between the main cost factors. This particularly applies to taxation (VAT, road tax and fuel tax), technical specifications (maximum authorised dimensions and weights, safety standards) and other rules concerning government intervention, such as subsidies.

ACHIEVEMENTS

1. Tax harmonisation

a. VAT and excise duties

Agreement has been reached on VAT on transport services. There has also been some harmonisation of excise duties on fuels, with the adoption of Council Directive 92/81 and 92/82 of 19 October 1992 on rates of excise duties on mineral oils.

b. Charging of infrastructure costs

Directive 99/62 of 17 June 1999, on the charging of heavy goods vehicles for the use of certain infrastructures, seeks to eliminate distortion of competition and provides for taxes on motor vehicles, with maximum and minimum rates allowing differentiation in favour of less polluting vehicles, tolls and user charges for motorways, multi-lane roads, bridges, tunnels and mountain passes.

2. Technical harmonisation

a. Maximum authorised dimensions and weights

Directive 96/53 of 25 July 1996 laying down these maximum figures settled a fundamental issue for competition between transport operators. Moreover Directive 97/27 of 22 July 1997, dealing with the weights and dimensions of certain categories of motor vehicles (amending Directive 70/156), settled certain types of national transport. The maximum authorised weight is 32 tonnes. The Directive 2002/7 amending Directive 96/53 will harmonise the maximum length of buses in the European Union.

b. Roadworthiness tests

The harmonisation of roadworthiness tests has been dealt with in several directives, the most recent being Directive 96/96 of 20 December 1996, which coordinates all Community law on the subject. It provides for regular compulsory checks on motor vehicles with at least four wheels for the transport of passengers or goods (excluding farm vehicles), trailers and semi-trailers. Such checks include gas emissions and speed limiters when these are compulsory. A proposal for a directive (COM(98)117) currently under consideration aims to introduce spot checks at the roadside to identify certain faults which are deliberately concealed for the regular annual inspection.

c. Interoperability of high-speed trains

Council Directive 96/48 of 23 July 1996 on the interoperability of the European high-speed train network (COM(94)107) is of particular importance for the creation of the trans-European network, as it creates a regulatory framework of mandatory technical specifications for interoperability (TSI) and harmonised standards. Its main purpose is to harmonise national laws, which are at present based on differing ideas about safety, environmental protection, health and consumer protection and operational requirements. The adopted rules not only meet the requirements of interoperability but also allow the opening up of markets to all transport operators, as Directive 90/531 of 17 September 1990 intends, and supplement the directive on development of the railways, Directive 91/440 of 29 July 1991. A Commission proposal tends to amend Directive 96/48 and Directive 2001/16 on the interoperability of the trans-European rail system, in order to facilitate transfrontier transport and to reduce certain costs.

3. Administrative harmonisation

a. Drivers' legal obligations

- Directive 91/439 of 29 July 1991 lays down the health and training requirements for issuing **licences** and Directive 96/47/EC of 23 July 1996 defines the licence format.
- Regulation 484/2002 amending Regulation 881/92 and 3118/83 establishes a uniform **driver attestation** which can be checked by inspecting officers of all Member States.
- The Commission launched a proposal (COM(2001) 56) in order to make **professional training** mandatory for drivers who carry goods and passengers by road; it provides for common rules on compulsory minimum training for all new drivers to increase respect for profession and improve road safety.

b. Vehicle registration

This is covered by a directive and a regulation: Council Directive 99/37 of 29 April 1999, harmonising vehicles' registration documents, simplifies checks on ownership and transfers between residents of two different Member States; Council Regulation 2411/98 of 3 November 1998 on the recognition in intra-Community traffic of the distinguishing sign of the Member State in which motor vehicles and their trailers 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 harmonization

a. Road transport

The transport sector was excluded from Directive 93/104 on working time. With regard in particular to road transport, the failure of the two sides of the industry to reach agreement in talks on this matter led the Commission to take the initiative to propose legislation on the working time of mobile workers and self-employed hauliers. The latter were included because of the trend for undertakings to subcontract work to drivers who were previously employees, often with the aim of avoiding laws intended to protect employees, for example in the area of health and safety. The Commission proposal, following the example of the general directive on working time, maintains an average working week of 48 hours, while allowing numerous derogations and the possibility of extending the working week to 60 hours in any week, as long as the 48-hour average is respected over a four-month period. Directive 2002/15 of 11 March 2002 on the organisation of the working time of persons performing mobile home transport, aims to establish minimum requirements in relation to the organisation of working time to improve the health and safety of drivers.

Time spent driving is already covered by Regulation 3820/85 of 20 December 1985 laying down maximum authorised periods of continuous driving, rest breaks and driving time per week, while Regulation 3821/85 (repeatedly amended, most recently by Regulation 1056/97) requires a monitoring device to be fitted. The proposal for a regulation on the harmonisation of social legislation relating to road transport (COM(2001) 573) aims at a common interpretation on driving times and at a division of responsibilities of driver and employer. Directive 96/35 defines the conditions for access to the occupation of road haulier, particularly on aptitude and solvency, establishing machinery for detecting and punishing infringements.

b. Waterways

Directive 87/540 of 9 November 1987 governs access to the occupation of carrier of goods by waterway, covering the mutual recognition of diplomas, certificates and other professional qualifications.

c. Users

The Council has adopted Recommendation 98/376/EC on a parking card for disabled people; from 1 January 1999 this entitles card-holders to use special parking spaces throughout the Community.

5. Other forms of government intervention

Regulation 1191/69 (amended by Regulation 1893/91) of 26 June 1969 requires Member States to either terminate public service obligations or make compensation for them in accordance with common criteria. Regulation 1107/70 of 4 June 1970 lays down the conditions on which Member States may grant aids to transport companies, particularly to promote combined transport.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has used its legislative powers to support most of the Commission's proposals for harmonisation. In particular, it has expressed its views in favour of:

- **charging of infrastructure costs**, though with a number of amendments intending to, inter alia, abolish maximum limits and introduce the concept of 'sensitive areas'; the Commission rejected these amendments;
- phasing in the use of **high-speed trains** for goods transport, extending interoperability to non-Community European countries such as Switzerland and the CEECs and the interoperability of systems that are directly accessible to users, such as information, reservations and ticketing;
- a **driving licence with penalty points**; but Parliament's repeated efforts (most recently, its resolution on road safety of 11 March 1998, *4.5.3.) have been unsuccessful. Parliament was, however, against the proposal to increase to 44 tonnes the maximum authorised weight of vehicles used in combined transport.

AIR TRANSPORT: MARKET ACCESS

LEGAL BASIS

*4.5.1.

OBJECTIVES

Under current international law, and especially the 7 December 1944 Chicago Agreement, international air transport is governed by the principle of national sovereignty, and this places legal restrictions on air traffic. To remove these restrictions, **liberalisation involves establishing a number of "*freedoms*"**, as defined in legal literature and, in some cases, international agreements. These freedoms are usually identified by an ordinal number, rising according to the degree of liberalisation.

1. **Technical freedoms established by the international agreement on the transit of air services** (Chicago Agreement)

- **First freedom:** The right to pass over the territory of the signatory States without landing.
- **Second freedom:** The right to land in the territory of the signatory States for non-commercial reasons.

2. **Commercial freedoms laid down in a draft international air transport agreement**, but already recognised by bilateral agreements and by Community law

- **Third freedom**: The right to set down passengers, mail and freight taken up in the territory of the State in which the aircraft is registered.
- **Fourth freedom**: The right to take on passengers, mail and freight destined for the territory of the State in which the aircraft is registered.
- **Fifth freedom**: The right to take on passengers, mail and freight destined for the territory of any other contracting State and the right to set down passengers, mail and freight originating in the territory of any other contracting State.

3. **Freedoms defined by legal literature**

- **Sixth freedom**: The right to provide transport services between two countries other than the country in which the aircraft is registered across the territory of that country.
- **Seventh freedom**: The right to operate completely outside the territory of the state of registration and to set down or take on passengers, mail or freight originating in or destined for a third State, which is not the State of registration.
- **Eighth freedom**: The right to transport passengers, mail or freight from one point to another within the same State, which is not the State in which the aircraft is registered.

The freedoms of this third category, which are now a reality in the Community, have not yet been fully achieved in the rest of the world, but the USA's 'open skies' policy has made air transport one of the most competitive sectors at world level. This means that the Community must adopt a policy for the air transport industry enabling European airlines to face global challenges. This is the subject of a Commission communication (COM(99)182), which assesses the situation and identifies policy orientations:

- Community competition law to apply, particularly with regard to State aid;
- technical barriers to trade to be removed, particularly with regard to harmonising safety rules;
- restrictions on ownership and bilateral agreements to be abolished.

ACHIEVEMENTS

A. The internal air transport market

The eighth freedom, known as ***cabotage***, was gained when the single market in air transport finally came into force on 1 July 1997, at the end of a long process of liberalisation culminating in three measures adopted on 23 July 1992.

1. Harmonised access

Regulation 2407/92 lays down the conditions for granting the licence to operate as an air carrier: companies must have their registered office in an EU country, must be directly or indirectly accountable to a Member State or its nationals and must operate air transport services as their main business.

2. Liberalisation of tariffs

Regulation 2409/92 introduced full tariff liberalisation (*4.5.6.).

3. Free access to the market

Regulation 2408/92 abolished restrictions on *cabotage* (the seventh and eighth freedoms) from 1 April 1997, opening up access for carriers throughout the Union to all national and international routes within the Community.

4. Open sky agreements

After the creation of a Single Market in air transport in 1992, the Commission already expressed the view that the Member States should no longer enter into bilateral agreements with third countries on an individual basis. Starting in 1994, the USA offered "open skies" agreements to other countries. The European Court of Justice ruled on 5 November 2002 that bilateral "open skies" agreements concluded between 8 EU Member States and the United States were in conflict with EU law. The Court of Justice stressed that "nationality clauses" are an infringement of the right of establishment. The Court also said that where the Community had laid down common rules, the Member States had no competence to enter into obligations towards non-member countries if these agreements affect the common rules. The Court's ruling is the basis for accomplishment of a Single Market free of discriminations and will enhance a coherent European policy for international aviation. The Commission meanwhile put forward a communication and proposal for

a regulation about the negotiating and implementation of air service agreements (COM(2003)94).

B. Further progress

1. Access to the ground-handling market

The market in groundhandling services is covered by Directive 96/67 of 15 October 1996. Before, the provision of groundhandling services at EU airports was largely a monopoly controlled by a limited number of service suppliers. When the directive came into force, it gradually opened up the services to competition and led to full liberalisation in December 2002. The directive essentially stipulates that access to the market by suppliers of groundhandling services is free and that for certain categories of services at the larger airports of the EU the number of suppliers may be no fewer than two for each category of services.

2. Seat booking systems

a. Computerised reservation systems

They are a key element in an airline's efficiency, of interest not only to passengers seeking the lowest fares but also to smaller companies looking for business. The Commission accordingly adopted Regulation 2299/89 of 24 July 1989, introducing a **code of conduct for reservation systems**. In the light of experience with the code and the growth of information technology, especially the Internet, there is now a need to amend the regulation to improve its effectiveness and extend the use of reservation systems to rail transport. The Commission accordingly put forward a proposal, which has now become Council Regulation 323/99 of 8 February 1999.

b. Overbooking

This is a major problem in air transport. Regulation 295/91 of 4 February 1991 lays down common rules for a denied-boarding compensation system in scheduled air transport to protect passengers on scheduled flights from this practice. On unscheduled flights passengers are protected by Directive 90/314 if the flight is part of a package tour. There is no protection for passengers who buy tickets in other circumstances. Some airlines also require reconfirmation of the ticket as a condition for compensation if boarding is denied, although the customer does not receive proof of reconfirmation.

To plug these loopholes, a Commission proposal, COM(98)41, aims to amend Regulation 295/91 by extending the compensation scheme to any flight in return for payment and defining as "confirmed" any booking involving the issue of a ticket that identifies the precise flight and is marked 'OK'. Parliament has already approved this proposal, but the Council intends to reach an agreement in principle when differences with regard to applying this regulation at Gibraltar airport have been resolved.

ROLE OF THE EUROPEAN PARLIAMENT

1. Parliament has supported the principle of opening up the Community air transport market. It has argued in favour of "code-sharing" and extending access rights to include cabotage (see especially its resolution of 14 February 1995 on the Commission communication on the way forward for civil aviation in Europe).

2. But it has also expressed concern about the impact of liberalisation

- on passengers: safety, quality of service and clarity of tariffs;
- and airline personnel: employment and working conditions.

Hence it has advocated taking liberalisation at a cautious pace (see especially its resolution of 19 February 1998 on the Commission communication on the impact of the third package of air transport liberalisation measures).

3. Finally, it has expressed concern about relations with non-member countries, drawing attention to the risk of bilateral agreements in this area and arguing for agreements to be concluded by the EU under Articles 84 and 228 EC, rather than the Commission's choice of Article 113.

AIR TRANSPORT: COMPETITION AND FARES

LEGAL BASIS

Article 80(2) EC, completed by general provisions on competition (Articles 81 to 83) and on the freedom to provide services (*3.2.3.).

OBJECTIVES

The objective is to lay down the procedure for applying the Treaty's provisions on competition to air transport, taking account of the sector's special characteristics. For decades it has been governed by a series of bilateral agreements that restricted competition, thus having a considerable impact on patterns of trade, and involved State aid to national airlines, which should be kept in check. Competition policy includes fares policy, which aims essentially to encourage airlines to control costs and increase productivity while providing passengers with a high-quality service.

ACHIEVEMENTS

1. Agreements and business practices

This subject is governed by the regulations of 14 December 1987, 3975/87 laying down the procedures for the application of the rules on competition to undertakings in the air transport sector and 3976/87 on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector, amended by Regulations 2410/92 and 2411/92, which extended the original provisions to all air transport within the Community. These provisions empower the Commission to grant exemptions to various categories of agreement and concerted practices, subject to certain conditions designed to ensure that competition is not eliminated or unduly restricted. The Commission may also adopt regulations concerning certain agreements and concerted practices.

The liberalisation of the single market, the agreements between airlines and the resulting practice of code-sharing have revealed the shortcomings in the external aspects of competition policy in the air transport sector. In response to this, the Commission submitted a proposal to extend the above regulations to routes between the Community and non-member States (COM(97)218).

2. State Aid

In 1984 the Commission established criteria for the evaluation of State aid schemes for air carriers, set out in Annex IV to Memorandum No 2 entitled 'Civil aviation: progress towards the development of a Community air transport policy' (COM(84)072). In 1993 a committee of experts on civil aviation was set up, issuing, in its report published on 1 February 1994, recommendations on State aid which advocated certain conditions for the approval of such aid:

- the aid should be a one-off measure;
- it should be linked to a restructuring plan, to be assessed and monitored by independent professionals appointed by the Commission and ultimately leading to privatisation;
- the government concerned must undertake to refrain from interfering in commercial decision-making by the airline concerned, which, for its part, must not use the aid to buy new capacities;
- lastly, the interests of other carriers must not be adversely affected.

However, the Commission rejected the obligation to privatise and the condition that the aid should be granted on a one-off basis.

In 1994 the Community adopted the guidelines on the application of Articles 92 and 93 of the EC Treaty and Article 61 of the EEA Agreement to State aid in the aviation sector. These guidelines do not apply to State aid granted by non-member States to their own air carriers. On the basis of market economy principles the guidelines lay down criteria for distinguishing State aid from ordinary financial operations.

3. Tariffs

The Community began to take action in this area in 1987. The matter is currently governed by Council Regulation 2409/92 on fares and rates for air services (for intra-Community routes alone), part of the 'air transport package' adopted in June 1992, which sought to establish the double disapproval principle on a general basis. Fares are to be freely set by the airlines, but come into force only if the authorities of none of the Member States served by the route raise objections. This system took effect from 1 January 1993, together with some safeguard clauses intended to avoid excessively high or low (dumping-priced) fares. Member States thus have the right to ban a basic fare. The ban is considered to have been approved if, within 14 days from the date of notification, none of the Member States concerned nor the Commission has submitted a reasoned disapproval. In cases of dispute, the Commission takes the final decision.

4. Allocation of timetable slots

The continuous growth in air transport during the last decade has increased pressure on the capacity of airports. Regulation 95/93 of 18 January 1993 was the first step towards laying down a number of non-discriminatory rules by introducing common rules for the allocation of slots at Community airports. A maximum of 50% of slots that were used or newly created had to be reserved for newcomers on the market. The slots allocated prior to the approval of the regulation remained subject to the same rules as before. On 20 June 2001 the Commission adopted a proposal to revise the regulation (COM(2001)335). The changes should primarily help to make the slot system more flexible in terms of both allocation and use. A common position is awaited.

5. Airport charges

In order to eliminate distortions of competition between airports and also between airlines in the event of preferential treatment for national carriers it is important to harmonise Community legislation on airport charges payable by airlines for the use of airports. In 2000, the Court

of Justice gave an opinion stating that the Commission was right to demand, on the basis of Community law, that charges should be non-discriminatory, which does not necessarily mean that they must all be the same. This allows for the possibility of having different levels of charges as long as the differences can be justified on the basis of objective, non-discriminatory criteria (*Aéroport de Paris/Alpha Flight Services,* T128/98, 12 December 2000).

In June 2000, the Commission published a charter on passenger rights (COM(2000)365) which is to be displayed in airports throughout the Community. This charter aims at raising passengers' awareness of their rights and at exercicing them more effectively.

ROLE OF THE EUROPEAN PARLIAMENT

1. In numerous reports, particularly in its resolution of 1 February 1995 entitled 'The way forward for civil aviation in Europe', Parliament has emphasised the need for a common policy on air transport providing for greater competition among airlines. Parliament takes the view that fares should comply with the law of supply and demand, while taking account of carriers' long-term costs and not undermining safety standards. As a response to the economic consequences of the attacks of 11 September 2001, the European Parliament adopted a resolution on 28 February 2002 by which it warned the Member States against granting State aid using the events of 11 September as the sole cause of the economic downturn or using them to cover up their own economic and political shortcomings. It pointed out that, through Monetary Union, Europe has for the first time been able to take a common position with regard to external shocks.

2. However, Parliament has stressed the limits of liberalisation.

a. It has expressed the view that liberalisation should be implemented cautiously and gradually, while taking into account the interests of both consumers and the industry (resolution of 16 February 1998 on the Commission communication on the impact of the third package of air transport liberalisation measures). It thus opposes US-style deregulation in Europe. Moreover, it believes that State aid should be underpinned by regulation-based criteria which are compatible with the principles of the single market.

b. It considered that the development of a single market in the European airline industry had led to positive competition, but the welcome features of competition should not be diminished by other factors such as delays and congestion. Working conditions had deteriorated, and Parliament called on the Commission to present a proposal on the working conditions of air traffic controllers and on common training and licensing standards for all flight and cabin crew members. A concrete action plan should be subject to regular review with the industry, including the social partners (resolution of 4 May 2000 on the Commission communication on the airline industry).

c. When approving at first reading the proposal for a directive on airport charges, it tabled amendments introducing the concept of a 'national airport network' and modifying the criteria for calculating charges, in order to allow the management body to take other airport revenue into account.

d. It encouraged the Commission to continue its efforts to improve air passenger rights. It welcomed the voluntary airline passenger service, but considered nevertheless that the principle of self-regulation should be supplemented by legislative initiatives. However, the Parliament stressed that this was a delicate balancing act. It is important to avoid over-regulation that might damage the competitiveness of European airlines.

AIR TRANSPORT: AIR-TRAFFIC AND SAFETY RULES

LEGAL BASIS

Article 80(2) EC.

OBJECTIVES

The steady expansion of air transport and essentially stable airport capacity levels are contributing to traffic congestion and the resulting economic and safety problems. The increase in competition arising from the liberalisation of air transport may cause further problems. The earmarking of large areas of airspace for military purposes merely exacerbates the situation. The public authorities' response to this problem is air traffic control, whose purpose is to regulate the movement of aircraft within a given (controlled) airspace with a view to guaranteeing the safety of air transport.

1. Air traffic control

Europe is the only high-density air traffic area in which control is not the responsibility of a single body, and this leads to specific problems: technical problems (incompatibility of systems, lack of radar coverage), social problems (the legal status of staff) and institutional problems (the lack of a joint research centre). In an attempt to solve the problem of coordination, 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 so far acceded. The Convention, which was extensively amended in 1981, led to the establishment of the European Organisation for the Safety of Air Navigation, which includes the Permanent Commission and the Agency of Air Traffic Services. 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.

2. Safety

For reasons of safety and efficiency as well as competitiveness, it is necessary to establish and maintain a high uniform level of civil aviation safety in Europe. Regulation 1592/2002 of 15 July 2002 puts in place a Community system of air safety and environmental legislation and creates a European Aviation Safety Agency. The role of the Agency will be to help drawing up of common standards on safety and the environmental compatibility of civil aviation in Community legislation. Further objectives are to ensure that these standards are applied in a uniform way and to advice on the implementation of safeguard measures. It will also help the Commission to promote its standards and practices in this area at international level. The introduction of common rules should facilitate the activities of the aeronautical industry in Europe: only one certificate will be needed to place its products on the entire European market. Access to external markets will be simplified by the conclusion of agreements on the harmonisation of standards and the mutual recognition of certificates.

ACHIEVEMENTS

1. Air traffic

a. On 10 October 2001, the Commission presented an action programme on the creation of the Single European Sky. The aim is to turn Europe's sky, into an integrated air space governed by the same principles and rules by December 2004. The package of the Commission's proposals, also of 10 October 2001 includes the organisation and use of air space, the provision of air navigation services, the interoperability of the European air traffic management network and is laying down the framework for the creation of the Single European Sky.

b. 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 institutions and to improve the regulatory framework for air traffic management. It forms part of the overall strategy of the Single Market and the Single European Sky initiative.

c. Galileo, a progamme on satellite radio navigation, was first presented by the Commission in February 1999. This programme is to give the Europeans an independent technology applicable to a wide range of activities including transport (as well as medicine, law enforcement and agriculture). This communication system, set up by Regulation 876/2002 of 21 May 2002 as a joint undertaking (European Community and European Space Agency) is to be developed and validated by 2005 and deployed by 2007.

2. Air safety

In order to ensure a high level of safety and to improve the internal market, Regulation 3922/91 aims at harmonising the technical rules and the administrative procedures in the field of civil aviation safety. Hereby common goals governing technical rules and administrative procedures drawn up by the Joint Aviation Authorities (JAA) are introduced into Community legislation.

On 19 December 2000 the Commission put forward a proposal for a directive on occurence reporting in civil aviation, whereby a legal framework for collecting and dissiminating information on aviation incidence is created.

3. Air security

After the attacks of 11 September 2001, it was decided to introduce an EU security policy based on the legal instruments provided by the Treaty. The measures deal with issues such as securing cockpits, training and air-ground communications. Among them Regulation 2320/2002 requires each Member State to adopt a national civil

aviation security programme and to appoint an authority with specific and exclusive powers to coordinate and manage its implementation.

4. Accident prevention

a. In 1997 the Commission put forward a proposal for a directive establishing a safety assessment of third countries' aircraft (COM(97)55), which provides, inter alia, that aviation authorities should collect and exchange all relevant information.

b. Since **cabin crews** have an important role to play in safety, the Joint Aviation Authorities (JAA), an ICAO body, have adopted standards (JAR-OPS) which include provisions on flight crew training. As the Commission planned to transpose these standards into Community legislation, it submitted a proposal for a directive on safety requirements and attestation of professional competence for cabin crews in civil aviation (COM(97)382). The Member States have achieved harmonised accident investigation procedures which guarantee the independence of the bodies responsible and exchange information.

5. Dealing with accidents

a. Directive 94/56 of 21 November 1994 establishing the fundamental principles governing the **investigation of civil aviation accidents** and incidents seeks to provide the competent authorities with an appropriate legal framework.

b. The Warsaw Convention, which governs **air carriers' liability in the event of an accident**, covers only international transport and, in view of the current economic situation, the limits it sets are too low. The Community thus adopted Regulation 2027/97 of 9 October 1997, applicable to Community air carriers in the event of injuries to passengers on one of their domestic or international flights. The liability limits are higher than those established by the Warsaw Convention and travellers must be informed of the substance of the regulation. Community legislation regarding air carrier liability has been adjusted to fully comply with the provisions of the Montreal Convention of 28 May 1999. It details the unification of certain rules regarding international carriage by air. Regulation 889/2002 amends the previous Regulation 2027/97 on air carrier liability in the event of accidents.

ROLE OF THE EUROPEAN PARLIAMENT

1. Parliament has always closely monitored issues relating to air traffic control, aware of its importance for the implementation of a common transport and safety policy. It has, in particular, advocated the establishment of a single control authority.

2. Parliament's response to the Commission's 1996 communication on the prevention of air accidents is contained in its resolution of 17 July 1997, in which it proposes:

- technical measures to reduce injuries in the event of an accident and other measures to reduce risks to areas surrounding airports;
- the elimination of the worldwide trade in counterfeit spare parts and a reduction in the number and size of the items of hand luggage allowed into the cabin.
- a blacklist of those carriers which 'do not have adequate reporting systems and do not meet EU safety standards, with the aim of refusing them permission to land or take off in the EU'.

3. On 3 September 2002, the Parliament adopted its position at first reading on the Commission communication concerning the creation of a Single European Sky. The Parliament asked for an effective cooperation with Eurocontrol to avoid confusion or duplication, an effective framework for cooperation between political and military authorities.

4. Parliament takes the view that high priority should be given to the interoperability of new technology and to launching European-scale research and technological development initiatives (such as Galileo) to develop smart air transport systems. Parliament in its resolution of 3 October 2001 on Galileo stressed the technical and industrial importance of this programme for Europe's space and telecommunications industries, but expressed major concern about the financial aspects involved in the development of the system. Parliament requested the Commission to encourage the private sector to participate in the setting-up of the Galileo programme.

SEA TRANSPORT: MARKET ACCESS AND COMPETITION

LEGAL BASIS

Article 80(2) EC completed by general provisions on competition (Articles 81 to 83) and freedom to provide services (*3.2.3.).

OBJECTIVES

The aim is to apply the Treaty principle of free movement of services to the Union's sea transport industry and ensure it complies with competition rules.

This policy is based on the Community's need to defend itself against the threat of unfair competition from the merchant fleets of some non-member States and against protectionist trends. In particular, the principal maritime transport routes must be kept open to all operators.

ACHIEVEMENTS

1. General policy

a. 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 decline in Community sea transport, already apparent in 1985, is still going on, mainly as a result of competition from non-member States, particularly the developing economies in Asia. The situation has led to **a four-pronged strategy**. This deals firstly with safety (*4.5.9.), the preservation of open markets, boosting Community competitiveness and State aids. Secondly, it takes a multilateral approach to the world market as a whole, to establish an international consensus on the application of competition rules and a review of the instruments for protecting Community maritime trade. Ways of boosting competition include action to improve the training of seafarers, research and development, and the introduction of advanced technology, so as to make quality the factor for the success of Community sea transport. The provision of State aids will have to comply with Community law and special guidelines. The Council agreed to the Commission communication in its resolution of 24 March 1997.

b. The Commission Green Paper on **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 proposed including the ports in the trans-European networks and maximising their role as transfer points in the intermodal transport sequence.

2. Market access

a. First action to apply the principle of freedom to provide services

- Regulation 4055/86, applying the principle of freedom to provide services to maritime transport between Member States and third countries, formed part of the maritime transport package. It abolished the restrictions on Community shipowners after a transitional period and prohibited future cargo-sharing arrangements other than for liner shipping in exceptional circumstances.
- Regulation 4058/86, on coordinated action to safeguard free access to cargoes in ocean trade, enables the Union to take retaliatory measures if Community shipowners or ships registered in a Member State encounter restrictions on the free access to cargoes.
- The preservation of free markets and free movement of services and goods within the ports of the European Union should not, however, damage the environment or jeopardize security at sea (Council Directive of 17 June 2002).

b. The free market: liberalisation of *cabotage*

- In June 1992 the transport Ministers decided on a package of measures to phase in the liberalisation of *cabotage*, by granting non-resident carriers access to services between ports in a given Member State. Finally, **Council Regulation 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 accomplished on 1 January 1999.
- The law of the vessel's flag country applies to vessels providing continental *cabotage* services and cruise ships, but with the option to apply the law of the host country if the vessel is less than 650 gross registered tonnes; to apply the law of the host country to *cabotage* with islands, except in the case of crews hired for voyages calling at other Member States, who come under the law of the flag country; there is no provision for 'offshore cabotage', operating from floating structures established on the continental shelf.

3. Competition rules

a. On 22 December 1986 the Council adopted Regulations 4056 and 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 restrictive practices. It exempted certain technical agreements and, in some cases, agreements from liner conferences from the rules on competition laid down in Articles 81 and 82 of the Treaty. The second regulation, on **unfair pricing practices**, provided for a series of measures to enable shipowners or Member States affected or threatened by such practices to complain to the Commission.

b. Regulation 479/92 granted a further group exemption in favour of **'consortia' between liner shipping companies**, on which the Commission implementing Regulation 870/95 of 20 April 1995 goes into greater detail.

c. In February 2001 the European Commission adopted a package of measures to establish clear rules and to set up an open and transparent procedure for **access to services in ports**. This proposal also includes a factual report on public financing and charging practices in Community ports and an interpretative summary of Community rules on transparency of public money flows into and within sea ports and of state aids to sea ports (COM(2001)35 and COM(2002)101).

d. Directive 2000/34 extended the EU **working time** Directive 93/104 to previously excluded sectors and activities. The directive concerns the agreement on organising the working time of seafarers, lays down minimum safety and health requirements and respect of periods of daily rest, breaks, weekly rest, maximum weekly working time, annual leave and aspects of night work, shift work and patterns of work. This directive completes the agreement reached by the social partners of the Community's shipping industry. It is aimed at establishing fair conditions of operation for ships flying the flag of third countries operating in Community waters. It applies the provisions of certain ILO Conventions specified in Directive 1999/63/EC to any ship calling at the port of a Member State irrespective of the flag it flies. As regards workers on board sea-going fishing vessels, Member States shall take the necessary measures to ensure that any worker on board of a vessel flying the flag of a Member State is entitled to adequate rest and to limit the number of hours to 48 hours a week on average calculated over a reference period not exceeing 12 months.

ROLE OF THE EUROPEAN PARLIAMENT

1. Parliament's resolution of 24 April 1997 welcomes the Commission communication 'Towards a new maritime strategy' and 'considers it vital, withinternational 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 and preserving shipping safety and seafarers' social protection at a level complying with international agreements, a level with which vessels flying flags of convenience must also comply. Parliament also calls for clarification of the legal status of second registers, to ensure that Community law applies to all vessels, regardless of the Member State where they are registered. It also calls for a Community register.

2. Parliament argues that it is not possible to set up a common transport policy without regulating competition between seaports, because rail, road and waterway transport policy affects such competition. In the above resolution Parliament calls for inclusion of seaports in the trans-European networks and for port dues to take account of safety needs and respect for the environment.

3. In its resolution of 7 July 2000 on the Commission communication "The Development of Short Sea Shipping in Europe: A dynamic Alternative in a Sustainable Transport Chain - Second Two Yearly Progress Report" Parliament welcomed the development of short sea shipping for reasons of environment and safety. The role of the Commission is the consideration of the links between short sea shipping and other means of transport, the provision of the infrastructure necessary to economic activities and provision of appropriate measures in the near future to eliminate the environmental shortcomings of short sea shipping. The role of the competent authorities of the Member States and ports is to exempt short sea shipping from charges for waste disposal at port reception facilities.

In addition, Parliament calls for joint investment programs to be drawn up in the Mediterranean area, in the ports of the Canary Islands, the Azores and Madeira, taking into account the incentives for short sea shipping lines and the simplification of customs and embarcation procedures.

SEA TRANSPORT: TRAFFIC AND SAFETY RULES

LEGAL BASIS

Title V of the EC Treaty does not directly regulate either air or sea transport. The Treaty's draftsmen saw no need to include them in it, as international organisations already regulated both sectors.

OBJECTIVES

Safety, in terms of protecting not only the health and lives of people at sea (both crews and passengers) but also the environment, is a fundamental objective of sea transport policy.

ACHIEVEMENTS

1. General

a. The role of international law

The main legal TEXTS are:

- the 1973 Marpol Convention (Convention on pollution at sea), which was amended in 1978;
- the 1974 SOLAS Convention (International Convention for the Safety of Life at Sea);
- the recommendations of the IMO (International Maritime Organisation - a specialist UN body).

b. Main points of Community policy

- In 1993 the Commission launched an **action programme** in a communication entitled 'A common policy on safe seas' COM(93)66. This focused on the development, transposition and application of international rules, the training of personnel and the development of infrastructures. The communication 'Towards a new maritime strategy' (COM(96)0081), confirmed the programme.
- In its resolution of 8 June 1993 the Council approved the programme and defined the following objectives:
  - . effective and uniform implementation of international rules,
  - . enhanced training,
  - . improvement of maritime infrastructures and of traffic procedures,
  - . legal measures concerning civil liability,
  - . harmonisation of standards with regard to survival craft on passenger vessels,
  - . risk assessment,
  - . environmental protection.

2. Basic rules

As there are international rules to regulate safety at sea, the Community's main contribution has been to transpose them into Community law, ensuring they have legal force and uniform application throughout the Member States.

a. Directive 94/58 of 22 November 1994 on **minimum training conditions for seafarers** gave the 1978 IMO Convention on standards of training, certification and watchkeeping for seafarers the force of Community law. It was amended by Directive 98/35 in the light of the new international training and certification requirements of STCW (Standards of Training, Certification and Watchkeeping for Seefarers, a Convention of IMO). Member States are required to ensure that, on board ships, the members of the crew are able to communicate with each other and that, on board passenger ships, the crew are, in particular, able to communicate with passengers in critical situations. It is also foreseen that on board all types of tankers at least one common language is established.

b. In the same way, Council Regulation 2978/94 of 21 November 1994 implements IMO Resolution A.747(18) on the **application of tonnage measurement of ballast spaces in segregated ballast oil tankers**. It aims to ensure that this type of vessel, which is more environmentally friendly than conventional oil tankers, does not attract higher port dues in view of its greater tonnage for the same load capacity.

c. Directive 96/98 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. Technical progress has been made in the field of voyage data registration (VDR) black boxes. Like the black boxes carried on aircraft, VDRs enable accident investigators to review procedures and instructions in the moments before an accident and help to identify the cause of any accident.

d. Safety of passenger craft

- On 8 December 1995 the Community adopted Regulation 3051/95 on the **safety management of roll-on/roll-off passenger ferries** ("ro-ro" ferries), which established systems of safety management and made it compulsory for ferry companies to comply from 1 January 1996 with the ISM Code (a code drawn up by the IMO which was not due to come into force until 1 July 1998).
- The safety of **vessels which are not covered by international rules** is the subject of Directive 98/18 of 17 March 1998 on safety rules and standards for passenger ships plying between two Community ports.
- Directive 98/41 of 18 June 1998 on the **registration of persons** sailing on board passenger ships will make it possible to monitor the number of passengers and improve the effectiveness and speed of rescue operations.

3. Instruments for monitoring shipping

a. General monitoring of compliance

Pollution of the seas and coasts is a highly controversial subject. The situation could be improved if international laws governing environmental safety and protection were more effectively enforced. This was the object of Council Directive 95/21 of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control). Its aim is to significantly reduce the number of ships in waters under the jurisdiction of Member States which do not comply with the law. At present many countries apparently do not enforce the international laws on board ships flying their flag. The solution is to adopt the criterion of the 'port State' according to the port in which the vessel docks.

b. Special monitoring of shipping with dangerous goods

Council Directive 93/75 of 13 September 1993 imposing minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods requires carriers to declare the loading of such goods in accordance with international regulations.

By Decision 2002/971, the Council authorised the Member States to ratify and accede to the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention).

c. Harmonising statistics

Again with the aim of providing users with a high-quality service and optimum safety, Directive 95/64 of 8 December 1995 on statistical returns in respect of carriage of goods and passengers by sea harmonises statistical information.

d. Harmonising monitoring arrangements

Council Directive 94/57 of 22 November 1994 lays down common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations. It sets out the arrangements for organisations responsible for ensuring that vessels comply with international standards. It establishes uniform criteria for surveying and certification so as to ensure a standard degree of reliability.

4. Recent developments

Recent accidents such as the *Erika* and *Prestige* have shown that major improvements were needed in the area of maritime safety.

a. The Commission put forward the so-called Erika I and II packages in March and December 2000 to bring about the necessary improvements (COM(2000)142 and COM(2000)802). The Erika I and II package contains legislative proposals relating to the enforcement of ship safety standards, pollution prevention, ship inspection, the accelerated phasing in of double hull tankers, the control and information system for maritime traffic, the compensation of oil pollution damage and the establishment of a European Maritime Safety Agency.

b. In response to the Council's conclusions of 6 December 2002 following the *Prestige* accident, the Commission produced a proposal for a regulation to amend Regulation 417/2002 on the accelerated phasing-in of double hull tankers or equivalent design requirements for single hull tankers. The proposal consists of three parts:

- a provision that heavy grades of oil cannot be carried in single hull vessels when visiting EU ports;
- a revision of the EU phasing-out scheme (Regulation 417/2002) agreed in February 2001 following agreement in IMO;
- a broader application of the Condition Assessment Scheme.

c. Attention has also focused on issues such as port state control, places of refuge, oil spill compensation, penal sanctions, relationships with the international community and industry and the recognition of seafarers certificates.

d. Meanwhile there have also been developments at EU-level on other key issues such as environmental liability, the ban on TBT anti-fouling paints, deregulation of port services, air pollution from ships, maritime security and the establishment of the European Marime Safety Agency (EMSA). This agency was established by Regulation 1406/2002. Its task is to provide advice to the Commission and to monitor the implementation of legislation in the field of maritime safety.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has strongly supported the provisions governing maritime traffic and safety at sea.

- When it approved the Commission communication on a common policy on safe seas in its resolution of 11 March 1994, Parliament stressed the need for better enforcement of existing standards and reinforcement of controls; it also called for national coastguard services to be consolidated into a European coastguard service and for a comprehensive vessel traffic management system. Parliament also called for introduction of a satellite navigation system, the improvement and extension of technical standards and Community criteria on compulsory pilotage.
- Following the loss of the *Estonia*, Parliament asked the Commission to submit a proposal, which eventually became Regulation 3051/95. Its resolution of 1 February 1996 on safety at sea confirmed its 1994 proposals and called for tougher penalties for negligence or omission that resulted in accidents.
- To enhance the protection of the marine environment the European Parliament proposes the reduction of discharges at sea of ship generated waste and cargo residues and more particularly illegal discharges and the improvement of the port reception facilities.

DEVELOPMENT OF TRANS-EUROPEAN NETWORKS

LEGAL BASIS

Title XV EC.

OBJECTIVES AND INSTRUMENTS

1. Objectives

Taking up an idea put forward in some Community discussion papers in the early 1990s, the Maastricht Treaty gave the Community the task of helping to establish and develop trans-European networks of transport, telecommunications and energy infrastructures. The purpose of these networks lies in the general objective of economic and social cohesion, and one of their main aims is "to link island, landlocked and peripheral regions with the central regions of the Community". They depend primarily on the interconnection and interoperability of national networks.

2. Instruments

Under the codecision procedure the Community establishes **guidelines** which:

- identify "**projects of common interest**";
- cover the objectives, priorities and broad lines of the measures envisaged.

ACHIEVEMENTS

A. General guidelines

1. Basic ideas

They were set out in the Commission White Paper on Growth, Competitiveness and Employment, presented to the European Council in December 1993, which makes a strong case for the networks. It highlights the Community's role as integrating national operations in the wider context of Community interest. It points out that the networks can help to create jobs, not only in building the infrastructure itself, but also by subsequently stimulating growth. It identifies 26 priority projects in the transport sector, 8 in energy and 9 action sectors for an information highway system.

2. Political stimulus

It came from the Brussels European Council in December 1993, which approved the Commission White Paper and instructed two working parties, whose recommendations were endorsed at the European Councils of Corfu in June 1994 and Essen in December 1994, including 14 priority projects in the field of transport and 10 in energy.

B. Sectoral legislative action

1. Transport

a. The main decision

It is the **European Parliament and Council Decision of 23 July 1996 (96/1692) on Community guidelines for the development of the trans-European transport network.** Its purpose was to establish the broad lines of action needed to create the network and identify the projects of joint interest that should form part of it. It highlights as priorities the following projects of joint interest:

- **rail transport**: the North-South (Nuremberg-Munich-Verona via the Brenner), PBKAL (Paris-Brussels-Cologne-Amsterdam-London), South (Madrid-Montpellier) and West-East (Paris-Karlsruhe-Munich-Vienna and Lyon-Turin) High Speed Train routes; the Betuwe (Rhine-Ruhr) and Cork-Dublin-Stranraer conventional routes;
- **road transport**: the Patras-Thessaloniki (Pathe), Via Egnatia (Igoumenitsa-Alexandropoulis) and Lisbon-Valladolid motorways;
- **combined transport**: the Adriatic axis (Munich-Vienna-Cyprus/Malta via Italy and Greece), the Øresund (fixed rail-road) link between Denmark and Sweden; the Nordic Triangle; the Ireland-UK-Benelux rail and road link; the West Coast Main Line in the UK;
- **air transport**: Malpensa Airport (Milan).

The Commission proposed an amendment to this decision (COM(97)681) converting the Lisbon-Valladolid motorway project into a **multi-modal link joining Portugal and Spain to the rest of Europe**, integrating seaports, inland waterways and intermodal terminals into the overall guidelines.

b. Complementary decisions

- The Commission's 1998 report (Trans-European Transport Network: report on the progress and implementation of the 14 Essen projects (COM 98/356).
- Council Directive 96/48 of 23 July 1996 on the **interoperability of the European high-speed train network** aimed to promote the interconnection and interoperability of the national HST networks, to create a European network made up of national "subsystems" that would be managed by the Member States in compliance with joint requirements.
- The Council decision of 24 April 2000 defining the criteria for including port facilities, inland pors, maritime, international and Community ports in the Trans-European Network.
- The Commission's proposal of October 2001 to revise the guidelines for the Trans-European Network. This proposal, called for the Barcelona Council, strengthens the priority given to the first series of projects, takes stock of progress and responds to new challenges with plans for six new

priority projects including deployment of the Galileo Satellite System and the crossing of the Pyrenees by rail.

- Since the inland ports and sea ports are in the Trans-European Networks essential interconnection points between the different modes of transport, the Council adopted on 5 June 2002 their inclusion and development in order to create a more efficient use of the entire network in both operational and environmental terms.

2. Energy

a. Priority projects

Several projects were given priority status at the Essen Summit in December 1994:

- Projects in the European Union:
  - . Greece - Italy electrical interconnection,
  - . France - Italy electrical interconnection,
  - . France - Spain electrical interconnection,
  - . Spain - Portugal electrical interconnection,
  - . Denmark East-West electrical interconnection,
  - . Greece natural gas network,
  - . Portugal natural gas network,
  - . Portugal-Spain gas interconnection.
- Projects with neighbouring countries:
  - . Algeria-Morocco-European Union gas delivery pipeline,
  - . Russia-Poland-European Union gas delivery pipeline.

b. Main texts

- **Commission communication to Parliament and the Council on Community guidelines in the field of trans-European energy networks (19 January 1994)**. This document cited the inadequacy of national measures as grounds for 'broad lines of action' by the Community, taking up concepts and activities in the Member States which would be more effectively dealt with at Community level in future with the ultimate aim of an integrated Community area.
- **Council Decision of 28 March 1996 (96/391) laying down a series of measures to create a more favourable context for the development of trans-European networks in the energy sector**. This included technical cooperation measures between the agencies responsible for the networks, to safeguard interoperability.
- **European Parliament and Council Decision of 5 June 1996 (1254/96) establishing a series of guidelines on trans-European networks in the energy sector**. It contained an action plan by which the Community identifies projects of common interest and then helps to create a framework to encourage their implementation and sectoral objectives for electricity.
- **Commission Decision (97/548) of 11 July 1997 defining specifications of projects of common interest identified in the sector of the trans-European energy networks by Decision 1254/96 of the European Parliament and of the Council.**
- **Decision 1741/1999 of the European Parliament and of the Council amending Decision 1254/96 laying down a series of guidelines for trans-European energy networks**. It aims to update the indicative list of projects of common interest presented in the Annex of Decision 1254/96, by modifying the description of certain projects on this list and by adding projects that have reached maturity in the meantime that comply with the criteria laid down in the aforementioned Decision.
- European Parliament and Council Decision 2045/2002 amending Decisions 1719/1999 and 1720/1999 on interoperability and access to Trans-European Networks for the electronic interchange of data between administrations.
- European Parliament and Council Decision 1346/2001 amending Decision 1692/1996 aiming at clarifying the position of sea ports, inland ports and intermodal terminals in the Trans-European Network.

3. Telecommunications (*4.7.7. and 4.7.9.)

In this field, progress has been slow.

a. European Parliament and Council Decision of 9 November 1995 (2717/95) established a series of **guidelines for the development of the integrated services digital network** (ISDN) as a trans-European network. The decision defines the objectives, priorities and common-interest projects for developing a range of services based on the Euro-ISDN in the prospect of a future European broadband communications network.

b. European Parliament and Council Decision of 7 March 1997 sets up a series of **guidelines for trans-European telecommunications networks**. This sets out the objectives, priorities and broad lines of the measures envisaged. The priorities adopted include applications contributing to economic and social cohesion and the development of the basic networks, particularly satellite networks.

ROLE OF THE EUROPEAN PARLIAMENT

1. General

Parliament strongly supported the trans-European network policy. In its resolution of 9 February 1999, on the Commission's report concerning the state of implementation of priority projects, it was rather critical of the Commission's failure to bring forward substantive basic proposals, or promotional measures designed to relaunch priority projects whose calendar or financing are uncertain. Parliament considered that greater attention should be paid to interoperability and cross-boarder cooperation.

2. Sectoral

In the field of transport it urged adoption of the directive on the interoperability of the European HST network. In the case of telecommunications it called for the completion of missing links, notably for the Euro-ISDN and integrated broadband networks. It amended the text of the 1995 decision setting the guidelines for the development of the ISDN, particularly with a view to making it a public service network (Resolutions of 13 June 1995 and 21 September 1995).

FINANCING THE TRANS-EUROPEAN NETWORKS

LEGAL BASIS

Article 155 EC.

ACHIEVEMENTS

A. Treaty provisions

Article 155 states that for projects of common interest the Community may support the financial efforts of the Member States (on the principle of additionality) through:

- feasibility studies;
- loan guarantees;
- interest-rate subsidies; and
- in the case of transport networks, subsidies through the Cohesion Fund.

B. Direct financing through the Community budget

1. Principles

a. These were laid down by Council **Regulation 2236/95** of 18 September 1995 on **general rules** for granting Community financial support.

- **Conditions**

  The regulation first sets out the conditions for using the forms of finance laid down by the Treaty:

  . feasibility studies can be co-financed if there is substantial participation by public bodies,

  . preparatory studies and technical support measures can be more than 50% financed if they are undertaken on the Commission's initiative,

  . the contribution to loan guarantee premiums may go up to 100%,

  . interest-rate subsidies may not exceed 10% of the investment cost,

  . the investment may be co-financed in exceptional cases where other forms of financial support are unsuitable and provided that the other resources required are mobilised.

- **Criteria**

  The regulation then lays down the project selection criteria:

  . projects must contribute to achieving the purposes of the networks,

  . they must contribute to the economic objectives of the Commission White Paper on Growth, Competitiveness and Employment,

  . there must be an environmental impact assessment,

  . they must be intrinsically viable, with solid financial backing, participation by the private sector and a need for Community support.

b. Regulation 2236/1995 was **amended by Regulation 1655/1999** covering the period 2000-2006. It introduced a number of new features:

- multiannual indicative programme to give greater prominence to the EU funding of projects;
- the introduction of risk capital for the financial aid given by the Union;
- a higher ceiling for Community aid i.e. from 2003 up to 20% of the total cost of the project in the case of satellite positioning and navigation systems;
- euro 4 600 million will be earmarked for the Trans-European Networks (including telecommunications and energy networks) TEN-Ts between now and 2006; the amount to be spent on Trans-European Networks is still to be decided by the European Parliament;
- at least 55% of funds for TEN-Ts will be given to railway projects and not more than 25% to roads;
- the Commission may cancel its financing decisions if the project has not got underway within two years.

2. Implementation

Budget appropriations for Trans-European networks are entered in Title B5-7 of the general budget. The timetable for payment appropriations (in million Euro) is as follows:

	Transport	***Telecommunications***	**Energy**	**Total**
2002	321	21	10	352
2003	256	12	9	277
2004	270	7	15	292
2005	250	13	15	278
following years		14	13	27

C. Other methods of funding

1. Community Structural Funds

a. The European Regional Development Fund

It provides support only in regions fulfilling its objectives, and only to top up national public funding (on the principle of additionality set out in Article 155) (*4.4.2.).

b. The Cohesion Fund

It acts in a similar manner, but can only provide support in four countries: Greece, Ireland, Spain and Portugal (*4.4.3.).

2. Support from the European Investment Bank and the European Investment Fund

EIB loans are not subject to territorial restrictions but are granted on the basis of banking criteria: financial feasibility (the ability to repay) and technical and environmental suitability. The EIF provides its guarantees on the same conditions.

3. Private sector support

This is encouraged by Regulation 2236/95, which contains a provision for developing partnerships between the public sector and private operators. On the basis of a report by a group of experts, the Commission submitted a communication on the application of this policy to the transport sector (COM(97)453), which comprises the following measures.

a. Public procurement procedures for the award of transport infrastructure contracts (studies and concessions)

- Commission to elaborate specific guidelines for the award of contracts;
- measures to reconcile technical dialogue with the protection of intellectual property of the bidders: e.g. use of 'design contest' formula.

b. Competition

- Commission to clarify right of access to rail infrastructures and capacity reservation in connection with new projects;
- particular attention to be given to State aids to the public sector.

c. Financing instruments

The Commission wishes wider use to be made of structurally subordinated loans and early operational stage loans; in particular it envisages setting up, in consultation with the EIB and EIF, a 'mezzanine' fund (mezzanine finance, also known as subordinated debt or quasi-equity, is a risk-absorber senior to equity but subordinated to bank debt).

ROLE OF THE EUROPEAN PARLIAMENT

- As long ago as 1961 the Kaptein report, after listing all the problems then in urgent need of solutions, proposed setting up a European investment fund for the transport sector to be financed by public, private and international capital, and possibly also capital provided by the Community Institutions.
- In the process of adopting Regulation 2236/95 under the codecision procedure, Parliament tabled a series of amendments, designed mainly to improve the definition of criteria, objectives and procedures, in order to provide more security and transparency for the Member States and operators and develop partnership between the public and private sectors. At Article 1(3) it set percentages for the use of appropriations intended for transport infrastructure projects:
  - . 55% minimum for railway projects, including combined transport,
  - . 25% maximum for road projects,
  - . 15% maximum for traffic management and telematics.

  The remainder is made up of variable amounts for waterways, seaports, airports and inland ports.
- Parliament also stressed that the Commission must ensure that projects implemented under the 1999 regulation are coordinated and consistent with projects receiving contributions from the Community budget, EIB funds, the EIF, the Cohesion Fund, the ERDF and other Community financial instruments.
- Parliament stressed that the Commission must also ensure coordination with the aims of the European transport policy and with funding activities under the PHARE programme and the Instrument for Structural Policies for Pre-Accession (ISPA).
- It also called for the Commission to draw up a note on the environmental impact, pursuant to Article 174 of the Treaty, for any major project cofinanced with Community funds.

GENERAL PRINCIPLES OF EU INDUSTRIAL POLICY

LEGAL BASIS

Industrial policy is the application to industry or certain sectors of industry of the general Treaty provisions in order to accelerate optimal resource allocation among the various sectors. The Maastricht modifications to the EC Treaty (Article 157) provided a legal basis for a common industrial policy by which the Commission can propose improvements to the competitiveness of European industry, though only with the Council's unanimous support.

OBJECTIVES

EU industrial policy aims to speed up the adjustment of industry to structural changes, encourage initiative, development and cooperation between undertakings, foster the industrial potential of innovation, research and technological development. A number of policies already well-integrated with industrial policy can contribute to industrial policy objectives.

1. Further opening of the world trading system,- specifically, the opening of protected third country markets to EU producers and service suppliers. By giving EU producers cheaper access to foreign inputs while subjecting them to increased competition from third countries, it both enables and forces them to improve their competitiveness.

2. Single market related policies generally have a positive impact on competitiveness, in particular, by fostering liberalisation of markets and harmonisation of rules.

3. Energy and transport policies.

4. R&D policy, by reinforcing the knowledge base and focusing on key enabling technologies.

5. Competition policy induces firms to enhance their efficiency and enable their better survival within their markets. It also helps to prepare EU companies for the challenge of third country markets.

6. Regional policy.

7. 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.

8. Consumer protection and public health policy are essential preconditions for consumer confidence which is the basis for stable and growing demand.

9. 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 provide the framework conditions within which entrepreneurs and businesses can take initiatives, exploit their ideas and opportunities.

Industrial policy should take into account the specific needs and characteristics of individual sectors. Many products, such as pharmaceuticals, chemicals, automobiles, are subject to detailed sector-specific regulations matching their inherent characteristics or use.

2. Major documents

a. The initiatives taken to complete the internal market announced in the **1985** Commission's **White Paper** "**Completing the Internal Marke**t" (COM(85)310), gave EU industrial policy a major boost. An integrated market will give industry the advantages already enjoyed by its American and Japanese competitors in their substantial internal markets including opportunities for mass production, specialization, economies of scale, transnational cooperation among enterprises, technical harmonization, research, innovation, investment and EU-wide tendering.

b. In **1990** Commission **Communication "Industrial Policy in an Open and Competitive Environment"** (COM(90) 556) proposed a coherent industrial policy strategy aimed at creating framework 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.

c. The **1993** Commission **White Paper "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.

d. The **1995** Commission **report** (SEC (95) 437 final) on "**Implementation of Council Resolutions and Conclusions on Industrial Policy**" showed that action

taken by the EU on industrial policy contributes to a general improvement in competitiveness. The Commission reviews the state of competitiveness of EU industry in annual reports. The 2002 report on European competitiveness (SEC (2002) 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 which encourage or hamper innovation in the EU and proposed, at all decision-making levels, practical measures to step up the EU's overall innovation capacity, with special emphasis on SMEs. In 1996, Parliament endorsed the main principles of the Commission's conclusions on innovation.

e. Commission **Communication "Competitiveness of European Enterprises in the face of globalisation**" (COM (98) 718 final) 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.

f. The Commission recognised the need to open up a new debate on the future of EU industrial policy within an enlarged Europe. In 2002 its **Communication "Industrial policy in an enlarged Europe**" (COM (2002) 714) reassessed the approach and underlined the key role of knowledge and innovation in a global economy, while maintaining the basic parameters. The Commission noted that manufacturing output has declined remarkably in the past years and yet still accounts for a large share of the wealth generated in the EU. The service sectors' share of EU industrial output increased from 52% in 1970 to 71% in 2001 while that of manufacturing decreased from 30% to 18% during the same period. Nevertheless the Commission urged policy makers not to assume that the manufacturing industry no longer plays a key role. Service and manufacturing industries are intertwined and mutually dependent. Manufacturing innovations have introduced totally new service concepts, as in telecommunications and information technologies. It is mostly through manufacturing processes that new technology applications are introduced. On the positive side, the Commission noted that most industrial sectors have made substantial effort to upgrade their production and organisational structures, which has led to an upgrading of skilled jobs and accounts for the rising demand for highly skilled labour. In terms of international trade, EU industry remains a dominant force. On the negative side, there remains a productivity growth gap between EU manufacturing its competitors in the USA and Japan. Although there has been a big increase in Information and Communication Technology (ICT) investment this has yet to be translated into productivity gains. Similarly, EU innovative performance remains weak. Research investment in the EU was only 1.9% of GDP in 2000 compared to 2.7% in the USA and 3% in Japan. In terms of enlargement the Communication notes that most, if not all, of the candidate countries are ready to integrate into the EU's industrial economy. Some outstanding problems remain - relating mostly to the differences in manufacturing. Most candidate country industries are less specialised and consist largely of low-technology sectors including food and beverages, textiles, wood products, and basic metal industries. Some countries are also having difficulties implementing the EU's *acquis* - in particular the high cost legislation relating to areas such as the environment.

EU industry is faced with a number of challenges. Most important is globalisation, which requires EU industry to respond quickly to unforeseen 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.

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 reorganizing of the steel sector and called for a more dynamic industrial policy. Parliament adopted numerous resolutions e.g:

- Resolution of 29 June 1995 on industrial competitiveness policy stressed the importance of coordination of national industrial policies, the need for social dialogue and environmental protection in the EU's industrial strategy.
- Resolution of 27 October 1995 on EU Industrial Competitiveness Policy approved the proposed Action Programme on industrial competitiveness adopted on 25 June 1996 by the Council (Decision 96/413).
- Following the Commission Communication on benchmarking, the European Parliament endorsed, in its Resolutions of 9 April 1997 and 19 December 1997, benchmarking and the establishment of a high-level group on benchmarking as an appropriate technique identifying best practice in European industry.
- Resolution on industrial restructuring and relocation on 13 November 1996.
- Resolution of 14 May 1998 on the Commission paper "Competitiveness of European Industry" indentified weaknesses in the European economy (e.g. inadequate presence in new areas of Information Technologies, low investment, unfriendly tax systems causing company relocations, a fragmented single market coupled with a lack of a European company identity) and called on the Commission to come forward with a genuine European industrial policy based on a mix between incentives to encourage investments, loans or direct financial aid to help old industries modernise, and the use of venture capital.
- Resolution of 15 January 1999 called on the Commission for a detailed analysis of the effects of international financial crisis on EU industry, especially for textiles, steel and shipbuilding.

- Resolution of 13 June 2002 assessed the Commission Communication of November 2001 “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”.

STEEL INDUSTRY

GLOBAL VIEW

The EU is the world's largest steel producer, with total production of crude steel of 159m tonnes in 2001 (19% 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 - mostly in Asia - leading to a sharp decline in the EU's traditional surplus in iron and steel. EU imports have increased from 15.4 million tonnes in 1997 to 26.6 million tonnes in 2001. The EU is second to the US in trading power, with Japan third.

The Luxembourg-based Arcelor Group, created in June 2001 from the merger of Aceralia, Arbed and Usinor groups is the world's largest steel making group employing around 110 000 people world-wide and producing around 50 million metric tonnes, or about a third of total EU production annually. Today, one third of cars in Europe are produced with Arcelor steel.

EU tariffs for steel products are relatively low. The average consolidated bound rate was around 2% in 2000, and all tariffs disappear in 2004 in line with the EU's commitments in the Uruguay Round. Imports from many countries enter the EU at preferential rates under bilateral agreements. More than 50% of finished steel products are imported from the associated countries of Central and Eastern Europe at zero duty. 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 $400 during 2003, up from $260 in 2002 and $175 in 2001. The rises have sparked anger on the part of big steel users like Caterpillar, the US maker of construction machines, and Emerson, a leading electronics equipment producer. Since January 2002, the shares of Ispat, Corus, Nucor and Arcelor (some of the largest steel making companies in the world) have risen 85%, 31%, 28% and 22% respectively, relative to world stock markets. However, while demand in EU and the United States is decreasing rapidly, China comes to the rescue of the world's steel makers. Unexpected surges in demand of as much as 10% in 2002 pulled global steel consumption to a record level in 2002. The high demand is primarily a result of the country's booming construction industry.

To reduce costs and increase competitiveness, many large steel producers are collaborating on 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 500000 tonnes a year with half the costs of conventional mills.

In March 2002, US President Bush announced tariffs for three years of up to 30% on imported steel, guided by section 201 of the Trade Act, a safeguard clause in US trade legislation. This decision was made in order to protect the country's ailing steel industry during a restructuring of the American industry. President Bush had followed the International Trade Commission's recommendation from 2001 to impose significant tariffs of between 20% and 40% on 17 steel products for three years in order to remedy the steel crisis in the US. Under WTO rules, countries can impose temporary increases in tariffs, known as safeguards, to give time for a domestic industry to restructure to improve competitiveness. The EU Commission, however, claims the US action breaks WTO rules. It is particularly concerned that there has been no overall increase in steel imports - a precondition for safeguard actions - and that some of the moves target the wrong steel products. Two thirds of EU steel exports were affected by President Bush's actions, which came into force two weeks after the announcement.

In June 2002, the WTO's Dispute Settlement Body accepted the request by the Commission and by other world producers that a panel should be established to judge the legality of the US steel safeguards. Their arguments included the following:

- the US hit a wide diversity of steel products on the basis of an arbitrary definition of like-products;
- the US action was not justified by sudden, recent, sharp and significant increase in imports;
- the US failed to ensure that the injury caused by other factors is not attributed to imports;
- as a result, the US measures are disproportionate because they go beyond the extent necessary to remedy the injury caused by imports;
- the US excluded imports from certain WTO members from the measures, in a manner incompatible with relevant WTO provisions;
- the US failed to observe the obligation to grant equal treatment in excluding developing members from their protectionist measures.

The tariffs affected two thirds of the EU's steel exports and the Commission rapidly took action, imposing additional customs duties on imports of certain US products. On 12 July 2002, the total number of steel products exempted from the tariffs was 250, or about 6%. Most of the exempted products were smaller speciality items, which are not sold in large volumes in the US. Retaliatory sanctions from the EU towards the US could amount to as much as € 378 million. EU Trade Commissioner Pascal Lamy said the decision on whether to retaliate or not would depend on how many European steel companies gained exemptions from the tariffs.

The climbing steel prices affect i.a. 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 € 460 million a year to the US, but its exports are currently severely affected by the US tariffs. However, the decrease in exports to the US is being partly compensated for by an EU-Russia trade agreement, signed on 9 June 2002, designed to increase imports of certain Russian steel products into the EU. The agreement increases quantitative limits for the import of steel products such as flat and long products into the EU for 2002 to 2004. Similar agreements have been made with both Ukraine and Kazakhstan.

From an environmental viewpoint the industry remains an important emitter of carbon dioxide, accounting for around 30% of all industrial 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 nineties there has been 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 materials in the world.

In many of the candidate countries the steel industry is of great importance. In March 2002, representatives from the Czech Republic held meetings with the EU on the restructuring of the Czech steel industry. Poland is seeking a privatisation of the industry with help from foreign investors. Polish production in the first quarter of 2002 fell 11.3% from the same period of 2001, and in the second quarter fell a further 16%, producing 8.8 million tonnes of steel compared to 10.5 million tonnes in 2000. Nearly half of Poland's 25 steel mills have been privatised since 1990, and over € 1 000 million have been invested in modernisation programmes over the same period. Romania is attempting to retain its privileged status under the Association Agreement with the EU.

For some time now, the EU has been pressed by Japan to allow the candidate central European states 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.

THE EUROPEAN UNION

After the expiry of the ECSC Treaty, the Eurostat statistics system on the steel industry was meant to expire as well. However, both the steel industry and the Commission requested a prolongation of the system until the end of 2002, since statistics have shown to be an important aid in the decision making process for both policy makers and the industry itself. Also in 2002, the report entitled "Steel Industry. Annual Community statistics on steel for 2003-2009" was published to establish a common framework for the statistics.

As a response to the US tariffs, a Resolution of the ECSC Consultative Committee was adopted unanimously in April 2002. The Consultative Committee, whilst recognising that the US steel industry is faced with economic, social and regional problems, firmly contested that these problems were caused by imports, since the volume of imports into the US in 2001 alone fell by more than 23%. The Consultative Committee doubted that there were sufficient grounds for taking measures under Article 201 of the US Trade Act. The first steps had already been taken in January 2002, when the Commission adopted Regulation 76/2002 introducing prior surveillance of imports of certain iron and steel products covered by the ECSC and EU Treaties originating in certain third countries as a response to the already worsened situation of the steel industry and the possibility of American imposed tariffs.

Council Regulation 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. In February 2003, Parliament expressed its concern in two Resolutions in February 2003 about the continuing US tariffs and the overall crisis in the steel industry, pointing to the decision of the steel giant, Arcelor, to close hot rolling lines in all the group's continual 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.

SHIPBUILDING

GLOBAL VIEW

In 2001, Japan was the world's largest shipbuilding country with 33% market share in new orders, Korea was second with 30% and China had 11%. The EU accounted for 13% dropping from 24% in 1998. In 2002, Korea had around 45% of the world market after having tripled its shipbuilding capability in the 1990s. The largest European shipbuilding group is Norwegian Aker Yards Group, the world's no. 4 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, high standard fishing vessels and the manufacture of small and 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 now increasingly in China too, has resulted in prices decreasing rapidly. The global economic situation has led to a sharp decline in demand; in 2001, only the segment of Liquefied Natural Gas carriers (LNGs) saw an increase in absolute order volume. However, this is only a niche market as it only represents around 8% of world orders in cgt (compensated gross tonnes). 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 the 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 starting 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 introduced 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. The devaluation of the South Korean currency gave the yards an additional competitive advantage. In 1999, prices from the Korean yards had been reduced to down to 40% below production costs, according to an EU Commission report. And since the EU was pursuing a policy to reduce the state aid granted to European shipbuilding companies, the lower prices of the Asian companies meant significant market shares for the Korean shipyards. Thanks to a historically high level of ordering in 2000, prices recovered to some extent, but the significant drop in orders in 2001 led to a new reduction in prices (total orders were 21% lower in 2001 than in 2000 based on cgt). While the decline in 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. This lack of incoming orders is likely to become a great threat to European shipbuilders, since there is an increasing uneasiness about the situation after 2003, when most of the previous orders will have been completed.

Up to May 2001, the Commission tried to engage South Korea in talks, aiming to stabilise the world shipbuilding market through market instruments. The investigation into subsidies carried out under the Trade Barrier Regulation (TBR) established that substantial subsidies had been granted to Korean shipyards through both export and domestic programmes, which contradicted the WTO's 1994 Subsidies Agreement. These efforts took place on a bilateral level and in the OECD. However, no progress was achieved, as the Korean Government claimed that it had no influence on the shipyards or on the financial institutions supporting them, and further said that it was convinced business was conducted along free market principles.

After the fruitless talks between Korea and the EU, the Commission launched a TBR report in May '01. It found that Korean state aid to shipyards included € 2 600 million to Daewoo and € 1 700 million to Sambo. In October 2000, the committee of European Union shipbuilders associations (CESA) lodged a complaint under TBR in order to eliminate certain trade practices caused by the subsidising of commercial shipbuilding in Korea and adversely affecting EU sales of commercial vessels. The report found subsidies in the form of the Advance Payment Guarantees and loans provided by the state-owned Export-Import Bank of Korea (KEXIM), which were not consistent with WTO regulations, debt forgiveness and interest relief by government-owned and government-controlled banks, and special tax concessions.

In the middle of the trade dispute with the EU, South Korea on 17 June 2002 unveiled an ambitious programme 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 $170 million to develop new technology over the next ten years. At the meeting, the Korean shipbuilders agreed to raise their global market share from 30% in 2001 to 40% in 2010. It was suggested that high-end and high-margin vessels such as cruise ships and supply vessels should account for 35% of total production in 2010 compared to 13% in 2001. Furthermore, they promised to boost exports of shipbuilding equipment and parts to $2 000 million by 2010 from $370 million in 2001. In 2001, ship exports accounted for 6.4% of South Korea's total exports. The program highlights concerns about Japanese shipbuilders who are teaming up to compete with Korean rivals through mergers and strategic partnerships. Still, the Korean shipbuilders have enough construction orders to keep them busy until the end of 2003. The world's largest shipbuilder, Hyundai Heavy Industries, in May 2002 won $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 $800 million, bringing its backlog to 110 ships, enough to occupy its shipyards for the next two and a half years.

In order to further increase sales in the EU, Korean shipbuilders have been holding talks with several Dutch companies, as they are said to be very strong in fields like navigation, consulting and high-tech equipment. Furthermore, the Netherlands has 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 after the US in Korea. Korean shipbuilders are also highly interested in using the Czech Republic as an entry point to the EU market. The country is ideal for investments just before becoming a part of the EU, since there are a large number of advantages for foreign investors, including 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 world-wide to be of high quality.

As far as the candidate countries are concerned, the Commission carried out a study in 2000, in which it is stated that eastern European yards need cash aid to survive EU entry in order to withstand the competition. Bulgaria requires outside EU financial support because of the weakness of the country's banking system, according to the report. The main problem for this country is that its largest yard, Varna, went into receivership in 1999 and no solution has yet been found for the company. 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. Positive signs are showing in Lithuania and Latvia with the four Lithuanian yards expanding beyond their traditional eastern European customer-base to Scandinavia and Western Europe. Europe's third-largest shipbuilder, Polish Stocznia, filed for bankruptcy in 2002, with debts of $448 million. However, the company is expected to reopen with fewer workers with the help of the Polish government, since the industry needs to be cleared up before EU entry. It employs about 7 500 people with orders worth $1 200 million in 2001.

THE EUROPEAN UNION

What refers to the Republic of Korea and the EU, the Commission is claiming that the Korean shipbuilding industry is contravening the WTO's 1994 Subsidies Agreement. Also in 1994, Council Regulation 3286/94 was adopted (the Trade Barrier Regulation). This Regulation established EU procedures in the field of the common commercial policy in order to ensure the exercise of the EU's rights under international trade rules, in particular those established under WTO auspices. On 24 October 2000, the Committee of European Union shipbuilders associations (CESA) filed an official complaint under the Trade Barrier Regulation (TBR).

Aiming at a quick resolution, the EU and Korea on 18-19 July 2000 held a first round of consultations on shipbuilding in Seoul, the so-called EC/Korea Agreed Minutes, attempting to promote fair and competitive conditions and to stabilise the market. As a result of the Agreed Minutes, the Korean Government was committed to refrain from any direct or indirect intervention to underwrite loss-making Korean shipyards and to apply internationally accepted financial and accounting principles, ensuring that Korean shipyards set prices that reflected market conditions. The EU ended operating aid in form of subsidies to European shipbuilders on 31 December 2000, because the Commission was convinced that state aid was in principle distortive and did not necessarily help the industry to improve its competitiveness.

Given no negotiated resolution between the EU and Korea, the EU on 25 July 2001 proposed to adopt a Council Regulation imposing a temporary defensive mechanism of providing EU shipbuilders with subsidies in order for them to regain competitiveness. It was one element of the Commission's two-part strategy - proposing a temporary defensive mechanism and initiating dispute settlement proceedings. Competition Commissioner Monti stated that the proposal was not at all aiming at the reintroduction of the operating aid to shipbuilding, which came to an end on 31 December 2000, but 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 a Panel against Korea in the WTO and activate the temporary defensive mechanism for European shipbuilding, even though Finland, Sweden, Denmark and the UK had expressed reservations about it. France decided to back the Commission's proposal at the Council of EU Industry Ministers' meeting on 6 June 2002 in Luxembourg, helping to create the necessary qualified majority in the Council. A year earlier, the Commission also proposed reintroducing subsidies temporarily for European shipyards, but disagreement among the 15 states blocked the plan. This time, Competition Commissioner Mario Monti said, the compromise plan would reduce the amount of subsidies from the originally proposed 14% and that it would also limit their duration and scope. The Commission will now hold a series of further negotiations with the Korean authorities in an attempt to restore normal trading practices. The proposal for the defensive mechanism was limited to those market segments in which the Commission and the Council found that the EU industry had been considerably injured by unfair Korean trade practices, namely container ships and product and chemical tankers. For these segments, the mechanism will, if imposed, authorise a maximum aid ceiling of 6% of the contract value, but must not result in distortion of competition within the EU. The aid will only be authorised, if it is clear that the aid amount is the minimum necessary to stay competitive within the EU.

The principal provisions of the temporary defensive mechanism are the following:

- maximum aid of 6% of contract value;
- the scope of the mechanism covers container ships, product and chemical tankers, Liquefied Natural Gas (LNG) tankers;
- authorisation of aid in the first two segments after the Commission gives notice in the Official Journal that it has launched the WTO procedure against Korea (which depends on the assessment by the

Commission of an unsuccessful outcome of the bilateral negotiations with Korea);

- entry into effect of granting aid to LNG carriers on the basis of a new Commission investigation under the Trade Barriers Regulation (TBR), confirming that Community yards building this type of ship suffer material injury and serious prejudice, caused directly by unfair Korean practices;
- expiry of the Regulation: 31 March 2004, to take account of the time necessary for a WTO panel to reach its conclusions, i.e. 18 months from the end of September 2002.

Seeing that negotiations broke down between the EU and South Korean authorities in September 2002, the Commission stated in its communication on world shipbuilding industry (6th report) of November 2002 that it had again initiated WTO action against Korea through the dispute settlement procedure.

THE AUTOMOBILE INDUSTRY

LEGAL BASIS

Although the Treaty of Rome contained no specific provisions on a common policy for the automobile industry, its provisions on competition, state aid (Articles 81-89) and the internal market empower the Commission to intervene in the automobile market. It may be authorized to negotiate with third countries (external policy). Article 157 of the Treaty provides a legal basis for an EU industrial policy.

OBJECTIVES

The EU is focussed 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 policy areas such as transport, environment, competition, trade and enlargement.

ACHIEVEMENTS

In its 1996 Communication on the automobile industry (COM(96)327) the Commission described the strategy pursued by the EU to create a favourable environment for this sector. Competitiveness is primarily a matter for the industry itself.

1. Internal Market

On 6 December 1989 a Commission Communication on the internal market in motor vehicles, considered the sector's prospects and the various guidelines for measures to accompany adjustment efforts made necessary by the opening of the market.

Harmonisation of technical requirements on motor vehicles has so far been achieved for three categories of vehicles, namely 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 on type-approval of motor vehicles and their trailers, amended 18 times since 1970, lastly by 2001/116. The proposal COD/2003/0153 will simplify and consolidate these extensive and complicated Directives and once adopted in 2004 will replace the existing legislation.
- motorcycles: Directive 2002/24 on type-approval of two or three-wheeled motor vehicles and tractors.
- tractors: directive 2003/37 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 is mandatory for passengers 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. buses and coaches, on one hand, and commercial vehicles, on the other. As regards the first, WVTA will be in place in 2004 on an optional basis.

As to trucks, the harmonisation process is expected to take a few years, although a large majority of separate directives are already in place and are applicable on an optional basis.

The principle of type-approval implies that each authority granting an approval for a vehicle, a system, a component or a technical unit is and remains solely responsible for ensuring the conformity of production (COP) during the whole period of validity of the approval.

In the field of vehicle safety, a number of directives have been adopted, i.e. protection of motor vehicles occupants in the event of a frontal and side impact (96/79 and 96/27 respectively), frontal underrun protection of heavy goods vehicles (2000/40), liquid-fuel tanks and rear underrun protection of motor vehicles and their trailers (2000/8), roadworthiness tests for motor vehicles and their trailers (99/52).

2. Competition policy

In promoting industrial cooperation to assist small suppliers of motor vehicle components, the Commission adopted Regulation 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.

3. Structural Policy

The EU, which made available more than €154 000 million for structural measures from 1994 to 1998, has created structural policy instruments relevant to the automobile industry. A training network was initiated with funding from the FORCE programme.

4. Research and Development Policy

The car industry is a significant recipient of EU R&D funding, for example in the Fifth Framework Programme. The car industry is particularly involved in such programmes as JOULE, ESPRIT and BRITE-EURAM.

5. External Trade Policy

The EU's external trade policy is designed to protect its automobile market against unfair practices and disruption and to improve industry's access to third countries through trade-policy measures.

The Council's 1994 measures establishing the EU's import system and rules governing external trade defence instruments, gave the EU a set of rules that enables it

to deal with unfair trade practices more effectively than before.

In 1991 the EU concluded a trade agreement with Japan aimed particularly at gradually opening the EU market to Japanese cars and light commercial vehicles during a transitional period ending on 31 March 1999 and precluding market disruptions that such imports might cause. Both Japanese and Korean markets have been opened further to European imports. During 1998, the Commission continued to ensure correct application of the EU-Japan arrangement for Japanese exports of cars and light commercial vehicles.

Global technical harmonisation is a key factor in strengthening the competitiveness of the European automotive industry world-wide.

The EU and its member states have always been at the forefront of international harmonisation efforts, by actively supporting the work within the Revised 1958 Agreement of the UN Economic Commission for Europe (UN-ECE) on international technical harmonisation in the motor vehicle sector. The EU became a contracting party to the Agreement on 24 March 1998 and over 100 Regulations have been developed under its auspices. There is a very strong analogy between EU legislation and some of these Regulations in terms of their technical provisions. The EU has adopted 78 Regulations to date, most of which are considered to be equivalent to their corresponding EU Directives. As a result, type-approvals based on these regulations are accepted in the EU as equivalent to type-approvals based on the respective separate directives.

In addition, the EU negotiated, through the UN-ECE, a new Global Agreement of 1998 to allow non-contracting parties to the 1958 Global Agreement, such as the US, to be associated more closely with the international harmonisation process. Both instruments have the same scope as to harmonising technical regulations on motor vehicles and parts, but the 1998 Agreement does not provide for the mutual recognition of approvals granted on the basis of global technical regulations. what refers to 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.

6. Environment Policy

Regarding environmental protection, significant progress has been made in reducing pollutant emissions, greenhouse gases and waste:

- Directive 70/220 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 added limit values for emissions of nitrogen oxides (NO_x);
- Directive 88/436/ introduced limit values for particulate emissions from diesel engines.
- Directive 94/12 introduced more stringent limit values and provided for a 50% reduction in most harmful vehicle emissions compared to 1991 levels.
- Directive 98/69 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 140g CO2/km by 2008/9.
- 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.

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.

In 1995:

- the EP endorsed the Commission's proposed changes to the block exemption for EU car dealers and its extension for a further ten years, but subject to the inclusion of a proposition that a review will be carried out after five years.
- the EP adopted a Resolution on "The Automobile Industry within the EU", in which it urged that cars for the year 2000 must be clean, lean-produced, intelligent and of high quality.

In 1997,

the EP has called for the creation of a High Level Group on the automobile industry, including representatives from the automobile and equipment industries, trade unions and user groups. The Group advises on an overall strategy in this sector, particularly on the problem of overcapacity, the per-category authorization for distribution and maintenance agreements.

In 1998,

under the codecision procedure, Parliament provided an important input to amend. Directive 70/220 concerning air pollution: (emissions from non-personal motor vehicles and motor vehicles).

THE CHEMICAL AND PHARMACEUTICAL INDUSTRIES

LEGAL BASIS

The Treaty of Rome does not contain any specific provisions for an industrial policy for the chemical and pharmaceutical industry. However, the EU may undertake certain actions within the framework of: competition policy (Articles 81-89); the mandate of 30 May 1980, which empowers the Commission to put forward proposals particularly on industrial policy (Article 308); trade policy; and the completion of the internal market (in particular Article 95 concerning harmonization). Article 157 provides a legal basis for a EU industrial policy.

OBJECTIVES

The EU attempts to create favourable conditions for a single market, to have a unified commercial policy and to stimulate investment in this sector.

ACHIEVEMENTS

A. Chemical industry

Chemicals bring about benefits on which modern society is entirely dependent, for example, in food production, medicines, textiles, cars etc. They also make a vital contribution to the economic and social wellbeing of citizens in terms of trade and employment. The global production of chemicals increased from 1 million tonnes in 1930 to 400 million tonnes today. In 1998, the EU chemical industry was the world's largest, followed by that of the US, with 28% of production value and a trade surplus of € 12 000 million.

The chemical industry is also Europe's third largest manufacturing industry. It employs 1.7 million people directly and up to 3 million jobs are dependent on it. As well as several leading multinationals, it also comprises around 36 000 SMEs. These SMEs 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 and 99/45 on classification, packaging and labelling of dangerous substances and preparations;
- Regulation 793/93 on the evaluation of the existing substances;
- Directive 76/769 on marketing restrictions on dangerous substances.

There is consensus on using these instruments more efficiently and to implement and enforce them more rigorously.

A 2001 Commission White Paper proposed a strategy on future EU chemicals policy with the overriding goal of sustainable development. In order to achieve this, the Commission identified a number of objectives to achieve sustainable development in the chemicals industry within the framework of the single market namely:

- protection of human health and the environment;
- maintenance and enhancement of the competitiveness of the EU chemical industry;
- prevention of fragmentation of the internal market.

2. Competition Policy

Under the terms of the EU's competition policy, any agreement among chemical firms to restructure the market requires prior authorization from the Commission. The Commission used its investigative powers when it suspected price-fixing in the EU plastics market early in 1987. State aid for the chemical industry has also to be authorized (see annual reports on competition policy). EU legislation, such as the block exemption regulations on specialization, research and development and patent licensing, is particularly important for this industry.

Commission Communication COM (96) 187 set out a framework for action to strengthen the chemical industry's long-term competitiveness on the basis of specific actions: improving the regulatory framework; ensuring effective competition; encouraging intangible investment and developing industrial cooperation.

3. Research and Development Policy

The bulk of investment in the chemical industry relates to R&D. The principal pioneering sector is biotechnology, i.e. the application of scientific and engineering principles to the treatment of matter with biological agents. Innovation is also taking place in a second field, that of new materials (advanced composite materials, plastics, ceramics, etc.), which have themselves led to significant breakthroughs in microelectronics and biotechnology. Many chemical firms have taken part in projects sponsored under the framework programme of EU research and technological development activities. Not only does the programme provide financial contributions to meet 50% of research costs, it also pools the research carried out by various institutes and regions, opening up new market opportunities.

B. Pharmaceutical industry

The sector is characterized 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 which 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 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 on medicinal products for human use and in Chapter IV of Directive 81/851 on medicinal products for veterinary use. The pharmacovigilance chapters of the latter were amended by Directives 2000/38 and 2000/39 respectively. These amendments are now integrated into the two Directives on the Community Codes relating to medicinal products for veterinary and human use (2001/82 and 2001/83).

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, it appeared necessary to amend Regulation 2309/93 and Directives 2001/83 and 2001/82 laying down the Community codes in relation to medicinal products for human and veterinary use.

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, harmonization will depend upon the way in which national social-security systems are administered and an equalization of income levels.

Council Directive 89/105 related to the transparency of measures regulating the pricing of medicinal products for human use and their inclusion in the scope of national health insurance systems. Given that medicines are highly innovative products that take a long time to develop, it is not possible to secure a profitable return on investments without a period of patent protection, because imitations quickly appear on the market.

3. Research and Development Policy.

In implementing Communication COM(93)718 on the outlines of an industrial policy for the pharmaceutical sector, the Commission noted signs of weakness in the EU industry, particularly as regards its capacity to finance R&D of innovative therapeutic drugs, and reviewed the prospects for concentration and restructuring, since these were likely to reshape the industry up to the turn of the century.

4. Cosmetics Industry

In the early 1970's, the EU decided to harmonise member states' national cosmetic regulations to enable the free circulation of cosmetic products. Following intensive expert discussions, Directive 76/768 on cosmetic products was adopted. The principles laid down in the Cosmetics Directive take into account the needs of the consumer while encouraging commercial exchange and eliminating barriers to trade. One of its the main objectives is to give clear guidance on what requirements a safe cosmetic product should fulfil in order to freely circulate within the EU, without pre-market authorisation and thus guarantee the safety of cosmetic products for human use. This safety relates to composition, packaging and information and it falls totally under the responsibility of the producer or the importer who is responsible for the marketing liability. There is no pre-market control for cosmetic products at member state or EU level. Control of cosmetic products within the EU is assured through the responsibility of the person who places the product on the market, a simple notification of manufacturing/importing site, and an in-market surveillance system.

Commission Directive 95/17 lays down detailed rules for the application of Directive 76/768 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.

Directive 76/768 has already undergone six amendments and 23 adaptations to technical progress.

ROLE OF THE EUROPEAN PARLIAMENT

1. Chemicals

The EP has stressed that the restructuring of the European petrochemical industry should be European rather than national, bearing in mind the international context in which it has to operate. The EP advocated an approach in which the Commission should monitor the situation closely. There is a need to increase specialization of product ranges in which European firms enjoy a comparative advantage. On 13 March 1997, the EP adopted a resolution on the chemical industry stressing the elimination of excessive regulations and the conclusion of multinational agreements for the protection of investment.

2. Pharmaceuticals

In the discussion about the pricing of medicinal products (proposal for a directive, COM(86) 765), the EP proposed in March 1988 that a data bank be created by the Commission in order to improve competition in the pharmaceutical sector and insisted upon transparency of transfer prices. The Commission accepted all the amendments tabled by the EP at first reading of this proposed Directive.

- On 14 November 1994, the EP adopted two resolutions dealing with the specific research programmes (in the 4th Framework R&D Programme) on "biotechnology" and "biomedicine and health".

- Resolutions adopted by the EP in April 1996 on the Communication on the outlines of an industrial policy for the pharmaceutical industry stressed the need to ensure the industry's innovation capacity, the reduction in the time needed 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.

THE AEROSPACE INDUSTRY

LEGAL BASIS

Air transport policy is based on Article 80, §2, of the EC Treaty, whereas policy w.r.t. aircraft construction must be based on Article 308, which covers all cases in which the Treaty does not make explicit provision for action to attain one of the EU's objectives. Article 157 provides a legal basis for EU industrial policy.

OBJECTIVES

Aerospace is vital to Europe's objectives for economic growth, security and quality of life. It is influenced by a broad range of European policies such as trade, transport, environment, security and defence. European aerospace must maintain a strong competitive position in the global aerospace marketplace.

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 world-wide, compared with almost half for US industry.

According to the report of the European Advisory Group on Aerospace "Strategic Aerospace Review for the 21st century" (STAR 21), delivered in July 2002, certain key factors give the industry its distinctive character:

- close links between civil and defence activities
- cyclical nature of the industry
- high level of capital intensity
- consolidation
- privatisation
- EU-US relationships.

A. Aircraft Industry

1. Competition Policy.

The Council Resolution and Declaration of 1975 and 1977 respectively laid the foundations for coordinating member states' aircraft construction policies given that aerospace technology is advancing rapidly and becoming increasingly expensive, requiring extensive cooperation. The Airbus programme is exemplary in this respect. Launched in 1968 as an economic interest grouping, Airbus Industrie is now one of the most important players in Europe's aeronautical industry. Other cooperative projects are the Tornado, Alpha Jet and Transall programmes, which, together with joint space projects, greatly increase the competitiveness of European manufacturers. In 1985 a number of EU countries agreed to pool their resources in developing the EFA or 'Eurofighter' for the 1990s.

In its 1997 Communications on the European aerospace and defence-related industries, the Commission recognised that the industry is too fragmented to face up to international competition and that restructuring is going too slowly. Accompanying measures were needed in the 5th European research framework programme, 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 world-wide challenges', the Commission assessed the progress of the European airline industry and identified policies to safeguard its competitiveness.

2. Research and Development Policy

The progress made in aerospace research and industry owes more to inter-governmental action and cross-border projects launched by aerospace enterprises than EU intervention. In 1988 the major aircraft manufacturers published a report entitled 'Euromart' (European Cooperative Measures for Aeronautical Research and Technology), which focuses on a programme of cooperative research and development, which is crucial if this European industry is to thrive; it calls 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 thematic priorities of the 6th R&D Framework Programme for 2002-2006.

B. The Space Industry

1. Competition Policy.

European governments began cooperating in the space sector through the European Space Agency (ESA), banks and industrial enterprises also being involved. The Ariane programme, involving ten European countries, was launched in 1983. In 1987, the ESA Council of Ministers said that, if Europe wanted to maintain its role in space in the future, ESA's 13 member states should agree the broad-based development of the Ariane programme. The future of the European aerospace industry depends on European cooperation, since no European country has sufficient financial and economic resources to implement major space projects on its own. In 1996, the Commission proposed a European Space Strategy fostering applications in telecommunications, satellite navigation and Earth observation. The measures proposed were based on existing resources (RTD Framework Programme, Trans-European Networks, national and ESA programmes, EIB-EIF financing), the alignment of trade positions and better coordination. The 1996 and 1997 Communications on defence-related industries proposed the application of EU rules on the award of public contracts, intra-Community trade and competition to this sector, which also includes large parts of the aerospace industry. Beyond the emblematic success of the Ariane launcher, space activities have evolved from being a research endeavour to offering a unique and critical technology enabling Europe to address and achieve a large number of policy goals related to economic growth, the information society, transport infrastructure, environmental protection and peace-keeping. Space has the potential to become an

integral component of the EU's core policies. The first benefits of such a development are already highlighted by the Galileo and GMES initiatives, respectively in the field of navigation by satellite and global monitoring for environment and security.

Following the 2000 Communication "Europe and Space: Turning To a New Chapter", endorsed by subsequent EU and ESA Council Resolutions, the Commission and the ESA Executive set up a Joint Task Force. Its aims are to further develop and implement the European strategy for space, reporting to the EU and ESA Councils and the 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.

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 successive EU research Framework Programmes. The 6th Framework Programme will address the implementation of:

- Galileo as a strategic European infrastructure to radically change the transport sector and foster related services.
- GMES to provide information to the user community as specified in the EU Action Plan (2001-2003).
- Satellite telecommunications to provide affordable and economically viable services to the largest possible customer base.
- A global budget of over €1 000 million has been proposed to support research efforts in the aeronautics and space sectors.

C. Relations between Europe and the USA

A number of attempts have been made between the ESA and the USA to resolve the problem of state aids in the aeronautics industry. In 1992 the Council adopted Decision 92/496 on an agreement between the EU and the USA on trade in large civil aircraft providing for discipline regarding all forms of government support for manufacturers of large civil aircraft. In 1997, the Commission reviewed the 1992 agreement and decided that it could be improved, particularly as regards subsidies to military programmes, via research credits from NASA and the Pentagon. In July 1997, the Commission also authorised the Boeing /McDonnell-Douglas merger, which had raised serious questions about competition.

ROLE OF THE EUROPEAN PARLIAMENT

The EP adopted the following resolutions:

- in 1987, stating that the time had come for the EU to develop a coherent policy on space activities and recognizing the ESA as the principal instrument of European cooperation;
- in 1988, calling on the member states concerned to increase their support for the Airbus programme and particularly to the development of the long-range A-330 and A-340 aircraft;
- in 1991, calling on the Commission to define and implement a 'comprehensive and balanced' European space policy;
- in 1992, on employment in the European aerospace industry;
- in 1993, on the Commission Communication on the European aircraft industry, where it again emphasized the need to create a favourable environment for developing the aircraft industry and proposed that a research programme should be established in cooperation with the industry;
- in 1995, appealing to all partners to conclude a multilateral trade agreement to cover government support in the civil aircraft sector;
- in 1996, on the EU aircraft industry, where it expressed concern about the European industry's loss of market share. In November 1996, the future of the European aerospace industry was discussed in an EP symposium;
- in 1997, welcoming the EU Action Plan for Satellite Communications in the Information Society as well as the Franco-German-UK declaration in favour of a European-level restructuring of the military and civil aerospace industry and endorsing the transformation of Airbus Industrie into a single corporate entity;
- in 1998, reacting to the 1996 Commission Communication on Space, Parliament called for a strengthening of EU support for Europe's space industry and reacting to the Commission Communication "The European Union and Space: fostering applications, markets and industrial competitiveness", it emphasised the urgent need for a reshaping of the resolution EU's space policy;
- a resolution reacting to the proposal for a Council Decision on the agreement between the EU, the ESA and the European Organization for the Safety of Air Navigation on a European contribution to the development of a global navigation satellite system;
- a resolution on the Commission Communication "The European Aerospace Industry - meeting the Global Challenge";
- In 2000, Parliament adopted a Resolution on the Commission working document "Towards a coherent European Approach for Space".

THE AUDIOVISUAL INDUSTRY

LEGAL BASIS

EC Treaty:

- Articles 23, 25, 28 (free movement of goods, including audiovisual products);
- Articles 39-55 (free movement of workers, right of establishment, freedom to provide services);
- Articles 81 and 82 (rules on competition);
- Article 95 (technical harmonisation, including advanced television services).

OBJECTIVES

- The establishment of a common information area, including the setting up of common standards.
- The promotion of television programmes with European content as a complement to existing national programmes.
- Regulatory consistency among the Member States with a view to deregulation (or re-regulation) of broadcasting activities.

ACHIEVEMENTS

1. State of integration

Television still operates on analog transmission systems, using three different standards (NTSC e.g. in North America, PAL in most of Europe, SECAM e.g. in France and French speaking countries). "Over-the-air" transmission is the most widely-used system in Europe but poor reception and problems of frequency capacity have led to the development of cable and satellite. The various terrestrial transmission systems have not yet been harmonised. Digital transmission will permit many more (interactive) services thanks to digital compression. The European Digital Video Broadcasting (DVB) Group has defined specifications for digital satellite and cable which have become ETSI standards and ITU recommendations. High Definition Television is closely linked, financially and commercially, with three sectors: telecommunications, consumer electronics, professional equipment and the components industry where the USA, Japan and Europe have different strengths. Another fast-developing market is wide-screen television.

Even though there has been a boost in demand for TV programmes, supply of truly European products and intra-EU audiovisual trade remain relatively limited. Not one group in European film/TV/video as yet rivals the global reach of the US "majors" which in part explains why the EU audiovisual industry has a negative trade balance with the USA. The US Telecommunications Act of 1996, which liberalised the cable, television, telecommunications industry in the US, is likely to increase the competitive pressure and spread into the area of all (electronics) information-entertainment services, in which the EU has opened up its markets both internally and externally.

2. Main achievements

Directive 95/47 on the use of standards for transmission of television signals.

Directive 92/38 on standards for satellite broadcasting of television signals.

Council decision 93/424 on an action plan for the introduction of advanced television services in Europe.

Council decisions 89/337 and 89/630 concerning High Definition Television.

Other main achievements have been Directive 97/36 of 20 June 1997 ("Television without Frontiers") and the MEDIA Programme. Directive 97/36, amending the 1989 Directive 89/552, sets up rules for TV programming in the EU. These rules include, inter alia, provisions for advertising, sponsorship, independent producers, European broadcasting preferences and decency standards.

The MEDIA Programme, originally adopted in 1990 for 1991-1995, dedicated € 200 million to the European audiovisual industry. The MEDIA II Programme (1996-2000) (Council Decision 95/563) has a budget allocation of € 310 million and seeks to encourage the free circulation of European audiovisual works and reinforce the competitiveness of the programme industry. In its Communication (COM(98)446) of 14 July 1998 'Audiovisual policy: next steps', the Commission identified main trends and initiated a review process of audiovisual policy. On 27 July 1998, the Commission proposed a Council decision establishing an EU statistical information infrastructure for the audiovisual industry and markets (SEC(1998)1325). On 11 March 1999, the Commission proposed a Council decision concerning EU participation in the European audiovisual observatory (COM(99)111).

3. Competition policy and media concentration

a. With the 1980's liberalisation of the media in Europe, fierce competition began for market share and position between European groups and US companies. In 1994, the European Commission carried out a vast consultation process with the European audio-visual industry on the competitiveness and competition in the audiovisual sector, which the White Paper on "Growth, Competitiveness and Employment (COM(93)700), identified as one of the key sectors in the Information Society. The exercise was based upon the Green Paper "Strategy options to strengthen the European programme industry in the context of the audiovisual policy of the European Union" (COM(94)96). Major European audiovisual group strategies have focused on the need to achieve critical mass, the desire to diversify and to secure access to larger international markets. A series of important mergers and acquisitions have taken place, though many have been limited to a national scale.

b. The Commission has begun to apply the EU's competition rules to broadcasting organisations and to the supranational multi-media groups. In December 1992 it submitted a Green Paper 'Pluralism and media concentration in the internal market' (COM(92)480), which emphasised that it is primarily for the member states to maintain the diversity of the media and that there are for the time being, sufficient means of preventing concentration in the audiovisual sector. It therefore sees three op-

tions: no action at EU level; harmonisation of national laws on media ownership; and greater transparency regarding media ownership.

The EP has demanded a Directive on media concentration (Resolutions of 16 September 1992, 24 October 1994, 14 July 1995, 15 June 1995). In its Resolution of 19 September 1996, the EP called for both EU and national support to underpin the values of Public Service Broadcasting, in a time of increasing competition between private, multinational media groups and public broadcasters. In the meantime, the Commission is considering options for a draft directive on access to media ownership.

4. Telecommunications and advanced television services (HDTV)

The establishment of a common market in broadcasting runs parallel to the EU's initiatives in the telecommunications sector. Both sectors are at a transitional stage, and most member states have reacted by re-regulating their (often interlinked) national telecommunications and broadcasting systems. Parliament has repeatedly emphasised the importance of an EU framework for both broadcasting and telecommunications in order to avoid divergent national re-regulation in these related communications sectors.

HDTV is an electronic medium for cinema-quality programmes and is a major innovation in electronics. It is also the platform of the struggle over television standards in programme production, transmission and reception. Council Decision 93/424 provides an Action Plan for the introduction of advanced television sources in Europe, aiming at promoting the wide-screen 16:9 format (625 or 1250 lines), irrespective of the European television standard used and irrespective of the broadcasting mode (terrestrial, satellite or cable).

Directive 95/47, replacing Directive 92/38 on the use of standards for the transmission of television signals, provides the legislative framework necessary for the introduction of digital television in Europe. The Directive requires that digital TV service use standardised transmission systems, without dictating the details of the standards. The Directive also sets requirements on conditional access systems for digital television, following intensive industry consultation with the Digital Video Broadcasting (DVB) Group.

The introduction of HDTV services is no longer the immediate objective. Instead, there is a consensus among market players that the introduction of the HDTV screen format - 16:9 wide-screen - is more strategically important and achievable. The advantage of 16:9 as a policy is that it bypasses the debate on technologies; 16:9 can be delivered using analogue or digital technologies. Unlike its predecessors (the so-called MAC directives), there is no longer a single objective (HDTV) with a particular mandated approach. The Commission publishes its regular reports on progress in implementing the action plan for the introduction of advanced television services in Europe (e.g. Annual Report 1997, COM(98)441). At the end of 1999, the Commission published its review of the market for digital television services in the EU in the context of the TV standards Directive 95/47/EC (COM(99)540).

ROLE OF THE EUROPEAN PARLIAMENT

1. The EP's resolutions on television have repeatedly called for common technical standards for direct broadcasting by satellite (DBS) with a view to preventing a proliferation of different transmission standards, as with PAL and SECAM for colour television in the 1960s (resolutions of 28 October 1983 and 22 October 1986). The EP has supported the introduction of HDTV standards which are compatible with existing television sets and has advocated the Community's adoption of a common position on the question of HDTV standards (resolutions of 16 May 1986, 11 April 1989, 20 November 1991 and 11 March 1992). In Directive 92/38 of 11 May 1992 concerning satellite broadcasting standards, the Council included most of the EP amendments which sought to balance the interests of the various groups concerned.

2. The EP also saw a need for the economic promotion of audiovisual production in the context of the HDTV strategy. This strategy must enable the European programme industry to meet in quantitative and qualitative terms the demand from the television operators introducing the new services and to increase the supply of competitive products from European producers (resolution of 22 January 1993 on encouraging audiovisual production in the context of the strategy for high-definition television). Given the new technological developments, the EP took the general view that minimum common standards should be formulated even before the introduction of the first digital television systems. It emphasised a flexible regulatory framework providing operators and consumers with a sufficiently stable environment (resolution of 19 April 1994) on digital video broadcasting.

3. The EP's Committee on Economic and Monetary Affairs and Industrial Policy organised a hearing on standards for and access to digital television on 19/20 December 1994. In Directive 95/47, Council incorporated the EP amendments. The compromise text provides that holders of industrial property rights to decoding systems may grant licences to manufacturers of consumer equipment at equitable, reasonable and non-discriminatory rates. The member states must take necessary measures to ensure that operators of conditional access services offer to all broadcasters on a fair reasonable and non-discriminatory basis, technical services enabling the broadcasters' services to be received by viewers authorised by means of decoders administered by the service providers. In its Resolution of 13 June 1995, the EP had reintroduced its compromise amendments which were incorporated into the Directive. Parliament had insisted that the consumer should not pay the price of technological progress (successive purchases of decoders that are incompatible and rapidly become obsolete).

On 14 June 1995, the EP adopted a Resolution on the Green Paper "Strategy options to strengthen the European programme industry in the context of the audiovisual policy of the European Union". On 16 June 1995, the EP approved the proposal for a Council Decision on the development and distribution of European audiovisual works (MEDIA II - Development and Distribution - 1996-2000).

INFORMATION TECHNOLOGIES

LEGAL BASIS

The Treaties do not contain any special provisions for Information Technology (IT), although Article 157 provides a legal basis for an EU industrial policy. However, the EU may undertake certain actions within the framework of many sectoral and horizontal policies at international, EU, member state and local levels, such as competition policy (Articles 81-89), trade policy, trans-European networks (Articles 154-156), research and technological development (Articles 163-173) and approximation of laws (Article 95).

OBJECTIVES

Strictly speaking, IT means only computer hardware and software but it is often conflated 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 in latter years converged substantially and it is expected that they will eventually merge into one technology - with differing user interfaces but similar if not identical underlying circuitry.

Priorities for action are: establishment of information technology infrastructure; improvement of competitiveness of IT industry in Europe; better consideration for industry's needs in research policy; establishment of the information society and the promotion of industrial co-operation.

ACHIEVEMENTS

1. Internal Market

Commission Directive 96/19 opened up the telecommunications market to full competition on 1 January 1998. Most of the legislative framework is in place and is being applied by national regulatory authorities. Implementation is regularly monitored by the Commission in its reports on the implementation of the telecommunications regulatory package.

The 1999 Communications Review launched a broad public consultation on the regulatory framework for electronic communications services and put forward the essentials of a new framework for communications infrastructure and associated services.

The comprehensive review of the telecoms framework led to the adoption of a new regulatory package for electronic communication services in December 2002 which cuts the number of laws from 23 to 8 and creates a truly liberalised telecommunications market where competition should cut prices and improve the quality of services. This new regulatory framework was applied in all member states from 25 July 2003. It consists of:

- framework Directive 2002/21 on a common regulatory framework for electronic communications networks and services;
- authorisation Directive 2002/20 on the authorisation of electronic communications networks and services;
- access and interconnection Directive 2002/19 on access to, and interconnection of, electronic communications networks and associated facilities;
- Directive 2002/22 on universal service and users' rights relating to electronic communications networks and services;
- Directive 2002/58 on the processing of personal data and the protection of privacy in the electronic communications sector (Data Protection Directive);
- Regulation 2887/2000 on unbundled access to the local loop.

2. Information Society

The developments in technology, innovation in services supply, lower prices and improvements in quality brought about by competition in the sector have provided the basis for Europe's transition to the Information Society.

The Commission launched the basic outline for eEurope in November 1999. Subsequent action plans have set out roadmaps of what needs to be done by when. There have, so far, been two action plans, the eEurope Action Plan 2002 and the eEurope Action Plan 2005. eEurope 2002 cast its net very wide, successfully putting the Internet at the top of the European political agenda. eEurope 2005 narrowed the focus, concentrating on effective access, usage and the ready availability of the Internet. It aims to ensure widespread availability and use of broadband networks throughout the EU by 2005, as well as security of networks and information.

One of the top priorities of eEurope 2002 was to modernise the rules and regulations governing Internet access and to create a single market for all telecommunications services. The new regulatory framework for electronic communications networks and services (adopted in December 2002) will provide cheaper and faster Internet access for citizens and business alike.

To stimulate Internet take-up, the EU has concentrated on providing a favourable environment in which companies and other types of organisation can develop digital skills and services. In April 2002, a formal decision (Regulation733/2002) was taken to create the EU Top Level Domain which will allow European citizens, organisations and businesses to have web-sites and e-mail addresses that end with 'dot-eu' (.eu) - in addition to the current domain names: '.com', country indications and generic terms like .org, .net, etc.

As a follow-up to eEurope 2002 and to the Communication "Helping SMEs To Go Digital" (COM (2001) 136), the Commission services have launched specific actions to address the needs of SMEs w.r.t. adoption of information and communication technologies (ICT) and e-business. eEurope 2005 emphasises the importance of broadband networks. Broadband networks as such will not create SMEs but can help in providing SMEs with faster and more stable communications. Broadband means faster infrastructure, and has powerful economic and social implications because of improving internet capacity for content, applications, speed, and services. The Action Plan seeks to accelerate deployment of broadband services over networks including hardwire, wireless,

fibre optics and satellite links, and third-generation mobile phones (UMTS) when these become widely used. Currently, the networks most readily available are ADSL and cable modem networks.

The more networks and computers become a central part of business and daily life, the more need there is for data security. Secure networks and information systems are crucial for e- business and a prerequisite for privacy. To meet this challenge, the EU launched a comprehensive strategy based on Communications (COM (2000) 890, COM (2001) 298) on network security and cyber crime, and the data protection Directive 2002/58 on electronic communications.

3. Research

At the end of 1998, an agreement was reached on the Fifth Framework Programme (1998-2002) by Council and Parliament, covering all the EU's research activities with a total budget of €14 960 million. In the Fifth Framework programme, a number of specific programmes concerned industrial technologies:

- user-friendly information society;
- competitive and sustainable growth;
- promotion of innovation and encouragement of SME participation.

Within the Fifth Framework Programme, the Information Society Technologies Programme (budget of € 3 600 million for 1999-2000) brought together and extended the ACTS (Advanced Communications Technologies and Services), Esprit (Information Technology Research) and Telematics Applications Programmes of the Fourth Framework Programme (1994-1998).

Information Society Technologies is also one of the main priorities of the Sixth Framework Programme 2002-2006 (FP6). The activities carried out in this field, pursuant to the conclusions of the Lisbon European Council and the objectives of the e-Europe initiative, are intended to stimulate the development in Europe of technologies and applications at the heart of the creation of the Information Society in order to increase the competitiveness of European industry and allow European citizens in all EU regions the possibility of benefiting fully from the development of the knowledge-based economy.

The Commission publishes its periodical reports on research and technological development activities of the EU. The annual reports provide details on implementation of the specific programmes. Besides the specific programmes other positive actions to stimulate the development of new industrial technologies include:

- **Trans-European Networks (TENs)**

  The 1997 Decision on TEN Telecommunications Guidelines (Decision 1336/97) sets out priorities for the development of the European Information Infrastructure in ISDN, applications and generic services.

- **European Research Coordination Agency, Eureka**

  Eureka (set up on 17 July 1985 at the Paris intergovernmental conference) is a framework for technical cooperation in Europe between businesses and research institutes. Eeureka's membership has increased to 27 members including several Central and Eastern European countries, as well as Turkey. Eureka should be regarded as complementing EU RTD programmes. The EU is an active participant in Eureka through its own research establishments (Joint Research Centre) and its RTD programmes.

ROLE OF THE EUROPEAN PARLIAMENT

The EP advocates a robust advanced technology policy as part of a European industrial strategy. In a host of oral and written questions, own-initiative reports, opinions and resolutions, the EP has called for greater coordination of national efforts, enhanced EU support for industrial RTD activities, and a common policy on trade and competition:

- a 1996 Resolution outlined its ideas on innovation, European Science and Technology Policy and its monitoring of the 4th Framework Programme;
- a 1997 Resolution made full use of the EP role as co-legislator in the codecision procedure for the TEN Telecommunications Guidelines;
- EP Resolutions in 1994, 1996 and 1997 endorsed the Information Society Action Plans;
- other EP resolutions have dealt with copyright in the Information Society (1996), standards and regulations (1997), encrypted services, electronic signatures (1997, 1999) and electronic commerce (1998, 1999);
- a 1998 EP Resolution welcomed the Information Society Technologies Programme in FP5 (budget € 3 600 million 1999-2002) which provided an integrated programme of information processing, communications and media technologies;
- a 2000 EP Resolution welcomed the Commission's initiative 'eEurope: an Information Society for All' while emphasising the need to guarantee worker's rights.
- a 2001 Resolution on "The next generation Internet: the need for an EU research initiatived" called on the Commission and the member states to give the research initiative on the next-generation Internet and new communication infrastructure, high priority in the Sixth Framework Research Programme. In 2002, Parliament approved a budget of € 100 million for the priority thematic area 'Technologies for the Information Society' under the Sixth Framework Programme (2002-2006).

BIOTECHNOLOGY INDUSTRY

LEGAL BASIS

The Treaty does not contain any special provisions for biotechnology. Article 157 however provides a legal basis for an EU industrial policy. The EU may undertake certain actions within the framework of many sectoral and horizontal policies at international, EU, member state and local levels, such as competition policy (Articles 81-89), the mandate of 30 May 1980, which empowers the Commission to put forward proposals on industrial policy (Article 308), trade policy and the completion of the internal market (Article 95).

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.

1. Internal Market

a. 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 consumer's 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 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 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 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 EMEA in London;
- Regulation 258/97 governs GM foods and GM seeds under the various seed Directives (66/401 66/402, 66/403, 69/208, 70/457 and 70/458 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 2001/18, which replaced 90/220 in 2002.

Directive 2001/18 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 consumer/users to fully exercise their choice; addresses the issue of liability with respect to significant environmental damage arising from contained use of genetically modified micro-organisms (within the scope of Directive 90/219) 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) are appropriately implemented in EU legislation.

b. Industrial biotechnology and bioremediation

Europe is a world leader in harnessing genetically modified micro-organisms (GMM) 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 in neither a GMM nor directly derived from one. The approval procedure for these activities is covered by Directive 90/219 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.

c. Non-food agricultural and silvicultural biotechnology

Non-food agricultural GMOs also need approval under Directive 2001/18. 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 on the marketing of forest reproductive material. Outside the EU, cotton is already a major GM crop. Cotton does not have any food use in Europe beyond the small (and economically irrelevant) quantities consumed as cotton seed oil. Fibre and wood/paper will probably remain the main candidates in this category for some time. There are other plants that have dual uses. Conventional rape is already used for diesel production, apart from feed and oil. If a food/feed plant is genetically modified to replace petroleum products by producing fine chemicals, but not to be used for food/feed, it will need approval under 2001/18. 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.

d. 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 and its supporting legislation, notably Regulation 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 2309/93 all new products with a major biotechnological component are subject to centralised assessment by the EMEA. Given the considerable barriers to market entry of these products, the regulatory system should seek to avoid unnecessary difficulties that would impede biotechnology companies' efforts to compete and bring pharmaceutical products to market. It costs an estimated € 250 million to develop a new drug. Consequently pharmaceutical companies tend to concentrate on potential best sellers that can be sold to millions of people: there is relatively little research into "orphan drugs" (treatments for rare diseases) and drugs to treat diseases that are common only in low-income countries. However, changes in legal constraints can create incentives for pharmaceutical companies to develop "orphan drugs": in 2000 the Commission introduced an Orphan drug Directive, which, though still in the early stages, is already having a positive impact on the use of biotechnology.

2. 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 on the legal protection of biotechnological inventions establishes a sound legal framework concerning criteria for obtaining a patent in this field. In addition, the proposed Community Patent Regulation will increase the competitiveness of EU companies in providing for effective, affordable and legally sound protection and counter the present trend of biotechnology companies which prefer to patent in the US.

3. 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.).

4. 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 clarify public debate, dialogue with member states and other interested parties and to give specific advice to guide the EU legislative process. Cross-border co-operation 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 (€ 13.125 million) consisting of three thematic programmes related to life sciences and biotechnology: Biotechnology, Biomedicine and health, Agriculture & 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 (€ 14 960 million) for 1998-2002:

- Quality of life and management of living resources: € 2 413 million ;
- Competitive and sustainable growth: € 2705 million;

The EP approved the budget in June 2002 for the following thematic programmes under FP6 (€ 17 500 million) for 2002 – 2006:

- Life sciences, genomics and biotechnology for health: € 2 255 million.
- Food quality and safety : € 685 million.

DEFENCE INDUSTRY

LEGAL BASIS

EU action in this field must be based on Article 308 which provides for cases in which the European Treaties do not make explicit provision for the action needed to attain one of the EU's objectives. Article 157 provides a legal basis for EU industrial policy.

OBJECTIVES

The defence industry is 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. EU Defence Industry Policy

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. This set out a number of principles and indicated where the first steps should be taken. The Commission also presented a 14 point Action Plan for defence-related industries related to, inter alia, simplification of intra-EU transfers, European company statute, public procurement, RTD, standardisation, customs duties, exports, etc. Some of these measures required legislation while others could be adopted under existing instruments. The following progress should be pointed out in certain areas of the Action Plan.

B. Detailed Situation

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 21" Century in November 2000 investigated options for defence standards reform in European defence procurement.

The Commission began work on a review of Benchmarking U.S defence procurement practices and its implications for European defence industries. This exercise involves comparing US procurement practices against those applied in the EU, with particular reference to SMEs.

2. Research and Development Policy

The EU R&D Framework Programme is aimed solely at civil objectives. Some of the technological areas covered (e.g. materials, Information and Communication Technologies - ICT) can contribute to the improvement of the defence technological base and the competitiveness of this industry. One should therefore examine the best way to reflect defence industry needs in the implementation of EU research policy.

3. Intra-EU transfers and public procurement

The EU needs to simplify and harmonise the rules on intra-EU transfers of defence products and equipment. A second fundamental task is to simplify and harmonise EU rules for public procurement. It is important to have the guidelines in order to establish an EU framework in this area.

4. Exports

A common regime for dual-use goods and technologies export control was adopted by the Council based on

Regulation 1334/2000 (amended by 2432/2001) and **Joint Action 401/2000** under the CFSP concerning the control of technical assistance related to certain military end-users, which together form an integrated system. This regime reflects the international arrangements to prevent proliferation of weapons of mass destruction.

Regarding conventional arms exports, a major step was achieved in June 1998 with the adoption of an EU Code of Conduct on arms export. Its aim is to improve transparency, prevent unfair competition and clarify the rules applicable to common projects. The Council assesses implementation of the Code on an annual basis. In June 2000 the Council adopted the common list of equipment covered by the Code of Conduct.

In July 2002, the European Advisory Group on Aerospace delivered a report "Strategic Aerospace Review for the 21st century" (STAR 21). Defence issues play an important part in the report.

THE 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 the ESDP. It also reaffirmed its support for the Action Plan in the Commission's 1997 Communication, called for defence standardisation and the creation of a European Armaments Agency. In calling for an updated Action Plan to be submitted to the Council and Parliament as soon as possible, Parliament asked the Commission to consider how far the common commercial policy and single market disciplines should be applied to defence industries, the possibility of developing a multi-institution and defence industry body to pool and coordinate research in the defence field, and whether further measures are needed to facilitate the establishment of transnational companies and integrate the industries in the accession countries.

SOCIAL AND EMPLOYMENT POLICY: GENERAL PRINCIPLES

LEGAL BASIS

- Article 2 EU Treaty;
- Articles 2, 3, 13, 39-42, 125-130, 136-148 EC Treaty.

OBJECTIVES

The promotion of employment, improved living and working conditions, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.

ACHIEVEMENTS

1. The Treaty of Rome

a. The Treaty of Rome contained only a few provisions on social and labour market policy. Social policy was considered as an adjunct to economic policy. Articles 48 to 51 covered the free movement of labour and Title III dealt with social policy. It comprised two parts: social provisions in order to promote co-operation (including the principle of equal pay for equal work) were laid down in articles 136-145 and Articles 146-148 dealt with the European Social Fund. Article 136 expressed the belief that improved working conditions and an improved standard of living for workers would arise from the functioning of the common market, although also law, regulation or administrative action was required. Clashes over the interpretation of this ambiguous paragraph have been numerous.

b. Until 1972 the harmonisation of social policy was mainly left to the functioning of the common market. Measures adopted are limited to the setting-up the **European Social Fund** (*4.8.2.) and to the improving of mobility of labour through the co-ordination of social security (Regulation 1408/71, *4.8.4.). Some steps were also taken to improve the field of health and safety. The common market brought many structural changes which affected the employment situation. Increased awareness of the unevenness of growth together with government changes led to a more proactive social policy.

c. In 1974 the Council adopted the First Programme of Social Action. The measures proposed centred around: employment protection, employee participation, equal treatment for men and women, health and safety.

d. By the mid-80s Member States' governments focused more on the deregulation of labour markets. A number of directives on health and safety and equal treatment were adopted, but unanimity voting in the Council paralysed progress in other areas.

2. The Single European Act (1986)

- The single European Act introduced Article 138, which on the basis of avoiding "social dumping" (i.e. companies moving to areas with lower social standards in order to gain a competitive edge) provided for harmonisation of health and safety conditions at work (*4.8.5.). Acting by qualified majority the Council had to adopt directives laying down minimum requirements.
- The Single European Act also introduced the role of the social partners in negotiating agreements and the title on economic and social cohesion in the Community (*4.4.1.).

3. The Social Charter

Everybody understood that the implementation of the internal market by 1992 would lead to widespread restructuring of industry and services across the EC. People's working lives would be disrupted. There was a growing consensus that greater account should be taken of the social aspects.

a. After long debates, the Community Charter of the fundamental social rights of workers, or 'Social Charter' for short, was adopted at the Strasbourg Summit in December 1989 by the Heads of State and Government of 11 Member States - with the UK opting out. Based on the Council of Europe's Social Charter and the ILO's conventions, it lays down a range of social rights that are to be guaranteed in the European labour market. It was adopted as a political declaration of intent, but required the Commission to set out a Social Action Programme to accompany it.

b. The action programme

This was adopted slowly, particularly as regards binding legal acts. It proposed 47 separate initiatives. The Council adopted Directive 91/533 on the obligation on employers to inform employees of the conditions applicable to their employment relationship, but the main success has been the adoption of directives concerning health and safety of employees at work (*4.8.5.). The European Court of Justice supported a broad interpretation of the concept of health and safety, including also working time.

4. The Treaty of Maastricht

a. At Maastricht the promotion of a high level of employment and of social protection was added as one of the tasks of the EC. The Social Fund's remit (*4.8.2.) was specified and a whole new section was inserted on education and vocational training (*4.16.0.). A Protocol and an Agreement on social policy were added to the new Treaty.

During the Maastricht Summit, it proved impossible to get an agreement by all 12 Member States on the changes proposed on the chapter on social policy. The UK, in particular, did not agree with many changes. Instead of abandoning the proposed Social Chapter, the other

eleven Member States made an Agreement amongst themselves. This agreement is annexed to the Protocol on Social Policy (Protocol No 14) which states that 'eleven Member States ... wish to continue along the path laid down in the 1989 Social Charter' and exempts the UK from participation.

b. This meant that two sets of rules were applied in the social area: the EC Treaty covering all Member States and the Agreement on Social Policy.

The Agreement contained three significant innovations:

- a more ambitious formulation of the objectives of social policy;
- a major boost for the role of management and labour at Community level (*4.8.6.);
- extension of qualified majority voting in the Council in the following areas: improvements in the working environment to protect employees, working conditions, information and consultation of workers, equal opportunities for men and women on the labour market and equal treatment at work, and occupational integration of people excluded from the labour market.

5. The Amsterdam Treaty

a. Main results

In Amsterdam the UK signed the Social Chapter and the Agreement was integrated in the Treaty, replacing Articles 136-145, with a few changes:

- reference was made to the European Social Charter of Turin and the Community Charter of the Fundamental Rights of Workers;
- co-decision procedure replaced the co-operation procedure in many fields;
- action to tackle social exclusion was introduced;
- Community action concerning equal opportunities was expanded.

b. Other changes

- The co-decision procedure also gained importance in provisions relating to the European Social Fund, the free movement of workers and to social security for Community migrant workers.
- The promotion of employment was added to the list of the European Union's objectives. In order to attain this objective the new employment chapter gives the EU a new area of responsibility to complement the activities of the Member States, involving the development of a 'coordinated strategy' for employment. The main element of this European Employment Strategy is formed by common guidelines (*4.8.3.). To promote co-operation between Member States and with the Commission an Employment Committee was created.
- A new article (13) authorises the Council to take appropriate action to **combat any discrimination** based on sex, race, ethnic origin, religion or belief, disability, age or sexual orientation.

6. The Treaty of Nice

A small number of changes have been made by the Treaty of Nice: Article 137 describing the Community activities has been rewritten to make it more concise and a social Protection Committee has been introduced.

Traditionally, European social policy initiatives have been contained in a series of Commission Action Programmes. For the new century, the name has been changed to the Social Policy Agenda. The Agenda forms a part of the integrated European approach towards achieving the economic and social renewal outlined at the Lisbon Summit (March 2000): for the European Union to become by 2010 'the most competitive and dynamic knowledge based economy capable of sustainable economic growth with more and better jobs and greater social cohesion'. The Nice Summit endorsed the Social Policy Agenda up to 2005 and invited the Commission to present annually a scoreboard outlining the progress made in implementing the Agenda.

ROLE OF THE EUROPEAN PARLIAMENT

- Since the creation of the Community, the EP has been active in the development of EU employment and social policy. The EP goal has always been to combat unemployment; to improve working conditions; to improve the living conditions for the poor and socially excluded, the elderly, children, handicapped people and migrant workers; and to ensure equal opportunities for women and men.
- Although, according to the Treaty of Rome, the EP's role was only supervisory, it adopted many resolutions during the 1960s, 1970s and 1980s. On the one hand, Parliament supported the Commission's different proposals and, on the other hand, called for a more active Community policy in the social area to counterpart the increasing Community importance in the economic area. It also strongly supported the concept of a European social dimension. The EP was of the opinion that the decision-making procedure in the Treaty of Rome had to be changed, because unanimity was very difficult to obtain in the Council.
- The EP was more closely involved in the preparation of the Treaty of Amsterdam than in previous Treaty revisions. During the IGC, the EP adopted many resolutions setting out, inter alia, its proposals on social policy. The social provisions in the Amsterdam Treaty reflect many of the recommendations in these resolutions, such as the inclusion of the Social Agreement in the Treaty and the insertion of an employment chapter, and constitute a successful outcome of the EP's work. The EP, however, regrets that unanimity and simple consultation of the EP have been maintained for many social matters.
- In 2003, when the Commission presented the third scoreboard on implementing the Social Policy Agenda, the EP stated that the structural weaknesses identified on the labour market were largely to blame for lasting poverty and social exclusion, which were being aggravated by other factors such as health problems and disability, family break-ups, a lack of basic training and housing problems. Parliament underlined that social

security was vital to reduce the risk of poverty. It asked the Commission to provide new initiatives i.a. with a view to incorporating a social dimension in competition policy, revising the Directives on European Works Council and on Working Time, drafting a directive on social protection for new forms of employment and adopting an initiative making it easier to reconcile work and family life. It called on the Commission and Member States to ensure the correct, full and timely implementation of existing directives, in particular those adopted on the basis of Art. 13 of the Treaty: the Commission must not hesitate in pursuing infringement actions against Member States in this regard.

THE EUROPEAN SOCIAL FUND

LEGAL BASIS

Articles 146 to 148 and 158 to 162 of the EC Treaty.

OBJECTIVES

1. Improving employment opportunities for workers in the internal market by facilitating their adaptation to industrial changes and increasing their geographical and occupational mobility, in particular through vocational training and retraining.

2. Contributing to the strengthening of economic and social cohesion in the Union.

ACHIEVEMENTS

A. **Background**

1. The early stages

Set up by the Treaty of Rome, the ESF is the oldest of the Structural Funds. During the transitional period (until 1970), it reimbursed the Member States half the cost of vocational training and resettlement allowances for workers affected by economic restructuring. In total, it assisted over two million people during this period.

2. The first reforms

a. 1971

A review of the system at the end of the transitional period led to an initial reform (1971 Council Decision) that increased the Fund's resources substantially, replaced the system of retroactive funding with new rules providing for applications for assistance to be submitted in advance, and the introduction of a link between assistance and Community policies.

b. 1983

A second reform (Council Decision of 17 October 1983) laid down the guidelines for the Fund's measures, which were to focus on:

- training young people to combat the growing unemployment within this section of the population: they were to make up at least 75% of the beneficiaries of the Fund;
- the regions most in need.

3. The essential reforms

a. Following the Single Act

By including in the EC Treaty the objective of economic and social cohesion within the Community by reducing disparities between regions, the Single European Act (1986) set the scene for the fundamental reform of the entire Structural Funds in 1988 (Regulations of 24 June and 19 December 1988), which sought to:

- double the Funds' resources;
- use the Funds in an integrated way through:
  - . common principles and objectives,
  - . a single operating framework.

The ESF was fully integrated into this new mechanism and was assigned some of the common objectives as well as objectives specific to the ESF (Regulation of 19 December 1988).

b. Following the Treaty of Maastricht (1991)

- The Treaty enshrined regional policy as one of the major Community policies with the use of the Funds for structural purposes. In particular, it expanded the aims of the ESF to include 'adaptation to industrial changes and to changes in production systems, in particular through vocational training and retraining'. It also did away with the detailed provisions on assistance that had previously been included in the EC Treaty and entrusted the Council with this responsibility.
- As regards this new legal basis, there was a further reform in July 1996 with two common regulations governing the Funds (2081 and 2082/93) and specific regulations for each one. They consisted of:
  - . a further doubling of resources (for the period 1994/99), with the majority being allocated to the less-favoured regions,
  - . the establishment of new objectives,
  - . for the ESF in particular (Regulation 2084/93), concentration of aid on the most obvious needs and the most effective projects.

4. The most recent changes

These were brought about by:

- Regulation 1260/1999 of 21 June 1999, which lays down the general provisions governing the various Structural Funds;
- Regulation 1784/1999 of 12 July 1999, which determines the role of the ESF within this overall framework.

B. The current role of the ESF (2000-2006 programming period)

1. Role in relation to all Community policies

a. Employment policy

The ESF is the main financial instrument of the Community employment policy defined by the European employment strategy (1994) and the employment guidelines (1997). (*4.8.3.)

b. Structural policy

The ESF forms part of the structural policy framework which covers several funds. While the ESF covered six of the seven structural policy objectives in the previous period (1994-1999), it now covers only three objectives, of which the last two are new:

- **Objective 1:** regions whose development is lagging behind

(those whose level of development is less than 75% of the Community average). The ESF provides assistance in these regions together with the three other Structural Funds.

- **Objective 2:** regions undergoing economic and social conversion

This objective is also covered by all the Funds.

- **Objective 3:** human resources

Specific to the ESF, this objective involves support for the adaptation of employment, education and training systems and policies in the Member States. It should be implemented with flexibility given the diversity of national practices.

2. Scope of the ESF

a. Key areas

As part of its own specific objective, the ESF covers five key areas (Regulation of 12 July 1999):

- 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 policy.
- Promoting a skilled and adaptable workforce, innovation and entrepreneurship.
- Improving women's access to the labour market.

b. Complementary concerns

- In these areas of intervention, the ESF must take account of three 'horizontal' complementary objectives:
  - . support for local authorities in the area of employment,
  - . giving a social dimension to the information society,
  - . promoting equal opportunities for men and women.
- The ESF contributes to the implementation of the Community initiative EQUAL, which seeks to combat discrimination and inequalities in the labour market and facilitate the social and occupational integration of asylum-seekers.
- The ESF finances innovative operations and pilot projects concerning labour markets, employment and vocational training.

c. Eligible activities

Three forms of assistance are eligible for ESF support:

- Firstly, assistance for individuals:
  - . education and vocational training, rehabilitation, guidance, counselling;
  - . advanced training in the fields of scientific research and technological development.
- Secondly, assistance for structures and systems in order to increase the effectiveness of the actions to assist individuals, in particular:
  - . improvement of the training of teachers, trainers and administrative staff;
  - . improvement of employment services;
  - . development of links between the world of work and the education, training and research sectors;
  - . development of systems for anticipating changes in employment and in qualification needs.
- Finally, accompanying measures:
  - . assistance in the provision of services to beneficiaries;
  - . promoting socio-educational measures;
  - . awareness-raising.

d. Implementing methods

Decision-making procedures

Assistance from the ESF is based on the priorities laid down in the national action plans for employment. Its management must be simplified and decentralised, with greater involvement of the regional and local authorities and NGOs. Financial and control procedures will be improved.

Concentration of assistance

ESF interventions are concentrated on a limited number of areas or themes and are directed towards the most important needs and the most effective operations. A significant proportion of the funds allocated under Objectives 2 and 3 must be made available in the form of **small grants**, with special arrangements for access by NGOs.

ROLE OF THE EUROPEAN PARLIAMENT

1. Competence

The EP's influence over the Structural Funds has increased:

- since the Treaty of Maastricht, it has had to give its assent to the general provisions governing the Funds;
- since the Treaty of Amsterdam, the implementing rules for the ESF have been subject to the codecision procedure.

2. Role

The EP takes the view that the ESF is the Union's most important instrument for combating unemployment. It has therefore always advocated the efficient operation of the Fund. It has criticised the complexity of the Funds, which involve too many objectives and too many Community initiatives together with burdensome management resulting in complications and delays in payment of support to beneficiaries.

EMPLOYMENT POLICY

LEGAL BASIS

EC Treaty Articles 2, 3, 125-130, 136, 137, 140, 143, 145-148.

OBJECTIVES

Important principles, objectives and activities mentioned in the Treaty include promotion throughout the Community of a **high level of employment** by developing a co-ordinated strategy particularly with regard to creation of a skilled, trained and adaptable workforce and of labour markets responsive to economic change.

ACHIEVEMENTS

1. The beginning

a. Under ECSC

Workers have benefited from **Readaptation Aid in the European Coal and Steel Community** (ECSC) since the 1950s. Aid was granted to workers in the coal and steel sectors, whose jobs were threatened by industrial restructuring. The **European Social Fund** (*4.8.2), created in the early 1960s, was the principal weapon in combating unemployment.

b. Actions is the 1980s

In the 1980s and early 1990s **action programmes on employment focused on specific target groups**: ERGO (long-term unemployed), LEDA (local employment development) and ELISE (helping SME). In the same period a number of **observatory and documentation systems** were established. The European Commission and the Ministries for Employment of the Member States decided in 1982 to set up MISEP (Mutual Information System on Employment Policies in Europe). SYSDEM (Community System of Documentation on Employment) was established in 1989. At the end of 1989 the Council called upon the Commission and the Member States to set up a European Employment Observatory (EEO). The third EEO network, RESNET (Research Network) was established in 1997.

c. EURES

To encourage free movement and help workers to find a job in another member state, the former SEDOC system was improved in 1992 and renamed **EURES** (European Employment Service). Partners in the network include Public Employment Services, Trade Unions and Employer Organisations.

2. Towards a more comprehensive policy

a. The 1993 White Paper

In the early years of the 1990s the fear spread that the high levels of unemployment found in most countries could become permanent and the European Commission under Jacques Delors released the **White Paper on Growth, Competitiveness and Employment** in 1993. It set off a debate about European economic and employment strategy and brought the issue of employment to the top of the European agenda for the first time.

b. The Essen process (1994)

In December 1994 the European Council in Essen recommended that Member States invest in vocational training, increase employment intensive growth, reduce non-wage labour costs, increase active labour market policies, and fight youth and long-term unemployment. Member States were instructed to incorporate these recommendations into multi-year programs that would be monitored by the Commission and the relevant Councils of Ministers. The Commission and the Council of Ministers would report back annually to the European Council. This solution, called the Essen Process, did not delegate much power to the EU, but it contributed to raising the awareness of employment problems at EU level.

c. The contribution of the Amsterdam Treaty (1997)

The 1997 Intergovernmental Conference in Amsterdam forged a careful compromise between Member States in favour of more EU action and those reluctant to transfer real policy-making competence to the EU. The compromise was based on an innovation in governance that had been part of the multilateral surveillance process for entering EMU and represented an evolution of the Essen process.

By adapting such an approach for employment policy, it seemed possible to accommodate pressure for increasing action at the EU level with resistance to expanding EU competence. The result was the **Employment Chapter** of the Amsterdam Treaty which formally created the **European Employment Strategy** and an **Employment Committee** with advisory status to promote co-ordination of member states' employment and labour market policies.

3. European Employment Strategy

a. In November 1997, at an extraordinary European Council in Luxembourg the process envisaged by the Employment Chapter was launched before the ratification of the Amsterdam Treaty. The annual cycle for co-ordinating and monitoring national employment policies is called the European Employment Strategy (EES) or Luxembourg Process. This coordination of national employment policies at EU level is based on the commitment of member states to establish a set of common objectives and targets and was built around several components:

- **Employment Guidelines**: following a proposal from the Commission, the Council shall agree every year on a series of guidelines setting out common priorities for Member States' employment policies;

- **National Action Plans***:* every member state shall draw up an annual National Action Plan which

describes how these guidelines are put into practice nationally;

- **Joint Employment Report***:* The Commission and the Council shall jointly examine each National Action Plan and present a Joint Employment Report. The Commission shall present a new proposal to revise the Employment Guidelines accordingly for the following year;

- **Recommendations***:* The Council may decide, by qualified majority, to issue country-specific Recommendations upon a proposal by the Commission.

In this way, the Luxembourg process delivers a rolling programme of yearly planning, monitoring, examination and re-adjustment. This new governance mechanism has the objective to promote policy learning through the exchange of good practice. One of the main features of the EES are the mechanisms for joint monitoring and surveillance, including peer review and benchmarking on the basis of common indicators. The Luxembourg process is also called the **open method of coordination** and has gained in importance in recent years as it became a general model to be used also for other policy domains. The open method of coordination is based on five key principles: subsidiarity, convergence, management by objectives, country surveillance and an integrated approach.

b. The first set of guidelines was formally organised into **four pillars** containing three to seven guidelines each:

- **Employability**: policies to make unemployment systems more active and increase the skills of workers;
- **Entrepreneurship and Job Creation**: policies to encourage new, smaller and more innovative businesses and make tax systems more employment friendly;
- **Adaptability**: policies to increase the flexibility of workers and work organisation arrangements;
- **Equal Opportunity**: policies to promote gender equality.

c. In 2000, the **European Council at Lisbon** embraced full employment as an overarching objective of the employment and social policy. It committed member states to reach the 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. The aim is to reach by **2010** an overall employment rate of 70 per cent and an employment rate of more than 60 per cent for women. The employment rate for older workers (55 to 64 years) should reach 50 per cent in 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. For 2002 improving the quality in work was added.

4. Reviewed European Employment Strategy

a. Five years after its launch, the EES was reviewed in 2002. Based on national policy impact evaluation studies carried out by independent experts, the Commission made an **assessment** leading to the Communication "Taking stock of five years of the European Employment Strategy" (COM(2002)416). One of the main achievements of the EES is that it has succeeded in identifying employment as an overarching objective and in fostering convergence of national employment policies towards the European Employment Guidelines. Another step forward is the support for a new pro-active labour market policy, replacing the passive and curative measures of the past with active and preventive measures.

b. Following the evaluation the EU decided to **reinforce the strategy** and to incorporate the targets agreed in Lisbon. The timing of the process was modified in order to streamline the annual economic and employment policy coordinating cycles. The new comprehensive policy cycle is built on two blocks and strengthens the role of the Spring European Council in giving direction to the overall EU strategy:

- Every January the Commission presents the conclusions of its review of the implementation of EU policy guidance in form of an **Implementation Package**, together with its Spring Report to the annual Spring European Council on economic and social affairs. The Implementation Package includes the Broad Economic Policy Guidelines Implementation Report, the draft Joint Employment Report and the implementation report on the Internal Market Strategy and it contains a detailed assessment of implementation in the various policy areas. The Spring Report presents the Commission's strategic policy priorities for the EU.
- Every April, following the general political orientations given by the Spring European Council, the Commission presents its proposals for further action in the various policy areas together in a **Guidelines Package**, composed of the Broad Economic Policy Guidelines, the Employment Guidelines and the Employment Recommendations. Subsequent to further consideration by the European Parliament and the competent Council formations, the June European Council draws up conclusions. The relevant Council formations adopt the Broad Economic Policy Guidelines, the Employment Guidelines and the Employment Recommendations, on the basis of which Member States draw up their National Action Plans or Reports in the course of the second semester.

c. The **2003 Employment Guidelines**

- They set out **three main objectives**:
  - . to increase employment and participation rates ("more jobs");
  - . to raise quality and productivity at work ("better jobs");
  - . to promote an inclusive labour market ("jobs for all").

- In order to achieve these three objectives the Guidelines focus now on **ten policy priorities,** rather than grouping a range of guidelines into four pillars, as has previously been the practice. These specific guidelines are priorities for action:
  - . Active and preventive measures for unemployed and inactive people;
  - . Job creation and entrepreneurship;
  - . Addressing change and promoting adaptability and mobility in the labour market;
  - . Development of human capital and lifelong learning;
  - . Labour supply and active ageing;
  - . Gender equality;
  - . Integrating and combating discrimination against disadvantaged people;
  - . Making work pay;
  - . Undeclared work;
  - . Regional employment disparities.

ROLE OF THE EUROPEAN PARLIAMENT

1. General

The EP considers **employment as the most important priority for the EU** and has always been of the opinion that the EU and its member states have to co-ordinate their efforts and that working towards full employment should be made an explicit goal of the member states and the EU. Since April 1983, when the EP held a special part-session on combating unemployment, it has adopted many resolutions on the issue.

2. Detailed actions

a. In 1994 a special **Temporary Committee on Employment** was created. The EP adopted the Committee's final report in July 1995. The EP found that the EU and the member states should adopt an integrated strategy dedicated to job creation, encompassing all policies which have an impact on employment.

b. During the 1996 **Intergovernmental Conference**, the EP was very active in ensuring that employment policy got a much higher priority in the Amsterdam Treaty than was the case with the previous treaties and called for a specific Employment chapter in the Treaty. The Treaty of Amsterdam takes up many of the EP's proposals on employment policy.

c. The EP set out its proposals for the **Luxembourg European Council on Employment** in October 1997. The conclusions of the Council, and the following Employment Guidelines, reflect many of Parliament's recommendations.

d. In its **Resolution of June 2003 on the Employment Guidelines**, the EP asked for the inclusion of the following elements:

- better coordination between Broad Economic Policy Guidelines, Employment Guidelines, Social Inclusion Strategy and Sustainability Strategy;
- better involvement of all relevant actors (social partners, among others);
- quantitative targets to be developed to measure progress on quality at work;
- integrated approach on equal opportunities and gender equality in the labour market to be developed;
- call on Member States for a significant reduction in unemployment gaps regarding disabled and non disabled people;
- call for a 50% reduction in the number of working poor in all Member States by 2010;
- call on Member States to give priority to policies for innovation and job creation for low performing areas; regional employment disparities to be reduced by 10% annually until 2010;
- National Action Plans to be discussed and adopted by the relevant parliamentary assembly.

SOCIAL SECURITY COVER IN OTHER MEMBER STATES OF THE UNION

LEGAL BASIS

Articles 42, 63 and 308 EC Treaty.

OBJECTIVES

An important principle and objective in the Treaty of Rome is the removal of obstacles to freedom of movement between Member States for people (*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 of migrant workers that were subsequently superseded by **Regulation 1408/71,** supplemented by its rules on implementation, **Regulation 574/72.** Nationals from Iceland, Liechtenstein and Norway are also covered via the European Economic Area (EEA) Agreement.

A. The four main principles of Regulation 1408/71

1. The principle of equal treatment

This gives employees or self-employed persons from other Member States the same rights as the citizens of the host State. To implement the principle of equal treatment, three other conditions must be met: assimilation of the facts, aggregation of periods and retention of rights. In other words, a Member State may not grant social security protection exclusively to its own citizens. The right to equal treatment applies unconditionally and bears no relation to the length of time the employee or self-employed person has been resident in the country.

2. The principle of aggregation of several periods of time

It is significant where national legislation requires a person to have been insured or employed for a certain period of time before being entitled to benefits for sickness, invalidity, old age, death and unemployment. The aggregation period means that the host Member State must take account of periods of insurance and employment in another Member State in calculating the duration of the period of insurance or employment. What refers to membership of unemployment or sickness funds, for example, the aggregation principle ensures that a direct transfer can be made from a fund in one Member State to a fund in another Member State.

3. The principle of prohibiting double payment

This prevents individuals from obtaining special benefits by using their right to freedom of movement. An individual who has paid contributions to the social security systems in two or more Member States during the same period of insurance does not thereby obtain entitlement to more than one payment of the same type.

4. The principle of the right to take social insurance to other EU Member States

This ensures that an individual's social benefits can be paid out anywhere in the EU. However, this principle, which prohibits Member States from withholding payments to individuals who live abroad, does not apply to all insurance payments. There are special rules for the unemployed, for example. The right of an individual to take his/her entitlement with him/her differs depending on whether the payment is in cash (daily allowance, pensions, etc.) or in kind (medical assistance, hospitalisation etc.). Payments in kind are usually made in accordance with the provisions of the country in which the entitled person lives or resides. Different rights apply to exporting cash benefits (e.g. sickness benefit or pensions) and benefits in kind (e.g. medical assistance). As a rule, benefits in kind are governed by the rules of the country in which the person entitled to them resides or stays. If the 'competent State' is not the State of residence, the 'competent State' must reimburse the institution in the State of residence or stay its expenditure on benefits in kind.

B. Persons covered

1. Originally, Regulation 1408/71 only covered **workers** but with effect from 1 July 1982 its scope was extended to cover **the self-employed** too (see Regulation 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)).

2. By Council Regulation 1606/98 of 29 June 1998 the Council extended the scope of Regulation 1408/71 in order to set **civil servants** on an equal basis with general statutory pension rights prevailing in the Member States.

3. Regulation 307/1999 of 8 February 1999 extended the scope of the Regulation to include all insured persons, particularly **students** and others **not in gainful employment**.

4. Council Regulation 895/2003 of 14 May 2003 extended the provisions of the Regulation to **nationals of third countries**, provided they are **legally resident** in the territory.

C. Benefits covered

Article 4(1) of Regulation 1408/71 lists the social security benefits covered by the Regulation and in doing so the provisions which seek to prevent migrant workers and self-employed persons suffering losses because they work or have worked in one or more Member States:

- sickness and parental benefits;
- invalidity benefits, including those 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 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 judgements by the Court of Justice, the Decker (C-120/95) and Kohll (C-158/96) cases suggest that all insured persons might in the future be able to obtain medical treatment or medical products anywhere in the Union, provided that this did not result in an excessive rise in costs.

D. Future outlook

1. Prospect of reform of Regulation 1408/71

Since 1971 Regulation 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 interpretation of the Court of Justice. As a result it is today a very **complicated and cumbersome piece of legislation**. The Commission presented its proposal for a **fundamental reform** of the whole legislative system at the end of 1998 (COM(98)0779). The proposal has the dual aim of on the one hand simplifying the coordination of social security systems and, on the other, of modernising it. After long discussions the Council adopted its common position on 26 January 2004 (COM(2004)44), which consists of the following essential elements:

a. The **personal scope** of the Regulation is extended to cover **all nationals** of Member States who are covered by the social security legislation of a Member State. This means that not only employed workers, self-employed workers, civil servants, students and pensioners but **also non-active persons** are protected by the coordination rules. This simplifies and clarifies the rules determining the legislation applicable in cross-border situations.

b. The **material scope** of the Regulation is extended to cover **statutory pre-retirement schemes**, which means that the beneficiaries of such schemes will have a guarantee that benefits will be paid, willbe covered for health care and will receive family benefits even if they reside in another Member State.

c. The principles of **equal treatment** and the assimilation of facts are strengthened.

d. Insured **persons staying temporarily** in another Member State **will be able to benefit from health care** judged to be medically necessary during that stay.

e. There is provision for a **greater obligation for co-operation** and **mutual assistance** between the institutions of the Member States for the benefit of citizens.

The new Regulation will streamline and update the existing complex rules. It will make it easier to move from one Member State to another, whether for professional or private reasons, without losing social security entitlements.

2. Access to medical treatment during a temporary stay in another Member State and reimbursement of medical expenses

This is currently provided by the social security institution of the Member State of origin issuing at personal request various paper forms (E111, E128, E110, E119) depending on whether the insured person is travelling, studying abroad, posted abroad or is a job seeker or an international road transport driver. The Commission proposes to replace all these paper forms by single, personalised European Health and Insurance Card (COM(2003)378). This Card will simplify procedures to the benefit of the European citizens and care providers as well. The Card should replace form E111 from June 2004 and subsequently all the other forms.

ROLE OF THE EUROPEAN PARLIAMENT

The EP has always shown a great interest in the problems encountered by migrant workers, frontier workers, the self-employed and third-country nationals working in other Member States and has adopted various resolutions in an attempt to improve their conditions. Several times, the EP has regretted that there are still obstacles to full freedom of movement and has called on the Council to adopt the pending proposals such as bringing early retirement pensions within the scope of Regulation 1408/71, extending the right of unemployed persons to receive unemployment benefit in another Member State and extend the scope of Regulation 1408/71 to include all insured persons. A number of these demands will be fulfilled with the final adoption of the fundamentally revised Regulation 1408/71. The EP wants to improve the situation of frontier workers especially as regards their social security and taxation (Resolution of 17 January 2001).

HEALTH AND SAFETY AT WORK

LEGAL BASIS

Treaty Articles 71, 94, 95, 136, 137 and 308.

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. This is to be achieved by laying down minimum requirements, allowing member states to introduce a higher level of protection if they so wish. Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back to the creation and development of small and medium-sized undertakings.

ACHIEVEMENTS

A. Up to 1987

1. First steps

Since the establishment of the EEC steps towards a global approach to health and safety at work have been taken, such as setting up a Standing Committee on Safety in Coal Mines, and an Advisory Committee on Safety, Hygiene and Health Protection at Work to assist the Commission in drawing up and implementing measures relating to the working environment.

2. The 1980 Framework Directive and its follow-up

In 1980, the Council adopted Framework Directive 80/1107 on protection against the risks of exposure to chemical, physical and biological agents at work. This directive led to a number of daughter directives in the following years:

- 82/130 as amended by 88/35, 91/269, 94/44, 98/65 on electrical equipment for use in a potentially explosive atmosphere in mines susceptible to fire danger,
- 82/605 replaced by 98/24 on protection against the risks associated with metallic lead,
- 83/477 as amended by 91/382, 98/24 and 2003/18 on asbestos,
- 86/188 as amended by Directive 98/24 on noise,
- 88/364 replaced by 98/24 on protection against certain agents,
- 91/322 as amended by 96/94 and 2000/39 on indicative limit values.

B. From 1987 to 1989

1. The innovations of the single European Act (1986)

a. Since the **introduction of Article 138** into the Treaty by the Single European Act of 1986 measures in the field of health and safety at work can be taken by qualified majority vote in the Council. The introduction of Article 138 had four main objectives:

- greater effort to improve workers' health and safety at work,
- harmonising conditions in the working environment,
- prevention of 'social dumping' as the internal market was completed,
- preventing companies from moving to areas with a lower level of protection simply to gain a competitive edge.

b. Article 95, introduced by the SEA, was also instrumental in lifting all barriers to trade.

2. Results

- Directives adopted under Article 138 lay down minimum requirements concerning health and safety at work.
- Directives under Article 95 are intended to ensure the placing on the market of safe products including machines and personal protective equipment for professional use. Member states are not permitted to set higher requirements for their products than those laid down by the Directives.
- The Community Charter of Fundamental Social Rights for Workers of 1989, though not legally binding, affirms the right to health and safety at the workplace.

C. After 1989

1. Framework Directive 89/391

This aims to improve the protection of workers from accidents at work and occupational diseases by providing preventive measures, information, consultation, balanced participation and training of workers and their representatives. The directive covers all workers in the EU, privately and publicly employed with the exception of the self-employed and domestic servants. It has spawned 17 "daughter" directives:

- 89/654 on requirements for working places,
- 89/655 as amended by Directive 2001/45 on the use of work equipment,
- 89/656 on the use of personal protective equipment,
- 90/270 on work with display screen equipment,
- 90/269 on manual handling,
- 90/394 on exposure to carcinogens,
- 92/57 on temporary or mobile construction,
- 92/58 on provisions of safety and health signs at work,
- 92/85 on pregnant workers,
- 92/91 on mineral-extracting industries (drilling),
- 92/104 on mineral-extracting industries,
- 93/103 on fishing vessels,
- 98/24 as amended by Directive 2000/39 on chemical agents,
- 99/92 on minimum requirements for improving the safety and health protection of workers potentially at risk from explosive atmosphere,

- 2000/54 on the protection from risks related to exposure to biological agents at work,
- 2002/44 on risks arising from physical agents (vibration),
- 2003/10 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (noise).

2. Other measures

- Directive 91/383 on temporary workers,
- Directive 92/29 on medical treatment onboard vessels,
- Directive 93/104 as amended by 98/662,2000/34 and 2003/88 on certain aspects of the organisation of working time,
- Council Regulation 2062/94 established the **European Agency for Health and Safety at Work** in Bilbao (Spain) which provides EU bodies, the member states and those involved in this area, with technical, scientific and economic information on safety and health at work,
- Directive 96/29 on protection against the dangers arising from ionising radiation,
- Directive 99/95 on working time provisions in maritime transport**,**
- Directive 2000/34 amending 93/104 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).

3. Contribution of the Treaty of Amsterdam (1997)

It strengthened the status of employment issues by introducing the Employment Title and the Social Agreement. Minimum Directives can be adopted concerning the protection of health and safety at work and concerning working conditions by qualified majority and co-decision with the EP. The scope of the notion 'working conditions' in Article 138 was a highly controversial issue and diverging approaches have been made by the Parliament, the Council, the Commission and by the member states. In its judgement of 12 November 1996 (Case No. C-84/94) the European Court of Justice ruled that Article 138 should not be interpreted restrictively.

4. The European Social Agenda

Approved by the European Council in Nice (December 2000), it aims at developing an EU strategy on health and safety at work:

- to consolidate, adapt and, where appropriate, simplify existing standards;
- to respond to new risks such as work-related stress, by initiatives on standards and exchanges of good practice;
- to promote the application of legislation in SMEs, taking into account the special constraints to which they are exposed, to apply them by means of a specific programme;
- to develop, from 2001 onwards, exchanges of good practice and collaboration between labour inspection institutions in order to satisfy the common essential requirements more effectively.

5. The Charter of Fundamental Rights (December 2000)

Its Article 31 states that "every worker has the right to working conditions which respect his or her health, safety and dignity". However, the Charter of Fundamental Rights is not yet legally binding.

6. The European week for Safety and Health at Work

It is an annual information campaign backed by all Member States, the European Commission and Parliament, trade unions and employers' federations. It provides the opportunity to pay particular attention on the importance of safety and health at work.

D. Future outlook

In March 2002, the Commission adopted a new Community strategy on health and safety at work (COM(2002)118), running from 2002 to 2006. This strategy has three novel features:

1. It adopts a global approach to well-being at work, taking account of changes in the world of work and the emergence of new risks, especially of a psychosocial nature. As such, it is geared to enhancing the quality of work, and regards a safe and healthy working environment as one of the essential components.

2. It is based on consolidating a culture of risk prevention, on combining a variety of political instruments - legislation, the social dialogue, progressive measures and best practices, corporate social responsibility and economic incentives - and on building partnerships between all the players on the safety and health scene.

3. It points up the fact that an ambitious social policy is a factor in the competitiveness equation and that, on the other side of the coin, having a «non-policy» engenders costs which weigh heavily on economies and societies.

ROLE OF THE EUROPEAN PARLIAMENT

The EP has frequently emphasised the need for optimal protection of workers' health and safety. In several resolutions, it has called for covering all aspects directly or indirectly affecting the physical or mental well-being of workers. The EP has had a significant influence on directives improving the working environment. The 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. The EP urges the Commission to investigate the new problem areas which are not covered by current legislation: i.e. stress, burn-out, violence and harassment at the workplace. The Parliament calls on the Commission to allocate the resources necessary to reflect the high priority to be accorded to occupational health and safety and urgently calls for a detailed action plan with financial and timing commitments against each major proposal. The EP calls for an extension of the scope of the Framework Directive 89/391 to excluded groups of workers such as the military, the self-employed, domestic workers and home workers. The Parliament also calls for a Directive laying down minimum standards for the recognition of occupational diseases.

SOCIAL DIALOGUE: INFORMATION, CONSULTATION AND PARTICIPATION OF WORKERS

I. INDUSTRIAL RELATIONS

LEGAL BASIS

EC Treaty Articles 136-140

OBJECTIVES

To promote dialogue between labour and management which may lead to contractual relations or agreements at EU level.

ACHIEVEMENTS

1. General evolution of the EU-level social dialogue

At EU level, the trend has been towards increasing influence for labour and management over social policy.

a. Treaty of Rome

Under the original Article 138, one of the Commission's tasks was to promote close cooperation between member states in regard to the right of association and collective bargaining between employers and workers.

b. Val Duchesse social dialogue

Initiated in 1985, the Val Duchesse social dialogue process aimed to involve the social partners represented by the European Trade Union Confederation (ETUC), the Union of Industries of the European Community (UNICE) and the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP) in the internal market process. The Council is not represented. The meetings of the Social Dialogue Committee have resulted in a number of joint statements on employment, education and training and other issues.

c. Single European Act

Article 139, which was inserted into the Treaty by the Single European Act (1986), extended the scope of Article 138 and created a specific basis in the Treaty for establishing 'social dialogue'. The promotion of the social dialogue became one of the Commission's official tasks and collective agreements at EU level were made possible.

d. Agreement on Social Policy

In October 1991, UNICE, ETUC and CEEP adopted a joint agreement which called for mandatory consultation of the social partners in the preparation of EU law in the area of social affairs, and an option for negotiation between social partners to lead to framework agreements. This agreement became enshrined in the **Agreement on Social Policy** (ASP) which was adopted by all Member States, with the exception of the United Kingdom and annexed to the Maastricht Treaty on European Union.

At national level the two sides of industry are given the opportunity of implementing directives by way of agreement. At Community level, specific rules are laid down in the Agreement. The Commission must consult management and labour before taking any action in the social policy field. The negotiation process may take up to nine months, and the social partners have the following possibilities:

- they may conclude an agreement and jointly request the Commission to propose that the Council adopt a decision on implementation, or,
- having concluded an agreement between themselves, they may prefer to implement it in accordance with the procedures and practices specific to management and labour and to the Member States, or
- they may be unable to reach an agreement.

In the latter case, the Commission will resume work on the proposal in question and will forward the result of its deliberations to the Council. The first practical results of this process are the adoption of a **framework agreement on parental leave**, on **part-time work**, on **fixed-term work** and two framework agreements on **the organisation of working time of seafarers** and **air transport**. The agreement on **telework** concluded in May 2002 will be implemented, for the first time, in accordance with the social partners' and member states' own procedures and practices. The negotiations on **temporary work** failed in May 2001. However, in March 2002 the Commission adopted a proposal for a directive on temporary work based on the consensus which emerged among the social paWrtners, despite the failure of their negotiations.

e. Amsterdam Treaty

The incorporation of the Agreement on social policy into the EU Treaty following the Amsterdam Treaty means that the EU Treaty forms a single coherent framework for social and employment policies for all Member States.

2. Bodies at EU level

a. It was considered essential from the very outset of European cooperation to involve various economic and social groups in drawing up EEC legislation. The **Economic and Social Committee** (*1.3.11) testifies to this.

b. Since the 1960s a number of **advisory committees** have existed whose role is to advise the Commission on the formulation of specific policies. In general, these committees, such as the Committee on Social Security for Migrant Workers, the Committee on the European Social Fund and the Committee on Equal opportunities for Men and Women, are made up of representatives of national employer and trade union organisations as well as governments.

c. Sectoral social dialogue

Some of the earliest social dialogue structures were established in the main sectors. Sectoral social dialogue at European level has made considerable progress since its structures were reformed on the basis of suggestions made by the Commission in 1998. The sectoral social dialogue is organised either as **joint committees**, appointed by the Commission usually in sectors corresponding to one of the common policies, or **informal working parties**, organised in response to a joint request of the social partners. A range of joint texts has been negotiated by the committees, on issues which include equal opportunities, modernisation of work, training, enlargement and corporate social responsibility.

d. Since 1970, the key tripartite body at European level concerning discussion on employment has been the **Standing Committee on Employment.** The continuous consultation between the Council of Ministers, the Commission and the two sides of industry aims at facilitating cooperation on employment policies. The Standing Committee on Employment was reformed in 1999. Its work was integrated into the coordinated employment strategy. It comprised 20 representatives of the social partners, divided between trade union and employer organisations.

e. Based on a joint contribution of the social partners for the Laeken Social Summit in December 2001, the Council established a **Tripartite Social Summit for Growth and Employment** in March 2003. The Tripartite Social Summit replaces the Standing Committee on Employment and will ensure a continuous concertation between the Council, the Commission and the social partners on economic, social and employment matters. The Summit shall meet at least once a year.

f. In the autumn of 1995, the **European Centre for Industrial Relations** (CERI) was opened. This was the result of an initiative taken by management and labour with the aid of the Commission (COM(95)0445). The aim of the centre is to promote an understanding of the European dimension in industrial relations through educating leaders and representatives of employers' and workers' organisations.

3. Future outlook

Since the changes introduced by the Amsterdam Treaty the consultation process is now even more important since it covers all proposals within the scope of Art. 137 and by all member states.

ROLE OF THE EUROPEAN PARLIAMENT

The EP has always supported the development of 'social dialogue' and makes a practical contribution by often inviting labour and management at EU level to present their views to the Committee on Employment and Social Affairs before it delivers a report on any proposal which affects them. The EP considers it necessary to promote and ensure the broadest possible participation by organisations representing the two sides of industry, especially SMEs.

II. INFORMATION, CONSULTATION AND PARTICIPATION OF WORKERS

LEGAL BASIS

Articles 44, 94, 95 and 137 EC.

OBJECTIVES

To support member states' action relating to the information and consultation of workers.

ACHIEVEMENTS

The information, consultation and participation of workers has been a key theme in EU debate since the first social action programme was adopted by the Council in 1974. **The Social Charter** stressed the desirability of promoting worker participation. The Commission's proposals in this area, however, have often encountered resistance in the Council and a number of proposals have therefore not yet been adopted. This should be seen in the light of the fact that Community legal acts in this field could only be adopted by a unanimous vote until the Treaty modifications of Maastricht and Amsterdam. The latter increased the EP's influence. The procedure is now co-decision with qualified majority in the Council.

1. Present legislation

Most of the directives adopted by the Council deal with the right of workers to be informed and consulted on a number of important issues concerning the running of the company or their interests. However, the directives do not contain provisions giving them the right to participate in decision-making.

- Directive 75/129 of 17 February 1975 on **collective redundancies**, as amended by Directive 98/59 of 20 July 1998. Under this directive, employers must enter into negotiations with workers in the event of mass redundancy.
- Directive 77/187 of 14 February 1977 as amended by Directive 98/50, on the safeguarding of workers' rights in conjunction with the **transfer of undertakings**, pursuant to which workers must be informed of the reasons for the transfer and the consequences.
- Directive 78/855 of 9 October 1978 on **mergers of limited companies**, pursuant to which workers in companies which merge are protected to the same extent laid down in the directive on the transfer of undertakings.
- Directive 94/45 of 22 September 1994 on the introduction of **European Works Councils**. The adoption of this directive was an innovation in that, unlike previously adopted directives in this area, it does not address specific situations. It does lay down general rules to ensure that workers in big multinational companies and consortia are informed and consulted. It is also the first directive adopted under the Agreement on Social Policy. Workers have also acquired certain rights to information and consultation in regard to **the working environment**.

- Directive 2002/14 of 11 March 2002 establishing a **general framework for informing and consulting employees** in the EU.
- **European Company Statute (SE).** The **Regulation on the Statute for a European company** (2157/2001) was accompanied by a supplementary **Directive on the involvement of employees** (2001/86) (*3.4.2.)
- Similarly the **Statute for a European Cooperative Society (SCE)** (Regulation 1435/2003) was supplemented by Directive 2003/72 regarding the involvement of employees (*3.4.2.).

2. Future Outlook

Other proposals have long been pending in the Council without it being possible to reach a decision: Proposals for Council regulations on a '**European association**' and a '**European mutual society**' together with the associated proposals for Council directives containing supplementary provisions on the position of workers (COM(93)0252) (*3.4.2.).

ROLE OF THE EUROPEAN PARLIAMENT

1. General

Parliament has adopted several Resolutions calling for the workers' right to be involved in company decision-making. Its 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 multinational and national companies and the right should apply to all companies irrespective of legal status. Parliament believes that workers should be involved in company decision-making concerning the introduction of new technology, changes in the organisation of the work, production and economic planning. It hopes that the rules on worker involvement in the European Company (SE) could also be applied to the 'European Association' and the 'European Mutual Society'.

2. Specific

- In a Resolution of 5 June 2003 on the Commission Communication on a framework for the promotion of employee financial participation (COM(2002)0364), the EP confirmed its support for **participation** of employees in profits and enterprise results.
- Its resolution on the Commission report (COM(2000)0188) on the application of the Directive on the establishment of a **European works council** called for a rapid revision of the 1994 Directive.
- The EP also called for sanctions to be applied in case either employers' or employees' representatives fail to respect the directive. The Parliament is in favour of setting up worldwide works councils.

EQUALITY FOR MEN AND WOMEN

LEGAL BASIS

- Article 2, article 3 (2), and articles 13, 94, 137, 141 and 308 of the EC Treaty;
- Protocols annexed to the Treaty on European Union: No 2 on Article 141 and No 14, with the Agreement on social policy annexed to it.

OBJECTIVES

To ensure equal opportunities and treatment for men and women.

ACHIEVEMENTS

1. The first Directives on equality

Article 114 of the Treaty of Rome enshrines the principle that men and women should receive equal pay for equal work. The Member States have shown little enthusiasm for implementing this provision and a series of directives has therefore been adopted, starting in 1975.

a. Approximation of laws in the Member States relating to the application of the principle of equal pay for men and women: Directive 75/117 of 10 February 1975.

b. 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 of 9 February 1976.

c. Progressive implementation of the principle of equal treatment for men and women in matters of social security: Directive 79/7 of 19 December 1978.

d. Implementation of the principle of equal treatment for men and women in occupational social security schemes: Directive 86/378 of 24 July 1986, amended by Directive 96/97 of 20 December 1996.

e. 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 of 11 December 1986.

f. Introduction of measures to improve the safety and health at work of pregnant workers who have recently given birth or are breast-feeding, Directive 92/85 of 19 October 1992.

g. Framework agreement on parental leave concluded by UNICE, the CEEP and the ETUC: Directive 96/34 of 3 June 1996.

h. Burden of proof in cases of discrimination based on sex: Directive 97/80/EC of 15 December 1997.

2. The contribution of the Treaty of Amsterdam

By amending the relevant provisions on the aims and objectives of the Community (Articles 2, 3 and 13) and incorporating the provisions of the Social Protocol as Title XI, the Treaty of Amsterdam inserted in the EC Treaty the principles of equality between men and women and non-discrimination based on sex or sexual orientation.

3. Recent developments

a. Fourth medium-term Community action programme for men and women (1996-2000)

The programme (Council Decision 95/593 of 22 December 1995) aims at introducing the equal opportunities dimension in all policies, projects and measures implemented at Community, national, regional and local level.

b. Employment-NOW 1994-1999

- Employment-NOW is based on the experience gained from the NOW (1991-1994) initiative which demonstrates that measures specifically aimed at women can help to develop new approaches in training and vocational integration. The specific aim of NOW is to:
  - . reduce unemployment amongst women,
  - . improve the position of those already in the workforce,
  - . develop innovative strategies to respond to the changes in the organisation of work and job requirements, with a view to reconciling employment and family life.
- The Commission's financial contribution to NOW for 1994-1999 is ECU 496 million.

c. European framework agreements

Under the procedure laid down in the Agreement on social policy annexed to the EUT, the Commission set about consulting the social partners – the ETUC (European Trade Union Confederation), UNICE (the Union of Industries in the European Community) and the CEEP (European Centre of Public Enterprises) – which led to the signing of two framework agreements:

- on parental leave (Directive 96/34 of 3 June 1996);
- on part-time work (Directive 97/81 of 15 December 1997).

The purpose of these framework agreements is to reconcile professional and family life, prevent any form of discrimination against part-time workers – the majority of whom are women – and make working hours more flexible, taking account of employers' and workers' needs.

d. Employment guidelines

In December 1997, on a proposal from the Commission, the Council adopted guidelines for employment, the main aims of which include strengthening equal opportunities policies. The guidelines are to be reflected in practical measures and included in national action plans drawn up by the Member States (Council Resolution of 15 December 1997).

e. Court of Justice rulings in the Kalanke and Marschall cases

- The Court's ruling of 17 October 1995 in the **Kalanke** case, C-450/93, held that positive action policy on recruitment and promotion contravened Article 2(4) of equal treatment Directive 76/207.
- But on 11 November 1997, the Court recognised, in the **Marschall** case (C-409/95), that the Directive authorises the Member States to take measures in favour of women in order to improve their ability to compete in the employment market and pursue their career on an equal footing with men. In this way, women with the same qualifications as their male competitors can receive preference for promotion in areas where they are under-represented, so as to reduce an existing inequality.

f. Modification of the 'burden of proof' in cases of sex-discrimination

The Council adopted a directive on this subject on 15 December 1997. Under the directive it is up to defendants taken to court for direct or indirect discrimination to prove that they have not infringed the principle of equal treatment. Until that date, a woman invoking a breach of the principle of equality in cases of discrimination of this kind usually had to assume the burden of proof on her own, even if some of the facts would have been easier for the defendant to establish.

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 in July 1984.

1. Parliament resolutions greatly assisted the EU position at the **World Conference on Women in Beijing** (September 1995), at which the Council, Commission and Parliament were unanimous in their agreement on the action platform.

2. On 13 February 1996, Parliament adopted a **resolution on the Memorandum on equal pay for work of equal value**, recognising that wage differences between the sexes for work of equal value are only one of the sources of discrimination in the employment market. Other instances of divergence may be attributed to the structure of the local employment markets, wage structures, or a lack of social facilities enabling men and women to combine family commitments with an occupational career.

3. The EP made every effort to ensure that the principles of equal treatment and equal opportunities were included in the **European Union's Charter of Fundamental Rights** (resolutions of 17 May 1995 and 13 March 1996).

4. Parliament also stressed the need for implementing the principle of equal treatment of men and women in occupational **social security** schemes (12 November 1996).

5. Parliament also drew attention to various forms of **discrimination** and **violence** against women which get in the way of real equality of opportunity, such as treatment of women in advertising and trafficking in women for the purpose of sexual exploitation (resolutions of September and December 1997). Pointing out that violence profoundly affects women's lives and prevents them from attaining true equality, it urged the Commission and Council to designate **1999** as '**European Year of action to combat violence against women**'. This proposal was drawn up in the Written Declaration of 9 March 1998, signed by 350 MEPs and adopted in plenary sitting on 2 April 1998.

DISABLED PERSONS, THE ELDERLY AND THE EXCLUDED

LEGAL BASIS

Although the essential competence in this field belongs to Member States, the EU Treaty offers several possibilities for action at EU level.

1. In general

Articles 13, 39, 42, 125-130, 136-145, 150, 308 EC and Declaration No 22 annexed to the Amsterdam Treaty. The general non-discrimination Article 13 EC mentions disability and age among the fields in which the Council may take appropriate action to combat discrimination.

2. In particular

- Articles 136 and 137 EC, added by the Amsterdam Treaty in 1999, mention the combating of social exclusion and integration of persons excluded from the labour market among the fields of social policy in which the EU supports and completes Members States' actions;
- Article 308 is a general basis for EU action in cases that are within EU objectives but where the Treaty has not provided for the necessary powers.

OBJECTIVES

- To promote equal rights for people with disabilities and for old people.
- To combat social exclusion.

ACHIEVEMENTS

A. Disabled persons

Eurostat estimates the percentage of people directly affected by some form of disability to be between 10 and 12 % of the population in most Member States. This amounts approximately to 37 million people, half of these are of working age.

1. Employment

The disabled are hard hit by unemployment and one of the aims of EU initiatives is to promote their job opportunities. In the period 2000-2006 of the European Social Fund the EQUAL initiative encourages new approaches to deal with discrimination on the labour market. Following the EU **Employment Strategy** (*4.8.3.), initiated in 1998, employment guidelines contain commitments to **improve disabled people's employability**. **Council Resolution** of 17 June 1999 on **equal employment opportunities** for people with disabilities calls upon the Member States to develop, evaluate and review support programmes for the integration of people with disabilities in various ways.

2. General disability strategy

a. In pursuance of the 1993 United Nations Resolution "Standard Rules **f**or the Equalisation of Opportunities for Persons with Disabilities" the Commission adopted Communication in July 1996 (COM(96)0406). This **European Disability Strategy** is **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. Whilst responsibility in this field lies with the Member States, the Communication emphasised that the EU would make a significant contribution in fostering cooperation between Member States and in encouraging the exchange and development of **best practice**.

b. In 1996, a **High Level Group on Disability** was set up to monitor the policies and priorities of governments, to pool information and experience and to advise the Commission.

In 1997, the **social partners** undertook to collect examples of good practice and adopted, as one result of this work, a **declaration** on the employment of people with disabilities on 19 May 1999.

c. On the basis of Article 13 of the Treaty the Council adopted **Directive 2000/78** of 27 November 2000 establishing a **general framework for equal treatment in employment and occupation** and Decision 2000/750 establishing a **Community action programme to combat discrimination** (2001 to 2006).

d. By Decision 2001/903 of 3 December 2001, the Council established 2003 as the **European Year of People with Disabilities**. During this European Year the Council adopted several resolutions:

- 2003/C39/03, to improve the access of people with disabilities to the knowledge based society;
- 2003/C134/04, on equal opportunities for pupils and students with disabilities in education and training.
- 2003/C175/01, on promoting the employment and social integration of people with disabilities.

e. In October 2003, a Commission Communication (COM(2003)650) set up a **European Action Plan on Equal Opportunities for People with Disabilities** aiming at their further inclusion in an enlarged EU economy and society as a whole. Three operational objectives are central:

- achieving full application of the Equal Treatment in Employment and Occupation Directive;
- reinforcing mainstreaming of disability issues in relevant Community policies;
- improving accessibility for all.

B. The Elderly

In 2000, more than 60 million persons (16,4%) of the EU population were aged 65 and over. The rise in life expectancy is forecast to continue and, combined with the drop in fertility, the ageing of the population will

accelerate. The share of EU population of 60 and over is expected to rise to 37% by 2050.

1. EU policy approach to ageing

a. Importance of the issue

As one of the first world regions to be affected by ageing of the population, Europe has developed a wide variety of policy responses. Since 1984, the EU has carried out studies and seminars focussing on the contribution of the elderly to economic and social life. The first action programme for the elderly dates back to 1991. The 1990s have seen major developments in EU cooperation on ageing issues. In 1990, the European Commission presented a communication on policy responses to ageing as its contribution to the UN International Year of Older Persons. Since then, Member States have committed themselves to work on ageing issues in the context of sound public finances, employment, social protection and sustainable development while maintaining these as national policies.

b. Conception

Ageing is not an issue to be tackled in isolation. The EU's response to ageing is therefore developed as part of the overall strategy of mutually reinforcing policies and encompasses the economic, employment and social implications of ageing. The EU approach aims to mobilise the full potential of people of all ages. The basic assumption is that adequate responses to ageing must go beyond attention to those who are currently old. Adjusting well to population ageing is an issue for people of all ages. This results in an orientation towards active ageing policies and practices, such as life long learning, working longer, retiring later and more gradually, being active after retirement and engaging in capacity enhancing and health sustaining activities.

2. Key challenges

Two Commission Communications, "Towards a Europe for All Ages" (COM(99)0221) and later "Europe's response to world ageing" (COM(2002)143) set out the key challenges which have been identified as:

- managing the economic implications of ageing in order to maintain growth and sound public finances;
- adjusting well to an ageing and shrinking workforce;
- ensuring adequate, sustainable and adaptable pensions;
- achieving access to high quality health care for all while ensuring the financial viability of health care systems.

C. Social inclusion

According to Eurostat, some 18% of the population of the EU lives on less than 60% of the average national income, that is some 65 million people live on low incomes. A little more than one third of poor households are working, the so-called working poor. Another third lives in retirement. The remaining one third is either inactive (19%) or unemployed (13%).

1. Poverty programmes

In the framework of the first Poverty Programme, the Community implemented an initial programme for pilot projects and surveys with a view to combating poverty between 1975 and 1980. This first programme was followed by two others. However, Community action was constantly challenged on the grounds of missing legal base. For that reason the fourth Poverty Programme proposed in 1993 was never adopted by the Council. The situation changed with the Amsterdam Treaty of 1999: articles 136 and 137 provide that the fight against social exclusion should be one of the EU's social policy goals.

2. The open method of coordination

Based on the Commission Communication Building an Inclusive Europe (COM(2000)0079), the Lisbon European Council debated social exclusion for the first time in March 2000. In December 2000, the European Council agreed to base social inclusion policies on an Open Method of Coordination combining national action plans and Commission initiatives for cooperation.

a. **The key elements** in this method are:

- Common Objectives on poverty and social exclusion,
- National Action Plans against poverty and social exclusion,
- Joint Reports on social inclusion and regular monitoring, evaluation and peer review,
- Common Indicators to provide a means of monitoring progress and comparing best practices.

b. A common set of **four objectives** were defined:

- to facilitate participation in employment and access to resources, rights, goods, and services for all;
- to prevent the risks of exclusion;
- to help the most vulnerable;
- to mobilise all relevant bodies.

C. In December 2002, the Commission adopted by Decision 59/2002 an **action programme** to **encourage cooperation between Member States** for the years 2001-2006 with a total budget of EUR 70 million. The activities of the programme are divided into three strands:

- analysis of characteristics, causes, processes and trends in social exclusion,
- policy cooperation and exchange of information and best practices,
- promotion of dialogue involving the various stakeholders and support networking.

ROLE OF THE EUROPEAN PARLIAMENT

The EP has adopted resolutions calling for improved conditions for the socially excluded, the elderly and disabled persons. It regards it as important that greater solidarity is shown within the Community and that an attempt is made to integrate the above groups into society. In this context, it urges the Member States to set minimum incomes so that the poorest citizens are guaranteed the necessary means to achieve a reasonable standard of living and guaranteed social security and sickness insurance. It regards it as essential that Community activities in the form of action programmes continue and has on several occasions called on the Council to adopt the programmes for the elderly and the socially excluded proposed by the Commission.

In 1993 the EP initiated the holding of the **Older People's Parliament**. In October 1998 the Parliament organised a European Conference 'Older people in the 21st century - a new lease of life' and in November 2003 a "european parliament of disabled people" was organised.

Every year since 1993 Parliament and Commission have celebrated on **3 December** the European Day of Disabled People. It has also in several resolutions called for all EU education, training and youth policies and programmes to include support measures to promote the integration of all disabled people into mainstream education and training systems.

ENVIRONMENT POLICY: GENERAL PRINCIPLES

LEGAL BASIS

In October 1972 a European Council decided that a common environmental policy was essential. Since then some 200 pieces of legislation have been adopted by the EU to limit 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. In 1987 a title on Environmental protection was added to the Treaty. This is generally acknowledged as the turning point for EU environment policy. The legal basis for EU environment policy is Articles 174 to 176 of the Treaty.

OBJECTIVES

The Treaty changes heightened the profile of EU environment policy. Changes to the preamble and Article 2 (B) make the principle of sustainable development one of the EU's main objectives. Article 6 explicitly mentions the need to integrate protection of the environment in all sectoral policies. By moving this clause from the article on the environment to an important position at the beginning of the treaty, the EU underlined its commitment to sustainable development. In the final act the Commission undertakes to draw up impact assessment studies for proposals likely to have serious repercussions for the environment.

Under Article 174 (3) of the Treaty, EU environment policy is based on the principles of precaution, prevention, rectifying pollution at source and "the polluter pays". Article 95 expressly states that concerning "health, safety, environmental protection" the Commission 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 EU 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.) it will tackle environmental problems only when it can deal with them more effectively than national or regional government.

ACHIEVEMENTS: ENVIRONMENTAL INSTRUMENTS

1. Assessment of the effects of certain plans and programmes on the environment

The Directive on the assessment of the effects of certain plans and programmes on the environment (2001/42) supplements Directive 85/337 on environmental impact, which covers construction work and other installations or schemes, as well as other measures affecting the natural environment or landscape. The 2001 Directive introduces a system of prior environmental assessment at the planning stage for plans and programmes in town and country planning, land use, transport, energy, waste management, water management, industry, telecommunications, agriculture, forestry, fisheries and tourism.

2. European Environment Agency (EEA)

Council Regulation 1210/90, later amended by 933/1999, established the EEA and the European Environment Information and Observation Network. It defines the Agency as a central EU body whose objective is to protect and improve the environment in accordance with the Treaty provisions and EU environment action programmes, with a view to establishing sustainable development.

To achieve this, the Agency provides the EU and member states with objective, reliable and comparable information at EU level to enable them to take the measures required to protect the environment, evaluate their implementation 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 open to non-members of the EU.

3. The Community eco-label award scheme

Regulation 880/92 (amended by 1980/2000) instituted an EU eco-label award scheme. The award may be granted to products available in the EU which meet specific environmental and eco-label criteria, set and reviewed by the EU Eco-Labelling Board (EUEB), which is also responsible for assessment and verification. The awards are published in the EU Official Journal. The Eco-label award scheme is designed to promote products with a reduced environmental impact, compared to similar products and to provide consumers with accurate and scientifically based information and guidance. The Commission and the member states must promote the use of the eco-label by means of awareness-raising action and information campaigns and ensure coordination between the EU scheme and existing national schemes. The Commission will examine before September 2005 how this Regulation is applied and propose any appropriate amendments.

4. Eco-audits

Regulation 761/2001 (replacing 1836/93, which allowed voluntary participation by organisations in an eco-management and audit scheme EMAS), set up a new scheme to improve industrial environmental protection by introducing a form of environmental management. Its objective is to promote improvements in the environmental performance of organisations in all sectors through:

- introducing and implementing environmental management systems as set out in Annex I to the Regulation;
- objective and periodical assessment of those systems;
- training and active involvement of the staff of such organisations;

– provision of information to the public and the other interested parties.

5. Environmental inspections in the Member States

EP/Council Recommendation 2001/331 provides for minimum criteria in the member states regarding the organisation, performance, follow-up and publicising of environmental inspections to ensure a more uniform implementation and application of environment legislation. The recommendation covers environmental inspections of all industrial installations, enterprises and facilities subject to authorisation, permit or licensing requirements under current EU environmental legislation ("controlled installations").

6. Environmental taxes and charges in the Single Market

In addition to framework measures at EU level, implementing an environmental policy also requires provision of a number of economic, technical or fiscal instruments. Environmental taxes and charges are a way of implementing the "polluter pays" principle by inducing consumers and producers to adopt more environmentally compatible behaviour.

Commission Communication (COM (97) 9) presented the applicable legal framework and set out member states' options and obligations in accordance with single market rules. The EP Resolution of 15 July 1998 underlined the need to introduce environmental levies in all member states to avoid distortion of competition between member states which introduced them and those which did not.

7. LIFE: a financial instrument for the environment

€ 640 million is budgeted for the third phase (2000-2004) of LIFE, the only EU financial instrument specifically designed for environmental purposes (Regulations 1655/ 2000 and 1973/92).

LIFE co-finances environmental activities in the EU and in certain other countries (bordering on the Mediterranean and the Baltic Sea and Central and Eastern Europe). LIFE consists of three thematic components: LIFE-Nature, LIFE-Environment and LIFE-third countries.

8. EU Environment Programmes

The Fifth Action Programme on the Environment "Towards Sustainability" established the principle of a European strategy of voluntary action for the period 1992-2000 and marked the beginning of a "horizontal" approach to all causes of pollution (industry, energy, tourism, transport, agriculture, etc.).

The Sixth Environment Action Programme, entitled "Environment 2010: Our future, our choice" (Decision 1600/2002) covers the period from 1 January 2001 to 31 December 2010 and is the central environmental component of the EU sustainable development strategy. The Programme constitutes a framework for environmental policy. It is based particularly on the polluter-pays principle, the precautionary principal 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 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.

9. International Cooperation in the field of environment

Among various EU-activities in the area of international cooperation are especially:

– the EU-Russia Partnership and Cooperation Agreement (in force since 1997) includes a Joint Work Programme for the environment.
– The Europe-Asia cooperation strategy intends to help Asian countries build up environmental management capacities (more efficient and rational use of natural resources, the introduction of a sustainable wealth-creation model and environmental institutions) and to adopt market-based environmental measures.
– UN World Summit and Sustainable Development (Johannesburg, 26 August to 4 September 2002): the EU played a major role and contributed actively to the adoption of a political declaration and a plan of implementation (to improve access to basic sanitation and drinking water; to reduce biodiversity loss, halt the decline of fish stocks; to minimise harmful effects to human health from the production and use of chemicals by 2020).

10. Environmental liability

At the time of writing (2003) a proposal (COM(2002)0017) to introduce a liability scheme is under discussion; this scheme will include not only compensation for damage to the environment (in accordance with the polluter-pays principle), but also the prevention of such damage.

11. The precautionary principle

Commission proposal (COM(2000)0001) and EP-vote on 14 December 2000 on the Precautionary Principle tries to establish common guidelines to apply it in a wider context and provide criteria to assess, appraise and communicate risks that science is not yet able to evaluate fully.

12. Programme promoting NGO activity in environmental protection

Decision 466/ 2002 lays down an EU Action Programme promoting non-governmental organisations primarily active in the field of environmental protection, € 32 million is planned for 2002-2006. Support will be targeted to the priority areas from the Sixth Environmental Action Programme. The Commission is required to submit a report to the European Parliament and the Council on the achievement of the objectives of the programme during the first three years.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has initiated much legislation, such as environmental impact assessments, free access to information and the eco-label for environmentally friendly

products. Treaty modifcations strengthened its role by extending the Codecision Procedure to all measures under Article 175 except those dealing with taxation or the management of water resources. After a long debate between Parliament, Commission and Council an agreement was reached on a joint text for the 6th Community Environment Action Programme (2001-2010). At Parliament's request the programme contains provisions for the listing and phasing-out of environmentally harmful subsidies, for environmental taxes at appropriate national or EU level, for Kyoto Protocol emission targets and for thematic strategies for tackling environmental priorities. All legislation arising from the thematic strategies will be adopted under codecision. Additional targets will - also at Parliament's request - be sought under the programme for cutting greenhouse gas emissions, linked to an assessment by the International Panel on Climate Change. The programme will promote the development of alternative fuels and fuel-efficient vehicles. Under the agreement, the rising volumes of urban traffic will also be tackled and efforts made to improve the quality of the urban environment. Furthermore, mainstreaming environmental concerns will - at Parliament's request - be better included in EU policy-making, and special attention devoted to increasing the environmental awareness of the general public and local authorities.

Lastly, the programme aims to adopt more sustainable production methods and patterns of consumption by improving the management and use of natural resources as well as waste management. Parliament also played an active role in the Johannesburg Summit on Sustainable Development.

During accession negotiations Parliament played an active role regarding consequences in the field of environment.

To improve legislative assistance to Members, Parliament's Environment Committee has concluded two framework contracts with independent research institutes for independent expert advice on regulatory/ policy assessments in the environmental area and evaluations of a more technical-scientific nature related to the environment, public health and food safety.

IMPLEMENTATION OF COMMUNITY ENVIRONMENT LAW

LEGAL BASIS AND OBJECTIVES

*4.9.1.

ACHIEVEMENTS

1. Public access to environmental information

Directive 2003/4/ on public access to environmental information sets out the basic terms and conditions for right of access to environmental information held by or for public authorities and aims to achieve the widest possible systematic availability and dissemination of this to the public. Moreover, it is aimed at aligning EU law with the provisions of the United Nations/Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the so-called "Arhus Convention 1998" with a view to its ratification by the EU. The countries are required to ratify, approve, accept or accede to the Convention in order to bring about its entry into force.

The Directive comprises the following key elements:

- disclosure of information is the general rule, unless there is an overriding public interest in refusal;
- access to information is in principle free of charge, however, public authorities may, under certain circumstances, charge for supplying environmental information as long as it does not exceed a reasonable amount;
- information on the contamination of the food chain is also covered, where relevant, by the scope of the Directive;
- information requests must be answered within one month of being received, with the possibility of extension by one month if necessary;
- when replying to requests for information public authorities must specify the different procedures used in compiling it or refer to the standardised procedure used. Member states should report to the Commission on their experience in applying this Directive no later than 14 August 2009. In light of experience and taking into account developments in computer telecommunications and/or electronic technology, the Commission shall report to the EP and Council any proposal for revision, which it may consider appropriate.

2. Arhus Convention on access to information, public participation and access to justice in environmental matters

The Commission proposal (COM(2003) 622) on the application of the provisions of the Arhus Convention to EU institutions and bodies had not been adopted in the EP at the end of 2003.

Background: In 1998, the EU and the fifteen member states had signed the UN/ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ("the Arhus Convention") whose main aim is to allow the public to become more involved in environmental matters and to actively contribute to improved preservation and protection of the environment.

The signing of the Arhus Convention obliges the EU to align its legislation to the requirements of the Convention.

This proposal for a Regulation envisages the application of the Convention's three pillars, access to information, public participation in decision-making and access to justice in environmental matters, to the EU institutions and bodies, building upon the provisions which already exist in this area.

3. Implementation and enforcement of Community environmental law

The Dublin European Council in June 1990 stressed that Community environmental legislation would only be effective if fully implemented and enforced by member states. In May 1997, in its Resolution on Communication (COM(96) 500) Parliament called on the Commission to produce and publicise an annual report on progress in adopting and implementing EU environmental law.

An Annual Survey on implementation and enforcement of environmental law has been published since 1996/97. The Fourth Annual Survey covers the year 2002.

The Commission continues to receive a high number of complaints from the general public and NGOs on non-compliance with EU environmental law. Such complaints often take the form of written questions and petitions to the EP. This reflects the concern of EU citizens about the state of the environment and the "green record" of their member states. The report shows that member states still have problems in fully and correctly implementing EU provisions into national law and that it is necessary to develop new working methods at all stages of the implementation life cycle. Moreover, full implementation of the Arhus Convention will improve access to justice in member states and thus also facilitate the handling of complaints by the Commission.

4. Serious environmental crimes - Protection of the environment through criminal law.

To guarantee a high level of environmental protection the increasing problem of environmental crime must be tackled. The EU has adopted numerous legislative acts protecting the environment. Member states have to transpose and implement these acts, but experience has shown that the criminal sanctions currently used by the member states are not always sufficient. A minimum level of criminal offence in breach of EU measures needs to be established to ensure better and harmonised application.The Council adopted Framework Decision 2003/80 on the protection of the environment through criminal law, based on Article 34 of the Treaty and applicable from January 2005 latest as a suitable instrument to oblige Member States to provide penal sanctions on their territory.

ROLE OF THE EUROPEAN PARLIAMENT

The EP has always insisted on better public access to environmental information, participation and justice. In its report on Directive 90/313/ it insisted that the public gain better access to environmental information held by public authorities, and that the information be disseminated using the latest technology available to help enable EU legislation to be aligned with the Arhus Convention.

The EP also stressed the importance of clearer, better-supervised and implemented law, in particular in view of enlargement. It also supported a system of minimum criminal sanctions against the most serious breaches of EU environmental protection law. The effectiveness of EU environmental policy is largely determined by its implementation at national, regional and local levels. At present, however, deficient application and enforcement remains a major problem, illustrated by a growing number of infringement cases as well as steadily increasing instances of non-compliance with EU law investigated by the Commission. The need for improved implementation has thus been recognised as a key priority both of the Fifth and the Sixth Environmental Action Programmes.

The EP insisted (Decision 1600/2002/ on the 6th Community Environment Action Programme, *4.9.1.) that "a more effective implementation and enforcement of… EU… legislation on the environment" should be regarded as one of the strategic objectives of environmental policy of the EU. It called for measures to improve respect for EU environmental protection rules, improve 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 and in 1997, a Resolution called on the Commission to produce and publicise annual reports on progress in adopting and implementing EU environmental law. As a result, the Commission now publishes annual surveys on implementation and enforcement. Implementation issues have been high on the agenda of the Environment Committee's meetings over the last few years. The Committee now draws up three follow-up-reports each year, in which it looks at EU legislation in the environment and related fields, examines problems of implementation and evaluates whether the legislation is, or is not, meeting its initial objectives.

A number of specific implementation issues have been discussed on numerous occasions within the European Parliament. The Spanish National Hydrological Plan has been raised on several occasions in committee question time, was examined by a delegation from the Environment Committee in February 2003 and was again discussed in the presence of Commissioners Wallström and Barnier on 16 December 2003.

SUSTAINABLE DEVELOPMENT

LEGAL BASIS AND OBJECTIVES

*4.9.1.

ACHIEVEMENTS

1. Global Partnership for sustainable development

Globalisation acts as a powerful force for sustaining global growth and providing ways of dealing with international problems such as health, education and the environment. However, market forces cause and exacerbate inequality and exclusion and can cause irreparable damage to the environment. Globalisation should therefore go hand in hand with measures designed to prevent or mitigate these effects.

Based on Commission Communication COM(2002) 82 the EP voted on 6 May 2002 on sustainable development towards global partnership (in view of the world summit on sustainable development (WSSD) in Johannesburg in September 2002).

With a view to achieving the "Millenium Goal" of reducing poverty by half by 2015, the Commission called on Member States to increase their development aid, first of all, to an EU average of 0.39% of GDP and then to 0.7% by 2010. It also urged them to agree on an immediate moratorium on debt servicing for all LDCs with debt problems.

This EU-strategy for sustainable development will cover economic, social, environmental and financial aspects, as well as coherence of EU policies and governance at all levels:

- harnessing globalisation: trade for sustainable development;
- fighting poverty and promoting social development: to reduce extreme poverty in the world by 2015 (people who live on 1 a day or less);
- sustainable management of natural and environmental resources: to reverse the trend of the loss of environmental resources by 2015 as well as to develop intermediate objectives in the sectors of water, land and soil, energy and biodiversity;
- improving the coherence of EU policies;
- better governance at all levels: wich means strengthening the participation of civil society, and the legitimacy, coherence and effectiveness of global economic, social and environmental governance;
- financing sustainable development.

2. Environmental technology for sustainable development

A Commission report (COM(2002) 122) summarises the main issues concerning environmental technology - including an action plan.

At the European Council in Lisbon in March 2000, the EU set itself the objective of becoming "the most competitive and dynamic knowledge-based economy in the world". At the Göteborg 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 and sustainable development, having the potential to contribute to growth while at the same time improving the environment and protecting natural resources.

New and innovative environmental technologies can add to economic growth in a number of ways. They can allow us to get more environmental protection for less money, or to meet current standards at a lower cost. This frees up resources for use elsewhere in the economy. They also help to decouple environmental pollution and resource use from economic growth, allowing our economies more scope to grow in the long run while still remaining within the environment's limits. This is central to sustainable development.

Finally, an innovative environmental technology sector can help underpin growth if it is capable of tapping into rapidly growing export markets.

3. Integration of environmental Policy

The Cardiff Summit of June 1998 called on the Council to establish its own strategy for giving effect to the general principle of integrating environment policy into all other EU policies. In Cardiff the focus was mainly on energy, transport and agriculture. On the same lines, in Vienna (December 1998) the European Council extended this process to three other fields, i.e. the internal market, industry and development.

a. Environment and employment

Commission proposal COM(97) 592 and the EP (vote on 16 July 1998), encouraged Member States to speed up the transition to new and clean technologies to replace polluting technologies and reconsider ways to finance the provision of public goods. The most favourable time for making this shift is when old capital is to be replaced with new investment integrating high environment standards. The benefits would be twofold: investment would create jobs and business opportunities; new technologies would lead to a better environment.

b. Environment and energy policy

The EU has taken several measures to integrate environment considerations into energy policy. Directive 88/609/ of 24 November 1988 limits emissions of certain pollutants into the air from large combustion plants. Various steps have been taken under the SAVE (increasing energy efficiency), Altener (developing renewable sources) and Joule-Thermie programmes and the framework programmes for research and technological development. In addition, new measures have been proposed concerning the taxation of energy products, the incineration of waste and polluting emissions from motor vehicles (the 'Auto-Oil' programme).

Several measures are proposed for strengthening environmental integration within energy policy with three main objectives: to promote energy efficiency/saving; to increase the share of production and use of cleaner

energy sources; and to reduce the environmental impact of the production and use of energy sources.

c. Approaches to sustainable agriculture

When the CAP was reformed in 1999, it was decided that agri-environmental measures should be stronger. Accordingly, farmers who voluntarily undertook environmental work (protection of the environment, preservation of the countryside) would be paid. However, payments would be made only for measures going beyond good agricultural practice, which implies that the farmer is already observing basic environmental standards. Specific environmental measures were also introduced into the CAP (further financial incentives for more extensive production of beef, voluntary set-aside of up to 10% of the base area in the arable crops sector).

d. Integration of the environment dimension in developing countries

The present Regulation 2493/2000 is designed to continue action on the basis of experience gained in implementing the earlier Regulation, to promote the full integration of the environmental dimension in the development process of developing countries.

The Regulation lays down the rules under which cooperation projects initiated by various players (governments, public bodies, regional authorities, traditional or local communities, cooperatives, international organisations, non-governmental organisations, private actors) in developing countries and intended to promote sustainable development may receive EU financial aid and technical assistance. The budget for applying the Regulation over the period 2000-2006 is € 93 million.

e. Strategy for integrating the environment into the single market

Environmental standards are often perceived as barriers to market access (strict technical standards), just as open markets are frequently seen as a threat to the quality of the environment. A Commission proposal (COM(99)263) tries to develop the synergies between the single market and EU environment policy following the strategy formulated by the European Council in Vienna, with the aid of a series of measures on public procurement, state aid, standardisation, financial reporting and eco-labelling. Economic instruments such as taxes (environmental taxes and charges) which can be an appropriate way of implementing the "polluter pays" principle.

f. Strategy for integrating the environment into industry

The industrial sector 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 Council Conclusions of 29 April 1999, environmental policy and sustainable development should be integrated into industrial policy.

g. Promoting sustainable development in the non-energy extractive industry

Extractive operations raise two types of concern: the use of non-renewable resources and the damage done to the environment (air, soil and water pollution, noise, destruction or disturbance of natural habitats, visual impact on the surrounding landscape, effects on groundwater levels). Mining waste is one of the largest waste streams in the EU and some of that waste is dangerous. Abandoned mine sites and unrestored quarries spoil the landscape and can pose severe environmental threats due especially to acid mine drainage.

h. Integrating environmental protection requirements into the Common Fisheries Policy

Fisheries has to confront the structural imbalance between catch capacity and the biological potential of stocks, which has led to overfishing and the threat of changes in marine ecosystems. The overfishing of some stocks is so severe that the scientific authorities have recommended a rapid reduction in exploitation rates of up to 40%, especially in the case of vital stocks such as cod, haddock, hake, plaice or herring. In several cases spawning stock is considered inadequate to save stocks from biological collapse. In particular, very restrictive measures for North Sea herring have had to be taken urgently to avoid a repeat of the situation at the end of the 1970s, which required the closure of all herring fishing for four years. According to action plan COM(2002) 186 EP vote on 20 January 2002) the EU will integrate environmental protection requirements into the Common Fisheries Policy.

i. Integrating the environmental dimension into sustainable development of the urban environment

Following the Communication "Sustainable urban development in the EU: a framework for action" (COM(1998)605), Decision 1411/2001 puts in place a framework for cooperation to define, exchange and implement good practice in sustainable urban development (in the framework of Agenda 21). The main partners are the Commission and the networks of towns and cities organised at European level. The budget for the period 2001-2004 is € 14 million. 80% of the resources will be allocated equally to information and cooperation activities. The remaining 20% will go to accompanying measures.

j. Integration of the environment into economic policy

The best strategy for integrating the environment into economic policy is to create or improve the functioning of markets for environmental goods; creating and assigning well-defined property rights for environmental goods and services which are enforceable by law and tradable; fixing a price to pay (in the form of a tax or charge) for pollution; establishing deposit-refund schemes to encourage recycling; offering subsidies to goods and services which generate positive environmental effects; negotiating agreements with industry and providing information about the environmental characteristics of goods and services. According to Commission Communication COM(1999) 640 EP vote on 31 May 2001) the EU will develop a strategy to integrate environmental issues into economic policy by using existing instruments such as the member states' annual reports on structural reform and the Broad Economic Policy Guidelines.

k. Integration of the environment into air transport

The communication COM(1999)640 (EP vote on 7 September 2000) aims to improve the environmental performance of air transport activities so as to offset the environmental impact of growth in this sector.

ROLE OF THE EUROPEAN PARLIAMENT

*4.9.1. and 4.9.2.

TREATMENT OF WASTE

LEGAL BASIS AND OBJECTIVES

*4.9.1.

ACHIEVEMENTS

1. General

a. Technical background

- In the EU's most densely populated areas, disposal by **dumping** is reaching its limits. Even though it remains a possible solution in other areas where sufficient sites are still available, opportunities are limited in the long term by the threat of water and soil pollution and the protests of local inhabitants. Recourse to dumping will depend on the availability of conveniently situated and well-planned sites and the pre-treatment of certain waste before final dumping takes place.
- Waste **incineration** is an option in many cases, having the advantage of energy recovery. However, investment is required to prevent toxic emissions, as well as careful planning and management of the plant and sensitive selection of sites.
- The best way to cut down the volume of waste is to reduce the use of packaging and to **recycle**. Recycling has great potential for reducing pollution. Energy consumption is cut by between a quarter and three fifths for every tonne of paper produced from waste paper rather than wood, while atmospheric pollution is cut by 75%. Recycling of paper, cardboard and glass is therefore of prime importance. Levels of recycling in the Member States range from 28% to 53% for paper and cardboard (EC average: 49,6%) and between 21% and 70% for glass.

b. Main thrust of EU policy

- EU policy has five main objectives:
  - avoiding waste by promoting environmentally-friendly and less waste-intensive technologies and processes and by producing of environmentally sound and recyclable products,
  - promoting reprocessing, in particular the recovery and re-use 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,
  - 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. Each member state is to draw up a waste management plan.
- Joint research projects aim to reduce the quantities of waste, which cannot be recycled, and to set up processes for recycling industrial and domestic waste and the use of waste for agricultural purposes or energy generation.

2. Principal legislation

a. Basic directive

Directives 75/442 and 91/689 constitute general and basic provisions for all wastes and hazardous wastes whereas Directives 75/439 and 86/278 contain requirements for specific waste streams - waste oil and sewage sludge - which differ due to the different types and problems of waste.

b. Hazardous waste

- **Controlled management of hazardous waste**

  Council Directive 91/689 for the management, recovery and correct disposal of hazardous waste. Decision 2000/532 (amended by Decision 2001/573) established a single list which integrates the list of dangerous waste laid down in previous Decisions.
- **Disposal of polychlorinated biphenyls (PCB) and polychlorinated terphenyls (PCT)**

  Directive 96/59 approximates the laws of the member states on the controlled disposal of PCBs, the decontamination or disposal of equipment containing PCBs and/or the disposal of used PCBs in order to eliminate them completely.
- **Disposal of spent batteries and accumulators**

  Council Directive 91/157 on batteries and accumulators containing certain dangerous substances.

  Member States must prohibit the marketing of batteries and accumulators containing more than 0.0005 % of mercury by weight and must encourage the separate collection of batteries as to indicate recycling requirements and heavy-metal content.
- Council Directive 75/439 of 16 June 1975 on **the disposal of waste oil**.
- **Use of sewage sludge in agriculture**

  Council Directive 86/278 on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture. The Directive has been quite successful in preventing crop contamination by pathogens because of the use of sludge on agricultural soils. However, few member states have a particularly high reuse rate. As the Commission forecasts an increase of about 40% in sludge production by 2005, a comprehensive review of the provisions contained in the Directive seems appropriate.
- **Incineration**

  Directive 2000/76 will apply to existing plants as from 28 December 2005 and has applied to new plants since December 2002, to prevent or reduce, as far as possible, air, water and soil pollution caused by the incineration or co-incineration of waste.
- **Titanium Dioxide**

Council Directive 78/176 to prevent, gradually reduce and ultimately eliminate pollution from titanium dioxide industrial waste.

- Council Directive 82/883 to fix common reference methods of measurement for sampling in order to conserve environments concerned by titanium dioxide waste.

c. End- of- life vehicles

At the moment, 75% of end-of-life vehicles are recycled (metal content). The aim of Directive 2000/53 is to increase the rate of re-use and recovery to 85% by average weight per vehicle and year by 2006, and to 95% by 2015, and to increase the rate of re-use 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.

d. Supervision and control of transfrontier shipments of waste

Supervision and control of transfrontier shipments of waste is regulated by Council Regulation 259/93. The Commission is proposing a revision of the 10-year-old Waste Shipment Regulation (COM(2003) 379) to simply 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 types of means, including vehicles, trains, ships and planes. The proposal strengthens the current control procedures, simplifying and clarifying them to the benefit of both the environment and waste shipment companies. It is also a step towards greater international harmonisation of waste shipments, as it fully implements the UN Basel Convention, which regulates shipments of hazardous waste at international level. The proposal reduces procedures and lists of waste from three to two and has four main objectives:

- implementing the OECD Council Decision C(2001)107 of 14 June 2001 in EU legislation;
- addressing the problems encountered in the application, administration and enforcement of the 1993 Regulation and establishing greater legal clarity;
- pursuing global harmonisation in the area of trans-boundary shipments of waste;
- enhancing the structure of the Articles of the Regulation. The Commission's proposal introduces clarification on the application and implementation of the current Regulation. The proposal does not change the basic logic of the current Regulation.

At the international level, the Community signed the Basel Convention on transboundary movements of hazardous waste in 1989.

e. Disposal of PCBs and PCTs and environmental issues of PVC

In a Resolution adopted on 17 January 2001 the EP recommended improving implementation of Directive 96/59 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCBs and PCTs) rather than redrafting it. In another Resolution on 3 April 2001, Parliament also made a series of recommendations concerning the Green Paper published by the Commission in July 2000 on environmental issues of PVC (COM(2000)469). The EP criticised the Commission for not having performed any lifecycle analysis of PVC products to compare them with alternative materials and called on the Commission to bring forward as soon as possible a draft long-term horizontal strategy on the replacement of PVC. It proposed that the "polluter pays" principle should be applied to PVC waste. It also called on the Commission to propose appropriate measures to ensure separate collection of PVC products and proposed that all use of lead and cadmium in PVC will be banned. It suggested that a recycling system similar to that for end-of life vehicles be set up and that labelling of all plastic materials be made compulsory.

f. Waste electrical and electronic equipment (WEEE)

After a long and controversial debate in the EP, Directive 2002/95 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (so-called RoHS Directive) was adopted.

This aims to protect the soil, water and air against pollution through the restriction of the use of certain substances, such as lead, mercury, cadmium, chromium and certain hexavalent brominated flame retardants (e.g. polybrominated biphenyls or polybrominated diphenyl ethers) in that type of equipment.

It lays down provisions to ensure that from 1 July 2006 new electrical and electronic equipment put on the market does not contain any of the above. Certain exemptions apply, inter alia, to the use of mercury in compact and straight fluorescent lamps, as well as to the use of lead in different types of solders and as an alloying element.

It provides for the prohibition of other hazardous substances and for their replacement by more environmentally friendly alternatives as soon as new scientific evidence is available, on the basis of a new proposal from the Commission. Before the 13 February 2005, the Commission shall review the measures provided for in this Directive to take into account new scientific evidence.

Also after a long and controversial debate in the EP Directive 2002/96 on waste electrical and electronic equipment (WEEE) was adopted. It has as its objective the protection of the soil, water and air against pollution, through better disposal of waste electrical and electronic equipment. The Directive provides for:

- a binding annual collection target of four kilograms of these wastes per person from private households;
- free of charge collection facilities;
- the possibility for producers to put into practice individual or collective financing schemes for the collection of WEEE from private households;
- financing by producers of collection, treatment, recovery and disposal costs for WEEE from users other than private households (the financial impact of this provision on producers is expected to be carefully considered by the Commission);
- financing by producers, or by users other than private households, of the costs of "historical waste"

management (WEEE from products put on the market between now and 2005);

- clear marking by producers of electrical and electronic equipment in order to facilitate their identification and dating, as well as the later treatment and disposal of WEEE;
- adoption of measures at member state level in order to minimise the disposal of WEEE together with other types of waste.

g. Radioactive Waste and Substances

The increase in the generation of electricity from nuclear sources has led to an increase in the production of waste.

All member states produce radioactive waste to varying degrees. The existence of this waste must not put at risk the health of EU citizens, because of the dangers of ionising radiation, or the environment.

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) 1493/93 and Directive 92/3/Euratom. Each member state must ensure that its own radioactive waste is properly managed. The provisions of this Directive prohibit the export of radioactive waste to the ACP countries in line with the Lomé IV Convention signed on 15 December 1989, to a destination south of latitude 60° south or to a third country which does not have the resources to manage the radioactive waste safely.

h. Packaging and packaging waste

First signed in 1994 the Packaging and Packaging Waste Directive (94/64) aims to offer a high level of environmental protection combined with the need to avoid distortions in the internal market. The Commission has proposed a revision of the Directives (COM(2001 729 and COM(2003) 536) in the field of recovery and recycling targets. No changes are foreseen to various aspects of the Directive, such as prevention, reuse or producer responsibility. But the proposed revision includes new targets for recovery and recycling to be implemented by 30 June 2003.

i. Landfill sites

Complementary measures are tabe found in the Directive 1999/31, which 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.

ROLE OF THE EUROPEAN PARLIAMENT

The EP always pressed for further development of EU strategy on waste management and urged the Commission to develop appropriate proposals placing stronger emphasis on waste prevention, more extensive recycling and market and fiscal incentives.

The EP was often the driving force and criticised the EU waste management policy and it called on the Commission to put in place a real waste management strategy based on sustainable development, ensuring that the present generation's use of resources did not jeopardise their use by future generations. Concerned to avoid 'waste tourism', Parliament also advocated implementation of the polluter-pays principle, elimination of waste at source and development of the recycling market.

Concerning the two directives in 2001 on waste electrical and electronic equipment the EP insisted that the prevention of such waste has the absolute priority, and in addition, the re-use, recycling and other forms of recovery of such wastes so as to reduce the disposal of waste. The EP also called for restricting the use of hazardous substances in electrical equipment in order to contribute to the environmentally sound recovery and disposal of waste electrical and electronic equipment by ensuring that substances causing major problems during the waste management phase - such as lead, mercury, cadmium, hexavalent chromium and certain brominated flame-retardants - are substituted.

The EP criticised the Commission (see above) concerning environmental issues of PVC.

NOISE

LEGAL BASIS AND OBJECTIVES

*4.9.1.

ACHIEVEMENTS

1. General

In its Fifth Community Environmental Action Programme (1992-2000, *4.9.1), combating noise emerged for the first time as one of the basic priorities of an integrated environmental policy. The Green Paper "Action against noise" (COM(96) 540) adopted on 5 November 1996 sought to develop a new approach to the problem of noise and a first step towards an integrated programme for combating noise. According to the Green Paper, around 20% of the population of Western Europe (some 80 million people) suffer from noise levels that experts consider unacceptable (exceeding 65 dB (A)) and over 50% of the EU population is constantly exposed to single-source noise levels of between 55 and 65 dB(A). This noise is caused by traffic, industrial and recreational activities.

Economic incentives are an essential part of EU noise abatement policy. Possible measures are:

- subsidies for the purchase of quieter products,
- a legal requirement to provide information on products,
- noise levies in accordance with the polluter-pays principle,
- the introduction of noise licences,
- subsidies for the development of quieter products.

2. Framework Directive for the assessment and management of exposure to environmental noise

Directive 2002/49 relating to the assessment and management of environmental noise:

- aims to harmonise noise indicators and assessment methods for environmental noise;
- aims to gather noise exposure information in the form of 'noise maps';
- member states shall ensure that no later than 30 June 2007 strategic noise maps showing the situation in the preceding calendar year are available and, where relevant, approved by the competent authorities;
- all information should be made available to the public;
- member states shall ensure that no later than 18 July 2008 the competent authorities have drawn up action plans designed to manage, within their territories, noise issues and effects, including noise reduction if necessary for:
  - . places near major roads which have more than six million vehicle passages a year, major railways which have more than 60 000 train passages per year and major airports;
  - . agglomerations with more than 250 000 inhabitants.

In January 2004, the Commission forwarded a report to the Council and the EP on existing EU measures relating to sources of environmental noise.

3. Sectoral legislation

A series of Directives has been adopted on noise abatement. Noise emission levels have been established for motor vehicles, motorcycles, agricultural and forestry tractors, domestic appliances, earth-moving equipment, construction equipment, lawn-mowers and civil subsonic aircraft.

Particular attention has been paid to road and air traffic, which poses a major noise nuisance.

a. Motor vehicles

The basic Directive on the permissible sound level and the exhaust system of motor vehicles (70/157 adapted by 1999/101) covers all motor vehicles with a maximum speed of more than 25km/h.

- The Directives lay down limits for the noise level of the mechanical parts and exhaust systems of the vehicles concerned. The limits range from 74 dB(A) for motor cars to 80 dB(A) for high-powered goods vehicles. This is equivalent to halving noise output, i.e. two cars of the next generation will together produce only as much noise as one of the previous one. However, the marked reduction in noise output by cars will be partly offset by the rise in the number of cars and the distance they travel and by the increase in powerful and heavy vehicles.
- The limit value for heavy lorries introduced by the EU in November 1992 is 80 dB(A), thus ensuring that this so-called 'low-noise' lorry will become the norm for road haulage in Europe. With effect from 1995/96, in urban traffic 25 new lorries together will only produce the same amount of noise as a single lorry at the beginning of the 1980s (measured in terms of noise limit values and taking measurement techniques into account). Lorries which comply with the noise limit values have been permitted to carry a distinguishing mark since 1994, which has made the monitoring of preferential user arrangements for low-noise lorries considerably easier. It is particularly important for the current ban in Austria on night travel (10 p.m to 5 a.m) on all transit motorways and associated trunk roads, from which low-noise lorries (limit value: 78dB(A) for lorries < 150 kW and 80 dB(A) for lorries > 150kW) are exempted.

b. Two- or three-wheeled motor vehicles: permissible sound level of motorcycles

Directive 78/1015 established common limits for the sound level of motorcycles and technical requirements relating to exhaust systems (construction, materials and durability).

The most recent reduction lays down noise limit values of 75 dB(A) for vehicles of up to 80 cc, 77 dB(A) for those between 80 and 175 cc and 80 dB(A) for those of more than 175 cc.

c. Subsonic civil jet aircraft

Regulation 925/1999 applies to modified subsonic civil jet aircraft re-certified as a result of their compliance with the standards set out in Volume I, Part II, Chapter 3 of Annex 16 to the Convention on International Civil Aviation (third edition July 1993).

On 29 September 1999 the Commission presented a Communication on progress made in the consultations with the US on the development of a new generation noise standard for civil subsonic jet aeroplanes and phase-out measures for the noisiest categories of civil subsonic jet aeroplanes within Chapter 3 (COM(1999) 452).

The Directive on environmental impact assessment (85/337) applies to private and public-sector projects, i.e. to construction works and other interventions in nature and landscape. For airports with a runway length of 2100 metres or more member states must carry out an assessment in which the projects' main effects on the environment are ascertained and evaluated. The procedure provides, in particular, for public consultation.

d. Railways

The Low Noise Train development programme launched jointly by the German, Austrian and Italian railways aims to achieve a substantial reduction in noise emissions for the whole system, of up to 23 dB(A), by new goods train designs which optimise noise reduction. A parallel aim is to make rail freight more attractive, and hence more competitive, by reducing life-cycle costs by 40% from their present level and by achieving speeds of up to 160 km/h; one or two different locomotives and between three and five different types of wagon, geared to the products to be transported, will be developed within the next few years.

At EU level, a proposal dating back to 1984 to harmonise the regulations governing noise emissions from railway trains was withdrawn by the Commission on 28 July 1993.

e. Airborne noise emitted by household appliances

Legislative harmonisation must be confined to those requirements necessary to measure the airborne noise emitted by household appliances and to carry out checks on the declared level. Such measures are provided by Directive 86/594. Directive 88/180 and 84/538 (amended by 88/181) relate to the permissible sound-power level of lawnmowers. The permitted sound-power level ranges between 96 dB/pW and 105 dB/pW according to the corresponding cutting width of the lawnmower. For lawnmowers with a cutting width exceeding 120 cm, the sound-pressure level of airborne noise, in dB(A), measured at the operator's position under the conditions specified in Annex Ia of Directive 88/180, does not exceed 90 dB(A).

f. Construction plants

Noise emitted by hydraulic excavators, rope-operated excavators, dozers, loaders and excavator-loaders has long been limited by EU Directives. The reduction of noise levels of certain types of earth-moving machines was provided in two stages. The second stage establishing the permissible sound-power level is between 93 and 114 dB(A)1pW as from 30 December 2001. Specific measures for tower cranes are provided by Directive 87/405. EC type-examination certificates shall be issued to tower cranes which satisfy the following requirements: the lifting mechanism must emit less than 100 dB(A)/1 pW and the sound-pressure level at the operator's position must not exceed 80 dB 20 µ pA from 1992.

g. Noise emission by equipment used outdoors

The 1996 Commission Green Paper on Future Noise Policy highlighted the increase of noise pollution in urban areas. While most external noise is caused by transport equipment, noise emissions from the use of outdoor equipment is constantly increasing. Directive 2000/140 relating to the noise emission in the environment by equipment for use outdoors is a framework directive designed to control noise emissions by more than 50 types of equipment used outdoors. The noise emission limits laid down for certain types of equipment involve two stages, so as to enable undertakings to adapt to the new rules. The emission limits for stage 1 take effect two years after the entry into force of the directive. More stringent limits will enter into force in stage 2 four years later.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has repeatedly stressed the need for further cuts in limit values and improved measurement procedures. With regard to air traffic over residential areas near to airports consideration should be given to a ban on night flying, landing fees graded according to noise levels and measures to avoid particularly noise-intensive take-off and landing manoeuvres. Parliament has called for setting EU values for noise around airports and also called for noise reduction measures to be extended to cover military subsonic jet aircraft

AIR POLLUTION

LEGAL BASIS AND OBJECTIVES

*4.9.1.

ACHIEVEMENTS

A. General

Protectng the atmosphere is an issue that will dominate EU policies on energy, transport and land development in the coming century. EU activities to protect the air concern a wide range of problems: depletion of stratospheric ozone, acidification, ground-level ozone and other pollutants and climate change. The EU has taken important steps over the past decade, but there is no substantial improvement in the environment yet, in spite of a decrease in the emissions to air and water of pollutants such as sulphur dioxide (50% reduction since 1980), lead (60% reduction since 1980), phosphorous in many water catchment areas (a 30 to 60% reduction since 1980s) and to a lesser extent nitrogen oxides and volatile organic compounds (a 14% reduction since 1990). Atmospheric pollutants, which enter the air from a wide variety of sources, can be subdivided into three broad categories:

- emissions from mobile sources (transport industry): apart from CO_2, the main ones are: nitrogen oxides (NO_x), carbon monoxide (CO) and hydrocarbons (HC), i.e. volatile or non-volatile organic compounds, soot particles and ozone (O_3);
- emissions from immobile sources (businesses, homes, farms and rubbish dumps). Apart from CO_2, the main ones are: sulphur dioxide (SO_2), nitrogen oxides (NO_x), hydrocarbons (HC), soot particles, chlorofluorocarbons (CFCs) and methane;
- emissions caused by power generation. Apart from CO_2, the main ones are sulphur dioxide (SO_2) and soot particles.

High concentrations of these gases and pollutants arising from them through chemical reactions in the atmosphere or in the soil are harmful to human health, corrode various materials and damage vegetation, have a detrimental effect on agricultural and forestry production and cause unpleasant smells. Many of these pollutants, such as carbon dioxide (CO_2), methane, nitrogen oxides (NO_x) and chlorofluorocarbons (CFCs), are responsible for the greenhouse effect.

B. Emissions from the transport sector

The emissions from the transport sector have a particular importance because of their rapid rate of growth: goods transport by road in Europe has increased by 54% since 1980, passenger transport by road by 46% in the past ten years in the EU and passenger transport by air has increased by 67% in the past ten years.

The main emissions caused by motor traffic are nitrogen oxides (NO_x), hydrocarbons (HC) and carbon monoxide (CO), accounting for 58%, 50% and 75% respectively of all such emissions. Whilst emission levels in the economically more developed countries have increasingly stabilised, they are continuing to rise in the less developed countries. EU Directives establishing stricter standards for the emission of pollutants by motor vehicles have had positive results, but the progress achieved to date is threatened by the rising number of vehicles on the road and vehicle use. In recent years, EU fuel consumption increased by 1.5% a year. Several Directives have been adopted 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 environmentally friendly manner.

1. Motor vehicles with trailers: Petrol engines, diesel engines

In cooperation with the oil and motor vehicle industries the Commission has devised a common "Auto-oil" programme to reduce exhaust gas emissions. The programme comprises two new Directives (98/69 and 98/70) dealing with the quality of petrol and diesel fuel and measures to tackle air pollution from motor-vehicle emissions:

- Directive 98/70 reduced pollution from car emissions by introducing new environmental specifications applicable to petrol and diesel fuels and banned leaded petrol from the market from 2000; it also provided for progressive improvements in the environmental quality of unleaded petrol and diesel fuel.
- Directive 98/69 lays down limit values for emissions from petrol and diesel cars, to apply from 2000 and 2005, according to the type of vehicle; tax incentives granted by member states to encourage advance compliance with new limit values are permitted and the new European test cycle provided by this Directive applied from 1999.
- Directive 98/77 inserts new technical requirements into Directive 70/220 such as EU approval of replacement catalytic converters as separate technical units, EU approval of vehicles operating on liquefied petroleum gas or natural gas, and the measurement of rolling resistance.

The Commission launched in 1997 the so-called Auto Oil II-Programme (COM(2000) 626) to assess policy options for achieving air quality objectives with a particular focus on reducing road transport emissions. Within this Auto Oil II-Programme emissions from road transport have been estimated. The results suggest that emissions of the traditionally regulated pollutants will fall to less than 20% of their 1995 levels by 2020, whereas CO_2 emissions will continue to rise at least until 2005. The share of overall (non-CO_2) emissions attributable to road transport will have fallen substantially between 1990 and 2010 and the relative importance of other sectors will have correspondingly risen.

a. Emission of gaseous pollutants from diesel engines

Directive 1999/96 tightened the maximum emission levels in the EU from diesel-powered lorries as well as limiting values for heavy-duty engines fuelled by natural gas (NG) and liquefied petroleum gas (LPG), in accordance with the conclusions of the Auto-Oil I programme, which

recommended that limits for emissions of nitrogen oxides (NO_x) and particulates from heavy goods vehicles should be reduced by 30% in relation to 1996.

b. Sulphur content of certain liquid fuels

Directive 2003/17 completed the environmental specifications for petrol and diesel fuels in accordance with Article 9 of Directive 98/70. It introduces fuels with sulphur levels lower than 10 ppm, down from the current limit value of 50 ppm from 1 January 2005 at the same time as the entry into force of the new emissions limits for EURO IV vehicles. Full conversion to zero sulphur fuels will take place on 1 January 2009.

c. Lead in petrol

Since the compulsory introduction of unleaded petrol in October 1989, leaded petrol was subject to restrictive measures and finally disappeared from 1 January 2000 (Directive 98/70).

2. Non-road mobile machinery: gaseous pollutants

The purpose of the current Directives 97/68 amended by 2001/63 is to approximate the laws of the member states with regard to:

- emission standards;
- type-approval procedures for engines intended to be fitted to non-road mobile machinery.

3. Wheeled agricultural or forestry tractors: pollutant gases

Directive 2000/25 concerns requirements applicable to emissions from agriculture or forestry tractors. They particularly concern the definition of the type approval procedures by type of engine intended to be fitted to tractors, and also the definition of type approval procedures by type of vehicle from the point of view of emission pollutants.

4. CO_2 emissions from new passenger cars

Decision 1753/2000 established a new scheme to monitor the average specific emissions of CO_2 from new passenger cars, with the aim of measuring the effectiveness of EU Strategy to reduce such CO2 emissions. The Commission reports regularly on the effectiveness of this strategy (see COM(2002) 693).

C. Industry

1. Pollution from large combustion plants

Directive 2001/80 applies to combustion plants with a rated thermal input equal to or greater than 50 MW, irrespective of the type of fuel used. The aim of the Directive is gradually to reduce the annual emissions of sulphur dioxide and oxides of nitrogen from existing plants and to lay down emission limit values for sulphur dioxide, nitrogen oxides and dust for new plants.

2. Volatile organic compounds (VOCs)

Directive 1999/13, on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations is part of the global strategy to reduce pollution. It complements the Auto-oil programme by combating emissions of organic solvents from stationary commercial and industrial sources, and the 1994 Directive on volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution chain.

3. Integrated pollution prevention and control (IPPC)

The IPPC-framework Directive 96/61 concerns highly polluting industrial activities as defined in Annex I (energy industries, production and processing of metals, mineral industry, chemical industry, and waste management). It defines the basic obligations to be met by all the industrial installations concerned, whether new or existing. These basic obligations cover a list of measures for preventing the pollution of water, air and soil by industrial effluent and other waste. They serve as the basis for drawing up operating licences or permits for industrial installations.

D. Biosphere

1. Management and quality of ambient-air

Council Directive 96/62, provided for in the Fifth Environmental Action Programme, sets out the basic principles of a common strategy for establishing ambient air quality objectives with a view to reducing or preventing harmful effects on the environment and health and aims:

- to establish quality objectives for ambient air;
- to draw up common methods and criteria for assessing air quality;
- to obtain and disseminate information on air quality.

The Air Quality framework Directive 96/62 is supplemented by the following Directives related to specific pollutants:

a. Sulphur dioxide, nitrogen dioxide and nitrogen oxides, particulates and lead in the ambient air

Directive 1999/30 is the first “daughter” of Directive 96/62 to assess concentrations of these substances on the basis of common methods and criteria, obtain adequate information and to ensure that it is made available to the public and to maintain ambient air quality where it is good and improve it in other cases.

b. Benzene and carbon monoxide

Directive 2000/69, the second “daughter” Directive, supplements 96/62 by introducing specific limit values for benzene and carbon monoxide.

c. Ozone

Directive 2002/3 is the third “daughter” Directive of the Air Quality Framework Directive (96/62). The mechanism relates to concentrations of ozone in ambient air and the provision of adequate public information on these concentrations. It establishes an information threshold,

an alert threshold (higher than the information threshold), target values and long-term aims with a view to preventing or reducing the harmful effects of ozone on human health and the environment.

2. Clean Air for Europe (CAFE) Programme

The Clean Air for Europe (CAFE) programme (COM(2001) 245) will lead to an integrated strategy to effectively combat air pollution by 2004. This is also the first of the thematic strategies announced in the Commission's proposals for the 6th Environmental Action Programme. Recent studies, such as the ones carried out under the Auto-Oil II Programme, have revealed the considerable success that air quality policy has already had in reducing emissions to the benefit of human health and the environment, but more needs to be done.

3. National emission ceilings for certain atmospheric pollutants

Directive 2001/81 is part of the follow-up to the Commission Communication on a strategy to combat acidification (COM(97) 88 final), which sought to establish for the first time national emission ceilings for four pollutants - sulphur dioxide (SO_2), nitrogen oxide (NO_x), volatile organic compounds (VOC) and ammonia (NH_2) - causing acidification, eutrophication and tropospheric ozone formation.

4. Monitoring

a. Measures to monitor and limit the concentration of lead and nitrogen dioxide in the air

- Directive 82/884 amended by 90/656 and Directive 91/692 on a limit value for lead in the air.
- Directive 85/203 on air quality standards for nitrogen dioxide

b. Measures to monitor greenhouse gas emissions

An effective monitoring mechanism is of crucial importance for assessing progress in meeting the targets of the Kyoto Protocol. Council Decision 93/389 amended by 99/296, establishes a mechanism designed to monitor in the member states all anthropogenic greenhouse gas emissions not controlled by the Montreal Protocol and evaluate progress made in this field to ensure compliance with the EU's commitments under the UN Framework Convention on Climate Change (Unfccc) and under the Kyoto Protocol.

The EU is, however, considering enhancing its monitoring capabilities, notably through information technologies and satellite observation systems. In particular, monitoring systems attuned to changes in carbon sources and sinks need to be developed.

5. Kyoto Protocol on climate change

Council Decision 2002/358 adopted the decision on EU ratification of the Kyoto Protocol to the UN Framework Convention on Climate Change. Member states had to ratify or approve simultaneously with the EU and the other participating states not later than 1 June 2002. Under the Kyoto Protocol, concluded in 1997, contracting parties committed themselves to reducing the six greenhouse gases responsible for climate change: Carbon Dioxide, Methane, Nitrous Oxide, Hydrofluorcarbons, Perfluorcarbons and Sulphur Hexafluoride. The EU committed itself to achieving an overall reduction of 8% of CO_2 emissions in the 2008-12 period as compared with 1990 levels. For the protocol to enter force, it has to be ratified by 55 contracting parties, accounting for 55% of total CO_2 emissions in 1990. The EU and member states will fulfil their commitments jointly. The emission levels given are a translation of the figures of the "Burden Sharing Agreement" as a percentage of the base year or period. The quantified emission limitation and reduction commitment agreed by the EU and its member states for the purpose of determining the respective emission levels allocated to each of them for the first quantified emission limitation and reduction commitment period from 2008-2018 are set out in Annex II. These commitments are as follows: Belgium 92.5%; Denmark 79%; Germany 79%; Greece 125%; Spain 115%; France 100%; Ireland 113%; Italy 93.5%; Luxembourg 72%; Netherlands 94%; Austria 87%; Portugal 127%; Finland 100%; Sweden 104% and the United Kingdom 87.5%.

At the end of 2003 a decision concerning a monitoring mechanism of EU greenhouse gas emissions and the implementation of the Kyoto Protocol is still pending (to revise Decision 93/389, amended by 99/296; see: COM(2003) 51; vote EP: 21 October 2003; see also COM(2003) 735).

With the European Climate Change Programme (ECCP) (see COM(2000) 88 and COM(2001) 580) the process towards reduction of greenhouse gases will be supported.

6. Greenhouse gas emissions trading scheme

Directive 2003/87 amending 96/61, established a greenhouse gas emission allowance trading scheme in the EU in order to allow the EU to meet its obligations under the United Nations Framework Convention on Climate Change and the Kyoto Protocol. While seeking an overall reduction in greenhouse emissions, it also aims to ensure the proper functioning of the internal market and prevent any distortions of competition which might result from the establishment of separate national trading schemes. The first phase covers the period between 2005 and 2007. The Kyoto Protocol's first commitment period from 2008 to 2012 corresponds to the second phase of the EU scheme, which will start in 2005 and in a first phase cover CO_2 emissions from large industrial and energy activities. These are estimated to account for 46% of the EU's CO_2 emission in 2010, and about 4 000 to 5 000 installations across the EU will be affected. In 2004, the Commission will consider an extension of the Directive to other sectors and greenhouse gases. Each installation covered by the Directive will have to apply to the competent member state authority for a permit to emit greenhouse gases. The procedure shall be fully co-ordinated with that under Directive 96/61 on Integrated Pollution Prevention and Control (IPPC) to avoid unnecessary bureaucracy. On the basis of the permits, member states shall allocate emission allowances to each installation every year. With the proposed "Linking Directive" (COM(2003) 403) the EU emissions trading system should be linked with the other Kyoto Flexible Mechanisms: Joint Implementation (JI) and the Clean Development Mechanisms (CDM) the

aim being to combat climate change globally by allowing European companies to carry out emissions-curbing projects around the world and convert the credits earned into emission allowances under the EU emissions trading scheme.The core element of this proposal is to provide the recognition of JI and CDM credits as equivalent to EU emission allowances for their use within the EU scheme.

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 and played a leading and active role in the long discussion between Parliament, Commission and Council concerning EU policy on climate change and especially emissions trading.

WATER PROTECTION AND MANAGEMENT

LEGAL BASIS AND OBJECTIVES

*4.9.1.

ACHIEVEMENTS

1. Framework Directive in the field of Water Policy

The objective of Framework Directive (2000/60) is to establish an EU framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater, in order to prevent and reduce pollution, promote sustainable water use, protect the aquatic environment, improve the status of aquatic ecosystems and mitigate the effects of floods and droughts. By December 2003 member states had to identify all the river basins lying within their national territory and assign them to individual river basin districts. River basins covering the territory of more than one member state are assigned to an international river basin district.

By 2007 member states must complete an analysis of the characteristics of each river basin district, a review of the impact of human activity on the water, an economic analysis of water use and a register of areas requiring special protection. All bodies of water used for the abstraction of water intended for human consumption providing more than 10 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.

The above-mentioned objectives have to be achieved at the latest fifteen years after the date of entry into force of the Directive, but this deadline may be extended or relaxed in certain conditions.

By 2010, Member States must ensure that water pricing policies provide adequate incentives for users to use water resources efficiently and that the various economic sectors contribute to the recovery of the costs of water services including those relating to the environment and resources.

By 2012 at the latest and every six years thereafter, the Commission will publish a report on the implementation of the Directive and will will convene where appropriate a conference of interested parties on EU water policy involving member states, representatives from competent authorities, the EP, NGOs, social and economic partners, consumer bodies, academics and other experts.

Decision 2455/2001 added Annex X to the framework Directive. This ranks in order of priority the substances for which quality standards and emission control measures will be set.

2. EU International agreements

a. Helsinki Convention: trans-boundary watercourses and international lakes

Signed on behalf of the EU in Helsinki in1992.

b. Convention for the Protection of the Rhine

The EU signed the new Convention in April 1999 in Bern.

c. Danube - Black Sea region

Environmental cooperation in the Danube - Black Sea region (COM (2001) 615). With enlargement, many of the Danube countries will become members of the EU and the Black Sea will ultimately become a coastal area of the EU. As the environmental situation in the region is extremely critical, a strategy is required to rectify it.

d. Barcelona Convention on the protection of the Mediterranean

Today, 20 Mediterranean coastal States and the EU are the Contracting Parties to the Barcelona Convention, signed in 1976 by all member states. In 1995, amendments to the Convention established the Precautionary Principle and set as a new and ultimate target the full elimination of pollution sources. The most significant aspect of the Barcelona Convention and the Mediterranean Action Plan are its six Protocols, dealing, for example, with pollution from ships and aircraft, pollution from land-based sources, pollution by transboundary movements of hazardous wastes and their disposal and Mediterranean specially protected areas. When enough member states have ratified the Convention, these protocols become binding in International Law.

e. Helsinki Convention on the protection of the Baltic Sea

The Convention, signed in March 1974 by all states bordering the Baltic is intended to abate pollution of the Baltic Sea area caused by discharges through rivers, estuaries, outfalls and pipelines, dumping and normal operations of vessels as well as through airborne pollutants. The Convention entered into force in 1980.

f. Paris Convention on the protection of the marine environment of the North- East Atlantic

This convention was signed in Paris on 22 September 1992. The Parties to the Convention must observe two principles: the Precautionary Principle and the Polluter Pays principle.

3. Specific measures for marine pollution

a. Accidental marine pollution

EU action on accidental marine pollution has been based on the following three principles since 1978: action programmes on the control and reduction of pollution caused by hydrocarbons discharged at sea, EU Information Systems, and Task Forces composed of experts from the Member States who are called on to furnish practical assistance in the event of accidental marine pollution. Decision 2850/2000 is designed to improve these three elements and integrate them into a single framework for cooperation, covering the period from 1 January 2000 to 31 December 2006.

b. Compensation for oil pollution damage occurring in European waters

A compensation fund for oil pollution in European waters (the “COPE Fund”) is being set up to provide

compensation to any person entitled to compensation for pollution damages, but has been unable to obtain full compensation under the international regime due to insufficient compensation limits. The member states must lay down a system of financial penalties to be imposed on any person involved in the transport of oil by sea convicted of grossly negligent behaviour.

4. Quality of Water

a. Intended for Human comsumption

As groundwater supplies 75% of the EU's drinking water, pollution from industry, waste dumps and nitrates from the agricultural sector is a serious health risk. It is estimated that 800 000 people in France, 850 000 in the UK and 2.5 million in Germany are drinking water with nitrate concentrations above the permitted EU limit (Directive 75/440 on the quality required of surface water intended for the abstraction of drinking water, as last amended by Directive 91/692). Following Commission proposals for the extensive modification of the legislation on the quality of water intended for human consumption, Directive 98/83 adapted Directive 80/778 to scientific and technological progress and reduced the limit value on lead from 50 to 10 micrograms/litre. It was claimed that this would have particularly serious financial implications because of the pipes that would need to be replaced.

Given that many of the pollutants washed out of the soil over the past decade have not yet reached the water table, it will take between 25 and 50 years for groundwater nitrate levels in the watersheds of the Netherlands, Belgium, Denmark and Germany to fall to an acceptable figure, in accordance with the drinking water directive, despite recent cuts in the use of fertilisers in some member states.

b. Intended for Bathing Water

The "Bathing Water"-Directive (76/160, last amended by 91/692) concerns the quality of bathing water (with the exception of water intended for therapeutic purposes and water used in swimming pools) and lays down minimum quality criteria (physical, chemical and microbiological parameters). The FEEE (Foundation for Environmental Education in Europe), a private organisation which receives support from the Commission, organises an annual 'blue flag' campaign. Any bathing beach awarded a blue flag does not pose a health risk to bathers, as it has to satisfy all the criteria listed in the Annex to the "Bathing Directive". Protection of bathing waters has been one of the most successful elements of EU Water Policy, resulting in unprecedented public awareness. Thus, the Commission presented in 2003 a proposal to revise the "Bathing Water" Directive in the light of changes in science and technology and managerial experience..

c. 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: Directive 79/923 on the quality required of shellfish waters and 78/659 on the quality of fresh waters needing protection or improvement in order to support fish life.

d. Urban Waste Water Treatment

Directive 91/271 concerning urban waste water treatment (amended by 98/15) covers urban waste water treatment. Aid under the Structural Funds and the Cohesion Fund may be allocated for the investment required to comply with the Directive. The Commission also intends to increase its support to small and medium-sized agglomerations affected by the deadline of 31 December 2005 as well as to the candidate countries, for which the implementation of the Directive represents a major challenge.

5. Discharges of substances

Nitrates

The protection of waters against pollution caused by nitrates from agricultural sources is laid down by Directive 91/676. As established in the last report of the Commission (COM(2002)407), the monitoring networks indicate that over 20% of groundwater in the EU and between 30 and 40% of lakes and rivers are showing excessive nitrate concentrations. Nitrogen from agricultural sources accounts for between 50 and 80% of the nitrates entering Europe's water. The impact of the Directive's implementation will only be felt in a few years' time, though positive results are already starting to be seen in some regions.

Dangerous substances

Regarding dangerous substances discharged into the aquatic environment by industrial plants, EU legislation has introduced a system of stricter limit values, 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 complied with. The 'basic directive' 76/464 contains a blacklist of 129 substances declared dangerous by virtue of their toxicity and bio-accumulation. It was supplemented by Directive 80/68 on the protection of groundwater against pollution caused by certain dangerous substances. Pursuant to these directives, specific directives were introduced prescribing limit values and quality objectives for the discharge of cadmium, hexachlorocyclohexane (HCH) and mercury. The Directive on reduction and eventual elimination of pollution caused by waste from the titanium dioxide industry (89/428) was adopted in June 1989. This directive prohibits the discharge into any waters of the most dangerous waste, in particular solid and strong acid waste from older industrial plants, after 31 December 1989.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has frequently taken the initiative in the field of water protection. In addition to the situation in general, it is concerned with the serious environmental damage caused by oil spills from ships.

In January 2000, after the oil slick disaster caused by the wreck of *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)0769), but insisted that this decision should be taken as quickly as possible in order to create the optimum conditions to manage crises such as the *Erika*.

Concerning the framework directive on water policy, the EP urged an effective, coherent, integrated policy on water which would take account of the vulnerability of aquatic ecosystems near coasts and estuaries; the EP set four objectives: coordination of member states' initiatives, charges for water use, programme of measures for the member states and exemptions.

NATURE PROTECTION AND BIODIVERSITY

LEGAL BASIS AND OBJECTIVES

*4.9.1.

ACHIEVEMENTS

1. General

The EU and its member states have played an important international role in seeking solutions to global problems such as climate change and the destruction of the tropical rainforests. The United Nations Conference on the Environment and Development (UNCED), held in Rio de Janeiro in June 1992, was of major importance for environmental policy. It ended with the adoption of the Framework Convention on Climate Change, the Biological Diversity Convention, both of which are new treaties in international law, the Rio Declaration, a Statement of Forest Principles and the 'Agenda 21' programme.

2. Biodiversity action plans

In 2002 Council adopted 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.

3. Sectoral action

a. Conservation of natural habitats and of wild fauna and flora

Directive 92/43 ("Habitat Directive") on the conservation of natural habitats and of wild fauna and flora (amended by 97/62) established a European ecological network known as "Natura 2000". The network comprises "special conservation areas" designated by member states in accordance with the Directive, and special protection areas classified pursuant to Directive 79/409 (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.

b. International conventions for the protection of fauna and flora

The EU is a party to the following international conventions, among others:

- the Bonn Convention of 23 June 1979 on the protection of migratory species of wild fauna;
- the Berne Convention on the protection of European wildlife and natural habitats;
- the Washington Convention (CITES) of 3 March 1973 on International Trade in Endangered Species of Wild Fauna and Flora;
- the Rio de Janeiro Convention on biological diversity.

For many years there has been a substantial loss of biological diversity due to human activities (pollution, deforestation, etc.). The UNEP estimates that up to 24% of species belonging to groups such as butterflies, birds and mammals have completely disappeared from the territory of certain European countries.

The Convention on Biological Diversity was signed by the EU and all the member states at the United Nations Conference on Environment and Development in Rio de Janeiro from 3 to 14 June 1992 anticipating, preventing and attacking the causes of significant reduction or loss of biological diversity at source.

c. Fauna and Flora

The basic Regulation 338/97 on the protection of species of wild fauna and flora by regulating trade therein, applies in compliance with the objectives, principles and provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The species covered by the Regulation are listed in four annexes.

Other Directives concerning Fauna and Flora protection are:

- Directive 1999/22 which sets minimum standards for housing and caring for animals in zoos and reinforces the role of zoos in conserving biodiversity while retaining a role in education and scientific research.
- Directive 86/609, adopted by the Council in November 1986, following an EP Resolution on limiting animal experiments and on the protection of laboratory animals, in which it called for a limitation on animal experiments if similar results could be obtained by other methods and if the results were stored in a central European data bank.

Acts concerning Marine Fauna are:

- Regulation 348/81 on common rules for imports of whale or other cetacean products restricting imports into the EU of cetacean products.
- Decision 1999/337 on the signature by the EU of the agreement on the International Dolphin Conservation Programme to help reduce incidental dolphin mortality during tuna fishing.

The Council adopted Regulation 3254/91 banning the use of leghold traps in the EU and the import into the EU of pelts and manufactured goods of certain wild species originating in countries which allow leghold traps or trapping methods which do not meet international humane trapping standards. However, the Commission failed to come to an agreement, as required in the Regulation, on humane trapping methods with the countries where leghold traps are used (Canada and Russia). In its Resolution of 21 February 1997 the EP severely criticised the Commission and, in agreement with the Council of Environment Ministers, called for a ban on imports of the skins of animals caught with leghold traps to be introduced not later than 31 March 1997.

d. Forests

There are several measures aimed at the protection of forests:

- EU scheme to protect forests against fire;
- EU scheme to protect forests against atmospheric pollution by fostering the monitoring and study of forest ecosystems;
- measures to promote the conservation and sustainable management of tropical forests and other forests in developing countries;
- establishing a European Forestry Information and Communication System (EFICS) to set up a system to collect, coordinate, standardize, process and disseminate information concerning the forestry sector and its development.

The Council adopted Regulation 3062/95 on operations to promote tropical rainforests, intended to preserve the biological diversity of tropical forests and ecosystems by making financial and technical aid available to the developing countries concerned, and by securing the active participation of local people.

In 2002 Regulations 3528/86 and 2158/92 on the protection of the EU's forests against atmospheric pollution and fire respectively were amended.

e. Genetically modified organisms (GMOs)

The main objective of the basic Directive 90/219 was to lay down common measures for the contained use of genetically modified micro-organisms for the purposes of protecting human health and the environment.

Member states are required to regulate the contained use of genetically modified micro-organisms in order to minimise their potential negative effects on human health and the environment, as micro-organisms released in the environment of one member state in the course of their contained use may spread into other member states.

The Directive classifies genetically modified micro-organisms into two groups according to the level of hazard.

Directive 2001/18 introduced a new regulatory system, more efficient and transparent than that established by Directive 90/220 on the deliberate release into the environment of genetically modified organisms. In addition, in 2001, the Council adopted Decision 2001/204 supplementing Directive 90/219 as regards the criteria for establishing the safety, for human health and the environment, of types of genetically modified micro-organisms.

Regulation 1829/2003 lays down procedures for the authorisation, supervision and labelling of genetically modified food and feed and aims to guarantee a high level of protection for human life and health, animal health, the environment and consumers' interests while ensuring that the internal market functions properly. It also establishes transparent procedures to assess, authorise and monitor genetically modified food and feed and a system for the labelling of genetically modified food and feed.

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.

INDUSTRIAL RISKS: DANGEROUS SUBSTANCES AND TECHNOLOGIES

LEGAL BASIS AND OBJECTIVES

*4.9.1.

ACHIEVEMENTS

A. Dangerous substances

1. Classification and labelling

a. Before an environmental policy had even been defined, in 1967 the Council adopted **Directive 67/548** on the classification, packaging and labelling of dangerous substances, last amended by Directive 98/98. These measures aimed to achieve the following objectives:

- to guarantee adequate protection for humans and the environment against the potential risks of chemical substances;
- to introduce a uniform notification procedure for new chemical substances and provisions on packaging and temporary labelling for dangerous substances;
- to introduce an environmental hazard mark;
- to reduce as far as possible the number of experiments on animals.

The Directive creates a single 'gateway' through which all new chemical substances must pass before entering the EU market. It obliges manufacturers and importers to label chemical substances with information indicating the quantities manufactured, uses, safety precautions, the results of toxicological and environmental pollution tests and the possibilities of 'neutralising' the substance. More stringent tests are necessary for substances for which production figures exceed 100 tonnes per year or a total of 500 tonnes and for substances for which marketing figures exceed 1 000 tonnes per year or a total of 5 000 tonnes.

These rules apply to all chemical substances marketed in the EU for the first time after 10 September 1981. The Directive also provides for the classification and labelling of existing chemical substances. All substances, which were on the market between 1 January 1971 and 18 September 1981, are listed in the European Inventory of Existing Commercial Chemical Substances (Einecs). This inventory, which contains more than 100 000 chemical substances is unique. To date 2 500 of these substances have been shown to be dangerous and classified and labelled accordingly. Of the remaining substances, a further 20 000 are probably also dangerous. However, analysis and assessment of all substances will probably take a few more years.

b. The aim of **Regulation 793/93** on the evaluation and control of the risks of existing substances is to permit the systematic evaluation at EU level of the risks posed by the substances listed in the Einecs (Regulation 1488/94 established the appropriate principles for such an evaluation).

c. **Directive 94/48**, which emerged from the 1990-1994 action plan and the 'Europe against Cancer' programme, aims to restrict the marketing and use of carcinogenic and mutagenic substances and those causing birth defects, and of certain aliphatic chlorinated hydrocarbons and coal-tar oils.

2. Restrictions on use

The EU has restricted the use of other dangerous substances and preparations by Directive 76/769, last amended by Directive 99/43.

a. PCBs and PCTs

Polychlorinated biphenyls (PCBs) and terphenyls (PCTs), used as components in electrical transformers, can turn into dioxin if a fire breaks out (as at Seveso). Directive 96/59 on the elimination of PCBs and PCTs aims to harmonise national rules on the controlled disposal of PCBs, decontamination or disposal of equipment containing PCBs and/or the disposal of used PCBs, in order to eliminate them completely.

b. PCPs

Directive 91/173 restricted the use of pentachlorophenol (PCP), since this substance, which is used in wood preservatives among other things, is considered to be a carcinogen. In a judgement of the Court of Justice , the Federal Republic of Germany, which had set a limit value for PCP of 0.01% before this directive was adopted, was forbidden - at the request of France - to set a more stringent national limit value than that established in the Directive, after the Commission had earlier approved an exemption pursuant to Article 100a(4) of the Treaty.

c. Asbestos

The fifth amendment to Directive 76/769 defined asbestos as a dangerous substance within the meaning of the original directive. Directive 91/382 was intended to protect workers against the dangers of asbestos, and Directive 91/659, adapting Annex I of Directive 76/769, aims to restrict still further its marketing and use.

d. Pesticides

Two measures apply to plant protection products. The first (Directive 76/895) is based on Article 43 of the Treaty relating to the CAP and lays down maximum levels for pesticide residues in and on fruit and vegetables. The second measure (Directive 79/117), relating to the harmonisation of legislation, is intended to prohibit the sale and use of plant protection products containing certain active substances. The annex to the Directive lists the categories of prohibited products, i.e. mercury compounds and persistent organochlorine compounds (aldrin, dieldrin, chlordane, endrin, DDT, etc). The annex is constantly updated on the basis of the latest scientific and technological findings. A new Directive (91/414) of 15 July 1991 on the placing of plant protection products on the market (last amended by Directive 99/1) aims to create uniform conditions for the authorisation of pesticides and to establish an authorisation procedure. It complements provisions on classification, packaging and labelling.

e. Marketing of biocides

Directive 98/8 on the use of all biocides other than in agriculture covers the full range of biocides, from wood preservatives and disinfectants to rat-poison and anti-mould coatings. These substances are authorised only if they appear in a positive list. Pursuant to the mutual recognition principle, a substance authorised in one member state may be used throughout the EU.

f. Detergents

In 1973 two Directives were adopted, one prescribing the average rate of biodegradability for surfactants (Directive 73/405 last amended by Directive 86/94), the other relating to methods of testing the biodegradability of anionic surfactants (Directive 73/404 last amended by Directive 82/243). These measures aim to prevent the large-scale formation of foam which limits air-water contact and so jeopardises the photosynthesis vital to aquatic flora.

B. The risk of major accidents associated with certain industrial processes

1. Major accidents: Seveso Directives

After the accident at Seveso, the EU took steps to prevent major accidents and to limit their consequences.

a. Directive 82/501, 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.

b. Directive 88/610 extended the original Directive's scope to 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.

c. The **Seveso II Directive 96/82** replaced the original Seveso Directive 82/501. 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 Transboundary Effects of Industrial Accidents of the United Nations Economic Commission for Europe.

d. The Seveso II Directive was amended by **Directive 2003/105**. In view of recent industrial accidents (Netherlands, France, Romania) the amended Directive provides for an obligation on industrial operators to put into effect Safety Management Systems, including a detailed risk assessment using possible accident scenarios.

2. Chemical products

The objective of the White Paper COM(2001) 88 is to develop a strategy for a future chemicals policy promoting sustainable development. Although EU legislation already prohibits some harmful chemicals (asbestos, for example), there are gaps w.r.t. existing chemical substances. There is a lack of information on the effects of many existing substances placed on the market prior to 1981, when the requirement for the testing and notification of new substances was introduced. Such substances account for approximately 99% of the total volume of substances available on the market and, although the Commission has initiated an assessment of these substances, it is a lengthy process and does not subject existing substances to the same stringent test criteria as new substances. In view of concerns about the harmful effects of chemical substances on human health and the environment, the Commission considers that a strategy must be developed to guarantee the protection of human health and the environment in a context of sustainable development.

The White Paper refers to four current EU legal instruments on chemicals: on the marketing and use of certain dangerous substances and preparations, the classification, packaging and labelling of dangerous substances and of preparations and the evaluation and control of the risks of existing substances. The objectives are in line with the overriding goal of sustainable development and seek to make the chemical industry accept more responsibility while respecting the precautionary principle and safeguarding the single market and the competitiveness of European industry. An important part of future chemicals policy is the REACH-system (Registration, Evaluation, Authorisation and Restrictions of Chemicals) -for both existing and new substances covering all phases of the procedure. There is an eleven-year transition period for existing substances to be assimilated into the new system. A specific timetable and taskforce exist to assess the data which already exists. The proposed measures will be in accordance with worldwide initiatives to promote the safe use of chemicals. There are several international organisations in this field (the Intergovernmental Forum on Chemical Safety (IFCS)) and many international treaties, such as, for example, the OSPAR Convention for the Protection of the Marine Environment of the North East Atlantic and the Rotterdam Convention on the prior informed consent (PIC) procedure for certain hazardous chemicals and pesticides in international trade.

3. Test on Chemical Substances

a. Directive 87/18 on **good laboratory practice** and its application for tests on chemical substances will be replaced with a new Directive as part of the project to codify and clarify EU legislation.

b. Directive 88/320 of 9 June 1988 on the **inspection and verification** of Good Laboratory Practice is intended to harmonize national laws in this area.

4. Biocide products on the market

Directive 98/8 established a regulatory framework for placing biocides on the market while ensuring a high level of protection for man and the environment. The Directive provides for mutual recognition of authorisations within the EU and the establishment of a list of active substances which may be used in biocidal products.

C. Biotechnology

In 1990 the Council adopted Directives 90/219 and 90/220 (both amended in 1994) on, respectively, the contained use of genetically modified micro-organisms and the deliberate release into the environment of genetically modified organisms. Measures to control the contained use of genetically modified micro-organisms (GMOs) (e.g. in research and development) have been drawn up on the basis of the first Directive. These include a notification system, the implementation of specific containment measures depending on the type of micro-organism and the nature of the activity and measures relating to accidents and waste management. Regulation 258/97 on novel foods and novel food ingredients was adopted after a long process of conciliation. Agreement was reached on compulsory Europe-wide labelling of foods and food ingredients containing GMOs, which may not be marketed unless authorized and proven harmless. (*also 4.9.8.)

D. Export and import of dangerous substances

Regulation 1492/96 on the export from and import into the EU of certain dangerous chemicals provides for a single notification procedure and information system on the import and export of such chemicals and lists notifiable substances.

ROLE OF THE EUROPEAN PARLIAMENT

The EP played a leading and active role in the long discussions with Commission and Council concerning the new Seveso II Directive 2003/105 (to train for emergencies; inform the public - and map areas that might be affected by the consequences of major accidents). In the ongoing discussion concerning the future of chemicals policy in the EU the EP is trying to find a compromise between the diverging positions of the Commission and industry.

Parliament has strongly criticised the Commission, in particular for having authorised the marketing of genetically modified maize despite the reservations expressed by some scientists and despite the opposition shown by 13 of the 15 Member States to marketing this type of maize (cf in particular the Resolution adopted on 8 April 1997).

Austria and Luxembourg have since adopted measures under Article 16 of Directive 90/220 to prohibit the marketing of genetically modified maize.

INTEGRATED PRODUCT POLICY

LEGAL BASIS AND OBJECTIVES

*4.9.1.

ACHIEVEMENTS

The Green Paper (COM(2001) 68) on Integrated Product Policy (IPP) presented a strategy to develop a market for greener products and stimulate public discussion. In principle, all products and services fall within the scope of the proposed strategy, which calls for the involvement of all parties at all levels throughout the product life cycle and for the promotion of environmentally friendly products by manufacturers and distributors. Consumers should preferably choose green products and use them to prolong their shelf life and reduce their impact on the environment. NGOs could play a role in creating environmentally-friendly products. The IPP strategy focuses on the application of the polluter pays principle in fixing the prices of products, informed consumer choice and eco-design of products.

1. Fixing the prices of products

The environmental performance of products can best be optimised by the market once all prices reflect their true environmental costs. 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.

Thus the Green Paper advocates differentiated taxation as a means of implementing the polluter pays principle according to the environmental performance of products, e.g. the application of lower VAT rates to products carrying the eco-label or the introduction of other environmental taxes and charges.

2. Informed consumer choice

The Green Paper sees education of consumers (including children) and companies as an important way of promoting demand for more environmentally friendly products. Another way of ensuring informed consumer choice consists in providing consumers with understandable, relevant and credible technical information either through product labelling or other accessible sources of information. 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. Already, the European eco-label represents a source of information for consumers, but its scope needs to be widened to take in a broader range of products. Public funding of this kind of eco-labelling should be increased, both at European and at national level.

3. Eco-design of products

To extend eco-design across a broader range of products, information on the environmental impact of products throughout their life cycle should be published. 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 in the design process could be used as instruments for the promotion of the life cycle concept within companies.

4. Other instruments

The eco-management and environmental audit schemes, such as the EMAS systems, are important instruments in the quest to ascertain and control the effects of products on the environment. They have a potential role to play in the promotion of IPP. Other EU instruments, such as the research and development programmes and LIFE are listed as instruments that could help to promote IPP. To this end, it would be desirable to include IPP in the EU 6th Framework Research Programme.

ROLE OF THE EUROPEAN PARLIAMENT

The strategy of integrated product policy - as developed in the Green Paper - is fully in line with the objectives and ideas of the EP, which has stressed the need for environmental criteria to be incorporated in government procurement procedures. However the EP felt 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, the directive on packing etc.. and regretted the lack of clear objectives, timetables and methods and indicators for monitoring IPP.

CONSUMER POLICY: PRINCIPLES AND INSTRUMENTS

LEGAL BASIS

The ECT now recognises consumer policy in its own right. Article 153 constitutes a legal basis for a complete and diverse 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". The article also requires a stronger integration of consumer interests in other EU policies.

Article 95 emphasises the role of scientific evidence, both at EU and national level, in the evaluation of proposals concerning health, safety, environmental protection and consumer protection measures.

Article 153 strengthens Article 95's limited application and broadens its remit beyond single market issues to include access to goods and services and to the courts, quality of public services, and aspects of nutrition, food, housing and health policy. It states also that action adopted shall not prevent any Member State from maintaining or introducing more stringent measures as long as they are compatible with the Treaty.

OBJECTIVES

Five internationally accepted basic consumer rights are recognised by the European Union:

- the right to protection of health and safety;
- the right to protection of financial interests;
- the right to protection of legal interests;
- the right to representation and participation;
- the right to information and education.

Translating these rights from paper into practice has principally focused on two areas:

1. Information

The ability of the consumer for self-protection is directly linked to knowledge. Improving the standards of information on consumer products is therefore imperative, more so now than ever before, given the advent of the Information Age. Broad policy lines include the transparency of product information, the development of consumer information services and increased comparative testing of products.

2. Purchasing

Policy development has been based on the principle that the purchaser should be able to: assess the basic features (nature, quality, quantity, price) of the goods and services on offer so as to make a rational choice between competing products and services; use these goods and services safely and satisfactorily; claim redress for any injury or damage resulting from the product supplied or the service received.

Following the completion of the single market, consumer policy objectives have shifted to address the EU's new major goals: European Monetary Union, sustainable patterns of development and consumption, and enlargement to the East.

ACHIEVEMENTS

1. General

EU action in favour of consumers has taken the form of a series of action plans, beginning in 1975. The most recent sets out the Commission's strategy for consumer policy at European level from 2002-2006. It sets out three mid-term objectives, implemented through actions in a short-term rolling programme, which will be regularly reviewed through a working document of the Commission. The three objectives are:

- a high common level of consumer protection;
- effective enforcement of consumer protection rules;
- involvement of consumer organisations in EU policies.

The three objectives are designed to help achieve integration of consumer concerns into all EU policy areas, to maximise the benefits of the single market for consumers and to prepare for enlargement.

2. Institutional development

In 1995 the autonomous Consumer Policy Service became a full Directorate-General now known as SANCO, which is advised on formulating the various EU policies by the Consumer Committee, composed of 20 members (one from each Member State and five representatives of European consumer organisations). Among SANCO's tasks is that of producing an annual report on the integration of consumer concerns into other policy areas. SANCO's input into all stages of the decision-making process has been most noted in legislative proposals concerning agriculture, health, public and financial services, information technology, motor vehicles, and international trade.

3. Consumer groups

There is still insufficient coordination and commonality of purpose between national consumer groups, as well as wide differences in their efficacy and influence. However, the situation is improving as trans-frontier purchases of goods and services increase following the completion of the single market and the adoption of the Euro by 11 EU member states. In addition, EURO COOP (a consumer cooperative organisation) provides a European platform for consumer interests.

4. Consumer education

The EU has made provision for consumer education in primary and secondary schools and the gradual inclusion of consumer education in school syllabuses. The

Commission has also piloted teacher-training schemes in schools.

5. Consumer information

The EU has set up **European Consumer Information Centres** in areas where cross-frontier purchase is significant. These centres provide information concerning the internal market and consumers, and have reinforced the link between national consumer organisations and the EU. The Commission also publishes a practical guide for consumers detailing consumer policy developments, and explaining what protection is available on matters such as product safety, doorstep selling and foodstuffs.

ROLE OF THE EUROPEAN PARLIAMENT

1. General

Pressure exerted by the European Parliament for consumer concerns to be dealt with comprehensively by the other EU institutions has been strong and persistent. As long ago as November 1967 an MEP's written question first pushed the Commission to address the issue. The first direct elections in 1979 led to consumer affairs being pushed (with the help of consumer groups' lobbying) higher on Parliament's agenda. Sustained pressure from the elected parliament was also to prove the critical element in the Single European Act modifications which shifted consumer protection policy from being a technical harmonisation of standards in furtherance of the internal market, to mutual recognition on the basis of consumer protection, as part of the drive to improve the lot of the consumer in a citizens' Europe. A more active policy resulted under the majority voting system for matters relating to completion of the internal market, including a welter of measures which obliged Member States to ensure more substantial consumer protection. The scientific advisory committees from the DGs for Industry and Agriculture were moved into SANCO and a Scientific Steering Committee was created to bring wider scientific experience and overview into consumer health questions.

The proceedings and advice of the scientific committees are now made public (also on the Internet). This makes it more difficult for the Standing Committees to go against the advice of the Scientific Committees without very good (and public) reason. The changes make the European system of food control much more similar to the US system. The internal market "product warning system" is now a part of SANCO, which is now better off in terms of profile, staff and financial resources.

2. Specific

Some of the many issues addressed by Parliament include:

- the need for a detailed consumer protection policy;
- greater coordination at EU level of the activities of national consumer groups;
- the need for European Consumer Information Centres (first proposed by Parliament).

Parliament has been particularly instrumental in ensuring higher budgetary provisions for the information and education of consumers and for the development of consumer representation in those Member States where such representation is weak. The European Parliament has been particularly active in placing food safety high on the political agenda with its stance against the use of hormones in meat production and enquiry into the BSE crisis. Questions of food safety continue to occupy the public mind. The BSE crisis can now be seen (together with the WTO and enlargement) as the key to radical reform of the CAP - something for which the EU consumer has been waiting a long time.

Finally, the TCE makes the co-decision procedure, in which Parliament has considerably more power, more or less the general rule. In addition, it widens the areas of legislation in which qualified majority voting is used in the Council.

CONSUMER PROTECTION MEASURES

LEGAL BASIS

*4.10.1.

ACHIEVEMENTS

A. Protection of consumers' health and safety

1. General Product Safety Directive (92/59) lays down that manufacturers can only market products which are safe under normal or reasonable conditions of use. Information on the risks of use must also be given.

2. Community System for the Exchange of Information (Council Decision 93/580)

This provides for the rapid exchange of information between Member States on the dangers arising from the use of all consumer products, with the exception of pharmaceuticals and products for professional use. As a result, a number of dangerous products, such as toys, have already been withdrawn from the market.

3. European Home and Leisure Accident Surveillance System (Ehlass) (Council Decision 93/683)

This was established to provide regular information on accidents in the home and during leisure activities, with a view to promoting accident prevention, product safety standards, and priority areas for the regulation and technical harmonisation of specific products. This successful programme is being enlarged to include the proposed accidents and injuries programme in the public health field at the insistence of the European Parliament.

4. Foodstuffs

Regulation 178/2002 lays down the general principles of food law and established the European Food Authority (EFA). The **BSE** crisis and its aftermath had helped push this high up the political agenda.

Also in the WTO context the long-running dispute with the USA over the use of hormones in meat production resurfaced.

In 2002 national rules on Irradiation of foodstuffs were replaced by a complete EU list of the foodstuffs which may be treated on the basis of the 1998 Framework and Implementing directives.

5. Cosmetics

Measures adopted have improved the safety of cosmetic products, as well as protecting consumers by providing for ingredient inventories and more informative labelling.

6. Toys

Basic safety requirements covering mechanical and physical danger, toxicity and flammability are stipulated which all EU and non-EU made toys must meet. The Standardisation Committee (CEN) revises existing standards and develops new ones for various categories of toys (Directive 88/378 as amended).

7. Medicinal products

Since the 1960s, detailed criteria for marketing authorisations, and rules on labelling and wholesale distribution have been frequently amended and enlarged to include immunological medicinal products (sera, vaccines, toxins, allergens etc.), radio- pharmaceuticals, and homeopathic medicines. The advertising of prescription drugs is prohibited. Special provisions promoting especially high standards for medicinal products derived from human blood have been laid down to promote self-sufficiency in the EU supply of blood for transfusion (Directive 89/381 as amended).

8. European Medicines Evaluation Agency

Set up in 1993 this Agency handles the centralised and decentralised procedures for market authorisation of pharmaceutical products, the centralised procedure being mandatory in the case of biotechnology products.

B. Protection of consumers' economic and legal interests

1. Unfair Commercial Practices Directive

The Commission adopted a proposal for a directive on Unfair Commercial Practices on 18th June 2003. Common rules and principles are designed to give consumers the same protection against sharp business practices and rogue traders throughout the EU. The idea is to replace existing multiplicity of national rules with a single set of common ones.

2. Alternative Dispute Resolution (ADR)

The Commission adopted Recommendation 98/257 on the out-of-court settlement of consumer disputes. The Recommendation sets out the principles to be respected by ADR schemes.

3. The sale of goods and guarantees

The Directive on the sale of goods and guarantees of 1999 aims to harmonise those parts of sales contract law that concern legal guarantees (warranties).

4. Injunctions Directive

This directive 98/27 established a common procedure to allow a qualified body from one member-state to seek an injunction in another. The aim is to control traders undertaking activities in one Member State which harm the interests of consumers in another.

5. Packaging and indication of price

The Unit Prices Directive of 1998 obliges most traders to indicate the selling price and the price per unit in order to improve and simplify comparisons of price and quantity between products in the Single Market.

6. Distance selling

Directive 97/7 on distance selling covers contracts negotiated at a distance by new selling techniques via the press and post, television and home computer, fax and telephone. Its provisions had to be incorporated into national legal systems by June 2000.

7. Contract law

The Commission produced an Action Plan in 2003 based on a first round of consultations. The Action Plan proposes three regulatory and non-regulatory measures to introduce a second round of discussions. Actions taken in concert with the existing sector specific approach have the aim of increasing the coherence of the EU "acquis"; promoting EU-wide general contract terms and examining non sector-specific solutions.

8. Doorstep selling

With regard to contracts negotiated away from business premises, the salesperson is required to inform the consumer in writing of their right to cancel the contract within a period of at least seven days (Directive 85/577 as amended).

9. Liability for defective products

The 1985 Directive empowers the consumer to bring proceedings against the producer of a defective product, needing only to prove the damage, the defect in the product, and the causal link between the two. In 1999 a Directive extended the scope of strict liability to unprocessed primary agricultural products.

10. Car prices

The Commission publishes regular surveys of differentials between new car prices in the Member States.

11. Consumer credit

In September 2002 a proposal was adopted for a new consumer credit directive since the credit market has changed significantly since the original directive of 1987. A recommendation of 2001 lays down guidelines for information to be given to consumers regarding home loans.

12. Electronic and cross-border payments

A code of conduct has been drawn up relating to electronic payment and relations between financial institutions, traders, service establishments and consumers. Following the banks' agreement to harmonise transfrontier electronic payment systems, the Commission set down criteria under which banks should provide written information to the client about charges, cease double charging for transfers, and execute transfers within a reasonable time.

13. Advertising

The directives on **comparative and misleading advertising** replaced three different EU regimes with a uniform regulatory framework which permits references to relevant features "on goods or services of the same kind offered by a competitor" in a way that does not mislead nor discredit the competitors.

14. Package holidays

A Directive of 1990 protects consumers who contract package travel in the EU.

15. Airline overbooking and fares

Given the common practice by airlines of overbooking flights, rules have been established for a denied-boarding compensation scheme. The Commission, strongly backed by Parliament is proceeding with deregulation of European airlines, which have some of the highest fares in the world.

16. Timeshare

The Timeshare Directive of 1994 gives timeshare buyers rights throughout the EU.

17. European Consumer Centres (Euroguichets)

The European Consumer Centres Network (ECC Network) is an important interface between the Commission and European consumers. The Network of ECCs initially concentrated on consumer information and consumer support related to cross-border shopping but over time their role has expanded with priority now given to providing consumers with pro-active information on European consumer issues. The Athens ECC, opened in 2003 brings the total to 15 centres in 13 Member States.

ROLE OF THE EUROPEAN PARLIAMENT

The European Parliament has been the driving force behind most of the general safety measures adopted, measures concerning food - in particular a Food Standards Agency and measures concerning the safety of cosmetics, as well as questions related to tourism, unfair contract terms, distance selling, door-to-door sales and the use of hormones in meat and dairy production. The wider international aspect of product safety was underlined in resolutions on exports of various dangerous substances, notably pesticides, and on the need to give greater protection to workers and consumers in the destination countries for EU exports. Certain amendments were made to the Regulation by the Parliament concerning in particular flexibility for traditional food producers and those in remote areas and implementation of the HACCP system.

The Parliament passed a Regulation amending directive 2001/18 on the traceability and labelling of genetically-modified organisms and food and feed products produced from GMOs resulting in controversy with the USA in the context of the WTO. Cases of serious human infection with bacteria such as E-coli and the increasingly common phenomenon of antibiotic-resistant bacteria led Parliament in the spring of 1998 to raise the question of the use of antibiotics in animal feedstuffs either as prophylactics or as fattening aids, since this practice can result in the creation of antibiotic resistant strains of pathogens such as E-coli and salmonella. The European Parliament has been particularly instrumental in phasing out the testing of cosmetic products on animals (Directive 76/768 as amended). The European Medicines Evaluation Agency (EMEA) was set up after many years of pressure from the European Parliament for an EU wide system of market authorisation for pharmaceuticals.

PUBLIC HEALTH

LEGAL BASIS AND OBJECTIVES

1. Historically, EU health policy originated from health and safety provisions, and later developed as a result of free movement of people and goods in the internal market which required coordination in public health. In harmonising measures to create the internal market, a high level of protection formed the basis for proposals in the field of health and safety.

2. Various factors, including the BSE crisis towards the end of the century put health and consumer protection high on the political agenda. As a result, DGXXIV (renamed SANCO) was considerably reinforced.

3. The **ECT**, whilst not introducing an EU health policy, nonetheless takes a number of steps in that direction. Art. 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 includes: "by way of derogation from art. 37" (CAP) "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.

ACHIEVEMENTS

A. Early development

1. Despite the absence of a clear legal basis, public health policy had developed in several areas prior to the current Treaty. These included:

- **medicines.** Legislation introduced since 1965 has sought: high standards in medicine research and manufacturing; harmonisation of national drug licensing procedures; rules on advertising, labelling and distribution;
- **research.** Medical and public health research programmes date back to 1978, on subjects such as age, environment and life-style related health problems, radiation risks, and human genome analysis, with special focus on major diseases;
- **mutual assistance.** In case of disaster, and extremely serious illness.

2. 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 onto 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 after the Maastricht Treaty

In November 1993, the Commission published its 'Communication on the framework for action in the field of public health' which identified eight areas for action.

1. Health promotion

The programme of Community action 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 current 'Europe against Cancer' programme ran until end 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, tobacco smoking, both active and passive. This runs in conjunction with existing EU legislation on tobacco, which includes:

- Council Resolution on banning of smoking in public places (1989);
- two Directives on labelling of tobacco products, with obligatory health warnings as well as tar and nicotine yields, and also banning oral tobacco products (1989, 1992) and the Directive on the maximum tar yield of cigarettes (1990).
- agreement was reached by the Council and Parliament on the text of a new directive to replace 98/43 (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

The only major scourge to be specifically mentioned in the TEU, and recognised in the Commission's Communication as a multi-faceted problem linked to social exclusion and unemployment. The EU set up the European Committee to Combat Drugs (CELAD) in 1990, and the 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 Creutefeld - Jakob.

6. Injury prevention

The 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 the improvement of 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 to identify possible “clusters” as well as encouraging the setting up of support groups.

9. Other Activities

Activities outside the eight programmes 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 as limited in effectiveness because of the dilution caused by its 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 new programme 2003-2009

In May 2000 the Commission put forward its proposal for a new programme to replace the existing 8 programmes by a single integrated horizontal scheme. The long co-decision procedure for the proposal ended successfully and the final Decision was published in October 2002 to come into effect on 1 January 2003 and to run for six years with a budget of €312m.The new programme will focus on key priorities where a real difference can be made. It focuses on three strands of action:

a. Mutual exchange of information

Knowledge about people’s health, health interventions and health system functioning. The inclusion of health system comparisons is a new element here, since this was always considered as 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 regarding the ability of citizens to seek medical help in other Member States have increased the importance of this aspect as has the fact that EU Member States face the same kinds of problems with respect to provision of health services to an increasingly aged population.

b. Strengthening rapid response capacity

The rapid response capacity in the EU for coordinated reactions to major threats to health is now seen as essential, especially in the light of bio-terrorist threat and worldwide epidemics easily transmissible in these days of rapid worldwide transport.

c. Targeting actions to promote health and disease prevention

This is to be undertaken by tackling the key underlying causes of ill-health relating to personal lifestyles and economic and environmental factors. This will entail in particular closely working with other EU policy areas such as environment, transport agriculture and economic development.

In addition it will mean closer consultation with all interested parties and greater openness and transparency in decision-making. A key initiative in this is the setting up of an EU Health Forum as a consultative mechanism.

Provisions have been made for structural arrangements, establishing a new programme committee and strengthening the Commission’s coordinating and technical capabilities by the externalising of some functions, possibly by the creation of an Executive Agency for certain functions, once a Regulation for the establishment of such agencies is adopted.

In addition to projects 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 including accession countries, whose inclusion in the programme from an early stage is regarded as essential.

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;
- 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.

JUSTICE AND HOME AFFAIRS: GENERAL ASPECTS

LEGAL BASIS

1. Title IV (Articles 61 to 69) of the EC Treaty 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.

2. 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. 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.

ACHIEVEMENTS

A. Provisions of the Treaty of Maastricht (Title VI)

1. Scope

Under the Treaty of Maastricht, cooperation in the field of justice and home affairs, the 'third pillar' of the European Union, applied to nine areas of 'common interest':

a. asylum policy;

b. rules governing the crossing by persons of the external borders of the Member States and the exercise of controls thereon;

c. immigration policy and policy regarding nationals of third countries:

- conditions of entry and movement by nationals of third countries on the territory of Member States;
- conditions of residence by nationals of third countries on the territory of Member States, including family reunion and access to employment;
- combating unauthorised immigration, residence and work by nationals of third countries on the territory of Member States;

d. combating drug addiction in so far as this is not covered by points g, h and i;

e. combating fraud on an international scale in so far as this is not covered by g, h and i;

f. judicial cooperation in civil matters;

g. judicial cooperation in criminal matters;

h. customs cooperation;

i. police cooperation for the purpose of preventing and combating terrorism, unlawful drug-trafficking and other serious forms of international crime, including if necessary certain aspects of customs cooperation, in connection with the organisation of a Union-wide system for exchanging information within a European Police Office (Europol).

2. Decision-making machinery

- The right of initiative lay, depending on the sector, either with the Member States or the Commission, which had to be fully associated with all such work under Article K.3.
- The decision-making body was the Council, comprising the Ministers of Home Affairs and Justice. It acted unanimously, under Article K.4(3). The Committee of Permanent Representatives and a Coordinating Committee of senior civil servants, the 'K4 Committee', prepared its decisions.
- They informed and consulted Parliament in certain areas, as its views had to be 'duly taken into consideration'.

B. Changes brought in with the Treaty of Amsterdam

1. Partial 'communitisation'

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.** However, this 'communitisation' 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 ECT)

- During a transitional period of five years:
  - . The Commission 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 para. 3;
  - . Parliament is simply consulted.
- 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 (para. 2);

. A few areas become subject to codecision (between Parliament and the Council) (para. 4) and the Council may decide (but only unanimously) to apply this system to other areas (para. 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.

2. 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.

3. 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.

C. Developments since Amsterdam

1. Contributions of the Treaty of Nice

It extends the codecision procedure (Article 67(5))

- to certain measures relating to asylum and refugees provided that the Council has already adopted legislation defining the common rules and basic principles governing these issues;
- to judicial cooperation in civil matters with the exception of aspects relating to family law.

2. Slow rate of progress

a. The **Cardiff** European Council (June 1998) instructed the Council and Commission to produce an action plan on the best method of implementing the new provisions. The plan, approved by the Vienna European Council (December 1998), establishes a calendar of priorities lasting two and five years.

b. The **Tampere** European Council (October 1999) stressed its intention to turn the EU into an area of freedom, security and justice. It called on the Commission to produce a scoreboard indicating the progress made and compliance with deadlines. This scoreboard, which has been in operation since 2000, is updated twice a year and has three objectives: guaranteeing transparency for citizens, maintaining the momentum generated by the Tampere European Council and highlighting any delays that have been identified.

c. The December 2001 meeting of the European Council in **Laeken** provided an opportunity to assess the progress made. The Commission, in its update of the scoreboard for the second half of 2001, concluded that the situation was positive 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.

d. The **Seville** European Council (June 2002) highlighted the need to develop a common policy in the field of asylum and immigration. It stressed the importance of adopting tangible measures to combat illegal immigration and manage external borders on the basis of two plans adopted in this field during the first half of 2002.

e. At the end of 2002, the Commission noted that although the impetus given at the Laeken European Council was continuing to bear fruit in certain areas, this had not made up for the delay with regard to asylum and immigration in particular, despite the fact that all of the necessary proposals had been submitted to the Council.

3. List of the main legislation adopted in the field of asylum and immigration (*4.11.2., 4.11.3.)

- Council Decision of 28 September 2000 establishing a European Refugee Fund.
- Council Regulation 2000/2725 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention, supplemented by Council Regulation (EC) No 407/2002 of 28 February 2002 laying down certain rules to implement Regulation (EC) No 2000/2725. The system entered into force on 15 January 2003.
- 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.
- **Council Decision of 13 June 2002 adopting an action programme for administrative cooperation in the fields of external borders, visas, asylum and immigration (ARGO programme).**
- Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence.
- Council Framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence.
- Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.
- Regulation 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.

ROLE OF THE EUROPEAN PARLIAMENT

- In accordance with Article 39 of the Treaty on European Union, the 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 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 people 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 codecision procedure being extended to all areas within justice and home affairs. 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.

JUDICIAL COOPERATION

LEGAL BASIS

- Judicial cooperation in civil matters: Article 65 of the EC Treaty;
- 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;
- The Treaty of Nice introduces, in the area of judicial cooperation in criminal matters, a reference to Eurojust.

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 security through recognition and enforcement of judgments and decisions through EU territory.
- 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

a. Initially, judicial cooperation in civil matters took the form of international agreements. As long ago as 1957, Article 220 of the Treaty of Rome included the option for the Member States to act within the European Community in order to simplify the formalities governing the reciprocal recognition and enforcement of court judgments.

b. 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** (*4.11.1.)

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 in the sense that:

- the Commission does not have a monopoly on right of initiative,
- the Council almost always takes decisions in this area unanimously,
- Parliament only has a consultative role.

3. Since the Treaty of Amsterdam

a. The December **1998 action plan** for implementing the provisions of the Treaty had as its main objective judicial cooperation in civil matters: improving cooperation between the Member States' authorities in order to make life easier for European citizens, as freedom of movement encourages their mobility.

b. 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,
- automatic referral to the principle of mutual recognition of court decisions and pre-court decisions, such as those relating to evidence.

c. Main legislation adopted

- Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings;
- Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses;
- Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters;
- Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;
- Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters;
- Council Decision of 28 May 2001 establishing a European Judicial Network in civil and commercial matters;
- Council Regulation (EC) No 743/2002 of 25 April 2002 establishing a general Community framework of activities to facilitate the implementation of judicial cooperation in civil matters;
- At the JHA Council of 28 and 29 November 2002, a political agreement was reached on the Regulation concerning matrimonial matters and parental responsibility, of which children were the main subject.

B. Judicial cooperation in criminal matters

1. Before the Treaty of Amsterdam

a. The **Council of Europe** drew up the first legal acts on judicial cooperation in criminal matters, with conventions in 1957 on extradition and 1959 on judicial assistance in criminal matters.

b. 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;
- spart from these legal instruments, in June 1997 the Amsterdam European Council adopted an action programme for fighting organised crime, containing 30 recommendations to promote practical cooperation and if possible bring national legal systems into line.

2. The contribution of the Treaty of Amsterdam

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 December 1998 action plan stresses stepping up judicial cooperation, coordinating legal rules as the new Treaty requires and tackling a number of over-arching problems, such as data protection, tax havens, crime prevention, victims' aid and the pre-accession pact to fight organised crime in the Central and Eastern European countries.

3. Subsequent developments

a. Guidelines of the Tampere European Council and Extraordinary European Council of 21 September 2001

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, drugs trafficking, trafficking in human beings, high-tech crime and environmental crime. The Council also underlined the need for specific action to combat money-laundering.

Following the attacks of 11 September 2001, the Extraordinary European Council of 21 September expressed its support for the introduction of a European arrest warrant and the adoption of a common definition of terrorism. It called for the entire package of measures decided on at Tampere to be adopted as quickly as possible.

b. A new body for cooperation: Eurojust

The Council Decision of 28 February 2002 sets up Eurojust with a view to reinforcing the fight against serious crime. It aims to facilitate the coordination of action 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. Its remit covers the field of serious crime, especially organised crime, and it helps to promote and improve coordination between the Member State authorities responsible for investigations and prosecutions. It may call on the Member States to undertake investigations or prosecutions relating to specific events.

c. 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 (Hippokrates). 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**, 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 Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings.
- A number of acts relate to various aspects of organised crime, particularly terrorism, money laundering, trafficking in human beings and computer crime:
  - . 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;
  - . 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 19 July 2002 on combating trafficking in human beings, which seeks to harmonise offences and sanctions in this area;
  - . 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 of the Member States as well as cooperation in this field.
- Some acts seek to impose the obligation to provide for **criminal sanctions** for certain types of offences, notably Council Framework Decision of 27 January 2003 on the protection of the environment through criminal law.

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. To this end, it called on the Commission to submit to the EP legislative proposals to improve the minimum guarantees concerning procedural rights.

POLICE AND CUSTOMS COOPERATION

LEGAL BASIS

- Police cooperation: Articles 29 and 30 of the EU Treaty;
- Customs cooperation: Article 135 of the EC Treaty;

The Treaty of Nice does not introduce any changes.

OBJECTIVES

Guaranteeing citizens a high level of protection in an area of freedom and security through police cooperation between the Member States. This objective is achieved through closer cooperation between police forces and customs authorities, both directly and through Europol.

ACHIEVEMENTS

A. General development of police cooperation

1. First efforts

Formal police cooperation between the Member States' representatives began in 1976 with the creation of working parties known as 'Trevi groups'. Its main subjects were terrorism and the organisation and training problems of police departments. By 1989 there were four working parties, on terrorism, police cooperation, organised crime and the free movement of persons.

2. The Schengen agreements (1985-1990)

The Schengen system set up liaison officers in the signatory states to coordinate the exchange of information on terrorism, drugs, organised crime and illegal immigration networks. It introduced a right of pursuit across frontiers, enabling police officers to pursue a suspect on the territory of another Member State, but Member States apply this right in different ways. Patrols, in some cases with officers of different nationalities, carry out checks throughout the Schengen territory.

3. The Treaty of Maastricht (1992)

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.

4. The Treaty of Amsterdam (1997)

This Treaty 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.

5. European police cooperation today

ranges from administrative and operational cooperation between police forces or through Europol to coordinated campaigns to fight organised crime and safeguard law and order. In the security field, the Council has not only taken a detailed look at terrorism but has also considered the problem of football hooliganism, exchanging information and experience on the subject and defining common rules on stadium bans and media attitudes.

B. Fighting organised crime

In March 2000 the Council adopted a document entitled 'The prevention and control of organised crime: a European Union strategy for the beginning of the new millennium'. It lays down a number of political guidelines, particularly with regard to establishing reliable data, protecting the public sector and the legitimate private sector, reinforcing prevention, improving legislation, backing up investigations and giving Europol a greater role, confiscating the proceeds of crime, and increasing cooperation between the police and judicial authorities at both national and EU level. The strategy also underlines the need to strengthen cooperation with the applicant countries and at international level. It makes a number of recommendations for each of these political guidelines.

C. The European Police Office (Europol)

1. Mission

Created by a Council Act of 26 July 1995 (drawing up the Convention on the establishment of a European Police Office), Europol began to operate on 1 July 1999. It replaced the Europol Drugs Unit, created as an interim measure in 1995.

a. Original mandate

- Europol's **objective** is to improve the efficiency of the competent services in the Member States and their cooperation in the fight against terrorism, drug trafficking and other serious forms of international crime such as trafficking in nuclear and radioactive products, illegal immigration networks, trafficking in human beings, trafficking in stolen cars and money laundering connected with these types of crimes. The Council may also decide to entrust Europol with responsibility for other forms of crime.
- Europol's priority tasks are as follows: facilitating the exchange of information between Member States, collating and analysing information and intelligence, aiding investigations in the Member States by notifying them of any relevant information, and maintaining a computerised system of information collected directly from the Member States.

b. Extension of its mandate

Europol's mandate was successively extended to include money laundering in general (irrespective of the type of crime connected with the money laundered) by the Council Act of 30 November 2000 and then all of the aspects of international organised crime set out in the annex to the Europol Convention by the Council Decision of 6 December 2001.

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 re-

sponsible for monitoring its activities and, in particular, appointing its Director.

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.
- Following the decision of the Extraordinary European Council of 21 September 2001 to strengthen Europol's role in the fight against terrorism, EUR 5 million was included in the EU's budget for 2002 and a proposal for a Council decision was presented in July 2002 by the Commission with a view to allowing these funds to be allocated. Its objective is to develop in particular a computer network and a communication system as well as an operations control centre within Europol to provide better support for the Member States in the field of terrorism.

D. The European Police College (CEPOL)

- CEPOL was created through the Council Decision of 22 December 2000. It was established initially as a network of existing national training institutes, but could ultimately lead to the creation of a permanent institution. The operation and future of the network are due to be reviewed after three years.
- 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 has a permanent secretariat. It is funded by the Member States and thus does not come under the EU budget.

E. 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.
- Since September 2001, the heads of the anti-terrorist units of the intelligence services of the Member States have held regular meetings.

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 2003-2007.
- In a resolution of 30 May 2001, the Council set out its guidelines for a strategy for customs cooperation.

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. The EP emphasises that the framework and methods of cooperation between Europol, Eurojust and the European Anti-Fraud Office (OLAF) must be clearly defined. Finally, it highlights the need to create a European border security unit.

ENERGY POLICY

LEGAL BASIS

- Coal: ECSC Treaty, particularly Article 3 and Articles 57-64 (expired in 2002);
- Nuclear energy: EAEC Treaty, in particular Articles 40-76 (investment, joint undertakings and supplies) and 92-100 (the nuclear common market);
- Overall energy policy and energy policy in other fields: EC Treaty, particularly Articles 100 (supply difficulties) and 308;
- The most recent revision of the EU Treaty has still not managed to include a separate chapter on energy. Energy policy has simply been incorporated in the list of objectives (Art. 3u); the subject of 'energy' is also included under the Title 'Environment' (Title XIX ; Art. 175, §2). In addition the Treaty mentions the Trans-European networks, which include energy infrastructure (Title XV, Arts. 154, 155 and 156 in connection with Art. 158).
- The TEU 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. An chapter on energy policy is planned for the proposed EU-Constitution (Art. III-157).

OBJECTIVES

During the period covered by this report, EU energy policy was still directed towards the long-term energy objectives first set out in 1995 in the 'White Paper on Energy Policy for the EU' (COM(95) 682), followed by the Green Paper "Towards an European Strategy for the security of energy supply" (COM(02) 769 and COM(02)321). Commission, Parliament and Council emphasise that energy policy must form part of the general aims of EU economic policy based on market integration and deregulation: public intervention must be limited to what is strictly necessary to safeguard the public interest and welfare, sustainable development, consumer protection and economic and social cohesion. However, beyond those general aims energy policy must pursue particular aims that reconcile competitiveness, security of supply and protection of the environment.

Apart from the general energy objectives, the EU has set various sectoral objectives, which marked out the framework for energy policy during the period covered by this report: 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.

Commission, Parliament and Council 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 - based on the German example-a current entry directive should be introduced. The Commission submitted an initial provisional draft in April 1999.

ACHIEVEMENTS

1. Energy generation and consumption: general survey

The EU has already 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 slight (total consumption for EU 15 in 2001 was 1486.1m toe). Since 1975 the EU has considerably reduced its total energy dependence and its dependence on crude oil (overall EU self-sufficiency in 2001: 51,0%, crude oil imports 2000: 32,5% of total energy consumption). 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).

2. Individual sectors (sectoral aspects) of energy policy

a. 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. There are now virtually only three coal-producing countries left in the EU: UK, Germany and Spain. Large quantities of coal are being imported. Imported coal is significantly cheaper than domestic coal. The correspondingly large subsidies needed in Germany and Spain are meeting with increased resistance (from buyers, consumers and suppliers of other sources of energy). The question of whether the EU should permit the continuation of coal subsidies beyond 2006 and what level of production should be permitted for the coal-producing countries is currently the subject of controversy.

b. 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).

c. Nuclear energy and nuclear fuels

Nuclear energy is still accorded a key role in EU energy policy objectives. However, the 1986 Chernobyl disaster has made nuclear energy highly controversial. Abandonment of nuclear power is at the earliest a medium-term prospect but in any event greater efforts must be made to improve the safety standards of nuclear power stations. Despite the EAEC Treaty, the Commission's powers are far from adequate (for example, no uniform standards for safety and discharges; no EU consultation procedure concerning power stations sited near frontiers; no clear EU provisions for the storage and transport of nuclear fuels or nuclear waste; difficulties in establishing basic standards of radiation protection; no adequate EU system of information and monitoring in cases of nuclear malfunctions; no agreed emergency procedures in case of disaster, etc.).

In the Green Paper on energy security, nuclear power was grouped (together with coal, oil, gas and renewables) as a "less than perfect" energy option and the question raised how the EU can develop fusion technology and reactors for the future; reinforce nuclear safety; and find a solution to the problem of nuclear waste. As nuclear safety could no longer be considered from a purely national perspective and in preparation for enlargement the Commission began in January 2003 a new approach to safety of nuclear facilities and nuclear waste (COM(03) 32).

d. Renewable sources of energy and energy efficiency

Promoting renewable energy is one of the main objectives of EU energy policy. As stated above, the aim is to double renewables' share of total energy consumption to 15% by 2010 and increase renewable energy sources for the internal electricity market to 22,1% of the total produced (Directive 2001/77). Decision 1230/2003 "Intelligent Energy for Europe" contains measures to promote renewables and increase energy efficiency. There are sub-programmes supporting sustainable development projects and projects expanding cooperation between the EU and developing countries for renewable energy sources. The framework programme is worth €200 million for the period 2003-2006, though both Commission and the EP argued for much more money. In 2003 Directive 2002/91 on the energy performance of buildings (in particular insulation, air conditioning, the use of renewable energy sources) was adopted. 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(02) 415), the Commission wants 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. This proposal, which has given rise to controversial discussions in both the Council and the EP, is mainly concerned with establishing a uniform definition for electricity produced in CHP plants (adopted by the EP in December 2003, PE 322.046).

In December 2003 the Commission proposed a new directive (COM(03) 739) to boost energy efficiency in the EU and to promote the market for energy services (such as lighting, heating, hot water, ventilation etc.)

3. Research, development and demonstration projects (*4.13.0.)

The EU framework programme of research encompasses many energy R&D and demonstration projects to support the energy policy objectives. These are designed to improve the acceptance level, competitiveness and scope of application of traditional energy (e.g. reactor safety and management of radioactive waste; gasification and liquefaction in the case of coal), encourage the adoption of new forms of energy (alternative energy sources, new technologies for a sustainable energy supply, nuclear fusion) or energy saving and rational use.

4. Internal market

In the energy sector the completion of the internal market requires the removal of numerous obstacles and trade barriers, the approximation of tax and pricing policies and measures in respect of norms and standards and environmental and safety regulations. Following the Directives adopted in 1990 and 1991 on transit of electricity and gas, a further opening of the electricity networks for large industrial customers ('Third Party Access', TPA) was agreed on 25 July 1996 (Directive 96/92). The Directive 98/30 for the gas market was adopted on 22 June 1998. The Commission will report annually to Parliament on implementation of the two directives.

With two further Directives for electricity (03/54) and gas (03/55) - together with Regulation 1228/2003 on conditions for access to the network for cross-border exchange in electricity, the energy markets in electricity and gas will be fully open to competition by 2005 (2007 for household customers). There will be also national regulatory authorities to supervise public service obligations, security of supply and tariff formation. In future, the source of electricity will have to be accurately labelled. In order to strengthen competition in the internal electricity market and to promote investment in energy infrastructure and security of supply the Commission launched new initiatives in 2003 (COM(03) 740 and COM(03) 743) and also proposed (COM(2003) 741) a new regulation on access to gas transmission networks. Directive 2003/96 introduced a new EU system for taxation of energy products. The proper functioning of the internal market and the achievement of the objectives of other EU policies require minimum levels of taxation at EU level for most energy products, including electricity, natural gas and coal. In addition, the taxation of energy products and, where appropriate, electricity is one of the instruments available for achieving the Kyoto Protocol objectives. This directive widens the scope of the EU minimum rate system, currently limited to mineral oils, to all energy products, chiefly coal, gas and electricity.

5. Greenhouse effect and international cooperation (in particular with Eastern Europe)

The EU has stressed its commitment to combat the greenhouse effect and to international cooperation. However, the 1992 proposal for a carbon dioxide and energy tax (COM(92) 0226) has not yet been implemented, because of strong opposition by a number of member states or industrial sectors 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 (and the latest follow-up conference in Milan in December 2003). The EU has promised to reduce its CO_2 emissions by 8% from 1990 levels by 2008-2012. After long and controversial debate in July 2003 the Directive on greenhouse gas emissions (2003/87) was accepted. It will create the largest emissions trading scheme in the world from 2005. The accession of new member states to the EU will create the need to include them into the internal energy market to benefit from open competition, improvement of energy efficiency and the gradual introduction of renewable energy sources. The European Energy Charter, finally signed in Lisbon in December 1994 and ratified in December 1997 could provide a long-term basis for East-West energy sector cooperation along these lines.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament's main task is to convince the member states that the long-term common interest in solving these problems at EU level is more important than short-term national interests which might give preference to other solutions. 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).

POLICY FOR RESEARCH AND TECHNOLOGICAL DEVELOPMENT

LEGAL BASIS

1. EU research and technology policy was originally based on Article 55 of the ECSC Treaty (expired in 2002); Articles 4 to 11 of the EAEC Treaty (nuclear research); Articles 35 and 308 of the EC Treaty; and Council Resolution of 1974 on coordination of national policies and projects of interest to the EU in the fields of science and technology.

2. Title XVEC provided a new and explicit basis for research and technological development policy, based on rolling 5-year Framework Programmes.

3. In 1993 co-decision by Council and Parliament for the adoption of the EU Framework Programmes was introduced and the aim of EU Researd and Technological Development (R&TD), policy redefined. Article 7 of the Euratom Treaty was left unchanged.

4. In 1999 the requirement for Council unanimity to adopt the Framework Programme 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.

OBJECTIVES

1. The aim of EU R&TD policy is to strengthen the scientific and technological basis of European industry and to encourage it to become more competitive at international level. There is no mention of social welfare, public health, or a clean environment, or any other more socially tuned goal of research expenditure. Promoting industrial competitiveness was central to the FPs as defined by the member states in the mid-to-late 1980s. This key provision was, however, amended in 1993 by adding the phrase "while promoting all the research activities deemed necessary by virtue of other Chapters of this Treaty."

2. Article 164 specified: "In pursuing these objectives, the EU 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 … EU research, technological development and demonstration with third countries and international organisations;

(c) dissemination and optimisation of the results of activities in EU research, technological development and demonstration;

(d) stimulation of the training and mobility of researchers in the EU.

3. Article 165 provides that: "The EU… and member states shall coordinate their …. activities so as to ensure that national policies and EU… policy are mutually consistent."

ACHIEVEMENTS

1. EU R&TD policy: A short review

The main basis and instruments of EU R&TD policy are the multi-annual Framework Programmes (FPs), which set objectives, priorities and the financial package of support for a period of several years (usually five). The F Ps overlap so as to maintain continuity. With the 1st FP (1984-87), the R&TD activities of the EU were for the first time coordinated as part of a single structured framework. The main aim of the 2nd FP (1987-91) was to develop technologies for the future, in particular in the area of information technology and electronics (Esprit, the European Strategic Programme for Research and Development in Information Technologies), materials and industrial technologies. The 3rd FP (1990-94) followed broadly the same lines but also focussed on dissemination of research findings. In April 1994, after a long and difficult procedure, Council and Parliament (in the first ever co-decision) adopted the 4th FP (1994-1998). This programme built on the previous initiatives, but contained several important innovations, such as a new programme on targeted socio-economic research. FP5 (1998-2002) focused - unlike its predecessors - on current social and economic problems more than pure research, with a view to improving the standard of living and working conditions in Europe.

2. Implementation of R&TD policy

A typical EU project involves several countries, several companies (including SMEs), and universities. An effort is also made to involve the less industrialised member states, to strengthen economic and social cohesion. The R&TD Framework Programmes are implemented through Specific Programmes developed within each activity. The EU has several means at its disposal to achieve its R&TD objectives within these Specific Programmes:

- direct projects carried out by the JRC located at Ispra (Italy), Geel (Belgium), Petten (Netherlands), Karlsruhe (Germany) and Seville (Spain), and entirely financed by the EU;
- indirect projects carried out by groups of research workers, laboratories and universities in the member states and financed by the EU to a maximum of 50%;
- concerted projects, also carried out by groups of research workers, laboratories and universities in the member states and coordinated by the EU, which may also bear the cost of coordination.

3. The 6th Framework Programme (2002-2006)

a. Background

Decision 1513/2002 created FP6 for research, technological development and demonstration activities. (2002-2006). To fully exploit the research potential in the member states FP6 established a European Research Area (ERA), the goal of which is to make the EU one of the driving forces for research worldwide (initiative launched by the Lisbon European Council in March 2000). The ERA is the cornerstone of FP6. By improving cooperation between the various economic, social and scientific players, the ERA promotes scientific excellence, competitiveness and innovation.

b. Instruments

FP6 aims to introduce two new instruments:

- networks of excellence, which aim at progressively integrating partners' activities networked through "virtual" centres of 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 parallel, the EU will participate in research programmes undertaken by several member states.

c. Structure and Lines of Action

FP6 comprises five specific programmes:

- integrating and strengthening the European Research Area, including the thematic priorities;
- structuring the European Research Area;
- the activities of the Joint Research Centre (JRC);
- nuclear energy;
- the activities of the Joint Research Centre (Euratom).

The total budget for the sixth Framework Programme is € 17.5 billion, of which € 1.23 million is for Euratom. The Framework Programme runs from 1 January 2003 to 31 December 2006.

d. Short Overview of the specific programmes

(i.) Integrating and reinforcing the European Research Area (thematic priorities). Budget:) € 13 345 million

- Life sciences, genomics and biotechnology for health: € 2 255 million
- Information society technologies: € 3 625 million
- Nanotechnologies, knowledge-based multifunctional materials, new production processes: € 1 300 million
- Aeronautics and space: € 1 075 million
- Food safety and risks to health: € 685 million;
- Sustainable development, global change and ecosystems (including research in the area of energy and transport): € 2 120 million
- Citizens and governance in a knowledge-based society: € 225 million;
- Specific activities covering a wider field of research: € 2 060 million

  (including horizontal research activities involving small and medium sized enterprises (SMEs) with a budget of € 430 million; specific measures in support of international cooperation; € 315 million).

(ii) Structuring the European Research Area. Budget: € 2.605 billion

- Research and innovation: € 290 million
- Human resources and mobility: € 1 580 billion
- Research infrastructures: € 655 million
- Science and society: € 80 million

(iii) Strengthening the foundations of the European Research Area. € 320 million

The activities carried out under this heading are intended to step up coordination and to support the coherent development of research and innovation-stimulation policies and activities in Europe.

e. Implementation of the Programme

(i) participation

Any legal entity, i.e. any natural or legal person established in accordance with national, international or EU legislation may apply for and receive support. In other words, universities, international organisations, research institutes, SMEs and large companies.

Previously, it was impossible for a team of researchers from the candidate countries to coordinate a project unless they were partnered with researchers from the EU, but now these candidate countries are treated in the same way as the member states.

(ii) Call for proposals

Projects must respond to a specific call for proposals. Research teams and consortia wishing to put forward a proposal in response to a call normally have at least three months to draw up and submit their file.

(iii) Information sources

In order to guarantee equality of access and fair treatment to all applicants, calls for proposals are published in the Official Journal of the European Communities and on the Commission Internet pages designed for this purpose. In parallel, the server and the RTD info magazin also provide information.

At national level, there are networks of contact points to supply information on the Framework Programme for research. The national authorities can assist applicants who have no experience in applying for financial support. The national contact points (NCPs) are independent, decentralised help desks found in the member states, accession countries and other partner countries.

(iv) Selection of projects

As far as is possible, project selection will comprise two phases. Participants will first be invited to submit a summary of their proposal. Subsequently, if their application following the initial selection procedure

is accepted, they will be invited to submit a detailed proposal.

(v) International cooperation

Research activities may be pooled in other European cooperation contexts, such as COST (Cooperation in the field of scientific and technical research of activities of public interest financed nationally in Europe and coordinated with the support of the EU) and EUREKA (an extra-Community programme for technological research and development based on mixed financing of activities).

4. Prospects for European R&TD policy

The adoption of FP6 represents a clear step towards a new strategic orientation of EU research policy. However it is essential, as Parliament has in recent times repeatedly stressed, to step up R&D efforts 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 political and economic independence and its social and cultural identity. Greater efforts are being made to integrate the accession countries in the EU's R&D policy.

Compared with the R&TD expenditures in the member states at national level (€ 175 500 million in 2001) the FP6 budget for 2002-2006 at € 17 500 million is of only minor importance.

Compared with the main competitors on the world market (mainly US, Japan) R&D spending is insufficient (1,9% of GDP for R&D in the EU, 2,8% in the US and 3,1% in Japan in 2001). Thus, Heads of State and Government agreed at the Barcelona European Council (March 2002) to raise investment in R&TD from 1,9% of GDP in 2001 to 3% by 2010.

ROLE OF THE EUROPEAN PARLIAMENT

For more than 20 years the EP has promoted an ever more ambitious EU R&D policy with a sound legal base and stated that total R&TD spending in the member states should be raised substantially to maintain and strengthen Europe's international competitiveness vis-à-vis i.a. the US and Japan. The EP also advocated more collaboration with non-EU partners, a serious integration of activities between the Structural Funds and the Framework Programmes and a targeted approach to optimise the involvement of SMEs. It also proposed a new programme to develop and marshal complementary assets of research infrastructure, shared platforms and facilities for European researchers, together with networks of excellence. It insisted that far more flexibility should be built into all the programmes and projects in any future Framework Programmes, to enable the shifting of resources to more promising areas, and the ability to react to changing circumstances and newly emerging priorities for research.

SMALL AND MEDIUM-SIZED ENTERPRISES

LEGAL BASIS

SMEs operate mainly at national level, but are affected by EU legislation on taxation (Articles 90-93), competition (Articles 81-89), company law (right of establishment – Articles 43-48), the first to thirteenth Directives, governing the formation of limited companies, structural operations such as mergers and divisions under each member state's national law, cross-border mergers, takeover bids etc., Regulation 2137/85 on European Economic Interest Grouping, Regulation 2157/2001 on the European Company Statute and Directive 2001/86 on the involvement of employees, regional and social policy (Articles 136-145), and customs formalities (Articles 25-27).

The Commission adopted a new definition of micro, small and medium-sized enterprises (SMEs) in Recommendation 2003/361. The staff thresholds used are micro (0-10 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 enter into force from 1 January 2005. The new rules should promote growth, entrepreneurship, investments and innovation, facilitate access to venture capital, cut administrative burdens and increase legal certainty and favour co-operation and clustering of independent enterprises.

OBJECTIVES

Micro, small and medium-sized enterprises represent 99 % of all enterprises in the EU, provide around 65 million jobs and are an essential source for entrepreneurial spirit and innovation, thus crucial to EU competitiveness. EU policy for SMEs aims to promote their interests and to abolish discrimination in market access.

ACHIEVEMENTS

1. General

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 1993-1996. A third multiannual programme took effect for the period 1997-2000.

In Lisbon in 2000, the European Council defined its objectives in terms of employment, economic reform and social cohesion. By 2010, the EU aims "to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion". In 2001, the European Council agreed on a strategy for sustainable development and added an environmental dimension to the Lisbon strategy. It recognised the need for radical transformation of the economy to create some 15 million new jobs by 2010.

The Council adopted the European Charter for Small Enterprises in June 2000, setting out recommendations for small enterprises to take full advantage of the knowledge economy.

The fourth multiannual programme runs for the period 2001-2005 with a budget of €450 million The five prime objectives of the programme are:

- Enhancing growth and the competitiveness of business in a knowledge-based economy

  Measures to enhance competitiveness and innovation, prepare enterprises for globalisation and promote new information and communication technologies.

- Promoting entrepreneurship

  Measures specifically to promote business start-ups and transfers, develope training in entrepreneurship, and identify and promote specific policies for SMEs.

- Simplifying and improving the administrative and regulatory environment for business, in particular to promote research and innovation

  Measures in particular to improve assessment of all proposed EU legislation on business and to produce better regulation.

- Improving the financial environment for business, especially SMEs

  Measures in particular to improve the financial environment for business, develope proximity funding (business angels) and organise round- tables of bankers and SMEs.

- Giving business easier access to EU support services, programmes and networks and improving coordination of these facilities

  Measures to promote simpler access to EU programmes, better coordination between support or advice networks such as the Euro Info Centres, and the organisation of business cooperation events.

The Commission produces annual implementation reports, the report on the activities of the SME Envoy and Communications on: innovation policy; industrial policy; the impact of the e-Economy on European enterprises; economic analysis and policies implications and a better environment for enterprises.

The Commission launched a "Go Digital Awareness Campaign" in 2001 to demonstrate to SMEs the potential benefits of adopting and efficiently using e-business, and provide them with practical assistance on how to participate and take full advantage of the e-Economy. An analysis of the "Go Digital Awareness Campaign" was published in 2003.

As a follow-up to the eEurope 2002 Action Plan and "Helping SMEs to "Go Digital", the Commission has launched specific actions to help SMEs adopt information and communication technologies (ICT) and e-business. More than 70 events were organised across Europe in 2002 organised by SME and other business organisations.

The Better Regulation Package adopted by the Commission on 5 June 2002, aims to reform the way in

which the institutions, individually or jointly, legislate at the European level, and how the member states implement and apply this legislation at national level. This ambitious package responds to the Lisbon European Council aim to simplify and improve the regulatory environment. It is a political reply to the criticism expressed regularly of excessive, inappropriate and burdensome EU legislation. The Commission adopted an Action Plan "Simplifying and improving the regulatory environment" in 2002.

In January 2003 the Commission adopted the so-called SME package. The package analyses how the member states, candidate countries and the Commission are implementing the principles of the European Charter for Small Enterprises. The main findings of the SME package are in the Communication "Thinking Small in an Enlarging Europe" (COM (2003) 26), composed of the following four reports:

- The 2003 implementation report on the European Charter for Small Enterprises in the EU Member States (COM (2003) 21);
- The 2003 implementation report on the European Charter for Small Enterprises in the candidate countries (SEC (2003) 57);
- The report on the activities of the EU for small and medium-sized enterprises (SEC (2003) 58);
- The report of activity of the SME Envoy of the European Commission (SEC (2003) 60).

At the beginning of 2003, the Commission also launched a public debate on how to further improve the entrepreneurship agenda, through its Green Paper on Entrepreneurship in Europe (COM (2003) 27). Based on the analysis of progress in Enterprise Europe including the SME package, the Green Paper poses essential questions on how to produce more entrepreneurs and how to get more European firms to grow.

2. Internal market

Among the measures to complete the internal market, simplification of frontier formalities and the initiatives in the field of standardisation are particularly relevant to SMEs.

Special exceptional arrangements for SMEs have been introduced in many areas, for example:

- the administrative environment,
- approximation of company law,
- rules on competition,
- research;
- changes in taxation.

a. Company Law

The European company is regarded as one of the key elements for the completion of the internal market. The Council adopted the two legislative instruments required for the creation of a European company, Regulation 2157/2001 on the Statute for a European company and Directive 2001/86 supplementing the Statute for a European company w.r.t. the involvement of employees, the two instruments being indissolubly linked.

The European Company Statute should make cross-border business management more flexible and less bureaucratic and enhance the competitiveness of European business. It will make it possible for a public limited company to be set up in the EU with the Latin designation Societas Europaea (SE). The SE statute will allow enterprises to operate throughout the EU subject to the EU legislation directly applicable in all member states.

b. Competition Policy

Recently the Commission has made great efforts to modernise its competition rules, make procedures more efficient, increase their transparency and facilitate their application. This policy trend has a direct bearing on SMEs. In January 2001, Regulation 70/2001 on the application of Articles 87 and 88 of the Treaty to state aid to SMEs replaced the 1996 guidelines. It exempts investment aid - 15% of eligible costs for small and 7.5% for medium-sized enterprises; (in regionally-assisted areas higher aid ceilings apply, in order to counter both the regional and the SME-specific disadvantage), aid for consultancy (50% of eligible costs) and aid for participation in fairs and exhibitions (50% of eligible costs). The Regulation provides that such aid does not have to be notified to the Commission, unless it exceeds certain thresholds.

c. Taxation

In October 2001, a Commission Communication "Towards an Internal Market without tax obstacles - A strategy for providing companies with a consolidated corporate tax base for their EU-wide activities" (COM(2001)582) and a detailed study on "Company Taxation in the Internal Market" (SEC(2001)1681) addressed problems relating to company taxation in the internal market and the situation of SMEs.

3. Information and cooperation for SMEs

A privileged link between Europe and SMEs, the Euro-Info-Centre (EIC) network consists of some 300 members in 38 countries and 14 correspondence centres. The network was extended in 1998 to cover the candidate countries and the network has some 230 EICs in 2003 located in public, private and semi-public bodies directly related to SMEs (chambers of commerce, local development agencies and banks). The EICs or "Euroguichets" inform businesses, initiate them, advise them and help them in all fields concerning EU programmes and policies, organise seminars and conferences and participate in awareness-raising actions under the eEurope "Go digital" initiative.

EICs communicate with each other and the Commission using the Business Cooperation Network and the Business Cooperation Centre. They form a contact network for business consultants and seek to encourage cooperation between firms in the member states at transnational, inter-regional and local level. The "Dialogue with Business" website is a well-established multilingual gateway to data, information and advice from many existing sources. Several thousand companies use it daily to access support services at European, national and local levels. In 2001 the Commission set up an SME Envoy, whose role is to liaise with the SME business

community, considering their specific interests and needs in EU programmes and policies. This action is co-ordinated with existing networks such as the Euro-Info Centres, which already provide valuable information and advice to SMEs.

A high-level consultative body advising the Commission on enterprise policy - the Enterprise Policy Group (EPG) – was created in November 2000. The EPG is divided into two sections: a group including Directors-General responsible for Industry and for SMEs in the Member States; and a Professional Chamber, which includes SME entrepreneurs, trade union representatives and those with experience of working in and with SMEs, among its thirty-five senior members.

In the framework of the "e-Commission" and better regulation initiatives, the Interactive Policy Making (IPM) initiative introduced two new internet-based instruments (Feedback Mechanism and On-line Consultations) in order to let stakeholders participate actively in the Commission's policymaking process. This mechanism has collected information from over 17 000 cases, mainly from small businesses, about all kinds of problems which small enterprises face in their daily work. This enables the Commission to make policy based on "hard" facts.

The Gate2Growth initiative aims to support innovative entrepreneurs in Europe. It provides a common portal for technology entrepreneurs, innovation professionals and intermediaries. In response to a request by the EP this one-stop-shop risk capital website is being further developed in cooperation with regional and national initiatives in order to give these an additional European scope. Within the Gate2Growth initiative is the Incubator Forum - a pan-European network of professional managers of technology incubators linked to research institutes and universities, launched in 2002.

4. SMEs and Research

The Fourth Framework Programme included measures to assist SME access to new technologies through close coordination between enterprise policy and RTD policy. Community RTD projects such as BRITE and Esprit have been expanded and supplemented by others such as the new information technologies programme. SMEs also take part in other programmes not specifically designed for them, such as Leonardo in the vocational training sector.

In March 2002, the Barcelona European Council agreed that RTD investment in the EU must be increased towards 3% of GDP by 2010. They also called for an increase in the level of business funding from its current level of 56% to two-thirds of total RTD investment, a proportion already achieved in the US and some European countries. The Sixth Framework Programme 2002-2006 (FP6) devotes the highest ever budget to SMEs (nearly € 2 200 million). All the initiatives already established under FP5 aimed at simplifying administrative procedures, reducing bureaucracy and helping SMEs are maintained and further improved. SMEs also benefit from the LIFE-Programme, the financial instrument for the environment, which spent € 28 million in 2002 on projects in which SMEs are involved, or from the EU Eco-label scheme, where 80% of the participating companies are SMEs. ProTon Europe is a pan-European network of Technology Offices linked to public research organisations and universities, launched in 2002. It is supported by the Commission as part of its Gate2Growth Initiative. A significant amount of world-class research is undertaken in universities and research institutions in Europe, which has actual or potential commercial relevance. To realise the potential of these public research organisations commercialisation should become an integral part of the research process and alternative approaches to the ownership and exploitation of intellectual property rights (IPR) suitably explored. ProTon Europe aims to build up a membership of at least 250 PROs throughout Europe to boost the commercial uptake of publicly funded R&D. This should contribute to the creation of new products, processes and markets, improve the management of innovation and thereby stimulate sustainable and high value economic growth, competitiveness and employment. The working methods of ProTon Europe include benchmarking of technology commercialisation activities across Europe and the collection and dissemination of good practice in managing and commercialising IPR.

5. Finance

Progress has been made over the last few years to improve the availability of finance and credit for SMEs through the provision of loans, guarantees and venture capital. The European financial institutions, the European Investment Bank (EIB) and the European Investment Fund (EIF), have increased their operations for SMEs. Furthermore, the financial instruments of the Growth and Employment Initiative (Council Decision 98/347) have been extended under the Fourth Multiannual programme for enterprise and entrepreneurship in particular for SMEs, which gave them a new legal basis. The latter includes four schemes: the European-Technology-Facility-Start-up, the SME Guarantee Facility, the Seed Capital Action and the Joint European Venture programme (JEV).

The 2001 Commission paper "Enterprises' access to finance" argued that Europe's SMEs are gradually switching from loan finance to other instruments (such as equity, debt-equity combinations, leasing, and guaranteed loans and equity) although at least for the next decade enterprise finance will continue to be dominated by bank lending.

The Structural Funds target some € 16 000 million on SME projects in the period 2000-2006 or roughly 11% of the total budget. About one third of this is for advisory services and shared business services, such as incubators, networking, and clusters. In addition, this aid triggers large matching support from national funds.

ROLE OF THE EUROPEAN PARLIAMENT

- As early as 1983 Parliament designated that year 'The Year of Small and Medium-sized Enterprises and the Craft Industry' and launched a series of initiatives to encourage their development.
- 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 Parliament 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 Parliament 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 Parliament 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.

TOURISM

LEGAL BASIS

The EC Treaty does not allow the Community to pursue a specific policy for tourism. But Article 3(u) of the Treaty, which the Maastricht Treaty inserted, does authorise the Community to provide guidelines for the development of tourism as part of other policies. In this way the provisions on free movement of persons, goods and services, small businesses and regional policy apply to tourism as well.

OBJECTIVES

The economic importance of tourism is such that the European institutions have justifiably focused attention on this sector despite the absence of a legal basis. With 53% of the market the Union is the world's largest tourist region. The industry accounts for 5.5% of the Union's GDP and 6% of its employment (Europe of Twelve).

ACHIEVEMENTS

1. General policy

a. The first Council resolution on the subject, of 10 April 1984, acknowledged the importance of tourism for European integration and invited the Commission to make proposals. A subsequent Decision of 22 December 1986 established an advisory committee on tourism and required the Member States to consult it. In the same year a budget line was instituted to fund a Community contribution to joint promotion efforts by Member States in markets outside the EC.

b. Since 1997 there has been a broad debate on tourism's contribution to employment in Europe which has involved all private and public stakeholders. At the end of 2001 the Commission presented a communication on improved cooperation between all stakeholders to ensure the future of tourism in Europe from the point of view of sustainability and competitiveness, through the promotion of information, training, quality, sustainable development and new technologies (COM/2001/0665). On 21 May 2002, the Council unanimously adopted a resolution on tourism, which calls for the coordination of all European legislation to encourage this sector, the promotion of Europe as a tourist destination, and close collaboration between the industry, Member States and the EU institutions.

2. Special measures

a. For tourists

These included measures making it easier to cross frontiers and protecting tourists' health, safety and practical interests, such as the Council Recommendation of 22 December 1986 on fire safety in hotels, Directive 90/314 on package tours and Directive 94/47 on timeshare properties.

b. For businesses and professionals

These included measures on market access, competition and small businesses. They gave particular attention to the profession of tourist guide, which is subject to strict rules in the Community's Mediterranean countries and somewhat looser rules in the other Member States; the judgements of the Court of Justice in Cases C 198/89, C 154/89 and C 180/89 established the principle that tourist guides may carry on their activities in countries other than their own when accompanying a group abroad, provided they do not operate in places for which a specialist guide is required, such as museums, sites of particular historical or architectural interest, etc.

c. For countries and regions

- In view of the contribution tourism makes to regional development, it has received **aid from the Structural Funds**, especially the ERDF and the EAGGF – Guidance Section, which provided ECU 2 300 million in funding between 1989 and 1993.
- Particular attention was devoted to the **creation of a Community system of statistics** in the sector. Directive 95/57 of 23 November 1995 set up a first two-yearly programme to harmonise national methods.
- The Community also set up **action for developing the tourist industry**, particularly after declaring 1990 *European Year of Tourism*. It carried out the first action plan between 1993 and 1996. The Commission followed this with a first multiannual programme for European tourism, *Philoxenia* 1997-2000, designed to stimulate the quality and competitiveness of European tourism in order to boost growth and employment.

d. The **campaign against sex tourism involving children** was the subject of a 1996 Commission communication, COM(96)0547, dealing with European tourists' behaviour in developing countries.

ROLE OF THE EUROPEAN PARLIAMENT

Since 1993 Parliament has made a decisive contribution to the development of Community action in the field of tourism; indeed, we might say it has been the driving force behind such action.

In particular, it has called for:

- inclusion in the Treaty, as a result of the 1996 revision, of a special chapter on tourism, giving the Community sufficient powers to pursue a common policy, while respecting the principle of subsidiarity (resolutions of 15 December 1994 on the Commission report on Community measures affecting tourism, and 13 February 1996 on the Commission Green Paper on the role of the Union in the field of tourism);
- creation of a European Tourism Agency (resolution of 15 December 1994 as above, and resolution of 25 October 1996 on the proposal for a Council decision on an initial multiannual programme for European tourism);
- increased protection for tourists' interests:

. greater civil liability of travel agencies and stricter criteria for granting operating licences (resolution of 15 December 1994 as above),

. compliance with Directive 90/314 on package travel,

. creating a Community legal framework for safety in tourist accommodation,

. protection from overbooking in hotels (resolution of 31 March 1998 on improving safety, consumers' rights and trading standards in the tourism sector);

- protecting the environment from damage caused by mass tourism, for instance by staggering holiday periods (resolution of 13 July 1990 on measures under European Year of Tourism, and 18 January 1994 on tourism in the approach to the year 2000);

- a Charter of the rights and obligations of tourists (resolution of 11 June 1991 on a Community tourism policy);

- action against travel agencies, airlines and hotel chains that encourage child sex tourism (resolution of 6 November 1997 on the Commission communication on combating child sex tourism).

EDUCATION, VOCATIONAL TRAINING AND YOUTH POLICY

LEGAL BASIS

Articles 3, 140, 146, 149,150 EC

The Treaty of Rome did not make any extensive reference to education. It simply stated in Article 3 that the Member States should make a contribution to quality education and training. It was essentially with the entry into force of the **Maastricht Treaty** that a comprehensive reference was made to the contribution of the EU in this area. Among other things, education became subject to co-decision.The **Amsterdam Treaty** changed the provisions slightly, the main change being that the co-decision procedure applied to vocational training as well.

According to the principle of subsidiarity, each Member State has the full responsibility for the organisation and content of its education and vocational training systems. Any act of harmonisation of legal and regulatory provisions of the Member States is excluded from the scope of Articles 149 and 150.

OBJECTIVES

The EU shall contribute to the development of quality education by encouraging co-operation between Member States and, if necessary, by supporting and supplementing their action.

ACHIEVEMENTS

A. Action programmes

Education and training are recognised as being of vital importance to Europe's economic and social future. This is reflected in the emphasis given to Community policy by adopting important action programmes.

As early as 1963 the Council laid down general principles for implementing a common vocational training policy. The aim was to enhance co-operation between Member States to ensure the maintenance of a high level of employment. In the 1970s and the 1980s various resolutions were passed by the Council aimed at establishing action programmes such as **Commett** and **Erasmus**.

1. Socrates

This was launched in 1995, and was such a success that a second phase was adopted in January 2000 to run from January 2000 to December 2006 with a total budget of € 1 850 million. The programme consists of **eight actions**.

a. Action 1, **Comenius** (from pre-school to secondary education), seeks to enhance the quality and reinforce the European dimension of school education, in particular by encouraging transnational co-operation between schools.

b. Action 2, **Erasmus** (higher education), encourages transnational co-operation between universities and mobility of university students. The Erasmus mobility scheme has grown from about 3 000 students when it first began in 1987/88 to over 100 000 today. In October 2002, the "millionth Erasmus student" goal was celebrated.

c. Action 3, **Grundtvig** (adult education and other educational pathways), a major new element, seeks to encourage the European dimension of life-long learning.

d. Action 4, **Lingua** (teaching and learning of languages), has been completely remodelled: the school component is now fully incorporated under Comenius.

e. Action 5, **Minerva** (open and distance learning, information and communication technologiesin education), seeks to support transversal measures relating to open and distance learning.

f. Actions 6, 7 and 8 are innovations and experimental programmes.

In a Resolution on 28 February 2002 on the implementation of the Socrates programme, the European Parliament expressed concern about the troublesome administrative procedure for beneficiaries of small grants. In a Decision of the European Parliament and of the Council on 27 February 2003, the provisions were accordingly amended in order to simplify and to allow flexibility for small projects.

2. Leonardo Da Vinci

This is an action programme for the implementation of a **vocational training** policy. It was set up in 1994 and the first phase ran until 31 December 1999. Its main objective is to increase the quality and to support the development of policies and innovative action in the Member States, by encouraging projects and transnational partnerships with an interest in training.

A decision to extend the programme was taken in 1999. Leonardo Da Vinci Phase II runs from 1 January 2000 to 31 December 2006 and has a budget of 1,150 million.

3. Youth for Europe programme

Although young people have benefited from the EU' activities since its creation, for example through the European Social Fund and from 1988 through the action programme for the promotion of youth exchange **'Youth for Europe'**, it was however with the Maastricht Treaty that a solid legal basis was first established for developing new programmes for the benefit of young people.

a. The **European Voluntary Service for Young People** (EVS) gave young people aged between 15 and 25 the possibility to spend up to 12 months in another Member State or a third country in a non-profit making, unpaid, activity.

b. On 13 April 2000 the **Community Action Programme for Youth** was established for a five-year

period from 2000-2004 with a total budget of 520 million, merging the two former programmes 'YOUTH for Europe' and EVS into a single programme. The YOUTH programme also supports co-operation activities with third countries, such as the **Euro-Med Youth Programme I** (1999-2001). A second phase of the programme runs from 2002-2004 and is aimed at young people in the 12 Mediterranean partner countries and the 15 Member States. The YOUTH programme also supports co-operation in South East Europe (SEE), the Commonwealth of Independent States (CIS) and Latin America (LA).

4. Tempus

The first TEMPUS programme adopted by the Council in May 1990 was a co-operation scheme for higher education for the countries of Central and Eastern Europe and the republics of the former Soviet Union. It both encourages Joint European Projects and provides mobility grants for individuals working in higher educational institutions. A second phase was adopted in 1993 and a third phase runs from July 2000 to 2006.

5. Erasmus Mundus

It is a global programme established in July 2002 by a European Commission proposal. to promote intercultural understanding through co-operation with third countries in higher education The scheme will provide 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 double or multiple degrees, scholarships for students from third countries and partnerships with third-country higher education institutions. The European Parliament increased the budget from € 200 million to € 230 million. The programme will run from 2004 to 2008.

6. Other schemes which encourage co-operation with third countries in education and training

According to Articles 149 and 150 of the Treaty, the EU shall foster co-operation with third countries in the fields of education and vocational training. EU activities in these fields have been steadily increasing and, in addition to above-mentioned programmes, include programmes such as USA-EC, CANADA-EU, ALFA and AL AN (for Latin American countries), ASIA Link (for several countries in Asia), and pilot programmes with Australia and Japan.

B. Other Initiatives

1. Quality education

At all levels quality education is a priority for all EU Member States and essential if the Lisbon objectives of 2000 are to be achieved by 2010. However, according to the Commission Communication "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. Moreover, the level of education of Europeans remains insufficient. Therefore the Commission suggest simultaneous actions in the Member States (COM (2003) 685). **The Bologna Declaration on the European Dimension for Higher Education** of 19 June 1999, signed by 29 countries, marks a turning-point in the development of European higher education. Although the fundamental principles of autonomy in education are respected, the signatories committed themselves to creating a European dimension for higher education by 2010.

(Regarding **language** education: *4.17.0.)

2. Recognition of qualifications

To promote mobility within the EU, several directives have been adopted guaranteeing **mutual recognition of professional qualifications** between Member States (*3.2.3). In March 2002, the Commission put forward a proposal for one Directive to replace and simplify the existing rules. As regards the recognition of periods of study undertaken abroad university students currently benefit from the **European Credit Transfer System** 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.

3. Decision 95/2493 established **1996** as the **European Year of Lifelong Learning**. Following the success of this experience, 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.

4. E-learning

Despite a high level of education, the EU remains behind the US and Japan in particular 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. An **E-Learning Action Plan** was adopted by the Commission in March 2001 with the following components: to equip schools with multimedia computers, to train European teachers in digital technologies, to develop European educational services and software and to speed up the networking of schools and teachers.

5. In November 2002 the Commission launched a **White Paper on Youth.** The Council in its conclusions of 14 February 2002 acknowledged that the White Paper was the starting point for the establishment of a framework of European co-operation in the youth field: on the one hand, the application of the **open method of co-ordination** and, on the other, taking the youth dimension more into account in other policies. A key priority is the development of active citizenship of young people and, to this end, the Commission has initiated pilot projects in favour of youth participation under the YOUTH programme.

6. Community Centres, Institutes and Networks

Cedefop, the European Centre for the Development of Vocational Training (est. 1975), assists the Commission in implementing the Community vocational training policy. The **European University Institute in Florence** (est. 1976) contributes to the development of the cultural and scientific heritage of Europe. **Eurydice**, the European Information Network in the European Community (est. 1981), collects and disseminates information on education systems in the Member States. The **European Training Foundation** (est. 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 ROLE OF THE EUROPEAN PARLIAMENT

The European Parliament has always supported close co-operation between the Member States in the fields of education, training and youth and to increase the European dimension in the Member States' education policies. Another goal was to include in the Treaty a solid legal basis for education, training and youth. By the adoption of the Maastricht and Amsterdam Treaties which introduced two new articles in these fields, the EP gained considerable influence on the policies carried out, since the decisions are taken following the co-decision procedure and with 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**. It also played a pioneering role in the establishment of the European Voluntary Service for Young People.

CULTURAL POLICY

LEGAL BASIS

Articles 3, 30, 87(3) d and 151 EC Treaty

1. The **Treaty of Rome** did not contain a specific chapter or paragraph concerning cultural policy. Only in the preamble to the Treaty was there a reference to culture as a factor capable of uniting people and promoting social and economic development.

2. The **Maastricht Treaty** gave cultural policy its own legal basis. Article 151 provides a basis for action aimed at encouraging, supporting and 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. The principles for intervention by the EU in the field of culture are complementarity and subsidiarity. Any act of harmonisation of legal and regulatory provisions of the member states is excluded from the scope of Article 151. Measures are taken by codecision procedure with unanimity in Council.

3. Article 22 of the **Charter of Fundamental Rights** stipulates that "the...EU shall respect cultural, religious and linguistic diversity".

4. The **Convention's draft Constitutional Treaty**, which serves as basis for the Intergovernmental Conference (Autumn 2003) recommends that the field of culture will be subject to qualified majority voting.

OBJECTIVES

The EU shall contribute to the flowering of the cultures of the member states, while respecting their national and regional diversity and shall bring common cultural heritage to the fore.

ACHIEVEMENTS

1. Action programmes

Although the EU had no legal basis for culture prior to the adoption of the Maastricht Treaty, it nevertheless provided funding for cultural activities via the European Social Fund (* 4.8.2) and the European Regional Fund (*4.4.2) and through ad hoc initiatives. Actions focused on the protection of cultural heritage, grants for artists, assistance for literary translation and support for cultural events.

a. Cultural Programmes

With the introduction of a legal basis for culture in the Maastricht Treaty, the EU started to organise its cultural activities more effectively.

- The Kaleidoscope Programme was set up in 1996 and aimed to encourage artistic creation and to promote awareness and dissemination of the culture of the peoples of Europe.
- The Ariane Programme was adopted in 1997 in order to increase co-operation between Member States in the field of books and reading, and to promote a wider knowledge of literary works and history of the European peoples by means of translation and improvement of skills of professionals in this field.
- The **Raphael Programme** was adopted in 1997 with the aim of encouraging co-operation between the Member States in the area of cultural heritage with a European dimension.

b. Culture 2000 Programme

Kaleidoscope, Ariane and Raphael marked the first stage in the implementation of EU action on culture. The three programmes have helped to reinforce and extend transnational partnerships, have improved public access to culture and have promoted European cultural activities. In May 1998 the Commission proposed the establishment of a First EU Framework Programme in support of Culture for the period of five years (2000-2004) with a total budget of €167 million. The aim was to simplify action by using a single instrument for financing and programming cultural co-operation. The programme was formally adopted on 14 February 2000. Its aims are to promote dialogue and mutual knowledge of European culture, to promote good practices concerning Europe's cultural heritage, creativity and transnational dissemination of culture and the mobility of artists, new forms of cultural expression, and to foster the intercultural dialogue between European and non-European cultures. The 'Culture 2000' Programme ended in 2004. In April 2003 the Commission presented a proposal (COM (2003) 0187) to extend the 'Culture 2000' Programme unchanged for the years 2005 and 2006.

2. Other Activities

a. Languages

Linguistic diversity is an important part of EU cultural identity and is recognised in Article 22 of the Charter of Fundamental Rights of the EU. The knowledge of other European languages not only opens doors to work opportunities but also furthers understanding between the citizens of the EU. Therefore the EU promotes the dissemination and preservation of European languages through several activities. The EU recommends that all pupils leaving compulsory education should be able to speak at least two European languages in addition to their mother tongue.

The European Year of Languages 2001 was a great success and, in July 2003, the European Commission adopted an action plan for 2004-2006 with a view to promoting language learning and linguistic diversity

b. European Capital of Culture

The European Capital of Culture was launched in Athens in 1985 and was a genuine success. The event began as an intergovernmental initiative, but at the request of the EP, the Commission in 1997 submitted a proposal for a Decision, based on Article 151, adopted on 25 May 1999, which will end the designation of the cities by

intergovernmental agreement and bring it into the EU framework from 2005 onwards.

c. Cultural Goods

According to Article 30 of the Treaty, prohibitions or restrictions on the import, export or transit of national treasures possessing artistic, historic or archaeological value are permissible so long as they do not constitute a means of discrimination on trade between member states. In view of the implications of the abolition of frontier controls in connection with the consolidation of the internal market, rules were needed for the protection of cultural goods. Therefore the EU adopted a Regulation (3911/92) according to which the export of cultural goods is subject to the presentation of an EU export licence. A Council Directive (93/7) 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. By a Resolution of 21 January 2002 on the implementation of the above-mentioned Regulation and Directive, the Council invited the member states and the Commission to improve the effectiveness of their activities in these fields.

d. Rights of the artist and artistic work

The EU has approximately 7 million people professionally active in the cultural sector. The EU supports the activities of artists through programmes such as Culture 2000 and MEDIA, and the Treaty guarantees freedom of movement for all, including professional artists. However, as the EP has pointed out in several resolutions (for example, 9 March 1999), this right is often hampered by national administrative barriers. The EU has also established rights for the protection of the work of artists through its copyright Directives and legislation concerning resale rights, and rental and lending rights. Cultural goods and services are subject to. There is a standard minimum VAT rate of 15% and a reduced rate of less than 5%. As a way of supporting artistic and intellectual creativity, the EU allows member states to apply reduced rates of VAT to certain goods and services such as the supply of books and periodicals, access to cultural events and reception of radio and TV broadcasts.

e. Copyright

The protection of intellectual property rights or copyright has economic, social and cultural aspects. The creation of the EU single market and rapid technological advances made it necessary to create legal protection for copyright. Accordingly, since 1991 the EU has adopted several directives on the exercise of rights to protect authorship and performance (*3.4.4.).

f. Cultural industries

The cultural industries, cinema, audiovisual media, publishing, craft industry and music, contribute to job creation and economic welfare, promote cultural diversity and enhance European identity. Therefore the EU takes the cultural aspects of these industries into account when implementing its actions (Article 87 3(d) EC Treaty). Due to the special nature of the cultural industries, the EU during the WTO negotiations on trade has always taken the position that certain cultural and audiovisual sub-sectors should not be liberalised (the so-called **cultural exception**). In a Resolution of 4 September 2003 on cultural industries, the EP supported unanimity in Council in the field of trade regarding cultural and audiovisual services. The Convention's draft Constitutional Treaty also recommends unanimity voting as regards these services.

g. Town-Twinning

The idea behind the Town-Twinning was born in Europe after World War II and is regarded as making an important contribution to the development of European citizenship. On the initiative of the EP, in 1989 the EU established a support scheme for twinning events which includes educational programmes on topical European issues. The annual budget of approximately □12 million supports about 1 300 projects.

ROLE OF THE EUROPEAN PARLIAMENT

- The EP believes that Europe's position in the world is not merely determined by its political, economic, social and geographical standing but to a large extent by the position and strength of its cultural values. To emphasise the importance of the cultural aspect of EU policy, the EP decided to establish a Committee responsible for cultural matters after its first direct elections in 1979.
- The EP had for many years been of the opinion that the 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. This means that it gained influence on legislation adopted according to Article 151, which however requires unanimity voting in Council, which can be difficult to obtain. Therefore the EP pleaded for a change to qualified majority voting. This change has been incorporated in the Convention's draft Constitutional Treaty.
- The EP also asked the Commission to draw up a multi-annual programme on linguistic diversity including regional and minority languages and to carry out a feasability study on the creation of a European Agency for Linguistic Diversity and Language Learning (Resolution of 4 September 2003). It wants to give 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). As seen above, it was instrumental in including the European Capital of Culture scheme within the EU framework and in town twinning.

MEDIA AND SPORT POLICY

LEGAL BASIS

Articles 23, 25, 28, 39-55, 81-82, 149,150, 151, 157 EC Treaty.

1. The Treaty of Rome did not provide any direct powers in the field of **media and audiovisual 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 particular reference to the audiovisual sector in Article 151 on culture. The Treaty of Amsterdam included a Protocol on the System of Public Broadcasting in the Member States. The Treaty of Nice altered Article 157 on industry, including audiovisual industry, replacing unanimity voting in Council with qualified majority voting. The Charter of **Fundamental Rights** of the EU states in its Article II-11, that "the freedom and pluralism of the media shall be respected."

2. **Sport** is affected by many spheres of EU responsibility. Although no article in the Treaties mentions sport explicitly, the Amsterdam Treaty gave a strong political signal about the increasing importance attached to sport by the inclusion of a Declaration on Sport. The adoption at the December 2000 Nice European Council of a Declaration on the specific characteristics of sport recognised the important social, educational and cultural functions of sport.

OBJECTIVES

As regards **media policy** the EU encourages cooperation between member states and, if necessary, supports and supplements their action in artistic and literary creation, including the audiovisual sector. Concerning **sport** the EU in its action under the various Treaty provisions, takes account of the social, educational and cultural functions inherent in sport.

ACHIEVEMENTS

A. Media and audiovisual Policy

1. 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 in this area compared to the United States forced the EU to take initiatives. In 1984, the Council adopted various Resolutions on the development of a European programme-making industry, including measures to fight audiovisual piracy. The Commission's White Paper on the completion of the single market (1985), mentioned several initiatives intended to open up the audiovisual market to competition in the member states and promote high-definition television. The European Year of Cinema and Television (1988) provided the ideal opportunity for discussions with the national authorities and the audiovisual industry on possible measures in this sector.

2. Television without frontiers

In 1989 the Directive on Television without frontiers was adopted. This Directive, revised in 1997, established the legal framework for the free movement of television broadcasting services in the EU. It provides rules concerning: a) The circulation of audiovisual programmes within the member states; b) Advertising and sponsorship; c) Protection of minors; d) Availability to all of broadcasting of events of major importance to the public; e) Promotion of European works by laying down a minimum proportion of broadcasting time for European products.

3. The MEDIA Programmes

The European film landscape is characterised by a strong American market dominance. In order to promote the European film and audiovisual industry and to make it more competitive, the MEDIA I-Programme was established for a period of five years (1990 - 1995). MEDIA II (1996 - 2000) was allocated € 310 million and was followed by MEDIA Plus (2001-2005), which had a total budget of € 400 million, € 50 million for training and € 350 million for development. The MEDIA programmes have been very successful and the Commission intends to present a proposal for a new programme to begin in 2007. To cover the year 2006 the Commission has put forward a proposal to prolong the Media Plus Programme unchanged for 2006 and to adjust the overall budget.

4. Audiovisual Initiative

To strengthen the competitive situation of Europe's audiovisual industry the European Commission and the European Investment Bank Group decided in May 2001 to offer additional financial help and created the "i2i Audiovisual Initiative" through medium to long-term financing and credit lines to help the film industry.

5. Other initiatives

a. Film industry

The EU takes a great interest in the audiovisual industry and has adopted several Resolutions in the area, e.g. Resolution on National aid to the film and audiovisual industrie*s* (February 2001); Resolution on Conservation and enhancement of European cinema heritage (June 2000) and on the Deposit of cinematographic works in the EU (November 2003).

b. Cultural exception

The EU and its member states have often emphasised the special nature of the audiovisual sector. Audiovisual services and content have a great political, social and

cultural impact and the audiovisual industries and their economic dimension should be regarded as the tools of an essentially cultural form of expression. Therefore, the EU during the WTO negotiations on trade has always taken the position that certain cultural and audiovisual sub-sectors should not be liberalised (the so-called cultural exception). Furthermore, in August 2003 the Commission adopted the Communication "Towards an international instrument on cultural diversity" in which it supported the opportunity to develop a new international instrument on cultural diversity in the framework of Unesco

c. Protection of minors and human dignity

Protection of minors is an important part of the development of the audiovisual and media sector and the directive on "Television without frontiers" contains provisions in this regard. On 24 September 1998 the Council adopted a Recommendation on the "Protection of minors and human dignity in audiovisual and information services". It was the first legal instrument concerning the content of on-line audiovisual and information services made available on the Internet. It 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 2004. A Parliament and Council Decision adopting a multiannual "Action plan on promoting safer use of the Internet by combating illegal and harmful content on global networks" was taken on 25 January 1999. This Action plan, in conjunction with the Recommendation on protection of minors and human dignity, are means of implementing a European approach to the safer use of the Internet.

d. The European Union's information and communication policy

There is a generally recognized deficit as regards the knowledge and interest of EU citizens in the policies of the European Union. Following a request from the European Parliament and the European Council, the Commission assented to a new approach on information and communication on 2 July 2002 (COM(2002)350), which outlined the importance of working more closely with the Council of Ministers and the European Parliament and in real partnership with the member states, both at national and regional level, to inform citizens better about EU issues and to enable them to participate in EU debates.

B. Sport

More than one third of Europe's citizens participate in sporting activities and many aspects of EU policies influence the sporting world in areas such as free movement of persons, competition policy, media policy and health policy. However, it was only after 1997, with the inclusion of a Declaration on Sport in the Amsterdam Treaty that the EU started to deal with sport from angles which were not purely economic.

1. Freedom of movement of persons

As an economic activity in the sense of Article 2 of the Treaty, sport must comply with EU law, in particular the provisions relating to the free movement of workers, as acknowledged by the Court of Justice "Walrave ruling" of 1974. Since then, various cases (Dona, Deliège, Lethonen) have confirmed this approach. In December 1995 the Court, basing its reasoning on Article 48, ruled in the very important **Bosman Case** (C-415/93) that transfer fees**,** directly affecting a footballer's access to the employment market in another EU country, were an obstacle to the free movement of workers and thus illegal under the Treaty. The Court also ruled against any limit on the number of other EU players who could be fielded in a club team. In December 1998, following a number of complaints, the Commission expressed several reservations to 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, UEFA and professional footballers' representatives in 2001 agreed to change the transfer system coming to a solution in line with EU law and taking into account the specific nature of football.

2. Competition policy

Sport comprises two level of activity: 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. On the other hand, there exists a series of economic activities generated by sporting activities to which the competition rules of the Treaty do apply. The interdependence and particularly the overlap between these two levels render the application of competition rules more complex. The sports sector is mainly concerned with anti-trust rules, which are based on Articles 81 and 82 of the Treaty. The Commission has the task of ensuring that EU competition rules are respected. In this context it examines cases concerning sport where competition policy rules have been applied. In the case concerning ticket sales and the 1998 World Cup, it ruled that the arrangement, whereby one tour operator had the exclusive rights to sell entry tickets as part of a package tour to the world's premier soccer competition, was an exclusive distribution agreement that restricted competition to the detriment of football fans.

3. Audiovisual policy and sporting events

Given the huge importance of advertising in the world of sport, television is the primary source of funding for professional sport in Europe. Some sports, such as football and Formula 1, attain very high viewing figures, hence the importance attached to these events by broadcasters. Many broadcasters are willing to pay large amounts for the exclusive right to broadcast popular sports events. In this regard the 'Television without Frontiers' Directive is important since it contains guarantees for unencoded access broadcasting of certain major sporting events.

4. Public health - doping

The EU member states have national anti-doping legislation but the EU Sports Ministers and the EU institutions have taken the view in several resolutions that the fight against doping can be improved by increased

cooperation at EU level. The **World Anti-Doping Agency** (WADA) was established on 10 November 1999 to promote and coordinate the fight against doping in sport in all its forms at an international level. The conclusions of the informal meeting of the Ministers of Sports of the EU for the fight against doping in February 2003 stated that the 3rd draft of the anti-doping code of WADA (which was approved during the WADA Copenhagen Conference in March 2003) should be fully binding for the athletic bodies and organisations at all levels. The Ministers also underlined that close cooperation between the EU, the Council of Europe and Unesco is needed in order to properly tackle the doping phenomenon and its inherent international and cross-boundary nature.

5. Sport and education

On 6 February 2003, the European Year of Education through Sport 2004 was established by Decision 291/2003 of the EP and Council. The aims of the year are many but in particular to raise young people's awareness of the importance of sport in the development of personal and social skills and to encourage the links between education and sport. 28 countries will participate in the different events taking place throughout 2004. The slogan is "move your body, stretch your mind".

ROLE OF THE EUROPEAN PARLIAMENT

The EP has stated that the EU should stimulate growth and competitiveness for the **audiovisual and media** sector and at the same time recognise the sector's cultural significance and its potential to safeguard cultural diversity. EP strongly supports the "Television without frontiers" directive and was even able to secure "unencoded access broadcasting" of major national and international events such as the Olympic Games, when the Directive was revised in 1997. The EP supports the promotion of the EU film industry and thanks in particular to Parliament's amendments the MEDIA Plus Programme received a budget of 400 million. The EP also urges the Commission to encourage member states to introduce tax incentives to attract investment in film. The EP is worried about increasing media concentration and has called on the Commission and the member states to safeguard media pluralism and to ensure that the media in all the EU member states are free to guarantee democracy and cultural diversity. The EP emphasises that the EU should deal with **sport matters** while fully respecting the principle of subsidiarity and is therefore in favour of including an explicit reference to sport in Article 151. EP already in 1997 asked the Commission to organise a European Year of Sport, which resulted in the establishment of the European Year of Education through Sport 2004. The EP is very worried about doping both in professional and amateur sport and strongly supports the Commission's plan to intensify cooperation of doping work at international level.

GENERAL TAX POLICY

LEGAL BASIS

Action in the general taxation field can be justified by the general aim of the EC Treaty, expressed in Article 3, of eliminating between Member States "customs duties...and all other measures having equivalent effects"; and of "ensuring that competition in the common market is not distorted". Article 93 deals specifically with indirect taxation (VAT and excise duties). Measures in other tax fields are generally taken on the basis of Article 94 (completed by Articles 96 and 97) covering measures to prevent distortions of the market. Article 293 also recommends the conclusion of inter-State fiscal conventions in order to avoid double taxation.

OBJECTIVES

Both the creation of the Single Market and the completion of Economic and Monetary Union have led to new Community initiatives in the field of general taxation. The Community is pursuing a number of objectives.

1. 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 (*4.19.2., 4.19.3. and 4.19.4.).

2. 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** (*4.19.5.).

3. The objective of more recent moves towards a general taxation policy has been to prevent the **harmful effects of tax competition,** notably the migration of national tax bases as firms move between Member States in search of the most favourable tax régime. Though such competition can have the beneficial effect of limiting governments' ability to "tax and spend", it can also distort tax structures. It is argued that the proportion of total taxation accounted for by taxes on relatively mobile factors like capital (interest, dividends, corporate tax) has fallen, while that on less mobile factors, notably labour – for example social charges – has risen. This, in turn, has raised unemployment.

4. The Maastricht Treaty provisions on Economic and Monetary Union introduced a new dimension to general taxation policy by severely limiting governments' ability to finance public expenditure out of 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 out of 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, and to end the Treaty provision that tax measures must be adopted by unanimity in Council. As the Commission pointed out in a 1980 paper on 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 45.5% in 2000; but figures vary considerably between Member States. Overall taxation and social security contributions, for example, are under 34% in Greece but nearly 55% in Sweden. Direct taxes – mostly personal income tax and company taxation – vary between 9% in Greece to over 32% in Denmark (EU average 13.7%). Indirect taxes – that is, mainly VAT and excise duties – vary between about 11% in Spain to over 19% in Denmark (EU average 13.8%). Social security contributions vary from only 1.7% in Denmark to over 19% in France (EU average 15.1%).

ACHIEVEMENTS

A. General

In 1996 the Commission proposed a comprehensive review of taxation policy ("Taxation in the European Union" of 20 March (SEC(96)487)). This highlighted the major challenges facing the Union: the need to create growth and employment, to stabilise fiscal systems, and to fully realise the Single Market. In June 1996 the Commission also proposed a European Confidence Pact for Employment, emphasising the need to reverse the tendency of tax systems to penalise employment.

In April 1996 the Council of Finance Ministers (Ecofin) set up a High Level Group on taxation chaired by the then tax Commissioner, Mario Monti. The Commission's initial conclusions following the meetings of this group (which included representation from the European Parliament) 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 Co-ordination 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 Council, and is now in operation. Adherence to the code is monitored by a body appointed by the national finance ministers: the so-called "Primarolo Group" (*4.19.5.).

In May 2001 the Commission published a new Communication on **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 re-affirmed (*4.19.2.).

In the case of **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 (*4.19.5.).

Since the need for unanimity in Council limits the scope for legislation on tax matters, the Commission suggests other possibilities.

- The Commission intended to "adopt a more pro-active strategy generally in the field of **tax infringement..**" It would be more ready to initiate action where it believed that Community law was being broken; and would ensure the correct application of the European Court of Justice's judgements.
- Instruments exist which, unlike regulations or directives, do not directly create Community law. These included **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 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 co-operation

Co-operation between the tax authorities of Member States has, in any case, been a key element in the implementation of EU tax policy, in particular to combat tax fraud. In the field of VAT, such co-operation has been an essential part of the transitional system introduced in 1993 (*4.19.2.), together with the computerised VIES facility for verifying VAT numbers. Recent initiatives have included a proposal to computerise the movement and surveillance of excisable products (COM(2001)466); re-enforcement of administrative co-operation in the field of VAT (COM(2001)294; and a new **Fiscalis** programme to run from 2003-2007, extending the work of the previous programme in improving information-exchange, joint investigation, training, etc. from the field of indirect taxation to that of direct taxation.

C. The taxation of motor vehicles

In September 1997 the Commission published a study on Vehicle Taxation in the European Union *(*XXI/306/98). All Member States, this noted, "rely heavily on a range of tax instruments to ensure significant budgetary receipts from both private and commercial road users". But various pressures had resulted in "large differences in the overall strategies followed". Vehicle taxes were listed under three broad categories:

- Taxes on the acquisition, purchase or registration of a vehicle: VAT, registration taxes (RT), and registration charges.
- Taxes on the possession or ownership of a vehicle: annual circulation tax (ACT) – usually through the purchase of a *vignette* 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; and 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 (though ACT is sometime reimbursed, unexpired RT never is). The Commission accordingly proposed a gradual reduction of RT levels, with a view to total abolition, to be made up by circulation taxes. Meanwhile, there should be an RT refund system to ensure, during the transitional period, a *pro rata* refund of the residual RT in all cases where a passenger car, registered in one Member State, is moved permanently to another.

D. The taxation of pensions

In June 1997 the Commission published a "Green" consultation paper on Supplementary Pensions in the Single Market (D-G XV). A report on the results of the consultation ("Report on pensions Green Paper", COM(1999)134, May1999), 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 pension*s*" (COM(2001)214, April 2001).

The systems of taxing pensions can be classified as follows:

- **Taxed, Exempt, Exempt (TEE),** where contributions must be paid out of taxed income, but neither investment returns nor benefits are in principle subject to tax. Only Germany and Luxembourg fall into this category.
- **Exempt, Taxed, Taxed (ETT),** where contributions can be paid out of untaxed income, but where both investment returns and benefits are subject to tax. Denmark, Italy and Sweden fall into this category.
- **Exempt, Exempt, Taxed (EET),** where neither contributions nor investment returns are subject to tax, but where benefits are. All other Member States fall into this category.

The Commission's preferred solution is to "strive for alignment of Member States' pension taxation systems on the basis of the EET principle".

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has generally approved the broad lines of the Commission's programmes in the field of taxation, including the Monti package, the Code of Conduct and the work of the Primarolo Group.

Parliament's most recent report on general tax policy within the EU was adopted in March 2002. The resolution stressed that "tax competition is not at odds with the completion of the internal market". It might "in itself be an effective instrument for reducing a high level of taxation"; and could help in attaining a reduction in administrative burdens, an increase in competitiveness and a modernisation of the European social model.

In the case of 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 Council "for decisions concerning mutual assistance and co-operation between tax authorities". In any case, "Parliament should be given co-decision powers in the taxation area".

VALUE ADDED TAX

LEGAL BASIS

Under Article 93 of EC Treaty, the Council is required to adopt measures for the harmonisation of "turnover taxes, excise duties and other indirect taxes" where this is "necessary to ensure the establishment and functioning of the Internal Market."

OBJECTIVES

1. Under the **First VAT Directive** of 11 April 1967 Member States replaced their general indirect taxes by a common system in order to achieve transparency in the "**de-taxing" of exports and "re-taxing" of imports** in trade within the EEC (see below). All Member States had introduced a VAT by the early 1970s.

2. 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.

3. 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 8 000 million ECU, 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 Baden-Würtembourg. 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)0323) 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 macro-economic statistics or on sampling techniques.

2. The transitional system

The Commission proposals, however, proved unacceptable to Member State governments. In the second half of 1989, a high-level working party convened by the Council outlined an alternative.

a. 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.

b. 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**. Mail-order or similar companies having sales over a certain threshold to any Member State must levy VAT at the rate applied in that country (i.e. where the goods are delivered).
- **Tax-exempt legal persons**. (i.e. hospitals, banks, public authorities, etc.). Where these buy goods over a certain threshold from another Member State they are required to pay VAT on them at their domestic rate, despite the fact that the deliveries are theoretically zero-rated (i.e. the customer rather than the vendor is accountable for the tax).
- **New means of transport**. Boats, aircraft and cars under 6 months old are taxable in the purchaser's country, even if acquired in another Member State.

3. Towards a "definitive" system

a. The original intention was that this transitional system should apply until the end of 1996. Under Article 35a of the amended 6th.VAT Directive, the Commission was required to "submit proposals for a definitive system" before the end of 1994, and for the Council to reach a decision on it before the end of 1995. However, no formal

legislative proposals appeared. Instead, the Commission published two discussion documents:

- "A Common System of VAT: a programme for the Single Market" (COM(96)328 final of 22 July 1996). This outlined a timetable, running from late 1996 to mid-1999, during which the new system would be introduced in stages.
- "Description of the General Principles, Commission Services technical note" (XXI/1156/96), which was launched at a special conference on 4/5 November 1996. The essentials were:
- the "place of taxation" would no longer be where goods are located, or services provided, but where the suppliers' business was established;
- invoicing and deduction of input tax would be according to the origin system;
- VAT rates would be harmonised "within a rather narrow band";
- the allocation of VAT revenues would be separated from the VAT system itself, and be carried out according to national consumption statistics;
- the 6th. Directive would be revised to make the system simpler, with fewer derogations, exemptions, options and special régimes;
- steps would be taken to avoid differing national interpretations of VAT law; the role of the VAT Committee would be strengthened; and cooperation between tax authorities improved.

b. In pursuit of this final objective, a draft Directive was proposed to give the **Committee on Value Added Tax,** which consists of national representatives and is chaired by the Commission, more powers of decision (COM(97)325). New proposals to replace the **8th VAT Directive** with a system of deduction in the country of registration, together with a linked proposal on **eligibility for deduction** (COM/98/377); and a simplification of the "tax representative" system (COM(1998)660) were published in 1998. 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)0004), following a decision by Council to apply a temporary derogation from the normal provisions of the 6th Directive, and apply a "reverse charge" procedure (which remains in force). The Commission also published a Communication on **Electronic Commerce and Indirect Taxation** (COM(1998)374 final); and a draft **Directive on VAT on e-commerce** (COM(2000)349), which was adopted in 2002.

c. More generally, the Commission has now shifted its emphasis from a move to a "definitive" system towards measures to improve the present "transitional" arrangements. In June 2000 it published a Communication on a **Strategy to Improve the Operation of the VAT System within the Context of the Internal Market** (COM(2000)348), outlining a new list of priorities and a timetable.

Proposals already tabled	**Target Date for Adoption**	**Actual date**
VAT Committee (COM(1997)325)	2000/2001	Still pending
Mutual assistance on recovery (COM(1998) 364)	2000/2001	June 2001
Right of deduction (COM(1998)377)	2000/2001	Still pending
Persons liable for VAT (COM(1998)660)	2000/2001	17 October 2000
New Proposals	**Target Date for Publication**	**Actual date**
Taxation of postal services	June/July 2000	Still awaited
Taxation of e-commerce	June/July 2000	June 2000. Adopted May 2002.
Electronic Invoicing	Autumn 2000	November 2000. Adopted May 2002
Administrative cooperation and mutual assistance	December 2000	June 2001
Minimum standard rate of VAT (revision)	July 2000	September 2000

Source: Commission Communication COM(2000)348.

d. A new Communication on "Tax Policy in the European Union - Priorities for the years ahead" was published by the Commission in May 2001 (COM(2001)260). In this, it stated its intention to publish additional VAT proposals on **the place of supply of goods,** on **travel agents** and on the **"recasting" of the Sixth Directive**. That on travel agents was published on 8 February 2002 (COM(2002)64). It also listed "potential future priorites":

- treatment of financial and insurance services;
- sales promotion, discount vouchers, etc.;
- supply of goods: assembly, distribution networks, distance selling;
- coordination of customs and taxation;
- place of taxation of services: general revision; rationalisation of Article 27 derogations;
- rationalisation of options, rights and derogations;
- rationalisation of reduced VAT rates;
- schemes applying to small businesses.

B. VAT rates

1. The Commission's original proposals on VAT rates (COM(87)321) were for "approximation" within two tax bands: a standard rate between 14% and 20%; and a reduced rate between 5% and 9%. However, the main provisions of Directive 92/77/EEC of 19 October 1992 were:

- a **minimum standard rate** of 15%, subject to review every two years;
- the option for Member States to apply either a single or two **reduced rates** over 5% to any of the goods and services listed in Annex H of the amended 6th. 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**.

2. Commission reports on the results of this agreement have concluded that there have been no significant changes in cross-border purchasing patterns since 1st.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 Council. A Communication published in November 1997 on "**Job creation: Possibility of a reduced VAT rate on labour-intensive services for an experimental period and on an optional basis"** (SEC(97)2089), and a formal proposal in 1999 (COM(1999)62). This was agreed by Council for a limited range of services and until the end of 2002. A proposal to extend the period until the end of 2003 was published on 25 September 2002 (COM(2002)525) and agreed. It has been decided that the 15% minimum standard rate will be maintained at least until 2005.

3. Much controversy has taken place concerning the continuing application of a **zero VAT rate** to certain goods and services, notably in the UK and Ireland. A specific derogation contained in Art. 28 of the 6th.Directive, refers back to Art. 17 of the Second VAT Directive of 11 April 1967. The zero rates already in force on 31 December 1975 can continue provided that they exist for clearly defined social reasons; that they benefit the final consumer; and that the "origin principle" is still *not* being generally applied. Sweden and Finland have the right to continue applying a zero rate where another Member State already applies it to the same products or transactions.

ROLE OF THE EUROPEAN PARLIAMENT

1. The VAT system

Parliament has pointed out that ending tax controls at frontiers is not the same thing as abolishing fiscal frontiers. Goods and services traded *between* Member States must be treated in the same way as those traded *within* Member States. 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.

2. VAT rates

The EP Committee on Economic and Monetary Affairs and Industrial Policy broadly supported the Commission's original 1987 proposals for VAT rates. But, as a result of the revisions that took place in the years that followed, Parliament was only able to give a final opinion on rates in June 1991. It supported a 15% minimum standard rate; but proposed that the application of a reduced rate to certain essential goods and services should be mandatory rather than optional. It also proposed that "no reduced rate may be more than 9%": i.e. that zero might be considered a legitimate reduced rate.

Parliament voted *against* the proposed 25% upper limit on the VAT standard rate in 1997, but in 1998 approved a 15-25% standard rate band under certain conditions. It also pressed for Member States to be given the option of applying a reduced rate to certain labour-intensive or environmentally-friendly activities – pressure which was eventually successful. In May 1998 Parliament also urged action to ensure a uniform application of rules on reduced VAT rates.

EXCISE DUTIES: ALCOHOL AND TOBACCO

LEGAL BASIS

Under Article 93 of EC Treaty, the Council is required to adopt measures for the harmonisation of "turnover taxes, excise duties and other indirect taxes" 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 EC Treaty Article 90;
- Very large discrepancies in the duty on a particular product can result in tax-induced movements of goods; in loss of revenue; and in fraud.

Attempts have therefore been made since the early 1970s to harmonise both structures and rates; but progress has been slight, in part because of considerations other than the purely fiscal. For example, high levels of duty have been imposed in some Member States as part of general policies to **discourage drinking and smoking**. On the other hand, wine and tobacco are important **agricultural products** in some Member States.

ACHIEVEMENTS

A. Alcoholic beverages

A further difficulty in the case of alcohol has been disagreement about **the extent to which different products are in competition with each other**. In 1983 the Court ruled on the levels of duty in the UK on wine and beer (Case 170/78 ECR (1985)). The Court's view was that the products could be considered substitutes since "the two beverages are capable of meeting identical needs". The Commission has traditionally taken the view that "all alcoholic drinks are more or less in competition" (COM(79)261). However, recent 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 excises on beer, wine and spirits were made in 1972 (COM(72)225). Work on these in 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); and this 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 within 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, for spirits ECU 3.81 per 0.75 litre bottle. Unlike VAT, however, few national alcohol excises are close to the average rate. No Member State found the proposals acceptable. The Commission then proposed a more flexible approach (COM(89)527). Instead of single, harmonised rates there would be **minimum** rates and **target** rates, on which there would be long-term convergence. Only the minimum rates were retained in Directive 92/84/EEC. The levels agreed were:

- alcohol and alcoholic beverages (i.e. spirits): ECU 550 per hl/alcohol;
- intermediate products: ECU 45 per hl.;
- still wine and sparkling wine: ECU 0 per hl.;
- beer: ECU 0.748 per hl/degree plato or ECU 1.87 per degree of alcohol.

Under the terms of the Directive, Council should have reviewed these rates by the end of 1994, and adopted any necessary changes. No Commission proposals, however, 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 ECU per hl. However, this 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. A new proposal was then expected in late 2002, but also failed to appear.

B. Tobacco products

1. Structures

a. The **basic structure** of tobacco excises 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 the rolling of cigarettes); and smoking tobacco (other).

b. In the case of **cigarettes**, the tax must consist of a **proportiona**l ("*ad valorem*") excise duty, calculated as a percentage of the maximum retail selling price, combined

with a **specifi***c* 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".

c. 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).

d. The **difficulty of reaching a fixed ratio** reflects the structure of the Community tobacco industry. A specific tax – so many ECU 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

a. The Commission's original proposals on excise duties within the context of the Single Market programme (COM(87)0325 and COM(87)0326) 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 t-i. retail price, or ECU 20 per kilo;
- Cigars & cigarillos: 5% of t-i. retail price, or ECU 7 per 1000 or per kilo;
- Pipe tobacco: 20% of t-i. retail price, or ECU 15 per kilo.

b. Both the 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 observes that the "situation is giving rise to considerable fraud"; but that the cause "does not lie exclusively in the taxation domain".

c. 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 were not adopted.

d. A new Report and draft Directive (COM (2001)133) was published in **2001**. This proposed:

- A € 70 minimum specific excise **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 (specific and *ad valorem* together) of € 70 per 1000 cigarettes.
- A € 100 minimum specific excise **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 (specific and *ad valorem* together) of € 100 per 1000 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 € 100 per 1000 alternative threshold was reduced to € 95 and the € 70 additional threshold to € 60 per 1000 from July 2002, rising to € 64 from July 2006. Spain and Greece were given later deadlines.

ROLE OF THE EUROPEAN PARLIAMENT

1. 1987 to 1992

Parliament's Economic Committee examined the structure and rates of alcohol and tobacco excises 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 1000 cigarettes, as in the case of other tobacco products.

2. 1997

a. 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.

b. 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 were 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 of cigarettes and that on hand-rolled tobacco;
- the effect on employment of higher levels of duty.

3. 2002

In 2002 Parliament rejected the Commission's proposals for changes in tobacco excises (see above), one of the main reasons being the projected impact on the enlargement countries, where rates are significantly below even the then existing EU minima.

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."

THE TAXATION OF ENERGY

LEGAL BASIS

Under Article 93 of the EC Treaty, the Council is required to adopt measures for the harmonisation of "turnover taxes, excise duties and other indirect taxes" 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 contained in Article 174: the protection of the environment or of public health, and the promotion of the "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 was always 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 make a switch from the taxation of labour to other sources of revenue, including taxing the use of raw materials and energy.

ACHIEVEMENTS

1. Mineral oils

The **basic structure** of mineral oil excises 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 kilogram. For the purposes of excise duties, mineral oils are defined as covering: 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, within 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.

2. The CO_2/Energy tax proposal

a. 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 the year 2000 at their level in 1990. This in, turn, was seen as a key element in world-wide policies to reduce the emission 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".

b. Following deadlock in the Council on the 1992 proposals – which were opposed both for technical reasons and for reasons of national fiscal sover-

eignty – the Commission published a **revised version** (COM(94)0127), providing for wide flexibility. The minimum rates set by the original proposal became target rates; and exemptions for various industries were allowed for. Council did however, not adopt the revised proposal either. Instead, individual Member States have been pursuing their own solutions towards the reduction of CO_2 emissions. The environmental aspects of the situation were outlined in a Communication, Environmental Taxes and Charges in the Single Market (COM(97)0009).

3. The 1997 proposals

In 1997 the Commission published new proposals for "restructuring the Community Framework for the Taxation of Energy Product" (COM(97)0030). 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, which would be set at the rates listed in the following tables:

Energy products used as motor fuels			
Petrol (ECU per 1 000 l)	417	Gas oil (ECU per 1 000 l)	310
Kerosene (ECU per 1 000 l)	310	LPG (ECU per 1 000 kg)	141
Natural gas (ECU per gigajoule)	2,9		

Energy products used as motor fuels for certain industrial and commercial purposes			
Gas oil (ECU per 1 000 l)	32	Kerosene (ECU per 1 000 l)	30
LPG (ECU per 1 000 kg)	41	Natural Gas (ECU per gigajoule)	0,3

Energy products used as heating fuels			
Heating gas oil (ECU per 1 000 l)	21	Heavy fuel oil (ECU per 1 000 kg.)	18 or 22
Kerosene (ECU per 1 000 l)	7	LPG (ECU per 1 000 kg)	10
Natural Gas (ECU per gigajoule)	0,2	Electricity (ECU per Mwh)	1
Solid energy products (ECU per gigajoule)	0,2		

Various rebates, etc. would be available to certain industries with high energy costs. The Council has subsequently discussed these, and modified versions of these, proposals; and set itself the target date of end-2002 for adoption.

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.

4. The 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 €245 per 1 000 litres to a higher common "central" rate; this would initially be set at €350 in 2003 and would be adjusted for inflation on the basis of the consumer price index from 2003 onwards;
- 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 (see Table below), 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.

National excise duties on fuel, August 2002 (€ per 1 000 litres)

	B	DK	D	EL	E	F	IE	I	L	NL	A	P	FIN	S	UK
Unleaded petrol	494	539	624	296	396	586	401	542	372	608	407	479	567	475	790
Diesel fuel*	290	405	455	245	294	370	354	403	253	340	282	272	329	345	742†

**Diesel fuel with a sulphur content of less than 50 ppm.*

† Rate on ultra-low sulphur. Normal rate € 839.

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Council reached an outline agreement in early February 2003 under which a minimum rate of € 302 per 1000 litres would apply from the date the Directive came into effect, rising to € 330 in 2010. However, countries needing to make tax increases would have up to seven years to reach the € 302 rate, and until 2012 to reach the € 330 rate.

5. 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. sugarbeets 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 aids 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 of 5.75% by 2010. On 20 June 2002 the Council reached a political agreement on the proposal.

6. VAT on other fuels

Among other recent tax proposals in the energy field has been that of December 2002 on **VAT applying to natural gas and electricity** (COM(2002)688). Currently, the place of taxation is the place of supply, but this is becoming increasingly difficult to determine as cross-border trading in energy increases. The proposal would make 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:

- delete the list of systematic exemptions, but to 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 observed that it

> "Believes that the 'polluter pays' principle needs to be applied more widely, particularly in the energy products sector, but points out 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, also adopting amendments designed to strengthen them.

PERSONAL AND COMPANY TAXATION

LEGAL BASIS

There is no explicit provision in the EC Treaty for the harmonisation of direct taxes. Action in this field has therefore had to be based on more general objectives.

1. 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.

2. **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".

3. Most of the arrangements in the field of direct taxation, however, still lie outside the framework of Community law. An extensive network of **bilateral tax treaties** – involving both Member States and third countries – covers the taxation of cross-border income flows.

OBJECTIVES

Two specific objectives are the **prevention of tax evasion** (e.g. the proposed withholding tax on interest) and the **elimination of double taxation** (e.g. agreements on dividend payments to non-residents).

More generally, some harmonisation of business taxation (both corporation tax and the personal taxation of dividends) is considered necessary to **prevent distortions of competition**, particularly of investment decisions. Harmonisation might also be justified to prevent the undermining of revenues through "tax competition" (*4.19.1.) and to reduce the scope for manipulative accounting (e.g. via transfer pricing).

ACHIEVEMENTS

A. Company taxation

1. 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).

2. 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.

3. 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 Council. A new version appeared in 1998 (COM(1998)67) as part of the "Monti package" (*4.19.1.), 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** was established in 1991, and reported in March of the following year (*Report of the Committee of Independent Experts on Company Taxation*). It recommended a programme of action to eliminate double taxation; harmonise corporation tax rates within a 30%-40% band; and ensure the 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 "mergers" and "parent/subsidiaries" Directives** (COM(93)0293); and drew attention to two already-tabled draft Directives: 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 (*4.19.1.). 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. 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. The Group now has a mandate to supervise this "rollback".

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". The Commission accordingly established two panels of experts, one academic and one from the business community and trade unions. The study – some 700 pages long, including Annexes – 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 "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, October 2001).

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 in Brussels 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, CCTB. The Commission announced that it was working on a pilot project covering SMEs and companies using the European Company Statute (*Societas Europea)*. The project could initially be implemented in a restricted number of Member States which were favourable to the proposals.

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). By comparison with larger firms, it observed, 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 in the form of a recommendation on self-financing, "Concerning the taxation of small and medium-sized enterprises" (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".

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 continuing source of problems. Bilateral agreements avoid double-taxation in general, but fail to cover such questions as applying various tax-reliefs available in the country of residence to income in the country of employment. In order to ensure equal treatment between resident and non-resident workers the Commission proposed under Article 94 (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 Council and was withdrawn in 1993. Instead the Commission issued a Recommendation under Article 211 (155) covering the principles that should apply to **the tax treatment of non-residents' income.**

Meanwhile, the Commission has also brought infringement proceedings against some Member States for discrimination against non-national workers. The Court of Justice ruled in 1993 (Case C-112/91) that a country could tax its *own* nationals more heavily if they resided in another Member State. The Court has also found, however, that a country cannot treat a non-resident national of another Member State less favourably that its own nationals (see above: Case C-279/93).

2. Taxation of bank and other interest paid to non-residents

In principle, a taxpayer is required to declare such income when making normal tax returns. In practice, as the Ruding Report observed, "the free movement of capital ... together with the existence of bank secrecy ... will increase the potential for tax evasion by individuals." 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 7 years after the adoption of the Directive;
- meanwhile, Austria and Luxembourg – which maintain banking secrecy for non-residents – and possibly other Member States would introduce a withholding tax on interest paid to non-residents, at a rate to be decided. An "appropriate share of their revenue" would be transferred to the investor's state of residence;
- introduction of the legislation would, however, be conditional on agreement being reached on "equivalent" measures with key third countries (notably Switzerland) and with the US. A decision, by unanimity, would be taken on the matter by the end of 2002.

Agreement was not in fact reached until January 2003, on the basis of modified proposals, and subject to final agreement with Switzerland and other tax jurisdictions. Elements of the agreement were:

- **Revenue-sharing**. Those countries adopting a withholding tax – both within and outside the EU – will retain 25% of the revenue collected, and remit 75% of it to the saver's country of residence.
- **Information on request**. The agreement with Switzerland, etc. should involve an immediate system of information on request "for all criminal or civil cases of fraud or similar misbehaviour on the part of taxpayers". Implementation, however, may be through bilateral agreements between individual countries.
- **Equivalence**. The conditions for an eventual full move to information exchange by EU Member States do not incorporate *exact* equivalence of measures in Switzerland, etc. Whereas the Directive establishes a system of *automatic* exchange, the OECD model eventually to apply to Switzerland only provides for information *on request*. For this reason, the agreement envisages Switzerland permanently retaining the 35% withholding tax.
- **Voluntary disclosure by the beneficial owner.** Where a taxpayer declares interest income obtained from a paying agent in another country to the tax authorities in the Member State of residence, withholding tax will not be applied.
- **Other third countries**. As well as continuing to press for the adoption of information exchange by Switzerland, etc., the Commission is invited to enter into discussions with "other important financial centres" with a view to a more general adoption of "measures equivalent to those to be applied within the EU".
- **Tax rates** would be as in the Table below.

2004-2006	2007-2009	2010+	Following agreement with Switzerland, US, etc.
Austria, Belgium & Luxembourg **15%** withholding tax. Other 12 automatic information exchange.	Austria, Belgium & Luxembourg **20%** withholding tax. Other 12 automatic information exchange.	Austria, Belgium & Luxembourg **35%** withholding tax. Other 12 automatic information exchange.	Vote by unanimity on whether all to adopt *automatic* information exchange, depending upon Switzerland, Liechtenstein, San Marino, Monaco and Andorra adopting, and US "committed to", information exchange "upon request as defined in the OECD agreement".

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 (*4.19.2.). 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". Parliament also affirmed that the desirability of such extensive reforms did not make any less urgent those measures to remove the particular obstacles to cross-border activity.

THE DEVELOPMENT OF ECONOMIC AND MONETARY UNION

LEGAL BASIS

- Decisions of the European Summits of The Hague (1969), Paris (1972) and Brussels (1978);
- Articles 98 to 124 EC, introduced by the Maastricht Treaty;
- Protocols annexed to the EU Treaty on the transition to the third stage, the excessive deficit procedure, the convergence criteria, the opt-out clauses for the United Kingdom and Denmark, the Statutes of the European Monetary Institute, the European System of Central Banks and the European Central Bank.

OBJECTIVES

The main aims of monetary union are:

- to finalise the completion of the internal market by removing the uncertainty and the costs inherent in exchange transactions, as well as the costs of hedging against currency fluctuation risks;
- to ensure full comparability of costs and prices throughout the Union, which should help consumers, stimulate intra-Community trade and facilitate business;
- to reinforce Europe's monetary stability and financial power by:
  - . ending, by definition, any possibility of speculation between the Community currencies,
  - . ensuring, through the economic and financial dimension of the monetary union thus established, that the new currency is largely invulnerable to international speculation,
  - . enabling the euro to become a major reserve and payment currency.

ACHIEVEMENTS

A. First period (1957-1969): absence of a European monetary project

The Rome Treaty laid down only minor provisions for monetary cooperation. The six founding Member States of the Community were participants in the Bretton Woods international monetary system, which was characterised by fixed rates of exchange between the currencies and the possibility of adjustment. The creation of a parallel system was unnecessary.

B. Second period (1969-1979): the first efforts towards integration

The demise of the Bretton Woods system, confirmed by the ending of the dollar's convertibility into gold on 15 August 1971, was followed by a general floating of the currencies. With the oil crisis of the early 70s, the European currencies came under even greater pressure. In the face of such general monetary instability, the cause of serious economic and social difficulties, the Member States sought to put in place a framework which could provide a minimum of stability, at least at European level, and could lead to monetary union.

1. As early as **1969**, when the international monetary system was threatening to collapse, the Heads of State and Government had already decided at the **Hague Summit** that the Community should progressively be transformed into an economic and monetary union.

2. In October **1970**, the **Werner report** (drawn up by the then Prime Minister of Luxembourg) proposed:

- in the first stage, a reduction of the fluctuation margins between the currencies of the Member States;
- then the achievement of complete freedom of capital movements with integration of the financial markets, particularly the banking systems;
- finally, an irrevocable fixing of exchange rates between the currencies.

3. 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, the Member States created in 1973 the European Monetary Cooperation Fund (EMCF) which was authorised to receive part of the national monetary reserves (*5.2.0.).

4. 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.

5. By the **end of 1977**, only half of the nine Member States (Germany, Belgium, the Netherlands, Luxembourg and Denmark) remained within the mechanism, the others having decided to allow their currencies to float freely. The Werner Plan was abandoned the same year.

C. Third Period (1979-1987): 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 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 Member States, with the exception of the United Kingdom, joined the exchange-rate mechanism.
- Greece, which became a member of the Community in 1981, did not join the exchange-rate mechanism.
- Spain and Portugal became members 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 establish an internal and external area of currency stability, was achieved. The instability characteristic of the international monetary system in the 1980s was averted in the participating countries. After efforts lasting over 20 years, stability prevailed.
- **Monetary discipline** led to economic convergence, with a reduction of inflation rates and an approximation of interest rates.
- **Private use of the ECU** (by contrast with its 'official' use, i.e. between central banks belonging to the EMS) developed considerably. It was used increasingly in the launch of international bond issues by the Community institutions, Member States and firms. Having become a prime international financial instrument, it replaced most of the currencies comprising it on the capital markets. In these various ways, the EMS and the ECU thus provided a strong basis for the introduction of the single currency.

D. Fourth period (1988-1992): progress towards Economic and Monetary Union

1. The establishment of the internal market led the Community to **revive the objective of monetary union**. The **Hannover European Council (June 1988)** pointed out that 'in adopting the Single Act (which came into force on 1 July 1987), the Member States of the Community confirmed the objective of progressive realisation of economic and monetary union'. It entrusted to a committee chaired by the Commission President, Jacques Delors, 'the task of studying and proposing concrete stages leading towards this union'.

2. In **April 1989** the **report of the Delors Committee** envisaged the achievement of EMU in three stages: stepping up cooperation between central banks; the establishment of a European System of Central Banks (ESCB); progressive transfer of decision-making power for monetary policy to supranational institutions; irrevocable fixing of parities between the national currencies and introduction of the single European currency.

The Madrid European Council of June **1989** adopted the Delors Plan as a basis for its work and decided to implement the first of these stages from 1 July 1990, when capital movements and financial services would be fully liberalised.

In December **1989** the Strasbourg European Council had to take account of a new situation, the prospect of German reunification. It was decided to convene an intergovernmental conference (IGC) to prepare the amendments to the Rome Treaty in view of EMU.

3. Approved by the European Council of December 1991, the amendments proposed by the intergovernmental conference were incorporated in the **Treaty on European Union** signed in Maastricht on **7 February 1992**. The Treaty's EMU project was based on the general outlines of the Delors Plan but differed from it on some significant points. In particular, the second stage did not

begin until 1 January 1994 and did not include the transfer of responsibilities for monetary policy to a supranational body but simply the strengthening of cooperation between central banks, replacing the former Committee of Governors with the European Monetary Institute **(*5.2.0.)** which would be responsible, with the Commission, for the technical preparation of EMU. Establishment of the ESCB was deferred to the third stage.

E. Fifth period: stages in Economic and Monetary Union (1990-2002)

1. First stage (1 July 1990-31 December 1993)

This consisted of:

- **completion of the internal market,** achieved on 31 December, entailing in particular the full liberalisation of capital;
- **strengthening of economic coordination**, through greater convergence on price stability and public finance reform.

2. Second stage (1 January 1994-31 December 1998)

a. The European Monetary Institute (EMI)

Set up on 1 January 1994 (*5.2.0.), this was the to the precursor to the future European Central Bank and was to prepare for the third stage of EMU.

b. Financial and monetary discipline

In this stage, Member States were to:

- render their central banks independent of the political authorities (Art. 116(5) of the EC Treaty);
- discontinue their overdraft facilities with their central banks and their privileged access to financial institutions (Arts.101, 102, 103 of the EC Treaty);
- endeavour to fulfil the following five convergence criteria:
  - . an inflation rate not exceeding by more than 1.5% the average of the three best performing countries in the year preceding the third stage,
  - . a budget deficit not exceeding 3% of GDP, or at the very least close to that level, provided that it has declined continuously,
  - . government debt not exceeding 60% of GDP, or at the very least approximating to that level owing to a sharply diminishing trend,
  - . a long-term interest rate that does not exceed by more than 2% the average of the three best performing countries in terms of price stability,
  - . maintenance of national currency within the normal fluctuation margins of the European Monetary System and no devaluation for at least two years.

c. The decision to pass 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 eleven countries, Germany, Belgium, Spain, France, Ireland, Italy, Luxembourg, Austria, Netherlands, Portugal and Finland, would proceed to the next stage.

3. Third stage (1 January 1999-1 July 2002)

On 1 January 1999, EMU started with those 11 countries. Greece joined them on 1 January 2001.

a. The European System of Central Banks (ECBS) and European Central Bank (ECB) came into operation on 1 January 1999 (*5.2.0.)

b. The process of introducing the euro

- On 1 January 1999, the euro became the sole official currency of the member countries:
  - . the parities of the participating currencies and their rate for conversion into euros are irrevocably fixed,
  - . the euro has became a currency in its own right and the ECU basket has ceased to exist,
  - . monetary policy and exchange-rate policy is carried out in euros and the participating Member States issue their new public-sector debt instruments in euros.
- 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 euros 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 (Arts. 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 (BEPG) applicable to all the Member States and a mechanism for monitoring excessive public deficits (*5.4.0.).

d. The Stability and Growth Pact

Adopted by the Amsterdam European Council on 16 and 17 June 1997 (*5.5.0.), its purpose is to ensure budgetary discipline by maintaining the obligation to conform to the deficit and indebtedness criteria laid down for initial access to the Monetary Union.

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. At present the Danish crown is participating in EMS II with a fluctuation margin of 2.25% on either side of its central rate in relation to the euro.

F. Enlargement: prospects for the new Member States (*6.3.1.)

Having met the criteria laid down in the Maastricht Treaty, the new Member States qualify to participate in the European exchange-rate mechanism (EMS II) and then eventually adopt the euro.

THE INSTITUTIONS OF ECONOMIC AND MONETARY UNION

LEGAL BASIS

- Articles 105 to 124 ECT;
- 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.

ACHIEVEMENTS

No monetary institution was established during the first stage of EMU (1 July 1990 – 31 December 1993).

A. The institutions of the second stage of EMU (1 January 1994 – 31 December 1998)

1. The European Monetary Institute (EMI)

a. Role

- The EMI was established at the beginning of the second stage of EMU, pursuant to Article 117 of the Treaty, and took over the tasks of the Committee of Governors and the European Monetary Cooperation Fund (EMCF). It had no say in the conduct of monetary policy, which remained the prerogative of the national authorities. Among its main tasks for the implementation of the second stage of EMU were:
  - . to strengthen cooperation between the national central banks,
  - . to strengthen coordination of the monetary policies of the Member States with a view to ensuring price stability,
  - . to monitor the functioning of the European Monetary System,
  - . to facilitate the use of the 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 ECT).
- In accordance with Article 123(2) of the 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 ECT), it had an advisory role.
- Its had the following tasks:
  - . to keep under review the monetary and financial situation of the Member States and of the Community and the general payments system of the Member States and to report regularly thereon to the Council and to the Commission;
  - . to deliver opinions to the Council or Commission, to contribute to the preparation of the work of the Council, and to examine, at least once a year, the situation regarding the movement of capital and the freedom of payments and report to the Commission and to the Council thereon.
- It was dissolved at the start of the third stage and replaced by the Economic and Financial Committee.

B. The institutions of the third stage (beginning on 1 January 1999)

1. The European Central Bank (ECB)

a. Organisation

Established on 1 June 1998, the ECB is a European institution with legal personality (Article 107(2) ECT and Article 9 of the ECB Statute) based in Frankfurt. It is run by three bodies that enjoy independence from Community institutions and national authorities.

(i) The Governing Council

- Comprises the members of the Executive Board and the Governors of the national central banks of those countries that have adopted the euro (Article 112(1) ECT and Article 10.1 of the Statute).
- As the supreme decision-making body it adopts the guidelines and takes the decisions necessary to ensure the performance of the tasks entrusted to the ESCB, formulates the monetary policy of the Community including, as appropriate, decisions relating to intermediate monetary objectives, key interest rates and the supply of reserves in the ESCB, and establishes the necessary guidelines for their implementation (Article 12 of the Statute).

(ii) The Executive Board

- Comprises a President, Vice-President and four other members, all appointed by common accord of the governments of the Heads of State or Government of the euro-zone Member States for a non-renewable period of eight years (Article 112(2) ECT).
- It is entrusted with implementing monetary policy and in doing so gives the necessary instructions to national central banks. It is also responsible for the preparation of meetings of the Governing Council and for the current business of the ECB (Articles 11 and 12 of the Statute).

(iii) The General Council (Article 45.1 of the Statute)

- Consists of the President and Vice-President of the ECB and the Governors of the Central Banks of all EU Member States, regardless of whether or not they have adopted the euro.
- It contributes to the collection of statistical information, coordinates the monetary policies of those Member States that have not adopted the euro and oversees the functioning of the European exchange-rate mechanism (ERM2) (*5.1.0.)

(iv) The **capital of the ECB** amounts to ECU 5 000 million. The national central banks are the sole subscribers to and holders of the capital (Article 28 of the Statute). The key for capital subscription is established according to a weighting that is revised every five years to reflect each Member State's share in the population and GDP of the Community (Article 29 of the Statute).

b. Role

- Only the ECB may authorise the issue of banknotes within the Community. The ECB itself or the national central banks may issue such notes. Member States may issue coins subject to approval by the ECB of the volume of the issue (Article 106 ECT).
- The ECB takes decisions necessary for carrying out the tasks entrusted to the ESCB under the latter's Statute and under the Treaty (Article 110 ECT).
- Assisted by the national central banks, it collects the necessary statistical information either from the competent national authorities or directly from economic agents (Article 5 of the Statute).
- It is consulted on any proposed Community act in its fields of competence and, at the request of national authorities, on any draft legislative provision (Article 105 ECT).
- It may perform specific tasks concerning policies relating to the prudential supervision of credit institutions and other financial institutions (Article 25.2 of the Statute). However, the competent authorities in the Member States continue to oversee the banking system, as they did before the advent of the euro.
- It is responsible for the smooth running of Target (Trans-European automated real-time gross settlement express transfer system), a payment system in euro that links up the 15 national payment systems and the ECB payment mechanism.
- With a view to enlargement of the European Union the ECB is making the arrangements to integrate the central banks of the new Member States into the ESCB.

2. The European System of Central Banks (ESCB)

a. Organisation

The ESCB consists of the ECB and the national central banks (Article 107(1) ECT and Article 1.2 of the Statute). It is governed by the same decision-making bodies as those of the ECB (Article 107 (2) ECT).

The Eurosystem comprises only the European Central Bank (ECB) and the national central banks of the 12 Member States in the euro zone.

b. Role

The ESCB's fundamental task lies in maintaining price stability (Article 105 ECT). Without prejudice to this objective, the ESCB supports the general economic policies contributing to the achievement of the objectives of the Community. It discharges this task by carrying out the following functions (Article 105(2) ECT and Article 3 of the Statute):

- defining and implementing the monetary policy of the Community;
- conducting foreign-exchange operations consistent with the provisions of Article 111 ECT;
- holding and managing the official foreign reserves of the Member States;
- promoting the smooth operation of payment systems;
- contributing to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system.

3. The Economic and Financial Committee

Comprising not more than six members, a third of whom are appointed by the Member States, a third by the Commission and a third by the ECB, its duties are the same as those of the Monetary Committee, which it succeeded on 1 January 1999, with one important difference: notifying the Commission and Council of developments in the monetary situation is now the responsibility of the ECB.

4. The Eurogroup

Originally called Euro-11, the meeting of ministers of economics and finance of the euro-zone 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 zone and EMU. The European Commission and, where necessary, the ECB are invited to attend these meetings.

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

1. Legislative role

a. The European Parliament is consulted on the following issues:

- Arrangements for introducing the euro coins by Member States (euro banknotes are the responsibility of the ECB).
- Agreements on exchange rates between the euro and non-EU currencies.
- Choice of countries eligible to join the single currency in 1999 and subsequently.
- Nomination of the President, Vice-President and other members of the ECB Executive Board.
- Any changes to voting arrangements within the ECB Governing Council (Article 10.2 of the Statute of the ESCB and ECB) in accordance with the Declaration on Article 10.6 of the Statute of the European System of Central Banks and of the European Central Bank, annexed to the Treaty of Nice.
- Legislation implementing the "excessive deficit" procedure provided for in the Stability and Growth Pact.

b. 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.

2. Supervisory role

a. Resulting from 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 also to the European Council (Article 113(3) ECT).
- 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 the competent committees of the European Parliament.

b. Resulting from Parliament's own initiative

Parliament called for the extensive powers of the ECB provided for under the Treaty – i.e. freedom to determine the monetary policy to be pursued – to be balanced by democratic accountability (resolution of 18 June 1996). To that end it instituted "monetary dialogue" as a regular procedure. The President of the ECB, or another member of its Governing Council, appears before Parliament's Economic and Monetary Affairs Committee at least every three months to answer questions on the economic outlook and to justify the conduct of monetary policy in the euro zone.

EUROPEAN MONETARY POLICY

LEGAL BASIS

- Articles 98 to 124 of the EC Treaty;
- 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

1. The main objective of the ESCB is to maintain price stability in accordance with Article 105 of the EC Treaty.

2. Without prejudice to this objective, the ESCB supports the general economic policies in the Community, with a view to contributing to the achievement of the objectives of the Community as laid down in Article 2 of the EC Treaty, in particular 'a high level of employment and of social protection'. The ESCB acts in accordance with the principles of an open market economy with free competition, favouring an efficient allocation of resources.

ACHIEVEMENTS

A. The guiding principles of ECB action

1. The independence of the ECB

a. The essential **principle** of the ECB's independence is set out in Article 108 of the EC Treaty and Article 7 of the Statute. When exercising powers and carrying out tasks and duties, neither the ECB, nor a national central bank (NCB), nor any member of their decision-making bodies may seek or take instructions from Community institutions or bodies, from any government of a Member State or from any other body. Respect for Article 108 is guaranteed by the nature of the mandate entrusted to the members of the Executive Board and the Governing Council. (*5.2.0.)

b. The ECB's independence is 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 are prohibited. (*5.2.0.) This excludes the dependency of monetary policy on budgetary policy.

c. 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 responsibility and transparency of the ECB

a. In order to ensure the credibility of the ECB, the Treaty imposes reporting commitments on the ECB (Article 15 of the Statute). The ECB draws up and publishes reports on the activities of the ESCB at least quarterly. A consolidated financial statement of the ESCB is published each week. The ECB addresses an annual report on the activities of the ESCB and on the monetary policy of both the previous and the current year to the European Parliament (Article 113(3) of the EC Treaty). Each month, the ECB's Monthly Bulletin is published in the 11 official languages of the European Community and provides an in-depth analysis of the economic situation and the outlook for price developments.

b. The ECB is also responsible to the democratic institutions. The heads of the ECB regularly appear before the European Parliament. (*5.2.0.) However, the EP cannot give any instructions to the ECB and has no a posteriori control.

c. The operation of the Governing Council respects the 'one person, one vote' principle. The governors must not defend national interests but must adopt a federal position, in other words in favour of the collective interest of the euro zone. The search for consensus is key to its operation. In accordance with the Treaty, the minutes of its meetings are not published.

B. The ECB's monetary policy strategy

1. Overview

- At its meeting on 13 October 1998, the ECB Governing Council agreed on the main elements of its monetary policy strategy: quantitative definition of price stability; a prominent role for the monitoring of the growth of the monetary mass identified by an aggregate; and a broadly based assessment of the outlook for price developments.
- The ECB has opted for a monetary strategy based on two pillars, whose respective roles were clarified during the recent review of the monetary strategy on 8 May 2003.
- The Member States that have not adopted the single currency retain their powers in the field of monetary policy.

2. Price stability

- Price stability is defined as a year-on-year increase in the Harmonised Index of Consumer Prices (HICP) for the euro area of below 2%. It must be maintained over the medium term.
- This definition was confirmed and clarified on 8 May 2003. At the same time, the Governing Council agreed that it would aim to maintain inflation rates close to 2% over the medium term. This underlined the ECB's commitment to provide a sufficient safety margin to guard against the risks of deflation. It also addressed the issue of the possible presence of a measurement bias in the HICP and the implications of inflation differentials within the euro area.

3. The first pillar of the monetary policy strategy

- A prominent role is assigned to money in the ECB's strategy in conjunction with the monetary origins of inflation over the medium to longer term. This role is signalled by the announcement of a quantitative reference value for monetary growth: the annual rate of growth of the broad monetary aggregate M3. This covers currency in circulation, short-term deposits with credit institutions (and other financial institutions) and short-term debt securities issued by these establishments.
- The calculation of the reference value was based on the quantitative relationship between money and prices on the one hand, and economic activity and the velocity of circulation of money on the other. The M3 value was set at 4.5% (in December 1998) on the basis of the medium-term trend in real GDP growth (2% to 2.5% per year) and the trend in the velocity of circulation of M3 (0.5% and 1% per year).
- On 8 May 2003, in order to underscore the longer-term nature of the reference value for monetary growth, the Governing Council decided to no longer conduct a review of the reference value on an annual basis, but to continue to assess the underlying conditions and assumptions.

4. The second pillar of the monetary policy strategy

- The second pillar is based on an assessment of a broad range of indicators and of the outlook for price development and the short and medium-term risks for price stability in the euro zone. The range of indicators includes wages, exchange rates, long-term interest rates, various aspects of economic activity, budgetary policy indicators, price indexes and costs, and the results of surveys carried out among firms and consumers.
- The macroeconomic projections (scenarios based on the developments of key variables in the euro zone in conjunction with the projections for each country) drawn up by Eurosystem staff are an important contribution to the deliberations of the Governing Council.
- These inflation assumptions are compared to other assumptions from international organisations (IMF, OECD), with which the ECB exchanges information.

These two pillars offer complementary analytical frameworks. Since 8 May 2003, the Governing Council has first of all examined the economic and financial variables to identify short to medium-term price developments. The monetary analysis, involving many monetary indicators including M3, its components and its counterparts, seeks to verify the results of the economic analysis.

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 zone economy, and in particular the rates for loans granted by commercial banks and for saving deposits.

1. Open market operations

Open market operations play an important role in steering interest rates, managing the liquidity situation in the market and signalling the monetary policy stance through four categories of operations.

a. Main refinancing operations

The main refinancing operations are the most important instrument of the monetary policy. They are regular liquidity-providing reverse transactions with a weekly frequency and a maturity of two weeks. They provide the bulk of liquidity to the banking system. The minimum bid rate for the main refinancing operations is the key ECB interest 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 zone. These three rates were set for the first time on 22 December 1998: the interest rate for the main refinancing operations at 3%, the marginal lending facility and deposit facility rates at 4.5% and 2% respectively.

b. Longer-term refinancing operations

These are liquidity-providing reverse transactions with a monthly frequency and a maturity of three months. They represent only a limited part of the global refinancing volume and do not seek to send signals to the market.

c. Fine-tuning operations

These *ad hoc* operations aim to deal with unexpected liquidity fluctuations in the market, in particular with a view to smoothing the effects on interest rates.

d. Structural operations

These operations are mainly aimed at adjusting on a permanent basis the structural position of the Eurosystem 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 Eurosystem. The interest rate on the deposit facility provides a floor for the overnight market interest rate.

Both of these rates aim to ensure the smooth operation of the market in situations of very high supply and demand of funds.

3. Holding of minimum reserves

In accordance with Article 19(1) of the Statute, the ECB may require credit institutions established in Member States to hold minimum reserves with the ECB and national central banks. The aim of the minimum reserves is to stabilise the short-term interest rates on the market and to create (or enlarge) a structural liquidity shortage among the banking system vis-à-vis the Eurosystem. The calculation methods and determination of the amount required are set by the Governing Council.

D. An initial assessment

- The euro, a visible symbol of European identity, became the second largest currency in the world when it was launched. It has become an international currency of investment and currency on the markets alongside the dollar and the yen.
- With 16% of global GDP, the euro zone comes behind the United States (21%), but well ahead of Japan (8%). Its economic importance will encourage the use of the euro at international level.
- Since it started operating, the Eurosystem has had to deal with the depreciation of the euro (25% depreciation in relation to the dollar between the beginning of 1999 and the beginning of 2002) then with a lengthy appreciation in relation to the dollar from the beginning of June 2002, reaching a high in May 2003.
- The 1999-2002 period was characterised by many shocks: a mini oil shock (tripling of oil prices between February 1999 and October 2000), the increase in food prices (beef sector crisis and climate problems) and the attacks of 11 September 2001 (fall in key interest rates and increase in banks' liquidity to limit the risk of recession
- Inflation averaged around 2.2% in 2002, a slight decrease in comparison with 2001 (2.4%), but a little above the levels compatible with the definition of price stability.
- The key interest rates in the euro zone are currently the lowest they have been for more than half a century.

ROLE OF THE EUROPEAN PARLIAMENT

- The EP considers that a 'domestic payment area' is a necessary complement to the single currency zone. As a result, in order to facilitate the operation of the internal market, steps should be taken to ensure that the costs of cross-border payments in euro are the same as the costs for payments in euro within a Member State. These objectives were fulfilled through Regulation (EC) No 2560/2001 of 19 December 2001, which also established a mechanism for the common description of bank accounts (IBAN for the customer's account and BIC for the banking establishment) with effect from 1 July 2003.
- In its resolution on the 2001 annual report, the EP stresses that the Stability and Growth Pact is a fundamental element of the euro zone's credibility.
- The EP's Committee on Economic and Monetary Affairs supports closer coordination of economic policies at European level and calls for further economic liberalisation and structural reforms with a view to reducing unemployment and enabling the Union to fulfil the objective set out at the Lisbon European Council in March 2000: making the European Union the most competitive and dynamic knowledge-based economy in the world by 2010.

COORDINATION OF ECONOMIC POLICIES

LEGAL BASIS

- Articles 2, 4, 98-104 introduced by the Treaty of Maastricht; and Articles 125, 126 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. Subsequent articles prescribe the areas and forms of coordination. Article 99 lays down the procedures related to the general policy recommendations (Broad Economic Policy Guidelines). Article 100 is concerned with special provisions applicable in cases of serious economic difficulties. Articles 101 through 103 rule out privileged access to financing from the European Union or the European Central Bank (ECB) to any public body. Article 104 contains the basis for subsequent secondary legislation with regard to budgetary discipline. The thresholds for the level of public debt and deficit are defined in a separate protocol to the Treaty (Protocol on Excessive Deficit Procedure). Article 104 also lays down the procedure to be followed if a Member State does not fulfil the deficit or debt criteria. The Title on employment, introduced in the Treaty of Amsterdam, establishes employment policy among the fields of economic policy coordination (Articles 125 and 126). See also Employment policy (*4.8.3.).

B. Aims

1. **Contribute to the attainment of Treaty objectives**

The overall objectives of economic policy coordination are those of the European Union, seeking to secure balanced, sustainable and non-inflationary growth, associated with high employment and competitive industry in a market economy setting. This should lead to higher standards of living and quality of life together with increasing convergence of economic performance across Member States.

2. Tune national fiscal policies to single monetary policy

The Euro area is a monetary union where the currency area does not coincide with the area of budgetary sovereignty. Policy coordination is needed to combine one monetary policy, pursued by an independent central bank, with fiscal and structural policies, for which each Member State remains responsible.

3. Draw maximum benefit from economic integration

The EU is highly integrated in terms of trade and investment flows. The high degree of interdependence between the national economies needs to be taken into account because it increases the influence of one Member State's policy decisions on the evolution of the others' economies. Successful coordination guarantees that such spillover effects are taken into account in policy design, enabling the advantages offered by a well-functioning large internal market to be fully exploited.

4. Achieve economic convergence

The coordination of structural policies, i.a. in product and labour markets, seeks to foster long-term convergence of national economies since their evolution determines the direction in which the EU economy will develop.

C. Scope of coordination

The scope of economic policy coordination is wide but not precisely defined. It can be seen as encompassing all actions aiming to provide economic conditions for balanced and sustainable growth within the EMU and the EU. Its main elements should be:

- a common assessment of the economic situation;
- agreement on appropriate policy responses in the short run and in the long run;
- acceptance of peer pressure and, where necessary, adjustment of policies pursued.

ACHIEVEMENTS

A. Decision-making framework

Economic policy coordination is mainly based on consensus without legally enforceable rules, except in the fiscal policy framework (*5.5.0.). In other areas the means employed consist in information exchange, discussion, peer review and, where appropriate, commonly agreed goals with common actions. The key concept of 'open method of coordination' was coined by the Lisbon summit of March 2000, with the European leaders encouraging the Member States to set benchmarks, identify best practices and implement policy in line with these.

The legal framework for economic policy co-ordination, developed since Maastricht, is based on:

- Council Regulation 3605/93 on the application of the excessive deficit procedure; and
- the Stability and Growth Pact (*5.5.0.).

Further framework for coordination is defined by decisions taken by the European leaders in the European Council. These decisions have created a "soft" legal basis for policy co-ordination 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
- the Resolution of the Cologne European Council of June 1999, establishing the Macroeconomic Dialogue.

B. Actors

The European Council sets co-ordinated political priorities and gives guidelines at the highest level. The Member States are in charge of national reporting, exchange of information and the implementation of recommendations and decisions adopted by the Ecofin Council. The Eurogroup (the Finance Ministers of EMU Member States) discusses EMU-related matters informally, usually before the Ecofin Council meeting. The ECB participates in matters linked to monetary policy. The Commission (in particular the Commissioner and the 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 (EFC) gives opinions and prepares the Council's work. So does also the Economic Policy Committee (EPC), which also contributes to the Commission's work. Finally, the Social partners are involved in their fields of main interest: employment, wage developments and structural reform.

C. Main tools

1. Overall Policy Coordination – Broad Economic Policy Guidelines (BEPGs)

a. Nature and frequency

The BEPGs is the central, overarching policy document for different areas of economic policy coordination. It covers both macroeconomic and structural policy issues. The ECOFIN Council adopts this strategic document, endorsed by the European Council, in early summer of each year on the basis of the Commission's recommendation. As of 2003 the period for major revisions is increased to three years, reflecting the medium-term character of this strategy document. Only minor updating is to be made in between.

b. Content

The purpose of the BEPGs is to give concrete recommendations to the Member States with regard to macroeconomic and structural policies. The document consists of two broad sections, the first devoted to orientations common to all Member States or all Euro area Member States and the second containing country-specific recommendations.

c. Legal status

The BEPGs are not legally enforceable, but peer pressure exercised by other Member States is expected to make the recommendations politically binding. To step up the pressure, the Council can issue a recommendation to non-compliant Member States and make it public.

d. Implementation and follow-up

Since 2000 the Commission publishes an annual Implementation Report to enhance the follow-up of the recommendations. The report aims to give more visibility to progress made or missed, permitting results to be taken into account when preparing the BEPGs for the following year. The Implementation Report also constitutes an important link between the BEPGs and the coordination of budgetary policies under the Stability and Growth Pact (*5.5.0.).

e. Relationship with sectoral coordination

In order to guarantee the coherence of sectoral coordination – the so called "processes" – information must flow between them and the overall coordination based on the BEPGs. Input from the coordination in fields of budgetary policy and public finances, employment, structural reform and the general Macroeconomic Dialogue is used in the preparation of the BEPGs. Conversely, the recommendations issued in the BEPGs are to be applied when setting goals in other fields.

2. The Macroeconomic Dialogue – the Cologne Process

The Cologne summit of June 1999 introduced bi-annual meetings of representatives of various European institutions and the social partners, called the Macroeconomic Dialogue or the Cologne Process. Its purpose is to be a forum for an exchange of views, thereby fostering a common assessment of the economic situation at the European Union level. It is hoped that such exchanges will lead to stability-oriented wage claims and a balanced macroeconomic policy mix, supporting strong non-inflationary growth. The model for this procedure is the dialogue between management and labour organisations common in some Member States. The parties in the Macroeconomic Dialogue include the social partners, the Council, the Commission and the ECB.

3. **Framework for fiscal policy – Stability and Growth Pact**

The purpose of coordinating budgetary policies is to ensure a sufficient degree of coherence between the Member States' fiscal policies, given the common monetary policy conducted by the ECB. The coordination of budgetary policies consists of multilateral surveillance and the Excessive Deficit Procedure, the rules for which are set out in detail in the Stability and Growth Pact (*5.5.0.).

4. Employment – the Luxembourg Process and the Employment Guidelines

a. Procedures

The Employment Guidelines constitute the centrepiece of this policy coordination process. The Council adopts this policy document on the basis of the Commission's proposal. The Member States are requested to take the Guidelines into account when formulating their national employment policies. They must submit to the Commission National Action Plans (NAPs) on employment, which are examined by the Commission and the Council. The NAPs are an input to the Commission's Joint Employment Report and thereby to the following year's Employment Guidelines. Apart from the Member States, the European

Parliament, the Economic and Social Committee and the Committee of Regions each provide an input to the Employment Guidelines.

b. Legal status

Policy coordination in employment matters is a relatively weak coordination process. It is based on regular reporting, peer review and general guidelines issued to Member States. Country-specific recommendations can also be given, but they are not legally binding.

5. Structural Reform – Cardiff Process and Lisbon targets

a. Origin and content

The aim of structural reform is to make product, labour and capital markets more efficient, thus promoting high standard of living and high quality of life for the European citizen in a globalised world. The progress in these fields is monitored in the Cardiff Process, named after the Cardiff European Council, which introduced the procedure.

b. Procedures

Coordination is voluntary and based on monitoring, the exchange of best practices between the Member States and peer pressure. The centrepiece of the process is a reporting system on the measures taken in improving the functioning of product and capital markets. Member States provide national reports annually, on the basis of which the Commission prepares a “Cardiff report” for the EU. This report serves as an input to the assessment of the implementation of the Broad Economic Policy Guidelines.

c. Speeding-up structural reform - Lisbon targets

In the Lisbon summit of 2000 the Member States committed themselves to speeding up the structural reform process, in order to make the European Union the most dynamic economy in the world by 2010. Numeric goals were set to be reached by that year in areas such as employment and research and development. The progress made in three years has been disappointing and it is widely agreed that a fresh effort is needed if the targets for 2010 are to be reached.

Since 2000 a special spring summit has taken place. It is a meeting of the European Council dedicated to economic policy, evaluating in particular the progress in structural reforms.

ROLE OF THE EUROPEAN PARLIAMENT

The Treaty requires that European Parliament be consulted on secondary legislation implementing the Excessive Deficit Procedure, including the Stability and Growth Pact.

In several resolutions Parliament has reiterated its view that it and the national parliaments should be more closely associated in the policy coordination processes, which have a significant impact on the national actions in areas of fiscal and structural policies.

FRAMEWORK FOR FISCAL POLICIES

LEGAL BASIS

- Articles 2, 4, 98-104 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 the Economic and Monetary Union (EMU). Rules outlining a common framework for national fiscal policies entered EU Law in the Treaty of Maastricht as an essential element in the preparations for the completion of EMU. Whereas national sovereignty in the field of fiscal policy was maintained, the autonomy of Member States was reduced by the convergence criteria, with which they had to comply in order to be allowed to adopt the Euro (*5.2.0).

B. Economic background

1. High deficits and rising debt

The goal of keeping public deficits and debt in check has as its background developments in public finances over the previous decades. Public debt had been steadily growing throughout the 1980s in most Member States and had reached historically high levels in many by the beginning of the 1990s. The recession of the early 1990s deepened budgetary deficits, leading to further increase in debt. It was felt that in order to give a good start to the single currency in terms of solid economic fundamentals, national governments needed to reduce the ratio of deficits and debt to gross domestic product (GDP).

2. The requirements of monetary union

In a monetary union with fiscal policy independence, a common framework for fiscal policies can be justified by the risk of the free-rider problem. Such a problem arises in a situation where one participant can benefit from others' actions without paying its share of the common cost. 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 its profligacy. As a member of a common currency area, it might be able to avoid the cost – a higher interest rate for its borrowing or, eventually, the impossibility to borrow – if lenders expected the rest of the countries to stand for the debt. In an extreme case, the debt position might swell to a level which the debtor could not sustain without help from its partners, who might feel obliged to pay in order to avoid damage to the common currency. If the profligate country was one of the big economies, its behaviour might also lead to too high interest rates for the EMU as a whole. Although some economists argue that global financial markets would be sufficiently efficient as to charge individual Member States the full cost of higher borrowing, persuading them thus not to run excessive deficits and debt, this outcome is by no means certain. 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.

The avoidance of high deficits and debt will also permit the ECB to keep interest rates as low and supportive to growth as possible, given its mandate for price stability.

Keeping public finances in balance in normal times will give the Member States room for manoeuvre permitting them to use discretionary fiscal policy in reacting to asymmetric economic shocks, i.e. those hitting the Member State concerned but not the whole Euro area.

ACHIEVEMENTS

A. Framework

1. Convergence criteria

The convergence criteria define the framework for fiscal policies for EU Member States before their entry to EMU, and they therefore continue to apply to the Member States not having adopted the Euro yet. For the first eleven Member States having entered the third stage of EMU in 1999 and Greece, which was able to join from the beginning of 2001, the original criteria are no longer applicable. The present fiscal policy framework applicable to them, however, draws heavily on the convergence criteria, including reporting procedures and sanctions. Council Regulation 3605/93 on the application of the excessive deficit procedure implementing the Protocol on excessive deficits 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 1466/97 of 7 July 1997 on the surveillance of budgetary positions and the surveillance and coordination of economic policies; and
- Council Regulation 1467/97 of 7 July 1997 on the excessive deficits procedure.

These prescribe how the Treaty rules, in particular the Excessive deficit procedure (EDP), should be implemented. The Pact is applicable to all Member States, both those having adopted the Euro and those still in the waiting room (Sweden) 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, Article 3 of Council Regulation 1466/97 requires general government finances to be close to balance or in surplus in the medium term. This, combined with the nominal 3% deficit limit, which is independent of the cyclical position of the economy, means that, in times of strong growth, public finances should be in surplus, if deficits are to be permitted during downturns. A balanced position in the medium term permits the use of the so-called automatic stabilisers, leading to deficits during downturns as lower growth reduces tax revenues at the same time as higher unemployment raises public expenditure.

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 to general government debt.

1. Stability and convergence programmes

For the purposes of multilateral surveillance, all Member States are required to submit to the Council and the Commission medium-term programmes with regard to their budgetary position and the economic outlook on which the budget plans are based. These programmes are called stability programmes for the EMU Member States and convergence programmes for those outside EMU. They must cover a period of three years following the year of submission, as well as the year prior to submission and the current year. The Programmes must be updated annually. Updates are submitted in the autumn, which in most Member States coincides with the presentation of the following year's budget proposal to the national parliament.

a. Content

The programmes must provide information on

- how the medium-term objective of close to balance or in surplus is to be achieved, as well as on the expected development path of the government debt ratio;
- the main assumptions about economic developments on which the programme is based, measures of budgetary and other economic policy taken to achieve the objectives set out in the programme.

b. Assessment

The programmes are assessed by the Commission and the Economic and Financial Committee. On the basis of these assessments, the Council examines whether

- based on the medium-term objectives set out in the programme, an excessive deficit is likely to be avoided;
- the measures taken or proposed are sufficient to achieve balanced budget in the medium term,
- the underlying economic assumptions are realistic;
- the programme is consistent with the recommendations addressed to the Member State in the Broad Economic Policy Guidelines (*5.4.0).

The Council delivers an opinion on each programme acting on the recommendation of the Commission and after having consulted the Economic and Financial Committee (*5.4.0).

2. Early warning

a. Non-respect of the balanced-budget requirement

If the Council finds that the development of a Member State's public finances diverges significantly from the objective of balanced position in the medium-term or from the path towards such a position, it shall give an early warning to the Member State concerned. The early warning is given as a Council recommendation to make necessary policy adjustments. The Commission has recommended an early warning three times so far. In January 2002, it made such recommendation with regard to Germany and Portugal, but the Council decided against an early warning in both cases. The third Member State concerned was France, which received an early warning in January 2003.

b. Non-implementation of BEPGs

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 Broad Economic Policy Guidelines. This warning mechanism has so far been used once, in February 2000, when Ireland received a warning as a result of an excessively loose fiscal policy (tax cuts in times of strong inflation pressure).

3. Excessive deficit procedure

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, i.e. if there is an annual fall of real GDP of at least 2%. It may also be set aside in "exceptional" circumstances. A downturn may be considered exceptional even where the annual fall of GDP is less than 2% but, in accordance with the Amsterdam Resolution, not if the fall of GDP does not exceed 0.75%.

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 requesting the situation to be brought to an end. Should the Member State not take adequate measures, the Council may require it to make a non-interest bearing deposit. If the Member State fails to bring the deficit below the 3% level within two years, the deposit may be converted to a fine not exceeding 0.5% of GDP.

c. Practice

Since the beginning of the third stage of EMU, the Commission has prepared three reports under the Excessive Deficit Procedure. In September 2002, it concluded that the actual deficit of 4.1% of GDP of the Portuguese general government in 2001 was excessive. In November 2002, the Commission reached the same conclusion concerning the projected German deficit for 2002. In April 2003, the French deficit of 3.1% in 2002 was found to be excessive. In all three 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.

C. Evolution of deficits and debt

Despite the recent rise in the deficits of many Member States, the overall conclusion with regard to the fiscal rules remains positive: deficits and debt levels have declined significantly since the rules were introduced in the Maastricht Treaty. After an initial clear decline, most Member States entered EMU with a deficit, which led to time limits being set for achieving a budgetary position close to balance or in surplus. The purpose was to avoid the medium-term objective becoming a moving target, which would never be reached. Most Member States used the economic upturn of the late 1990s to balance their budgets, the result being a significant reduction in public deficits. By the end of 2001, seven of the twelve EMU Member States had achieved the target of close to balance or in surplus. This picture is darkened by the subsequent deterioration in some Member States and by the fact that among those having so far failed to reach a balanced position are the three largest economies of the Euro area accounting for more than 70% of the total output (France, Germany and Italy).

Public debt has been declining in the Euro area, but the average level still clearly exceeds the 60% reference value due to the impact of three highly indebted countries (Belgium, Greece and Italy).

THE ROLE OF THE EUROPEAN PARLIAMENT

Parliament has certain prerogatives in the field of coordination of fiscal policies:

- the Council informs it of its decisions regarding multilateral surveillance and excessive public deficit;
- it is consulted concerning secondary legislation implementing the excessive deficit procedure, including the Stability and Growth Pact.

In several resolutions Parliament has reiterated its view that it and the national parliaments should be more closely associated in the policy coordination processes, which have a significant impact on the national fiscal policy.

FOREIGN POLICY: AIMS, INSTRUMENTS AND ACHIEVEMENTS

LEGAL BASIS

A. 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.

B. The CFSP is further consolidated by other provisions.

1. 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.

2. In the EC Treaty

Articles 296, 297, 300 and 301.

OBJECTIVES

A. Article 11 of the Treaty on European Union defines the following **five objectives** of the CFSP:

1. To safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter.

2. To strengthen the security of the Union in all ways.

3. 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.

4. To promote international cooperation.

5. To develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.

B. 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.

C. 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 political status of the European Communities was crowned by the signature of the Treaty on European Union (TEU) on 7 February 1992. The Treaty introduced the three-pillar system distinguishing thus the different areas of EU intervention. The second pillar concerning the Common Foreign and Security Policy was based on intergovernmental procedures like the third pillar concerning cooperation in the fields of justice and home affairs and contrary to the first and main pillar, which concerned purely Community policies. In regard to the CFSP, the TEU constituted a significant breakthrough.

1. Instruments

The CFSP is different from the EPC because it acquired concrete strategic means, which go beyond simple verbal statements. Articles 12 and 13 bestow the following instruments on the CFSP:

- common positions;
- joint actions.

Both are decided unanimously by the Council and bind Member States. Joint actions are more important since their implementation requires a great degree of political involvement of the Member States. Nevertheless, they are seldom used since Member States often prefer Council declarations, which do not generate binding consequences.

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 particular the Council on Foreign Affairs), the Commission, the Parliament, the Political and Security Committee.

3. Security and defence

*6.1.3.

C. The Treaty of Amsterdam (1997)

The 1996 IGC which preceded ratification of the Amsterdam Treaty was expected to introduce the institutional reform needed to give to the CFSP a more coherent and consolidated aspect. Yet, only the second paragraph of Article 3 (c) of the TEU was amended to include an obligation for the Council and the Commission to cooperate in order to ensure consistency in the external activities of the Union as a whole. Apart form the introduction of new instruments and a more efficient decision-making process, the Treaty of Amsterdam produced only improvements to a structure which remained largely unchanged.

1. Instruments

Article 12 gives 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-options papers as a contribution to policy formulation in the Council;
- to provide direct policy support to the High Representative.

3. Decision-making process

- Article 23 stipulates that decisions shall be taken by the Council acting unanimously. In seeking to overcome the constraints that produced the rule of the unanimity, the Treaty introduced the instrument of **constructive abstention** (Art.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. Yet, if a Member State opposes such a decision, the Council may, acting by a qualified majority, request that the matter be referred to the European Council for decision by unanimity.

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

The PSC, set up by the 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 stipulates that enhanced cooperation shall relate to implementation of a joint action or a common position on issues that do not have any military or defence implications. If no Member States

object or call for a unanimous decision in the European Council ("emergency brake"), enhanced cooperation is adopted by the Council by QMV, with a threshold of only eight Member States.

ROLE OF THE EUROPEAN PARLIAMENT

1. 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.

2. Actual action

The European Parliament has sought throughout the 1990s to extend the scope of the CFSP. 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, the EP has focused its attention on the following subjects:

- the performance of the CFSP is weakened by the three-pillar structure;
- the EU should have legal personality in order to act as a coherent legal entity in world affairs;
- the use of QMV should attribute a more flexible character to the CFSP; Member States should make less systematic use of the constructive abstention mechanism;
- the creation of a single European diplomatic service;
- despite the CFSP bodies and tools put in place by the Treaty of Amsterdam, the need for institutional reform remains pressing;
- the tasks of the High Representative for CFSP should be entrusted to a Commission vice-president, in order to avoid the inevitable conflict between the Council and the Commission.

DEFENDING HUMAN RIGHTS

LEGAL BASIS

1. Treaty on the European Union

Article 11.

2. International texts

a. United Nations

- Universal Declaration of Human Rights;
- International covenants and other instruments on human rights.

b. Others

- Final Act of the Conference on Security and Cooperation in Europe (Helsinki, 1975);
- Appropriate provisions of the former Lomé Conventions and Preamble to and Article 9 of the present Cotonou Agreement with African, Caribbean and Pacific countries.

OBJECTIVES

The European Union:

- publicly condemns violations of human rights wherever they occur;
- makes representations to the authorities of the countries concerned urging them to put an end to those violations;
- adopts measures that will put pressure on the authorities of the countries concerned.

ACHIEVEMENTS

A. General

Respect for human rights and fundamental freedoms is **a cornerstone of EU foreign policy**. A large number of agreements with third countries therefore now include a section on 'political dialogue' dealing with the rule of law, democratisation, human rights, etc. This component is incorporated into all the Union's new strategies for relations with the Asian countries, the Mediterranean countries (including the Euro-Mediterranean partnership), the countries of Latin America, and so on.

B. Specific action against the death penalty

In June 1998, the EU decided, as an integral part of its human rights policy, to strengthen its international activities in opposition to the death penalty. The EU will work towards the universal abolition of the death penalty, as a strongly held policy now agreed by all EU Member States. Where capital punishment still exists, the EU will call for its use to be progressively restricted, and insist that it be carried out according to minimum standards. The EU will also press, where relevant, for moratoria to be introduced. In addition, the recent adoption by the Council (9 April 2001) of new guidelines for the EU's policy aimed against torture and other cruel, inhuman or degrading treatment or punishment will create a new instrument for the EU in its relations with third countries.

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. Means of action

1. Instruments of moral pressure

- Resolutions adopted under Rule 50 of the Rules of Procedure, i.e. during debates on topical and urgent subjects of major importance;
- Meetings of the EP's interparliamentary delegations with parliamentarians from third countries;
- Annual reports on human rights worldwide and Community human rights policy (since 1984);
- Public hearings;
- The Sakharov Prize: Parliament introduced the Sakharov Prize for Freedom of Thought on 13 December 1985, at which time Andrei Sakharov, winner of the 1975 Nobel Peace Prize, was still in exile in Gorki. The prize is awarded annually in recognition of an action or achievement relating to: the development of East-West relations in the light of the Helsinki Final Act, particularly the 'third basket'; safeguarding the freedom of scientific enquiry; the defence of human rights and respect for international law; governments' respect for the letter of their constitution. Whilst the original intention was that the prize should mainly be awarded to upholders of the Helsinki Final Act, today it helps to underscore Parliament's commitments to defend human rights and fundamental freedoms throughout the world.

2. Binding instruments

The 1987 Single Act (Article 300, § 3, EC) conferred upon Parliament the power to withhold its **assent** to association treaties between the EU and third countries and to other international agreements with significant budgetary implications. This prerogative has enabled it to apply pressure - when such agreements are reached or are due for renewal - for human rights violations in the countries in question to be taken into account.

B. Content of action

1. Broad policy lines

a. The European Parliament has persistently called for the **defence of human rights to be the focus of a strong common foreign policy**. Such a policy should integrate individual foreign policies and should be based on the notion that the defence of human rights is a duty and a

right which cannot be jeopardised by the principle of non-interference in other countries' internal affairs (as stated by the President of Parliament at the award ceremony for the 10th Sakharov Prize).

b. Parliament has placed particular emphasis on **linking respect for human rights to agreements with third countries**, which are predominantly developing countries. It has constantly backed the Commission in calling for the insertion of a clause on respect for human rights in such agreements. Any breach of this clause could lead to the termination of the agreement (principle of 'conditionality'). Parliament's assent prerogative in the ratification procedure for these agreements has clearly lent greater force to its exhortations and most agreements now contain such a clause.

2. Specific actions

a. Action on specific problems and areas

- Parliament has held public hearings on Tibet, East Timor, Algeria and former Yugoslavia (rape of women).
- At its instigation, special democratisation programmes were launched for the countries of Central and Eastern Europe. They focused in particular on the protection of minorities, since, in addition to general human rights, the rights of minorities must be guaranteed as preconditions for accession to the EU.
- By sending observers to monitor elections, the EP makes a further contribution to strengthening democracy in third countries.
- The EP has actively supported the campaign for a UN moratorium on the death penalty, the establishment of the International War Crimes Tribunal, the setting-up of the European Monitoring Centre on Racism and Xenophobia, the EU campaign to combat violence against women, and World Women's Day in 1998, organised to highlight the situation of women in Afghanistan;
- Current priorities of the EP include measures to combat the exploitation of children as cheap labour, as prostitutes or in civil wars.
- In 2003, the EP approved, among others, the following resolutions:
  . on the importance for the EU to sponsor a resolution inviting all States to introduce a moratorium on executions with a view to completely abolishing the death penalty, and reiterating its request to the US, China, Saudi Arabia, Sudan, Republic of Congo, Iran, and other States to end all executions immediately,
  . on the importance of abolishing all forms of degrading and cruel punishment and all legalised forms of torture, notably practised in Iran, Saudi Arabia, Sudan, and some States of Nigeria,
  . on the need that the fight against terrorism should in no way endanger the protection of human rights and must be based on international humanitarian law,
  . asking that the Council Presidency should sponsor or support a resolution calling the US immediately to clarify the situations of prisoners in Guantanamo,
  . on violations of human rights in China, in particular the situation in Tibet and Xinjiang; in Russia, in particular the situation in Chechnya; in Algeria, Tunisia, Libya,
  . on the human rights situations in Israeli Occupied Territories and in the area under the Palestinian Authority, Saudi Arabia, Iran, Iraq, Sudan, Ivory Coast.

b. Defence of specific individuals

- Parliament has adopted several resolutions demanding the release of political prisoners and conscientious objectors, condemning those governments that are responsible for the violation of human rights and urging clemency for persons sentenced to death.
- The Sakharov Prize has given Parliament the opportunity to support the following renowned human rights defenders:
  . Leyla Zana (Kurdish member of parliament imprisoned by the Turkish authorities) - 1995,
  . Wei Jinsheng (Chinese dissident) - 1996,
  . Salima Ghezali (Algerian journalist) - 1997,
  . Ibrahim Rugova (Kosovo Albanian leader) - 1998,
  . Xanana Gusmão (a leader of the military wing of the Revolutionary Front for the Independence of East Timor, Fretilin) - 1999,
  . Nurit Peled-Elhanan (Israeli university lecturer), Izzat Ghazzawi, (Palestinian university lecturer), both of whom had campaigned for peace and tolerance between Jews and Palestinians, and Dom Zacarias Kamuenho (Archbishop of Lubango, Angola) campaigner for peace in Angola - 2001,
  . Oswaldo Payá Sardinsã (Cuban dissident and coordinator of the Varela project) for Freedom of Thought in the name of all dissidents - 2002.

  In earlier years, the Prize had been awarded to Nelson Mandela and Aung San Suu Kyi.

SECURITY AND DEFENCE POLICY

LEGAL BASIS

Title V of the TEU on the Common Foreign and Security Policy (CFSP) (*6.1.1.). and the five declarations on CFSP annexed to the TEU, particularly numbers 2 and 3 on the Western European Union (WEU).

OBJECTIVES

Five objectives were established for the CFSP (as modified by the Amsterdam Treaty):

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

ACHIEVEMENTS

A. The Treaty of Amsterdam

1. Content of the CFSP

a. The incorporation of the Petersberg tasks

Under Article 17 (4), the Treaty of Amsterdam incorporated into the TEU the so-called Petersberg tasks: 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.

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 WEU to implement decisions which have defence implications, and that the EU will draw up political guidelines for such situations. The Council, in agreement with the institutions of the WEU, must adopt the necessary practical arrangements to allow all Member States who wish to participate fully and on an equal footing in planning and decision-taking in the WEU. For its part, the WEU will be responsible for organising the forces and the chain of command.

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 Planning 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 implemented by the Commission.

B. The Nice Treaty

1. Political and Security Committee

Under Article 25 of the Nice Treaty, the Political and Security Committee shall exercise, under the responsibility of the Council, political control and strategic directions of crisis management operations. The Council may authorise the Committee, for the purpose and for the duration of a crisis management operation, as determined by the Council, to take the relevant decisions concerning the political control and strategic direction of the operation. This gives it an even more prominent role in the ESDP.

2. Enhanced cooperation

Enhanced cooperation shall respect the principles, objectives, general guidelines and consistency of the CFSP and the decisions taken within the framework of that policy. It shall relate to implementation of a joint action or a common position, but not to matters having military or defence implications. If no Member States object or call for unanimous decision in the European Council, enhanced cooperation is adopted in the Council by a qualified majority with a threshold of only eight Member States.

C. Further developments

1. Cologne European Council

At the June 1999 European Council in Cologne, as a result of the Kosovo conflict, the EU took a major step towards establishing its own military capabilities and placed the Petersberg tasks at the core of the process of strengthening the European Common Security and Defence Policy (ESDP). The aim was to create capacity for autonomous action, backed up by credible military forces, and the readiness to respond to international crises without prejudice to actions by NATO. The European Council made it clear that the integration of the WEU into the EU institutional framework was not necessary, despite the fact that it was foreseen in the Amsterdam Treaty; rather, those functions that the WEU assumed in the field of Petersberg tasks would be included in the EU.

2. Helsinki European Council

A concrete military aim was set up by the European Council, known as the "Headline Goal": by the year 2003, in voluntarily cooperation, the Member States should be able to deploy within 60 days, and then sustain, forces capable of the full range of Petersberg tasks, including the most demanding, in operations up to corps level (up to 15 brigades consisting of 50 000-60 000 persons). This new force, to be called the European Rapid Reaction Force (ERRF), would be available for deployment to a crisis area up to 2 500 miles away within 60 days, where it could remain for at least a year. Its mission would include humanitarian rescue operations, the prevention of armed conflict, or even full-scale intervention to separate fighting parties. 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 a European Security and Defence Policy,
  - . the interim EU Military Committee (EMC), composed of the Chiefs of Defence represented by their military delegates, which will give advice and make recommendations to the PSC.
- The Feira Council also created a European Security and Intelligence Force (ESIF) which will consist of 5000 well-armed police, able to carry out actions in support of global peacekeeping missions. This force will be under the control of the PSC, while effective operational control will be in the hands of the HR. It will require a pool of more than 15 000 men committed and trained for service with the ESIF.

4. The Capabilities Commitment Conference

On 20 November 2000 in Brussels, the Member States took part in a Capabilities Commitment Conference, making it possible to draw together the specific national commitments corresponding to the military capability goals set by the Helsinki European Council. These commitments have been set out in a document known as the "Force Catalogue". In accordance with the guidelines of the Helsinki and Feira European Councils on collective capability goals, the Member States committed themselves to medium and long-term efforts in order to further improve both their operational and their strategic capabilities by implementing reforms in their armed forces required for autonomous EU action.

5. Nice European Council

In December 2000, the European Council in Nice assessed each Member State's undertakings in regard to forming the European Security and Defence Policy.

6. Göteborg European Council

At the June 2001 European Council in Göteborg, 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.

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 consultations, cooperation and transparency between the EU and NATO in crisis management in the Western Balkans.

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 SFOR. It confirmed the Union's readiness to take over the military operation in the Former Yugoslav Republic of Macedonia (FYROM) as soon as possible in consultation with NATO. As a consequence, the first military operation was launched on 18 March 2003 and it makes use of NATO common assets and planning capabilities.

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) and the launch of the EU military operation in the former Yugoslav Republic of Macedonia to follow the NATO operation "Allied Harmony" on 31 March 2003.

D. WEU: recent developments

On 17 October 2000, the WEU military committee adopted the transition plan which seeks, while the permanent structures of the EU take shape, to ensure continuity in crisis management. However, the WEU Military Staff, with its Planning Cell and Situation Centre, will disappear once its counterpart is set up in its final form within the EU.

The meetings of the Council of Ministers of the WEU in Oporto in May 2000 and in Marseille in November 2000 paved the way for the transfer to the EU of the WEU functions required for performing Petersberg tasks.

E. WEU/NATO relations

Cooperation between the Western European Union and NATO underpinned the process of the reactivation of the WEU and became progressively more intensive and more frequent. In 1994 the concept of Combined Joint Task Forces (CJTFs) as a means of facilitating contingency operations was introduced. It should be implemented in a manner that provided separable but not separate military capabilities that could be employed by NATO or the WEU and would respond to European requirements and contribute to Alliance security.

Further steps have been made:

- From 17 to 23 February 2000 the first ever joint WEU/NATO crisis management exercise took place. This was based on a peace support mission scenario (Petersberg mission) consisting of a WEU-led operation using NATO assets and capabilities.
- A Joint WEU/NATO Exercise Study (JES 01), took place in the Netherlands in June 2001. JES 01 focused from a technical/operational viewpoint on procedures for establishing an Operation HQ (OHQ) for a WEU-led operation using NATO assets and capabilities under the political control and strategic direction of WEU.

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. Nevertheless, throughout its resolutions it points to the lack of a parliamentary dimension to the ESDP and notes 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.

It believes that the UN should be the only legitimate organisation for the implementation of international law, reminding that the use of force is authorised only by the UN Security Council.

In addition, the EP proposes, in the context of the CFSP and the ESDP, regular meetings bringing together representatives of the competent committees of national parliaments and the EP, with a view to examining the development of the two policies jointly with the Council Presidency, the HR for the CFSP and the Commissioner responsible for external relations.

In its resolution of 25 October 2001, the European parliament calls 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.

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.

THE EUROPEAN UNION AS A TRADE POWER

I – TRADE

A. The EU's place in world trade

1. The EU accounts for a **fifth of world trade** (2002 figures):

- it is the **first exporter** with 20.5 %;
- it is the **second importer** after the United States with 18.6 %.

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 6.9 % of exports;
- 1.3 % to 5.1 % of imports.

3. It has a slight **balance of trade** surplus whereas the United States has an enormous and rapidly increasing deficit and Japan and China have large surpluses (in the case of China the surplus is rapidly increasing).

Table 1

World exports of goods (bn euros)

	1990	1995	2002	Share of world total in 2002
EU 15	355.2	573.3	993.8	20.5 %
USA	300.5	431.9	713.6	14.7 %
Japan	213.7	316.4	412.9	8.5 %
Canada	99.0	144.5	266.1	5.4 %
China	50.2	111.3	337.5	6.9 %
Hong Kong	61.7	129.2	128.6	2.6 %
World	1849.4	2707.8	4841.9	

Source: Eurostat for the EU, the IMF for the rest of the world

Table 2

World imports of goods (bn euros)

	1990	1995	2002	Share of world total in 2000
EU 15	404.4	545.3	987.5	18.6 %
USA	387.7	566.2	1235.9	23.3 %
Japan	177.7	245.8	342.2	6.4 %
Canada	101.5	135.6	255.0	4.8 %
China	40.9	89.5	273.1	5.1 %
Hong Kong	58.8	134.4	195.2	3.6 %
World	1943.7	2783.8	5289.9	

Source: Eurostat, IMF

Table 3

Balance of trade (bn euros)

	1990	1995	2002
EU 15	-49.2	28.0	6.3
USA	-87.2	-134.3	-522.4
Japan	36.0	70.6	70.7
Canada	-2.5	8.9	11.1
China	9.3	21.8	64.3
Hong Kong	2.9	-5.2	-66.6

Source: Eurostat, IMF

B. The nature of the EU's trade

1. Main products

a. The European Union primarily buys and sells **manufactured goods**: they represent 90 % of its exports and about ¾ of its imports. Machines and transport equipment alone account for over 45 % of exports and over 35 % of imports.

b. **Energy** and **chemical products** come next.

c. Conversely, **foodstuffs** and **raw materials** constitute only a little over 7 % of exports and 10 % of imports.

Table 4

Breakdown of total EU 15 exports by product

	1990	1995	2003
Foodstuffs and beverages	7.5 %	6.8 %	5.1 %
Raw materials	2.4 %	2.4 %	2.0 %
Energy	3.6 %	2.3 %	2.7 %
Chemical products	13.0 %	12.8 %	15.8 %
Machines and transport equipment	42.2 %	44.6 %	45.5 %
Other	31.3 %	31.0 %	28.4 %

Source: Eurostat

Table 5

Breakdown of total EU 15 imports by product

	1990	1995	2003
Foodstuffs and beverages	8.4 %	7.9 %	5.9 %
Raw materials	7.8 %	7.4 %	4.5 %
Energy	17.9 %	11.9 %	14.6 %
Chemical products	6.8 %	7.9 %	8.1 %
Machines and transport equipment	29.9 %	31.8 %	36.1 %
Other	29.2 %	33.1 %	30.7 %

Source: Eurostat

2. Export-import balance by product

a. The EU has a very high **surplus** for **chemical products** and a high **surplus** for **machines** and **transport equipment**.

b. On the other hand, it has a **considerable deficit for energy**, which has almost doubled during the period.

Table 6

EU 15 balance of trade by product (bn euros)

	1990	1995	2003
Foodstuffs and beverages	-7.6	-4.2	-7.7
Raw materials	-25.0	-26.6	-24.7
Energy	-64.9	-51.4	-118.0
Chemical products	21.3	30.4	74.0
Machines and transport equipment	34.7	82.6	88.2
Other	-5.1	-2.7	-25.3

Source: Eurostat

C. The EU's main trading partners

1. With almost **20 %** of total trade, the **USA** is still the EU's main trading partner, being the first customer and the first supplier. Despite the considerable increase in absolute value, the share has declined somewhat in the last decade (1990-2003).

2. During the same period, **China** has moved from eighth to second place (from 2 % to 6.9 %), replacing Switzerland. Its exports to the EU have increased almost ninefold and its imports almost sevenfold.

3. **Switzerland** and **Japan** are in third and fourth place with 6.3 % and 5.4 % but this represents a fall as in 1990 they accounted for 9.8 % and 9.1 %.

4. **Russia** is in fifth place, with a little over 4 %, which has been stable throughout the period.

5. In terms of economic groupings, we may note:

- a very strong increase in the candidate countries, where their exports and imports have increased sevenfold;
- marked progress (by a factor of about 2.5) in trade with the newly developed Asian countries;
- a significant increase in exports to Latin America (which have increased by a factor of 2.5) and with the southern and eastern Mediterranean countries (which have increased by a factor of over 2);
- a relative decline in respect of EFTA, OPEC, the ACP countries and the countries of the former Soviet Union.

Table 7

The EU 15's main trading partners (Share of total trade: imports + exports)

1990		1995		2003	
USA	20.8 %	**USA**	18.5 %	**USA**	18.9 %
Switzerland	9.8 %	**Switzerland**	8.4 %	**China**	6.9 %
Japan	9.1 %	**Japan**	7.8 %	**Switzerland**	6.3 %
Norway	4.1 %	**Norway**	3.8 %	**Japan**	5.4 %
Soviet Union	4.1 %	**China**	3.7 %	**Russia**	4.3 %
Canada	2.4 %	**Russia**	3.4 %	**Norway**	3.8 %
Yugoslavia	2.1 %	**Poland**	2.5 %	**Poland**	3.5 %
China	2.0 %	**South Korea**	2.1 %	**Czech Republic**	3.1 %

Source: Eurostat

Table 8

EU 15 exports by economic area (bn euros)

	1990	1995	2003
USA	82.7	103.3	220.4
Candidate countries	25.3	70.7	175.0
EFTA	59.6	69.8	96.5
MEDA	36.5	50.6	81.0
DAE	31.0	65.6	73.2
Latin America	16.9	32.4	43.3
OPEC	36.6	39.0	66.4
Japan	24.5	32.9	40,0
ACP	23.8	17.6	40.2
CIS	18.5	20.8	45.3
China	5.8	14.7	40.1

Source: Eurostat

MEDA: Southern and Eastern Mediterranean countries

DAE: dynamic Asian economies (Thailand, Malaysia, Singapore, South Korea, Taiwan, Hong Kong)

CIS: former USSR countries

Table 9

EU 15 imports by economic area (bn euros)

	1990	1995	2003
USA	91.5	103.7	151.1
Candidate countries	22.9	55.5	155.3
EFTA	58.6	69.9	90.5
MEDA	28.6	32.1	107.2
DAE	36.3	54.4	71.1
Latin America	27.1	30.4	66.6
OPEC	45.2	38.4	95.1
Japan	51.4	54.3	66.6
ACP	28.8	19.9	62.3
CIS	22.9	24.9	47.6
China	11.4	26.3	43.3

Source: Eurostat

II – TRADE IN SERVICES

Alongside trade proper, in goods, mention should also be made of trade in services, which has acquired considerable importance in recent years and which now also tends to be categorised as trade.

A. General situation

1. The European Union accounts for **a quarter of world trade in services**. It is still the premier importer and premier exporter.

Table 10

World exports and imports of services (bn euros)

	1992		2002	
	Exports	**Imports**	**Exports**	**Imports**
EU 15	159.2	145.4	336.3	311.9
USA	134.8	91.0	305.3	240.5
Japan	37.8	71.7	69.5	114.2
Canada	16.0	23.8	39.3	44.9
China	7.1	7.3	42.0	49.2
World	563.6	583.3	1301.0	1303.0

Source: Eurostat, IMF Source: Eurostat, IMF

2. Balance

The EU has a stable long-term surplus but it is much lower than the USA's considerable surplus. Japan has a large and persistent deficit.

Table 11

Balance of trade in services (bn euros)

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
EU 15	13.8	12.9	11.9	12.0	13.5	17.6	11.9	7.4	7.4	10.0	24.4
USA	43.9	52.4	56.0	59.1	67.9	78.6	72.8	77.4	80.6	74.0	64.9
Japan	-33.9	-36.8	-40.4	-43.8	-49.0	-47.8	-44.1	-50.8	-51.6	-48.8	-44.7

Source: Eurostat, IMF

B. Type of services

Services to businesses (insurance, financial services, IT services, licences) now rank first in exports, having displaced transport and travel.

Table 12

The EU 15's external trade by type of service (bn euros)

	Exports			Imports			Balance	
	1992	**2002**	**Variation**	**1992**	**2002**	**Variation**	**1992**	**2002**
Total services	159.2	336.3	111 %	145.4	311.9	115 %	13.8	24.4
Transport	45.6	78.9	73 %	41.8	73.1	75 %	3.7	5.8
Maritime transport	19.9	37.0	86 %	19.0	33.7	77 %	0.9	3.4
Air transport	19.1	31.8	66 %	16.3	27.8	70 %	2.8	4.0
Other transports	6.6	10.1	53 %	6.5	11.6	78 %	0.1	-1.5
Travel	37.4	70.3	88 %	37.3	82.2	120 %	0.1	-12.0
Other services	71.7	183.3	156 %	63.9	152.8	139 %	7.8	30.4
Communications	2.7	5.9	118 %	2.7	6.9	157 %	0.0	-1.1
Construction	7.7	10.3	34 %	4.0	6.7	66 %	3.7	3.7
Insurance	4.1	17.7	336 %	3.6	5.0	40 %	0.5	12.7
Financial services	7.5	21.9	194 %	4.8	9.9	108 %	2.7	12.0
Information technology and information	1.5	13.4	816 %	2.2	7.5	243 %	-0.7	5.9
Royalties and licence fees	5.2	14.9	183 %	9.2	23.6	156 %	-4.0	-8.7
Other business services	29.9	86.4	189 %	29.7	81.4	174 %	0.2	5.0
Personnel, cultural and recreational services	2.8	4.1	44 %	3.3	6.1	85 %	-0.5	-2.0
Services provided or received by public administrations	10.3	8.7	-15 %	4.5	5.7	28 %	5.8	3.0
Non-classified services	4.5	3.8	-14 %	2.3	3.8	65 %	2.2	0.1

Source: Eurostat

C. Main partners

35 % of the EU's trade is with the USA, 7 % with the candidate countries, 4 % with Japan, 2 % with China and Australia.

Table 13

The EU 15's trade in services by geographic region in 2002 (bn euros)

	Exports	Imports	Part du total
Total	336.3	311.9	
EFTA	50.8	42.1	14 %
Other European countries	30.3	43.2	11 %
of which, candidate countries	17.4	25.7	7 %
Africa	19.2	19.0	6 %
America	145.8	135.7	43 %
of which:			
Canada	7.8	7.1	2 %
USA	119.4	110.6	35 %
Asia	63.9	50.9	18 %
of which:			
China	5.3	4.6	2 %
India	2.7	2.4	1 %
Japan	17.5	9.0	4 %
Oceania	7.1	5.9	2 %
of which: Australia	5.6	4.6	2 %
Other	19.2	15.3	5 %

Source: Eurostat

THE EUROPEAN UNION AND THE WORLD TRADE ORGANISATION (WTO)

LEGAL BASIS

1. International: the Agreement establishing the World Trade Organisation, which was signed in Marrakech on 15 April 1994 and entered into force on 1 January 1995.

2. European common commercial policy: Articles 26 and 27 and 131 to 134 of the EC Treaty; conclusion of international agreements: Articles 300 and 301 of the 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: 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 European Community 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

a. The **unilateral measures** (customs tariffs, anti-dumping measures) are:

- proposed by the Commission;
- adopted by the Council acting by a qualified majority (Articles 133 and 301).

b. 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).

c. 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.).

B. Background

1. GATT

a. 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.

b. 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.

c. 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 World Trade Organisation, through the Marrakech agreements of 15 April 1994. The European Community 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.

a. 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).

b. 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 (*6.4.5.) and in the long term for their access to markets free from customs duties.

2. 1998 and 1999

Following the 1998 Ministerial Conference in Geneva, the EU played an important role in the WTO's General Council in preparing for the 1999 Conference in Seattle. Its objectives were:

- establishing rules governing liberalisation in various areas (investment, competition, public procurement);
- making the environment an integral feature;
- dialogue on social standards;
- consideration of the interests of the least developed countries.

As the Conference (November-December 1999) was a complete failure, the EU subsequently argued for a new round of negotiations. (For details of the Union's overall approach, see the Commission communication COM(1999)331 and the Council conclusions of 21 June, 27 September and 15 November).

3. 2000-2001

a. 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.

b. 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. 2002-2003

a. 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).

b. However, the 2003 Ministerial Conference (held in September in Cancun) was a complete failure due, above all, to the problem of agriculture. There was a North-South clash, in particular between the United States-European Union coalition (which had adopted a common position on agriculture just before the Conference) and the so-called Group of 21, led by China, Brazil and India, whose main aim was to put an end to the agricultural subsidies of the two major Western unions.

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 Dispute Settlement Body 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

1. 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).

2. 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).

3. 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.

THE ENLARGEMENT OF THE UNION

LEGAL BASIS

- Article 49 of the Treaty on European Union (TEU).

OBJECTIVES

The enlargement of the European Union is not an objective in itself, even if it may be maintained that, in order to fulfil its task of achieving European unity, preserve peace on the continent and carry greater weight in the world, the Union is called upon to bring together all the peoples of Europe.

ACHIEVEMENTS

A. The legal framework

1. Conditions of accession

According to Article 45 TEU, countries applying must:

- be part of the European continent;
- respect the principles on which the Union is founded, as set out in Article 6 namely:
  - . democracy,
  - . human rights and fundamental freedoms, and the rule of law.

2. Decision meling 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. 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.

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 process

1. The current applicants

They are Turkey (applied in April 1987), 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). Switzerland applied in May 1992 but, following the negative outcome of the 1992 referendum on the country's accession to the European Economic Area, the Swiss Government did not pursue its application to accede to the EU, but neither did it withdraw it. Croatia submitted its application in February 2003 (*6.3.3.).

2. Launching the process

a. The basic criteria: 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 and respect for and protection of minorities,
- . existence of a functioning market economy and the ability to cope with competitive pressure and market forces within the Union,
- . ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union and adoption of the common rules, standards and policies that make up the body of EU law - the *acquis communautaire*.

b. The **Commission's opinion** on applications for accession: the Commission submitted its opinion on the applications for membership and the effects of enlargement on Community policies, in particular agricultural and structural policies, in a communication of July 1997 on 'Agenda 2000'.

c. The **Luxembourg European Council** of December 1997 endorsed the Commission's opinion on the membership applications and decided to launch the enlargement process and open negotiations, initially with six applicant countries: Hungary, Poland, Estonia, the Czech Republic, Slovenia and Cyprus. It also agreed on an enhanced pre-accession strategy. The **Helsinki European Council** of December 1999 decided to open negotiations with Romania, the Slovak Republic, Latvia, Lithuania, Bulgaria and Malta and to recognise Turkey's status as a candidate country.

3. The Pre-accession strategy

In 1994, the Essen European Council defined a pre-accession strategy to prepare the candidate countries of central and eastern Europe (CEECs) for EU membership based on implementation of the Europe Agreements, the Phare programme of financial assistance and a 'structured dialogue' bringing all Member States and candidate countries together to discuss issues of common interest. The Luxembourg European Council, of December 1997, decided on an enhanced pre-accession strategy for the ten CEECs. The strategy comprises 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 receive pre-accession assistance under a specific Council regulation for 2000-2004. Assistance focuses 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. Assistance is provided under two "European Strategy" regulations for Turkey (*6.3.5.).

4. The accession negotiations

a. Principles

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.

b. Progress

- The accession process was formally opened on 30 March 1998 and detailed negotiations began the following day with six candidate countries (Cyprus, Estonia, Hungary, Poland, the Czech Republic and Slovenia), in the form of bilateral intergovernmental conferences (composed of representatives of the Union and the applicant country concerned and the Commission negotiating team). Negotiations with Bulgaria, Latvia, Lithuania, Malta, Romania and Slovakia were formally launched in February 2000. The negotiations were preceded by a screening exercise aimed at explaining existing EU legislation to the candidate countries and checking whether they were willing to accept it and able to apply it. The negotiations cover the 31 chapters into which the *acquis* is divided.
- The European Council of Nice (*1.1.4.) reaffirmed the "Roadmap" for the negotiations proposed by the Commission and endorsed the target date for membership of the most advanced candidate countries in 2004, confirming Parliament's view that the best prepared candidate countries should be able to participate in the 2004 European Parliament elections. It also defined the framework for the institutional reform necessary for enlargement. Negotiations with ten countries (Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia) were closed at the Copenhagen meeting of the European Council in December 2002. The Treaty of Accession for these countries was signed on 16 April 2003 and they will become Member States on 1 May 2004 following completion of the ratification procedures.
- Negotiations continue with Bulgaria and Romania with the objective of welcoming them as members in 2007. The "roadmaps" for the two countries have been revised, and a significant increase in pre-accession assistance has been agreed. Negotiations have not yet been opened with Turkey: the European Council welcomed the important steps it has taken towards meeting the Copenhagen political criteria. If the European Council in December 2004 decides, on the basis of the Commission's report, that Turkey fulfils the political criteria, the EU will open accession negotiations without delay. The accession strategy for Turkey is to be strengthened and the EC-Turkey Customs Union is to be extended and deepened.

5. Monitoring

Monitoring of the commitments undertaken is intended to give further guidance to the acceding States in the efforts to assume the responsibilities of membership as well as reassuring the current Member States. The Commission has to present a full monitoring report to Council and Parliament six months before accession. 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 arise in the first three years after accession.

C. Adapting the Union

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.

1. The **Treaty of Nice** (*1.1.4.) (signed on 26 February 2001 and entered into force on 1 February 2003) and its attached Protocol on Enlargement and declarations set out the principles and methods for determining the number and distribution of seats in the 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, with the possibility for this number to be exceeded temporarily according to the actual dates of accession of the various candidate countries.

2. In the negotiations with the candidate countries on the 'Institutions' Chapter, the following **transitional and other arrangements** were agreed with respect to the accession of ten countries in May 2004:

- from 1 May 2004 until the next elections, the new Member States will be represented in the current

European Parliament by as many nominated Members as there will be elected Members in the 2004-2009 term;

- as from the June 2004 elections, the number of seats in Parliament will increase from 626 to 732. The Czech Republic and Hungary will have the same number of seats as countries of a similar size in terms of population;
- for a transitional period up to the end of October 2004, the 25 Member States will have 124 votes in total in the Council and a qualified majority will be reached with 88 votes; from 1 November 2004, the Member States will have 321 votes in total and the qualified majority will be reached with 232 votes;
- all new Member States will have one Commissioner each as from 1 May 2004; the same principle will apply to the current Member States from the term of the next Commission (1 November 2004).

ROLE OF THE EUROPEAN PARLIAMENT

- The fifth EU enlargement is, 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 considers that all the applicant countries have a moral right to be allowed to accede to the Union. However, it has expressed concerns on a number of occasions about the inadequacy of the EU's institutional framework and the additional resources which need to be made available. Throughout the negotiations it has stressed the need to evaluate the candidate countries on the basis of merit and in line with the principle of differentiation.
- 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 ten countries which had completed the accession negotiations, thus enabling the Accession Treaty to be signed. Members of the national parliaments of the acceding countries participated in the work of the European Parliament as observers from 1 May 2003.

THE EUROPEAN ECONOMIC AREA (EEA)

LEGAL BASIS

Article 310 of the EC Treaty (Association Agreements).

OBJECTIVES

The purpose of the EEA is to extend the EC's single market to include a number of countries in the European Free Trade Area 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 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.

3. Subsequent development

a. As three other EFTA countries – Austria, Finland and Sweden – joined the European Union at the beginning of 1995, the EEA now only covers Iceland, Norway and Liechtenstein (which joined EFTA in May 1995).

b. The 10 new Member States joining the EU on 1 May 2004 will automatically become part of the EEA.

B. The nature of the European Economic Area

1. A step beyond a free trade area

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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 EAA.

a. Free trade itself is limited: it does not cover certain sectors such as agriculture and fisheries.

b. The extension of the internal market is not complete:

- the free movement of persons only applies to workers although it applies to all people within the European Union, particularly in the Schengen area (*2.3.0.);
- there continue to be controls at the EU's borders with the three EFTA countries;
- there is no harmonisation of taxation.

c. The EEA is not even a customs union as it does not have any common external tariff. As a result, it does not have a common commercial policy towards the rest of the world either.

d. Obviously, **the EEA excludes the other elements of European integration**:

- economic and monetary union;
- external and common security policy;
- cooperation in the field of justice and home affairs.

e. Above all, it does not integrate the three countries in 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

- **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.
- **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

- 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.
- 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')

- **Areas**: The EEA Agreement provides for the participation of the EFTA countries in the EU's activities in a number of areas:
  - . research and development;
  - . information services;
  - . education and training;
  - . youth;
  - . tourism;
  - . SMEs;
  - . audiovisual sector;
  - . civil protection.
- **Forms**: in these areas, the EFTA countries participate in particular in framework programmes and projects.
- **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 European Union 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 European Union, 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 through the inclusion of the acts in question in the lists of protocols and annexes to the EEA Agreement.

In all, some 4 000 Community acts have been incorporated into the EEA Agreement since its entry into force.

- **An EEA Council**, made up of representatives of the EU Council and the Foreign Ministers of the EFTA states, meets at least twice a year to provide a political incentive and guidelines for the Joint Committee.

b. Transposition

Once a Community act has been incorporated into the EEA Agreement, it must be transposed into the national legislation of the three EFTA countries, if the transposition is required according to their constitutional arrangements. It may take the form of a simple governmental decision or may require parliamentary approval.

c. Nature of the mechanism

- The mechanism gives the impression that the extension of Community acts concerning the internal market to the EFTA states must be assessed by those states, initially in the form of a decision to incorporate the legislation by the Joint Committee and then in the form of a national decision on transposition. In reality, these decisions are essentially formal in nature: the Community legislation must be extended to these states; they do not have any choice. The Association Agreement also requires the Joint Committee to decide as quickly as possible so that the act in question may be applied more or less simultaneously in the Union and in the three countries; the only margin for assessment is the possibility of purely technical adjustments;
- Provisions have been established to involve the EFTA countries in the preparation of Community acts. Thus, the representatives of these countriesare 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 t. 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.

THE WESTERN BALKAN COUNTRIES

LEGAL BASIS

Title V TEU;
Articles 133 and 310.

OBJECTIVES

Bring peace, stability and economic development to the region and open the perspective of integration in the EU.

ACHIEVEMENTS

A. Approach to the region as whole

1. Until 1999

The former Yugoslavia benefited from a co-operation agreement with the EU since 1980. In June 1990 the Commission proposed measures to improve relations, but the break-up of the country in 1991 and the various conflicts changed the situation entirely. The EU's political, trade and financial relations with the region focused on crisis management and reconstruction, reflecting the countries' emergency needs at that time. The EU's assistance programmes were substantial, totalling some 5.500 million. As the region emerged from this difficult period, a more long-term approach to development was required. At the EU's initiative, the Stability Pact for South Eastern Europe (involving the countries of the Western Balkans, other countries of the region, the EU and several other countries, international financial institutions and regional initiatives) was adopted on 10 June 1999 in Cologne.

2. The Stabilisation and Association Process

- As its main contribution to the Stability Pact, the EU launched the Stabilisation and Association Process for the countries of the Western Balkans (SAP) in 1999. It established a strategic framework for their relations with the EU, combining a new contractual relationship (Stabilisation and Association Agreement) (SAAs) 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 co-operation 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, ratification by the parliament of the country concluding the agreement as well as by all EU member state parliaments. They require respect for democratic principles, human rights and the rule of law; they foresee the establishment of a free trade area with the EU and they set out rights and obligations in areas such as competition and state aid rules, intellectual property and establishment, which will allow the economies of the region to begin to integrate with that of the EU. So far, two countries (former Yugoslav Republic of Macedonia and Croatia) have signed an SAA, but none has entered into force.
- The CARDS-programme underpins the objectives and mechanisms of the Stabilisation and Association process. As each country moves deeper into the process, assistance will focus increasingly on support for the reforms and institution building necessary to implement the obligations in the SAAs. The CARDS regulation foresees some □4 650 million for the entire region in the period 2000-2006.
- The European Councils in Feira and Nice (June and December 2000) explicitly recognised the vocation of the countries of the Western Balkans (Albania, Bosnia-Herzegovina, Croatia, Federal Republic of Yugoslavia, Former Yugoslav Republic of Macedonia) as potential candidates for EU-membership and spoke of a clear prospect of accession once the relevant conditions had been met.

In November 2000, the EU unilaterally granted almost totally free access to its markets for goods from the Balkans.

A. 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 Co-operation, 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. However, Albania has participated in the Stabilisation and Association Process from the beginning and in October 2002, the Council authorised the Commission to open negotiations on a Stabilisation and Association agreement. From 1991-2001, the EU provided € 1098 million assistance, under the various programmes for humanitarian assistance (ECHO), for food security, democracy and human rights, macro economic assistance, PHARE and, since 2001, the CARDS programme.

2. Bosnia and Herzegovina (BiH)

- Since the Dayton/Paris Peace Agreement in 1995 brought the war in Bosnia and Herzegovina to an end, the EU has participated fully in the country's reconstruction. BiH benefits from autonomous trade preferences since 1996, but institutionalised contacts with the EU started only in June 1998. With the introduction of the SAP in 1999, BiH also became a participant. The country is still at an early stage in the process. In order to identify the most important issues for the country under the SAP, the EU published a Road Map, setting out 18 basic steps. This Road Map was substantially completed in September 2002 and a feasiblity study for a

Stabilisation and Association Agreement will be the next step.

- The first operation under the European Security and Defence Policy started in Bosnia-Herzegovina on 1st January 2003, when the European Union Police Mission took over from the UN's International Police Task Force.
- BiH has received over € 2 200 million since 1991 from the EU, under the ECHO (humanitarian), Obnova (reconstruction), PHARE and CARDS (from 2001) programmes. In addition, financial assistance was given for balance of payments support, the voluntary return of refugees, free media and human rights.

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 co-operation 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. Since ratification procedures require time and delay the entry into force of such an agreement, an Interim Agreement was signed in parallel, allowing the trade and trade-related matters of the SAA to enter into force on 1 January 2002.
- On 21 February 2003, Croatia, the first country of the Western Balkans to do so, submitted a formal request for EU membership.
- Between 1991 and 2001 Croatia received € 430 million of EU assistance. Until 2000 this was principally humanitarian aid or reconstruction assistance through Obnova In 2001, € 60 million were allocated under the CARDS programme.

4. Serbia and Montenegro (former Federal Republic of Yugoslavia)

- 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 Federal Republic of Yugoslavia (FRY) in October 2000, the EU re-established relations with the Belgrade administration and quickly lifted most sanctions. With effect from 1 December 2000, the EU included the FRY in the liberalised EU preferential trade regime for the region. The FRY also became a full participant in the Stabilisation and Association Process, taking part already in the first summit between the EU and the SAP States in Zagreb in November 2000. The FRY formally ceased to exist on 4 February 2003 and was replaced by the new Union of Serbia and Montenegro.
- The EU still provides considerable financial assistance, amounting to € 2 347 million from 1991-2001 including humanitarian assistance, reconstruction, macro-financial assistance, democracy and media programmes as well as interim administration costs. The European Agency for Reconstruction, which was established in February 2000 initially to implement aid to Kosovo, is responsible for the implementation of EU aid in the whole FRY since December 2000.

5. Former Yugoslav Republic of Macedonia (FYROM)

- The country declared independence from the collapsing Yugoslav federation in September 1991. A first trade and co-operation agreement with the EU entered into force in January 1998. In April 2001, FYROM was the first country of the region to sign a Stabilisation and Association Agreement. Since ratification procedures require time and delay the entry into force of such an agreement, an Interim Agreement was also signed in April 2001, which allowed the trade and trade-related matters of the SAA to enter into force on 1 June 2002.
- FYROM faced a serious political crisis in 2001, due to a violent insurgency, which led to the deployment of a NATO mission. International military presence was assured by NATO until 31 March 2002, when the EU took over from NATO with its first ever military peace keeping mission.
- Between 1992 and 2001, FYROM benefited from a total EU assistance of some € 570 million. Since 2001, the CARDS programme is the EU's main financial instrument for the country. The European Agency for Reconstruction is responsible for the implementation of all past and future programmes since 1 March 2002.

ROLE OF THE EUROPEAN PARLIAMENT

The European Parliament has set up a delegation for South-East Europe, responsible for the countries of the Western Balkans and regularly sends parliamentary observers when elections take place in the region.

Parliament considered that the Stability Pact, initiated in June 1999 and accompanied by the EU's SAP, is decisive in fostering peace and democracy in the region. It also approved the overhaul of the financial aid arrangements for the countries of the Western Balkans (the CARDS programme). It gave its assent to the Stabilisation and Association agreements concluded with Croatia and FYROM.

The EP has often highlighted the need for respect for democracy, the rule of law and the rights of minorities in the region. It has insisted on full and effective co-operation 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. In November 2002 it recommended suspension of a further stage of the Stabilisation and Association Process and suspension of financial assistance if these requirements are not met.

RUSSIA AND THE OTHER COUNTRIES OF THE FORMER SOVIET UNION

LEGAL BASIS

- 'Trade and Cooperation Agreements': Articles 133, 300 and 308 of the EC Treaty, which empower the Community to pursue a trade policy with third countries;
- 'Economic, financial and technical measures with third countries': Article 181a of the EC Treaty, introduced by the Treaty of Nice; these agreements, which include provisions outside the Community remit (social and public health services, trade in cultural and audiovisual services, etc.) are negotiated and concluded jointly by the Community and the Member States;
- 'Partnership and Cooperation Agreements': Article 300 of the EC Treaty calling for the assent of the European Parliament as well as of the parliaments of the Member States. Pending this assent, trade and trade-related provisions of the agreements are put into force by way of Interim Agreements based on Article 133. The Treaty of Nice did away with codecision by the EP for the implementing provisions of the commercial policy. However, the EP will continue to be immediately and fully informed of any decision concerning the provisional application or the suspension of agreements, or the establishment of the Community position.

OBJECTIVES

A. Immediately after the beginning of official relations with the Soviet Union in 1988, the European Community started to work towards a swift normalisation of economic relations with the leading power in Eastern Europe. Its intention was also to support the process of perestroika initiated by President Gorbachev.

B. The end of the Soviet Union in December 1991 meant a complete review of the EU's relations with what had once been a centralised superpower. The EU had to deal with a number of newly independent states of various sizes and structures and at different stages of development. Establishing solid commercial links is naturally a fundamental goal. However, the overall objective is much broader. In addition to providing technical assistance, in particular through the TACIS programme, the EU decided to offer these states a new kind of much further-reaching agreement intended to integrate them into a network of extensive economic, political and cultural relations and thus help bolster stabilisation in Europe.

ACHIEVEMENTS

A. General development of relations with the region

1. The initial thaw

The Joint Declaration of the European Community and the Council for Mutual Economic Assistance (CMEA) in June 1988 ended the Cold War era by mutual recognition. On this basis, in December 1988 the European Community concluded a comprehensive Trade and Cooperation Agreement with the Soviet Union. This was the first contractual link with this country and an essential part of the normalisation of relations.

2. The transition

After the disintegration of the Soviet Union at the end of 1991, the EU had to negotiate new agreements with countries that had been part of the Union. The former Trade and Cooperation Agreement was used as a basis for developing bilateral relations before the implementation of the 1996 Interim Agreements (concluded only in the field of commercial cooperation, as a prelude to the adoption of the Partnership and Cooperation Agreements in full).

3. The Partnership and Cooperation Agreements

a. Scope

Partnership and Cooperation Agreements (PCAs) have been negotiated and signed so far with nine of the twelve countries in question. Once in force, these Agreements automatically replace the trade provisions of the 1989 Agreement. They cover the general principles, current payments, competition, protection of intellectual, industrial and commercial property and the Protocol on mutual assistance between administrative authorities in customs matters. They have been concluded for a renewable period of ten years and provide for regular meetings between ministers, senior officials and parliamentarians of the EU and the partners with a view to monitoring the implementation of the Agreements and looking into new areas of cooperation. They fall short of the Europe Agreements already concluded with certain Central European countries, since they do not include free trade provisions nor mention the possibility of accession to the EU. They are so-called 'mixed agreements' and include a suspension clause, as all newly concluded agreements of the EU with third countries have since 1992. The agreements also have an evolution clause stating that, when the necessary conditions are met, free trade agreements could be envisaged.

b. Resources

The TACIS programme is the main instrument used by the EU to assist the implementation of the Partnership and Cooperation Agreements in areas ranging from advice on the adoption of economic legislation to the provision of technical know-how in the area of infrastructures. The second phase of the programme (2000-2006) has a budget allocation of over € 3 million.

COUNTRY	PARTNERSHIP AND COOPERATION AGREEMENTS		INTERIM AGREEMENTS	
	signed	in force	signed	in force
Russia	24 June 1994	1 December 1997		1 February 1996
Ukraine	14 June 1994	1 March 1998		1 February 1996
Belarus	6 March 1995	negotiations suspended		
Moldova	28 November 1994	1 July 1998		1 May 1996
Armenia	22 April 1996	1 July 1999	10 December 1996	20 November 1997
Azerbaijan	22 April 1996	1 July 1999	8 October 1996	8 October 1997
Georgia	22 April 1996	1 July 1999	4 October 1996	1 August 1997
Kazakhstan	23 January 1995	1 July 1999	5 October 1996	
Kyrgyzstan	9 February 1995	1 July 1999	28 November 1996	1 August 1998
Mongolia	16 June 1992	March 1993		
Uzbekistan	21 June 1996	1 July 1999	14 November 1996	1 June 1998
Tajikistan	-	-	-	-
Turkmenistan	24 May 1997 (initialled)	-	10 November 1999	-

B. Relations with the various countries

1. Russia

a. Efforts towards a rapprochement

- The **Partnership and Cooperation Agreement** with Russia entered into force on 1 December 1997;
- In the same vein and on the basis of Article 13 of the Treaty on European Union, the Council adopted on 14 June 1999 a **Common Strategy** which gives priority to four areas of action:
  - . consolidation of democracy, rule of law and public institutions in Russia,
  - . integration of Russia into a common European economic and social space,
  - . cooperation to strengthen stability and security in Europe and beyond,
  - . common challenges on the European continent;
- The Council has adopted an action plan for common action with Russia to combat organised crime;
- Since 2000, EU-Russia summits have been held twice a year. In May 2002, the final statement highlighted the need for greater cooperation in the fight against international terrorism;
- Two major economic projects currently in the pipeline could contribute to the rapprochement: an energy partnership and the creation of a common European economic space;
- In order to facilitate Russia's integration into the global economy, the EU granted Russia full market economy status in May 2002.

b. Differences

- The main difference relates to the Chechnyan issue: it was addressed once again at the November 2002 summit;
- The other delicate topic is the enclave of Kaliningrad; a solution was, however, found at the November 2002 summit involving multiple visas at a low cost.

2. Ukraine, Belarus, Moldova

a. Ukraine

- a Partnership and Cooperation Agreement entered into force in 1998;
- a Common Strategy taking account of the Ukraine's aspirations for European integration was adopted on 10 December 1999. It has three main objectives: supporting the transition process in Ukraine, meeting common challenges, and strengthening cooperation between the EU and Ukraine in the context of enlargement.

a. Belarus

The election of Mr Loukachenko as President in 1996 led to a deterioration in relations. The EU has regularly criticised the violations of human rights and fundamental freedoms within the regime as well as the absence of a market economy. As a result, it suspended the negotiations on the entry into force of the Partnership and Cooperation Agreement and halted its technical assistance. Mr Loukachenko's re-election in September 2001, under conditions that were criticised by the opposition and international observers, does not give much cause for optimism in the years ahead. The EU has not closed the door on a partnership but the *sine qua non* is an improvement in respect for human rights and introduction of economic reforms.

b. Moldova

- The Partnership and Cooperation Agreement entered into force on 1 July 1998. Since then, relations have been relatively good. For the period 2000-2003, the priority areas of action were the

legal and administrative reforms, support for enterprises and social assistance;

- In addition to the serious economic problems, Moldova is faced with two secessionist threats:
  . that of Gagauzia, which already has substantial cultural and political autonomy and the right to self-determination should the country wish to establish a union with Romania,
  . that of Transdniestria, over which Russia and Ukraine wish to maintain their influence.

In order to deal with these risks, in 2003 the Commission proposed creating an area of shared prosperity and stability through economic integration, stronger political links and cultural cooperation. This entails a specific contractual instrument (neighbourhood agreement) and an ad hoc financial instrument (neighbourhood instrument).

3. Transcaucasian Republics: Armenia, Azerbaijan and Georgia

The Partnership and Cooperation Agreements with these three countries, which were signed in 1996 and entered into force in 1999, have similar objectives:

- encouraging democratisation and economic development,
- contributing to the re-establishment of peace in the region.

The financial assistance provided is distributed more or less equally among the three countries: EUR 287 million to Armenia between 1991 and 2000, EUR 343 million to Georgia between 1992 and 2002, and EUR 334 million to Azerbaijan between 1992 and 2001.

4. Central Asian Republics (Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan, Turkmenistan) and Mongolia

The importance of a partnership with these countries unquestionably increased following the attacks of 11 September 2001.

a. Partnership Agreements have been signed with Kazakhstan, Kyrgyzstan, Uzbekistan and Mongolia. Despite their shortcomings as regards human rights, the development of links with these countries is important in light of their geo-strategic significance and their support in the fight against terrorism. By stepping up political and economic cooperation with these countries, the EU is helping to stabilise Central Asia.

b. Relations with Tajikistan and Turkmenistan are not as highly developed. A Partnership and Cooperation Agreement and an Interim Agreement have been signed with Turkmenistan but the poor situation as regards human rights in the country has prevented them from entering into force. The civil war in Tajikistan made any signature of an agreement with the EU impossible at the time. However, the attacks of 11 September 2001 have paved the way for a improvement in relations with both countries. Thus, in January 2002, the EU decided to put an end to the freeze on its assistance to Tajikistan.

ROLE OF THE EUROPEAN PARLIAMENT

The EP has regularly expressed its concern with regard to human rights both within the former Soviet Union and since its disintegration. Recently, it has been particularly concerned about the situation in Chechnya (see its last resolution of 29 November 2003).

THE SOUTHERN AND EASTERN MEDITERRANEAN COUNTRIES

L BASIS

- Title V of the EU Treaty;
- Articles 133 and 310 of the EC Treaty.

OBJECTIVES

In accordance with the guidelines laid down by the European Councils held in Lisbon (June 1992), Corfu (June 1994) and Essen (December 1994), the European Union decided to draw up a framework for relations with countries of the Mediterranean basin with a view to establishing a partnership. It thus seeks to balance, through cooperation with the South, the policy of opening the EU up to the countries of Central and Eastern Europe.

ACHIEVEMENTS

A. The general framework: the Barcelona Conference

1. On 27 and 28 November 1998, the Barcelona Conference brought together the Foreign Ministers of the EU Member States and the following countries: Algeria, Cyprus, Egypt, Israel, Jordan, Lebanon, Malta, Morocco, Mauritania (as a member of the Arab Maghreb Union (UMA)), Syria, Tunisia, Turkey and the Palestinian Authority. The League of Arab States and the UMA were invited to attend.

2. The Conference adopted two documents, a declaration and a work programme, which provide for **cooperation in three areas**:

a. Political and security partnership

With a view to establishing 'a common area of peace and stability', the partners agree to 'conduct a strengthened political dialogue at regular intervals' and to act in accordance with the United Nations Charter and the Universal Declaration of Human Rights. This area covers:

- cooperation to combat terrorism;
- the fight against organised crime;
- measures in favour of nuclear non-proliferation.

b. Economic and financial partnership

The objective is to create 'an area of shared prosperity' based on:

- the progressive establishment of a free trade area;
- the implementation of economic cooperation and concerted action;
- a substantial increase in the European Union's financial assistance, consisting of Community budget resources, EIB assistance and individual financial contributions from the Member States, totalling EUR 5 350 million for the 2000-2006 period.

c. Partnership in social, cultural and human affairs, including in particular instruments to promote exchanges between political leaders, universities, the media, trade unions, enterprises, etc.

The work programme sets out the **priority actions** in these three areas, including: the creation of a free trade area, the implementation of the Mediterranean Water Charter (adopted in 1992), energy planning, reduction of food dependency, environmental measures, etc.

3. The bodies

A 'Euro-Mediterranean Committee for the Barcelona Process' composed of senior officials of the 'troika' of the European Union and each Mediterranean country meets to prepare the meeting of the Foreign Ministers. The principle of creating a Euro-Mediterranean Parliamentary Assembly was adopted at the Valencia Conference in April 2002. The Euro-Mediterranean Parliamentary Forum added a parliamentary dimension to the decision-making procedures.

B. Developments at global level

1. General development

At the ministerial meetings in Malta (15 and 16 April 1997) and Palermo (3 and 4 June 1998), the objectives of the Barcelona Conference were reasserted and an initial evaluation of the results was presented. The Barcelona Process was considered to be complementary to the Middle East peace process, examination of which dominated the Malta meeting. The Palermo Conference highlighted the global nature of the partnership: political confidence in the region was necessary for the creation of a free trade area. The European Commission hoped to give fresh impetus to the Barcelona Process in 1999-2000 in order to complete the signature of the association agreements, improve the Euromed Regulation and prepare the establishment of the free trade area. Meeting in Santa Mariá da Feira in June 2000, the Council adopted a common strategy on the Mediterranean region to promote cohesion and give a boost to Euro-Mediterranean relations. The goal of the 2001 Marseilles Conference was to take stock of the progress of the Euro-Mediterranean Process. A new action plan was adopted at the Valencia meeting in 2002. In the light of the results achieved, the limits imposed on this plan and the development of the geo-strategic environment in the region, the Euro-Mediterranean Partnership finds itself at a crossroads in 2003. The Commission communication of 11 March 2003 proposes including the Mediterranean region as part of a new strategic approach to the areas bordering the European Union. The Euro-Mediterranean Process should therefore take on a new dimension. Presented at the Mid-Term Conference in Crete in May 2003, this development was examined in further detail at the Naples Euro-Mediterranean Conference at the end of 2003.

2. Specific results

a. In the political and security field:
- training seminars for diplomats;
- network of foreign policy institutes (EuroMesco);
- adoption of a plan for the management of natural disasters;
- cooperation on terrorism;
- guidelines for a Charter for Peace and Stability adopted informally in Stuttgart in April 1999; the 2001 Marseilles Conference did not approve the adoption of this Charter.

b. In the economic and financial field:
- agreements establishing a customs union have been concluded with Turkey, Cyprus and Malta;
- new generation association agreements have been signed with Tunisia (1995), the Palestinian Authority (1997 interim agreement), Israel (2000), Morocco (1996), Jordan (1997), Egypt (1999), Algeria (2002) and Lebanon (2002), and negotiations are under way with Syria;
- the MEDA II Regulation was amended in November 2000. The MEDA Committee was set up with a view to enabling the Member States to advise the Commission in relation to implementation of the MEDA programme. On the basis of the 2000-2006 budget allocation, triennial national indicative programmes have been drawn up at national level. A regional programme covers multilateral activities.

c. In the social and cultural field:
- the Euromed Heritage, Euromed Audiovisual 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;
- many networks have been set up: chambers of commerce, industrial federations, foreign policy and economic policy institutes;
- since the events of 11 September 2001, the dialogue between cultures and civilisations has been strengthened. The European Parliament has called for this dialogue to be considered an essential measure.

C. The development of relations with the various countries

Relations are for the most part conducted through Euro-Mediterranean association agreements incorporating:
- the gradual establishment of free trade areas;
- aid for economic transition: improving competitiveness, administrative reforms, scientific cooperation.

The European Union has concluded association agreements with 11 of the 12 partner countries; negotiations are currently taking place with Syria to this end.

ROLE OF THE EUROPEAN PARLIAMENT

1. General position

The EP has called for the Barcelona Process to be turned into an ambitious programme for inter-regional cooperation which would eventually lead to the creation of an association of Euro-Mediterranean states and incorporate a Charter for Peace and Stability and a single market.

2. Specific proposals

a. In the political field

The EP has called for:
- a regional programme on justice and home affairs;
- in cases of breaches of human rights, application of the procedures laid down in the association agreements;
- a moratorium on the death penalty;
- the creation of a Euro-Mediterranean Parliamentary Assembly.

b. In the economic field

The EP has proposed in particular:
- the conversion of the debt of Mediterranean third countries;
- special support for micro-projects;
- the harmonisation of investment legislation;
- reforms of the legislation and administration in the Southern countries in order to create conditions to foster entrepreneurship and investment.

c. In the social and cultural field

The EP has proposed that progress should be made:
- in the area of migration: management of flows, temporary migration, specific circulation visa, ensuring that immigrants have equal economic and social rights and the right to vote in local and European elections;
- in the area of education: training of teachers, vocational training, teaching languages and a common Mediterranean culture.

(cf. Resolution on the Commission communication entitled 'Reinvigorating the Barcelona Process').

THE UNITED STATES OF AMERICA AND CANADA

LEGAL BASIS

- For the USA: Article 133 EC;
- For Canada: Articles 133 and 308 EC and 101 Euratom.

OBJECTIVES

Maintaining a free exchange of goods while protecting the European Union's interests remains one of the main objectives of the Union's important trade relations with the US. The US and the Union play a major role in international bodies such as the 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 at establishing direct links between the two parties and at consolidating and diversifying economic and commercial cooperation to the greatest possible extent.

ACHIEVEMENTS WITH REGARD TO THE 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

It provides for a system of regular consultations:

- biannual consultations between the EU Presidency plus the Commission and the US President;
- biannual consultations between the EU Foreign Ministers and Commission and the US Secretary of State;
- ad hoc consultations between the Presidency Foreign Ministers and the US Secretary of State;
- biannual consultations between the Commission and the US Government at cabinet level;
- briefings by the EU Presidency to US representatives on the Common Foreign and Security Policy (CFSP) at ministerial level.

2. The new Transatlantic Agenda and the Joint Action Plan (1995)

The EU-US Summit of December 1995 adopted a statement of political commitment, the New Transatlantic Agenda (NTA), and a comprehensive joint EU-US Action Plan. The new Agenda enables the two sides to join forces to achieve four broad objectives: promoting peace, development and democracy around the world; responding to global challenges; contributing to the expansion of world trade; as well as closer economic relations and building bridges across the Atlantic. The Action Plan identifies over 150 fields for action where the EU and the US have agreed to work together, both bilaterally and multilaterally. To promote peace and stability, the EU and the US have pledged to cooperate in creating an increasingly stable and prosperous Europe. Cooperation and joint action are focused on the reconstruction of 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

- At their summit on 25 June 2003, the EU and the US tried to demonstrate that they had entered a post-war era of closer co-operation following sharp divisions over the conflict in Iraq. The summit was the first since transatlantic relations were strained by the war, and their joint statement is being seen as an attempt to present a united front. Crucially, they pledged to work together to combat the spread of weapons of mass destruction (WMD). They demanded that Iran allow new inspections of its nuclear power program. The joint statement described the proliferation of WMD as a major threat to international peace and security and pledged to use all means available to avert proliferation and the calamities that would follow. They agreed;
  - . to work together to strengthen the international system of treaties and regimes against the spread of WMD;
  - . to seek to ensure strict implementation and compliance;
  - . to support non-routine inspections;
  - . to recognise that other measures in accordance with international law may be needed to combat proliferation.
- The two sides signed extradition and mutual legal assistance agreements that will provide additional tools to combat terrorism, organised crime, and other serious forms of **criminality**. The mutual legal assistance treaty provides for the formation of joint investigative teams, the use of video-technology for taking testimony, and the provision of information regarding suspect bank accounts. The extradition treaty updates the oldest treaties in force between the US and EU Member States, which permitted extradition for only a limited range of listed offences.
- The launch of talks on an "**open aviation area**" marks the end of a painful battle between the two sides over opening up air transport. The summit's conclusions said the negotiations would begin in early autumn.
- The two partners confirmed their commitment towards the drive to speed up the development of

a **hydrogen economy**. In an official declaration, the EU and the US made a commitment to step up their cooperation, particularly in the case of research, standards, nomenclature and regulations. The partners will strive to boost public/private cooperation in this area. The two sides are seeking to build complementary ties so as to explore the technical options for facilitating the advent of the hydrogen economy, primarily by placing emphasis on renewable sources of energy.

b. Areas of agreement

- It cannot be ignored that transatlantic policy coordination has not always been successful in the recent past (for example policies on Cuba, Iraq, Iran, Middle East) despite all these declarations, agendas and plans.
- Disagreements remain over issues such as genetically-modified crops (GMO), which the US is much more keen than the EU to develop and exploit. The US President has criticised EU policies on GMOs, saying they contributed to famine in Africa, while the EU insists that it does much more than Washington to feed the hungry. Separate divisions also exist on the International Criminal Court, established in The Hague in the face of the US refusal for its soldiers to be subject to the court's jurisdiction. Iraq was mentioned only briefly: Mr Bush vowed that Europe and the US would work together to help the people of Iraq build a future of security, prosperity and freedom.

C. Economic cooperation

1. The European Union and the United States are the leading players in international trade, accounting for 37% of world merchandise trade, and 45% of world trade in services in 2002. They are also the largest source and destination of Foreign Direct Investment (FDI), accounting for 54% of total world inflows and 67% of total world outflows in 2000.

2. The EU and the US. are each other's single largest trading partner (in goods and services) (*6.2.1) In 2002 two way cross-border trade in goods and services (exports and imports) amounted to more than € 650 000 million (€ 412 000 million in goods and € 238 000 million in services). The EU and the US. each account for around 21% of each other's total trade in goods. It is estimated that trade in high-technology products accounts for 20% of EU/US. merchandise trade. Transatlantic trade represents 39% of EU and 35% of US. total cross-border trade in services. In 2001 EU-US trade in services accounted for 36% of total bilateral trade (goods + services), up from 33% in 1988.

3. The EU and US. have by far the world's most important bilateral investment relationship and they are each other's most important source and destination for FDI. The EU and the US. accounted in 2001 for 49% and 46% respectively of each other's outward FDI flows. The EU accounted for 54% of US inward FDI and the US for 69% of EU inward FDI. Over the period 1998-2001 the US was the destination of 52% of EU outward FDI flows and the source of 61% of EU inward FDI. Nearly three-quarters of all foreign investment in the U.S. in the 1990s came from Europe. Levels of FDI flows between the EU and the U.S. are substantially greater than trade levels.

The EU is not only a critical source of revenue for U.S. companies, it is also a key supplier of capital or liquidity for the US. economy, substantially contributing to finance its current-account deficit. Although transatlantic trade disputes steal the headlines, trade itself accounts for less than 20% of transatlantic overall commerce, and US-EU trade disputes account for less than 1% of transatlantic commerce.

ACHIEVEMENTS WITH REGARD TO CANADA

A. General

1. 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 co-operation in the peaceful uses of atomic energy (Euratom's oldest international agreement). Then in 1976 the Framework Agreement for Commercial and Economic Co-operation between the European Communities and Canada was concluded: the Community's first co-operation agreement with an industrialised country. Since then, the EU's co-operation 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. In order to facilitate co-operation across a far broader range of policy areas, political declarations were adopted in 1990 and again in 1996.

2. The EU and Canada now meet in a variety of fora to take forward their co-operative agenda. Twice a year meetings take place at Foreign Minister level, as well as 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 Co-operation 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. Along with the EU, Canada has taken a strong stand against the extra territorial sanctions against foreign companies doing business in Cuba (Helms-Burton Act).

At the Athens summit (28 May 2003), the EU and Canada:

- welcomed the initialing of a new agreement on wine and spirits, and expressed their wish to carry the

process forward to conclusion and ratification on both sides of the Atlantic;

- agreed to a joint action plan toward a regulatory co-operation framework with the aim of preventing unnecessary barriers to trade and investment, and welcomed the joint EU/Canada seminar on regulatory co-operation on 26 June in Brussels, "Enhancing Partnership and Dialogue";
- expressed appreciation for the useful contribution made by the Canada Europe Roundtable for Business (CERT), to enhance bilateral trade and investment;
- with regard to Canada's request for WTO consultations concerning the status and treatment of applications for the approval of genetically-modified organisms (GMOs) in the EU, Canada and the EU set out their different positions. Discussions covered, inter alia, the economic, scientific, social, and political aspects of the issue as viewed by each side.

LATIN AMERICA

LEGAL BASIS

1. Title V of the Treaty on European Union as regards general relations.

2. EC Treaty:
- Article 37 for fisheries agreements,
- Articles 133 and 300 for trade relations,
- Article 308 for cooperation agreements.

OBJECTIVES
- to reinforce political ties;
- to strengthen economic and trade relations;
- to support democratic development and economic and social progress in Latin American countries;
- to foster regional integration.

These objectives are reflected in particular in 'fourth-generation' agreements, which are more ambitious than previous ones, going beyond simple trade and development aid agreements and providing for political cooperation and free-trade areas.

ACHIEVEMENTS

A. Relations with the continent as a whole

1. Development cooperation

Since the 1960s, Latin America has benefited from financial and technical assistance from the European Union, which is its biggest provider of official development aid. Development and cooperation policy is conducted by means of regional and global 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, the second phase of which (2000-2005) has already been launched, AL-Invest for cooperation between companies, ALURE for cooperation in the energy sector, the new eLIS programme, designed to promote more widespread use of information technology, ECHO for support for the victims of natural disasters and drought and the project for the creation of a centre for European and Latin American studies (CELAS).

2. Relations with the Rio Group

The Rio Group, which was founded in 1986, is the principal mechanism for political consultation at continental level. It now covers the whole of Latin America and also includes representatives of the Caribbean countries. Relations between the EU and the Rio Group were placed on an official footing by a declaration made in Rome on 20 December 1990. The interregional dialogue includes an annual meeting of Foreign Ministers. The partnership between the two regions consists of
- political dialogue,
- technical, financial and economic cooperation, and
- trading links.

3. Joint summit in Madrid, 2002

After an initial summit in Rio de Janeiro in June 1999, the Heads of State or Government of the countries of the EU, Latin American and the Caribbean met again in Madrid on 17 and 18 May 2002. This second summit established a political, economic and cooperation partnership. It approved a progress report on the development of relations since the first summit of 1999. The main results of the debates, as recorded in the declarations, were as follows:
- a commitment to step up individual and collective action against terrorism in all its forms;
- a pledge to consolidate the rule of law, democracy, human rights and the fight against social injustice;
- an undertaking to engage in social, cultural, scientific, technological and educational cooperation;
- a commitment to cooperate in the fight against drug-trafficking and a reaffirmation of the shared responsibility of producer and consumer countries;
- a reaffirmation of commitment to the multilateral system of the UN and a declaration of intent to coordinate positions in international forums;
- a commitment to the lowering of trade barriers.

B. Relations with regional groupings

1. Central America: the San José dialogue
- 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, and the EU relies on this dialogue to promote peace, political stability, democracy, respect for human rights and regional integration in the countries concerned. The establishment in 1991 of the 'Central American integration system' has since brought progress in the domain of regional integration..
- At the 18th ministerial conference, held in Madrid in May 2002, the parties decided to draw up a new agreement on cooperation and political dialogue. This agreement, 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 countries of Central America have expressed the hope that negotiations on the liberalisation of trade, similar to those that culminated in the agreement between the EU and Mexico, will be announced at the Guadalajara summit in May 2004. At the time of writing, Chile and Mexico were the only Latin American countries with which the Union had concluded free-trade agreements.

2. Andean Community

The EU has maintained regular contact with Andean countries (Bolivia, Colombia, Ecuador, Peru and Venezuela) since 1969, when the Andean Group was founded (the Group became the Andean Community in 1996). It concluded a first cooperation agreement with them in 1983, followed by a 'third-generation' agreement in 1993, which provided for economic and trade cooperation and development cooperation and included a most-favoured-nation clause.

At their meeting on the fringe of the Rio summit in 1999, the Andean countries raised the possibility of a new cooperation agreement, which would be wider in scope than the 1993 agreement. The Madrid summit of EU, Latin American and Caribbean Heads of State or Government in 2002 took a decision to update the agreement. The negotiations were completed in October 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 the conditions' for an association agreement which would include free trade and would be based on the results of the Doha Round of WTO negotiations. The new agreement extends the scope of cooperation to the fight against terrorism and illegal immigration. In addition, it institutionalises the mechanisms of political dialogue that were created in 1996 with the signing of the Rome Declaration.

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 2000-2001 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. To this end, an interim report was to be presented at the Guadalajara summit in May 2004.

C. Relations with individual countries

1. Argentina

Among the Latin American trading partners of the EU, Argentina is second only to Brazil in terms of trade volume. Since the signing of the framework economic and trade agreement on 2 April 1990, relations have developed well. There is now a broad consensus on democracy, human rights and the international situation. In addition, agreements have been concluded on trade in textile products, fisheries and scientific and technological cooperation.

Bilateral relations took on a new dimension with the conclusion of the framework agreement with Mercosur. On 2 August 2002, the European Community adopted a new five-year strategy for its development cooperation in the period from 2002 to 2006, the main aims of which are to reform government administration, to combat poverty and unemployment and to develop trade. It should be noted, however, that the financial crisis in Argentina put many European financial institutions in difficulty.

2. Brazil

Since the conclusion of the 1992 cooperation agreement between the EU and Brazil, bilateral relations have become closer, and relations with the EU have become one of the priority areas of Brazilian foreign policy. Relations also took on a new dimension with the conclusion in 1995 of the EU-Mercosur association agreement, particularly in the domains of fisheries, environmental policy, transport and competition.

3. Colombia

Despite major social inequalities and the armed struggle waged by guerrillas, Colombia had managed to maintain a relatively high degree of stability during the period from 1960 to 1980. Since 1980, the country has been plagued by widespread uncontrolled violence. The aim of the EU is to help Colombia in its quest for peace as a basis for the sustainable development of the country. To this end, the EU has adopted a five-year strategic plan covering the years from 2002 to 2006. The political dialogue with Colombia was institutionalised by the Rome Declaration of 1996 and centres on interregional issues such as the importance of democratic values and human rights.

4. 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 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 also provides for the liberalisation of trade over a ten-year period. About 90% of Chile's industrial products can already enter the EU freely, and the remaining 10% will have free market access within two years. For its part, Chile will phase out customs duties on European industrial products in three stages – after three, five and seven years. Up to 98% of the volume of trade in agricultural products will be liberalised over the next ten years.

5. Mexico

The Economic Partnership, Political Coordination and Cooperation Agreement, also known as the Mexico-EU Global Agreement, was signed on 8 December 1997 and entered into force on 1 October 2000. In the framework of this Agreement, the EU and Mexico concluded a Free Trade Agreement, which entered into force on 1 July 2000 for industrial and agricultural goods and in March 2001 for

services, intellectual property and investments. Mexican industrial exports were to have completely free access to the EU market from 2003, and the Mexican market was to be fully opened to EU exports in 2007. These agreements 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 three years ago, with Mexican exports to the EU increasing by 19% and a 28% rise in European exports to Mexico. An agreement on scientific and technological cooperation has just been finalised and should be signed at the beginning of 2004. The two parties are also planning to conclude an agreement in the fields of education, youth and training.

6. Paraguay

The main areas of bilateral cooperation are government reform, education, social reforms, restructuring of the production system and regional integration.

7. Uruguay

Until the end of the military dictatorship in 1985, bilateral relations were virtually non-existent. The restoration of democracy altered this situation, and a framework cooperation agreement was concluded in 1991. The Union supports the Government's efforts to guarantee political stability.

8. Peru

Political dialogue is based on the Rome Declaration, signed in 1996. In 1995, Peru signed an agreement on the suppression of drug trafficking. The EU adopted a five-year strategy for its development cooperation with Peru in the period from 2002 to 2006, defining the main objectives of its cooperation policy for that period.

9. Bolivia

Despite the fact that Bolivia has carried out reforms and espoused democracy, it remains the poorest country in Latin America. EU policy has two main elements: support for the national development strategy and measures designed to combat poverty. These aims are reflected in the adoption, on 17 May 2002, of a cooperation and development strategy.

10. Ecuador

Ecuador is the smallest of the Andean countries. Its economic and political situation continues to give cause for concern. EU policy has focused on assisting the Government to combat poverty and its social consequences but also on the struggle to minimise the environmental impact of economic activity. Bilateral relations are governed by the framework agreement signed in 1993, which entered into force in 1998.

11. Venezuela

Venezuela has the strongest economy in the Andean Community. It has experienced a period of significant changes that have affected the political, social and economic life of the country. In the context of bilateral relations, the Union is focusing on two of Venezuela's main needs by helping to alleviate the effects of natural disasters and to diversify the economy by means of measures in sectors such as fisheries.

ROLE OF THE EUROPEAN PARLIAMENT

1. Parliament has set up delegations for relations with Central and South America and is in close contact with parliaments in the region, in particular the Latin American Parliament (Parlatino), the Central American Parliament (Parlacen), the Mercosur Joint Parliamentary Committee, the Andean Parliament and the Congress and Senate in Chile and Mexico. A total of 16 EU-Latin American interparliamentary conferences have taken place since 1974; the most recent was held in Brussels in May 2003.

2. In its resolution of 15 November 2001, the European Parliament called for the adoption of a common EU strategy for Latin America and the Caribbean, proposing that it remain in force for an initial period of four years in order to 'give substance and direction to EU action in launching the strategic bi-regional partnership' agreed upon at the Rio summit of June 1999. In a very detailed resolution comprising 66 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, signing a joint peace charter and launching a political and security partnership;
- in the economic, financial and commercial spheres, putting an EU-Latin American free-trade area in place by 2010;
- in the social and cultural spheres, setting up a bi-regional solidarity fund, introducing a global anti-drugs plan and creating a centre for European and Latin American studies.

The resolution emphasises that one of the basic aims of the new strategy should be to promote human rights, democracy, good governance, transparency and the rule of law.

THE COUNTRIES OF THE ARABIAN PENINSULA, IRAQ AND IRAN

LEGAL BASIS

Articles 113 and 308 of the EC Treaty.

I – ARABIAN PENINSULA

OBJECTIVES

- To strengthen relations between the EU and the Gulf Cooperation Council (GCC), which includes the United Arab Emirates, Bahrain, Saudi Arabia, Oman, Qatar and Kuwait, by broadening cooperation in various economic and technical fields;
- To help strengthen the process of economic development and diversification of the GCC countries.

ACHIEVEMENTS

A. General

1. Economic aspect

For the European Union, the GCC region is of strategic economic importance. In 1998, 11% of the Union's oil imports came from the area and the GCC was the Union's principal trading partner in the Arab world: half of the trade with Arab countries and 3.6% of total EU exports to third countries. The trade balance is consistently in favour of the EU: EUR 15 300 million in 1999, a rise of 18.6% on 1997. Economic interdependency is at the core of EU efforts to support the process of regional integration.

2. Political aspect

The Union and the GCC have stated on a number of occasions their joint positions on the problems of the Middle East and on ways of establishing closer relations between the two organisations, in view of the stabilising influence which further integration between the Gulf States would inevitably have in that region.

B. Cooperation Agreement

1. Content

Having been signed in 1988 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 Council at ministerial level, which has met every year since 1990, alternating between Europe and the Gulf countries.

2. Implementation

After a period of relatively slow progress, the agreement has now started to produce concrete results.

a. Standards Cooperation

The Standards and Metrology Organisation of the GCC (GSMO) and the European Commission concluded a Memorandum of Understanding in 1996 on a three-year standards cooperation programme. A second programme on telecommunications standards is currently being prepared.

b. Customs Cooperation

The cooperation programme started in 1994 and was finalised in 1997. Cooperation will continue in the light of the GCC plan to establish a customs union in 2001.

c. Energy Cooperation

A Conference on Natural Gas took place in Doha in November 1996 and a Conference on Oil and Gas Technologies took place in Bahrain in October 1997.

d. Environment Cooperation

The EU-GCC Marine Pollution Workshop, held in Kuwait in November 1998, made recommendations for cooperation projects. A workshop was held in Saudi Arabia in October 1998 on hazardous waste management. The Jubail Marine Wildlife Sanctuary has received EU assistance and the GCC proposes creating a network of marine protected areas based on this experience. It is hoped an EU-GCC workshop on air pollution might take place in the near future.

e. Technology Information Centre

In 1996, the Joint Council agreed to support the establishment of an EU-GCC Technology Information Centre, to be set up in Muscat. The EU has offered to contribute to the overall financial arrangements and to finance an implementation study for the project.

C. Free Trade Agreement

In the 1988 Cooperation Agreement, both parties undertook (Article 11) to start talks as soon as possible on a trade agreement, ultimately intended to create free trade between the two regions. The first negotiating directives were adopted by the EU Council of Ministers in December 1989 and a first negotiation session took place in October 1990. The 1998 Joint Council agreed to enter into a second phase consisting of comparing the respective negotiating directives in preparation of the final phase of the negotiation of arrangements for specific products. In March 1999, a comprehensive mandate for participation in the free trade negotiations was presented by the GCC. Subsequently, two negotiating sessions have taken place and lists of sensitive products have been presented for manufactured goods.

ROLE OF THE EUROPEAN PARLIAMENT

1. The EP has criticised the arrangements concerning the 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.

2. In 1997, the European Parliament voted for resolutions criticising non-respect of human rights in Bahrain and the United Arab Emirates.

II – IRAQ

1. The EU Council has emphasised the central role of the UN in the process leading towards self-government for the Iraqi people and reaffirmed the EU's commitment to play a significant role in the political and economic reconstruction of the country.

2. Prior to the recent military conflict, the EP approved a resolution supporting the work of UN inspectors, claiming that breaches of UN resolutions on weapons of massive destruction do not justify military action and opposing any unilateral military action.

3. After the start of the conflict in March 2003, the European Commission started to provide emergency humanitarian aid through ECHO. To its commitment of € 100 million for 2003, it added € 37 million after the end of the war. The focus of the aid is on health, nutrition, water, sanitation and food programmes.

III – IRAN

1. The EU does not have any contractual relations with Iran and there is no Commission delegation in Tehran. The Iranian Embassy in Belgium is accredited to the EU.

2. On 7 February 2001, the Commission adopted a communication – approved by the Council in May 2001- setting out the perspectives and conditions for developing closer relations with Iran. It is expected that this may lead to the conclusion of a Trade and Cooperation Agreement. A mandate for such an agreement was presented by the Commission to the Council in November 2001 and was adopted in June/July 2002.

3. The European Parliament has qualified the situation of human rights in Iran as 'unacceptable', pointing out in particular 'the continuing recourse to cruel, inhuman and degrading punishments', above all the execution by stoning, and the discriminatory laws against women. It has asked the Council and Member States to submit a resolution to the UN Commission on Human Rights. It has demanded that any future trade and cooperation agreement with Iran contains a human rights clause (Resolution of 24 October 2002).

4. On 21 July 2003, the General Affairs Council expressed increasing concern over the development of the Iranian nuclear programme and over the proliferation risks implied, in particular as regards closing the nuclear fuel cycle. The Council reiterated its expectation that Iran show full transparency, cooperate fully with IAEA and meet its requests, in particular those referred to in the last Board of Governors meeting. An urgent and unconditional acceptance, signature and implementation of an IAEA Additional Protocol on safeguards is of the utmost importance as it would be considered by the international community as a sign of the Iranian commitment in the field of non-proliferation. The Council decided to review future steps of the cooperation between EU and Iran in September in view of further developments particularly with regard to the second report of IAEA Director General, El Baradei, the IAEA evaluations and the possible conclusions of the Board of Governors of this Agency. The Council expressed deep concern over the human rights situation in Iran also in the light of the recent arrests of students, journalists and others during recent student demonstrations. The Council called for rapid progress in this field and stressed the importance of close cooperation by Iran with UN human rights mechanisms. It also called for the rapid release of persons detained for having exercised their right to freedom of expression.

JAPAN

LEGAL BASIS

Article 133 EC.

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

1. 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. The nature of the dialogue has changed: while in the past economic relations with Japan were dominated by trade disputes, today the focus is on the EU request 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. In particular, the EU welcomed Japan's decision in August 2000 to launch a new Three Year Deregulation Programme beginning in 2001.

2. The latest high level meeting of the bi-annual EU-Japan Regulatory Reform Dialogue was held on 5 March 2003 in Brussels. The aims were to help European industry increase its presence in Japan, to help Japanese industry widen its operation in Europe and to improve regulatory reforms on both sides. Whereas in 2001, the EU was prepared to take action against Japan at the WTO due to disagreements over competition, specifically in the telecommunications sector, significant advances have now been made in this field. Advances have also been made in the financial services and the streamlining of merger procedures as a result of far-reaching changes in the Japanese commercial code. The EU welcomes the strengthening of Japan's competition policy, especially the greater effectiveness and independence of the Japan Fair Trade Commission (JFTC), as well as the announcement of the Japanese government's intention to double the stock of foreign investment in Japan over the nest five years.

3. The 11th EU-Japan Summit was held in Tokyo on 8 July 2002. The achievements of the EU-Japan Action Plan announced at the previous summit were acknowledged. A desire to deepen partnership in the following international areas of priority was expressed:

- support for developing countries, in particular, sustainable development for Africa;
- peace in the Middle East;
- the fight against drugs;
- easing tensions between India and Pakistan;
- the expectation of tangible results in achieving peace and security on the Korean peninsula;
- the need to accelerate negotiations on all aspects of the Doha Development Agenda in time for the fifth World Trade Organisation meeting in Mexico in September 2003.
- a desire to conclude an agreement on science and technology in the future;
- the aim of making 2005 the "Japan-EU Year of People-to-People Exchange".

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 meeting 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 EU Political Directors Troika and the Japanese Political Director.

New developments in Japan called for a review of the EU-Japan relationship, which had last been assessed in the Commission's Communication of 1992. In March 1995, the Commission completed a new Communication to the Council (Europe and Japan: "The Next Steps", (COM(95) 73) specifying the position taken on the EU's new Asia strategy (COM(94) 34), evaluating the developments and changes and arguing in favour of increasing the weight of the EU-Japan political relationship, as both the EU and Japan are increasingly trying to match their economic importance with a more active political role.

Since 1991, annual summits betwen Japan and the EU have allowed them to review the international situation, to exchange views and define convergent actions.

C. Trade

With a share close to 5% of the EU exports, Japan is the EU's third largest export market after the USA and Switzerland.

Europe is equally a very important market for Japan. With a 8.3% share, Japan is the second largest exporter into the EU. It is also a major investor.

This important trade relationship had developed on the basis of a strong trade surplus in favour of Japan. Like with the US, a potential for trade disputes has existed, in this case often rooted in structural features of the Japanese society and economy which made "doing business with and investing in Japan", or competing with its exports, particularly difficult. Since the early 90's, and

especially since its "financial bubble" collapsed, Japan has accepted the need for special efforts to open its economy to international competition and embark on structural reforms for its own good and for the benefit of the international community

Most trade issues are being tackled both in the framework of Word Trade Organisation and bilaterally. In December 2000, the EU and Japan initiated an agreement for mutual recognition of product certification committing both sides to recognise each other's import and export standards in order to facilitate their trade relations. The agreement, the first of its kind concluded by Japan, covers four main trade areas - telecommunications equipment, electric appliances, chemical products and pharmaceuticals.

In July 2001, the EU submitted a number of deregulation proposals to Japan on areas including import procedures, air and sea transport, transportation of dangerous goods, insurance and securities, asset management and banking.

In December 2001, Tokyo was host to the Japan-EU Investment Symposium. The EC-Japan Mutual Recognition Agreement, which permits acceptance of conformity assessment conducted in one Party according to the regulations of the other in four product areas and is seen as important step in facilitating market access, came into force on 1 January 2002 and the Joint Committee held its first meeting in March. A Working Group on Monetary and Financial Regional Co-operation was established in Tokyo in May 2002.

The 11th Japan-EU Summit of July 2002 marked the completion of negotiations for the Agreement concerning Co-operation on Anti-Competititve Activities, the launch of an informal dialogue between regulators in the financial services sector and successful expert meetings held on the subject of fourth generation mobile telecommunications systems. At the same time, business leaders from Europe and Japan attended the EU-Japan Business Dialogue Round Table (7-9 July 2002).

D. Cooperation

The EU and Japan co-operate 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 range of EU-Japan co-operation activities has diversified over recent years to include information technology and electronic commerce. Negotiations between Japan and the EU on nuclear safety have already been completed.

Active cooperation is taking place in the field of science and technology, with some positive outcome (exchange of young scientists, the Human Frontier Science Programme, research on thermonuclear fusion, a programme on intelligent manufacturing systems). At the Ministerial Meeting of January 1993, it was agreed to establish a forum on science and technology. A first meeting of the EU/Japan Forum on Science and Technology took place in Tokyo in June 1994 at which special interest was shown in increasing exchanges between teachers, research workers and students. During the EU-Japan Co-operation Week in Tokyo in Autumn 1997, the conference on EU-Japan Cooperation in Education, Science and Technology was held on 29-30 September, where high-level experts and scholars exchanged knowledge and views on international cooperation and technology transfer in the field of Science and Technology.

Negotiations for an EU-Japan Antitrust Agreement started in June 2000. This agreement is designed to "contribute to the effective enforcement of the competition laws of each Party through promoting cooperation and coordination between the competition authorities of the Parties and to avoid or lessen the possibility of conflicts between the Parties in all matters pertaining to the application of the competition laws of each party."

In addition, the Commission attaches great importance to the expansion of its export promotion programme in close cooperation with the European industry and is often supported by JETRO (Japan External Trade Organisation). Its action consists more and more of joint European participation in Japanese fairs and exhibitions. Simultaneously, the Union's Executive Training Programme is developing favourably with overall participation of more than 500 young European executives.

ROLE OF THE EUROPEAN PARLIAMENT

Since 1978 a delegation from the European Parliament meets once a year with a delegation from the Japanese Parliament, the Diet, alternating between venues within the European Union and Japan.

The EP has held several debates over the last few years on relations with Japan, dealing both with problems created by Japanese exports to Europe and with the obstacles meeting European exports to Japan. Recent resolutions include: 18 September 1997, on the Commission communication "The Next Steps"; 13 April 1999, the EP's opinion on the amended proposal for a Council regulation on implementation by the Commission of a programme of specific measures and actions to improve access of EU goods and cross-border services to Japan; 7 October 1999, on the nuclear accident in Japan.; 13 June 2002, on the abolishment of capital punishment.

CHINA

LEGAL BASIS

- Title V. TEU;
- Articles 133 and 310 EC.

OBJECTIVES

To develop trade and other relations between the European Union and China:

- to the economic and commercial benefit of the EU;
- to help China become a democratic and prosperous nation, integrated in the world economy and trading system.

ACHIEVEMENTS

A. General pattern of relations

1. Initial developments

a. It was not until 1975 that China and the European Community 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 (of which it has since become one of the ten leading beneficiaries). Trade relations progressed to such an extent that the 1978 agreement proved to be inadequate and was superseded in 1985 by a broader agreement on economic and trade cooperation.

c. Relations continued to improve; this was reflected in a 1987 agreement to set up a centre for the application of biotechnology in agriculture and medicine. Efforts to encourage investments for mutual benefit were also made. Meetings at ministerial level became more frequent and in 1988 the Commission opened a delegation in Beijing.

2. A setback

a. The progress in relations was brought to a sudden halt by the Tiananmen Square massacre in June 1989, which was immediately condemned by the Community. The Madrid European Council of 26-27 June ordered the suspension of high-level bilateral meetings, the postponement of new cooperation projects and cutbacks in existing programmes.

b. In October 1990 the restrictions on high-level contacts, cultural, scientific and technical cooperation and new cooperation projects were loosened, but the embargo on arms sales and military cooperation has been maintained.

3. The gradual resumption of relations

- 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.
- In June 1994 an ambitious new framework for bilateral political dialogue was set up.
- In July 1995 the Commission issued a communication on "A Long-Term Policy for China-Europe Relations" which was endorsed by the European Council and reflected China's rise as an economic and political power.
- 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. This was endorsed by the European Council of Ministers on 29 June 1998. Along the lines of the strategy presented in 1995, this Communication aimed to:
  - . increase China's integration into the international community by enhancing political dialogue;
  - . support the development of an open society based on the rule of law and respect for human rights;
  - . integrate China into the world economy by giving it a greater role in the trading system and by supporting its newly-launched economic and social reform;
  - . improve the use of the funds granted by Europe;
  - . enhance the European Union's image in China.
- In May 2001 the Commission adopted a further Communication on EU strategy towards China in which it reported on implementation of the 1998 document and outlined steps for a more effective EU policy.
- In March 2002 the Commission adopted a 'Country Strategy Paper' for China setting out a framework for EU co-operation with China during the period 2002-2004. The objectives are support for integration of China into the world economy and trading system; support for a transition to an open society based on the rule of law and respect for human rights; improved coordination with spending by EU Member States; and raising the EU's profile in China. A budget of € 250 million is planned for the period 2002-2006 to support EU programmes in China, especially those promoting economic and social reform.

B. Current relations

1. Political relations

- Political dialogue continues within the framework established in 1994. This comprises regular meetings of ministers of the EU troika with Chinese

ministers; high-level consultations between the Commission and China; ad hoc meetings between foreign ministers; two annual meetings between the Chinese Foreign Minister and the EU ambassador in Beijing and, equally, between the foreign minister of the country holding the EU presidency and the Chinese ambassador to that country.

- A dialogue solely devoted to human rights has been established. To that effect two annual meetings are held between the EU troika and the Chinese Government. The latest one was held in November 2002 in Beijing. Topics raised have included the "fundamental rights" of political dissidents, treatment of religious faiths and the Falungong spiritual movement, freedom of expression, application of torture and the death penalty and the situation of ethnic minorities. Individual cases are also raised. The dialogue is complemented by financial support to projects such as implementation of UN human rights covenants, local democracy and judicial reform.
- The first regular EU-China political summit was held in London in April 1998. As a result, the troika made its first visit to Tibet. A second summit was held in December 1999 when President Prodi visited Beijing. A third took place in October 2000 in Beijing with the aim of deepening existing co-operation and to expanding it into new areas. Problems such as the trafficking in human beings and illegal immigration were addressed. The fourth summit was held in Brussels in September 2001 and sought to promote increased exchanges and dialogue. The most recent was held in Copenhagen in September 2002. At the latter meeting issues addressed included China's recent accession to the WTO, reconciliation in Korea and the Middle East, peaceful resolution of the Taiwan question, respect for human rights, non-proliferation and disarmament, illegal migration and trafficking in human beings, environmental issues, marine transport and the promotion of direct investment.
- The handover of Hong Kong to China in 1997 did not affect EU relations with Hong Kong, where it still has a delegation. The EU remains vigilant as regards respect for fundamental freedoms and respect for the rule of law.
- Equally, the handover of Macao in 1999 had no effect on relations with the EU, and the trade and cooperation agreement remained valid. In November 1999 the Commission adopted a Communication to the Council and the European Parliament, entitled "The EU and Macao: Beyond 2000". The Communication underlined the respect for the principles set out in the Basic Law of the Macao Special Administrative Region (MSAR) and the full implementation of the concept "one country, two systems" and guarantees the specific social, economic and cultural identity of Macao.
- In both Hong Kong and Macao the Commission monitors the situation to ensure that democracy and human rights are respected and issues annual reports.
- In July 2000, China's Prime Minister Zhu Rongji paid the first-ever visit by a Chinese leader to the Commission in Brussels. This visit marked the 25th anniversary of the start of formal diplomatic relations between the EU and China. Both sides agreed on how to handle differences over the human rights and to continue their dialogue on the basis of equality and mutual respect.
- In November 2002 the Commission concluded an agreement with Hong Kong on readmission of persons residing without authorisation (which will allow identification and return of persons illegally entering the territories concerned) and in December 2002 an agreement on maritime transport was signed between the EU and China which aims to consolidate business relations and improve conditions for cargo transport.

2. Trade relations

- 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. In 2002 bilateral trade rose to € 115 000 million, the balance being strongly in favour of China. China was the EU's third largest partner outside Europe.
- Investment by EU companies in China is however falling behind that of the USA, Japan and Taiwan. It fell from € 2 230 million in 2000 to € 1 650 million in 2001.

3. Economic cooperation

- The 1985 agreement provided for cooperation in industry, mining, energy, transport, communications and technology. A science and technology agreement was signed in 1999.
- In May 2000 the EU and China signed a Bilateral Agreement paving the way for China's accession to the World Trade Organisation (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 € 22 million.
- In March 2000, the EU and China launched the EU-China Legal and Judicial Cooperation programme. This € 13 million programme is to last for four years. The objectives are to develop a better understanding of the concept of the rule of law in China and to improve awareness of the Chinese legal system.
- Other current co-operation projects concern environmental management, basic education in Gansu, village governance, forest management and financial services.

4. Humanitarian aid

- Five projects benefit from EU support through the Human Rights and Democracy Programme.

- In 1996 the EU donated € 2.45 m via ECHO to help victims of natural disasters, in particular the earthquake in Yunnan.
- The EU has also contributed € 7.2 million to an integrated rural development project in Panam County, one of the poorest areas of Tibet. This project aims to enhance the agricultural self-sufficiency of ethnic Tibetan people by improving food production through better irrigation, the long-term protection of grazing land and the development of training facilities for the local population.

ROLE OF THE EUROPEAN PARLIAMENT

The 19th European Parliament-China Interparliamentary meeting took place in Beijing and Lhasa from 7 to 14 July 2002. The meeting concentrated on the consequences of rapid economic growth and the accession of China to the WTO, on political developments in relation to democracy and human rights and on religious freedom in Tibet.

The EP has regularly adopted resolutions on China, with special emphasis on **human right***s*, and has addressed issues in relation to Macao, Hong Kong and Taiwan. In a resolution on the human rights situation in China in January 2000, the EP 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.

Also in 2000 the EP adopted two resolutions specifically on **Tibet**; in the first it asked the Chinese government to open a dialogue with the Dalai Lama on the future of Tibet, without pre-conditions, and on the basis of five-point peace plan. The EP also expected the Council to abandon its "no action" approach to China, which is preventing the human rights situation in China from being discussed. In its second resolution concerning a Poverty Reduction Project for western China and the future of Tibet, it again called for negotiations on a new status for Tibet which guaranteed full Tibetan autonomy except in regard to defence and foreign policy. It also called on Member States to give serious consideration to the possibility of recognising the Tibetan Government in exile as the legitimate representative of the Tibetan people if, within three years, the Beijing authorities and the Tibetan government in exile had not, through the negotiations organised under the aegis of the Secretary-General of the UN, signed an agreement on a new Statute for Tibet.

In a resolution on **Taiwan,** adopted in April 2000, 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; it welcomed the offer by the Taiwan President to PRC of immediate negotiations on trade relations and direct transport links.

In 2001 further resolutions were adopted: in February on the freedom of religion, in April on the poor state of respect for human rights and in October on accession of China to the WTO.

THE COUNTRIES OF SOUTH ASIA - SAARC

LEGAL BASIS

Under Article 133 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 relations with the area, and consolidating the regional cooperation process represented by the South Asia Association for Regional Cooperation (SAARC) by offering financial aid and technical assistance.

ACHIEVEMENTS

A. Multilateral 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. The EU encourages SAARC, founded in 1985 and grouping all the countries of the Indian sub-continent, in its aim to set up a free trade area.

B. Bilateral relations

1. India

a. Importance for the EU

India is the second most populous country in the world, the dominant political and military power in the area and one of the most dynamic economies among developing countries, with, in particular, a fast-growing information technology sector.

b. Content of the relations

- 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.
- It provides for greater cooperation, particularly in the sphere of trade. Based on adherence to the most-favoured-nation clause it is compatible with the World Trade Organisation rules. It also includes dispute resolution and anti-dumping measures. Cooperation covers the industrial and services sector, communications, energy and private investment. The EU-India Joint Commission oversees the entire field of cooperation. Since 2000, the EU and India have held a summit at government level each year. A science and technology agreement was signed in November 2001.
- Over 2002-2006 the EU will make available some €225 million for development and economic cooperation with India.

2. Pakistan

After being delayed on account of the country's nuclear programme, a third-generation cooperation agreement was signed in November 2001, but it has not been ratified yet due to the European Parliament's concerns about the political situation in the country.

EU development cooperation with Pakistan focuses on poverty alleviation and social sector development, in particular health care and education. Projects to the amount of € 180 million are currently being funded.

3. Bangladesh

Relations with this country date back to shortly after its foundation. The cooperation agreement signed in 1976 has now been replaced by a new cooperation agreement, signed in 2000, and in force since March 2001.

EU development assistance is aimed at poverty alleviation, food security and at supporting health and primary education. Since 1976, total humanitarian aid and NGO co-financing has amounted to € 1500 million.

4. Sri Lanka

Sri Lanka first signed a cooperation agreement with the EU in 1975. A third generation agreement came into force in 1995, focusing on partnership, cooperation, and respect for human rights and democracy.

Due to the civil war, a large part of EU assistance has been through ECHO (€ 8.3 million in 2002). Over 2003-2005 € 61.32 million for rural development, economic cooperation and post-conflict assistance is programmed. In its resolution of 20 November 2003, the EU encouraged the main political parties in Sri Lanka to stick to the cease-fire agreement and urged Sri Lanka's President to do everything to achieve a fair and stable political situation and to further the peace process.

5. Nepal

- On 20 November 1995 the European Union and Nepal signed their first cooperation agreement covering the following areas: respect for human rights and democratic principles, cooperation in trade, development, science and technology, energy, agriculture, the environment, and action to combat drugs and AIDS.
- From 1977 on the EU has committed e130 million in development assistance, focusing on rural development, health, education and water management. € 615 000 will be made available as a response to the growing instability in the country due to the Maoist guerrillas.

6. Bhutan

EU assistance to Bhutan started in 1982 and totalled about € 46 million over the period 1982-2002. It focused on rural development and poverty reduction. The overall estimated EU allocation over 2002-2006 is € 15 million.

7. The Maldives

Since 1981, the Maldives has received € 5 million in EU development assistance (projects in tourism and fish inspection). A further amount of € 2 million for environment and capacity building is programmed for 2004.

ROLE OF THE EUROPEAN PARLIAMENT

1. Multilateral relations

The European Parliament has recommended the strengthening of economic, political and cultural ties between the EU and Asia in general, particularly through increased trade and investment, and a better coordination in the fields of cooperation and development with the most developed countries in the region. It has emphasised the efforts made to improve democratic freedoms, human and minority rights, social rights, and health and environmental protection regulations.

An EP delegation maintains relations with the parliaments of the countries of the region.

2. Bilateral relations

a. India

The EP believes that there is a considerable potential for an all-round bilateral relationship between the European Union and India, given India's values of democracy, cultural pluralism and a robust entrepreneurial spirit which are underpinned by free elections, an independent judiciary, a free national and regional press, active NGOs as well as an open and transparent civil society, and thus called for the organisation of a comprehensive dialogue that covers all aspects of bilateral relations, including issues relating to the non-proliferation of nuclear weapons. It has urged India to continue the dialogue with Pakistan and welcomed India's efforts to strengthen regional cooperation between the Member States of SAARC, in particular its efforts to promote the South Asian Free Trade Area, including the free trade agreement with Sri Lanka (resolution of 12 March 1999 on EU-India enhanced partnership).

b. Pakistan

The EP reminded Pakistan of the importance that the EU attaches to respect for human rights as an integral part of its external relations and of any cooperation agreement. It reiterated its call on the Commission to institute cooperation programmes offering active support to NGOs in the human rights field (resolution of 5 April 2001). Its concerns over the fairness of the general elections of October 2002 led the Council to postpone ratification of the 2001 cooperation agreement.

c. Bangladesh

The EP 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 European Parliament is kept informed (resolution of 21 November 2002).

d. Sri Lanka

The EP has repeatedly 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.

e. Nepal

The EP expressed its deep concern at the breakdown of the cease-fire 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 cease-fire (resolution of 23 October 2003).

ASEAN AND THE OTHER COUNTRIES OF SOUTH-EAST ASIA

LEGAL BASIS

Articles 133 and 308 TEU.

OBJECTIVES

The EU's relationship with South-East Asia has the following aims:

- to promote peace and security through bilateral and multinational channels;
- to reinforce political ties;
- to strengthen commercial, economic and development co-operation;
- to promote and protect human rights;
- to co-operate in combating transnational crime and terrorism;
- to promote sustainable and equitable development;
- to bring together peoples and cultures.

ACHIEVEMENTS

I - ASEAN

A. Evolution

Established in 1967, ASEAN now includes, apart from the five original member nations (Indonesia, Malaysia, Philippines, Singapore, and Thailand), Brunei, Vietnam, Laos, Burma and Cambodia.

1. The 1980 Co-operation Agreement

The EU/ ASEAN relationship dates from 1972, when a Special Co-ordinating 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 Co-operation Agreement between the EU and some members of ASEAN: Brunei, Indonesia, Malaysia, Philippines, Singapore, Thailand. It sets out objectives for commercial, economic and development co-operation and establishes a Joint Co-operation Committee to promote the various co-operation activities envisaged by the two sides. Although it is a co-operation 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 co-operation Agreement.
- 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 co-operation and a growing political dialogue. In 1991 it was agreed to revise the 1980 agreement, but negotiations remain blocked because of human rights concerns about East Timor. In September 1994, the Karlsruhe EU-ASEAN Ministerial Meeting took stock of existing relations and called for a strengthening of ties in a spirit of greater equality and partnership.
- 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.

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 Asia-Europe Meeting (ASEM), initiated by ASEAN, in Bangkok in 1996. Among the initiatives proposed at the second meeting (London 1998) was the creation of an ASEM trustfund of the World Bank, of which the EU was the largest donor and which operated until the end of 2001. Also endorsed was the ASEM Investment Promotion Action Plan (IPAP), to enhance two-way investment flows between Asia and Europe.

The third ASEM Summit, in Seoul 2000, adopted a 10 year "action framework", and declared support for "rapprochement" between the two Koreas. At the economic level, both sides supported a new WTO negotiation round as soon as possible. as regards cultural co-operation, two flagship projects were adopted, one for study grants, the other for creating an "information highway" between European and Asian researchers. Both parties called for cultural links to be strengthened through the Europe-Asia Foundation in Singapore (ASEF), the only institution from ASEM dialogue charged with promoting cultural, intellectual and people-to-people contacts between the two regions.

b. ASEAN-EU Ministerial Meeting (AEMM)

Attended by Foreign Ministers, the AEMM is the highest level of institutional dialogue. At the Seoul Summit there was agreement on annual Ministerial meetings.

After suspension due to the Burma (Myanmar) problem, an AEMM took place in December 2000 in Vientiane, Laos which approved a joint declaration which called for a rapid resumption of talks between the Burmese military junta in Rangoon and the democratic opposition. The declaration also backed the joint efforts of the international community and Indonesia to quickly solve the refugee situation in East Timor, mentioned respect for human rights, supported the launch of a new round

of WTO negotiations as soon as possible taking account of the concerns of the developing countries and placed back on track co-operation between the EU and ASEAN in economic and regional security matters.

At the 2003 AEMM in Brussels, the ministers agreed that future co-operation should focus on non-traditional security issues, establishing channels of communication between the ASEAN and EU secretariats as well as environmental and cultural co-operation ASEAN expressed a strong interest in drawing on EU experience in furthering enhanced regional economic integration. The ministers adopted an EU-ASEAN Joint Declaration on Terrorism affirming their commitment to work together and to contribute to international efforts to fight terrorism.

2. Technical: the Joint Cooperation Committee (JCC)

This official-level Committee is the only body formally established by the 1980 Co-operation Agreement responsible for implementation. It meets every 18 months to discuss ongoing and future projects. It consists of representatives of the European Commission (though EU member states are also represented) and the governments of ASEAN. Since 1994 it has set up five sub-committees dealing with Trade and Investment, Economic and Industrial Co-operation, Science and Technology, Forestry, Environment, and Narcotics. The functioning of the JCC was blocked for a time following Burma's accession to ASEAN, but a meeting was held in May 1999, with Burma as a "passive presence" only. The September 2001 JCC agreed on a new approach to co-operation; a clear focus on policy dialogue where the EU can support ASEAN regional integration and other key priority areas. Future co-operation programmes should derive from the policy dialogue and should be subject to a two-way value added test. The new approach is to be launched after a joint reflection on the future of EU-ASEAN co-operation, which was launched during 2002, with a view to presenting substantive proposals to the next EU-ASEAN Ministerial Meeting.

3. Trade relations

In 2001, the EU was ASEAN's second largest export market and the third largest trading partner after the USA and Japan with exports to ASEAN estimated at € 42 700 million and imports from ASEAN valued at € 66 200 million, demonstrating that the EU maintained its commitment to keeping its market open to ASEAN after the 1997 Asian Financial Crisis.

As a region, ASEAN has benefited significantly from the EU's Generalised System of Preferences. Countries such as Thailand and Indonesia have "graduated" a number of sectors where they have become competitive in the last few years, losing the benefit of the GSP for important products - in particular, fishery products for Thailand. Singapore, due to its advanced level of development, is excluded from the system. European investment was high in the region before the crisis and although the trend is rising again, it has not yet reached pre-crisis levels.

C. The EU and Burma

In 1996, the European Council first imposed an embargo on export of goods which may be used for repression, refused visas for a list of junta officials and froze funds held by those officials abroad. When Burma joined ASEAN in 1997, the EU refused to allow the country to accede to the 1980 EU-ASEAN co-operation agreement and EU-ASEAN ministerial meetings were suspended. While strengthening sanctions, the changes made in spring 2000 made possible Burma's participation in the EU-ASEAN ministerial meeting that year, in which the EU reaffirmed its willingness to pursue dialogue with all parties concerned. The meeting made it possible for the European Troika to visit Rangoon in January 2001 and to have a meeting at senior official level with the Burmese opposition leader and Nobel Prize winner, Mrs Aung San Suu Kyi. In October 2002, the EU again urged the restoration of democracy, the pursuit of national reconciliation and the protection of human rights in Burma. It welcomed the release of Mrs Aung San Suu Kyi from house arrest and noted the subsequent relaxation of some constraints on political activities, while regretting that these promising first steps have not led to the start of a wider political process. The EU stressed the necessity for the Burmese Government to engage, without further delay, in substantial dialogue with the opposition, leading to a peaceful political transition and national reconciliation.

ROLE OF THE EUROPEAN PARLIAMENT

The first contacts between the 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 were established. The EP continuously emphasises the need to restore the democratic process in Burma and Indonesia. Following restrictions on the freedom of movement of Mrs Aung San Suu Kyi, the EP in September 2000 invited the ASEAN countries to persuade the military regime of Burma to lift their restrictions on her. Before the third Asia-Europe Summit (ASEM 3), the EP called for the continuation of the ASEP process (Asia-Europe parliamentary meetings) and for inclusion of a democratic clause in the agreement concluded with the Asian countries. The EP called on Vietnam to undertake in-depth political reforms notably involving the abolition of the death penalty and the end to religious persecution. In an emergency debate in January 2001 the EP invited the Cambodian Constitutional Council to rapidly approve the draft law for the trials of Khmer Rouge leaders between April 1975 and January 1979 by the end of the year.

II - OTHER SOUTH-EAST ASIAN COUNTRIES

A. 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 People's Republic of China. The EU strongly supported Taiwan's accession to WTO which took place on 1 January 2002. In March 2003, the Commission established a permanent office in the country's Capital city, Taipei.

B. The Republic of Korea

1. The Republic of Korea is also an important trading partner for the EU with bilateral trade reaching € 40 800 million in 2000 and a trade balance of € 7 800 million in favour of Korea. The EU is Korea's second largest trade partner. The EU contributed $6 000 million to the IMF's December 1997 rescue package.

2. The December 1998 Commission Communication "EU Policy Towards the Republic of Korea" updates the content of the 1996 cooperation framework agreement and argues that the financial crisis that hit Asia changed Korea dramatically resulting in a need to redefine EU bilateral relations with Seoul. The Commission recommends the implementation of political and economic reforms leading to true democracy and a market economy.

3. Another forum of discussion to which the EU acceded in 1997 is KEDO, the Korean Energy Development Organization set up in 1994 to oversee the dismantling of North Korea's nuclear weapons programme. During the ASEM Summit in Seoul the EU announced a series of measures to develop warmer relations with North Korea and affirmed its commitment to include North Korea in the international community in order to boost peaceful unification of the two Koreas. The EU already provided € 180 million in humanitarian aid to North Korea and has shown willing to provide technical assistance and pursue its participation in KEDO.

AUSTRALIA AND NEW ZEALAND

LEGAL BASIS

Article 133 TEU (basis for the EU's common commercial policy).

OBJECTIVES

The EU maintains strong historic and economic links with Australia and New Zealand and intends to further strengthen its ties with both countries especially in view of the increasing importance of the Asia-Pacific area. EU policy towards both countries concentrates on maintaining stable trade relations and deepening cooperation. Given their historical dependence on farm exports to the UK, both countries were affected by the UK's accession to the EU: the Commonwealth preferential arrangements had to be adapted to the EU's agricultural policy.

ACHIEVEMENTS REGARDING AUSTRALIA

A. Basic elements of the relations

1. Strong economic relations

The EU has been Australia's largest economic partner for the past eleven years and in 2001/2 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 (22% share of total imports, mainly medicines, cars and telecommunications equipment) and third most important market for Australian exports (12% share of total exports, mainly coal, wool and wine). The EU remains Australia's largest partner in services trade (22%) and leading investor (33% of total foreign investment in Australia). In recent years bilateral agreements have been concluded on trade in wine, co-operation 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 WTO and issues relating to climate change, the environment, marine science, biotechnology and information and telecommunication technologies. Another area of cooperation concerns 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 w.r.t. 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

a Commitment to resolve outstanding issues in the bilateral Wine Agreement.

b Co-operation 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 SPS 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 Program for Research..
- Commitment to make optimal use of the Forum for European-Australian Science and Technology cooperation (FEAST) as a key vehicle in this process.

4. Transport

- Development of arrangements between the Australian Global Navigation Satellite System Coordination Committee and the European Commission to enable cooperation associated with the Galileo Satellite Navigation project.
- Increased cooperative activity in the fields of Intelligent Transport Systems (ITS) and sustainable transport strategies.
- Close cooperation on transportation, including the aviation liberalisation agenda in multilateral fora such as the International Civil Aviation Organization, the Organisation for Economic Co-operation and Development and the World Trade Organization (General Agreement on Trade in Services) and by working towards a bilateral agreement on relaxing ownership and control rules, inward investment opportunities, and opportunities to develop intermodal services in the respective markets.

5. Environment

On the basis of the existing framework of cooperation, continuing collaboration on climate change. In particular, specific attention could be given to:

- technology development and deployment;
- climate science, impacts and adaptation;
- harmonisation of emissions monitoring, reporting, verification and certification procedures; and
- evolution of mitigation commitments.

Agreement to improve mutual understanding of respective approaches to environment protection and on how the approaches impact on international policy setting and respective and joint interests.

6. Development Cooperation

Pursue opportunities for further collaboration in development cooperation programs in areas of mutual interest, including through:

- assisting the recovery and nation-building processes in East Timor and the Solomon Islands;
- gearing programs to build good governance and economic growth in nations in the Pacific, particularly Papua New Guinea; and
- providing support and funding for the Asia Pacific Leadership Forum on HIV/AIDS and Development.

7. Migration and Asylum

Enhancement of exchange of information and cooperation on approaches to manage the challenges posed by global migration, consulting closely in multilateral fora and bilaterally. In particular, focus on development of policy settings 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 nexus between development and migration;
- exchange of information relevant to human trafficking and related transnational crime;
- exchange of information on new technologies and electronic support structures to assist in combating irregular migration, identity and document fraud.

ACHIEVEMENTS REGARDING NEW ZEALAND

A. General

1. The EU-New Zealand relationship was given a formal framework by the May 1999 **Joint Declaration** on relations between the two parties.

- A number of **common goals** are proclaimed, such as the support of democracy, the rule of law and respect for human rights, to promote the effectiveness of the UN, to co-operate on development issues in the South Pacific and to promote sustainable development and the protection of the global environment.To this end numerous areas of co-operation are identified.
- The Joint Declaration also sets up a **consultative framework** in which such co-operation 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.

2. Several sectoral agreements between the EU and New Zealand complete the picture. Most notable among them are the following:

- 1991: arrangement for co-operation in Science and Technology;
- 1997: agreement on sanitary measures applicable to trade in live animals and animal products;
- 1998: agreement on mutual recognition in relation to conformity assessment.

B. Economic Relations

1. The EU is New Zealand's third largest export market, after Australia and Japan, and also its second largest supplier. Overall, the EU is New Zealand's second largest merchandise trading partner. While the UK remains New Zealand's first export destination in the EU, other countries, such as France, have also become more important. The EU represents 17 % of the stock 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.

2. The **Veterinary Agreement** (1997) aims at facilitating 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.

3. The **Mutual Recognition Agreement** (1999) facilitates trade in industrial products between the EU and New Zealand. It covers exchanges estimated at more than €500 million in sectors such as medical devices, pharmaceutical goods, and telecommunications terminal equipment. A parallel agreement was also signed

A GENERAL SURVEY OF DEVELOPMENT POLICY

with Australia. These agreements are the first Mutual Recognition Agreements the EU has ever signed with a third country.

LEGAL BASIS

- Development and co-operation policy in general: articles 177-181 EC;
- Cotonou Agreement and various association agreements: article 310 EC;
- Generalised Scheme of Preferences and co-operation agreements: article 133 EC;
- Financial and technical assistance to Asian and Latin American developing countries: article 308 EC.

OBJECTIVES

EC Treaty Article 177 states that "Community policy will contribute to the objective of developing and consolidating democracy and the rule of law; it shall foster in the developing countries:

- sustainable economic and social development;
- smooth and gradual integration into the world economy;
- the campaign against poverty."

The inclusion of development policy provisions in the European Community Treaty is politically significant, as it establishes development policy as a Community policy in its own right. In addition to the formulation of general development policy objectives, three obligations are imposed on the Community and its Member States. According to article 178, the European Union shall take the objectives of development into account in its policies that are likely to affect developing countries. Article 180 requires the European Union and the Member States to co-ordinate their policies on development co-operation and to consult each other on their aid programmes. According to article 181 the Union and the Member States shall, within their respective spheres of competence, co-operate with third countries and the competent international organisations.

ACHIEVEMENTS

The implementation of the European Union's development policy takes two main forms: first, regional agreements granting certain privileges and, secondly, action at world level.

A. The regional agreements

These include the Cotonou Partnership Agreement (*6.4.6.) with 77 African, Caribbean and Pacific countries, and agreements with the Maghreb (Algeria, Morocco and Tunisia) and Mashreq (Egypt, Jordan, Lebanon, Syria) countries (*6.3.6.).

This regional policy is characterised by certain specific features which may be summarised as follows: the agreements cover all forms of action (commercial, technical, financial, cultural and, in the most recent agreements, political dialogue); they are enshrined in international treaties ratified by the parliaments concerned; the countries benefiting from them can decide what use they wish to make of the various co-operation instruments and, finally, this type of co-operation is offered to the developing countries in specific geographical areas. The Trade, Development and Co-operation Agreement (TDCA) between the European Union and South Africa constitutes an example of this policy. The TDCA was signed in Pretoria on 11 October 1999. Its trade-related articles have been provisionally applied since January 2000 as ratification by all 15 EU member states is still ongoing. To date, only 8 Member States have ratified the agreement though this will change as outstanding issues (automobiles, wine and spirit) are resolved.

B. The action at world level

1. Scope

This action includes the trade and co-operation agreements of various types with the Latin American and Asian countries (*6.3.8., 6.3.12. and 6.3.13.), the EU's system of generalised tariff preferences (*6.4.2.), financial and technical aid to Asian and Latin American developing countries (*6.4.3.), humanitarian aid (*6.4.4.), special funds and the campaign against poverty. It therefore covers both co-operation of a type affecting a large number of developing countries (e.g. generalised preferences and food aid) and specific co-operation instruments designed to establish relations suited to each country (e.g. trade agreements with various Asian and Latin American countries) and with certain groups of countries on these two continents (in Latin America with Mercosur, the Andean Group and Central America and in Asia with ASEAN).

2. Concept

UN international conferences on the environment, human rights, population, social development, the role of women, and food security have demonstrated that countries can agree on common values and principles concerning essential issues for development. These processes have already led to important changes in the concepts of aid and its role in development. These changes fall within four main categories:

a. Enhanced political dimension: human rights, democratic principles, rule of law and good governance.

b. Stronger links between relief, rehabilitation and development co-operation.

c. New approach regarding the role of aid and a redefinition of the parties' respective roles: emphasis is placed on environment policy, local capacity building, the role of civil society, and on new ways of including other development agents, especially in the private sector.

d. A change in priorities, by reducing intervention in productive sectors and integrating new themes:

- actions in favour of environmental protection, the management of natural resources, and sustainable development, which involve environmental impact

studies in all projects as well as financing for specific environmental programmes and projects;
- the creation of an instrument for structural adjustment support at macroeconomic and sectoral levels;
- institutional reforms, development of administrative capacity, building civil society, development of a more participatory approach, and decentralised co-operation; a new conception of the economic role of the state, policies to foster private sector development, and support for trade development.

3. Legislative framework

In recent years the Council adopted a series of regulations based on Article 179 of the European Community Treaty, with the aim of creating a clear legal basis for the following development policy initiatives:
- Regulation 5769/03 on aid for poverty diseases, aid for policies and actions on reproductive and sexual health and rights in developing countries;
- Regulation 3619/02 extending and amending Council regulation 1659/98 on decentralised co-operation;
- Regulation 11074/01 on action against anti-personnel landmines in third countries other than developing countries;
- Regulation 3631/00 on measures to promote the full integration of the environmental dimension in the development process of developing countries;
- Regulation 976/99 on the requirements for the development and consolidation of democracy, the rule of law and respect for human rights and fundamental freedoms in third countries;
- Regulation 1658/98 on co-financing operations with European non-governmental organisations (NGOs) in fields of interest to the developing countries;

C. Future prospects

New priorities have been established for development policy in the light of the new international context, past experience, and social and economic developments. These priorities include:

1. Strategies to encourage poverty alleviation.

2. Increased regional co-operation to strengthen regional economies and growth, acknowledging its importance for conflict prevention.

3. Integrating developing countries into the world economy, allowing the poorest countries to benefit from special treatment with regard to trade and debt relief.

4. Private-sector development and economic reforms to achieve diversification and productivity growth.

5. Respect for human rights, the rule of law and democratic principles, including, in particular, women's and children's rights.

6. Good governance as an essential requirement of development policy and consequently the establishment of transparent and accountable systems of government and management.

7. Ownership: if stakeholders are encouraged, they will grow in number, organise and train themselves, form networks and build partnerships with each other and with public entities to provide a long-term, sustainable development approach.

ROLE OF THE EUROPEAN PARLIAMENT

1. In its report on complementarity between Community and Member State policies on development co-operation, the EP considered that:
- complementarity of development policies must be part of an overall strategy aimed at ensuring the consistency and coordination of these policies;
- Member States should step up information exchanges and communication with the Commission in order to improve coordination between them and complementarity between development policies;
- devolution of decision-making powers within both the EU and Member States is a prerequisite for achieving greater complementarity;
- increased consistency of the EU's development actions is a priority with a view to improving the effectiveness and credibility of the EU's development policies.

2. In its resolution of 23 April 2003 on the work of the ACP-EU Joint Parliamentary Assembly in 2002 (which was overshadowed by disagreement over Zimbabwe), the EP:
- expressed its view that an improvement in the information and dialogue structures between the EU and ACP partners was vital;
- congratulated the JPA Bureau on giving practical effect to the wish to extend its work beyond purely administrative matters and use its meetings also for political discussions;
- noted with satisfaction the streamlining of procedures and organisation of the JPA- including management of resolutions - has taken place.

3. In the report of 24 April 2003 on the work of the ACP-EU Joint Parliamentary Assembly (JPA) in 2002, the EP welcomed a number of important successes:
- the parliamentary character of the Assembly was underlined;
- future Standing Committee work on the use of the European Development Fund (EDF) which will help to redress a democratic deficit as parliamentary scrutiny over the EDF has in the past been notably lacking;
- the innovative Cape Town Declaration, which stressed that the forthcoming trade negotiation process needed to avoid a narrow concentration on purely commercial aspects and give real consideration to the development needs of the ACP States.

TRADE REGIMES APPLICABLE TO DEVELOPING COUNTRIES

LEGAL BASIS

Article 133 EC (amended by the Treaty of Nice).

OBJECTIVES

- Helping the developing countries to expand sales of their products on the markets of the industrialised countries.
- Promoting the industrialisation of the developing countries through customs duty reductions or exemptions for finished or semi-finished industrial products and certain agricultural products.

ACHIEVEMENTS

A. Historical evolution

The Community was the first to apply, with effect from 1 July 1971, the GSP to developing countries belonging to the 'Group of 77' within Unctad and to the overseas countries and territories of the Member States. In 1995 the system covered 145 countries and independent territories and 25 territories and States dependent on the Member States of the Community or third countries. Albania, Estonia, Lithuania and Latvia were added in 1991, and the countries of the former Soviet Union in 1993.

1. The first scheme

It applied from 1971 to 1980 to developing countries belonging to the Group of 77 within Unctad. The main features were preferential tariff advantages granted unilaterally and on a non-reciprocal basis for:

- processed agricultural products (tariff reductions were allowed on a given number of scheduled products);
- finished and semi-finished industrial products (the recipient countries were able to export these products to the Community free of customs duty up to a ceiling fixed annually for each country and product. Special measures were introduced for, in particular, textiles and coir and jute products).

These principles remained intact, but they were modified and adapted each year, while ensuring that the recipient countries received enough information to take advantage of the benefits offered by the GSP.

2. The second scheme

It was initially to apply for ten years (1980-1990). Provision was included, however, for an assessment to be made of its operation to allow for updates and adjustments in light of the changing environment of the multi-lateral trading system. Its main features were as follows.

a. In the manufacturing sector, all quantitative restrictions were abolished in the case of the 36 least developed countries.

b. The mechanism of preferential limits applicable to **sensitive' industrial products** was modified. Under the original system, all beneficiary countries were monitored globally on an identical basis. This was replaced by a new system which, for each individual product, identified the highly competitive supplier countries; restrictions could now be imposed on these countries through the rigorous application of **tariff quotas fixed by country**, while access for the other supplier countries was regulated by a system of **flexible/target ceilings for each country.**

The 10-year revision scheduled took place on 1 January 1995, when a new scheme entered into force, based on the Commission's guidelines and approved by the Council on 19 December 1994.

B. The current GSP (1995-2004)

The EU's GSP is implemented following a cycle of ten years. The present cycle began in 1995 and will expire in 2004. This arrangement is laid down in Council Regulation 2820/98 of 21 December 1998 which was amended in 2001 to take into account the GSP cycles (the 3rd GSP cycle was due to finish in 2001, the EU's third scheme GSP is not due to finish until 2004), so Regulation 2501/2001 extended arrangements to bridge this gap. In managing the GSP, the Commission is assisted by the Committee on Generalised Preferences, composed of representatives of Member States and chaired by the Commission. The Committee can be consulted or can express opinion on certain draft implementation measures.

1. General rules

GSP preferences are granted to exports of specific products from individual countries. The GSP operates at two levels:

a. The general arrangements providing basic trade preferences following the traditional objectives of economic development.

b. Other arrangements geared to fostering sustainable development and providing special incentives related to respect for social rights and environmental protection. The latter arrangements grant additional preferences upon the request of countries which respect certain social or environmental standards laid down in certain international agreements.

2. Beneficiary countries

Originally preferences had to be "generalised", i.e. they had to be granted to all developing countries. Membership of the Group of 77, created by developing countries, is considered a criterion for being eligible for GSP treatment. China and the "economies in transition" that emerged after the dismantling of the former Soviet Union, have been granted similar treatment to the developing countries. A country may be excluded from the benefits of the GSP if its per capita income and/or value of its manufactured exports are too high. At present, Hong Kong, Singapore and South Korea have been excluded on the basis of these criteria.

3. General arrangements

The GSP is a trade policy instrument aimed at fulfilling development objectives. The tariff modulation mechanism is based on trade policy considerations. The graduation mechanism and the special arrangements represent the development component of the general GSP arrangements.

a. Tariff modulation

Since 1995, trade preferences under the GSP have been granted without quotas or quantitative restrictions. Instead, preferences are set according to a modulation mechanism. Depending on its sensitivity, each product is classified in one of four categories. The four categories are as follows:

- **very sensitive products**, for which the preferential tariff is 85% of the normal Common Customs Tariff (CCT);
- **sensitive products**, for which the preferential tariff is 70% of the CCT rate;
- **semi-sensitive products**, for which the preferential tariff is 35% of the CCT rate;
- **non-sensitive products**, which enter the EU's market duty-free.

According to a safeguard clause, the benefit of GSP preferences may be suspended for certain products originating from certain countries in the event that those imports "cause or threaten to cause serious difficulties to a Community producer".

b. Gradation

Provisions are necessary to make sure that more developed countries do not use the preferences and harm weaker economies. Therefore provisions determine whether a given sector in a given country is in a position to face international competition without benefiting from the GSP. A development index and a specialisation index apply. The former index is based on that country's income per capita and its level of exports of manufactured products. The latter index is based on that country's share of EU imports in a specific sector.

c. Exceptions

If imports from a country in a specific sector exceed 25% of all imports into the EU from all beneficiary countries in that sector during any given year, exports from that country in that sector do not benefit from GSP treatment regardless of its level of development. This provision is commonly known as the "lion's share clause". It is also to be noted that the graduation mechanism does not apply to countries whose exports to the EU in a given sector do not exceed 2% of all beneficiary countries' annual exports to the EU in that sector. This exception is known as the "minimal share clause".

4. Special Arrangements

a. Least Developed Countries (LDCs)

The EU's GSP provides more favourable treatment to LDCs recognised as such by the UN. The additional advantages include duty-free access for all industrial and agricultural products listed in the regulation. Treatment for LDCs has been improved over the years: Council Regulation 602/98 of 9 March 1998 extended the coverage of both Regulation 3281/94 and Regulation 1256/96 concerning the Community's schemes of generalised tariff preferences for LDCs. In February 2001, the Council adopted Regulation 416/2001, the so-called "Everything but Arms" (EBA) regulation, thus granting duty-free access, without quantitative restrictions, to the imports of all products from LDCs except arms and munitions. Only imports of fresh bananas, rice and sugar are not fully liberalised. Duty free access will only be granted in 2006 (bananas) and 2009 (rice and sugar). The Commission expects the preferential treatment to result in growing access to the European market and in turn reinforce the EBA's impact on investments and diversification of production in beneficiary countries.

b. Special arrangements supporting measures to combat drugs

- Since 1990 special measures, (duty-free access for agricultural and industrial exports) have been granted to countries of the **Andean Community** (Bolivia, Colombia, Ecuador, Peru and Venezuela) on the grounds that the development of these countries is seriously hampered by drug production. Special arrangements aim to create export opportunities for substitution crops and to improve economic and social development, in particular through industrialisation.
- These special arrangements have been extended to the Member States of the **Central American Common Market** (Costa Rica, Guatemala, Honduras, Nicaragua, El Salvador), **Panama** and more recently, **Pakistan**.

c. Special Incentives

- Since 1995, the EU's GSP scheme has acquired an additional development orientated dimension by providing special incentives rewarding compliance with international social and environmental standards. To qualify under the social policy incentive clause, countries must be able to provide proof of compliance with International Labour Organisation (ILO) Convention No 87 on the freedom of association, No 98 on the right to organise and to bargain collectively and No 138 on child labour. In order to qualify under the environmental clause, countries must demonstrate that they effectively apply ITTO (International Tropical Timber Organisation) standards for the sustainable management of tropical forests.
- The special incentive clauses allow for a significant increase in the preferential margin. For industrial products the preferential margin could almost be doubled. The advantage is slightly less for agricultural products than for industrial products.

5. Temporary withdrawal

The benefit of GSP preferences may be temporarily withdrawn in whole or in part for products originating in a country in one of the following cases:

- practice of any form of slavery or forced labour;
- export of goods made by prison labour;
- manifest shortcomings in customs controls on export, transit of drugs, or failure to comply with international conventions on money laundering;
- fraud or failure to provide administrative co-operation as required for the verification of certificates of origin forms;
- manifest cases of unfair trading practices;
- infringements of the objectives of international conventions such as NAFO (Northwest Atlantic Fisheries Organisation) concerning the conservation of fish resources.

6. Rules of origin

Rules of origin are designed to ensure that eligible products have actually been produced in the exporting developing country. The whole of the preferential GSP scheme is subject to compliance with the conditions governing the origin of products eligible for preferences.

Determining a product's origin is particularly important where two or more countries have been involved in its manufacture. "Regional cumulation of origin" is a special arrangement designed to foster regional economic integration between developing countries by a waiver of certain conditions pertaining to the determination of origin. "Donor country content" is a special arrangement designed to foster industrial co-operation between the EU and developing countries by allowing products from the EU to be considered as originating in the beneficiary country processing them.

HUMANITARIAN AID

LEGAL BASIS

Article 179 EC.

OBJECTIVES

According to Council Regulation 1257/96 of 20 June 1996, the Community's humanitarian aid shall comprise assistance, relief and protection operations on a non-discriminatory basis to help people in third countries, particularly the most vulnerable among them, in particular:

- to save and preserve life during emergencies and their immediate aftermath and natural disasters;
- to provide the necessary assistance and relief to people affected by long- lasting crises arising, in particular, from outbreaks of fighting or wars;
- to help finance the transport of aid and efforts to ensure that it is accessible to those for whom it is intended;
- to carry out short-term rehabilitation and reconstruction work, especially on infrastructure and equipment, with a view to facilitating the arrival of relief;
- to cope with the consequences of population movements (refugees, displaced people and returnees) caused by natural and man-made disasters;
- to ensure preparedness for risks of natural disasters or comparable exceptional circumstances and use a suitable rapid early-warning and intervention system;
- to support civil operations to protect the victims of fighting or comparable emergencies, in accordance with current international agreements.

ACHIEVEMENTS

The Community has been involved in humanitarian aid operations since the end of the 1960s. The significant amount of aid supplied since the late 1980s has made it a key element of the Community's international policy. The EU has now become the world's largest provider of humanitarian aid. Since 1992, it operates this aid through **ECHO (European Office for Emergency Humanitarian Aid)**.

1. Purpose of ECHO

ECHO was set up with the aim of centralising the Commission's humanitarian aid operations and thereby organising them more effectively.

Beyond the funding of humanitarian aid, ECHO:

- carries out feasibility studies for its humanitarian operations;
- monitors humanitarian projects and sets up co-ordination arrangements;
- promotes and co-ordinates disaster prevention measures by training specialists, strengthening institutions and running pilot micro-projects;
- finances humanitarian landmine clearance operations and provides information for people in affected areas about the dangers of anti-personnel mines;
- organises training programmes and gives its partners technical assistance;
- raises public awareness about humanitarian issues in Europe and elsewhere.

2. Gradual improvement of the instrument

A number of measures have been adopted over the years to ensure that the aid is managed in a sound and effective manner:

- the signature of a framework partnership contract with over 200 partners providing for greater flexibility in the allocation of ECHO funding and management procedures which promote responsibility;
- the adoption of a new organisational structure of ECHO in February 1996 including the creation of three new units. ECHO is now structured so that the management of resources is separate from the evaluation of humanitarian requirements and the preparation of contracts with partners;
- the setting-up of an evaluation unit in 1996 helped to strengthen the monitoring and effectiveness of humanitarian operations;
- the financial audits of ECHO's principal partners;
- the enhancement of co-ordination with the Member States and other humanitarian actors;
- the development during 2001 of a local information system HOLIS (Humanitarian Office Local Information System) to integrate existing information systems such as ECHO's contract database HOPE, with sophisticated management systems currently being developed.

3. Recent initiatives to enhance efficiency

a. Capacity for urgency

On 6 June 2001, the Commission adopted a new decision procedure for "Primary Emergency" humanitarian aid situations. The new procedure allows the Commission to take formal funding decisions within 24-72 hours of the onset of new humanitarian disasters and to release the necessary funds quickly through "fast-track" budgetary procedures.

In order to be able to respond to major new emergencies and crises, the Commission may also request extra funds from the EC budget's emergency reserve from the Budgetary Authority, namely the Council and the Parliament. € 200 million is potentially available for this purpose.

b. Disaster prevention

ECHO has confirmed its readiness for greater involvement in disaster prevention and preparedness through its proactive and regional approach. The Dipecho programme, which aims to fund disaster preparedness activities came into effect in 1998 and operates within regional frameworks The objective of the action plans

is to remedy shortcomings in disaster prevention and preparedness systems and ensure consistency. The activities cover human resource development, improvement of response capabilities and implementation of demonstration microprojects. Action Plans are being prepared for disaster-prone regions, i.e. South-East Asia and Bangladesh, Central America and the Caribbean, Andean Community, South Asia, Central Asia and sub-Saharan Africa. The plans are prepared on the basis of analysis and regional consultations. During 2001, two Dipecho Action Plans were implemented for Southeast Asia and Central America. A further Action Plan for South Asia, with a budget of € 3.2 million, was approved in July 2001.(Annual Report on Humanitarian Aid Office - ECHO 2001 COM(2002)322).

4. Scope and destination of the action

a. On the whole

To date, ECHO has provided almost € 6 500 million of humanitarian aid. ECHO is active in more than 30 conflict zones and more than 85 countries world-wide and provides an essential life-line to 40-50 million vulnerable people.

b. In 2001

ECHO spending totalled € 550.7 million and funded projects in more than 60 countries.

c. In 2002

ECHO signed over 1100 contracts with partner organisations and spent € 537 million in response to humanitarian crises, conflicts and disasters throughout the world. The largest proportion of this, 39%, was spent in Africa, followed by 26% in Asia and 12% in the Middle East/North Africa.

d. For 2003

A provisional funding strategy worth € 442 million has been set out. The drop in budget is largely a result of the drawing down of operations in Kosovo, where the humanitarian need is less as efforts move into the reconstruction and rehabilitation phase. Areas of intervention throughout 2003 are likely to be the Great Lakes Region, Afghanistan and the Middle East with efforts focused on "bridging the transition gap" between relief to development.

ROLE OF THE EUROPEAN PARLIAMENT

1. Through its opinions and resolutions the EP has always expressed its concern with regard to humanitarian aid and thus brought considerable pressure to bear for a constant improvement to and development of the range of instruments. The idea of creating ECHO originated in the EP.

2. As the institution for adopting the EU budget, the EP has insisted every year on an increase in the appropriations for humanitarian aid, not only in general but also for specific regions or countries. It has also frequently sent delegations to study the situation of local populations on the ground, to enable it to make specific proposals to improve aid.

3. It is also worth noting the many resolutions on the situation in various trouble spots where people are in particular need. Over the past few years the EP has concerned itself several times on the basis of current events with Kosovo, the Great Lakes Region, Sudan, Angola, Sierra Leone, Ethiopia and Eritrea, Guinea-Bissau, East Timor and the Democratic People's Republic of Korea, among others.

FOOD AID AND FOOD SECURITY

LEGAL BASIS

Article 179 EC.

OBJECTIVES

Food aid was initially managed according to the rules of the Common Agricultural Policy in order to dispose of surpluses. Over the years food aid policy has gradually been reformed, delinking it from the Common Agricultural Policy and integrating it more firmly into the Union's development policy in response to concerns about food security.

ACHIEVEMENTS

A. General Principles

Council Regulation 1292/96 of 27 June 1996 (adapted on 15 June 2000) on food-aid policy, food-aid management and special operations in support of food security laid down the following principles:

- food aid is an important feature of the Community's development cooperation policy;
- food aid must be integrated into the developing countries' policies for the improvement of their food security, in particular by the establishment of food strategies aimed at alleviating poverty and geared to achieving the ultimate goal of making food aid superfluous;
- food aid and operations in support of food security must be taken into account as objectives in all community policies likely to affect developing countries, in particular from the point of view of economic reforms and structural adjustment;
- food aid should avoid having adverse effects on local production, distribution, transport and marketing capacities;
- food security should help the populations of developing countries and regions at household, local, national and regional levels to improve their own food production;
- early-warning systems concerning the food situation can be supported by the Community, along with food storage programmes to strengthen the food security in recipient countries.

Food aid operations of a humanitarian nature are carried out in the framework of the rules on humanitarian aid policy (*6.4.4.).

B. The Food Aid Convention of 13 April 1999

This has replaced the 1995 Convention.

1. Objectives

a. Types of situations

The Convention wants to contribute to world food security and to improve the ability of the international community to respond to emergency food situations and other food needs of developing countries by:

- making appropriate levels of food aid available on a predictable basis;
- encouraging member countries to ensure that the food aid provided is aimed particularly at the alleviation of poverty and hunger of the most vulnerable groups and is consistent with agricultural development in those countries;
- including principles for maximising the impact, the effectiveness and quality of the food aid provided as a tool in support of food security;
- providing a framework for co-operation, co-ordination and information-sharing among members and food aid related matters to achieve greater efficiency in all aspects of food aid operations and better coherence between food aid and other policy instruments.

b. Categories of beneficiaries

Food aid under the Convention may be provided to:

- least developed countries;
- low-income countries;
- lower middle-income countries and other countries included in the WTO list of net food-importing developing countries, when experiencing food emergencies or when food aid is targeted at vulnerable groups.

2. Means and methods

Under the Convention (article 3) the EU and its Member States have a global annual commitment of

1 320 000 tonnes of wheat equivalent. The total indicative value of the EU and Member States annual commitment amounts to € 422 million. This figure represents the total estimated cost, including transport and other operational costs associated with food aid operations.

EU operations in support of food security consist of either supplying food products or financing development projects relating to food security.

Among the products to be supplied as food aid the largest category is cereals. Wheat and white maize are the main cereals allocated to Africa. Rice is consumed largely in Asia but also in many other developing countries. Pulses, in particular beans, are rich in protein and often particularly suited to the diets of the recipient groups. These products were formerly included under "other products", a category which is not accounted for in tonnes, but by value, since it covers a wide variety of products such as groundnut oil, dried fish, meat, tinned foods, tomato puree, fruit and seeds. Other categories are vegetable oil, sugar, milk powder, and butteroil. Vegetable oil adds fat to the diet while sugar is useful as an energy booster in food supplement programmes for severely undernourished groups of refugees and displaced persons.

In addition to food products, seeds, fertilisers, tools and other agricultural inputs may also be supplied as part of

farm rehabilitation programmes aimed at improving the recipients' food security.

Financial allocations intended to help the countries improve their food security may be used to finance storage programmes or early warning systems, public information and education programmes, the purchase of tools and inputs, farm rehabilitation projects and marketing.

Triangular food aid operations, where food is purchased in a developing country and delivered to another, has diminished considerably over the last four years, due to emphasis being given to food security policies.

C. Level and destination of aid

1. Volume of the aid

a. In general

2001 saw a shift in focus in the Commission's implementation of its food aid and food security programme. The Commission's aim was to integrate the food security requirement more fully into the overall development strategy of the beneficiary countries referred to in the Country Strategy Papers and Poverty Reduction Strategy Papers. The programme also focused on increased ownership of the programmes and policies by national partner - governments and civil society. The appropriations available in the 2002 budget for food aid and food security operations in developing countries amounted to €510 million.

b. Direct aid

Implemented by the Commission, it is granted to governments in the form of financial aid and support operations. In the 2002 budget, it amounted to €239,2 million.

c. Indirect aid

It is implemented through internationl organisations like the World Food Programme (WFP) and individual NGOs. In the 2002 budget, it amounted to € 235.5 million. The WFP received € 132 million, up from € 98 million in 2001; EuronAid € 60.5 million down from € 76 million in 2001. Though an NGO, EuronAid needs to be distinguished from individual NGOs. It is a European network of NGOs founded in 1981, owned and guided by member NGOs active in the field of food aid and food security. The main purpose of EuronAid is to carry out purchases, transportation and logistics of food in kind for NGO programmes as well as to facilitate a dialogue on food aid and food security policies with the European Commission (EC) and other interested parties. NGOs, members and non-members, from European and Southern countries benefit from EuronAid services. Its creation was promoted by the EC to provide services like procurement, transport and logistics to all NGOs receiving EC grants for food aid. Up to 95% funding of EuronAid is provided by the Commission. As an NGO, EuronAid is active in gaining access and administering EC funding in support of food aid and food security.

2. Recipients

Intervention countries are divided by the Commission into two groups. First, those who receive structural aid, namely the Least Developed Countries (LDCs) with a high food insecurity index and secondly those in a post-crisis situation. In these countries interventions mostly involve supplying food aid, tools and seeds.

In 2002, intervention countries included: Angola, Ethiopia, Madagascar, Malawi, Mozambique, Zimbabwe, Afghanistan, Armenia, North Korea and Palestine. Of these Ethiopia, Zambia, Zimbabwe, Afghanistan and Palestine received the largest food aid/food security allocations.

In terms of geographical distribution of food aid and of support actions for food security in 2002, ACP countries amounted to 53.74%, Asia for 13.64%, Latin America for 0.47%, the NIS countries (Armenia, Azerbaidjan, Kyrgyzstan, Moldova and Tajikistan) for 15.21% and the Mediterranean/Middle East 5.88%. Other distributions amounted to 3.47% with outstanding distributions making up the remaining 7.95%.

ROLE OF THE EUROPEAN PARLIAMENT

The EP:

- called on the Commission to support the priority use of products deriving from Community agricultural production in the implementation of the Food Aid Convention (resolution.of 4 May 1999);
- called for access to food in sufficient quantities and of a sufficient quality to be recognised as a fundamental human right for the people of the developing countries and issued an appeal for the implementation of the Universal Declaration of Human Rights regarding the right to food and well being; taking the view that national governments have a duty to honour that obligation (resolution of 3 September 2002 on trade and development for poverty eradication and food security);
- took the view that the fight against poverty and food insecurity must incorporate an attack on the structural causes of poverty in the developing countries, and, accordingly, calls for: measures to foster access to land, water and the resources of biodiversity and measures to foster a policy of local support for sustainable agricultural smallholdings *inter alia*.

RELATIONS WITH THE AFRICAN, CARIBBEAN AND PACIFIC COUNTRIES: FROM THE YAOUNDÉ AND LOMÉ CONVENTIONS TO THE COTONOU AGREEMENT

LEGAL BASIS

Article 310 EC.

OBJECTIVES

After the expiration of the fourth Lomé Convention on 29 February 2000, the Partnership Agreement signed in Cotonou (Benin) on 23 June 2000 establishes a new framework for the future relations between the European Union (EU) and the African, Caribbean and Pacific (ACP) States. 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 in a spirit of complete equality. However, the new Agreement is different from the previous conventions as it has sought to embrace a wider range of issues outside traditional development. Its main aim is the eradication of poverty through an integration of ACP States in the world trading system. It also reinforces the institutional and political dimension of their relations, with such fundamental aspects as human rights, democracy and good governance.

ACHIEVEMENTS

A. Historical overview

1. Yaoundé Convention

Part Four of the EEC Treaty, together with an implementing convention, governed relations between the EEC and the overseas countries and territories (OCTs). After these countries gained independence the 18 and later 19 African States, Madagascar and Mauritius (ASMM) became associated with the EEC under the two Yaoundé Conventions (1964-1969 and 1971-1975).

In parallel, the Convention of Arusha (1971-1975) governed trade links with the three East African States (Kenya, Uganda and Tanzania). The agreement with Nigeria, signed in Lagos on 16 July 1966, was never ratified and did not enter into force.

2. Lomé Conventions

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 possibility of negotiating with the EEC the organisation of their future relations. Other African states that were not members of the Commonwealth or the ASMM were also given the same option.

This led to the First Lomé Convention (1975-1980) followed by three other ones: 1981-1985, 1986-1990 and 1990-2000.

3. The Fourth Lomé Convention

a. General

It was signed on 15 December 1989 for a period of ten years (with the possibility of amending the Convention after five years) and came into force on 1 March 1990; the associated Financial Protocol was adopted for five years only. The amended Convention resulting from the mid-term review and the second Financial Protocal associated with Lomé IV were signed on 4 November 1995, and expired o 28 February 2000.

b. Trading and trade cooperation arrangements

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.

c. Human rights

As a result of the mid-term review, a clause (Article 366a) was inserted under which aid to a State might be suspended, partially or totally, 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

a. Negotiations were concluded in Brussels on 3 February 2000 by the ACP States and the EU Member States. A separate agreement was signed with South Africa (*6.4.1.), following the protocol establishing South Africa's partial membership from April 1997. The signature took place In Cotonou (Benin) on 23 June 2000.

b. The ratification process was completed on the 27 February 2003 when the European Commission ratified the new Convention. The new Agreement entered into force on 1 April 2003 though it has been partly implemented since August 2000 (though with the exception of provisions relating to the 9th European Development Fund). The new Agreement has a duration of 20 years.

2. Basic content (art. 4.1. and 2)

The Cotonou Agreement, characterised by the term 'partnership', implies mutual commitment and responsibility, hence the emphasis given to political dialogue, including such issues as democracy, good governance and immigration and to a broad-based involvement of the 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 poverty reduction as central objective.

C. Institutional and political dimension

1. Institutions

The joint institutions are the Council of Ministers, the Committee of Ambassadors and the Joint Parliamentary Assembly. The new Agreement renames the former Joint Assembly 'the Joint Parliamentary Assembly' in order to emphasise the parliamentary nature of this body. Included in the tasks of the Joint Parliamentary Assembly is the organisation of regular contacts, not only with economic and social actors as in the previous Lomé Convention, but also with civil society (art. 17). The main innovation as regards the Joint Council of Ministers is the broadening of its mandate to conduct an ongoing dialogue with social and economic partners and other elements of civil society (art. 15).

2. Actors of the partnership (art. 4-7)

One of the most significant innovations of the new Agreement is the inclusion of a chapter on the actors of the ACP- EU Partnership. The ACP countries recognise the complementary role of non-State actors (private firms, economic and social partners,civil society in all its forms including NGOs) in the development process. Thereby, non-State actors are informed and involved in consultation on cooperation policies and on the political dialogue. They are involved in the implementation of cooperation projects and provided with adequate support for capacity building.

3. Political dialogue (art. 8-10)

a. 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, establish priorities and common principles. The objectives of the dialogue include regional cooperation, conflict prevention and peaceful settlement of disputes. Through dialogue, the parties contribute to the strengthening of democracy and sustainable development. (art. 11).

b. The dialogue covers all fields of cooperation laid down in the Agreement as well as questions of common interest, including environment, gender, migration and cultural matters. It will focus on specific issues such as the respect for human rights, democratic principles, the rule of law and good governance, the arms trade, anti-personnel landmines, military expenditure, corruption, drugs and organised crime and ethnic, religious or racial discrimination. The EU provides assistance for capacity building to promote democracy, transparency, improved access to justice and more efficient law enforcement procedures.

4. Migration (art. 13)

The Agreement establishes a framework for dealing with migration through the readmission clause: each ACP or EU State shall accept the return of and readmit any of its nationals who are illegally present on the territory of a EU or ACP State, at that State's request and 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 of workers from the EU in ACP countries.

D. Trade and financial framework

1. A preparatory period for future trade arrangements (art. 36 and 37)

The Agreement provides for a preparatory period of eight years before moving to new WTO compatible trade arrangements. Formal negotiations for these trade agreements started in September 2002 and should lead to an agreement by January 2008. This means the dismantling of non-reciprocal preferential trade arrangements in favour of free trade Regional Economic Partnership Agreements (REPAs) with the EU. Between 2002 and 2008 the existing non-reciprocal trade regime of Lomé IV is to be maintained. Ecomonic Partnership Agreements will set-up an entirely new framework for trade and investment flows between the EU and ACP. From 2008 to 2020, two-way free trade in goods and services will be phased in as WTO compatible trade arrangements will be agreed, which ACP are encouraged to join as a group, building on their own regional integration.

2. Trade related areas and investment

For the first time, the ACP-EU Agreement contains provisions (chapter 5) on trade related areas such as non-tariff barriers, including intellectual property rights and biodiversity, competition policy, standards, phyto-sanitary measures, environment and labour standards. Both parties underline the importance of the international agreement on Trade Related Intellectual Property Rights (TRIPs) and the Convention on biological diversity (art. 46).

The Agreement gives added importance to support for investment and the private sector. Cooperation in investment will include:

- measures to create and maintain stable investment conditions, encouraging EU private investment in the ACP States;
- investment support through long term financial resources; and
- investment risk guarantee schemes.

3. Financial cooperation

- The overall amount of EU financial assistance for the first five years of the Agreement (2003-2008) is € 13 500 million. An additional € 2 500 million from previous European Development Funds (EDF) is available, bringing the total to €16 000 million. Loans worth € 1 700 million from the European Investment Bank are also available. Under the European Development Fund, € 10 000 million in grants is earmarked for supporting long term development.

- The Investment Facility aims to help businesses in ACP countries by supporting sound private companies, privatisation, providing long term finance and risk capital, and strengthening local banks and capital markets. It will receive € 2 200 million to be managed by the European Investment Bank, with € 1 300 million for regional cooperation. It has been agreed that the ACP will define the regions eligible for support.

4. Resource allocation and programming

The Agreement introduces significant changes to programming procedures and resource allocation. ACP States should now identify eligible non-state actors and the resources allocated for non-state actors as part of their National Indicative Programmes. Their resource allocation will be based on both needs and performance. Each ACP State and region will receive an indication of the resources it may 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 causes of delay 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.

Resource allocation will consist of two main elements: an allocation for macroeconomic support, programmes and projects and an allocation for unforeseen needs, such as emergency assistance.

5. Export revenue stabilisation

The Agreement replaces Stabex and Sysmin with a system for supporting short-term fluctuations in export revenue. Resources for this will be drawn from the National Indicative Programmes. Support may be provided if a worsening in public deficit coincides with a loss of overall export earnings or a loss of export earnings from all agricultural and mineral products. LDCs benefit from a more favourable threshold on export losses required for triggering support (art. 68).

6. Debt relief

Outside the ACP-EU framework, the ACP countries agreed to an EU proposal to use up to € 1 000 million from uncommitted EDF funds to support ACP Highly Indebted Poor Countries. On a case-by-case basis, uncommitted resources from past indicative programmes will be used for debt relief. Technical assistance on debt management will be provided to ACP States (art. 66 and 67).

ROLE OF THE EUROPEAN PARLIAMENT

- The EP is kept regularly informed by the Commission of the implementation of the ACP-EU Partnership Agreement. However, it has few powers in respect of the allocation of aid as the EDF is not included in the budget. Nevertheless, it must grant an annual discharge in respect of the operations financed under the EDF.
- The EP contributes significantly to ACP-EU cooperation through the work of its Committee on Development and Cooperation and through the ACP-EU Joint Assembly, now named the Joint Parliamentary Assembly, which has a fundamental role to play in the development and strengthening of relations between the EU and its ACP partners. Bringing together the elected representatives of the EU (the Members of the EP) and of the ACP States twice a year. Each year the EP adopts a resolution expressing its views on and concerns about the work of the ACP-EU Joint Assembly and on ACP-EU cooperation.

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