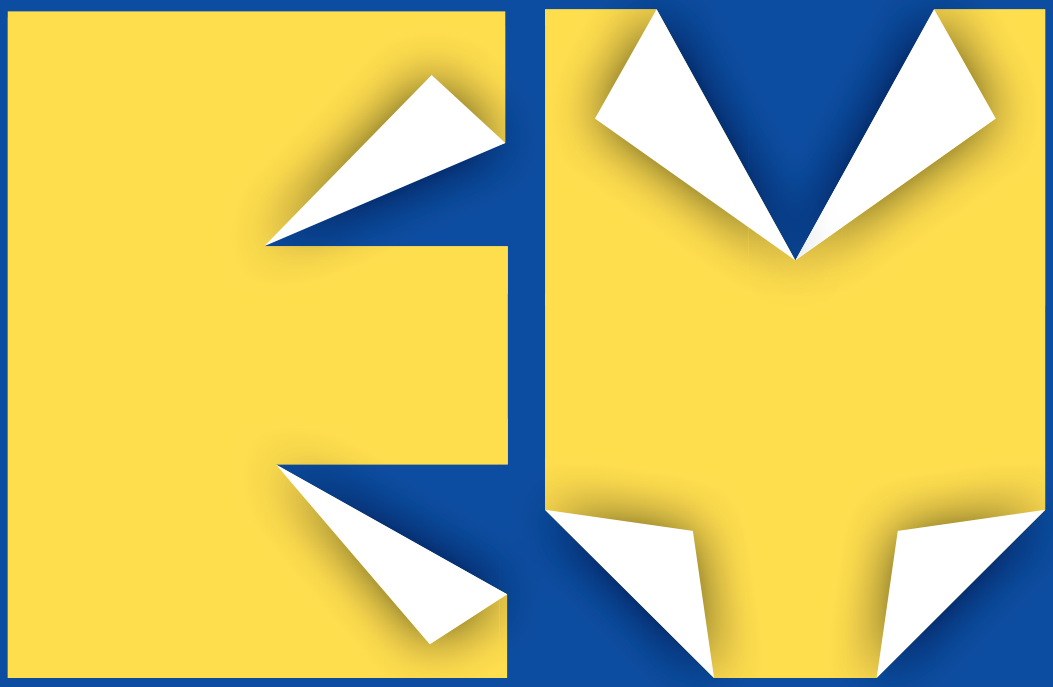
FACT SHEETS ON THE EUROPEAN UNION

2014 EDITION



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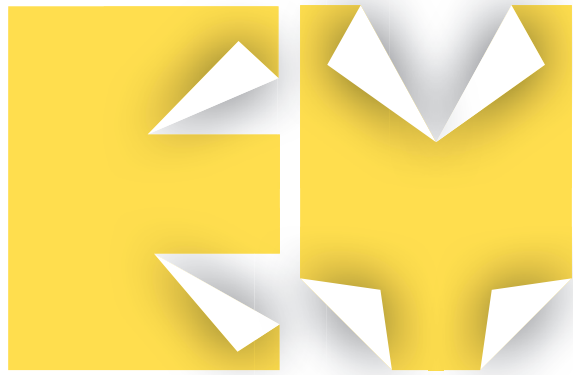

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DEAR READER,

Since their inception in 1979, the European Parliament's Fact Sheets have proven to be very useful for the public as a source of information about the EU, with a particular focus on Parliament's contribution to European integration and policy-making. Designed for non-specialists interested in finding out more about European integration, they have also very often been useful as background documents for MEPs, professionals and academics and have become a reference for students.

The Fact Sheets highlight the role of the European Parliament, which now decides on the vast majority of EU legislation: on 1 December 2009 over 40 new policy areas were brought under the ordinary legislative procedure involving Parliament and the Council, including agriculture, fisheries and energy. Parliament also has budgetary powers covering all EU expenditure and, together with the Council, has the final say on the EU budget. It now has the right to initiate treaty change and elects the President of the European Commission.

These Fact Sheets have been drafted and updated by the relevant policy departments within Parliament's directorates-general for internal and external policies with the aim of keeping them simple, clear and concise, and improving their readability and usefulness. With the same aim, the directorates-general for translation and for innovation and technological support have made a concerted effort to make these updated Fact Sheets available in 23 official languages, both in hard copy and on CD-ROM.

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If you wish to go into greater detail, please refer to the more specialist works produced by the European Parliament. Parliament's departments produce factual documentation, briefings and reports, working with experts, think tanks, scientific and academic institutions worldwide to produce top-quality studies covering the full range of EU and external policies. To provide easy access to this valuable store of knowledge, the directorates-general for communication and for innovation and technological support have jointly developed Parliament's 'Think Tank' pages — an online platform that brings together all kinds of expertise and high-quality information from Parliament: http://www.europarl.europa.eu/thinktank/en

I hope you find the Fact Sheets a valuable source of information.

Klaus Welle

Secretary-General of the European Parliament

Strasbourg, January 2014

1 HOW THE EUROPEAN UNION WORKS

The EU has its own legislature and executive as well as an independent judiciary and a central bank. These are supported and complemented by a set of institutions and bodies. The EU's rules and decision-making procedures are laid down in the Treaties. The Union has its own budget with which to achieve its objectives.

2 CITIZENS' EUROPE

EU citizens have the right to travel, live and work throughout the Union. An effective system has been put in place and is constantly being improved in order to fully implement these rights. The EU also has a Charter of Fundamental Rights.

3 THE INTERNAL MARKET

With former customs barriers now dismantled, people, goods, services and capital can now move as freely throughout Europe as they can within a Member State. The continuous removal of obstacles and the opening up of national markets means that more companies can compete with each other, benefiting consumers.

4 ECONOMIC AND MONETARY UNION

Economic and monetary union is the result of a long process aimed at harmonising the economic and monetary policies of the European Union's Member States and introducing a single currency, the euro. So far, 18 Member States have adopted the euro, which is used on a daily basis by over half the EU population. An economic governance system has been established, as has coordination and surveillance of economic policies.

5 SECTORAL POLICIES

Over the years, the European Union has developed several policies and measures that all Member States endeavour to apply. These policies concern the whole of the Union and have common objectives, notably complementing the single market. While less stress is placed on harmonisation in some fields, a common framework is still guaranteed.

6 THE EU'S EXTERNAL RELATIONS

The European External Action Service and the High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the European Commission endow the European Union with the means to act on the international scene. The EU is now being called on more and more to play its full role in international affairs, building therein on its traditional economic, trade and development policies. Promotion of human rights throughout the world is a key aspect of this. The European Parliament's rights in this field have also been gradually strengthened, notably through the Lisbon Treaty.

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1 HOW THE EUROPEAN UNION WORKS

The European Union's institutions and bodies, and the powers conferred on them, derive from the founding Treaties. The Treaty on European Union refers to seven EU institutions in the strict sense of the term: four of these are responsible for drafting policies and taking decisions, namely the European Council, the Council, the European Commission and the European Parliament. The Court of Justice ensures that Community law is observed, the European Central Bank's main task is to maintain price stability in the euro area, and the Court of Auditors examines the legality and regularity of Union revenue and expenditure. The Union's powers have evolved considerably over the years through the successive Treaties, as have its decision-making procedures.

1 HOW THE EUROPEAN UNION WORKS

1.1. Historical evolution of European integration

1.1.1. The First Treaties

The disastrous effects of the Second World War and the constant threat of an East-West confrontation meant that reconciliation between France and Germany had become a top priority. The decision to pool the coal and steel industries of six European countries, brought into force by the Treaty of Paris in 1951, symbolised the birth of a common purpose and marked the first step towards European integration. The Treaties of Rome of 1957 strengthened the foundations of this integration and the notion of a common future for the six European countries involved.

Legal basis

- The Treaty establishing the European Coal and Steel Community (ECSC), or Treaty of Paris, was signed on 18 April 1951 and came into force on 25 July 1952. For the first time, six European States agreed to work towards integration. This Treaty laid the foundations of the Community by setting up an executive known as the 'High Authority', a Parliamentary Assembly, a Council of Ministers, a Court of Justice and a Consultative Committee. The ECSC Treaty expired on 23 July 2002 at the end of the 50-year validity period laid down in its Article 97. In accordance with the Protocol (No 37) annexed to the Treaties (the Treaty on European Union and the Treaty on the Functioning of the European Union), the net worth of the ECSC's assets at the time of its dissolution was assigned to the Research Fund for Coal and Steel to finance research by Member States in sectors relating to the coal and steel industry.
- The Treaties establishing 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. Unlike the ECSC Treaty, the Treaties of Rome were concluded 'for an unlimited period' (Article 240 of the EEC Treaty and Article 208 of the EAEC Treaty), which conferred quasi-constitutional status on them.
- The six founding countries were Belgium, France, Germany, Italy, Luxembourg and the Netherlands.

Objectives

- The founders of the ECSC were clear about their intentions for the Treaty, namely that it was merely the first step towards a 'European Federation'. The common coal and steel market 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 (goods, persons, capital and services).
- The aim of Euratom was to coordinate the supply of fissile materials and the research programmes initiated or being prepared by Member States on the peaceful use of nuclear energy.
- The preambles to the three Treaties reveal a unity of purpose behind the creation of the Communities, namely the conviction that the States of Europe must work together to build a common future as this alone will enable them to control their destiny.

Main principles

The European Communities (the ECSC, EEC and Euratom) were born of the desire for a united Europe, an idea which gradually took shape as a direct response to the events that had shattered the continent. In the wake of the Second World War the strategic 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 can be regarded as the starting point for European integration. At that time, the choice of coal and steel was highly symbolic, given that in the early 1950s these vital industries formed the basis of a country's power. In addition to the clear economic benefits, the pooling of French and German resources was intended to mark the end of the rivalry between the two countries. On 9

May 1950 Robert Schuman declared: 'Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity.' It was on the basis of that principle that France, Italy, Germany and the Benelux countries (Belgium, the Netherlands and Luxembourg) signed the Treaty of Paris, which concentrated predominantly on ensuring:

- free movement of goods and free access to sources of production;
- permanent monitoring of the market to avoid distortions which could lead to the introduction of production quotas;
- compliance with the rules of competition and the principle of price transparency;
- support for modernisation and conversion of the coal and steel sectors.

2. Following the signing of the Treaty, and despite France being opposed to the restablishment of a German national military force, René Pleven was giving thought to 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 European integration process underway again following the failure of the EDC took the form of proposals on a customs union and atomic energy put forward for consideration at the Messina Conference (June 1955), which culminated in the signing of the EEC and EAEC Treaties, the latter better known as the 'Euratom' Treaty.

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 common policies for agriculture and transport;
- the creation of a European Social Fund;
- the 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 set 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 is intended to guarantee the free movement of goods and the mobility of factors of production (the free movement of workers and enterprises, the freedom to provide services and the free movement of capital).

b. *The Euratom Treaty had originally set highly ambitious objectives, including the 'speedy establishment and growth of nuclear industries'. However, owing to the complex and sensitive nature of the nuclear sector, which touched on the vital interests of the Member States (defence and national independence), those ambitions had to be scaled back.*

4. The Convention on certain institutions common to the European Communities, 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. All that remained was for the 'Executives' to be merged; the Treaty establishing a Single Council and a Single Commission of the European Communities of 8 April 1965, known as the 'Merger Treaty', duly completed the process of unifying the institutions.

From then on, the EEC held sway over the sectoral communities, the ECSC and the EAEC. This amounted to a victory for the general EEC system over the coexistence of organisations with sectoral competence, and a victory for its institutions.

→ Vesna Naglič

1.1.2. Developments up to the Single European Act

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

Main achievements in the first stage of integration

Article 8 of the Treaty of Rome provided for the 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. Creating a 'Green Europe' was another major project for European integration. The first regulations on the Common Agricultural Policy (CAP) were adopted and the European Agricultural Guidance and Guarantee Fund (EAGGF) was set up in 1962.

Meanwhile, the Court of Justice of the EU interpreted the regulations on the transitional period in such a way that, when it ended, a number of provisions of the Treaty establishing the European Community took direct effect (these Articles have now become Articles 19, 36, 54 and 66 TFEU (*3.1.1). Even so, at the end of the transitional period there were still major obstacles to freedom of movement; the single market was not complete.

First Treaty amendments

A. Improvements to the institutions

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. Own resources and budgetary powers

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).

- The Treaty of Luxembourg of 22 April 1970 granted Parliament certain budgetary powers (*1.3.1).
- The Treaty of Brussels of 22 July 1975, gave Parliament 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 (*1.3.11).

C. Elections

The Act of 20 September 1976 gave Parliament new legitimacy and authority by introducing its election by direct universal suffrage (*1.3.4). The Act was revised in 2002, introducing the general principle of proportional representation and other framework provisions for national legislation on the European elections.

D. Enlargement

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.

E. Community budget

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.

Plans for further 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 European Defence Community (EDC) in August 1954.

A. Failure of an attempt to achieve political union

At the 1961 Bonn summit, the Heads of State or Government of the six founding Member States of the European Community asked an intergovernmental committee, chaired by the French ambassador Christian Fouchet, to put forward proposals on the political status of a union of European peoples. This research committee tried in vain, on two occasions between 1960 and 1962, to present the Member States with a draft treaty that was acceptable to all, although Fouchet based his plan on strict respect for the identity of the Member States, thus rejecting the federal option.

In the absence of a political community, its substitute took the form of European Political Cooperation, or EPC. At the summit conference in The Hague in December 1969, the Heads of State or Government decided to look into the best way of making progress in the field of political unification. The Davignon report, adopted by the foreign ministers in October 1970 and subsequently amplified by further reports, formed the basis of EPC until the Single Act entered into force.

B. The 1966 crisis

A serious crisis arose when, at the third stage of the transition period, voting procedures in the Council were to change from unanimous to qualified majority voting in certain areas. France opposed a range of Commission proposals, which included measures for financing the CAP, and stopped attending the main Community meetings (the 'empty chair' policy). Eventually, agreement was reached on the so-called Luxembourg Compromise (*1.3.7), which stated that, when vital interests of one or more countries were at stake, members of the Council would endeavour to reach solutions that could be adopted by all while respecting their mutual interests.

C. The increasing importance of European 'summits'

Although remaining outside the Community institutional context, the conferences of Heads of State or Government of the Member States started to provide political guidance and to settle the problems that the Council of Ministers could not handle. After early meetings in 1961 and 1967, these conferences took on increasing significance with the summit at the Hague of 1 and 2 December 1969, which allowed negotiations to begin on enlarging the Community and which saw agreement on the Community finance system. The Fontainebleau summit in December 1974 took major political decisions on direct elections to Parliament and the Council's decision-making procedures. It was also decided to meet three times a year as the 'European Council' to discuss Community affairs and political cooperation (*1.3.6).

D. Institutional reform and monetary policy

Towards the end of the 1970s there were various initiatives in the Member States to bring their economic and fiscal policies into line. 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 European currency unit (ECU).

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.

E. The Spinelli Project

A few months after its first direct election in 1979, Parliament ran into a serious crisis in its relations with the Council, over the budget for 1980. At the instigation of Altiero Spinelli MEP, founder of the European Federalist Movement and a former Commissioner, a group of nine MEPs met in July 1980 to discuss ways of relaunching the operation of the institutions. In July 1981 Parliament set up an institutional affairs committee, with Spinelli as its coordinating rapporteur, to draw up a plan for amendment of the existing Treaties. The committee decided to formulate plans for what was to become the constitution of the European Union. The draft Treaty was adopted by a large majority on 14 February 1984. Legislative power would come under a twin-chamber system akin to that of a federal State. The system aimed to strike a balance between Parliament and the Council, but it was not acceptable to the Member States.

The Single European Act

Having settled the Community budget dispute of the early 1980s, the European Council decided at its Fontainebleau meeting in June 1984 to set up an ad hoc committee of the personal representatives of the Heads of State or Government, known as the Dooge Committee after its chairman. The committee was asked to make proposals for improving the functioning of the Community system and of political cooperation. The Milan European Council of 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.

On 17 February 1986 nine Member States signed the Single European Act (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 in 1986, but owing to a private citizen having 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. Its principal provisions are as follows:

A. Extension of the Union's powers

1. Through the creation of a large internal market

A fully operational internal market was to be completed by 1 January 1993, taking up and broadening the objective of the common market introduced in 1958 (*3.1.1).

2. Through the establishment of new powers in

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

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

Qualified majority voting replaced unanimity in four of the Community's existing responsibilities (amendment of the common customs tariff, freedom to provide services, the free movement of capital and the common sea and air transport policy).

Qualified majority voting was also introduced for several new responsibilities, such as the internal market, social policy, economic and social cohesion, research and technological development, and environmental policy.

Finally, qualified majority voting was the subject of an amendment to the Council's internal rules of procedure, so as to comply with a previous Presidency declaration 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.

C. Growth of the role of the European Parliament

Parliament'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 gave 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 Parliament as co-legislator, on an equal footing with the Council.

→ Wilhelm Lehmann

1.1.3. The Maastricht and Amsterdam Treaties

The Maastricht Treaty altered the former European treaties and created a European Union based on three pillars: the European Communities, the Common Foreign and Security Policy (CFSP) and cooperation in the field of justice and home affairs (JHI). With a view to the enlargement of the Union, the Amsterdam Treaty made the adjustments needed to enable the Union to function more efficiently and democratically.

I. The Maastricht Treaty

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

A. The Union's structures

By instituting a European Union, the Maastricht Treaty marked a new step in the process of creating an 'ever-closer union among the peoples of Europe'. The Union was 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 had a single institutional structure, consisting of the Council, the European Parliament, the European Commission, the Court of Justice and the Court of Auditors which (being at the time strictly speaking the only EU institutions) exercised their powers in accordance with the Treaties. The Treaty established an Economic and Social Committee and a Committee of the Regions, which both had advisory powers. A European System of Central Banks and a European Central Bank were set up under the provisions of the Treaty in addition to the existing financial institutions in the EIB group, namely the European Investment Bank and the European Investment Fund.

B. The Union's powers

The Union created by the Maastricht Treaty was given certain powers by the Treaty, which were classified into three groups and were commonly referred to as 'pillars': The first 'pillar' consisted of the European Communities, providing a framework within which the powers for which sovereignty had been transferred by the Member States in the areas governed by the Treaty were exercised by the Community institutions. The second 'pillar' was the Common Foreign and Security Policy laid down in Title V of the Treaty. The third 'pillar' was cooperation in the fields of justice and home affairs laid down in Title VI of the Treaty. Titles V and VI provided for intergovernmental cooperation using the common institutions, with certain supranational features such as involving the Commission and consulting Parliament.

1. The European Community (first pillar)

The Community's task was to make the single market work and to promote, among other things, a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection and equality between men and women. The Community pursued 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 had to respect the principle of proportionality and, in areas that did not fall within its exclusive competence, the principle of subsidiarity (Article 5 EC).

2. The Common Foreign and Security Policy (CFSP) (second pillar)

The Union had the task of defining and implementing, by intergovernmental methods, a Common Foreign and Security Policy (*6.1.1). The Member States were to support this policy actively and unreservedly in a spirit of loyalty and mutual solidarity. Its objectives were: 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 promote international cooperation; to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.

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

The Union's objective was to develop common action in these areas by intergovernmental methods (*5.12.1) to provide citizens with a high level of safety within an area of freedom, security and justice. It covered 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;
- controlling illegal 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. Increased powers for the Union

1. European Community

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

2. European Union

Intergovernmental cooperation in the areas of police and judicial cooperation was strengthened by defining objectives and precise tasks and creating a new legal instrument similar to a directive. The instruments of the Common Foreign and Security Policy were developed later, in particular by creating a new instrument, the common strategy, a new office, the 'Secretary-General of the Council responsible for the CFSP', and a new structure, the 'Policy Planning and Early Warning Unit'.

B. A stronger position for Parliament

1. Legislative power

Under the codecision procedure, which was extended to existing 15 legal bases under the EC Treaty, Parliament and the Council became co-legislators on a practically equal footing. Excepting only agriculture and competition policy, the codecision procedure applied to all the areas where the Council was permitted to take decisions by qualified majority. In four cases (Articles 18, 42 and 47 and Article 151 on cultural policy, which remained unchanged) the codecision procedure was combined with a requirement for a unanimous decision in the Council. The other legislative areas where unanimity was required were not subject to codecision.

2. Power of control

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

3. Election and statute of Members

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

C. Closer cooperation

For the first time, the Treaties contained general provisions allowing some Member States under certain conditions to take advantage of common institutions to organise closer cooperation between themselves. This option was 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 closer cooperation was possible were the third pillar and, under particularly restrictive conditions, matters subject to non-exclusive Community competence. The conditions which any closer cooperation had to fulfil and the planned decision-making procedures had been drawn up in such a way as to ensure that this new factor in the process of integration would remain exceptional and, at all events, could only be used to move further towards integration and not to take retrograde steps.

D. Simplification

The Amsterdam Treaty removed from the European Treaties all provisions which the passage of time had rendered void or obsolete, while ensuring that this did not affect the legal effects which derived from them in the past. It also renumbered 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

a. The Amsterdam Treaty set the maximum number of Members of the European Parliament, in line with Parliament's request, at 700 (Article 189).

b. The composition of the Commission and the question of weighted votes were covered by a 'Protocol on the Institutions' attached to the Treaty. This provided that, in a Union of up to 20 Member States, the Commission would comprise one national of each Member State, provided that by that date, weighting of the votes in the Council had been modified. At all events, at least a year before the 21st Member State joined, a new IGC would have

to comprehensively review the Treaties' provisions on the institutions.

c. There was provision for the Council to use qualified majority voting in a number of the legal bases newly established by the Amsterdam Treaty. However, of the existing Community policies, only research policy had new provisions on qualified majority voting, with other policies still requiring unanimity.

F. Other matters

A protocol covered 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)) improved transparency.

Role of the European Parliament

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

→ Vesna Naglič

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

The 'Amsterdam leftovers' were meant to be resolved by the Treaty of Nice. However, this Treaty prepared the European Union only partially for the important enlargements to the east and south of 1 May 2004 and 1 January 2007. Hence, following up on the questions raised in the Laeken Declaration of 15 December 2001, the European Convention made an effort to produce a new legal base for the Union in the form of the Treaty Establishing a Constitution for Europe. Following negative referendums in two Member States, this treaty was not ratified.

Treaty of Nice

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

A. Objectives

The conclusions of the 1999 Helsinki European Council required the EU to be able, by the end of 2002, to welcome as new Member States those applicant countries which were ready for accession. Since only two of the applicant countries were more populous than the current Member State average, the political weight of countries with a smaller population was due to increase considerably. The Treaty of Nice was thus meant to make the EU institutions more efficient and legitimate and to prepare the EU for its next major enlargement.

B. Background

A number of institutional issues had been addressed by the Intergovernmental Conferences (IGC) of Maastricht and Amsterdam (*1.1.3) but not satisfactorily resolved (referred to as the 'Amsterdam leftovers'): the size and composition of the Commission, the weighting of votes in Council, and the extension of qualified majority voting. On the basis of a report by the Finnish Presidency, the Helsinki European Council decided at the end of 1999 that an IGC should deal with the leftovers and all other changes required in preparation for enlargement.

C. Content

The IGC opened on 14 February 2000 and completed its work in Nice on 10 December 2000, reaching agreement on the above institutional questions and a range of other points, namely a new distribution of seats in the European Parliament, a more flexible enhanced cooperation, the monitoring of fundamental rights and values within the EU, and a strengthening of the EU's judicial system.

1. Weighting of votes in the Council

Taking together the system of voting in Council, the composition of the Commission and, to some extent, the distribution of seats in the European Parliament, the IGC realised that the main imperative was to change the relative weight of the Member States, a subject addressed by no other IGC 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 latter being the solution proposed by the Commission and upheld by Parliament. The IGC chose the former option. The number of votes was increased for all Member States but the share of the most populous Member States decreased: previously 55% of the votes, it fell to 45% when the 10 new members joined and to 44.5% on 1 January 2005. This was why the demographic 'safety net' was introduced: 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.

2. The European Commission

a. Composition

Since 2005 the Commission has one commissioner per Member State. The Council has the power to decide, acting unanimously, on the number of commissioners and on the arrangements for a rotation system, provided that each Commission reflects the demographic and geographical range of the Member States.

b. Internal organisation

The Treaty of Nice provides the President of the Commission with the power to allocate responsibilities to the commissioners and to redistribute these in the course of a term of office. The President chooses the Vice-Presidents and decides how many there shall be.

3. The European Parliament

a. Composition

The Treaty of Amsterdam had set the maximum number of MEPs at 700. At Nice the European Council

thought it necessary, with an eye to enlargement, to revise the number of MEPs for each Member State. The new composition of Parliament was also used to counterbalance the changed weighting of votes in the Council. The maximum number of MEPs was hence set at 732.

b. Powers

Parliament was enabled, like the Council, the Commission and the Member States, to institute a legal challenge to acts of the Council, the Commission or the European Central Bank 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 was transformed into a legal base for operations enabling regulations governing political parties at EU level and the rules regarding their funding to be adopted using the codecision procedure.

Parliament's legislative powers were increased through a slight broadening of the scope of the codecision procedure and by requiring that Parliament must give its assent to the establishment of enhanced cooperation in areas covered by codecision. Parliament must also be asked for its opinion should the Council pronounce on the risk of a serious breach of fundamental rights in a Member State.

4. Reform of the judicial system

a. The Court of Justice of the European Union

The Court of Justice of the EU obtained the possibility to meet in a number of different ways: it may sit in chambers (consisting of three or five judges), in a Grand Chamber (eleven judges) or as the full Court. The Council, acting unanimously, may increase the number of Advocates-General. The Court of Justice of the EU retains jurisdiction over questions referred for a preliminary ruling, but it may, under its Statute, refer types of matters other than those listed in Article 225 of the EC Treaty to the Court of First Instance.

b. Court of First Instance

The powers of the Court of First Instance were increased to include certain categories of preliminary rulings, with the possibility of judicial panels being established by unanimous decision of the Council. All these operating provisions, notably the powers of the Court of First Instance, were thenceforth set out in the Treaty itself.

5. Legislative procedures

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

6. Enhanced cooperation

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. Whereas the Amsterdam Treaty provided for enhanced cooperation under the first and third pillars only, the Treaty of Nice encompassed all three pillars.

The Treaty of Nice made two further changes: a referral to the European Council was no longer possible, and the concept of 'a reasonable period of time' clarified the wording of Article 43 TEU. The assent of Parliament was now required in all areas where enhanced cooperation relates to a question covered by the codecision procedure.

7. Protection of fundamental rights

A paragraph was added to Article 7 TEU to cover cases where a patent breach of fundamental rights has not actually occurred but where 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 Parliament, determines the existence of the risk and addresses appropriate recommendations to the Member State in question. A non-binding Charter of Fundamental Rights was proclaimed (*1.1.6).

D. Role of the European Parliament

As at earlier intergovernmental conferences, Parliament was actively involved in preparations for the 2000 IGC, giving its views on the conference agenda and its progress and objectives. Parliament also expressed its opinion on the substance and judicial implications of the Charter of Fundamental Rights (*1.1.6). Parliament insisted that the next IGC should be a transparent process, with the involvement of European and national parliamentarians, the Commission, and input from ordinary people. Its result should be a constitution-type document.

Convention on the Future of Europe

A. Basis and objectives

In accordance with Declaration No 23 annexed to the Treaty of Nice, the Laeken European Council of 14 and 15 December 2001 decided to organise a Convention bringing together the main parties concerned for a debate on the future of the European Union. Its objectives were to prepare the next IGC as transparently as possible and to address the four main issues concerning 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.

B. Organisation

The Convention had a chair (Valéry Giscard D'Estaing), two vice-chairs (Guiliano Amato and Jean-Luc Dehaene), 15 representatives of the Member States' heads of state or government, 30 members of the national parliaments (two per Member State), 16 members of the European Parliament and two members of the Commission. The countries having applied to join the Union also took part in the debate on an equal footing but could not block any consensus which might emerge among the Member States. The Convention thus had a total of 105 members.

In addition to the chair and vice-chairs, the Praesidium comprised nine members of the Convention and an invited representative chosen by the applicant countries. The Praesidium had the role of lending impetus to the Convention and providing it with a basis on which to work.

C. Outcome

The work of the Convention comprised: a 'listening phase' in which it sought to identify the expectations and needs of Member States and Europe's citizens; a phase in which the ideas expressed were studied; and a phase of drafting recommendations based on the essence of the debate. At the end of 2002, eleven working groups presented their findings to the Convention. During the first half of 2003, the Convention drew up and debated a text which became the draft Treaty establishing a Constitution for Europe.

Part I of the Treaty (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. A subsequent IGC adopted this text on 18 June 2004 with a number of amendments, but the basic structure of the Convention's draft was retained. As a result of two negative referendums in France and the Netherlands the ratification procedure for the Treaty Establishing a Constitution for Europe was not completed (*1.1.5).

D. Role of the European Parliament

The impact of MEPs during the work of the European Convention was seen by most observers as decisive. Thanks to several aspects, such as their experience of negotiating in an international environment and the fact that the Convention made use of Parliament's premises, MEPs were able to leave a strong imprint on the debates and results of the Convention. Furthermore, they contributed actively to the formation of political families comprising MEPs and national MPs. Parliament managed to achieve a considerable number of its initial objectives. Most of these were safeguarded in the Treaty of Lisbon.

→ Wilhelm Lehmann

1.1.5. The Treaty of Lisbon

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

Legal basis

Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (OJ C 306, 17.12.2007), entry into force on 1 December 2009.

History

The Lisbon Treaty started as a constitutional project at the end of 2001 (European Council declaration on the future of the European Union, or Laeken declaration), and was followed up in 2002 and 2003 by the European Convention which drafted the Treaty establishing a Constitution for Europe (Constitutional Treaty) (*1.1.4). The process leading to the Lisbon Treaty is a result of the negative outcome of two referenda on the Constitutional Treaty in May and June 2005, in response to which the European Council decided to have a two-year 'period of reflection'. Finally on the basis of the Berlin declaration of March 2007, the European Council of 21 to 23 June 2007 adopted a detailed mandate for a subsequent Intergovernmental Conference (IGC) under the Portuguese Presidency. The IGC concluded its work in October 2007. The Treaty was signed at the European Council of Lisbon on 13 December 2007 and it has been ratified by all Member States.

Content

A. Objectives and legal principles

The Treaty establishing the European Community is renamed the 'Treaty on the Functioning of the European Union' and the term 'Community' is replaced by 'Union' throughout the text. The Union takes the place of the Community and is its legal successor. The Lisbon Treaty does not create state-like Union symbols like a flag or an anthem. Although the new text is hence no longer a constitutional treaty by name, it preserves most of its substantial achievements.

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

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

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

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

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

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

B. Enhanced democracy and better protection of fundamental rights

The Treaty of Lisbon expresses the three fundamental principles of democratic equality, representative democracy and participatory democracy. Participatory democracy takes the new form of a citizens' initiative (*2.1.5).

The Charter of Fundamental Rights is not incorporated directly into the Lisbon Treaty but acquires a legally binding character through Article 6(1) TEU, giving the Charter the same legal value as the Treaties (*1.1.6).

The EU's accession to the European Convention was opened when the 14th protocol to the ECHR entered into force, on 1 June 2010. It allows not only states but also international organisations to become signatories of the ECHR. Accession still requires the ratification by all states that are parties to the ECHR as well as the EU itself.

C. A new institutional set-up

1. The European Parliament

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

The EP's legislative powers have been increased through the 'ordinary legislative procedure' which replaced the former codecision procedure. It now applies to more than 40 new policy areas, raising the total number to 73. The assent procedure continues to exist as 'consent' and the consultation procedure remains unchanged. The new budgetary procedure creates full parity between Parliament and the Council for approval of the annual budget. The multiannual financial framework has to be agreed by Parliament (consent).

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

The maximum number of MEPs has been set at 751. The maximum number of seats per Member State is decreased to 96, the minimum number increased to 6. Germany will keep its 99 MEPs until the next elections, thus raising the total number of MEPs to 754. The difference of 18 seats between the 736 MEPs elected in June 2009 (on the basis of the Treaty of Nice) and the number of seats provided for by the Treaty of Lisbon was filled in December 2011.

2. The European Council

The Lisbon Treaty formally recognises the European Council as an EU institution, responsible for providing the Union with the 'impetus necessary for its development' and for defining its 'general political directions and priorities'. The European Council has no legislative functions. A long-term presidency replaces the current system of six-month rotation. The President is elected by a qualified majority of the European Council for a renewable term of 30 months. This should improve the continuity and coherence of its work. The President also represents the Union externally, without prejudice to the duties of the High Representative of the Union for Foreign Affairs and Security Policy (see below).

3. The High Representative (HR) for Foreign Affairs and Security Policy

The HR is appointed by a qualified majority of the European Council with the agreement of the President of the European Commission. The HR is responsible for the EU's Common Foreign and Security Policy and has the right to put forward proposals. Besides chairing the Foreign Affairs Council she is also Vice-President of the Commission and is assisted by the European External Action Service, comprising staff from the Council, the Commission and national diplomatic services.

4. The Council

Lisbon maintains the principle of double majority voting (citizens and Member States). However, the current arrangements shall remain in place until November 2014; between 1 November 2014 and 31 March 2017 the new rules shall apply but the use of existing voting weights can be requested by any Member State.

Qualified majority is reached when 55% of members of the Council, comprising at least 65% of the population, support a proposal (Article 16(4) TEU). When the Council is not acting on a proposal from the Commission or the High Representative, the necessary majority of Member States increases to 72% (Article 238(2) TFEU). To block legislation, at least four countries have to vote against a proposal. A new scheme inspired by the 'Ioannina compromise' will allow 75% (55% from 1 April 2017) of the Member States necessary for the blocking minority to ask for reconsideration of a proposal during a 'reasonable time period' (Declaration 7).

The Council meets in public when it deliberates and votes on a draft legislative act. To this end, each Council meeting is divided into two parts dealing respectively with legislative acts and non-legislative activities. The Council Presidency continues to rotate on a six-month basis but there are 18-month group presidencies of three Member States in order to ensure better continuity of work. As an exception, the Foreign Affairs Council is continuously chaired by the HR for Foreign Affairs and Security Policy.

5. The Commission

Since the President of the Commission will be chosen and elected by taking into account the outcome of

the European elections, his or her political legitimacy will be increased. The President is responsible for the internal organisation of the college (appointment of commissioners, distribution of portfolios, request to resign under particular circumstances).

6. The Court of Justice of the European Union

The jurisdiction of the Court is extended to all activities of the Union with the exception of CFSP. The number of advocates-general can be increased from eight to eleven. Specialised courts can be set up with the consent of Parliament. Access to the Court is facilitated for individuals. A European Public Prosecutor's Office should be set up in order to investigate, prosecute and bring to judgment offences against the Union's financial interests.

D. More efficient and democratic policy-making with new policies and new competencies

Several so-called 'passerelle clauses' allow a change from unanimous decision-making to qualified majority voting and from the consultation procedure to codecision (Article 31(3) TEU, Articles 81, 153, 192, 312 and 333 TFEU, plus some passerelle-type procedures concerning judicial cooperation in criminal matters) (*1.4.2). In areas where the Union has no exclusive powers, at least nine Member States can establish enhanced cooperation between themselves. Authorisation for its use must be granted by the Council after obtaining the consent of the European Parliament. In CFSP unanimity applies.

The Lisbon Treaty considerably strengthens the principle of subsidiarity by involving the national parliaments in the decision-making process (*1.3.5). A certain number of new or extended policies have been introduced in environment policy, which now includes the fight against climate change, and energy policy, which makes new references to solidarity and the security and interconnectivity of supply. Furthermore, intellectual property rights, sport, space, tourism, civil protection and administrative cooperation are now the possible subject of EU law-making.

In CSDP (*6.1.2) the Lisbon Treaty introduces a mutual defence clause which provides that all Member States are obliged to provide help to a Member State under attack. A solidarity clause provides that the Union and each of its members have to provide assistance by all possible means to a Member State affected by a human or natural catastrophe or by a terrorist attack. A 'permanent structured cooperation' is open to all Member States who commit themselves to taking part in European military equipment programmes and to providing combat units that are available for immediate action. To establish such cooperation, it is necessary to have a qualified majority vote by the Council after consultation with the HR.

Role of the European Parliament

See 1.1.4 for Parliament's contributions to the European Convention and its implication in previous IGCs. With respect to the 2007 IGC, leading to the signature of the Treaty of Lisbon, the Parliament for the first time sent three representatives to the conference under the Portuguese presidency. According to Parliament's President, at his inaugural speech in February 2007, ensuring 'that the substance of the Constitutional Treaty, including the chapter on values, becomes a legal and political reality by the next European Parliament elections' was one of Parliament's highest priorities for the second half of its sixth term.

→ Petr Novak

1.1.6. The Charter of Fundamental Rights

The Charter of Fundamental Rights sets out the basic rights that must be respected both by the European Union and the Member States when implementing EU law. It is a legally binding instrument that was drawn up in order to expressly recognise, and give visibility to, the role of fundamental rights in the legal order of the Union.

Legal status

The Charter of Fundamental Rights of the European Union was solemnly proclaimed by Parliament, the Council and the Commission in Nice in 2000. After being amended, it was proclaimed again in 2007.

However, the solemn proclamation did not make the Charter legally binding. The adoption of the draft Constitution for Europe, signed in 2004, would have granted it binding force. The failure of the ratification process (*1.1.4) meant that the Charter remained a mere declaration of rights until the adoption of the Treaty of Lisbon.

On 1 December 2009, the Charter became legally binding. Article 6(1) of the Treaty on European Union (TEU) now provides that '[t]he Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union […], which shall have the same legal value as the Treaties'. The Charter, therefore, constitutes primary EU legislation; as such, it serves as a parameter for examining the validity of secondary EU legislation and national measures.

Background

The European Communities (now the European Union) were originally created as an international organisation with an essentially economic scope of action. Initially, therefore, there was no perceived need for rules concerning respect for fundamental rights.

However, once the Court of Justice affirmed the principles of direct effect (*1.2.1) and of primacy of European law, according to which Community law takes precedence over domestic law [Costa v. ENEL, Case 6/64], certain national courts began to express concerns about the effects which such case-law might have on the protection of constitutional values. If European law was to prevail even over domestic constitutional law, it would become possible for it to breach the fundamental rights granted by national constitutions. In response to this, in 1974 the German and Italian constitutional courts each adopted a judgment in which they asserted their power to review European law in order to ensure its consistency with constitutional rights [Solange I; Frontini].

At the same time, the Court of Justice developed its own case-law on the role of fundamental rights in the European legal order. As early as 1969 it recognised that fundamental human rights were 'enshrined in the general principles of Community law' and, as such, protected by the Court itself [Stauder, Case 29/69]. Its subsequent reaffirmation of the same principle eventually led the German Constitutional Court to adopt a more nuanced approach, recognising that the Court of Justice ensured a level of protection of fundamental rights substantially similar to that required by the national constitution, and, thus, that there was no need to verify the compatibility of every piece of Community legislation with the constitution [Solange II, 1987].

For a long time, the protection of fundamental rights against action by the Communities was therefore left to the Court of Justice, which elaborated a catalogue of rights drawn from the general principles of Community law and from the common constitutional traditions of the Member States. However, the absence of an explicit, written catalogue of fundamental rights, binding on the European Community and easily accessible to citizens, remained an issue of concern. Two main proposals were made on repeated occasions with the aim of filling this legislative gap.

The first was that the European Community could accede to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), an already existing regional instrument aimed at protecting human rights, whose correct application by States Parties is supervised by the European Court of Human Rights. This option, however, was ruled out after the Court of Justice rendered an Opinion [2/94], according to which the Community lacked the competence to accede to the Convention. As a consequence, this avenue could only be pursued after the Treaties had been amended. The necessary amendments were finally adopted with the entry into force of the Treaty of Lisbon. Article 6 TEU now requires the Union to accede to the ECHR.

The other proposal was that the Community should adopt its own Charter of Fundamental Rights, granting the Court of Justice the power to ensure its correct implementation. This approach was discussed on a number of occasions over the years and was proposed again during the 1999 European Council meeting in Cologne.

The drafting process

The basic content of the Charter was shaped by the Conclusions of the Cologne meeting, according

to which the main purpose of the Charter was to make the overriding importance and relevance of fundamental rights more visible to EU citizens. The main sources of inspiration for the drafters of the Charter were to be the ECHR and the constitutional traditions common to the Member States, as general principles of Community law. In addition, the European Social Charter (a Council of Europe treaty) and the Community Charter of the Fundamental Social Rights of Workers would also serve as sources of inspiration, insofar as they did not merely establish objectives for action.

The composition of the body which was to draft the Charter was decided on at the 1999 European Council meeting in Tampere. The body, which was called the 'Convention', included, as full members, 15 representatives of the heads of state or government of the then 15 Member States, one representative of the President of the Commission, 16 Members of the European Parliament, and 30 members of national parliaments (two from each parliament). Observer status was also granted to two representatives of the Court of Justice and two representatives of the Council of Europe, including one from the European Court of Human Rights. Other EU bodies (such as the Economic and Social Committee, the Committee of the Regions and the Ombudsman), as well as other bodies, social groups or experts, could be invited to give their views but were not directly involved in the drafting process. Representation of the views of citizens and civil society was ensured, given the predominance of representatives drawn from the national parliaments and the European Parliament. The composition and working methods of the Convention served as a model for the Convention on the Future of Europe (*1.1.4).

Content

The Charter of Fundamental Rights is divided into seven titles, six of which are devoted to listing specific types of rights while the last clarifies the scope of application of the Charter and the principles governing its interpretation. One significant characteristic of the Charter is its innovative grouping of rights, whereby it abandons the traditional distinction between, on the one hand, civil and political rights and, on the other, economic and social rights. At the same time, the Charter makes a clear distinction between rights and principles. The latter, according to Article 52(5), are to be implemented through additional legislation and only become significant for the Courts in cases involving the interpretation and legality of such laws.

The substantive part of the Charter is subdivided as follows:

Title I ('Dignity') upholds the rights to human dignity, life and integrity of the person, and reaffirms the prohibition against torture and slavery.

Title II ('Freedoms') upholds the rights to liberty and respect for private and family life, the right to marry and to found a family, and the rights to freedom of thought, conscience and religion, expression and assembly. It also affirms the rights to education, work, property and asylum.

Title III ('Equality') reaffirms the principle of equality and non-discrimination as well as respect for cultural, religious and linguistic diversity. It also grants specific protection to the rights of children, the elderly and persons with disabilities.

Title IV ('Solidarity') ensures protection for the rights of workers, including the rights to collective bargaining and action and to fair and just working conditions. It also recognises additional rights and principles, such as the entitlement to social security, the right of access to health care and the principles of environmental and consumer protection.

Title V ('Citizens' Rights') lists the rights of the citizens of the Union: the right to vote and to stand as a candidate in elections to the European Parliament and in municipal elections, the right to good administration, and the rights to petition, to have access to documents, to diplomatic protection and to freedom of movement and of residence (*2.1.1).

Title VI ('Justice') reaffirms the rights to an effective remedy and a fair trial, the right of defence, the principles of legality and proportionality of criminal offences, and the right to protection against double jeopardy.

While the Charter mostly reaffirms rights which already existed in the Member States, and which had been recognised as forming part of the general principles of EU law, it is also innovative in some respects. For instance, disability, age and sexual orientation are now explicitly mentioned as prohibited grounds of discrimination. Moreover, the Charter includes some 'modern' rights, as illustrated by the prohibition against reproductive human cloning.

The main value of the Charter, however, does not lie in its innovative character, but in the explicit recognition of the pivotal role that fundamental rights play in the EU legal order. Thus, the Charter expressly acknowledges that the Union is a community of rights and of values, and that citizens' fundamental rights lie at the heart of the European Union.

Scope of application and interpretation

Title VII of the Charter includes some general provisions governing its interpretation and application.

The personal scope of application of the Charter is potentially very broad: most of the rights it recognises are granted to 'everyone', regardless of nationality or status. However, some rights are only granted to citizens (in particular, most of the rights listed in Title V), while others are rather relevant for non-EU nationals (for instance, the right to asylum) or for specific categories of persons (such as workers).

The material scope of application of the Charter is defined expressly in Article 51, which states that its provisions are addressed only to the EU institutions and bodies and, when they act to implement EU law, to the Member States (*2.1.2). This provision serves to draw the boundary between the scope of the Charter and that of national constitutions: the Charter does not bind states unless they are acting to implement EU law. Moreover, the Charter does not extend the powers or competences of the Union, thereby ensuring that the adoption of the Charter does not, by itself, increase the powers of the Union to the detriment of those of the Member States.

Additional rules confirming the importance of national constitutional traditions and national laws are to be found in Articles 52 and 53. The first of these articles stipulates that fundamental rights must be interpreted in harmony with the constitutional traditions common to the Member States, as well as with the ECHR, and with full account taken of national laws and practices. Article 53 clearly states that the Charter cannot restrict or adversely affect the level of protection of fundamental rights already provided by Union law, international law (in particular the ECHR) and the Member States' constitutions.

While the Charter encompasses a number of rights, these are not granted unlimited protection. Indeed, Article 52 allows for limitations on the exercise of rights, so long as these are provided for by law, respect the essence of the rights in question, and are proportionate and necessary to protect the rights of others or the general interest. Moreover, while some rights are framed in absolute terms, others are only granted 'in accordance with Union law and national laws and practices', signifying that the scope of such rights may be subject to additional limitations.

The Charter is equally applicable to all the Member States of the European Union. Although a Protocol has been adopted to clarify its application to the United Kingdom and Poland, it does not limit or rule out its impact on the legal orders of these two Member States, as expressly recognised by the Court of Justice [N.S., Case C-411/10].

Role of the European Parliament

Immediately after the Court of Justice recognised the primacy of Community law over national law, Parliament underlined the risk that the new doctrine might undermine human rights as protected by national constitutions.

In 1977, Parliament, the Council and the Commission adopted a Joint Declaration on Fundamental Rights, in which they committed themselves to respect fundamental rights in the exercise of their powers. Moreover, in 1979 Parliament adopted a resolution suggesting that the European Community should accede to the ECHR.

The 1984 draft Treaty establishing the European Union (*1.1.2) specified that the Union must protect the dignity of the individual and grant everyone coming within its jurisdiction the fundamental rights and freedoms derived from the common principles of the national constitutions and the ECHR. It also envisaged accession of the Union to the ECHR.

In April 1989, Parliament proclaimed the Declaration of fundamental rights and freedoms. Subsequent attempts to grant this declaration the status of a legally binding document were, however, unsuccessful.

In 1997, after the adoption of the Amsterdam Treaty, Parliament again called for the adoption of a binding Charter of Fundamental Rights. During the drafting process that led to the adoption of the Charter, Parliament adopted several resolutions insisting that this instrument be given legally binding force by incorporating it into the Treaties. After the Charter was solemnly declared, Parliament expressed its disappointment at its non-binding nature and again called for it to be incorporated in the Treaties in a legally binding manner.

→ Rosa Raffaelli

1.2. Main characteristics of the European Union's legal system

1.2.1. Sources and scope of European Union law

The European Union has its own legal order which is separate from international law and forms an integral part of the legal systems of the Member States. The legal order of the Union is based on its own sources of law. Given the varied nature of these sources, a hierarchy had to be established among them. Primary legislation is at the top of the hierarchy and is represented by the Treaties and general legal principles. This is followed by international agreements concluded by the Union, and secondary legislation, which is based on the Treaties.

Sources and hierarchy of Union law

- Treaty on European Union (TEU); Treaty on the Functioning of the European Union (TFEU); Charter of Fundamental Rights of the European Union;
- international agreements;
- general principles of Union law;
- secondary legislation.

The Treaties and the general principles are at the top of the hierarchy, and are known as primary legislation. Following the entry into force of the Lisbon Treaty, the same value was also given to the Charter of Fundamental Rights. International agreements concluded by the European Union are subordinate to primary legislation. Secondary legislation is the next level down in the hierarchy and is valid only if it is consistent with the acts and agreements which have precedence over it.

Objectives

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

EU sources of law

A. Primary legislation of the European Union *1.1.1, 1.1.2, 1.1.3

B. Secondary legislation of the European Union

1. General points

The legal acts of the Union are listed in Article 288 TFEU. They are regulations, directives, decisions, recommendations and opinions. EU institutions may adopt legal acts of these kinds only if they are empowered to do so by the Treaties. The limits of Union competences are governed by the principle of conferral, which is enshrined in Article 5(1) TEU. The Treaty of Lisbon defines the scope of Union competences, dividing them into three categories: exclusive competences, shared competences and supporting competences, whereby the EU adopts measures to support or complement Member States' policies. Articles 3, 4 and 6 TFEU list the areas that come under each category of Union competence. In the absence of the necessary powers to attain one of the objectives set out in the Treaties, the institutions may, in certain circumstances, apply the provisions of Article 352 TFEU.

The Lisbon Treaty simplified the EU legal system by reducing the number of Union legal acts. Effectively, following Lisbon, the Community method applies to all European policy areas, except for Common Foreign and Security Policy. Lisbon also did away with the legal instruments in the former 'third pillar'. As a result, the institutions now adopt only those legal instruments listed in Article 288 TFEU. The only exceptions are the common foreign, security and

defence policies, to which the intergovernmental method still applies. In this area, common strategies, common actions and common positions have been replaced by 'general guidelines' and 'decisions defining' actions to be undertaken and positions to be adopted by the Union, and the arrangements for the implementation of those decisions (Article 25 TEU).

There are, in addition, various forms of action, such as recommendations, communications and acts on the organisation and running of the institutions (including interinstitutional agreements), the designation, structure and legal effects of which stem from various provisions in the Treaties or the rules adopted pursuant to the Treaties. White papers, green papers and action programmes are also important, given that the Commission uses these documents to agree long-term objectives.

2. Hierarchy of EU secondary legislation

The Lisbon Treaty introduced a hierarchy among secondary legislation by drawing a clear distinction in Articles 289, 290 and 291 TFEU between legislative acts, delegated acts and implementing acts. Legislative acts are legal acts which are adopted through the ordinary or a special legislative procedure. Delegated acts for their part are non-legislative acts of general application which supplement or amend certain non-essential elements of a legislative act. The power to adopt these acts may be delegated to the Commission by the legislator (Parliament and the Council). The objectives, content, scope and duration of the delegation of power are defined in the legislative act, as are any urgent procedures, where applicable. In addition, the legislator lays down the conditions to which the delegation is subject, which may be the authority to revoke the delegation or the right to express an objection.

Implementing acts are generally adopted by the Commission, in which body competence is vested in cases where uniform conditions for implementing legally binding acts are needed. Implementing acts are a matter for the Council only in specific cases which are duly justified and in areas of Common Foreign and Security Policy. Where a basic act is adopted under the ordinary legislative procedure, the European Parliament or the Council may at any time indicate to the Commission that, in its view, a draft implementing act goes beyond the implementing powers provided for in the basic act. In this case, the Commission must revise the draft act in question.

3. The various types of EU secondary legislation

a. Regulations

Regulations are of general application, binding in their entirety and directly applicable. They must be complied with fully by those to whom they apply (private persons, Member States, Union institutions). Regulations are directly applicable in all the Member States as soon as they enter into force (on the date stipulated or, failing this, on the twentieth day following their publication in the Official Journal of the European Union) and do not need to be transposed into national law.

They are designed to ensure the uniform application of Union law in all the Member States. Regulations supersede national laws incompatible with their substantive provisions.

b. Directives

Directives are binding, as to the result to be achieved, upon any or all of the Member States to whom they are addressed, but leave to the national authorities the choice of form and methods. National legislators must adopt a transposing act or 'national implementing measure' to transpose directives and bring national law into line with their objectives. Individual citizens are given rights and bound by the legal act only once the transposing act has been adopted. Member States are given some discretion, in transposing directives, to take account of specific national circumstances. Transposition must be effected within the period laid down in the directive. In transposing directives, Member States guarantee the effectiveness of Community law, in accordance with the principle of sincere cooperation established in Article 4(3) TEU.

In principle, directives are not directly applicable. The European Court of Justice, however, has ruled that certain provisions of a directive may, exceptionally, have direct effects in a Member State even if the latter has not yet adopted a transposing act in cases where: (a) the directive has not been transposed into national law or has been transposed incorrectly; (b) the provisions of the directive are imperative and sufficiently clear and precise; and (c) the provisions of the directive confer rights on individuals.

If these conditions have been met, individuals may invoke the provision in question in their dealings with the public authorities. Even when the provision does not confer any rights on the individual, and only the first and second conditions have been met, Member State authorities are required to take account of the untransposed directive. This ruling is based chiefly on the principles of effectiveness, the prevention of Treaty violations and legal protection. On the other hand, an individual may not rely on the direct effect of an untransposed directive in dealings with other individuals (the 'horizontal effect'; *Faccini Dori* case [92] ECR, p. I-3325 et seq., point 25).

According to the case-law of the Court (*Francovich* case, joined cases C-6/90 and C-9/90), an individual citizen is entitled to seek compensation from a Member State which is not complying with Union law. This is possible, in the case of a directive which has not been transposed or which has been

transposed inadequately, where: (a) the directive is intended to confer rights on individuals; (b) the content of the rights can be identified on the basis of the provisions of the directive; and (c) where there is a causal link between the breach of the obligation to transpose the directive and the loss and damage suffered by the injured parties. Fault on the part of the Member State does not then have to be demonstrated in order to establish liability.

c. Decisions, recommendations and opinions

Decisions are binding in their entirety. Where those to whom they are addressed are stipulated (Member States, natural or legal persons), they are binding only on them, and address situations specific to those Member States or persons. An individual may invoke the rights conferred by a decision addressed to a Member State only if that Member State has adopted a transposing act. Decisions may be directly applicable on the same basis as directives.

Recommendations and opinions do not confer any rights or obligations on those to whom they are addressed, but may provide guidance as to the interpretation and content of Union law.

4. Provisions on competences, procedures, implementation and enforcement of legal acts

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

b. Implementation of Union legislation

Under primary law, the EU has only limited powers of enforcement, as EU law is usually enforced by the Member States. Furthermore, Article 291(1) TFEU adds that Member States shall adopt all measures of national law necessary to implement legally binding Union acts. Where uniform conditions for implementing legally binding Union acts are needed, the Commission exercises its implementing powers (Article 291(2) TFEU).

c. Choice of type of legal act

In many cases, the Treaties lay down the type of legal act to be adopted. In many other cases, however, no type of legal act is specified. In these cases, Article 296(1) TFEU states that the institutions must select it on a case-by-case basis, 'in compliance with the applicable procedures and with the principle of proportionality'.

d. General principles of Union law and fundamental rights

The Treaties make very few references to the general principles of Union law. These principles have mainly been developed in the case-law of the Court of Justice of the European Union (legal certainty, institutional balance, legitimate expectation, etc.), which is also the basis for the recognition of fundamental rights as general principles of Union law. These principles are now enshrined in Article 6(3) TEU, which refers to the fundamental rights as guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States and the Charter of Fundamental Rights of the European Union (*1.1.6).

e. International agreements concluded by the European Union

The Union may, within its sphere of competence, conclude international agreements with third countries or international organisations (Article 216(1) TFEU). These agreements are binding on the Union and the Member States, and are an integral part of Union law.

Role of the European Parliament

Under Article 14(1) TEU: 'The European Parliament shall, jointly with the Council, exercise legislative and budgetary functions'. The Lisbon Treaty gave Parliament significantly more legislative powers by extending the scope of the codecision procedure (under which Parliament has equal rights with the Council) to many more policy areas. Following the entry into force of the Lisbon Treaty, codecision is now known as the 'ordinary legislative procedure'. Parliament is seeking to simplify the legislative process, improve the drafting quality of legal texts and ensure that more effective penalties are imposed on Member States that fail to comply with Union law.

→ Vesna Naglič / Danai Papadopoulou

1.2.2. The principle of subsidiarity

In areas which do not fall within the Union's exclusive competence, the principle of subsidiarity, laid down in the Treaty on European Union, defines the circumstances in which it is preferable for action to be taken by the Union, rather than the Member States.

Legal basis

Article 5(3) of the Treaty on European Union (TEU) and Protocol (No 2) on the application of the principles of subsidiarity and proportionality.

Objectives

The principle of subsidiarity and the principle of proportionality govern the exercise of the EU's competences. In areas in which the European Union does not have exclusive competence, the principle of subsidiarity seeks to protect the capacity of the Member States to take decisions and to take action and authorises intervention by the Union when the objectives of an action cannot be satisfactorily achieved by the Member States 'by reason of the scale and effects of the proposed action'. The purpose of including a reference to the principle in the European Treaties is also to ensure that powers are exercised as close to the citizen as possible.

Achievements

A. Origin and history

The principle of subsidiarity was formally enshrined by the Maastricht Treaty, which included a reference to it in the Treaty establishing the European Community (TEC). However, the Single European Act (1987) had already incorporated a subsidiarity criterion into environmental policy, albeit without referring to it explicitly as such. In its judgment of 21 February 1995 (T-29/92), the Court of First Instance of the EC ruled that the principle of subsidiarity was not a general principle of law, against which the legality of Community action should have been tested, prior to the entry into force of the EU Treaty.

Without changing the wording of the reference to the principle of subsidiarity in Article 5, second paragraph, of the EC Treaty, the Treaty of Amsterdam annexed to the EC Treaty the 'Protocol (No 2) on the application of the principles of subsidiarity and proportionality'. The overall approach to the application of the principle of subsidiarity agreed at the 1992 European Council in Edinburgh thus became legally binding and subject to judicial review via the protocol on subsidiarity.

The Lisbon Treaty incorporated the principle of subsidiarity into Article 5(3) TEU and repealed the corresponding provision of the TEC while retaining its wording. It also added an explicit reference to the regional and local dimension of the principle of subsidiarity. Furthermore, the Lisbon Treaty replaced the 1997 protocol on the application of the principles of subsidiarity and proportionality by a new protocol with the same name (Protocol No 2), the main difference being the new role of the national parliaments in ensuring compliance with the principle of subsidiarity (*1.3.5).

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 relation to central government. 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 the context of the European Union, the principle of subsidiarity serves to regulate the exercise of the Union's non-exclusive powers. It rules out Union intervention when an issue can be dealt with effectively by Member States at central, regional or local level and means that the Community is justified in exercising its powers when Member States are unable to achieve the objectives of a proposed action satisfactorily.

Under Article 5(3) TEU there are three preconditions for intervention by Union institutions in accordance with the principle of subsidiarity: (a) the area concerned does not fall within the Union'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 Union.

C. Scope

1. The demarcation of Union competences

The principle of subsidiarity applies only to areas in which competence is shared between the Union and the Member States. The entry into force of the Treaty of Lisbon has put an end to the differing interpretations of the scope of the principle of subsidiarity by providing a clearer demarcation of the powers conferred on the Union. Part One, Title I, of the TFEU in fact divides the competences of the Union into three categories (exclusive, shared and supporting) and identifies the areas covered by the three categories.

2. Where it applies

The principle of subsidiarity applies to all the EU institutions. The rule has practical significance for legislative procedures. The Lisbon Treaty has strengthened the role of both the national parliaments and the Court of Justice in monitoring compliance with the principle of subsidiarity.

D. National parliamentary scrutiny

Under the second paragraph of Article 5(3) and Article 12(b) TEU, national parliaments monitor compliance with the principle of subsidiarity in accordance with the procedure set out in Protocol No 2. Under this procedure, any national parliament or any chamber of a national parliament has eight weeks from the date of forwarding of a draft legislative act to send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. If 'negative' reasoned opinions represent at least one third (one vote per chamber for a bicameral parliamentary system and two votes for a unicameral system) of the votes allocated to the national parliaments, the draft must be reviewed ('yellow card'). The institution which produced the draft legislative act may decide to maintain, amend or withdraw it. This threshold is reduced to one quarter for legislation relating to police and judicial cooperation in criminal matters. If, in the context of the ordinary legislative procedure, at least a simple majority of the votes allocated to national parliaments challenge the compliance of a proposal for a legislative act with the principle of subsidiarity and the Commission decides to maintain its proposal, the matter is referred to the legislator (European Parliament and the Council), which takes a decision at first reading. If the legislator considers that the legislative proposal is not compatible with the principle of subsidiarity, it may reject it subject to a majority of 55% of the members of the Council or a majority of the votes cast in the European Parliament ('red card' or 'orange card').

In May 2012, for the first time, a 'yellow card' was issued with regard to a Commission proposal for a regulation concerning the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services ('Monti II'). Twelve out of 40 national parliaments or chambers thereof (representing 19 out of 54 — or more than one third — of votes allocated) considered that the content of the proposal did not conform to the principle of subsidiarity. The Commission eventually withdrew its proposal.

E. Judicial review

Compliance with the principle of subsidiarity may be reviewed retrospectively (following the adoption of the legislative act) by means of a legal action brought before the Court of Justice of the European Union. This is also stated in the Protocol. However, the Union institutions have wide discretion in applying this principle. 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 296 TFEU. This requirement is met if it is clear from reading the recitals that the principle has been complied with.

Such actions may be brought by Member States or notified by them on behalf of their national Parliament or a chamber thereof, in accordance with their legal order. The Committee of the Regions may also bring such actions against legislative acts if the TFEU provides that it must be consulted on the adoption of such acts.

Role of the European Parliament

The European Parliament was the instigator of the concept of subsidiarity and, on 14 February 1984, in adopting the draft TEU, proposed a provision stipulating that in cases where the Treaty conferred on the Union a competence which was concurrent with that of the Member States, the Member States could act as long as the Union 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 into many resolutions (for example those of 23 November and 14 December 1989, 12 July and 21 November 1990 and 18 May 1995), in which it reaffirmed its support for the principle of subsidiarity.

A. Interinstitutional agreements

On 25 October 1993, the Council, Parliament and the Commission signed an interinstitutional agreement which demonstrated clearly the three institutions' eagerness to take decisive steps in this area. They thus undertook to comply with the principle of subsidiarity. The agreement lays down, by means of procedures governing the application of the principle of subsidiarity, arrangements for the exercise of the powers conferred on the Union institutions by the Treaties, so that the objectives laid down in the Treaties can be attained. 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 the context of the powers conferred on them. Any amendment made to the Commission text by the Council or Parliament must be accompanied by a justification concerning compliance with the

principle of subsidiarity if it entails a change in the scope of EU intervention.

The three institutions will regularly check, using their internal procedures, whether the action envisaged complies with the principle of subsidiarity as regards both the choice of instruments and the content of the proposal. Accordingly, under Rule 36 of Parliament's Rules of Procedure, 'During the examination of a proposal for a legislative act, Parliament shall pay particular attention to respect for the principles of subsidiarity and proportionality'. The Commission also draws up an annual report on observance of the principle.

Under the terms of the Interinstitutional Agreement on 'Better Lawmaking' of 31 December 2003, the Commission must explain in its explanatory memoranda how the proposed measures are justified in the light of the principle of subsidiarity and must take this into account in its impact assessments. Moreover, in concluding the framework agreement of 20 November 2010 Parliament and the Commission undertook to cooperate with the national parliaments in order to facilitate the exercise by those parliaments of their power to scrutinise compliance with the principle of subsidiarity.

B. European Parliament resolutions

In its resolution of 13 May 1997 Parliament already made clear its view that the principle of subsidiarity was a binding legal principle but pointed out that its implementation should not obstruct the exercise by the EU of its exclusive competence, nor be used as a pretext to call into question the *acquis communautaire*. In its resolution of 8 April 2003 Parliament added that disputes should preferably be settled at political level, whilst taking into account the proposals made by the Convention on the Future of Europe concerning the establishment by the national parliaments of an 'early warning' mechanism in the area of subsidiarity. This mechanism was in fact incorporated into the Lisbon Treaty (see above).

In its resolution of 13 September 2012, Parliament welcomed the closer involvement of the national parliaments with regard to scrutinising legislative proposals in the light of the principles of subsidiarity and proportionality and suggested that any ways to alleviate impediments to national parliaments' participation in the subsidiarity control should be investigated. It also suggested that an assessment be made to determine whether appropriate criteria should be laid down at EU level for evaluating compliance with the principles of subsidiarity and proportionality.

→ Vesna Naglič / Danai Papadopoulou

1.3. European Union institutions and bodies

1.3.1. The European Parliament: Historical background

The origins of the European Parliament lie in the expansion of the Common Assembly of the European Coal and Steel Community (ECSC), which thus became the common assembly of all three supranational European communities that existed at the time. The assembly subsequently acquired the name 'European Parliament'. Over time, the institution, whose members have been directly elected by the citizens of the Member States since 1979, has undergone numerous changes. With the entry into force of the Treaty of Lisbon, Parliament has become an equal partner with the Council when it comes to the legislative procedure.

Legal basis

- The original treaties (*1.1.1, 1.1.2, 1.1.3, 1.1.4, 1.1.5);
- Decision and Act concerning the election of the representatives of the European Parliament by direct universal suffrage (20 September 1976), as amended by the Council Decisions of 25 June and 23 September 2002.

Three Communities, one assembly

Following the establishment of the European Economic Community (EEC) and the European Atomic Energy Community (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 the 'European Parliament' on 30 March 1962.

From appointed assembly to elected parliament

Before the introduction of direct elections, Members of the European Parliament (MEPs) were appointed by each of the Member States' national parliaments. All Members thus had a dual mandate.

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

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

Enlargements

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

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

On 1 January 1986, with the third enlargement, the number of seats rose from 434 to 518 with the arrival of 60 Spanish and 24 Portuguese Members, appointed by their national parliaments and subsequently replaced by directly elected Members.

Following German unification, the composition of Parliament was adapted to reflect 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 rose from 518 to 567 for the June 1994 elections. After the fourth EU enlargement, the number of MEPs increased to 626, with a fair allocation of seats for the new Member States in line with the resolution mentioned above.

The Nice Intergovernmental Conference introduced a new distribution of seats in Parliament, which was applied at the European elections in 2004. The maximum number of MEPs (previously set at 700) was increased to 732. The number of seats allocated to the 15 old Member States was reduced by 91 (from 626 to 535). The remaining 197 seats were distributed among all old and new Member States on a *pro rata* basis.

With the accession of Bulgaria and Romania on 1 January 2007, the number of seats in Parliament was temporarily raised to 785 in order to accommodate MEPs from those countries. Following the 2009 elections, which were held from 4 to 7 June 2009, the number of seats was reduced to 736. However, the Treaty of Lisbon sets a maximum number of 751 MEPs, to be temporarily raised to 754 until the next elections.

During the present term, 18 MEPs have been added to those elected in June 2009, following the ratification by the Member States of an amending protocol adopted during the 23 June 2010 Intergovernmental Conference (IGC). With the accession of Croatia on 1 July 2013, the maximum number of seats has been temporarily raised to 766, in order to accommodate the 12 Croatian MEPs who were elected in April 2013 (in accordance with Article 19 of the Act concerning the conditions of accession of the Republic of Croatia).

Since 7 June 2009, the distribution of MEPs has been as follows (additional MEPs who arrived in 2011 are given in brackets, Croatian MEPs who arrived in 2013 are in square brackets):

Belgium	22
Bulgaria	17 (plus 1)
Czech Republic	22
Denmark	13
Germany	99 (96 from 2014)
Estonia	6
Ireland	12
Greece	22
Spain	50 (plus 4)
France	72 (plus 2)
Croatia	[12]
Italy	72 (plus 1)
Cyprus	6
Latvia	8 (plus 1)
Lithuania	12
Luxembourg	6
Hungary	22
Malta	5 (plus 1)
Netherlands	25 (plus 1)
Austria	17 (plus 2)
Poland	50 (plus 1)
Portugal	22
Romania	33
Slovenia	7 (plus 1)
Slovakia	13
Finland	13
Sweden	18 (plus 2)
United Kingdom	72 (plus 1)
Total	736 (754) [766]; absolute majority: 369 (378) [384]

The total number of seats will have to be reduced to 751 at the next elections. In March 2013, Parliament, which has the power of initiative on the matter, approved a resolution proposing the following changes to the Council: starting from the 2014 elections, Germany would lose 3 seats (as already planned), and Belgium, Bulgaria, the Czech Republic, Ireland, Greece, Croatia, Latvia, Lithuania, Hungary, Austria, Portugal and Romania would all lose one seat each. The Council adopted a decision endorsing Parliament's resolution on 28 June 2013.

Gradual increase in powers

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

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

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: this represented an important step forward in terms of Parliament's political control over the EU executive.

The Treaty of Amsterdam extended the codecision procedure to most areas of legislation and reformed the procedure, placing Parliament as co-legislator on an equal footing with the Council. The appointment of the President of the Commission was made

subject to Parliament's approval, thus increasing its powers of control over the executive. The Treaty of Nice further extended the scope of the codecision procedure.

The Treaty of Lisbon constitutes another important extension of both the application of qualified majority voting in the Council (using a new method) and the application of the codecision procedure (now extended to some 45 new legislative domains). Codecision, now known as the ordinary legislative procedure, has become the most widely used decision-making procedure, covering particularly important areas such as the common agricultural policy and justice and security policy. Moreover, Parliament's role in the preparation of future treaty amendments has become more significant (Article 48 TEU).

→ Rosa Raffaelli

1.3.2. The European Parliament: Powers

Parliament asserts its institutional role in European policy-making by exercising its various functions. Parliament's participation in the legislative process, its budgetary and control powers, its involvement in treaty revision and its right to intervene before the European Court of Justice enable it to uphold democratic principles at European level.

Legal basis

Articles 223 to 234 and 314 TFEU.

Objectives

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

Constitutional-type powers and ratification powers (*1.4.2)

Since the Single European Act (SEA), all treaties marking the accession of a new Member State and all association treaties have been subject to Parliament's assent. The SEA also established this procedure for international agreements with 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 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 to or imposing penalties on that Member State. Conversely, any revision of the Statute for Members of the European Parliament has to receive the consent of the Council.

Since the entry into force of the Lisbon Treaty Parliament has been able to take the initiative for treaty revision and has the final say over whether or not to convene a convention with a view to preparing a future treaty amendment (Article 48(2) and (3) TEU).

Participation in the legislative process (*1.4.1)

Parliament takes part in the adoption of the Union's 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. Ordinary legislative procedure

From the entry into force of the Treaty of Nice, the simplified codecision procedure (former Article 251 EC) applied to 46 legal bases in the EC Treaty that allowed for the adoption of legislative acts. This put Parliament, in principle, on an equal footing with the Council. If the two institutions agreed, the act was adopted at first or second reading; if they did not agree, it could only be adopted after a successful conciliation.

With the Lisbon Treaty, the codecision procedure was renamed the ordinary legislative procedure (Article 294 TFEU). Following that treaty, more than 40 new policies became subject to this procedure for the first time, for example in the areas of freedom, security and justice, external trade, environmental policy and the CAP.

B. Consultation

The consultation procedure continues to apply to taxation, competition, harmonisation of legislation not related to the internal market, and some aspects of social policy.

C. Cooperation

The cooperation procedure (former Article 252 EC) was introduced by the SEA and was extended under the Maastricht Treaty to most areas of legislation where the Council acts by majority. This procedure obliged the Council to take into account at second reading amendments by Parliament that had been adopted by an absolute majority and taken over by the Commission. This marked the beginning of real legislative power for Parliament. The importance of the cooperation procedure diminished with the wider use of the codecision procedure introduced by the Amsterdam Treaty. It survived in four provisions relating to economic and monetary policy (former Articles 98 et seq. EC), but was abolished after the entry into force of the Treaty of Lisbon (*1.1.5).

D. Assent

Following the Maastricht Treaty, the assent procedure applied to the few legislative areas in which the Council acts by unanimous decision,

limited since the Amsterdam Treaty to the Structural and Cohesion Funds (former Article 161 EC).

Under the Lisbon Treaty, some new subjects fall under this procedure, now generally renamed the consent procedure, such as measures to be adopted by the Council when action by the Union is considered necessary and the Treaties do not provide the necessary powers (Article 352 TFEU).

E. Right of initiative

The Maastricht Treaty gave Parliament the right of legislative initiative, but it was limited to asking the Commission to put forward a proposal. This right is maintained in the Lisbon Treaty (Article 225 TFEU), and is spelled out in more detail in the latest Interinstitutional Agreement between the Commission and Parliament.

Budgetary powers (*1.4.3)

The Lisbon Treaty eliminated the distinction between compulsory and non-compulsory expenditure and put Parliament on an equal footing with the Council in the annual budgetary procedure, which now resembles the ordinary legislative procedure.

Parliament remains one of the two arms of the budgetary authority (Article 314 TFEU). It is involved in the budgetary process from the preparation stage, notably in laying down the general guidelines and the type of spending. It adopts the budget and monitors its implementation (Article 318 TFEU). It gives a discharge on implementation of the budget (Article 319 TFEU).

Finally, Parliament has to provide its consent to the multiannual financial framework (Article 312 TFEU). The first such framework under the rules of the Lisbon Treaty was adopted in July 2013.

Scrutiny over the executive

Parliament has several powers of scrutiny. In particular, it discusses the annual general report (Article 233 TFEU) and oversees, together with the Council, the Commission's implementing and delegated acts (Articles 290 and 291 TFEU).

A. Investiture of the Commission

Parliament began informally approving the investiture of the Commission in 1981 by examining and approving its programme. However, it was only when the Maastricht Treaty came into force in 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 Commissioners. Parliament also introduced hearings of Commissioners-designate in 1994. According to the Lisbon Treaty the candidate for Commission President has to be chosen in accordance with the results of the European elections.

B. Motion of censure

There has been provision for a motion of censure against the Commission (under what is now Article 234 TFEU) ever since the Treaty of Rome. Such a motion requires a two-thirds majority of the votes cast, representing a majority of Parliament's component members. If it is passed, the Commission must resign as a body. There have been only eight motions of censure since the beginning: none has been adopted, but the number of votes in favour of censure has steadily increased. However, the most recent motion (put to the vote on 8 June 2005) obtained only 35 votes to 589, with 35 abstentions.

C. Parliamentary questions

These take the form of written and oral questions with or without debate (Article 230 TFEU) 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 Union law (Article 226 TFEU).

E. Scrutiny over the Common Foreign and Security Policy

Parliament is entitled to be kept informed in this area 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 (Article 36 TEU). Implementation of the interinstitutional agreement on budgetary discipline and sound financial management (2006/C 139/01) has also improved CFSP consultation procedures as far as financial aspects are concerned. The creation of the new High Representative of the Union for Foreign Affairs and Security Policy enhances Parliament's influence, as the High Representative is also a Vice-President of the Commission.

Appeals to the Court of Justice

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

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

for failure to act (Article 265 TFEU), Parliament may institute proceedings against an institution before the Court for violation of the Treaty, as for instance in Case 13/83, in which the Court ruled against the Council for failing to take measures relating to the common transport policy.

With the Treaty of Amsterdam, Parliament acquired the power to bring an action to annul an act of another institution, but only for the purpose of protecting its own prerogatives. The Treaty of Nice amended the former Article 230 EC: Parliament no longer has to demonstrate a specific interest, and is therefore now able to institute proceedings in the same way as the Council, the Commission and the Member States. 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 263 TFEU thus upholds the Court's rulings in Cases 320/81, 294/83 and 70/88.

Finally, Parliament is able to seek a prior opinion from the Court of Justice on the compatibility of an international agreement with the Treaty (Article 218 TFEU).

Petitions (*2.1.4)

When EU citizens exercise their right of petition, they address their petitions to the President of the European Parliament (Article 227 TFEU).

European citizens' initiative (*2.1.5)

Parliament organises a hearing with the proponents of successfully registered ECIs under the auspices of the committee responsible for the policy addressed by the ECI.

Appointing the Ombudsman

The Treaty of Lisbon continues to provide that Parliament elects the European Ombudsman (Article 228 TFEU) (*1.3.16).

→ Wilhelm Lehmann

1.3.3. The European Parliament: organisation and operation

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

Legal basis

- Articles 223 and 234 TFEU;
- Rules of Procedure of the European Parliament.

Membership

The European Parliament has 766 Members, allocated as follows: Germany — 99; France — 74; Italy and the United Kingdom — 73; Spain — 54; Poland — 51; Romania — 33; the Netherlands — 26; Belgium, Greece, Hungary, Portugal and the Czech Republic — 22; Sweden — 20; Austria — 19; Bulgaria — 18; Finland, Denmark and Slovakia — 13; Ireland, Lithuania and Croatia — 12; Latvia — 9; Slovenia — 8; Cyprus, Estonia and Luxembourg and Malta — 6.

During the present parliamentary term the number of MEPs was adjusted to 754 as provided for in Article 14(2) TEU. In addition, in July 2013 12 Members from the new Member State, Croatia, took office (see table at the end of chapter).

On a proposal made by Parliament in a resolution of 13 March 2013, the Council has adopted a decision on the distribution of seats after the elections in 2014. 12 Member States will lose one seat each (Belgium, Bulgaria, the Czech Republic, Ireland, Greece, Latvia, Lithuania, Hungary, Austria, Portugal, Romania and Croatia), and Germany will revert to the maximum number of seats allowed by the Treaty (96). The distribution of seats will be reviewed again sufficiently in advance of the elections to be held in 2019.

Organisation

A. Political bodies

Parliament's political bodies comprise the Bureau (the President and 14 Vice-Presidents); the Conference of Presidents (the President and the political group chairs); the five Quaestors, who are responsible for Members' administrative and financial business; the Conference of Committee Chairs; and the Conference of Delegation Chairs. The term of office of the President, Vice-Presidents and Quaestors is two and a half years.

B. Committees and delegations

Members sit on 20 committees, 2 subcommittees, 39 delegations (interparliamentary delegations and delegations to joint parliamentary committees, parliamentary cooperation committees, and multilateral parliamentary assemblies). Parliament also sends a delegation to the Joint Assembly set up under the agreement between the African, Caribbean and Pacific (ACP) states and the EU. It may also establish special committees on the basis of Rule 184.

Since July 2009, each committee or delegation has elected its own Bureau, consisting of a chair and three vice-chairs.

C. Political groups

Members do not sit in national delegations but according to their political affinities, in transnational groups. Under the Rules of Procedure, a political group must comprise Members elected from at least one-quarter of the Member States and must consist of at least 25 Members (Rule 30). The political groups hold regular meetings during the week before the part-session and in part-session week, as well as seminars to determine the main principles of their activity. Certain political groups correspond to supranational political parties operating at EU level. These include the European People's Party, the Progressive Alliance of Socialists and Democrats, the Party of the Greens/European Free Alliance and the Alliance of Liberals and Democrats for Europe Party. These supranational parties work in close cooperation with the corresponding political groups within the European Parliament.

D. European political parties and foundations

The European Parliament recommends the creation of an environment favourable to the continued development of European political parties and foundations, including the adoption of framework legislation.

Article 224 TFEU (former Article 191(2)TEC), provides a legal basis for the adoption, in accordance with the ordinary legislative procedure, of a statute for European-level political parties and of rules on their funding. So far, there are 10 such political parties,

founded mostly on the basis of Regulation (EC) No 2004/2003. Some years later, a further regulation (1524/2007(EC)) introduced the possibility of funding political foundations supporting their respective parties through educational and research activities. On a proposal from the Commission, Parliament's Committee on Constitutional Affairs adopted a report on a reformed statute for 'Europarties' on 15 April 2013, which is awaiting its first reading in plenary.

E. The Secretariat

The Secretariat of the European Parliament comprises 10 Directorates-General (from January 2014, 12) and the Legal Service. Its task is to coordinate legislative work and organise plenary sittings and meetings. It also provides technical, legal and expert assistance to parliamentary bodies and MEPs to support them in the exercise of their mandates. The Secretariat provides interpretation and translation for all meetings and formal documents.

Operation

Under the Treaty, Parliament organises its work independently. It adopts its Rules of Procedure, acting by a majority of its members (Article 233 TFEU). Except where the Treaties provide otherwise, Parliament acts by a majority of votes cast (Article 231 TFEU). It decides the agenda for its part-sessions, which primarily cover the adoption of reports prepared by its committees, questions to the Commission and Council, topical and urgent debates and statements by the Presidency. Committee meetings and plenary sittings are held in public and are webstreamed.

Seat and places of work

From 7 July 1981 onwards, 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, Parliament took a series of decisions concerning its organisation and its places of work (i.e. Luxembourg, Strasbourg and Brussels).

At the Edinburgh European Council of 11 and 12 December 1992, the Member States' governments reached an 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 part-sessions should be held in Brussels;
- the parliamentary committees should meet in Brussels;
- Parliament's secretariat and back-up departments should remain in Luxembourg.

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

Parliament draws up its annual calendar of part-sessions on a proposal by its Conference of Presidents. In general, in the course of a year Parliament holds 12 four-day part-sessions in Strasbourg and six two-day part-sessions in Brussels. In 2012, two two-day part-sessions during the same calendar week took place in the month of October. For 2013 and after, the Court of Justice has ruled that two full part-sessions are required (Case C-237/11).

Pursuant to Article 229 TFEU, Parliament may hold an extraordinary part-session, at the request of a majority of its component Members or at the request of the Council or the Commission. On 18 December 2006, Parliament held, for the first time, a supplementary plenary sitting in Brussels directly after the Council of 15 and 16 December 2006. This practice has since been consolidated.

Members of Parliament by group and Member State (7th legislature)

EPP: Group of the European People's Party

S&D: Group of the Progressive Alliance of Socialists and Democrats

ALDE: Group of the Alliance of Liberals and Democrats for Europe

Greens/EFA: Group of the Greens/European Free Alliance

ECR: European Conservatives and Reformists

EFD: Europe of Freedom and Democracy

GUE/NGL: Confederal Group of the European United Left/Nordic Green Left

NI: Non-attached Members

The following table indicates the distribution of seats as of 18 November 2013.

	EPP	S&D	ALDE	Greens/ EFA	ECR	GUE/ NGL	EFD	NI	
Belgium	5	5	5	4	1		1	1	**22**
Bulgaria	7	4	5				1	1	**18**
Czech Republic	2	7			9	4			**22**
Denmark	1	5	3	1	1	1	1		**13**
Germany	42	23	12	14		8			**99**
Estonia	1	1	3	1					**6**
Ireland	4	2	4			1		1	**12**
Greece	7	8	1	1		3	2		**22**
Spain	25	23	2	2		1		1	**54**
France	30	13	6	16		5	1	3	**74**
Croatia	5	5			1	1			**12**
Italy	34	22	5		2		8	2	**73**
Cyprus	2	2				2			**6**
Latvia	4	1	1	1	1	1			**9**
Lithuania	4	3	2		1		2		**12**
Luxembourg	3	1	1	1					**6**
Hungary	14	4			1			3	**22**
Malta	2	4							**6**
Netherlands	5	3	6	3	1	2	1	5	**26**
Austria	6	5		2				5	**19**
Poland	29	7			11		4		**51**
Portugal	10	7		1		4			**22**
Romania	14	11	5					3	**33**
Slovenia	4	2	2						**8**
Slovakia	6	5	1				1		**13**
Finland	4	2	4	2			1		**13**
Sweden	5	6	4	4		1			**20**
United Kingdom		13	12	5	27	1	9	6	**73**
Total	**275**	**194**	**85**	**58**	**56**	**35**	**32**	**31**	**766**

→ Erika Schulze
11/2013

1.3.4. The European Parliament: electoral procedures

The procedures for electing the European Parliament are governed both by European legislation defining rules common to all Member States and by specific national provisions which vary from one state to another. The common rules lay down the principle of proportional representation and certain incompatibilities with a mandate as an MEP. Many other important matters, such as the exact electoral system used and the number of constituencies, are governed by national laws.

Legal basis

Articles 20, 22 and 223 of the Treaty on the Functioning of the European Union (TFEU).

Common rules

A. Principles

The founding Treaties stated that Members of the European Parliament (MEPs) would initially be appointed by the national parliaments, but made provision for election by direct universal suffrage. The Council implemented this provision with the Act of 20 September 1976.

In 1992 the Maastricht Treaty provided that elections must be held in accordance with a uniform procedure and that Parliament should draw up a proposal to this effect, for unanimous adoption by the Council. However, since the Council was unable to agree on any of the proposals, the Treaty of Amsterdam introduced the possibility of adopting 'common principles' instead. Council Decision 2002/772/EC, Euratom modified the 1976 Act accordingly, introducing the principles of proportional representation and incompatibility between national and European mandates.

With the Treaty of Lisbon, the right to vote and to stand as a candidate acquired the status of a fundamental right (Article 39 of the Charter of Fundamental Rights of the European Union).

B. Application: common provisions in force

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

According to Article 22(2) TFEU, '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 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 system (Council Decision 2002/772/EC, Euratom).

3. Incompatibilities

The office of Member of the European Parliament is incompatible with that of member of the government of a Member State, member of the Commission, judge, advocate-general or registrar of the Court of Justice, member of the Court of Auditors, member of the European Economic and Social Committee, member of committees or other bodies set up pursuant to the Treaties for the purpose of managing the Union's 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 Union or of the specialised bodies attached to them. Further incompatibilities were added in 1997 (member of the Committee of the Regions) and in 2002 (member of the Court of First Instance — now General Court —, member of the Board of Directors of the European Central Bank, Ombudsman of the European Union and, most importantly, 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 can vary a great deal.

A. Electoral system

Pursuant to the 2002 Council Decision, all Member States must use a system based on proportional representation. A Member State may set a minimum threshold, which may not exceed 5%, for the allocation of seats. Most new Member States apply a 5% or 4% threshold. The German constitutional court has declared the country's hitherto existing 5% threshold for European elections to be unconstitutional.

B. Constituency boundaries

In European elections most of the Member States function as single constituencies. However, four

Member States (France, Ireland, Italy and the United Kingdom) have divided their national territory into a number of regional constituencies.

Constituencies of merely administrative interest or distributive relevance within the party lists exist in Belgium (4), Germany (16, only for the CDU/CSU), the Netherlands (19) and Poland (13). In Belgium one seat is reserved for election by the German-speaking minority.

C. Entitlement to vote

The voting age is 18 in all Member States except Austria, where it is 16.

1. Voting by non-nationals in their host country

Citizens of the Union residing in a Member State of which they are not nationals have the right to vote in elections to Parliament in their state of residence, under the same conditions as nationals (Article 22 TFEU). The concept of residence still varies from one state to another. Some countries require voters to have their domicile or usual residence on electoral territory (Estonia, Finland, France, Poland, Romania and Slovenia), to be ordinarily resident there (Cyprus, Denmark, Greece, Ireland, Luxembourg, Slovakia, Sweden and the United Kingdom) or to be listed on the population register (Belgium and the Czech Republic).

2. Voting by non-resident nationals in their country of origin

In the United Kingdom the right to vote of citizens resident abroad is confined to certain categories (e.g. citizens who have lived abroad for less than 15 years). Belgium, Denmark, Greece, Italy and Portugal grant the right to vote only to those of their non-resident nationals who are living in another EU Member State. Austria, Finland, France, the Netherlands, Spain and Sweden grant their nationals the right to vote irrespective of their country of residence. Germany grants this right to citizens who have lived in another country for less than 25 years. In Bulgaria, Ireland and Slovakia the right to vote is confined to EU citizens domiciled on their national territory.

D. Right to stand for election

Apart from the requirement of citizenship of an EU Member State, which is common to all the Member States (with the exception of the UK, where certain Commonwealth citizens are also allowed to stand for election to the European Parliament), conditions vary from one country to another.

1. Minimum age

The minimum age for standing for election is 18 in most Member States, the exceptions being Belgium, the Czech Republic, Estonia, Greece, Ireland, Latvia, Lithuania, Poland, Slovakia and the United Kingdom (21), Romania (23), and Italy and Cyprus (25).

2. Residence

In Luxembourg, a national of another Member State needs at least two years' residence in order to stand for election to the European Parliament. Also, a list may not comprise a majority of candidates who do not have Luxembourg nationality.

E. Nominations

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

F. Election dates

The European elections in 2009 took place between 4 and 7 June, the exact day being chosen in accordance with national traditions. The 2004 elections were held between 10 and 13 June.

The next elections will take place in 2014. With its decision of 14 June 2013, the Council has moved the dates, originally set for June, to 22-25 May, so as to avoid a clash with the Whitsun holidays.

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

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

H. Allocating seats

While most Member States have adopted the d'Hondt rule for allocating seats, there are many exceptions. For instance, Germany uses the divisor method, with a standard truncation method called Sainte-Laguë/Schepers, while in Italy seats are allocated by the 'whole electoral quota and largest remainder' method, and in Ireland and Malta by means of the single transferable vote (STV-Droop) system.

I. Validation of results, and rules on election campaigns

In Denmark, Germany and Luxembourg the national parliament validates the election results; in Slovenia,

the National Assembly confirms the election of MEPs. In Austria, Belgium, the Czech Republic, Estonia, Finland, Italy, Ireland and the United Kingdom it is up to the courts to do so, while both options are provided for in Germany. In Spain the result is validated by the 'Junta Electoral Central'; in Portugal and Sweden a validation committee carries out this task. In France the Council of State is competent to adjudicate disputes concerning the elections, but the Minister of the Interior also has the right to do so on the grounds that the legally stipulated forms and conditions have not been observed.

In most Member States the rules on election campaigns (permitted funding, broadcasting time slots, publication of poll results) are the same as those applying to national elections.

J. Filling seats vacated during the electoral term

In some Member States (Austria, Denmark, Finland, France, Croatia, Italy, Luxembourg, the Netherlands and Portugal) seats falling vacant are allocated to the first unelected candidates on the same list (possibly after adjustment to reflect the votes obtained by the 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 from the same list; if there are not enough substitutes, by-elections are held. In some Member States (notably Austria and Denmark) MEPs have the right to return to the Parliament once the reason for their departure has ceased to apply.

Role of the European Parliament

Since the 1960s Parliament has repeatedly voiced its opinion on issues of electoral law and has put forward proposals in accordance with Article 138 of the EC Treaty. The continuing lack of a genuinely uniform procedure for election to Parliament shows how difficult it is to harmonise different national traditions. The option provided for in the Treaty of Amsterdam of adopting common principles has only partially enabled these difficulties to be overcome. The Treaty of Lisbon (Article 223 TFEU) still provides a legal basis for the adoption of a uniform procedure, requiring the consent of Parliament.

In 1997 Parliament made a proposal for a uniform electoral procedure; its substance was incorporated into the 2002 Council decision, with the exception of the proposed establishment of a single European constituency for filling 10% of the seats. At present the European constituency is still the subject of debate; the intention is to adopt a Parliament position with a view to opening negotiations with the Council.

On 22 November 2012 Parliament adopted a resolution urging the European political parties to nominate candidates for the position of President of the Commission, so as to reinforce the political legitimacy of both Parliament and the Commission. The Commission subsequently adopted a recommendation to this effect, also calling on national political parties to display their affiliation with European political parties during the electoral campaign.

In 2003 a system for the funding of European political parties was established (Regulation EC No 2004/2003) which, after being amended in 2007, also allowed for the establishment of political foundations at EU level. Since funding for election campaigns remains low, and continues to be subject to national regulation, Parliament is pursuing a revision of this regulation.

→ Rosa Raffaelli

1.3.5. The European Parliament: Relations with the national parliaments

The progress of European integration has changed the role of national parliaments. Various instruments of cooperation between the European Parliament and national parliaments have been created in order to establish effective democratic control of European legislation at all levels. This trend has been reinforced by new provisions introduced by the Treaty of Lisbon.

Legal basis

Article 12 TEU; Protocol No 1 on the role of national parliaments in the European Union.

Objectives

A. Rationale for cooperation

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

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

B. The evolving context of cooperation

The role of the NPs has continued to decline as European integration has progressed, with the strengthening of Community (then Union) powers and broadening of its areas of competence, the rise of majority voting in the Council and the increase in the EP's legislative powers.

Until 1979 the EP and the NPs were linked organically, since MEPs were appointed from within the NPs. Direct elections to the EP broke those ties, and for some 10 years relations ceased altogether. The need to restore them became apparent after 1989, when contacts were made and attempts were set in train to replace the original organic ties. The Maastricht Treaty helped by including two declarations (Nos 13 and 14) on the subject, which provide in particular for:

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

The NPs have recently acquired a measure of control over their governments' European activities, as a result of constitutional reforms, government undertakings or amendment of their own operating methods, as well as of the interpretation of national constitutional rules given by some Member States' Constitutional Courts. Their committees specialising in European affairs have played a major role in this development, in cooperation with the EP.

The protocol on the role of national parliaments annexed to the Treaty of Amsterdam encourages greater involvement of national parliaments in the activities of the EU and requires consultation documents and proposals to be forwarded promptly so the NPs can examine them before the Council takes a decision. National parliaments played an important role during the debates of the Convention on the Future of Europe (*1.1.4), where they also were the subject of one of the 11 working groups. In May 2006, the European Commission agreed to transfer electronically all new proposals and consultation papers to the national parliaments.

The Treaty of Lisbon introduces an early warning system, i.e. a new mechanism for national parliaments to watch over the respect of the subsidiarity principle in new legislative proposals (Protocol No 1, on the role of national parliaments in the European Union, and Protocol No 2, on the application of the principles of subsidiarity and proportionality). It gives a majority of chambers the possibility to block a new Commission proposal. However, the final decision is up to the legislative authority (European Parliament and Council of Ministers) (*1.2.2). This mechanism has recently been activated for the first time with regard to the proposal for a Council regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the

freedom to provide services. The Treaty also contains new articles clarifying the role of national parliaments in the European institutional set-up (Articles 10 and 12 TEU).

Since the inception of the EU's sovereign debt crisis in March 2010, the role of euro zone NPs in the ratification of rescue packages, or their modification, has underlined the importance of close cooperation and a permanent exchange of information between them and the European Parliament.

Achievements: the instruments of cooperation

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

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

Over the last years, the presidents met every year. Important recent conferences were held in Lisbon, on 20-21 June 2008 (on the EU beyond the Treaty of Lisbon), and in Warsaw, on 19-21 April 2012 (on the crisis of the European unity).

Since 1995 the EP has maintained close relations with the parliaments of the associate and accession countries. The presidents of the European Parliament and these parliaments have repeatedly met to discuss accession strategies and other topical questions.

B. The ECPRD

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

C. Conference of Parliaments of the Community

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

D. Conference of Parliamentary Committees for Union Affairs 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 affairs and six MEPs. Convened by the parliament of the country holding the presidency of the Union 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 on the role of the national parliaments in the European Union particularly states that COSAC may make any contribution it deems appropriate for the attention of the institutions of the European Union. However, contributions made by COSAC in no way bind national parliaments or prejudge their position.

E. Joint Parliamentary Meetings

After the experience of the European Convention, parliamentarians from both the European Parliament and NPs felt that it would be useful to establish a permanent instrument of political cooperation to deal with specific topics. Therefore, from 2005 on MEPs and national MPs have met in Joint Parliamentary Meetings to deal with important issues affecting parliaments in the process of EU policy-making and institution-building. An important recent meeting took place on 20/21 October 2011 and dealt with the future of EU financing (2014-2020).

F. Other instruments of cooperation

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

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

Administrative cooperation is developing in the form of traineeships in the European Parliament and exchanges of officials. Reciprocal information on parliamentary work, especially in legislation, is of increasing importance and uses modern information technology, such as the Internet-based IPEX data and communication network.

→ Rosa Raffaelli

1.3.6. The European Council

The European Council, formed by the Heads of State or Government of the Member States, provides the necessary impetus for the development of the European Union and sets out the general political guidelines. The European Council is linked to the Commission in that the Commission President is a non-voting member of the European Council. The President of the European Parliament also addresses the European Council at the beginning of its meetings. With the entry into force of the Lisbon Treaty, a long-term presidency of the European Council was established and the European Council became an institution of the Union.

Legal basis

Articles 15, 26, 27, 42(2) TEU.

History

The European Council is now the summit conference of Heads of State or Government of the EU Member States. The first of these 'European summits' took place in Paris in 1961 and they have become more frequent since 1969.

The Paris European summit of February 1974 decided that these meetings of Heads of State or Government should henceforth be held on a regular basis under the name of 'European Council', which would be able to adopt a general approach to the problems of European integration and ensure that Union activities were properly coordinated.

The Single Act (1986) for the first time included the European Council in the body of the Community Treaties, defining its composition and providing for bi-annual meetings.

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

The Treaty of Lisbon made the European Council a full institution of the European Union (Article 13 TEU) and defined its tasks which are to 'provide the Union with the necessary impetus for its development and define the general political directions and priorities thereof' (Article 15 TEU).

Organisation

Convened by its President, the European Council brings together the Heads of State or Government of the Member States and the President of the Commission (Article 15(2) TEU). The High Representative for Foreign Affairs and Security Policy takes part in its work. The President of the European Parliament is usually invited to speak at the beginning of the meeting (Article 235(2) TFEU).

Since the entry into force of the Treaty of Lisbon, the European Council meets at least twice per semester. The President has a mandate of thirty months, which is renewable once. It normally takes decisions unanimously. However, a number of important appointments are made by qualified majority (in particular, that of its own President, the choice of the candidate to be elected President of the European Commission and the appointment of the High Representative for Foreign and Security Policy and the President of the European Central Bank).

In the course of the sovereign debt crisis, the European Council has been obliged to meet more often. In 2012, for instance, the European Council met four times. In addition, the following meetings took place: one extraordinary European Council meeting, two informal meetings of members of the European Council and four meetings of the Heads of State or Government of the euro zone (also called euro area summits).

Role

A. Place in the Union's institutional system

Under Article 13 TEU, the European Council forms part of the 'single institutional framework' of the Union. But its role is to provide a general political impetus rather than act as a decision-making body in the legal sense. It takes decisions with legal consequences for the Union only in exceptional cases (see point 2 below), but has acquired a number of institutional decision-taking powers. The European Council is now authorised to adopt binding acts which may be challenged before the Court of Justice, including for failure to act (Article 265 TFEU).

Article 7(2) TEU gives the European Council the power to initiate the procedure suspending the rights of a Member State as a result of a serious breach of the Union's principles, subject to the consent of the European Parliament.

B. Relations with the other institutions

The European Council takes decisions with complete independence and in most cases does not require a Commission initiative or the involvement of Parliament.

However, the Lisbon Treaty maintains an organisational link with the Commission, since its President is a non-voting member of the European

Council, and the High Representative for Foreign Affairs and Security Policy attends the debates. Moreover, the European Council often asks the Commission to submit reports in preparation for its meetings. However, it is increasingly asking its own services to prepare such documents.

Article 15(6d) TEU requires the President of the European Council to submit to Parliament a report after each of its meetings. He also meets the President of the Parliament as well as leaders of political groups on a monthly basis, and in February 2011 he agreed to answer written questions from MEPs concerning his political activities. But Parliament is also able to exercise some informal influence through the presence of its President at European Council meetings, pre-European Council meetings of the party leaders in their respective European political families, as well as through 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.

With the Lisbon Treaty, the new office of High Representative of the Union for Foreign Affairs and Security Policy became an additional element proposing and carrying out foreign policy on behalf of the European Council. The President of the European Council ensures the external representation of the Union on issues concerning its Common Foreign and Security Policy, without prejudice to the powers of the High Representative of the Union for Foreign Affairs and Security Policy.

C. Powers

1. Institutional

The European Council provides the Union with 'the necessary impetus for its development' and defines its 'general political directions and priorities' (Article 15(1) TEU). It also decides by qualified majority on the formation of the Council and the calendar of rotating presidencies.

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 26 TEU). It decides unanimously whether to recommend to the Member States to move towards a progressive framing of a common Union defence policy, under Article 42(2) TEU.

If a Member State intends to oppose the adoption of a decision for important reasons of national policy, the Council may decide by qualified majority to refer the matter to the European Council for a unanimous decision (Article 31(2) TEU). The same procedure may apply if Member States decide to establish enhanced cooperation in this field (Article 20 TEU).

3. Economic governance and multiannual financial framework

Since 2009, the sovereign debt crisis has made the European Council and the euro summits the prime actors in tackling the fallout from the global banking crisis. Several Member States have received financial aid packages through ad hoc or temporary agreements decided by the Heads of State or Government and later ratified in the Member States. In future, financial aid will be channelled through the permanent European Stability Mechanism. Member State governments, with the active participation of the Commission, the Parliament, and the ECB, have drawn up an international treaty — the Treaty on Stability, Coordination and Governance (also called 'Fiscal Compact') — permitting a stricter control of Member States' budgetary and socio-economic policies. This increasingly raises questions about the role of the European Commission and the European Parliament in the economic governance of the euro zone.

The European Council also plays an important role in the European Semester. At its spring meetings it issues policy orientations on macroeconomic, fiscal and structural reform and growth-enhancing policies. At its June meetings it endorses recommendations resulting from the assessment of the National Reform Programmes drawn up by the European Commission and discussed in the Council of the EU.

It is also involved in the negotiation of the multiannual financial framework, where it plays a pivotal role in reaching a political agreement on the key political issues in the MFF regulation, such as expenditure limits, spending programmes and financing (resources).

4. Police and judicial cooperation in criminal matters

At the request of a member of the Council, the European Council decides whether to establish enhanced cooperation in an area related to this field. (Article 20 TEU). The Lisbon Treaty introduced several new bridging clauses enabling the European Council to change the decision-taking formula in the Council from unanimity to majority (*1.4.2).

Achievements

The European Council has been effective in adopting general guidelines for action by the Union, and also in overcoming deadlock in the Community decision-making process. But its intergovernmental constitution and decision-making procedures may be curbing the federal development of European integration in general, and even putting at risk the supranational achievements of the Community system. The institutional changes brought about by the Lisbon Treaty have yet to be assessed. It is worth

noting that the President of the European Council regularly reports to the European Parliament.

A. 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 the fight against terrorism;
- European neighbourhood policy and relations with Russia;
- relations with the Mediterranean countries and the Middle East.

Meeting in Helsinki on 10 and 11 December 1999, the European Council decided to reinforce the CFSP by developing military and non-military crisis management capabilities.

Meeting in Brussels on 12 December 2003, the European Council approved the European Security Strategy.

B. Enlargement

The European Council has set the terms for each round of EU enlargement. At Copenhagen in 1993 it laid the foundations for a further wave of accession (Copenhagen criteria). Meetings in subsequent years further specified the criteria for admission and the institutional reforms required beforehand.

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

Meeting in Luxembourg on 3 October 2005, the Council approved a framework for negotiations with Croatia and Turkey on their accession to the EU. The Accession Treaty with Croatia was signed on 9 December 2011, and Croatia acceded on 1 July 2013.

C. Institutional reform

The European Council meeting in Tampere (15 and 16 October 1999) decided on the arrangements for drafting the EU Charter of Fundamental Rights (*1.1.6). 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 on the Future of Europe, which drew up the ill-fated Constitutional Treaty (*1.1.4). After two and a half years of institutional stalemate, the European Council of 21 and 22 June 2007 adopted a detailed mandate for an intergovernmental conference leading to the signature of the Lisbon Treaty on 13 December 2007, which entered into force on 1 December 2009 (*1.1.5). On 25 March it adopted the decision amending Article 136 and paving the way for the creation of the European Stability Mechanism.

→ Petr Novak

1.3.7. The Council of the European Union

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

Legal basis

In the European Union's single institutional framework, the Council exercises the powers conferred on it by the Treaty on European Union (Article 16) and the Treaty on the Functioning of the European Union (Articles 237 to 243).

Role

A. Legislation

On the basis of proposals submitted by the Commission, the Council adopts Union legislation in the form of regulations and directives, either jointly with Parliament in accordance with Article 294 TFEU (ordinary legislative procedure) or alone, following consultation of Parliament (*1.4.1). The Council also adopts individual decisions and non-binding recommendations (Article 288 TFEU) and issues resolutions. The Council and Parliament establish the general rules governing the exercise of the implementing powers conferred on the Commission or reserved to the Council itself (Article 291(3) TFEU).

B. Budget

The Council is one of the two branches (the other being Parliament) of the budgetary authority which adopts the Union's budget (*1.4.3). The Council also adopts decisions, pursuant to a special legislative procedure and acting unanimously, laying down the provisions applying to the own resources system and the multiannual financial framework (Articles 311 and 312 TFEU). In the latter case, Parliament must give its consent by a majority of its Members. The latest framework (2014-2020) was adopted by Parliament in July 2013.

C. Other powers

1. International agreements

The Council concludes the Union's international agreements, which are negotiated by the Commission and require Parliament's assent in most cases (Article 218(6) TFEU).

2. Appointments

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

3. Economic policy

The Council ensures coordination of the economic policies of the Member States (Article 121 TFEU) and, without prejudice to the powers of the European Central Bank, takes political decisions in the monetary field. Special rules apply for the members of the Eurogroup, who elect a president for a two-and-a-half-year term (Articles 136 and 137 TFEU). Usually, the finance ministers of the Eurogroup meet one day before the meeting of the Economic and Financial Affairs Council.

Article 136 TFEU was amended by European Council Decision 2011/199/EU and entered into force on 1 May 2013, following ratification by all the Member States. It now provides the legal basis for stability mechanisms such as the ESM (*4.2.3).

4. Common Foreign and Security Policy

The Treaty of Lisbon gave legal personality to the EU, which replaced the European Community. The new Treaty also abolished the three-pillar structure. Justice and home affairs has become a fully integrated EU policy area, in which the ordinary legislative procedure applies in almost all cases. However, in foreign and security policy the Council still acts under special rules when it adopts common positions and joint actions or draws up conventions.

The former Troika formula has been replaced by a new system: presided on a permanent basis by the High Representative of the Union for Foreign Affairs and Security Policy, the Foreign Affairs Council is now closely associated with the Commission. It is assisted by the Council's General Secretariat and by the European External Action Service.

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 16(2) TEU).

2. Presidency

With the exception of the Foreign Affairs Council, the Council 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 16(9) TEU). The Presidency of all Council formations except foreign affairs is held by pre-established groups of three Member States for periods of 18 months, with each member chairing the Council for six months.

The order of presidencies for the next seven years is as follows: Greece and Italy in 2014, Latvia and Luxembourg in 2015, the Netherlands and Slovakia in 2016, Malta and the United Kingdom in 2017, Estonia and Bulgaria in 2018, Austria and Romania in 2019, and Finland in the first half of 2020. The European Council can change the order (Article 236(b) TFEU).

B. Operation

Depending on the area concerned, the Council takes its decisions by a simple majority, a qualified majority or unanimously (*1.4.1. and 1.4.2). When the Council acts in a legislative capacity, its meetings are now usually open to the public (Article 16(8) TEU).

1. Simple majority

This means that a decision is deemed to have been taken when there are more votes for than against. Each Member of the Council has one vote. The simple-majority rule is applicable when the Treaty does not provide otherwise (Article 238(1) TFEU). It is thus the default decision-making process. In practice, however, it applies only to a small number of decisions: internal Council rules, the organisation of the Council secretariat, and rules governing committees provided for in the Treaty.

2. Qualified majority

a. Mechanism

In many cases the Treaty requires decisions by a qualified majority (QMV), which entails more votes than a simple majority. In such cases there is no longer equality of voting rights. Each country has a given number of votes, based on its population (Article 205(2) TEC and, from November 2014, Article 238 TFEU). As from 1 January 2007, a new weighting of votes was introduced, with a qualified majority being obtained if (with 28 Member States after Croatia's accession):

- the decision receives at least 260 votes of a new total of 352 (73.86%),
- the decision is approved by a majority of Member States, and
- the decision is approved by at least 62% of the EU's population (any verification that this criterion has been met must be requested by a Member State).

If a proposal does not come from the Commission, adoption of an act of the Council shall require at least 255 votes in favour, cast by at least two-thirds of the members.

The Treaty of Lisbon discarded the system of weighted votes and follows a simple double-majority rule (55% of the members of the Council, comprising at least 15 of them and representing Member States comprising at least 65% of the population of the Union). This new system will not come into force before 1 November 2014. However, a member of the Council may ask to extend the current system until 31 March 2017.

b. Scope

The Treaty of Lisbon again extended the scope of decision-making by QMV. For 68 legal bases QMV is either introduced or extended, mostly in conjunction with the introduction of the ordinary legislative procedure (including many former third-pillar areas). Qualified majority is also applied for the appointment of the President and the Members of the Commission and for the Members of the Court of Auditors, the European Economic and Social Committee and the Committee of the Regions (*1.4.1 and 1.4.2).

3. Unanimity

Unanimity is required by the Treaty for decisions in only a few areas, which are, however, among the most important (taxation, social policy, etc.). This was maintained by the Treaty of Lisbon. However, Article 48(7) of the new TEU provides a bridging clause which enables the Council to adopt decisions on certain subjects by a qualified majority instead of unanimity. Moreover, for certain policies the Council may decide (unanimously) to extend the use of QMV (e.g. Article 81(3) TFEU on family law with cross-border implications).

In general, the Council tends to seek unanimity even when it is not required to do so. This preference dates back to the 1966 Luxembourg compromise, which ended a dispute between France and the other Member States, in which France had refused to move from unanimity to QMV in certain areas. The text of the compromise read: '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'.

A similar solution was found in 1994. The so-called Ioannina compromise protected Member States which were not far from constituting a blocking minority by providing that if those states expressed their intention of opposing the taking of a decision by the Council by qualified majority, the Council would do all within its power, within a reasonable space of time, to reach a solution that would satisfy a large majority of states.

More recently, the possibility of postponing the introduction of the new double-majority system from 2014 to 2017 is a step in the same direction.

Coreper

A committee consisting of the permanent representatives of the Member States prepares the Council's work and carries out the tasks which the Council assigns to it (Article 240 TFEU). It is chaired by a representative of the Member State chairing the General Affairs Council, i.e. the rotating Presidency. However, the Political and Security Committee, which monitors the international situation in areas covered by the Common Foreign and Security Policy, is chaired by a representative of the High Representative for Foreign Affairs and Security Policy.

→ Wilhelm Lehmann

1.3.8. The European Commission

The Commission is the European institution that has the monopoly on legislative initiative and important executive powers in policies such as competition and external trade. It is the principal executive body of the European Union and it is formed by a College of Members composed of one Commissioner per Member State. It also chairs the committees responsible for the implementation of EU law. The former comitology system was recently replaced by new legal instruments; the implementing and delegated acts.

Legal basis

Article 17 of the Treaty on European Union (TEU), and Articles 234, 244 to 250, 290 and 291 of the Treaty on the Functioning of the European Union (TFEU).

History

At the beginning, each Community had its own executive body: 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 were merged into a single European Commission in 1965 (*1.1.2).

Composition and legal status

A. Number of members

The Commission was for a long time composed of at least one but not more than two Commissioners per Member State. In practice the five most populous countries returned two Commissioners and the others one, including the ten new Member States since accession. Since 1 November 2004 the Commission has consisted of one Commissioner per Member State.

The Treaty of Lisbon originally provided for a number of Commission members from two-thirds of Member States from 1 November 2014. At the same time it introduced an element of flexibility by allowing the European Council to determine the number of Commissioners (Article 17(5) TEU). The European Council decided, before the second Irish referendum on the Treaty of Lisbon in 2009, to keep one Commission member per country. In May 2013 the European Council decided that the Commission would continue to consist of a number of members equal to the number of Member States.

B. Method of appointment

The Treaty of Lisbon stipulates that the results of the European elections have to be taken into account when the European Council, after appropriate consultations and acting by a qualified majority, proposes the candidate to Parliament. Parliament elects the President with the majority of its component members (Article 17(7) TEU).

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, including the High Representative for Foreign Affairs and Security Policy, are subject to a vote of consent, as a body, by Parliament and are then appointed by the European Council, acting by qualified majority.

Since the Treaty of Maastricht a Commissioner's term of office matches Parliament's legislative term of five years and it is renewable.

C. Accountability

1. Personal accountability (Article 245 TFEU)

Members of the Commission are required:

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

Commissioners may be dismissed by the Court of Justice, at the request of the Council or the Commission itself if they are in breach of any of these obligations or are found to be guilty of serious misconduct (Article 247 TFEU).

2. Collective accountability

The Commission is collectively accountable to Parliament under Article 234 TFEU. If Parliament adopts a motion of censure against the Commission, all of its members are required to resign, including the High Representative for Foreign Affairs and Security Policy, as far as his or her duties in the Commission are concerned.

Organisation and operation

The Commission works under the political guidance of its President, who decides on its internal organisation. The President allocates the sectors of its activity among the members. This gives each Commissioner responsibility for a specific policy 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 must resign if the President so requests, subject to the approval of the College.

The Commission has a General Secretariat consisting of 33 departments (directorates-general) and 11 special departments (services), including the European Anti-Fraud Office, the Legal Service, the Historical Archives and the Publications Office. With a few exceptions, the Commission takes decisions by a majority vote (Article 250 TFEU).

Powers

A. Power of initiative

As a rule, the Commission has a monopoly on the initiative in EU law-making (Article 17(2) TEU). It draws up proposals for an act to be adopted by the two decision-making institutions; Parliament and the Council.

1. Full initiative: the power of proposal

a. Legislative initiative

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.

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).

b. Budgetary initiative

The Commission draws up the draft budget, which it proposes to the Council and Parliament under Article 314 TFEU (*1.4.3).

c. Relations with third countries

Based on a mandate from the Council, the Commission is responsible for negotiating international agreements under Articles 207 and 218 TFEU, which are then put to the Council for conclusion. This includes the negotiations for accession to the Convention on the Protection of Human Rights and Fundamental Freedoms (Article 6(2) TEU). In foreign and security policy the High Representative negotiates agreements.

2. Limited initiative: the power of recommendation or opinion

*a. In the context of economic and monetary union (*4.1.2)*

The Commission has a role in managing the European Monetary Union (EMU). It submits to the Council:

- recommendations for the broad draft guidelines of the economic policies of the Member States and warnings if these policies are at risk of being incompatible with the guidelines (Article 121(4) TFEU);
- proposals for an assessment by the Council of whether an excessive deficit exists in a given Member State (Article 126(6) TFEU; previously the Commission could only make a recommendation;
- recommendations on measures to be taken if a non-euro Member State is in balance-of-payments difficulties, under Article 143 TFEU;
- recommendations for the exchange rate between the single currency and the other currencies, and for general orientations for exchange-rate policy, under Article 219 TFEU;
- evaluations of national policy plans and presentations of country-specific draft recommendations in the framework of the European Semester.

b. Under the Common Foreign and Security Policy

In this area many competences have been transferred from the Commission to the High Representative (HR) for Foreign Affairs and Security Policy and her European External Action Service (EEAS). However, the Commission may support the HR in submitting to the Council any decision concerning the Common Foreign and Security Policy (Article 30 TEU). The HR is also Vice-President of the Commission.

B. Power to monitor the implementation of Union law

The Treaties require the Commission to ensure that they are properly implemented, together with any decision taken to implement them (secondary law). This is its role as guardian of the Treaties. It does so mainly through the 'failure to act' procedure under Article 258 TFEU.

C. Implementing powers

1. Conferred by the treaties

The main powers held by the Commission are as follows: implementing the budget, under Article 317 TFEU; authorising the Member States to take safeguard measures laid down in the Treaties, particularly during transitional periods (e.g. Article 201 TFEU); and enforcing the competition rules,

particularly in monitoring state subsidies, under Article 108 TFEU.

In the financial rescue packages dealing with the debt crisis of some Member States, the Commission is responsible for the management of the funds raised through and guaranteed by the EU budget. It also has the power to change the voting procedure in the European Stability Mechanism (ESM)'s Board of Governors from unanimity to a special qualified majority (85%) if it decides (together with the ECB) that a failure to adopt a decision to grant financial assistance would threaten the economic and financial sustainability of the euro area (Article 4(4) ESM Treaty). (*4.2.3).

2. Delegated by the Council and Parliament

Pursuant to Article 291 TFEU the Commission exercises the powers conferred on it for the implementation of the legislative acts laid down by the Council and Parliament.

The Treaty of Lisbon has introduced new 'rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers' (Article 291(3) TFEU and Regulation (EU) No 182/2011). They replace the previous committee mechanisms with two new instruments, the advisory procedure and the examination procedure. The right of scrutiny of Parliament and of the Council is formally included, as well as a provision for an appeal procedure in cases of conflict.

3. Delegated acts

The Treaty of Lisbon also introduced a new category of legal provisions, situated between legislative and implementing acts. These 'delegated non-legislative acts' (Article 290 TFEU) are 'acts of general application to supplement or amend certain non-essential elements of the legislative act' (also called the 'basic act'). In principle, Parliament enjoys the same rights of oversight as the Council.

D. Regulatory and consultative powers

The Treaties seldom give the Commission full regulatory powers. One example is Article 106 TFEU, which authorises the Commission to ensure the application of the Union's rules on public undertakings and undertakings entrusted with the operation of services of general economic interest. Where necessary, it addresses the appropriate directives or decisions to Member States.

The Treaties provide the Commission with the power to make recommendations or deliver reports and opinions in many instances. They also provide for it to be consulted on certain decisions, such as on the admission of new Member States to the Union (Article 49 TEU). The Commission is consulted, in particular, on the Statute for MEPs and the Statute for the European Ombudsman.

Role of the European Parliament

The Commission is the principal interlocutor of Parliament in legislative and budgetary matters. Parliamentary scrutiny of the Commission's work programme and its execution is increasingly important for ensuring better democratic legitimacy in EU governance.

→ Wilhelm Lehmann

1.3.9. The Court of Justice of the European Union

The Court of Justice of the European Union is one of the EU's seven institutions. It consists of three courts of law: the Court of Justice, the General Court and the Civil Service Tribunal. It is responsible for the jurisdiction of the European Union. These bodies ensure the correct interpretation and application of primary and secondary Union law in the EU. The Court of Justice reviews the legality of acts by the Union's institutions and decides over whether Member States have fulfilled their obligations under primary and secondary law. It also provides interpretations on Union law when so requested by national judges and ensures that the law is observed in the interpretation and application of treaties.

Court of Justice

A. Legal basis

- Article 19 TEU, Articles 251 to 281 TFEU and Article 136 Euratom; Protocol No 3, annexed to the Treaties, on the Statute of the Court of Justice;
- Certain international agreements.

B. Composition and Statute

1. Membership

a. Number (Article 19 TEU and Article 252 TFEU)

One Judge per Member State. Eight Advocates-General, whose number may be increased by the Council if the Court so requests.

b. Requirements (Article 253 TFEU and Article 19 TEU)

- They must possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognised competence.
- Their independence must be beyond doubt.

c. Appointment procedure (Article 253 TFEU)

Judges and Advocates-General are appointed by common accord of the governments of the Member States.

2. Characteristics of the office

a. Duration (Article 253 TFEU and Statute)

Six years. Partial replacement every three years:

- 14 and 13 Judges replaced alternately,
- half of the Advocates-General replaced alternately.

Retiring Judges and Advocates-General may be reappointed.

b. 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. They may be removed from office only by a unanimous decision of the Court.

c. 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.

C. Organisation and operation (Article 253 TFEU and Statute)

1. Institutional set-up

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

2. Operation

The Court establishes its Rules of Procedure, which require the approval of the Council, acting by a qualified majority. The Court sits in chambers (of three or five Judges), in a Grand Chamber (11 Judges) or in a full Court (these various formations were introduced by the Treaty of Nice: *1.1.4).

D. 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. General practice

Its judgment of 15 July 1964 in the *Costa/Enel* case was fundamental in defining European Community law as an independent 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 judgments concerning the protection of human rights include 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 that it upholds (*1.5.1).

2. In specific matters

- 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.
- 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.
- The external jurisdiction of the Community: *AETR* judgment of 31 March 1971, in the *Commission/Council* case, which recognised the Community's right to conclude international agreements in spheres where Community regulations apply.
- Recent judgments establishing an obligation to pay damages by Member States that have failed to transpose directives into national law or failed to do so in good time.
- Various judgments relating to social security and competition.
- 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 Treaties must not be interpreted rigidly but must be viewed in the light of the state of integration and of the objectives of the Treaties themselves. This principle has allowed the Community to legislate in areas where there are no specific Treaty provisions, such as the fight against pollution (in a judgment of 13 September 2005 (Case C-176/03), the Court in fact authorised the European Community to take measures relating to criminal law where 'necessary' in order to achieve the objective pursued as regards environmental protection).

General Court

A. Legal basis

Articles 254 to 257 TFEU, Article 40 Euratom; Protocol No 3 annexed to the Treaties on the Statute of the Court of Justice (Title IV).

B. Duration and Statute (Article 254 TFEU)

1. Membership

a. Number (Article 19 TEU)

At least one Judge per Member State. The Judges may be called upon to perform the task of Advocate-General.

b. Requirements

Identical to those of the Court of Justice.

c. Appointment procedure

Identical to that of the Court of Justice.

2. Characteristics of the office

Identical to those of the Court of Justice.

C. Organisation and operation

1. Institutional set-up

Identical to the Court of Justice.

2. Operation

In agreement with the Court of Justice, the General Court 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 General Court sits as a full Court or 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.

European Union Civil Service Tribunal

In order to relieve the General Court of some of its proceedings, Article 257 TFEU provides for the possibility of establishing 'judicial panels' with the jurisdiction to hear certain categories of actions 'in certain specific areas' at first instance. In accordance with this provision, the Council Decision of 2 November 2004 established a 'European Union Civil Service Tribunal' (OJ L 333, 9.11.2004, p. 7). The Tribunal is responsible for ruling on disputes between the EU institutions and

their staff, where these are not the responsibility of a national court. This decision stipulates that the decisions of this Tribunal are subject to appeals to the Court of First Instance.

Role of the European Parliament

Since a 1990 ruling on a case by Parliament brought as part of the legislative procedure on the adoption of health measures to be taken following the Chernobyl nuclear accident, the Court has granted the European Parliament the right to bring before the Court actions to have decisions declared void (Article 263 TFEU) for the purpose of safeguarding its prerogatives under the legislative procedure. The Treaty of Nice extended this right, which is no longer restricted to the defence of Parliament's prerogatives. The procedure for nominating candidates for the posts of Judge and Advocate-General by the Member States changed with the entry into force of the Lisbon Treaty. Candidates are now first appraised by a panel of seven persons, one of whom will be proposed by the EP (Article 255 TFEU).

→ Udo Bux

1.3.10. Competences of the Court of Justice of the European Union

This fact sheet describes the competences of the Court of Justice of the European Union, which consists of three courts — the Court of Justice, the General Court and the Civil Service Tribunal — and offers various means of redress.

Court of Justice

A. 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.

1. Proceedings against the Member States for failure to fulfil an obligation

These actions are brought:

- either by the Commission, after a preliminary procedure (Article 258): opportunity for the state to submits its observations, reasoned opinion (*1.3.8);
- or by another Member State after it has brought the matter before the Commission (Article 259).

Role of the Court:

- confirming that the state has failed to fulfil its obligations, in which case the state is required to take the necessary measures to comply with the Court's judgment;
- if the Commission considers that the Member State concerned has not taken such measures, it may (after a preliminary procedure, as provided for above) propose to the Court of Justice that it impose a lump sum or penalty payment on the Member State in question, the amount being determined by the Court on the basis of a Commission proposal (Article 260).

2. 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 263) or, in infringement of Community law, have failed to act (failure to act: Article 265).

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 266).

3. Other direct proceedings

Actions against Commission decisions imposing penalties on firms (Article 261).

Actions for compensation for damages caused by the institutions or their servants (Article 268).

Actions by EU officials and servants against their institutions (Article 270) — competence currently devolved to the Civil Service Tribunal (see below).

Actions relating to contracts concluded by the EU (Article 272).

B. Indirect proceedings: question of validity raised before a national court or tribunal (Article 267)

The national courts are normally responsible for applying EU law when a case so requires. 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.

C. Responsibility at second instance

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

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

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

Achievements

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

A. In general

Its judgment of 15 July 1964 in the *Costa/Enel* case was fundamental in defining European Community law as an independent 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 judgments concerning the protection of human rights include 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 that it upholds (*1.5.1).

B. In specific matters

- 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.
- 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.
- The external jurisdiction of the Community: *AETR* judgment of 31 March 1971, in the *Commission/Council* case, which recognised the Community's right to conclude international agreements in spheres where Community regulations apply.
- Recent judgments establishing an obligation to pay damages by Member States that have failed to transpose directives into national law or failed to do so in good time.
- Various judgments relating to social security and competition.
- 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 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 legislation to be adopted in areas where there are no specific Treaty provisions, such as the fight against pollution (in a judgment of 13 September 2005 (Case C-176/03), the Court in fact authorised the European Community to take measures relating to criminal law where 'necessary' in order to achieve the objective pursued as regards environmental protection).

General Court

A. Jurisdiction of the General Court (Article 256)

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

- actions for annulment or for failure to act brought against the institutions (Articles 263 and 265);
- actions for the reparation of damage caused by the institutions (Article 268);
- disputes concerning contracts concluded by the Community (Article 272).

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

The judgments given by the General 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 General Court has the jurisdiction to give preliminary rulings (Article 267) in the areas laid down by the Statute. However, these decisions may exceptionally be subject to review by the Court of Justice 'where there is a serious risk of the unity or consistency of Community law being affected'. The review does not have suspensory effect.

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

- in cases of reviews of decisions of the Court of First Instance ruling on the decisions of judicial panels (see below), the Court of Justice refers the matter to the Court of First Instance, which is bound by the points of law laid down by the Court of Justice. However, the Court of Justice itself decides the case if the decision on the proceedings is based on the same evidence as that brought before the General Court, taking into account the review by the Court of Justice;
- in cases of reviews of decisions of the Court of First Instance on preliminary issues, if the Court of Justice finds that there is a serious risk of the

unity or consistency of EU law being affected, its answer to the question referred replaces that of the General Court (Article 62 of the Court's Rules of Procedure).

C. Responsibility for appeals

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

European Union Civil Service Tribunal

In order to relieve the General Court of some of its proceedings, Article 257 TFEU provides for the possibility of establishing 'judicial panels' with the jurisdiction to hear certain categories of actions 'in certain specific areas' at first instance. In accordance with this provision, the Council Decision of 2 November 2004 establishes a 'European Union Civil Service Tribunal' (OJ L 333, 9.11.2004, p. 7). The Tribunal is responsible for ruling on disputes between the EU institutions and their staff, where these are not the responsibility of a national court. The decision stipulates that the decisions of this Tribunal are subject to appeals to the General Court.

→ Udo Bux

1.3.11. The European Central Bank

The European Central Bank (ECB) is the central institution of the Economic and Monetary Union (EMU). The ECB and the national central banks constitute the European System of Central Banks (ESCB). The primary objective of the ESCB is to maintain price stability. The forthcoming Single Supervisory Mechanism (SSM) will also confer upon the ECB tasks concerning prudential banking supervision.

Legal basis

- Articles 3 and 13 of the Treaty on European Union (TEU);
- Main provisions are included in Articles 3(1)(c), 119, 123, 127-134, 138-144, 219, 282-284, of the Treaty on the Functioning of the European Union (TFEU);
- Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank; Protocol (No 15) on Certain Provision Relating to the United Kingdom of Great Britain and Northern Ireland; Protocol (No 16) on Certain Provisions Relating to Denmark; appended to the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU).

Organisation and operations

A. Organisation

The European Central Bank (ECB) was established on 1 June 1998 with its headquarters in Frankfurt am Main, Germany. It has legal personality (Article 282(3) TFEU) and enjoys in each Member State the most extensive legal capacity accorded to legal persons under its law (Article 9.1 of the Statute). According to Article 13(1) TEU, the ECB is a European Union institution. The ECB has its own decision-making bodies.

The ECB and the national central banks of the Member States constitute the European System of Central Banks (ESCB), Article 282(1) TFEU. The ECB, together with the national central banks of those Member States whose currency is the euro constitute the Eurosystem (Article 282(1) TFEU). The ESCB and the ECB perform their tasks and carry on their activities in accordance with the provisions of the Treaties and of their Statute (Article 1 of the Statute).

The ECB's independence is enshrined in Article 130 TFEU which stipulates, that, when exercising the powers and carrying out the tasks and duties conferred upon them by the Treaties and the Statute, neither the ECB, nor a national central bank, nor any member of their decision-making bodies may seek or take instructions from Union institutions, bodies, offices or agencies, from any government of a Member State or from any other body (see also Article 282(3) TFEU).

B. Decision-making bodies of the European Central Bank

The ECB's decision-making bodies are the Governing Council, the Executive Board (Article 129(1) TFEU and Article 9.3 of the Statute) and the General Council (Article 141(1) TFEU and Article 44.1 of the Statute).

The ESCB is governed by the decision-making bodies of the ECB (Article 129(1), Article 282(2) TFEU and Article 8 of the Statute).

1. Governing Council — composition and role

The Governing Council of the European Central Bank comprises the members of the Executive Board of the ECB and the Governors of the national central banks of the Member States whose currency is the euro (Article 283(1) TFEU and Article 10.1 of the Statute).

According to Article 12.1 of the Statute, the Governing Council adopts the guidelines and takes the decisions necessary to ensure the performance of the tasks. It formulates the monetary policy and establishes the necessary guidelines for the implementation. The Governing Council adopts the Rules of Procedure of the ECB, exercises advisory functions and decides how the ESCB is to be represented in the field of international cooperation (Articles 12.3-12.5 of the Statute).

2. Executive Board — composition and role

The Executive Board comprises the President, the Vice-President and four other members. They are appointed by the European Council with qualified majority on a recommendation from the Council after it has consulted the European Parliament and the Governing Council. The selection must be done from among persons of recognised standing and professional experience in monetary or banking matters. Their term of office is eight years and is not renewable (Article 283(2) TFEU and Articles 11.1-11.2 of the Statute).

The Executive Board is responsible for the current business of the ECB (Article 11.6 of the Statute). It implements monetary policy in accordance with the guidelines and decisions laid down by the Governing Council. It gives the necessary instructions to national central banks. The Governing Council might

also delegate certain powers to the Executive Board (Article 12.1 of the Statute). The Executive Board has responsibility for the preparation of meetings of the Governing Council (Article 12.2 of the Statute).

3. General Council — composition and role

The General Council exists as a third decision-making body of the ECB (Article 141 TFEU and Article 44 of the Statute) only as long as there are EU Member States with a derogation which have thus not yet adopted the euro.

The General Council comprises the President and Vice-President of the ECB and the Governors of the national central banks of all EU Member States. The other members of the Executive Board may participate, without having the right to vote, in meetings of the General Council (Article 44.2 of the Statute). It provides a link between EU Member States inside and those outside the Eurosystem.

The ECB takes over those former tasks of its predecessor, the European Monetary Institute (EMI) which, because of the derogations of one or more Member States, still have to be performed after the introduction of the euro (Article 43 of the Statute). The General Council performs these tasks (Article 46.1 of the Statute). According to Article 141(2) TFEU, its tasks include the strengthening of cooperation between the national central banks; strengthening of the coordination of the monetary policies of the Member States, with the aim of ensuring price stability; monitoring the functioning of the exchange-rate mechanism; holding consultations concerning issues falling within the competence of the national central banks and affecting the stability of financial institutions and markets; and carrying out the former tasks of the European Monetary Cooperation Fund which had subsequently been taken over by the EMI.

The General Council contributes inter alia also to the advisory functions of the ECB, to the collection of statistical information and the reporting activities of the ECB and to the necessary preparations for a country's accession to the Eurosystem (Article 46 of the Statute).

C. Objectives, tasks and powers

1. Objectives and tasks

Article 127 TFEU specifies the objectives and tasks of the ESCB and outlines the principles within which these have to be exercised. According to Article 127(1) TFEU, the primary objective is to maintain price stability. Without prejudice to this, the ESCB also supports the general economic policies in the Union in order to contribute to the achievement of the Union's objectives, which are outlined in Article 3 TEU. The ESCB acts in accordance with the principle of an open market economy with free competition and in compliance with the principles set out in Article 119 TFEU. The basic tasks carried out through the ESCB (Article 127(2) TFEU, Article 3 of the Statute) are:

- to define and implement the monetary policy of the Union,
- to conduct foreign-exchange operations consistent with the provisions of Article 219 TFEU,
- to hold and manage the official foreign reserves of the Member States,
- to promote the smooth operation of payment systems.

The ESCB also contributes 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 (Article 127(5) TFEU).

2. Powers and instruments

The ECB has various powers and instruments at its disposal. It has the exclusive right to authorise the issue of euro banknotes within the Union (the ECB and the national central banks may issue such notes). Member States may issue euro coins subject also to approval by the ECB of the volume of the issue (Article 128 TFEU).

The ECB passes regulations and takes decisions necessary for carrying out the tasks entrusted to the ESCB under the Treaty and the Statute. It also makes recommendations and delivers opinions (Article 132 TFEU).

The ECB shall be consulted on any proposed Union act in its fields of competence and by national authorities regarding any draft legislative provision in its fields of competence (Article 127(4) TFEU). It may submit opinions on the issues of consultation. The ECB is also consulted on decisions establishing common positions and on measures on unified representation of the euro area in international financial institutions (Article 138 TFEU). Assisted by the national central banks, the ECB collects the necessary statistical information either from the competent national authorities or directly from economic agents (Article 5 of the Statute).

The Statute lists various instruments the ECB may use in order to fulfil its monetary functions. Article 17 stipulates that the ECB and the national central banks can open accounts for credit institutions, public entities and other market participants and accept assets as collateral. It can conduct open market and credit operations (Article 18) and require minimum reserves (Article 19). The Governing Council might also decide by majority of two-thirds on other instruments of monetary control (Article 20). However, the prohibition of prohibiting monetary finance (Article 123 TFEU) draws limits to the use of monetary policy instruments.

To ensure efficient and sound clearing and payment systems the ECB may provide facilities and pass regulations (Article 22). The ECB might also establish relations with central banks and financial institutions in other countries and with international organisations (Article 23).

3. Member States with a derogation

Articles 139-144 TFEU stipulate special provisions for Member States with a Treaty obligation to adopt the euro but which have not yet fulfilled the conditions to do so ('Member States with a derogation'). Article 139 TFEU lists Treaty provisions which are not applicable to them, including the objectives and tasks of the ESCB (Article 127 (1-3), (5) TFEU), issue of the euro (Article 128 TFEU), acts of the ECB (Article 132 TFEU), measures governing the use of the euro (Article 133), monetary agreements and other measures relating to exchange-rate policy (Article 219 TFEU), appointment of member of the Executive Board (Article 283(2) TFEU), decisions establishing common positions (Article 138(1) TFEU), and measures to unified representation within international financial institutions (Article 138(1) TFEU). Two Member States are not obliged to join the euro area (opt-out), so special provisions apply to Denmark (Protocol No 16) and to Great Britain (Protocol No 15).

Additional tasks conferred on the ECB

Also other legal bases confer tasks on the ECB. The European Stability Mechanism (ESM) Treaty (in force as of September 2012) established the ESM as international financial institution and conferred on the ECB mainly assessment and analysis tasks in relation to granting financial assistance.

According to the founding regulations of the European Systemic Risk Board (ESRB), which is responsible for the macro-prudential oversight of the financial system within the European Union, the ECB ensures a Secretariat for the ESRB providing analytical, statistical, logistical and administrative support. The President of the ECB also acts as Chair of the ESRB.

Using the provisions in Article 127(6) TFEU, the forthcoming Single Supervisory Mechanism (SSM), which consists of the ECB and the competent national authorities, will confer additional specific tasks relating to the (micro- and macro-) prudential supervision of credit institutions in the participating Member States on the ECB. The SSM will add a Supervisory Board to the governance structure of the ECB.

→ Rudolf Maier

1.3.12. The Court of Auditors

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

Legal basis

Articles 285 to 287 of the Treaty on the Functioning of the European Union (TFEU).

Structure

A. Composition

1. Number

One member per Member State (the Treaty of Nice formalised what had until then been only the recognised procedure), thus currently 28.

2. Qualifications

They must:

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

3. Appointment

Members of the Court are appointed:

- by the Council, by qualified majority;
- on the recommendation of each Member State regarding its own seat;
- after consulting Parliament.

B. Type of mandate

1. Term

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

2. Status

Members enjoy the same privileges and immunities as those applying to Judges of the Court of Justice.

3. Duties

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

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

C. Organisation

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

The Court is organised around five chambers. There are four chambers with responsibility for specific areas of expenditure and for revenue (vertical chambers), and one horizontal chamber, known as the CEAD (Coordination, Evaluation, Assurance and Development Chamber).

Each chamber has two areas of responsibility — firstly, to adopt special reports, specific annual reports and opinions; secondly, to prepare draft observations for the annual reports on the general budget of the EU and the European Development Funds, and draft opinions for adoption by the Court as a whole.

Powers

A. The Court's audits

1. Scope

The Court's remit covers examination of any revenue or expenditure accounts of the Union or any Union body. It carries out its audits in order to obtain a reasonable assurance as to:

- the reliability of the annual accounts of the European Union;
- the legality and regularity of the underlying transactions; and
- the soundness of financial management.

2. Methods of investigation

The Court's audit is continuous; it may be carried out before the closure of accounts for the financial year in question. It is based on records and may also be carried out on the spot:

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

In the Member States the audit is carried out in liaison with the competent national bodies or departments. These bodies are required to forward to the Court any document or information it considers necessary for carrying out its task.

3. Other prerogatives

Following its audits, the Court provides Parliament and the Council with a yearly Statement of Assurance ('DAS' for déclaration d'assurance in French) as to the reliability of the accounts and the legality and regularity of the underlying transactions. The Court publishes:

- an annual report on the implementation of the EU budget for a given financial year, including the DAS, which it forwards to the EU institutions. The report is published in the Official Journal, together with the institutions' replies to the Court's observations;
- a Statement of Assurance on the European Development Fund (EDF);
- special reports on topics of particular interest, notably on issues of sound financial management;
- specific annual reports concerning EU bodies.

B. Advisory powers

Under Article 287(4) TFEU the other institutions may ask the Court for its opinion whenever they see fit. The Court's opinion is mandatory when the Council:

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

Role of the European Parliament

The Court of Auditors was created in 1977 at the initiative of the European Parliament. Since then, it has assisted Parliament and the Council in exercising their role of monitoring the implementation of the budget. In particular, the Annual Report and the Special Reports are the basis for Parliament's yearly discharge exercise. The Court's Members are invited to present their reports to meetings of Parliament's committees and to reply to questions asked by MEPs. Furthermore, the expertise of the Court is helpful to MEPs drafting legislation on financial matters.

The absence of a positive DAS with regard to the payments underlying the Union's accounts (i.e. the Court of Auditors' annual Statement of Assurance) has been an ongoing issue. Mainly due to problems in the areas of shared management of the EU budget (i.e. with the Member States), the DAS with regard to payments underlying the accounts has been negative since it was first introduced for the financial year 1994. The Commission has been successful, though, in improving financial management in recent years. While the most likely error rate was estimated by the Court to be around 7% in 2006, it decreased to below 4% for the financial years 2009 and 2010.

It should also be noted that Parliament's Committee on Budgetary Control hears Members-designate of the Court.

→ Heather Meek

1.3.13. The European Economic and Social Committee

The European Economic and Social Committee is a consultative body of the European Union. It is composed of 344 members. Its opinions are required on the basis of a mandatory consultation in the fields established by the Treaties or a voluntary consultation by the Commission, the Council or Parliament. The Committee may also issue opinions on its own initiative. Its members shall not be bound by any mandatory instructions. They shall be completely independent in the performance of their duties, in the Union's general interest.

Legal basis

Article 13(4) of the Treaty on European Union (TEU) and Articles 301-304 of the Treaty on the Functioning of the European Union (TFEU).

Composition

A. Number and national allocation of seats (Article 301 TFEU)

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

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

B. Method of appointment (Article 302 TFEU)

The members of the Committee are appointed by the Council by qualified majority, on the basis of proposals by the Member States. The Council consults the Commission on these nominations (Article 302(2) TFEU). The Member States must ensure that the various categories of economic and social activity are adequately represented. In practice, one-third of the seats go to employers, one-third to employees and one-third to other categories (farmers, retailers, the liberal professions, consumers, etc.).

C. Type of mandate (Article 301 TFEU)

The members of the Committee are appointed by the Council for a renewable five-year term (Article 302 TFEU). They must be completely independent in the performance of their duties, in the general interest of the Union (Article 300(4) TFEU).

Organisation and procedures

The Committee is not among the institutions listed in Article 13 of the TEU (which only states that it assists Parliament, the Council and the Commission by exercising consultative activities), but it does have a large degree of autonomy in its organisation and operation.

- The President and the Bureau, each with a term of office of two and a half years, are appointed by the Committee from among its members.
- The Committee adopts its own rules of procedure.
- It may meet on its own initiative, but it normally meets at the request of the Council or the Commission.
- To help prepare its opinions, it has specialised sections for the various fields of EU activity and can set up subcommittees to deal with specific subjects.
- For the sake of synergy effects, it shares its permanent secretariat services in Brussels with the secretariat of the Committee of the Regions (with regard to its seat in Brussels, see Protocol No 6 to the Lisbon Treaty on the location of the seats of the institutions). It has an annual administrative budget, included in section VI of the Union budget, of EUR 130 million (2013).

Powers

The Committee has an advisory function (Article 300 TFEU). Its purpose is to inform the institutions responsible for EU decision-making of the opinions of the representatives of economic and social activity.

A. Opinions issued at the request of EU institutions

1. Mandatory consultation

In certain specifically mentioned areas the TFEU stipulates that a decision may be taken only after the Council or Commission has consulted the EESC. These areas are:

- agricultural policy (Article 43);
- free movement of persons and services (Articles 46, 50 and 59);
- transport policy (Articles 91, 95 and 100);
- harmonisation of indirect taxation (Article 113);
- approximation of laws on the internal market (Articles 114 and 115);
- employment policy (Articles 148, 149 and 153);
- social policy, education, vocational training and youth (Articles 156, 165 and 166);
- public health (Article 168);
- consumer protection (Article 169);
- trans-European networks (Article 172);
- industrial policy (Article 173);
- economic, social and territorial cohesion (Article 175);
- research and technological development and space (Articles 182 and 188);
- environment (Article 192).

2. Voluntary consultation

The Committee may also be consulted by Parliament, the Commission or the Council on any other matter as they see fit. When these institutions consult the Committee, whether on a mandatory or voluntary basis, they may set it a time-limit (of at least one month) after which the absence of an opinion cannot prevent them from taking further action (Article 304 TFEU).

B. Issuing an opinion on its own initiative

The Committee may decide to issue an opinion whenever it considers such action appropriate.

→ Udo Bux

1.3.14. The Committee of the Regions

The Committee of the Regions is made up of 344 members representing the regional and local authorities of the Member States of the European Union. It issues opinions sought on the basis of mandatory (as required by the Treaty) and voluntary consultation and, where appropriate, own-initiative opinions. Its members are not bound by any mandatory instructions. They are completely independent in the performance of their duties, in the European Union's general interest.

Legal basis

Articles 300 and 305 to 307 of the Treaty on the Functioning of the European Union (TFEU).

Objectives

The Committee of the Regions is an advisory body which represents the interests of regional and local authorities in the European Union and adresses opinions on their behalf to the Council and the Commission.

In the words of its mission statement, the Committee of the Regions is a political assembly of holders of a regional or local electoral mandate serving the cause of European integration. It provides institutional representation for all the European Union's territorial areas, regions, cities and municipalities.

Its mission is to involve regional and local authorities in the European decision-making process and thus encourage greater participation by citizens.

In order to better fulfil this role, the Committee of the Regions has long sought the right to refer cases involving infringement of the principle of subsidiarity to the Court of Justice. Following the entry into force of the Treaty of Lisbon, it now has this right under the terms of Article 8 of Protocol No 2 on the Application of the Principles of Subsidiarity and Proportionality.

Organisation

A. Composition (Article 305)

1. Number and national allocation of seats

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

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

2. Method of appointment

Members are appointed for five years by the Council acting unanimously on proposals made by the Member States (Article 305 TFEU). The term of office is renewable. Members must either hold a regional or local authority electoral mandate, or be politically accountable to an elected assembly (Article 300(3) TFEU).

B. Structure (Article 306)

The Committee of the Regions elects its Chair and officers from among its members for a term of two-and-a-half years. It adopts its Rules of Procedure and submits them to the Council for approval. Its work is carried out in six specialist committees which draw up draft opinions and resolutions which are then submitted for adoption in plenary.

In the interests of efficiency, some of its permanent Secretariat's services at its seat in Brussels (see Protocol No 6 on the location of seats of the institutions and of certain bodies, agencies and department of the EU) are shared with the Secretariat of the Economic and Social Committee. The Committee of the Regions has an administrative budget of approximately EUR 87 million for 2013.

Attributions

A. Opinions issued at the request of other Institutions

1. Mandatory consultation

The Council and the Commission are required to consult the Committee of the Regions before taking decisions on matters concerning:

- education, vocational training and youth (Article 165),
- culture (Article 167),
- public health (Article 168),

- trans-European transport, telecommunications and energy networks (Article 172),
- economic and social cohesion (Articles 175, 177, 178).

2. Voluntary consultation

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

When Parliament, the Council or the Commission consult the Committee of the Regions (whether on a mandatory or voluntary basis) they may set a time limit (at least one month: Article 307) for its response. Should the deadline expire without an opinion being issued, they may proceed without benefit of an opinion.

B. Issuing an opinion on its own initiative

1. When the Economic and Social Committee is being consulted

The Committee of the Regions is informed when the Economic and Social Committee is consulted and it may also issue an opinion on the matter if it considers that regional interests are involved.

2. General practice

As a general rule the Committee of the Regions may issue an opinion whenever it sees fit. The Committee has, for instance, issued opinions on its own initiative in the following areas: small and medium-sized enterprises (SMEs), trans-European networks, tourism, structural funds, health (fight against drugs), industry, urban development, training programmes and the environment.

→ Udo Bux

1.3.15. The European Investment Bank

The European Investment Bank (EIB) furthers the objectives of the European Union by providing long-term project funding, guarantees and advice. It supports projects both within and outside the EU. Its shareholders are the Member States of the EU. The EIB is the majority shareholder in the European Investment Fund (EIF) and constitutes with the latter the EIB Group.

Legal basis

- Articles 308 and 309 of the Treaty on the Functioning of the European Union (TFEU). Further provisions regarding the EIB are contained in Articles 15, 126, 175, 209, 271, 287, 289, 343 TFEU;
- Protocol (No 5) on the Statute of the European Investment Bank, and Protocol (No 28) on Economic, Social and Territorial Cohesion, appended to the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU).

Objectives

According to Article 309 TFEU the task of the EIB is to contribute to the balanced and steady development of the internal market in the interest of the Union. It shall in all sectors of the economy facilitate the funding of projects:

- for developing less-developed regions;
- for modernising or converting undertakings or for developing new activities;
- of common interest to several Member States.

It shall also contribute to the promotion of economic, social and territorial cohesion in the Union (Article 175 TFEU and Protocol No 28). In addition, it supports the implementation of measures outside the European Union supporting the development cooperation policy of the Union (Article 209 TFEU). Furthermore, it supports the implementation of the Europe 2020 objectives. Hence, the EIB plays an important role in generating new growth and assists in overcoming the economic crisis.

Resources and instruments

A. Resources

In pursuit of its objectives the EIB has recourse mainly to its own resources and the capital markets (Article 309 TFEU).

1. Own resources

The own resources are provided by the members of the EIB, i.e. the Member States (Article 308 TFEU). The contribution to the capital of each individual Member State is laid down in Article 4 of the Statute and is calculated in accordance with its economic weight. In order to strengthen the EIB's role in financing the economy and support growth in the Union, the June 2012 European Council recommended an increase of the subscribed paid-in capital by EUR 10 billion. The EIB Board of Governors decided unanimously (Article 4(3) of the Statute) on this increase of capital which took effect on 31 December 2012. Hence, the subscribed capital increased in total to EUR 242.4 billion and the subscribed and paid-in capital increased by EUR 10 billion to EUR 21.6 billion. The increased paid-in capital is expected to enable the EIB to lend in the next three years additionally about EUR 60 billion, initiating new projects of about EUR 180 billion.

2. Capital market

The EIB raises the greater part of its lending resources from international capital markets, mainly through bond issuing. It is one of the largest supranational lenders. In order to acquire cost-efficient funding an excellent credit rating is important. The major credit rating agencies attribute currently the highest rating to the EIB, reflecting the quality of the EIB loan portfolio. Borrowing activities amounted in 2012 to approximately EUR 71 billion. The majority of this was raised in the core currencies (EUR, GBP and USD).

B. Instruments

The EIB uses a wide range of different instruments, but mainly loans and guarantees. However, various other more innovative instruments with a higher risk profile have been developed. Further instruments will be designed, also in cooperation with other Union institutions. The financing provided by the EIB might also be combined with financing by other EU sources ('blending'). Besides providing project financing, the EIB is giving advice.

Lending is mainly provided in the form of direct loans or intermediate loans. Direct project loans are subject to certain conditions, e.g. the total investment costs must exceed EUR 25 million and the loan can only cover up to max. 50% of the project costs. Intermediate loans comprise lending to local banks or other intermediaries which in turn support the final recipient. Regarding the regional

distribution, the majority in lending ('signatures') in 2012 (in total EUR 52.2 billion), took place in the European Union (EUR 44.8 billion).

In order to create additional financing for large infrastructure projects in the European Union especially in the key sectors of energy, transport and information technology, the 'Europe 2020 Project Bond Initiative' was created. A pilot phase, exploring the feasibility of the concept, started in summer 2012. Due to its experience and knowledge, the EIB plays a key role in this initiative. It implements this pilot phase by providing so-called 'credit enhancements' in form of subordinated debt instruments.

Besides providing long-term funding, the EIB also gives infrastructure project advice. For instance, its Joint Assistance to Support Projects in European Regions (Jaspers) to new and future EU Member States gives technical, economic and financial advice for the whole project cycle in order to optimise the use of Structural and Cohesion Funds.

Governance and structure

A. Governance

The EIB has legal personality according to Article 308 TFEU. It is directed and managed by a Board of Governors, a Board of Directors and a Management Committee (Article 6 of the Statute). An Audit Committee audits the activities of the Bank (Article 12 of the Statute).

1. The Board of Governors

a. Composition

The Board of Governors consists of the ministers designated by the Member States (Article 7(1) of the Statute).

b. Role

The Board of Governors lays down general directives for the credit policy of the Bank and ensures its implementation (Article 7(2) of the Statute). According to Article 7(3) of the Statute the Board of Governors is required to:

- decide whether to increase the subscribed capital;
- determine the principles applicable to financing operations undertaken within the framework of the Bank's task;
- exercise the prescribed powers for the appointment and compulsory retirement of the members of the Board of Directors and of the Management Committee;
- take decisions in respect of the granting of finance for investment operations to be carried out, in whole or in part, outside the EU;
- approve the annual report of the Board of Directors, the annual balance sheet and profit and loss account and the rules of procedure of the Bank.

It appoints the six members of the Audit Committee (Article 12(1) of the Statute), the Board of Directors (Article 9(2) of the Statute) and the Management Committee (Article 11(1) of the Statute).

2. The Board of Directors

a. Composition

The Board of Directors consists of 28 directors and 18 alternate directors. The directors are appointed by the Board of Governors for five years, one nominated by each Member State, and one nominated by the Commission (Article 9(2) of the Statute).

b. Role (Article 9 of the Statute)

The Board of Directors takes decisions in respect of:

- granting finance, in particular in the form of loans and guarantees;
- raising loans;
- fixing the interest rates on loans granted and the commission and other charges.

It ensures that the Bank is properly run; it ensures that the Bank is managed in accordance with the provisions of the Treaties and of the Statute and with the general directives laid down by the Board of Governors.

3. The Management Committee

a. Composition

The Management Committee consists of a President and eight Vice-Presidents appointed for a period of six years by the Board of Governors on a proposal from the Board of Directors. Their appointments are renewable (Article 11(1) of the Statute).

b. Role

The Management Committee is responsible for the day-to-day business of the Bank, under the authority of the President and the supervision of the Board of Directors; it prepares the decisions of the Board of Directors, and ensures that these decisions are implemented (Article 11(3) of the Statute).

4. The Audit Committee (Article 12 of the Statute)

a. Composition

The Audit Committee consists of six members, appointed by the Board of Governors (Article 12(1) of the Statute).

b. Role

The Audit Committee annually checks that the operations of the Bank have been conducted and its books kept in a proper manner. To this end, it verifies that the Bank's operations have been carried out in compliance with the formalities and procedures laid down by this Statute and the Rules of Procedure (Article 12(2) of the Statute).

It ascertains whether the financial statements, as well as any other financial information contained in the annual accounts drawn up by the Board of Directors, give a true and fair view of the financial position of the Bank (Article 12(3) of the Statute).

B. Structure

In 2000 the EIB Group was established. The Group consists of the EIB and the European Investment Fund (EIF).

The European Investment Fund (EIF) was founded in 1994. The EIF is set up as a public private partnership (PPP) with three main shareholder groups: the EIB, as majority shareholder (62.2%), the Commission (30%) and several public and private financial institutions (7.8%). The EIF provides various forms of risk capital instruments, e.g. venture capital. The lending focus of the EIF are small and medium-sized enterprises (SMEs). The EIF uses a wide range of innovative instruments in order to enhance the access of SMEs to finance.

→ Rudolf Maier

1.3.16. The European Ombudsman

The European Ombudsman conducts inquiries into cases of maladministration by European Union institutions or bodies. He acts on his or her own initiative or on the basis of complaints from EU citizens. The Ombudsman is appointed by the European Parliament for the duration of the EP's parliamentary term.

Legal basis

Articles 20, 24 and 228 of the Treaty on the Functioning of the European Union (TFEU).

Objectives

Established by the Maastricht Treaty (1992) as one of the aspects of European citizenship, the institution of the European Ombudsman aims to:

- improve the protection of citizens in connection with cases of maladministration by European Union institutions or bodies;
- and thereby enhance openness and democratic accountability in the decision-making and administration of the EU's institutions.

Achievements

As provided for in the Treaty, the Ombudsman's status and duties were spelt out by Parliament in a decision of 9 March 1994 taken after consulting the Commission and with the approval of the Council (OJ L 113, 4.5.1994, p. 15, amended by EP decisions of 14 March 2002, OJ L 92, 9.4.2002, p. 13 and of 18 June 2008, OJ L 189, 17.7.2008, p. 25). The Ombudsman then adopted provisions implementing that decision. The procedures for appointing and dismissing the Ombudsman are laid down in Rules 204 to 206 of Parliament's Rules of Procedure.

A. Status

1. Appointment

a. Requirements

- meet the conditions required for the exercise of the highest judicial office in his or her country or have the necessary expertise and experience to properly fulfil the duties of the Ombudsman;
- provide assurance of being entirely independent.

b. Procedure

Nominations are submitted to Parliament's Committee on Petitions, which considers their admissibility. A list of admissible candidates is then put to the vote in Parliament. Election is by secret ballot on the basis of a majority of the votes cast.

2. Term of office

a. Length

The Ombudsman is appointed by Parliament after each European election for the duration of its legislature. He or she may be reappointed.

b. Obligations

The Ombudsman:

- must be entirely independent in the exercise of his or her duties in the interests of the Union and its citizens;
- may not seek or take instructions from any body or organisation;
- must refrain from any act incompatible with his or her 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 Parliament if he or she no longer fulfils the conditions required for the exercise of his or her duties or is guilty of serious misconduct.

B. Role

1. Scope

The Ombudsman deals with cases of maladministration by European Union institutions or bodies. The entry into force of the Lisbon Treaty has extended the Ombudsman's remit to include the Common Foreign and Security Policy and the activities of the European Council.

*a. **Maladministration may consist of administrative irregularities, discrimination, the abuse of power, refusal to disclose information, unfair delays, etc.***

b. Exceptions

The following matters are not included:

- action by the Court of Justice and the Court of First Instance;
- complaints against local, regional or national authorities, which are the responsibility of the EU Member States (ministries, general government, municipal, general or regional councils), even when these complaints refer to matters connected to the European Union;

- actions by national courts or ombudsmen: the European Ombudsman does not serve as a court of appeal against decisions taken by these bodies;
- any cases which have not previously been through the appropriate administrative procedures within the organisations concerned;
- cases dealing with labour relations between European Union bodies and their staff, unless the opportunities for internal applications and appeals have been exhausted;
- complaints against businesses or individuals.

2. Referrals

The Ombudsman conducts inquiries for which he or she finds grounds either on his or her own initiative or on the basis of complaints submitted by EU citizens or any natural or legal person residing or having their registered office in a Member State, either 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 enquiry

The Ombudsman can request information from:

- institutions and bodies, which must comply and provide access to the files concerned, unless they are unable to do so on duly substantiated grounds of secrecy;
- officials and other staff of said institutions and bodies, who are required to testify at the request of the Ombudsman, although 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, which must comply unless such disclosure is prohibited by law or regulation; even in such cases, however, the Ombudsman can obtain the information on the understanding that it will not be passed on.

If the Ombudsman does not obtain the assistance requested, he or she informs Parliament, which takes appropriate action. The Ombudsman can also cooperate with his or her counterparts in the Member States, subject to the provisions of the national law concerned. If the information appears to relate to a matter of criminal law, however, the Ombudsman immediately notifies the competent national authorities and the EU institution to which the official or member of staff is answerable.

4. Outcome of inquiries

Wherever possible, the Ombudsman acts in concert with the institution or body concerned to find a solution satisfactory to the complainant. Where the Ombudsman establishes that maladministration has occurred, the matter is referred to the institution or body concerned, which then has three months in which to inform the Ombudsman of its views. The Ombudsman then forwards a report to Parliament and the institution or body concerned on the outcome of the inquiry. Finally, the Ombudsman informs the complainant of the result of the inquiry, the opinion delivered by the institution or body concerned and any personal recommendations.

C. Administration

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

D. Activities

The first Ombudsman, Mr Jacob Söderman, served two terms of office, from July 1995 to 31 March 2003. During that time, his office received more than 11 000 complaints, of which about 30% were declared admissible. In more than 5 000 cases, the complaints were passed on to a competent body or the citizens concerned were advised whom to contact for help. Almost 1 500 investigations were opened, including 19 on the Ombudsman's own initiative. In more than 500 cases, the institution in question settled the matter in the complainant's favour. In more than 200 cases, a critical remark was issued to promote better administration in similar situations in the future. Increasing use has been made of amicable solutions, recommendations and special reports. In only a handful of cases have the institutions rejected the Ombudsman's proposals. In about 700 cases, the Ombudsman decided that no maladministration had occurred.

The Code of Good Administrative Behaviour (approved by Parliament in 2001) is a procedural code which takes account of the principles of European administrative law contained in the case law of the Court of Justice and also draws inspiration from national laws. The Ombudsman uses this code when investigating whether there has been maladministration, drawing on its provisions in his or her inquiries. But the Code also acts as a guide and a resource for EU officials, encouraging the highest standards of administration.

At the plenary sitting of 15 January 2009, Mr Nikiforos Diamandouros (one of three candidates) was re-elected as European Ombudsman by Parliament for the remainder of the current parliamentary term (following a first term in office which began in April 2003).

E. Revision of the Ombudsman's Statute

On 11 July 2006, the Ombudsman submitted a proposal to Parliament's President on adjustments to the Ombudsman's Statute. The Committee on Petitions supported this proposal in its report on the Ombudsman's 2005 Annual Report (resolution

of 16 November 2006) and Parliament approved the report proposing amendments to the Statute on 22 April 2008. These amendments were approved by the Council. They seek primarily to:

- enable the Ombudsman to consult any document that he or she needs in the course of an inquiry by doing away with the secrecy exception, while clarifying and strengthening the provisions concerning the Ombudsman's duty to maintain the confidentiality of documents disclosed to him or her;
- extend the arrangements on cooperation with the European Ombudsman (already established with national ombudsmen) to the bodies in charge of promoting and protecting human rights in the Member States;
- amend the wording of the provision concerning the testimony of officials who do not speak on a personal basis, but as officials (the original formulation referred to speaking 'in accordance with instructions from their administrations');
- ask the Ombudsman to notify the European Anti-Fraud Office (OLAF) if in the course of inquiries he or she receives information that might fall within OLAF's remit.

Role of the European Parliament

Although entirely independent in the exercise of his or her duties, the Ombudsman is a parliamentary ombudsman. This is why Article 228 TFEU is cited in Chapter 1, which deals with the European Parliament. The Ombudsman has very close relations with Parliament, which has sole power to appoint and dismiss him or her, lays down rules governing the exercise of his or her duties, assists with investigations and receives his or her reports. The Committee on Petitions draws up a report every year on the Annual Report on the Ombudsman's activities. In these reports, it has repeatedly emphasised that the European Ombudsman and his national and regional counterparts should work with the Commission and Parliament to ensure that what emerges from current revisions of the treaties increases as much as possible the European Union's transparency and accountability. In its resolution adopted in November 2010 on the basis of a report by the Committee on Petitions on the Ombudsman's activities in 2009, Parliament pointed out that the most common allegations of maladministration concerned a lack of transparency. Parliament considers that the term 'maladministration' should continue to be interpreted broadly, so as to cover not only infringements of legal rules or general principles of European administrative law, but also instances where an institution fails to act consistently and in good faith, or fails to take account of the legitimate expectations of citizens.

→ Claire Genta

1.4. Decision-making procedures

1.4.1. Supranational decision-making procedures

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

History (*1.1.1, 1.1.2, 1.1.3, 1.1.4 and 1.1.5)

The Treaty of Rome gave the Commission powers of proposal and negotiation, mainly in the fields of legislation and external economic relations, and allocated powers for decision-making to the Council or, in the case of appointments, representatives of the Member States' governments. It gave Parliament a consultative power. Parliament's role has gradually grown, in the budgetary domain with the reforms of 1970 and 1975, in the legislative domain with the Single European Act and all the following Treaties, in the first place the Treaty of Maastricht introducing codecision with the Council, which also increased Parliament's role in appointments. The Single European Act also gave Parliament the power to authorise ratification of accession and association treaties; Maastricht extended that power to other international treaties of certain kinds. The Treaty of Amsterdam made substantial progress down the road to democratising the Community, by simplifying the codecision procedure, extending it to new areas and strengthening Parliament's role in appointing the Commission. Following this approach, the Treaty of Nice considerably increased Parliament's powers. On the one hand, the codecision procedure (in which Parliament has the same powers as the Council) applies to almost all new areas where the Council decides by qualified majority. On the other hand, Parliament now had the same powers as the Member States in terms of referring matters to the Court of Justice. The Treaty of Lisbon is a further qualitative step towards full equality with the Council in EU legislation and finance.

Legislative procedures[1]

A. Ordinary legislative procedure (Article 289 and 294 TFEU)

1. Scope

The Lisbon Treaty added 40 further legal bases, in particular in the area of justice, freedom and security and in agriculture, in which the Parliament will decide on legislative acts on equal footing with the Council. Hence, the ordinary legislative procedure, formerly called codecision procedure, will apply to 85 legal bases. It now covers most areas requiring a qualified majority in the Council. However, it does not apply to several important areas that require unanimity in the Council, for example fiscal policy concerning direct taxation or transnational aspects of family law.

2. Procedure

The ordinary legislative procedure follows the same steps as the former codecision procedure. However, the wording of the TFEU has changed considerably, notably to underline the equal role of Council and Parliament in this procedure.

a. Commission proposal

b. First reading in Parliament

Parliament adopts its position by a simple majority.

c. First reading in the Council

The Council adopts its position by a qualified majority, except in the fields of social security as well as police and judicial cooperation in criminal matters, which can be subject to a unanimous vote or submitted to the European Council at the request of one Member State (Articles 48 and 82 TFEU). In the latter case, to continue

[1] The Lisbon Treaty abolished the cooperation procedure which was introduced by the Single European Act of 1986.

the procedure, the European Council needs to reattribute the matter to the Council within four months. Other exceptions from QMV are asylum policy (Article 78 TFEU), immigration (Article 79 TFEU) and the definition of criminal offences and sanctions (Article 83 TFEU). If the Council approves Parliament's position the act is adopted.

d. Second reading in Parliament

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

- approve the proposal as amended by Council or take no decision; in both cases, the act as amended by the Council is adopted;
- reject the Council's 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 Council's position, which are then put to the Commission and the Council for their opinion.

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 and the Council's positions 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, by a qualified majority of the members of the Council or their representatives and by a majority of the members representing the European Parliament.
- If it does so, the joint text goes to the Council and Parliament for approval.

g. Conclusion of the procedure (third reading)

- The Council and Parliament have six weeks to approve the joint text. The Council acts by a qualified majority and Parliament by a 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.

Some bridge clauses allow the European Council to extend the application of the ordinary procedure to areas exempted from it. Over the past few years the number of first reading adoptions based on informal negotiations between the Council and the Parliament has significantly increased.

B. Consultation procedure

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

C. Consent procedure

1. Scope

Since the entry into force of the Lisbon Treaty the consent procedure applies in particular to the horizontal flexibility clause (former Article 308 TEC, before that Article 235). Other examples are combating discrimination (Article 19(1) TFEU), membership of the Union (Article 49 TEU), and arrangements for withdrawal from the Union (Article 50 TEU). In addition, Parliament's consent is required for association agreements, accession of the Union to the ECHR, agreements establishing a specific institutional framework, agreements with important budgetary implications, and agreements in areas where the ordinary legislative procedure applies.

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 (see Parliament' Rules of Procedure).

Budgetary procedure (*1.4.3)

Appointment procedures

A. Parliament elects the President of the European Commission (TEU, Article 14§1) (*1.3.8).

B. The European Council, acting by qualified majority, appoints the High Representative for Foreign Affairs and Security Policy (TEU, Article 18§1).

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

- the list of the other persons whom it proposes for appointment as Members of the Commission, by common accord with the President-elect;
- the Members of the Court of Auditors (Article 286 TFEU), after consulting Parliament and in accordance with the proposals put forward by the Member States;
- the Members of the Committee of the Regions and the European Economic and Social Committee, acting unanimously, on a proposal by the Commission (Articles 301 and 305 TFEU).

D. Parliament elects the European Ombudsman (Article 228 TFEU).

Conclusion of international agreements

Having gained legal personality, the Union can now conclude international agreements (Article 218 TFEU). The Lisbon Treaty requires the consent of the European Parliament in any agreements concluded in the field of the Common Commercial Policy as well as in all fields whose policies would fall under the ordinary legislative procedure within the EU. The Council decides by QMV, with the exception of association and accession agreements, agreements risking to prejudice the Union's cultural and linguistic diversity, and agreements in fields where unanimity would be required for the adoption of internal acts.

- Procedure: The Commission or the High Representative of the Union for Foreign Affairs and Security Policy (HR) presents recommendations to the Council, the Council defines the mandate for the negotiations and nominates the Union negotiator (from the Commission or the HR) to conduct negotiations; under the Lisbon Treaty the Commission has to report regularly to a special committee of the European Parliament during the negotiations; the proposal for conclusion is presented by the 'negotiator' (Commission or HR).
- Decision: Council, by QMV, except in the fields mentioned above.
- Parliament's role: consent for most agreements (see above), consultation for agreements falling exclusively in the field of foreign and security policy.

Quasi-constitutional procedures

A. System of own resources (Article 311 TFEU)

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

B. Provisions for election of Parliament by direct universal suffrage (Article 223 TFEU)

- Proposal: Parliament;
- Decision: Council, unanimously after obtaining Parliament's consent and recommending the proposal to the Member States for adoption according to their constitutional requirements.

C. Adoption of the Statute for Members of the European Parliament (Article 223(2) TFEU) and the Statute for the Ombudsman (Article 228(4) TFEU)

- Proposal: Parliament;
- Commission's role: opinion;
- Council's role: consent (by qualified majority except in relation to rules or conditions governing the tax arrangements for Members or former Members in which case unanimity applies);
- Decision: Parliament.

D. Amendment of the protocol on the Statute of the Court of Justice (Article 281 TFEU)

- Proposal: Court of Justice (with consultation of the Commission) or Commission (with consultation of the Court of Justice);
- Decision: Council and Parliament (ordinary legislative procedure).

Role of the European Parliament

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. It was proposed 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. Many of these improvements were implemented by the Lisbon Treaty (*1.1.5).

In the field of appointments, the Treaty of Lisbon failed to put an end to the wide range of different procedures, although some streamlining was achieved. There still are some applications of unanimity, which is likely to provoke political disputes and reduces the influence of the Parliament. Progress has notably been made after the entry into force of the Treaty of Nice with the move from unanimity to qualified majority for the appointment of the Commission President. The Lisbon Treaty provides, in addition, for the election of the Commission President by the Parliament. The appointment of the President-elect, after appropriate consultations of the Parliament, has to take into account the results of the European elections. This underlines the political legitimacy and accountability of the European Commission.

→ Erika Schulze

1.4.2. Intergovernmental decision-making procedures

In the Common Foreign and Security Policy and in several other fields such as enhanced cooperation, certain appointments or treaty revision, the decision-making procedure is different from the one provided in supra-national decision-making, notably European legislation. The dominant feature in these fields is a stronger component of intergovernmental cooperation and Member State involvement. The challenge of the public debt crisis has provoked an increased use of such decision mechanisms, notably in the creation of aid packages for Member States in financial difficulties.

Legal basis

Articles 21-46, 48 TEU; Articles 2(4), 215, 218, 220, 221 TFEU.

Description

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

- Proposal: any Member State, the Parliament or the Commission;
- Commission's role: consultation and participation in the intergovernmental conference;
- European Parliament's role: consultation before the intergovernmental conference is convened (the conferences themselves involved Parliament on an ad hoc basis but with increasing influence: for some time it was represented either by its President or two of its Members; at the last intergovernmental conference it provided three representatives);
- Role of the Governing Council of the European Central Bank: consultation in the event of institutional changes in the monetary field;
- Decision: common accord of the governments on amendments to the Treaties, which are then put to the Member States for ratification in accordance with their constitutional requirements; before that a decision by the European Council is required, by a simple majority, on whether or not to convene a convention, after consent of the Parliament.

B. Procedure for the activation of passerelle clauses

- European Council: activates and decides, unanimously, on the use of the general passerelle clause (Article 48 TEU) and the specific passerelle for the Multiannual Financial Framework (Article 312 TFEU). Any national parliament has a right of veto for the general clause;
- Council: Other bridge clauses can be decided by the Council, acting unanimously or by qualified majority, depending on the relevant treaty provision (Article 31 TEU, Articles 81, 153, 192, 333 TFEU).

C. Accession procedure (Article 49 TEU)

- Applications: from any European State which complies with the Union's principles (Article 2 TEU); notification of national parliaments and European Parliament; the European Council agrees on conditions of eligibility;
- Commission's role: consultation; it takes an active part in preparing and conducting negotiations;
- European Parliament's role: consent, by an absolute majority of its component Members;
- Decision: by the Council, unanimously; the agreement between Union Member States and the applicant State, setting out the terms of accession and the adjustments required, is put to all the Member States for ratification in accordance with their constitutional requirements.

D. 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 consent: adopted by a two-thirds majority of the votes cast, representing a majority of its Members (Rule 74(3) of the EP Rules of Procedure);
- Decision determining the existence of a breach: adopted by the European Council, 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 consent: 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. The Council can address recommendations to the Member State before taking such a decision.

E. Enhanced cooperation procedure

1. General rules (Article 20 TEU, Article 329(1) TFEU)

- Proposal: exclusive right of the Commission; Member States which intend to establish enhanced cooperation can address a request to the Commission to that effect;
- European Parliament's role: consent;
- Decision: by the Council, acting by a qualified majority.

2. Cooperation in the field of CFSP (Article 329(2) TFEU)

- Application to the Council by the Member States concerned;
- Proposal forwarded to the High Representative for Foreign Affairs and Security Policy (HR), who gives an opinion;
- Information of the European Parliament;
- The Council acts by unanimity.

A similar procedure exists for initiating a structured cooperation in defence policy introduced by the Lisbon Treaty (*6.1.2).

F. Procedure for decisions in foreign affairs

The Lisbon Treaty abolished the three-pillar structure of the previous treaties but kept foreign policy separate from the other EU policies. The objectives and provisions of CFSP are part of the Treaty on European Union. They are now better drafted and more coherent than in the previous treaties.

A major institutional change is the creation of the office of the HR, who is assisted by a new External Action Service and can propose initiatives in CFSP. CFSP has been integrated into the Union framework but follows specific rules and procedures (Article 24(2) TEU).

- Proposal: any Member State, the HR or the Commission (Article 22 TEU);
- 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;
- Decision: European Council or Council, acting unanimously. The European Council defines the priorities and strategic interests of the EU; the Council takes decisions or actions. The HR and the Member States put into effect these decisions, making use of national or Union resources. The President of the European Council can convene an extraordinary meeting of the European Council if international developments so require.

G. Financial crisis management (*4.2.3)

The advent of grave financial difficulties in some Member States in 2010 has made it necessary to come to their rescue in different guises. Some components of the aid package are managed by the Union, for instance the European Financial Stabilisation Mechanism. The major parts, notably the contributions to the European Financial Stability Fund (EFSF), are paid directly by the Member States. The EFSF is a 'special purpose vehicle' created by an intergovernmental agreement among euro area Member States. Hence the decisions required for such intergovernmental measures had to be taken at the level of the European Council, or the heads of state or government of the Eurogroup, including ratification in the Member States according to their national constitutional requirements. Two important reasons for this development are the no-bail-out clause (Article 125 TFEU) and the resistance of some national constitutional courts to a further transfer of financial and budgetary powers to the European Union.

An amendment of Article 136 TFEU (economic policy coordination) was adopted by the European Council on 25 March 2011, under the simplified treaty revision procedure, without convening a convention (European Council Decision 2011/199/EU). It will enter into force in April 2013 and thus enable the operation of permanent crisis prevention mechanisms such as the European Stability Mechanism (ESM). The latter was created by an intergovernmental treaty between the members of the euro area which entered into force on 27 September 2012. Voting procedures on its executive board include a so-called 'emergency procedure' which provides for a qualified majority of 85% in case the Commission and the ECB conclude that an urgent decision related to financial assistance is needed. Finally, an international Treaty on Stability, Coordination and Governance in the Economic and Monetary Union has been drawn up by Member State governments and entered into force on

1 January 2013, after 12 contracting parties whose currency is the euro deposited their instrument of ratification.

H. Appointments

- The European Council, acting by a qualified majority, appoints the President, Vice-President and other four members of the Executive Board of the European Central Bank, on a recommendation by the Council and after having consulted the Parliament (Article 283(2) TFEU.
- The Governments of the Member States appoint by common accord the judges and advocates-general of the Court of Justice and the General Court (formerly Court of First Instance, Article 19(2) TEU).

Role of the European Parliament

In the run-up to the 1996 Intergovernmental Conference, Parliament had already called for 'communitisation' of the second and third pillars, so that the decision-making procedures applicable under the Treaty establishing the European Community also applied to them. The entry into force of the Treaty of Nice on 1 February 2003 brought some progress on this dossier in that it made the qualified majority procedure generally applicable and, in particular, extended it to the second and third pillars.

After Parliament's continued efforts during the European Convention to make the former second and third pillars part of the Union's structure (*1.1.4), the Lisbon Treaty extends supranational decision-making to the former third pillar (justice and home affairs) and introduces a coherent institutional framework for foreign and security policy, with important innovations such as the long-term President of the European Council and the High Representative.

In view of an increasing inter-governmentalisation of economic and fiscal governance, the Parliament played its part in ensuring appropriate participation of EU institutions in the negotiations on the international treaty mentioned under G.

→ Petr Novak

1.4.3. The budgetary procedure

Since the Treaties of 1970 and 1975, the Parliament's role in the budgetary process has been progressively enhanced. The Lisbon Treaty gave the Parliament, together with the Council, equal say over the whole EU budget.

Legal basis

- Article 314 of the Treaty on the Functioning of the European Union (TFEU) and Article 106a of the Treaty establishing the European Atomic Energy Community;
- Articles 36 to 52 of the Financial Rules (Regulation (EU, Euratom) No 966/2012 of the European Parliament and the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 , OJ L 298, 26.10.2012;
- Interinstitutional Agreement (IIA) of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management (OJ C 139, 14.6.2006), as amended by Decision No 2012/5/EU of the European Parliament and of the Council of 13 December 2011 (OJ L 4, 7.1.2012, p. 12), Decision No 2009/1005/EU of the European Parliament and of the Council of 17 December 2009 (OJ L 347, 24.12.2009, p. 26), Decision No 2009/407/EC of the European Parliament and of the Council of 6 May 2009 (OJ L 132, 29.5.2009, p. 8), Amendment of 18 December 2008 (OJ C 326, 20.12.2008, p. 3), Decision No 2008/371/EC of the European Parliament and of the Council of 29 April 2008 (OJ L 128, 16.5.2008, p. 8) and Decision No 2008/29/EC of the European Parliament and of the Council of 18 December 2007 (OJ L 6, 10.1.2008, p. 7).

Objectives

The exercise of budgetary powers consists in establishing both the overall amount and the distribution of annual EU expenditure and the revenue necessary to cover it, and in exercising control over the implementation of the budget. The budgetary procedure itself involves the preparation and adoption of the budget. (*1.5.1 for details on EU revenue and expenditure, *1.5.3 for details on implementation and *1.5.4 for details on budgetary control.)

Description

A. Background

The European Parliament (EP) and Council together form the budgetary authority. Prior to 1970, budgetary powers were vested in the Council alone; the EP had only a consultative role. The Treaties of 22 April 1970 and 22 July 1975 increased the EP's budgetary powers:

- the 1970 Treaty whilst maintaining Council's right to the last word on 'compulsory expenditure' related to Treaty obligations or from acts adopted in accordance with the Treaty, gave the EP the last word on 'non-compulsory expenditure' which initially amounted to 8% of the budget;
- the 1975 Treaty gave the Parliament the right to reject the budget as a whole.

Until the Lisbon Treaty, the Council and the EP each engaged in two readings in the course of the budgetary procedure, at the end of which the Parliament could either adopt the budget or reject it as a whole.

The Treaty of Lisbon introduced a simpler and more transparent budgetary procedure. The modifications derive mainly from the elimination of the distinction between compulsory expenditure and non-compulsory expenditure (which had risen to 68% of the budget by 2010), allowing for equal treatment of all expenditure under the same procedure. The procedure is further simplified, as there will be only one reading in each institution, based on the draft budget presented by the Commission.

B. The stages in the procedure

Article 314 of the TFEU sets out the stages and time-limits which must be respected during the budgetary procedure. In practice, however, a 'pragmatic' timetable has been applied by the EP, the Council and the Commission. The different stages are as follows:

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

The EP and the Council lay down guidelines on the priorities for the budget. The Commission draws up the draft budget and forwards it to the Council and the EP by 1 September at the latest (according to Article 314(2) TFEU, but by the end of April or beginning of May according to the pragmatic timetable). The European Commission may modify the draft budget at a later stage to take account of new developments, but not later than the point at which the Conciliation Committee (see below) is convened.

2. Stage two: establishment of the Council's position on the draft budget

The Council adopts its position on the draft budget and forwards it to the EP by 1 October at the latest (according to Article 314(3) TFEU, but by the end of July according to the pragmatic timetable). The Council shall inform the EP in full of the reasons which led it to adopt its position.

3. Stage three: the Parliament's reading

The EP has 42 days in which to react. Within that period, it may either approve Council's position or decline to take a decision, in which case the budget is deemed finally adopted, or else the EP can adopt amendments by a majority of its component members, in which case the amended draft shall be referred back to the Council and to the Commission. The President of the EP, in agreement with the President of the Council, shall then immediately convene a meeting of the Conciliation Committee.

4. Stage four: meeting of the Conciliation Committee and adoption of the budget

From the day on which it is convened the Conciliation Committee (composed of the representatives of the members of the Council and an equal number of representatives of the EP) has 21 days to agree on a joint text. For that, a decision by a qualified majority of the members of the Council or their representatives and by a majority of the representatives of the EP is required. The Commission shall take part in the Conciliation Committee's proceedings and take all necessary initiatives with a view to reconciling the positions of the EP and the Council.

Should the Conciliation Committee fail to find an agreement on a joint text within the 21 days referred to above, a new draft budget must be submitted by the Commission. If the Conciliation Committee does agree on a joint text within the deadline, then the EP and the Council have 14 days from the date of that agreement to approve the joint text. The following table summarises the possible outcomes at the end of these 14 days.

The approval process of Conciliation's joint text

Positions on the joint text	Parliament	Council	Outcome
+: adopted –: rejected None: no decision taken	+	+	Common project adopted
		–	Back to EP's position, possibly [1]
		None	Common project adopted
	None	+	Common project adopted
		–	New draft budget by Commission
		None	Common project adopted
	–	+	New draft budget by Commission
		–	New draft budget by Commission
		None	New draft budget by Commission

[1] If Parliament confirms some or all of its previous amendments, acting by a majority of its component members and three fifths of the votes cast. If the Parliament does not reach the required majority, the position agreed in the joint text will be taken on board.

If the procedure is successfully completed, the President of the EP declares that the budget has been definitively adopted. In case no agreement has been reached by the beginning of a financial year, a system of provisional twelfths is put in place until an agreement can be found. In this case a sum equivalent to not more than one twelfth of the budget appropriations for the preceding financial year may be spent each month in respect of any chapter of the budget. That sum shall not, however, exceed one twelfth of the appropriations provided for in the same chapter of the draft budget. However, according to Article 315 TFEU, the Council on a proposal by the Commission may authorise expenditure in excess of one twelfth (in accordance with Article 16 of the Financial Rules) unless the EP, within 30 days, decides to reduce the expenditure authorised by the Council.

5. Supplementary and amending budgets

In the event of unavoidable, exceptional or unforeseen circumstances, the Commission may propose draft amending budgets amending the adopted budget of the current year. These amending budgets are subject to the same rules as the general budget.

Role of the European Parliament

A. Powers conferred by Article 314 of the TFEU (previously by Article 272 of the EC Treaty)

In 1970, the EP gained the right to the last word over non-compulsory expenditure. The proportion of non-compulsory expenditure rose from 8% of the budget in 1970 to 63% in the 2010 budget, the

last year in which the distinction was made. With the abolition of the distinction between compulsory and non-compulsory expenditure, the EP now has joint power with Council over all expenditure in the budget. Indeed, the position of the EP can even be considered stronger than that of the Council since the latter may never impose a budget against the will of the EP, while the EP may in some circumstances have the last word and impose a budget against the will of the Council (see supra B.4). However, this is rather unlikely, and it would be more appropriate to say that, in general, the new budgetary procedure is based on a real (although specific) codecision between the EP and the Council, on an equal footing, covering all the expenses of the Union.

The EP has rejected the budget as a whole twice (in December 1979 and in December 1984) since gaining the power to do so in 1975. Under the new rules agreed in the Lisbon Treaty, the Conciliation Committee had twice not reached an agreement (budgets for 2011 and 2013). In both cases, the new draft budget presented by the Commission reflecting the near-compromise in conciliation was finally adopted. However, for the 2013 budget, the European Parliament only agreed after signature, by the three institutions, of joint statements regarding payments.

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

Following repeated disputes concerning the legal base for implementation of the budget, the institutions adopted a joint declaration in 1982, which also laid down measures designed to ensure smoother completion of the budgetary procedure. This was followed by a series of Interinstitutional Agreements covering the following periods: 1988-1992, 1993-1999, 2000-2006 and 2007-2013. Discussions are currently underway on a proposal for a new IIA beginning in 2014. These successive agreements have provided an interinstitutional reference framework for the annual budgetary procedures and considerably improved the way the budgetary procedure works by:

- establishing multiannual financial frameworks (MFFs) setting out the ceilings for appropriations by categories of expenditure;
- formalising interinstitutional collaboration through trialogues and conciliation at various stages of establishing the budget;
- providing special provisions in certain areas of conflict, such as the classification of expenditure, the inclusion of the financial provisions in legislative instruments, the legal bases and the pilot projects and preparatory actions (initiatives of the EP with no legal basis), expenditure relating to the fisheries agreements, financing of the CFSP, etc.;
- limiting the role of the maximum rate of increase rule;
- setting up decision-making mechanisms for additional resources, such as the flexibility instrument, the emergency aid reserve, the European Globalisation Fund, the European Solidarity Fund or the revision of the MFF ceilings.

Although MFFs do not replace the annual budgetary procedure, the Interinstitutional Agreements have introduced a form of budgetary codecision procedure, which allows the EP to assert its role as a fully-fledged arm of the budgetary authority, to consolidate its credibility as an institution and to orientate the budget towards its political priorities. The Lisbon Treaty and the Financial Rules also stipulate that the annual budget must respect the ceilings defined in the MFF, which must itself respect the ceilings established in the decision on own resources.

C. The European semester

On 7 September 2010 the Economic and Financial Affairs Council approved the introduction of the 'European semester'. The European semester is a six-month period every year during which the Member States' budgetary and structural policies will be reviewed to detect any inconsistencies and emerging imbalances. The aim is to reinforce coordination while major budgetary decisions are still under preparation. In addition to coordination between national budgets, the European Parliament is also working to exploit synergies and reinforce coordination between national budgets and the EU budget.

→ Judith Lackner

1.5. Financing

1.5.1. The Union's revenue and expenditure

Budget revenue is determined by the Council after ratification by Member States' parliaments. Budget expenditure is approved jointly by the Council and Parliament.

Legal basis

- Articles 310-325 of the Treaty on the Functioning of the European Union and Article 173 of the Euratom Treaty (revenue and expenditure); Article 352 of the Treaty on the Functioning of the European Union and Articles 172 and 203 of the Euratom Treaty (loans);
- Council Decision (EC, Euratom) No 436/2007 of 7 June 2007 on the system of the European Communities' own resources (OJ L 163, 23.6.2007, p. 17);
- Council Regulation (EC, Euratom) No 105/2009/EC of 26 January 2009 amending Regulation (EC, Euratom) No 1150/2000/EC implementing Decision 2000/597/EC, Euratom on the system of the Communities' own resources (OJ L 36, 5.2.2009, p. 36);
- Council Regulation (EC, Euratom) No 2028/2004/EC of 16 November 2004 amending Regulation (EC, Euratom) No 1150/2000/EC implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources (OJ L 352, 27.11.2004, p. 1);
- Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002(OJ L 298, 26.10.2012, p.1);
- Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management — including the multiannual financial framework 2007-2013 (OJ C 139, 14.6.2006), as amended by Decision No 2012/5/EU of the European Parliament and of the Council of 13 December 2011 (OJ L 4, 7.1.2012, p. 12), Decision No 2009/1005/EU of the European Parliament and of the Council of 17 December 2009 (OJ L 347, 24.12.2009, p. 26), Decision No 2009/407/EC of the European Parliament and of the Council of 6 May 2009 (OJ L 132, 29.5.2009, p. 8), Amendment of 18 December 2008 (OJ C 326, 20.12.2008, p. 3), Decision No 2008/371/EC of the European Parliament and of the Council of 29 April 2008 (OJ L 128, 16.5.2008, p. 8) and Decision No 2008/29/EC of the European Parliament and of the Council of 18 December 2007 (OJ L 6, 10.1.2008, p. 7).

Objective

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

Operation

While the European Coal and Steel Community (ECSC) was granted its own resources from the start, the European Economic Community (EEC) and the European Atomic Energy Community (Euratom) were initially financed by contributions from the Member States. The Own Resources Decision of 21 April 1970 provided the EEC with its own resources. Own resources are currently limited to 1.23% of EU GNI. As the budget must balance, expenditure is also constrained by this ceiling.

Revenue

1. 'Traditional' own resources

These were created by the Decision of 1970 and have been collected ever since. In 2012 they represented roughly 12% of total revenue. They consist of custom duties, agricultural duties and sugar and isoglucose levies.

2. The VAT-based own resource

Although provided for in the Decision of 1970, this resource was not applied until the VAT systems of the Member States were harmonised in 1979. It consists in the transfer to the Community of a percentage of the estimated VAT collected by the Member States. The VAT resource accounted for 10.4% of total revenue in 2012.

3. The GNI-based own resource

This 'fourth own resource' was created by the Decision of 1988 and consists of a levy on the Member States' GNP of a uniform percentage set in each year's budget procedure. Originally it was only to be collected if the other own resources did not fully cover expenditure, but it now finances the bulk

of the EU budget. In 2012, the GNI-based resource represented approximately 70% of EU revenue.

4. Other revenue and the balance carried over from the previous year

Other revenue includes taxes paid by EU staff on their salaries, contributions from non-EU countries to certain EU programmes, and fines from companies that breach competition or other laws. The balance from each financial year is entered in the budget for the following year as revenue in the case of a surplus. Other revenue, balances and technical adjustments amounted in 2012 to about 7.6% of total revenue.

5. Correction mechanisms

Correcting budgetary imbalances between Member States' contributions is also part of the current own resources system. The 'UK rebate' agreed in 1984 consists in a reduction in the United Kingdom's contribution equivalent to two-thirds of the difference between its contribution (excluding traditional own resources) and what it receives back from the budget. This rebate was adjusted in 2007 in order gradually to exclude non-agricultural expenditure in Member States having acceded since 2004 from the calculation. This correction is financed by all the other Member States, except for Germany, the Netherlands, Austria and Sweden, who benefit from a reduction in their contributions to the financing of the UK rebate. Germany, the Netherlands, Austria and Sweden also benefit from a reduced rate of call of VAT for the period 2007-2013, and the Netherlands and Sweden benefit from a reduction in their GNI contributions for the same period. Proposals for a new Own Resources Decision are under discussion.

Expenditure

A. Basic principles

The Community budget obeys the nine general rules of unity, budgetary accuracy, annuality, equilibrium, unit of account (the euro), universality, specification (each appropriation is allocated to a particular kind of expenditure), sound financial management and transparency, pursuant to Articles 6 to 35 of the Regulation on the financial rules.

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

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

The unity rule is not fully adhered to either, owing to the fact that European Development Fund (EDF) appropriations are not included in the budget. Parliament has repeatedly requested in its resolutions that the EDF be integrated into the general budget.

B. Budget structure based on the characteristics of the appropriations

1. Operating expenditure/administrative expenditure/individual activity budgets

The general budget is divided into ten sections, one for each institution. While the other institutions' sections consist essentially of administrative expenditure, the Commission section (Section III) consists of operational expenditure to finance actions and programmes and the administrative costs of implementing them (technical assistance, agencies, human resources). The Commission uses a budget nomenclature that presents resources by policy area and activities, thus making it easier to assess the cost and effectiveness of each Community policy ('Activity Based Budgeting').

2. The Multiannual Financial Framework (MFF) (*1.5.2)

Since 1988, Community expenditure has been placed in a multiannual framework, which breaks the budget down into headings with expenditure ceilings reflecting the main budgetary priorities for the period covered. The first programming period covered 5 years; the subsequent and current periods 7 years. The Treaty of Lisbon foresees a period of 'at least 5 years', in line with the term of the Commission and the legislative term. The annual budgets must respect the limits set out in the multiannual framework.

Borrowing and lending operations

The Euratom Treaty expressly empowers the Community to contract loans. Article 352 provides the necessary powers under the Treaty on the Functioning of the European Union.

Loans have greatly increased in volume since 1978 and are set to increase further. The Interinstitutional Agreement on Budgetary Discipline and Sound Financial Management of May 2006 provides for extended recourse to such 'new financial instruments'. Financial instruments in the form of equity or risk capital, guarantees or other risk sharing arrangements have been incorporated in a range of EU programmes to increase the leverage capacity of EU financial assistance.

As part of a package of measures agreed by the Council on 9 May 2010 for Member States in

difficulties or threatened with severe difficulties, the European Financial Stabilisation Mechanism was established to provide financial assistance in the form of a loan or a credit line guaranteed by the EU budget. The 'Balance of Payments' facility enables financial assistance to Member States whose currency is not the euro. Moreover, macrofinancial assistance, in the form of loans or grants, may be given to assist non-member countries.

Role of the European Parliament

A. Revenue

Parliament has in several resolutions (e.g. that of 11 March 1999 on the need to modify and reform the European Union's own resources system, that of 8 June 2005 on Policy Challenges and Budgetary Means of the enlarged Union 2007-2013, and that of 17 May 2006 on the conclusion of an interinstitutional agreement on budgetary discipline and sound financial management) drawn attention to the inadequacy of revenue and highlighted problems with the own resources system, particularly regarding its excessive complexity. It has put forward proposals to ensure that the Union is financially independent and to make revenue collection simpler, more transparent and more democratic.

The resolution of 29 March 2007 on the future of the European Union's own resources provided guidelines for the Commission's review work initially foreseen in 2008/2009. This resolution pointed to the shortcomings of the current financing system and advocated a two-step approach with a view to creating a new system of own resources.

The Treaty of Lisbon states that the budget should be financed wholly from own resources and empowers the Council, after consulting Parliament, to unanimously adopt a decision on the system of own resources of the Union, including the possibility of establishing new categories of own resources and abolishing existing ones. Any such decision would need to be ratified by the Member States. However, the implementing measures in respect of such a decision may now only be adopted by the Council after obtaining the consent of Parliament. This can be seen as a step in the direction of extending the Community method to the area of the Union's own resources.

Building on the new provisions of the Treaty of Lisbon, Parliament again called for an in-depth reform in its resolutions of 8 June 2011, 13 June 2012, 23 October 2012 and 13 March 2013, also voting in favour of the Commission's proposal to reform the VAT own resource. The reform proposed by Parliament would aim at achieving an autonomous, fairer, simpler and more transparent system, under which the share of GNI-based revenue would be reduced to a maximum of 40% and replaced by one or several genuine own resources. Rebates and correction mechanisms would be phased out. The reform would not increase the overall tax burden for citizens, but would, rather, decrease the burden on national treasuries. As a result of the negotiations on the MFF for 2014-2020, a high-level group will be set up, composed of representatives of Parliament, the Council and the Commission, to undertake a general review of the own resources system in dialogue with national parliaments. The results of its work are to be taken into account in the proposed review of the next MFF.

B. Expenditure

Before the adoption of the Treaty of Lisbon, budgetary expenditure was classified as either compulsory (if it related to Treaty obligations or from acts adopted in accordance with the Treaty), or non-compulsory. While Parliament had the last say over non-compulsory expenditure, the Council had the last say over compulsory expenditure. Parliament opposed this distinction as a restriction of its powers. The Treaty of Lisbon abolishes the distinction between compulsory and non-compulsory expenditure and gives Parliament joint budgetary powers with the Council over the whole budget.

C. Borrowing and lending operations

In line with its resolution of 22 April 2008 on the European Investment Bank's annual report for 2006, Parliament's Committee on Budgetary Control now holds an annual meeting with the EIB to scrutinise its financial activities. Whilst considering that financial instruments can be a valuable tool in multiplying the impact of Union funds, Parliament has stressed that they should be implemented under strict conditions, avoiding budgetary risks for the budget. To that end, detailed rules for the use of financial instruments have been included in the Regulation on the financial rules.

Parliament adopted a resolution on 7 July 2010 calling for an assessment of the impact on the EU budget of the European Financial Stabilisation Mechanism and other EU financial instruments and of EIB loans. Parliament has also called for all expenditure and revenue resulting from decisions taken by or in the name of the EU institutions, including borrowing, lending and loan guarantee operations, must be summarised in a document annexed every year to the Draft Budget, providing an overall view of the financial and budgetary consequences of Union activities.

→ Annemieke Beugelink

1.5.2. Multiannual Financial Framework

To date, there have been four interinstitutional agreements on the budgetary procedure containing multiannual financial frameworks: Delors I (1988-1992), Delors II (1993-1999), Agenda 2000 (2000-2006) and the Multiannual Financial Framework 2007-2013. The Treaty of Lisbon transformed the Multiannual Financial Framework into a legally binding act. Following Parliament's consent on 19 November 2013, the Council adopted the 2014-2020 MFF regulation on 2 December 2013.

Legal basis

Prior to the adoption of the Treaty of Lisbon, the multiannual financial framework (MFF), also known as the financial perspective, was adopted as part of the interinstitutional budgetary agreements between the European Parliament (EP), the Council and the Commission. The previous MFF was agreed as Annex I to the Interinstitutional Agreement (IIA) of 17 May 2006 on budgetary discipline and sound financial management (OJ C 139, 14.6.2006). Article 312 of the Treaty on the Functioning of the European Union (TFEU), which came into force on 1 December 2009, provides for the adoption of an MFF regulation. The draft MFF regulation and a new draft IIA on cooperation in budgetary matters and sound financial management as amended by the Council were rejected by Parliament on 6 July 2011. The Presidents of Parliament, the Council and the Commission reached a political agreement on an MFF regulation for 2014-2020 and a new IIA on 27 June 2013, which Parliament formally endorsed at its November 2013 part-session.

Background

In the 1980s, a climate of conflict in relations between the institutions arose out of a growing mismatch between resources and requirements. The concept of a multiannual financial perspective was developed as an attempt to lessen conflict, enhance budgetary discipline and improve implementation through better planning. The first IIA was concluded in 1988. It contained the financial perspective for 1988-1992 (also known as the Delors I package), which was intended to provide the resources needed for the budgetary implementation of the Single European Act. A new IIA was agreed on 29 October 1993, together with the financial perspective for 1993-1999 (the Delors II package), which enabled the Structural Funds to be doubled and the own resources (*1.5.1) ceiling to be increased. The third IIA, on the financial perspective for 2000-2006, also known as Agenda 2000, was signed on 6 May 1999, and one of its main challenges was to secure the necessary resources to finance enlargement (*6.3.1). The fourth IIA, covering the period 2007-2013, was agreed on 17 May 2006.

The MFF has since been included in the Treaty of Lisbon. Article 312 TFEU stipulates that the MFF, 'established for a period of at least five years', 'shall ensure that Union expenditure develops in an orderly manner and within the limits of its own resources', and that 'the annual budget of the Union shall comply with the multiannual financial framework', thus laying down the cornerstone of financial discipline.

In addition to determining the 'amounts of the annual ceilings on commitment appropriations by category of expenditure and of the annual ceiling on payment appropriations', the TFEU states that the MFF shall also 'lay down any other provisions required for the annual budgetary procedure to run smoothly'. The new MFF will be accompanied by a new IIA covering the areas of budgetary discipline, cooperation in budgetary matters and sound financial management.

Current Multiannual Financial Framework 2007-2013

The previous MFF establishes, for the period 2007-2013, annual ceilings for commitment appropriations (by heading and subheading), and for payment appropriations.

For the period 2007-2013 the ceiling for commitment appropriations is EUR 976 billion (1.12 % of EU GNI), and the ceiling for payment appropriations is EUR 926 billion (1.06 % of EU GNI) at current prices[1].

The IIA to which the MFF is annexed is divided into three parts.

a. Part I contains a definition and implementing provisions for the financial framework. This section includes a number of instruments which provide for more flexibility (the EU Solidarity Fund, the European Globalisation Adjustment Fund, the Emergency Aid Reserve and the Flexibility Instrument), in addition to the possibility, 'in case of unforeseen circumstances', of revising the MFF ceilings (Article 21).

b. Part II relates to improving interinstitutional collaboration during the budgetary procedure.

[1] The ceilings at 2011 prices are EUR 994 billion for commitments and EUR 943 billion for payments.

c. Part III contains provisions related to sound financial management of EU funds.

The Multiannual Financial Framework 2014-2020[1]

In its amended proposal of 6 July 2012, the Commission proposed, for the period 2014-2020, increasing the ceiling for commitment appropriations to EUR 1 033 billion (1.08 % of EU GNI) and that for payment appropriations to EUR 988 billion (1.03 % of EU GNI). In the light of the current economic climate, the Presidents of the Commission, Parliament and the Council reached a political agreement on 27 June 2013 on an MFF package which reduced the overall ceilings for commitment appropriations to EUR 960 billion (1.00 % of EU GNI) and for payment appropriations to EUR 908 billion (0.95 % of EU GNI).

In its resolution of 3 July 2013 on the political agreement on the Multiannual Financial Framework 2014-2020, Parliament recalled that adoption of the MFF regulation and the new IIA is linked to the adoption of amending budgets needed to provide extra payment appropriations for the financial year 2013, to a political agreement on the relevant legal bases, especially on points also reflected in the MFF regulation, and to the setting up of a high-level group on own resources.

Those three conditions were fulfilled in time for Parliament to give its consent to the Council's draft MFF regulation at the November 2013 part-session, following which, on 2 December 2013, the Council adopted the 2014-2020 MFF regulation.

[1] All figures in this section are in 2011 prices.

Multiannual Financial Framework (EUR million, 2011prices)

COMMITMENT APPROPRIATIONS	2014	2015	2016	2017	2018	2019	2020	Total 2014-2020
1. Smart and inclusive Growth	60.283	61.725	62.771	64.238	62.528	67.214	69.004	450.763
1a Competitiveness for Growth and Jobs	15.605	16.321	16.726	17.693	18.490	19.700	21.709	125.614
1b Economic, social and territorial cohesion	44.678	45.404	46.045	46.545	47.038	47.514	47.925	325.149
2. Sustainable growth: Natural Resources	55.883	55.060	54.261	53.448	52.466	51.503	50.558	373.179
of which: market related expenditure and direct payments	41.585	40.989	40.421	39.837	39.079	38.335	37.605	277.851
3. Security and citizenship	2.053	2.075	2.154	2.232	2.312	2.391	2.469	15.686
4. Global Europe	7.854	8.083	8.281	8.375	8.553	8.764	8.794	58.704
5. Administration	8.218	8.385	8.589	8.807	9.007	9.206	9.417	61.629
of which: administrative expenditure of the Institutions	6.649	6.791	6.955	7.110	7.278	7.425	7.590	49.798
6. Compensations	27	0	0	0	0	0	0	27
TOTAL COMMITMENT APPROPRIATIONS	134.318	135.328	136.056	137.100	137.866	139.078	140.242	959.988
as a percentage of GNI	1,03%	1,02%	1,00%	1,00%	0,99%	0,98%	0,98%	1,00%
TOTAL PAYMENT APPROPRIATIONS	128.030	131.095	131.046	126.777	129.778	130.893	130.781	908.400
as a percentage of GNI	0,98%	0,98%	0,97%	0,92%	0,93%	0,93%	0,91%	0,95%
Margin available	0,25%	0,25%	0,26%	0,31%	0,30%	0,30%	0,32%	0,28%
Own Resources Ceiling as a percentage of GNI	1,23%	1,23%	1,234%	1,23%	1,23%	1,23%	1,23%	1,23%

Role of the European Parliament

a. The MFF 2007-2013

In September 2004, Parliament established a special committee on policy challenges and budgetary means (FINP) which laid down its negotiating position. Parliament ensured that the overall agreement on the MFF 2007-2013 provided for sound management of the EU budget and preserved the EP's legislative and budgetary powers through, for example, more flexibility in the budgetary procedure, better and faster reactions to disasters, clearer obligations for Member States, better financial planning, and better controls over the setting-up of new agencies. Parliament has since played a major role in revising the MFF to ensure the provision of sufficient budgetary means for Galileo, the European Institute of Innovation and Technology, the European Economic Recovery Plan, ITER (the International Thermonuclear Experimental Reactor), and enlargement of the EU to Croatia.

B. The MFF regulation

Following the adoption of the Treaty of Lisbon, the draft MFF regulation for the period 2007-2013 and a new draft IIA on cooperation in budgetary matters and sound financial management as amended by Council were rejected by Parliament on 6 July 2011 because they were considerably less flexible than the previous IIA and did not take the EP's position sufficiently into account. As a consequence, that IIA remained in force.

C. The MFF 2014-2020

In July 2010 Parliament established a special committee on policy challenges and budgetary resources for a sustainable EU after 2013 (SURE), with the brief of preparing a report on the next MFF before the Commission presented its proposals. On the basis of the SURE report, Parliament adopted a resolution on 8 June 2011 entitled 'Investing in the future: a new Multiannual Financial Framework (MFF) for a competitive, sustainable and inclusive Europe'.

Parliament has reaffirmed the approach set out in the SURE report in three further resolutions on the MFF and own ´resources:

- European Parliament resolution of 13 June 2012 on the Multiannual Financial Framework and own resources;
- European Parliament resolution of 23 October 2012 in the interests of achieving a positive outcome of the Multiannual Financial Framework 2014-2020;
- European Parliament resolution of 13 March 2013 on the European Council conclusions of 7/8 February concerning the Multiannual Financial Framework.

In its resolution of 3 July 2013 Parliament gave political confirmation, before its legal endorsement of the MFF package on 19 November 2013, to the agreement on the 2014-2020 MFF reached by the Presidents of Parliament, the Council and the Commission following an intense series of negotiations, during which the EP secured:

- flexibility for commitments and payments across headings and across years to allow the use of the full amounts foreseen for 2014 to 2020;
- enhanced flexibility to tackle youth unemployment and strengthen research without reducing resources for other programmes;[1]
- enhanced flexibility to provide help in the event of major disasters through the Solidarity Fund;
- an obligatory revision clause making it possible to reassess the budgetary needs during the MFF period and adjust them, if necessary, allowing the newly elected European Parliament to play its role, and a commitment to reviewing the duration of future MFFs with a view to striking the right balance between the duration of the institutions' political cycles and stability for programming cycles and investment predictability;
- ring-fencing of funds for the large-scale projects ITER, GALILEO and COPERNICUS to protect other programmes in the event of cost overruns;
- a clear understanding on a viable way and timetable for the setting up of a true system of own resources for the European Union;
- budget unity and transparency, ensuring full information for citizens on all expenditure and revenue resulting from decisions taken by, or in the name of, the EU's citizens, and adequate parliamentary control;
- improvement of interinstitutional collaboration in budgetary matters, particularly regarding the fisheries agreements, the CFSP, the EDF and the agencies, and in the budgetary procedure, including gender budgeting;
- enhanced financial management, particularly regarding EU funds spent through international organisations and by the Member States, and the evaluation of EU spending.

→ Fabia Jones
11/2013

[1] EUR 2 543 million (at 2011 prices) may be frontloaded to 2014 and 2015 for the following programmes: Youth Employment: EUR 2 143 million; Horizon 2020: EUR 200 million; Erasmus: EUR 150 million and COSME: EUR 50 million.

1.5.3. Implementation of the budget

The Commission implements the budget on its own responsibility and in cooperation with the Member States subject to the political control of the European Parliament.

Legal basis

- Articles 290-291, 317-319 and 321-323 of the Treaty on the Functioning of the European Union (TFEU), Article 179 of the Euratom Treaty;
- Financial Regulation, Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002, [1]
- Implementing Rules to the Financial Regulation, i.e. Commission delegated regulation of 29 October 2012 on the rules of application of Regulation of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union [2]
- Interinstitutional Agreement of 17 May 2006 between the EP, the Council and the Commission on budgetary discipline and sound financial management, including the multiannual financial framework 2007-2013 [3], last amended by Decision 407/2009 of the EP and of the Council of 6 May 2009 [4].

Objective

The Commission implements the revenue and expenditure of the budget in accordance with the Treaties and with the provisions and instructions set out in the Financial Regulation, under its own responsibility and within the limit of the appropriations authorised (*1.5.2).

The Member States cooperate with the Commission so that the appropriations are used in accordance with the principle of sound financial management, i.e. economy, efficiency and effectiveness.

Description

A. Basic mechanism

Implementation of the budget is made up of two main operations, commitments and payments. Regarding commitment of expenditure, a decision is taken to use a particular sum from a specific budgetary line in order to finance a specific activity. Then, after the corresponding legal commitments (e.g. contracts) have been established and the contractual service, work or supplies been delivered, the expenditure is authorised and the sums due are paid.

B. Methods of implementation

As specified in Article 58 of the Financial Regulation, the Commission may implement the budget in one of the following ways:

- Directly ('direct management'), by its departments, or through executive agencies,
- Under shared management with Member States ('shared management'),
- Indirectly ('indirect management'), by entrusting budget implementation tasks to entities and persons, e.g.: third countries, international organisations,...

In practice, some 76% of the budget is spent under 'shared management', with Member States distributing funds and managing expenditure, 22% is done under 'direct management' by the Commission and the rest under 'indirect management' [5].

Article 317 TFEU specifies that the Commission shall implement the budget in cooperation with the Member States, and adds that the regulations made pursuant to Article 322 TFEU shall lay down the control and audit obligations of the Member states in the implementation of the budget and the resulting responsibilities.

Furthermore, in the broader context of the EU law implementation, Article 290 and 291 TFEU set provisions ruling the delegated powers and implementing powers conferred to the Commission, in particular the control on the Commission exercised by the Member States, the Council and the Parliament in this respect.

According to Article 290 TFEU a legislative act may delegate to the Commission the power to adopt non-legislative acts to supplement 'certain non-essential elements of the legislative act'. The Parliament and the Council have the right to revoke such delegation of powers to the Commission, or to object to it, thereby preventing it from entering into force.

Article 291 regulates the implementing powers conferred to the Commission. Whereas Article 291(1) TFEU stipulates that Member States are responsible for the adoption of all measures of national law necessary to implement legally binding Union

[1] OJ L 298, 26.10.2012.

[2] OJ L 362, 31.12.2012, pp. 1-111.

[3] OJ C 139, 14.6.2006.

[4] OJ L 132, 29.5.2009, p. 8.

[5] Source: European Commission Directorate-General for Budget.

acts, Article 291(2) provides for these acts to confer implementing powers on the Commission or, in the cases of articles 24 and 26 TEU, to the Council, where 'uniform conditions for implementing legally binding Union acts are needed'. Pursuant to Article 291(3) the European Parliament and the Council lay down by means of regulations the rules concerning mechanisms for control of the Commission's exercise of implementing powers.

Article 291 TFEU has been given follow-up by Regulation 182/2011 of the Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers[1]. This control is exercised through the committees composed of the representatives of Member States and chaired by a representative of the Commission. The regulation sets two new types of procedure, applicable depending on the scope of the act in question. Under the examination procedure, the Commission cannot adopt the measure if the committee has delivered a negative opinion. Under the advisory procedure, the Commission is obliged to take 'utmost account' of the committee's conclusions, but it is not bound by the opinion.

Incorrect implementation of the budget by Member States is penalised through the clearance of accounts procedure for agricultural spending, whereby national government receipts from the EU budget are corrected by recalling unduly paid funds following controls carried out by the Commission and the Court of Auditors. Arrangements also exist to ensure that only eligible expenditure is financed by the Structural Funds. Decisions concerning such corrections are taken by the Commission according to the procedures concerning implementing powers mentioned above.

Implementation of the budget in particular sectors has been the subject of frequent criticism by the Court of Auditors (*1.3.10).

C. Implementation Rules

The Financial Regulation contains all the principles and rules which govern the implementation of the budget. It has a horizontal character, being applicable to all areas of expenditure and all revenue. Further rules applicable to the implementation of the budget are to be found in sector-based regulations, covering particular EU policies.

The Commission's main tool for implementing the budget and for monitoring its execution is its computerised accounting system ABAC (accruals based accounting). The Commission has taken action to meet the highest international accounting standards, in particular the International Public Sector Accounting Standards (IPSAS) established by the International Federation of Accountants (IFAC). Member States' responsibility in shared management of the EU budget has been tightened notably by Article 59 of the new Financial Regulation.

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

Role of the European Parliament

Firstly, the European Parliament (EP), as one of the two arms of the budgetary authority, has a prior influence on the implementation of the Community budget, by means of the amendments and decisions taken in the context of the budgetary procedure (*1.4.3) to allocate funds. The EP may decide to make use of the reserve mechanism of the budget: where it has doubts regarding the justification of expenditure or the Commission's ability to implement it, the EP may decide to place such funds in reserve until the Commission provides appropriate evidence. Such evidence is provided as part of a request to transfer funds from the reserve. Both EP and Council are required to approve proposals for transfers. Appropriations cannot be implemented until they have been transferred from the reserve and to the relevant budget line.

Secondly, the discharge procedure (*1.5.4) allows the EP to control the current budgetary implementation. Although most questions raised concern the discharge period, many of the questions put to the Commission by the Committee on Budgetary Control — within the framework of the discharge procedure — refer to the current implementation of the budget. The discharge resolution, which is an integral part of the discharge decision, contains many obligations and recommendations addressed to the Commission and other bodies involved in the implementation of the budget.

According to the Lisbon Treaty, the Parliament along with the Council is responsible for establishing 'the financial rules which determine in particular the procedure to be adopted for establishing and implementing the budget and for presenting and auditing accounts' (Article 322(1) TFEU). Key elements are the improvement of the implementation of the budget, increasing the visibility and the benefits of Community funding to the citizen and achieving the right balance between the protection of financial interests, the proportionality of administrative costs and user-friendly procedures.

Furthermore, in almost all policy areas, the EP influences the implementation of the budget through its legislative and non-legislative activities, e.g. by reports and resolutions or simply by addressing oral or written questions to the Commission.

[1] OJ L 55, 28.2.2011, pp. 13-18.

Over the last few years, EP has strengthened its political control over the Commission by introducing instruments which enable an exchange of information on the implementation of funds and the amount of commitments outstanding i.e. legal commitments, which have not yet been honoured by payment. Outstanding commitments can become a problem if accumulated over longer periods. EP is therefore pushing the Commission to keep these under control.

New tools are being developed which should allow for a better monitoring of the implementation and to improve the value for money of EU programmes. For this purpose the EP supports high standard Activity Statements (prepared by the Commission in Preliminary Draft General Budget working documents) and regular cost effectiveness analyses of Community programmes.

The previous comitology decision[1] already strengthened EP's power of control through the 'regulatory procedure with scrutiny' which entitled Parliament to scrutinise quasi-legislative measures implementing an instrument adopted by co-decision and to reject such measures by an absolute majority. Articles 290 and 291 TFEU go beyond this 'regulatory procedure with scrutiny' introducing new rules on the delegating powers and implementing acts.

According to rapporteur Szájer, the entry into force of the Treaty of Lisbon has brought a complete change from the old comitology system to a new legal framework including delegated and implementing acts; having introduced a hierarchy of norms, it reinforces the democratic character of the Union and rationalises its legal order.

→ Alexandre Mathis

[1] Council Decision 2006/512/EC of 17 July 2006 amending Council Decision 1999/468/EC of 28 June 1999 (OJ L 200, 22.7.2006).

1.5.4. Budgetary control

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

Legal basis

- Articles 317, 318, 319, 322 and 325 TFEU;
- Financial Regulation, Part One, Title VII, Chapters 1 and 2 (Council Regulation (EC, Euratom) 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, last amended by Regulation (EU, Euratom)1081 of the EP and of the Council of 24 November 2010);
- Interinstitutional Agreement of 17 May 2006 between the EP, the Council and the Commission on budgetary discipline and sound financial management, paragraph 44;
- Rules of Procedure of the EP, Title II, Chapter 7, Rules 76, 77 and 78; Title IV, Chapter 2, Rule 112; Annex VI.

Objectives

To ensure the legality, accuracy and financial soundness of budget operations and financial control systems, as well as the sound financial management of the European budget (economy, efficiency and effectiveness).

Achievements

A. Control at national level

Initial control of income and expenditure is exercised partly by national authorities. These have kept their powers, particularly on traditional own resources (*1.5.1), for which area they have the necessary procedures for collecting and controlling the sums. Member States retain 25% of traditional own resources as a collection fee. Collection of traditional own resources is nevertheless a matter of great importance to EU institutions. It was in this connection that the EP established a Committee of Inquiry on Transit (see below). Operational expenditure under the European Agricultural Guarantee Fund (EAGF), the European Agricultural Fund for Rural Development (EAFRD) and the Structural Funds is also controlled in the first instance by the authorities of the Member States, which often have to bear part of the cost of such interventions.

B. Control at Community level

1. Internal

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

2. External: by the Court of Auditors (*1.3.11)

External control is carried out by the European Court of Auditors (ECA), which submits each year to the budgetary authority detailed reports in accordance with Article 287 TFEU. These are:

- the 'statement of assurance as to the reliability of accounts and the legality and regularity of the underlying transactions' (known as the DAS);
- the annual report relating to implementation of the general budget, including the budgets of all institutions and satellite bodies;
- special reports on specific issues;
- specific annual reports relative to EU agencies and bodies.

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

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

Within the EP, the Committee on Budgetary Control is in charge of preparing the position of the EP and in particular of:

- the control of the implementation of the budget of the EU and of the European Development Fund (EDF);
- the closure, presenting and auditing of the accounts and balance sheets of the Union, its institutions and any bodies financed by it;
- the control of the financial activities of the European Investment Bank (*1.3.14);
- monitoring the cost-effectiveness of the various forms of Community financing in the implementation of the Union's policies;
- consideration of fraud and irregularities in the implementation of the budget of the Union, measures aiming at preventing and prosecuting such cases, and the protection of the Union's financial interests in general.

It also prepares the decisions on discharge.

The discharge procedure

Once a year, Parliament, on the Council's recommendation, gives discharge to the Commission on the implementation of the budget for the year n-2, after having examined the ECA's annual report and the replies from the Commission and the other institutions to its questions (Article 319

TFEU). The Commission and the other institutions are obliged to take action on EP's observations in its discharge resolutions (Article 147 of the Financial Regulation). The EP gives discharge annually to the other institutions as well as to the agencies. The EP gives discharge to the Commission separately for the implementation of the EDF as these are not yet integrated into the general budget. The EP's discharge decision and resolution concerning the implementation of the EU general budget Section I — EP is addressed to the President of the EP.

Parliament considers the discharge reports in plenary before 15 May (Article 145 Financial Regulation). Thus the votes on the granting of the discharge are taken during the May part-session and, in the event of their being held over, during the October part-session. If a proposal to grant discharge is not carried by a majority, or if EP decides to defer its discharge decision, EP informs the institutions or agencies concerned about the reasons for deferring the discharge decision. They are required to take measures without delay to eliminate the obstacles to the discharge decision. Then, within six months, the Committee on Budgetary Control submits a new report containing a new proposal to grant or refuse discharge.

4. Anti-fraud measures: by OLAF

The Office for the Fight against Fraud (known as OLAF) was established in 1999 (Commission Decision 1999/352). It is competent to carry out investigations independent of the Commission. Its role is to protect the Union's financial interests, with a responsibility for fighting fraud involving EU funds in all institutions and for coordinating the bodies responsible in the Member States. Within the framework of Regulations 1073/1999 and 1074/1999 regarding OLAF's investigations, on 25 May 1999 EP, the Council and the Commission signed an Interinstitutional Agreement regarding internal investigations. This Agreement stipulated that each institution should establish common internal rules intended to ensure the smooth running of OLAF's investigations. A part of these rules which is now integrated into the EU institutions' Staff Regulations oblige staff to cooperate with OLAF and include a certain amount of protection for staff members who divulge information regarding possible fraud or corruption. This is also known as protection of 'whistleblowing'.

A reform of OLAF has been under discussion since 2003[1]. On 20 November 2008 the Parliament gave its first reading position by putting forward approximately one hundred amendments to the second Commission's proposal of 2006[2]. In its position the EP underlined the need for 'considerable improvement in the efficiency and quality of OLAF investigations through the strengthening of procedural guarantees, the role of the Supervisory Committee, the presumption of innocence, the right of defence of those under investigation and the rights of informers, the adoption of clear and transparent investigative rules and the improvement of cooperation with the competent national authorities and the EU institutions' and called upon the Council to open negotiations on a recasting of EU anti-fraud legislation. However, the dossier stayed blocked in the Council until the Commission adopted a new proposal on 17 March 2011[3]. Since September 2011 an EP delegation have been mandated to negotiate amendments with the Council on the basis of the Parliament's first reading position of 20 November 2008. The main sensitive issues discussed at these trilogue meetings covered the need:

- to simplify and consolidate anti-fraud legislation,
- to clearly define the notion of 'financial interests of the Union',
- for independent control of the legality of investigations in progress ,
- to clarify the role of the Supervisory Committee
- to clarify the role of the Director-General and of the Deputising director(s) of OLAF

At this stage — January 2012 — it is difficult to foresee a reliable timetable for the closure of the dossier. It will depend on the attitude of the different parties involved in the trilogue to achieve a reasonable compromise which could guarantee the efficiency, effectiveness and accountability of OLAF, while safeguarding its investigative independence.

Article 325 TFEU requires close and regular cooperation between Member States and the Commission, as well as opening the way to specific Council measures to afford equivalent and effective protection in the Member States for the EU's financial interests.

Role of the European Parliament

A. Development of powers

From 1958 to 1970 the EP was simply kept informed of decisions on discharge given by the Council to the Commission on its implementation of the budget. In 1971, it achieved the power to grant the discharge

[1] See the Commission report on the evaluation of OLAF's activities, COM(2003) 154 final of 2 April 2003.

[2] The first proposal was issued in February 2004 (see COM(2004) 103 final of 10 February 2004) and withdrawn in March 2007. The second proposal was issued in May 2006 (see COM(2006) 244 final of 24 May 2006).

[3] See COM(2011) 135 final of 17 March 2011 — Amended Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/1999 concerning investigations conducted by the European Anti-fraud Office (OLAF) and repealing Regulation (Euratom) No 1074/1999.

together with the Council. Since 1 June 1977, when the Treaty of 22 July 1975 entered into force, it alone has the power to give discharge on the accounts, after the Council has given its recommendation. It should also be mentioned that the EP, through its competent committees, hears Commissioners-designate, and the Committee on Budgetary Control hears Members-designate of the Court of Auditors as well as the short-listed candidates for the post of Director of OLAF. These posts cannot be filled without these hearings at the Parliament.

B. Use of the discharge

The EP may decide to postpone discharge where it is dissatisfied with particular aspects of the Commission's management of the budget. Refusal of discharge can be considered as tantamount to requiring resignation of the Commission. This threat was put into effect in December 1998: following a vote in plenary at which the discharge motion was rejected, a group of five independent experts was established, which reported on accusations of fraud, mismanagement and nepotism against the Commission; the Commissioners then resigned en bloc on 16 March 1999. Members of the Committee on Budgetary Control prepare the EP's response to ECA special reports, often in the form of working papers for the guidance of the general rapporteur on the discharge.

Although the Treaty only refers to the discharge to the Commission, for reasons of transparency and democratic control the EP also grants separate discharge to the other institutions and bodies and to each agency or similar entity (Annex VI of the EP Rules of Procedure). At the EP's part-session of April 2009, during the discharge procedure for 2007, it deferred the discharge to the Council of Ministers, inter alia because the latter refused to provide EP with relevant information that would have enabled it to grant the discharge; the discharge was eventually granted in November 2009, once the Council had made progress in meeting EP's requests. However, the procedures for the discharge of the Council for the financial years 2008 and 2009 again encountered considerable difficulties. Therefore, the report on discharge for the implementation of the Council's budget in 2009, adopted unanimously on 28 March 2011 in the Committee on Budgetary Control, again proposes to postpone its decision on granting discharge to the Secretary-General of the Council.

As stated above, the Commission, the other institutions and the agencies must report on the measures taken in the light of the observations of the discharge resolutions. The Member States must inform the Commission on the measures they have taken following the EP's observations and the Commission must take these into account when writing its follow-up report (Article 147 of the Financial Regulation). .

C. Other instruments

Parliament's specialised committees are also contributing to ensuring that Community funds are spent in an efficient way in the best interest of the European taxpayer.

On a number of occasions, the members of the Committee on Budgetary Control have also held discussions with representatives of the corresponding committees of parliaments in the Member States, with national auditing authorities and with representatives of customs departments; on-the-spot enquiries have also been carried out by individual members to ascertain the facts underlying particular problems.

In December 1995 the EP exercised for the first time its right acquired under the Treaty to establish a Committee of Inquiry. This committee reported on allegations of fraud and maladministration under the Community transit system. The committee's 38 recommendations received wide support.

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

The Treaty of Lisbon strengthens the control facilities oriented on results achieved by the EU programmes implemented using the Union's finances. Article 318 TFEU obliges the Commission to submit a comprehensive evaluation report to Parliament and the Council, taking account of their observations, as indicated in the annual discharge procedure.

In addition, paragraph 44 of the Interinstitutional Agreement of 17 May 2006 between the EP, the Council and the Commission on budgetary discipline and sound financial management recognises the 'importance of strengthening internal control without adding to the administrative burden' and requests that 'In this context, priority will be given to sound financial management aiming at a positive Statement of Assurance, for funds under shared management with the Member States, which therefore undertake to produce an annual summary at the appropriate national level of the available audits and declarations'.

→ Jean-Jacques Gay / Helmut Werner

2 CITIZENS' EUROPE

The concept of Citizens' Europe incorporates various aspects and has gradually come into being. European citizenship, which is now enshrined in the Treaties, complements national citizenship but does not replace it. The Charter of Fundamental Rights, which became legally binding with the entry into force of the Lisbon Treaty, gathers all the rights of individuals together in one single document, grouping them around several major principles: human dignity, fundamental freedoms, equality, solidarity, citizens' rights and justice. In addition to having the right to move freely within the European Union, all citizens have the right to petition Parliament on any matter in a field for which the Union is competent. Lastly, the European Citizens Initiative enables citizens to invite the Commission, under certain conditions, to present a proposal for a legal act deemed necessary for the purpose of implementing the Treaties.

2 CITIZENS' EUROPE

2.1. Individual and collective rights

2.1.1. The citizens of the Union and their rights

European citizenship is enshrined in the Treaties (Article 20 of the Treaty on the Functioning of the European Union (TFEU) and Article 9 of the Treaty on European Union (TEU)). It is an essential factor in the formation of a European identity. European citizenship exists as a complement to citizenship of a Member State. The main difference between the two is that the rights that citizens enjoy as a result of European citizenship are not matched with duties.

Legal basis

Articles 18 to 25 TFEU and Articles 9 to 12 TEU.

Objectives

Inspired by the freedom of movement for persons envisaged in the Treaties, the introduction of a European form of citizenship with precisely defined rights and duties was considered as long ago as the 1960s. Following preparatory work which began in the mid-1970s, the Treaty on European Union, adopted in Maastricht in 1992, made it an objective for the Union 'to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union'. A new part of the EC Treaty (ex Articles 17 to 22) was devoted to this citizenship.

Like national citizenship, EU citizenship refers to a relationship between the citizen and the European Union which is defined by rights, duties and political participation. This is intended to bridge the gap between the increasing impact that EU action is having on EU citizens, and the fact that the enjoyment of rights, the fulfilment of duties and participation in democratic processes are almost exclusively national matters. The aim is to increase people's sense of identification with the EU and to foster European public opinion, a European political consciousness and a sense of European identity.

Moreover, there is to be stronger protection of the rights and interests of Member States' nationals (ex Article 2, third indent of the Treaty on European Union, new Article 3).

Achievements

A. Definition of EU citizenship

Under Article 9 TEU and Article 20 TFEU, 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, but does not replace, national citizenship. EU citizenship comprises a number of rights and duties in addition to those stemming from citizenship of a Member State.

B. Substance of citizenship

For all EU citizens, citizenship implies:

- the right to move and reside freely within the territory of the Member States (*2.1.3);
- the right to vote and to stand as a candidate in elections to the European Parliament and in municipal elections in the Member State in which they reside, under the same conditions as nationals of that State (for the rules on participation in municipal elections see Directive 94/80/EC of 19 December 1994, and for the rules governing election to the European Parliament, see Directive 93/109/EC of 6 December 1993);
- 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 (second paragraph of Article 24 TFEU) and the right to apply to the Ombudsman (third paragraph of Article 24 TFEU) appointed by the European Parliament concerning instances of maladministration in the activities of the Community institutions or bodies. These procedures are governed respectively by Articles 227 and 228 TFEU (*1.3.16 and 2.1.4);
- 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 (fourth paragraph of Article 24 TFEU);

- the right to access European Parliament, Council and Commission documents, subject to certain conditions (Article 15(3) TFEU).

The TFEU further emphasises the principal rights of EU citizens by listing them in Article 20(2).

C. Scope

With the exception of electoral rights, the substance of Union citizenship achieved to date is to a considerable extent simply a systematisation of existing rights (particularly as regards freedom of movement, the right of residence and the right of petition), which are now enshrined in primary law on the basis of a political idea.

By contrast with the constitutional understanding in European states since the French Declaration of Human and Civil Rights of 1789, no specific guarantees of fundamental rights are associated with citizenship of the Union. Article 6 TEU, as amended by the Treaty of Lisbon, states that the Union recognises the rights set out in the Charter of Fundamental Rights of the European Union and that it will accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms, but it does not make any reference to the legal status of Union citizenship (*1.1.6 'Fundamental rights in the European Union').

Union citizenship does not as yet entail any duties for citizens of the Union, despite the wording to that effect in Article 20(2) TFEU. This constitutes a major difference between EU citizenship and citizenship of a Member State.

Article 22, second paragraph, of the EC Treaty and Article 48 TEU provided opportunities for the gradual development of EU citizenship, shoring up the legal status of EU citizens at European level. The Treaty on European Union as amended by the Treaty of Lisbon retains these provisions (Article 25 TFEU and Article 48 TEU), also providing, in Article 11(4), for a new right for EU citizens: 'Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties'. The conditions governing the submission and admissibility of any such initiative by citizens are the subject of Regulation (EU) No 211/2011 of the European Parliament and of the Council on the citizens' initiative. Its main provisions are as follows:

- the signatories of a citizens' initiative must come from at least a quarter of the Member States, and the minimum number of signatories from each of those Member States should be equal to the number of MEPs that Member State has, multiplied by 750;
- there must be at least seven organisers, who are EU citizens old enough to vote in European Parliament elections and who reside in at least seven different Member States; this committee will then need to appoint one main representative and one deputy who will be responsible for liaising with the European Commission;
- a citizens' initiative is admissible if it fulfils the following conditions: a citizens' committee has been formed and contact persons appointed; the proposed initiative does not manifestly fall outside the framework of the European Commission's powers to submit a proposal for a legal act of the Union, and is not manifestly contrary to the values of the Union as set out in Article 2 TEU; it is not abusive, frivolous or vexatious;
- citizens' initiatives complying with these admissibility criteria must be registered by the European Commission within two months of receipt.

Once received, the initiative will be published on the European Commission's website. A meeting will be held at which the organisers can present the issues raised, and the European Commission then has three months to bring forward its legal and political conclusions.

With the aim of ensuring that the procedure is clear and easy to follow, the Regulation on the Citizens' Initiative includes a 'statement of support form' (including the data required for verification by the Member States), which also outlines the procedures and conditions for the collection of the forms. The organisers are subject to obligations to protect personal data. They are also liable for any damage caused by the organisation of an initiative, and penalties may be imposed for infringing the regulation.

Role of the European Parliament

In electing the European Parliament (EP) by direct suffrage, EU citizens are exercising one of their essential rights in the European Union, that of democratic participation in the European political decision-making process. As regards the procedures for the election of its Members, the EP has always called for the implementation of a uniform electoral system in all the Member States. Article 223 TFEU provides that the EP shall draw up a proposal to that effect ('to lay down the provisions necessary for the election of its Members by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States'). The Council will then lay down the necessary provisions (acting unanimously and after obtaining the consent of the majority of the Members of the EP), which will

enter into force following their approval by the Member States in accordance with their respective constitutional requirements.

The EP has always wanted to endow the institution of EU citizenship with comprehensive rights. It advocated the determination of EU 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, the EP 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 substance of citizenship, neither in regard to individual nor to collective rights. One of the EP'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 has applied to the measures to make it easier to exercise the rights associated with EU citizenship (Article 18(2)).

In accordance with the EP's requests, the TFEU (Article 263, fourth paragraph) 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.

As regards the right of access to documents, on 17 December 2009 the EP adopted a resolution on improvements needed in the legal framework for access to documents following the entry into force of the Lisbon Treaty. Among other things, it stressed the need to widen the scope of Regulation (EC) No 1049/2001 to encompass all the institutions and bodies not covered by the original text.

→ Claire Genta

2.1.2. Respect for fundamental rights in the Union

For a long time, the legal basis for fundamental rights at EU level consisted essentially of the reference made in the Treaties to the European Convention for the Protection of Human Rights and Fundamental Freedoms. The case-law of the Court of Justice of the European Union has thus long been instrumental in enforcing respect for human rights in the EU. Since the entry into force of the Treaty of Lisbon, the Charter of Fundamental Rights, which is now legally binding, has expanded this legal basis.

Legal basis

The protection of fundamental rights is one of the basic tenets of EU law. For a long time, the European Treaties did not incorporate a written list of these rights, containing only a reference to the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Treaties also referred to those fundamental rights which result from the constitutional traditions common to the Member States as general principles of Community law. At the same time, through its case-law the Court of Justice of the European Union has contributed greatly over time to the development of and respect for fundamental rights.

Following the adoption of the Treaty of Lisbon in late 2009, the situation has changed significantly, as the EU has a Charter of Fundamental Rights that is now legally binding. Article 2 of the Treaty on European Union (TEU) provides that 'the Union is based on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities'.

Article 6 TEU provides that:

'The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2007, which shall have the same legal value as the Treaties.'

'The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms.'

'Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.'

Article 7 TEU takes over a provision from the earlier Treaty of Nice which establishes both a prevention mechanism, where there is 'a clear risk of a serious breach' by a Member State of the values referred to in Article 2 TEU, and a sanction mechanism, in the event of a 'serious and persistent breach' by a Member State of those values. The European Parliament has both a right of initiative, by means of which it can call for these mechanisms to be applied, and a right to exercise democratic control, as it must consent to their implementation.

A reference to human rights and fundamental freedoms can also be found in the provisions on the Union's external action (Article 21 TEU). Article 67 of the Treaty on the Functioning of the European Union (TFEU) provides that 'the Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States'.

Certain provisions of the Treaty enshrine certain rights. This is the case, for example, with Article 8 TFEU, as regards gender equality, and Article 10, as regards combating discrimination.

Article 15 TFEU, which takes over a provision from the earlier Treaty of Nice, enshrines the right of every natural or legal person in a Member State to have access to the documents of the Union's institutions, bodies and agencies. Article 16 TFEU enshrines the right to protection of personal data.

Objectives

To ensure that fundamental rights are protected in the drafting, application and interpretation of Community law. Functioning in the classic sense as rights of defence, Community fundamental rights protect the individual against interference by the Community institutions.

Achievements

A. Case-law of the Court of Justice

The Court of Justice has long emphasised the need to respect the fundamental rights of every individual. Its large body of case-law lays down standards of protection on the basis of a range of legal sources: the provisions of the Treaties, including the EU Charter of Fundamental Rights; the international conventions to which the Treaties refer — notably the European Convention for the Protection of Human Rights and Fundamental Freedoms and the 1951 Geneva Convention Relating to the Status of Refugees; fundamental rights as they result from the constitutional traditions common to the Member

States; and the international legal instruments to which the Member States are parties and those to which the EU is a party.

The Court of Justice examines not only the compatibility of EU legislation with fundamental rights, but also the compatibility of measures taken at national level by the Member States to apply or comply with EU law.

The case-law of the Court of Justice has essentially developed on the basis of preliminary rulings (Article 267 TFEU).

B. The Charter of Fundamental Rights

The Charter was proclaimed by the Commission, the Council and Parliament on 7 December 2000 at the Nice European Council. These rights are not new: the Charter was founded on the basis of 'established law', that is, it brings together in one document the fundamental rights already recognised by the Community Treaties, the constitutional principles common to the Member States, the European Convention on Human Rights and the Social Charters of the EU and the Council of Europe. However, the text places special emphasis on problems arising from current and future developments in the areas of information technology or genetic engineering by enshrining rights such as the protection of personal data or rights in connection with bioethics. It also responds to recent calls for transparency and impartiality in the functioning of the Community's administration by incorporating the right of access to administrative documents, drawing on the key elements of the case-law of the Court of Justice in this area.

The Charter brings together all personal rights in a single text. It thus implements the principle of the indivisibility of fundamental rights. Breaking with the distinction hitherto maintained by European and international texts between civil and political rights, on the one hand, and economic and social rights, on the other, it lists all the rights in question, grouping them around a number of key principles: human dignity, fundamental freedoms, equality, solidarity, citizens' rights and justice.

The Charter aims only to protect the fundamental rights of individuals in the context of the action taken by the EU institutions and Member States to implement the Union Treaties.

Now, however, Article 6(1) TEU makes specific reference to the Charter, which has not been incorporated in the Treaty itself, and makes it legally binding. A protocol sets out a number of derogations for the United Kingdom and Poland.

C. The EU's accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)

This Convention, adopted in the Council of Europe in 1950 and amended by means of a series of protocols, is a key text in the area of fundamental rights. It is divided into two parts: a section on rights and freedoms comprising 17 articles, and a section describing the operating procedures and the competences of the European Court of Human Rights, which sits in Strasbourg. The Court has produced a large body of case-law clarifying the various rights set out in the ECHR. These include the right to life (Article 2), the prohibition of torture (Article 3) and the prohibition of slavery and forced labour (Article 4).

The EU as such is not a party to the ECHR. All its Member States are parties to it, however. Article 6(2) of the Treaty of Lisbon requires that the EU accede to the ECHR, which would mean that the EU, just as its Member States are at present, would become subject, as regards respect for fundamental rights, to review by a legal body which is external to the EU and which specialises in protecting fundamental rights: namely, the European Court of Human Rights. Following accession, European citizens, but also third-country nationals present on the territory of the EU, will be able to challenge legal acts adopted by the EU directly before the Court on the basis of the provisions of the ECHR, in the same way that they challenge legal acts adopted by its Member States.

Negotiations on EU accession are currently taking place between the European Union and the Council of Europe.

D. The EU Agency for Fundamental Rights

The Agency is the successor body to the European Monitoring Centre for Racism and Xenophobia set up in 1997. The main aim of the Monitoring Centre was to provide the EU and its Member States with objective, reliable and comparable data at European level on racism, xenophobia and anti-Semitism in order to help them take appropriate measures or formulate appropriate policies. The Agency was established by a Council regulation of February 2007[1]. It has been operational since March 2007 and is based in Vienna. Its goal is to provide EU institutions and Member States with assistance and expertise in the field of fundamental rights. The Agency is not authorised to handle individual complaints, it does not have decision-making powers in the area of regulation and it does not have the power to monitor fundamental rights in the Member States in accordance with Article 7 TEU. A five-year multiannual framework sets out the areas in which it may act. Its tasks include, in particular, the

[1] Regulation (EC) No 168/2007 of 15 February 2007 (OJ L 53, 22.2.2007).

collection, analysis, dissemination and evaluation of relevant information and data, conducting research and scientific surveys, drawing up preparatory and feasibility studies, and the publication of an annual report on fundamental rights and thematic reports.

Role of the European Parliament

A. General approach

The European Parliament has always attached great importance 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 Civil Liberties, Justice and Home Affairs.

B. Specific actions

The European Parliament has focused in particular on the issue of codifying fundamental rights in a legally binding document. It was responsible for the declaration of principle on the definition of fundamental rights adopted by the EU's three political institutions (Commission, Council and EP) on 5 April 1977 and expanded in 1989. In 1994, it drew up a list of the fundamental rights guaranteed by the Union. It placed special emphasis on the drafting of the Charter by making it 'one of its constitutional priorities' and stipulating requirements to be met by the Charter, in particular that:

- the document should be given 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 to be incorporated into the new Constitutional Treaty;
- 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 under the second and third pillars in the context of the powers and functions conferred upon it by the Treaties.

Finally, it has regularly called for the EU to accede to the ECHR, stressing that this would not duplicate the role of a binding Community Charter. It called several times for an Agency for Fundamental Rights to be set up.

→ Jean-Louis Antoine-Grégoire

2.1.3. Free movement of persons

The freedom of movement and residence for persons in the EU is the cornerstone of Union citizenship, as introduced by the Treaty of Maastricht in 1992. Its practical implementation in EU law, however, was not a straightforward matter: it first involved the gradual abolition, limited to certain Member States, of internal borders under the Schengen agreements. Today, the free movement of persons is mainly governed by Directive 2004/38/EC on the right of EU citizens and their family members to move and reside freely within the territory of the Member States. The implementation of this directive, however, continues to face many obstacles.

Legal basis

Article 3.2 TEU; Article 21 TFEU; and Titles IV and V TFEU.

Objectives

The concept of the free movement of persons has changed in meaning since its inception. The first provisions on the subject, when creating the European Economic Community in 1957 (*1.1.1, 3.1.3 and 3.1.4), referred merely to the free movement of individuals considered as economic players, either as employees or providers of services, thus covering the free movement of workers and the freedom of establishment. The Treaty of Maastricht[1] introduced for every person holding the nationality of a Member State citizenship[2] of the EU from which stems the right of persons to move and reside freely within the territory of the Member States. The Lisbon Treaty confirmed this right, which is also included in the general provisions of the area of freedom, security and justice.

Achievements

A. 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. Initially, the Schengen Implementing Convention (signed by only five Member States: Belgium, France, Germany, Luxembourg and the Netherlands) formed part of intergovernmental cooperation in the field of justice and home affairs. A protocol to the Amsterdam Treaty provided for the transfer of the 'Schengen *acquis*' (*5.12.4) into the Treaties. Today, under the Lisbon Treaty, it comes under parliamentary and judicial scrutiny. As most of Schengen is now part of the EU *acquis*, it has no longer been possible for accession countries to 'opt out' since the EU enlargement of 1 May 2004 (Article 8 of the Schengen Protocol).

1. Participating countries

There are currently 26 full Schengen members: 22 EU Member States plus Norway, Iceland, Switzerland and Lichtenstein (which have associate status). Ireland and the United Kingdom are not parties to the Convention but can 'opt in' for the application of selected parts of the Schengen body of law; Denmark is bound under specific provisions. Bulgaria, Romania and Cyprus have signed but not yet implemented the Convention. Croatia is required to join the Schengen Area by 2015.

2. Scope

The Schengen area's achievements include:

a. the abolition of internal border controls for all persons;

b. measures to strengthen and harmonise external border controls: all EU citizens need only to show an identity card or passport to enter the Schengen area (*5.12.4);

c. a common visa policy for short stays: nationals of third countries included in the common list of non-member countries whose nationals need an entry visa (as listed in Annex II of Council Regulation (EC) No 539/2001) may obtain a single visa which is valid for the entire Schengen area; Member States may, however, require a visa for other third countries;

d. police and judicial cooperation: police forces assist each other in detecting and preventing crime and have the right to pursue fugitive criminals into the territory of a neighbouring Schengen state; a faster extradition system; and transfer of the enforcement of criminal judgments (*5.12.6 and 5.12.7);

e. the establishment and development of the Schengen Information System (SIS) (*5.12.4).

[1] Treaty on European Union, which entered into force on 1 November 1993.

[2] See Part Two of the TFEU entitled 'Non-discrimination and citizenship of the Union'.

B. Free movement of EU citizens and their family members

1. First steps

In line with the objective of transforming the Community into an area of genuine freedom and mobility for all its citizens, several directives were adopted during the 1990s in order to grant residence rights to persons other than workers: Council Directive 90/365/EEC on the right of residence for employees and self-employed persons who have ceased their occupational activity; Council Directive 90/366/EEC on the right of residence for students; and Council Directive 90/364/EEC on the right of residence (for nationals of Member States who do not enjoy this right under other provisions of Community law and members of their families).

2. Directive 2004/38

In order to take account of the large body of case-law linked to the free movement of persons, a new comprehensive Directive was adopted in 2004: Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. The new directive repealed the three abovementioned directives (and also Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC and 75/35/EEC) and brought together the piecemeal measures found in the complex body of legislation and jurisprudence that had governed this matter to date. Its measures are designed to encourage Union citizens to exercise their right to move and reside freely within the Member States, to cut back administrative formalities to the bare essentials, to provide a better definition of the status of family members and to limit the scope for refusing entry or terminating the right of residence. Within the scope of Directive 2004/38/EC, family members include: the spouse; the registered partner, if the legislation of the host Member State treats registered partnerships as equivalent to marriage[1]; the direct descendants who are under the age of 21 or are dependants and those of the spouse or registered partner; the dependent direct relatives in the ascending line and those of the spouse or registered partner.

a. Rights and obligations:

- **For stays of less than three months**: the only requirement for Union citizens is that they possess a valid identity document or passport. The host Member State may require the persons concerned to register their presence in the country within a reasonable and non-discriminatory period of time.
- **For stays of more than three months**: the right of residence is subject to certain conditions. The EU citizen and family members must have sufficient resources and sickness insurance to ensure that they do not become a burden on the social services of the host Member State during their stay. Residence permits are abolished for Union citizens; however, Member States may require them to register with the competent authorities. Family members of Union citizens who are not nationals of a Member State must apply for a 5-year residence permit.
- **Right of permanent residence:** The Directive gives Union citizens the new right of permanent residence in the host Member State after a five-year period of uninterrupted legal residence, provided that an expulsion decision has not been enforced against them. This right of permanent residence is no longer subject to any conditions. The same rule applies to family members who are not nationals of a Member State and who have lived with a Union citizen for five years. The right of permanent residence is lost only in the event of more than two successive years' absence from the host Member State.
- **Restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health:** Union citizens or members of their family may be expelled from the host Member State on grounds of public policy, public security or public health. Under no circumstances may an expulsion decision be taken on economic grounds. Measures affecting the freedom of movement and residence must comply with the proportionality principle and be based exclusively on the personal conduct of the individual concerned. Such conduct must represent a sufficiently serious and present threat which affects the fundamental interests of the state. Previous criminal convictions do not automatically justify expulsion. The mere fact that the entry documents used by the individual concerned have expired does not constitute grounds for such a measure. Only in exceptional circumstances, for overriding considerations of public security, can expulsion orders be served on a Union citizen if he/she has resided in the host country for ten years or if he/she is a minor.

Lifelong exclusion orders cannot be issued under any circumstances. Persons concerned by exclusion orders can apply for the situation to be reviewed after three years. The Directive also makes provision for a series of procedural guarantees. In particular, the individuals concerned have access to judicial review and, where appropriate, to administrative review in the host Member State. Member States may adopt the necessary measures to refuse,

[1] This includes homosexual registered partnerships or marriage, if the legislation of the host Member State treats homosexual registered partnerships or homosexual marriage as equivalent to marriage.

terminate or withdraw any right conferred by this Directive in the case of abuse of rights or fraud, such as marriages of convenience.

b. The implementation of Directive 2004/38

This directive had to be transposed into national law and implemented by all Member States by 30 April 2006. On 10 December 2008, the Commission presented a report on the application of the Directive to the Council and the European Parliament, which highlighted a number of serious problems with the transposition provisions[1]. In 2009, it issued a Communication on guidance for better transposition and application of the Directive[2]. As the guardian of the Treaties, it is the Commission's duty to ensure full and effective implementation of the Directive by all Member States. The Commission also stressed in its statement of 29 September 2010 that 'the Member States are responsible for and entitled to take the measures to protect public safety and public order on their territory. In doing so, they must respect the rules laid down in the 2004 Directive on Free Movement, the fundamental rights of EU citizens and avoid discrimination, notably on grounds of nationality or the belonging to an ethnic minority'. The Commission announced that it was 'analysing the situation of all other EU Member States under the Directive on Free Movement to assess whether it will be necessary to initiate infringement proceedings …'

c. Transitional period for workers from new EU Member States

The Treaty of Accession signed on 16 April 2003 allowed the 'old' EU-15 Member States to introduce so-called 'transitional arrangements' for nationals of the EU Member States joining in 2004. This meant that certain limitations on the free movement of person could be maintained with regard to citizens of the 'new' Member States during a transitional period of a maximum of 7 years after accession (in the case of Bulgaria and Rumania, this applied as of 1 January 2007).

d. Third-country nationals

For provisions applying to third-country nationals who are not family members of an EU citizen, see *5.12.3.

e. Current proposal

In April 2013, the European Commission proposed a Regulation on promoting the free movement of citizens and businesses by simplifying the acceptance of certain public documents in the European Union. It is aimed at facilitating circulation of certain public documents by dispensing them from the accomplishment of all forms of legalisation or of similar or other formalities related to their acceptance in other Member States when presented to their authorities.

Role of the European Parliament

Parliament has made a substantial contribution, through the codecision procedure, to the effective implementation of the free movement of persons and to increasing the number of people who enjoy that freedom. Parliament also regularly organises various events that also involve national parliaments and representatives of civil society, dedicated to topics of relevance to EU citizens in order to encourage political debate on the free movement of persons. In the past years, Parliament has also published various studies that tackle the free movement of EU citizens and the various obstacles they encounter in exercising their right to free movement.

→ Vesna Naglič

[1] COM(2008) 840 final.

[2] COM(2009) 313 final.

2.1.4. The right of petition

Since the entry into force of the Treaty of Maastricht, every EU citizen has had the right to submit a petition to the European Parliament, in the form of a complaint or a request, on an issue that falls within the European Union's fields of activity. Petitions are examined by Parliament's Committee on Petitions, which takes a decision on their admissibility and is responsible for dealing with them in conjunction with the Commission.

Legal basis

Article 227 of the Treaty on the Functioning of the European Union (TFEU).

Objectives

The right of petition aims to provide EU citizens and residents with a simple means of contacting the European institutions with requests or complaints.

Achievements

A. Principles (Article 227 TFEU)

1. Those entitled to petition Parliament

The right of petition is open to any EU citizen and any natural or legal person that is resident or has a registered office in a Member State, either individually or in association with others.

2. Scope

In order to be admissible, petitions must concern matters which fall within the EU's fields of activity and which affect the petitioners directly. The latter condition is interpreted very broadly.

B. Procedure

The procedure for dealing with petitions is laid down in Rules 201 to 203 of the European Parliament's Rules of Procedure, which confer responsibility on a parliamentary committee, currently 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 EU languages.

2. Material admissibility

Petitions that meet these formal requirements are referred to the Committee on Petitions, which must first decide whether they are admissible. The committee does this by ascertaining that their subject falls within the EU's fields of activity. Where this is not the case, the petition is declared inadmissible. The petitioner is informed of this and of the reasons for the decision. Petitioners are often encouraged to contact another national or international body. An analysis of the statistics concerning petitions shows that the main reason why petitions are declared inadmissible is that petitioners continue to confuse European and national responsibilities and the way responsibilities are split between the European institutions and the Council of Europe and the European Court of Human Rights.

3. Examination of petitions

The Committee on Petitions usually asks the Commission to provide relevant information or to give its opinion on the points raised by the petitioner. Sometimes, it also consults other parliamentary committees, particularly when petitions are seeking to change existing laws. The Committee on Petitions may also hold hearings or send members on fact-finding missions to the location in question (four fact-finding missions were carried out in 2008, to Fos-sur-Mer in France, Cyprus, Bulgaria and Romania). Once sufficient information has been gathered, the petition is included on the agenda for a meeting of the committee, to which the Commission is invited. At this meeting, the Commission gives its opinion orally and comments on its written response to the issues raised in the petition. Members of the Committee on Petitions then have the opportunity to put questions to the Commission representative.

4. Outcome

This varies from case to case:

- If the petition concerns a specific case requiring individual attention, the Commission may contact the appropriate authorities or intervene through the permanent representation of the Member State concerned, as this course of action is likely to settle the matter. In certain cases, the Committee of Petitions asks the President of the European Parliament to contact the national authorities in question.
- If the petition relates to a matter of general interest, for example if the Commission finds that EU law has been breached, it can open infringement proceedings. This may result in a Court of Justice ruling to which the petitioner can then refer.
- The petition may result in political action being taken by Parliament or the Commission.

In all cases, the petitioner will receive a response detailing the results of the action taken.

C. Some examples

1. The 'Equitable Life' scandal, United Kingdom

Two petitions were filed in which customers of insurance company Equitable Life described the losses they had suffered after the company ran into financial difficulties. The petitioners alleged that the UK authorities had not properly enforced European law relating to insurance companies. These petitions led to Parliament setting up a committee of inquiry.

2. The Lyon-Turin rail tunnel

The residents of the Susa valley, backed by the local authorities, filed a petition expressing their concerns about the impact on the environment and public health of the construction of the high-speed Lyon-Turin railway line. Following a visit from a Committee on Petitions delegation, MEPs urged that more detailed, independent impact assessments be drawn up. These assessments were then considered at a joint meeting of the Committee on Petitions and the Committee on Transport and Tourism, with Commissioner Barrot and the petitioners in attendance. The conclusions were then referred to the Italian Government. The file remains open, with the Committee on Petitions continuing to work on it in conjunction with the committees responsible for transport and the environment.

3. Incompatibility with EU law of the Valencia urban development law, Spain

Several petitions, signed by more than 15 000 people, challenged an urban development law (the 'LRAU' law) adopted by the autonomous region of Valencia, which the petitioners felt infringed their rights as property owners. The Committee on Petitions sent two fact-finding missions to Valencia. This persuaded the Valencia authorities to make changes to the law and Parliament was even invited to submit recommendations. These recommendations were the subject of a resolution adopted in December 2005. In 2006, Parliament received a petition alleging that the Alicante authorities, regardless of the imminent repeal of the LRAU law, had authorised urban development plans which did not comply with EU rules on the environment and public procurement. The Committee on Petitions then organised a fact-finding mission, the results of which were the subject of a Parliament resolution adopted in June 2007. The recommendations elicited no response from the local authorities concerned for several months. The Commission ultimately decided to bring the Spanish authorities before the Court of Justice for non-compliance with the Public Procurement Directive. At the request of the Committee on Petitions, it also opened an investigation into more than 250 urban development projects which were in breach of the Water Framework Directive. Finally, in March 2009, on the basis of the report by Ms Auken (Verts/ALE, DK) Parliament adopted a resolution on the impact of extensive urbanisation in Spain on the individual rights of European citizens, on the environment and on the application of EU law. The resolution called on the Spanish Government and the regional authorities to thoroughly review their legislation affecting the rights of individual property owners in order to bring it into line with EU rules. As a result of the action taken, the Alicante authorities ultimately abandoned their urban development plans for the village of Parcent.

4. M30 motorway project in Madrid, Spain

In June 2006, a fact-finding visit was made to Madrid to follow up several petitions concerning a project to extend the M30 motorway that passes through the city. The petitioners' main objection concerned the failure to carry out the impact assessments necessitated by a project of this nature and scale, given its location. Indeed, such assessments are mandatory under Council Directive 97/11/EC amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment. The investigation carried out by the Commission revealed that EU rules on environmental impact assessments had not been complied with in the course of the project.

5. The 'European City Guide' petition: a resolution on misleading 'directory companies'

In a resolution adopted in December 2008 on the basis of the report by Mr Busutil (PPE-DE, MT), Parliament focused on the psychological and financial damage suffered by the small businesses concerned (400 petitions were received). It stated that the European institutions should provide appropriate legal remedy for victims, enabling them to successfully challenge, annul or terminate contracts that were concluded on the basis of misleading advertising and obtain reimbursement of the money they have paid. It urged victims to report business scams to national authorities, and called on Member States to provide small and medium-sized enterprises with the know-how they need to file complaints with governmental and non-governmental authorities.

D. Annual activity report

The annual report for 2011 was drawn up by Giles Chichester (ECR, UK) and adopted in plenary on 17 July 2012.

Annual number of petitions received by Parliament

Parliamentary year *	Total number	Admissible	Inadmissible
2001	1 132	812	320
2002	1 601	1 186	415
2003	1 315	858	457
2004	1 002	623	379
2005	1 032	628	318
2006	1 021	667	354
2007	1 506	980	526
2008	1 849	—	—
2009	1 924	1 108	818
2010	1 655	972	653
2011	1 414	998	416

* Comments: in 2008 and 2009, the largest numbers of petitions were received from Germany and Spain, followed by Italy, Romania, Poland and the United Kingdom. This order did not change in 2011.

The 10 most common subject areas for petitions (2010)

Environment	245 (12.2 %)
Fundamental rights	152 (7.6 %)
Internal market	131 (6.5 %)
Justice	125 (6.2 %)
Transport	101 (5 %)
Health	83 (4.1 %)
Social affairs	76 (3.8 %)
Education and culture	72 (3.6 %)
Property and restitution	70 (3.5 %)
Employment	62 (3.1 %)

The 10 most common subject areas for petitions (2011)

Environment	227 (16.1 %)
Fundamental rights	123 (8.7 %)
Internal market	98 (6.9 %)
Transport	69 (4.9 %)
Consumer rights	55 (3.9 %)
Economic and monetary affairs	53 (3.7 %)
Justice	45 (3.2 %)
Employment	45 (3.2 %)
Culture	42 (3 %)
Health	28 (2 %)

→ Claire Genta

2.1.5. European Citizens' Initiative

The European Citizens' Initiative (ECI) is an important instrument of participatory democracy in the European Union. Thanks to this measure, one million EU citizens residing in at least one quarter of the Member States can invite the Commission to submit a proposal for a legal act which they consider to be required in order to implement the EU Treaties. The ECI gives EU citizens a right similar to the right of initiative of the European Parliament and the Council. Since the application of Regulation (EU) No 211/2011, which established detailed procedures and conditions for the ECI, two dozen initiatives have been attempted, of which two thirds have been successfully registered and are now ongoing through the collection of statements of support.

Legal basis

- Article 11(4) of the Treaty on European Union (TEU);
- Article 24(1) of the Treaty on the Functioning of the European Union (TFEU);
- Regulation (EU) No 211/2011;
- Rule 197a of Parliament's Rules of Procedure.

Background

Citizens' initiatives are instruments available to citizens in a majority of the Member States, be it at national, regional or local level, although they differ considerably in scope and procedure. The concept of EU citizenship, from which the European Citizens' Initiative (ECI) was derived, was first introduced in the Maastricht Treaty (*1.3.1). Back in 1996, in the run-up to the Amsterdam Intergovernmental Conference, the Austrian and Italian foreign ministers proposed that a right to submit such initiatives be introduced alongside the right to petition the European Parliament, but the proposal was not retained by the Conference. Provisions for a citizens' initiative very similar to the current regime were originally included in the draft Constitutional Treaty (Article 47(4)). Although the Convention Praesidium rejected the inclusion of these provisions in the final text, concerted efforts on the part of civil society organisations allowed them to be maintained. Following the failure of the ratification process for the Constitutional Treaty, similar provisions were reinserted during the drafting of the Lisbon Treaty.

Today, the right to submit a citizens' initiative is enshrined under Title II TEU (provisions on democratic principles). Article 11(4) TEU establishes the basic framework for that right, and Article 24(1) sets out the general principles for a regulation defining concrete procedures and detailed conditions. The proposal for a regulation was the result of an extensive consultation carried out in the framework of a Commission Green Paper (COM(2009) 622). Negotiation and settlement of the final text took several months — a draft proposal was submitted to Parliament and the Council on 31 March 2010, and a political agreement was reached on 15 December 2010, enabling formal adoption of the text by Parliament and the Council on 16 February 2011. As Regulation (EU) No 211/2011, it entered into force on 1 April 2011. Owing to a number of technical adaptations needed at Member State level to establish a streamlined verification process, the ECI Regulation only became applicable a year later. By 1 April 2015, and by the same date every three years thereafter, the Commission is required to present a report on the application of the ECI Regulation with a view to its possible revision.

The right to submit an ECI should be clearly separated from the right to submit a petition, a procedure from which it differs in many substantial respects. Petitions can be submitted by EU citizens or by natural or legal persons having their residence in the EU (*2.1.4), and must address matters that fall within a field of activity of the EU and affect the petitioner directly. Petitions are addressed to Parliament in its capacity as the direct representative of the citizens at EU level. An ECI is a direct call for a specific EU legal instrument, must abide by specific rules in order to qualify, and is ultimately addressed to the Commission, which alone among the institutions has the right to submit legislative proposals. In this respect, the ECI is similar in nature to the right of initiative conferred on Parliament (Article 225 TFEU) and on the Council (Article 241 TFEU).

Procedure

A. Citizens' committee

As a minimum organisational structure is needed for an initiative of such magnitude, the first step in the creation of an ECI is the establishment of an organising committee, called a 'citizens' committee'. This committee must be formed by at least seven people who are residents of at least seven different Member States (but not necessarily of different nationalities) and who are of age to vote in the European elections. Members of the European Parliament (MEPs) may participate, but cannot be counted for the purpose of reaching the minimum

number of citizens required to form a committee. The committee must name a representative and a substitute to act as contact people for the specific ECI.

B. Registration

Before it can start collecting statements of support from citizens, the committee must register the initiative with the Commission. This involves submitting a document giving the title and subject matter and a short description of the initiative, outlining the legal basis proposed for legal action and providing information on the committee members and on all sources of support and funding for the proposed initiative. The organisers may provide more detailed information and other material, such as a draft of the proposed legislative document, in an annex.

The Commission has two months to decide whether to register the proposed initiative. It will not be registered if the procedural requirements have not been met or if it falls outside the framework of the Commission's powers to submit a proposal for a legal act for the purpose of implementing the Treaties. Registration will also be refused if the initiative is manifestly frivolous, abusive or vexatious, or is contrary to the values of the EU as set out in Article 2 TEU. The Commission's decision is open to judicial or extrajudicial redress. Registered initiatives are published on the Commission's web portal.

C. Collection of statements of support

Once the initiative is registered, the organisers can start collecting statements of support. This must be done within 12 months. Statements of support can be collected on paper or electronically. If they are collected electronically, the online collection system must first be certified by the relevant national authorities. Detailed rules for the technical specifications of online collection systems are laid down in a Commission implementing regulation (Regulation (EU) No 1179/2011).

Regardless of whether the statements of support are collected on paper or electronically, the same data requirements apply for the purpose of verification. These requirements, defined at Member State level, are spelled out in Annex III to Regulation (EU) No 211/2011. Some Member States (Belgium, Denmark, Germany, Estonia, Finland, Ireland, the Netherlands, Slovakia and the UK) do not require signatories of statements of support to provide personal identification documents or numbers. All other Member States do require such identification. The annex specifies, for each Member State in which they are required, the types of personal identification document that may be used.

In order to be considered by the Commission, the ECI must gather one million statements of support within 12 months. Also, in order for it to qualify in a given Member State, the number of signatories in that Member State must be at least 750 multiplied by the number of MEPs elected from that Member State. In this way, the minimum number of signed statements of support is determined according to the same system of degressive proportionality used to determine the distribution of seats in the European Parliament among the Member States.

D. Verification and certification

Having collected the necessary number of statements of support from a sufficient number of Member States, the organisers must submit them to the competent national authorities[1], which are tasked with certifying the statements of support compiled by the Commission on the basis of information communicated by the Member States. The authorities given this task are typically interior ministries, electoral commissions or population registries. The national authorities have three months to certify the statements of support but are not required to authenticate the signatures.

E. Submission and examination

At this stage, the organisers are asked to submit relevant certificates from the national authorities concerning the number of statements of support, and must provide information about funding received from any source, abiding by the thresholds set out in Regulation (EC) No 2004/2003 on the regulations governing political parties at European level and the rules regarding their funding. In principle, contributions above EUR 500 must be declared.

Having received the submission, the Commission is required to publish it without delay in a register, and to receive the organisers at the appropriate level to allow them to explain the details of their request. After an exchange of views with the Commission, the organisers are given an opportunity to present the initiative at a public hearing held at the European Parliament. The hearing is organised by the committee responsible for the subject-matter of the ECI (Rule 197a of Parliament's Rules of Procedure).

Current initiatives

Several organisations had attempted to launch initiatives similar to the ECI before this instrument was adopted in law and detailed procedures were established. In 2007 the European Disability Forum launched one of the first such pilot initiatives, in which it claimed to have collected 1.2 million signatures. After the ECI Regulation was adopted in 2010, but before it had entered into force, Greenpeace

[1] A list of the competent national authorities is given at: http://ec.europa.eu/citizens-initiative/public/authorities-verification

claimed to have received 1 million signatures calling for a moratorium on GMO crops. However, neither of these initiatives can be counted as an ECI. Since 1 April 2012, about two dozen ECIs have been launched. There are currently nine initiatives initiatives registered, which are now at the collection phase. Five of the ECIs were closed in November 2013. The organisers of at least two of them claim to have reached the requisite number of statements of support within the one-year deadline. Firstly, Right to Water wishes to invite the Commission to 'propose legislation implementing the human right to water and sanitation as recognised by the United Nations, and promoting the provision of water and sanitation as essential public services for all'. Secondly, 'One of Us', which also claims to have reached the threshold of one million signatures, is asking the EU 'to end the financing of activities which presuppose the destruction of human embryos, in particular in the areas of research, development aid and public health'. To date, the Commission has refused to register 15 initiatives, in most cases on the grounds that the requested legislative initiative falls outside the scope of its competencies. As the collection of signatures is completed, the statements of support are submitted to national authorities for verification, before being presented to the Commission.

Role of the European Parliament

The ECI instrument has been of major interest to Parliament. On 7 May 2009, before the entry into force of the Lisbon Treaty, Parliament adopted a resolution[1] containing a detailed proposal for the implementation of the ECI. After the entry into force of the Treaty, Parliament was actively involved in the negotiation of the ECI Regulation through its four rapporteurs (Zita Gurmai and Alain Lamassoure on behalf of the Committee on Constitutional Affairs, and Diana Wallis and Gerald Häfner on behalf of the Committee on Petitions). Parliament contributed successfully to making the ECI a more accessible and citizen-friendly instrument of participatory democracy. It obtained, inter alia, a reduction of the minimum number of Member States from which the statements of support have to come, from one third, as originally proposed, to one quarter of all Member States; it insisted that the verification of admissibility is to be carried out at the pre-registration stage; and it pressed for the provisions allowing all European citizens and EU residents, regardless of nationality, to be granted the right to sign an ECI.

→ Petr Novak
11/2013

[1] OJ C 212E , 5.8.2010, p. 99.

3 THE INTERNAL MARKET

The single market is the EU's greatest achievement. It is an area without internal borders in which the free movement of goods, persons, services and capital is, in principle, guaranteed. To bring this into being, EU legislators have adopted hundreds of directives to remove technical, regulatory, legal and cultural barriers within the Union. The creation of the internal market encouraged EU Member States to liberalise the monopolistic public utility markets that had been protected until that point. By aligning their national laws, Member States set about harmonising rules and standards within the EU. Examples of this can be seen in the mutual recognition of diplomas, in public procurement, intellectual property and financial supervision.

3 THE INTERNAL MARKET

3.1. The internal market: framework

3.1.1. The internal market: general principles

The internal market is an area of prosperity and freedom, giving 500 million Europeans access to goods, services, jobs, business opportunities and the cultural richness of 27 Member States. It is an area without internal frontiers, ensuring free movement of goods, persons, services and capital. Building an internal market requires continuous efforts. Current debate on the internal market was relaunched by European institutions with the communication on the 'Europe 2020 strategy', the Commission's report 'A new strategy for the single market — At the service of Europe's economy and society', the communication on 'Single Market Act — Twelve levers to boost growth and strengthen confidence', 'Single Market Act II and numerous resolutions of the European Parliament (e.g. 'Completing the Digital Single Market',[1] 'Competitive digital single market — eGovernment as a spearhead'[2]). One of the most promising and challenging areas for progress is the digital single market. On the one hand, it opens up new opportunities to boost economies (e.g. through e-commerce) whilst also limiting administrative burdens (e.g. through e-government). On the other hand, it highlights that current regulations and business practices fail to match the opportunities created by information and communication technologies.

[1] European Parliament resolution of 11 December 2012, P7_TA(2012)0468.
[2] European Parliament resolution of 20 April 2012, P7_TA(2012)0140.

Legal basis

Articles 4(2)(a), 26, 27, 114 and 115 of the Treaty on the Functioning of the European Union (TFEU).

Objectives

The common market created by the Treaty of Rome in 1958 was intended to eliminate trade barriers between Member States with the aim of increasing economic prosperity and contributing to 'an ever closer union among the peoples of Europe'. The Single European Act of 1986 included the objective of the internal market in the EEC Treaty, defining it as 'an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured'. With the whole bulk of the internal market legal framework now in place, debate is concentrating on the effectiveness and impact of EU regulation and is calling for an approach focused on complete transposition, implementation and enforcement of internal market rules and moving towards what could be called the 'management' of the internal market and the 'partnership' between EU institutions and national authorities.

Achievements

A. The common market of 1958

The common market, the Treaty of Rome's main objective, was intended to merge the economies of the Member States as far as possible through: a customs union with a common external tariff; the free movement of goods, persons, services and, to a certain extent, capital; the elimination of quantitative restrictions (quotas) and measures having an equivalent effect. The customs union (achieved on 1 July 1968), the abolition of quotas, the free movement of citizens and workers, and some tax harmonisation with the general introduction of VAT (1970) were achieved before the end of the transition period (1 January 1970). However, the freedom of trade in goods and services and the freedom of establishment remained restricted due to continuing anti-competitive practices imposed by public authorities; reduction in measures having equivalent effect to quantitative restrictions and due to existing national technical rules for products. The free movement of services or the freedom of establishment (except certain professions such as doctors) had not completely been attained by the mid-1980s.

B. The launching of the internal market in the 1980s and the Single European Act

The lack of progress in the achievement of the common market was largely attributed to the choice of too detailed legislative harmonisation method and the unanimity rule required for Council decisions to be taken. According to the Cecchini report 'The cost of non-Europe', presented in March 1988, this had a considerable economic cost estimated at 4.25% to 6.5% of GDP. The political debate led the EEC in the mid-1980s to consider a more thorough approach to the objective of removing trade barriers: the internal market. The green light was given in 1985, when the European Council set the end of 1992 as the date for completing the internal market and asked the Commission to prepare a programme with a list of acts to be adopted and a timetable for implementation. The Commission adopted a White Paper in 1985, where most of the legislative measures to be taken (approximately 300) were listed and grouped into three main objectives: eliminating physical, technical and tax frontiers.

The Single European Act entered into force on 1 July 1987 setting a precise deadline of 31 December 1992 for its completion. It also strengthened the internal market decision-making machinery by introducing qualified majority voting for common customs tariffs, free provision of services, free movement of capital and approximation of national legislation. By that deadline, over 90% of the legislative projects listed in the 1985 White Paper had been adopted, largely by using the majority rule.

C. Towards a shared responsibility to achieve the internal market

The internal market, the world's largest common space of 500 million consumers, strongly contributed to the prosperity and integration of the European economy. It has increased intra-Community trade (by about 15% per year over 10 years), boosted productivity and reduced costs (through the abolition of customs formalities, harmonisation or mutual recognition of technical rules and lower prices as a result of competition), generated extra growth of 1.8% in the last 10 years and created around 2.5 million more jobs, while reducing the differences in income levels between Member States.

A new internal market strategy, running from 2003 to 2010, focused on the need to facilitate the free movements of goods, integrate the services markets, reduce the impact of tax obstacles and simplify the regulatory environment. In particular, substantial progress was made in opening up transport, telecommunications, electricity, gas and postal services. Transposition rate (measured by the 'transposition deficit', which is the percentage of directives not transposed in all the Member States) fell to 0.9% in 2010, but increased to 1.2% in September 2011[1] whilst the interim target was 1%. The Commission's 2012 Internal Market Scoreboard observed that, although the average percentage of single market legislation not yet transposed at national level remains below the agreed target of 1%, some Member States would not be able to overcome the high backlog 'without drastic action'. In its communication on governance of the single market[2], the Commission urged Member States to reach the target of 0% for late and incorrect transposition of directives. Furthermore, the Commission called for the length of infringement procedures to be shortened and for compliance with judgments of the Court of Justice to be ensured through penalty payment procedures.

The Commission also proposed horizontal measures such as an emphasis on clear, easily implementable new regulation, better use of existing IT tools to facilitate participants in exercising their single market rights, and setting up national centres to oversee the single market's functioning. Moreover, monitoring is integral to the annual reports on single market integration in the context of the European Semester process. The 2013 report[3] noted that only one Member State (Denmark) met the new 0% transposition deficit target and that the online problem solving network Solvit was underused.

D. The relaunch of the internal market in 2010 — preparing for the 20 years' anniversary

As the full potential of the internal market remains unexploited and as Europe has been changed by reunification, enlargement and closer involvement since the introduction of the single market, the EP, Council and Commission have recently put further effort into relaunching the internal market, in order to secure a new boost for the single European market and to put citizens, consumers and SMEs at the centre of the single market policy. With its communication 'Europe 2020 — A strategy for smart, sustainable and inclusive growth'[4], the Commission presented seven flagship initiatives that will commit both the EU and Member States to help Europe out of the crisis and 'turn Europe into a smart, sustainable and inclusive economy delivering high levels of employment, productivity and social cohesion'. In the report, the Commission furthermore highlights the importance of strengthening the single market for the 21st century.

In addition to the Europe 2020 strategy, the Commission presented a report on 'A new strategy for the single market at the service of Europe's

[1] Internal Market Scoreboard, Commission, September 2011.

[2] COM(2012) 259.

[3] COM(2012) 752.

[4] COM(2010) 2020.

economy and society' (May 2010). The report tried to develop a comprehensive strategy for the single market, deploying all policies (competition, consumer, digital, tax and other policies) and presented several initiatives to build a stronger single market, aimed at removing the remaining barriers[1]. The communications from the Commission and the EP's resolution 'Delivering a single market for consumers and citizens' prepared the ground for the Commission's communication 'Towards a Single Market Act'[2], in which it presented a series of measures designed to boost the European economy and create jobs, thereby adopting a more ambitious single market policy. Moreover, in addition to the communication of 11 January 2012 entitled 'A coherent framework for building trust in the Digital Single Market for e-commerce and online services'[3], in June 2012 the Commission adopted its communication on governance of the single market[4]. It proposed to focus on sectors with the highest growth potential: in 2012-2013 these are network industries (e.g. energy and telecommunications) and key services sectors (trade, business services, financial intermediation and transport).

In October 2012 the Commission proposed a second set of actions — Single Market Act II — to further develop the single market and exploit its untapped potential as an engine for growth, putting forward 12 key actions for rapid adoption by the EU institutions. These actions are concentrated on four main drivers for growth, employment and confidence, such as integrated networks, cross-border mobility of citizens and businesses, the digital economy, and actions that reinforce cohesion and consumer benefits. The Single Market Act II follows in the footsteps of a first set of measures presented by the Commission — the Single Market Act I — and includes the following actions towards a deeper and better integrated single market:

- business mobility (e.g. introducing provisions to mobilise long-term investment, modernising insolvency proceedings, and contributing to an environment that offers second chances to failing entrepreneurs);
- the digital economy (working towards the completion of the digital single market by 2015, the Commission proposes to facilitate e-commerce in the EU by making payment services easier to use, more trustworthy and competitive; to address a key underlying cause of lack of investment in high-speed broadband connection; and to make electronic invoicing standard in public procurement procedures);
- consumer confidence (e.g. introducing measures to ensure widespread access to bank accounts, as well as transparent and comparable account fees and easier bank account switching).

The Commission plans to put forward all key legislative proposals of the Single Market Act II by spring 2013 and the non-legislative ones by end 2013. The European Parliament and Council are called upon to adopt legislative proposals as a matter of priority by spring 2014.

Role of the European Parliament

The EP was a driving force in the process that led to the launching of the internal market. In particular, it backed the idea of transforming the internal market into a fully integrated home market by 2002 (resolution of 20 November 1997). In several 2006 resolutions (e.g. 12 February, 14 February, 16 May and 6 July) the EP supported the idea that the internal market was a common framework and point of reference for many EC and EU 'policies' and asked for a debate which went beyond the common rules on the four freedoms, fundamental rights and competition.

The EP also played an active role in the recent relaunch of the internal market. Among others, the EP adopted a resolution on 'Delivering a single market for consumers and citizens' on 20 May 2010, underlining that integration should be deepened and the remaining gaps closed and that the measures must be taken in order to inform and empower consumers and SMEs more effectively in the single market but also to increase citizens' confidence[5]. Furthermore, the EP responded to the Single Market Act with three resolutions adopted in April 2011: 'Governance and partnership in the single market'[6], 'A single market for Europeans'[7] and 'A single market for enterprises and growth'[8]. In all its resolutions from 2010 and 2011, the EP called for strengthening of single market governance and improving the transposition and enforcement of single market legislation. The EP's resolution of 20 April 2012 on a 'Competitive Digital Single Market — eGovernment as a spearhead'[9] represented a clear and consistent legal framework for mutual recognition of electronic authentication, identification and signatures which is necessary to guarantee operational cross-border administrative services throughout the EU. It was followed by the resolution of 22 May 2012 on the Internal Market Scoreboard[10] and two Commission

[1] P7_TA(2010)0186.

[2] COM(2010) 608.

[3] COM(2011) 942.

[4] COM(2012) 259.

[5] P7_TA(2010)0186.

[6] P7_TA(2010)0144.

[7] P7_TA(2010)0145.

[8] P7_TA(2010)0146.

[9] 2011/2178(INI).

[10] 2011/2155(INI).

communications on 'A strategy for e-procurement'[1] and 'European Strategy for a Better Internet for Children'[2].

On 11 December 2012, the EP also adopted two non-legislative resolutions on 'Completing the Digital Single Market'[3] and 'Digital Freedom Strategy in EU Foreign Policy'[4], which stressed that the EP strongly supports the principle of net neutrality, namely that Internet service providers do not block, discriminate against, impair or degrade, including through price, the ability of any person to use a service to access, use, send, post, receive or offer any content, application or service of their choice, irrespective of source or target and called on the Commission and Council to promote and preserve high standards of digital freedom in the EU. The aim of the resolutions was to develop policy and practice for building a real digital single market in the EU to face 27 different sets of rules in key areas such as VAT, postal services or intellectual property rights, among others. Connecting SMEs to the digital revolution through a real and developed pan-European e-commerce is one of the recommendations to the Commission and the Council to break down digital barriers between Member States.

Furthermore, on 7 February 2013, the EP adopted a 'Resolution on the better Governance of the Single Market'[5], which establishes a single market governance cycle as a specific pillar of the European Semester. The Annex to the Resolution consists of eight detailed recommendations to the European Commission as to the content of the legislative proposal and indicate the conditions required to achieve tangible improvements in applying single market rules. The IMCO Committee's Working Group on Digital Single Market has set an ongoing effort to give a boost to the European digital economy. This effort is focused on creating an appropriate regulatory environment, infrastructure and consumer trust.

→ Mariusz Maciejewski / Jana Roginska

[1] COM(2012) 179.

[2] COM(2012) 196.

[3] 2012/2030(INI).

[4] 2012/2094(INI).

[5] 2012/2260(INI).

3.1.2. Free movement of goods

The free movement of goods, the first of the four fundamental freedoms of the internal market, is ensured through the elimination of customs duties and quantitative restrictions, as well as through the prohibition of measures having an equivalent effect. The principle of mutual recognition, the elimination of physical and technical barriers, and the promotion of standardisation were added to continue completion of the internal market. With the adoption of the new legislative framework (NLF) in 2008, the marketing of products, free movement of goods, the market surveillance system in Europe and the CE mark were strengthened significantly. Furthermore, the mutual recognition principle has been consolidated, applying to a wide range of products not covered by EU harmonisation.

Legal basis

Articles 26, 28 to 37 of the Treaty on the Functioning of the European Union (TFEU).

Objectives

The right to the free movement of goods originating in Member States or goods from third countries, which are in free circulation in the Member States, is one of the fundamental principles of the Treaty (Article 28 TFEU). Originally, the free movement of goods was seen as part of a customs union between the Member States, involving the abolition of customs duties, quantitative restrictions on trade and equivalent measures and the establishment of a common external tariff for the Community. Later, 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 could move as freely as on a national market.

Achievements

The elimination of customs duties and quantitative restrictions (quotas) between Member States was accomplished by 1 July 1968, i.e. one and a half years early. This deadline was not met in the case of the supplementary objectives — the prohibition of measures having an equivalent effect, and harmonisation of the relevant national laws. These objectives became central in the ongoing effort to achieve free movement of goods.

A. Prohibition of charges having an effect equivalent to that of customs duties: Articles 28(1) and 30 TFEU

Since there is no definition of this abovementioned concept in the Treaty, case-law has had to provide one. The Court of Justice of the European Union (CJEU) considers that any charge, whatever it is called or however it is applied, 'which, if imposed upon a product imported from a Member State to the exclusion of a similar domestic product has, by altering its price, the same effect upon the free movement of products as a customs duty' may be regarded as a charge having equivalent effect, regardless of its nature or form (Cases 2/62 and 3/62, 14 December 1962, and 232/78, 25 September 1979).

B. Prohibitions of measures having an effect equivalent to quantitative restrictions: Articles 34 and 35 TFEU

The concept of a measure equivalent to a quantitative restriction is vague. The CJEU, therefore, in the *Dassonville* judgment, took the view that all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade are to be considered as measures having an effect equivalent to quantitative restrictions (Cases 8/74, 11 July 1974, and C-320/03, 15 November 2005, points 63 to 67). The Court's reasoning developed further in the *Cassis de Dijon* (Case 120/78, 20 February 1979) jurisprudence, laying down the principle that any product legally manufactured and marketed in a Member State in accordance with its fair and traditional rules, as well as manufacturing processes of that country, must be allowed on to the market of any other Member State. This was the basic reasoning which animated the debate towards the identification of the principle of mutual recognition also in the absence of harmonisation. As a consequence, even in the absence of European harmonisation measures (secondary EC legislation), Member States are obliged to allow goods, which are legally produced and marketed in another Member State, to circulate and be placed on their market, unless mandatory requirements subsist. In this case, any measure taken must be scrutinised under the principles of necessity and proportionality.

Importantly, the field of application of Article 34 TFEU is limited by Keck jurisprudence stating that certain selling arrangements fall outside its scope provided they are non-discriminatory (i.e. provisions apply to all relevant traders operating within the national territory and affect in the same manner, in law and in fact, the marketing of domestic products

and products from other Member States) (Joined Cases C-267/91 and C-268/91, 24 November 1993).

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

Article 36 TFEU allows Member States to take measures having an effect equivalent to quantitative restrictions when these are justified by general, non-economic considerations (e.g. public morality, public policy or public security). Such an exception to a principle must be strictly interpreted and national measures cannot constitute a means of arbitrary discrimination or disguised restriction on trade between Member States. Exceptions are no longer justified if Community legislation has come into force in the same area and does not allow them. Finally, the measures must have a direct effect on the public interests to be protected and must not go beyond the necessary level (principle of proportionality).

Furthermore, the CJEU has recognised in its jurisprudence (*Cassis de Dijon* case) that the Member States may make exceptions to the prohibition of measures having an equivalent effect on the basis of mandatory requirements (relating, among other things, to the effectiveness of fiscal supervision, fairness of commercial transactions, consumer protection and protection of the environment). Member States have to notify national exemption measures to the Commission. In order to facilitate supervision of such national exemption measures, procedures for the exchange of information and the monitoring mechanism were introduced (as stated in Articles 114, 117 of the TFEU, Decision 3052/95/EC of the European Parliament and of the Council of 13 December 1995 and in Council Regulation (EC) No 2679/98 of 7 December 1998). This was further formalised in the regulation on mutual recognition, which was adopted in 2008 as part of the so-called new legislative framework legislation (NLF).

D. Harmonisation of national legislation

Since the late-1970s, the Community has made considerable efforts in harmonising national legislation. The adoption of Community harmonisation laws has enabled obstacles created by national provisions to be removed as inapplicable and the establishment of common rules aimed both to guarantee the free circulation of goods and products and the respect of the other EC Treaty objectives, such as environment, consumers, competition, etc.

The harmonisation was further facilitated by the introduction of the qualified majority rule, required for most directives relating to the completion of the single market (Article 95 TEC, as modified by the Maastricht Treaty), and by the adoption of a new approach proposed in a Commission White Paper in June 1985 aimed at avoiding an onerous and detailed harmonisation. In the new approach based on the Council resolution of 7 May 1985 (confirmed in the Council resolution of 21 December 1989 and Council Decision 93/465/EEC), the guiding principle is the mutual recognition of national rules. Community harmonisation must be restricted to essential requirements and is justified when national rules cannot be considered equivalent and create restrictions. Directives adopted under this new approach have the dual purpose of ensuring the free movement of goods through the technical harmonisation of entire sectors, and of guaranteeing a high level of protection of the public interest objectives referred to in Article 114(3) TFEU (e.g. toys, building materials, machines, gas appliances and telecommunications terminal equipment).

E. Completion of the internal market

The creation of the single market implied the elimination of all remaining obstacles to free movement. The Commission White Paper of June 1985 set out the physical and technical obstacles to be removed and the measures to be taken by the Community to this end. Most of these measures have now been adopted. However, the single market still requires substantial reforms if it is to meet the challenges of technological progress, which is a key factor in making the EU the most competitive and dynamic economy in the world.

Role of the European Parliament

The EP supported the completion of the internal market and has always given particular support to the 'new approach' in connection with the free movement of goods, clarifying its definition in a report in 1987. It has also made a strong legislative contribution to the harmonisation directives. The EP made a significant contribution to the important NLF package adopted in 2008. The key issues for the EP in its negotiations with the Council were to secure that all economic operators involved should be increasingly responsible for assuring the compliance and safety of the products they put on the market, and to further strengthen the CE mark by enhancing consumer knowledge of it. Furthermore, the EP wanted to reinforce market surveillance and therefore, amongst others, amended the general product safety directive (GPSD), so that the national authorities must take appropriate measures against consumer products that represent a serious risk.

In its resolution of 8 March 2011, the EP also requested the Commission to establish a single market surveillance system for all products (harmonised and non-harmonised), based on one legislative act covering both the GPSD and Regulation (EC) No 765/2008 on market surveillance, as this would achieve a high level of product safety and market surveillance and clarify the legal basis. On 13 February 2013, responding on the request of the

EP, the European Commission presented the Product Safety and Market Surveillance Package, which aims at the improvement of the market surveillance systems in the EU Member States. The package is composed of new enforcement rules for the internal market for goods, which will enable national market surveillance authorities to enforce the law and to provide better and more means to ensure consumer protection. In particular, authorities will be able to better track down unsafe products while at the same time the new rules on consumer product safety will simplify the safety rules for consumer products, and merge them into one single piece of legislation.

The three most important parts of the package are:

1. a proposal for a new regulation on consumer product safety (CPSR);

2. a proposal for a single regulation on market surveillance for products — unifying and simplifying existing fragmented legislation;

3. a multiannual plan for market surveillance of 20 individual actions that the Commission will undertake over the next three years.

Along with the principle of mutual recognition, standardisation plays a central role in the proper functioning of the internal market. Harmonised European standards help ensure the free movement of goods within the internal market and allow enterprises in the EU to become more competitive. These standards help to protect the health and safety of European consumers and also contribute to environmental protection. The EP adopted a resolution on 21 October 2010[1], in order to affect the content of the standardisation reform. The EP called for preserving the standardisation system's many successful elements, improving it and striking the right balance between the national, European and international dimensions. Furthermore, the EP considered the addition of the principle of 'appropriate representation' to be a vital element, given that it is of the utmost importance to incorporate all stakeholder positions in an appropriate manner, whenever the public interest is concerned, especially in the development of standards intended to support EU legislation and policies.

On 25 October 2012, Regulation (EU) No 1025/2012 of the European Parliament and of the Council on European standardisation was adopted. This regulation aims at modernising and improving the European standards setting to make it faster and at the same time more inclusive.

The EP furthermore supports the need for stronger cooperation between EU and national authorities in order to improve the quality of EU legislation, and to identify legislation in need of simplification or codification, in accordance with the goal to put more effort into better regulation, prompt transposition and correct implementation. The EP also calls on the other institutions to support, when possible, co-regulation and voluntary agreements, in order to respect the same principle of better law-making.

→ Mariusz Maciejewski / Jana Roginska

[1] OJ C 70 E, 8.3.2012, p. 56.

3.1.3. Free movement of workers

One of the four freedoms for EU citizens is the free movement of workers. It involves workers' rights of movement and residence, right of entry and residence for family members and right of work in another EU Member State. Nevertheless, these rights are accompanied by restrictions concerning notably the rights of entry and residence, the right to take up employment in the public sector, and restrictions in some countries for citizens coming from the 'new' Member States.

Legal basis

Articles 4(2)(a), 20, 26 and 45 to 47 of the Treaty on the Functioning of the European Union (TFEU);

Regulation (EEC) No 1612/68 of 15 October 1968 (amended by Regulations (EEC) No 312/76 and (EC) No 2434/92) and Directive 2004/38/EC, as well as Directive 2005/36/EC and the case-law of the Court of Justice of the European Union (CJEU).

Objectives

Freedom of movement for workers is one of the founding principles of the EU. It is laid down in Article 45 of the TFEU and is hence a fundamental right of workers. It entails 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.

Achievements

According to Eurostat data from 2008, 2.3% of EU citizens (11.3 million persons) resided in a Member State other than the state of which they are a citizen. According to a recent Eurobarometer survey, 10% of persons polled in the EU-27 replied that they had lived and worked in another country at some point in the past, while 17% intended to take advantage of free movement in the future.

A. Current general arrangements on freedom of movement

Any national of a Member State has the right to look for a job in another Member State in conformity with the relevant regulations applicable to national workers. He or she will receive the same assistance from the national employment offices as nationals of the host Member State without any discrimination on the grounds of nationality, and will also have the right to stay in the host country for a period long enough to look for work, apply for a job and be recruited. This right is recognised to apply equally to workers on permanent contracts, seasonal and cross-border workers, and those who provide services.

1. Workers' rights of movement and residence

a. Movement

Based on Directive 2004/38/EC on residence for EU citizens the host Member State may require a citizen to register his/her presence in a country within a reasonable and non-discriminatory period of time. Depending on the length of the stay, other formalities may also have to be completed. This directive introduces EU citizenship as the basic status for nationals of the Member States when they exercise their right to move and reside freely on EU territory.

b. Residence

The right of residence for migrant workers for more than three months remains subject to certain conditions, varying according to their status (employees, self-employed, pensioners, posted workers, having lost a job). Union citizens acquire the right of permanent residence in the host Member State after a five-year period of uninterrupted legal residence.

2. Rights of entry and residence for family members

Directive 2004/38/EC amended Regulation (EEC) No 1612/68 with regard to family reunification and extended the definition of 'family member' (formerly limited to spouse, descendants aged under 21 or dependent children, and dependent ascendants) to include registered partners if the host Member State's legislation considers a registered partnership as the equivalent of a marriage. Irrespective of their nationality, these members of the worker's family have the right to reside in the same country.

3. Employment

a. Taking up employment and treatment at work

Workers who are nationals of a Member State may not be treated differently from national workers in the territory of the host Member State as regards working and employment conditions due to their nationality, in particular employment take-up, dismissal and remuneration. Equal treatment also applies concerning occupational training and retraining measures. They have the same social and tax benefits as national workers. Nationals of one Member State working in another are entitled to

equal treatment in respect of exercising trade union rights.

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

This right was laid down in Regulation (EEC) No 1251/70 and must be viewed in the context of the citizens' directive.

B. Restrictions on freedom of movement

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

The treaty allows Member States to refuse an EU national the right of entry or residence on their territory on the grounds of public policy, public security or public health. Measures affecting freedom of movement and residence must be based on the personal conduct of the individual concerned. Such conduct must represent a sufficiently serious and present threat which affects the fundamental interests of the state. In any event, before taking an expulsion decision, the Member State must assess a number of factors. Lifelong exclusion orders cannot be issued under any circumstances. The directive also makes provision for a series of procedural guarantees.

2. Restrictions on taking up jobs in the public service

According to Article 45(4) TFEU, free movement of workers does not apply to employment in the public sector. Access to the public service may be restricted to only nationals of the host Member State. However, this derogation has been interpreted in a very restrictive way by the CJEU and, therefore, only those posts in which the exercise of public authority and the responsibility for safeguarding the general interest of the state is involved may be restricted to their own nationals (for example the internal or external security of the state). These criteria must be evaluated on a case-by-case approach in view of the nature of the tasks and responsibilities covered by the post in question (*Lawrie-Blum*, Case No C-66/85).

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

During a transitional period after their accession, certain conditions can be applied that restrict the free movement of workers from, to and between these Member States. These restrictions only concern the freedom of movement for the purpose of taking up a job and they may differ from one Member State to another. Following the accession of 10 countries on 1 May 2004, transitional periods were in place for workers from these new Member States except those from Malta and Cyprus. After several prolongations, complete freedom of movement for workers of these Member States has been established since May 2011.

With Bulgaria and Romania's accession in 2007, similar transition periods have been agreed. Some Member States still have a restriction in place, which will be lifted at the latest by 1 January 2014.

C. Measures to encourage freedom of movement

1. Mutual recognition of training

As a basic principle, any EU citizen should be able to freely practice his or her profession in any Member State. However, the practical implementation of this principle is often hindered by national requirements for access to certain professions in the host country. The system for recognition of professional qualifications was reformed to help make labour markets more flexible and encourage more automatic recognition of qualifications. Directive 2005/36/EC on the recognition of professional qualifications consolidates and modernises 15 existing directives covering almost all recognition rules (*3.2.3).

2. The EURES network (European Employment Services)

EURES is a cooperation network between the Commission and the public employment services of the EEA Member States and other partner organisations, and Switzerland (see 5.10.3).

3. Other activities to strengthen workers' mobility

The EU has made major efforts to create an environment conducive to worker mobility, among which are:

- an action plan on skills and mobility from 2002 until 2005;
- a European health insurance card and a directive on cross-border healthcare;
- the coordination of social security schemes with Regulations (EC) No 883/2004 and (EC) No 987/2009 (*5.10.4);
- the European Year of Workers' Mobility (2006) to raise awareness of the rights of workers to free movement, opportunities and instruments which have been introduced to promote freedom of mobility (EURES);
- a proposal for a directive on the portability of supplementary pension rights;
- exchanges between young workers: Leonardo da Vinci strand of the lifelong learning programme 2007-2013 (*5.13.3);
- the Commission proposal to facilitate and promote EU mobility under the Europe 2020 strategy, and in particular in the flagship initiative 'An agenda for new skills and jobs';
- the flagship initiative 'Youth on the move' as part of the Europe 2020 Strategy;

- the Commission communication 'Reaffirming the free movement of workers: rights and major developments'.

Role of the European Parliament

The EP considers all employment-related topics to be among the EU's main priorities and has always stressed that the EU and its Member States should coordinate their efforts and promote the free movement of workers as one of the objectives of the completed internal market. The EP has always played a dynamic role in the establishment and improvement of the internal market and has always energetically supported the efforts of the European Commission in this area.

Workers from other Member States should be treated in the same way as workers from the host country. This has been challenged by the CJEU in a series of recent judgments regarding Directive 96/71/EC on the posting of workers, known as the Viking, Laval, Rüffert and Commission v Luxembourg cases, which concern freedom of establishment and freedom of services. The Court had to balance economic and social rights in light of the directive.

As early as 2006, the EP already expressed concern, in its resolution on the application of Directive 96/71/EC on the posting of workers (P6_TA(2006)463), that the directive was not being implemented properly in some Member States to prevent social dumping. In its resolution of 18 December 2008 on the European job mobility action plan (2007–2010), the EP recalled its commitment to promoting the mobility of workers and the importance of having a long-term mobility strategy. On 25 October 2011, the European Parliament adopted a resolution on promoting workers' mobility within the European Union (2010/2273(INI)), in response to the Commission communication on the same subject, where it reaffirms the importance of promoting workers' mobility and addresses topics such as removing obstacles that impede mobility, addressing administrative and legal aspects and linking mobility with other policies. On 15 December 2011, the EP adopted a resolution on the freedom of movement for workers within the European Union (P7_TA(2011)0587), where it took the view that worker mobility in the EU should never be regarded as a threat to national labour markets.

→ Dr. Marion Schmid-Drüner

3.1.4. Freedom of establishment and freedom to provide services

As stipulated in the Treaty on the Functioning of the European Union and reinforced by the case-law of the European Court of Justice, the freedom of establishment and the freedom to provide services guarantee mobility of business and professionals within the EU. For the further implementation of these two freedoms, expectations concerning the Services Directive adopted in 2006 are high, as it is of crucial importance for the completion of the internal market.

Legal basis

Articles 26 (internal market), 49 to 55 (establishment) and 56 to 62 (services) of the Treaty on the Functioning of the European Union (TFEU).

Objectives

Self-employed persons and professionals or legal persons within the meaning of Article 54 TFEU who are legally operating in one Member State may: (i) carry on an economic activity in a stable and continuous way in another Member State (freedom of establishment: Article 49 TFEU); or (ii) offer and provide their services in other Member States on a temporary basis while remaining in their country of origin (freedom to provide services: Article 56 TFEU). This implies eliminating discrimination on the grounds of nationality and, if these freedoms are to be used effectively, the adoption of measures to make it easier to exercise them, including the harmonisation of national access rules or their mutual recognition (*3.1.5).

Achievements

A. Liberalisation in the treaty

1. 'Fundamental freedoms'

The right of establishment includes the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, for a permanent activity of a stable and continuous nature, under the same conditions as those laid down by the law of the Member State of establishment for its own nationals.

Freedom to provide services applies to all those services normally provided for remuneration, insofar as they are not governed by the provisions relating to the freedom of movement of goods, capital and persons. The person providing a 'service' may, in order to do so, temporarily pursue her or his activity in the Member State where the service is provided, under the same conditions as are imposed by that Member State on its own nationals.

2. The exceptions

Under the TFEU, activities connected with the exercise of official authority are excluded from freedom of establishment and provision of services (Article 51 TFEU). This exclusion is, however, limited by a restrictive interpretation: exclusions can cover only those specific activities and functions which imply the exercise of authority; and a whole profession can be excluded only if its entire activity is dedicated to the exercise of official authority, or the part that is dedicated to the exercise of public authority is inseparable from the rest. Exceptions enable Member States to exclude the production of or trade in war material (Article 346(1)(b) TFEU) and to retain rules for non-nationals in respect of public policy, public security or public health (Article 52(1)).

B. Services Directive — towards completing the internal market

The Services Directive (Directive 2006/123/EC of 12 December 2006 on services in the internal market), which strengthens the freedom to provide services within the EU, was adopted in 2006, with an implementation deadline of 28 December 2009. This directive is crucial for completing the internal market, since it has a huge potential for delivering benefits for consumers and SMEs. The aim is to create an open single market in services within the EU while at the same time ensuring the quality of services provided to consumers in the Union. The full implementation of the Services Directive could increase trade in commercial services by 45% and foreign direct investment by 25%, bringing an increase of between 0.5% and 1.5% in GDP (Commission communication 'Europe 2020'). This directive contributes to administrative and regulatory simplification and modernisation. This is achieved not only through the screening of the existing legislation, and the adoption and amendment of relevant legislation, but also through long-term projects (setting up the Points of Single Contact and ensuring administrative cooperation). The implementation of the directive has been significantly delayed in a number of Member States in relation to the original deadline. Its successful implementation calls for sustained political commitment and widespread support at European, national, regional and local levels.

Role of the European Parliament

The EP has been instrumental in liberalising the activities of the self-employed. It has ensured a strict delimitation of the activities that may be reserved for nationals (e.g. those relating to the exercise of public authority). It is also worth mentioning the case that the EP brought before the Court of Justice against the Council for failure to act with regard to transport policy. That case, brought in January 1983, led to a judgment of the Court (Case No 13/83 of 22 May 1985) condemning the Council for failing to ensure free provision of international transport services or lay down conditions enabling non-resident carriers to operate transport services within a Member State. This was in breach of the Treaty. The Council was thus obliged to adopt the necessary legislation. The role of the EP has grown with the application of the codecision procedure provided for in the Treaty of Maastricht, and now of its successor, the ordinary legislative procedure, to most aspects of freedom of establishment and provision of services.

The EP also played a crucial role in the adoption of the Services Directive, and is closely following its implementation. In addition, it is putting pressure on the Member States to fulfil their obligations under the directive and ensure its proper implementation. Following the Commission communication of 8 June 2012 on the implementation of the Services Directive, Parliament's Committee on the Internal Market and Consumer Protection (IMCO) is preparing a report on 'Internal Market for services: state of play and next steps' (2012/2144/INI).

On 7 February 2013, the EP also adopted a resolution with recommendations to the Commission on the governance of the single market (2012/2260(INI), emphasising the importance of the services sector as a key area for growth, the fundamental character of the freedom to provide services, and the benefits of a full implementation of the Services Directive.

→ Mariusz Maciejewski

3.1.5. The mutual recognition of diplomas

The freedom of establishment and the freedom to provide services represent one of the cornerstones of the single market, enabling the mobility of businesses and professionals throughout the EU. Implementing these freedoms supposes the overall recognition of nationally delivered diplomas and qualifications. Different measures for their harmonisation and mutual recognition have been adopted, and further legislation on the subject is under way.

Legal basis

Articles 26 and 53 of the Treaty on the Functioning of the European Union (TFEU).

Objectives

For self-employed persons and professionals to establish themselves in another Member State or offer their services there on a temporary basis, diplomas, certificates and other proof of professional qualification as issued in the different Member States need to be mutually recognised, and any national provisions governing access to various professions need to be coordinated and harmonised.

Achievements

Article 53(1) TFEU provides that the mutual recognition of the diplomas and other qualifications required in each Member State for access to the regulated professions can be used to facilitate freedom of establishment and provision of services. It also addresses the need to coordinate national rules on the taking-up and pursuit of activities as self-employed persons. Paragraph 2 of the same article subordinates the mutual recognition, 'in cases where such harmonisation is a difficult process', to the coordination of the conditions governing exercise in the various Member States. The harmonisation process evolved through a number of directives from the mid-1970s. On these bases, legislation on mutual recognition is adjusted to the needs of different situations. It varies in completeness according to the profession concerned, and in recent cases has been adopted using a more general approach.

A. The sector-specific approach (by profession)

1. Mutual recognition after harmonisation

Harmonisation progressed faster in the health sector, for the obvious reason that professional requirements, and especially training courses, did not vary much from one country to another (unlike in other professions), meaning that it was not difficult to harmonise them. This harmonisation developed through a number of directives from the mid-1970s through to the mid-1980s, which regulated, with regard to freedom of establishment and provision of services, a substantial number of professions (e.g. doctors, nurses, veterinary surgeons, midwives and self-employed commercial agents). The Professional Qualifications Directive (2005/36/EC) aimed to clarify, simplify and modernise the existing directives, and to bring together the regulated professions of doctors, dentists, nurses, veterinary surgeons, midwives, pharmacists and architects in one legislative text. This directive specifies, among many other things, how the 'host' Member States should recognise professional qualifications obtained in another ('home') Member State. The recognition of professionals includes both a general system for recognition and specific systems for each of the abovementioned professions. It focuses, among many other aspects, on the level of qualification, training and professional experience (of both a general and a specialist nature). The directive also applies to professional qualifications within the transport sector, and to insurance intermediaries and statutory auditors. These professions were previously regulated under separate directives. On 22 June 2011, the Commission adopted a Green Paper on Modernising the Professional Qualifications Directive (COM(2011) 367), proposing a legislative initiative to reform the systems for the recognition of professional qualifications, with a view to facilitating the mobility of workers and adapting training and current labour market requirements. On 19 December 2011 the Commission published a proposal for a revision of the Professional Qualifications Directive (COM(2011) 883), based on the outcome of the various consultation processes. The most important key proposals include: the introduction of the European professional card; harmonisation of the minimum training requirements; and automatic recognition for seven professions, namely architects, dentists, doctors, nurses, midwives, pharmacists and veterinary surgeons. The proposal's main objectives were to facilitate and enhance the mobility of professionals across the EU and to help alleviate personnel shortages in some Member States. Parliament and the Council are currently discussing the proposal. It will (presumably) be adopted during the second half of 2013.

2. Mutual recognition without harmonisation

For other professions for which differences between national rules have prevented harmonisation,

mutual recognition has made less progress. The diversity of legal systems has prevented the full mutual recognition of diplomas and qualifications that would have secured immediate freedom of establishment on the basis of a diploma obtained in the country of origin. Council Directive 77/249/EEC of 22 March 1977 granted lawyers the freedom to provide occasional services; free establishment otherwise requires a diploma from the host country. Directive 98/5/EC of 16 February 1998 was a significant step forward, stating that lawyers holding a diploma from any Member State may establish themselves in another Member State to pursue their profession, with the proviso that the host country can require them to be assisted by a local lawyer when representing and defending their clients in court. After three years operating on this basis, lawyers acquire the right (if they so wish) to full exercise of their profession, after passing an aptitude test set by the host country and without having to take a qualifying examination. Other directives have applied the same principle to other professions, such as road haulage operators, insurance agents and brokers, hairdressers and architects.

B. The general approach

The drafting of legislation for mutual recognition sector by sector (sometimes with more extensive harmonisation of national rules) has always been a long and tedious procedure. For that reason, the need for a general system of recognition of equivalence of diplomas, valid for all regulated professions that have not been the subject of specific Union legislation, became apparent. This new general approach changed the perspective. Before, 'recognition' was subordinated to the existence of European rules concerning 'harmonisation' in the specific regulated profession or activity. Afterwards, 'mutual recognition' became almost automatic, under the established rules, for all the regulated professions concerned, without any need for sector-specific secondary legislation. From that moment, both the 'harmonisation' and the 'mutual recognition' methods continued to be used under a parallel system, with, in some cases, situations where both have been used under a complementary system taking the form of both a regulation and a directive (see the Council resolutions of 3 December 1992 and 15 July 1996 on transparency of qualifications and vocational training certificates). The host Member State may not refuse applicants access to the occupation in question if they possess the qualifications required in their country of origin. However, if the training they received was of a shorter duration than in the host country, it may demand a certain length of professional experience, and 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 national law.

Role of the European Parliament

On 15 November 2011, the EP adopted a resolution on the implementation of the Professional Qualifications Directive (2005/36/EC)[1] calling for the modernisation and improvement of Directive 2005/36/EC and encouraging the use of the most efficient and appropriate technologies, such as the introduction of a European professional card, which should be an official document recognised by all competent authorities, in order to facilitate the recognition process. Following the Commission's proposal of 19 December 2011 for a revision of the Professional Qualifications Directive, on 13 February 2013 the IMCO committee tabled a report for first reading in plenary (PE494.470v02-00).

→ Mariusz Maciejewski

[1] Texts adopted, P7_TA(2011)0490.

3.1.6. The free movement of capital

The free movement of capital is not only the youngest of all Treaty freedoms, but — because of its unique third-country dimension — also the broadest. Initially, the Treaties did not prescribe full liberalisation of capital movements; Member States only had to remove restrictions to the extent necessary for the functioning of the common market. However, economic and political circumstances globally and in Europe changed, and thus the European Council confirmed the progressive realisation of the Economic and Monetary Union (EMU) in 1988. This included more coordination of national economic and monetary policies. Consequently, stage one of EMU introduced complete freedom for capital transactions, introduced first through a Council directive and later on enshrined in the Maastricht Treaty. Since then, the Treaty prohibits any restriction on capital movements and payments, both between Member States and between Member States and third countries. The principle was directly effective, i.e. it required no further legislation at either EU or Member States' level.

Legal basis

Articles 63 to 66 of the Treaty on the Functioning of the European Union (TFEU), supplemented by Articles 75 and 215 TFEU for sanctions.

Objectives

All restrictions on capital movements between Member States as well as between Member States and third countries should be removed. However, for capital movements between Member States and third countries, Member States also have: (1) the option of safeguard measures in exceptional circumstances; (2) the possibility to apply restrictions that existed before a certain date to third countries and certain categories of capital movements; and (3) a basis for the introduction of such restrictions — but only under very specific circumstances. This liberalisation should help to establish the single market by supplementing other freedoms (in particular the movement of persons, goods and services). It should also encourage economic progress by enabling capital to be invested efficiently and promoting the use of the euro as an international currency, thus contributing to the EU's role as a global player. It was also indispensable for the development of Economic and Monetary Union (EMU) and the introduction of the euro.

Achievements

A. First endeavours (before the single market)

The first Community measures were limited in scope. A 'First Directive' dating from 11 May 1960 and amended in 1962 unconditionally liberalised direct investment, short- or medium-term lending for commercial transactions, and purchases of securities traded on the stock exchange. Some Member States decided not to wait for Community decisions and introduced unilateral national measures, thereby abolishing virtually all restrictions on capital movements (Germany in 1961; United Kingdom in 1979; and the Benelux countries (between themselves) in 1980). Another Directive (72/156/EEC) on international capital flows followed.

B. Further progress and general liberalisation in view of the single market

It was not until the single market was launched, almost 20 years later, that the progress which had started in 1960-1962 was resumed. Two directives, dating from 1985 and 1986, extended unconditional liberalisation to long-term lending for commercial transactions and purchases of securities not dealt in on the stock exchange. In view of the aim of completing the single market (by 1993), moving from the European Monetary System to EMU and the envisaged introduction of the euro, capital movements were fully liberalised in a first step by Council Directive 88/361/EEC of 24 June 1988, which scrapped all remaining restrictions on capital movements between residents of the Member States as of 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 so-called safeguard clause enabling Member States to take protective measures when short-term capital movements of exceptional size seriously disrupted the conduct of monetary policy. Such measures could, however, only apply in a limited number of duly substantiated cases and could not last for more than six months (no Member State made use of this possibility). It also allowed for some countries to maintain temporary restrictions, mainly on short-term movements, but only for a specific period: this applied to Ireland, Portugal and Spain until 31 December 1992, and Greece until 30 June 1994. However, Protocol 32 to the Treaty on European Union (TEU), for instance, allows Denmark

to maintain existing legislation which restricts the acquisition of second homes by non-residents.

C. The definitive system

1. Principle

In a second step, the Maastricht Treaty of European Union (TEU) introduced free movement of capital as a Treaty freedom. Today, Article 63 TFEU prohibits all restrictions on the movement of capital and payments between Member States, as well as between Member States and third countries. This constitutes a unique third-country dimension of this particular Treaty freedom. It prohibits all obstacles, not just discriminatory ones. It lays down a general prohibition which goes beyond the mere elimination of unequal treatment on grounds of nationality (see Case C-367/98, Commission v Portugal, paragraph 44). Article 65(1) TFEU allows for different tax treatment of non-residents and foreign investment, but this shall not constitute a means of arbitrary discrimination or a disguised restriction, Article 65(3) TFEU. Even in relation to third countries, the principle of free movement of capital prevails over reciprocity and maintaining Member States' negotiating leverage vis-à-vis third countries (see Case C-101/05, Skatteverket v A).

The right of free movement of capital is not affected by notification obligations, i.e. the reporting of cross-border transactions (e.g. for electronic payments, cash and securities movements above certain thresholds) for the purpose of external sector statistics, which are used for compiling the balance of payments for Member States and the European Monetary Union.

2. Exceptions and justified restrictions

Nevertheless, exceptions are largely confined to capital movements related to third countries (Article 64 TFEU). In addition to the option of maintaining national or Community measures concerning direct investment and certain other transactions that were in force as of 31 December 1993 (31 December 1999 for Bulgaria, Estonia and Hungary), the Council may also, after consulting the European Parliament, unanimously adopt measures which constitute a step backwards in the liberalisation of capital movements with third countries. The Council and the European Parliament may adopt legislative measures with regard to third-country capital movement involving direct investment establishment, provision of financial services or the admission of securities to capital markets (an example of this being the proposal for a regulation establishing transitional arrangements for bilateral investment agreements between Member States and third countries (COM(2010) 344; European Parliament legislative Resolution of 10 May 2011 (TA(2011)0206)). Article 66 TFEU covers emergency measures vis-à-vis third countries; however, these are limited to a period of six months.

The only justified restrictions on capital movements in general, including movements within the Union, which Member States may decide to apply, are laid down in Article 65 TFEU and include: (i) measures to prevent infringements of national law (namely in view of taxation and prudential supervision of financial services); (ii) procedures for the declaration of capital movements for administrative or statistical purposes; and (iii) measures justified on the grounds of public policy or public security. This is supplemented by Article 75 TFEU providing for the possibility of financial sanctions against individuals, groups or non-state entities to prevent and combat terrorism. Pursuant to Article 215 TFEU, financial sanctions may be taken against third countries, or individuals, groups or non-state entities, based on decisions adopted within the framework of the common foreign and security policy.

3. Consequences of Economic and Monetary Union (EMU): Abolition of the safeguard clause

Today's safeguard clause is Article 144 TFEU (together with Article 143 TFEU). It allows for taking protective balance of payments measures where difficulties jeopardise the functioning of the internal market or where a sudden crisis occurs. Since 1 January 1999, the beginning of the third phase of EMU, the safeguard clause to remedy crises in the balance of payments is only applicable to those Member States which have not (yet) introduced the euro.

D. Treatment of violations and Court decisions

In cases where Member States restrict the freedom of capital movement in an unjustified way, the usual infringement procedure according to Article 258-260 TFEU applies.

Important infringement cases concerned, inter alia, special rights of public authorities in private companies/sectors (e.g. *Commission* v *Germany* (Case C-112/05 *Volkswagen*); in a case brought against Portugal (Case C-171/08) in 2010, the Court confirmed earlier jurisprudence on special rights and highlighted that the free movement of capital includes both 'direct' investments and 'portfolio' investments; and a third-country case (Case C-452/04 *Fidium Finanz*).

E. Payments

On payments, Article 63(2) TFEU stipulates that 'Within the framework of the provisions set out in this Chapter, all restrictions on payments between Member States and between Member States and third countries shall be prohibited.'

1. Harmonisation of the cost of domestic and cross-border payments within the euro area

Regulation (EC) No 2560/2001 of 19 December 2001 harmonised the costs of domestic and cross-border payments within the euro area. In the meantime, it has been repealed and replaced by Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community. Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro improved the framework.

2. New legal framework for payments

The Directive on Payment Services (PSD) 2007/64/EC provides the legal foundation for the creation of an EU-wide single market for payments by 2010. It aims to establish a comprehensive set of rules applicable to all payment services in the EU to make cross-border payments as easy, efficient and secure as 'national' payments within a Member State and to foster efficiency and cost-reduction through more competition by opening up payment markets to new entrants. The PSD provides the necessary legal framework for an initiative of the European banking industry, called the 'Single Euro Payments Area' (SEPA). SEPA instruments were available, but not much in use by the end of 2010. Consequently, in December 2010, the European Commission proposed a regulation (COM(2010) 775) setting EU-wide end-dates for the migration of the old national credit transfers and direct debits to SEPA instruments; thus phasing out national credit transfers and direct debits, respectively 12 and 24 months after the entry into force of the regulation. This proposal was adopted in 2012 (Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009).

Role of the European Parliament

The EP 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 EU than between the EU and the rest of the world, to ensure that European savings feed 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 the EP's political pressure that the Commission was able to launch legislation on harmonisation of domestic and cross-border payments (resolution of 17 June 1988).

In a closely related area, the EP supported the goal of an efficient, integrated and safe market for clearing and settlement of securities in the EU in its non-legislative resolution 'Clearing and settlement in the EU' of 7 July 2005 (2004/2185(INI)) and held a workshop on securities law issues (see document PE 464.428 for the workshop and the related note PE 464.416). The EP is currently expecting further legislative proposals in the area of clearing and settlement to be discussed in the ordinary legislative procedure.

→ Doris Kolassa

3.2. Implementation

3.2.1. Competition policy

Articles 101 to 109 of the Treaty on the Functioning of the European Union (TFEU) contain rules on competition in the internal market, prohibiting anti-competitive agreements between undertakings. Businesses with a dominant market position must not abuse their position in a way which impacts negatively on trade between Member States.

Mergers and takeovers with a Community dimension are monitored by the European Commission and may be prevented in certain cases.

State aid granted in favour of certain undertakings or products which leads to distortions of competition is prohibited but may be authorised in certain cases.

Competition rules also apply to public undertakings, public services and services of general interest. However, exceptions may be granted where application of the rules would place in jeopardy the realisation of the objectives of these services.

Legal basis

- Articles 101 to 109 TFEU and Protocol No 27 on the internal market and competition, which make clear that fair competition is included in the objective of the internal market in Article 3(3) TFEU;
- Merger Regulation (EC) No 139/2004;
- Articles 37, 106 and 345 TFEU for public undertakings and Articles 14, 59, 93, 106, 107, 108 and 114 TFEU for public services, services of general interest and services of general economic interest; Article 36 of the Charter of Fundamental Rights.

Objectives

The fundamental objective of Community competition rules is to prevent distortion of competition. This is not, however, an end in itself. It is rather a condition for achieving a free and dynamic internal market and is one of a number of instruments promoting general economic welfare. Since the Lisbon Treaty came into force, this objective has no longer been set out expressly in Article 3 TFEU but included in the term 'internal market' pursuant to Protocol No 27. This was not expected to have any practical implications, as no changes were made to the competition rules themselves. The conditions for the application of these rules and their legal effects have become so entrenched in the decades of administrative practice in the European Commission and the case-law of the European Courts that they can be considered to be unchanging.

Achievements

A. Comprehensive ban on anti-competitive agreements (Article 101 TFEU)

All agreements between undertakings which have as their object or effect a distortion of competition and which may may affect trade within the Union are prohibited and automatically void (paragraph 1). Agreements which contribute to improving the production or distribution of goods or to promoting technical or economic progress may be exempted, provided that consumers are allowed a fair share of the resulting benefit and that the agreement does not impose unnecessary restrictions or aim to eliminate competition for a substantial part of the products concerned (paragraph 3).

Council Regulation (EC) No 1/2003 has governed the implementation of the rules laid down in Articles 101 and 102 TFEU since 1 May 2004. This allows national competition authorities and the courts of the Member States to apply Articles 101 and 102 TFEU themselves. The following instruments have proven to be useful in practice.

- Block exemptions: these cover groups of similar specific agreements which usually have a comparable impact on competition. If one of these groups can be expected regularly to fulfil the conditions for exemption set out in Article 101(3) TFEU, it may be exempted en bloc in the legal form of a regulation from the prohibition of Article 101(1) TFEU. This procedure is intended to reduce the administrative burden on the European Commission.
- Agreements of minor importance: certain agreements which do not fulfil the conditions

for exemption under Article 101(3) TFEU are not regarded as infringements if they are of minor importance and have little impact on the market (the 'de minimis' principle). Such agreements are often seen as useful for cooperation between small and medium-sized enterprises.

Certain types of agreement are always considered harmful to competition and are thus prohibited without exception. These are first and foremost price-fixing agreements and territorial protection clauses.

Settlement procedure in cartel cases: it is possible, on the basis of Regulation (EC) No 773/2004 in conjunction with Regulation (EC) No 622/2008, for a procedure to be accelerated and a fine to be reduced by 10% if the undertakings concerned support the European Commission in its work and disclose their participation in an anti-competitive arrangement at an early stage.

Claims for damages: the European Commission published a White Paper in 2008 on claims for damages in order to heighten the deterrent effect against prohibited agreements and provide better protection for consumers. In June 2013 it also submitted a proposal for a directive on certain rules governing damages for infringements of competition law (COM(2013) 404), which is currently passing through the legislative procedure. Two specific features in particular stand out in cartel cases: damages would become an option in addition to fines, and the effectiveness of leniency policy should not be placed in jeopardy.

B. Abuse of dominant market positions (Article 102 TFEU)

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' (Case 27/76, *United Brands*). Dominant positions are assessed in relation to the whole internal market, or at least a substantial part of it. How much of the market is taken into account will depend on the nature of the product, the availability of products, and consumers' behaviour and readiness to switch to alternative products. Article 102 TFEU provides a non-exhaustive list of examples of 'abusive practice".

C. Merger control procedure

Under Regulation (EC) No 139/2004, concentrations which would significantly impede effective competition, in the common market or in a substantial part of it, in particular by the creation or strengthening of a dominant position, must be declared incompatible with the common market (Article 2(3)). The European Commission must be notified of planned mergers. Investigations are initiated when control is acquired over another undertaking (Article 3(1)). The merger may not be completed until the Commission has given its authorisation (Article 7). There is no systematic subsequent scrutiny or unbundling of associated companies.

The procedure can comprise two phases. Most procedures are complete with the first phase (25 working days), and a more exhaustive investigation takes place during a second phase (90 working days) for more complex cases. Decisions on compatibility made by the Commission may involve conditions and obligations (Article 8).

D. Prohibition on aid in Article 107 TFEU

State aid includes all state-funded aid granted directly by Member States. It covers not only non-repayable subsidies, loans on favourable terms, tax and duty exemptions, loan guarantees but even state participation in undertakings in so far as preferential treatment of certain undertakings or sectors distorts or is liable to distort competition and impact negatively on trade between Member States.

The prohibition on aid does not apply to the cases listed in paragraph 2. Such aid is compatible with the internal market and is automatically permitted. Individual examination by the European Commission is required for the cases listed in paragraph 3. The '*de minimis* principle' is also applied in the area of State aid control, and a general block exemption (Regulation (EC) No 800/2008) has been in force since 2008.

In the wake of the economic and financial crisis, a provisional legal framework was established on the basis of Article 107(3)(c). Its application period was initially set to expire at the end of 2010 but this was later extended. Its provisions included the following:

- a temporary framework for State aid measures to support access to finance (OJ C 83, 7.4.2009, p. 1);
- the application of the State aid rules to measures in support of financial institutions (OJ C 270, 25.10.2008, p. 8);
- recapitalisation of financial institutions (OJ C 10, 15.10.2009, p. 2).

Subsidies available for all sectors of the economy were directed at offsetting the interruption of bank lending and at fostering investment in sustainable growth. All State aid rules are currently being revised and the new rules, which will also replace the instruments established to combat the crisis, are expected to apply from 2014.

E. Public services, services of general interest and services of general economic interest (SGEIs)

The second sentence of Article 14 TFEU for the first time assigns shared legislative powers to the European Union. Under the ordinary legislative procedure, the European Parliament and the Council are co-legislators on equal footing, as set out in Articles 52 and 114 TFEU. Article 14 TFEU is supplemented by a protocol (No 26) on services of general interest. The protocol makes reference to Article 14 TFEU and emphasises once again the importance of these services, their diverse nature, the broad measure of discretion enjoyed by national, regional and local authorities, and the principle of universal access. Article 36 of the Charter of Fundamental Rights confirms the particular importance of Article 14 TFEU. Here, too, the access of European citizens to SGEIs is recognised with a view to promoting social and territorial cohesion within the Union.

On 20 December 2011 the Commission adopted a new SGEI package. Its rules have been applied since 31 January 2012 and are the result of a Commission decision (OJ L 7, 11.1.2012, p. 3) and two communications (OJ C 8, 11.1.2012, p. 14, and OJ C 8, 11.1.2012, p. 15). Directive 2006/111/EC still applies.

Role of the European Parliament

Parliament is usually only involved in competition legislation through the consultation procedure. Its influence is thus limited compared to that of the European Commission and Council. Parliament has often called for the ordinary legislative procedure to be applied in the area of competition law, too.

The EP's principal role is therefore scrutiny of the executive. The Commissioner responsible for competition appears several times a year before Parliament's Committee on Economic and Monetary Affairs (ECON) to explain the approach taken to and discuss individual decisions.

Each year, Parliament adopts a resolution on the European Commission's Annual Report on Competition Policy. Since 2011, however, this resolution has no longer confined itself to responding to the Commission's findings from the previous reporting period but has taken up topical key issues of competition law and its application.

With a view to improving consumer protection, Parliament adopted a resolution at the beginning of 2012 which called for a uniform legal framework for collective claims by consumers (A7-0012/2012). The ordinary legislative procedure applies to the proposal for a directive on claims for damages referred to above. This is therefore a rare instance within the field of competition policy in which the European Parliament (with the Committee on Economic and Monetary Affairs as its committee responsible) is assigned the role of co-legislator.

In its resolution of 15 November 2011 on the reform of the EU rules on State aid for services of general economic interest (P7_TA(2011)0494) Parliament emphasises the need to clarify the relationship between the internal market rules and the rules governing the provision of services and calls once again for the principle of subsidiarity to be applied. The resolution recalls the powers and the measure of discretion enjoyed by national and local authorities and refers in this context to the new Protocol No 26 annexed to the TFEU.

→ Stephanie Honnefelder
11/2013

3.2.2. Public procurement contracts

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

Legal basis

Articles 26, 34, 53(1), 56, 57, 62 and 114 of the Treaty on the Functioning of the European Union (TFEU).

Objectives

Public procurement contracts play a significant role in Member States' economies. They are estimated to be equivalent to more than 16% of the Union's GDP. Prior to the implementation of Community legislation, only 2% of public procurement contracts were awarded to non-national undertakings. They play a key role in certain sectors (such as construction and public works, energy, telecommunications and heavy industry) and are traditionally characterised by a preference for national suppliers, based on statutory or administrative rules. This lack of open and effective competition was one obstacle to the completion of the single market — pushing up costs for contracting authorities and inhibiting, in certain key industries, the development of competitiveness.

The application of the principles of the internal market (in particular freedom to provide services and freedom of competition) to these contracts secures a better allocation of economic resources and a more rational use of public funds (public authorities obtaining products and services of the highest available quality at the best price under keener competition). Giving preference to the best-performing undertakings across the European market encourages the competitiveness of European firms (which are then able to increase in size and develop their outlets) and reinforces the respect of the principles of transparency, equal treatment, genuine competition and efficiency, thereby reducing the risk of fraud and corruption. A genuinely open single market can be achieved only when all firms are able to compete for these contracts on an equal footing.

Achievements

The Community equipped itself with legislation aimed to coordinate national rules, imposing obligations on the publicity for the invitations to tender and on the objective criteria to scrutinise tenders. Following the adoption of various normative acts since the 1960s, the Community decided to simplify and coordinate public procurement legislation and so adopted four directives to this end (92/50/EEC, 93/36/EEC, 93/37/EEC and 93/38/EEC).

As proposed in the Green Paper of 27 November 1996, three of these directives were merged, with the aim of simplification and clarification, into Directive 2004/18/EC on public works contracts, public supply contracts and public service contracts (corrected by Directive 2005/75/EC) and Directive 2004/17/EC on the water, energy, transport and postal services sectors. Some annexes to both directives have been modified by Directive 2005/51/EC.

Directive 2004/17/EC shall not apply to work and service 'concessions' awarded simply for carrying out the specific activities concerned.

Directive 2009/81/EC introduced specific rules for defence procurement, which should make it easier for defence companies to access the other Member States' defence markets.

Definitions

'Public contracts' are defined as being the contracts concluded in writing between one or more economic operators and one or more contracting authorities, having as their object the execution of works, supply or services in exchange for remuneration.

'Contracting authorities' means the state, regional or local authorities, as well as bodies governed by public law and associations formed by one or several of such authorities or one or several of such bodies governed by public law, which are established for the specific purpose of meeting needs of general interest, not having an industrial or commercial character, having legal personality and being financed by or subject to management supervision of the 'contracting authorities'. They are all listed in the annexes.

'Concessions' are contracts similar to a public service contract, except for the fact that the consideration for the provision of services consists either solely in the right to exploit the service or in this right together with payment.

Procedures

Calls for tender have to correspond to three types of procedure, to be used on the basis of a threshold system, combined with the methods for calculating the estimated value of each public contract and the indications for the procedures to be used, compulsory or indicative, as stated by the directives. The threshold system is to be updated every

two years. In the 'open procedure', any interested economic operator may submit a tender. In the 'restricted procedure', only invited candidates may submit a tender. In the 'negotiated procedure', the contracting authorities may consult the economic operators of their choice and negotiate the terms of contract with one or more of them. A 'competitive dialogue' (a procedure in which any economic operator may request to participate and where the contracting authorities may conduct a dialogue with the admitted candidates, aimed to develop more suitable alternatives capable of meeting its requirements and, consequently, invite to tender only chosen candidates) is suitable, within the framework of Directive 2004/18/EC, for complex contracts.

As a general principle, all rules to be applied to an individual tender (e.g. on procedure, admission, quantifiable features, auction process and technical specifications, subcontracting, obligations, conditions for performance, economic, financial and technical capacities, qualifications and awarding of the contract) must be clarified in the 'call for tender' and the annexed 'specifications'.

All procedures have to respect the principles of EU law: e.g. transparency, non-discrimination, competition, free movement, mutual recognition, proportionality, confidentiality and efficiency. The respect of these principles is compulsory; this is also the case in public procurement contracts signed by a third party, whether public or private, which has been granted special or exclusive rights by a contracting authority to carry out a public service. National rules can be applied but they have to respect existing EU law, e.g. on public morality, public policy, public security, health, human and animal life, employment conditions and safety at work, safety of the transaction of information via electronic means, security, confidentiality, privacy, certification, environment, misconduct and concerning the conditions for the pursuit of activities or a profession. The Commission is keen to develop an international framework for electronic public procurement systems and will propose measures to ensure a well-functioning internal market through their use, improve the governance of the public procurement system and achieve greater efficiency. Directives 1999/93/EC and 2000/31/EC shall apply in this respect.

Specific rules concern public work concessions, service design contests, subcontracting, framework agreements, dynamic purchasing systems and public work contracts with subsidised housing schemes. Regulation (EC) No 2195/2002 provides for a common procurement vocabulary (CPV).

A. Criteria for the award of the contract

A choice is allowed between (a) the lowest price and (b) the most economically advantageous bid (a criterion containing several elements: quality, price, technical merits, environmental elements, time limit on delivery, profitability, etc.). The chosen criteria have to be specified in the call for tender and the attached documents.

B. Rules on publicity and transparency

Public contracts whose values exceed the thresholds stated in the directives have to be published in accordance with standard forms. In certain contracts, the publication of an information notice (e.g. notice of a design contest) is compulsory, while in others it is not compulsory (e.g. prior information notice). The forms of publicity, the time limits, the rules applicable to communication and exchange of information, and the conduct of the procedure are stated in the two directives and their annexes, as well as in Regulation (EC) No 1564/2005. Decision 2005/15/EC stated detailed rules concerning the procedure for establishing whether a given activity is directly exposed to competition, provided for in Article 30 of Directive 2004/17/EC. Each contracting authority shall duly inform tenderers of the decisions reached with regard to the procedure and the award of contracts, as soon as possible. Any unsuccessful candidate shall be informed of the reasons for rejection.

C. Remedies

In order to address cases of breaches of the public procurement rules by contracting authorities, the remedies directive (2007/66/EC) provides for an effective review system covering both public procurement directives (2004/17/EC and 2004/18/EC). An important element in the remedies directive is the 'standstill' period between the communication to the tenderers of the decision to award the contract and the award itself. This standstill period is 10 calendar days when electronic means or fax are used to notify the award decision, and 15 calendar days if other means are used.

D. Other aspects of public procurement

The potential of public procurement as a policy instrument has been increasingly recognised. A communication presented by the Commission in July 2008 calls on governments to make sure that half of all their tendering procedures comply with a set of common green criteria by 2010. The Commission's guide **Buying social — A guide to taking account of social considerations in public procurement**, from 2010, promotes socially responsible public procurement. Pre-commercial procurement creates incentives for public authorities to procure innovatively.

Reform

On 20 December 2011, the European Commission adopted legislative proposals for the replacement of Directives 2004/17/EC and 2004/18/EC. Their aim is to make procedures more simple and flexible, in order to encourage access to public procurement for SMEs and to ensure more consideration for social and environmental criteria.

On the same date, the European Commission also proposed a directive on concessions, including service concessions and thereby completing the legislative framework on public procurement in the internal market. The external component of public procurement has also been discussed since 21 March 2012, when the Commission published a proposal for a regulation establishing rules on the access of third-country goods and services to the EU's internal market in public procurement and procedures supporting negotiations on access of EU goods and services to the public procurement markets of third countries.

The Commission also launched a consultation in October 2010 on e-procurement[1] and adopted in April 2012 a strategy for e-procurement[2] with the aim to reach a full e-procurement by mid-2016.

Role of the European Parliament

The European Parliament has been active over the past years on the public procurement dossier and adopted several resolutions: resolution of 18 May 2010 on new developments in public procurement; resolution of 12 May 2011 on equal access to public sector markets in the EU and in third countries; resolution of 25 October 2011 on modernisation of public procurement.

The EP Committee for Internal Market and Consumer Protection adopted on 18 December 2012 and 24 January 2013 three reports on the legislative proposals on public procurement and on concessions. The Parliament notably supports simplification measures (e.g. flexible procedures) and calls for an enhanced legal certainty. The Parliament considers that the cheapest price shouldn't be the only criterion for awarding a contract: the best value, including criteria on sustainability (life-cycle costs, environmental and social criteria) should also be taken into account.

The negotiating team of the Parliament is currently discussing the proposals in trilogue with the Council and the Commission prior to the vote in plenary.

→ Carine Piaguet

[1] Green Paper on expanding the use of e-procurement in the EU — COM(2010) 571.

[2] COM(2012) 179 final.

3.2.3. Company law

After many years of unsuccessful attempts to establish a single EU framework for enterprises, two legislative instruments adopted by the Council in 2001 led to the creation of the European company. Rules were adopted for the European cooperative. A European Economic Interest Grouping was also created.

Legal basis

Article 50(1) and (2)(g) TFEU; Article 54, second paragraph, TFEU; Articles 114, 115 and 352 TFEU.

Objectives

The primary objectives of the harmonisation of company law are to promote the attainment of freedom of establishment and aim to give the public easier and faster access to information on companies, while at the same time simplifying the disclosure requirements for companies, and to remove the legal obstacles to company development on a European scale. Since the single market implies the creation of Europe-wide companies, companies must be able to act throughout the Union according to a uniform legal framework, which will result in elimination of the effects of the existence of several national legal systems.

Achievements

A. A minimum set of common obligations

1. Setting up a company

A First Council Directive 68/151/EEC of 9 March 1968, amended by Directive 2003/58/EC of the Parliament and of the Council of 15 July 2003, aims to give the public easier and faster access to information on companies, while at the same time simplifying the disclosure requirements for companies. A second Council Directive 77/91/EEC of 13 December 1976 relates only to public limited-liability companies; the constitution of such companies requires a minimum amount of authorised capital as security for creditors and a counterpart to the limited liability of members. There is also a minimum content requirement for public limited-liability companies' instruments of incorporation. With a view to simplifying the arrangements for constituting public limited-liability companies and for maintaining and modifying the capital of said companies, Directive 77/91/EEC was amended by Directive 2006/68/EC.

2. Company operation

The First Directive regulates the issue of the validity of the company's undertakings towards third parties acting in good faith, a subject which, apart from the Council Directive (2009/102/EC of 16 September 2009) on single-member private limited-liability companies, is so far covered only by proposals. Council Directive 90/435/CEE of 23 July 1990 (amended by Directive 2003/123/EC) on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States introduces tax rules which are neutral from the point of view of competition for groups of companies of different Member States. It abolishes the double taxation of dividends distributed by a subsidiary in one Member State to its parent company in another. More recent legislation concerning the taxation system was also adopted in the form of Council Directive 2008/7/EC of 12 February 2008 concerning indirect taxes on the raising of capital.

3. Company restructuring

Efforts were made to give shareholders and third parties the same guarantees during restructuring in the European Parliament and Council Directive (2011/35/EU of 5 April 2011, repealing the Third Council Directive 78/855/EEC of 9 October 1978) concerning mergers of public limited liability companies and the Sixth Council Directive (82/891/EEC of 17 December 1982) on the division of public limited-liability companies. The latter was amended by Directive 2007/63/EC, regarding the requirement of an independent expert's report in the event of the merger or division of public limited-liability companies, and by Directive 2009/109/EC of the European Parliament and of the Council (partially repealed by Directive 2012/30/EU), in order to simplify the obligations as regards reporting and documentation requirements in the case of mergers and divisions. Furthermore, Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids aims to establish minimum guidelines for the conduct of takeover bids for the securities of companies governed by the laws of Member States, where some or all of those securities are admitted to trading on a regulated market. The so-called Transparency Directive (2004/109/EC) provided for a number of notification thresholds for acquirers once they reached a certain stake in a listed company. However, the initial rules contained a notification gap: the holding of certain types of financial instruments which could be used to acquire an economic interest in listed companies without buying shares was not covered by the Directive's provisions concerning disclosure. In order to close the gap in notification requirements, the revised Transparency Directive requires the disclosure of any major holding of

financial instruments that could be used to acquire an economic interest in a listed company and that would have the same effect as holdings of shares.

4. Guarantees concerning the financial situation of companies

To ensure that information provided in accounting documents is equivalent in all Member States, the Fourth, Seventh and Eighth Directives (78/660/EEC of 25 July 1978, 83/349/EEC of 13 June 1983 and 84/253/EEC of 10 April 1984) require company accounts (annual accounts, consolidated accounts and approval of persons responsible for carrying out statutory audits) to give a true and fair view of the company's assets, liabilities, financial position and profit or loss. Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards harmonises the financial information presented by publicly traded companies in order to guarantee protection for investors.

Directive 2006/43/EC of 17 May 2006 on statutory audits of annual accounts and consolidated accounts amends Directives 78/660/EEC and 83/349/EEC and repeals Directive 84/253/EEC. It aims to improve the reliability of the financial statements of companies by establishing minimum requirements for the statutory audit of annual and consolidated accounts. Directive 2009/49 of the European Parliament and the Council of 18 June 2009 (also amending Directive 83/349/EEC) simplifies the business environment, and particularly the financial reporting requirements, for micro-enterprises in order to enhance their competitiveness and release their growth potential.

Regulations for companies with an EU dimension

A. Removal of barriers to company development on an EU scale

To prevent differences in national bodies of company law from interfering with companies' cross-border transactions, legislative instruments have been adopted to facilitate cross-border mergers and the exercise of certain rights of shareholders of listed companies on a cross-border basis. The question of cross-border transfer of registered office has not yet been resolved, and the Commission launched a public consultation on this point from January to April 2013.

1. Cross-border mergers

Directive 2005/56/EC on cross-border mergers of limited-liability companies is intended to facilitate cross-border mergers between companies with share capital. It introduces a simple framework which avoids the liquidation of the company being taken over and applies to mergers of companies with share capital which are constituted in accordance with the legislation of a Member State and whose statutory headquarters, central administration or main establishment is within the Union, if at least two of them are subject to the legislation of different Member States. It applies to all companies with share capital apart from undertakings for collective investment in transferable securities (UCITS).

2. The cross-border exercise of certain rights of shareholders

Directive 2007/36/EC of 11 July 2007 on the exercise of certain rights of shareholders in listed companies abolishes the main obstacles to a cross-border vote in listed companies which have their registered office in a Member State by introducing specific requirements for a certain number of shareholder rights at the General Meeting.

B. Community statutes

1. Aim

To allow companies that want to act or establish themselves beyond their national frontiers the option of being subject to one set of legislations and not several as is the case at present.

2. The European company

After a long period of stalemate (negotiations that lasted 30 years) the Council adopted the two legislative instruments necessary for the establishment of a European Company, namely Regulation (EC) No 2157/2001 on the Statute for a European company and Directive 2001/86/EC supplementing the Statute with regard to the involvement of employees in the European company.

Council Regulation (EC) No 2157/2001 enables a company to be set up within the territory of the Union 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 SE must 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.

Directive 2001/86/EC 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. 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.

3. The European cooperative society

Regulation (EC) No 1435/2003 on the Statute for a European Cooperative Society (SCE) organises a genuine single legal statute for the SCE. It enables a cooperative to be established by persons resident in different Member States or by legal entities established under the laws of different Member States. With a minimum capital of EUR 30 000, these new SCEs can operate throughout the single market with a single legal personality, set of rules and structure. They can extend and restructure their cross-border operations without having to set up a network of subsidiaries, which costs both time and money. In addition, cooperatives in several different countries can now merge to form an SCE. Finally, a national cooperative with activities in a Member State other than where it has its head office may be converted into a European cooperative without first having to go into liquidation.

Directive 2003/72/EC of 22 July 2003 supplements this statute with regard to the involvement of employees in the SCE in order to ensure that that the establishment of an SCE does not entail the disappearance or reduction of practices of employee involvement existing within the companies participating in the establishment of the SCE.

4. European economic interest grouping (EEIG)

The EEIG, which is endowed with legal capacity, is governed by Regulation (EEC) No 2137/85 and enables companies in one Member State to cooperate in a joint venture (for example, to facilitate or develop the economic activities of its members, but not to make profits for itself) with companies or natural persons in other Member States, the profits being shared between the members. Its activity must not be more than ancillary to the economic activities of its members. An EEIG may not invite investment by the public.

Proposals

In February 2012 the Commission launched a broad public consultation to collect comprehensive stakeholder opinion on European company law. As part of its rethinking of European company law initiated in late 2010, this consultation exercise follows the report of the reflection group and the conference on the future of European company law in May 2011. In response to the Commission communication on a renewed EU strategy 2011-14 for Corporate Social Responsibility, the European Parliament adopted a resolution on the subject in February 2013.

Role of the European Parliament

The European Parliament has been able to get some of its amendments incorporated in legislation. It has strongly defended worker participation in companies. In addition, it has highlighted the need to make progress in the creation of the various forms of European company to facilitate the cross-border activities of enterprises. In February 2007 it therefore asked the Commission to present a proposal for a European private company adapted to the needs of SMEs and prepare for a review of the rules of the statute on a European company in order to simplify procedures for the constitution of such companies. Furthermore, following the withdrawal of the two proposals for a regulation on a European association and mutual society, Parliament has invited the Commission to resurrect these projects. It has also called for an appropriate legal framework for foundations and associations. In its resolution of 14 March 2013, it issued recommendations to the Commission on the Statute for a European mutual society. Finally, Parliament has on numerous occasions called for a proposal on the cross-border transfer of registered office. More recently, it has welcomed pursuit of the objective of cutting the administrative burden for European companies and has given its opinion on the different options proposed by the Commission for doing so.

→ Vesna Naglič

3.2.4. Intellectual, industrial and commercial property

Intellectual property includes all exclusive rights to intellectual creations. It encompasses two types of rights: industrial property, which includes inventions (patents), trademarks, industrial designs and models and designations of origin, and copyright, which includes artistic and literary property. For many years the European Union has had an active policy in this area, aimed at harmonising legislation between Member States and creating new forms of intellectual property to protect intellectual property rights within the Union.

Legal basis

Articles 36, 114 and 118 of the Treaty on the Functioning of the European Union (TFEU).

Objectives

Although governed by different national laws, intellectual property rights are also subject to EU legislation. The legislative activity of the European Union chiefly consists of harmonising certain specific aspects of intellectual property rights and providing uniform protection for intellectual property rights throughout the Union through the creation of a single European system, as is the case for the Community trade mark and Community designs.

Achievements

A. Legislative harmonisation

1. Trademarks, designs and models

On 27 March 2013, the Commission tabled a proposal seeking to simplify and update national and Union trademark legislation, making trademark registration in the EU cheaper, quicker, more reliable and more predictable, increasing legal certainty for holders. The proposed regulatory package includes: a recast of the trademark directive (No 2008/95/EC), aligning more closely Member State trademark legislation, in addition to a revision of the regulation on the Community trademark (No 207/2009/EEC), which also contains provisions regarding the Office for Harmonisation in the Internal Market, and a revision of the regulation on the fees payable to the Office (No 2869/95).

Directive 98/71/EC of 13 October 1998 approximates national legislation on the legal protection of designs and models. Council Regulation (EC) No 6/2002 of 12 December 2001 (amended) institutes a Community system for the protection of designs and models. Council Decision 2006/954/EC of 18 December 2006 and Council Regulation (EC) No 1891/2006 of 18 December 2006 link the Union system for the registration of designs or models to the World Intellectual Property Organization's international registration system for industrial designs and models.

2. Copyright

a. Copyright in the information society

The European Parliament and the Council adopted Directive 2001/29/EC of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society in order to adapt legislation on copyright and related rights to technological developments, and in particular the information society[1].

b. Exploitation of rights

The principal legal acts in this area are listed below:

- Council Directive 92/100/EEC of 19 November 1992, on the renting and lending of works under copyright, repealed and replaced, for codification purposes, by Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property;
- Directive 93/83/EEC of 27 September 1993 on broadcasting and cable retransmission;
- Directive 2001/84/EC of 27 September 2001 on the resale right for the benefit of the author of an original work of art.

c. Term of protection of copyright and related rights

These rights are protected for 70 years (see Directive 2006/116/EC as amended by Directive 2011/77/EU).

[1] The Directive aims in particular to harmonise reproduction and distribution rights and rights regarding the communication and making available to the public of works, while seeking to achieve a fair balance between the interests of the rightholder and the interests of the other parties.

d. Computer programs and databases

Directive 91/250/EEC requires Member States to protect these by copyright, as literary works within the meaning of the Berne Convention for the Protection of Literary and Artistic Works. After being amended on several occasions, the Directive was codified by Directive 2009/24/EC of the European Parliament and of the Council. Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 provides for the legal protection of databases, defining a database as 'a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means'. The Directive stipulates that databases shall be protected both by copyright, covering intellectual creation, and by a '*sui generis*' right protecting investment (of money, human resources, effort and energy) in the obtaining, verification or presentation of the contents.

e. Collecting societies

A licence must be obtained from the different holders of copyright and related rights before content protected by copyright and related rights and linked services may be disseminated. Rightholders entrust their rights to a collecting society which manages rights on their behalf. In July 2012 the European Commission put forward a proposal for a directive on collective management of copyright and related rights (COM(2012) 0372), in order to establish requirements needed to ensure copyright and related rights are properly managed by collecting societies. This proposal also covers multi-territorial licensing for use online in the internal market of rights in musical works.

3. Patents

Council Decision 2011/167/EU of 10 March 2011 confirmed that 25 Member States are prepared to establish enhanced cooperation between themselves in regard to the creation of unitary patent protection. Regulation (EU) No 1257/2012 of the European Parliament and of the Council implements enhanced cooperation in the area of the creation of unitary patent protection, as authorised by Decision 2011/167/EU. Council Regulation (EU) No 1260/2012 of 17 December 2012 implements enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements. Both will enter into force from 1 January 2014 or from the date of entry into force of the Agreement on the Unified Patent Court, whichever is later.

4. Combating counterfeiting

As differences in national systems for penalising counterfeiting and piracy were making it difficult for Member States to combat these offences effectively, the European Parliament and the Council adopted Directive 2004/48/EC on the enforcement of intellectual property rights as a first step. The Directive aims to step the fight against piracy and counterfeiting by approximating national legislative systems to ensure a high, equivalent and homogeneous level of intellectual property protection in the internal market. Directive 2004/48/EC provides for measures, procedures and compensation under civil and administrative law only. The Commission subsequently proposed that penal measures be adopted. These would supplement Directive 2004/48/EC and boost efforts at fighting counterfeiting and piracy. However the Commission withdrew this proposal subsequent to its Communication of 23 November 2005 on the implications of the European Court of Justice's judgment annulling the framework decision on the protection of the environment through criminal law.

Recent European Court of Justice case-law

In May 2012, the European Court of Justice confirmed in the SAS case [C-406/10] that, according to Directive 91/250, only the expression of a computer program is protected by copyright and that ideas and principles which underlie the logic, algorithms and programming languages are not protected under that directive (paragraph 32). The Court stressed that neither the functionality of a computer program nor the programming language and the format of data files used in a computer program in order to exploit certain of its functions constitute a form of expression of that program for the purposes of Article 1(2) of Directive 91/250 (paragraph 39).

5. 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'. This theory applies to all fields of industrial property.

b. Limits

The theory of exhaustion of Union rights does not apply in the case of marketing of a counterfeit product, or of products marketed outside the European Economic Area (Article 6 TRIPS Agreement on Trade-Related Aspects of Intellectual Property Rights). In July 1999 the European Court of Justice ruled, in its judgment in *Sebago Inc*. and *Ancienne Maison Dubois & Fils SA* 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, the European Parliament has argued for the gradual harmonisation of intellectual property rights. It has also opposed the patenting of parts of the human body. The European Parliament has similarly opposed the patenting of inventions capable of being implemented on a computer, its concerns here being to avoid obstructing the spread of innovation and to afford SMEs free access to software created by major international developers. Parliament is currently drawing up a highly controversial own-initiative report on payment for private copying. It has also played a very active role in the WIPO draft treaty on copyright exceptions for the visually impaired.

→ Vesna Naglič

3.2.5. European System of Financial Supervision

Drawing the lessons from the financial crisis and based on the recommendations of the de Larosière Report, the European System of Financial Supervision (ESFS) was created as a decentralised, multi-layered system of micro- and macro-prudential authorities. This supervisory system is currently undergoing major changes due to the introduction of a Banking Union. The ESFS will be reviewed in 2014.

Legal basis

Articles 26 and 114 of the Treaty on the Functioning of the European Union (TFEU); Article 290 TFEU (Delegated Acts); Article 291 (Implementing Acts); Article 127(6) TFEU.

Objectives

The de Larosière Report published in February 2009 recommended the creation of a European System of Financial Supervision (ESFS) as a decentralised network. This resulted finally in the creation of a system of micro- and macro-prudential supervision consisting of European and national supervisors. The micro-prudential pillar on the European level is formed by the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA), and the European Insurance and Occupational Pensions Authority (EIOPA), which work together in the Joint Committee of the European Supervisory Authorities (ESAs). Macro-prudential oversight is conducted by the European Systemic Risk Board (ESRB). The respective Member States' competent national supervisory authorities are also part of the EFSF. One objective of the ESFS is, inter alia, the development of a common supervisory culture and facilitating a single European financial market.

Legal framework of the ESFS

A. Micro-prudential supervision and regulation

In the European Union, micro-prudential supervision, i.e. the supervision of individual institutions, is characterised by a multi-layered system of different institutions. The different layers can be separated according to the area of sectoral supervision and regulation (banking, insurance and securities markets) and the level of supervision and regulation (European and national). In order to ensure consistency and coherence between the different layers, various coordination bodies and instruments have been created. In addition, coordination of the various institutions on international level has to be ensured.

1. The European Supervisory Authorities (ESAs)

On the European level, the ESAs are responsible for the micro-prudential supervision, whereas the day-to-day supervision is conducted on national level. EBA, EIOPA and ESMA are Union bodies with own legal personality and are represented by their respective Chairperson; they are independent and acting only in the interest of the Union as a whole.

a. European Banking Authority (EBA)

Legal basis: Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority) amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC.

The EBA's seat is in London, UK. Its scope includes inter alia credit institutions, financial conglomerates, investment firms and payment institutions. There is a multitude of tasks which are conferred upon the EBA by the founding regulation which include ensuring sound, effective and consistent regulation and supervision, contributing to stability and effectiveness of the financial system, preventing regulatory arbitrage, ensuring equal level of supervision, consumer protection, strengthening international supervisory coordination, appropriate regulation of supervision of credit institutions. The EBA drafts technical regulatory standards and implementing technical standards which are adopted by the Commission (as delegated acts and implementing acts). It issues guidelines and recommendations and has certain powers in relation of breach of Union law by national supervisory authorities. The EBA's governing bodies are the Board of Supervisors (main decision-making body, composed of Chairperson, the head of the competent supervisory authority in each Member State and one representative each from Commission ECB, ESRB and the other two ESAs), the Management Board, a Chairperson, an Executive Director, and the Board of Appeal.

b. European Insurance and Occupational Pensions Authority (EIOPA)

Legal basis: Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European

Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC.

The EIOPA's seat is in Frankfurt, Germany. Its set-up is similar to that of the EBA, but its scope is directed at insurance undertakings.

c. European Securities and Markets Authority (ESMA)

Legal basis: Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC.

The ESMA is located in Paris, France. Its set-up is similar to the other ESAs, but its scope is directed at securities markets and their participating institutions. It is also responsible for supervising credit rating agencies.

2. Joint Committee of the European Supervisory Authorities

The Joint Committee ensures overall and cross-sectoral coordination in order to ensure cross-sectoral supervisory consistency. As outlined in the ESAs' regulations, this includes the following areas: financial conglomerates, accounting and auditing, micro-prudential analyses of cross-sectoral developments, risks and vulnerabilities for financial stability, retail investment products, measures fighting money laundering, and information exchange between the ESRB and ESAs and developing relations between these institutions. The Joint Committee is responsible for the settlement of cross-sectoral disagreements between ESFS authorities.

The Joint Committee is composed of the Chairpersons of the ESAs (and of possible sub-committees) and chaired by one Chairperson of the ESAs for a rotating 12-month term. The Chairperson of the Joint Committee is the Vice-Chair of the ESRB. The Joint Committee has to meet at least twice a year. The Secretariat is provided by staff of the ESAs.

3. Competent national supervisory authorities

According to the various legislative measures in the financial services field, each Member State has to designate its competent authority or authorities. These competent national supervisory authorities form part of the ESFS.

B. Macro-prudential oversight

1. Legal basis

- Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on the European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board;
- Council Regulation (EU) No 1096/2010 of 17 November 2010 conferring specific tasks upon the European Central Bank concerning the functioning of the European Systemic Risk Board.

Macro-prudential oversight is carried out on European level by the European Systematic Risk Board (ESRB). The ESRB is seated in Frankfurt am Main, Germany. Its objective is to prevent and mitigate systemic financial stability risk in the European Union considering macro-economic developments. The founding regulations confer various tasks upon and provide instruments to the ESRB including the collection and analysis of relevant information, risk identification and prioritisation, issuing warnings and recommendations and monitoring its follow-up, issuing confidential warnings to Council when ESRB determines an emergency situation, cooperating with other parties of ESFS, coordinating its actions with international financial organisations, e.g. the IMF and the Financial Stability Board (FSB), and carrying out tasks specified in other Union legislation. The European Central Bank (ECB) is providing the Secretariat for the ESRB and the President of the ECB is Chair of the ESRB.

C. Cooperation at various levels

The EFSF is also coordinating on international level with various institutions.

Banking Union — Future extension of the ESFS

The financial crisis showed that a simple coordination of financial supervision via the ESFS was not sufficient to prevent a fragmentation in the European financial market. In order to overcome this obstacle, the European Commission proposed in mid-2012 a Banking Union adopting a more integrated approach and complementing the single currency area and the single market. This framework comprised a Single Supervisory Mechanism, a Single Resolution Mechanism; proposals regarding deposit guarantee schemes and a single supervisory rulebook accompanied by a single supervisory handbook. The process of establishing the Banking Union is still ongoing.

1. Single Supervisory Mechanism (SSM)

The objectives of the forthcoming Single Supervisory Mechanism (SSM) are to ensure consistent and coherent supervision in order to prevent regulatory arbitrage and fragmentation of the financial services market in the Union. The SSM will be composed of the ECB and the national competent authorities. The ECB will be responsible for the effective and consistent

functioning of the mechanism. Both the ECB and the national competent authorities will cooperate and exchange information. Within the framework of the SSM, specific tasks related to the prudential supervision of credit institutions in the participating Member States, i.e. all euro area Member States and non-euro area Member States which decide to join, will be conferred on the ECB. These tasks will include inter alia the authorisation of credit institutions, ensuring compliance with prudential and other regulatory requirements, carrying out supervisory reviews, etc. Besides these micro-prudential tasks, the ECB will also have macro-prudential tasks and tools at its disposal, e.g. in relation to capital buffers. The governance structure of the ECB will be adapted accordingly: a new Supervisory Board within the ECB will be established in view of the SSM.

The legislative procedure is currently ongoing.

2. Single Resolution Mechanism (SRM)

The Single Resolution Mechanism (SRM) for Member States participating in the Single Supervisory Mechanism will complement the SSM. It will contain provisions and providing appropriate tools for the recovery and resolution of credit institutions in the SSM. It is expected that it will also be supplemented by provisions on effective financial backstop arrangements. The Commission proposal for an SRM is expected in June 2013.

To be distinguished from the future SRM is the currently negotiated European Commission proposal for a Bank Recovery and Resolution Directive (COM(2012) 280/3) intending to ensure EU harmonised national recovery and resolution mechanisms.

3. Deposit guarantee schemes (DGSs)

In 2010, the Commission tabled a proposal for a recast of the (existing) DGS Directive. While initially the Banking Union framework included a 'common' DGS, the discussion on whether such a DGS is necessary is ongoing and focusing on harmonised national DGSs versus a common European DGS.

4. Other elements of the Banking Union project

In order to ensure a level playing field, a single rulebook shall be developed. A single supervisory handbook shall ensure consistent supervision and is to be developed by the respective competent authorities. Initiatives for bank structural reforms which are currently under discussion (Liikanen Report) may also impact the Banking Union project.

Role of the European Parliament

The European Parliament as co-legislator played an important role in setting up the founding legislation of the ESFS and plays also a major role in the negotiations of the legislation of the various elements of the envisaged Banking Union. It is involved in the process of developing regulatory technical standards (adopted by the Commission) and in the process of developing implementing technical standards. It has extensive information rights, e.g. receiving the annual work programme, multiannual work programme and an annual report of the ESAs. The Chairpersons of the ESAs and the Executive Directors have to be confirmed by the European Parliament. The European Parliament can request opinions from the ESAs. The European Parliament also has to vote the annual discharge of the authorities.

→ Rudolf Maier

3.2.6. Financial services: key legislation

In 1999 the Commission set out the Financial Services Action Plan (FSAP), a set of 42 measures to create an effective single market in financial services. The implemented measures harmonised the Member States' rules on banking, securities trading, insurance, old-age pensions and other financial services. The FSAP is an integral part of the Lisbon Agenda, whose successor is the EU 2020 Strategy, which likewise includes the financial field.

Legal basis

- Articles 49 and 56 of the Treaty on the Functioning of the European Union (TFEU) on freedom of establishment and freedom to provide services form the legal basis for most of the directives and regulations dealing with financial services;
- 11 May 1999: Commission adopts the Financial Services Action Plan (COM(1999) 232);
- 5 December 2005: White Paper on financial services 2005-2010;
- 2 June 2010: Communication from the Commission on 'Regulating financial services for sustainable growth' (COM(2010) 301);
- Details of the key directives and current developments are given on the homepage of the Commission's DG Internal Market and Services (http://ec.europa.eu/internal_market/top_layer/index_24_en.htm).

Banking and payment services

A. Banking Directive 2013/36/EU (Capital Requirements Directive — CRD) and Regulation (EU) No 575/2013 on capital requirements (CRR, jointly referred to as CRD IV)

1. Purpose and content

The purpose of the directive and the regulation is to establish a modern, risk-sensitive legal framework for credit institutions which takes account of the international framework accords on own capital requirements for credit institutions (Basel III) drawn up by the Basel Committee on Banking Supervision. The provisions, which previously comprised two directives, are intended to boost the EU economy and also to create greater financial stability, with benefits for both businesses and consumers. The directives update the rules on authorisation and operations and the own capital framework, with a view to making the latter more comprehensive and more risk-sensitive. For example, the CRD provides for the explicit measurement of operational risk, and facilitates improvements in risk management through an authorisation scheme for internal rating systems. Subsequent revisions (CRD II-IV) have introduced, for example, provisions on resecuritisations and remuneration policies, as well as higher capital requirements. The CRR Regulation is intended to constitute a 'single rule book'.

2. Assessment

The original CRD transposed the Basel Framework Accord in a manner appropriate to the European financial services sector. Nonetheless, the global financial markets crisis since 2008 has shown that improvements are needed. In a report adopted in 2010 Parliament set out its priorities: improved capital base, liquidity standards, anti-cyclical measures, a leverage ratio and the coverage of counterparty credit risk (CCR). However, the non-transparent nature of the procedure employed hitherto has been criticised, and a proposal for a directive has been called for which would lay down rules tailored to the European market.

B. Payment Services Directive 2007/64/EC (PSD)

1. Purpose and content

This directive aims to facilitate electronic payments throughout the EU and to pave the way for a Single European Payment Area (SEPA). Further objectives include improved consumer protection, through the introduction of requirements to provide information, and greater competition, through the opening-up of markets on the basis of harmonised market access rules. The intention is to create a coherent, technology-neutral environment for payment services which will promote infrastructure modernisation. The PSD is complemented by Regulation (EC) No 924/2009 on cross-border payments in the Community as well as by Regulation (EU) No 260/2012 establishing technical and business requirements for credit transfers and direct debits in euro.

2. Assessment

Some aspects of the PSD have been criticised, for example the failure to make it mandatory to cross-check the (critical) IBAN number with the name of the account-holder, so that transfers can still be made even if the two do not match. No upper limit can be imposed on direct debits and there is no recall possibility once a transfer has been accepted.

Although the SEPA instruments were introduced EU-wide in late 2010, little use is being made of them. In December 2010, therefore, a proposal for a regulation on the discontinuation of national transfers and debits was made. In December 2010, therefore, a proposal for a regulation on the discontinuation of national transfers and debits was made. It was adopted in 2012 (in the form of Regulation (EU) No 260/2012) and lays down deadlines for the migration from national to European payment instruments.

Securities market

A. Markets in Financial Instruments Directive 2004/39/EC (MiFID)

1. Purpose and content

The MiFID is intended to introduce uniform EU standards governing securities trading, make for more competition and improve investor protection, for example by means of new legal provisions, greater transparency regarding the commissions which can be charged for investment advice and more integrated provision of financial services. Investors must be aware of all fees they will be required to pay and be fully informed about the product and the risks associated with it. It is hoped that this regulatory framework will help to boost investors' confidence and thus to increase the inflow of international capital to Europe. As with the CRD IV, the Commission proposed a revision in 2011 in the form of a recast of the directive (COM(2011) 656; 'MiFID II') and regulation (COM(2011) 652, 'MiFIR').

2. Assessment

Investor-protection bodies complain, for example, that investors bear the burden of proof in cases where banks have given misleading or incomplete advice, even though it is the investment adviser who is required to document such advice. Also, breaches of regulatory provisions cannot give rise to a claim under civil law, so investors are not entitled to compensation. As this area is regulated by a 'Lamfalussy directive', it requires numerous implementing provisions. This also applies to the new proposals.

B. Directive 2009/65/EC concerning Undertakings for Collective Investments in Transferable Securities (UCITS)

1. Purpose and content

Since 1985 the UCITS Directive has provided for harmonised investment fund shares to receive a 'European passport', so that, once they have been approved in a Member State, they can be sold in all other Member States via a notification procedure. The product range covered has been continually expanded, and investor protection aspects have been taken into account. The recast directive clarifies the provisions on the EU passport for management companies, eliminates bureaucratic obstacles to cross-border marketing and lays down rules governing fund mergers and master feeder structures. Investor information and the arrangements for cooperation between national supervisory authorities have also been improved.

2. Assessment

In the case of this directive too, many implementing measures need to be adopted in certain fields, for example pooling, the notification procedure, the passport for management companies or key investor information. Further proposals are being drafted: (a) proposed amendments relating to depositary functions, remuneration policies, liability and penalties (COM(2012) 350), (b) a proposal for a regulation on European long-term investment funds (COM(2013) 462) and (c) a proposal for a regulation on money market funds (COM(2013) 615). The Commission also held a consultation in mid-2012 on the future legal framework for investment funds.

Insurance

A. Insurance and Reinsurance Directive 2009/138/EC (Solvency II)

1. Purpose and content

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

Earlier directives laid down a static method of calculating the solvency spread, which was assessed against overall trading volume on the basis purely of the size of the balance sheet. By contrast, the Solvency II system is more concerned with actual risk, and the focus of supervision will be the individual risk level of each company. All relevant quantifiable risks must now be taken into account (at least market risk, credit risk, insurance risk and operational risk). The new supervisory system will thus mean that insurance firms' capital resources are adequate to cover their risks. This will be supplemented by a minimum capital requirement (MCR), which must be met at all times.

Under the Solvency II rules, an insurance company's board will be responsible for developing and implementing its investment strategy. The aim will be to manage assets so prudently that obligations

such as capital adequacy or a specific risk/return profile are met at all times.

2. Assessment

As a result of Solvency II, insurance companies may have larger sums available to invest and will thus be able to compete more effectively on increasingly globalised markets. Supervisory authorities fear, however, that greater competition could result in more insolvencies and declining consumer confidence and increase the pressure on small and medium-sized insurance companies. In the short term the result might be a lower level of protection against serious, long-term risks (because of higher capital requirements) and insurers could cut back on cross-subsidisation, which might lead to an increase in certain premiums. The legislative procedure for Solvency II is also an excellent demonstration of the complexity of the two-stage legislative procedure, under which implementing measures related to the transposition and application of the framework directive are required: it was only in 2011 that the Commission adopted the 'Omnibus II' proposal (COM(2011) 8) (NB: the 'Omnibus I' Directive made corresponding amendments to the Banking and Securities Directives) in order to take account of the new Supervisory Architecture and, in particular, the European Insurance and Occupational Pensions Authority (EIOPA) which was set up at the beginning of 2011. The proposal also includes provisions to extend the deadlines for transposition, repeal and application. By spring 2012, however, it was clear that Omnibus II would not be published or enter into force before the transposition period of the Solvency II Directive expired on 31 October 2012, meaning that the framework directive would have to have been transposed without transitional provisions. For that reason, a proposal was made in May 2012 to extend the transposition deadline to 30 June 2013 and to fix an application deadline for businesses of 1 January 2014. Directive 2012/23/EU was necessary in order to prevent a legal vacuum from arising after 31 October 2012. However, as consultations on Omnibus II are continuing, a further extension of the transposition deadline to 31 January 2015 has already been proposed, and application would only begin on 1 January 2016 (COM(2013) 680).

Role of the European Parliament

The EP is particularly closely involved in the drafting of legislation on financial services. Not only has it exercised its co-legislative role, but it has also consistently supported the work of the Commission, moving discussions forward on many occasions and issuing its own proposals to make its position clear (for example to put limits on remuneration schemes in the banking and investment sector). By virtue of its proactive approach, the EP is prominently involved both in the current debate in the Commission, the Council and other international institutions about development of the supervisory structure for financial markets at EU level and in exploring ways of combating systemic risk.

→ Doris Kolassa
11/2013

ECONOMIC AND MONETARY UNION

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Economic and monetary union (EMU) means greater coordination of the Member States' economic policies at European level and a commitment to avoid excessive budgetary deficits (Stability and Growth Pact). It is an integral part of the work to complete the internal market. EMU led to the introduction of a single currency: the euro. Since 1 January 1999, the European Central Bank (ECB) has been responsible for steering European monetary policy. A system of economic governance has been put in place, as well as coordination and surveillance of economic policies and a mechanism to provide Member States facing serious economic problems with financial assistance.

4 ECONOMIC AND MONETARY UNION

4.1. Context

4.1.1. History of Economic and Monetary Union

Economic and monetary union (EMU) is the result of a progressive economic integration in the EU. It is an expansion of the EU single market, with common product regulations and free movement of goods, capital, labour and services. A common currency, the euro, has been introduced in the eurozone, which currently comprises 18 EU Member States. All 28 EU Member States — with the exception of the UK and Denmark — must adopt the euro after a minimum of two years' participation in ERM II and fulfilment of the convergence criteria. A single monetary policy is set by the European Central Bank (ECB) and is complemented by harmonised fiscal and coordinated economic policies. Within EMU there is no single institution responsible for economic policy. Instead, the responsibility is divided between Member States and various EU institutions.

Legal basis

- Decisions of the European Summits of The Hague (1969), Paris (1972), Brussels (1978), Hannover (1988), Madrid and Strasbourg (both 1989), Maastricht (1991–1992);
- Articles 119–144, 219, 282–284 of the Treaty on the Functioning of the European Union (TFEU);
- Protocols annexed to the TFEU on: the transition to the third stage of economic and monetary union; the excessive deficit and macroeconomic imbalances procedures; the convergence criteria; the opt-out clauses for the United Kingdom and Denmark; the European System of Central Banks and the European Central Bank, as well as the Eurogroup.

Objectives

EMU is the result of progressive economic integration, and is therefore not an end in itself. The management of EMU is designed to support sustainable economic growth and high employment through appropriate economic and monetary policy-making. This involves three main economic activities: (i) monetary policy with the objective of price stability; (ii) coordinating economic policies in Member States; (iii) ensuring the smooth operation of the single market.

Achievements

The euro is now part of day-to-day life in 18 Member States of the European Union. Other Member States will eventually adopt the euro. The single currency presents undeniable advantages: it lowers the costs of financial transactions, makes travel easier, strengthens the role of Europe at international level, etc.

History of EMU

At the summit in The Hague in 1969, the Heads of State defined a new objective of European integration: Economic and Monetary Union (EMU). A group, headed by Prime Minister Werner of Luxemburg, drafted a report, which envisaged the achievement of full economic and monetary union within 10 years according to a plan in several stages. The ultimate goal was to achieve full liberalisation of capital movements, the total convertibility of Member States' currencies and the irrevocable fixing of exchange rates. The collapse of the Bretton Woods system and the decision of the US Government to float the dollar in mid-1971 produced a wave of instability on foreign exchanges which called into serious question the parities between the European currencies. The EMU project was brought to an abrupt halt.

In 1972 (Paris Summit) the EU attempted to impart fresh momentum to monetary integration by creating the 'snake in the tunnel': a mechanism for the managed floating of currencies (the 'snake') within narrow margins of fluctuation against the dollar (the 'tunnel'). Thrown off course by the oil crises, the weakness of the dollar and the differences in economic policy, the 'snake' lost most of its members in less than two years and was finally reduced to a 'mark' area comprising Germany, the Benelux countries and Denmark.

Creation of the European Monetary System (EMS): Efforts to establish an area of monetary stability were renewed in 1978 (Brussels Summit), with the creation of the European Monetary System (EMS), based on the concept of fixed, but adjustable exchange rates. The currencies of all the Member States, except the UK, participated in the exchange-

rate mechanism, ERM I. Exchange rates were based on central rates against the ECU ('European Currency Unit'), the European unit of account, which was a weighted average of the participating currencies. A grid of bilateral rates was calculated on the basis of these central rates expressed in ecus, and currency fluctuations had to be contained within a margin of 2.25% either side of the bilateral rates (with the exception of the Italian lira, which was allowed a margin of 6%). Over a 10-year period, the EMS did much to reduce exchange-rate variability: the flexibility of the system, combined with the political resolve to bring about economic convergence, achieved sustainable currency stability.

With the adoption of the Single Market Programme in 1985, it became increasingly clear that the potential of the internal market could not be fully exploited as long as relatively high transaction costs linked to currency conversion and the uncertainties linked to exchange-rate fluctuations, however small, persisted. Moreover, many economists denounced what they called the 'impossible triangle': free movement of capital, exchange-rate stability and independent monetary policies were incompatible in the long term.

Introduction of the EMU: In 1988, the Hannover European Council set up a committee to study EMU under the chairmanship of Jacques Delors, the then President of the European Commission. The committee's report, submitted in 1989, proposed to strengthen the introduction of the EMU in three stages. In particular, it stressed the need for better coordination of economic policies, rules covering national budget deficits, and a new, completely independent institution which would be responsible for the Union's monetary policy: the European Central Bank (ECB). On the basis of the Delors report, the Madrid European Council decided in 1989 to launch the first stage of EMU: full liberalisation of capital movements by 1 July 1990.

In December 1989 the Strasbourg European Council called for an intergovernmental conference that would identify what amendments needed to be made to the Treaty in order to achieve the EMU. The work of this intergovernmental conference led to the Treaty on European Union, which was formally adopted by the Heads of State or Government at the Maastricht European Council in December 1991 and signed on 7 February 1992.

The Treaty provides for the EMU to be introduced in three stages.

Stage 1 (from 1 July 1990 to 31 December 1993): the free movement of capital between Member States;

Stage 2 (from 1 January 1994 to 31 December 1998): convergence of Member States' economic policies and strengthening of cooperation between Member States' national central banks. The coordination of monetary policies was institutionalised by the establishment of the European Monetary Institute (EMI), whose task was to strengthen cooperation between the national central banks and to carry out the necessary preparations for the introduction of the single currency. The national central banks were to become independent during this stage;

Stage 3 (underway since 1 January 1999): the gradual introduction of the euro as the single currency of the Member States and the implementation of a common monetary policy under the aegis of the ECB. Transition to the third stage was subject to the achievement of a high degree of durable convergence measured against a number of criteria laid down by the Treaties. The budgetary rules were to become binding and a Member State not complying with them was likely to face penalties. A single monetary policy was introduced and entrusted to the European System of Central Banks (ESCB), made up of the national central banks and the ECB.

The first two stages of EMU have been completed. The third stage is still underway. In principle, all EU Member States must join this final stage and therefore adopt the euro (Article 119 of the Treaty on the Functioning of the EU). However, some Member States have not yet fulfilled the convergence criteria. These Member States therefore benefit from a provisional derogation until they are able to join the third stage of EMU. Furthermore, the United Kingdom and Denmark gave notification of their intention not to participate in the third stage of EMU and therefore not to adopt the euro. These two States therefore have an exemption with regard to their participation in EMU. The exemption arrangements are detailed in the protocols relating to these two countries annexed to the founding Treaties of the EU. However, the United Kingdom and Denmark reserve the option to end their exemption and submit applications to join the third phase of EMU. Currently, 18 of the 28 Member States have joined the third stage of EMU and therefore have the euro as a single currency.

Role of the European Parliament

Since the Lisbon Treaty, the European Parliament now participates as equal co-legislator in the ordinary legislative procedure in establishing detailed rules for multilateral surveillance (Article 121(6) TFEU). This involves inter alia the preventive part of the Stability and Growth Pact, as well as more diligent macroeconomic surveillance to

prevent harmful imbalances following the financial crisis. The 'six-pack' strengthened the role of the EP in the economic governance of the EU, in particular through the introduction of the 'European Semester' and the installation of an 'Economic Dialogue'. In addition, the EP is consulted on the following issues:

- agreements on exchange rates between the euro and non-EU currencies;
- choice of countries eligible to join the single currency in 1999 and subsequently;
- appointment of the President, Vice-President and other Members of the ECB Executive Board;
- legislation implementing the excessive deficit procedure provided for in the Stability and Growth Pact.

→ Dirk Verbeken

4.1.2. The institutions of Economic and Monetary Union

The institutions of the European Monetary Union are largely responsible for establishing European monetary policy, rules governing the issuing of the euro and price stability within the EU. These institutions are: ECB, ESCB, Economic and Financial Committee, Euro Group and Economic and Financial Affairs Council (ECOFIN).

Legal basis

- Articles 119–144, 219, 282–284 of the Treaty on the Functioning of the European Union;
- Protocols annexed to the Treaty on European Union : Protocol (No 4) on the statute of the European System of Central Banks and the European Central Bank, Protocol (No 14) on the Euro Group.

Objectives

The main objectives (*4.1.1) of the institutions of Economic and Monetary Union (EMU) are to:

- finalise the completion of the internal market by removing exchange rate fluctuations and abolishing the costs inherent in exchange transactions, as well as the costs of hedging against currency fluctuation risks;
- ensure comparability of costs and prices within the Union, which helps consumers, stimulates intra-Union trade and facilitates business;
- reinforce Europe's monetary stability and financial power by:
- ending, by definition, any possibility of speculation between the Union currencies;
- ensuring, through the economic dimension of the monetary union thus established, that the new currency is largely invulnerable to international speculation;
- enabling the euro to become a major reserve and payment currency.

Achievements

A. The institutions of the first stage of EMU (1 July 1990–31 December 1993)

No monetary institutions were established during the first stage of EMU.

B. The institutions of the second stage of EMU (1 January 1994–31 December 1998)

1. The European Monetary Institute (EMI)

The EMI was established at the beginning of the second stage of EMU (pursuant to Article 117 of the EC 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 the strengthening of both cooperation between the national central banks and the coordination of Member States' monetary policies with a view to ensuring price stability. In accordance with Article 123(2) of the EC Treaty, the EMI was dissolved following 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 numbers by the Commission and the Member States. Set up to promote the coordination of Member States' policies to the full extent needed for the functioning of the internal market (Article 114 of the EC Treaty), it had an advisory role. It was dissolved at the start of the third stage and replaced by the Economic and Financial Committee (Article 134 TFEU).

C. The institutions of the third stage (1 January 1999 onwards)

1. The European Central Bank (ECB) (*1.3.11)

a. Organisation

Established on 1 June 1998, the ECB is based in Frankfurt-am-Main. It is run by two bodies that enjoy independence from Union institutions and national authorities (namely the ECB Governing Council and the Executive Board) and — for certain tasks — by the ECB General Council (which is not itself a decision-making body of the ESCB). The Treaty of Lisbon introduced the ECB as an institution of the EU (Article 13(1) TEU, Articles 282–284 TFEU); prior to this, it had had no status according to the provisions of the EC Treaty, although it had nevertheless had legal personality.

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 283 TFEU 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 Union (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 its implementation (Article 12 of the Statute). The Treaty of Lisbon states that the members of the ECB Executive Board are selected and appointed by mutual consent by a qualified majority in the European Council (Article 283 TFEU).

ii. The Executive Board

Comprises a President, Vice-President and four other members, all appointed by common accord of the Heads of State or Government of the euro area Member States for a non-renewable period of eight years (Article 283 TFEU). It is entrusted with implementing monetary policy and, in doing so, gives the necessary instructions to national central banks. It is also responsible for the preparation of meetings of the Governing Council and for the current business of the ECB (Articles 11 and 12 of the Statute).

iii. The General Council

The General Council (Article 44 of the Statute) consists of the President and Vice-President of the ECB and the Governors of the Central Banks of all EU Member States, regardless of whether they have adopted the euro. It contributes to the collection of statistical information, coordinates the monetary policies of those Member States that have not adopted the euro and oversees the functioning of the European exchange rate mechanism.

b. Role

Whereas either the ECB or the national central banks may issue banknotes within the euro area, only the ECB may actually authorise their issuing. Member States may issue coins subject to approval by the ECB of the volume of the issue (Article 128 TFEU). The ECB takes the decisions necessary for the ESCB to carry out the tasks entrusted to it under its Statute and through the Treaty (Article 132 TFEU). Assisted by the national central banks, it collects the necessary statistical information either from the national authorities responsible or directly from economic agents (Article 5 of the Statute). It is consulted on any proposed Union act in its fields of competence and, at the request of national authorities, on any draft legislative provision (Article 127(4) TFEU). It is responsible for the smooth running of the trans-European automated real-time gross settlement express transfer system (TARGET2); a euro payment system that links up the national payment systems and the ECB payment mechanism. The ECB makes the arrangements to integrate the central banks of the Member States joining the euro area into the ESCB.

The ECB may perform specific tasks concerning policies relating to the prudential supervision of credit institutions and other financial institutions (Article 127(6) TFEU and Article 25.2 of the Statute). The national authorities in the Member States continue to oversee the banking system; cross-border cooperation of supervisory authorities in the Union is ensured by the three European Supervisory Agencies (ESAs): The European Banking Agency (EBA), the European Securities and Market Agency (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA). This supervisory system is supplemented by the new macro-prudential oversight institution, the European Systemic Risk Board (ESRB).

2. The European System of Central Banks (ESCB) and the Eurosystem

a. Organisation

The ESCB consists of the ECB and the national central banks of all EU Member States (Article 282(1) TFEU and Article 1 of the Statute). It is governed by the same decision-making bodies as those of the ECB (Article 282(2) TFEU). The Eurosystem comprises only the ECB and the national central banks of the Member States in the euro area.

b. Role

The ESCB's fundamental task lies in maintaining price stability (Article 127(1) and Article 282(2) TFEU, Article 2 of the Statute). Without prejudice to this objective, the ESCB supports the general economic policies contributing to the achievement of the Union's objectives. It discharges this task by carrying out the following functions (Article 127(2) TFEU and Article 3 of the Statute):

- defining and implementing the monetary policy of the Union;
- conducting foreign-exchange operations consistent with the provisions of Article 219 TFEU;
- holding and managing the Member States' official foreign reserves;
- promoting the smooth operation of payment systems;
- and (Article 127(5) TFEU and Article 3.3 of the Statute):
- 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 (Article 134(2) TFEU), 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 on the monetary situation is now the responsibility of the ECB.

4. 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.

5. The Euro Group

Originally called Euro-11, the meeting of the Economics and Finance Ministers of the euro area changed its name to 'Euro Group' in 1997. This advisory and informal body meets regularly to discuss all the issues connected with the smooth running of the euro area and EMU. The Commission and, where necessary, the ECB are invited to attend these meetings (Article 1 of the Protocol (No 14) on the Euro Group). At the informal Ecofin meeting in Scheveningen on 10 September 2004, Luxembourg's Prime Minister and Minister of Finance, Jean-Claude Juncker, was elected President of the Euro Group. He thus became the Euro Group's first elected and permanent President for a mandate that started on 1 January 2005. The role of the Euro Group was enhanced by the Treaty of Lisbon with the aim of increasing coordination in the euro area. The term 'Euro Group' is also mentioned for the first time in this Treaty (Article 137 TFEU). Official innovations include the election by the majority of the Member States represented in the Euro Group of a Chairman of the Euro Group for a term of two-and-a-half years (Article 2 of the Protocol (No 14) on the Euro Group).

Role of the European Parliament

A. Legislative role

1. The European Parliament, together with the Council, in the ordinary legislative procedure:

- adopts detailed rules for the multilateral surveillance procedures (Article 121(6) TFEU);
- amends certain Articles of the ECB's Statute (Article 129(3) TFEU); and
- lays down the measures necessary for the use of the euro as single currency (Article 133 TFEU)

2. The European Parliament is consulted on the following issues:

- arrangements for Member States' introduction of euro coins (Article 128(2) TFEU);
- agreements on exchange rates between the euro and non-EU currencies (Article 219(1) TFEU);
- 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 (Article 283(2) and Article 11.2 of the ECB's Statute);
- any changes to voting arrangements within the ECB Governing Council (Article 10.2 of the Statute of the ESCB and ECB);
- legislation implementing the excessive deficit procedure provided for in the Stability and Growth Pact;
- any changes to the powers given to the ECB to supervise credit and other financial institutions (Article 127(6) TFEU);
- changes to certain Articles of the the ECB's Statute (Article 129(4) TFEU).

3. The European Parliament is informed about the detailed provisions concerning the composition of the Economic and Financial Committee (Article 134(3) TFEU).

B. Supervisory role

1. Under the Treaty on the Functioning of the European Union

The ECB addresses an annual report on the activities of the ESCB and on the monetary policy of both the previous and current year to the European Parliament, the Council and the Commission, and to the European Council. 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 (Article 284(3) TFEU and Article 15.3 of the ECB Statute). The President of the ECB and the other members of the Executive Board may, at the request of European Parliament or on their own initiative, be heard by relevant committees of the European Parliament (Article 284(3) Subparagraph 2).

2. Parliament's initiative

The EP 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 a 'Monetary Dialogue'. The President of the ECB, or another Member of its Governing Council, appears before the European Parliament's Committee on Economic and Monetary Affairs at least once every three months to answer questions on the economic outlook and to justify the conduct of monetary policy in the euro area. In addition, the European Parliament routinely delivers an opinion on the ECB's annual report in the context of an own-initiative report.

→ Dirk Verbeken

4.1.3. European monetary policy

The ECB and ESCB ensure the achievement of the primary goal of the European monetary union, which is to maintain price stability. The main instruments of the single monetary policy for the euro area are the open market operations, the standing facilities and the holding of minimum reserves.

Legal basis

- Articles 119–144, 219, 282–284 of the Treaty on the Functioning of the European Union (TFEU);
- Protocol (No 4) accompanying the Lisbon Treaty on the Statute of the European System of Central Banks (ESCB) and the European Central Bank (ECB).

Objectives

The primary objective of the ESCB under Article 127(1) TFEU is to guarantee price stability. Without prejudice to this objective, the ESCB supports the general economic policy in the Union, with a view to contributing to the achievement of the Union objectives laid down in Article 3 of the Treaty on European Union (TEU). The ESCB acts in accordance with the principles of an open market economy with free competition, favouring an efficient allocation of resources (Article 127(1) TFEU).

Achievements

A. The guiding principles of ECB action

1. The independence of the ECB

The essential principle of the ECB's independence is set out in Article 130 TFEU and Article 7 of the Statute of the ESCB and the ECB. 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 Union institutions or bodies, from any government of a Member State or from any other body. Respect for Article 130 TFEU is guaranteed by the form of the mandate entrusted to the Members of the Executive Board and the Governing Council (*4.1.2). The ECB's independence is also maintained by the prohibitions referred to in Article 123 TFEU, which also apply to the NCBs: overdraft facilities or any other type of credit facility in favour of Union institutions or bodies, central governments, regional, local or other public authorities, other bodies governed by public law or public undertakings of Member States are prohibited (*4.1.2). The independence of the ECB centres around the free choice of monetary policy instruments. The Treaty provides for the use of traditional instruments (Articles 18 and 19 of the Statute) and allows the Governing Council to decide by a majority of two thirds on the use of other methods as it sees fit (Article 20 of the Statute).

2. The principles of accountability and transparency of the ECB

In order to ensure the credibility of the ECB, the Treaty (Article 284 TFEU) and the Statute (Article 15) impose reporting commitments. The ECB draws up and publishes reports on the activities of the ESCB at least quarterly (Article 15.1 of the Statute). A consolidated financial statement of the ESCB is published each week (Article 14.1.2 of the Statute). In practice, the ECB publishes monthly bulletins which provide an in-depth analysis of the economic situation and the outlook for price developments. The ECB 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 284(3) TFEU and Article 15.3 of the Statute). The ECB is also accountable to the European Parliament. Members of the ECB's Executive Board regularly appear before it (*4.1.2). However, the European Parliament cannot give any instructions to the ECB and has no *a posteriori* control.

3. Voting rules in the ECB Governing Council (Article 10.2 of the Statute)

Voting in the Governing Council respects the 'one member, one vote' principle. Each member of the Governing Council therefore has one vote. Monetary policy decisions are taken by a simple majority of members eligible to vote; in the event of a tie, the ECB President has the casting vote. When the number of members of the Governing Council exceeds 21, each member of the Executive Board will have one vote and the number of governors of national central banks eligible to vote, and thus the number of voting rights held by the NCBs, will be 15. These latter voting rights would be assigned and rotated according the detailed provisions laid down in Article 10.2 of the Statute. The Governing Council will adopt all the necessary measures to implement the rotation of voting rights by a majority of two thirds of its members, both eligible to vote and not eligible to vote. In particular, the Governing Council may decide to defer the start of the rotation system until such time as the number of NCB governors is more than 18. Following this provision, the ECB Governing Council decided on 18 December 2008 to postpone the implementation of the rotation system until the number of governors reaches 19. When carrying out their activities in the Governing

Council, the governors of the national central banks must not defend national interests but must act in the collective interest of the euro area. The minutes of the Governing Council meetings and the breakdowns of votes cast are not published.

B. The ECB's monetary policy strategy

1. Overview

On 13 October 1998, the ECB Governing Council agreed on the main elements of its monetary policy strategy: (i) quantitative definition of price stability; (ii) an important role for the monitoring of the money growth identified by a monetary aggregate; and (iii) a broadly based assessment of the outlook for price developments. The ECB has opted for a monetary strategy based on two pillars (Pillar 1: economic analysis; Pillar 2: monetary analysis), whose respective roles were clearly defined once again during the review of the monetary strategy on 8 May 2003.

2. Price stability

Price stability was initially defined as a year-on-year increase in the Harmonised Index of Consumer Prices (HICP) for the euro area of below 2%. It must be maintained over the medium term. This definition was confirmed on 8 May 2003 and one important point was clarified: inflation rates below but close to 2% are to be achieved over the medium term. This underlined that a sufficient safety margin downwards was to be provided to guard against the risk of deflation and to allow for a possible measurement bias in data collection and differences in inflation rates within the euro area.

3. The first pillar of the monetary policy strategy: economic analysis

The first pillar of the ECB's monetary policy strategy is economic analysis. This 'focuses mainly on the assessment of current economic and financial developments and the implied short- to medium-term risks to price stability. The economic and financial variables that are the subject of this analysis include, for example: developments in overall output; aggregate demand and its components; fiscal policy; capital and labour market conditions; a broad range of price and cost indicators; developments in the exchange rate, the global economy and the balance of payments; financial markets; and the balance sheet positions of euro area sectors'[1].

4. The second pillar of the monetary policy strategy: monetary analysis

The second pillar of the ECB's monetary policy strategy is monetary analysis. It 'is founded on the relationship between money growth and inflation over the medium to longer-term horizon and exploits the fact that monetary trends lead inflationary trends'.

C. Implementation of the monetary policy: instruments and procedures

By establishing interest rates at which the commercial banks can obtain money from the central bank, the ECB Governing Council indirectly affects the interest rates throughout the euro area economy, and in particular the rates for loans granted by commercial banks and for saving deposits. The ECB uses a range of instruments to implement its monetary policy.

1. Open market operations

Open market operations play an important role in steering interest rates, managing the liquidity situation in the market and signalling the monetary policy stance through four categories of operations:

a. Main refinancing operations — The main refinancing operations are the most important instrument of the monetary policy. They are regular liquidity-providing reverse transactions with a weekly frequency and a maturity of two weeks. They provide the bulk of liquidity to the banking system. The minimum bid rate for the main refinancing operations is the key ECB interest rates. It is within the limits of the rates of the deposit facility and the marginal lending facility. The level of these three key rates signals the orientation of the monetary policy of the euro area.

b. Longer-term refinancing operations — These are liquidity-providing reverse transactions with a monthly frequency and a maturity of three months. They represent only a limited part of the global refinancing volume and do not seek to send signals to the market.

c. Fine-tuning operations — These ad hoc operations aim to deal with unexpected liquidity fluctuations in the market, in particular with a view to smoothing the effects on interest rates.

d. Structural operations — These operations are mainly aimed at adjusting on a permanent basis the structural position of the euro system vis-à-vis the financial sector.

2. Standing facilities

Standing facilities provide or absorb liquidity with an overnight maturity. Their interest rates bound overnight market interest rates. This rate is known as the EONIA (Euro Overnight Index Average). Two standing facilities are available to eligible counterparties:

- The marginal lending facility enables counterparties to obtain overnight liquidity against eligible assets. The interest rate on this facility provides a ceiling for the overnight market interest rate.

[1] The description of the two pillars are taken from: The Monetary Policy of the ECB (2011), http://www.ecb.int/pub/pdf/other/monetarypolicy2011en.pdf

- The deposit facility enables counterparties to make overnight deposits with the euro system. The interest rate on the deposit facility provides a floor for the overnight market interest rate.

Both of these rates aim to ensure the smooth operation of the money market in situations of very high money supply and demand.

3. Holding of minimum reserves

In accordance with Article 19(1) of the Statute, the ECB may require credit institutions established in Member States to hold minimum reserves with the ECB and national central banks. The aim of the minimum reserves is to stabilise the short-term interest rates on the market and to create (or enlarge) a structural liquidity shortage among the banking system vis-à-vis the euro system, making it easier to control money market rates through regular allocations of liquidity. The calculation methods and determination of the amount required are set by the Governing Council.

4. Non-standard monetary policy measures and crisis response as of 2007

During crises, the ECB can respond with a number of non-standard monetary policy measures (liquidity provision and credit easing) in order to re-establish market functioning, to ensure that the transmission of monetary policy continues to work[1]. The most important of these measures are:

- full allotment in refinancing operations at fixed rate;
- lowering of minimum credit rating requirements for collateral (including for sovereign debt) and broadening of the accepted collateral types;
- Securities Markets Programme (SMP): direct intervention in secondary bond markets to buy individual Member States' sovereign debts, in tandem with neutralising operations to keep the money supply constant in order to adhere to its price-stability objective;
- the opening of swap lines with other central banks;
- Covered Bond Purchase Programme (CBPP): a first programme was launched in July 2009. The second programme (CBPP2) was announced in October 2011. The programmes are aimed at 'supporting a financial market segment that is particularly important for the longer-term funding of banks and the financing of the real economy'[2].

On 8 December 2011, the ECB announced so far unprecedented policy measures in order to 'support bank lending and liquidity in the euro area money market':

- long-term refinancing operation (LTROs) — fixed rate tender with full allotment — with a maturity of three years and an early repayment option after one year;
- reduction of the reserve ration from 2% to 1%;
- increasing collateral availability by: (i) further reducing rating threshold for certain asset-backed securities; and (ii) accepting additional performing credit claims as collateral (bank loans).

Role of the European Parliament

In the Resolution of 1 December 2011 on the ECB Annual Report for 2010, the Parliament 'welcomes the determined and proactive stance taken by the ECB throughout the crisis since 2007'. It recommends an enhanced transparency of the ECB, e.g. it 'reiterates its long-standing call for the summaries of minutes of meetings of the Governing Council to be made public'. It also calls for a better integration of the macro-prudential supervision of the financial system into the monetary policy context.

→ Dirk Verbeken

[1] For more information on the different phases of the monetary policy conducted by the ECB as a crisis response see: speech by Mr González-Páramo, 13 October 2011: http://www.ecb.int/press/key/date/2011/html/sp111013.en.html

[2] See speech by Mr González-Páramo, October 2011.

4.1.4. Economic governance

Economic governance is the system of institutions and procedures established in view of achieving the European Union objectives in the economic area, namely the coordination of economic policies for the promotion of economic and social progress for EU peoples.

The financial, fiscal and economic crises that originated in 2008 showed that the EU needed a model of economic governance more effective than the economic and fiscal coordination or ad hoc responses in force until then. Recent developments in the area of economic governance include both the overhaul of existing and the adoption of new provisions, establishing reinforced coordination and surveillance of both fiscal and macro-economic policies, as well as the set-up of a robust framework for the management of financial crises.

Legal basis

- Article 3 of the Treaty on European Union (TEU);
- Articles 2–5, 119–144, 282–284 of the Treaty on the Functioning of the European Union (TFEU);
- Protocols annexed to the TFEU: No 12 on the excessive deficit procedure; No 13 on the convergence criteria; No 14 on the Eurogroup.

Objectives

A. Treaty provisions

The preamble to the Treaty reads '(Member States are)... resolved to achieve the strengthening and the convergence of their economies and to establish an Economic and Monetary Union...'

Articles 2, 5 and 119 TFEU constitute the basis for coordination: they require Member States to view their economic policies as a matter of common concern and closely coordinate them. The areas and forms of coordination are specified in the subsequent Article 121 — which lays down the procedure related to the general (Broad Economic Policy Guidelines) and specific policy recommendations — and Article 126 — establishing the procedure to be followed in case of excessive government deficit (*4.2.2).

Articles 136–138 set specific provisions to Member States whose currency is the euro, for which they strengthen coordination and surveillance of budgetary discipline and economic policies.

Furthermore, Title IX on employment requires that employment policies be coordinated and consistent with the economic policies as defined in the broad guidelines (Article 146) (*5.10.3).

B. Areas subject to economic governance

The financial, fiscal and economic crises that originated in 2008 showed that financial, fiscal and macro-economic imbalances are strictly interrelated, not only within the national boundaries, but also at EU level, and even more so for countries in the euro area. Therefore the reinforced economic governance system, which was set up in 2011 and is still under further development, refers to several economic areas, including fiscal policies, macro-economic issues, crisis management as well as macro-financial supervision.

Achievements

A. Economic coordination — until 2011

Until 2011, economic policy coordination was mainly based on consensus, without legally enforceable rules, except in the fiscal policy framework defined under the Stability and Growth Pact (SGP) (*4.2.3). The scope of economic coordination was wide, and different forms of cooperation could be implemented, depending on the binding degree of the cooperation agreement:

- Cooperation by exchange of information: e.g. the Macroeconomic Dialogue established at the Cologne European Council in 1999;
- Coordination as crisis management tool: e.g. the set-up of the European Financial Stability Mechanisms in May 2010;
- Open method of coordination: Member States set common targets, but determined themselves how to achieve them (e.g. the 'Lisbon Strategy', established in March 2000, with the European leaders encouraging the Member States to set benchmarks, identify best practices and implement relevant policies);
- Delegation of a policy: entire authority over a policy could be delegated to a single institution (examples include monetary policy (*4.1.3) or competition policy (*3.2.1), delegated to the ECB and the Commission, respectively).

B. Economic governance — since 2011 onwards

The crisis exposed fundamental problems and unsustainable trends in many European countries, and made clear that EU's economies are strictly interdependent. Greater economic

policy coordination across the EU was considered necessary to address problems and boost growth and job creation in future: to this aim, the system of bodies and procedures on economic coordination in place in the EU was revised and reinforced in 2011 (with the adoption of the so-called 'six pack'), in 2012 (with proposals on the 'banking union' and the set-up of the ESM), in 2013 (with the adoption of the 'two pack' and other legislative proposals, which are still undergoing the adoption process).

1. The reinforced economic and fiscal surveillance, and their coordination under the European Semester

The reinforced governance includes a new synchronised working model — the European Semester — to discuss and coordinate economic and budgetary priorities; tighter EU surveillance of fiscal policies as part of the Stability and Growth Pact (*4.2.2); new tools to tackle macro-economic imbalances (*4.2.3); new instruments to deal with Member States in financial distress (*4.2.3).

The European Semester is a six-month period each year, during which Member States' budgetary, macro-economic and structural policies are coordinated so as to allow Member States to take EU considerations into account at an early stage of their national budgetary processes and in other aspects of economic policymaking. The aim is to ensure that all policies are analysed and assessed together and that policy areas which previously were not systematically covered by economic surveillance — such as macro-economic imbalance and financial issues — are included. The key stages in the European Semester are as follows:

- In late autumn the European Commission presents the Annual Growth Survey (AGS), which sets out what the Commission considers as the EU's priorities for the upcoming year, in terms of economic, budgetary and labour policies and other reforms to boost growth and employment. The Commission also publishes the Alert Mechanism Report (AMR), which identifies those Member States with potential macro-economic imbalances.
- The Spring European Council gives strategic guidance on the priorities to be pursued during the Semester cycle. It explicitly invites EU Member States to take account of these priorities in the drafting of their stability or convergence programmes (SCPs) and national reform programmes (NRPs), including their national job plans.
- In April, Member States submit their plans for sound public finances (stability or convergence programmes) and reforms and measures to make progress towards smart, sustainable and inclusive growth (national reform programmes). This joint submission allows accounting for complementarities and spill-over effects between fiscal and structural policies.
- In May/June, the Commission assesses the NRPs and SCPs, as well as the progress made in Member States towards the targets defined in the Europe 2020 strategy and the correction of macro-economic imbalances. On the basis of such assessment, the Commission proposes country-specific recommendations (CSRs), which are then discussed by different formations of the Council.
- In June/July, the European Council endorses the CSRs, which are officially adopted by the Council in July, closing the annual cycle of the European Semester at the EU level.

The first European Semester was put into practice for the first time in 2011. EU-level discussions on fiscal policy, macro-economic imbalances, financial sector issues, and growth-enhancing structural reforms take place jointly during the European Semester and before governments draw up their draft budgets and submit them to national parliamentary debate in the second half of the year (the 'national semester').

2. In addition, a complementary agenda with additional reforms, called Euro Plus Pact, was agreed in March 2011 among euro area Member States, as well as six non-euro area countries that have chosen to sign up: Bulgaria, Denmark, Latvia, Lithuania, Poland and Romania. It focuses on four areas: competitiveness, employment, sustainability of public finances, and reinforcing financial stability. All 23 signatories are committed to implementing the reforms in detail. The remaining four Member States are free to sign up if they wish. It is fully embedded in the new economic governance framework and the commitments taken therein are included in the national reform programmes of the Member States concerned.

3. Action to repair the financial sector: the EU has established new rules and supervisory authorities (ESAs) to prevent crises and make sure that financial players are properly regulated and supervised. Further work is underway, in particular to ensure Europe's banks have sufficient capital reserves to enable them to withstand any future shocks to the financial system, so that they can continue functioning and providing credit to households and businesses.

C. Actors

The European Council sets coordinated political priorities and gives guidelines at the highest level. The Member States are in charge of national reporting, exchange of information and the implementation of recommendations and decisions adopted by the Ecofin Council. The Eurogroup (the Finance Ministers of the Member States that have introduced the euro) discusses EMU-related matters,

usually before the Ecofin Council meeting. The ECB participates, when matters are linked to monetary or exchange rate policy. The Commission is in charge of reporting, preparing and making recommendations, as well as the follow-up of the implementation of decisions. The Economic and Financial Committee gives opinions and prepares the Council's work, as the Economic Policy Committee (EPC) and the Eurogroup Working Group do, which also contribute to the Commission's work.

Role of the European Parliament

With the entry into force of the Lisbon Treaty, the European Parliament (EP) is a co-legislator when setting rules for multilateral surveillance (Article 121(6) TFEU).

The legislative acts related to economic governance established the Economic Dialogue. In order to enhance the dialogue between the institutions of the Union, in particular the European Parliament, the Council and the Commission, and to ensure greater transparency and accountability, the competent committee of the European Parliament may invite the President of the Council, the Commission, the President of the European Council or the President of the Eurogroup to discuss their decisions or present their activities in the context of the European Semester. In the framework of this dialogue, the European Parliament may also offer the opportunity to participate in an exchange of views to a Member State which is the subject of a Council decision under the excessive deficit procedure or excessive imbalance procedure.

Under the European Semester, the European Parliament expresses its opinion on the draft AGS in specific resolutions, also taking into account the contributions gathered in a Parliamentary week meeting on the European Semester with national parliaments held at the beginning of the year. In late autumn, the EP expresses its opinion on the ongoing European Semester cycle (including CSRs as adopted by the Council) also taking into account the outcomes of a joint meeting with chairs of competent committees of national parliaments.

The EP promotes involvement of national parliaments through annual meetings with members of the relevant committees of the national parliaments. Furthermore, and in line with the legal and political arrangements of each Member State, national parliaments should be duly involved in the European Semester and in preparation of stability programmes, convergence programmes and national reform programmes, in order to increase the transparency and ownership of, and accountability on, decisions taken.

→ Alice Zoppè

4.2. Coordination and surveillance of economic policies

4.2.1. A new framework for fiscal policies

The sovereign debt crisis threatening the stability of the Economic and Monetary Union has highlighted an urgent need for major improvements to the framework for fiscal policies. A substantial reform (part of the so-called 'six-pack '), amending the Stability and Growth Pact and providing important rules and instruments for the surveillance of national fiscal policies, entered into force on 13 December 2011. Another significant reform, the intergovernmental Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG), whose fiscal component is called Fiscal Compact, entered into force on 1st January 2013. The fiscal compact complements and reinforces the six-pack. In addition, an important Regulation (part of the so-called 'two-pack ') will enter into force in mid 2013 aiming at further strengthening the fiscal and economic surveillance by establishing common rules for monitoring and assessing national draft budgetary plans as part of the European Semester Cycle.

Legal basis

- Articles 3, 119–144, 136, 219, 282–284 of the Treaty on the Functioning of the European Union (TFEU);
- Protocol (No 12) on the excessive deficit procedure; Protocol (No 13) on the convergence criteria annexed to the TFEU

Objectives

The emerging new fiscal policies architecture of the European Union aims to build a more robust and effective framework for the coordination and surveillance of the fiscal policies of the Member States. The new structure is a direct response to the sovereign debt crisis, which revealed the need for stricter rules considering the spill-over effects from unsustainable public finances within the euro area. The new framework therefore draws on the experiences of the initial design failures of the European Monetary Union and attempts to reinforce the guiding principle of sound public finances, which is enshrined in Article 119(3) TFEU.

Achievements

A. Stability and Growth Pact

Primary Union law provides the main legal foundation for the Stability and Growth Pact (SGP) in Article 121 TFEU (multilateral surveillance), Article 126 TFEU (excessive deficit procedure) and Protocol No 12 (on the excessive deficit procedure). Secondary Union law sets out in more detail how the rules and procedures provided by the Treaty have to be implemented. The first Economic Governance Package ('six-pack') entered into force on 13 December 2011, reforming and amending the rules of the Stability and Growth Pact. The amended SGP provides the main instruments for the surveillance of Member States' fiscal policies (preventive arm) and for the correction of excessive deficits (corrective arm). In its current form, the SPG, consists of the following measures:

- Council Regulation (EC) No 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and surveillance and coordination of economic policies as amended by Council Regulation (EC) No 1055/2005 of 27 June 2005 and Regulation (EU) No 1175/2011 of 16 November 2011. This regulation constitutes the preventive arm.
- Council Regulation (EC) 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure, as amended by Council Regulation (EC) No 1056/2005 of 27 June 2005 and Council Regulation (EU) No 1177/2011 of 8 November 2011. This regulation constitutes the corrective arm.
- Regulation (EU) No 1173/2011 of 16 November 2011 on the effective enforcement and budgetary surveillance in the euro area.

1. Preventive arm of the SGP

The aim of the preventive arm is to ensure sound public finances by multilateral surveillance based on Article 121 TFEU. The amended Regulation No 1466/67 and the new Regulation No 1173/2011 form the secondary legislation foundation.

A key concept used for the surveillance and guidance is the country-specific medium-term budgetary objective (MTO). The MTO of each country has to be in a range of between -1% of GDP and balance or surplus, corrected of cyclical effects and of one-off temporary measures. This objective has to be revised every three years, or when major structural reforms are implemented impacting on the fiscal position. Core instruments in the preventive arm of the SGP are the Stability or Convergence Programmes.

Stability or Convergence Programmes (SCP)

Submission: As part of the multilateral surveillance under Article 121 TFEU, in April of each year, each Member State has to submit a stability programme (in the case of euro area Member States) or a convergence programme (for non-euro area Member States) to the Commission and Council. The stability programmes must contain inter alia the MTO, the adjustment path to it and a scenario analysis examining the effects of changes in the main underlying economic assumptions on the fiscal position. The basis for the calculations must be the most likely macro-fiscal (or more prudent) scenarios. These programmes are published.

Assessment: The Council, based on an assessment of the Commission and the Economic and Financial Committee (EFC), will examine the programmes. In particular, progress made in order to achieve the MTO will be scrutinised. New in the amended SGP is the explicit consideration of the development of expenditures in the assessment.

Opinion: Based on a Commission recommendation and after consultation of the EFC, the Council adopts an opinion on the programme. In its opinion, the Council can request the Member States to adjust the programme.

Monitoring: The Commission and the Council monitor the implementation of the SCPs.

Early Warning: In case of major deviations from the adjustment path to MTO, the Commission addresses a warning to the Member State concerned in accordance with Article 121(4) TFEU (Article 6 and 10 of the amended Regulation 1466/97). This warning is given in the form of a Council recommendation requesting the necessary policy adjustments by the concerned Member State.

Sanctions: For euro area Member States, the amended SGP also foresees the possibility to impose sanctions in the form of an interest-bearing deposit amounting to 0.2% of the previous year's GDP, when the Member State concerned does not take appropriate adjustment action. There are also fines foreseen for the manipulation of debt or deficit data.

European Semester: The submission and assessment of the SCPs form part of the European Semester, which has been newly enshrined in the preventive arm of the SGP. The European Semester is a broader process of economic policy coordination within the European Union.

2. Corrective arm of the SGP

Excessive Deficit Procedure

The purpose of the excessive deficit procedure (EDP) is to prevent excessive deficits and to ensure their prompt correction. The EDP is governed by Article 126 TFEU, Protocol (No 12) annexed to the Treaty and by the amended Regulation (EC) No 1467/97 and the new Regulation (EU) No 1173/2011.

According to the amended SGP, an excessive deficit procedure is triggered by the deficit **or** debt criterion:

- **Deficit criterion:** A general government deficit is considered to be excessive if it is higher than the reference value of 3% of GDP at market prices **or**
- **Debt criterion:** the debt is higher than 60% of GDP and the annual debt reduction target of 1/20 of debt has not been achieved over the last three years.

The regulation also contains provisions clarifying when, if a deficit is higher than the stated reference value, it will be considered as exceptional (resulting from an unusual event, severe economic downturn) or temporary (forecasts indicate that the deficit will fall below the reference value following the end of the unusual event or downturn).

Articles 126(3) to 126(6) TFEU provide for the procedure for assessing and deciding on an excessive deficit. The Commission prepares a report if a Member State does not comply or if there is a risk that it will not comply with one of the two criteria. The EFC formulates an opinion on this report. If the Commission sees an excessive deficit as given (or as possible to occur), it addresses an opinion to the concerned Member State and informs the Council. Based on a Commission proposal, the Council finally decides whether an excessive deficit exists (Article 126(6) TFEU) and subsequently, based on a Commission recommendation, adopts a recommendation addressed to the Member State concerned (Article 126(7) TFEU) to demand that effective action be taken to reduce the deficit and sets a deadline of not more than six months. Where the Council establishes that no such action has been taken, its recommendation may be made public (Article 126(8) TFEU). After persistent failure to comply with the recommendations made, the Council may notify the Member State concerned to take appropriate measures within a given time limit (Article 126(9) TFEU).

Sanctions: The excessive deficit procedure also foresees sanctions in case of non-compliance (Article 126(11) TFEU). For euro area Member States, as a rule, this sanction shall be a fine, consisting of a fixed component (0.2% of GDP) and a variable component (max. of 0.5% of GDP for both components taken together).

Additional sanctions are foreseen for euro area Member States in Regulation (EU) No 1173/2011 on the effective enforcement and budgetary surveillance in the euro area. The sanctions are imposed at different stages of the EDP and entail non-interest-bearing deposits of 0.2% and a fine of 0.2% of previous years' GDP. Under the same regulation, sanctions are also foreseen for statistical manipulation.

B. Fiscal Compact

At the European Council Meeting in March 2012, the interovernmental 'Treaty on Stability, Coordination and Governance in the Economic and Monetary Union', whose fiscal component is called fiscal compact, was signed by all Member States except the UK and the Czech Republic. The fiscal compact provides for an enshrining of the balanced budget rule (golden rule) — lower limit of a structural deficit of 0.5% GDP — into national law, preferably on constitutional level (debt brake). Member States might by sued by other Member States before the European Court of Justice in cases where the rule has not been properly implemented. Additional provisions include inter alia automatic triggering of the correction mechanism and enforced rules for countries under excessive deficit procedure. In addition, financial assistance from the European Stability Mechanism will only provided to Member States which have signed the fiscal compact.

C. Further major reforms strengthening economic governance in the euro area

The overall reform of the Economic Governance of the Union and of the fiscal policies framework includes, besides the revised SGP rules and the intergovernmental TSCG, two proposals for regulations whose purpose is to further strengthen the economic governance in the euro area ('two-pack').

- Regulation on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area; and
- Regulation on the strengthening of economic and budgetary surveillance of Member States experiencing or threatened with serious difficulties with respect to their financial stability in the euro area.

The main elements of the first Regulation is to provide for common budgetary timelines for all euro area Member States, and for rules to monitor and assess Member States' budget plans by the Commission. In case of serious non-compliance with the SGP rules, the Commission can request that the plans be revised.

Role of the European Parliament

The European Parliament is co-legislator as regards the setting of detailed rules for multilateral surveillance (Article 121(6) TFEU), and it is consulted on secondary legislation implementing the excessive deficit procedure (Article 126(14) TFEU). Both the preventive arm and the corrective arm of the amended Stability and Growth Pact contain a new instrument, the Economic Dialogue, ensuring a prominent role of the European Parliament in the newly established fiscal policies framework. Therein, it is stated that the competent Committee of the European Parliament is entitled to invite the President of the Council, the Commission, the President of the European Council or the President of the Eurogroup for discussion. The European Parliament is also informed on a regular basis about the application of the regulations. Furthermore, the Commission's powers to impose extra reporting requirements in the framework of the new regulation on monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area will have to be renewed every three years and Parliament or Council would be able to revoke them.

→ Jost Angerer

4.2.2. Macroeconomic surveillance

Over the past decade, the EU has experienced major macroeconomic imbalances (which have emphasised the negative effects of the financial crisis that began in 2008) and serious divergences in competitiveness (which have prevented the use of common monetary policy measures).

A new surveillance and enforcement procedure has been set up in order to identify and correct such macroeconomic imbalances at a much earlier stage: the Macroeconomic Imbalance Procedure (MIP). The MIP is aimed at preventing and correcting macroeconomic imbalances[1] in Member States, paying specific attention to those macroeconomic imbalances with potential spill-over effects on other Member States.

[1] Commission webpage on the Macroeconomic Imbalance Procedure.

Legal basis

- Article 3 of the Treaty on European Union (TEU);
- Articles 119, 121 and 136 of the Treaty on the Functioning of the European Union (TFEU).

Objectives

The Macroeconomic Imbalance Procedure (MIP) is a surveillance and enforcement mechanism that aims to prevent and correct macroeconomic imbalances within the EU. The surveillance undertaken is part of the European Semester for economic coordination (*4.2.1).

This surveillance relies on:

1. An Alert Mechanism Report (AMR), which is prepared by the Commission and is based on a scoreboard[1] of indicators and thresholds. The scoreboard indicators refer to external imbalances (current accounts, net international investment position, real effective exchange rate, changes in export shares, unit labour cost) and internal imbalances (house prices, private sector credit flow, private sector debt, public debt, unemployment rate and changes in financial sector liabilities). For each indicator, a threshold has been identified, which signals that a specific problem might arise; some thresholds are differentiated for euro-area and non-euro-area Member States. If a Member State exceeds several thresholds, the Commission performs an 'in-depth review', i.e. further economic analysis aimed at determining whether macroeconomic imbalances are likely to emerge or already exist.

2. **Preventive recommendations.** If, on the basis of the outcomes of the in-depth-review, the Commission finds that macroeconomic imbalances exist, it must inform the Parliament, the Council and the Eurogroup. The Council, on a recommendation from the Commission, may address the necessary recommendations to the Member State concerned, in accordance with the procedure set out in Article 121(2) TFEU. These preventive MIP recommendations form part of the 'country specific recommendations' addressed to each Member State in July each year by the Council as part of the European Semester.

3. **Corrective recommendations within the Excessive Imbalance Procedure (EIP)**. If, on the basis of the in-depth review, the Commission finds that the Member State concerned is affected by excessive imbalances, it must inform Parliament, the Council, the Eurogroup, the relevant European Supervisory Authorities and the European Systemic Risk Board (ESRB). The Council, on a recommendation from the Commission, may, in accordance with Article 121(4) TFEU, adopt a recommendation establishing the existence of an excessive imbalance and recommending that the Member State concerned take corrective action. The Council's recommendation must set out the nature and implications of the imbalances and specify a set of policy recommendations to be followed and a deadline within which the Member State concerned must submit a corrective action plan.

4. **Corrective action plans.** The Member State for which an EIP is opened must submit a corrective action plan within a deadline to be specified in the Council's recommendation. The Council, on the basis of a Commission report, must assess the corrective action plan within two months of its submission. The Commission and the Council assess progress by the Member State concerned on the basis of regular progress reports and Commission monitoring.

5. **Assessment of corrective action.** On the basis of a Commission report, the Council must assess whether the Member State concerned has taken the recommended corrective action. Where it considers that the Member State has not taken such action, the Council, on a recommendation from the Commission, must adopt a decision (based on reverse qualified majority voting (QMV)) establishing non-compliance, together with a recommendation setting new deadlines for taking corrective action.

[1] Scoreboard data platform: interactive Eurostat database incorporating the updated indicators used in the scoreboard and additional 'reading' indicators.

In this case, the Council must inform the European Council.

6. **Potential financial sanctions.** Euro-area Member States which do not follow up on recommendations made under the EIP may be subjected to gradual sanctions, ranging from an interest bearing deposit to annual fines. The interest-bearing deposit or fine should amount to 0.1% of national GDP.

Achievements

A. The 2012 round

In February 2012 the Commission published the first AMR, as part of the 2012 European Semester. It identified 12 Member States as warranting in-depth review. Member States under a financial assistance programme were not subject to in-depth review.

In May 2012, the Commission published 12 reviews which examined the origin, nature and severity of possible macroeconomic imbalances. The outcomes of the in-depth reviews constituted, inter alia, the basis for the country specific recommendations adopted by the Council in July 2012.

B. The 2013 round

For the 2013 European Semester, the Commission published the second AMR in November 2012. The report concluded that 14 Member States should be subject to in-depth review.

In April 2013 the Commission published a communication and the 2013 in-depth reviews for the Member States identified in the latest AMR. It noted that macroeconomic adjustments were taking place, although they differed in nature and pace across the Member States concerned. All of them were experiencing macroeconomic imbalances, which called for policy action.

C. The 2014 round

In November 2013, the Commission published the third AMR. Sixteen Member States were considered to be at risk of macroeconomic imbalances. The Commission will assess the existence of macroeconomic imbalances in spring 2014.

Role of the European Parliament

With the entry into force of the Lisbon Treaty, Parliament has become a co-legislator in setting rules for multilateral surveillance (Article 121(6) TFEU).

The legislative acts relating to macroeconomic surveillance establish the Economic Dialogue. In order to enhance the dialogue between the institutions of the Union — in particular Parliament, the Council and the Commission — and to ensure greater transparency and accountability, the competent committee of Parliament may invite the President of the Council, the Commission, the President of the European Council and/or the President of the Eurogroup to discuss their decisions or present their activities within the European Semester. As part of this dialogue, Parliament may also provide an opportunity to participate in an exchange of views with a Member State which is the subject of a Council recommendation under the EIP.

In late autumn, Parliament expresses its opinion on the ongoing European Semester cycle (including the country-specific recommendations adopted by the Council), also taking into account the outcome of a joint meeting with the Chairs of the competent committees of national parliaments.

Under the MIP, the Commission cooperates with Parliament and the Council in defining the set of macroeconomic indicators to be included in the scoreboard used for monitoring possible macroeconomic imbalances in the Member States.

Parliament promotes the involvement of national parliaments through annual meetings with members of the relevant committees of those parliaments. Furthermore, and in line with the legal and political arrangements of each Member State, the national parliaments should be duly involved in the European Semester and in the preparation of stability programmes, convergence programmes and national reform programmes, in order to increase the transparency and ownership of, and accountability for, the decisions taken.

→ Alice Zoppè
12/2013

4.2.3. Financial assistance to EU Member States in severe economic difficulties

Financial assistance to EU Member States in severe difficulties is aimed at preserving the financial stability of the EU and the Euro area.

European economies are nowadays closely interrelated. The current crisis has proven the need of a coordinated and appropriately funded financial assistance to EU Member States in severe difficulties.

Safeguards have been set up: financial assistance is linked to macroeconomic conditionality. The EU ensures that Member States receiving such assistance make the necessary fiscal, economic, structural and supervisory reforms.

The EU has designed new mechanisms/tools to reduce the probability of a new crisis emerging in the future. They are currently being implemented.

Legal basis

- Article 3 of the Treaty on European Union (TEU);
- Articles 2–5, 119–144, 282–284 of the Treaty on the Functioning of the European Union (TFEU);
- Protocols 12, 13, 14 annexed to the TFEU.

Objectives

Financial assistance to EU Member States in severe economic difficulties aims at preserving the financial stability of the EU and the Euro area.

The new mechanisms are a direct response to the sovereign debt crisis. They are designed to reduce the probability of a new crisis emerging in the future.

Thus, the EU is building a stronger economic and governance framework for Economic and Monetary Union (see *4.1.4)

Achievements

A. May 2010: EFSM and EFSF, the setting up of a temporary stabilization mechanism

The EU and euro area Member States set up a temporary stabilization mechanism to preserve their financial stability in the context of the sovereign debt crisis.

This mechanism consists of:

1. The European Financial Stabilization Mechanism (EFSM)

It is covered by the EU budget within the limit of its own resources. It is estimated at EUR 60 billion. Loans are financed by the Commission's borrowings on financial markets, guaranteed by the EU budget.

It has been activated for Ireland and for Portugal.

2. The European Financial Stability Facility (EFSF).

Its total effective lending capacity is estimated at EUR 440 billion. Loans are financed by the EFSF's borrowings on financial markets, guaranteed by the shareholders (Euro area Member States).

It has been activated for Ireland, Portugal Spain and for Greece.

B. October 2012: ESM, the creation of the primary support mechanism

It is a permanent instrument. It was aimed at replacing the two temporary crisis management mechanisms. But so far they still coexist.

Its main features build on the EFSF. The ESM will be the primary support mechanism to Euro area Member States.

Its total effective lending capacity is EUR 500 billion. Loans are financed by the ESM's borrowings on financial markets, guaranteed by the shareholders (Euro area Member States).

It took over the EFSF commitments to Spain for the recapitalization of its banking sector and may provide financial assistance to Cyprus.

Alongside the EFSM, EFSF and ESM, other institutions provide financial stability support under their respective competences and objectives:

- the International Monetary Fund (IMF) and
- the European Central Bank (ECB) which can undertake outright transactions in secondary sovereign bond markets.

C. Mid-2013: 'two-pack' will enter into force

The so-called 'two-pack' consists of two EU regulations applicable to Member States of the Euro area and forming part of the building of a stronger economic and governance framework for EMU.

One of the regulations strengthens the monitoring and surveillance procedures for Member States experiencing or threatened with severe difficulties with regard to financial stability.

Under this regulation, Member States may become subject to enhanced surveillance by the Commission, including countries receiving certain types of precautionary financial assistance. They may also be subject to a macro-economic adjustment programme.

But financial assistance is linked to macroeconomic conditionality: receiving financial assistance implies an obligation for the Member State concerned to adopt measures to address the sources of instability. Thus, the EU ensures that Member States receiving such assistance make the necessary fiscal, economic, structural and supervisory reforms.

If the beneficiary Member State does not comply with policy requirements contained in the adjustment programme, it could face financial consequences with regard to the disbursements under the programme.

D. Financial assistance designed for non Euro area Member States: the balance-of-payments facility

Since February 2002, the Balance-of-Payments (BoP) assistance is available for all Member States.

Under BoP, the EU can provide mutual assistance to non-euro area Member States when a Member State is in difficulties or is seriously threatened with difficulties as regards its balance of payments. BoP assistance is designed to ease a country's external financing constraints. It usually takes the form of medium-term financial assistance, in cooperation with IMF.

Role of the European Parliament

By adopting the two-pack, the EP has contributed to establishing an EU legal framework for enhanced economic governance in the Euro zone both for budgetary surveillance and for the decision-making and surveillance procedure for Member States under a macro-economic adjustment programme.

Moreover, the two-pack gives a tighter scrutiny role to the EP: the competent committee can invite the concerned institutions (Commission, Council, Eurogroup, ECB and IMF) for Economic Dialogues in the EP.

Regarding financial assistance to Member States whose currency is not the Euro, a proposal is currently under discussion. But the Balance-of-Payments assistance is still available.

→ Manica Hauptman / Cécile Bourgault

5 SECTORAL POLICIES

Harmonised action creates a leverage effect that makes it possible to obtain better results. Over the years the European Union has developed a set of policies that complement the single market. These cover many different fields and allow for varying degrees of harmonisation, ranging from genuine common policies to simple cooperation. These policies are the lines of action the EU decides to follow in certain areas in order to achieve the general objectives it has set. These are very often areas that closely affect the lives of the EU's citizens, and also businesses. Cohesion, agriculture, fisheries, environment, health, consumer rights, transport, tourism, energy, industry, research, jobs, asylum and immigration, as well as taxation, justice, culture, education and sport, are all areas in which the Union has its say.

5 SECTORAL POLICIES

5.1. Regional and cohesion policy

5.1.1. Economic, social and territorial cohesion

In order to promote its overall harmonious development, the European Union is strengthening its economic, social and territorial cohesion. In particular, the EU aims at reducing disparities between the levels of development of its various regions. Among the regions concerned, special attention is paid to rural areas, areas affected by industrial transition, and regions which suffer from severe and permanent natural or demographic handicaps, such as the northernmost regions with very low population density and island, cross-border and mountain regions.

Legal basis

Articles 174 to 178 of the Treaty on the Functioning of the European Union (TFEU).

Context

From the beginning, there have been large territorial and demographic disparities in the European Community (now the European Union), with the potential to constitute obstacles to integration and development in Europe. From the outset, the Treaty of Rome (1957) established solidarity mechanisms in the form of two Structural Funds: the European Social Fund (ESF) and the European Agricultural Guidance and Guarantee Fund (EAGGF, Guidance Section). In 1975, regional aspects were introduced with the creation of the European Regional Development Fund (ERDF). In 1994, the Cohesion Fund was also created. However, for a long time these initiatives had only modest resources.

With the Single European Act of 1986, economic and social cohesion became a competence of the European Community. In 2008, the Treaty of Lisbon introduced a third dimension of EU cohesion: territorial cohesion. These three aspects of cohesion are supported through cohesion policy and the Structural Funds.

Objectives

Strengthening its economic, social and territorial cohesion is one of the EU's main objectives. It dedicates a significant proportion of its activities and budget to reducing the disparities among regions, with particular reference to rural areas, areas affected by industrial transition, and regions which suffer from severe and permanent natural or demographic handicaps.

The EU supports the achievement of these objectives through:

- the coordination of economic policies;
- the implementation of EU policies;
- the use of the Structural Funds (EAGGF, Guidance Section; ESF; ERDF), the European Investment Bank and the other existing financial instruments (e.g. the Cohesion Fund).

The Guidance Section is one of the components of the European Agricultural Guidance and Guarantee Fund. Within the framework of the Union's cohesion policy, the EAGGF Guidance Section supports rural development and the improvement of agricultural infrastructure.

The European Social Fund is the Union's main instrument supporting measures which aim to prevent and combat unemployment, develop human resources and foster social integration in the labour market. It finances initiatives that promote a high level of employment, equal opportunities for men and women, sustainable development and economic and social cohesion.

The European Regional Development Fund is intended to help to redress the main regional imbalances in the EU. It supports regions whose development is lagging behind, along with the conversion of declining industrial regions.

The Cohesion Fund provides a financial contribution to projects relating to the environment and to trans-European networks in the area of transport infrastructure. This fund may only be accessed by those Member States whose gross national income per inhabitant is lower than 90% of the EU average.

To guarantee efficient use of the Structural Funds, the following principles have to be upheld:

- organisation of the funds by objectives and regions;
- partnership between the Commission, Member States and regional authorities in planning, implementing and monitoring their use;

- programming of assistance;
- additionality of EU and national contributions.

The allocation of the Union's financial resources devoted to cohesion policy is focused on three basic objectives:

- convergence — aiming to stimulate growth and employment in the least developed regions;
- regional competitiveness and employment — supporting economic, social and territorial cohesion in the regions not covered by the Convergence objective;
- European territorial cooperation — supporting EU cohesion through cooperation at cross-border, transnational and interregional level.

Achievements

Since 1988, the Union's cohesion policy has seen a massive increase in its budget and has become, next to the common agricultural policy, one of the most quantitatively significant Union policies. Over the financial programming period 2007-2013, a total of approximately EUR 355 billion (at 2011 prices) has been dedicated to the prevention of economic, social and territorial inequalities. These funds have been spent on such various activities as road-building, environmental protection, investment in innovative enterprises, job creation and vocational training. For the period 2014-2020 it is envisaged that EUR 325 billion (at 2011 prices) will be dedicated to economic, social and territorial cohesion.

Role of the European Parliament

Parliament plays a very active role in supporting the strengthening of the EU's economic, social and territorial cohesion. The legislation relating to cohesion policy and the Structural Funds is prepared under the ordinary legislative procedure, in which Parliament has an equal say with the Council.

Parliament has been actively involved in the negotiations for the reform of cohesion policy post-2013. This reform defines the priorities and instruments of future EU action aimed at strengthening economic, social and territorial cohesion. Parliament has strongly supported the proposals for a wide-ranging and efficient cohesion policy, which also necessitate sufficient financial resources.

→ Marek Kołodziejski
11/2013

5.1.2. European Regional Development Fund (ERDF)

The European Regional Development Fund (ERDF) is the main instrument of cohesion policy. Its purpose is to reduce regional imbalances. Following several revisions of its governing rules, the fund has three main objectives for the period 2007-2013, namely convergence, regional competitiveness and employment, and European territorial cooperation. These objectives will be maintained in the programming period 2014-2020.

Legal basis

Articles 174 to 178 of the Treaty on the Functioning of the European Union (TFEU).

Objectives

The original objectives of the ERDF were to help correct regional imbalances by contributing to:

- the development and structural adjustment of regions whose development is lagging behind;
- the conversion of declining industrial regions.

Achievements

The ERDF was set up in 1975 and has become the main instrument of the Community's regional policy. The main principles under which it operates were laid down as part of the general reform of the Structural Funds in 1988. Since then the rules governing the ERDF have undergone a number of revisions which have radically altered its objectives and operating procedures.

A. 1993 reform

1. Objectives

Regulation (EEC) No 2083/93 set the following four objectives for the ERDF 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 the European Union).

80% of the fund's resources are reserved for Objective 1.

2. Community initiatives

These are projects which affect the Community as a whole, for which the Commission alone is responsible. Their scope covers:

- interregional cooperation;
- employment and manpower;
- industrial development;
- the outermost regions;
- urban policy;
- rural development.

3. Main programmes

- Interreg, which supports cross-border cooperation projects between regions at the Community's internal and external borders, in a wide variety of fields;
- Urban, which covers problematic urban areas (high unemployment, run-down buildings, poor housing and inadequate social networks);
- Konver, which encourages the arms industry to convert to civilian activities.

B. 1999 reform

1. Objectives

- Regulation (EC) No 1261/99 reduced the objectives of the ERDF for the period 2000-2006 to two:
- Objective 1: unchanged, although it now includes the areas which were previously eligible under Objective 6 and the outermost regions;
- Objective 2: unchanged, but it now also covers the former Objectives 2 and 5b and broaden their scope to cover other areas: urban areas in difficulty, crisis areas dependent on fisheries and areas highly dependent on services.

2. Eligible regions

a. Under Objective 1

- Regions whose GNP is less than 75% of the Community average (a list of the regions concerned is drawn up by the Commission);
- Outermost regions;
- Regions previously covered by Objective 6.

Together these regions account for about 20% of the EU population.

b. Under Objective 2

There are four types of region eligible under Objective 2: industrial, rural, urban and fishery-dependent. The Commission draws up a list of these regions, in close cooperation with the Member States concerned. They account for about 18% of the EU population.

3. Community initiatives

Scope:

- transfrontier, transnational and interregional cooperation to stimulate development and balanced regional planning;
- rural development;
- transnational cooperation on new approaches to the problem of discrimination or inequality in access to employment.

4. Programmes

The four programmes — Interreg, Urban, Leader and Equal — have a budget which represents 5.3% of the total resources made available to the Structural Funds.

5. Allocation of responsibilities

This has been spelt out more clearly:

- the Commission underwrites the strategic priorities,
- programme management is more decentralised, with a greater role played by regional and local authorities and the economic and social partners.

C. 2007-2013 period

Regulation (EC) No 1080/2006, which came into force on 1 January 2007, lays down three new objectives and sets aside a total budget of EUR 355 billion (at 2011 prices).

1. Convergence

This objective, which is similar to the former Objective 1, aims to speed up the convergence of the least developed Member States and regions by improving the conditions for growth and employment. It is financed by the ERDF, the European Social Fund (ESF) and the Cohesion Fund.

The following regions and Member States are eligible:

- regions whose per capita GDP is below 75% of the Community average. They must correspond to NUTS II level;
- regions whose per capita GDP would have been below 75% of the Community average were it not for the statistical effect of enlargement receive transitional, specific and degressive financing;
- the outermost regions. The aim is to facilitate their integration into the internal market and to take account of their specific constraints by, inter alia, offsetting additional costs stemming from their remoteness.

The following are eligible for assistance under the Cohesion Fund:

- Member States whose per capita gross national income (GNI) is below 90% of the Community average and which are running economic convergence programmes.

2. Regional competitiveness and employment

This objective aims to strengthen the competitiveness and attractiveness of and employment in regions other than those which are the most disadvantaged. It is financed by the ERDF and the ESF. The eligible regions are:

- regions which fell under Objective 1 during the period 2000-2006 and which no longer meet the regional eligibility criteria of the 'convergence' objective and thus receive transitional support;
- all other regions not covered by the 'convergence' objective.

3. European territorial cooperation

This new objective aims to strengthen cross-border, transnational and inter-regional cooperation and is based on the existing Interreg programme. It is financed by the ERDF. Regions eligible for funding are those regions at NUTS III level that are situated along internal land borders and certain external land borders, as well as certain regions situated along maritime borders separated by a maximum of 150 km.

D. Prospects for the period 2014-2020

In 2010 the Commission began discussions on the future of the cohesion policy and its instruments. This policy will in particular support efforts to implement the Europe 2020 Strategy for smart, sustainable and inclusive growth.

In October 2011 the Commission put forward draft legislation on 'structural instruments: common provisions for the ERDF, ESF, Cohesion Fund, EAFRD and EMFF, and general provisions applicable to the ERDF, ESF and Cohesion Fund' (2011/0276(COD)). Parliament has played an active role in the negotiations with the Council and the Commission.

In November 2013 Parliament approved the reform of the cohesion policy. The total budget for the cohesion policy for the period 2014-2020 is expected to be EUR 325 billion (at 2011 prices). The three objectives of the cohesion policy will be maintained.

As an element of the reform, a new regulation on the ERDF was prepared. In the future, investments under the ERDF will be concentrated in four main priority areas: research and innovation, the Digital Agenda, support for SMEs and the low-carbon economy.

Role of the European Parliament

The code of conduct agreed with the Commission in 1993 and expanded in 1999 requires that Parliament should be kept regularly informed of the fund's activities. Under the 1999 reform, Parliament also managed to secure the retention of the URBAN programme as a Community initiative.

By opting for an approach based on cooperation, Parliament won a victory in the form of agreement on the changes required as regards environmental protection. It has secured a hearing for its views in the partnership areas where the general regulation provides for greater involvement on the part of civil society and NGOs.

Thanks to the new rules brought in by the Treaty of Lisbon, Parliament is now on an equal footing with the Commission and the Council when it comes to preparing new legislation concerning the Structural Funds, as these new laws are subject to the ordinary legislative procedure.

→ Marek Kołodziejski
11/2013

5.1.3. The Cohesion Fund

The Cohesion Fund, which was set up in 1994, provides funding for environmental projects and trans-European network projects. Since 2007 it has also been authorised to support projects in fields relating to sustainable development, such as energy efficiency and renewable energy.

Legal basis

Article 177 of the Treaty on the Functioning of the European Union (TFEU).

Objectives

The Treaty states that the Cohesion Fund shall provide a financial contribution to projects in the fields of:

- the environment;
- trans-European networks in the area of transport infrastructure.

Achievements

Initially, the Council set up a 'cohesion financial instrument' (Regulation (EEC) No 792/93). The Cohesion Fund replaced it in 1994 (Regulation (EC) No 1164/94, amended by Regulations (EC) Nos 1264/1999, 1265/1999, 1386/2002, 16/2003, 621/2004, and 1084/2006.

A. Field of application

1. Eligible countries

The fund is reserved for Member States whose per capita gross national product (GNP) is less than 90% of the Community average and which have set up a programme aiming to meet the criteria set by Article 126(2) of the TFEU concerning excessive government deficits in the context of coordinating economic policies as part of EMU.

During the period 2007-2013, the Cohesion Fund is providing funding for Bulgaria, the Czech Republic, Estonia, Greece, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Portugal, Romania, Slovenia and Slovakia. Spain is eligible on a transitional basis.

2. Eligible projects

a. Environmental projects which serve the priorities of the Community's environmental protection policy as set out in the environmental policy and action programme. In this context, the fund may also contribute in fields relating to sustainable development which will manifestly benefit the environment, such as energy efficiency and renewable energy and — in the case of transport not affected by the trans-European networks — rail transport, inland waterway transport, sea transport, intermodal transport systems and their interoperability, management of road, maritime and air traffic, clean urban transport and public transport.

b. Projects relating to the trans-European transport network, particularly priority projects of European interest decided by the Union.

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 State, takes the decision to fund a project. Decisions must maintain a balance between the two areas for which funding is available (environment and transport infrastructure). The Commission presents an annual report on the activities of the fund to Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions.

Financial assistance from the Cohesion Fund may be suspended by decision of the Council (acting by a qualified majority) if a State has an excessive public deficit, if it has not remedied this situation or if the measures taken prove inappropriate.

C. Volume of aid

1. The fund's resources

a. Period 2000-2006

Regulation (EC) No 1264/1999 set the total resources available for commitments at EUR 18 billion at 1999 prices.

The indicative allocation of the overall resources from the fund among the Member States depends on several criteria: a State's population and area, GNP per capita and socio-economic factors such as its infrastructure. However, total annual payments to these States from the Cohesion Fund, combined with assistance from the Structural Funds, must not exceed 4% of their GDP.

b. 2007-2013 programming period

Regulation (EC) No 1084/2006 sets out the general provisions for the operation of the Cohesion Fund and lays down that it contributes to the convergence objective covering less developed Member States and regions through financial participation in the convergence objective's operational programmes.

The accession of new Member States on 1 May 2004, all of which are eligible for the Cohesion Fund, and the existence of new and important financing needs in those countries, justifies an increase in the budget to EUR 18 billion for the period 2000-2006 and EUR 61 billion for the period 2007-2013 (EUR 58 billion + EUR 3 billion for specific transitional support).

In October 2011 the Commission put forward draft legislation setting out the EU's future cohesion policy. The European Parliament has played an active role in the negotiations with the Council and the Commission. The regulations concerned are expected to be adopted by the end of 2013.

Role of the European Parliament

The creation of the Cohesion Fund in 1994 was the European Parliament's first opportunity to use the new power of assent conferred on it by the Maastricht Treaty. On that occasion it was also able to ensure that regional and local authorities were involved in monitoring projects financed by the fund and that it could also exercise the power of assent with regard to how the fund operates.

In subsequent years, Parliament's influence on cohesion policy increased. In particular, it was opposed to the way the conditionality clause on government deficits penalised countries which had already fulfilled the criteria.

Parliament was actively involved in drawing up the regulation covering the period 2007-2013. It put forward several proposals that helped enhance the text of the regulation, with an emphasis on:

- environmental protection;
- the disabled;
- simplification of procedures and transparency;
- a stronger role for regional actors and the introduction of a 'premium system' (in the form of a Community quality and performance reserve, which in the period 2000-2006 was provided only for the Structural Funds).

The Council did not think it appropriate to accept all these proposals.

→ Marek Kołodziejski

5.1.4. The Solidarity Fund

The European Union Solidarity Fund enables the EU to provide financial support to a Member State, an accession country or a region in the event of a major natural disaster.

Legal basis

Article 175, third paragraph, and Article 212(2) of the Treaty on the Functioning of the European Union (TFEU).

Objectives

The Solidarity Fund enables the EU, acting as a body, to provide effective support to a Member State, or to an accession country, in its efforts to deal with the effects of a major natural disaster. Through the Fund, which is not covered by the EU budget, up to EUR 1 billion can be made available each year to supplement public expenditure by the Member State(s) concerned.

Achievements

The Solidarity Fund was set up under Regulation (EC) No 2012/2002 of 11 November 2002 in response to the disastrous flooding that affected central Europe in the summer of 2002. Since then, 56 disasters — including floods, forest fires, earthquakes, storms and drought — in 23 different European countries have received support through the Fund to a total value of more than EUR 3.5 billion.

On 12 November 2013 agreement was reached on a package deal on the budget for 2014, which included the amending budget for 2013 and mobilisation of the EU Solidarity Fund to help cover costs arising from the damage caused by floods in Germany (EUR 360.5 million), Austria (EUR 21.7 million) and the Czech Republic (EUR 15.9 million), and drought in Romania (EUR 2.5 million). The compromise provides for EUR 400.5 million to be spent under the EU Solidarity Fund, while EUR 250 million will be financed by redeployments in the 2013 budget and the remaining EUR 150 million will be paid from the 2014 budget.

A. Scope and eligibility

The Solidarity Fund serves mainly to provide assistance in the event of a major natural disaster with serious repercussions for living conditions, the natural environment or the economy in one or more regions of a Member State or of a country applying for accession. A natural disaster is regarded as 'major' if:

- in the case of a State, it causes damage whose estimated cost is either in excess of EUR 3 billion (2002 prices) or more than 0.6% of the gross national income of the beneficiary State;
- exceptionally, in the case of a region (with particular attention paid to remote and isolated parts of Europe, such as outermost and island regions), it causes damage affecting a majority of the population, with serious and lasting repercussions for living conditions and economic stability, in which specific case the annual aid available may not exceed 7.5% of the annual amount allocated to the Solidarity Fund (i.e. EUR 75 million).

1. Measures

Assistance from the Fund takes the form of a grant to supplement public spending by the beneficiary State and is intended to finance measures to alleviate damage which in principle is non-insurable. Urgent measures eligible for funding are:

- the immediate restoration to working order of infrastructure and plants providing energy, drinking water, waste water disposal, telecommunications, transport, health and education;
- the provision of temporary accommodation and the funding of rescue services, in order to meet the immediate needs of the population affected;
- the immediate consolidation of preventive infrastructure and protection of cultural heritage sites;
- the immediate cleaning-up of disaster-stricken areas, including natural areas.

2. Submission of the application

The State affected must submit an application for assistance from the Fund to the Commission no later than 10 weeks after the first effects of the disaster become clear. It must estimate the cost of the measures required and indicate any other sources of funding.

3. Implementation

The procedure for allocating a grant, followed by a budgetary procedure, can take several months. Once the appropriations have been made available, the Commission concludes an agreement with the beneficiary State and makes a grant. The beneficiary State is responsible for using the grant and auditing the way it is spent. Emergency measures can be financed retrospectively to cover operations from the first day of the disaster.

It is not possible to double-finance measures by defraying from the Solidarity Fund costs already covered by the Structural Funds, the Cohesion Fund,

the European Agricultural Guidance and Guarantee Fund (EAGGF), the Instrument for Structural Policies for Pre-Accession (ISPA) or the Special Accession Programme for Agriculture and Rural Development (SAPARD).

4. Use of the grant

The Solidarity Fund grant must be used within one year of the date on which it was allocated. The beneficiary State must pay back any part of the grant that remains unused. Six months after the expiry of the one-year period, it must present an implementation report to the Commission. This document must provide details of the expenditure eligible for support from the Solidarity Fund and of all other funding received, including insurance settlements and compensation from third parties.

5. Annual report and checks by the Court of Auditors

The Commission presents an annual report on the activities of the Fund. In June 2008, the European Court of Auditors presented the results of a performance audit of the Fund, concluding that while it had achieved its goal of demonstrating solidarity with Member States at times of disaster, the conditions governing the approval of applications were rather vague, especially for regional disasters. The Court was also critical of the slow pace of the allocation process.

A special report of the Court of Auditors in 2012 dealt with the 2009 L'Aquila earthquake in the Abruzzo region of Italy. This was the most serious natural disaster that the Solidarity Fund has had to deal with since it was created. The assistance provided totalled over EUR 500 million. The report found that, with the exception of one particularly complex project (CASE), all financed projects complied with the regulation.

B. New Commission proposal adopted in October 2011

In 2005, the Commission put forward proposals to broaden the Fund's scope of intervention and lower the intervention thresholds that trigger the release of funding. Since then, these proposals have been blocked by a majority of Member States. To move the situation forward, the Commission proposed, in its 'Communication on the Future of the European Union Solidarity Fund' of 6 October 2011, put forward as part of the legislative package on cohesion policy for 2014-2020, ways to improve the functioning of the Fund. The Commission is offering to withdraw its 2005 proposal, and to modify the way the Fund operates, without changing the provisions on eligible operations or the volume of permitted spending. The proposed modifications include:

- a clearer definition of the scope for intervention through the Solidarity Fund, both in general terms and in the event of slowly unfolding disasters;
- a new and simplified definition of 'regional disasters';
- the introduction of advance payments and quicker payment procedures;
- a simplification of the administrative procedures by combining decisions on the award of grants with the implementation agreement.

Role of the European Parliament

In its legislative resolution of 18 June 2006 (P6_TA(2006)0218), Parliament welcomed the Commission's stance and proposed the implementation of a new, expanded Solidarity Fund to cover the 2007-2013 period. The Council, however, has never issued a common position on the matter. Faced with this impasse, the Commission withdrew its proposal in 2011 and initiated a new debate on the basis of its Communication on the Solidarity Fund.

This communication is used as the basis for discussions in the current negotiations on the legislative package for the Union's Cohesion Policy for 2014-2020. On 25 July 2013 the Commission presented a legislative proposal to amend the Solidarity Fund Regulation, making a limited number of technical adjustments. This proposal is currently being considered by Parliament and the Council (2013/0248(COD).

In a resolution of 15 January 2013 on the European Union Solidarity Fund, implementation and application (P7_TA(2013)0003), Parliament highlighted the importance of the Fund as the main instrument allowing the EU to respond to serious disasters. At the same time, it criticised the unacceptably long time it takes to provide aid to affected regions or Member States, and called for these delays to be reduced by simplifying the procedures involved and allowing advance payments to be made. Parliament also called for a clearer and more precise definition of the concept of disasters, and of the scope of intervention, in order to reduce the scepticism felt by many Member States that are opposed to reform of this EU instrument.

→ Esther Kramer
11/2013

5.1.5. The European Spatial Development Perspective (ESDP)

The ESDP is a policy framework for the sectoral policies of the Member States that have a spatial impact. Its main aim is to help achieve balanced and sustainable development of Europe's territory.

Legal basis

Conclusions of Informal Council of EU Ministers responsible for Spatial Planning, Potsdam 10-11 May 1999.

Background

Spatial development policies are intended to ensure the balanced and sustainable development of the territory of the European Union (EU) in accordance with the basic objectives of Community policy: economic and social cohesion, knowledge-based economic competitiveness complying with the principles of sustainable development and the conservation of diverse natural and cultural resources.

Although it does not create further Community responsibilities as regards spatial planning, the European Spatial Development Perspective (ESDP) is a framework for policy guidance to improve cooperation among Community sectoral policies which have a significant impact in spatial terms. It was drawn up because it was found that the work of the Member States complemented each other best if directed towards common objectives for spatial development. It is an intergovernmental document which is for guidance and not binding. In accordance with the principle of subsidiarity, it is applied at the most appropriate level and as desired by the various parties engaged in spatial development.

History

The ESDP is the result of an intensive discussion process. The first proposals on spatial development date from the 1960s with the European Parliament's European Regional Planning Scheme. The Commission's documents 'Europe 2000' (COM(90) 544) and 'Europe 2000+' (COM(94) 354) gave a decisive boost to the preparation of a concerted policy. The Liège Council in 1993 was the starting point for preparation of the European Spatial Development Perspective as it is now. Since then, successive presidencies, assisted by the Spatial Development Committee comprising representatives of the Commission and national officials, drew up a number of drafts resulting in the final adoption of the ESDP in May 1999 at the Potsdam Informal Council of Ministers responsible for spatial planning.

Approach

The underlying idea in the ESDP is that economic growth and the convergence of certain economic indicators are not enough to achieve the goal of economic and social cohesion, so concerted action on spatial development is needed to correct the disparities detected. This must include: constant progress in economic integration, a growing role for local and regional authorities, the enlargement of the European Union and the development of links between the Member States and their neighbours.

The ESDP is designed facilitate cooperation in EU sectoral policies which have a significant impact on territorial development and is thus very much in line with the integrated approach that is the hallmark of European cohesion policy. Its aims remain very much core EU priorities as they are very closely linked to the targets of the EU 2020 strategy**.**

The EU is part of one of the largest and strongest economic areas in the world. Nevertheless, serious economic imbalances impede achievement of balanced and sustainable spatial development. The ESDP has selected four major areas which interact and exert considerable pressure on the spatial development of the European Union:

- **The development of urban areas**: almost 80% of the population of the EU now lives in towns. Urban centres are being restructured or emerging and networks of towns are forming and cooperating across frontiers. A new relationship between the town and the country is required to meet the challenges facing our territories.
- **The development of rural areas**: the rural areas of the European Union are often threatened by marginalisation, mainly because of the possible concatenation of constraints such as distance from the main towns, harsh climates, thinly-spread population and inadequate infrastructure or a lack of economic diversification because of the preponderance of agriculture.
- **Transport**: as the single market is completed, the constant growth in road and air traffic generates bottlenecks and pressure on the environment. The European Union is one of the main emitters of carbon dioxide in the world and the uneven distribution of infrastructure across its territory may result in substantial imbalances in terms of

economic investment and call into question the principles of territorial cohesion.

- **Natural and cultural heritage**: its diverse natural and cultural heritage is a great richness for Europe but it is threatened by some aspects of economic and social modernisation. The fauna, flora, water, soil and traditional landscapes have to cope with the imbalances generated by an over-exploited environment. With an eye to sustainable development, Europe's spatial planning policy seeks to reduce such practices and encourage the rational use of resources.

Objectives

A. Polycentric urban development and a new relationship between town and country

The EU, with its many cities is on of the most dynamic areas of integration in the world economy. In the light of future enlargements and the growing integration of the national economies into the single market and the world economy, the recommended model of polycentric development will make it possible to avoid excessive concentration of population and economic, political and financial power in a single dynamic area. The emergence of a relatively decentralised urban structure will enable the potential of all the regions of Europe to be developed and so also reduce regional disparities.

Country-based activity is not in itself a hindrance to competitive economic development and employment growth. Rediscovering multifunctionality in an agriculture aiming at quality, expanding activities relating to the new information technologies and exchanging experience on selected topics will help rural areas to make the most of their potential.

Furthermore, consideration of a new rural-urban partnership will aim at promoting an integrated approach at regional level and working together to solve insurmountable difficulties one by one.

B. Parity of access to infrastructure and knowledge

While transport and telecommunications infrastructure alone cannot achieve the objectives of economic and social cohesion, they are nevertheless important instruments.

The future extension of the trans-European networks should be based on a polycentric development model. Furthermore, all regions should enjoy balanced access to intercontinental centres (ports and airports).

The current increase in passenger and goods traffic poses a growing threat to the environment and the efficiency of transport systems. An appropriate spatial development policy (public transport in towns, intermodal systems, shared infrastructure) will allow an integrated approach to environmental pressures arising from greater mobility, traffic congestion and land use.

Access to knowledge and communications infrastructure is vital to a knowledge-based society, but it remains spatially unbalanced in the European Union and is concentrated where economic dynamism is greatest. Raising the level of education and training among the population of the regions in difficulty, principally through the dissemination of the new information technologies, will help counter these imbalances.

C. Wise management of the natural and cultural heritage

Spatial development can act as an engine for the conservation and sustainable use of biodiversity at local and regional level. Although strict protection measures are sometimes justified, it is often more sensible to integrate management of the endangered areas into planning strategies for larger areas.

The richness of Europe's cultural heritage and landscapes is an expression of its identity and is of general importance. Protecting them involves the definition of integrated strategies for their preservation and restoration and raising public awareness of the contribution which spatial planning policy can make to defending the heritage of future generations.

Achievements

Although the ESDP is not a binding document, the Member States want it to produce results in the long term. The desired cooperation among those engaged in spatial planning at various levels will help avoid contradictions or measures cancelling each other out. The Member States have already made a number of relevant recommendations:

A. At Community level

- Measures to encourage the collection and exchange of information include: the establishment of comparable indicators, studies on the major spatial trends in Europe, exchange of innovative experiences in the field of spatial planning.
- Establishment of a 'European Spatial Planning Observation Network' (ESPON) has begun. Specialist research institutes in the Member States would then support political cooperation through joint studies on spatial development.

B. Transnational cooperation

The Interreg III Community Initiative recommends that the Member States and the Commission

maintain project-oriented transnational cooperation for spatial development.

C. At Member State level

It is proposed that the Member States should take more account of the European dimension of spatial planning in their national policies.

D. Cross-border and interregional cooperation

Member States and regional and local authorities are encouraged to implement further cross-border projects.

Role of the European Parliament

In its reports, the European Parliament has frequently reiterated that the harmonious development of the whole territory of the EU must be founded on the application of a polycentric spatial development model, parity of access to infrastructure and knowledge and wise management of the natural and cultural heritage, as proposed by the ESDP. Furthermore, Parliament has also urged that priority should be given to combating distortions between the centre and the periphery and disparities at subnational level so as to strengthen cohesion. With this in mind, it has stressed the importance of cooperation and partnership between urban centres, suburban areas and the countryside, particularly those with specific disadvantages.

→ Esther Kramer

5.1.6. Common classification of territorial units for statistics (NUTS)

The European Union has established a common classification of territorial units for statistics, known as 'NUTS', in order to facilitate the collection, development and publication of harmonised regional statistics in the EU. The hierarchical system also serves socio-economic analyses of the regions and the framing of EU cohesion policies.

Legal basis

Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003, first amended by Commission Regulation (EC) No 105/2007. The NUTS have also been supplemented by the addition of new regional sub-divisions of the Member States that joined the EU in 2004 and 2007 (Commission Regulations (EC) No 1888/2005 and No 176/2008). The Commission adopted the second amendment to the Regulation (Commission Regulation (EC) No 31/2011), that entered into force on 1 January 2012.

Objectives

Regional statistics are a cornerstone of the EU statistical system. They are the basis for the definition of regional indicators. They were established at the beginning of the 1970s on the basis of negotiations between the national statistical bodies of the Member States and Eurostat, the statistical office of the European Communities.

The users of statistics have expressed a growing need for Community-wide harmonisation to provide them with access to comparable data for the whole of the European Union (EU). In order to facilitate the collection, transmission and publication of harmonised regional statistics, the EU has established the NUTS classification system, replacing the system established by Eurostat.

The single legal framework thus created by Regulation (EC) No 1059/2003 will ensure the stability of regional statistics over time. In addition, it establishes a common procedure for any future amendments.

Structure

The NUTS classification subdivides the economic territory of the Member States, which also includes their extra-regional territory. This is made up of the parts of the economic territory that cannot be considered part of a particular region: airspace, territorial waters and the continental plateau, territorial enclaves (embassies, consulates and military bases), deposits of resources located in international waters and exploited by units within the territory.

In order for regional statistics to be comparable, geographical areas must also be of comparable size in terms of population. Their political, administrative and institutional situation also needs to be specified. If necessary, non-administrative units must also reflect economic, social, historical, cultural, geographical or environmental circumstances.

The NUTS classification is hierarchical in that it subdivides each Member State into three levels: NUTS 1, NUTS 2 and NUTS 3. The second and third levels are subdivisions of the first and second levels. A Member State may decide to add further levels to the hierarchy by subdividing NUTS level 3.

Functioning

A. Definition

The definition of territorial units is based on the existing administrative units in the Member States. An administrative unit is a geographical area for which an administrative authority is empowered to take administrative or strategic decisions, in accordance with the judicial and institutional framework of the Member State.

The existing administrative units used for the requirements of the hierarchical NUTS classification are listed below.

1. NUTS 1: 'Gewesten/Régions' in Belgium; 'Länder' in Germany; 'Continente', 'Regiao dos Açores' and 'Regiao da Madeira' in Portugal; 'Scotland, Wales, Northern Ireland' and 'Government Office Regions of England' in the United Kingdom; 'statisztikai nagyrégiók' in Hungary; 'regiony' in Poland; 'uzemi' in the Czech Republic; 'economic regions' in Bulgaria.

2. NUTS 2: 'Provincies/Provinces' in Belgium; 'Regierungsbezirke' in Germany; 'Periferies' in Greece; 'Comunidades y ciudades autónomas' in Spain; 'Régions' in France; 'Regions' in Ireland; 'Regioni' in Italy; 'Provincies' in Netherlands; 'Länder' in Austria; 'tervezési-statisztikai régiók' in Hungary; 'voïvodies' in Poland; 'oblasti' in Slovakia; 'oblasti' in the Czech Republic; 'planning regions' in Bulgaria; 'developing regions' in Romania.

3. NUTS 3: 'arrondissements' in Belgium; 'Amtskommuner' in Denmark; 'Kreise/kreisfreie Städte' in Germany; 'nomoi' in Greece; 'provincias' in Spain; 'départements' en France; 'regional authority

regions' in Ireland; 'provincie' in Italy; 'län' in Sweden; 'maakunnat/landskapen' in Finland; 'maakond' in Estonia; 'megyék' and 'megyei jogu varasok' in Hungary; 'regioni' in Latvia; 'apskritys' in Lithuania; 'gzejjer' in Malta; 'podregiony' and 'powiat' in Poland; 'kraje' in Slovakia; 'statisticne regije' in Slovenia; 'kraje' in the Czech Republic; 'oblasti' in Bulgaria; 'judete' and 'municipe' in Romania.

B. Thresholds

The NUTS level for an administrative unit is determined on the basis of demographic thresholds:

Level	Minimum	Maximum
NUTS 1	3 million	7 million
NUTS 2	800 000	3 million
NUTS 3	150 000	800 000

If the population of a Member State as a whole is below the minimum threshold of a NUTS level, that Member State constitutes a NUTS territorial unit at that level.

If there is no administrative unit of a sufficient size in a Member State, the level is established by aggregating a sufficient number of smaller contiguous administrative units. These aggregated units are known as 'non-administrative units'.

Units LAU 1 and LAU 2 (local administrative units), sometimes incorrectly designated as NUTS 4 and NUTS 5, are the primary components of the NUTS regions. The possibility of extending NUTS to the LAU is an unfinished project that is still undecided, especially since some European countries are reorganising their previous administrative division to bring it more closely into line with current socio-economic circumstances and the planning and development needs of the regions concerned, particularly in regard to applications for subsidies and development aid granted by the European institutions, or to promote cooperation between the administrative bodies of the various regions of Europe.

C. Amendments

Amendments to the NUTS classification are to be adopted in the second half of the calendar year, not more frequently than every three years. Member States must inform the Commission of any change to administrative units or other changes that might affect the NUTS classification (for instance changes to the components that might have an impact on the limits of the NUTS 3 level).

Changes to small administrative units alter the NUTS classification, since they involve a population transfer of over 1% of the NUTS 3 territorial units in question.

For the non-administrative units of a Member State, the NUTS classification may be amended when the amendment reduces the standard deviation of the size in terms of population of all EU territorial units.

A first amendment of the regulation was done in 2006 (starting 1 January 2008), the second became effective on 1 January 2012 and is valid until 31 December 2014.

Role of the European Parliament

The European Parliament has stressed on a number of occasions that certain aspects, such as the treatment of smaller administrative units, require particular attention. The establishment of a NUTS level for smaller administrative units will allow the actual situation to be taken more fully into account and avoid disparities, particularly since regional entities that are very different in terms of population are classified at the same NUTS level.

In its Resolution T6-0492/2008 [1], the European Parliament called on the Commission to examine which NUTS level is most pertinent in order to identify the area in which an integrated policy for territorial development might best be implemented, including: population and labour catchment areas (towns, suburban areas and the adjacent rural areas) and territories which justify specific thematic approaches (such as mountain ranges, river basins, coastal areas, island regions and environmentally degraded areas).

→ Esther Kramer

[1] OJ C 15 E, 21.1.2010, p. 10.

5.1.7. Outermost regions (OR)

Specific measures support the development of the most remote regions of the European Union called the outermost regions: Guadeloupe, Guyana, Réunion, Martinique, Saint-Martin (France), the Azores and Madeira (Portugal) and the Canary Islands (Spain). The purpose of this support is to compensate for the constraints relating to the geographical remoteness of these regions.

Legal basis

Articles 349 and 355 of the Treaty on the Functioning of the European Union (TFEU).

Background

Some of the Member States of the European Union have part of their territories located in the regions of the globe most remote and distant from Europe. These regions, called outermost regions, suffer a number of difficulties related to their geographical characteristics, in particular: remoteness, insularity, small size, difficult topography and climate. They are economically dependent on a few products (often agricultural or natural resources). These issues limit their potential for future development.

Currently there are eight outermost regions:

- Four French overseas departments: Martinique, Guadeloupe, French Guyana and Réunion;
- One French overseas community: Saint-Martin (since 2009);
- Two Portuguese autonomous regions: Madeira and the Azores;
- One Spanish autonomous community: the Canary Islands.

In 2011, Mayotte become the fifth French overseas department. In July 2012, the European Council decided that as from 1 January 2014 Mayotte will become the ninth outermost region of the European Union.

Until the end of 2011, French overseas community Saint-Barthélemy was the ninth outermost region of the European Union. However, due to its remoteness from Metropolitan France, its specific legal status, close economic relations with partners from America and focus on tourism, France has requested to transform the status of Saint-Barthélemy into one of the EU overseas countries and territories (OCTs). That change came into force on 1 January 2012.

The OCTs are 26 countries and territories (including, until the end of 2013, Mayotte) — mainly small islands — outside mainland Europe, having constitutional ties with one of the following Member States: Denmark, France, the Netherlands and the United Kingdom.

Article 355 of the Lisbon Treaty allows the European Council to transform the status of French, Danish or Netherlands OCTs into the outermost regions without amending the treaty.

Objectives

Regardless of the large distance separating them from the European continent, outermost regions are an integral part of the European Union and the *acquis communautaire* is fully applicable there. However, due to their specific geographical location and related difficulties, the EU policies have had to be adjusted to their special situation.

These measures concern, in particular, areas such as customs and trade policies, fiscal policy, free zones, agricultural and fisheries policies, and conditions for supply of raw materials and essential consumer goods. Also, the rules related to state aids and conditions of access to Structural Funds and to horizontal Union programmes can be adapted to the needs of these regions.

Outermost regions can benefit from EU Cohesion Policy as well as agricultural funds and the fisheries fund. For the period 2007-2013, the EU has allocated for them around EUR 5.8 billion under the Structural Funds (4.5 billion in ERDF and 1.3 billion in ESF), EUR 1.2 billion under the European Agriculture Fund for Rural Development and EUR 101 million for the European Fisheries Fund.

To compensate the high costs related to their difficult geographical situation, outermost regions can access, under Cohesion Policy, an additional allocation of EUR 35 per person per year (EUR 979 million in total). This support is integrated in the ORs' operational programmes for assistance financed from the ERDF.

In the area of agriculture, ORs are supported by additional POSEI programmes (Programmes of Options Specifically Relating to the Remoteness and Insularity). Such programme exist for each of the three EU countries with outermost regions. Annually, the POSEI programmes provided an important financial support of around: EUR 278.4 million for France, EUR 268.4 million for Spain and EUR 106.2 million for Portugal. These programmes focus on two major measures:

- specific supply arrangements, aimed at mitigating the additional costs for the supply of essential products for human consumption, for processing and as agricultural inputs; and

- measures to support the local agricultural production.

Role of the European Parliament

Despite the fact that the decision on which regions can benefit from the status of the outermost regions is taken independently by the European Council, the European Parliament plays a very active role in the support for these regions.

Its influence is on an equal footing with that of the Council when it comes to the legislation concerning the most important EU policies like regional, agricultural, fishery or education policies. In its works, the European Parliament takes account of the specific situation of the outermost regions and supports initiatives aimed at increasing the development of these regions.

In 2008, the European Parliament adopted the resolution 'Strategy for the outermost regions: achievements and future prospects'. It acknowledges that the Structural Funds as well as the POSEI programmes play a major role in the development of the ORs. Parliament also notes that stronger partnerships for the ORs and adaptation of the EU policies to the specific needs of the ORs (as well as adaptation of the economic partnership agreements) are crucial for their development.

In 2012, the European Parliament adopted a resolution 'Role of Cohesion Policy in the outermost regions of the European Union in the context of EU 2020'. It considers that Cohesion Policy must remain one of the main instruments for reducing disparities in the European regions in general, and in the ORs in particular. The aim is to enable them to integrate into the EU internal market and assert themselves in their respective geographical areas. The resolution also emphasises the need for flexibility for the ORs regarding concentration on the three main thematic objectives envisaged in the new proposals for Structural Funds after 2014. Parliament considers that ORs should be classified among the least developed regions, regardless of their GDP, and that the co-financing rates for Structural Funds should be 85% for all instruments providing aid for outermost regions.

	Distance to the capital (km)	Surface area (km²)	Population	Per capita GDP (EU=100) [1]
European Union	—	4 406 051	503 633 601	100
France	—	632 833 [4]	65 327 724	108
Portugal	—	92 211	10 541 840	80
Spain	—	505 990	46 196 276	103
Azores	1 650	2 333	247 066	75
Canaries	1 700	7 447	2 114 215	87
Guadeloupe	6 750	1 710	450 844	66
French Guyana	7 075	84 000	239 450	53
Madeira	950	795	266 540	105
Martinique	6 850	1 080	390 371	72
Réunion	9 300	2 510	837 868	67
Saint-Martin [2]	6 700	53	36 979	61.9
Mayotte [3]	8 000	374	212 600	26.4

[1] Data for 2009.
[2] Source: INSEE.
[3] Will become OR in 2014. Source: INSEE.
[4] The surface of Metropolitan France is 543 965 km².

Source: Eurostat for 2012.

→ Marek Kołodziejski

5.1.8. National regional aid

The purpose of national regional aid is to support investment and job creation and encourage new business start-ups in Europe's most disadvantaged regions.

Legal basis

Articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU).

Objectives

As an exception to the rules applicable to general state aid, certain forms of aid may be regarded as being compatible with the common market in certain regions under certain conditions. The purpose of regional aid is to support investment and job creation and encourage new business start-ups. It is granted under a multisectoral aid scheme which forms an integral part of a regional development strategy.

Types of aid and eligibility

The conditions for granting investment aid to companies are detailed in the Guidelines on National Regional Aid for 2007-2013. They will be extended until 30 June 2014.

A. Scope

Activities in the following sectors are excluded from the scope of these guidelines:

- fisheries and the coal industry;
- agricultural products, especially those listed in Annex I TFEU;
- transport and shipbuilding;
- the steel industry and synthetic fibres.

B. Eligibility

1. Article 107(3)(a)

The guidelines stipulate that the eligibility conditions set out in Article 107(3)(a) are met if the per capita gross domestic product (GDP) of a NUTS[1] 2 region is less than 75% of the EU average. These conditions are also met in the case of:

- regional aid for the outermost regions;
- certain regions where per capita GDP now exceeds 75% of the EU-25 average as a result of statistical effect following the 2004 enlargement. These regions were granted 'assisted region' status, with an aid intensity of 30% up to 31 December 2010. The situation was reviewed in 2010. Eurostat statistics show that the regions of Hainaut, Kentriki Makedonia, Dytiki Makedonia and Basilicata retained that status, given that their per capita GDP from 2005 to 2007 was less than 75% of the EU-25 average. For investment projects entailing eligible expenditure of less than EUR 50 million, this ceiling was increased by 10% (20% for SMEs). However, the per capita GDP of all the other former assisted status beneficiary regions was more than 75% of the EU-25 average from 2005 to 2007. This means that for the period between 1 January 2011 and 31 December 2013 these regions will receive regional aid of between 15% and 30%, in accordance with the revised ceilings published in the Guidelines on National Regional Aid for 2007-2013 as amended in August 2010 (2010/C 222/02).

2. Article 107(3)(c)

As regional aid under the exception referred to in Article 107(3)(c) is intended for regions which are less disadvantaged than those referred to in Article 107(3)(a), the geographical scope and the maximum level of aid allowed must be strictly limited in line with the principle of geographical concentration. These regions are:

- regions in which per capita GDP was less than 75% of the EU-15 average in 1998 but which no longer meet this condition for the period 2007-2013;
- NUTS 2 regions with a population density lower than eight inhabitants per km^2 or NUTS 3 regions with fewer than 12 inhabitants per km^2;
- regions with a population of more than 100 000 inhabitants, which have either a per capita GDP lower than the EU-27 average or an unemployment rate higher than 115% of the national average;
- islands with fewer than 5 000 inhabitants;
- NUTS 3 regions which are adjacent to a region that is eligible for support under Article 107(3)(a) or which share a border with a non-EU country;
- regions which have a population of more than 50 000 and are in relatively serious decline or experiencing major structural change;
- regions below the NUTS 3 level with a population of more than 20 000 which suffer from very localised regional disparities and wish to make use of regional aid for SMEs.

[1] NUTS: Nomenclature of Territorial Units for Statistics.

C. Ceilings for regional investment aid — large companies

1. Article 107(3)(a)

The aid ceilings for large companies in regions falling within the scope of this article must not exceed:

- 30% for regions with a per capita GDP less than 75% of the EU-27 average;
- 30% for the outermost regions. These regions are eligible for an additional 20% if their per capita GDP is less than 75% of the EU-27 average, and an additional 10% in other cases;
- 30% for 'statistical effect' regions until 1 January 2011;
- 40% for regions with a per capita GDP less than 60% of the EU-27 average;
- 50% for regions with a per capita GDP less than 45% of the EU-27 average.

2. Article 107(3)(c)

The aid ceilings for large companies in regions falling within the scope of this article must not exceed:

- 15% as a general rule;
- 20% or 30% for 'statistical effect' regions as of 1 January 2011;
- 10% for regions with a per capita GDP that is more than 100% of the EU-27 average and an unemployment rate lower than the EU-27 average measured at NUTS 3 level.

D. Ceilings for regional investment aid

Aid ceilings may be increased by 20% for aid granted to small enterprises and by 10% for aid granted to medium-sized enterprises. For a 'large investment project' entailing eligible expenditure of more than EUR 50 million, the aid ceiling is 50% of the regional ceiling for investments of between EUR 50 million and EUR 100 million. The aid ceiling is 34% of the regional ceiling for investments of over EUR 100 million. Member States are required to notify the Commission of any aid awarded to an investment project entailing expenditure of more than EUR 100 million if the aid exceeds the maximum allowable amount.

E. Regional operating aid

Although operating aid is normally prohibited, it may exceptionally be granted on a temporary basis in regions eligible for aid under Article 107(3)(a). It must be justified in terms of its contribution to regional development and its nature, and its level must be proportional to the handicaps it seeks to alleviate.

In order to encourage the start-up and early development of small enterprises in the regions which qualify for national regional aid, these guidelines authorise aid of up to:

- EUR 2 million per small enterprise in regions eligible for aid under Article 107(3)(a). The aid ceiling is 35% of eligible expenses incurred in the first three years after the creation of the enterprise and 25% in the two years thereafter;
- EUR 1 million per small enterprise in regions eligible for aid under Article 107(3)(c). The aid ceiling is 25% of eligible expenses incurred in the first three years after the creation of the enterprise and 15% in the two years thereafter.

The annual amounts of aid awarded must not exceed 33% of the above-mentioned total amounts of aid for any one enterprise.

In the context of a larger modernisation of the state aid framework, the Commission is currently preparing a reform of the regional state aid rules. The new scheme is expected to be brought forward in June or July 2013. Key objectives of the reform are the promotion of growth, the reduction of red tape and better enforcement of the rules.

In February 2013 the European Council called on the Commission to quickly adopt revised Regional Aid Guidelines, with a view in particular to accommodating the situation of regions bordering convergence regions. New guidelines for the years 2014-2020 were adopted by the Commission on 19 June 2013 and will enter into force on 1 July 2014.

Role of the European Parliament

The European Parliament has several times expressed its concern regarding the consistency between economic, social and territorial cohesion on the one hand, and competition rules on the other. In its resolution of 15 November 2011 on reform of the EU state aid rules on Services of General Economic Interest (P7_TA(2011)0494), Parliament pointed out that substantial investment is needed to upgrade infrastructure, especially in the regions where it is most lacking and in particular in the areas of energy, telecommunications and public transport. Parliament has also called for more information to be provided to local and regional authorities with regard to the state aid rules in force.

→ Esther Kramer

5.1.9. Northern Ireland Peace programme

The purpose of the EU Structural Fund programme PEACE III (Programme for Peace and Reconciliation in Northern Ireland and the Border Region of Ireland) is to promote economic and social progress in Northern Ireland. It also encourages dialogue and reconciliation between nationalists and unionists and helps consolidate the peace process.

Legal basis

Council Regulation (EC) No 1260/1999 of 21 June 1999.

Background

Northern Ireland has been receiving financial support from the EU since the end of the 1980s, starting with the 1989-1993 Community Support Framework for Northern Ireland.

Since 1989, the EU has become one of the main contributors to the International Fund for Ireland. This fund is an international organisation set up by an agreement between the governments of the UK and Ireland in 1986.

The PEACE I programme (1995-1999) was launched in July 1995. In March 1999, the European Council decided that the special programme should continue until 2004. In January 2005, this PEACE II programme was extended until 2006 and it was given additional funding.

Since 2007, the current operational programme is PEACE III (2007-2013), carrying on some of the key aspects of the previous programmes, with a new strategic approach.

Objectives and priorities

The PEACE III programme has two main strands:

- reconciliation of the different communities involved in the conflict in Northern Ireland, and
- economic and social development.

The programme addresses the specific problems caused by the conflict in order to create a peaceful and stable society. To this end it develops around five thematic priorities:

- to build positive relations at the local level;
- to acknowledge the past and use new opportunities;
- to create shared public spaces, especially at local level;
- to develop key institutional capacity for a shared society;
- cross-border cooperation (economic, social and cultural).

Financing

For the 2000-2006 period, total expenditure part-financed under PEACE II was EUR 796 million. The Structural Fund contribution to this was EUR 597 million, of which EUR 467 million went to Northern Ireland (around 80% of the total) and EUR 130 million to the border counties of Ireland. About 15% of the total programme budget was earmarked for cross-border projects. The extension of PEACE II to 2006 brought extra funding of EUR 144 million for 2005-2006.

For the current planning period 2007-2013, Northern Ireland has six programmes with a financial contribution of EUR 1.1 billion, including the continued PEACE programme with EUR 225 million from the EU and national contributions of EUR 108 million.

Whereas in the beginning, the PEACE programme was financed by all Structural Funds, PEACE II was run only under ERDF and ESF instruments. The current PEACE III solely depends on EU funding under ERDF.

The conclusions of the European Council of 8 February 2013 foresee EUR 150 million for the PEACE programme for the years 2014-2020.

Eligibility and management

The eligible area for the PEACE III programme is Northern Ireland and the Border Region of Ireland (the Border Region comprises counties Louth, Monaghan, Cavan, Leitrim, Sligo and Donegal).

Operations and projects in the PEACE III programme are delivered by lead partners which are public bodies or their equivalent.

The beneficiaries of the projects run under the programme come from the sectors, fields, groups and communities hardest hit by the conflict. Projects are, moreover, expected to prioritise a cross-community approach.

A new strategic approach to achieve maximum impact from the funding was introduced in 2007. Local councils in Northern Ireland have formed eight clusters and play a much more strategic part in the delivery of PEACE III. The six County Councils in the Border Region of Ireland have the same role. Working in partnership with communities, they have developed local 'peace and reconciliation action plans'. Community and voluntary groups can

access funding by contacting their local authority for information on their cluster's or County Council's plan, which may contain a small grants programme and opportunities to tender for the delivery of projects.

Overall management of the programme is handled by the 'Special EU Programmes Body'. This body is supervised by a monitoring committee whose members represent the different interest groups in Northern Ireland and the border regions of Ireland.

For the most part, financing is administered by local partnerships and specialist non-governmental organisations in each sector. These structures also involve local councillors, union and employer representatives, the non-profit sector, representatives of the public interest and other groups with an interest in the local administration of the funds.

Achievements

PEACE has provided opportunities for participation and dialogue and brought decision-making and responsibility for community development closer to the people. The PEACE programme has funded a wide range of projects, including childcare and after-school projects, enterprise parks and small business enterprises, infrastructure and training projects, projects in support of immigrants and projects celebrating the diverse ethnic mixture of society as a whole. Many of the projects funded under PEACE were established to serve local requirements. They have built confidence and capability and helped foster better visions for the future. The range of projects funded under PEACE helped foster an environment where political agreements had a reasonable chance of succeeding.

Ex-prisoner projects, funded under PEACE, formed part of local networks of voluntary and public organisations, including regeneration partnerships, business incubation centres and public forums. Some projects worked directly with groups they once opposed, including traditionally hostile political groups or state agencies that the groups would not have been in contact with previously.

Role of the European Parliament

In its legislative resolution P7_TA(2010)0202 of 15 June 2010 on the proposal for a regulation of the European Parliament and of the Council concerning European Union financial contributions to the International Fund for Ireland (2007-2010), the Parliament underlined that the IFI should complement the activities financed by the Structural Funds, and especially those of the PEACE III programme operating in Northern Ireland and the border counties of Ireland. Parliament calls formally on the Commission to ensure this coordination.

→ Esther Kramer

5.1.10. European Grouping of Territorial Cooperation (EGTC)

European Groupings of Territorial Cooperation (EGTCs) were set up to facilitate cross-border, trans-national and inter-regional cooperation between Member States and their regional and local authorities. EGTCs enable these partners to implement joint projects, exchange experience and improve coordination of spatial planning.

Legal basis

Regulation (EC) No 1082/2006, based on Article 175 of the Treaty on the Functioning of the European Union (TFEU).

Background

The objective of a European Grouping of Territorial Cooperation is to facilitate and promote cross-border, trans-national and inter-regional cooperation between Member States or their regional and local authorities. An EGTC may be given the job of implementing programmes co-financed by the European Union or other cross-border cooperation projects that may or may not have EU funding. Examples of such activities include:

- running cross-border transport facilities or hospitals;
- implementing or managing cross-border development projects;
- exchanging experience and good practices;
- managing joint cross-border programmes that can finance projects of common interest for EGTC partners.

There is currently one EGTC (the European Urban Knowledge Network) whose members do not share a geographical border. It is a platform for exchanging ideas and experience in the field of urban development.

The creation of an EGTC brings its members many advantages:

- it allows its members to create a single legal entity and use a single set of rules to implement joint initiatives in two or more Member States;
- it allows stakeholders in two or more Member States to cooperate on joint initiatives without needing to sign an international agreement requiring ratification by the national parliaments;
- it allows Member States to respond together and directly to calls for proposals issued under EU territorial programmes and to act as a single Managing Authority for them.

Structure

An EGTC can be created by partners based in at least two Member States and belonging to one or more of the following categories:

- Member States;
- regional authorities;
- local authorities;
- bodies governed by public law;
- associations consisting of bodies belonging to one or more of these categories.

EGTCs act on behalf of their members, who adopt their statutes by means of special conventions. These conventions describe the organisation and activities of the EGTCs. The scope of these activities is limited to the field of cooperation chosen by the members. Furthermore, the powers of EGTCs are limited by the respective powers of their members. Public authority powers, e.g. policy and regulatory powers, cannot be transferred to an EGTC.

The law to be applied for interpreting and enforcing the convention is that of the Member State in which the EGTC has its registered office. Members can decide if their EGTC should be a separate legal entity, or whether its tasks should be delegated to one of the members.

The members adopt the EGTC's annual budget estimates, in respect of which an annual activity report is produced and certified by independent experts. Members are financially liable for any debts in proportion to their contribution to the budget.

Achievements

To date, 37 European Groupings of Territorial Cooperation have been set up in 18 EU Member States. This number is still growing. Seven new EGTCs were created in 2011 and six in 2012. The EGTC Register is managed by the Committee of the Regions.

Role of the European Parliament

Regulation (EC) No 1082/2006 on EGTCs took on board Parliament's requests concerning a clear definition of territorial cooperation, the need to spell out the financial liability of Member States, as well as the jurisdiction and the rules governing publication

and/or registration of an EGTC's statutes. In addition, the Council accepted Parliament's suggestion that an EGTC should be governed by the law of the Member State in which the EGTC has its registered office.

Parliament and the Council are currently discussing a new Commission proposal amending the existing regulations on EGTCs. As legislation relating to cohesion policy and the Structural Funds is prepared under the ordinary legislative procedure, Parliament and the Council have an equal say on it.

Parliament keeps a close eye on the effectiveness of the establishment of new EGTCs. In its resolution of 21 October 2008 on governance and partnership at national and regional levels and a basis for projects in the sphere of regional policy (P6_TA(2008)0492) [1], Parliament also called on those Member States which had not yet amended their national law to make provision for the establishment of EGTCs to do so as soon as possible.

In October 2011 the Commission published the legislative proposal on the Union's future cohesion policy (COM(2011) 0615). Parliament is actively involved in negotiations with the Council and the Commission. The regulation is due to be adopted before the end of 2013.

→ Marek Kołodziejski

[1] OJ C 15 E, 21.1.2010, p. 10.

5.2. Common agriculture policy (CAP)

5.2.1. The Common Agricultural Policy (CAP) and the Treaty

Following the entry into force of the Treaty of Rome, Member States' agricultural policies were replaced by intervention mechanisms at Community level. The foundations of the common agricultural policy have remained unchanged since the Treaty of Rome, with the exception of rules relating to the decision-making procedure. The Treaty of Lisbon recognised codecision as the 'ordinary legislative procedure' for the CAP, replacing the consultation procedure.

Legal basis

Articles 38 to 44 TFEU.

Reasons for the CAP

When the Treaty of Rome established the Common Market in 1958, agriculture in the six founding Member States was strongly affected by state intervention. For agricultural products to be included in the free movement of goods while maintaining state intervention in the agricultural sector, national intervention mechanisms which were incompatible with the common market had to be removed and transferred to Community level; this is the fundamental reason for the creation of the common agricultural policy (CAP).

In addition, intervention in agriculture was based on the principle, widespread at the time, of the specific nature of this sector, with its dependence on climate and geography and systemic imbalances between supply and demand leading to strong fluctuations in prices and income.

Food demand is inelastic, in other words, it reacts little to price fluctuations. Moreover, the length of production cycles and fixed inputs make the global supply of farming produce very rigid. On this basis, an abundant supply will bring down prices, whereas a reduced supply will force them up. All of these factors create permanent market instability. In this situation, governments have always tended to regulate agricultural markets and to support farming income, a tendency inherited by the CAP.

Although farming today accounts for only a small part of developed economies, even in the EU (*5.3.10), State intervention has increased of late with agro-rural policies which have added new dimensions, such as sustainable development, land and countryside management, diversification and renewal of the rural economy and the production of energy and biomaterials, to support the traditional function of the primary activity, namely food production. Support for public assets or non-market aspects of agriculture — in other words, those not rewarded by the market — has thus become a key strand of today's agricultural and rural policies, including the CAP.

Objectives

Article 39 of the TFEU sets out the specific 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.

These objectives are both economic [Article 39(a), (c) and (d)] and social [Article 39(b) and (e)] and are intended to safeguard the interests of producers and consumers. In practice, the objectives of the CAP have remained unchanged since the Treaty of Rome, worded in such a way as to prove extremely flexible and able to embrace the countless reforms witnessed since the 1980s (*5.3.2). It is noteworthy that, as evidenced by existing case law, the objectives of the CAP cannot all be fully achieved at the same time. The Community legislator therefore has considerable room for manoeuvre when it comes to choosing the instruments and scope of the reforms, depending on the evolution of the markets and the priorities set by the Community institutions at any given time.

Alongside the specific objectives of the CAP set out in Article 39 TFEU, several provisions of the Treaty

have added other objectives applicable to all policies and actions of the European Union. In this respect, promoting a high level of employment (Article 9), environmental protection to promote sustainable development (Article 11), consumer protection (Article 12), animal welfare requirements (Article 13), public health (Article 168(1)) and economic, social and territorial cohesion (Article 175) are becoming objectives of the CAP in their own right. Furthermore, at a time of market liberalisation and globalisation, Article 207 sets out the principles of the common commercial policy applicable to trade in agricultural products. Finally, the principles of competition policy make an exception for the production of and trade in agricultural products, in view of the unique structure of the primary sector (Article 42).

The agricultural decision-making process

Article 43(2), third subparagraph of the Treaty of Rome set out the procedure for the preparation and implementation of the CAP, based on a proposal of the Commission, the opinion of the European Parliament and, if necessary, the European Economic and Social Committee and the decision of the Council by qualified majority vote. This was a simple consultation procedure for the European Parliament which had not been modified until 2010. The Treaty of Lisbon (Article 42, first paragraph and Article 43(2)) then recognised codecision as the 'ordinary legislative procedure' of the CAP (*1.4.1), replacing the consultation procedure, and this consolidated the European Parliament's role as a true co-legislator for agriculture.

Nevertheless, the new Treaty raises major problems of interpretation to the extent that exceptions to the ordinary procedure are introduced in favour of the Council. Indeed, the second paragraph of Article 42, in the context of competition rules, provides that 'the Council, on a proposal from the Commission, may authorise the granting of aid: (a) for the protection of enterprises handicapped by structural or natural conditions; (b) within the framework of economic development programmes'. In addition, Article 43(3) stipulates that 'the Council, on a proposal from the Commission, shall adopt measures on fixing prices, levies, aid and quantitative limitations'. In the absence of a clear delimitation of the legislative competences of the European Parliament and the Council on agriculture, legal and political problems arose during the negotiations on the new CAP post-2013 (*5.3.9), even if case law eventually establishes a restrictive interpretation of the exceptions. The European Parliament has always rejected general implementing reservations in favour of the Council, which could qualify, indeed effectively invalidate, the codecision powers acquired under the new Treaty, particularly in the context of the fundamental reforms of the CAP in which the fixing of aid levels and prices would play a key role. The Council, however, has rejected any restrictions on the powers conferred by Article 43(3) under the new single CMO. In view of this, Parliament was forced to accept the exception in order to prevent the adoption of the new CAP from being blocked (resolution P7_TA(2013)0492 of 20 November 2013). Furthermore, a final declaration of the Council acknowledges that the agreement reached is without prejudice to subsequent CAP reforms and does not preclude possible legal steps. It can therefore be anticipated that the inter institutional debate on the scope of Article 43(3) will continue within the Court of Justice of the European Union.

In addition, there have always been other bodies which have also been involved in the implementation of the CAP as part of the 'comitology' procedure. Since 1961, when the first common organisations of the market were established, several committees have been set up. The Commission had proposed to give itself wide decision-making powers for running the CMOs. 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.

The Treaty of Lisbon introduced a distinction between 'delegated acts' and 'implementing acts' (*1.3.8). The adoption of delegated acts will henceforth be governed by the relevant basic legislative act, whereas the adoption of implementing acts will be subject to the new examination or advisory procedures under Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 (OJ L 55, 28.2.2011). The majority of the Commission's draft agricultural implementing acts will be subject to examination procedures during which the European Parliament and the Council will have a 'right of scrutiny'.

As part of the consultation procedures, professional organisations in the EU, through the Committee of Professional Agricultural Organisations (COPA) and the General Committee for Agricultural Cooperation in the European Union (COGECA), will still be indirectly involved in the European decision-making process.

The CAP, competence shared between the Union and the Member States

A general classification of competences into three categories has been incorporated into the TFEU (Title I) (*1.1.5). These are exclusive competences, shared competences and competences to carry out actions to coordinate, support or supplement the actions of the Member States. In this context, Article 4(2)(d) recognises competence shared between the Union and the Member States in the field of

agriculture, contrary to general opinion as set out in the doctrine and by the legal services of the Commission [SEC(1992) 1990, 27.10.1992], which have hitherto regarded policy on markets (first pillar of the CAP) as an exclusive competence of the Union.

New Article 4(2)(d) of the TFEU will have effects on legislative work in the field of agriculture to the extent that the European institutions will apply the subsidiarity principle (*1.2.2) in areas which do not fall within the exclusive competence of the Union (Article 5(3) and Article 12 of the EU Treaty). In this connection it should be noted that the national parliaments will be able to send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion regarding the compliance of a draft legislative act on agriculture with the subsidiarity principle. In addition, the 'enhanced cooperation system' established by Article 20 of the EU Treaty (*1.1.5) will from now on be applicable to the CAP. On this point, some Member States (here, a minimum of nine) may choose to enter into supplementary agricultural commitments to each other, in so far as the CAP is increasingly flexible regarding the application of common mechanisms (*5.3.3).

Role of the European Parliament

Having no decision-making powers, Parliament has exercised a strong influence over the CAP since the Treaty of Rome by using non-binding methods like use of own initiative reports and resolutions. Since the European Council declaration in 1997 in favour of a European agricultural model, the European Parliament has on several occasions demonstrated its commitment to a multifunctional European agriculture (and food) model, spread across the entire territory of the enlarged Union and compatible with the liberalisation and globalisation of the markets. This was evident in the 2003 CAP reform (resolutions of 30 May 2002 and 7 November 2002) and multilateral negotiations on agriculture within the WTO (the Doha round), which are still ongoing (resolutions of 13 March 2001, 25 October 2001 and 13 December 2001 and of 12 February 2003) (*5.3.8).

In this context, the European Parliament has also indicated that it is in favour of the integration of new objectives within the CAP with a view to responding to the new challenges of agriculture, such as product quality, public health, sustainable development, economic, social and territorial cohesion, environmental protection and tackling climate change These principles have recently been confirmed by the resolutions of 8 July 2010 and 23 June 2011 on the future of the CAP after 2013. This new reform of the CAP (*5.3.9), which began in 2010 and was completed in November 2013, has enabled the European Parliament to play its role as full co-legislator in the area of agriculture, on the basis of the institutional framework established by the Treaty of Lisbon (resolutions P7_TA(2013)0490 to 0493).

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5.2.2. Financing of the CAP

For many years the CAP was financed from a single fund, the EAGGF (European Agricultural Guidance and Guarantee Fund), which was replaced by the EAGF and the EAFRD on 1 January 2007.

Legal basis

Article 40(3) TFEU.

Regulations (EC) Nos 1290/2005 (OJ L 209, 11.8.2005), 1698/2005 (OJ L 277, 21.10.2005) and Regulation (EC) No 473/2009 (OJ L 144, 9.6.2009).

Development of the agricultural financial framework

Since January 1962, the CAP has been implemented through the European Agricultural Guidance and Guarantee Fund (EAGGF).

In 1964 this was split into two sections: the Guarantee Section and the Guidance Section, which were governed by different rules.

- The Guarantee Section, which is by far the larger of the two, had the purpose of funding expenditure resulting from application of the market and price policy. That expenditure has always been characterised by its unpredictability (in that it is affected by numerous variables: the vagaries of climate and animal and plant health; changing demand; international prices, etc.). During the financial year, therefore, the funding available was adjusted to bring it into line with actual requirements, by means of supplementary or amending budgets. As a general rule, the EAGGF Guarantee Section financed market interventions in full.
- The Guidance Section helped to finance operations involving the structural policy and the development of rural areas. Unlike the EAGGF Guarantee Section, the EAGGF Guidance Section was based on the principle of co-financing.

Since 1988, in an effort to curb the increase in CAP spending, the funds available have been subject to strict budgetary discipline following the introduction of a multiannual agricultural guideline (Decision 88/377/EC, supplemented by the Interinstitutional Agreement of 22 June 1988, as part of the Delors I Package) (*1.5.2 and *5.2.3).

Following the Treaty of Maastricht and the Edinburgh European Council (December 1992), the financial framework was overhauled (Delors Package II). The Interinstitutional Agreement of 1988 was superseded by a new Agreement on budgetary discipline for the period 1993-1999 (OJ C 331, 7.12.1993). It retained the principles first laid down in 1988, whilst at the same time improving the European Parliament's position on 'compulsory' expenditure under the EAGGF Guarantee Section. Since then, Parliament has had a right of scrutiny guaranteed by a conciliation procedure conducted prior to the adoption of the budget. For its part, Decision 88/377/EC was superseded by Decision 94/729/EC (OJ L 293, 12.11.1994), which confirmed the principle whereby financial discipline would apply to all common policies. Agenda 2000 (*5.2.3) extended the agricultural guideline under the financial perspective for the period 2000-2006 (OJ C 172, 18.6.1999). In parallel, the financing of the CAP was laid down in new Regulation (EC) No 1258/1999 (OJ L 160, 26 .6.1999).

The multiannual financial framework for 2007/2013 was approved in 2006 (OJ C 139, 14.6.2006) (*1.5.2). It includes the heading 'Preservation and management of natural resources', which covers the budget for agriculture and rural development, the environment and fisheries (EUR 413 billion at current prices, representing 42.3% of total commitment appropriations for the EU-27). Within this, the regulation of agricultural markets and direct payments represents 33.8% of total planned commitments, in other words EUR 330 billion at current prices. In addition, rural development measures represent 8% thereof, namely EUR 78 billion.

The preparatory discussions concerning the multiannual financial framework for the period 2007-2013 also included a review of the provisions on the funding of the CAP.

- Regulation (EC) No 1290/2005 (OJ L 209, 11.8.2005) split the EAGGF into two separate funds, the European Agricultural Guarantee Fund (EAGF), to finance market measures and revenue support, and the European Agricultural Fund for Rural Development (EAFRD). The EAGF, which has an annual budget in the region of EUR 47 billion at current prices for the period 2007-2013, finances, or occasionally cofinances, with the Member States the following: single CMO expenditure (*5.2.4); direct support to farms (*5.2.5); the Union's contribution to initiatives to provide information about and to promote agricultural products on the internal market and in third countries; and the Community share of the cost of veterinary measures and the collection and use of genetic resources, among other items of *ad hoc* expenditure.
- Regulation (EC) No 1290/2005 was accompanied by Regulation (EC) No 1698/2005 (OJ L 277,

21.10.2005) on support for rural development through the EAFRD, to take account of the financial and programming characteristics of the second pillar of the CAP (*5.2.6). The EAFRD has taken over part of the EAGGF Guarantee Section budget (in respect of support measures), the EAFRD Guidance Section and the LEADER initiative (which plays an important role in rural development by fostering local strategies based on partnership and experience-sharing networks). The EAFRD co-finances measures to improve competitiveness in the agricultural and forestry sectors, agri-environmental measures, and measures to improve the quality of life in rural areas and encourage the diversification of the rural economy and local capacity-building (*5.2.6).

The Guarantee Section had always been classified as compulsory expenditure under the Community budget, i.e. expenditure resulting directly from the Treaty or acts adopted pursuant thereto. Conversely, all EAGGF Guidance Section expenditure was classified as non-compulsory. Until the entry into force of the Treaty of Lisbon (*5.2.1), the Council, the senior arm of the EU's budgetary authority, traditionally had the last word on compulsory expenditure under the annual budget procedure. The European Parliament held decision-making power in respect of non-compulsory expenditure, subject to a maximum rate of increase calculated by the Commission on the basis of economic parameters. On the basis of the new TFEU (*5.2.1), this distinction has been done away with and the two arms of the budgetary authority (the European Parliament and the Council) now take joint decisions on all agricultural expenditure.

As regards 2014-2020, on 19 November 2013 the European Parliament adopted the regulation on the new multiannual financial framework and the interinstitutional agreement on sound financial management (resolutions P7_TA(2013)455 and 456). The new multiannual financial framework establishes a total budget for the heading 'Preservation and management of natural resources' (including the CAP) of EUR 373.17 billion, at 2011 prices, accounting for 38.9% of total commitment appropriations for the EU-28 (*5.2.10, table I, line A). The regulation of agricultural markets and direct payments accounts for 28.9% of total planned commitments, in other words EUR 277.8 billion at constant prices (*5.2.10, table I, line B). In addition, rural development measures account for 8.8% of the total, or EUR 84.9 billion (*5.2.10, table I, line C). Accordingly, the planned agricultural and rural development budget for 2020 stands at EUR 49 billion, equivalent to 34.9% of the total, below the percentage allocated to the CAP at the start of the period covered by the financial perspective (40.5% in 2014) (*5.2.10, table I, line D).

The changing nature of agricultural and rural expenditure

A. General overview

The share of the European Union budget accounted for by agricultural spending has been steadily declining in recent years. Whereas the CAP represented 66% of the Community budget in the early 1980s, it accounts for just 37.8% of it in 2014-2020 (*5.2.10, table I, line D). Since 1992, the date of the first significant overhaul of the CAP and the explosion in the volume of direct aid, agricultural expenditure has remained stable in real terms, apart from in 1996 and 1997 (as a result of the BSE crisis and the accession of three new Member States). The budgetary cost of the CAP when set against EU gross national income (GNI) has therefore decreased from 0.54% in 1990 to a forecast 0.34% in 2020 (*5.2.10, table I, line D).

B. Allocation by expenditure category and by sector

91% of expenditure under the first pillar (EUR 43.8 billion in 2011) (*5.2.10, table V, column 1) consists of direct aid to farmers (EUR 40.1 billion). The sharp increase in direct aid since 1992 has resulted in a corresponding fall in other EAGGF Guarantee Section/EAGF expenditure: export subsidies account for just 0.4% (EUR 179 million) of the total budget and the cost of other interventions (storage, measures to restructure the sugar industry, promotion and information actions, veterinary and phytosanitary measures) amounts to just EUR 3.8 billion (8.6% of the total).

In the past the three sectors which received most funding under the EAGGF Guarantee Section were arable crops (cereals, oilseeds and protein crops), beef and milk products. After the 2003 reform (*5.2.3 and *5.2.5) and the resultant decoupling of aid in relation to production, the top expenditure item was payments to farms (82.0% of the EAGF total in 2011), followed by direct aid linked to production (9.0%) (*5.2.4).

C. Distribution by country and by type of farm

As shown in Table V, column 1, for the financial year 2011 (*5.2.10), France is the largest EAGF beneficiary (20%), followed by Spain (13.6%), Germany (12.6%) and Italy (11%). As far as the EAFRD is concerned, Poland is the top beneficiary (14.9%), followed by Germany (9.8%), Spain (8.3%) and Romania (7.6%). The little influence new Member States (EU-12) have had on the EAGF should be noted (14.2%) given the gradual alignment process of direct payments which is in progress. However, the new Member States do already receive a significant share of EAFRD funding (39.2%), in accordance with the priority given to

the modernisation of agricultural facilities and the development of rural areas in these countries.

Table V, column 2 (*5.2.10) also illustrates the uneven distribution of CAP direct aid at farm level: 80.3% of CAP beneficiaries in the EU-27 received less than EUR 5 000 in annual payments in 2011, giving a total amount equivalent to 15.5% of the total direct aid paid out under the EAGF. In contrast, a very small percentage of farms (124 710 of a total of 7.6 million, i.e. 1.63%) each receives more than EUR 50 000, giving a total amount equivalent to EUR 12.5 billion (31% of the total direct aid paid out in 2011). Countries with a higher percentage of large farms (or firms) which receive money under the CAP are Denmark, France, the Czech Republic, the United Kingdom and Slovakia. This state of affairs obviously calls into question the legitimacy of CAP aid when set against the values espoused by European society as a whole.

Role of the European Parliament

The Interinstitutional Agreements of 1988, 1993, 1999 and 2006 have given the European Parliament a bigger say on compulsory expenditure. In the context of a consultation procedure, Parliament outlines its position on the total volume of EAGGF appropriations and how those appropriations are to be allocated by product and activity, although the final decision rests with the Council. Parliament's main contributions to the operation of the EAGGF include its firm support for the amendment of Regulation (EC) No 1258/1999 on the funding of the CAP and rural development as a way of preventing the disputes which arise when dialogue is conducted exclusively between the Member States' national departments responsible and those of the regions concerned (T6-0193/2005 of 26 May 2005, OJ C 117 E, 18.5.2006).

The lengthy interinstitutional negotiations on the multiannual financial framework for 2014-2020 resulted in a political agreement at the end of June 2013. Under the pressure of the consent needed from Parliament in plenary session, Parliament was able to amend the European Council's agreement in principle of 7-8 February 2013. Among the changes secured are: increased flexibility in the management of budget headings, the reinforcement of the Budget Unit, the immediate use by Member States of outstanding appropriations from the 2013 budget and the improvement of appropriations allocated under Heading 1 (competitiveness) (resolutions P7_TA(2013)0455 and 0456). The Committee on Agriculture, meanwhile, has — since the last trialogues held in September 2013 — improved some of the financial aspects of the new system of direct payments and the new rural development policy (*5.2.9). These changes enabled it, on 20 November 2013, to give the go-ahead to all the regulatory texts relating to the new CAP (resolutions P7_TA(2013)0490 to 0493).

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5.2.3. CAP instruments and reforms made to them

The common agricultural policy has undergone four major reforms, the most recent of which were in 2003 (mid-term review) and 2009 (the 'Health Check').

Legal basis

Articles 38 to 44 of the Treaty on the Functioning of the European Union (TFEU).

Objectives

The successive CAP reforms have adapted the mechanism it uses in order to better attain the stated aims of the Treaty (*5.2.1). The most recent reforms instigated following the mid-term review in 2003 and the 'Health Check' in 2009, as well as the first documents produced by the Commission on the next reform in 2013, set the CAP new objectives, in the following areas: economic (ensuring food security by means of stable agricultural production, increasing competitiveness and the distribution of value across the food chain); environmental (sustainable use of natural resources and the fight against climate change); and territorial development (ensuring economic and social diversity in rural areas).

Achievements

A. First steps: limited success in combating surpluses

Ever since it was first introduced in 1962, the CAP has fulfilled its objectives by ensuring secure food supplies. Then, with its policy of support prices that were very high compared with the world market prices and an unlimited buying guarantee, the CAP started to produce more and more surpluses. In the early 1980s, priority was given to closing the widening gap between supply and demand and controlling agricultural expenditure.

B. The 1992 reform: the great turning point

In 1992, owing to the persistence of surpluses and the burden on the budget, the Council adopted a new reform. This brought about radical changes in the CAP, replacing a system of protection through prices with a system of compensatory income support.

Loss in income resulting from a significant reduction in guaranteed prices for arable crops was compensated by direct aid per hectare, conditional (except for small producers) on a compulsory set-aside of 15%. In livestock production, the price of beef was compensated by a headage payment, subject to a maximum number of livestock per hectare of forage area, to encourage extensive farming. These compensatory measures were entered in the WTO's 'blue box' (*5.2.7).

Lastly, the market-related measures were supplemented by structural accompanying measures: an optional early retirement scheme for farmers over the age of 55; agro-environmental measures for farmers committed to using environmentally friendly methods; afforestation aid for farmland.

C. Agenda 2000: a new stage to build on the 1992 reform

Following the completion of the 1992 reform, the prospect of EU enlargement triggered fears that the adoption of the CAP by new members would translate by the return of surpluses and by an explosion in agricultural expenditure. The WTO's 1994 Agreement on Agriculture (*5.2.7) governed the CAP's management instruments and limited the possibilities for reorientation and subsidised exports.

The 1997 Luxembourg European Council, which declared that European agriculture should be versatile, sustainable, competitive and spread throughout European territory, made reform a strategic objective. The outcome of the agreement reached at the end of the Berlin European Council (24-25 March 1999) was that reform would focus mainly on the following:

- a new alignment of EU prices with world prices, partly offset by direct aid to producers;
- the introduction, on a voluntary basis, by Member States of environmental cross-compliance as a condition for granting aid and the option of reducing aid (modulation) to finance rural development measures;
- in line with the conclusions of the 1996 Cork Conference, reinforcement of socio-structural and accompanying measures, particularly agro-environmental measures, within a new rural development policy, known from then on as the 'second pillar of the CAP' (*5.2.6);
- budgetary stabilisation underpinned by a strict financial framework for 2000-2006 (*5.2.2) with three components: EUR 40.5 billion on average per year for the first pillar of the CAP (market policy and aid); EUR 14 billion earmarked for financing the second pillar (new rural development policy) and veterinary and plant

health measures; EUR 250 million per year for the Instrument for Structural Policies for Pre-Accession (ISPA).

D. The June 2003 reform: towards a new CAP

At the 1999 Berlin Summit, the 15 Member States adopted the proposals of Agenda 2000 and asked the Commission to carry out a mid-term review in 2002 to assess the impact of the latest CAP reform.

This mid-term review would, in the end, be the most ambitious reform of the CAP thus far, with four key objectives: forging stronger links between European agriculture and global markets; preparing for EU enlargement; better meeting society's new demands regarding conservation of the environment and product quality (public opinion having been perturbed by a series of animal health crises such as bovine spongiform encephalopathy — the so-called 'mad cow disease' — and foot and mouth disease); making the CAP more compatible with the demands of third countries in the context of the Doha Round negotiations launched in 2001 (*5.2.8).

On 26 June 2003, EU agriculture ministers meeting in Luxembourg reached an agreement which effectively overhauled the CAP and introduced a series of new principles and/or mechanisms:

- decoupling of aid from volumes produced, to make farms more market-oriented and to reduce distortions in agricultural production and trade. Decoupled aid has now become a single fixed farm payment, based on guaranteeing income stability;
- cross-compliance, which made the single payments conditional on a whole series of criteria concerning the environment, public health, animal welfare, etc., in response to the expectations of EU citizens;
- compatibility with WTO rules, insofar as the decoupling of aid had the end goal of allowing the single payment scheme to be entered in the 'green box' of the WTO Agreement on Agriculture (*5.2.7);
- public redistribution of payment entitlements allocated to farms on historical bases using three mechanisms: modulation, allowing funding to be transferred between the two pillars of the CAP to reinforce rural development (*5.2.6); national reserves of payment entitlements to cope with exceptional problems or special situations; the potential application of a regional decoupling model to allow harmonisation of payments per hectare allocated according to regional criteria;
- flexible management of the CAP, with the possibility of Member States applying a series of parameters of the new CAP in a variety of different ways (partial decoupling for some production to avoid abandonment; application of the historic decoupling model or regional model, with the option of introducing hybrid models, and so on);
- finally, financial discipline, a principle subsequently enshrined in the 2007-2013 financial perspective (OJ C 139, 14.6.2006), whereby the budget of the first pillar of the CAP was frozen and annual compulsory ceilings imposed. To comply with these, EU institutions will now be able to make linear reductions in existing direct aid;
- in addition, a single common market organisation (CMO) was established in 2007, by codifying the regulation mechanisms of the existing 21 CMOs [Regulation (EC) No 1234/2007, OJ L 299, 16.11.2007] (*5.2.4).

E. The 2009 'Health Check': consolidation of the 2003 reform framework

The 'Health Check', adopted by the Council on 20 November 2008, was the latest stage in this ongoing and still unfinished reform [Regulations (EC) Nos 72/2009 to 74/2009 and Decision 2009/61/EC, OJ L 30, 31.1.2009]. Despite the limited scope of the 'Health Check', the decisions taken by the Council made changes to a broad range of measures applied following the 2003 CAP reform. They aim to:

- reinforce complete decoupling of aid. The 'Health Check' made provision for the remaining payments coupled to production being gradually decoupled by moving them into the single farm payment scheme, with the exception of suckling cow, goat and ewe premiums;
- partially reorient first pillar funds towards rural development or sensitive products and/or regions. The modulation rate for direct aid under the first pillar of the CAP has been increased to strengthen the new measures brought in under the second pillar of the CAP (*5.2.6). In addition, under Article 68 of Regulation (EC) No 73/2009, the Member States may assist sectors and/or regions encountering specific problems and/or promote risk management measures (*5.2.5);
- review market regulation instruments. The 'Health Check' made the rules on public intervention and control of supply more flexible in order not to have an adverse impact on farmers' ability to react to market signals. In addition, in view of the growth in biofuels, compulsory set-aside has been abolished. Finally, the abolition of milk quotas by 2014-2015 has been confirmed.

Role of the European Parliament

On the whole, the European Parliament has supported all of the CAP reforms. It reiterated most of the Commission guidelines for the 2003 reform

while declaring itself in favour of partial decoupling and rejecting the idea of phased reduction of aid (T5-0256/2003 of 5 June 2003, OJ C 68, 18.3.2004). The European Parliament recommended a partial decoupling of aid for two sectors only: arable crops and male cattle. MEPs also amended the Commission's proposals on modulation and rejected the concept of a gradual reduction in the application of modulation. Lastly, Parliament renewed its calls for full codecision on agricultural policy, a goal that was attained when the Lisbon Treaty came into force (*1.1.5 and 5.2.1).

Parliament also emphasised, in its resolution of 22 April 2004 (T5-0367/2004, OJ C 104, 30.4.2004) that it was not bound by the decision taken by the Brussels European Council on agricultural spending until 2013, and reaffirmed its support for strengthening rural development policy. Furthermore, it expressed reservations concerning the seven-year period for the 2007-2013 financial perspective.

During debates on the 'Health Check', Parliament on the whole supported the Commission's proposals [COM(2007) 722 of 20 November 2007 and COM(2008) 306 of 20 May 2008] in four resolutions [T6-0093/2008 of 12 December 2008, T6-0549/2008, 0550/2008 and 0551/2008 of 19 November 2008].

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5.2.4. The first pillar of the CAP: I. The single common market organisation

The common market organisations (CMOs) have governed the production and sale of European agricultural products ever since the creation of the common agricultural policy. In 2007 a regulation establishing the single common market organisation codified all the market regulation schemes in force in a single text. Since 2003 direct support for agricultural products has been regulated outside the CMOs.

Legal basis

Article 40 TFEU and Council Regulation (EC) No 1234/2007 (OJ L 299, 16.11.2007).

Market policy — now included in the first pillar of the common agricultural policy (CAP) — is based on Article 40 TFEU and on the basic regulations governing the various common market organisations (CMOs) which have been adopted under that article. It was the oldest part of the CAP and, until the 2003 reform (*5.2.3), the most important. Since then, the majority of the direct support schemes have been decoupled from production and transferred firstly to Regulation (EC) No 1782/2003 (OJ L 270, 21.10.2003) and, following the adoption of the Health Check, to Regulation (EC) No 73/2009 (OJ L 30, 31.1.2009) (*5.2.5). In 2007, as part of the CAP simplification process that was then underway, a common market organisation (single CMO) covering all agricultural products was put in place to replace the 21 existing CMOs (Regulation (EC) No 1234/2007, OJ L 299, 16.11.2007). This made it possible to repeal about 50 Council acts.

Objectives

The regulatory measures under the first pillar of the CAP aim to direct agricultural production and stabilise the markets. They work by placing products or groups of products under a particular scheme, the common market organisation (CMO), in order to govern their production and trade, in compliance with the fundamental principles of the CAP (i.e. market unity, Community preference and financial solidarity) and in accordance with common rules and appropriate mechanisms. The latter had been defined in the basic regulations for each product until the single CMO entered into force, which codified the existing market regulation schemes.

There were other sectoral reforms which took place after the establishment of the single CMO: the provisions adopted in the 2007 reform of the fruit and vegetables sector, and in the 2008 reform of the wine market, have been incorporated into Regulation (EC) No 1234/2007; the cotton sector, meanwhile, which is governed by protocols annexed to the accession treaties for Greece and Spain, remains outside the regulation; the same applies to bananas, given that the most recent reform of the sector removed the provisions regulating banana production from the CAP and inserted them into the programmes for the outermost regions (POSEI) (Regulation (EC) No 2013/2006, OJ L 384, 29.12.2006) (*5.1.7).

Achievements

A. Scope of the product-specific CMOs prior to the establishment of the single CMO

The first CMOs, and the instrument funding them, the European Agricultural Guidance and Guarantee Fund (EAGGF), Guarantee section (*5.2.2), were established in 1962. Shortly afterwards, the range of products placed under CMOs was expanded to cover all the agricultural products listed in Annex II to the Treaty, the two major exceptions being alcohol and potatoes. Although the CMOs were often similar in structure, the degree of detail in their organisational models varied. They offered guarantees which varied according to the specific economic and agricultural characteristics of the products in question. These guarantees can be grouped under two main headings:

- an internal or 'internal market' heading, with common price systems, measures to control supply and sale, measures to support production, and market organisation or regulation measures;
- an external heading, with an external protection system in respect of products from third countries, rules for the administration of tariff quotas, safeguard clauses and, possibly, export refunds.

For the most important products the CMOs thus combined common price systems, direct aid, a trading system with third countries, supplemented, in some cases, by tools for organising production and marketing through producer groups or professional agreements, and measures relating to quality and marketing standards. For other products the CMOs included only a direct support or a border protection scheme.

B. The process of reforming the product-specific CMOs

Having suffered the effects of currency fluctuations and difficulties resulting from the structural production surpluses which had occurred in most sectors, the market support policy and the mechanisms associated with it were reformed in 1988, 1992 and 1999 (*5.2.3) in favour of a gradual reduction of institutional prices offset by the granting of direct aid and the establishment of stabilising mechanisms. In some cases these 'stabilisers' led to the introduction of 'production quotas' (through the consolidation of national quotas for sugar and dairy products) or 'guaranteed prices' for producers (through maximum guaranteed quantities (MGQs) or maximum guaranteed areas (MGAs)).

When the June 2003 CAP reform was implemented (*5.2.3), most forms of direct production aid were decoupled [becoming single farm payments (SPS)] (*5.2.5). The provisions governing this aid, now decoupled from the amounts produced, were removed from the corresponding CMOs and incorporated into Regulation (EC) No 1782/2003. The 2003 reform also modified certain CMOs:

- dairy sector: asymmetric price cuts (the intervention price for butter was reduced by 25% over four years; for skimmed milk powder a 15% reduction over three years was decided on); increases in the milk quotas were approved for certain countries;
- cereals: 50% reduction of the monthly increments for storage; the intervention price was maintained, except for rye; special payments were established and incorporated into Regulation (EC) No 1782/2003 (*5.2.5);
- rice: single reduction of the intervention price for rice by 50% with a maximum intervention amount;
- other products: special payments were established for nuts (subject to a ceiling on the production area), starch potatoes (with one part of the payment decoupled from and the other coupled to production) and dried fodder (once again, with one part decoupled and the other coupled).

The sectoral reforms which followed in 2004 (for cotton, tobacco, olive oil and hops) introduced in these sectors the principle of total or partial decoupling of aid (Regulations (EC) Nos 864 and 865/2004, OJ L 161, 30.4.2004). The 2006 sugar reform reduced price support for the sector and significantly altered the national production quota system in order to take account of the CMO commitments (Regulations (EC) Nos 318 to 320/2006, OJ L 58, 28.2.2006).

In 2007, a reform of the fruit and vegetables sector was approved (Regulation (EC) No 1182/2007, OJ L 273, 17.10.2007, which was incorporated into the single CMO by Regulation (EC) No 361/2008, OJ L 121, 7.5.2008). It provided for:

- the inclusion in the SPS of the existing aid for processed fruit and vegetables;
- a simplification and strengthening of the arrangements governing producer organisations, which were given responsibility for crisis management on the basis of cofinancing;
- the introduction of measures to promote consumption, in particular of fruit and vegetables in educational establishments (a programme which was subsequently established by Regulation (EC) No 13/2009, OJ L 5, 9.1.2009).

The most recent sectoral reform adopted was in the wine sector in 2008 (Regulation (EC) No 479/2008, OJ L 148, 6.6.2008). The main aspects of the reform were as follows:

- the phasing-out of distillation schemes;
- the introduction of a decoupled SPS for each vineyard; the possible conversion into decoupled payments of aid for the use of must;
- the implementation of a voluntary grubbing-up scheme;
- the abolition of planting rights before the end of 2015 (or, possibly, 2018, at national level);
- the creation of national aid budgets to help the sector adapt to changes in demand;
- the reallocation of distillation funds to rural development in wine-growing regions;
- the revision of existing wine-making practices and the improvement of labelling rules.

In addition, the 2009 'Heath Check' (*5.2.3) changed the rules for public intervention and control of supply in various sectors. Intervention was abolished for pigmeat, barley and sorghum. For wheat, butter and milk powder, a ceiling was introduced for intervention buying. Intervention above those ceilings is managed by means of a tendering procedure. Measures to control supply have also been made less rigorous: compulsory set-aside has been done away with and milk quotas have been increased by 1% per year ahead of their abolition in 2014/2015. Lastly, the direct support schemes have been revised and brought together within new Regulation (EC) No 73/2009 (*5.2.5).

Trends in the contribution of the EAGGF, Guarantee section (which became the EAGF in 2007) (*5.2.2), show the extent to which the CAP has changed as a result of this series of reforms, and how it has turned into an income support policy (with direct aid decoupled from production):

Contribution of the EAGGF Guarantee section/EAGF (in %)

Measures	1989EAGGF-G	2011EAGF
Payments decoupled from production (SPS)	—	82.0
Market support		
Export refunds	38	0.4
Public intervention/storage	20	–0.4
Production subsidies	42	9.0
Other measures (incl. restructuring of sugar industry)	—	9.0

Role of the European Parliament

The European Parliament has approved the main elements of the Commission proposal for a single common market organisation for all sectors (P6_TA(2007)0207 of 24.5.2007). It has also supported wine sector reform (P6_TA(2007)0610 of 12.12.2007) and the subsequent amendments to the consolidated text of the single CMO (resolutions P6_TA(2008)075 of 11.3.2008 and P6_TA(2008)092 of 12.3.2008).

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5.2.5. The first pillar of the CAP: II — Direct aid to farms

The 2003 reform decoupled the majority of direct aid and transferred it to the new single payment scheme (SPS). Regulation (EC) No 1782/2003 brought together in a single document the SPS and other specific aid schemes, still linked to the area cultivated or to production. This regulation was replaced by Regulation (EC) No 73/2009 following the 2009 CAP 'Health Check'.

Legal basis

Articles 38–44 TFEU; Council Regulation (EC) No 73/2009 (OJ L 30, 31.1.2009)

Objectives

A key point in the final CAP reform, adopted in June 2003 (*5.2.3.), was the introduction of a new horizontal regulation dealing with the common provisions applicable to direct aid schemes for European farmers. The new text [Regulation (EC) No 1782/2003, OJ L 270, 21.10.2003] was comprehensively revised following the 2009 'health check' and replaced by Regulation (EC) No 73/2009, which has thus become a type of single and comprehensive code for direct farm support.

Content of Regulation (EC) No 73/2009

A. Overview

Support from the CAP has traditionally been linked to production levels. The 2003 reform of the CAP converted the majority of direct market aid, previously granted by the hectare and/or head of livestock, into a single farm payment (SFP) defined using a historical approach and decoupled from the selection of products and amounts offered. The main aim of the SFP was to provide greater income stability to farmers. It has now become the primary aid scheme in the new CAP (82% of total expenditure by the EAGF in 2011 (*5.2.4). The 2009 'Health Check' completed the decoupling process and the majority of these aid schemes coupled to production will gradually disappear and be incorporated into the single payment scheme (SPS).

B. Measures

1. The single payment scheme (SPS) and methods of application

Aid for production received in the past constitutes a reference amount for each Member State, subject to a ceiling (national single payment envelopes). On the basis of this amount, firstly the unit value of a single payment entitlement (SPE) was calculated — one entitlement per hectare — and secondly the number of hectares eligible for SPEs. The Member States must set up a national reserve by applying a linear deduction percentage to their national single payment envelope. National reserves are used on a priority basis for farmers without any entitlements (newly established) and those with unusually low entitlement amounts.

A farmer from a Member State now has a single payment entitlement that corresponds to the aid he received during a past reference period and to the number of hectares that he farmed. Since 1 January 2005, farmers in receipt of single payments can determine their production in line with the needs of the market, while being assured they will receive the same amount of aid as in the past, regardless of the quantity they produce. This decoupling model, known as the historic model, has been chosen by Belgium, Ireland, Greece, Spain, France, Italy, the Netherlands, Austria, Portugal and, within the United Kingdom, Scotland and Wales.

In some countries (Malta and Slovenia), the reference amounts have been calculated on a regional and not an individual basis. They correspond to the total aid received by the farmers in the relevant region during the reference period. All the farmers in the region therefore receive the same aid per hectare (fixed rate or basic aid). This approach, known as the 'regional decoupling model', involves a certain amount of redistribution of payments between farmers, in contrast to the historic model.

The Member States also have the choice of a hybrid model: they can apply different calculation systems in different regions of their territories (as, for example, in the United Kingdom). They can also calculate the single payments using an approach that is partially historic and partially based on a fixed rate. Finally, these systems may vary over time, beginning with an application of the SPS and its full implementation, and then leading to dynamic hybrid models (as in Denmark, Germany, Finland and England) or static hybrid models (as in Luxembourg, Sweden and Northern Ireland)].

Since the new Member States did not have any historic reference points for setting the single payments, a simplified single area payment scheme (SAPS) was set up. Ten of the 12 new Member States have applied it. It involves the payment of uniform amounts per eligible hectare of agricultural land, up to a national ceiling that derives from the accession

agreements, which is gradually increased during the transitional period, until the aid of the 12 new Member States is fully aligned with the level of aid of the EU-15. The 'Health Check' confirmed the extension of the SAPS until 2013.

Full decoupling is the general principle of the 2003 reform. The 2009 'Health Check' confirmed this approach and, on this basis, the Member States which had chosen the (optional) partial decoupling system had to remove it before 2012. In addition, the specific support systems, still linked to production, were gradually eliminated by being incorporated into the SPS, except for the suckler cattle herd retention premium and the ewe and goat premiums, which the Member States may keep coupled at their current levels.

2. Cross-compliance

The provisions on cross-compliance are one of the key elements of the 2003 reform, which made the single payments subject to compliance by farmers with: (a) environmental and agricultural conditions laid down by the Member States designed to restrict soil erosion, maintain soil structure and soil organic matter levels and ensure a minimum level of maintenance; (b) Community standards in force relating to public health, animal health, the environment and animal welfare [18 standards in total listed in Annex II to Regulation (EC) No 73/2009].

Following the 2009 'Health check', the cross-compliance system has been simplified. Standards deemed not relevant have been withdrawn, as have those not linked to farmer responsibility. On the other hand, new requirements have been added, designed to retain the environmental benefits of set-aside and improve water management [Annex III to Regulation (EC) No 73/2009].

If a farmer does not abide by the cross-compliance rules, the direct payments he can claim will be partially reduced or totally removed.

3. Specific support [Article 68 of Regulation (EC) No 73/2009]

The Member States may keep up to 10% of the national envelopes of direct aid and 'recouple' it to five objectives, namely: (a) the environment, quality and marketing of products; (b) addressing geographical or sectoral handicaps; (c) he revaluing of decoupled payments per hectare in areas at risk of agricultural abandonment; (d) paying part of the insurance premiums covering risks in the arable crops sector; (e) contributions to mutual funds to combat plant and animal diseases.

4. Farm advisory system

A farm advisory system is provided for farmers who receive information on how to apply certain standards and good practices to production processes. The service, which is optional for the Member States, should help producers to abide by the cross-compliance rules.

5. New financial instruments: the budgetary discipline mechanism and modulation

A budgetary discipline mechanism applies in order to keep expenditure on the first pillar of the CAP below the annual budget ceilings set within the multiannual financial framework (*5.2.2). An adjustment to the direct payments will be proposed when forecasts indicate that the total forecast expenditure has been exceeded in a given financial year.

With a view to reinforcing the Member States' rural development programmes, all the direct payments (single payments and other aid coupled to production) have been reduced (compulsory modulation). It is applied to all farmers in the 15 older Member States, apart from small farmers (receiving less than EUR 5 000). Each Member State receives at least 80% of the appropriations that it has acquired through modulation (for Germany, 90%, because of the crisis in the rye sector). The remaining amounts are distributed between the 15 Member States in line with objective criteria: area farmed, agricultural employment and GDP per capita.

By way of exception, Regulation (EC) No 1782/2003 made provision for an optional modulation, which in 2013 is being applied by a single country, the United Kingdom.

The 2009 'Health Check' reinforced the compulsory modulation scheme in force. The modulation rate reached 10% from 2012. An additional reduction of 4% applies to annual payments exceeding EUR 300 000. The amounts removed by this new modulation will not be redistributed. They will remain in the Member State where they were generated and will be used to contribute to the 'new challenges' of rural development policy: climate change, renewable energies, water management, biodiversity and innovation associated with these four subjects, as well as accompanying measures for abandoning milk quotas.

6. Integrated administration and control system

Each Member State creates an integrated administration and control system which includes the following elements: a computerised database, an identification system for agricultural parcels, a system for the identification and registration of single payment entitlements, an integrated control system and a single system to identify each farmer who submits an aid application.

Role of the European Parliament

The European Parliament put forward significant amendments to the reform proposals submitted by the Commission in January 2003 (T5-0256/2003,

5.5.2003, OJ C 68 E, 18.3.2004). In particular, it developed the concept of 'partial decoupling', which was in the end adopted by the Council. It also changed the modulation system. However, its opinion was not accepted by the Council.

The adoption of the rules on the implementation of 'optional modulation' as laid down in Regulation (EC) No 1782/2003 led to a long conflict between Parliament, the Council and the Commission. The European Parliament rejected the proposal regarding the regulatory framework applicable to 'optional modulation' up to 20% [COM(2006) 241] (T6-0036/2007, 14.2.2007). In addition, Parliament suspended 20% of the allocations entered in the 2007 budget for rural development pending the withdrawal of the proposal. Following a unanimous political agreement, which restricted optional modulation to two countries (Portugal and the United Kingdom), the reserve was lifted and the regulation was adopted (Regulation (EC) No 378/2007, OJ L 95, 5.4.2007].

With regard to the 'Health Check', overall Parliament supported the Commission's proposals [T6-0093/2008, 12.12.2008, T6-0549, 0550 and 0551/2008, 19.11.2008]. However, it suggested a progressive modulation model, distinct from that put forward by the Commission in its communication of November 2007 [COM(2007) 722, 20.11.2007] (T6-0093/2008, 12.12.2008). This idea was taken up by the Commission in the legislative proposals of May 2008 [COM(2008) 306, 20.5.2008].

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5.2.6. Second pillar of the CAP: rural development policy

Rural development, now the second pillar of the common agricultural policy (CAP), has been reformed several times. These reforms were intended to make agriculture and forestry more competitive, to strengthen links between the primary activity and the environment, to improve the quality of life in rural areas, and to promote diversification of the economy in rural communities.

Legal basis

Articles 38 to 44 of the Treaty on the Functioning of the European Union (TFEU), Council Regulation (EC) No 1698/2005 (OJ L 277, 21.10.2005), Council Regulation (EC) No 473/2009 (OJ L 144, 9.6.2009), Council Decision 2006/144/EC (OJ L 55, 25.2.2006) and Council Decision 2009/61/EC (OJ L 30, 31.1.2009).

Objectives

Agricultural and rural policy plays a key role in the territorial, economic and social cohesion of the European Union and in protecting the environment. It must be remembered that agriculture and forestry is a sector characterised by its links with natural resources. Agriculture and forestry cover 78% of the EU's territory. Utilised agricultural area accounts for 171.6 million hectares (*5.2.10, Table II). Agriculture is also the biggest user of water, as well as the number-one producer of biomass for energy purposes (*5.2.10, Table III). The EU's agricultural model is based on the multifunctional nature of farming. Rural development policy (second pillar) has become, alongside market measures (first pillar), an essential component of this model. Its main aim is to create a cohesive and sustainable framework that will safeguard the future of rural areas, basing this in particular on its ability to provide a range of public services that go beyond the mere production of foodstuffs, and on the ability of the rural economy to create new sources of income and employment whilst conserving the culture, environment and heritage of rural areas.

Achievements

A. First steps

Structural agricultural measures first appeared in three 1972 directives on: farm modernisation, measures to encourage the cessation of farming, and socio-economic guidance and occupational training for farmers. A directive on mountain and hill farming and less-favoured areas was added in 1975. In 1985, those four directives were replaced by Council Regulation (EEC) No 797/85 on improving the efficiency of agricultural structures.

Since the 1988 reform of the Structural Funds, structural agricultural policy has come under regional policy, with rural development no longer financed solely by the EAGGF Guidance Section but also by the other Structural Funds (*5.1.1). The Community structural measures had several objectives at that time, of which Objective 1 (regions whose development is lagging behind), Objective 5a (adjustment of agricultural structures) and Objective 5b (development of rural areas) were directly applicable to rural development.

The 1992 reform of the Structural Funds added new measures to Objectives 1 and 5b. At the same time, the 1992 CAP reform (*5.2.3) created structural accompanying measures for market policy, with a view to offsetting the fall in farmers' income caused by guaranteed prices being reduced. These measures concerned conservation of the environment, reforestry and funding for an early retirement scheme. It should be noted that, for the first time, the Guarantee Section of the EAGGF was financing measures that were not directly market-related. In fact, the 1992 reform broke with the traditional notion of the CAP, being based on a clear distinction between price and market policy and structural policy. From then onwards, structural measures were regarded as supplementary to guarantee mechanisms.

B. Agenda 2000 — The birth of the second pillar of the CAP

Agenda 2000, therefore, altered the existing approach and created an integrated and sustainable rural development policy that would make rural development (second pillar of the CAP) and price and market policy (first pillar of the CAP) more cohesive. This new approach was formally established in Council Regulation (EC) No 1257/1999 (OJ L 160, 26.6.1999) which, moreover, replaced a dozen or so former regulations.

The new regulation made provision for nine distinct measures, with the Community contributing a percentage of the financing that varied according to the type of measure and the geographical location: investments in agricultural holdings; setting-up aid for young farmers; support for vocational training; support for early retirement; compensation for less-favoured areas and for areas with environmental

restrictions; support for farming practices designed to safeguard the environment; improving the processing and marketing of agricultural products; support to improve the economic, ecological and social functions of forests; and promoting the adaptation and development of rural areas.

Under the new Structural Funds' Regulation [Regulation (EC) No 1260/1999 (OJ L 161, 26.6.1999] (*5.1.2), the source of Community funding for rural development measures differed according to the territory concerned:

- in areas whose development was lagging behind (Objective 1), the measures were integrated into measures promoting regional development, financed by the EAGGF Guidance Section;
- in rural Objective 2 areas they accompanied the support measures, financed by the EAGGF Guarantee Section;
- in all other areas, they were to be integrated into the planning for rural development schemes (except in the case of 'accompanying measures', which were financed by the EAGGF Guarantee Section throughout the EU).

C. The 2003 CAP reform: Regulation (EC) No 1783/2003

The reform passed in June 2003 (*5.2.3) confirmed rural development as one of the fundamental elements of the CAP. It extended the scope of the instruments in Regulation (EC) No 1257/1999. Six categories of measures were either introduced or improved under the new Council Regulation (EC) No 1783/2003 (OJ L 270, 21.10.2003): In addition to the specific sums allocated to rural development, it was decided to transfer funds from the first pillar of the CAP to the second pillar by means of a progressive reduction (compulsory modulation) in direct payments to large farms.

D. The 2009 'Health Check'

The 2009 reform (*5.2.3) introduced five new measures into rural development policy, to be financed by additional modulation: combating climate change; development of renewable energies; water management; protection of biodiversity; promotion of innovation and accompanying measures for restructuring the dairy sector.

E. The financial and planning framework for rural development for the period 2007-2013: Regulation (EC) No 1698/2005

The latest wave of enlargements to the European Union increased the territorial and environmental diversity of rural areas and made rural development measures more important (*5.2.10, Table II).

With a view to meeting these new challenges, and as part of the preparatory work on the new multiannual financial framework for 2007-2013 (*5.2.10, Table I), the European institutions established in 2005 a single fund for the second pillar of the CAP, the EAFRD (European Agricultural Fund for Rural Development), bringing together all the previous measures [Regulation (EC) No 1698/2005, OJ L 277, 21.10.2005] (*5.2.2).

Alongside the 2007-2013 financial framework, Council Decision 2006/144/EC set out Community strategic guidelines for rural development in the new programming period. These guidelines identified key areas for achieving the EU's priorities, particularly as concerns the sustainable development objectives and the renewed Lisbon Strategy for growth and employment established by the Gothenburg European Council (15 and 16 June 2001) and the Thessaloniki European Council (20 and 21 June 2003) respectively. Four new axes were set out:

- improving the competitiveness of the agricultural and forestry sectors (axis 1);
- improving the environment and countryside (axis 2);
- improving the quality of life in rural areas and encouraging diversification of the rural economy (axis 3);
- building local capacity for employment and diversification (axis 4 — Leader).

Key actions for each axis were suggested to the Member States for their national or regional rural development programmes for 2007-2013. The Council decision also set out programming criteria to be applied in drawing up national and regional strategies. These must be based on an integrated approach that maximises synergies between the axes, and complementarity between the EU's structural instruments.

The rural development programmes for the period 2007-2013 were approved by the Commission during the first half of 2008 and were amended following the adoption of the 2009 'Health Check'.

Under the 2007-2013 multiannual financial framework, the EAFRD has a total of EUR 96 billion (of which EUR 18 billion come from transfers from the EAGF as a result of modulation and the restructuring programmes for the cotton, tobacco and wine sectors) (*5.2.10, Table I, lines C.1 and C.2). In fact, the new funds released have made it possible to partially offset the reduction in the budget for the rural development policy adopted in 2006.

Role of the European Parliament

The European Parliament (EP) has always maintained that rural development policy should reinforce, supplement and adjust the CAP to protect the European agricultural model. In 2005 the EP welcomed the establishment of a single fund for

rural development but it suggested allocating funds for the priority axes differently (T6-0215/2005, 7.6.2005, OJ C 124, 25.5.2006). MEPs stated in the same resolution that incorporating Natura 2000 into the new Regulation (EC) No 1698/2005, without earmarking additional funds, would be highly problematical. They therefore called for the resources available for commitment under the EAFRD to be raised to EUR 95.75 billion (at 2004 prices) for the new 2007-2013 programming period (*5.2.10, Table I). This threshold has not yet been reached despite the transfers from the EAGF.

As far as the rural development policy strategic guidelines are concerned, the EP approved the broad thrust of the European Commission's proposals but pointed out that more emphasis should be placed on modernising the agricultural sector and the needs of young farmers (T6-0062/2006, 16.2.2006).

In addition, in its resolution of 14 February 2007 [T6-0036/2007], the European Parliament called for funding of the second pillar to be reinforced under the 'Health Check'.

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5.2.7. WTO Agreement on Agriculture

The common agricultural policy is now governed at an external level by the rules of the World Trade Organization (WTO) and more specifically by its Agreement on Agriculture of 15 April 1994.

Legal basis

In regard to the General Agreement on Tariffs and Trade (GATT), signed in Geneva in 1947, and the Agreement establishing the World Trade Organization (WTO), signed in Marrakesh in 1994 (OJ L 336, 23.12.1994), the European Union and its Member States act pursuant to Article 207 (common commercial policy) and Articles 217 and 218 (international agreements) of the Treaty on the Functioning of the European Union (TFEU) (*6.2.2).

External aspects of the CAP — General framework

The entire common agricultural policy (CAP) has been subject to WTO discipline since 1995. A Dispute Settlement Body (DSB) with a stringent procedure for disputes has been set up to ensure that signatory states comply with the new multilateral rules.

The CAP is also affected by agricultural concessions granted to a wide range of countries under several multilateral and bilateral agreements [with the African, Caribbean and Pacific countries (ACP), Mercosur (the Southern Common Market), the Euro-Mediterranean Area, Mexico, Chile, etc.] and also by unilateral waivers granted under the Generalised System of Preferences (GSP). These preferential agreements must also be compatible with WTO rules and they explain the high quality of EU agricultural imports from developing countries (*5.2.10, Table VI).

WTO Agreement on Agriculture

The GATT of 1947 did apply to agriculture, but it was incomplete. So much so that signatory states (or 'contracting parties') actually excluded this sector from the scope of the principles stated in the general agreement in practice. The Uruguay Round, which began in Punta del Este in 1986, included this sector in multilateral trade negotiations. After eight years of tough talks and the signing of the Marrakesh Agreement, a new multilateral framework to encourage the gradual liberalisation of agriculture was set up within the World Trade Organization.

All of the WTO's agreements and memoranda of understanding on trade in goods signed in 1994, which entered into force on 1 January 1995, apply to agriculture. However, agriculture is special in that it has its own specific agreement, the Agreement on Agriculture, whose provisions prevail. In addition, some provisions of the Agreement on the Application of Phytosanitary Measures (SPS) also involve agricultural production and trade. The same is true of the Agreement On Trade-Related Aspects of Intellectual Property Rights (TRIPS) in relation to the protection of geographical designations.

A certain degree of flexibility applies in these agreements as regards implementation for both developing country WTO members (special and differential treatment) and least developed (LDCs) and net food-importing developing countries (special provisions).

On the basis of the Agreement on Agriculture, WTO Member States undertook to implement a programme to reform agricultural policies in force (over the period 1995-2000 for developed countries and 1995-2004 for developing countries). The reform programme has established binding commitments in three major areas:

A. Market access

The Agreement on Agriculture sought to improve access to markets by requiring:

- that all border protection measures be converted into customs duties (tariff equivalents) and then be gradually reduced (by 36% in six years, 1995-2000, compared with the reference period of 1986-1988);
- the establishment of commitments to give specific products not subject to tariffication, 'minimum access' to third countries by opening up tariff quotas (5% of the 1986-1988 base period consumption for each group of products by the end of 2000);
- tariff concessions for imports to be maintained at their 1986 to 1988 level at least ('existing' market access);
- the introduction of a special safeguard clause, which is triggered either when the volume of imports exceeds a certain ceiling or import prices fall below a certain threshold.

B. Domestic support

The Agreement on Agriculture makes provision for support volumes to be reduced. The extent of this reduction is dependent upon the nature of the aid. Aid is categorised in different 'boxes' depending on the effect it has in terms of distorting trade on agricultural markets.

- The 'amber box', also known as the 'Aggregate Measure of Support' (AMS), combines price support with aid that is coupled with production and not exempt from reduction commitments. It must be reduced by 20% over six years compared with the reference period 1986-1988. In addition, all WTO members may apply the *de minimis* clause, which allows any support amounting to less than 5% of the value of the product under consideration (specific aid) or of total agricultural production (non-specific aid) to be excluded from the current AMS. This ceiling is set at 10% for developing countries.
- The 'blue box' includes aid linked to supply control programmes which are exempt from reduction commitments, such as direct aid based on area and output which are fixed and allocated for a specific number of head of cattle (in the case of 'compensatory aid' approved by the CAP in 1992) (*5.2.3). However, the amount of support under the AMS and aid in the blue box category ('total AMS') for each product must not exceed total support granted during the 1992 marketing year.
- The 'green box' comprises two support groups. The first involves public services programmes (for example, research, training, marketing, promotion, infrastructure, domestic food aid or public food security stocks). The second involves direct payments to producers which are fully decoupled from production. These mainly involve income guarantee and security programmes (natural disasters, State financial contributions to crop insurance, etc.); programmes aimed at adjusting structures and environmental protection programmes. All green box aid which is deemed to be compatible with the WTO framework is totally exempt from reduction commitments.

C. Export subsidies

Export support measures had to be reduced by 21% in terms of volume and 36% in terms of budget over six years compared with the 1986-1990 base period level (except for beef products where the base period was 1986-1992). In the European Union this linear reduction was carried out for 20 groups of products. For processed products only the budgetary reduction was applied.

Impact of the Agreement on Agriculture on the CAP

The aim of the CAP reform in May 1992, in addition to its domestic objectives, was partly to facilitate the signing of the Agreement on Agriculture as part of the Uruguay Round. As a result the European Union has to a large extent complied with the commitments signed in Marrakesh:

A. Market access

Commitments involving EU consolidated rights involve 1 764 tariff lines. The average consolidated customs duty for food products, which stood at 26% at the start of the implementation period, was only 17% at the end of the period. In addition, the EU applied zero or minimal duty to 775 lines out of the total 1 764. Only 8% of the tariff lines have a customs duty in excess of 50%. These tariff peaks apply to dairy products, beef, cereals and cereal-based products as well as sugar and sweeteners. As far as tariff quotas are concerned, the European Union has established a total of 87 quotas, 37 of which come under 'minimum access' and 44 under 'current access'.

B. Subsidised exports

Ninety percent of subsidised exports notified to the WTO originate from the European Union. However, it should be borne in mind that a number of practices used by our main competitors (e.g. food aid, export credits and commercial state enterprises), which involve substantial sums, are not subject to WTO discipline. In addition, the European Union has reduced this type of support, which has a strong agricultural trade-distorting capacity. The share of export refunds in the EU's agricultural budget (EAGGF Guarantee Section, or EAGF since 2007) decreased from 29.5% in 1993 (EUR 10.1 billion), when there were 12 Member States, to 0.4% (EUR 179 million) in 2011, when there were 27 Member States (*5.2.2). Commitments on some EU products have been stringent: in particular, butter, rape, cheese, fruit and vegetables, eggs, wine and meat in general.

C. Domestic support

Most of the support under the amber and blue boxes was moved to the green box (EUR 63.8 billion in 2009/2010 for the EU-27) (WTO notification G/AG/N/EU/10) as a result of the 2003 CAP reform, which decoupled most of the existing direct aid, and subsequent sectoral reforms. Aid under the 'amber box' (AMS) fell heavily from EUR 81 billion at the start of the agreement period to EUR 8.7 billion in 2009-2010, even with the successive waves of enlargement. In addition, the 'blue box' reached EUR 5.3 billion in 2009/2010.

Role of the European Parliament

The European Parliament (EP) has always watched the progress of multilateral negotiations in general, and agricultural negotiations in particular, extremely closely. Several resolutions bear witness to this (e.g. 18.12.1999 on the Third WTO Ministerial Conference in Seattle; 25.10.2001 on openness and democracy in international trade; 13.12.2001 on the WTO meeting in Doha; 12.2.2003 on WTO agricultural trade negotiations; 25.9.2003 on the Fifth WTO Ministerial

Conference in Cancun; 12.5.2005 on the assessment of the Doha Round; 1.12.2005 on preparations for the Sixth WTO Ministerial Conference in Hong Kong; 4.4.2006 on the assessment of the Doha Round; and 24.4.2008 on 'towards a reform of the WTO'). The EP expressed regret at the failure of the Seattle, Cancun and Hong Kong Conferences and supported the EU's efforts to pursue the Doha Round negotiations.

The European Parliament has always called on the Commission to safeguard the interests of EU producers and consumers as well as the interests of farmers in those countries with which the EU has historically had particularly close relations (the ACP countries). In 1999, at the start of the so-called 'Millennium Round', it expressed its support for the approach adopted by the EU's negotiators in championing the European agricultural model based on the multifunctionality of the agricultural business. It reiterated this support in several resolutions which also highlighted the importance of expressly acknowledging 'non-trade concerns' and taking into account the public's demands regarding food safety, environmental protection, food quality and animal welfare.

Finally, in the European Parliament's resolution of 24 April 2008, MEPs emphasised the need for a large scale overhaul of the WTO. In particular they felt it was necessary to improve the coordination of WTO activities with those of other international organisations such as the International Labour Organization (ILO), the United Nations Food and Agriculture Organization (FAO), the United Nations Environment Programme (UNEP), the United Nations Development Programme (UNDP) and the World Health Organization (WHO).

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5.2.8. The DOHA Round and agriculture

Today, multilateral agricultural trade is governed by the Uruguay Round agreements, in particular the Agreement on Agriculture. The Doha Ministerial Conference of 14 November 2001 established a new comprehensive negotiating agenda.

Legal basis

Article 207(3) and Article 218 of the Treaty on the Functioning of the European Union (TFEU).

The framework for the present agricultural negotiations was defined by Article 20 of the Marrakesh Agreement on Agriculture (AAM). Under the terms of that article, World Trade Organization (WTO) members confirmed that reducing agricultural support and protection was an ongoing and gradual process. They also agreed that negotiations for continuing the process would begin on 1 January 2000. Furthermore, Article 20(d) specifies that the negotiations should take account of non-trade concerns (such as environmental protection, food safety, rural development, animal welfare, etc.) and special and differential treatment for developing countries.

Objectives of the Doha Round

The Fourth WTO Ministerial Conference, held in Doha (Qatar) in November 2001, launched the new process of agricultural negotiations. The conference's final declaration confirmed the aims of the preparatory work, clarified the general framework for negotiations — which are now held as part of the Doha Development Agenda (DDA) — and established a new timetable.

WTO members committed themselves to negotiations aimed at substantial improvements in market access, reducing, with a view to phasing out, all forms of export subsidies, and substantial reductions in trade-distorting domestic support, by ensuring that special and differential treatment for developing countries is an integral part of all elements of the negotiations and by taking into account the non-trade concerns mentioned in the proposals for negotiations submitted by WTO members.

The current negotiations

A. Progress

Thus far, the deadlines agreed upon have largely remained unmet. According to the Doha mandate, the Fifth Ministerial Conference in Cancún from 10 to 14 September 2003 was intended to assess the progress made since the start of the round on the 20 or so chapters on the negotiating table (including agriculture). Moreover, on the basis of an agreement on the 'modalities', members were to table their offers or 'comprehensive draft commitments'.

Ultimately the Cancún Conference ended in failure. This was due to several factors, in particular the lack of political will to reconcile members' positions and the controversy surrounding the 'Singapore issues', namely trade and investment, competition policy, transparency in government procurement and trade facilitation. However, while agricultural issues (including the cotton initiative tabled by four African countries) were a major stumbling block, the refusal of the developing countries to discuss the 'Singapore issues' also contributed to the failure of the conference.

The process was resumed at the beginning of 2004, with a number of political initiatives. For example, the EU announced in May some substantial concessions, agreeing, in particular, to negotiate a date for the abolition of all forms of export subsidy for agricultural products. The result was the General Council Framework Agreement of 1 August 2004, which set out the key principles for the negotiation 'modalities'. This decision also removed three of the 'Singapore issues' from the DDA.

WTO members had set themselves the unofficial goal of concluding the negotiations before the end of 2006, a goal that, once again, they failed to meet. The Hong Kong Ministerial Conference of December 2005 went some way towards smoothing out the differences between members, but on some points they remained irreconcilable At the beginning of 2007, new efforts were made to solve the situation. Finally, three new revised sets of draft modalities were tabled in 2008 providing an outline pending the final agreement to be decided in Geneva. The final 'July 2008 package' (TN/AG/W/4/Rev.3) concerned the following matters.

a. Domestic support

- 'Trade-distorting domestic support' (amber box + blue box + *de minimis* provision) (*5.2.7) would be reduced by 75-85% for the EU, by 66-73% for the United States and Japan and by 50-60% for other members (over a period of five years for developed countries and eight years for developing countries). An immediate reduction of 33% would be applied in the case of the United States, the EU and Japan, and 25% for all other countries.
- The 'amber box' (or AMS) (*5.2.7) would be reduced by 70% overall for the EU, 60% for the

United States and Japan and 45% for other countries. Prices and support for individual products would be capped at the average amber box support recorded for the 1995-2000 period.

- The 'blue box' (*5.2.7) would be expanded, but would be restricted to 2.5% of production for developed countries and 5% for developing countries, with caps set for each product.
- The *de minimis* provision (*5.2.7) would remain capped at 2.5% of production for developed countries and 6.7% for developing countries (but there would be no cuts for support provided mainly to subsistence farmers).
- The 'green box' conditions (*5.2.7) would be tightened.

b. Market access

- Tariffs would be cut according to a formula prescribing steeper cuts on higher tariffs. For developed countries, the cuts would range from 50%, for tariffs under 20%, to 66-73% for tariffs higher than 75%, meaning an average minimum cut of 54% for developed countries and from 33.3% to 44-48% for developing countries. The least developed countries (LDCs) would be exempt from any cut.
- 'Sensitive products' (for all countries) and 'special products' (for developing countries) would be subject to smaller cuts. However, the reductions for sensitive products could be offset by preferential tariff quotas and special products could be exempt from all cuts.
- The 'special safeguard clause' (*5.2.7) would gradually be abolished in developed countries. Developing countries would benefit from a new special safeguard mechanism (SSM) applicable to 2.5% of tariff lines, which would allow customs tariffs to be increased temporarily to help them cope when import volumes rise or prices fall.

c. Export competition

- Export subsidies(*5.2.7) would be abolished by the end of 2013, including those subsidies disguised as export credits in areas such as state trading export enterprises and food aid in non-emergency situations.

On 29 July 2008, after nine days of talks, the WTO Director-General, Pascal Lamy, once again confirmed the failure of the discussions on the draft modalities for the negotiations on agriculture. Differences over the SSM for developing countries proved insurmountable. Roughly speaking, the disagreement was between those (the United States in particular) who wanted a sharp increase in imports (40%) to trigger the additional customs tariffs, and those (India and China in particular) in favour of a lower trigger threshold (10%) to make the SSM easier to use. Other matters besides the SSM remained unresolved when the negotiations were suspended: cotton (a strategic product for some African exporting countries); issues related to geographical indications and biodiversity (intellectual property proposals on designations of origin and patent reforms with regard to genetic materials and traditional knowledge); and bananas (to be settled by a separate agreement between the EU, Latin American suppliers and the ACP states).

On 6 December 2008, the chairman of the Negotiating Group on Agriculture distributed his latest revised draft 'modalities'. However, disagreements remained in several areas, including sensitive products, the SSM, cotton, geographical designations and tariff simplification. It remains to be seen whether, in view of the divergent views held, it will be possible to complete the Doha Round in the medium term. The increased volatility of international agricultural prices is weakening confidence in the liberalisation of trade. Also, in so far as the financial crisis is reflected in an economic slowdown and unemployment, particularly in the United States and the EU, an increase in protectionist tendencies can be seen.

B. Positions

1. The European Union

Relying at times on the group of countries that share some of its ideas (the 'Friends of Multifunctionality'), the EU is essentially seeking a more market-oriented multilateral trading system, but is concerned about social, economic and environmental sustainability. It refers to efforts made in the areas of domestic support [CAP reforms (*5.2.3)] and market access ['Everything But Arms' initiative (*6.2.3)]. However, the reductions planned for domestic support do not pose major problems. In 2009-2010, the amount of support in the EU's amber box, blue box and the *de minimis* provision was some EUR 15 billion (G/AG/N/EEC/10), below the threshold laid down in the last set of draft modalities on trade-distorting domestic support (EUR 22 billion).

Furthermore, in its latest proposals on the modalities for commitments, the EU agrees to an average tariff reduction of 60% to improve market access, which is undoubtedly the most sensitive area for Community agriculture. These proposals are conditional upon clarifications from other developed countries with regard to removing different forms of export support (US food aid and export credits; Australian, New Zealand and Canadian state trading enterprises). The EU also seeks real discipline on the most trade-distorting US farm payments (counter-cyclical payments). Moreover, the EU reaffirmed its desire for balance in the continued reform of the agricultural trading system by ensuring special treatment for developing countries, specific commitments for sensitive products and due regard for non-trade concerns (*5.2.7).

2. The United States

Ignoring the criticisms concerning its counter-cyclical payments, the USA seems to be prepared to reduce trade-distorting domestic support substantially. The most recent US proposal aims to cut agricultural subsidies to less than USD 15 billion a year, a slight improvement on its previous offer of USD 17 billion. The latest draft by the chairman of the agriculture negotiations asked the United States to bring down its subsidies to between USD 13 and 16.4 billion. Brazil, representing the emerging countries, considers that US subsidies would still be too high at that level.

3. The Cairns Group

Bringing together 17 exporting countries whose common interest is to reduce obstacles that are harmful to agriculture, this group is very bitter towards the developed countries, which maintain a high level of subsidies. It is especially critical of the EU, which it holds responsible for the detrimental effects of the CAP on the agricultural world and the limited access to European markets. It is keen to see the elimination of export subsidies, and very reluctant about the concept of agricultural multifunctionality favoured by Europe.

4. The developing countries

Representing three-quarters of WTO members, developing countries 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. They have organised themselves into new alliances in order to promote their interests more successfully.

- The alliance of 20 countries (G20) formed in 2006 has grown to 22, led by India and China, and strives to protect both the millions of peasant farmers in their countries and their flourishing industry from too sharp a reduction in customs tariffs.
- A new alliance was formed in 2003 among the African Union, the ACP countries and the least-developed countries (G90) over a range of common negotiating positions on agriculture, market access for non-agricultural products, the Singapore issues and development.
- Finally, an alliance of developing countries (G33) was formed to promote recognition of strategic products (designated by the beneficiaries themselves and exempt from reductions) and a special safeguard mechanism for developing countries.

Role of the European Parliament

The European Parliament has voiced its opinion on the Doha Round negotiations on several occasions. In ensuring compliance with the negotiating mandate granted to the Commission, Parliament has always supported the efforts of European representatives to aid progress in the round and achieve a balanced agreement [resolutions of 4 April 2006 (OJ C 293 E, 2.12.2006, p. 155), 9 August 2008 (OJ C 9 E, 15.1.2010), 16 December 2009 (OJ C 286 E, 22.10.2010) and 14 September 2011 (P7_TA(2011)0380)].

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5.2.9. The CAP after 2013

The Commission presented its legal proposals for the CAP after 2013 in October 2011. In June 2013, the trilogue negotiations between the European Parliament, the Council and the Commission yielded a political agreement which was confirmed by Parliament in plenary on 20 November 2013 after the Multiannual Financial Framework (MFF) for the 2014-2020 period had been adopted and certain aspects of budgetary arrangements for direct payments and rural development had been settled during the last trilogues in September 2013.

Legal basis

Articles 38-44 of the Treaty on the Functioning of the European Union (TFEU).

Towards a new CAP in a new institutional framework

The European Union began work in 2011 on shaping the new CAP to apply from 2013, when the current financial framework ends. Before the political agreement was reached in in June 2013 and adopted in November 2013, the discussions about agricultural policy had been blighted by the negotiations on the new 2014-2020 MFF. There were also several new factors, in addition to agro-budgetary ones, affecting decision making on the new CAP: first and foremost, the co-decision procedure, which had been extended to agriculture by the Treaty of Lisbon (*5.2.1); then the new implementing legislation (delegated acts and implementing acts, which complement basic acts), also provided for under the Treaty of Lisbon; the end of the CAP transitional period for Member States which joined more recently; and, lastly, Croatia's accession to the EU (on 1 July 2013). In addition to these new institutional factors, mention must also be made of the crisis, which has hit Member States' economies hard and made negotiations difficult. provided for under the Treaty [COM(2010) 700 of 19.10.2010], the second specifically on the new agricultural reform and entitled 'The CAP towards 2020: Meeting the food, natural resources and territorial challenges of the future' [COM(2010) 672 of 18.11.2010]. Following the public debate on these two communications, on 29 June 2011 the Commission presented the financial package for 2014-2020, and on 12 October 2011 several legislative proposals on the new CAP [COM(2011) 625 to 631].

The 2014-2020 Multiannual Financial Framework and the CAP

Funding for the CAP in the 2014-2020 period will total EUR 362.7 billion (in 2011 constant-price euro) in commitment appropriations, which represents 0.37% of EU-28 GNI (*5.2.10, table 1). This is a smaller budget in real terms than that for the previous period, which represented 0.46% of EU-27 GNI. The share earmarked for direct payments and market support (the first pillar of the CAP) will total EUR 37.6 billion in 2020, a figure 13% less than the EUR 43.1 billion available at the end of the previous budgetary period, in 2013. Funding for rural development (the second pillar of the CAP) is also down, by 18%: the 2020 figure is EUR 11.4 billion, as against EUR 13.8 billion in 2013. The area losing out most severely, however, is that of actual market policy, funding for which is to be cut by 40% between 2013 and 2020.

Main outlines of the CAP for 2014-2020

Pending the publication of the relevant new legislation, adopted by Parliament and the Council in November 2013, the core features of the new CAP are already apparent.

- There are three strategic objectives: ensuring long-term food security for people in Europe and contributing to meeting the growing global demand for foodstuffs; sustainably producing diversified, high-quality food while conserving natural resources and biodiversity; and ensuring the viability of rural areas. The two pillars of the CAP are to be retained to meet these objectives (*5.2.4, *5.2.5 and *5.2.6).
- The reform focuses in particular on the direct support mechanisms, where there will be a shift from 'decoupling' to 'targeting'. The system of decoupling agricultural aid and providing generic income support instead, which began in 2003 (*5.2.5), will now switch to a system in which instruments are once again coupled to specific objectives or functions, and historical reference periods will cease to play a role. Single farm payments will be replaced by a system of multi-purpose payments, in stages or strata, with seven components: (1) a basic payment per hectare, the level of which is to be harmonised according to national or regional economic or administrative criteria and subject to a convergence process within each Member State so as to ensure, in 2019, a per-hectare level of support equivalent to at least 60% of the national or regional average, while limiting cuts in every case to 30% of amounts paid in the past;

(2) additional support seeking to compensate for the costs of providing environmental public goods not remunerated by the market (ecological or 'greening' component); (3) an additional payment for five years for young farmers; (4) a redistributive payment whereby farmers may be granted additional support for their first 30 hectares; (5) additional income support in areas with specific natural constraints; (6) aid coupled to production, granted to certain areas or types of farming for economic and/or social reasons; (7) lastly, a simplified system may be set up for small farmers with an income of less than EUR 1 250. The first three components will be compulsory for Member States while the last four are optional. Member States will use 30% of their national direct-payment envelopes to fund the greening component. The remaining 70% will be used to fund the basic payment component, after deduction of any amounts earmarked for national reserves of entitlements (mandatory, up to 3% of national envelopes), and for additional redistributive payments (up to 30%), payments for young farmers (mandatory, up to 2%), small farmers (up to 10%) or less favoured areas (up to 5%) or in the form of payments coupled to production (up to 15%). Only active farmers (defined with reference to a 'negative list' to be drawn up by each Member State) will be eligible for the new basic payments per hectare. Up to 2020, these payments will also be subject to a process of partial convergence among the Member States, without completely eliminating differences across the EU as a whole (reflecting the different national envelopes and eligible areas allocated to each Member State in 2015).

- With regard to the common organisation of the markets in agricultural products (single CMO [COM(2011) 626]), the existing tools (*5.2.4) will be adjusted to create 'safety nets', for use solely in the event of price crises or market disruption. New safeguard clauses are introduced for all sectors. The abolition of all supply control measures has also been confirmed: the sugar quota regime will expire in 2017 and the system of wine planting rights will be completely replaced by an authorisation system in 2020. The new milk scheme, scheduled for 2015, has been preceded by the adoption, in parallel with negotiations on the new CAP, of a 'milk' mini-package [Regulation (EU) No 261/2012, OJ L 94, 30.3.2012] which came into force in October 2012. It recognises producer and inter-branch organisations at EU level, in order to make possible joint negotiating contracts between producers and processors (within certain limits). Additional measures to be used in the event of crises in the milk market have been introduced following a proposal by Parliament. The new single CMO will also institute a crisis reserve to respond to market disturbances. This reserve will be funded by an annual reduction in direct payments of up to EUR 400 million, with an excess per farm of EUR 2 000. Funds not used by the reserve will be returned to farmers the following year. Building on the arrangements for the diary sector, new legislative frameworks have been established to spread added value along the food chain, on condition that producer and inter-branch organisations are strengthened and that contracting and collective negotiation are developed. Lastly, the new CAP redefines the rules of competition in agriculture. The Commission is to publish guidelines on the issues that are potentially most controversial in this regard.
- In the sphere of rural development, the wide range of existing instruments within the second pillar of the CAP (*5.2.6) is to be simplified so as to focus on support for competitiveness, innovation, 'knowledge-based agriculture', establishing young farmers, sustainably managing natural resources and ensuring balanced regional development. The measures are grouped in regional packages and are to be applied alongside the setting of quantifiable objectives, possibly linked to incentives. Better coordination of rural measures with the other structural funds is also envisaged (*5.1.1). Moreover, the second pillar of the CAP will provide Member States with a toolbox for 'individual risk management' (insurance and mutual funds), extended to include income stabilisation.
- The final aspect of the reform concerns the horizontal and financial rules, and here the integrated administration and control system and environmental cross-compliance provisions have been simplified (*5.2.5).

The new rules are to come into force as of 1 January 2014 but the new direct payments system will not be implemented in full before 2015. In November 2013 transitional measures were adopted by the European Parliament (resolution P7_TA(2013) 494) and the Council.

Role of the European Parliament

After the European Parliament's rejection of the financial framework for 2014-2020 adopted by the European Council summit of 7 and 8 February 2013 (resolution P7_TA(2013)0078 of 13.3.2013) because it did not reflect the priorities Parliament had set out earlier (see resolutions P7_TA(2011)0266 of 8.6.2011 and P7_TA(2012)0360 of 23.10.2012), negotiations with the Council were undertaken to address Parliament's priorities, namely: giving the Union the necessary means to recover from

the crisis by strengthening policies on growth, innovation and solidarity; rejecting the creation of supplementary deficits as a result of the systematic difference between commitment and payment appropriations introducing a compulsory MFF mid-term review clause creating the opportunity to reconfirm Parliament's budget priorities following the 2014 European elections; and lastly, ensuring that agreement on multiannual expenditure is accompanied by a roadmap for establishing a new system of own resources. In the end, the Council took on board these demands, and this enabled a political agreement to be reached. Once the negotiating stage had been completed, the final texts of the regulation on the new Multiannual Financial Framework and the interinstitutional agreement were adopted by Parliament on 19 November 2013 (resolutions P7_TA(2013) 455 and 456).

Discussions on the future of the post-2013 CAP had begun in Parliament even before the Commission presented its communication and legislative proposals. Parliament adopted a resolution based on an own-initiative report on 8 July 2010 [T7-0286/2010]. In the resolution, MEPs stressed the need for a new CAP that was strong, sustainable, fair, simpler and sufficiently well resourced to achieve its objectives. Parliament set priorities for the new CAP for the 21st century: food security, fair trade, maintaining farming activity across the whole of Europe, food quality, preserving biodiversity and protecting the environment, fair remuneration for the public goods supplied by farmers and, finally, rural development based on the creation of green jobs. These priorities were confirmed in a resolution of 23 June 2011 [T7-0297/2011] on the Commission's communication on the CAP towards 2020 [COM(2010) 672].

Parliament has also adopted several resolutions on matters complementary to CAP reform: fair revenues for farmers and a better functioning food chain in Europe [T7-0302/2010, 7.9.2010], recognition of agriculture as a strategic sector in the context of food security [T7-0006/2011, 18.1.2011], EU agriculture and international trade [T7-0083/2011, 8.3.2011], the EU protein deficit [T7-0084/2011, 8.3.2011] and farm inputs supply chain [T7-0011/2012, 19.1.2012]. Finally, Parliament amended the legislative proposals and the amended text became the mandate for negotiation with the Council [resolutions P7_TA(2013)0084, 0085, 0086 and 0087, 13.3.2013]. This was the basis on which, following more than 40 trilogue meetings, political agreement was reached in June 2013. Conciliation was still necessary, however, on certain outstanding aspects of budgetary arrangements for direct payments and rural development. Once these matters had been settled, on 20 November 2013, immediately after the adoption of the financial package, Parliament expressed its views again on the new agricultural regulations (resolutions P7-TA_(2013)0490 to 0493).

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5.2.10. The common agricultural policy in figures

The tables below show basic statistical data in several areas relating to the common agricultural policy (CAP), namely: the agriculture and food industries throughout the Member States (Table II), the integration of environmental concerns into the CAP (Table III), the forestry sector (Table IV), CAP financing and expenditure (Tables I and V) and trade in agricultural and food products (Table VI).

Table I: The CAP in the 2014/2020 financial framework (EU-28)

Commitment appropriations (million EUR at 2011 constant prices)	2014	2015	2016	2017	2018	2019	2020	Total 2014/2020
A. TOTAL multiannual commitment appropriations (EU-28)	134 318 (100 %)	135 328 (100 %)	136 050 (100 %)	137 100 (100 %)	137 866 (100 %)	139 078 (100 %)	140 242 (100 %)	959 988 (100 %)
As a percentage of GNI (EU-28)	1.03 %	1.02 %	1.00 %	1.00 %	0.99 %	0.98 %	0.98 %	1.00 %
Of which: Heading 2, Preservation and management of natural resources (incl. agriculture)	55 883 (41.6 %)	55 060	54 261	53 448	52 466	51 503	50 558 (36.0 %)	373 179 (38.9 %)
B. Agriculture — markets and direct aid (EAGF)	41 585 (30.9 %)	40 989	40 421	39 837	39 079	38 335	37 605 (26.8 %)	277 851 (28.9 %)
Of which: direct payments (EU-28)	39 681 (29.5 %)	39 112	38 570	38 013	37 289	36 579	35 883 (25.5 %)	265 127 (27.6 %)
C. Agriculture — Rural Development (EAFRD)	12 865 (9.6 %)	12 613	12 366	12 124	11 887	11 654	11 426 (8.1 %)	84 936 (8.8 %)
D. TOTAL CAP (B + C)	54 450 (40.5 %)	53 602	52 787	51 961	50 966	49 989	49 031 (34.9 %)	362 787 (37.8 %)
Appropriations as a percentage of GNI (EU-28)	0.41 %	0.40 %	0.38 %	0.38 %	0.36 %	0.35 %	0.34 %	0.37 %

Source: Political agreement reached in June 2013 by Parliament, the Council and the Commission, and vote in Parliament on 20 November 2013 (resolution P7_TA(2013)455).

Table II: Basic figures relating to agriculture and the food industry (EU-27 and EU-28)

	Utilised agricultural area (UAA) (1 000 ha)	No of farms (1 000 farms)	UAA per farm (ha)	Employment in agriculture, forestry, hunting and fishing (1 000 people)	Production of agricultural activity sector (million EUR)	Share of agriculture of GVA/GDP (%)	UAA classed as 'less-favoured area' (%)	Employment in the food industry (1 000 people)	Share of food industry in GVA (%)
	2011	2010	2010	2011	2011	2011	2005	2011	2010
BE	1 358	42	32.3	64	7 607	0.5	18.0	101.4	2.1
BG	4 476	357	12.5	677	4 349	4.2	24.8	113.2	2.4
CZ	3 484	23	151.5	152	4 834	0.9	49.2	116.7	2.4
DK	2 647	41	64.6	73	10 575	1.2	1.1	56.9	2.1
DE	16 704	298	56.1	658	52 289	0.6	52.0	893.2	1.7
EE	941	19	49.5	26	811	1.9	40.9	12.7	2.2
EL	3 478	717	4.9	513	10 926	2.5	78.1	115.5	3.4
ES	23 753	967	24.6	755	41 375	2.0	81.7	445.8	2.5
FR	27 837	507	54.9	753	72 224	1.4	44.5	661.0	1.7
IE	4 991	140	35.7	83	6 628	1.1	77.5	48.8	4.4
IT	12 856	1 616	8.0	965	47 508	1.6	50.8	418.6	1.8
CY	118	38	3.1	18	706	1.8	60.2	10.2	2.3
LV	1 796	83	21.6	75	1 078	1.3	73.5	29.2	2.4
LT	2 743	200	13.7	116	2 586	2.9	57.1	43.9	4.5
LU	131	2	65.5	—	352	0.2	95.3	1.4	0.7
HU	4 686	534	8.8	291	7 760	2.9	20.7	120.5	2.4
MT	11	12	0.9	5	129	0.9	100.0	5.8	1.6
NL	1 872	71	26.4	226	25 433	1.3	11.9	136.7	2.6
AT	2 878	149	19.3	202	7 154	1.0	64.1	79.1	2.0
PL	14 447	1 499	9.6	2 036	22 570	2.4	62.5	522.5	3.2
PT	3 668	304	12.1	520	6 298	1.3	92.4	106.1	2.1
RO	13 306	3 724	3.6	2 962	18 048	5.9	28.9	213.5	5.6
SI	483	74	6.5	79	1 232	1.3	92.4	16.4	1.5
SK	1 896	24	79.0	71	2 295	0.8	61.3	49.4	1.7
FI	2 291	63	36.4	114	4 633	0.8	95.1	39.7	1.6
SE	3 066	70	43.8	92	5 789	0.4	48.5	49.2	1.4
UK	15 686	183	85.7	408	22 017	0.6	52.8	386.2	1.5
EU-15	123 216	5 170	—	5 426	325 807	—	58.1	3 540.0	1.9
EU-12	48 387	6 587	—	6 509	66 398	—	45.7	1 254.0	3.2
EU-27	171 603	11 757	14.6	11 935	392 205	1.2	54.4	4 800.8	2.0
HR	1 326	177	7.5	186	2 861	2.9	—	—	—
EU-28	172 929	11 934	—	12 121	395 066	—	—	—	—

Sources: The Commission's 'EU Agriculture — Statistical and Economic Information Report 2012', February 2013 and the Commission's 'Rural Development in the EU — Statistical and Economic Information Report 2012', December 2012.

Table III: Basic agri-environmental indicators (EU-27)

	UAA classed as Natura 2000 area (%)	Territory classed as nitrate vulnerable zone (NVZ) (%)	Risk of erosion (rate of soil loss by water erosion) (t/ha/year)	UAA under organic farming (%)	Production of renewable energy from agriculture (kToe)	Production of renewable energy from forests (wood and waste) (kToe)	Greenhouse gas emissions from agriculture (1 000 t of CO_2 equivalent)
	2011	2012	2006	2010	2010	2010	2010
BE	7.2	76.2	2.34	3.6	613.3	952.0	10 042
BG	22.2	34.6	2.22	0.5	26.5	924.0	6 406
CZ	6.6	41.6	1.65	12.4	331.4	2 094.0	7 777
DK	4.7	100.0	1.09	6.1	182.7	1 718.0	9 520
DE	10.7	100.0	2.23	5.9	8 944.5	12 230.0	67 479
EE	5.5	7.2	1.88	12.8	2.7	958.0	1 344
EL	18.9	24.3	4.86	8.4	30.2	725.0	9 282
ES	15.8	16.2	3.48	6.7	1 120.9	4 751.0	40 014
FR	8.1	45.5	3.43	2.9	2 262.5	10 471.0	93 876
IE	4.1	100.0	0.33	1.1	34.3	194.0	17 910
IT	10.6	12.6	7.78	8.6	741.7	3 346.0	33 741
CY	6.0	5.3	n.a.	2.8	5.5	6.0	670
LV	6.7	12.8	0.43	9.2	49.7	1 732.0	2 330
LT	4.6	100.0	0.81	5.2	104.7	1 002.0	4 458
LU	10.2	100.0	3.32	2.8	11.7	48.0	690
HU	14.6	56.2	1.59	2.4	244.3	1 524.0	8 267
MT	7.8	100.0	n.a.	0.2	0.0	n.a.	78
NL	4.4	100.0	0.63	2.5	581.9	1 033.0	16 624
AT	11.4	100.0	4.84	17.2	498.1	4 340.0	7 453
PL	11.6	4.5	1.23	3.3	435.3	5 865.0	34 624
PT	18.4	3.7	7.63	5.8	256.2	2 582.0	7 515
RO	12.5	57.8	2.60	1.3	96.6	3 900.0	16 777
SI	21.3	100.0	7.22	6.4	39.3	572.0	1 963
SK	16.0	29.8	2.29	9.1	143.3	740.0	3 065
FI	0.8	100.0	0.13	7.4	264.0	7 707.0	5 882
SE	4.1	19.8	0.60	14.3	226.3	9 911.0	7 873
UK	3.0	43.6	4.61	4.1	288.6	1 442.0	45 908
EU-15	10.0	48.6	3.12	6.4	16 056.9	61 451.0	373 808
EU-12	12.2	35.7	1.74	3.7	1 479.3	19 317.0	87 758
EU-27	10.6	45.3	2.76	5.1	17 536.1	80 769.0	461 567

Source: The Commission's 'Rural Development in the EU — Statistical and Economic Information Report 2012', December 2012.

Table IV: Basic data on EU forests (2010)

Member States	Forest [1] (1 000 ha)	Other Wooded Land [2] (1 000 ha)	Other Land (1 000 ha)	Ownership of forests: Public (1 000 ha)	Forest per inhabitant (ha/hab)	Quantity of total roundwood removals (1 000 m³)
Austria	3 857	134	4 254	858	0.46	19 261
Belgium	678	28	2 322	301	0.06	3 451
Bulgaria	3 927	0	6 937	3 408	0.52	6 071
Croatia	1 920	554	3 118	1 396	0.44	4 306
Cyprus	173	214	537	119	0.20	—
Czech Republic	2 657	0	5 069	2 041	0.26	16 187
Denmark	587	48	3 607	139	0.11	—
Estonia	2 203	134	1 902	858	1.64	4 348
Finland	22 084	1 032	7 293	6 699	4.13	46 512
France	15 954	1 618	37 438	4 113	0.25	61 677
Germany	11 076	0	23 801	5 708	0.13	47 688
Greece	3 903	2 636	6 351	2 907	0.35	1 743
Hungary	2 039	0	6 922	1 178	0.20	6 496
Ireland	737	50	6 101	400	0.16	2 591
Italy	9 149	1 767	18 495	3 073	0.15	—
Latvia	3 354	113	2 762	1 655	1.50	11 091
Lithuania	2 165	84	4 019	1 366	0.67	5 515
Luxembourg	87	1	171	41	0.18	353
Malta	0.35	0	31.65	—	0.00	0
The Netherlands	365	0	3 023	184	0.02	1 118
Poland	9 319	0	21 314	7 661	0.24	3 5281
Portugal	3 456	155	5 457	54	0.32	10 866
Romania	6 573	160	16 265	4 398	0.31	13 667
Slovakia	1 938	0	2 872	980	0.36	9 027
Slovenia	1 253	21	740	291	0.62	3 236
Spain	18 173	9 574	22 171	5 336	0.40	13 980
Sweden	28 605	2 020	10 406	7 664	3.08	74 285
United Kingdom	2 881	20	21 349	959	0.05	8 432
EU-28	**159 114**	**20 364**	**244 727**	**63 787**	**0.32**	**409 244**

[1] 'Forest': Land spanning more than 0.5 hectares with trees higher than 5 metres and a canopy cover of more than 10%, or trees able to reach these thresholds in situ.

[2] 'Other Wooded Land': Land not classified as 'forest', spanning more than 0.5 hectares; with trees higher than 5 metres and a canopy cover of 5–10%, or trees able to reach these thresholds in situ; or with a combined cover of shrubs, bushes and trees above 10%.

Source: '2011 State of Europe's Forests', Forest Europe (The Ministerial Conference on the Protection of Forests in Europe). For ownership of forests in Greece and in Portugal, data are from 2005.

Table V: CAP expenditure by Member State (EU-27)

	1. Distribution by Member State Aids and Markets/Rural Development (2011)				2 % of farms benefiting from direct aids under the EAGF (2011)		
Member State (EU-27)	2011 EAGF [1] (Million EUR)	% of total EU-27	2011 EAFRD (Million EUR)	% of total EU-27	With aid ≤ EUR 5 000	With aid ≤ EUR 20 000	With aid ≥ EUR 50 000
BE	644.6	1.5	75.0	0.6	35.89	73.37	4.92
BG	316.6	0.7	123.2	1.0	91.95	96.87	1.52
CZ	669.3	1.5	448.2	3.8	63.44	83.98	9.64
DK	967.0	2.2	50.0	0.4	45.06	73.59	11.83
DE	5 531.8	12.6	1 153.0	9.8	46.23	79.35	5.01
EE	74.7	0.2	106.9	0.9	85.49	95.16	1.72
EL	2 425.0	5.5	414.3	3.5	81.48	98.25	0.14
ES	5 944.5	13.6	981.0	8.3	74.65	93.45	1.36
FR	8 790.9	20.0	740.7	6.3	29.40	59.71	10.14
IE	1 314.9	3.0	348.1	2.9	41.41	87.15	1.72
IT	4 852.6	11.0	1 103.1	9.3	87.13	97.18	0.83
CY	42.6	0.1	18.0	0.1	97.13	99.59	0.07
LV	112.5	0.2	159.8	1.3	95.14	98.96	0.33
LT	279.8	0.6	248.7	2.1	94.87	99.04	0.28
LU	34.8	0.1	13.3	0.1	30.00	64.00	5.00
HU	1 065.2	2.4	432.7	3.7	85.45	95.77	1.32
MT	4.3	0.0	7.4	0.0	96.88	99.38	0.00
NL	946.6	2.1	55.8	0.5	36.93	70.90	4.31
AT	747.0	1.7	560.5	4.7	59.55	94.94	0.36
PL	2 495.2	5.7	1 753.1	14.9	95.75	99.50	0.16
PT	773.7	1.8	488.2	4.1	87.32	96.57	1.22
RO	802.1	1.9	894.9	7.6	98.59	99.54	0.14
SI	108.8	0.2	111.8	0.9	93.81	99.66	0.04
SK	298.9	0.7	345.9	2.9	78.86	88.26	7.64
FI	499.5	1.1	282.5	2.4	46.13	90.31	0.87
SE	707.2	1.6	276.2	2.3	57.36	85.18	3.62
UK	3 322.3	7.6	601.7	5.1	43.19	73.37	8.92
EU [2]	43.5	0.1	—	—	—	—	—
EU-27	43 815.9	100.0	11 794.0	100.0	80.30	93.58	1.63

[1] European Agricultural Guarantee Fund (EAGF), Budget line number 05. The Sugar Restructuring Fund (05.02) is included in the EAGF.

[2] Commission expenditure.

Sources: **Column (1)**: Commission's 'Fifth Financial Report on the European Agricultural Guarantee Fund — EAGF 2011' and annexes; 'Fifth Financial Report on the European Agricultural Fund for Rural Development — EAFRD 2011'.

Column (2): Commission's 'Indicative Figures on the Distribution of Aid, by size-class of aid, received in the context of direct aid paid to the producers according to Council Regulation (EC) No 1782/2003 and Council Regulation (EC) No 73/2009 — Financial Year 2011'.

Table VI: Trade in agricultural and food products in EU-27 by geographical area (2011)

Country / Group of countries	Imports (Million EUR)	% of (3)	Exports (Million EUR)	% of (3)	Balance (b-a)
1. TOTAL (2+3)	394 042	—	403 539	—	9 497
2. Intra-EU	295 277	—	298 191	—	2 914
3. Extra-EU	98 765	100.0	105 348	100.0	6 583
CANDIDATE COUNTRIES [1]	4 101	4.1	5 078	4.8	977
of which Turkey	3 490	3.5	3 273	3.1	– 217
of which Croatia	416	0.4	1 296	1.2	– 880
OTHER EUROPEAN COUNTRIES					
of which Switzerland	4 174	4.2	6 539	6.2	2 365
of which Russia	1 108	1.1	10 571	10.0	9 463
of which Ukraine	2 627	2.7	1 871	1.8	– 756
MEDITERRANEAN AREA [2]	8 788	8.9	17 048	16.2	8 260
ARABIAN GULF COUNTRIES [3]	232	0.2	3 815	3.6	3 583
ASEAN [4]	10 369	10.4	4 823	4.6	– 5 546
of which Indonesia	3 490	3.5	2 638	2.5	– 852
OTHER ASIAN COUNTRIES					
of which India	2 195	2.2	2 387	2.2	192
of which China	4 461	4.5	3 259	3.1	– 1 202
of which Japan	183	0.2	4 755	4.5	4 572
NAFTA [5]	11 312	11.4	18 173	17.2	– 6 861
of which United States of America	8 239	8.3	13 475	12.8	5 237
MERCOSUR [6]	21 989	22.2	1 673	1.6	– 20 316
of which Brazil	13 871	14.0	1 150	1.1	– 12 721
of which Argentina	6 304	6.4	159	0.1	– 6 145
ACP (Lomé Convention)	13 318	13.5	8 519	8.0	– 4 799
OCEANIA					
of which Australia	1 643	1.7	138	0.1	– 1 505
of which New Zealand	2 311	2.3	224	0.2	– 2 087

[1] Croatia, Iceland, Turkey, the former Yugoslav Republic of Macedonia.

[2] Morocco, Algeria, Tunisia, Turkey, Egypt, Israel, Lebanon, Syria, Libya, Jordan, West Bank and Gaza Strip.

[3] Saudi Arabia, Kuwait, Bahrain, Oman, Qatar, United Arab Emirates.

[4] Myanmar, Thailand, Laos, Vietnam, Indonesia, Malaysia, Brunei, Singapore, Philippines and Cambodia.

[5] Signatory countries to the North American Free Trade Agreement (NAFTA): USA, Canada and Mexico.

[6] Brazil, Paraguay, Uruguay and Argentina.

Source: The Commission's 'Agriculture in the Union — Statistical and Economic Information Report 2012', February 2013.

→ Albert Massot
11/2013

5.2.11. The European Union and forests

The European Union does not have a common forestry policy. However, a large number of the EU's policies and initiatives affect forests, and not just within the EU itself but also in non-EU countries.

What is a forest? This would seem to be a simple question, but there is no one answer common to all the Member States. For the purposes of international forestry statistics, forests are deemed to be land with an area of more than 0.5 hectare and tree crown cover of more than 10%, and where trees can reach a minimum height of five metres at maturity.

Forests in the EU: valuable multifaceted and multipurpose ecosystems

A. The European forest landscape, a mosaic largely shaped by man

Taking the definition given above, there are 159 million hectares of forest (4% of the world total) in the EU. Forests cover in total 38% of the EU's land area: six Member States (Finland, France, Germany, Poland, Spain and Sweden) account for two thirds of the EU's forested areas (*5.2.10, Table IV). How important forests are varies considerably from one Member State to another: while forests in Finland, Sweden and Slovenia cover more than 60% of the country, this figure is only 11% in the Netherlands and the United Kingdom. Moreover, unlike a great many areas around the world where deforestation is still a major problem, the amount of land covered by forests is growing in the EU; by 2010 forest coverage had grown by approximately 11 million hectares since 1990, primarily due to both natural growth and afforestation work.

The EU has many different types of forests, reflecting its geoclimatic diversity (boreal forests, alpine forests with conifers, etc.). Their distribution is mainly determined by climate, sunshine, altitude and the topography of the land. Only 4% have never been touched by man; 8% are plantations, while the remainder fall into the category of 'semi-natural' forests, i.e. ones shaped by man. Moreover, the majority of European forests are privately owned (approximately 60% of forested land, as opposed to 40% for publically owned forests).

B. Multifunctional roles of forests: environmental, economic and social

Environmentally, forests help protect the soil (against erosion, for instance), form part of the water cycle and regulate the local climate (primarily via evapotranspiration) and the global climate (especially by stocking carbon); as the habitat for a great many species, forests also protect biodiversity.

From a socio-economic point of view, working forests generates resources, principally wood. Wood can be obtained from 135 million of the 159 million hectares of forests (no legal, economic or environmental restrictions to limit use). Moreover, felling on this land only accounts for 64% of the rise in the annual volume of wood. The primarily use is for energy (42% of volume), with 24% for sawmills, 17% for the paper industry and 12% for the panel industry. Approximately half of the renewable energy consumed in the EU comes from wood. Forests also provide 'non-ligneous' products (i.e. not from wood): food (e.g. berries and mushrooms), cork, resins, oils, etc. Forests are also a vehicle for certain specific services (hunting, tourism, etc.). Forests are also sources of employment, particularly in rural areas; the forestry sector (forestry, wood and paper industry) accounts for approximately 1% of the EU's GDP, and this can be as high as 5% in Finland. It provides jobs for some 2.6 million people. Lastly, forests have an important place in European culture.

C. Abiotic and biotic threats, challenges exacerbated by climate change

Abiotic (i.e. physical or chemical) factors that threaten forests include: fires (particularly in the Mediterranean area); drought; storms (on average, over the past 60 years, two storms a year have caused significant damage to EU forests); atmospheric pollution (emissions from road traffic). Biodiversity is also threatened by forests being broken up as transport infrastructure is built. As for biotic factors, animals (insects, cervids) and diseases can damage forests. In total, approximately 6% of land areas suffer damage from at least one of these factors.

Climate change is already becoming a serious issue for Europe's forests. While its effects will differ depending on geographic location, climate change is likely to affect the forests' rate of growth, their range, the range of certain parasites, and even the frequency and intensity of extreme weather events. How forests can adapt to these changes and the part they can play in combating them (e.g. by using wood instead of non-renewable energy and materials) represent two major challenges.

The EU's forests are thus the subject of numerous expectations, some of them competing, as the tensions between working them and protecting them illustrate. Reconciling contradictions of this kind forms one of the principle challenges in forestry governance.

Forestry policy and initiatives within the EU: coherence is the challenge

As no specific reference is made in the Treaties to forests, the EU does not have a common forestry policy. Forestry policy is still therefore primarily a national competence. However, many of the EU's actions do have an impact on forests in the EU and non-EU countries.

A. The European Reference Framework for Forestry: update likely in 2013

The EU Forestry Strategy (Council Resolution of 15.12.1998) acts as the reference framework for the forestry sector in the EU. It aims at better coordination between Member States' policies and EU actions that have an impact on forests. Its basic principles are respect for the subsidiarity principle, sustainable forest management and recognition of their multifunctional role.

The EU Forest Action Plan (COM(2006) 302), which builds on the forest strategy, aims to improve forestry's long-term competitiveness, protect the environment, contribute to a better quality of life for EU citizens and foster intersectorial coherence in forestry initiatives. The Forest Action Plan was rounded off by a communication on innovative and sustainable forest-based industries in the EU (COM(2008) 113), which put forward new measures to make the wood sector more competitive.

B. A wide range of EU actions affecting forests

1. Common agricultural policy (CAP), the main source of EU funds for forests

Approximately 90% of EU funds for forests come from rural development policy (European Agricultural Fund for Rural Development, or EAFRD), which is the second pillar of the CAP. Approximately EUR 8 billion (9% of the EAFRD budget) were set aside in 2007-2013 to co-finance forestry measures. Member States have been able to choose from among 20 measures directly or indirectly linked to forests. The measures Member States have employed the most under Axis 1 (Competitiveness) concerned training, improving the economic value of forests, adding value to forestry products and developing infrastructure. Under Axis 2 (Environment), the two most significant measures have been: support for the first afforestation of agricultural or non-agricultural land (EUR 2.4 billion from the EAFRD) and restoring forestry potential and adopting prevention measures (EUR 1.6 billion). Support for non-productive investments has also been a very popular measure. For instance, approximately 890 000 hectares of agricultural and non-agricultural land were due to be afforested during 2007-2013. Finally, under Axis 3 (Diversification) support for diversification into non-agricultural activities (e.g. production of renewable energy) has been the measure linked to forests with the highest take-up rate.

2. A glance at other EU actions affecting forests

The marketing of forest reproductive material is regulated at EU level (Directive 1999/105/EC). The European plant health regime aims to prevent harmful organisms spreading to forests (Directive 2000/29/EC). The EU also helps fund forest research, notably under the Seventh Framework Programme. Under energy policy, the EU has set itself the legally binding target of having 20% of total energy consumption coming from renewable energy sources by 2020, which should increase the demand for forestry biomass (Directive 2009/28/EC). Moreover, forestry projects can, under the cohesion policy, be co-financed by the European Regional Development Fund (fire prevention, renewable energy production, climate-change preparations, etc.). The Solidarity Fund (Regulation (EC) No 2012/2002) seeks to help Member States tackle major natural disasters, such as storms (e.g. EUR 82 million for Sweden in 2005) or forest fires (e.g. EUR 90 million for Greece in 2007). As for the Community Civil Protection Mechanism (Decision 2007/779/EC), this can be deployed when a crisis outstrips the Member State's ability to cope, as has happened with some forest fires (Greece, 2007 and 2012) and some storms.

In addition, approximately 37.5 million hectares of forest belong to the Natura 2000 network for nature protection, set up under the EU's environment policy. The Financial Instrument for the Environment (LIFE+) supports various forestry projects, e.g. the prevention of forest fires. The EU Biodiversity Strategy (COM(2011) 244) stipulates that sustainable forest management plans for publically owned forests must be in place by 2020. The European Forest Fire Information System EFFIS monitors forest fires. The EU also promotes ecological tendering (COM(2008) 400), which may encourage demand for sustainably produced wood; the European ecolabel has been awarded for wood flooring, furniture and paper. In addition, the FLEGT Action Plan provides for 'Voluntary Partnership Agreements' with wood-producing countries and a regulation to ban the marketing of illegally harvested wood which came into force in March 2013 (Regulation (EU) No 995/2010).

The EU also participates in many international processes affecting forests (Kyoto Protocol, etc.). Forest Europe is still the main political initiative on forests at pan-European level. Discussions are under way on a legally binding agreement on forest management and sustainable use. Turning to the EU's climate policy, there are various initiatives here concerning forests: the Green Paper on preparing forests for climate change (COM(2010) 66); consideration of the role of forests in the EU's

international commitments on climate change (COM(2012) 93); support for halting global forest cover loss by 2030 at the latest and reducing tropical deforestation by at least 50% by 2020 (COM(2008) 645); funding of projects under the REDD+ programme to reduce emissions linked to deforestation and forest degradation in Asia, Africa and Latin America. Finally, the Neighbourhood Policy can also be put to use; the 2012 Action Programme for Morocco, for instance, includes EUR 37 million for a programme supporting its forestry policy.

Role of the European Parliament

The European Parliament (EP) legislates on an equal footing with the Council in a great many fields that affect forests: agriculture, environment, etc. (ordinary legislative procedure). The same applies to the budget procedure. In addition, the EP adopts resolutions affecting forests on a regular basis. Its resolution of 30 January 1997 (T4-0026/1997) in particular resulted in the Council adopting the EU Forestry Strategy. In this, the EP proposed implementing actions to protect forests, better use and develop them and encourage their extension. The EP also gave its support in its resolution of 16 February 2006 (T6-0068/2006) to the implementation of an action plan on sustainable forest management, considering that a more coherent and active approach was needed to improve forest management. Finally, in its resolution of 11 May 2011 (T7-0226/2011) the EP declared itself in favour of updating the EU's Forestry Strategy and Forest Action Plan in order to include the challenges arising from climate change and make further progress on sustainable forest management.

→ Guillaume Ragonnaud

5.3. Common fisheries policy

5.3.1. The Common Fisheries Policy: origins and development

A Common Fisheries Policy (CFP) was first formulated in the Treaty of Rome. Initially linked to the Common Agricultural Policy, over time it has gradually become more independent. The primary goal of the CFP, as revised in 2002, is to ensure sustainable fisheries and guarantee incomes and stable jobs for fishermen. Several changes to the fisheries policy were introduced in the Treaty of Lisbon. In 2013 the Council and Parliament reached agreement on a new CFP.

Legal basis

Articles 38-43 of the Treaty on the Functioning of the European Union (TFEU).

The TFEU introduced some innovations regarding the involvement of Parliament in the drafting of legislation concerning the CFP. The most important change is that legislation necessary for the pursuit of the objectives of the CFP is now adopted under the ordinary legislative procedure (formerly known as the codecision procedure), making Parliament co-legislator. However, the provisions on legislation on 'measures on fixing prices, levies, aid and quantitative limitations and on the fixing and allocation of fishing opportunities' (Article 43(3) TFEU) remain as they were in the Treaty establishing the European Community (EC Treaty), meaning that such legislation can only be adopted by the Council on proposals from the Commission.

With regard to the ratification of international fisheries agreements, the Lisbon Treaty stipulates that they are to be ratified by the Council after Parliament has given its consent.

Objectives

Fisheries are a natural, renewable, movable and common property that are part of our common heritage. The Treaty of Rome made provisions for a Common Fisheries Policy, and now Article 39(1) TFEU sets out the objectives for the Common Agricultural Policy, which are shared by the Common Fisheries Policy, since Article 38 defines agricultural products as 'the products of the soil, of stock-farming and of fisheries and products of first-stage processing directly related to these products'. Fisheries are a common policy, meaning that common rules are adopted at EU level and applied in all Member States. The original objectives of the CFP were to preserve fish stocks, protect the marine environment, ensure economic viability of European fleets and provide consumers with quality food. The 2002 reform added to these objectives the sustainable use of living aquatic resources, in a balanced manner, from an environmental, economic and social point of view, specifying that sustainability must be based on sound scientific advice and on the precautionary principle. The new CFP basic rules came into force on 1 January 2003.

Achievements

A. Background

The Common Fisheries Policy originally formed part of the Common Agricultural Policy, but it gradually developed a separate identity as the Community evolved, starting in 1970, with the adoption by Member States of exclusive economic zones (EEZ) and the entry of new Member States with substantial fishing fleets. These developments meant that the Community had to tackle specific fisheries problems, such as access to common resources, the conservation of stocks, structural measures for the fisheries fleet and international relations in fisheries.

1. Beginnings

It was not until 1970 that the Council adopted legislation to establish a common organisation of the market for fisheries products and put in place a Community structural policy for fisheries.

2. Early development

Fisheries played a significant role in the negotiations leading to the United Kingdom, Ireland and Denmark joining the EEC in 1972. This resulted in a move away from the fundamental principle of freedom of access: national rights to exclusive coastal fishing in territorial waters, defined as lying within 12 nautical miles of the coast, were extended to include EEZs reaching up to 200 nautical miles from the coast. The Member States agreed to leave the management of their fisheries resources in the hands of the European Community.

3. CFP regulations and reforms

a. The 1983 regulation

In 1983, after several years of negotiations, the Council adopted Regulation (EEC) No 170/83, establishing the new-generation CFP which enshrined a commitment to EEZs, formulated the concept of relative stability and provided for conservatory management measures based on total allowable catches (TACs) and quotas. Since 1983, the CFP has 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 on its catch potential.

b. The 1992 regulation

In 1992 Regulation (EEC) No 3760/92, containing the provisions that governed fisheries policy until 2002, endeavoured to remedy the serious imbalance between fleet capacity and catch potential. The remedy it advocated was to reduce the Community fleet and alleviate the social impact by means of structural measures. The regulation introduced the concept of 'fishing effort' with a view to restoring and maintaining the balance between available resources and fishing activities. The regulation provided for access to resources through an effective licensing system.

c. The 2002 reform

The measures introduced in Regulation (EEC) No 3760/92 were not sufficiently effective to halt overfishing, and the depletion of many fish stocks continued at an even faster rate. The critical situation led to a reform consisting of three regulations that were adopted by the Council in December 2002 and entered into force on 1 January 2003:

- Framework Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources (repealing Regulations (EEC) No 3760/92 and (EEC) No 101/76);
- Regulation (EC) No 2369/2002 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector (amending Regulation (EC) No 2792/1999);
- Regulation (EC) No 2370/2002 establishing an emergency Community measure for scrapping fishing vessels.

The primary objective of the 2002 reform was to ensure a sustainable future for the fisheries sector by guaranteeing stable incomes and jobs for fishermen, and supplying consumers, while preserving the fragile balance of marine ecosystems. It introduced a long-term approach to fisheries management, including the preparation of emergency measures, involving multiannual recovery plans for stocks outside safe biological limits and of multi-annual management plans for other stocks.

In order to avoid aggravating the imbalance between the overcapacity of the fleet and the actual fishing possibilities, since 2005 aid has exclusively been used to improve safety and working conditions on board and product quality, to switch to more selective fishing techniques or to equip vessels with satellite vessel monitoring systems (VMS).

Socio-economic measures were also introduced to support the industry during the transition period. To ensure more effective, transparent and fair controls, the Community Fisheries Control Agency (CFCA) was established in Vigo (Spain).

The 2002 reform gave fishermen a greater say in decisions affecting them through the creation of Regional Advisory Councils (RACs), consisting of fishermen, scientific experts, representatives of other sectors related to fisheries and aquaculture, regional and national authorities, environmental groups and consumers.

The 2009 reform of the Common Fisheries Policy

The 2002 reform did not live up to expectations in the short term as the deterioration of some stocks continued to increase. At the same time, it highlighted some problems that had remained unnoticed until then, such as the problem of discards.

In 2009 the Commission launched a public consultation on the reform the CFP with the aim of integrating the new principles that should govern EU fisheries in the 21st Century. After a long debate in the Council and — for the first time — in Parliament, agreement was reached on 1 May 2013 on a new fisheries regime based on three main pillars:

- the new CFP;
- the common organisation of the markets on fishery and aquaculture products;
- the new European Maritime and Fisheries Fund (EMFF).

The new CFP is meant to ensure that the activities of the fishing and aquaculture sectors are environmentally sustainable in the long term and are managed in a way that is consistent with the objectives of achieving economic, social and employment benefits. The most important points are:

- Multiannual ecosystem-based management to reinforce the role that in the previous reform had been given to multiannual plans, but also to take a more ecosystem-oriented approach, exchanging single-species plans for multi-species and fisheries plans.

- Maximum Sustainable Yield (MSY): taking into account international compromises, such as the 2002 Johannesburg Summit on Sustainable Development, the new CFP will set the MSY as the main target for all fisheries. Where possible by 2015, and by 2020 at the latest, fishing mortality will be set at F_{MSY} (the level of catches of a given stock that produces the MSY).
- Discard Ban: the new reform will end one of the most unacceptable practices common to EU fisheries. The discard of regulated species is be phased out and, in combination, flanking measures are to be introduced to implement the ban. By 2019 all EU fisheries will be implementing the new discard policy.
- For the fleet capacity, the new CFP obliges the Member States to adjust their fishing capacities so that they are in balance with their fishing opportunities. The Member States are to draw up plans for reducing capacities whenever an overcapacity develops in any segment of a fleet.
- Small-scale fisheries are to play a special role in the new CFP given their weight in the EU fishing sector. The exclusion zone of 12 nautical miles for traditional fleets is to be extended until 2022, and recommendations are to be made to the Member States that they allocate a greater share of quotas to that sector, given its low environmental impact and high labour intensity.
- The rules governing the activities of EU fishing fleets in third-country and international waters are to be determined in the context of the EU's external relations, ensuring that they are in line with the principles of EU policy. Arrangements for fishing in such waters are to be developed through partnership agreements and through participation in regional fisheries management organisations (RFMOs).
- Sustainable aquaculture is another focus of the new reform, with the double objective of increasing yields to supply the EU fish market and boosting growth in coastal and rural areas. This is to be done through national plans to remove administrative barriers and uphold environmental, social and economic standards for the aquaculture sector.
- New obligations require the Member States to reinforce the role of science in the future CFP by increasing the collection of data, and the sharing of information, on stocks, fleets and the impact of fishing activities.
- The reform aims at achieving more decentralised governance by bringing the decision procedure closer to the fishing ground. The new regulation is to provide that EU legislators define the general framework and the Member States develop the implementing measures, while cooperating among themselves on the regional level.

The common organisation of the markets for fishery and aquaculture products has been part of the reform package. It aims to strengthen the competitiveness of the EU fishing industry and to improve transparency in the markets by means of a modernisation and simplification of the current regulation. The producer organisations will play a major role in the future of EU markets, especially in collective management, monitoring and control.

There will also be new marketing standards on labelling, quality and traceability that will give the consumer more information about the sustainability of their choices when purchasing fisheries products.

The new European Maritime and Fisheries Fund will serve as a financial tool to help implement the CFP and the common organisation of the market on fishery and aquaculture products.

Role of the European Parliament

A. Competence

- Fisheries legislation: the Lisbon Treaty provides for codecision (the ordinary legislative procedure)
- EU membership of international fisheries conventions and the conclusion of agreements with third countries (codecision with the Council)

B. Role

The Lisbon Treaty has given Parliament greater power to legislate, granting it the opportunity to help shape the Common Fishing Policy and to supervise the rules that govern the activities of the EU fishery and aquaculture sectors.

→ Rafael Centenera Ulecia

5.3.2. Fisheries resource conservation

Fisheries resource conservation is based on the need to ensure sustainable exploitation of these resources and the long-term viability of the sector. With a view to achieving this objective, the European Union has adopted legislation governing access to EU waters, the allocation and use of resources, total allowable catches and fishing effort limitation.

Legal basis

Articles 38 to 43 of the Treaty on the Functioning of the European Union (TFEU).

Objectives

The main objective is to ensure the long-term viability of the sector through sustainable exploitation of resources.

Achievements

A. Basic principles governing access to waters and resources

1. Access to EU waters

a. The principle of equal access

The general rule is that EU fishing vessels have equal access to waters and resources throughout the EU.

b. Restrictions in the 12 nautical mile zone

This is an exception to the principle of equal access to EU waters which applies within 12 nautical miles from the baselines, where Member States may retain exclusive fishing rights. This derogation stems from the need to preserve the most sensitive areas by limiting fishing effort and protecting traditional fishing activities on which the social and economic development of certain coastal communities depends. Measures establishing the conditions governing access to waters and resources are adopted on the basis of the biological, socio-economic and technical information available. This restriction has been extended until the end of 2014 by Regulation (EC) No 1152/ 2012.

c. Access restrictions beyond the 12 nautical mile zone

In 2005 the Commission issued a communication [COM(2005) 422] on the review of certain access restrictions in the common fisheries policy (Shetland Box and Plaice Box). The communication was a response to the obligation to assess the grounds for restrictions on access to waters and resources outside the 12 nautical mile zone. The Shetland Box was set up to control access to species which are of special importance in the region and biologically sensitive, while the Plaice Box was established to reduce the level of discards of flatfish, particularly plaice, in the North Sea fisheries. The communication provided for restrictions on access to the Shetland Box being maintained for a further three years, while, for the Plaice Box, no date was set owing to uncertainty over the length and scope of the studies required.

2. Allocation of resources and sustainable exploitation

a. The principle of relative stability

Fishing opportunities are allocated among the Member States in such a way as to ensure the relative stability of the fishing activities of each Member State for each stock concerned. This principle of relative stability, which is based in particular on historical catch levels, requires the maintenance of a fixed percentage of authorised fishing effort for the main commercial species for each Member State. Fishing effort needs to be generally stable in the long term in view of the importance of ensuring that fishing can continue, particularly in regions that have long been heavily dependent on fishing.

b. Sustainable exploitation

Conserving resources by adjusting fishing capacity to fishing opportunities is one of the priorities of the common fisheries policy. To achieve sustainable exploitation, fish stocks need to be managed in accordance with the principle of maximum sustainable yield (MSY). To this end, common fisheries policy (CFP) decisions are based on the best scientific advice available and apply the precautionary approach whereby the absence of sufficient scientific information may not be used as a reason for postponing or failing to take steps to conserve species. Sustainable exploitation also requires the gradual introduction of an ecosystem-based approach to fisheries management.

B. Fisheries resource conservation

1. Total allowable catches and effort limitation

a. Limiting catches

Total allowable catches (TACs), which are set on the basis of scientific advice from 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 for most of the stocks so that they may be adjusted in response to changes in stock levels. However, under the arrangements for multiannual management of resources, catch limits will be more stable, thus enabling fishermen better to plan their activities.

b. Limiting fishing effort

Fishing effort limitation measures may be taken as part of plans for the recovery of stocks that are at risk. They take the form of, for example, restrictions on the number of fishing days authorised each month. This number may vary according to the gear used, the fishing zone visited (based on ICES divisions), the species targeted, the status of the stock and, possibly, the power of the vessel. With a view to ensuring greater flexibility, the Member State may apportion these days among the various vessels in their fleet.

c. Technical measures

In general, such measures seek to prevent catches of juveniles, non-commercial species and other marine animals. They cover a target species and associated species (in the case of mixed fisheries), an operating zone and the types of gear that may be used. The most common technical measures cover:

- fishing gear: stipulating a minimum mesh size and a given structure for nets, and the number that may be carried on board;
- the composition of, and limits on, by-catches on board;
- the use of selective fishing gear to reduce the impact of fishing activities on marine ecosystems and non-target species;
- zones and periods in which fishing activities are prohibited or restricted, including for the purpose of protecting spawning and nursery areas;
- the setting of a minimum size for species that may be retained on board and/or landed.

In the event of a serious threat to the conservation of living aquatic resources or to the marine ecosystem arising as a result of fishing activities and requiring immediate action, the Commission and the Member States (or the latter, on their own initiative) may adopt emergency measures to protect fish stocks and to restore the balance of marine ecosystems that are at risk.

Alternatively, Member States may adopt conservation and management measures applicable to all fishing vessels within their 12-mile zone, provided that those measures are not discriminatory and that consultations have been held with the Commission, other affected Member States and the relevant Regional Advisory Council (RAC). However, if such measures are more stringent than EU legislation, Member States may apply them only to fishing vessels flying their flag in waters coming under their sovereignty and jurisdiction.

Finally, experimental fishing projects are carried out with a view to promoting conservation and looking into selective fishing techniques to be implemented.

2. Long-term strategy for fisheries resources management

Multiannual stock management plans seek to keep the volume of stocks within safe biological limits. These plans lay down maximum catches and a range of technical measures, taking due account of the characteristics of each stock and the fisheries in which it is found (species targeted, gear used, status of target stocks) and the economic impact the measures will have on the fisheries concerned.

Multiannual stock recovery plans are implemented for fish stocks that are at risk. They are based on scientific advice and provide for fishing effort restrictions (limits on the number of days vessels are at sea). They ensure 'that the impact of fishing activities on marine ecosystems is kept at sustainable levels'.

3. Fleet management

Fleet management is a means of adjusting fishing capacity in such a way as to ensure that there is a stable and sustainable balance between fishing capacity and fishing opportunities. This involves:

- establishing the number and types of vessels authorised to fish (e.g. by means of fishing licences);
- using a fleet register to control and monitor fishing capacity;
- implementing entry/exit schemes and overall capacity reduction measures;
- implementing fishing effort reduction measures and setting reference levels;
- requiring Member States to report on their fleet capacity;
- using European Fisheries Fund (EFF) instruments to adjust fishing capacity.

Role of the European Parliament

The European Parliament (EP) has consistently maintained that the principles of precaution and sustainability should be followed in matters relating to resources. In recent times, greater account has been taken of the amendments tabled by Parliament's Committee on Fisheries on fish stock management and recovery plans than was previously the case. For example, none of the amendments which the EP brought forward to the 2004 cod plan were adopted. However, some were incorporated (at least in part) in the later 2008 cod plan. In all, 80% of the EP's amendments to that plan were accepted in whole or in part. A similar situation arose in connection with the 2007 and 2009 bluefin tuna plans.

The 2008 revision of the cod recovery plan was the procedure in which the greatest number of changes was made prior to adoption. The West Scotland

herring plan was the proposal which gave rise to the smallest number of amendments. Most of the changes concerned effort control measures. In 7 of the 12 plans considered since 2002, large sections of the chapters on fishing effort limitation were deleted. The plans concerned were: (1) cod 2004; (2) northern hake; (3) southern hake and Norway lobster; (4) Bay of Biscay sole; (5) western Channel sole; (6) North Sea plaice and sole; and (7) Baltic cod. These plans had originally included a chapter with a set of provisions (eight articles) covering the use of kilowatt days (kW days) to regulate fishing effort and the establishment of a database and a list of vessels to supply the data. This chapter was removed in its entirety, firstly from the 2004 cod plan and subsequently from each of the other plans containing such a chapter, because it was considered that its provisions would have a discriminatory impact on Member States with large fishing fleets targeting cod, as compared to those taking cod only as a by-catch. In each plan, the deleted chapter was replaced by different effort limitation provisions, which gave rise to a variable and complex approach to effort limitation. The system adopted for the 2004 cod plan (days at sea by gear) was initially unsuccessful in reducing fishing effort and was replaced in the 2008 regulation by a scheme for limiting the total number of kW days by fleet that took specific account of each fleet's impact on cod mortality.

A large number of changes were also made to the southern hake and Norway lobster plan, including changes to the arrangements for effort limitation and inspection, monitoring and control, most of which were put forward by the EP. Significant modifications strengthening the bluefin tuna plan were made following comments from the EP and Council, and included the incorporation of a requirement for Member State fishing plans.

One of the main changes between the proposal for European eel recovery measures and the final regulation as adopted was the removal of provisions on seasonal closures. The focus was instead placed on eel management plans which could include closures as one management tool option among others. Parliament's Committee on Fisheries opposed seasonal closures and proposed that fishing effort should be reduced by half; however, effort reduction measures will only apply in cases where no eel management plan is approved.

→ Rafael Centenera

5.3.3. Fisheries control and enforcement

Fisheries control and enforcement aims to ensure good application of regulations regarding fisheries and to impose compliance with these rules where necessary. In this respect, competences and responsibilities are shared among Member States, the Commission and the operators. Member States which do not comply with these rules can be prosecuted in accordance with the infringement procedure.

Legal basis

Articles 38 to 43 of the Treaty on the Functioning of the European Union (TFEU).

Objectives

The control policy seeks to ensure fisheries regulations are observed and where necessary to enforce compliance. In short, adoption of the measures is the responsibility of the European Union bodies while the Member States are responsible for implementing the measures and applying sanctions in cases of infringements in their area of jurisdiction.

Achievements

A. Background

1. Control and enforcement systems before the 2002 CFP reform

The control and enforcement of fishing activities by Member States before the 2002 reform was hindered by poor enforcement of the rules, modest compliance and overfishing. This was the result of an ineffective control system, the main problem being the lack of uniformity in the way Member States were enforcing the Common Fisheries Policy (CFP), e.g, different administrative services, legislation and judicial proceedings. At EU level there were some bottlenecks as well; there was no list of sanctions to be applied by Member States in the event of serious infringements of the CFP rules, nor did the Commission inspections have powers that went beyond those of inspectors in the Member States. At international level, there was a need to better define the competences of the Commission and the Member States within regional fisheries organisations (RFOs).

2. Control and enforcement systems after the 2002 CFP reform

The reformed CFP [Regulation (EC) No 2371/2002] brought new changes aiming at overcoming these deficiencies by the adoption of the following measures:

a. Greater cooperation in enforcement and creation of a Joint Inspection Structure (JIS)

This was provided for in the Action Plan for the uniform and effective implementation of the CFP (COM(2003) 130). The JIS was to ensure the pooling of EU and national inspection and monitoring resources through the Community Fisheries Control Agency (CFCA).

b. Clarification of competences of the players in the fisheries sector

- Member States are responsible for the implementation of CFP rules on their territory and in their waters and also by the vessels flying their flags operating outside these waters. Member States are also responsible for placing observers on board and taking decisions, including the prohibition of fishing activities.
- The Commission must ensure that the Member States meet their obligations equally in terms of equity and effectiveness. Every three years, it shall draw up an evaluation report to be submitted to the European Parliament and the Council, on its action on the application of the CFP rules by the Member States.
- The operators involved in all fisheries activities from catching to marketing, transporting and processing must comply with the specifications of domestic law at each stage of production.

c. More harmonised application of the rules

Sanctions within Member States continue to vary and this acts as a constraint on the uniform achievement of a common level of compliance. The Council shall draw up a list of sanctions to be applied by Member States for serious infringements.

d. Ensuring commitment by Member States

The reform has granted the Commission more autonomy in the control of Member States' fishing activities (e.g. EU inspectors can now undertake inspections on fishing vessels and premises of businesses or other bodies related to the CFP without being accompanied by an inspector from the Member State concerned. The Commission can also deduct fishing quota when Member States have failed to cease overfishing). There is another measure, the CFP Compliance Scoreboard, that aims at achieving better compliance by raising public awareness of how well Member States are performing in their control and enforcement activities.

B. Cooperation, control and inspection

EU fishing vessels operate in EU waters, in the waters of third countries and on the high seas. Member States are responsible for enforcing CFP rules on all vessels fishing in their waters and vessels flying their flag outside their waters. Member States shall cooperate with EU inspectors and with other Member States to ensure compliance with the rules of the CFP.

1. Cooperation between Member States and the Commission

Member States may collaborate with EU inspectors in the undertaking of their duties and shall report to the Commission on diverse aspects such as resources allocated to monitoring, a breakdown of surveillance activities and the number and types of violations and sanctions applied.

2. Cooperation between Member States in inspection

Member States shall be authorised to:

- exchange inspectors;
- inspect vessels flying their flag in all EU waters except the 12-mile zone of another Member State;
- inspect vessels of another Member State in all EU waters, after authorisation by the coastal Member State concerned or where a specific monitoring programme has been adopted [Article 2(4) of Regulation (EEC) No 2847/93];
- inspect vessels of another Member State in international waters.;
- In other cases, Member States must authorise each other to carry out inspections.

3. Joint Inspection Structure

Access to EU waters and resources is limited to fishing vessels in possession of a fishing licence and authorisation to fish. They are also required to have tracking devices properly installed and functioning on board [such as the satellite vessel monitoring system (VMS)]. Masters of fishing vessels shall report catches and landings. They shall cooperate with inspectors on board their vessels and comply with conditions for landing, transhipment, marking and identification of vessels and fishing gear among others. Regarding the marketing of fisheries products, they can only be sold from fishing vessels to registered buyers or auctions. All these activities are to be controlled and inspected by Member State and Commission inspectors. The JIS aims at organising a joint deployment of national means of control and inspection according to an EU strategy to tackle enforcement of fisheries rules.

The Community Fisheries Control Agency

This body was set up in 2005 as a key element to improve compliance with the CFP rules. It will improve the uniform and effective enforcement by pooling EU and national means in the control, inspection and monitoring of fishing activities and coordinating them (joint deployment plans). This operational coordination will help tackle the shortcomings in enforcement resulting from the disparities in the means and priorities of the control systems in the Member States. The CFCA does not affect the distribution of competences of the Member States and the Commission, where Member States remain responsible for control and enforcement of the CFP rules.

C. Enforcement and Infringement Procedures

1. Harmonisation of the rules

Setting up common obligations to be applied to all Member States is a step forward to better enforcement. These are some of the measures in place;

a. Traceability

Intended to reduce infringements during fishing operations or after landing, this also provides consumers with extra information on fisheries products at every stage of the distribution chain. There are some obligations related to traceability; a number of **documents** shall accompany fisheries products for their identification from the net to the plate. Fishing vessels, including third country vessels, operating in EU waters shall be equipped with satellite tracking devices such as **VMS** to facilitate stricter monitoring of their activities.

b. List of behaviours that seriously infringe the rules of the CFP

The breaking of fisheries rules is not only limited to fishing activities at sea, but also those involved in landing, selling, storing, transporting and importing fish. Behaviours that seriously infringe EU rules are listed in Regulation (EC) No 1447/1999. In the Northwest Atlantic Fisheries Organisation (NAFO) area, there is an agreement between the contracting parties on what constitutes serious violations.

2. Enforcement by Member States

In line with their reporting obligations, enforcement achieved by Member States on fisheries rules is made public via the CFP Compliance Scoreboard. The yearly reports submitted to the Commission by the Member States cover:

- catch reporting obligations;
- quota overruns;
- fishing effort declarations;

- fleet register, compliance with entry-exit regime framed by the reference levels and other obligations related to fishing vessels;
- the use of structural aid;
- environmental issues (e.g. authorised vessels using driftnets or shark finning).

3. Infringement procedures

This refers to any procedure adopted by the Commission and formally initiated against a Member State for failure to comply with EU law. The most common are due to:

- overfishing; quota overruns, unauthorised fishing;
- misreporting of data on catch and fishing effort;
- lack of control of technical conservation measures (e.g. use of driftnets to catch tuna after the ban on these and the catch and marketing of undersized fish);
- ineffective control and inspection of the fishing industry.

Role of the European Parliament

The European Parliament has always supported the adoption of effective control and enforcement measures. In particular, Parliament made a number of demands, such as improved implementation of the CFP provisions to reduce illegal, unreported and unregulated (IUU) fishing by EU vessels, a ban on trade in IUU fish and a requirement that the legal origin of the fish be demonstrated before they are offloaded or imported into the EU, the creation of an EU register of IUU vessels, common minimum penalties for infringements and a ban on the entry into EU ports of IUU vessels and their fish. Furthermore, Parliament upheld and strengthened the rules on authorisations for fishing activities by EU fishing vessels outside EU waters and the access of third country vessels to EU waters. This regulation is part of the 'simplification' of the CFP and it sets up general rules for applying/issuing licences to fish, clarifies the responsibilities of Commission and the Member States and specifies the reporting requirements of fishing activities. In addition, a number of innovative ideas that could improve compliance with the terms of fisheries agreements and bring greater transparency to the activities of EU vessels in third country waters are being put forward. Although is not clear to what extent the proposal will be modified in Council, and whether certain aspects will be included in the final 'control regulation', the European Parliament considers that the provisions of this proposal are very important and must be maintained.

→ Jakub Semrau

5.3.4. Fisheries structural assistance

Initially funded by the Financial Instrument for Fisheries Guidance (FIFG), the European fisheries policy was funded by the European Fisheries Fund (EFF) for 2007-2013, and will be funded by the new European Maritime and Fisheries Fund (EMFF), worth EUR 6.5 billion, for 2014-2020.

Legal basis

Articles 32 to 37 and 158 of the EC Treaty and Articles 38 to 43 of the Lisbon Treaty.

Objectives

The main objective of the fisheries structural policy has been 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, successive efforts were 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. The new EMFF closely follows the overhaul of the entire Common Fisheries Policy (CFP) and is meant to help fishermen comply with new requirements such as the discard ban, but will also be used to improve safety and working conditions, data collection and port infrastructure.

Achievements

A. Background

The fisheries structural policy originated in 1970 with the decision to apply to the European Agriculture Guidance Guarantee Fund (EAGGF), Guidance Section, to support construction, modernisation, marketing and processing within the fisheries sector.

In 1992, the Edinburgh European Council decided, under Council Regulation (EEC) No 2080/93, to incorporate fisheries structural policy into the Structural Funds with its own objective, Objective 5(a) (adaptation of fisheries structures), and its own financial instrument, the Financial Instrument for Fisheries Guidance (FIFG). To provide financial support for fisheries-dependent areas, the Community initiative concerning the restructuring of the fisheries sector (PESCA) was put in place for the period 1994-1999, together with accompanying measures such as early retirement, incentives for young fishermen, etc.

Agenda 2000 introduced new guidelines, which included the incorporation of the structural problems of fisheries-dependent areas into the new Objective 2 of the Structural Funds (Council Regulation (EC) No 1260/1999) and the non-renewal of the PESCA initiative in 2000. Council Regulation (EC) No 1263/1999 established the new FIFG framework for intervention for the 2000-2006 period, with a view to achieving a sustainable balance between fisheries resources and their exploitation..

As part of the common fisheries policy (CFP) reform, a simpler system to limit the fishing capacity of the Community fleet in order to match it with the available resources was adopted. For 2007-2013, the European Fisheries Fund (EFF) replaced the FIFC.

B. Structural policy instruments

1. The multi-annual guidance programmes (MAGPs) ran from 1983 to 2002, in four phases, and were a key element of structural policy. Their aim was to adjust the size of the fleet in the EU Member States and to adapt the fishing effort to available resources. However, the MAGP system to restructure the fleet proved ineffective mainly because of:

- the very low level of ambition of the objectives agreed by the Council;
- the inconsistency of applying both aid to exit and aid to build;
- the difficulty of measuring the engine power of vessels;
- no account being taken of the impact of technological progress;
- the introduction of fishing effort reduction (the calculation of effort reduction targets was overly complex and produced adverse effects); reduction targets were distorted since Member States could achieve their targets either by permanently withdrawing vessels or by temporarily halting fishing activities (vessel tie-ups).

2. Vessel scrapping accounted for 94% of the total number of vessels withdrawn with assistance from the FIFG during the period 1994-1997.

3. The 2002 CFP reform spelled an end to the MAGPs and a simpler system was introduced to limit the capacity of the EU fleet. This system gave the Member States more responsibility for the management of their fleets.

C. The European Fisheries Fund (EFF)

1. The EFF has replaced the FIFG as of the 2007-2013 period and had five priorities:

- supporting the main objectives of the CFP, especially those established under the 2002 reform. This meant ensuring sustainable exploitation of fisheries resources and a stable balance between those resources and the capacity of the EU fishing fleet;
- increasing the competitiveness and economic viability of operators in the sector;
- promoting environmentally friendly fishing and production methods;
- providing adequate support for those employed in the sector;
- facilitating diversification of economic activity in areas dependent on fishing.

The total EFF budget for 2007-2013 amounted to EUR 3 849 million (EUR 2 908 million for convergence areas and EUR 941 million for non-convergence areas). Funding was made available for all sectors of the industry — sea and inland fisheries, aquaculture businesses, producer organisations and the processing and marketing sectors.

2. Types of action

To ensure the economic, environmental and social sustainability of fishing, the EFF concentrated on:

- measures for the adaptation of the Community fishing fleet (aid for the permanent or temporary withdrawal of fishing vessels, or for training, redeployment or early retirement);
- aquaculture, processing and marketing: promoting the acquisition and use of gear and methods that reduce the impact of fishing on the environment, especially by small and micro-enterprises;
- measures of common interest: projects that helped sustainable development or the conservation of resources, the strengthening of markets in fishery products or the promotion of partnerships between scientists and operators in the fisheries sector were eligible for aid;
- sustainable development of coastal fisheries areas: support for measures and initiatives aimed at diversifying and strengthening economic development in areas affected by the decline in fishing activities;
- technical assistance: action relating to the preparation, monitoring, administrative and technical support, evaluation, auditing and control necessary for implementing the proposed regulation.

The Member States are responsible for the allocation of financial resources among these five priorities.

D. The European Maritime and Fisheries Fund (EMFF)

To give effect to Parliament's agreement with the Council on the new and thoroughly revised CFP, the EMFF, as proposed by the Commission and modified by the Parliament in its first reading of October 2013, is to concentrate on the following.

1. Towards sustainable fisheries in the EU

As the new CFP obliges Member States to set sustainable fishing quotas from 2015 and introduces a ban on discarding unwanted fish, the EMFF will help fishermen to comply with the new rules by supporting investments in more selective fishing gear or equipment to facilitate handling, landing and storage of unwanted catches.

2. More data for better fisheries management

The EMFF will also fund the collection and management of fisheries data, for example the data needed to set the Maximum Sustainable Yield required by the new CFP rules.

3. Engine renewal

Parliament also added EMFF support for withdrawing, replacing or modernising engines, provided the new engine's power output is at least 4% less than that of the engine it replaces. However, fleet renewal subsidies have been rejected.

4. Support for young fishermen

Fishermen under 35 years old are to be granted up to EUR 100 000 in individual start-up support if they buy a small-scale coastal fishing vessel between 5 and 20 years old and have five years' professional experience in the sector.

5. Simpler rules, better control and enforcement

The CFP and the Integrated Maritime Policy (IMP) will both be funded through the EMFF, on the grounds that using a single fund will help simplify and integrate the two policies. Using the EMFF to fund control and enforcement measures should also help ensure that CFP rules are duly observed.

Role of the European Parliament

Parliament has always supported the incorporation of the fisheries structural policy into the Structural Funds, e.g. by recommending the creation of an autonomous Objective 6 (1993 reform) for fisheries within the Structural Funds, or supporting the EFF budget provided for in the agreement on the 2007-2013 financial perspective.

During the 2008 fuel crisis, Parliament adopted a resolution supporting fishermen and suggesting ways to help the struggling industry (in particular, calling on the Commission to reconsider its rules on state aid — banned under EU law — and to allow a maximum aid of EUR 100 000 per vessel, rather than per fishing enterprise).

On 23 October 2013, Parliament adopted its first reading position on the Commission proposal for a regulation on the European Maritime and Fisheries Fund (COM(2011) 804, see point D above), insisting on the importance of sustainable fisheries and calling, first and foremost, for concrete measures to eliminate overfishing, combined with good management of fleet capacity while enabling fishermen to make a living from fishing.

→ Jakub Semrau
11/2013

5.3.5. Producers' organisations and the Common Market Organisation in fisheries products

The Common Market Organisation (CMO) in fisheries and aquaculture products was the first component of the Common Fisheries Policy (CFP). Its scope for action in the face of the current crisis in the fisheries sector is limited given the nature of its intervention mechanisms and the scarce funding allocated to them.

Legal basis

Articles 38 to 43 of the Treaty on the Functioning of the European Union (TFEU).

With Council Regulation (EC) No 104/2000 establishing a Common Market Organisation in fisheries and aquaculture products as the existing regulatory framework, Commission proposal COM(2011) 416 aims to replace this regulation.

Objectives

The CMO in fisheries and aquaculture products provides for a price and intervention system with the aim of regulating the Community market for fisheries products. Its objectives are to:

- correct the most negative effects of the imbalance between supply and demand;
- stabilise prices in order to guarantee a minimum level of income for fishermen;
- promote the general competitiveness of the Community fishing fleet on world markets.

The CMO instruments are:

- Community withdrawals;
- carry-over operations;
- independent withdrawals and carry-overs by producers' organisations, including flat-rate compensations and premiums;
- private storage;
- special arrangements for tuna.

All of these intervention mechanisms are focused on the producers' organisations (POs). Most of them are located in seven Member States: Spain, Italy, France, the United Kingdom, Germany, Portugal and the Netherlands. These organisations are mainly to be found at the local fisheries level and, to a lesser extent, in the coastal fisheries and aquaculture sectors and their objective is to improve the marketing of their products. For this they may undertake actions such as:

- planning production and bringing it into line with demand, in particular by implementing catch plans;
- promoting concentration of supply;
- price stabilisation;
- promoting methods that encourage sustainable fishing.

Interventions expenditure has been gradually falling, largely due to the decreases in spending on compensation for operational programmes and on Community withdrawals that have been one of the most frequently used intervention mechanisms. Since the last reform of the CMO, Community withdrawals have been replaced in the first place in terms of expenditure by carry-over operations.

The state of the resources and the increase in the price of fuel may limit short-term use of CMO interventions. The four Member States making most use of the CMO instruments are France, Spain, Portugal and Ireland. The use of the CMO instruments has been increasing in the first three countries, but decreasing in Ireland. Other Member States — the United Kingdom, Denmark, Germany, Sweden, Italy and Belgium — use CMO interventions, with expenditure that is substantially lower than that of the previous four countries.

In order to promote the development of the fisheries sector, groups that include representatives of production, marketing and processing sectors may ask Member States for recognition as inter-branch organisations. This recognition can be granted by Member States under the control of the Commission. There are only four recognised inter-branch organisations, and they operate at state level: Comité Interprofessionnel des Produits de l'Aquaculture, CIPA (France), Interatún (Spain), Aquapiscis (Spain) and O.I. Filiera Ittica (Italy).

Within the reform of the CFP, a far-reaching reform of the CMO was deemed necessary, whereby market-oriented instruments would contribute, directly or indirectly, to meeting the main CFP objectives. To address overfishing and unsustainable practices and move away from production strategies based solely on volume, the new CMO, as outlined in the proposal for a regulation on the common organisation of the markets in fishery and aquaculture products (COM(2011) 0416) is meant to support:

- the empowerment of producers' organisations (POs) and their co-management of access rights as well as production and marketing activities;

- market measures that increase the bargaining power of producers (in fisheries and aquaculture), improve prediction, prevention and management of market crises and foster market transparency and efficiency;
- market incentives and premiums for sustainable practices; partnerships for sustainable production, sourcing and consumption; certification (ecolabels), promotion, information to consumers;
- additional market measures on discards.

Role of the European Parliament

On 12 September 2012, the Parliament adopted (620/27/27) its first reading position on the proposal for a regulation on the common organisation of the markets in fishery and aquaculture products (COM(2011) 416). Seeking to build a more responsive market backed by strengthened professional organisations, the Parliament has emphasised the following:

- **Strengthening POs:** it is necessary to strengthen these organisations, and to provide the necessary financial support to allow them to play a more meaningful role in the day-to-day management of fisheries, acting within a framework defined by the CFP objectives. Transnational producer organisations or associations of these organisations at trans-regional level should be encouraged. They should be based, where appropriate, on biogeographical regions, and at transnational level, and be intended as partnerships that aim to produce common and binding rules, providing a level-playing field for all stakeholders that are engaged in the fishery sector. It is necessary to ensure that they remain subject to competition rules and to maintain the link between individual coastal communities (including representation of small-scale fisheries) and the fisheries and waters that they have historically exploited.
- The **European Maritime and Fisheries Fund** (EMFF) may financially contribute to the launch/development of associations of producer organisations. Support should also be provided to producer organisations to create electronic nationwide databases/markets to better coordinate information between market operators and processors. POs should encourage contributing to food supply and jobs in coastal and rural areas, including vocational training and cooperation programmes to encourage young people to enter the sector and ensuring a fair standard of living for those engaged in fisheries. Funding for the instruments referred to in the CMO, including the Collective Fund, shall be established under the EMFF, without prejudice to established co-financing rates.
- **Fighting discards and illegal fishing:** POs should contribute towards the elimination of illegal, unreported and unregulated (IUU) fishing practices by applying such internal controls on members as may be necessary. To reduce the environmental impact of fishing, implementing measures should aim to improve the selectivity of fishing gears, to control effort and to avoid unwanted and unauthorised catches. POs should avoid, minimise and make the best use of unwanted catches of commercial stocks. Landings thereof should not be distributed free of charge, nor should they create a substantial market for such catches.
- **Labelling:** previously frozen products sold as fresh goods will have to have words 'defrosted products' on their labelling. For fresh products, the date of landing (not date of catch) is to be used on labelling. Marketing and labelling information must also include specific fish stock, the area where it was caught or farmed (incl. the flag State of the vessel) and the production method including the gear type used. The Commission shall, by 1 January 2015, submit a report for the establishment of a Union-wide eco-label scheme for fisheries products, and examine potential minimum requirements for obtaining approval for the use of such an eco-label.
- **Use of technology:** to safeguard European consumers, Member State authorities responsible for monitoring and enforcing the regulation should make full use of available technology, including DNA testing, in order to deter false labelling of catches. Aquaculture producer organisations should use information communications technology (ICT) to ensure that the best possible price for products is achieved.
- **Market intelligence:** the Parliament insisted that the Commission undertake to devise a Union-wide campaign making consumers aware of the huge variety of fish species landed in European ports, and to inform them of the different periods when species are in season, together with promotional campaigns concerning the new labelling measures being introduced. Also, information campaigns should be carried out in primary and secondary schools across the Union, so that youth and teachers are aware of the benefits of fish consumption and of the variety of fish available.
- **Health and hygiene standards**: in order to avoid unfair competition in the EU, imported products must meet exactly the same health and hygiene standards required of Union products and shall be subject to the same rigorous controls, including total traceability.

→ Jakub Semrau

5.3.6. International fisheries relations

To gain access to key fishing areas of the world or to combat illegal fishing, the European Union has concluded 22 international fisheries agreements. The European Union concludes bilateral agreements such as partnership or reciprocity agreements, or multilateral agreements such as international conventions or agreements with regional fisheries organisations.

Legal basis

Articles 38 to 43 of the Treaty on the Functioning of the European Union (TFEU). With regard to the ratification of international fisheries agreements, the Lisbon Treaty provides that they will be ratified by the Council after consent of the Parliament (Article 218(6)(a) TFEU).

Objectives

- To ensure appropriate European Union access to the world's main fishing zones and resources.
- To enhance bilateral and regional cooperation.
- To supply fish to European markets and provide employment.
- To contribute to the sustainable development of world fisheries.
- To tackle destructive fishing practices.
- To improve scientific research and data collection.
- To combat illegal, unregulated and unreported (IUU) fishing.
- To strengthen control and inspections under the regional fisheries organisations (RFOs).

Achievements

A. Role and importance

1. Raison d'être

Bilateral and multilateral fishing agreements became necessary after the establishment of exclusive economic zones (EEZs) of 200 nautical miles in the mid-1970s. The United Nations then adopted the Convention on the Law of the Sea (UNCLOS) in 1982, which was meant to be a constitution for the oceans, recognising coastal states' rights to control the fish harvest in adjacent waters. Although EEZs cover only 35% of the total area of the seas, they contain 90% of the world's fish stocks. UNCLOS does not just govern EEZs but also the high seas. It encourages states to cooperate with each other in the conservation and management of living resources (including marine mammals) in the high seas by means of the establishment of regional fisheries organisations (RFOs). As a result of this, distant water fishing fleets (DWFFs) had to enter into international agreements and/or other arrangements to get access to fisheries resources in either third countries' EEZs or in the high seas covered by an RFO. The principle of the freedom of the seas was over.

2. Financial investment and benefits for the European fleet

The budget allocated to international fishing agreements increased from EUR 5 million in 1981 to almost EUR 300 million in 1997 (0.31% of the total Community budget and nearly 30% of the resources allocated to the fisheries sector). The high level of investment was maintained in 1998 and 1999, but slackened off when the agreement with Morocco (totalling about EUR 90 million) was not renewed. In recent years about EUR 150 million has been assigned to fisheries agreements. The budget for 2013 is EUR 144.23 million. International agreements provide direct employment for around 30 000 people and generate considerable economic activity in sectors and regions heavily dependent on fishing. At the moment, the most important agreement in terms of financial compensation and access rights is the one to be signed with Mauritania for EUR 70 million a year, giving access to about 175 EU vessels.

3. Geographical extension

Since the first agreement was signed with the United States in 1977, 29 agreements have been signed in all, 26 of which were in force in the period 1993-1999, 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). In 2011, 24 fisheries agreements were in force with coastal states in Africa (14), the Pacific (6) and with northern countries: Norway, Iceland, Faroe Islands and Greenland. Regarding high seas fishing, the EU fleet operates in the Atlantic, the Mediterranean, the Indian Ocean, the Pacific Ocean and the Antarctic, through arrangements with RFOs covering these areas.

B. Types of fishing agreement

1. Bilateral fisheries agreements

a. Fisheries partnership agreements

Fisheries partnership agreements (FPAs) are an outcome of the 2002 reform of the common fisheries policy (CFP) and the Johannesburg Summit on Sustainable Development. They were adopted in Council Conclusions 11485/1/2004 on the Commission communication on an integrated framework for fisheries partnership agreements with third countries. The underlying idea is to become a partner with the third country in order to develop sustainable and responsible fisheries and enhance the value of fisheries products. The FPAs are also meant to underpin coherence with other policies such as development cooperation, environment, trade and health. All FPAs consist of a fisheries agreement and a protocol (e.g. defining the conditions of the agreement). Under these agreements the EU fleet is given access rights to the fisheries surplus in an EEZ, for the most part in African, Caribbean and Pacific countries (ACP) (also Greenland). The financial terms are based on a lump sum paid by the EU and fees from shipowners. The EU's financial contribution is justified by it being in the mutual interest of the two parties to invest in sustainable fisheries policy; it is not just a payment for access rights. Under the current rules of the World Trade Organization (WTO), these arrangements are not considered to be subsidies. The contribution mainly covers expenses linked to management costs, scientific assessment of fish stocks, fisheries management, control and monitoring of fishing activities, as well as expenses for the follow-up and evaluation of a sustainable fishing policy. Unilateral trade preferences granted by the EU under the Cotonou Agreement to ACP countries (and authorised by the WTO) expired at the end of 2007. A new scheme called economic partnership agreements (EPAs), focusing on mainly commercial aspects (e.g. rules of origin, market access and sanitary and phytosanitary standards), was introduced on 1 January 2008. FPAs are particularly important for tuna fisheries (Cape Verde, Comoros, Côte d'Ivoire, Kiribati, Madagascar, Mozambique, São Tomé and Principe, Seychelles and Solomon Islands). Other agreements for mixed fisheries are in force with Greenland and Mauritania. The length of the protocols varies from two to six years, depending on the country. There are also agreements with others countries that have suspended their protocols for different reasons or have no protocol at all, but the agreement is in force (Equatorial Guinea, Guinea-Bissau, Gabon, Gambia, Micronesia, Mauritius, Morocco, Senegal).

b. Reciprocal agreements

These agreements involve an exchange of fishing opportunities between EU fleets and third countries. The reference based used to guarantee an equal exchange is the 'cod equivalent' (one tonne of cod represents x tonnes of another species in exchange). The agreements mainly affect 'industrial' species (used for the manufacture of fishmeal), which make 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, the United Kingdom and Sweden share 15% of the volume. There are agreements of this type with Norway, that represent more than 70% of the quotas that get the EU, Faeroe Islands and Iceland.

2. Multilateral agreements

a. Agreements with regional fisheries organisations

The aim of these agreements is to strengthen regional cooperation to guarantee conservation and sustainable exploitation of fish resources on high seas and of straddling stocks. Importantly, they also aim to deter illegal, unreported and unregulated fishing. Regional fisheries organisations are of various types; some were set up under the auspices of the Food and Agriculture Organization of the United Nations (FAO), others independently; some manage biological resources in a certain zone, while others focus on a stock or groups of stocks. Some apply only on the high seas, or in exclusive economic zones, or in both. When the EU Commission enters into negotiations with RFOs, its actions are two-fold: membership of the organisation (either as a contracting party or observer) and regulations implementing into Community law the conservation and management measures adopted by the organisations. RFOs generally set up commissions responsible for scientific research, publication of the results and recommendations for managing stocks. These may remain as recommendations or become mandatory if no objections are made within a certain period. They generally act in the following ways:

- limiting catches by two methods: a global quota or national quotas;
- introducing prohibited zones or periods;
- banning or regulating fishing gear.

RFOs are also very active in establishing measures for the control and monitoring of fishing activities such as the adoption of joint inspection schemes in the North East Atlantic Fisheries Commission (NEAFC), Northwest Atlantic Fisheries Commission (NAFO) and the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). The EU is a contracting party in: NAFO; NEAFC; NASCO (North Atlantic Salmon Conservation Organisation); ICCAT (International Commission for the Conservation of Atlantic Tunas); CECAF (Committee for the Eastern Central Atlantic

Fisheries); WECAFC (Western Central Atlantic Fishery Commission); SEAFO (South East Atlantic Fisheries Organisation); IOTC (Indian Ocean Tuna Commission); GFCM (General Fisheries Commission for the Mediterranean); WCPFC (Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean); CCAMLR. The EU only has observer status in conventions agreed by individual Member States. The 2013 budget for RFOs was EUR 9.5 million.

b. International conventions

Conventions and other agreements are used to create a legal order for the seas and oceans and promote their peaceful use, the equitable and effective utilisation of their resources, the conservation of their living resources, and the protection and preservation of the marine environment. The EU is party to UNCLOS and has also collaborated in the development of other instruments to further develop UNCLOS, including:

- the FAO agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas (1993);
- the FAO Code of Conduct for Responsible Fisheries (1995);
- the FAO New York Agreement on straddling fish stocks and highly migratory fish stocks.

The 2013 budget for bodies set up under UNCLOS was EUR 200 000.

Role of the European Parliament

Parliament's consent is required for the adoption of international fisheries agreements. In addition, it must be immediately and fully informed of any decision concerning the provisional application or the suspension of agreements. Parliament has several times stressed the importance of international fisheries agreements for EU fish supplies, for the EU regions most dependent on fishing and for employment in the sector. Further, it has addressed the question of these agreements being consistent 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.

→ Rafael Centenera Ulecia

5.3.7. European aquaculture

European aquaculture is stagnating by contrast with increasing rates of aquaculture production at world level and, in particular, in Asia. To try to dampen this trend, the Commission published two communications with strategies for developing European aquaculture, one in 2002 and another in 2009. Whereas the 2002 strategy failed to increase European production, competition from third countries has sharply increased, there have been several market crises, and the global economic crisis has hit the aquaculture market and industry.

Background

European aquaculture production remained relatively stable between 1.2 million tonnes and 1.4 million tonnes during the period 1995 to 2010. It reached 1.26 million tonnes in 2010, which accounts for 20.3% of the total fisheries production. The value of European aquaculture production reached EUR 3.1 billion, 70% of which came from fish products, and 30% from crustaceans and molluscs. EU aquaculture focuses primarily on four species: mussels, trout, salmon and oysters. However, there has been some development in production of other species such as sea bass, sea bream and turbot.

The main aquaculture producers among the EU Member States are Spain (20%), France (17%), the United Kingdom (16%), Italy (12%) and Greece (9.6%), which together accounted for around 75% of total aquaculture production in 2010. However, considering the value of the production, France is the leading producer (21%), followed by United Kingdom (19%) and Spain (12%). Bivalve molluscs (mussels, oysters and clams) are dominant in Spain, France and Italy. The UK produces mainly salmon, while Greece produces mainly sea bass and sea bream.

A strategy for the sustainable development of European aquaculture (COM(2002) 0511)

In order to tackle the stagnation of aquaculture production, the Commission published, in 2002, a communication entitled 'A strategy for the sustainable development of European aquaculture'. The objectives of the strategy were:

A. Creating long-term secure employment, particularly in fisheries-dependent areas, and increasing employment in aquaculture by between 8 000 and 10 000 full-time job equivalents over the period 2003-2008;

B. Ensuring the availability to consumers of products that are healthy, safe and of good quality, as well as promoting high animal health and welfare standards;

C. Ensuring an environmentally sound industry.

However, the strategy did not achieve its objectives, particularly as regards increasing production and employment: neither the target of a 4% growth rate nor that of 8 000 to 10 000 new jobs was achieved.

The main problem for the aquaculture sector was the lack of production growth, in stark contrast with the high growth rate in the rest of the world. However, the sector has seen good progress in areas such as ensuring availability of quality products to the consumer and ensuring environmental sustainability.

In addition to the traditional obstacles and constraints, since 2002 European aquaculture has met with increased competition from production in third countries, and has had to face crises of governance and, most recently, the effects of the economic crisis.

'A new impetus for the Strategy for the Sustainable Development of European Aquaculture' (COM(2009) 0162)

In order to identify and address the causes of the stagnation of EU aquaculture production, the Commission published a new communication on 4 August 2009, entitled 'A new impetus for the Strategy for the Sustainable Development of European Aquaculture' (COM(2009) 162). This communication aimed to ensure that the EU remains a key player in this strategic sector, increasing production and employment by implementation of the following actions:

A. Promoting the competitiveness of EU aquaculture production through:

- research and technological development;
- promoting spatial planning for aquaculture in order to tackle the problem of competition over space;
- enabling the aquaculture business to cope with market demands;
- promoting aquaculture development in its international dimension;

B. Establishing conditions for sustainable growth of aquaculture through:

- ensuring compatibility between aquaculture and the environment;
- shaping a high-performance aquatic animal farming industry;
- ensuring consumer health protection and recognising the health benefits of aquatic food products;

C. Improving the sector's image and governance through:

- better implementation of EU legislation;
- reducing the administrative burden;
- ensuring proper stakeholder participation and the provision of appropriate information to the public;
- ensuring adequate monitoring of the aquaculture sector.

Strategic Guidelines for the sustainable development of EU aquaculture (COM(2013) 229 final)

Commission's proposal for the CFP reform aims to promote aquaculture through an open method of coordination: a voluntary process for cooperation based on Strategic Guidelines and multiannual national strategic plans.

The Strategic Guidelines published by the Commission on 29 April 2013 aim to assist the Member States in defining their own national targets taking account of their relative starting positions, national circumstances and institutional arrangements. Issues covered by EU legislation are not addressed under the open method of coordination, but they provide framework for its activities. The Guidelines address four priority areas:

1. Simplification of administrative procedures and reduction of licencing time for aquaculture farms;

2. Coordinated spatial planning for overcoming the hindering effect of the lack of space;

3. Enhancing the competitiveness of EU aquaculture;

4. Promotion of a level playing field.

The multiannual national plans which Member States are invited to submit should cover the period 2014-2020. The Commission will produce a summary report of all national plans by April 2014, with the objective of sharing information amongst Member States and for disseminating good practices. In addition Member States are encouraged to make a mid-term assessment of the implementation of their multiannual national plan by the end of 2017.

Role of the European Parliament

On 16 January 2003, in response to the Commission communication 'A strategy for the sustainable development of European aquaculture', European Parliament adopted a resolution on 'Aquaculture in the European Union: present and future'. Parliament invited the Commission to take action in particular with regard to:

A. Markets of aquaculture products

- Equip the aquaculture sector with a real economic crisis instrument and to intervene to resolve problems stemming from practices involving loss-making sales.
- Draw up new rules for the recognition of producers' organisations.

B. Research support to aquaculture

- Release funds for research into vaccines, to improve disease-resistant strains and to approve the use of any vaccine product authorised in one of the Member States.
- Support research on fish feeding with a view to secure the supply of raw materials and to guarantee product quality and food safety for consumers.
- Contribute to the development of techniques to determine the toxin concentration in shellfish.

C. Environmental issues.

- Undertake a feasibility study on the creation of a data bank and the conservation of genetic stocks of wild fish.
- Step up research for preventing introduction of escapees, transgenic fish, and alien species into the environment.
- Devise support systems for biological natural disasters (like toxic algal blooms) or man-made disasters (like the *Erika* or *Prestige*).
- Protect traditional practices such as aquaculture in estuaries.
- Provide a report on the welfare of farmed fish.
- Incorporate the search for new species of high quality and added value among its priorities for aquaculture.

On 17 June 2010, European Parliament adopted a resolution in response to the Commission communication 'A new impetus for the Strategy for the Sustainable Development of European Aquaculture'.

Parliament expressed its belief that a strong sustainable aquaculture sector could act as a catalyst for the development of numerous remote, coastal or rural areas in the Member States.

Parliament invited the Commission to:

- develop a specific EU quality label for aquaculture products, along with a specific organic aquaculture label;
- harmonise the environmental impact criteria and ensure that the sourcing of raw materials used for fish feed is in line with environmentally acceptable practice, issuing specific technical guidelines for the certification of sustainable fish feed;
- ensure that the Community legislation is applied rigorously across the entire chain of aquaculture products and that the principles of mutual recognition and free movement of goods are applied to curative and preventive pharmaceuticals used in aquaculture;
- submit a report on environmental and social standards in the aquaculture industry outside the EU, and launch impact assessment studies regarding the potential effects of Community trade agreements on the aquaculture sector;
- create an instrument for handling economic crises and devise support systems to deal with biological and man-made disasters;
- organise and promote, in close cooperation with the Member States, institutional information campaigns to promote aquaculture products, including organic products, and consider creating specialist organisations for the promotion of the sector's products;
- extend the scope of Council Regulation (EC) No 1/2005 on the protection of animals during transport, promoting locally based hatchery operations and encouraging slaughter close to the fish farm; propose specific sustainability criteria in relation to the wellbeing of farmed fish; and avoid pre-slaughter procedures classed by the European Food Safety Authority (EFSA) as harmful to the wellbeing of the fish;
- take the steps called for by Parliament to implement a cormorant population management plan;
- ensure the provision of suitable vocational training in the field of aquaculture;
- sponsor, in cooperation with developing countries, support and training measures designed to help promote sustainable aquaculture.

→ Irina Popescu

5.3.8. Integrated Maritime Policy

The Integrated Maritime Policy (IMP) is a holistic approach to all sea-related policies. Based on the idea that Europe can draw higher returns from seas and oceans with less impact on the environment by joining up its policies, the IMP encompasses fields as diverse as fisheries and aquaculture, shipping and seaports, marine environment, marine research, offshore energy, shipbuilding and sea-related industries, maritime surveillance, maritime and coastal tourism, employment in the maritime sectors, development of coastal regions, and external relations in maritime affairs.

Legal basis

Conclusions on maritime policy in the meeting of the European Council of 14 December 2007; With Regulation (EC) No 1255/2011 establishing a programme to support the further development of an Integrated Maritime Policy as the existing legal framework, Commission proposal COM(2011) 804 aims to replace it.

Milestones

- March 2005: The Commission put forward a communication on an IMP for the EU setting out the planned objectives for a Green Paper on the future of the EU maritime policy.
- October 2007: The Commission tabled a proposal for an IMP for the EU, known as the Blue Paper (COM(2007) 575), and a corresponding Action Plan (SEC(2007) 1278).
- December 2007: The European Council welcomed the IMP and invited the Commission to report on progress achieved at the end of 2009.
- September 2010: The Commission put forward its proposal for a regulation establishing a programme for continued financial support to the IMP, for the 2011-2013 period (COM(2010) 494).
- December 2011: the European Parliament and the European Council adopt the abovementioned Regulation (EC) No 1255/2011 forming the present legal basis for the IMP.

Objectives

The IMP is a framework to facilitate the development of diverse and sometimes conflicting sea-based activities, with a view to:

- maximising the sustainable use of the oceans and seas, in order to enable the growth of maritime regions and coastal regions as regards:
  - shipping: improving the efficiency of maritime transport in Europe and ensuring its long-term competitiveness, through the creation of a European Maritime Transport Space without barriers, and a maritime transport strategy for 2008-2018,
  - seaports: issuing guidelines for application of environmental legislation relevant to ports and proposing a new ports policy,
  - shipbuilding: promoting technological innovation and a European network of maritime multi-sectoral clusters,
  - maritime jobs: enhancing professional qualifications to offer better career prospects in the sector,
  - environment: reducing the impact and adapting to climate change in coastal zones, and diminishing pollution and greenhouse gas emissions from ships,
  - fisheries management: eliminating discards, destructive fishing practices (e.g., bottom trawling in sensitive areas) and illegal, unreported and unregulated fishing; promoting environmentally safe aquaculture;
- building a knowledge and innovation base for maritime policy, through:
  - a comprehensive European Strategy for Marine and Maritime Research,
  - joint cross-cutting calls under the Seventh Research Framework Programme for an integrated approach to maritime affairs,
  - support of research on climate change and its effect on maritime activities, environment, coastal zones and islands,
  - a European marine science partnership aiming at dialogue among the scientific community, industry and policy makers;
- improving the quality of life in coastal regions, by:
  - encouraging coastal and maritime tourism,
  - preparing a database on Community funding for maritime projects and coastal regions,
  - creating a Community Disaster Prevention Strategy,

  - developing the maritime potential of Outermost regions and islands;
- promoting EU leadership in international maritime affairs, through:
  - cooperation in maritime affairs under the Enlargement Policy, the European Neighbourhood Policy and the Northern Dimension, to cover maritime policy issues and management of shared seas,
  - projection of the EU's Maritime Policy based on a structured dialogue with major partners;
- raising the visibility of Maritime Europe, by:
  - launching the European Atlas of the Seas, as a means of highlighting the common European maritime heritage,
  - celebrating an annual European Maritime Day on 20 May.

Achievements

A number of specific actions have been launched according to the maritime policy action plan:

- Communication on best practices in integrated maritime governance and stakeholder consultation (COM(2008) 395), encouraging the development of national IMPs, creation of internal coordinating structures for maritime affairs,, and definition of responsibilities and competences of coastal regions.
- Communication on European marine and maritime research strategy (COM(2008) 534), proposing concrete measures and mechanisms to improve marine and maritime research.
- Communication on the EU and the Arctic region (COM(2008) 763), aiming for a more detailed reflection on the role of the EU in the Arctic, and looking for a structured and coordinated approach based on the sustainable use of resources.
- Communication on offshore wind energy (COM(2008) 768), identifying the challenges to be tackled in order to exploit Europe's potential for offshore wind energy, and stressing the need for better industrial and technological solutions, application of EU environmental legislation based on realistic assessment of the wind farms impact, as well as improved electricity grids capable of balancing generation and demand, and of transmitting the power to the consumption centres.
- Roadmap on maritime spatial planning (COM(2008) 791), aiming to ensure that proper planning is at the root of all marine-based activities, in order to allow for greater synergy between different maritime activities.
- Communication on the strategic goals and recommendations for the EU's maritime transport policy promoting safe, secure and efficient shipping (COM(2009) 8), as well as a communication and action plan with a view to establishing a European maritime transport space without barriers (COM(2009) 10). These was accompanied by a proposal for a directive on reporting formalities for ships arriving in and/or departing from ports of Member States (COM(2009) 11): all aim to cut down bureaucracy and facilitate maritime transport between EU ports.
- Strategy for the Baltic Sea region (COM(2009) 248), a first comprehensive strategy developed at 'macro-region' level, and a first step towards the regional implementation of the IMP; it included a list of 80 flagship projects.
- Communication on IMP for better governance in the Mediterranean (COM(2009) 466), meant to complement the various sectoral actions that the EU promotes in the Mediterranean area.
- Communication on the international dimension of the IMP (COM(2009) 536), complementing previous regional initiatives by exploring how the IMP should be extended into the wider international arena, and envisaging the creation of a EU framework for a global approach to maritime affairs, enhancing the role of the EU in international fora.
- Communication on integrated maritime surveillance (COM(2009) 538), setting out guiding principles for the development of a common information sharing environment, followed by the communication on a draft roadmap towards establishing the Common Information Sharing Environment for EU maritime surveillance (COM(2010) 584) setting out concrete steps to bring together national authorities to allow for the exchange of data by coast guards, traffic monitoring, environmental monitoring, pollution prevention, fisheries, border control, tax and general law enforcement authorities, as well as navies.
- Communication Marine Knowledge 2020 (COM(2010) 461), intended to improve the use of scientific knowledge on Europe's seas and oceans through a coordinated approach to data collection and assembly.
- Communication on the achievements and future development of Maritime Spatial Planning in the EU (COM(2010) 771), reviewing developments since the 2008 roadmap, and calling for action at EU level to ensure that Maritime Spatial Planning is deployed to the benefit of both the development of maritime activities and protection of the environment.

Role of the European Parliament

As the Commission's suggested integrated approach combining various policy areas broke new political ground, the question of which committee should be responsible for the IMP was hotly debated in Parliament. Maritime policy issues continue to be covered by several committees, unlike in the Commission (where DG MARE has been reorganised in order to ensure better coordination) and in the Council (where the General Affairs and External Relations Council is in charge of the IMP). The Parliament took a first step towards better synergy by launching the 'Seas and Coastal Areas' Intergroup, chaired by Corinne Lepage (ALDE), with 39 MEPs from different political groups in a working structure acting horizontally and across party lines.

The Parliament's working group to draft a report on the Green Paper on the IMP included TRAN and associated ENVI and PECH (associated committees for opinion), as well as ITRE and REGI (for opinions). A first resolution of 12 July 2007 on a future maritime policy for the European Union: a European vision for the oceans and seas (P6_TA2007-0343) highlighted:

- **c**limate change as the greatest challenge to maritime policy, to be tackled through reduction of gas emission from ships, assessment of the feasibility of emission trading for shipping and promotion of renewable energy,
- better European shipping with better European ships, reducing air-pollutant emissions, while improving maritime safety and social legislation for workers,
- better European coastal policy including better European ports, by using cohesion policy instruments,
- sustainable coastal tourism, with the environment being vital for the sector's survival,
- sustainable marine environment, whose conservation and in many cases rehabilitation is imperative,
- integrated fisheries policy as a way to protect small-scale fishing interests and to put an end to the by-catch and discards problem, as well as to recognize the increasing socio-economic significance of aquaculture,
- marine research, energy, technology and innovation to provide a proper response to the sustainability challenge, properly supported by EU and Member States funding, through a 'European Marine Science Consortium' and pooling of knowledge,
- a common maritime policy aiming to create a common European maritime space which will contribute to the integration of the internal market for intra-EU maritime transports and services.

The resolution of 20 May 2008 on an integrated maritime policy for the EU (P6_TA2008-0213), in response to the Commission's communication on the subject, was based on a TRAN report with opinions from PECH and REGI. The Parliament criticised the few practical measures, and reiterated the most important demands of the previous 2007 text.

The Parliament drafted a report covering the October 2009 Commission package of communications on the IMP (COM(2009) 466, 536, 538, 540), with TRAN as lead committee and opinion from PECH under the association procedure (Article 50 of the rules of procedure). The resolution of 21 October 2010 on Integrated Maritime Policy — Evaluation of progress made and new challenges (P7_TA2010-0386) confirmed the fundamentally positive assessment of the IMP. The text concentrated on the administrative and governance structures needed for the IMP and on cross-sectoral tools such as maritime spatial planning, surveillance and research.

On 24 November 2011 and following the recommendation from TRAN as the main committee on this report, the Parliament adopted its position on the programme to support the further development of the Integrated Maritime Policy (2010/0257(COD)). In it, the Parliament underscored that the purpose of proposed funding, i.e. EUR 50 million, was to continue the work undertaken since 2007, and recalled its resolutions of 2007, 2008 and 2010 in support of the development of the IMP. With several initiatives having been financed through preparatory actions and pilot projects (with a life-cycle limit of two or three years), Parliament saw the regulation as an appropriate programme for a stable framework to keep supporting them from 2011 to 2013. The Parliament welcomed the proposal, and contributed in particular by:

- better clarifying the objectives of the programme,
- adopting a clear position on its financing,
- insisting on more involvement of the co-legislators in further decision-making.

The report was then accepted by Council, becoming Regulation (EC) No 1255/2011, which has served as framework of the IMP to date.

Within the ordinary legislative procedure, a report has drafted on the Commission proposal for a regulation on the European Maritime and Fisheries Fund (COM(2011) 804) in the PECH Committee of the Parliament (Alain Cadec, EPP, Rapporteur), conveying the European Parliament's position on the Integrated Maritime Policy — which will serve as the basis for negotiations with the Council, expected to start in the course of 2013.

→ Jakub Semrau

5.3.9. European fisheries in figures

The European Union accounts for approximately 3.3% of global fisheries and aquaculture production. EU catches represent 5.3% of the world's total, while the EU's aquaculture production is around 2% of global production volume. The EU's fishing fleet has been declining in size for the past two decades at a fairly steady rate. Despite its own level of production, the EU is a net importer of fisheries and aquaculture products and constitutes the world's largest single market for these products, with 40% of global imports.

Total production

Global capture fisheries and aquaculture production have continued to increase in recent years, reaching 148.5 million tonnes in 2010. The EU's level of production has gradually been falling and now stands at 6.2 million tonnes. This represented about 4.2% of global production in 2010, down from 7% in the early 1990s.

The EU's largest producers are Spain (16% of the total EU production volume in 2010), Denmark (13.9%), the UK (13.1%) and France (10.6%)

Catches

Global capture fisheries production has remained stable, and stood at about 88.6 million tonnes in 2010. The EU's total catches have decreased to 4.9 million tonnes, or 5.6% of global volume. Most of the EU's catches (71.8%) are taken in the Northeast Atlantic.

The majority of catches in terms of volume are recorded by Denmark (17% of the EU total), Spain (15%), the UK (12%) and France (9%), which together account for slightly more than half of all EU catches. However, the proportion of production used industrially, mainly for the manufacture of fishmeal, is much higher in Denmark than in Spain, the UK or France, where most of the production is used for human consumption. This situation is mirrored in catch values: the unit value of landings in Denmark is lower than in the other leading countries. Finally, the main species in terms of volume of the catches are sprat and herring.

Aquaculture

Global aquaculture production has continued to grow and attained an all-time high in 2010 of 60 million tonnes (excluding aquatic plants and non-food products). Aquaculture production in the EU remained relatively stable at between 1.2 and 1.4 million tonnes during the period 1995 to 2010. In 2010 the production stood at 1.2 million tonnes, which represent 2.1% of the total global production volume.

The main aquaculture producers among Member States are Spain (20%), France (17%), the UK (16%) and Italy (12%), which together accounted for around two thirds of total aquaculture production in terms of volume in 2010. However, in terms of the value of production, France is the leading producer (21%), followed by the UK (19%) and Spain (12%).

EU aquaculture focuses on four main species: mussels, trout, salmon and oysters. In 2010, fish production accounted for half the total volume and for 70% by value, while shellfish accounted for 50% and 30% respectively. Bivalve molluscs (mussels, oysters and clams) predominate in Spain, France and Italy, but species vary from one country to another. The UK principally farms salmon.

The fleet

The Union's fishing fleet has been declining in size for the past two decades at a fairly steady rate. Between 2007 and 2011, the number of vessels in the EU fleet fell by 7.6%, from 90 043 to 83 014.

In 2011, Greece owned 21% of the total number of fishing vessels, followed by Italy (16%), Spain (13%) and Portugal (10%). Those four countries, plus France and the UK, accounted for 76% of the EU fishing fleet.

Spain accounts for 24% of the total tonnage of the EU fleet, followed by the UK (12%), Italy (11%), France (10%), and the Netherlands (8%). Southern Member States account for 55% of the total tonnage but 66% of the number of vessels, owing to the predominance of smaller vessels.

With the exception of Belgium and the Netherlands, where large vessels are the norm, all of the Member States' fleets principally consist of vessels that are less than 12 metres long, reflecting the importance of coastal fishing in those countries.

External trade

The EU is a net importer of fisheries products, with a negative trade balance in 2010 of 3.59 million tonnes, worth EUR 13.78 billion. In 2010, the EU imported 5 336 189 tonnes, with a value of EUR 16.56 billion. The same year, the EU exported 1 739 074 tonnes, with a value of EUR 2.77 billion.

The EU is the largest single market for imported fisheries and aquaculture products, with 40% of total

world imports in 2010. If intra-EU trade is excluded, EU imports represented 26% of the global total. The EU's main suppliers are Norway (22% of imports), China (9%) and Iceland (6%), whereas its main customers are the United States (11% of exports), Switzerland (9%), Russia, Norway and China (8% each), as well as Japan (7%). As far as overall trade is concerned — intra-EU trade and trade with third countries — Spain, France and Italy are the leading Member States in terms of imports, and Denmark, the Netherlands and Spain are the Member States with the highest exports.

Employment

The fisheries sector generated 139 023 jobs in 2009 (measured in full-time equivalents). Spain accounts for 26% of the total, followed by Italy (18%), Greece (17%), Portugal (13%) and France (9%). About 82% of employment in EU fisheries is concentrated in these countries.

Employment in aquaculture generated 31 193 full-time jobs in 2009. The highest levels of employment were in Spain (20%), the UK (19%), Greece (19%), France (12%) and Romania (8%), which together accounted for 78% of all aquaculture jobs in the EU.

The processing sector employed 120 388 people in 2009, two thirds of whom were spread between the UK (16%), Spain (16%), Poland (14%), France (12%) and Germany (7%).

Consumption of fisheries products

The average consumption of fish products in the EU is around 23.3 kg/person/year, compared with a global average of 17.8 kg/person/year (2007 data). Consumption varies from 4.6 kg/person/year in Bulgaria to 61.6 kg/person/year in Portugal.

→ Irina Popescu

5.4. Environment policy

5.4.1. Environment policy: general principles and strategic orientations

European environmental policy rests on the principles of precaution, prevention, rectifying pollution at source and 'polluter pays'. The Sixth Environment Action Programme established the framework and objectives to be achieved in this field during the period 2002-2012. Several complementary policies and instruments (such as environmental impact assessments, LIFE+, and the EU eco-label and eco-audit) have also been adopted to guide EU action in the area of environmental protection and, more broadly, sustainable development.

Legal basis

Articles 11 and 191 through 193 of the Treaty on the Functioning of the European Union (TFEU).

Objectives

The legal base grants the EU competence to act in all areas of environmental policy. The scope of this competence is limited by the principle of subsidiarity (which restricts EU action to those areas where it can be more effective than national or regional action) and the requirement for unanimity in the Council in matters such as those of a fiscal nature, town and country planning, land use, water resources management, the choice of energy sources and the structure of energy supply. Sustainable development was made an explicit objective through the 1997 Treaty of Amsterdam. The Treaty also explicitly mentions the duty to integrate environmental protection into all EU sectoral policies. A declaration attached to the Treaty of Amsterdam first committed the Commission to undertake impact assessments when putting forward proposals with significant environmental implications. The new Treaty included a significant addition, 'climate change', considered to be an issue of particular concern.

Achievements

The launch of a European environmental policy dates back to a conference of European Heads of State or Government in October 1972, which recognised the political need for such a policy in the Community. The 1987 Single European Act introduced a new 'Environment Title' in the Treaty of Rome, which provided the first legal base for the Community's environment policy. Subsequent revisions of the Treaties strengthened Europe's commitment to environmental protection and the role of the European Parliament in its development.

A. The Environment Action Programme and thematic strategies

The Sixth Environment Action Programme (Sixth EAP) 'Environment 2010: Our future, our choice' (Decision 1600/2002/EC) provided a strategic framework for the EU environmental policy for 2002-2012 and is regarded as the central environmental component of the sustainable development strategy of the EU. It focused on four priorities: climate change; biodiversity; environment and health; natural resources and waste. The Sixth EAP outlined strategic approaches to environmental policymaking, including: improving implementation of existing legislation; integrating environmental concerns into other policies; working more closely with the market; empowering individual citizens; and taking account of the environment in land-use planning and management decisions. The Sixth EAP also required the Commission to prepare thematic strategies (TS) covering seven areas: air pollution; prevention and recycling of waste; protection and conservation of the marine environment; soil protection; sustainable use of pesticides; sustainable use of natural resources; and urban environment. The thematic strategies represent a new approach to policy development, focusing on cross-cutting environmental themes rather than specific pollutants or economic activities. Though climate change and biodiversity feature among the key priorities of the 6EAP, these policy areas are not covered by TS, because they fall under separate strategic frameworks, the European Climate Change Programme (ECCP) and the Biodiversity Action Plan (BAP). The Commission publishes a review of environmental policy annually, the last one being the 2009 Environment Policy Review (SEC(2010) 975 final). The final assessment of the Sixth EAP was adopted by the Commission in August 2011. Major environmental achievements during the past 10 years include: the extension of the Natura 2000 network to cover almost 18% of the

EU's land area, the introduction of a comprehensive chemicals policy, and policy action on climate change.

B. Lisbon Strategy and EU 2020

The so-called Lisbon Strategy formulated in 2000 focused essentially on promoting growth and jobs through increasing the EU's competitiveness, notwithstanding periodic attempts to complement it by a 'third, environmental dimension', the EU Sustainable Development Strategy (SDS). In 2009, the EU Heads of State or Government agreed to shift the Lisbon Agenda away from a purely 'growth and jobs' approach, putting the environment and citizens first. Adopted in January 2010, the 'EU 2020' Strategy was designed by the Commission as a successor to the Lisbon Strategy and aims to shape a smart, inclusive and more sustainable growth. Under the Europe 2020 Strategy, the flagship initiative for a resource-efficient Europe points the way towards sustainable growth and supports a shift towards a resource-efficient, low-carbon economy. In this context a Roadmap on resource efficiency was published in 2011, together with a Roadmap for a competitive low-carbon economy by 2050.

C. EU Sustainable Development Strategy (EU-SDS)

The first EU-SDS was adopted at the European Council in 2001. A 'renewed' SDS was subsequently adopted in 2006, combining the internal and international dimensions of sustainable development and focusing clearly on: climate change and clean energy; sustainable transport; sustainable production and consumption; conservation and management of natural resources; public health; social inclusion, demography and migration; global poverty; and sustainable development challenges. Progress was to be reviewed at each spring European Council. However, this arrangement was criticised for the lack of attention devoted to environmental issues; especially when the number of structural indicators dedicated to sustainable development was decreased in 2004, to cover only greenhouse gas emissions, energy intensity of the economy, and transport volume relative to GDP. The reviews of the SDS and Lisbon Strategy were separated in 2006. The Commission's first report on the SDS (COM(2007) 642) noted that progress on the ground — implementation of commitments and impacts on the environment — had been modest. However, it argued that there had been significant advances in policy development, particularly in relation to climate change and energy.

D. Integration of environmental concerns in other policies

Integrating environmental concerns into other EU policy areas (energy, fisheries and transport) has become an important concept and is mentioned in Article 11 of the Treaty (ex-Article 6 TEC). A Commission communication on 'A strategy for integrating environment into EU policies — Partnership for Integration' (COM(1998) 333) was presented to the European Council in June 1998. At this meeting, the Council was requested to establish its own strategies for integrating the environment into their respective policy areas. The nine Councils that developed integration strategies were: General Affairs, Economic and Finance, Internal Market, Industry, Energy, Agriculture, Development, Fisheries and Transport. The report of this so-called 'Cardiff process' produced in 2004 concludes that the '(it) has failed to deliver fully on expectations'. In recent years, environmental policy integration has made the most significant progress in the field of energy policy and climate change issues, as reflected in the parallel development of the EU's climate and energy package. The Commission published its Roadmap for moving to a competitive low-carbon economy in 2050 (COM(2011) 112/4) to look at cost-efficient ways to make the European economy more climate-friendly and less energy-consuming in order to reach the target of an 80% reduction in emissions by 2050. It shows how the sectors responsible for Europe's emissions — power generation, industry, transport, buildings and construction, as well as agriculture — can make the transition to a low-carbon economy over the coming decades.

E. Simplification of EU environmental law

The Commission's 'Better Regulation' agenda has two key initiatives: the Commission's 2001 White Paper on 'European Governance' and the Lisbon Strategy. In June 2002, the Commission published an Action Plan for Simplifying and Improving the Regulatory Environment (COM(2002) 278) accompanied by two communications on improving public consultation on Commission legislative proposals (COM(2002) 277) and on introducing a system for assessing the likely future economic, social and environmental impacts of Commission proposals (COM(2002) 276). Whenever possible, the use of existing instruments and policies to achieve new policy goals is preferred over the introduction of new policy proposals.

F. Impact assessment

The principle that all major Commission proposals are accompanied by an appraisal of their environmental impact was endorsed by the EU Heads of State or Government in 1998. A communication on impact assessment (IA) published in June 2002 (COM(2002) 276) set out the details of the procedure, requiring all major Commission proposals to be subject to an integrated IA procedure. An IA maps out the potential consequences of a decision across its social, economic and environmental aspects, its potential costs and benefits, and its regulatory and

budgetary implications. Environmental assessment is automatically required for plans and programmes which are prepared for town and country planning, land use, transport, energy, waste management, water management, industry, telecommunications, agriculture, forestry, fisheries and tourism. Since the introduction of the system, the number and sophistication of IA has increased significantly. An Impact Assessment Board (IAB) was created in 2006, and new guidelines were published by the Commission (SEC(2009) 92), which both provide detailed guidance on the focus of the IA and strengthen the Parliament and Council's roles.

G. European Environment Agency (EEA)

The EEA created in 1990 is an EU agency, and its objective is to protect and improve the environment with a view to establishing sustainable development. By providing sound and independent information, it represents a major information source in developing, adopting, implementing and evaluating policy for the EU itself, the Member States and the general public. The Agency may cooperate with other bodies, such as IMPEL ('Implementation of Environment Law' — information network on environment legislation linking the Member States and the Commission). The Agency is open to countries that are not EU members. Currently, the EEA has 32 member countries. The 2010 European State of the Environment and Outlook Report is the flagship publication of the EEA, summarising the last five years of action for the environment.

H. International environmental cooperation

The European Neighbourhood Policy Strategy Paper (COM(2004) 373) contains recommendations on the development of regional cooperation, as a means to address issues arising at the enlarged EU's external borders, including environmental issues. Cooperation with neighbouring countries and regions is being promoted through a number of partnership agreements and cooperation strategies. The EU's commitment to global problems was demonstrated during the UN World Summit on Sustainable Development in Johannesburg 2002 by the major role the Community played, aiming to: improve access to basic sanitation and drinking water; reduce biodiversity loss; halt the decline of fish stocks; minimise harmful effects on human health from the production and use of chemicals. The Commission published a communication (COM(2011) 363) proposing policies for the UN Conference on Sustainable Development ('Rio+20') that took place in Brazil in June 2012.

Role of the European Parliament

The EP has been behind a large amount of legislation, such as environmental impact assessments, free access to information and the eco-label for environmentally friendly products. In its resolution of 1998, it recognised that the use of environmental levies could distort competition between those Member States which introduced environmental taxes and those which did not, thus making it desirable for such levies to be introduced by all Member States together.

In response to the communication on the precautionary principle, the EP adopted a report in 2000 calling for clearer guidelines on the application of this principle, believing it should be invoked whenever a provisional objective scientific evaluation of the risks shows that there are justified fears of potentially dangerous effects on the environment or human, animal or plant health that are incompatible with a sufficiently high level of Community protection. The EP's resolution covers not only the definition and scope of the precautionary principle but also risk assessment, risk management, risk communication and the burden of proof. During the negotiations with the accession countries, the EP played an active role as far as the environmental consequences were concerned.

At the EP's request, the Sixth EAP (2002-2012) contained provisions for: listing and phasing out environmentally harmful subsidies; environmental taxes at appropriate national or EU level; Kyoto Protocol emission targets; and thematic strategies for tackling environmental priorities. All legislation arising from the thematic strategies has been adopted by codecision. Furthermore, lead by the EP, environmental concerns are being more and more mainstreamed into EU policymaking, and special attention is being devoted to increasing environmental awareness among the general public and local authorities. The Commission published a mid-term review of the Sixth EAP (COM(2007) 225), which concluded that implementation is 'generally on-track' but that 'existing measures will have to be strengthened or new measures adopted' in certain areas. One year later, the EP adopted a resolution (2007/2204(INI)) noting that the EU is behind schedule in implementation.

On 20 April 2012 the EP adopted in plenary a resolution on the review of the Sixth Environment Action Programme and the setting of priorities for the Seventh — 'A better environment for a better life' (2011/2194(INI)). At present the EP is working on its first reading of the procedure on the General Union Environment Action Programme to 2020: 'Living well, within the limits of our planet'. In the legislative mandate 2004-2009, the EP played a major role, as a codecision actor with the Council, in adopting pieces of legislation which impact on EU environment, notably on chemicals (REACH), pesticides, waste management, water quality, and the climate and energy package.

→ Marcelo Sosa-Iudicissa

5.4.2. Implementation of European environmental law

The Århus Convention, in force since 2001, aims to involve the public in environmental activities, enabling access to information, participation in decision-making and access to justice in this field. The electronic register of releases and transfers of pollutants is already accessible to the public. With the introduction of Directive 2008/99/EC in 2008, the EU established measures relating to criminal law, in order to protect the environment more effectively.

Legal basis

Articles 191 through 193 of the Treaty on the Functioning of the European Union (TFEU).

Achievements

A. The Århus Convention: access to information, public participation and access to justice

In 1998, the European Community, together with the 15 Member States, signed the UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (better known as the 'Århus Convention'). The Convention, in force since 30 October 2001, is based on the premise that greater public awareness of, and involvement in, environmental matters will improve environmental protection. It is designed to help protect the right of every person of present and future generations to live in an environment adequate to his or her health and well-being. To this end, it provides for action in three areas:

- ensuring public access to environmental information held by the public authorities;
- fostering public participation in decision-making which affects the environment;
- extending the conditions of access to justice in environmental matters.

The signing of the Århus Convention obliged the EC to bring its legislation into line with the requirements of the Convention. Decision 2005/370/EC approved the Århus Convention on behalf of the EC. In 2003, the Commission proposed a regulation to guarantee that the provisions and principles of the Århus Convention are applied by EC institutions and bodies (COM(2003) 622). After a conciliation procedure, Regulation (EC) No 1367/2006 was adopted, containing the provisions necessary to apply the Århus Convention to EU institutions and bodies from 28 June 2007.

1. Public access to information

The first pillar of the Convention on public access to environmental information was implemented at Community level through Directive 2003/4/EC, which set out the basic terms and conditions for granting access to environmental information held by or for public authorities, aiming to achieve its widest possible systematic availability and dissemination to the public. Member States were obliged to report on their experience gained in applying this directive by no later than 14 February 2009, and required to submit a report to the Commission by no later than 14 August 2009. Several Member States (more than 10) had not reported within the deadlines, and infringement proceedings were therefore launched in November 2009: those proceedings were finally closed, all Member States having reported. From November 2010, the second implementation report of the Commission on how the EU has implemented the Århus Convention has been available for public viewing.

2. Public participation in decision-making

The second pillar, which deals with public participation in environmental plans and programmes, was transposed by Directive 2003/35/EC. This directive contributes to the implementation of obligations arising from the Århus Convention, in particular by providing for public participation in drawing up certain plans and programmes relating to the environment and by amending Council Directives 85/337/EEC and 96/61/EC with regard to public participation and access to justice to ensure that they are fully compatible with the provisions of the Convention.

3. Access to justice

A proposal for a directive (COM(2003) 624) intended to transpose the third pillar, which guarantees public access to justice in environmental matters, was put forward in 2003, but has so far only had its first reading in Parliament. Parliament wants the directive to establish a minimum framework for access to justice in environmental matters and for Member States to be free to grant broader access. It proposed amendments which would extend access to justice in environmental matters to citizens' organisations confronted with a tangible environmental problem and not only to environmental entities as in the original proposal. In the absence of European

legislation, the Member States have introduced non-coordinated national rules.

B. Establishment of a European Pollutant Release and Transfer Register

In May 2003, the EC signed the UN-ECE Protocol on Pollutant Release and Transfer Registers (the PRTR Protocol) within the framework of the fifth Ministerial Conference 'Environment for Europe'. The Protocol aims to establish a coherent, integrated and publicly accessible pollutant release and transfer register at national level for each Member State. In 2004, the Commission adopted a proposal for a regulation aiming to enhance public access to environmental information through the establishment of a coherent, integrated and Europe-wide PRTR (COM(2004) 634): Council Decision 2006/61/EC subsequently approved the Protocol on behalf of the European Community. Regulation (EC) No 166/2006 sets up a Pollutant Release and Transfer Register (PRTR) at EU level in the form of a publicly accessible electronic database. The public will be able to access this register free of charge on the Internet and will be able to find information using various search criteria (type of pollutant, geographical location, affected environment, source facility, etc.)

C. Implementation and enforcement of Community environmental law

The Dublin European Council of June 1990 stressed that Community environmental legislation would only be effective if fully implemented and enforced by Member States. On 14 May 1997, in its resolution on the Commission's communication (COM(96) 500), the EP called on the Commission to produce and publicise an annual report on progress in adopting and implementing Community environmental law. In 2007, the Commission issued a communication entitled 'A Europe of Results — Applying Community Law' (COM(2007) 502 final), which suggested ways to improve the application of Community law. The communication on 'Implementing European Community Environmental Law' (COM(2008) 773 final) applied the approach set out in the 2007 communication in order to show how EU environmental law could be better implemented by using a combination of:

- legislative and post-legislative work aimed at the prevention of breaches;
- responding to the specific concerns of the European public;
- more immediate and more intensive treatment of the most important infringements;
- enhanced dialogue with the European Parliament;
- enhanced transparency, communication and dialogue with the public and interested parties.

Infringement proceedings under Articles 258 and 260 of the Treaty are a powerful tool for addressing implementation problems. Complaints about the implementation of environmental legislation 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 Member States' 'green record'. In this context, new working methods need to be developed with Member States at all stages of the implementation life cycle.

D. Serious environmental crimes — protection of the environment through criminal law

In order to guarantee a high level of environmental protection, the increasing problem of environmental crime must be tackled. The Community has adopted numerous pieces of legislation protecting the environment: Member States are required to transpose and implement those acts. Experience has shown, however, that the sanctions currently applied by Member States are not always sufficient to achieve full compliance with Community law. Not all Member States provide for criminal sanctions against the most serious breaches of Community law protecting the environment. In order to tackle this issue, Directive 2008/99/EC (adopted on 19 November 2008) requires Member States to declare certain polluting activities as punishable under criminal rather than less punitive administrative law. Article 3 requires Member States to take necessary measures to classify a list of breaches of EU laws in the area of environmental protection as being criminal offences under domestic law; this includes: air, soil or water pollution, waste, trading in specimens of protected wild fauna or flora species. Sanctions have to be introduced not only to punish unlawful conduct by individuals, but also to punish the same environmental offences when committed by legal persons. In the latter case, however, Member States have a choice between the use of criminal or administrative sanctions. Member States should have brought into force the laws, regulations and administrative provisions necessary to comply with this directive before 26 December 2010.

Role of the European Parliament

The EP has always insisted on the need for better public access to environment-related information, increased public participation in environmental issues and improved access to justice in environmental matters, with information being disseminated using the latest technology available. EC legislation would thus be brought into line with the Århus Convention. The EP also considers simplifying and improving Community legislation to be one of its duties and has stressed the importance of clearer legislation which is better supervised and implemented. In addition, the EP has supported

proposals to establish a system of minimum criminal sanctions for the most serious breaches of EC law protecting the environment.

The effectiveness of EU environmental policy is largely determined by its implementation at national, regional and local levels. At present however, although the number of complaints concerning instances of non-compliance with Community law is slightly decreasing, deficient application and enforcement remains an important issue in the field of environmental law. The need for improved implementation has been recognised as a key priority of both the Fifth and Sixth Environment Action Programmes.

The EP stressed (Decision 1600/2002/EC on the Sixth Community Environment Action Programme) that a 'more effective implementation and enforcement of EC legislation on the environment' should be regarded as one of the strategic objectives of EU environmental policy. The EP thus called for measures to improve respect for EC rules on the protection of the environment, the promotion of improved standards of inspection, monitoring and enforcement by Member States and a more systematic review of the application of environmental legislation across the Member States. The EP strongly supports the objective of the prompt, uniform and effective implementation of EU environmental law. As an example, in response to a 1997 EP resolution, the Commission now publishes annual surveys on the implementation and enforcement of Community environmental law. Implementation issues have been high on the agenda of Environment Committee meetings over the last few years. The European Commission now draws up three follow-up reports each year, in which it looks at adopted EU legislation in the environment and related fields, examines problems of implementation and assesses whether or not the legislation is meeting its initial objectives.

On 12 March 2013 the EP approved in plenary session an own-initiative report on 'Improving the delivery of benefits from EU environment measures: building confidence through better knowledge and responsiveness', 2012/2104(INI), with an important and detailed number of recommendations for the strengthening of environmental law implementation.

→ Lorenzo Vicario / Marcelo Sosa-Iudicissa

5.4.3. Climate change and the environment

Tackling climate change is a key item on the EU's environmental agenda and is increasingly being integrated into other areas, such as energy, transport and regional development. The objective of EU climate policy is to limit global warming to 2°C above pre-industrial average temperature levels. The EU is committed to reducing greenhouse gas emissions by at least 20% below 1990 levels by 2020, while improving energy efficiency by 20% and increasing the share of renewable energy sources to 20% of consumption. A key mechanism in meeting this goal is the EU Emission Trading Scheme (EU ETS).

Legal basis and objectives

Article 191 of the Treaty on the Functioning of the European Union (TFEU) explicitly makes 'combating climate change' an objective of EU environmental policy.

General background

Over the past 100 years, global temperatures have risen by some 0.7°C and in Europe by about 1.0°C. Without emission reduction policies, the average global temperature is projected to increase between 1.1°C and 6.4°C over the course of this century. There is evidence that most of this warming can be attributed to greenhouse gas emissions (GHGs) and aerosols through human activities. The GHGs trap heat that is radiated from the earth's surface and prevent it from escaping into space, thereby causing 'global warming'. Human activities contributing to climate change include deforestation and the burning of fossil fuels, which leads to the emission of carbon dioxide (CO_2), methane, nitrous oxide and fluorocarbons.

A. Impacts of climate change

Global warming has led to: more extreme weather events such as floods, droughts, heavy rain, heat waves, forest fires; water availability issues; disappearance of glaciers and less snowfall; adaptation and shifts in the distribution or even extinction of fauna and flora; plant diseases and pests; a rising sea level; intensified photochemical smog causing health problems. An ecosystem's resilience may fail, causing it to jump from one steady state into another in just a few years. Science shows that the risks of irreversible and catastrophic changes would greatly increase if global warming exceeds a 2°C rise above pre-industrial levels. The current commitments of the international community under the Kyoto protocol are still expected to lead to a 3.5°C to 4°C temperature rise by 2050. The EU's aim is to help close this 'gigatonnes gap'.

B. Cost of action versus cost of non-action

The Stern Review, published by the UK Government in 2006, said that managing global warming would cost 1% of global GDP every year, while inaction could cost 'at least 5%' and up to 20% in a worst-case scenario. In its impact assessment accompanying COM(2007) 2, the Commission shows that taking action is compatible with growth: Around 0.5% of total global GDP would be required to invest in a low-carbon economy in 2013-2030, leading to a 0.19% decrease in global GDP growth per year up to 2030 (only a fraction of the expected annual GDP growth rate of 2.8%), plus health benefits, greater energy security and reduced damage. Models of the Fourth Intergovernmental Panel on Climate Change (IPPC) Assessment Report (2007) show that if no action is taken, the global mean temperature may increase 3.4°C by 2080. The EU has succeeded in 'decoupling' its greenhouse gas emissions from economic growth.

Achievements

A. The UN Framework Convention and its Kyoto Protocol

Under the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC) concluded in 1997, contracting parties commit to reduce the six greenhouse gases: carbon dioxide (CO_2), methane, nitrous oxide, hydrofluorcarbons, perfluorcarbons and sulphur hexafluoride. The EU committed itself to achieving an reduction in CO_2 emissions of 8% in 2008-2012 compared with 1990 levels. The protocol entered into force in 2005, after being ratified by 55 parties. The 'Burden-Sharing Agreement' redistributed the 8% reduction among the EU Member States (2013-2020). Decision 280/2004/EC provides a mechanism to implement Kyoto. At the UN conference in Montreal in 2005, the EU obtained a decision that talks should start on future action after 2012, when the Kyoto commitments expire (the 'post-2012 strategy').

B. Efforts within the EU

1. The climate and energy package. In 2007, EU leaders endorsed ambitious targets: a unilateral commitment to reduce emissions 20% compared to 1990 by 2020 (or 30% if others commit to comparable reductions); increasing renewable energy 20% by 2020 (in transport to 10%) and to reduce total EU energy consumption 20% by 2020. In 2008, the Commission made a proposals to translate these commitments into actions, part of the climate and energy package. This package was adopted by the EP and in April 2009. The six legislative measures are: a revised directive on the EU Emission Trading System (Directive 2009/29/EC); an effort sharing decision with binding national targets (Decision 406/2009/EC); a directive for pilot projects on carbon storage (Directive 2009/31/EC); a directive on renewable energy in electricity generation, transport, heating and cooling (Directive 2009/28/EC); a regulation on CO_2 from cars (Regulation 443/2009/EC); and a revised directive on fuel quality (Directive 2009/30/EC). Two other directives were adopted: Directive 2008/101/EC to include aviation in the EU-ETS from 2012 and Regulation (EC) No 842/2006 of 2006 on fluorinated greenhouse gases.

2. EU Emission Trading Scheme (ETS). An essential policy instrument to achieve the climate objectives, introduced in 2005 (Directive 2003/87/EC) and based on the 'cap and trade' principle. It sets a 'cap' on the total amount of greenhouse gas emissions that can be emitted by factories, power plants or other installations. Each country had to set up National Allocation Plans (NAPs) for the first two phases of the ETS (2005-2007 and 2008-2012). Initially the majority of allowances were allocated free of charge: the revised ETS Directive provides for allowances to be auctioned for the 2013-2020 period. More than 11 000 installations are covered. Emissions from sectors not covered (buildings, transport, agriculture, etc.) are subject to the Effort Sharing Decision (406/2009/EC), which obliges to ensure reductions of 10% below 2005 levels by 2020. The reformed Emissions Trading Scheme, as adopted in December 2008, enters into force in 2013 and runs until 2020. The main elements are: Cap, The revised directive sets a single EU-wide cap — set at 21% below 2005 levels; Scope, expanded to cover aviation (currently suspended in view of international rulings), petrochemical, ammonia and aluminium and two new gases, nitrous oxide and perfluorocarbons; Auctioning, starting with electricity plants in 2013; Carbon leakage: an exception is inserted for industrial sectors at risk eligible to receive up to 100% of allowances for free from 2013; Opt-outs, installations that emit under 25 000 tonnes of CO_2 per year; Carbon Capture and Storage (CCS) CO_2 going into CCS is considered as not emitted; Revenues from auctioning, Governments agreed that 'at least 50%' 'should' be used for adaptation, mitigation, renewables, efficiency and to avoid deforestation; Offsets, the use of credits to 'offset' emissions in third countries under the UN's Clean Development Mechanism (CDM) is limited to 50% of EU emission reduction 2008-2020; Future action, include emissions from maritime transport, should the International Maritime Organisation (IMO) fail to reach an agreement.

3. Greenhouse gas emission trading in respect of the Kyoto Protocol's project mechanisms. The 'Linking Directive' (2004/101/EC) links the EU emissions trading system with the other Kyoto Flexible Mechanisms: Joint Implementation (JI) and Clean Development Mechanisms (CDM).

4. Emissions outside the EU ETS: effort sharing. Road transport, shipping, waste, agriculture and forestry remain excluded. These sources account for half of all EU greenhouse gas emissions. In order to achieve an average 10% reduction of greenhouse gases from sectors not covered by the ETS, the Commission has set national targets. This effort-sharing decision is the first of its kind worldwide. The annual use of credits obtained through financing emission reduction projects in countries outside the EU through CDM may not exceed 3% of the 2005 level of GHG of a Member State. In the event of the conclusion of an international agreement, the overall EU reduction would be stepped up from 20% to 30%. If no international agreement had been approved, the Commission would make proposals to include emissions and removals related to land use, land use change and forestry (LULUCF) in the EU reduction commitment.

5. Energy efficiency and renewable energy. The new renewables directive seeks to ensure that by 2020 renewable energy, such as biomass, hydro, wind and solar power, makes up at least 20% of the EU's total energy consumption whilst at the same time increasing energy efficiency by 20%. As part of the overall target, a binding minimum target was set for each Member State to achieve at least 10% of their transport fuel consumption from biofuels. However, the binding character of this target is 'subject to production being sustainable' and to 'second-generation biofuels becoming commercially available'. On the 'Energy Efficiency Plan 2011', see 5.7.3.

6. Carbon capture and storage (CCS). CCS technology separates CO_2 from atmospheric emissions (resulting from industrial processes), compresses the CO_2 and transports it to a location where it can be stored. According to the UN Intergovernmental Panel on Climate Change, CCS

could remove 80-90% of CO_2 emissions. The EU set up a Technology Platform on Zero Emission Fossil Fuel Power Plants at the end of 2004 and proposed a regulatory framework to commercialise and subsidise this new technology. Directive 2009/31/EC on the geological storage of carbon dioxide sets out a regulatory regime to permit the exploration and storage of CO_2: it also establishes criteria for the selection of storage sites.

C. International diplomacy on climate change

In addition to its independent commitment to a 20% reduction by 2020, the EU has committed itself to a 30% reduction by 2020 provided that other developed countries commit themselves to comparable reductions and that economically more advanced developing countries contribute adequately according to their capabilities. The EU played an important role during the 2007 UN climate conference in Bali, securing agreement on a roadmap towards a new comprehensive agreement on cutting GHG emissions. The conference in December 2008 saw the adoption of work programmes for two parallel negotiation processes from 2009, one under the UNFCCC and the other under the Kyoto Protocol. Though disappointing in comparison with the EU's initial ambitions; the Copenhagen Accord adopted during COP 15 in December 2009 achieved some progress. For the first time at global level, the objective of keeping global warming at less than 2°C above the pre-industrial temperatures is endorsed in the Accord. The Accord received support from the vast majority of Parties to the UNFCCC, but due to opposition from a handful of countries, the conference merely took note of the Accord without endorsing it. In December 2010, the Mexican Presidency managed to restore faith in the multilateral process. During the COP 16 in Cancun, industrialised countries committed themselves to reaching their targets through developing low-carbon mechanisms; while developing countries agreed on actions to reduce emissions and to publish progress every two years. The USD 30 billion in fast start finance as well as technology cooperation are also included in the Cancun Agreements.

D. Adaptation to climate change

Action for adaptation ranges from soft and inexpensive measures (water conservation, crop rotations, drought tolerant crops, public planning and awareness raising) to costly protection and relocation measures (increasing the height of dykes, relocating ports, industry, and people away from low-lying coastal areas and flood plains). The Commission issued a Green Paper on 'Adapting to climate change in Europe — options for EU action' (COM(2007) 354), aimed to stimulate a debate, then it published a White Paper on Adaptation (COM(2009) 147), along with three working papers on water, coasts and marine issues, and agriculture and health.

Role of the European Parliament

In its 2005 report on winning the battle against climate change, the EP highlighted the importance of reducing emissions, developing partnerships, promoting research and energy efficiency, and encouraging citizens to become involved. A future regime should be based on 'common but differentiated responsibilities', based on science and aim, to not exceed a global average temperature increase of 2°C. In 2007 the EP established a Temporary Committee on Climate Change. Its mandate expired in February 2009 and its final report on '2050: The future begins today — recommendations for the EU's future integrated policy on climate change' called on the EU and the other countries to set a target of a 25-40% reduction in GHG emissions by 2020, and a reduction target of at least 80% by 2050. In 2008, EP adopted a directive on the inclusion of aviation into the EU ETS. In a resolution adopted in 2009 on the EU strategy for a comprehensive climate change agreement in Copenhagen and the adequate provision of financing for climate change policy, the EP considered that the collective contribution towards developing countries' mitigation efforts and adaptation needs from the EU should not be below EUR 30 000 million/year by 2020. Within the context of the revision of the renewables directive, EP ensured that the new law includes criteria to guarantee that biofuel production is environmentally and socially sustainable, and does not lead to deforestation and rising food prices. Following the outcome of the Copenhagen Conference on Climate Change (COP 15), EP in its resolution of 10 February 2010, called for a new 'climate diplomacy' led by the EU's High Representative for Foreign Affairs and the Commissioner on Climate Action. In a resolution of 25 November 2010, EP sent a strong signal just before the Cancun Conference on Climate Change (COP 16) to support the idea that the EU should aim for a 30% emissions reduction target. EP's Resolution of 16 November 2011 gave a clear mandate to the EU delegation to promote a second commitment period under the Kyoto protocol. The Resolution supports the establishment of a green climate fund, which

should help those countries most vulnerable to climate change with its mitigation and aid their adaptation. Amongst the suggestions on how such a fund could be financed, the EP called for a tax on financial transactions to be established at international level. In December 2011, an EP delegation attended the COP 17 that took place in Durban, South-Africa. The establishment of a green climate fund and the extension of the Kyoto Protocol beyond 2013 were decided. While agreements on a new binding treaty could be reached with 120 states, negotiation partners such as India, the U.S. and China were not ready to commit to binding targets by 2015. Further steps in climate negotiations will involve the drafting by the Durban Platform of a Roadmap by 2015 with a view to producing a global agreement, which should enter into force in 2020.

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5.4.4. Biodiversity, nature and soil

The 1992 UN Conference on the Environment and Development marked a major step forward for the conservation of biodiversity and the protection of nature. Other objectives foreseen in the Habitat Directive or the CITES Convention remain to be achieved. Since 2007, LIFE+ represent the most important financial instrument for the protection of biodiversity in the EU.

Legal basis

Articles 3, 11 and 191 through 193 of the Treaty of the European Union (TFEU).

Achievements

The EU has played an important international role in seeking solutions to biodiversity loss, climate change and the destruction of the tropical rainforests. The UN Conference on the Environment and Development (UNCED), held in Rio de Janeiro in 1992, led to the adoption of the Framework Convention on Climate Change and the Biological Diversity Convention (CBD), as well as to the Rio Declaration, a Statement of Forest Principles and the 'Agenda 21' programme. At the Gothenburg Summit in 2001, the EU agreed to halt biodiversity loss by 2010 and to restore habitats and ecosystems. At the Johannesburg World Summit on Sustainable Development in 2002, over one hundred world leaders agreed to 'significantly reduce the rate of biodiversity loss globally by 2010'. The UN General Assembly declared 2010 the Year of Biodiversity. The Global Biodiversity Outlook 3, from the CBD Secretariat, shows the 2010 biodiversity target has not been met. At its meeting held in Nagoya (Japan) in October 2010, the CBD Conference of the Parties (COP) adopted a revised Strategic Plan including new biodiversity targets for the post-2010 period. It aims to 'take effective and urgent action to halt the loss of biodiversity in order to ensure that by 2020 ecosystems are resilient and continue to provide essential services, thereby securing the planet's variety of life '. The adoption of the Nagoya Protocol on Access and Benefit-sharing was a crucial achievement of the Nagoya COP. Fair and equitable sharing of benefits arising from genetic resources is one of the three objectives of the CBD. The rules on sharing research results and commercial profit are defined. The Environment Council of March 2010, agreed on 'halting the loss of biodiversity and the degradation of ecosystems services in the EU by 2020, and restoring them (...), while stepping up the EU contribution to averting global biodiversity loss.' In June 2011, the Council endorsed the Biodiversity strategy 2020, with its 6 targets.

A. Biodiversity action plans

In 1998, the Commission adopted a Communication on the Biodiversity Strategy (COM(1998) 42). In 2002, Council adopted the Commission Communication COM(2001) 162 on biodiversity action plans. Its main objectives were to improve or maintain the biodiversity status and prevent further loss. In 2008, the Commission published the mid-term report on implementation of the Action Plan, concluding that the EU is unlikely to meet its 2010 target of halting biodiversity decline. At the G8+5 meeting in Potsdam in 2007, Germany proposed the drafting of a report on 'The Economics of Ecosystems and Biodiversity' (TEEB); along the lines of the Stern Report on the economics of climate change and the costs of non-action. The study was to define the huge dimension of the problem: e.g. the net present value of forest ecosystems that we lose each year is estimated at between EUR 1.35 trillion and EUR 3.1 trillion. The TEEB final report was presented at the 10th meeting of the Conference of the Parties to the Convention on Biological Diversity in Japan in October 2010.

B. International conventions for the protection of fauna and flora

The UN Environment Programme (UNEP) estimates that up to 24% of species belonging to groups such as butterflies, birds and mammals have already completely disappeared from the territory of certain European countries. According to dataset published by the International Union for Conservation of Nature (IUCN) since 2007: 23% of European Amphibians, 19% of European reptiles, 15% of European mammals and 13% of European birds are under threat. The EU is a party to the following conventions: Ramsar Convention on the conservation of wetlands of (1971); Washington Convention (CITES) on International Trade in Endangered Species of Wild Fauna and Flora (3 March 1973); Bonn Convention on the protection of migratory species of wild fauna (23 June 1979); Bern Convention on the protection of European wildlife and natural habitats (1982); Rio de Janeiro Convention on Biological Diversity (1992); and conventions of a more regional nature, such as: the Helsinki Convention on the Baltic Sea (1974), the Barcelona Convention on the Mediterranean (1976) and the Convention on the protection of the Alps (1991).

C. Financial instruments

Until the end of 2006, LIFE was the financial instrument supporting projects in the areas of LIFE-Nature, LIFE-Environment and LIFE-Third Countries.

In 2007, political agreement was reached between Council and Parliament on its successor LIFE+, with a funding of nearly EUR 2 billion for 2007-2013. LIFE+ has several funding programmes and consists of 3 components: LIFE+ Nature and Biodiversity, LIFE+ Environment Policy and Governance, and LIFE+ Information and Communication. At least 50% of total funding was allocated to support the conservation of nature and biodiversity. Other funding for Member States to support biodiversity targets were taken up under the CAP, CFP, Cohesion and Structural Funds, and the Seventh Framework Programme for Research. Programmes financed through LIFE+ were open to third countries: EFTA, candidate countries for accession and Western Balkans. The proposal for a new LIFE fund for the next financial period 2014-2020 was presented by the Commission at the end of 2011.

Objectives

A. Conservation of natural habitats and of wild fauna and flora

Habitat Directive 92/43 on the conservation of natural habitats and of wild fauna and flora (amended by Directive 97/62) established a European network, 'Natura 2000'. It comprises 'Sites of Community Interest/Special Areas of Conservation' designated by Member States, and 'Special Protection Areas' classified pursuant to Directive 79/409 on the conservation of wild birds. With a total area of over 850 000 km^2, this is the largest coherent network of protected areas in the world. The Habitat Directive aims principally to promote the conservation of biological diversity while taking account of economic, social, cultural and regional requirements. The Birds Directive covers the protection, management and control of (wild) birds, including rules for sustainable hunting.

B. Exploitation and trade of wild fauna and flora

In 1975, the CITES Convention on International Trade in Endangered Species of Wild Fauna and Flora entered into force, regulating international trade: i.e. (re-)export and import of live and dead animals and plants and of parts and derivatives thereof, based on a system of permits and certificates. The basic Regulation 338/97 on the protection of wild fauna and flora by regulating trade, applies the objectives, principles and provisions of the CITES Convention to EU law. In June 2009, Regulation (EC) No 398/09 (amending Regulation (EC) No 338/97) on the protection of species of wild fauna and flora entered in force. Regarding the protection of marine fauna, Regulation (EC) No 348/81 sets common rules for the import of whale or other cetacean products; whilst Decision 1999/337/EC concerns the EU's signing up to the agreement on the International Dolphin Conservation Programme, helping to reduce incidental dolphin mortality during tuna fishing. Directive 83/129/EEC, extended indefinitely by Directive 89/370/EEC. prohibits the import of seal pup products into the EU; in 2009, Regulation (EC) No 1007/09 introduced even stricter conditions for importing seal products. In 1991, the Council adopted the 'Leghold Trap Regulation' (Council Regulation (EC) No 3254/91), banning the use of leghold traps and the import of pelts and manufactured goods of wild species originating in countries which allow such trapping methods. Commission Decision (98/596/EC) allows the imports of furs into the EU from Canada, Russia and the USA as a result of the commitment of those countries to implement humane trapping standards. Rules and guidelines for the sustainable hunting of (wild) birds can be found in the Birds Directive.

C. Biodiversity related to animal welfare

Directive 1999/22 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 research. Directive 86/609 adopted by Council in 1986, following an EP Resolution on limiting animal experiments and on the protection of laboratory animals, calling for animal experiments to be limited, if similar results can be obtained by other methods and results stored in a central data bank. Later on, the Commission launched the Action Plan on Protection and Welfare of Animals 2006-2010 (COM(2006) 13) supporting the three Rs principle (to replace, reduce and refine the use of animals for research). Directive 2010/63/EU on the Protection of Animals used for Scientific Purposes (repealing Directive 86/609) is based on the Three Rs principle and took effect from 1 January 2013.

D. Marine biodiversity

Marine Biodiversity is covered within the scope of the Biodiversity Action Plans for Natural Resources and Fisheries. The review of the EU Biodiversity Strategy stresses the importance of the 'good ecological status' of seas and coastal areas for them to be able to support biodiversity. Furthermore, the EU Marine Strategy of 2002 (COM(2002) 539) proposes an ecosystem-based approach to ensure conservation and the sustainable use of biodiversity. In 2005, a Thematic Strategy (TS) on the Protection and Conservation of the Marine Environment was proposed by the Commission following the provisions of the Sixth 6Environmental Action programme. The following TS, the Marine Strategy Directive (2008/56/EC), entered into force in July 2008. It aimed to ensure the good status of the EU's marine waters by 2020 and to protect the resource base upon which marine-related economic and social activities depend.

E. Forests

Forests make up almost 30% of the surface area of the 'Natura 2000' network. Several measures are aimed at the protection of forests. Regulations 3528/86 and 2158/92 on the protection of the EU's forests against pollution and fire (which expired in 2002) have been integrated into the Forest Focus Regulation 2152/2003. Council Regulation 1615/89 established the European Forestry Information and Communication System (EFICS), setting up an information system on forestry. The Council Resolution of 15 December 1998 on EU Forestry Strategy established a framework for forests in support of sustainable management (SFM). In June 2006, a Communication on an EU Forest Action Plan was adopted (COM(2006) 302). The Commission Green Paper on 'Forest Protection and Information in the EU: preparing forests for climate change' (March 2010) is intended to launch the debate in the framework of the Action Plan. A Commission proposal to prevent illegally cut timber or timber products from being placed on the EU market and a Commission Communication on measures to reduce deforestation were endorsed by the EP in July 2010 and took effect in 2012.

F. Soil protection

In 2006, the Commission adopted COM(2006) 231, a Thematic Strategy for soil protection, and a proposal for a Directive (COM(2006) 232). This builds on a stakeholder consultation covering erosion, organic matter loss, contamination, landslides, compaction, salinisation, sealing and other aspects of soil degradation. The Council has been unable to reach an agreement on this proposal due to the opposition of a number of Member States constituting a blocking minority.

G. Climate change and biodiversity

Climate change has led to the adaptation of several plant and animal species, leading to shifts in distribution or even extinction of fauna and flora. Changes in ocean currents and a rise in sea levels are having adverse effects, most notably on coral reefs and mangroves. Climate change and the temperature increases are promoting plant diseases, pests and invasive species. Approximately 20–30% of plant and animal species assessed so far are likely to be at increased risk of extinction. In October 2008, the Commission adopted a Communication on 'Addressing the challenges of deforestation and forest degradation to tackle climate change and biodiversity loss' (COM(2008) 645).

Role of the European Parliament

The EP has played a decisive role in establishing systems concerning the protection of nature and biodiversity. In May 2007, it adopted a report on the Commission Communication on 'Halting the loss of biodiversity by 2010 -and beyond- Sustaining ecosystem services for human well-being' (COM(2006) 216). Parliament felt that the 'EU Action Plan to 2010 and beyond' would be insufficient. In April 2008, the EP adopted a resolution on preparation for the COP-MOP meetings on biodiversity and biosafety in Bonn, Germany. The EP expressed deep concern at the continued loss of biodiversity and at the EU's increasing ecological footprint, pointing out at the direct link between the conservation of biodiversity and the provision of ecosystem services, such as food production, water, nutrient circulation and climate regulation. The Commission proposal on LIFE+ (COM(2004) 621) originally included two components; the EP proposed adding a third component, 'Nature and Biodiversity'. In negotiations over this regulation, the EP pushed for a budget increase to EUR 1,95 billion. The EP also focussed on management, battling against 're-nationalisation' of the LIFE+ funds. Agreement was reached for a centralised management were the Commission controls the projects and delegates 22% of the budget to administrative costs, while 78% comes under the responsibility of the Member States. In February 2010, the EP adopted a resolution on the EU strategic objectives for the 15th meeting of the Conference of the Parties of CITES. The EP draws attention to the fact that the EU is one of the largest markets for illegal trade in wildlife. It also calls on the Commission and Member States to step up coordination to enforce EU wildlife trade legislation. In September 2010, the EP adopted a report on the implementation of legislation aiming at biodiversity (2009/2108(INI), in view of the post 2010 target. It expressed deep concern on the absence of any sense of urgency in halting the loss of biodiversity in the international political agenda. Improved biodiversity governance in both internal and external relations was also requested by the Members. At present, the EP is examining a draft regulation implementing the Nagoya Protocol (2012/0278(COD)).

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5.4.5. Water protection and management

Water is essential for human, animal and plant life and is an indispensable resource for the economy. EU water legislation was transformed by the adoption in 2000 of the Water Framework Directive (WFD); aiming at the establishment of a framework for the management of surface water and groundwater based on the river basin. The WFD is supplemented by international agreements and legislation related to water pollution, quality and quantity.

Legal basis

Articles 191 through 193 of the Treaty on the Functioning of the European Union (TFEU).

Achievements

A. Water Framework Directive (WFD)

European Water Policy has undergone a restructuring process and the WFD (2000/60/EC) is the tool setting the objectives for water protection. The previous milestones were the Drinking Water Directive and the Urban Waste Water Directive. The new policy had to address the increasing awareness of citizens and other parties, thus the new Directive was developed following an open consultation, that led to a broad consensus for a single framework legislation. WFD establishes a 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. Except for specific derogations, all waters are to achieve good environmental status through the use of River Basin Management Plans. River basins of more than one Member State are assigned to an international district. The objectives of the WFD are to be achieved by 2015, although this deadline may be extended or relaxed under certain conditions. Two implementation reports published to date (COM(2007) 128 and COM(2009) 156) indicate that while significant progress has been made, a number of shortcomings remain. Simultaneously with the 2007 implementation report, the Commission presented the new instrument WISE (Water Information System for Europe) which contains data and information collected at EU level, allowing an exchange of data through its public web portal and rapid reaction to deal with, for example, reports of pollution.

1. **Groundwater**. As groundwater supplies 75% of the EU's drinking water, pollution from industry, waste dumps and agriculture is a serious health risk. Given that many of the pollutants washed out of the soil 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, Brittany (France) and Germany to fall to an acceptable figure in accordance with the Drinking Water Directive. Directive 2006/116/EC on the protection of groundwater provides for specific criteria for the assessment of good chemical status, the identification of significant and sustained upward trends and the definition of starting points for trend reversals. All pollutant limits, with the exception of nitrates and pesticides, are set by Member States. Good groundwater chemical status is achieved when the concentration of pollutants does not exceed the groundwater quality standards and threshold values at any monitoring point.

2. **Drinking water**. Directive 98/83/EC defines the essential quality standards for water intended for human consumption. The Directive requires Member States to regularly monitor the quality of water intended for human consumption by using a 'sampling points' method and to draw up monitoring programmes. The Directive takes into account scientific and technical progress and aims to reduce the 'limit value' of lead in pipes from 50 to 10 micrograms/litre. Some claimed that this would have heavy financial implications, due to the need to replace infrastructures.

3. **Bathing Water**. In February 2006, the Commission adopted a new Bathing Water Directive (2006/7/EC). This Directive aims to enhance public health and environment protection by laying down provisions for the monitoring and classification (in four categories) of bathing water. It also provides for extensive public information and participation (in line with the Aarhus Convention), and modern management measures. The new directive complements the Water Framework Directive, the Directives on urban wastewater treatment and on nitrates pollution from agricultural sources. The main issue addressed during the conciliation procedure, was the extremely high health standards that bathing sites must attain to comply with the Directive.

4. **Quality standards for shellfish waters and freshwater fish**. Specific measures for the protection and/or improvement of the quality of fresh waters which support certain fish species and shellfish are contained in Directive 79/923/EC and Directive 78/659/EC on the quality of fresh waters needing protection or improvement in order to support fish life. Their codified versions (2006/113/EC and 2006/44/EC), are to be repealed by the WFD in December 2013.

5. **Urban waste water treatment**. Directive 91/271/EC (as amended by 98/15/EC) on urban waste water treatment aims to protect the environment from the adverse effects of urban waste water discharges and discharges from industry. The Directive sets minimum standards and timetables for the collection, treatment and discharge of urban waste water, introduces controls on the disposal of sewage sludge and requires an end to sewage sludge dumping at sea.

6. **Discharge of substances, limit values and nitrates**. The Directive on pollution caused by dangerous substances discharged into the aquatic environment (76/464/EEC) established a 'black' and 'grey' list of 132 substances declared dangerous by virtue of their persistence, toxicity and bio-accumulation. This was supplemented by subsequent Directives prescribing emission limit values and quality objectives for 17 of those substances. Directive 2006/11/EC brings together the original Directive (76/464/EEC) and its daughter Directives into a single text. As a first step in implementing the WFD, a list of 33 priority substances was adopted in 2001 (Decision 2455/2001/EC) identifying substances of priority concern that are persistent, harmful and tend to accumulate in the food chain. The list distinguishes between priority substances and priority hazardous substances. The former would have to meet maximum concentration limits in surface waters by 2015, while the latter would have to be phased out entirely by 2025. In December 2008, a Directive on environmental quality standards for water (2008/105/EC) was adopted, amending the WFD and the 2001 list of substances. The new list still contains 33 substances; however 8 of them have been reclassified from priority substances to priority hazardous substances. The protection of waters from nitrates from agricultural sources is covered by Directive 91/676, and Regulation 1882/2003, requiring Member States to send a report to the Commission every four years, with codes of good agricultural practice, designated nitrate vulnerable zones (NVZ), water monitoring and a summary of action programmes. It aims to safeguard drinking water and prevent damage from eutrophication, also limited by Regulation 2004/648/EC which restricts phosphates in laundry and dishwasher detergents. Phosphonates in European sewages lead to algae blooms and to the suffocation of fish and other aquatic life.

7. **Flood protection, water scarcity and drought**. Following a series of damaging floods in the late 1990s, Member State Water Directors concluded at their meeting in November 2003 that there was a need for a concerted EU Action Programme to improve flood risk management. Directive 2007/60/EC aims to reduce and manage the risks that floods pose to human health, the environment, infrastructure and property. Member States need to prepare flood risk maps and carry out a preliminary assessment to identify the river basins and associated coastal areas at risk. For such zones, they need to draw up flood risk maps and management plans focused on prevention, protection and preparedness. The Commission presented a Communication on 'Addressing the challenge of water scarcity and droughts in the EU' (COM(2007) 414) which outlines a set of policy options to increase water efficiency and encourage water savings including: better pricing; more efficient use of funding; national plans; the creation of an observatory and early warning system on droughts; additional water supply infrastructures; fostering water efficient technologies and practices; and developing a water-saving culture in Europe. In November 2012, the Commission published the Blueprint to Safeguard Europe's Water aiming to ensure that sufficient quality water is available for all legitimate uses.

B. EU international agreements on regional waters

The Helsinki Convention on the protection of the Baltic Sea, signed by all states bordering the Baltic and in force since 1980, is intended to abate pollution of the area caused by discharges and normal operations of vessels. The Paris Convention on the protection of the marine environment of the North-East Atlantic, signed in 1992, requires parties to observe the precautionary and the polluter-pays principles. The Helsinki Convention on the protection and use of transboundary watercourses and international lakes (Council Decision 95/308/EC) was signed in 1992. The EU signed the Convention on the protection of the Rhine in April 1999 in Berne (Council Decision 2000/706/EC). The Convention on the cooperation, protection and sustainable use of the Danube River and the Convention on the protection of the Black Sea against pollution are the instruments for environmental cooperation. COM(2001) 615 outline a strategy for environmental cooperation in the Danube-Black

Sea region. In December 2010, the Commission launched a strategy (COM(2010) 715) providing a policy for the integration and development of the Danube Region. Twenty Mediterranean coastal states and the EU are the contracting parties to the Barcelona Convention. Signed in 1976 by all Member States and amended in 1995, it established the precautionary principle and the full elimination of pollution sources as ultimate target. Its six protocols, deal, for example, with pollution from ships and aircraft, pollution from land-based sources and pollution by cross-border movements of hazardous waste. The Commission Communication COM(2006) 475 establishes a Strategy for the Mediterranean basin to protect the marine environment and the coastline of this region, and to reduce pollution by 2020. A Council Decision 2010/631/EU was signed concerning the conclusion, on behalf of the EU, of the Protocol on Integrated Coastal Zone Management (ICZM) in the Mediterranean to the Barcelona Convention. The ICZM Protocol provides a framework for an integrated approach, involving public and private stakeholders (including civil society and economic operators), where the Member States and their relevant competent authorities will be responsible for the design and implementation on the coastal territory of certain detailed measures, such as the establishment of zones where construction is not allowed.

C. Conservation and protection of the marine environment

1. **Thematic Strategy (TS) on the marine environment**. Published in October 2005, it aims to 'protect and restore Europe's oceans and seas to ensure that human activities are carried out in a sustainable manner so that current and future generations enjoy and benefit from biologically diverse and dynamic oceans and seas'. Also, the Commission proposed a marine strategy Directive to achieve 'good environmental status' by 2021 at the latest. The principal threats to the marine environment are: over-fishing, the discharge of pollution, oil spills, discharges from off-shore oil and gas exploration, ship dismantling, noise pollution, climate change, nutrient enrichment and algal blooms, the illegal discharges of radio-nuclides and noise. The Directive (2008/56/EC) defines common objectives at EU level. European Marine Regions are established as a basic unit for managing the marine environment. Member States are expected to develop a strategy for each of their Marine Regions and to actively co-operate with one another.

2. **Marine pollution**. The Commission Communication on 'Cooperation in the field of accidental or deliberate marine pollution after 2007' (COM(2006) 863) reviewed the prevention of marine pollution and recovery after pollution and indicates how monitoring and development is to be guaranteed from 2007 after the expiry of an earlier framework for cooperation (Decision 2850/2000/EC). The *Erika* oil spill disaster of 2000 prompted the EU to strengthen its role in the field of maritime safety and marine pollution with the adoption of a Regulation (EC) No 1406/2002 establishing the European Maritime Safety Agency (EMSA). Directive 2005/35/EC on ship source pollution and the introduction of penalties for infringements aim to ensure that those responsible for polluting discharges at sea are subject to effective and dissuasive penalties, which may be criminal or administrative. In March 2008, the Commission proposed an amendment to Directive 2005/35/EC (COM(2008) 134) which was agreed at first reading by the Council and Parliament in 2009. According to the revised directive, ship-source discharges of polluting substances shall be regarded as criminal offences if they are committed with intent, recklessly or with serious negligence and result in serious deterioration of the water.

3. **Integrated Maritime Policy**. The Commission presented a Communication on integrated maritime policy (IMP, COM(2007) 575) which aims at economic development without compromising the environment, use of knowledge and innovation, quality of life in coastal regions, and a leadership role for the EU. Its principles are: an integrated approach to maritime activities, an interconnected ecosystem approach to achieve the sustainable development of different activities, the subsidiarity principle, and stakeholder involvement. It stresses the importance of the Marine Strategy Directive (2008/56/EC). Further actions proposed include: pilot areas to reduce the impact of, and adapt coastal zones to, climate change; reducing air pollution and greenhouse gases from ships; and reducing the environmental impact of ship dismantling.

Role of the European Parliament

The EP has frequently taken the initiative in the field of water protection. In January 2000, following the oil disaster caused by *Erika*, it called for a sustainable, long-term European transport policy to prevent any further oil pollution disasters. It urged an effective, coherent, integrated policy on water which would take account of the vulnerability of aquatic ecosystems. The EP set four objectives: coordination of Member State, charges for water use, a programme of measures for Member States and exemptions. Concerning the Maritime Strategy, the EP stressed the importance

of biodiversity, eco-innovations, the effects of climate change on the seas, and the target of achieving good ecological status. In November 2006, the EP adopted an own-initiative report on the Thematic Strategy for marine environment. It called for a Directive with clear, measurable targets to be achieved within shorter deadlines than in proposed, and introduced the obligation of establish 'Marine Protected Areas'. The EP succeeded in bringing forward the timetable, but a number of amendments were not adopted. The EP and the Council reached an agreement on the proposal for a directive on the assessment and management of flood risks, which entered into force in November 2007. The main compromises concerned floodplains and sustainable land use, climate change adaptation and international cooperation in shared river basins. In June 2008, the EP voted by a large majority in support of new EU water quality rules based on a compromise agreement reached earlier with the Council on the proposed Directive on environmental quality standards in the field of water. Through requiring a revision of the list of priority substances within 2 years after the entry into force, EP has ensured the possibility of expanding the list of toxic substances. Furthermore, the objective of entirely phasing out the emission of 13 'priority hazardous substances' within 20 years was reinforced.

→ Marcelo Sosa-Iudicissa

5.4.6. Air and noise pollution

Atmospheric pollution has three main sources: transport, emissions from stationary sources and emissions caused by the production of electricity. The Ambient Air Quality and Cleaner Air for Europe Directive and the Thematic Strategy on Air Pollution aim to prevent harmful effects on the environment and health by reducing air pollution. Furthermore growing traffic and industrial activities often lead to noise pollution which also has a negative impact on human health. The Framework Directive for Environmental Noise provides a detailed picture of the extent of the noise problem as a basis for tackling it across the EU.

Legal basis

Articles 191 to 193 of the Treaty on the Functioning of the European Union (TFEU).

General background

EU activities to protect air quality include: limiting depletion of stratospheric ozone, controlling acidification, ground-level ozone and other pollutants, and combating climate change. Atmospheric pollutants enter the air from a variety of sources: mobile sources, immobile sources (businesses, homes, farms and landfills) and emissions caused by power generation. Pollutants, including gas emissions, are harmful to human health, corrode materials, damage vegetation and have a detrimental effect on agricultural and forestry, besides causing unpleasant smells. Some substances such as arsenic, cadmium, nickel and polycyclic aromatic hydrocarbons are human genotoxic carcinogens and there is no identifiable threshold below which they do not pose a risk. The EU has taken important steps over the past decade leading to a decrease in the amount of pollutants released into air and water.

Achievements in combating air pollution

The objectives sein the Thematic Strategy on Air Pollution, adopted in 2005, are to reduce the concentration of fine particulate matter ($PM_{2.5}$) by 75% and of ground level ozone (O_3) by 60%, and to reduce the threat to the natural environment from both acidification and eutrophication by 55%, all by 2020. This means cutting sulphur dioxide (SO_2) emissions by 82%, nitrogen oxides (NO_x) by 60%, volatile organic chemicals (VOCs) by 51%, ammonia (NH_3) by 27% and primary $PM_{2.5}$ by 59% of 2000 levels. In addition to lowering acute mortality and decreasing environmental damage, it is estimated that these reductions would save about 1.71 million lives per year.

A new directive on ambient air quality entered into force in June 2008, with the aim of improving human health and environmental quality. The new directive replaced the earlier Air Quality Framework Directive by merging most of the existing legislation. Only the fourth Daughter Directive (2004/107/EC) that sets emission limits for arsenic, cadmium, nickel and polycyclic aromatic hydrocarbons is still in place; a revision is planned for the near future.

Directive 2001/81/EC on national emission ceilings (NEC) sets national emission limits for SO_2, NO_x, VOC and NH_3 to be reached by 2010. In order to reduce the harmful effects of acidification, ground-level ozone and eutrophication, it requires Member States to annually report emissions and projections for all four air pollutants.

Road transport and aviation are expected to increase by 36% and 105%, respectively, between 2000 and 2020 in the EU-25. Several directives have been adopted to limit pollution from transport by setting emission performance standards for different categories of vehicles, such as cars, light commercial vehicles and heavy duty 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. Other directives regulate the quality of fuel and its sulphur and lead content.

The emission standards for cars and light-duty vehicles (Euro 5 in place since 2009) concern a number of air pollutants (carbon monoxide (CO), hydrocarbons (HC), nitrogen oxides (NO_x) and particulate matters (PM)). Euro 6, scheduled to enter into force in January 2014, sets even lower emission limits, mainly concerning NO_x emissions. Member States are required to refuse the approval, registration, sale and introduction of vehicles that do not fulfil the emission standards. The emission standards currently in force for heavy-duty vehicles are Euro IV and Euro V. They will be replaced by Euro VI in January 2014.

CO_2 emissions: Road transport generates about one fifth of the EU's CO_2 emissions, with passenger cars responsible for around 12%. Regulation (EC) No 443/2009 sets targets for CO_2 emissions from new passenger cars to achieve a fleet average of 130 g CO_2/km by 2015 (phased in from 2012) by improving vehicle motor technology. Furthermore a long-term target of 95 g CO_2/km as average emissions for the new car fleet was set, for which the modalities were agreed between Parliament and the Council in a new

revision in November 2013. A similar agreement had been reached earlier already for vans.

Since January 2012 emissions from aviation are included in the emission trading scheme (ETS). Due to international opposition, however, the scope had to be reduced to cover only aviation emissions for those flights that take place in the European regional airspace. This arrangement will be applied as from 1 January 2014 and until a planned global market-based mechanism (MBM) becomes applicable to international aviation emissions.

Further emission performance standards have been set for non-road mobile machinery (such as excavators, bulldozers, chainsaws), agricultural and forestry tractors, locomotives and inland waterway vessels.

Emissions from industry: The new Industrial Emissions Directive (IED) covers industrial activities that account for a significant share of pollution in Europe. It was adopted in November 2010, merging all the relevant directives into one coherent legislative instrument in order to facilitate its implementation. The most important part (the former IPPC Directive on industrial pollution and control) concerns highly polluting industrial activities. It lays down the obligations to be met by all industrial installations, contains a list of measures for the prevention of water, air and soil pollution and provides a basis for drawing up operating licences or permits for industrial installations. The 'best available techniques' (BAT) play a central role.

Achievements regarding noise pollution

Environmental noise levels are rising in urban areas, mainly as a result of the increase in traffic volumes and industrial and recreational activities. It is estimated that almost 20% of the population in the Europe Union suffer from noise levels that are considered unacceptable. This can affect health and the quality of life and lead to significant levels of stress, sleep disturbance and adverse health effects such as cardiovascular problems. Noise also has an impact on wildlife. The Green Paper on the future noise policy (COM(96) 540) was adopted in 1996 to develop a new approach to the problem of noise and as a first step towards an integrated programme for combating noise. Economic incentives are an essential part of EU noise abatement policy. Possible measures include subsidies for the development and purchase of quieter products, a legal requirement to provide certain information on products, noise levies in accordance with the polluter-pays principle and the introduction of noise licences.

Environmental noise: The Framework Directive on environmental noise, Directive 2002/49/EC (relating to the assessment and management of environmental noise), aims to reduce exposure to environmental noise by harmonising noise indicators and assessment methods, gathering noise exposure information in the form of 'noise maps' and making this information available to the public. On this basis the Member States are required to draw up action plans to address noise problems. Noise maps and action plans need to be reviewed at least every five years by the Member States.

Road traffic: Directives 70/157/EEC and 97/24/EC set limits on the permissible sound level of motor vehicles, mopeds and motorcycles. As a complement to this, Directive 2001/43/EC provides for the testing and limiting of tyre rolling noise levels and for their gradual reduction. A new regulation on the 'sound levels of motor vehicles' is about to be adopted.

Air traffic: In 1992, Directive 92/14/EEC was adopted, based on International Civil Aviation Organisation (ICAO) standards, in order to limit the operation of aeroplanes and ban the noisiest aircraft from European airports. Directive 2002/30/EC (currently being revised) established rules and procedures with regard to the introduction of noise-related operating restrictions at Community airports on the basis of the 'balanced approach' recommended by the ICAO (making airplanes quieter by setting noise standards; managing the land around airports in a sustainable way; adapting operational procedures to reduce the noise impact on the ground and, if required, introducing operating restrictions).

Railway traffic: In the context of the railway interoperability directives, a technical specification for interoperability (TSI) on noise was adopted in 2005 and replaced in 2011. This TSI (which only concerns new wagons) set maximum levels of noise produced by new (conventional) railway vehicles. A revised TSI Noise reducing further the existing noise limits for new wagons and locomotives is planned for late 2013/early 2014. In 2013, the Commission published a roadmap entitled 'Effective reduction of noise generated by rail freight wagons in the European Union' aimed at effectively reducing the level of noise by 2020.

Industrial noise and construction plants: Large industrial and agricultural installations covered by the Industrial Emissions Directive are able to receive permits following the use of 'best available techniques' (BATs) as references. Since industrial environmental noise is a local issue, measures to be taken depend on the location, which makes it hard to establish BATs for noise prevention and control. Noise emitted by construction plants (such as excavators, loaders, earth-moving machines and tower cranes) is currently regulated by several directives and regulations at EU level.

Recreational craft: Directive 2003/44/EC (amending Directive 94/25/EC) concerns recreational motorboats and complements its design and construction requirements with environmental

standards regarding exhaust and noise emission limit values.

Role of the European Parliament

Parliament has played a decisive role in the formulation of a progressive environmental policy to combat air pollution. It welcomed the Commission's Thematic Strategy on Air Pollution, but noted with concern that it did not show how the objectives of the Sixth EAP could be attained and did not include any legal requirement to reduce particulate emissions, but simply confined itself to suggesting indicative targets. Parliament called for a strategy with more ambitious reduction targets for NO_x, VOC and $PM_{2.5}$ while maintaining a balanced approach between costs and benefits.

For particles with a diameter of less than 2.5 micrometres ($PM_{2.5}$), Parliament and the Council agreed in December 2007 on an initial target value of 25µg/m³ from 2010. From 2015, this figure would become a binding limit. Parliament successfully argued for a second limit value — an indicative one — of 20µg/m³ to be achieved by 1 January 2020, five years after the first limit. The new Directive on Air Quality was adopted in May 2008. Parliament was concerned that, with respect to emissions from heavy-duty vehicles (Euro VI), the Commission's proposal did not set more ambitious limits concerning $PM_{2.5}$. It pushed in vain for further reductions of $PM_{2.5}$ in Euro VI. It did, however, secure agreement on the new Euro VI emission limits entering into force earlier than proposed by the Commission.

With regard to environmental noise, Parliament has repeatedly stressed the need for further cuts in limit values and for improved measurement procedures. It has called for the establishment of EU values for noise around airports (including an eventual ban on night flying) and also for noise reduction measures to be extended to cover military subsonic jet aircraft.

→ Tina Ohliger
11/2013

5.4.7. Natural resources and waste

Past and current patterns of resource use have led to high pollution levels, environmental degradation and depletion of natural resources. The EU has agreed on thematic strategies on the sustainable use of natural resources and on the recycling and prevention of waste. Furthermore, several specific pieces of legislation were introduced to manage waste in a more sustainable way.

Legal basis and objectives

Articles 191, 192 and 193 of the Treaty on the Functioning of the European Union (TFEU).

General background

All products have a natural base. European economies depend highly on natural resources, including raw materials (minerals, biomass and biological resources); environmental media (air, water and soil); flow resources (wind, geothermal, tidal and solar energy); and space (land area). In using resources and transforming them, capital stocks are built up which add to the wealth of present and future generations. However, if current patterns are maintained, degradation and depletion of natural resources will continue, as will the generation of waste. The dimensions of our current resource use are such that the chances for future generations — and the developing countries — of having access to their fair share of scarce resources are endangered. The sustainable production and consumption is a key ingredient in long-term prosperity. Total waste generation in the EU is about 2.6 billion tonnes per year (2008). This means that approximately 5.3 tonnes per capita of waste is produced in the EU every year. This amount is growing faster than GDP and only about half of total waste is recovered, recycled and reused, or incinerated. The other half is dumped in landfills. The European Environment Agency (EEA) identifies the following six major waste streams in the EU: construction and demolition waste (33%), mining and quarrying waste (25%), manufacturing waste (13%), and household waste (8%). The EU's Sixth Environment Action Programme (Sixth EAP) identifies waste prevention and management as one of top four priorities. Its primary objective is to decouple waste generation from economic activity, so that EU growth will no longer lead to more and more rubbish.

Achievements

A. Natural resources

1. Thematic Strategy on the Sustainable Use of Natural Resources. Presented in December 2005, this strategy (COM(2005) 670) focuses on improving knowledge, developing monitoring tools and fostering strategic approaches in specific economic sectors, in order to decouple economic growth from environmental degradation. It is closely linked with the Thematic Strategy on the Prevention and Recycling of Waste.

2. Sustainable Consumption and Production and Sustainable Industrial Policy (SCP/SIP). This action plan package (COM(2008) 397 final) was adopted by the Commission in July 2008, consisting of proposals to improve the environmental performance of products (*5.4.8 on sustainable consumption and production).

B. Waste management and prevention

1. Thematic Strategy on the Prevention and Recycling of Waste. This communication (COM(2005) 666) deals with substantial environmental impacts. The strategy adopts a life-cycle approach, a promotion of recycling and a new focus on the prevention of waste, a shift in EU policymaking on waste, to improve waste management and waste reduction by assessing EU waste policy, simplifying legislation and setting objectives.

2. Waste Framework Directive. The current Waste Framework Directive (2008/98/EC), follows on the Thematic Strategy on the Prevention and Recycling of Waste, and repealed the previous Directive (75/442/EEC codified 2006/12/EC), the Hazardous Waste Directive (91/689/EEC) and the Waste Oil Directive (75/439/EEC) from December 2010. It aims at reforming and simplifying EU policy by setting a new framework and targets with a focus on prevention. It requires Member States to establish national waste prevention programmes by 2013 and provides for a waste hierarchy.

3. Shipments of waste. Regulation (EC) No 1013/2006 establishes a system for the supervision and control of shipments within, into and outside the EU, with the specific aim of improving environmental protection. It covers practically all types of waste (except radioactive), including by road vehicles, trains, ships and planes. The regulation implements the UN Basel Convention (signed by the EC in 1989), which regulates shipments of hazardous waste at international level.

C. Production and waste stream-specific law

1. End-of-life vehicles (ELVs). Directive (2000/53/EC) aims at reducing waste from ELVs and their components by, for example, increasing the rate of reuse and recovery to 95% and the rate of reuse and recycling to at least 85% by 2015. It also encourages manufacturers and importers to limit the use of hazardous substances as well as to develop the integration of recycled materials. Directive 2005/64/EC, following on from the ELV Directive, makes it mandatory to take recycling and dismantling issues into consideration when designing motor vehicles. An implementation report (COM(2009) 635) and an EP study (PE 447.507) show that enforcing the ELV Directive has been problematic in many Member States, with gaps between the numbers of de-registered cars and ELVs, as well as illegal exports to developing countries.

2. Ships: End-of-life and dismantling. In 2007, the Commission presented a Green Paper on better ship dismantling (COM(2007) 269), analysing the problems posed by this activity and setting out the options for action. The dismantling of European ships often takes place in developing countries under dangerous and environmentally harmful conditions and is contrary to Community waste shipment law. Later, the Commission adopted an 'EU strategy for better ship dismantling' (COM(2008) 767) to ensure that ships sailing under a Member State flag or owned by European companies are dismantled in a safe and environmentally-friendly way worldwide.

3. Waste Electrical and Electronic Equipment (WEEE) and Hazardous Substances in Electrical and Electronic Equipment (RoHS). Directive 2002/96/EC on WEEE aims to protect soil, water and air, through better and reduced disposal of waste electrical and electronic equipment. It sets targets and rules for collecting, reusing, recycling and recovering; the responsibility and financing lies with the producers. The WEEE Directive was later amended by Directive 2008/34/EC. Directive 2002/95/EC on the restriction of the use of certain RoHS was adopted parallel to the WEEE Directive and aims to protect the environment and human health through the restriction of certain substances (lead, mercury, cadmium, chromium and brominated flame retardants) in electrical and electronic equipment. The implementation of the WEEE and RoHS Directives in Member States has proved difficult, with only one third of electrical and electronic waste to have been collected and properly treated. In 2008, the Commission therefore proposed a recast of the RoHS Directive (COM(2008) 809) and the WEE Directive (COM(2008) 810), with the aim of improving their implementation, cutting administrative burdens and clarifying the relationship between the two directives. In November 2010 and February 2011, the EP adopted legislative resolutions on the RoHS and on WEEE proposals (respectively) after first reading. Following negotiations with the Council, the recast of RoHS was approved in November 2011. As far as the recast of the WEE Directive is concerned, the EP and the Council reached an agreement, which was voted by MEPs in January 2012; the formal Council approval was decided on 4 July 2012. This will oblige Member States to increase their collection of e-waste and will allow consumers to return appliances to any small electrical goods shop without having to purchase new goods. The burden of proof with regards to the shipping of electrical waste will now lie on the exporter's side, thus impeding illegal shipments and the environmentally harmful disposal of waste in non-EU countries.

4. Disposal of spent batteries and accumulators. Directive 2006/66/EC on batteries, accumulators and waste batteries aims to improve waste management and the environmental performance of batteries and accumulators by establishing rules for their collection, recycling, treatment and disposal. The directive also sets limit values for certain hazardous substances (especially mercury and cadmium) in batteries and accumulators.

5. Radioactive waste and substances. In accordance with Directive 96/29/Euratom, each Member State must make the reporting of activities which involve a hazard arising from ionising radiation compulsory. In the light of possible dangers, activities are, in certain cases, subject to prior authorisation decided by each Member State. Shipments of radioactive waste are covered by Council Regulation (Euratom) No 1493/93 and Directive 2006/117/Euratom.

6. Packaging and packaging waste. The Directive (94/62/EC) covers all packaging placed on the market in the Community and all packaging waste, whether it is used or released at industrial, commercial, office, shop, service, household or any other level. It requires Member States to take measures to prevent the formation of packaging waste, and to develop packaging reuse systems. Directive 2004/12/EC (amending Directive 94/62/EC) establishes criteria and clarifies the definition of 'packaging'. The directive has been transposed by all Member States.

7. Waste from extractive industries represents about 25% of the total waste in Europe. A directive on the management of waste from extractive industries (the Mining Waste Directive) was adopted (2006/21/EC). It seeks to tackle the significant environmental and health risks associated with mining waste (current and historical) as a result of its volume and pollution potential.

D. Waste treatment and disposal

1. Use of sewage sludge in agriculture. The progressive implementation of the Urban Waste Water Treatment Directive 91/271/EEC in all Member States is increasing the quantities of sewage sludge requiring disposal. Council Directive 86/278/EEC regulates the use of sewage sludge in agriculture in order to protect the environment (in particular, the soil) and human health from heavy metals and other contaminants. Implementation of the directive has been successful in Member States, with several Member States setting even stricter limit values. As of June 2013 the Commission is still assessing whether it should be reviewed and revised.

2. Polychlorinated biphenyls (PCB) and polychlorinated terphenyls (PCT). Directive 96/59/EC approximates the Member States' laws on the controlled disposal of PCBs and PCTs, the decontamination or disposal of equipment containing PCBs and/or the disposal of used PCBs in order to eliminate them completely. The Commission adopted a Community Strategy on Dioxins, Furans and PCBs (COM(2001) 593) aimed at reducing their release into the environment and their introduction into food. This strategy set an integrated approach in order to guarantee that the dioxin and PCB problem is totally under control.

3. Landfill sites. Directive 1999/31/EC is intended to prevent or reduce the adverse effects of the landfill of waste on the environment, in particular on surface water, groundwater, soil and air, as well as on human health. The directive sets up a system of operating permits. The Member States must ensure that landfills comply with the legislation and are required to report to the Commission every three years on the implementation of the directive. Implementation still remains somewhat unsatisfactory, with all provisions not having been transposed in all Member States. Indeed, a large number of illegal landfills still exist. The Commission will review the targets for diversion of biodegradable waste from landfills and present a report to the European Parliament and the Council in 2014.

4. Incineration of waste. Directive 2000/76/EC aimed to prevent or reduce, as far as possible, air, water and soil pollution caused by the incineration or co-incineration of waste. As of November 2010, the directive on the incineration of waste was repealed by the directive on industrial emissions (2010/75/EU), together with six other directives related to industrial emissions, in order to make legislation on industrial emissions clearer and easier to implement.

Role of the European Parliament

The EP has played an important role on natural resources and waste. In 2007 it adopted an own-initiative resolution in response to the Commission's communication on a Thematic Strategy for Sustainable Use of Natural Resources. The EP called for a more comprehensive strategy, urging the Commission to set binding targets and timetables. The strategy failed to meet the objectives of the Sixth Environment Action Programme (EAP). Following negotiations, the EP adopted the Waste Framework Directive in 2008 with binding targets for 2020. The final text is different from the Commission's proposal thanks to EP initiatives: the addition of reuse, recycling and recovery targets; the inclusion of the five step waste hierarchy as a 'priority order', and the inclusion of an article that requires the Commission to report on EU waste generation and waste prevention, producing proposals and decoupling objectives for 2020. In 2006, the EP played a key role in the directive on the management of waste from extractive industries. In a resolution from 2001, the EP recommended improving the implementation of Directive 96/59/EC on the disposal of PCBs and PCTs, helping to adopt a Community strategy on dioxins, furans and PCBs. During the conciliation on batteries and accumulators, the EP called for a more ambitious target. The EP also supported the introduction of a closed-loop for recycling all of the lead and cadmium contained in waste batteries and wished to oblige Member States to ensure that their recycling processes achieved these targets. A few months later, the new directive came into force. In the ongoing negotiations for a recast of the WEEE Directive, the EP is calling for WEEE collection and treatment targets of at least 85% by 2016, higher than the 65% proposed by the Commission. The EP is also calling for an extended producer responsibility and tougher measures regarding the export of WEEE, with the burden of proof on the exporter. Concerning the proposed recast of the RoHS Directive, the EP argues that it is to be extended to more types of electronic and electrical equipment. Some MEPs also called for the banning of further toxic substances in a priority list as part of the revised RoHS Directive, including PVC and brominated flame retardants. This demand was later dropped by EP negotiators, but with the potential of new substances being banned after a review in three years' time.

→ Lorenzo Vicario / Marcelo Sosa-Iudicissa

5.4.8. Sustainable consumption and production

The concept of an Integrated Product Policy seeks to minimise the negative impacts of products (whether through their manufacture, use or disposal) by looking at all phases of a product's lifecycle and taking action where it is most effective. The EU has developed such a strategy as well as wider policies and initiatives to promote sustainable consumption and production, environmental technologies and nanotechnology.

Legal basis

Article 191 of the Treaty on the Functioning of the European Union.

Achievements

A. Integrated Product Policy (IPP)

The Commission's Green Paper on Integrated Product Policy (COM(2001) 68) presented a strategy for strengthening and refocusing product-related environmental policies, with a view to promoting the development of a market for greener products and stimulating public discussion. This strategy focused on three stages in the decision-making process that strongly influence the lifecycle environmental impacts of products:

- setting product prices: implementing the polluter pays principle and ensuring that prices reflect the environmental costs of products, for example through differentiated taxation according to environmental performance;
- informed consumer choice: increasing demand for more environmentally-friendly technologies by educating consumers and companies, and providing understandable, relevant and credible information through product labelling or other readily available information sources; and
- eco-design: promoting the lifecycle concept within companies through eco-design guidelines and a general strategy for integrating environmental considerations into the design process.

In a subsequent communication on 'Integrated Product Policy — Building on Environmental Life-Cycle Thinking' (COM(2003) 302), the Commission further elaborated its strategy, setting out a number of actions to encourage improvement in a product's environmental impact throughout its lifecycle, and emphasising three dimensions: 'lifecycle thinking', flexibility of policy measures and stakeholder involvement. The Communication proposes to identify and stimulate action on products with the greatest potential for environmental improvement. This is to be carried out in three phases: identify a first set of products with the greatest potential for environmental improvement; assess possible ways to reduce the lifecycle environmental impacts of some of the identified products; and create policy measures for identified products. More recently and with similar objectives to the IPP, the roadmap on resource efficiency was launched in 2011. It proposed ways to increase resource productivity and decouple economic growth from resource use and its environmental impact.

B. Action Plan for Sustainable Consumption, Production and Industrial Policy

In July 2008, the Commission proposed a package of actions and proposals on Sustainable Consumption and Production (SCP) and Sustainable Industrial Policy (SIP) which aim to improve the environmental performance of products throughout their lifecycle and increase consumer awareness and demand for sustainable goods and production technologies. These proposals form an integral part of the renewed SDS, and build on and complement existing EU policies, measures and instruments. The package consists of five elements: communications on the SCP and SIP Action Plan (COM(2008) 397) and on green public procurement (GPP) (COM(2008) 400); proposals for regulations revising the Community Ecolabel scheme (COM(2008) 401) and the Community eco-management and audit scheme (EMAS) (COM(2008) 402) respectively; and a proposed revision of the directive on eco-design (COM(2008) 399).

C. Eco-labelling and energy labelling

The European Ecolabel is a voluntary scheme, established in 1992 to encourage businesses to market products and services that meet certain environmental criteria. The criteria are set and reviewed by the EU Eco-Labelling Board (EUEB), which is also responsible for the assessment and verification requirements relating to them. They are published in the *Official Journal of the European Union*. Products and services awarded the Ecolabel carry the flower logo, allowing consumers — including public and private purchasers — to identify them easily. The label has so far been awarded to over 3 000 products such as detergents, paper and shoes. Ecolabel criteria are not based on

one single factor, but on studies which analyse the impact of a product or service on the environment throughout its life-cycle, starting from raw material extraction in the pre-production stage, through to production, distribution and disposal. In July 2008, the Commission proposed a revision of the EU Ecolabel Regulation in order to address the 'sustainable production' part of the Sustainable Industrial Policy Action Plan published at the same time. The revised Ecolabel Regulation (EC) No 66/2010 aims to promote the use of the voluntary Ecolabel scheme by making rules less costly and bureaucratic to use.

Directive 92/75/EEC introduced an EU-wide energy labelling scheme for household appliances (white goods), whereby labels and information in product brochures provide potential consumers with energy consumption rates for all models available. In June 2010, the Energy Labelling Directive 2010/30 was revised in order to extend its scope to a wider range of products including energy-using and other energy-related products.

D. Eco-design

Directive 2005/32/EC establishes a framework for setting eco-design requirements applicable to energy-using products (EuP) amending Directives 92/42/EEC, 96/57/EC and 2000/55/EC on energy efficiency requirements for products such as boilers, computers or televisions. Several implementing measures of the EuP Directive have meanwhile been adopted by the Commission under a comitology procedure. The scope of the EuP Directive was restricted to energy-using products (excluding means of transport). In 2008, the Commission presented a proposal to revise the EuP Directive to extend its scope to energy-related products other than energy-using products; these are products that do not consume energy during use, but have an indirect impact on energy consumption, such as water-using devices, windows or insulation material (Directive 2009/125/EC).

E. Eco-management and audit (EMAS)

The EU Eco-Management and Audit Scheme (EMAS) is a management tool for companies and other organisations to evaluate, report and improve their environmental performance. The scheme has been available to companies since 1995, but was originally restricted to companies in industrial sectors. Since 2001, however, EMAS has been open to all economic sectors including public and private services. In 2009, the EMAS Regulation was revised and modified for the second time. Regulation (EC) No 1221/2009 entered into force on 11 January 2010 and aims to further encourage organisations to register with EMAS.

F. Green public procurement (GPP)

In 2004, two new public procurement directives (Directives 2004/18/EC and 2004/17/EC) were adopted which aim to simplify, clarify and modernise procurement procedures. Under the Sustainable Consumption and Production and Sustainable Industrial Policy (SCP/SIP) Action Plan, the Commission undertook to further strengthen GPP and to provide guidance on how to reduce the environmental impact caused by public-sector consumption and how to use GPP to stimulate innovation in environmental technologies, products and services. The EC communication published in July 2008 proposed to set targets for green public procurement linked to common green procurement criteria across Member States (COM(2008) 400). At EU level, the Commission set an indicative target that, by 2010, 50% of all public tendering procedures should be green.

G. Environmental Technologies Action Plan (ETAP)

In 2004, the Commission adopted an Environmental Technologies Action Plan (ETAP) (COM(2004) 38), which aims to boost the development and use of environmental technologies and improve European competitiveness in the area. It consists of: a survey of promising technologies that could address the main environmental problems; identification, with stakeholders, of the market and institutional barriers that are holding back development and use of specific technologies; and an identification of a targeted package of measures.

H. Nanotechnology

In 2005, the Commission presented a communication entitled 'Nanosciences and nanotechnologies: An Action Plan for Europe 2005-2009' (COM(2005) 243), which defines actions for the 'immediate implementation of a safe, integrated and responsible strategy for nanosciences and nanotechnologies'. In order to ensure that all applications and use of nanosciences and nanotechnologies comply with the high level of public health, safety, consumers and workers protection, and environmental protection chosen, the Commission announced a regulatory review of EU legislation in the relevant sectors (including REACH). To this end, the Commission presented in 2008 the communication 'Regulatory aspects of nanomaterials' (COM(2008) 366) in which it concluded that the risks in relation to nanomaterials can be dealt with under the existing legislative framework, but that existing legislation may have to be modified in the light of new information becoming available.

Role of the European Parliament

The Integrated Product Policy (IPP) strategy developed in the Commission Green Paper is fully in line with the objectives and ideas of the EP (as underlined on various occasions). The EP has stressed the need for environmental criteria to be incorporated into government procurement procedures, and has expressed the view that a more exhaustive study should have been carried out into the success and failures of existing IPP elements, such as the EU Ecolabel scheme and the directive on packaging. It also regretted the lack of clear objectives with timetables and the lack of methods and indicators for monitoring IPP. The EP also played a strong role in the introduction of provisions allowing greener procurement in public procurement directives. On 24 January 2006, the EP signed an 'EMAS Statement', pledging itself to ensure its activities are consistent with current best practices in environmental management. In 2007, the EP obtained the ISO 14001.2004 certification and received the EMAS registration.

During discussions on the revision of the EuP Directive in 2008, the EP Environment Committee had proposed to extend the scope of the directive to all products. This would have established a general, EU-wide eco-design directive. However, this position was not endorsed by the plenary, which accepted the Commission proposal to only extend the scope of Directive 2005/32/EC to 'energy-related products'.

In May 2012 the EP approved an own-initiative report on a resource efficient Europe, 2011/2068(INI). In this document it addresses issues concerning priority actions, the agenda for future growth, the elements for transforming the economy, natural capital and ecosystems services, governance and monitoring and the international dimension of resource efficiency.

In February 2013, in response to a Parliamentary question by Mr Groote, MEP, the Commission clarified some concerns in respect to the application of the energy labelling in the transportation sector, and announced that this directive and its market surveillance aspects are due to be revised in 2014.

In March 2013 a Parliamentary question to the Commission on the use of the Ecolabel in the tourist industry received a positive reply from Commissioner Tajani stressing that this sector is being stimulated to apply for the EU Ecolabel, for hotels and campsites. Companies in the sector are also being helped to introduce EMAS procedures and certifications.

→ Marcelo Sosa-Iudicissa

5.4.9. Chemicals

EU chemicals legislation aims to prevent barriers to trade and to protect human health and the environment. EU legislation on the management of chemicals consists of rules governing the marketing and use of particular categories of chemical products, a set of harmonised restrictions on the placing on the market and the use of specific hazardous substances and preparations, and rules governing major accidents and exports of dangerous substances. In this respect, a main achievement at EU level is the REACH Regulation, which regulates the registration, evaluation and authorisation of such substances and the restrictions applicable to them.

Legal basis

Articles 191 through 193 of the Treaty on the Functioning of the European Union (TFEU).

Achievements

A. Registration, Evaluation, Authorisation and Restriction of Chemicals: REACH

EU chemicals policy underwent a radical overhaul with the introduction of Regulation 1907/2006/EC on the REACH in 2006. The regulation entered into force on 1 June 2007, establishing a new legal framework to regulate the development and testing, production placing on the market and process use of chemicals. The aim of the REACH Regulation is to provide a better protection of humans and the environment from possible chemical risks and to promote sustainable development. Although previous EU legislation already prohibited some harmful chemicals (e.g. asbestos), there was a lack of information on the effects of many 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 no information was available on their negative effects. REACH introduced a single system for all chemicals and abolished the distinction between 'new' (introduce to the market as from 1981) and 'existing' chemicals (listed before 1981). It transfers the burden of proof of risk assessment of substances from public authorities to industries. It calls also for the substitution of the most dangerous chemicals by suitable alternatives.

The European Chemicals Agency (ECHA), established under this regulation and based in Helsinki, is responsible for managing technical, scientific and administrative aspects of REACH, and ensuring consistency in its application. The Helsinki Agency's initial job was to manage a six-month pre-registration exercise in which firms had to send information on the basic substances, their company details and the expected registration dates. The resulting list, published by ECHA, contains around 143 000 substances, pre-registered by 65 000 companies. This information was used to launch a registration phase that will last until 2018. November 2010 was the first deadline for industries to register: (i) the most hazardous substances (carcinogenic, mutagenic and reprotoxic (CMRs)), which are produced or imported in quantities of 1 tonne or more per year; (ii) substances which are very toxic to the aquatic environment, in quantities of 100 tonnes or more per year; and (iii) all substances in quantities of 1 000 tonnes or more per year. May 2013 is the deadline for industry to register all phase-in substances manufactured or imported in the EU at and above 100 tonnes a year under REACH. A review of the REACH Regulation was published on February 2013 with encouraging results.

B. Classification, packaging and labelling

Chemicals are manufactured and traded globally, and their hazards are the same around the world. Therefore, the description of hazards for a particular product should not differ between countries. If the same criteria are used to identify and the same labelling used to describe these hazards, then the level of protection for human health and the environment will consequently become more consistent, transparent and comparable throughout the world. Directive 67/548/EEC (as amended) sets out an EU uniform notification procedure for the classification, packaging and labelling of dangerous substances. Directive 1999/45/EC relates to the classification, packaging and labelling of dangerous preparations (i.e. mixtures or solutions of two or more substances including paints, solvents, alloys and pesticides). The REACH Regulation does not include rules on classification, packaging and labelling, so the requirements set out in these directives continue to apply during a transitional period, though they have been amended (by Directive 2006/121/EC) to comply with REACH. Adopted in 2008, Regulation 1272/2008/EC on classification, labelling and packaging of substances and mixtures aims to align the EU system to the UN Global Harmonised System (GHS).

C. Major accidents

After an accident in Seveso, Italy in 1976, the EU took steps to prevent major accidents such as fires

or explosions. The Seveso Directive 82/501/EEC (as amended) aims to prevent such accidents and to limit the consequences of those that do occur by requiring safety reports, emergency plans and information to the public. In 1996, the Seveso II Directive (96/82/EC) on the control of major accident hazards involving dangerous substances introduced new requirements relating to safety management systems, emergency planning and land-use planning, and strengthened provisions on inspections carried out by Member States. It transposes the EU's obligations under the Espoo Convention on the transboundary effects of industrial accidents. In light of serious industrial accidents (Toulouse, Baia Mare and Enschede) and studies on carcinogens and substances dangerous for the environment, the Seveso II Directive was extended by Directive 2003/105/EC. It obliges Member States to provide notably a detailed risk assessment on possible accident scenarios and to cover risks arising from storage and processing activities in mining, from pyrotechnic and explosive substances and from the storage of ammonium nitrate and ammonium nitrate based fertilizers. The new Directive Seveso III (2012/18/EU) decided by the EP and the Council was published in July 2012. This update takes account of new UN-agreed international classifications of substances, which allow a better risk evaluation and handling of substances.

D. Sustainable use of pesticides

In 2006, the Commission adopted a Thematic Strategy (TS) on the sustainable use of pesticides (COM(2006) 372), which aims to reduce environmental and health risks while maintaining crop productivity and improving controls on the use and distribution of pesticides. The TS was accompanied by a proposal for a directive establishing a framework for EU action to achieve a sustainable use of pesticides. Adopted in January 2009, the new Directive 2009/128/EC obliged Member States to adopt national action plans to set up quantitative objectives, targets, measures and timetables in order to reduce the risks and impacts of pesticide use on human health and the environment. Aerial crop spraying will, in general, be banned, and no spraying will be allowed in close proximity to residential areas. A regulation on the placing on the market of plant protection products (which will replace Directive 91/414/EEC), was also adopted in January 2009 as a part of the Pesticide Package. The new Regulation 1107/2009/EC, which deals with the production and licensing of pesticides, contains a positive list of approved 'active substances' (the chemical ingredients of pesticides), drawn up at EU level. Pesticides will then be licensed at national level on the basis of this list. The EU will be divided into three zones (north, centre and south) with compulsory mutual recognition within each zone as the basic rule. This will make it easier for manufacturers to gain approval for their products across borders within a given zone and thus make more pesticides available to users more quickly. In order to establish a transparent system for reporting and monitoring progress, the new statistics Regulation 1185/2009/EC sets out rules for collecting information on the annual amounts of pesticides placed on the market and the annual amounts of pesticides used in each Member State.

E. Biocides products

Directive 98/8/EC establishes controls over the marketing and use of biocides (non-agricultural pesticides such as anti-bacterial disinfectants and insect sprays) so as to manage the associated risks to the environment and to human and animal health. These substances are authorised only if they appear on a positive list. Pursuant to the mutual recognition principle, a substance authorised in one Member State may be used throughout the EU. In June 2009, the Commission adopted a proposal for a regulation concerning the placing on the market and use of biocides products (COM(2009) 267) that would replace the 1998 directive from 2013. This new regulation was agreed at second reading by the EP and the Council in January 2012. The future legislation will introduce a ban of the most toxic chemicals — especially those that are carcinogenic, harmful to fertility or interfere with genes or hormones (endocrine disrupters).

F. Persistent organic pollutants (POPs)

POPs are chemical substances that persist in the environment, bioaccumulate through the food chain, and pose a risk of causing adverse effects to human health and the environment. This group of priority pollutants consists of pesticides (such as DDT), industrial chemicals (such as polychlorinated biphenyls (PCBs) and unintentional by-products of industrial processes (such as dioxins and furans). The EU signed both international instruments on POPs, together with the then 15 Member States. The EU ratified the Protocol on 30 April 2004 and the Stockholm Convention on 16 November 2004. Regulation 850/2004/EC complements earlier European legislation on POPs and aligns it with the provisions of the international agreements on POPs. To a certain extent, the regulation goes further than the international agreements; emphasising the aim to eliminate the production and use of the internationally recognised POPs.

G. Asbestos

Directive 87/217/EEC on the prevention and reduction of environmental pollution by asbestos sets out controls over the pollution of air, water and land by asbestos. It is complemented by Directives 91/382 and 2003/18/EC to protect workers against the dangers of asbestos, as well as certain provisions in Annex XVII of REACH. The main point of Directive

2003/18/EC is the introduction of a single limit value (of a maximum airborne concentration of 0.1 fibres per cm^3 as an eight-hour time-weighted average (TWA) for the exposure of workers. However, in case its provisions should prove to be more favourable for workers, then Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work ('the Carcinogens Directive') would apply.

H. Detergents

In 2004, Regulation 648/2004/EC harmonised the rules for: the biodegradability of surfactants, the restrictions and bans on surfactants, the information that manufacturers must hold and the labelling for detergent ingredients. It was subsequently amended by Regulation 907/2006/EC, in order to adapt Annexes III and VII; introducing new biodegradability tests, which should provide an enhanced level of protection to the aquatic environment. In addition, the scope of the tests was extended to all classes of surfactant, thereby including the 10% of surfactants that escaped legislation. As regards labelling, rules are extended to include fragrance ingredients that could cause allergies, and manufacturers are obliged to disclose a full list of ingredients to medical practitioners treating patients suffering from allergies. After a report review in 2007 on phosphates in detergents addressed to the Council and the European Parliament, the Commission proposed in April 2010 to ban the use of phosphates and to limit the content of other phosphorous-containing compounds in laundry detergents . The EP adopted this proposal in December 2011.

I. Mercury

In 2005, the Commission adopted a Communication on Mercury (COM(2005) 20) which addresses all aspects of the mercury life cycle and proposes 20 actions to address mercury pollution both in the EU and globally. It contains measures to reduce mercury emissions, cut supply and demand, and protect against exposure to methylmercury found in fish. Some of these measures are implemented by Regulation 1102/2008/EC on the banning of exports of metallic mercury. To the extent that mercury is considered as waste, it falls within the scope of existing EU legislation on waste; such as Regulation 259/93/EC on waste shipments and Directive 1999/31/EC on the landfill of waste. Global negotiations on an international agreement to address the mercury problem are currently taking place under the auspices of the United Nations Environment Programme.

J. Export and import of dangerous substances

EU Legislation regulating the export and import of dangerous chemicals has been in place since 1988, and was revised and strengthened in 1992 and 2003 following developments in international policy and law. EU rules relating to the export and import of dangerous chemicals were enhanced in 2008 by Regulation 689/2008/EC, which makes the EU' export regime for dangerous chemicals more stringent than the requirements of the Rotterdam Convention on the prior informed consent (PIC) procedure for certain hazardous chemicals and pesticides in international trade.

Role of the European Parliament

The EP played a key role in the development of the REACH Regulation. Its first reading position made amendments notably on the registration chapter introducing a targeted approach on data requirements for existing substances produced at lower tonnages (1-10 tonnes) and the 'One Substance, One Registration' (OSOR) approach to minimise costs, with an opt-out under specific conditions. In order to limit animal testing as much as possible, EP insisted that companies must be obliged to share data from tests conducted on animals (in return for reasonable compensation), in order to prevent duplication of experiments. On the authorisation chapter, the EP endorsed a stronger approach whereby all substances of very high concern could only be authorised when suitable alternatives or technologies do not exist. EP amendments tried to favour both innovation (through time-limited authorisations of 5 years) and certainty (through a list of the most hazardous substances). At the end of the legislative procedure, the agreement achieved between EP and Council on the controversial issue of 'authorisation/substitution' included the obligation to always present a substitution plan if suitable safer alternatives exist. During the long discussion on the Pesticides Package in 2008, EP amendments ensured the establishment of appropriately-sized buffer zones for the protection of aquatic organisms and also the introduction of protection measures for the most vulnerable groups, by prohibiting the use of pesticides in public gardens, sports and recreation grounds, school grounds and playgrounds, and in the close vicinity of healthcare facilities. In early 2013 the EP encouraged the Commission to take daring action in respect to the preservation of bee populations, following the EFSA report on the damaging effects of certain neonicotinoid insecticides.

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5.5. Consumer protection and public health

5.5.1. Consumer policy: principles and instruments

European consumer policy is a vital element of a well-functioning internal market. It aims to make the European Union a tangible reality for all citizens by ensuring their rights as consumers in everyday life. Empowering consumers, enhancing their welfare and effectively protecting their safety as well as their economic interests have become very important challenges.

Legal basis

Articles 4.2.f, 12, 114 and 169 of the Treaty on the Functioning of the European Union (TFEU) and Article 38 of the Charter of Fundamental Rights of the European Union.

Objectives

Article 114 TFEU is the legal basis for the harmonisation measures aimed at establishing the internal market. It emphasises the objective of ensuring a high level of protection, also where consumer protection measures are concerned; taking account in particular of any new development based on scientific facts.

Article 169 TFEU introduced a legal basis for a complete range of actions at European level. It stipulates that 'in order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests'. It also provides for greater consideration to be given to consumer interests in other EU policies. In this sense, Article 169 TFEU strengthens Article 114 and broadens its remit beyond single market issues to include access to goods and services, access to the courts, the quality of public services, and certain aspects of nutrition, food, housing and health policy. It also states that EU actions shall not prevent any Member State from maintaining or introducing more stringent measures as long as they are compatible with the Treaties. As a consequence, consumer policy is, nowadays, part of the Union's strategic objective of improving the quality of life of all its citizens. In addition to direct action to protect their rights, the Union ensures that consumer interests are built into EU legislation in all relevant policy areas. The Consumer Programme (2007-2013) aims to ensure the same high level of consumer protection for all 503 million citizens in the EU, with particular focus on consumer protection and raising consumer awareness in the Member States that acceded after 1 May 2004. A second general aim is to ensure the effective application of consumer policy rules through enforcement cooperation, redress, information and education.

According to the Treaty (Article 12 TFEU), consumer protection requirements must be taken into account in defining and implementing other Union policies and activities. Article 38 of the Charter of Fundamental Rights of the European Union reinforces consumer protection by stating that EU policies shall ensure a high level of consumer protection.

Achievements

A. General

EU action in favour of consumers started in the form of a series of action plans, beginning with the Council Resolution of 14 April 1975. Following the completion of the single market, consumer policy objectives have, now, to be considered as one of the EU major policies. The current consumer policy strategy at European level for the period 2007-2013 sets out three main objectives:

- empowering consumers by creating a more transparent market that offers consumers real choice, for example in terms of price and quality;
- enhancing consumers' welfare in terms of price, quality, diversity, affordability, safety, etc.;
- effectively protecting consumers from serious risks and threats.

In order to attain these objectives, EU consumer policy will focus on the following priority areas:

- better monitoring of consumer markets and national consumer policies;
- better consumer protection regulation;
- better enforcement and redress;
- better informed and educated consumers;
- putting consumers at the heart of other EU policies and regulation;
- better protection of EU consumers in international markets.

The Consumer Programme — programme of community action in the field of consumer policy (2007-2013) — is the financial framework complementing the strategy. Both texts are under review as Parliament and Council are currently discussing the European Consumer Agenda[1] and a proposal for a regulation on a consumer programme for the period 2014-2020[2].

The Commission feels that the simplification and improvement of the regulatory environment in the area of consumer protection will form a major future objective, involving many directives, rulings in case law and various rules of the Member States themselves. In February 2007, the Commission presented a Green Paper on the review of the consumer *acquis*[3], covering eight directives in this field. The modernisation and simplification of existing rules, where possible, could help both consumers (access to a greater choice of products at better prices) and businesses (reducing their burdens).

In order to strengthen consumer confidence in the single market, the Single Market Act (April 2011) proposed a set of measures including proposals on alternative dispute resolution, collective redress and passengers' rights. A new set of measures to be adopted (Single Market Act II) was presented by the Commission in October 2012. It notably focuses on the revision of the general product safety and market surveillance rules and on a bank account initiative (increased transparency and comparability of bank account fees, easy switching of bank account for consumers).

B. Sectoral measures (*5.5.2)

1. Consumer groups

The involvement of EU consumers' interests representatives is a priority for the European institutions. The European Consumer Consultative Group (ECCG) is the Commission's main forum to consult with national and European consumer organisations (Commission Decision 2009/705/EC). The ECCG may advise and inform the Commission on all issues related to consumer interests at EU level.

2. Consumer education

The EU has organised actions for consumer education at various stages; for example in primary and secondary schools with the gradual inclusion of consumer education in school syllabuses. The Commission has also piloted teacher-training schemes and supported the creation of Master's degree courses on consumer policy. The Europa Diary is a school diary aimed at students in secondary school (aged 15-18 years). It contains information for young people on EU related issues; including their rights as consumers. The interactive and online consumer education tool 'Dolceta' (www.dolceta.eu) is available in all Member States and in all official EU languages. It is aimed at trainers and teachers, but also at the informed consumer and covers, amongst others, basic consumer rights, product safety and financial literacy.

3. Consumer information

Consumers often do not know their rights; especially when it comes to buying cross-border or online products or services. This is not only a problem for the individual consumer, who is unable to make the most informed decision. Better informed consumers could also lead to enhanced consumer confidence, which is an essential condition for the further development of the internal market. The EU has set up European Consumer Centres (ECC-Network) to provide cross border information and advice on cross-border shopping problems and handle consumer complaints. A parallel network, FIN-NET, fulfils the same role for complaints about cross-border financial services. The Commission also conducts consumer information campaigns in the Member States and publishes practical guides for consumers.

4. Enforcement of consumer rights

The effective and correct enforcement of these rights is equally as important as the existence of consumer rights. The responsibility for their enforcement lies mainly with the national public authorities. Regulation EC (No) 2004/2006 on Consumer Protection Cooperation links up these national authorities in an EU-wide Enforcement Network, providing them with a framework to exchange information and to work together to stop any breach of cross-border consumer protection laws (e.g. on misleading advertisement, package holidays or distance selling). The Network also carries out joint market surveillance and enforcement activities

[1] COM(2012) 225.

[2] COM(2011) 707.

[3] COM(2006) 744 final.

(e.g. in the form of internet sweeps during which the authorities check websites to see whether they comply with the law). A Commission Communication of 2 July 2009[1] sets out the priority areas for action in the field of consumer rights' enforcement:

- strengthening cooperation between national authorities (such as the CPC Network) and market surveillance systems (such as the warning system RAPEX for dangerous products);
- strengthening the transparency of market surveillance and enforcement investigations;
- developing common understandings on the interpretation of EU consumer law;
- strengthening market monitoring;
- stepping up international cooperation through agreements with enforcement authorities e.g. in the US and China.

Role of the European Parliament

The EP continues to exert strong and persistent pressure for consumer concerns to be dealt with comprehensively by the other EU institutions. Consumer protection policy has shifted from a technical harmonisation of standards policy in furtherance of the internal market to the recognition of consumer protection as part of the drive to improve the objective of establishing a 'citizens' Europe'. The codecision procedure and the widening of the areas of legislation to be adopted under the qualified majority voting procedure in the Council, gave to the EP the power to be actively involved in developing and strengthening EU consumer protection legislation, balancing the markets interests with those of consumers. The EP also plays an important role in the definition of the consumer protection policy by adopting initiative reports[2]. EP has been particularly active in ensuring higher budgetary provisions for, e.g. the information and (financial) education of consumers and the development of consumer representation in the Member States, with a focus on the Member States that acceded after 2004.

→ Carine Piaguet

[1] COM(2009) 330.

[2] A new agenda for European Consumer Policy; European Parliament resolution of 22 May 2012 on a strategy for strengthening the rights of vulnerable consumers; European Parliament resolution of 15 November 2011 on a new strategy for consumer policy.

5.5.2. Consumer protection measures

European measures for consumer protection aim to protect the health, the safety and the economic and legal interests of European consumers, wherever they live or travel and wherever they are buying in the EU. Several areas are subject to EU regulation in this regard, such as drugs, GMOs, tobacco industry, cosmetics, toys or explosives.

Legal basis

Articles 114 and 169 of the Treaty on the Functioning of the European Union (TFEU).

Objectives

- To ensure that all consumers in the Union, wherever they may live, travel or shop in the EU, enjoy a high common level of protection against risks and threats to their safety and economic interests.
- To increase the ability of consumers to defend their own interests.

Achievements

A. Protection of consumers' health and safety

1. Community actions in the field of public health and tobacco (*5.5.3)

2. Foodstuffs (*5.5.5)

3. Medicinal products (*5.5.4)

4. General Product Safety System

Directive 2001/95/EC provides a General Product Safety System whereby any consumer product put on the market, that is not covered by specific sector legislation, must still respect certain standards. Distributors and manufacturers must provide consumers with the necessary information, take the necessary measures to avoid safety threats, monitor the safety of products and provide the documents necessary to trace the products. If a product poses a serious threat calling for quick action, the relevant Member State must immediately inform the Commission via RAPEX, a system for the rapid exchange of information between Member States and the Commission. The Commission has published on February 2013 a package on Consumer Product Safety and Market Surveillance with the objective to review the current system.

5. Safety of cosmetic products, explosives for civilian use and toys

The Cosmetics Directive 76/768/EEC and all its amendments and adaptations were replaced by the EU Cosmetics Regulation (EC) No 1223/2009. It ensures the safety of cosmetic products, as well as the protection of consumers by providing for ingredient inventories and informative labelling. By 11 July 2013, most provisions of the new regulation will be applicable. Safety requirements for explosives for civilian use and similar products (such as explosives and pyrotechnic articles) are set out in Directives 93/15/EEC, 2008/43/EC, 2004/57/EC and Decision 2004/388/EC. The directives do not apply to explosives for military or police use and munitions. Toy safety requirements (e.g. mechanical danger, toxicity and flammability, toys in food) are stipulated by Directive 2009/48/EC, The Standardisation Committee (CEN) revises and develops new standards. Toys that meet these standards bear the 'CE' mark.

6. European Exchange of Information and Surveillance Systems

Decisions 93/683 and 93/580 established a European Home and Leisure Accident Surveillance System (EHLASS), an information system on accidents at home and during leisure activities, and a Community System for the Exchange of Information between Member States on the dangers arising from the use of consumer products; with the exception of pharmaceuticals and products for trade use.

B. Protection of consumers' economic interests

1. Information society services, electronic commerce and electronic and cross-border payments

The E-commerce Directive 2000/31/EC covers the liability of service providers established in the EU for services (between enterprises, between enterprises and consumers, and those provided free to the recipient which are financed, for example, by advertising income or sponsoring), online electronic transactions (interactive telesales of goods and services and online purchasing centres in particular), and online activities, such as newspapers, databases, financial services, professional services (solicitors, doctors, accountants and estate agents), entertainment services (video on demand), direct marketing and advertising and Internet access services. Directive 97/5/EC on cross-border credit transfers and Regulation (EC) No 2560/2001 ensure that charges for cross-border payments in euros (cross-border credit transfers, cross-border electronic payment transactions and cross-border cheques) are the same as those for payments in that currency within a Member State.

2. TV without frontiers

Directive 89/552/EEC (as amended by Directive 2007/65/EC) ensures the free movement of broadcasting services and preserves certain public interest objectives, such as cultural diversity, the right of reply, consumer protection and the protection of minors. The provisions relate to, inter alia, ethical considerations (in particular the protection of minors — programmes broadcasted in un-encoded form are to be preceded by an acoustic warning or identified by a visual symbol) and compliance with criteria concerning advertisements for alcoholic beverages and teleshopping. Advertising of tobacco and medicines, programmes involving pornography or extreme violence are prohibited. Events of major importance for society are to be broadcast freely in un-encoded form, even if exclusive rights have been purchased by pay-TV channels.

3. Distance selling contracts and contracts negotiated away from business premises, the sale of goods and guarantees, unfair terms in contracts.

Directive 97/7/EC (as amended) and Directive 85/577 (as amended) protect the consumer in respect of contracts negotiated at a distance (e.g. via the press and post, television, home computer, fax and telephone) and those signed away from business premises (i.e. offered without the express wish of the consumer, in respect of which the consumer receives a visit from or takes part in an excursion organised by a trader). Directive 2002/65/EC regulates the distance marketing of consumer financial services. The Unfair Contract Terms Directive 93/13/EEC regulates standard term contracts. A contractual term not individually negotiated (particularly in the context of a pre-formulated standard contract) shall be regarded as unfair if, contrary to good faith, it causes a significant imbalance in the parties' rights and obligations, to the detriment of the consumer. Directive 99/44/EC (on certain aspects of the sale of consumer goods and associated guarantees) harmonises national provisions on the principle of product conformity vis-à-vis the contract, and on after-sale guarantees. For contracts concluded after 13 June 2014, the provisions of the new Consumer Rights Directive 2011/83/EU will apply. This directive covers and revises the four directives on distance selling contracts, on contracts negotiated away from business premises, on the sale of goods and guarantees, and on unfair terms in contracts.

4. Unfair commercial practices, comparative and misleading advertising

Directive 2005/29/EC on unfair commercial (business-to-consumer) practices prohibits misleading and aggressive practices, 'sharp practices' (such as pressure selling, misleading marketing and unfair advertising), and practices which use coercion as a means of selling, (irrespective of the place of purchase or sale). It includes criteria to determine aggressive commercial practice (harassment, coercion and undue influence) and a 'blacklist' of unfair commercial practices. Directive 2006/114/EC concerning misleading and comparative advertising controls misleading advertisement. It also lays down the conditions under which comparative advertising is permitted. The Communication from the Commission of November 2012 proposes to review Directive 2006/114/EC in order to tackle the loopholes of the text and focus on the problem of misleading directory companies.

5. Liability for defective products and price indication

Directive 85/374/EEC, modified by Directive 99/34/EEC, establishes the principle of objective liability or liability without fault of the producer in cases of damage caused by a defective product. The injured consumer seeking for compensation needs to prove the damage, a defect in the product and a causal link, within three years. Directive 98/6/EC on unit prices obliges traders to indicate sale prices and prices per measurement unit in order to improve and simplify comparisons of price and quantity between products on the market.

6. Consumer credit

Directive 2008/48/EC aims to ensure uniformity in the level of protection of rights enjoyed by consumers in the single market. It provides for a comprehensible set of information to be given to consumers in good time before the contract is concluded and also as part of the credit agreement. Creditors have to use the same Standard European Consumer Credit Information, i.e. a form containing all information about the contract, including the cost of the credit, the Annual Percentage Rate of Charge. Consumers are allowed to withdraw from the credit agreement without giving any reason within a period of 14 days after the conclusion of the contract. They also have the possibility to repay their credit early at any time, while the creditor can ask for a fair and objectively justified compensation.

7. Package holidays and timeshare properties

Directive 90/314/EEC protects consumers purchasing package holidays within the EU. Directive 2008/122/EC, on timeshare, long-term holiday products, resale and exchange, covers the obligation of information on the constituent parts of the contract and the right to withdraw without giving any reason within 14 calendar days, without costs. The directive also contains a checklist for pre-contractual information, involving the use of standard forms, available in all EU languages.

8. Air transport

Regulations (EC) No 261/2004 and (EC) No 2027/97 (as amended) established common rules on

compensation and assistance to passengers in the event of denied boarding, cancellation or long flight delays, and on air carrier liability (passenger and baggage) in the event of accidents. Regulation (EEC) No 2299/89 (as amended) on computerised reservation systems (CRS) for air transport products established obligations for the system vendor (to allow any carrier on an equal basis) and for the carriers (to communicate with equal care and timeless information to all systems). Regulation (EEC) No 2409/92 introduced common criteria and procedures governing the establishment of the air fares and air cargo rates charged by air carriers on air services within the Community. Regulation (EC) No 2320/2002 (as amended) introduced common rules in the field of civil aviation security standards, following the criminal acts of 11 September 2001.

9. European Consumer Centres Network (ECC-Network or 'Euroguichets')

The ECC-Network gives information and assistance to consumers within the context of cross-border transactions. This network also works together with other European networks, notably FIN-NET (financial), SOLVIT (internal market) and the European judicial network in civil and commercial matters.

C. Protection of consumers' legal interests

1. Alternative Dispute Resolution (ADR) procedures and injunctions

ADR are out-of-court settlement mechanisms that help consumers and traders solve conflicts, mostly through a third party, e.g. a mediator, arbitrator or ombudsman. Recommendation 98/257/EC, Decision 20/2004/EC and the Council Resolution of 25 May 2000 lay down the principles to be followed in ADR proceedings, aimed at guaranteeing the single consumer with cheaper and faster remedies. Directive 98/27 on injunctions for the protection of consumers' interests (as modified) harmonises existing EU and national law and, in order to protect the collective interests of consumers, introduces the 'action for injunctions', which can be opened, at the competent national courts level, against infringements made by commercial operators from other countries. A provisional agreement of Parliament and Council was reached on 12 March 2013 on two proposals for legislation: a directive on ADR and a regulation on Online Dispute Resolution (ODR).

2. European judicial network in civil and commercial matters and obligation for national authorities to cooperate

Decision 2001/470/EC established a European judicial network to simplify the life of citizens facing cross-border litigations by improving the judicial cooperation mechanisms between Member States in civil and commercial matters and by providing them with practical information to facilitate their access to justice. Regulation (EC) No 2006/2004 established a network of national authorities responsible for the effective enforcement of EC consumer protection law and, since 29 December 2005, obliged them to cooperate in guaranteeing the enforcement of EC law and to stop any infringement, using appropriate legal instruments such as injunctions, in the case of intra-Community infringements.

Role of the European Parliament

The codecision procedure and the widening of the areas of legislation to be adopted under the qualified majority voting procedure in the Council have given to the EP the power to be actively involved in developing and strengthening EU consumer protection legislation, whilst balancing markets interests with those of consumers.

→ Carine Piaguet

5.5.3. Public health

The Treaty of Lisbon enhances the importance of health policy. In Title XIV, Public Health, Article 168 (ex-Article 152 TEC), it is stipulated that 'a high level of human health protection shall be ensured in the definition and implementation of all Community policies and activities'. This objective is to be achieved through Community support to Member States and by fostering cooperation. Primary responsibility for health protection and, in particular, the healthcare systems themselves, remains at Member State level. However, the EU has an important role to play in improving public health, preventing and managing diseases, mitigating sources of danger to human health and harmonising health strategies between Member States. The EU has successfully implemented a comprehensive policy, through the Health Strategy 'Together for Health' and its action programme (2007-2013) and a body of secondary legislation. The present institutional set-up to support implementation includes the Commission's Directorate-General for Health and Consumer Protection (DG SANCO) and specialised agencies mainly ECDC and EMA. In 2013 the final rounds of negotiations are taking place for the adoption of the new plan 'Health for Growth' foreseen for the period 2014-2020.

Legal basis

Article 168 TFEU.

Objectives

The three strategic objectives of EU health policy are:

- fostering good health — to prevent diseases and promote healthy lifestyles by addressing the issue of nutrition, physical activity, alcohol, tobacco and drug consumption, environmental risks and injuries. With an ageing population, the specific health needs of older people also require more attention;
- protecting citizens from health threats — to improve surveillance and preparedness for epidemics and bioterrorism and increase capacity to respond to new health challenges such as climate change;
- supporting dynamic health systems — to help Member States' healthcare systems to respond to the challenges of ageing populations, rising citizens' expectations and the mobility of patients and health professionals.

Achievements

EU health policy originated from health and safety provisions, and later developed as a result of the free movement of people and goods in the internal market, which necessitated the coordination of public health issues. In harmonising measures to create the internal market, a high level of protection formed the basis for proposals in the field of health and safety. Various factors, including the bovine spongiform encephalopathy (BSE) crisis towards the end of last century, put health and consumer protection high on the political agenda. As a result, the Directorate-General for Health and Consumer Protection (DG SANCO) of the Commission assumed the coordination of all health-related matters, including pharmaceutical products. The consolidation of specialised agencies such as the European Medicines Agency (EMA) and the creation of the European Centre for Disease Prevention and Control (ECDC) show the EU's increasing commitment to health policy. Public health also benefits from actions in policy areas such as the environment and food amongst many others. The entry into force of the REACH framework (for the evaluation and registration of chemical substances) and the creation of the European Food Safety Agency (EFSA) are also good indicators of the multidisciplinary efforts aimed at improving the health of European citizens.

A. Past actions and context

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 to achieve high standards in medicine research and manufacturing, the harmonisation of national drug licensing procedures; and rules on advertising, labelling and distribution. Recent developments include the Pharmaceutical Package, which was approved by the European Parliament (EP) by early 2011.
- Research: Medical and public health research programmes date back to 1978, on subjects such as ageing, environment and lifestyle related health problems, radiation risks, and human genome analysis, with special focus on major diseases. These health issues and other new emerging topics were tackled in the Seventh EU Framework Programme. Their results will certainly influence the preparation of the new programme.

- Mutual assistance: Member States agreed to offer mutual assistance in the event of disaster and extremely serious illness. Many such issues have come into the spotlight of public concern over the last two decades; e.g. 'Mad Cow Disease' (BSE — bovine spongiform encephalitis), swine flu and, most recently, the H1N1 Influenza.
- More recently (2012-2013) the EP has also defined its position in the adoption of legislation for cross-border healthcare provision, and the revision of the legal framework for medical devices and advanced therapies.

The past actions that led to the configuration of the present EU health policy take stock of several focused initiatives. 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, has 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. In November 1993, the Commission published a 'Communication on the framework for action in the field of public health', which identified eight areas for action, thereby providing the basis for the first public health multiannual programme:

- Health promotion: The action programme focused on promoting healthy lifestyles and behaviour, particularly in the areas of nutrition, alcohol consumption, tobacco and drugs, medicines and medication.
- Health monitoring: This programme, based on cooperation, was less wide-reaching than the one proposed by the EP, which had wanted a specific budget and much tighter specifications for an EU, as opposed to a Member State, programme, including a centre for data collection.
- Cancer: The 'Europe against Cancer' programme ran until the end of 2002. Areas of activity included epidemiological studies (to measure the impact of cancer on the population), and research collaboration and dissemination.
- Drugs: The EU set up a European Monitoring Centre for Drugs and Drug Addiction (based in Lisbon) in 1995. It also co-signed the UN Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, as well as developing bilateral contacts with producer countries.
- AIDS and communicable diseases: Comprising information, education and preventive measures to combat AIDS and other related communicable diseases. Emphasis was also placed on collaborative research, international cooperation and information pooling.
- Injury prevention: This programme focused on home and leisure accidents, and targeted children, adolescents and older people.
- Pollution-related diseases: Many of the provisions of the fifth environmental action plan — on energy, transport and agriculture — had a significant, indirect impact on health. The pollution-related diseases programme concentrated on improving data and risk perception, as well as on disease-specific actions for respiratory conditions and allergies.
- Rare diseases: This programme targeted those diseases with a prevalence rate of less than five people per 10 000 EU population. It aimed to create an EU database and information exchange to improve early detection and identify 'clusters', as well to encourage the setting up of support groups.

The above eight programmes were carried out between 1996 and 2002. In their evaluation of 2003, it was found that the overall design of the programmes could have led to their limited effectiveness due to the dilution caused by their disease-by-disease approach. A more horizontal, inter-disciplinary approach was needed, where EU action could produce 'added value'. The initial eight separate programmes were replaced in 2003 by a single, integrated, horizontal scheme, the EU Public Health Programme 2003-2008, adopted after a codecision procedure. This led to the most recent phase of these endeavours, the Programme of Community action in the field of Health and Consumer Protection, 2007-2013, with a budget of EUR 312 million.

B. Recent developments

In recent years, the institutions have focused on three key dimensions with direct implications for public health policies.

1. The consolidation of the institutional framework

The role of the EP as a codecision-making body alongside the Council has been reinforced with regards to health, environment and consumer protection issues. The way in which the Commission launches the legislative initiatives has been fine-tuned, with standardised inter-services consultation procedures, new comitology rules and dialogue with civil society and experts. Finally, the role played by the agencies (EMA, ECDC, EFSA) has been enhanced; more specifically, with the creation of the Executive Agency for Health and Consumers (EAHC) in 2005, which implements the EU Health Programme.

2. The need to strengthen rapid response capacity

It is now seen as essential for the EU to have a rapid response capacity to react to major health threats in a coordinated manner, especially given the threat of bioterrorism and the potential for worldwide epidemics in an age of rapid global transport, making it easier for diseases to spread. The issue of the H1N1 pandemic influenza is a point in case.

3. The need to better coordinate health promotion 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 entails, in particular, working closely with other EU policy areas such as the environment, transport, agriculture and economic development. In addition, it means closer consultation with all interested parties and greater openness and transparency in decision-making. A key initiative in this respect is the setting-up of an EU public consultation mechanism on health matters.

Role of the European Parliament

The EP 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, studies, debates, written declarations and own-initiative reports on many issues, including: EU health strategy; radiation; protection for patients undergoing medical treatment or diagnosis; health information and statistics; respect for life and care of the terminally ill; a European charter for children in hospital; health determinants; research in biotechnology including cell, tissue and organ transplants and surrogate motherhood; rare diseases; safety and self-sufficiency in the supply of blood for transfusion and other medical purposes; cancer; hormones and endocrine disruptors; electromagnetic fields; drugs and their impact on health; tobacco and smoking; breast cancer and women's health in particular; ionising radiation; European health card containing essential medical data which can be read by any doctor; nutrition and diet, and their impact on health; BSE and its aftermath, and food safety and health risks; e-health and telemedicine; antibiotic resistance; biotechnology and its medical implications; medical devices; cross-border healthcare; Alzheimer's disease and other dementias; alternative medicines and herbal remedies; H1N1 pandemic influenza preparedness; advanced therapies.

In 2005, work was initiated leading to the approval by codecision (following a single reading) of a Programme of Community action in the field of Health and Consumer Protection, 2007-2013 (COD/2005/42A); based on a communication from the Commission to the EP, the Council, the European Economic and Social Committee and the Committee of the Regions on Healthier, safer, more confident citizens: a health and consumer protection strategy (SEC(2005) 425 and COM(2005) 115 final). This programme was approved in 2007 (OJ L 301, 20.11.2007, p. 3) and is based on four principles: a strategy based on shared health values; health is the greatest wealth; health in all policies (HIAP); strengthening the EU's voice in global health. Its objectives are to: foster good health in an ageing Europe; protect citizens from health threats; support dynamic health systems and new technologies. The programme was allocated a budget of EUR 321.5 million, which clearly shows the importance given to this area; despite the fact that this final figure implied an important reduction in the amounts compared with those proposed by the EP. As designated in the present legislative period (2009-2014), the Committee for Environment, Public Health, and Food Safety (ENVI) is the main actor in the EP on health matters. It is responsible for more than one third of the overall legislative work of the EP. The Health Working Group within ENVI has played since the beginning of the present legislature a very active role in promoting exchanges between members and professional experts on the most current health topics, by means of commissioning workshops and briefings.

The successor of the present programme is the Health for Growth Programme (2014-2020), which is in an advanced stage of preparation and its near final text has been the subject of several trialogues with the Commission, the Council and the Parliament. Three issues remain open to further negotiations, i.e. the budget envelope; the modalities for the adoption of annual work programmes; and the co-financing for joint actions to create incentives for better participation of less affluent Member States.

→ Marcelo Sosa-Iudicissa / Purificación Tejedor del Real

5.5.4. Medicines

The Treaty of Lisbon enhances the importance of health policy. Primary responsibility for health protection and the healthcare systems remains at Member State level, who determine many matters related to medicinal products, such as coverage by social security systems. However, as pharmaceuticals are goods subject to the rules of the single market, the EU has competencies with regard to their authorisation. The system combines a centralised modality through the European Medicines Agency (EMA) and a decentralised modality with national agencies. EMA was established to provide scientific input in the evaluation of the quality, safety and efficacy of medicinal products. In the EP, the Committee on Environment, Public Health and Food Safety (ENVI) is competent on this matter.

Legal basis

Article 168 of the Treaty on the Functioning of the European Union (TFEU).

Objectives

European health policy is based on the principle that the good health of the population is a condition for meeting the basic EU objectives of prosperity, solidarity and safety. The EU Health Strategy proposes three objectives for the coming years: guarantee access to affordable medicines; ensure that medicines are safe and effective; improve the quality and dissemination of information, so citizens can make informed choices. In economic terms, the pharmaceutical sector makes an important contribution to European well-being through the availability of medicines, economic growth and sustainable employment. It employs more than 630 000 people and accounts for more than 17% of EU Research and Development (R&D) expenditure.

Achievements

The market authorisation, classification and labelling of medicines, has been regulated in the EU since 1965, with the aim of safeguarding public health. However, the great disparities between Member States' legislation have hindered their trade on the internal market. Specific legislation has been adopted on advanced therapies (Regulation (EC) No 1394/2007) including human tissues and cells (Directive 2004/23/EC), paediatric medicinal products (Regulation (EC) No 1901/2006) and orphan drugs (Regulation (EC) No 141/2000). In addition, the directive on clinical trials (2001/20/EC), related to the implementation of good clinical practice on medicinal products for human use, specifies the requirements for investigations in humans in the authorisation procedure. A body of EU legislation has been adopted to specify the essential requirements that medical devices have to fulfil in order to be placed on the market, and the procedure for assessment of conformity, as well as conditions for clinical investigation and for the packaging and labelling. This legislation includes Directive 2007/47/EC on medical devices and active implantable medical devices (amending Directives 90/385/EEC and 98/79/EEC). In 2012 the Commission launched Directives COM(2012) 542 on medical devices and COM(2012) 541 on in vitro diagnostic medical devices. The Antimicrobial Resistance Surveillance System was established following the adoption of the Decision on epidemiological surveillance (Decision 2119/98/EC). In 2001, the Commission adopted a Strategy against antimicrobial resistance (COM(2001) 333 final). In response, the Council adopted the Recommendation on the prudent use of antimicrobial agents (2002/77/EC). The creation of EMA in 1993 was a significant step forward in the harmonisation of the EU market for medicines. Building on this long experience, the Commission proposed the 'Pharmaceutical Package' in December 2008 including a Communication 'Safe, Innovative and Accessible Medicines: a renewed vision for the pharmaceutical sector', and three legislative proposals which were submitted to the EP and the Council: legislative proposal COM(2008) 663 (amending Directive 2001/83/EC on medicinal products for human use) and COM(2008) 662 (amending Regulation (EC) No 726/2004, on a system for the authorisation, classification and labelling of medicinal products; the proposal COM(2008) 665 (amending Directive 2001/83/EC) and COM(2008) 664 (amending Regulation (EC) No 726/2004), on pharmacovigilance, the monitoring of medicinal products' safety by allowing for the suspension or withdrawal of an authorisation, which also applies to biotechnologically developed products and orphan medicinal products, adopted by EP Plenary in December 2010 (Regulation 1235/2010/EU; Directive 2010/84/EU); and finally the proposal COM(2008) 668 (amending Directive 2001/83/EC), on falsified medicines, addressing an alarming increase in medicinal products in the EU, which are falsified in relation to their identity, history or source, and which may contain sub-standard, falsified or non-relevant ingredients, or even the wrong dosage, posing a threat.

Current developments

In recent years, the Commission has taken important initiatives: promoting reflections on ways to improve market access, and to develop initiatives to boost EU pharmaceutical research; tackling the issues of counterfeiting and illegal distribution of medicines; enabling citizens to have access to high-quality information on prescription-only medicines; improving patient protection by strengthening the EU system for the safety monitoring ('pharmacovigilance') of medicines.

A. Antimicrobial resistance

The fight against antimicrobial resistance is part of the 'protection against health threat' objective of the Strategy 'Together for Health'. Antimicrobial agents are natural or synthetic substances that kill or inhibit micro-organisms, including bacteria, viruses, fungi and parasites. The use (and misuse) of antimicrobial agents is linked to an increasing prevalence of micro-organisms that have acquired resistance to one or more antimicrobial agents. Antimicrobial resistance poses a threat to public health. Current policy objectives aim to prevent the spread of resistant strains and to ensure that antibiotics are only used when they are needed. The policy has four pillars: surveillance; research and product development; prevention; and international cooperation. Antimicrobial resistance has been monitored at EU level since 1999, when the European Surveillance System was established following the adoption of the Decision on epidemiological surveillance (Decision 2119/98/EC). In 2001, the Commission adopted a Strategy against antimicrobial resistance. In 2002, the Council adopted the Recommendation on the prudent use of antimicrobial agents. In 2008, the Council concluded that antimicrobial resistance was still growing in Europe and represents a global health problem.

B. Healthcare associated infections

There is growing awareness and concern about the preventable harm to patients that is caused by healthcare itself; for example by errors in diagnosis, failure to act on test results, prescribing or administering the wrong medicine or the failure of medical equipment. Infections in hospitals are a particular problem that receives considerable attention. More than 4 million patients suffer from healthcare-associated infections in the EU each year. They are difficult to treat due to the antimicrobial resistance. Patients' Safety is identified in the Health Strategy 'Together for Health' as one of the priorities for Community action, and projects are funded by the EU.

C. Advanced therapy medicinal products

Advanced therapy medicinal products are a relatively new kind of medical product or pharmaceutical based on new scientific progress in cellular and molecular biotechnology leading to novel treatments including gene therapy, cell therapy or tissue engineering. These complex products involving pharmacological, immunological or metabolic actions require precise legal definitions. Therapies based on tissue and cell transplantations are increasingly common in the EU. Due to the potential risk of disease transmission, human substances such as tissues and cells must be subject to strict safety and quality requirements. Consequently, the EU has developed two directives (Directive 2002/98/EC; Directive 2004/23/EC). In addition, and based on the national reports on the donation of tissues and cells provided every three years by the Member States, the Commission prepared two reports on the voluntary and unpaid donation of tissues and cells (COM(2006) 593 final; COM(2011) 352 final). Following the last Commission report, the European Parliament is currently preparing an own-initiative report on the subject matter.

D. Clinical Trials

To place a medicinal product on the market, it has to be accompanied by a dossier containing particulars and documents relating to the results of tests and clinical trials carried out on the product. The standards for conducting them have developed progressively, in the EC and internationally since 1990 and are codified in the EU guideline on Good Clinical Practice (GCP), which must be followed by the pharmaceutical industry. The accepted basis for the conduct of clinical trials in humans is founded in the protection of human rights and the dignity of the human being with regard to the application of biology and medicine, as for instance reflected in the 1996 version of the Helsinki Declaration. Persons who are incapable of giving legal consent to clinical trials should be given special protection, for instance, children. In its Communication of 10 December 2008 on 'Safe, Innovative and Accessible Medicines: a Renewed Vision for the Pharmaceutical Sector', the Commission announced plans for a revision of the directive.

Additional challenges

The Commission recognises the crucial role that pharmaceutical research and development plays. It is currently implementing various initiatives to foster innovation. In 2006, the Seventh Research Framework Programme (FP7) and the Competitiveness and Innovation Programme (CIP) were adopted to support not only new technologies, but also the early commercialisation of scientific findings. In its Communication on rare diseases at the end of 2008, the Commission also looked into how it could strengthen its research and development efforts in relation to rare diseases. The Innovative Medicines Initiative (IMI) is a key measure for strengthening

the competitiveness in biopharmaceutical research and development. The objective of this instrument, an industry-Commission public-private partnership, is to enhance and accelerate the development of medicines, so as to make new treatment options available to patients earlier. Creating incentives for the development of pharmaceuticals is a relevant measure for combating diseases, especially in the developing world. Research and Development in life sciences is a key to pharmaceutical innovation. The sector is more and more globalised which brings opportunities with new markets. The EU has been losing ground in pharmaceutical innovation. Research and Development investment has gradually been relocating from Europe to the USA and Asia. At the same time, worldwide cooperation and trade have led to a global division of labour. Hence a new medicine is often the result of research and development in Europe, clinical trials in India and active ingredients produced in China before finally being manufactured, packaged and sold in the EU.

Role of the European Parliament

The EP has consistently promoted the establishment of a coherent public health policy and a policy on pharmaceuticals that takes into account both the public health interest and the industrial aspects. It has also actively sought to strengthen and promote health policy through numerous opinions, questions to the Commission and own-initiative reports on issues including: antimicrobial resistance; patient safety and protection against healthcare associated infection; medicinal products; medical devices; and alternative therapies.

At present the EP is still considering draft legislation on 'Medicinal products for human use: information on products subject to medical prescription' (2008/0255(COD)). The EP considers that information on medicinal products subject to prescription must be made available to patients and the general public. Patients should have the right to have easy access to certain information such as a summary of product characteristics and the package leaflet in electronic and printed form. The leaflet shall include a short paragraph setting out the benefit and potential harm of a medicinal product, as well as a short description of further information aimed at the safe and effective use of a medicinal product. A clear distinction must be made between the interpretation of information and advertising; the ban on advertising to the general public for prescription-only medicinal products should be maintained.

On November 2012, Regulation (EU) 1027/2012 of the EP and the Council on pharmaco-vigilance was published. The European pharmacovigilance system seeks to prevent, detect and assess adverse reactions to medicinal products placed on the Union market. It also ensures that any product which presents an unacceptable level of risk can be withdrawn rapidly from the market. The existing EU pharmacovigilance database, the 'EudraVigilance database', will become the single point of receipt of pharmacovigilance information for medical products authorised for human use in the EU, thus facilitating the early discovery of adverse reactions. In order to ensure transparency in pharmacovigilance issues, the EMA will create and maintain a European medicines web-portal.

On falsified medicines, together with the Council, the EP stipulates that a clear definition of 'falsified medicinal products' must be introduced in legislation, in order to clearly distinguish falsified medicinal products from other illegal products as well as infringements of intellectual properties. Given that the current distribution network for medicinal products is increasingly complex, the new legislation addresses all actors in the supply chain; including not only wholesale distributors, but also brokers who are involved in the sale or purchase of medicinal products without selling or purchasing those products themselves, and without owning and physically handling the medicinal products. Active substances shall only be imported if the active substances have been manufactured in accordance with standards of good manufacturing practise at least equivalent to those laid down by the EU legislation. Safety features should allow verification of the authenticity and identification of individual packs and provide evidence of tampering. The illegal sale of medicinal products to the public via the internet is an important threat to public health as falsified medicinal products may reach the public through such sale.

In 2013 the EP is considering a file on medical devices, which are gaining in importance for citizens' health, alongside medicines (2012/0266(COD)). On May 29 2013 the ENVI Committee approved the revised legislation on clinical trials for medicinal products of human use 2012/0192(COD).

In summary, in respect to the various pieces of legislation related to medicines, the EP made important improvements to the proposals presented by the Commission, contributing to the creation of a safer context for the use of pharmaceutical products for EU citizens' health and well-being.

→ Purificacion Tejedor del Real / Marcelo Sosa-Iudicissa

5.5.5. Food safety

European food safety policy aims are two-fold: to protect human health and consumers' interests and to foster the smooth operation of the European Union single market. The EU thus ensures that control standards are established and adhered to in the areas of feed and food-product hygiene, animal health and welfare, plant health and the prevention of food contamination from external substances. The Union also regulates labelling for foodstuffs and food and feed products.

Legal basis

Articles 43, 114, 168(4) and 169 of the Treaty on the Functioning of the European Union.

General background

In the wake of a series of human food and animal feed crises (e.g. BSE and dioxins), the years since 2000 have seen thoroughgoing reform of food safety policy, under the 'Farm to Fork' approach, with the aim of guaranteeing a high level of safety for foodstuffs and food products marketed in the Union.

Achievements

A. General legislation

The general principles of current food law entered into force in 2002 with Regulation (EC) No 178/2002. This framework regulation also established the European Food Safety Authority (EFSA) and provided procedures in matters of food safety. It took into account the 'precautionary principle' and set out general provisions for imposing traceability of food and feed. The regulation also established the Rapid Alert System for Food and Feed (RASFF).

B. Hygiene of foodstuffs

In April 2004, as part of the Farm to Fork approach, a new legislative framework known as the Hygiene Package was adopted. In 2006, two Commission decisions (Decision 2006/696/EC and Decision 2006/766/EC) were taken with the aim of improving the application of the rules in the Hygiene Package as regards trade with third countries in animals and products of animal origin for human consumption.

C. Food contamination

1. Safe food

Council Regulation (EEC) No 315/93 was adopted in order to ensure that no foodstuffs containing unacceptable quantities of contaminant substances may be marketed. The limits currently applying to the most important contaminants are set out in Commission Regulation (EC) No 1881/2006 establishing maximum levels for contaminants in food (e.g. nitrates, mycotoxins, heavy metals and dioxins), which are subject to regular review.

2. Plant protection products and the thematic strategy on the sustainable use of pesticides

Directive 91/414/EEC lays down strict rules on the authorisation of plant protection products so as to prevent or limit any contamination of food and to protect the environment. In December 2008, the Council and Parliament adopted Directive 2009/128/EC with a view to revising the Union's approach on plant protection products so as to reduce environmental and health risks while maintaining crop productivity.

3. Maximum residue limits

In 2008, three regulations were adopted setting maximum residue limits of active substances acceptable in food products for human consumption or animal feed (Commission Regulations (EC) Nos 149/2008, 260/2008 and 839/2008).

4. Contamination caused by materials in contact with food

Rules on food contact materials are provided for by Regulation (EC) No 1935/2004. It lays down the general requirements for all relevant materials and articles, while additional specific directives contain detailed provisions for each material.

D. Food labelling

1. Labelling, presentation and advertising of foodstuffs

Directive 2003/89/EC, amending the earlier Directive 2000/13/EC, regulates how ingredients present in foodstuffs are to be indicated. It was followed by a series of specific directives that set out the derogations or specifications for particular products or category of products.

2. Nutrition labelling

In general, nutrition labelling of foodstuffs is governed by Council Directive 90/496/EC, amended by Commission Directive 2003/120/EC. The term 'nutrition labelling' covers any information appearing on labelling relating to the energy value of foodstuffs and the nutrients they contain.

3. New regulation on the provision of food information to consumers

In July 2011, Parliament passed, at second reading, a new regulation that requires producers to indicate the presence of allergens in non-packaged foods, e.g. in restaurants and canteens. Food imitations, such as vegetable products replacing cheese or meat, must also be indicated. These rules will enter into force in stages by 2016.

4. Health and nutritional claims and dietetic foods

Regulation (EC) No 1924/2006 governs nutrition and health claims made on food. Directive 2009/39/EC established a framework with general rules for dietetic foods, including food for infants and young children, and set out requirements for their composition, marketing and labelling to ensure product safety. In June 2013, Parliament adopted a new regulation with the aim of distinguishing more clearly between dietetic foods, including 'follow-on formula' milk powder, and others.

E. Food additives and flavourings

1. Food Improvement Agents Package (FIAP)

Food additives are substances, not normally consumed in their own right, which are added intentionally to foodstuffs to perform certain technological functions (for example, colourings, sweeteners or preservatives). In 2008, a new legislative package was adopted relating to food additives, food enzymes and food flavourings. The package includes four regulations ((EC) Nos 1331/2008, 1332/2008, 1333/2008 and 1334/2008).

2. Food supplements and addition of vitamins and minerals

Directive 2002/46/EC establishes harmonised rules for the labelling of food supplements and introduces specific rules on vitamins and minerals in food supplements. Regulation (EC) No 1925/2006 harmonises the provisions laid down in Member States for the addition to foods of vitamins, minerals and certain other substances.

F. Animal health

1. European strategy for animal health

EU rules include general provisions on the surveillance, notification and treatment of infectious diseases and their vectors, in the form of, respectively, Directive 2003/99/EC of Parliament and Council, Council Directive 82/894/EEC and Council Directive 92/119/EEC. In May 2013, the Commission presented a new proposal for rules on animal health based on the principle that prevention is better than cure (COM(2007) 539).

2. Specific European regulation on animal health

Several EU regulations also exist with regard to specific aspects of animal health. In 2001, for example, Regulation (EC) No 999/2001 was adopted in response to problems which became apparent as a result of the BSE crisis. Council Directive 2001/89/EC deals with classical swine fever and Council Directive 2000/75/EC outlines action to be taken in terms of vigilance and prevention in the event of any outbreak of bluetongue disease.

G. Animal nutrition

1. Legislation on animal feed and feed labelling

Regulation (EC) No 183/2005 governs animal feed hygiene. Regulation (EC) No 767/2009, adopted in July 2009, brings together most legislation on the labelling and marketing of feed.

2. Undesirable substances in animal feeds

Directive 2002/32/EC on undesirable substances in animal feed includes maximum limits for heavy metals and prohibits the dilution of contaminated feed materials. Directive 2002/70/EC establishes requirements for determining levels of dioxins and dioxin-like PCBs in feedstuffs.

H. Animal welfare

The two main legislative texts here are Council Directive 98/58/EC concerning the protection of animals kept for farming purposes and Council Regulation (EC) No 1/2005 on the protection of animals during transport and related operations. In 2009, Regulation (EC) No 1099/2009 was adopted, replacing Directive 93/119/EC, on the protection of animals at the time of killing.

I. Novel foods

Regulation (EC) No 258/97 stipulated that novel foods (i.e. those not consumed to a significant degree before the regulation's entry into force) had to undergo a safety assessment before being marketed in the EU. It was subsequently incorporated into Regulation (EC) No 1852/2001.

J. Genetically modified organisms (GMOs)

1. The deliberate release into the environment of GMOs

Directive 2001/18/EC on the deliberate release into the environment of GMOs regulates their cultivation and commercialisation and, along with Regulations (EC) Nos 1829/2003 and 1830/2003, defines the Union's regulatory framework in this area.

2. Unique identification codes for GMOs

To facilitate the traceability system and make it unambiguous, Regulation (EC) No 65/2004 established a system to develop and assign unequivocal identification codes to GMOs.

3. Cross-border movements of GMOs

Regulation (EC) No 1946/2003 seeks to establish a common system of notification and information exchange on cross-border movements of GMOs towards non-EU countries.

Role of the European Parliament

In response to crises such as the BSE outbreak in 1996 and the epidemic of foot and mouth disease in 2002, temporary committees were set up to investigate alleged shortcomings in the implementation of European law. Parliament also adopted a broader set of conditions for the entry of novel foods into the Union, indications for monitoring food labelling and accompanying documentation for novel foods coming from third countries.

→ Lorenzo Vicario

5.6. Transport and tourism policy

5.6.1. Transport policy: General

Transport policy has been one of Europe's common policies ever since the Rome Treaties. Alongside the opening of transport markets and the creation of fair conditions of competition, the model of 'sustainable mobility' has increasingly gained significance in recent years — particularly in view of the constant rise in greenhouse gas emissions from the transport sector, which threatens to jeopardise the European Union's climate goals.

Legal basis

Article 4(2)(g) and Title VI of the TFEU.

Objectives

In the Treaties of Rome, Member States had already stressed the importance of a common transport policy with its own title. Transport was therefore one of the first common policy areas of the Community. The first priority was the creation of a common transport market, in other words the establishment of freedom of services and the opening of transport markets. This objective has largely been achieved, apart from rail transport, for which the single market has only been achieved in part.

In the process of opening the transport markets, it is also a matter of creating fair conditions for competition, as much for individual modes of transport as between them. For this reason, the harmonisation of national legal and administrative regulations, including the prevailing technological, social and tax conditions, has gradually taken on an ever-increasing importance.

The successful completion of the European internal market, the discontinuation of internal borders and falling transport prices due to the opening and liberalisation of transport markets as well as changes in production systems and in storage have led to a constant growth in transport. The transport of people and goods has more than doubled over the last 30 years. Nevertheless, the economic view of a very successful and dynamic transport sector is juxtaposed with increasing social and ecological ramifications. Increasingly, the model of 'sustainable mobility' gains in significance.

This model is under strain from two different sets of goals. On the one hand, safeguarding fairly priced and efficient mobility for people and goods is a central element in a competitive EU internal market and is the basis for freedom of movement of persons. On the other hand, there is the need to deal with increased traffic and accordingly to minimise external costs such as road accidents, respiratory diseases, climate change, noise, environmental damage or traffic jams.

Using this model involves an integrated approach to optimise the efficiency of the transport system, transport organisation and safety as well as to reduce energy consumption and environmental repercussions. The cornerstones of this model include improving the competitiveness of environmentally friendly modes of transport, the creation of integrated transport networks used by two or more modes of transport (combined transport and intermodality) as well as the creation of fair conditions of competition between modes of transport through fair charging for external costs they have caused.

Despite a variety of efforts, European transport policy still faces many challenges in terms of sustainability, particularly in combating climate change. Transport generates almost a quarter of all greenhouse gas emissions in the EU-27. The transport sector is still far from making a perceptible contribution to the EU's climate goal of reducing CO_2 emissions by at least 20% below the 1990 level by 2020 — on the contrary, the rise in greenhouse gas emissions from the transport sector is thwarting the efforts in all other sectors. From 1990 to 2007, greenhouse gas emissions from transport, which are covered by the Kyoto Protocol, rose by 26%. Taking into account the significant rises in emissions from maritime transport (60%) and international air transport (110%), the total increase in EU transport emissions in the period 1990-2007 amounted to 36%. One crucial reason for this — in spite of the easing in the situation as a result of the current economic crisis — was the constantly increasing demand for transport.

Delivery

A. General policy guidelines

The 1985 White Paper on the completion of the internal market made recommendations for ensuring the freedom to provide services and set out the guidelines for the common transport policy. In November 1985, the Council adopted three main guidelines: the creation of a free market (without quantitative restrictions) by 1992 at the latest, increasing bilateral and Community quotas, and eliminating distortion of competition. It also adopted a 'master plan' of goals to be reached by 31 December 1992 for all modes of transport (land, sea, air). This included the development of infrastructure of Community interest, the simplification of border controls and formalities as well as improving safety. On 2 December 1992 the Commission adopted the White Paper on the future development of the common transport policy. The main emphasis was placed on the opening of transport markets. At the same time, the White Paper represented a turning point towards an integrated approach, embracing all modes of transport, based on the model of 'sustainable mobility'. The Commission Green Paper of 20 December 1995, entitled 'Towards fair and efficient pricing in transport' [COM(95) 961], dealt with the external costs of transport. In this paper the Commission strove for the creation of an efficient and fair charging system for the transport sector to reflect these costs, thereby reducing distortions of competition within and between the different modes of transport. Tax measures in particular were discussed in this context. In the subsequently published White Paper of 22 July 1998 entitled 'Fair payment for infrastructure use: a phased approach to a common transport infrastructure charging framework in the EU' [COM(1998) 466], the Commission drew attention to the large differences between Member States in terms of the imposition of transport charges, which led to various intra- and intermodal distortions of competition. Furthermore, the existing charging systems did not sufficiently take into account the ecological and social aspects of transport.

In the White Paper 'European Transport Policy for 2010: Time to decide' [COM(2001) 370], the Commission first analysed the problems and challenges of the European transport policy — in particular with regard to the then upcoming eastern enlargement of the EU. It predicted a massive rise in traffic, which went hand-in-hand with traffic jams and overloading, especially in the case of road and air transport, as well as increasing health and environmental costs. This threatened seriously to endanger the EU's competitiveness and climate protection goals. In order to overcome these tendencies and to contribute to the creation of an economically efficient but equally environmentally and socially responsible transport system, the Commission put forward a package of 60 measures. They were designed to break the link between economic and traffic growth and combat the unequal growth of the various modes of transport. The goal of the 2001 White Paper was to stabilise the environmentally friendly modes of transport's share of the total traffic volume at 1998 levels. This purpose was served by measures taken to revive rail transport, to promote sea and inland waterway transport and to promote the interlinking of all the modes of transport. Furthermore, the Commission favoured a revision of the guidelines for trans-European networks (TEN-T/5.8.1), to adapt them to the enlarged EU and to push forward more strongly than previously the elimination of cross-border 'bottlenecks'. The third part of the White Paper, based on the rights and obligations of transport users, made provision for an action plan on road safety, improvement of user rights and transparency of costs for all types of transport by harmonising charging principles. Fourthly, the Commission stressed the need to tackle the consequences of globalisation in the transport sector.

Implementation

Despite the Commission's efforts, the common transport policy made only stuttering progress until the second half of the 1980s. The way forward to Community legislation was only cleared by the European Parliament's proceedings initiated against the Council because of its failure to act. In the 22 May 1985 judgment in Case 13/83, the European Court of Justice urged the Council to act on the transport policy. Only after this was the wind put back in the European transport policy's sails.

Many of the measures announced in the 1992 and 2001 White Papers have since been implemented or introduced (see the following chapters). Furthermore, the EU launched some ambitious technological projects in this period, such as the European satellite navigation system Galileo, the European Rail Traffic Management System (ERTMS) and the SESAR programme to improve air traffic control infrastructure. These large European projects are intended to contribute in the future to more efficient and safer traffic management.

In June 2006 the Commission presented a provisional appraisal of the White Paper [COM(2006) 314]. Despite various advances in European transport policy it held the opinion that the measures planned in 2001 were not sufficient in order to achieve the formulated objectives. For this reason, it launched further measures to reach these goals. These

include: (a) action plans for goods transport logistics [COM(2007) 607], for the deployment of intelligent transport systems in Europe [COM(2008) 886] and for urban mobility [COM(2009) 490], (b) 'Naiades', an integrated European action programme for inland waterway transport [COM(2006) 6], and (c) strategic goals and recommendations for the EU's maritime transport policy until 2018 [COM(2009) 8].

In July 2008 the Commission presented its 'Greening Transport' package. This is intended to help the EU achieve its climate and energy goals and comprises a series of communications, including a strategy for the internalisation of the external costs of all transport modes. The package may be seen as an important first step towards an intermodal effort to tackle the problem of external costs, which is still one of the most difficult, fundamental and controversial problems currently facing European transport policy.

A. Debate on the future of transport

The Commission recently launched a debate on the long-term future of transport between 20 and 40 years from now, and presented the communication on 'A sustainable future for transport: towards an integrated, technology-led and user friendly system' [COM(2009) 279, p. 4]. In that communication it discussed possible trends, forthcoming challenges and the transport policy options they imply. It considered the EU's future transport system in the light of, inter alia, (a) continuing globalisation, (b) the development of relations with third countries, (c) the growth of goods transport, (d) changes in social structures and demographic trends, (e) continuing urbanisation, (f) future commercial trends, (g) possible advances in energy, transport and communications technologies, (h) possible consequences of climate change and (i) forthcoming changes in the field of energy supply.

In its new White Paper entitled 'Roadmap to a Single European Transport Area —Towards a competitive and resource efficient transport system' [COM(2011) 144] — published on 28 March 2011 — the Commission describes the transition between old and new challenges for transport and sets out ways to meet these challenges. In the Commission's vision, the objective is set at reducing greenhouse gas emissions by at least 60% by 2050 compared with 1990 without curbing transport growth and impairing mobility, together with an interim objective in 2030 of reducing greenhouse gas emissions by about 20% compared with 2008. However, in noting that, given the substantial increase in transport emissions over the past two decades, the 2030 objective would not prevent an 8% rise in emissions compared with 1990, the Commission recognises that the transport system is still not sustainable. This means breaking the transport system's dependence on oil without sacrificing its efficiency; in practice transport has to use less and cleaner energy, exploit a modern infrastructure and reduce its impact on the environment and natural assets.

The Commission details its vision of the transport of tomorrow in 10 objectives (for instance for road freight transport, shifting 30% of freight to rail or waterborne transport by 2030 and more than 50% by 2050; tripling the length of the existing high-speed rail network by 2030 and moving the majority of medium-distance passenger transport to rail by 2050; putting in place a fully functional multimodal TEN-T in the EU by 2030, with a high quality and capacity network by 2050 and a corresponding set of information services, etc.).

The White Paper describes the strategy's key measures (the list of initiatives is set out in Annex I). In brief, the Commission proposes: a Single European Transport Area, giving as benchmarks the Single European Sky, Single European Railway Area, a 'Blue Belt' in the seas around Europe; opening the markets in combination with quality jobs and good working conditions; improved security and transport safety; better guarantees of passenger rights across all modes of transport and better accessibility of infrastructure. The formula proposed for successful future innovation is based on technological solutions and more sustainable behaviour. The modernisation of infrastructure, based on a multimodal core network, requires substantial resources, diversified sources of finance and an intelligent pricing system; prices must reflect costs and avoid distortions; thus in future transport users will have to pay a larger proportion of costs than today and two market-based instruments will be used: energy taxation and emission trading systems. The external dimension of transport will eventually be adapted to the double trend of opening up markets and internal sustainability.

Role of the European Parliament

A. Responsibilities

Until the Treaty of Maastricht came into force, legislation concerning transport came under the consultation process. Subsequently, the cooperation procedure was used for nearly all aspects of the common transport policy (the codecision procedure was used to establish the guidelines for trans-European transport networks). Since the Treaty of Amsterdam, European legislation on transport policy (apart from a few exceptions) has been adopted using the codecision procedure. As an equal co-legislator, the Parliament has played a crucial role in shaping the EU's transport policy through numerous

legislative procedures. The Treaty of Lisbon has not led to any substantial changes to the European transport policy but Article 91 of the TFEU states that the ordinary legislative procedure applies to all areas of land transport.

B. General approach

The large majority of MEPs have long since demanded an integrated global approach to the common transport policy. The aforementioned legal action against the Council did much to bring the common transport policy into being. Alongside fundamental support for the liberalisation of the transport markets carried out, the European Parliament continued to stress the necessity of implementing this alongside an all-embracing harmonisation of the prevailing social, tax and technological conditions and of safety standards. Moreover, it regularly supported the model of sustainable mobility with specific proposals and demands.

On 12 February 2003, Parliament adopted a resolution on the Commission's White Paper 'European Transport Policy for 2010: a time to decide'. The resolution stressed that the idea of sustainability must be the foundation and the standard for the European transport policy. Parliament shared the Commission's analysis as regards the magnitude of problems relating to transport and the unequal growth of the modes of transport. It stressed the importance of creating an integrated global transport system. The shift of emphasis towards environmentally friendly modes of transport, whilst maintaining the competitiveness of road transport, was approved as was the fair charging of infrastructure and external costs for each mode of transport. Additionally, Parliament demanded that transport should be given the political and budgetary consideration warranted by its strategic character and its role as a service of general interest. Parliament supplemented this general approach with a multitude of specific demands and proposals for each individual mode of transport, transport safety, the schedule, and financing of the European transport network as well as better coordination with other EU policy areas. The same applies for the further transport-related topics of intermodality, research, development and new technologies. The Commission has already taken up many of these themes in its most recent legislative proposals.

In its resolution of 12 July 2007 on the mid-term review of the transport White Paper, the European Parliament acknowledged the achievements in some transport policy fields and welcomed in principle the further measures envisaged by the Commission in this mid-term review. However, it also pointed out numerous existing challenges for the EU transport policy and drew up a comprehensive list of measures.

In its resolution of 11 March 2008 the European Parliament drew up numerous recommendations for environment-, climate- and energy-policy action under the European transport policy. Parliament proposed a policy mix of technological improvements, market-based instruments and flanking measures to reconcile environmental, transport and energy policies. Among other things, it called for demand management measures (for example, congestion charges and road pricing), emissions-based differential take-off and landing charges at airports, and the reduction of CO_2, SO_2 and NOx emissions from shipping.

On 9 July 2008 the European Parliament adopted a resolution on the Commission Green Paper 'Towards a new culture for urban mobility'. A further resolution on the same topic followed on 23 April 2009. Parliament called, among other things, for the development at European level of an integrated global approach to urban mobility intended to serve as a common frame of reference for European, national, regional and local players (municipalities, citizens, businesses and industry). It highlighted the importance of integrated and comprehensive Sustainable Urban Mobility Plans (SUMPs) with an emphasis on long-term city planning and spatial planning. Parliament also recommended launching a programme for the upgrading of statistics and databases on urban mobility and setting up an urban mobility observatory. It also called for greater financial support from the EU in this area. Many of these calls were taken up shortly afterwards by the Commission in its action plan on urban mobility [COM(2009) 490].

On 11 March 2009 Parliament adopted a resolution on the 'greening of transport', in which it criticised the Commission for its lack of a comprehensive strategy. Parliament called on the Commission to submit an integrated plan for the greening of transport, together with specific legislative proposals.

In its resolution of 6 July 2010 on a sustainable future for transport, Parliament responded with a wide-ranging list of demands to the Commission's communication on preparing the new White Paper. In its 42 paragraphs, this resolution deals with the whole spectrum of EU transport policy. Parliament's main demands are as follows:

- the establishment of a common European reservation system in order to enhance the effectiveness of the various modes of transport and to simplify and increase their interoperability;
- increasing the funding currently available for transport and mobility, the creation of a

transport fund and a budget commitment for transport policy under the multiannual financial framework;

- the setting of and compliance with clearer, more measurable targets to be achieved in 2020 (with reference to 2010). In particular Parliament calls for: (a) a doubling of the number of bus, tram and rail passengers (and, if relevant, ship passengers) and a 20% increase in funding for pedestrian- and cycle-friendly transport concepts; (b) a 20% reduction in CO_2 exhaust emissions from road passenger and freight traffic, and a 30% reduction in CO_2 emissions from air transport throughout EU airspace by 2020; (c) strictly carbon-neutral growth in air transport after 2020; (d) a 40% reduction in the number of deaths of and serious injuries to active and passive road transport users.

→ Piero Soave

5.6.2. Passenger rights

Common rules have been drawn up in an effort to ensure that passengers receive at least a minimum level of assistance in the event of serious delays to or cancellation of their journey, irrespective of the mode of transport used, and, in particular, to protect more vulnerable travellers. The rules also provide for compensation schemes. A wide range of derogations may be granted for rail and road transport services, however, and court actions challenging the application of the rules are still common.

Legal basis

Articles 91(1) and 100(2) of the Treaty on the Functioning of the European Union (TFEU).

Objectives

European Union legislation on passenger rights seeks to ensure that passengers enjoy a harmonised minimum level of protection, irrespective of the mode of transport used, with a view to facilitating mobility and encouraging the use of public transport.

Results

The EU has over time adopted a body of rules designed to protect passengers, irrespective of the mode of transport they use. These rules build on previous legislation on the protection of consumers[1] and package holidays[2] and on the applicable international conventions[3], the Charter of Fundamental Rights and the relevant national provisions. However, they are proving difficult to apply, leading to frequent court cases. The European Court of Justice plays a leading role in interpreting the rules.

The rules lay down a set of basic rights common to all modes of transport, such as non-discrimination, special protection for reduced-mobility passengers[4], traveller information, national enforcement bodies, and arrangements for handling complaints. In the event of cancellation or significant delay, the rules also provide for mandatory compensation and assistance schemes specific to each mode of transport.

A. Air transport: Regulations (EC) No 261/2004 and (EC) No 1107/2006

Regulation (EC) No 261/2004 has been the cause of numerous disputes and has been clarified in a series of rulings[5].

Denied boarding

- The carrier must first call for volunteers, who are offered: (i) a freely negotiated sum in compensation, and (ii) the choice between either being reimbursed within seven days (and, if necessary, a free flight to the initial point of departure), or being rerouted or continuing their journey as soon as possible, or at a mutually agreed later date.
- Passengers who cannot board must be offered: (i) assistance (meal, telephone calls and accommodation if necessary), (ii) the choice between either being reimbursed within seven days (and, if necessary, a free flight to the initial point of departure), or being rerouted or continuing their journey as soon as possible, or at a mutually agreed later date, and (iii) an immediate predetermined sum in compensation as follows:

[1] Including Directive 93/13/EEC on unfair terms in consumer contracts, Directive 2005/29/EC on unfair business-to-consumer commercial practices in the internal market, Regulation (EC) No 2006/2004 on consumer protection cooperation, and Directive 2011/83/EU on consumer rights.

[2] Directive 90/314/EEC on package travel, package holidays and package tours.

[3] Rules on air carrier liability in the event of accidents have been brought into line with the appropriate international conventions: Montreal Convention for air transport (transposed into EU law and extended to cover domestic flights by Regulation (EC) No 889/2002; Athens Convention for maritime transport (relevant provisions transposed into EU law and extended to cover domestic transport by Regulation (EC) No 392/2009); Convention concerning International Carriage by Rail (relevant provisions transposed into EU law and extended to cover domestic transport by Regulation (EC) No 1371/2007). In cases not covered by these conventions or their transposition into EU law, the relevant national provisions shall apply (bus or coach transport and inland waterway transport).

[4] Reduced-mobility passengers should, for example, receive appropriate assistance without being required to pay additional charges — provided that the carrier has been informed in advance: 36 hours before departure for bus or coach travel and 48 hours beforehand for all other means of transport.

[5] In March 2013, the Commission proposed that these rules should be clarified (and the definition of 'extraordinary circumstances' in particular should be improved) to aid enforcement of passenger rights both for carriers and for passengers (see COM(2013) 130 final of 13 March 2013).

Flights ≤ 1 500 km	Flights 1 500-3 500km Flights EU ≥ 1 500 km	Flights ≥ 3 500
EUR 250 (EUR 125 if rerouted and arriving less than two hours late)	EUR 400 (EUR 200 if rerouted and arriving less than three hours late)	EUR 600 (EUR 300 if rerouted and arriving less than four hours late)

Cancellation

- Assistance (meal, telephone calls and accommodation, if necessary)[1].
- A choice between (i) being reimbursed within seven days (and, if necessary, a free flight to the initial point of departure), or (ii) being rerouted or continuing their journey as soon as possible, or (iii) at a mutually agreed later date.
- Immediate compensation, as in the case of denied boarding, unless the passenger was notified in advance of the flight's cancellation[2] or there are extraordinary circumstances[3].

Delays of at least two hours for flights of 1 500 km or less, at least three hours for flights of between 1 500 and 3 500 km and intra-EU flights of more than 1 500 km, and at least four hours for flights over 3 500 km

- Assistance (meal, telephone calls and accommodation, if necessary).
- In the event of a delay longer than three hours, passengers should be offered reimbursement within seven days (and, if necessary, a free flight to the initial point of departure) and compensation as in the event of cancellation[4].

Upgrading/downgrading

- The carrier may not demand any extra payment when it upgrades a passenger.
- In the event of downgrading, the carrier must reimburse the passenger within seven days as follows: (i) 30% of the ticket price for flights of 1 500 km or less, (ii) 50% for flights of between 1 500 and 3 500 km and intra-EU flights of more than 1 500 km, and (iii) at least 75% for flights of over 3 500 km.

Reduced-mobility passengers

Reduced-mobility passengers and those accompanying them should be given priority for boarding. Where boarding is denied, or in the event of a flight cancellation or delay, irrespective of the duration of the delay, they should always be offered assistance (meals, telephone calls and accommodation, if necessary) as soon as possible.

B. Rail transport: Regulation (EC) No 1371/2007

Member States may derogate from the majority of these rules for domestic rail passenger services (until 2024) and local services (i.e. urban, suburban and regional services), and for international services if a significant part of the journey is provided outside the EU.

Cancellation or delay of over 60 minutes

- A choice between (i) being rerouted or continuing their journey as soon as possible, or (ii) at a mutually agreed later date, or (iii) being reimbursed within one month (and, if necessary, a free return journey to the initial point of departure).
- Where no reimbursement is made, compensation should be paid within one month at the request of the passenger (except if he or she was informed of the delay before purchasing the ticket) as follows: 25% of the ticket price paid for delays of between 60 and 119 minutes and 50% for longer delays.
- A meal at the station or on board the train, if possible, and accommodation, if necessary and possible.
- The carrier is not held liable if the cancellation or delay is due to unavoidable extraordinary circumstances.

C. Maritime and inland waterway transport: Regulation (EU) No 1177/2010

The rights of passengers travelling by sea or inland waterway (for journeys of more than 500 m, using motorised vessels carrying more than 12 passengers and three crew members) can be enforced only if the port of embarkation or the port of destination is situated in the EU and if the service is operated by a Union carrier. Cruise-ship passengers must embark at an EU port in order to enjoy these rights

[1] The CJEU has ruled that this assistance is due irrespective of the grounds for cancellation, and with no temporal or monetary limit other than that of the expenses actually incurred by the passenger.

[2] At least two weeks before the flight date. This deadline may be shortened in the event of rerouting.

[3] CJEU case-law has restricted this to cases of force majeure.

[4] The CJEU acknowledged that passengers for flights delayed by over three hours are comparable to passengers whose flights have been cancelled. Regulation (EC) No 261/2004 did not 'provide for' the possibility of reimbursement for delays of over five hours.

and they are not covered by some of the provisions concerning delays.

Cancellation or delay of over 90 minutes on departure

- Passengers should be informed of the delay or cancellation no later than 30 minutes after the scheduled departure time.
- A choice between (i) being rerouted or continuing their journey as soon as possible, or (ii) being reimbursed within seven days (and, if necessary, a free return journey to the initial point of departure) should be offered.
- Assistance (except if the passenger was informed of the delay before purchasing the ticket): meals, if possible, and accommodation on board or on land, if necessary. Accommodation on land is restricted to three nights at a cost of EUR 80 per night. Accommodation need not be provided if the cancellation or delay is caused by bad weather.

Significant delay on arrival

Compensation should be paid within one month at the request of the passenger (except if he or she was informed of the delay before purchasing the ticket or if the delay was caused by bad weather or force majeure) as follows:

Compensation	25% of the ticket price paid	50% of the ticket price paid
Journey ≤ 4 hours	Delay ≥ 1hour	Delay ≥ 2 hours
Journey of 4 to 8 hours	Delay ≥ 2 hours	Delay ≥ 4 hours
Journey of 8 to 24 hours	Delay ≥ 3 hours	Delay ≥ 6 hours
Journey ≥ 24 hours	Delay ≥ 6 hours	Delay ≥ 12 hours

D. Bus and coach transport: Regulation (EU) No 181/2011

The rights of passengers travelling by bus or coach can be enforced only on regular services of over 250 km where passengers board or alight in the territory of a Member State[1]. Until 2021, Member States may derogate from the majority of the provisions of the regulation.

Cancellation or delay of over 120 minutes on departure

- Passengers should be informed of the delay or cancellation no later than 30 minutes after the scheduled departure time.
- A choice between (i) being rerouted or continuing their journey as soon as possible or (ii) being reimbursed within 14 days (and, if necessary, a free return journey to the initial point of departure). If the carrier fails to offer the passenger this choice the passenger must be reimbursed and also has the right to compensation amounting to 50% of the ticket price, to be paid within one month.
- For journeys of over three hours, if the service is 90 minutes late, assistance must be offered (meals and accommodation, if necessary, for a maximum of two nights at a cost of EUR 80 per night). Accommodation does not need to be provided if the cancellation or delay is caused by bad weather or a natural disaster.

[1] Certain rights also apply to regular services covering a short distance (information, non-discrimination, reduced-mobility passenger access) or on occasional services (non-discrimination, compensation in the event of accident or damage to mobility equipment for reduced-mobility passengers).

Role of the European Parliament

The European Parliament has always been a strong advocate of passenger rights irrespective of the mode of transport used. Its main aim is to ensure that the rules adopted in recent years are properly applied. Parliament has also called for more readily comprehensible rules, the provision of clear and accurate information to passengers before and during their journey, straightforward, quick complaints procedures and better enforcement of the existing rules. The main proposals contained in its two resolutions adopted in 2012 are that the law should define clearly the 'exceptional circumstances' which release carriers from certain obligations, the establishment by carriers of a permanent helpline, with calls charged at non-premium rates, the obligation to handle passenger complaints within two months and measures to improve the effectiveness of national enforcement bodies.

Parliament has also come out in favour of improving existing rights, in particular as regards misleading or unfair terms in transport contracts, and improving access to transport infrastructure for reduced-mobility passengers and the introduction of new rights, such as minimum quality standards or proper rules to protect passengers making multimodal journeys. This last point would require Member States to refrain from making derogations when applying the rules on rail or road transport.

Main European Parliament decisions concerning passenger rights:

- resolution of 25 November 2009 on passenger compensation in the event of airline bankruptcy, P7_TA(2009)0092;
- resolution of 25 October 2011 on mobility and inclusion of people with disabilities and the European Disability Strategy 2010-2020, P7_TA(2011)0453;
- legislative resolution of 15 November 2011 on the draft Council decision concerning the accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, with the exception of Articles 10 and 11 thereof, P7_TA(2011)0478;
- resolution of 29 March 2012 on the functioning and application of established rights of people travelling by air, P7_TA(2012)0099;
- resolution of 23 October 2012 on passenger rights in all transport modes, P7_TA(2012)0371.

→ Marc Thomas

5.6.3. International and cabotage road transport

Following the adoption of various items of EU legislation, both international and cabotage road haulage and passenger transport services have been gradually liberalised.

Legal basis

Title VI of the Treaty of Lisbon and in particular Article 91 of the Treaty on the Functioning of the European Union (TFEU).

Objectives

To create a liberalised road transport market by opening up entry thereto. To be achieved by removing all restrictions on carriers that are based on their nationality or the fact of their being established in a Member State other than that where the service is provided.

Results

A. Road transport

1. Entry to the road haulage market (and occupation)

Following an action by the European Parliament for failure to act, the Court of Justice found, in its judgment of 22 May 1985 (61983CJ0013), that the Council had failed to introduce before the end of the transitional period laid down in the Treaty of Rome (31 December 1969), provisions concerning: (a) freedom to provide international transport services and (b) permission for non-resident carriers to provide national transport services in other Member States. Through legislation over a 25-year period, the EU has almost completed remedying all the shortcomings on these two points noted by the Court.

a. International road haulage services for hire or reward

Regulation (EEC) No 881/92 of 26 March 1992 consolidated existing legislation on cross-border transport services between Member States and established the system for issuing road haulage carriers with Community licences. The rules apply to transport of goods from or to a Member State or passing through one or more Member States. This system also applies to trips between a Member State and a non-EU country if an agreement exists between the EU and said non-EU country. Whereas, previously, transport of goods between two Member States had only been possible on the basis of bilateral agreements and had also been subject to restrictions, the new regulation abolished all quantitative restrictions (quotas) and bilateral licences as of 1 January 1993. International road haulage within the European Union has been almost completely free since then, because entry to the market is only based now on qualitative requirements which carriers must meet in order to obtain a Community licence. The Community licence is issued by the Member State in which the company is established and must be recognised by all other Member States (host countries). The Community licence is also valid now in all the member states of the European Economic Area.

Regulation (EEC) No 3916/90 of 21 December 1990 did however introduce a Community safeguard mechanism to deal with any crisis. This is a back-up measure to the complete dismantling of the quota system in the EU.

Council Directive 96/26/EC established three qualitative criteria for establishment as a road haulage carrier: good repute, financial standing and professional competence. This directive was repealed by Regulation (EC) No 1071/2009 of 21 October 2009 (see below) which added a fourth criteria, namely having an effective and stable establishment in a Member State.

Regulation (EC) No 484/2002 of 1 March 2002 established a 'driver attestation' for all nationals of non-EU countries hired by a carrier in possession of a Community licence. This document applies to both international and cabotage transport. It certifies that the driver is employed by the carrier in accordance with the employment and vocational training laws and statutory requirements that apply in the Member State in which the carrier is established. This measure is intended to stop non-EU nationals being unlawfully employed as underpaid drivers on short-term contracts, which distorts competition and is prejudicial to road safety.

Lastly, Directive 2006/1/EC of 18 January 2006 governs the cross-border leasing of vehicles without drivers for the carriage of goods by road.

b. Cabotage

Council Regulation (EEC) No 3118/93 of 25 October 1993 was adopted to cover 'cabotage', i.e. the provision of road haulage services within a Member State by a carrier established in another Member State. In practice, this refers to non-resident carriers which, rather than returning empty after an international trip, pick up and deliver a further load

in the host country before returning to the border. Regulation (EEC) No 3118/93 allows road haulage carriers which hold a Community licence issued by a Member State to provide road haulage services within other Member States on condition that this service is provided on a temporary basis. Full liberalisation of cabotage has however remained a temporary measure since 30 June 1998, with Member States able to apply to the Commission for the adoption of a safeguard clause in the event that cabotage causes serious disruption to their market. On 26 January 2005 the Commission issued an Interpretive Communication in an attempt to clarify the temporary nature of cabotage. Regulation (EC) No 1072/2009 of 21 October 2009 (Article 8(2)) then abandoned the concept of general cabotage and adopted the more restrictive formula of consecutive cabotage (allowing up to three cabotage operations within the seven days following an international journey to the cabotage host country). These provisions on cabotage apply with effect from 14 May 2010.

c. The Road Package of 21 October 2009

The European Union has gradually created the conditions needed to allow a liberalised internal road transport market to be introduced. However, to create fair conditions for competition, further harmonisation was needed on social, technical and fiscal conditions (see following fact sheets).

The Road Package adopted in October 2009 thanks to a compromise between Parliament and the Council is made up of three EU regulations: No 1071/2009, No 1072/2009 and No 1073/2009, all of which apply fully with effect from 4 December 2011. These new rules are common to international and cabotage road haulage services. The new legislative package provides for:

- a simplified, standardised format for the Community licence (for the new criteria concerning establishment, see 1a);
- the designation of a transport manager who must manage effectively and continually the carrier's activities, have a genuine link to the carrier (employee, director or owner) and reside within the EU;
- enhanced procedures for the exchange of information between Member States on infringements by carriers, and the obligation on Member States issuing a Community licence to take action against a carrier who has committed an offence in another Member State. The withdrawal of Community licences, certified copies or driver attestations has also been provided for;
- a clear and easily enforceable definition of the temporary nature of cabotage operations (see 1b).

Regulation (EC) No 1071/2009 introduced stricter rules on entry to the road haulage business and sought to modernise the road transport industry's image. Regulation (EC) No 1072/2009 also further consolidated and harmonised rules on cabotage. In particular, it merged Regulations (EEC) Nos 881/92 and 3118/93 and repealed Directive 2006/94/EC (on certain types of carriage of goods by road), which did away with the legal uncertainty surrounding carriers. See 2c below for further information on Regulation (EC) No 1073/2009.

2. Gradual liberalisation of passenger transport

a. International bus and coach passenger transport

Progress in opening up the market for passenger transport services has been slower than for road haulage.

Regulation (EEC) No 684/92 of 16 March 1992 helped open up the market for international bus and coach passenger services by permitting any EU transport company to operate passenger services for more than nine people (including the driver) between Member States. These passenger services may either be regular ones (at specified intervals on specified routes with predetermined stopping points) or occasional (carriage of groups formed on the initiative of a contractor or the carrier himself). Regulation (EEC) No 684/92 was supplemented and amended by Regulation (EC) No 11/98 of 11 December 1997 which introduced a Community licence to be issued by the authorities concerned in the Member State of establishment to bus and coach companies operating for hire or reward. Carriers must keep the Community licence with them as proof that they are entitled to operate services in their home country. Regular international services must also be covered by a prior authorisation issued in the carrier's name.

b. Cabotage

Regulation (EC) No 12/98 of 11 December 1997 authorised cabotage operations for all occasional services, for special regular services (for specified categories of passengers) provided these are covered by a contract concluded between the organiser and the carrier (e.g. transporting workers or students), and for regular services provided the cabotage is performed in the course of a regular international service (and not at the end of the line). Passenger cabotage services, just like haulage cabotage, are performed on a temporary basis.

The market has not as yet been opened up for the following services where the authorities concerned may refuse to allow non-resident carriers to operate passenger cabotage services: national regular services operated independently of an international service and urban, suburban and regional services, even when supplied as part of an international service.

c. The Road Package of 21 October 2009 (see 1c above)

Regulation (EC) No 1073/2009 lays down common rules for access to the international market for coach and bus services. It clarifies the scope and simplifies the procedures, by revising and consolidating the previous legislative framework (Regulation (EEC) No 684/92 on international carriage of passengers and Regulation (EC) No 12/98 on passenger cabotage services) which it also replaces. It confirms the principle of the free provision of services, under the same conditions as those laid down in Regulation (EEC) No 684/92, and then goes on to set out the conditions for issuing and withdrawing Community licences, their periods of validity and the detailed rules for the use and presentation of both the licence and certified copies thereof.

Here too the provision of passenger cabotage services is permitted, as with freight haulage, provided cabotage is not the main aim of the transport service; it must occur subsequent to a regular international service.

Role of the European Parliament

In the area of road transport, Parliament has called for, and supported, the gradual opening up of the road haulage and passenger transport markets in numerous resolutions and reports. At the same time, it has repeatedly emphasised that liberalisation must go hand in hand with harmonisation, and that social aspects and safety must be guaranteed.

The EP has declared itself to be in favour of greater liberalisation in haulage cabotage services, in particular, in order to cut the number of times lorries return empty (see point 18 of EP resolution of 6 July 2010 on a sustainable future for transport). Moreover, it has said that the Commission should draw up a report before the end of 2013 on the state of the Community's road transport market, in order to assess whether there has been sufficient progress on harmonisation of rules, particularly in the field of social legislation and safety, for consideration to be given to further opening up domestic road transport markets, including the removal of restrictions imposed on cabotage (see point 29, 5th indent of EP resolution of 15 December 2011 on the Roadmap to a Single European Transport Area — Towards a competitive and resource efficient transport system).

The Commission took the first step towards this with the publication in June 2012 of the report by the High Level Group, which recommended the gradual opening up of the EU road haulage market. The Group recommended in particular introducing two different kinds of cabotage: (1) limited to a short period of time and connected to an international trip; (2) not connected to an existing international trip and for which a registration procedure would be required to ensure that the driver comes under the host country's labour law.

The EP will have its say in the matter in 2013 when the Commission will publish a report on the state of the EU road haulage market. This will probably be accompanied by a proposal on further opening up this market to competition.

→ Piero Soave

5.6.4. Road transport: harmonisation of legislation

It is impossible to create a single European market for road transport without harmonising the relevant legal provisions in force in the Member States. The measures adopted by the EU are of a fiscal, technical, administrative and social nature.

Legal basis

Title VI of the Treaty of Lisbon, and in particular Article 91 TFEU.

Objectives

A common road transport policy which safeguards fair conditions of competition and guarantees the freedom to provide services calls for the harmonisation of the relevant legal provisions in force in the Member States. This applies not only to taxation (VAT, vehicle taxes and fuel taxes) and State aid, but also to technical specifications (maximum authorised dimensions and weights), social provisions and measures to protect the environment.

Achievements

A. Tax and technical harmonisation

1. Excise duty system

Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products replaced the two Council Directives 92/81/EEC and 92/82/EEC on the harmonisation of the structures of excise duties on mineral oils (*5.11.4).

2. Infrastructure charging

On 8 July 2008 the Commission presented a package of initiatives to make transport greener ('Greening Transport' package) [COM(2008) 433]. These initiatives provide a transparent and generally applicable model for calculating all external costs, including environment-, noise-, congestion- and health-related costs. This model served as the basis for the calculations of infrastructure charges in the context of the revision of the 'Eurovignette' directive (see below) and prefigured a strategy for the gradual application of this model to all modes of transport. Directive 1999/62/EC of 17 June 1999 remains the reference point when it comes to charging infrastructure costs to transport undertakings. It was amended by Directive 2006/38/EC of 17 May 2006 and Directive 2011/76/EU of 27 September 2011. The revision of the 1999 Eurovignette directive, which is based on the 'polluter-pays' principle and the internalisation of the external costs of road transport, aims to ensure that the costs of infrastructure use by heavy goods vehicles are reflected in the charges. With that aim in view, the charges can be modulated in order to take account of noise and air pollution and the risks associated with congestion. These charges come on top of the existing tolls, which are calculated on the basis of distance travelled in order to recover the costs of constructing, operating and developing the infrastructure concerned. The most important upshot of the compromise reached in 2011 by Parliament and the Council concerns transparency of revenues and investments. Member States may modulate infrastructure charges in order to take account of road congestion and these charges may vary by up to 175% during peak periods (up to five hours per day). Member States may offset this by imposing lower charges outside peak hours. The charge variation must be transparent, non-discriminatory and applied to all users equally. The issue of the earmarking of toll revenues, which was a major concern, was resolved by the Member States undertaking to reinvest the revenue from infrastructure charges and charges to cover external costs in specific projects of a high European interest (TEN-T: Annex III to Decision No 661/2010/EU) and to make transport more sustainable. In mountain regions, a mark-up on the infrastructure charge may be added for the most polluting heavy goods vehicles (EURO emission classes 0, I and II and class III from 2015). In that event, the revenue must be invested in priority projects of European interest. No later than 31 October 2015, the Commission is to submit a report to the European Parliament and the Council on the implementation and impact of this directive, in particular as regards the effectiveness of the provisions on the recovery of the costs related to traffic-based pollution and on the inclusion of vehicles of more than 3.5 and less than 12 tonnes.

3. Maximum authorised dimensions and weights

Directive 96/53/EC of 25 July 1996 laying down the maximum authorised dimensions and weights of national and international vehicles is the reference text used to set the maximum dimensions of heavy goods vehicles circulating between the Member States. This directive was amplified and amended by Directive 97/27/EC of 22 July 1997 and by Directive 2002/7/EC of 18 February 2002, which aims to harmonise the maximum dimensions of buses to allow for free circulation within the EU and, in particular, to ensure that cabotage operations for passenger transport work efficiently. However,

Article 4 of Directive 96/53/EC grants some national derogations: Member States may allow vehicles to be put into circulation which exceed the limits referred to in the annex to the directive (18.75 m and 40 t) to carry out transport operations which are considered not significantly to affect international competition in the transport sector, for example, operations linked to logging and the forestry industry. The Member States must inform the Commission of the measures taken. Derogations from the maximum dimensions and weights are authorised on a trial basis only at national level. On 15 April 2013 a proposal for a directive was submitted to Parliament and the Council which aims to authorise the cross-border circulation of longer heavier lorries (mega trucks) in Europe.

B. Administrative harmonisation

1. Drivers' legal obligations

Directive 91/439/EEC of 29 June 1991 on driving licences harmonised the format of licences and categories of vehicles, introduced the principle of mutual recognition and laid down basic requirements in respect of health and competence. Directive 96/47/EC of 23 July 1996 provided for an alternative credit-card format for driving licences. The third directive on driving licences (Directive 2006/126/EC of 20 December 2006) makes this credit-card format compulsory for all licences issued in the EU as from 19 January 2013. Furthermore, all the existing paper licences in circulation must be converted to the new plastic-card format when they are renewed or by 2033 at the latest. All new licences will be valid for a fixed period (from 10 to 15 years, depending on the country, for motorcycles and cars and five years for lorries and buses) and they will be valid throughout the EU. At present there are some 110 different driving-licence formats in the EU. The harmonisation is intended to meet the following three objectives: combating fraud, guaranteeing free circulation, and improving road safety. Driving-licence tourism, for example, will no longer be possible when each individual holds a single driving licence and when applicants can no longer be issued with a driving licence if they have had a licence restricted, suspended or withdrawn in another Member State. The Commission will report on the implementation of this directive, including its impact on road safety, no earlier than by 19 January 2018. For lorry-driver attestation, introduced by Regulation (EC) No 484/2002 of 1 March 2002, and the certificate of professional aptitude regulated by Directive 2003/59/EC of 15 July 2003, please see the previous fact sheet on road transport.

2. Vehicle registration

Council Directive 99/37/EC of 29 April 1999 (amended by Directive 2003/127/EC) harmonises vehicle registration documents and simplifies checks on ownership and transfers between residents of two different Member States. Council Regulation (EC) No 2411/98 of 3 November 1998 on the recognition 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 registration plates to display the retro-reflecting European flag and for the distinguishing sign of the Member State to be affixed on the far left of the registration plate. In the 2010 EU citizenship report entitled 'Dismantling the obstacles to EU citizens' rights', the Commission singled out vehicle registration problems as one of the main obstacles to the free movement of goods. The report proposed the simplification of vehicle registration formalities in another EU Member State, saving businesses, individuals and public bodies approximately EUR 1.5 billion. When the proposal enters into force, people who spend part of the year at a holiday home in another EU country, for example, will not be obliged to re-register their vehicles, while those residing permanently in another EU country will have six months to re-register their vehicles. The draft regulation of the European Parliament and of the Council awaits Parliament's first reading and is covered by the ordinary legislative procedure (Article 114 TFEU).

C. Social harmonisation

1. Working time

The transport sector was excluded from the scope of Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time. Directive 2002/15/EC of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities seeks to lay down minimum requirements in relation to working time in order to improve the health and safety of drivers. Under the directive, average weekly working time is 48 hours. This may be increased to 60 hours provided that an average of 48 hours per week is not exceeded in any four-month period. In October 2008 the Commission submitted a proposal for a directive amending Directive 2002/15/EC, excluding self-employed drivers from its scope. Parliament rejected the proposal in 2009, as it was opposed to this exclusion and wanted the rules regarding working time to apply also to 'false' self-employed drivers. Since the Commission did not subsequently withdraw the proposal, Parliament confirmed its 2009 position by means of its resolution of 16 June 2010 (P7_TA(2010)0221).

2. Driving time and rest periods established by the European Social Regulation (ESR).

Rules on maximum driving time per day and per week, breaks and minimum daily rest periods are laid

down in Regulation (EC) No 561/2006 of 15 March 2006 repealing Regulation (EEC) No 3820/85 of 20 December 1985. The regulation applies to drivers transporting goods (vehicles exceeding 3.5 tonnes) or passengers (vehicles carrying more than nine people). It also introduced more frequent breaks and improved and simplified checking and penalty measures. Regulation (EC) No 561/2006 also amended Regulation (EEC) No 3821/85 of 20 December 1985, making the digital tachograph mandatory; the tachograph, because it cannot be tampered with, facilitates the detection of infringements of the ESR. Directive 2006/22/EC of 15 March 2006 lays down minimum requirements for the implementation of the aforementioned regulations and stipulates the minimum number of checks (at least 3% of days worked by drivers in 2010) to be carried out by the Member States in order to monitor compliance with the rules on driving time, breaks and rest periods. The replacement of analogue tachographs with digital tachographs was expected gradually to clear the way for a greater volume of data to be checked more swiftly and more precisely, thereby making it possible for the Member States to carry out more checks.

As part of the road transport package (*5.6.3, paragraph 2c), Regulation (EC) No 1073/2009 of 21 October 2009 amended Regulation (EC) No 561/2006, reintroducing the '12-day rule' whereby coach or bus drivers engaged in providing a single occasional passenger service may work for up to 12 consecutive days (instead of the maximum of six consecutive days); the journey must include at least one 24-hour period in a country other than that in which the service started. The derogation is permitted only on the basis of very strict conditions, which maintain road safety and require drivers to take weekly rest periods immediately before and after the service. Other conditions will be added from 1 January 2014: the vehicle must be equipped with a digital tachograph and in cases where a driver works between 22.00 and 6.00, either the driver's shift will be reduced by three hours or there will be other drivers on board to take over.

Role of the European Parliament

Parliament has used its legislative powers to support, in principle, most of the Commission's proposals for harmonisation, whilst at the same time emphasising certain aspects to which it attaches particular importance.

- When the last revision of the Eurovignette Directive was carried out, Parliament stressed the importance of the environmental aspects. On 23 May 2011, after difficult negotiations, the EP managed to reach a compromise in the trialogue with the Council, with the result that from the second half of 2013 toll prices may include the costs of noise and air pollution. This outcome, which is 'the bare minimum we need to ensure the 'polluter pays' principle is introduced into the haulage industry', was achieved thanks to the unwavering determination of the Committee on Transport.
- Despite securing more stringent checks on driving time and breaks, the EP has consistently argued for effective social harmonisation in the EU. To this end (see paragraph 29 of European Parliament resolution of 15 December 2011 on a Single European Transport Area) the EP called on the Commission, before the end of 2013, to review the regulatory framework governing driving and rest periods in passenger and goods transport and to improve the harmonisation of the application and control of the rules. This report will outline the situation on the market, in particular by assessing the effectiveness of the checks and trends in employment conditions for professional drivers.
- Following the refusal to exclude self-employed drivers from the scope of Directive 2002/15/EC (see above, paragraph 3a), Parliament secured agreement that its provisions would apply to self-employed drivers, who make up approximately 20% of all drivers, as from 2009.

→ Piero Soave

5.6.5. Road traffic and safety provisions

The EU is aiming to create a European road safety area during the ten years 2010-2020. Competence in this field is principally national, therefore the EU is focusing its measures on vehicle condition, the transport of dangerous goods and safety of road networks.

Legal basis

Title VI of the Treaty of Lisbon and in particular Article 91 of the Treaty on the Functioning of the European Union (TFEU).

Objective

The aim is to improve road safety and contribute to sustainable mobility. According to statistics, there were 28 000 deaths and 250 000 people seriously injured on roads in the European Union in 2012. This represents a reduction of 9% which, compared with 2011's modest fall of 2%, allows room for hope that it is possible to achieve the aim of halving the number of road deaths by 2020, even if the Commission estimates that to do so, figures will have to fall on average by 7% per year.

Achievements

A. General

In June 2003 the Commission published the European Road Safety Action Programme 2003-2010. The aim of this programme, the third of its kind, was to halve the number of road deaths in the EU before the end of 2010. Even if it did not manage to meet this target by the deadline set, the programme did succeed in reducing the number of road accident victims, as the Commission pointed out in its Communication published on 20 July 2010, 'Towards a European road safety area: policy orientations on road safety 2011-2020'. The new White Paper published on 28 March 2011 moved the target date for halving the number of fatal road accidents forward to 2020 and set 2050 as the target date for moving close to having 'zero fatalities'. The Commission also set out in its policy orientations seven objectives for which it envisages national and EU measures being adopted.

Those objectives include: improving education and training for road users and stepping up the enforcement of road rules; making both road infrastructure and vehicles safer; promoting the use of intelligent transport systems (ITS), through the 'eCall' on board emergency call system for instance; improving emergency and post-injury services; and protecting vulnerable road users such as pedestrians and cyclists. Implementation of the policy orientations is based on open cooperation between the Member States and the Commission. In setting these objectives, the policy orientations point the way for national and local strategies, in accordance with the principles of shared responsibility and subsidiarity. Member States are thus encouraged to launch national programmes linked to specific targets. The European Road Safety Charter, launched by the Commission 2004, is also addressed to civil society so that it too may play its part, by sharing experience, in cutting the number of deaths on the EU's roads.

B. Technical condition of vehicles

Technical harmonisation of vehicles covers in particular:

- vehicle testing (Directive 2009/40/EC of 6 May 2009 on roadworthiness tests for motor vehicles and their trailers; Directive 2000/30/EC of 6 June 2000 on roadside inspection of commercial vehicles; Directive 1999/37/EC of 29 April 1999 on the registration documents for vehicles). A new package of legislative measures, proposed on 13 July 2012, aims to improve protection for vulnerable users and in particular young people; to establish a single European vehicle testing area (tests, equipment, qualifications of inspectors, assessment of defects and cooperation between Member States); and to reduce the administrative burden for road haulage firms. At present private vehicles, light commercial vehicles, buses, coaches, heavy goods vehicles and their trailers are all subject to periodic roadworthiness tests. In its proposal for a regulation to replace Directive 2009/40/EC, the Commission aims to extend roadworthiness tests to motorcycles and mopeds; Parliament, however, seems to be in favour of excluding them, leaving the Member States free to decide on a case by case basis. As regards the frequency of these tests, the Commission proposes a yearly test for all vehicles over six years old, while Parliament envisages these vehicles being tested every two years as from the fourth year after their registration. The Commission is proposing a risk based system for roadworthiness tests on commercial vehicles, via another regulation, in order to make them more efficient, repealing Directive 2000/30/EC of 6 June 2000. The Commission is amending Directive 1999/37/EC in the final part of the 2012 package on roadworthiness tests, in order to improve management of registration documents and to include in them a reference to the results of these tests;

- compulsory use of seat belts in vehicles under 3.5 tonnes in weight. Directive 2003/20/EC of 8 April 2003 stipulated the compulsory use of child restraints and of seat belts for all persons seated in those buses and coaches in which they are fitted (with exemptions for local transport services in urban areas);
- compulsory installation of speed limitation devices in motor vehicles exceeding 3.5 tonnes pursuant to Directive 92/6/EEC of 10 February 1992. Directive 2002/85/EC of 5 November 2002 extended the obligation to use speed limitation devices to all passenger vehicles with more than eight seats (not including the driver) and to goods vehicles of between 3.5 tonnes and 12 tonnes.
- active safety systems: Regulation (EC) No 78/2009 of 14 January 2009 on the type-approval of motor vehicles with regard to the protection of pedestrians and other vulnerable road users, laid down certain requirements for the construction and functioning of frontal protection systems in the event of a head-on collision with another vehicle, and enhanced the technology by which collisions with cyclists and pedestrians can be effectively avoided. It also laid down that type-approved brake assist systems (BAS) should be fitted;
- finally, safety of road users was improved by reducing the 'blind spot': Directive 2003/97/EC of 10 November 2003 stipulated that new heavy goods vehicles being driven in the EU should have additional 'blind spot' rear-view mirrors (wide angle, close proximity and forward view). Directive 2007/38/EC of 11 July 2007 laid down that existing lorry fleets were also to be fitted with these devices. Regulation (EC) No 661/2009 of 13 July 2009 repealed Directive 2003/97/EC, as from 1 November 2014, in order to make the same types of rear-view mirrors obligatory for vehicles registered outside of the EU. In 2011, the Commission commissioned a study on accidents caused by blind spots and in June 2012 it presented its report on the implementation of Directive 2007/38. This stressed that accidents involving heavy goods vehicles are responsible for more than 1 200 deaths per year and hence work to prevent accidents of this kind needs to continue.

C. Transport of dangerous goods

Directive 94/55/EC of 21 November 1994 extended to national transport the rules laid down in the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR). Directive 2008/68/EC of 24 September 2008 set up a common regime covering all aspects of the inland transport of dangerous goods in the EU (by rail and inland waterway as well as by road). Commission Directive 2012/45/EU of 3 December 2012 brought this up to date, in line with the latest version of the ADR Agreement (which is updated every two years). Council Directive 95/50/EC of 6 October 1995 governs uniform procedures for checks in the EU on the transport of dangerous goods by road. Council Directive 96/35/EC of 3 June 1996 covered the professional qualifications of safety advisers for the transport of dangerous goods by road, making it compulsory for businesses to appoint them. Directives 94/55/EC and 96/35/EC were repealed by Directive 2008/68/EC.

D. Intelligent transport systems (ITS) and the 'eSafety' initiative

On 16 December 2008, the Commission launched an Action Plan for the deployment of intelligent transport systems (ITS) in road transport. This was based on a series of initiatives (for example the eSafety initiative, launched in 2006) and provided for priority actions. Working on the same lines, Directive 2010/40/EU of 7 July 2010 on ITS in road transport aims at achieving the coordinated and consistent deployment of interoperable ITS services in the European Union. Intelligent transport systems are advanced applications whose purpose is to provide innovative services and enable different users to be better informed and make a safer, more coordinated and intelligent use of transport networks. These systems include, for example, automatic speed adjusters, devices to prevent involuntary lane departures, collision warning devices and automatic emergency call systems in the event of an accident (eCall).

The eSafety Forum, created by the Commission in 2003 and known since 2011 as iMobility, is a joint platform for exchange between all road safety stakeholders. The aim of the forum is to encourage and monitor the implementation of recommendations on eSafety and to support the deployment and use of car safety systems.

E. Safety of road infrastructure

Directive 2004/54/EC of 29 April 2004 laid down minimum safety requirements for tunnels in the Trans-European Road Network. The directive stipulates that all tunnels longer than 500 metres, whether in service, under construction or at the design stage, are to be subject to harmonised safety rules. These rules cover organisational, structural, technical and operational aspects of operating these tunnels, and keep in mind the kinds of accidents that occur most frequently, such as fire. Directive 2008/96/EC of 19 November 2008, on road infrastructure safety management, aims to ensure that road safety is taken into account, through impact assessments, at all stages of the construction, operation or substantial alteration of roads. To this end, it has established systematic safety audits

for road infrastructure projects. It has also laid down provisions for safety inspections on roads in operation and identification of road sections where a high number of accidents occur (accident black spots).

F. Drink-driving accident statistics and prevention

The CARE database on road accidents resulting in death or injury was created as an outcome of Council Decision 93/704/EC, to compile data from national statistical files and circulate them via the European Road Safety Observatory (ERSO). As part of the EU's policy on improving driving behaviour, the Commission stipulates that Member States must adopt random breath testing. Levels for maximum permitted blood alcohol content must be complied with. Persons suspected of drink-driving are subjected to random tests using instruments known as breathalysers (Commission Recommendations 2001/115 of 17 January 2001 and 2004/345 of 17 April 2004).

G. Cross-border enforcement in respect of road traffic offences

Directive 2011/82/EU of 25 October 2011 on the cross-border exchange of information on road safety related traffic offences established a procedure for information to be exchanged between 'national contact points' using an electronic data exchange network. This enables vehicles and their owners or holders to be identified when suspected of having committed an offence in a Member State other than the one in which the vehicle is registered, and allows the contact point in the country concerned to carry out 'automated searches' in another Member State. The authority in the State in which the offence was committed then sends an offence notification to the holder of the registration certificate, informing him or her of the details of the offence, the amount of the fine he or she has to pay, payment options and appeal procedures. While personal data is protected, the Directive does ensure that non-resident drivers are consistently punished for a series of road safety offences (speeding, not using a seat belt or a helmet, failing to stop at a red light, driving while under the influence of alcohol or drugs, use of a forbidden lane and illegally using a mobile phone).

Role of the European Parliament

The European Parliament has issued numerous resolutions emphasising the importance of road safety. When in 2005 it endorsed the Commission's third action programme (2003-2010), it was already calling for a long-term plan to be developed going beyond 2010, which would set out measures intended to prevent all road deaths ('Vision Zero') (P6-TA(2005)0366). In its resolution on European road safety 2011-2020 (P7-TA(2011)0408), Parliament once again called on the Commission to make the prevention of all road deaths a long-term objective, but it linked this to the systematic use of technology in road vehicles and the development of good quality ITS networks. Parliament is nonetheless insistent that a comprehensive action programme, including a detailed catalogue of measures, should be adopted, with timetables and follow-up tools. It has also added other quantative targets to be met by 2020: a 60% drop in the number of children under 14 killed on the roads, a 50% drop in deaths of pedestrians and cyclists, and a 40% drop in the number of people seriously injured, these figures to be established according to a uniform EU definition to be devised as soon as possible. Furthermore, in its resolution on a sustainable future for transport (P7-TA(2010)0260), Parliament asked the Commission to present a brief study on the best practices in Member States concerning the impact of speed limiters and expressed its concerns over the safety of workers in the transport sector. Parliament also advocated having a uniform definition of road safety terms in order to improve research on accidents by ensuring findings were comparable. The Commission's working document on road injuries, published on 19 March 2013, is a partial response to Parliament's call for strategy on road accidents to be broadened. It sets out the objective of reducing at EU level the total number of people seriously injured (in 2015-2020) and it announced that a system to define serious injuries has been operational throughout the EU since 2012. However Parliament wants to see by 2020 the establishment of a programme with quantified indicators, measures and milestones.

→ Piero Soave

5.6.6. Rail transport

It is impossible to create a single European market for transport without harmonising the legislation of the Member States. It is above all the technical rules which need to be harmonised.

Legal basis

Article 100(1) of the Treaty on the Functioning of the European Union.

Objectives

A common transport policy preserving competition and guaranteeing the freedom to provide services necessitates the harmonisation of the Member States' legislation. In the area of rail transport, it is above all a question of harmonising technical requirements. Significant differences between the individual Member States with regard to technical requirements and safety standards continue to stand in the way of creating an integrated European railway area and are making it more difficult for the railway industry to compete with other modes of transport. Gradual harmonisation of these requirements is essential if there is to be interoperability between the different national rail systems. Differences in authorisation procedures and environmental and consumer protection measures may also necessitate a degree of harmonisation, inter alia in order to avoid distortion of competition and make it easier for new companies to enter the market.

Achievements

A. Interoperability

With the adoption of Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system and Directive 2001/16/EC of 19 March 2001 on the interoperability of the trans-European conventional rail system, the EU began a process designed to ensure that trains can transit smoothly and safely from one Member State rail network to another. In order to implement this legislation, a number of technical solutions (known as 'technical specifications for interoperability' or TSIs) were drawn up, focusing primarily on key aspects such as control systems, safety, signalling, telematic applications for freight services, training for staff engaged in international transport operations, freight wagons and noise problems.

The two directives were amended and updated by Directive 2004/50/EC of 29 April 2004. At the same time, the scope of the directive on the conventional rail system was extended to cover the whole of the European rail network, in order to meet the demands posed by the full opening-up of the rail network to freight transport services (in January 2007) and international passenger transport services (in January 2010). Directive 2008/57/EC of 17 June 2008 — amended by Directive 2009/131/EC — recast Directives 2004/50/EC, 96/48/EC and 2001/16/EC into a single text. The core element is the principle of mutual recognition. Where a vehicle has already been placed in service in one Member State, other Member States can invoke national rules to impose additional requirements and further checks only if this is strictly necessary in order to verify or guarantee the vehicle's technical compatibility with the relevant network. National authorities can refuse an authorisation for placing in service only if the existence of a 'substantial safety risk' can be demonstrated.

In order to reduce technical barriers to interoperability, in March 2005 representatives of the rail industry and the Commission signed a memorandum of understanding on the deployment of the European Rail Traffic Management System (ERTMS/ETCS). The ERTMS is designed to harmonise the EU's 20-odd different signalling systems and introduce a uniform automatic speed control system, based on the latest developments in telecommunications technology. In July 2009 the Commission adopted a European plan providing for the progressive deployment of the ERTMS along the main European rail routes within a decade.

B. European Railway Agency

In order to assist the Commission and the Member States in improving the interoperability and safety of the European rail network, the European Railway Agency — with headquarters in Lille and Valenciennes (France) — was set up under Regulation (EC) No 881/2004 of 29 April 2004 as part of the second railway package. The agency's main task is the harmonisation, registration and monitoring of technical specifications (TSIs), which must cover the whole of the European rail network, and the setting of common safety targets for European railways. The agency itself has no decision-making powers, but, with the assistance of groups of experts, draws up draft decisions for the Commission. Regulation (EC) No 1335/2008 of 16 December 2008 strengthened the agency's powers, assigning it new tasks arising from the amendment of the Railway Safety Directive (2004/49/EC) and the Directive on the interoperability of the rail system (2008/57/EC).

C. Social harmonisation

Directive 2005/47/EC of 18 July 2005 lays down working conditions for mobile workers engaged in interoperable cross-border services in the railway sector. It is based on an agreement between the European social partners in the rail industry.

Directive 2007/59/EC, adopted as part of the third railway package, aims to harmonise the minimum qualification requirements and thus the certification of locomotive and train drivers in the EU. A train driver's licence issued by one Member State must be recognised by the other Member States. Such mutual recognition of harmonised licences is crucial to the creation of a European railway area. The directive also specifies the tasks for which the competent authorities of the Member States, train drivers and other stakeholders in the sector, in particular railway undertakings, infrastructure managers and training centres, are responsible.

It states that all train drivers must hold a licence demonstrating that they satisfy minimum conditions as regards medical requirements, basic education and general professional skills. They must also hold harmonised complementary certificates attesting that they have received specific training relating to the routes operated, the equipment used and the operational and safety procedures specific to a particular company. Railway undertakings holding a safety certificate are required to keep a register of all complementary certificates. Since 2011, certificates or licences have been issued to drivers performing cross-border services, cabotage services or freight transport services in another Member State, or working in at least two Member States.

D. Access to infrastructure for railway undertakings

Directive 95/18/EC of 19 June 1995 provides that, in order to gain access to the infrastructure of all the Member States, a railway undertaking must hold an operating licence. The licence is issued by the Member State in which the company is established, subject to compliance with certain common conditions (good repute, financial fitness and professional competence), and is valid throughout the Community. The directive was amended by Directive 2001/13/EC of 26 February 2001, which — as part of the first railway package — extended the provisions on the issuing of licences to cover almost all railway undertakings, with just a few exceptions. It also laid down the safety, technical, economic and financial requirements for obtaining a licence, together with the licensing procedure.

E. Railway noise

Directive 2002/49/EC of 25 June 2002 relating to the assessment and management of environmental noise (the Noise Directive) provides a basis for the adoption of EU measures aimed at reducing noise emitted by the major sources, including rail vehicles and infrastructure. This was the basis for the adoption in 2003 of guidelines on computation methods for railway noise; noise emission limits for rolling stock used in the EU entered into force in June 2006. In April 2011 a further Commission decision revised the TSI for the railway system's rolling stock. On 8 July 2008 the Commission published a communication entitled 'Rail noise abatement measures addressing the existing fleet' [COM(2008) 432], in which it sets the goal of retrofitting all freight wagons by 2015.

F. New changes to the regulatory framework

In 2012, some of the above-mentioned legislative provisions were simplified and reinforced by Directive 2012/34/EU establishing a single European railway area. This directive, which must be implemented by mid-2015, reinforces in particular the existing provisions concerning competition, regulatory control and the financial architecture of the railway sector. In addition, in January 2013 the Commission presented a new package of measures aimed at removing the final obstacles to the establishment of a single European railway area and opening up, in particular, national passenger rail transport services. This fourth railway package, which is currently being discussed by the legislator, contains legislative proposals to amend the following instruments:

- Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area;
- Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and road;
- Regulation (EC) No 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency;
- Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways;
- Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community;
- Regulation (EEC) No 1192/69 of the Council of 26 June 1969 on common rules for the normalisation of the accounts of railway undertakings.

Role of the European Parliament

The EP has used its legislative powers to support, in principle, most of the Commission's proposals for harmonisation, while at the same time emphasising certain aspects:

- in its resolutions of 15 June 2006 and 11 March 2008, concerning sustainable transport policy, the EP explicitly supported the introduction of the ERTMS/ETCS rail safety, control and signalling system in order to eliminate technical obstacles, and called for moves to be made towards a single European railway area;
- in its resolution of March 2009 on the greening of transport and the internalisation of external costs (P6_TA(2009)0119), the EP called on the Commission to take steps without delay to produce specific proposals for all modes of transport and, secondly, to submit a comprehensive plan for calculating and charging external costs and assessing their impact on the basis of a comprehensible model. It then called on the Commission to draw up a proposal for a directive with a view to introducing noise-related track access charges for locomotives and wagons in order to provide incentives for railway undertakings to re-equip their fleets rapidly with low-noise vehicles.

→ Piero Soave

5.6.7. Air transport: Market access

In order to ensure fair competition in the air transport field, several regulations have been adopted to govern the relevant areas, such as business practices, State aid, prices and airport charges.

Legal basis

Article 100(2) of the TFEU.

Objectives

The objective is to lay down the procedure for implementing the Treaty's provisions on competition in air transport, taking into account the unique features of the sector, which to an extent is still characterised by State aid for national airlines and airports and also by cartel-related problems caused by the formation of global alliances. As well as the creation of fair conditions of competition, the competition policy is intended to encourage airlines to provide passengers with a cost-efficient and high-quality service.

Achievements

1. Agreements and business practices

This subject is governed by Regulation (EEC) No 3975/87 of 14 December 1987 laying down the procedures for the application of the rules on competition to undertakings in the air transport sector and Regulation (EEC) No 3976/87 on the application of Article 105(3) of the TFEU to certain categories of agreements and concerted practices in the air transport sector. Through these provisions, which form the first package of measures for air transport, the Commission was empowered to grant exceptions to various categories of agreement and concerted practices, subject to certain conditions designed to ensure that competition is not eliminated or unduly restricted. These regulations have been changed several times over the years and adapted to current developments [including Regulations (EEC) Nos 2410/92 and 2411/92 of 23 July 1992 as well as Regulation (EC) No 01/2003 of 16 December 2002]. Through Regulation (EC) No 1459/2006, the Commission has also applied exemptions (e.g. Article 101(3)) to certain agreements, decisions and concerted practices concerning consultations on tariffs for the carriage of air passengers and slot allocation at airports. The EU took the global aspect of air transport into account in Regulation (EC) No 847/2004 of 29 April 2004 and Regulation (EC) No 868/2004 of 21 April 2004. It thereby created the necessary legal basis for the negotiation and implementation of air service agreements between Member States and third countries and for the application of the rules of air traffic competition between the Union and third countries, including protection against the distortion of competition by third-country companies in the form of State aid or dishonest pricing policies.

2. State aid

In 1984, the Commission established the criteria for the evaluation of State aid to airlines. In 1993, a committee of civil aviation experts was set up which issued recommendations on State aid in its report of 1 February 1994. According to these recommendations, the provision of State aid must meet certain conditions:

- it must be a 'one-off' measure;
- it must be linked to a restructuring plan, which will be assessed and monitored by independent experts appointed by the Commission and should ultimately lead to privatisation;
- the relevant government must undertake to refrain from interfering in the commercial decisions of the airline, which in turn must not use the aid to finance new capacities;
- the interests of other airlines must not be adversely affected.

On 9 December 2005, the Commission approved guidelines on financing airports and on granting start-up aid for airlines departing from regional airports to pursue the dual objective of combating air traffic congestion and promoting the mobility of citizens whilst complying with competition rules. In this respect, the development of regional airports should help boost the regional economy. These guidelines — based on the principles of Commission decision 2004/393/EC in the Ryanair/Charleroi airport case [which was, however, annulled by the judgment of the Court of First Instance of 17 December 2008 (Case T-196/04)] —, supplement the former guidelines from 1994 but do not invalidate them. Following the annulment of the 'Charleroi' decision, the Commission needs to review its guidelines to take low cost airlines into account.

3. Tariffs

The provisions governing this matter (air passenger and freight tariffs applied by Community air carriers on intra-Community routes alone) can be found in Regulation (EEC) No 2409/92 on fares and rates for air services, which forms part of the 'third

package' on air transport liberalisation adopted in July 1992. As a general rule, airlines can set their own prices, but the regulation contains a number of safeguard clauses to avoid overly high or low (dumping) prices. In seeking to recast the third package, Regulation (EC) No 1108/2008 establishes common rules for the operation of air services in the Union. It provides the framework for pricing freedom and price transparency (by including the air fare or air rate, taxes, charges, surcharges and fees applicable at the time of publication). It requires the explicit agreement of the passenger as regards price supplements for optional travel insurance and prohibits any form of price discrimination based on the place of residence or the nationality of the customer.

4. Allocation of timetable slots

The continuous growth of air transport over the past decade has increased the pressure on airport capacity. Regulation (EEC) No 95/93 of 18 January 1993 was the first step towards establishing non-discriminatory rules on the allocation and reservation of time slots for specific airlines, with a view to allowing their aircraft to take off and land at Community airports and to prevent air traffic congestion. Experience has shown, however, that the procedure established guaranteed neither the maximum nor the most flexible possible use of limited capacity at congested airports and that it was not uniformly applied in the Member States. Thus, in order to take account of the changing circumstances, particularly with respect to new entrants and issues relating to market access, a new Regulation (EC) No 793/2004 was adopted on 21 April 2004. Under this regulation, slots represent a right to use the airport infrastructure for take-offs and landings at specified times and on specified days — i.e. the use of slots only creates a right to use the airport infrastructure. To this end, a coordinator, appointed by the particular airport, is responsible for the allocation of slots. On the one hand, the regulation takes into account the interests of established airlines; on the other, it facilitates market access for new competitors, for example by allowing the coordinator to give them some form of priority (50%) as regards the pool containing all the unallocated slots under the terms of Article 6 of the new regulation. However, in order to mitigate the impact of the financial crisis on air transport, the Commission asked the European Parliament and the Council to adopt a regulation to loosen the rules on the allocation of slots at EU airports (temporarily freezing the 80/20 rule that requires airlines to use at least 80% of their slots in order to keep the slots they are allocated) during the April-October summer 2009 season, a measure which was repeated in 2010.

5. Airport capacities and charges

As part of the 'Airport Package', the Commission presented, in a Communication of 24 January 2007 [COM(2006) 819], an action plan for airport capacity, efficiency and safety at European airports. The Commission foresees that the EU will have to cope with the saturation of its airport capacity caused by the demand for flights, a situation known as 'capacity crunch'; on the basis of the expected evolution in air traffic up to 2025, there is a risk that the top 20 airports will be saturated at least 8-10 hours per day. Thus the need to develop a strategic vision. The communication concentrates in particular on: (a) optimising the use of existing airport capacities; (b) encouraging complementarity between air and rail transport; (c) the environmental dimension of airports, particularly as regards flight noise; and (d) the development of cost-effective technological solutions. Finally, a new observatory has been set up to advise the Commission. The main legislative initiative in the 'Airport Package' was Directive 2009/12/EC of the European Parliament and of the Council which was adopted on 11 March 2009 and applies to airports whose annual traffic is over five million passenger movements. It obliges each Member State to publish a list of the airports on its territory to which this Directive applies. The main objectives of the Directive are transparency in the charging of airport infrastructure, consultation with airport users and application of the principle of non-discrimination with respect to the setting and payment of charges by airlines. The Directive also requires each Member State to establish an independent administrative body, which has authority over all airport managing bodies and air carriers and is responsible for monitoring the correct application of the measures laid down by the Directive and, if necessary, for arbitrating in disputes relating to airport charges.

Role of the European Parliament

Parliament has emphasised in numerous reports and opinions the importance of a common air transport policy and of stronger competition between airlines. In its resolutions, Parliament has argued that the development of an internal market for European air transport would lead to positive competition because passengers now have at their disposal a greater choice of flights at often cheaper prices. With regard to State aid, Parliament welcomed the end of the transition period for State aid for airlines proposed by the Commission, as it considered that State airlines should be subject to competition rules. On the subject of time slot allocation, Parliament supported the Commission's proposal and improved on it by, inter alia, strengthening

the role and independence of the coordinator and market entry chances for new competitors, and introducing sanctions in the event of misuse of time slots. However, following the global economic and financial crisis which had a serious impact on the activities of air carriers and led to a drop in air traffic from the winter of 2008/2009, Parliament helped launch measures introducing a temporary freeze so that the failure to use allocated time slots did not cause air carriers to lose their rights and made it possible for them to more easily reduce capacity at congested airports.

→ Piero Soave

5.6.8. Air transport: Civil aviation security

Aviation security (not to be confused with aviation safety[1]) exists to prevent malicious acts against aircraft and their passengers and crew. Following the terrible attacks of 2001, the EU has adopted a set of security rules for safeguarding civil aviation. These rules are regularly updated to address evolving risks. Member States retain the right to apply more stringent measures.

[1] Aviation safety relates to the design, manufacture, maintenance and operation of aircraft.

Legal basis

Article 100(2) of the Treaty on the Functioning of the European Union.

Objectives

The aim of aviation security is to prevent acts of unlawful interference, above all by keeping threatening items such as arms and explosives away from aircraft. It had been high on the agenda for decades when it became a major cause for concern following the terrorist attacks of September 2001. Since then, the regulatory framework in this field has expanded considerably worldwide, whether nationally, via international cooperation/agreements, or through the International Civil Aviation Organisation[1] (ICAO) and Annex 17 to the Chicago Convention and the related Universal Security Audit Programme[2] (USAP). As far as the European Union is concerned, it has developed an appropriate policy which is regularly updated to address evolving risks and threats as well as technological changes.

Achievements

In the wake of the terrorist attacks of September 2001, Regulation (EC) No 2320/2002[3] was adopted to safeguard civil aviation and provide the basis for a common interpretation by the Member States of Annex 17 to the Chicago Convention. In March 2008, this regulation was replaced by Regulation (EC) No 300/2008[4].

Regulation (EC) No 300/2008 was adopted by Parliament and the Council to set the common rules and basic standards on aviation security, as well as mechanisms for monitoring compliance. It is supplemented by a set of regulations adopted by the Commission via the regulatory procedure with scrutiny (general measures supplementing the common basic standards) or the regulatory procedure (detailed measures needed for the implementation of the common basic standards). It is worth noting that the implementing rules, which 'contain sensitive security information', are not published. The EU regulatory framework is based on binding common standards and the following basic principles:

- Each Member State is responsible for the security of flights departing from its territory ('Host State responsibility' as laid down by the ICAO).
- All passengers and staff and all baggage must be screened before boarding. Cargo, mail, and in-flight supplies must also be screened before being loaded, unless they have been subjected to appropriate security controls.
- Member States retain the right to apply more stringent security measures should they consider it necessary.

The EU regulatory framework covers all components of the air transport chain which can affect the security of the aircraft and/or infrastructure. It includes: airport, aircraft, passengers, baggage, cargo, airport and in-flight supplies, security staff and equipment. EU rules apply to all airports in the Union that are open to civil aviation, to all operators providing services at these airports, including air carriers, and to all other operators 'applying aviation security standards' providing goods or services to or through such airports. The security standards applied may nevertheless be proportionate to the aircraft/operation/traffic involved.

In this context, each Member State designates a single authority to be responsible for coordinating and monitoring the implementation of aviation

[1] The International Civil Aviation Organisation (ICAO) is the specialised agency of the United Nations established by the Convention on International Civil Aviation (also known as the Chicago Convention), signed on 7 December 1944 and to which 190 States are currently contracting parties. The ICAO notably lays down 'standards and recommended practices' to be enforced by the Contracting States, but there is no binding mechanism to guarantee their proper application.

[2] Annex 17 to the Chicago Convention lays down standards and recommended practices for the protection of the security of international air transport. The Universal Security Audit Programme (USAP) was launched in 2002 to monitor ICAO Contracting States' compliance with these standards.

[3] OJ L 355, 30.12.2002, p. 1.

[4] OJ L 97, 9.4.2008, p. 72.

security law, and also draws up and implements a 'national civil aviation security programme' (which lays down the roles and obligations of all operators concerned). Member States also establish and implement a 'national quality control programme' (to determine the level of compliance of operators and provide measures to correct deficiencies), impose penalties for infringement, and cooperate with the Commission when it conducts inspections to monitor compliance with EU rules on aviation security. The operators concerned must draw up and implement a 'security programme' in order to comply with EU law and the 'national civil aviation security programme' of the Member State in which they are located. The Commission carries out unannounced inspections of airports and operators, in cooperation with the national authorities responsible for aviation security (these authorities are also inspected), in order to monitor the implementation of EU law.

From July 2014, on-site checks at third-country airports will also be carried out by the national authorities concerned, where relevant, in order to assess the implementation of security measures relating to air cargo to be carried to the EU.

To facilitate air transport, the Commission may recognise the equivalence of third countries' aviation security standards.

The current legislative framework leaves it up to Member States to decide how aviation security costs are to be covered. In 2009 the Commission proposed a directive to ensure that key principles such as cost-relatedness and non-discrimination between carriers or passengers are applied. However, this proposal did not adopt a position on the issue of public financing versus the 'user pays' principle, and left it to subsidiarity to determine who pays for security. As things stood in early 2013, this proposal was still to be adopted by the legislator.

Role of the European Parliament

The European Parliament has always taken the view that civil aviation security is one of the EU's main concerns, and has endorsed the setting-up of a strict and effective system to prevent and avoid any terrorist attack. In so doing, Parliament has also emphasised the importance of the fundamental rights of citizens and the need to counterbalance measures to improve aviation security with strong and adequate safeguards aimed at protecting the privacy, personal dignity and health of citizens.

With a resolution of 23 October 2008[1], for example, Parliament forced the Commission to withdraw and modify a proposal on body scanners, while its report of 1 June 2011 urged excluding any form of technology using ionising radiation from use in security screening, and recommended that only stick figures should be used and that the related data should not be stored or saved. The legislation on body scanners adopted in November 2011[2] meets these criteria.

In general terms, Parliament is of the opinion that the comitology procedure is inappropriate in the aviation security sector, at least for measures having an impact on citizens' rights. Its report of June 2011 therefore called for Parliament to be fully involved through codecision (this is still not the case, however).

Concerning the financing of security measures, Parliament takes the view that security charges should only cover security costs and that Member States applying more stringent measures should bear the ensuing additional costs.

Related decisions of the European Parliament:

- Resolution of 23 October 2008 on the impact of aviation security measures and security scanners on human rights, privacy, personal dignity and data protection (P6_TA(2008)0521)[3];
- Legislative resolution of 5 May 2010 on the proposal for a directive of the European Parliament and of the Council on aviation security charges (P7_TA(2010)0123)[4];
- Report of 1 June 2011 on aviation security, with a special focus on security scanners (A7-0216/2011)[5].

→ Marc Thomas

[1] Texts adopted, P6_TA(2008)0521.

[2] Commission Regulations (EU) Nos 1141/2011 (OJ L 293, 11.11.2011) and 1147/2011 (OJ L 294, 12.11.2011).

[3] http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0521+0+DOC+XML+V0//EN

[4] http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P7-TA-2010-0123+0+DOC+PDF+V0//EN

[5] http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bREPORT%2bA7-2011-0216%2b0%2bDOC%2bPDF%2bV0%2f%2fEN

5.6.9. Air transport: Single European Sky

The Single European Sky initiative aims at increasing the efficiency of air traffic management and air navigation services by reducing the fragmentation of European airspace. By its nature, this ongoing initiative is pan-European and open to neighbouring countries.

Legal basis

Article 100(2) of the Treaty on the Functioning of the European Union.

Objectives

The Single European Sky (SES) initiative was launched in 1999 to improve the performance of Air Traffic Management (ATM[1]) and Air Navigation Services (ANS[2]) through a better integration of European airspace. The expected benefits of the SES are (very) huge: compared to 2004, once completed (around 2030) it could triple the airspace capacity; halve the costs of ATM; improve the safety by 10 times; and reduce the impact of aviation on the environment by 10%[3].

Achievements

The Single European Sky was launched as a reaction to delays due to air navigation which had reached a peak in Europe in the late 1990s. The SES aims at reducing the fragmentation (between Member States/civil and military uses/technologies) of the European airspace — thereby increasing its capacity and the efficiency of air traffic management and air navigation services. By its nature, the initiative is pan-European and open to neighbouring countries — as shown by the important role played by Eurocontrol[4] in its implementation. In practice, the SES — which is due for completion around 2030 — should result in reduced flight times (because of shorter paths and fewer delays) and, consequently, in reduced flight costs and aircraft emissions. The first set of common requirements establishing the Single European Sky was adopted in 2004 (SES 1): Regulations (EC) Nos 549/2004 (framework), 550/2004 (provision of air navigation services), 551/2004 (organisation and use of the airspace[5]), 552/2004 (interoperability of technologies and systems). This framework was amended in 2009 (SES 2) to insert performance-based mechanisms into it (Regulation (EC) No 1070/2009). It was also complemented by the extension of EU rules on aviation safety (and the related competencies of the European Aviation Safety Agency) to ATM, ANS and airport operations safety[6]. In parallel, a number of implementing rules and technical standards have been adopted either by the European Commission through the comitology or (seldom) the legislator[7].

This comprehensive regulatory framework has significantly fostered the restructuring of European airspace and the provision of ANS by imposing, notably: the separation of regulatory functions from service provision; the (much more) flexible use of airspace between civil and military; the interoperability of equipment; the harmonised classification of upper airspace[8], a common charging scheme for ANS or the common licensing requirements for air traffic controllers. In addition, the 'key components' which form the structure of the SES have been set up:

- Pursuant to the 'Performance Scheme'[9], binding performance targets on key areas (safety[10], the environment, capacity and cost-efficiency) and incentives aim at improving the overall efficiency of ATM and ANS. The performance

[1] Air Traffic Management (ATM) ensures the safe and efficient movement of aircraft during all phases of operations (through air traffic services + airspace management + air traffic flow management).

[2] Air Navigation Services (ANS) means all the services provided to air navigation: air traffic services; communication, navigation and surveillance services; meteorological services; aeronautical information services.

[3] Please note that these official SES objectives are also those billed by SESAR — which is a bit confusing.

[4] The Organisation for the Safety of Air Navigation (Eurocontrol) is a pan-European civil-military intergovernmental organisation created in 1963 for the purpose of maintaining safety within the field of Air Traffic Management. The organisation is made up of 39 contracting States and the European Union. The European Commission has designated Eurocontrol as 'Performance Review Body' and 'Network Manager' of the SES.

[5] From airport to airport, as airports are entry and exit points to the airspace: this is the 'gate to gate' approach.

[6] By means of Regulation (EC) No 1108/2009.

[7] As is the case with Directive 2006/23/EC of the European Parliament and of the Council on a Community air traffic controller licence.

[8] Airspace is classified in accordance with 'classes' defined by the Chicago Convention on International Civil Aviation and designated from 'Class A' to 'Class G'. Flight rules and the services provided differ from one class to another.

[9] Set up by Regulation (EU) No 691/2010.

[10] From 2015.

targets are adopted by the Commission through the comitology[1]. The 'Performance Review Body' (currently Eurocontrol) helps preparing these targets and monitors the implementation of the Performance Scheme.

- The 'Network Manager' (currently Eurocontrol) deals with the 'network functions' which must be addressed in a centralised manner, as is the case with the design of the European Route Network, Air Traffic Flow Management (ATFM) and the coordination of radio frequencies used by general air traffic.
- The 'Functional Airspace Blocks' (FABs) shall remedy the fragmentation of the European airspace by restructuring its function of traffic flows regardless of national boundaries. This is to allow enhanced cooperation (i.e. better management of airspace/optimisation of the network of roads and economy of scale through the integration of services) or even mergers between service providers across national borders, thus lowering the costs of ANS. In each FAB, the Member States concerned shall jointly designate one or more Air Traffic Service (ATS[2]) providers. So far nine FABs covering 31 countries[3] have been agreed upon.
- The 'SESAR (Single European Sky ATM Research) Joint Undertaking' (set up in 2007) manages the technological and industrial dimension of the SES, i.e. the development and deployment of the new European ATM system. The total estimated cost of the development phase of the SESAR programme (2008-2013/most probably 2017) is EUR 2.1 billion to be shared equally between the EU, Eurocontrol and the industry. The deployment phase (i.e. the large-scale installation of the new system between 2014 and 2020/most probably 2030) could require more than EUR 30 billion.

Thus, it seems that the efficiency of ATM in Europe is improving: the average (en-route and airport) ATFM delay per flight is on a downward slope: from 5.4 minute per flight in 1999 to 1.8 minute in 2011, and around 1 minute in 2012; from 2008 the average horizontal direct en-route extension[4] has been going down continuously from 4.6% to 4.3% in 2011 and around 4.2% in 2012 — i.e. on average the routes flown are 4.2% longer than 'the most direct route' (the famous km in excess); in total, the cost of ANS should decrease by EUR 3.5 billion between 2009 and 2014 (i.e. should amount to 37.2 billion over the period, instead of 40.7 billion at 2009 prices[5]).

The current improvements, however, should not be sufficient to achieve the (very ambitious) SES objectives[6]. In spite of the progress made over the last 10 years, European airspace is still far from full integration. This is certainly due to the huge scope of the initiative (which in any case should not be completed by 2030) and the difficulties and resistances it entails. In 2013 the SES is still an ongoing initiative and the European Commission is about to propose a new set of rules to address 'the existing deficiencies in terms of efficiency and quality of the national air navigation service providers, and the present sub-optimal institutional set-up'.

Role of the European Parliament

The European Parliament has always endeavoured to remove obstacles to the implementation of the Single European Sky through a pragmatic approach. Thus, it is the Parliament that insisted strongly and successfully on the need for a close cooperation between civil and military sectors, in the context of the flexible use of airspace, when the Member States were still reluctant to address the issue. It is also the Parliament that proposed the creation of an industry consultation body to enable stakeholders to advise the European Commission on the technical aspects of the SES. The Parliament has also always advocated the crucial role Eurocontrol had to play in the implementation of the Single Sky, and the need to foster cooperation with neighbouring countries to extend the initiative beyond the borders of the EU.

Considering that the major objectives of the Single European Sky are still to be reached, the Parliament calls now on the Commission to switch from the 'bottom-up' to the 'top-down' approach in order to overcome the remaining reticence and to speed up

[1] The first reference period for the performance scheme covers the calendar years 2012 to 2014 included. The following reference periods shall be of five calendar years.

[2] Air Traffic Services (ATS) means the various flight information services; alerting services; air traffic advisory services and air traffic control services.

[3] All EU Member States plus Bosnia and Herzegovina, Croatia, Norway and Switzerland. However, these FABs (which are set up by mutual agreement between (Member) States pursuant to the so-called 'bottom-up approach') are still largely bound by national boundaries and do not necessarily mirror traffic flows.

[4] This is the difference between the actual flown route (between the departure and terminal areas with a radius of 30 nautical miles around airports) and the direct route. This is the distance 'flown in excess'.

[5] However, it shall be noted that the 2009 cost per service unit was particularly high.

[6] For instance, the airlines and the European Commission intend to halve the cost of ANS by 2020.

the implementation of the initiative — notably with respect to SESAR and the Functional Airspace Blocks.

Major related decisions of the European Parliament:

- Report of 21 January 2004 on the regulation laying down the framework for the creation of the Single European Sky (A5-0010/2004)[1];
- Report of 19 January 2009 on the proposal for a regulation amending Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004 and (EC) No 552/2004 in order to improve the performance and sustainability of the European aviation system (A6-0002/2009)[2];
- Resolution of 23 October 2012 on the implementation of the Single European Sky legislation (P7_TA(2012)0370)[3].

→ Marc Thomas

[1] OJ C 96 E/100, 21.4.2004, p. 99.

[2] OJ C 117 E/44, 6.5.2010, p. 23.

[3] http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0370+0+DOC+XML+V0//EN

5.6.10. Sea transport: strategic approach

European regulations on sea transport focus on the application of the principle of free movement of services and the correct application of competition rules, while ensuring a high level of safety, working conditions, and environmental standards.

Legal basis

Article 100(2) of the Treaty on the Functioning of the European Union, supplemented by the Treaty's general provisions on competition and the freedom to provide services (*3.2.3).

Objectives

Ninety per cent of the EU's foreign trade and 40% of trade between EU Member States is conducted by sea. Each year, more than 3.7 billion tonnes of freight is transhipped in the EU's ports, and the amount is rising; more than 400 million passengers pass through European sea ports. A coherent sea transport policy is therefore vital to the EU's economic development.

The priority aim is to apply the Treaty principle of freedom to provide services to the Union's sea transport industry and ensure that competition rules are complied with. This policy is partly based on the EU's need to defend itself against the threat of unfair competition from the merchant fleets of third countries and to seek fair and stable competitive conditions for sea transport worldwide and for related maritime industrial sectors. The EU is particularly concerned to ensure that the principal maritime transport routes are kept open to all operators, and the global dimension of sea transport needs to be taken into account alongside the further development of a comprehensive international legal framework, bearing in mind the need to represent the EU's interests in a coordinated and effective manner in international fora.

Sea transport makes a substantial contribution, both directly and indirectly, to job creation in the EU. Improving working conditions, remedying shortages of skilled labour or professional qualification measures are therefore also priorities of policy on sea transport.

Sea transport is also a fundamental part of the Integrated Maritime Policy (IMP, 5.4.8). The EU's maritime safety policy is dealt with in a separate chapter (*5.6.11).

Achievements

A. General approach

Sea transport was the subject of a 1985 Commission memorandum entitled 'Progress towards a common transport policy — maritime transport' and a 1996 communication, 'Towards a new maritime strategy'. The Commission Green Paper on sea ports and maritime infrastructures [COM(97) 678)] contained a detailed review of the industry and took a close look at the problems of port charges and market organisation, including integrating ports into the TEN-T networks.

B. Market access

Regulation (EEC) No 4055/86 of 22 December 1986, applying the principle of freedom to provide services to maritime transport between Member States and third countries, abolished the restrictions on EU shipowners after a transitional period. Regulation (EEC) No 4058/86 of 22 December 1986, on coordinated action to safeguard free access to cargoes in ocean trade, enabled the Community to take retaliatory measures against restrictions on the free access to cargoes.

In June 1992 the Council adopted a package of measures to phase in the liberalisation of cabotage, i.e. access for carriers not resident in a given Member State to the maritime transport market between the ports of that Member State. Council Regulation (EEC) No 3577/92 of 7 December 1992 laid down the principle of liberalisation of cabotage from 1 January 1993 for Community shipowners operating vessels registered in a Member State, a process completed on 1 January 1999.

C. Competition rules

On 22 December 1986 the Council adopted Regulations (EEC) Nos 4056/86 and 4057/86 as part of a maritime package. The first of these regulations laid down the procedures for applying the rules on competition to international maritime transport to or from one or more Community ports and aimed to ensure that competition was not distorted by means of agreements. On 13 October 2004, the Commission adopted a White Paper on the review of Regulation (EEC) No 4056/86, applying the EC competition rules to maritime transport [COM(2004) 675].

In 2004, the Commission also submitted revised guidelines for state aid to maritime transport [Communication COM(2004) 43]. This indicated what aid — particularly for the purpose of promoting the entry of vessels in the registers of the Member States or a return to registration under their flags — was compatible with Community law.

In February 2001 the Commission submitted a package of measures to establish clear rules and to

set up an open and transparent procedure for access to services in ports — the 'ports package' [COM(2001) 35] aiming to open up port services to competition, both at individual sea ports and between them. After the EP had rejected the proposal at third reading on 20 November 2003, the Commission made a fresh attempt to tackle the matter and on 13 October 2004 submitted a new proposal [COM(2004) 654], which the EP also rejected, this time at first reading, on 18 January 2006, and some time later the Commission withdrew it.

The Commission then carried out a comprehensive consultation process, which resulted in its submission in October 2007 of the considerably broader 'Communication on a European Ports Policy' [COM(2007) 616]. In it the Commission again discusses the framework conditions of competition law within and between the ports and announces guidelines for state aid to ports, for example. In addition, the communication deals with other challenges, however, such as efficiency and future capacities required by the ports, as well as the necessary connections with the hinterland, environmental concerns and the far-reaching change in sea transport.

D. Working conditions

Directive 1999/63/EC of 21 June 1999 was based on an agreement between the European Community Shipowners' Associations (ECSA) and the Federation of Transport Workers' Unions (ETF) in the EU. It concerns the organisation of the working time of seafarers on board EU Member State-flagged ships, while Directive 1999/95/EC of 13 December 1999 applies it to third-country ships calling at Community ports.

The International Labour Organisation (ILO) accepted the Maritime Labour Convention on 23 February 2006 to create a single, self-contained instrument comprising all the current standards relating to maritime labour: seafarers' right to a safe, secure job in accordance with current safety standards, as well as to appropriate employment and living conditions, health protection, medical care, and social protection. Directive 2009/13/EC implements an agreement by ECSA and ETF on this Convention.

Directive 2012/35/EU of 21 November 2012 amending Directive 2008/106/EC on the minimum level of training of seafarers stipulates that the training and certification of seafarers is regulated by the International Maritime Organisation (IMO) Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978 (the 'STCW Convention'), which entered into force in 1984 and which was significantly amended in 1995. The directive transposes the latter in Union law, in order to maintain the competitiveness of seafarers from the Union as well as to uphold safety on-board ships through up-to-date training.

E. Environmental standards for sea transport

In recent years, numerous measures have been adopted on protecting the marine environment. They include:

- Directive 2000/59/EC of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues, which made it compulsory to dispose of oil, oily mixtures, ships' waste and cargo residues at EU ports, and provided for monitoring to enforce this;
- Regulation (EC) No 782/2003 of 14 April 2003 on the prohibition of organotin compounds on ships; such compounds were used primarily as anti-fouling agents, to prevent the growth of organisms on ships' hulls, but cause serious environmental damage;
- Directive 2005/35/EC of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements; this contains precise definitions of offences and also provides for effective, dissuasive and proportionate penalties — criminal or administrative — for violation of the rules. In May 2009 the EP and the Council of Ministers agreed on the revised directive, under which emissions of pollutants from ships are also defined as criminal offences in less serious cases if committed with intent, recklessly or by serious negligence;
- a series of directives on reducing the sulphur content of marine fuels, culminating with Directive 2012/33/EU of 21 November 2012.

F. EU sea transport policy until 2018

In January 2009, the Commission submitted a communication on strategic goals and recommendations for the EU's maritime transport policy until 2018 [COM(2009) 8]. It presented the principal strategic options for the EU's maritime transport system, looking ahead to 2018. The main fields in which measures could be taken and a wide range of impending challenges were identified, particularly:

- EU maritime shipping in globalised markets and in the face of increased competition;
- human resources, seamanship and maritime know-how. Possible measures concerned, in particular, increasing the attractiveness of the maritime professions, improving the employment prospects of seafarers, promoting lifelong professional prospects in maritime sectors and improving the image of shipping. Consideration was also given to ensuring the implementation of the ILO 2006 Maritime Labour Convention and improving the training and further training of crews;

- measures to work towards the long-term objective of 'zero-waste, zero-emission' maritime transport and measures to improve maritime safety and prevent terrorism and piracy;
- exploiting the full potential of short sea shipping, for example by creating a European maritime transport space without barriers and fully implementing the projects to establish the motorways of the sea or link ports to their hinterland;
- maritime research and innovation: the Commission recommended promoting innovation and technological R&D in order to improve the energy efficiency of ships, reduce their environmental impact and provide better quality of life at sea. It also advocated establishing a reference framework to enable the deployment of 'e-Maritime' services at European and global levels.

Over the next few years the Commission will submit various proposals on the fields of action listed in this communication.

Role of the European Parliament

Parliament's resolution of 24 April 1997 welcomed the Commission communication 'Towards a new maritime strategy' and underlined the need for a level playing field, while attaching value to seafarers' social protection in accordance with international agreements, with which Parliament considered that vessels flying flags of convenience should also comply. Parliament also called for clarification of the legal status of second registers and for a Community register.

In Parliament's 1999 opinion, the proposals for directives on market access in ports submitted after the Commission Green Paper on sea ports were not suitable for regulating competition in and between ports. Accordingly, the EP rejected these proposals, as described above, and thus brought these legislative procedures to a halt.

In its resolution of 12 April 2005 on short sea shipping, the EP called for short sea shipping to be promoted more strongly, for administrative procedures to be reduced as much as possible, for the development of high-quality corridors between Member States and for priority to be given to investment in infrastructure in order to improve access to ports.

In its resolution of 5 May 2010 on strategic goals and recommendations for the EU's maritime transport policy until 2018, the EP supported the Commission's approach in principle, and called for a long list of concrete measures (further action against abuses of flags of convenience, state aid to preserve the competitiveness of EU shipping, greater consideration of maritime within the TEN-Ts, as well as improving the sustainability of sea transport by reducing emissions from ships, internalising external costs and introducing worldwide environmental standards under the IMO).

On 15 December 2011, the EP adopted its own-imitative report on a Roadmap to a Single European Transport Area in response to the 2011 Commission White Paper. With regard to maritime transport, the EP called for (i) a proposal to be put forward by 2013 on the 'Blue Belt'; (ii) an introduction of a European policy for short and medium sea shipping; and (iii) under the next multiannual financial framework for the period 2014-2020, the allocation of at least 15% of TEN-T funding to projects that improve sustainable and multimodal connections between seaports, inland ports and multimodal platforms.

→ Jakub Semrau

5.6.11. Maritime transport: traffic and safety rules

A number of EU directives and regulations, in particular the three legislative packages adopted in the wake of the Erika and Prestige oil tanker disasters, have significantly improved safety standards in maritime transport in recent years.

Legal basis

Title VI in particular Articles 91(1)(c) and 100(2) of the Treaty on the Functioning of the European Union.

Objectives

Safety at sea is a key element of maritime transport policy with a view to protecting passengers and crew members as well as the marine environment and coastal regions. Given the global nature of maritime transport, the International Maritime Organisation (IMO) develops uniform and internationally recognised safety standards. The primary international agreements include the International Convention for the Prevention of Pollution from Ships (MARPOL), the International Convention for the Safety of Life at Sea (SOLAS) and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW). Prompt amendment of EU law to incorporate these international law-based agreements is a fundamental objective of the EU's maritime transport policy. In the past, however, some IMO measures intended to improve maritime safety have proved inadequate. Consequently, Member State and EU participation in the development and improvement of the international agreements and the adoption of additional measures at EU level have been just as important.

Achievements

A. Basic legislation

The EU's contribution is primarily to transpose international rules into EU law in order to ensure they have legal force and are uniformly applied throughout the Member States. In the 1990s, considerable progress was made in this regard.

1. Seafarer training

Directive 94/58/EC of 22 November 1994 on the minimum level of training of seafarers gave the 1978 IMO Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) the force of EU law. The convention underwent significant revisions in 1995, prior to being codified by Directive 2001/25/EC of 4 April 2001, and replaced by recast Directive 2008/106/EC of 19 November 2008. The directive outlined the rules on training and competency standards for seafarer certification, and regulated specialist training, Member States' requirements on seafarer training, communication between crew members and the verification of crew members' certificates (port State control). Significant changes were made to the STCW Convention (strengthening combating fraudulent certification, standards for physical aptitude, updating safety training) in 2010. These new provisions have to be transposed into national law under Directive 2012/35/EU of 21 November 2012 amending Directive 2008/106/EC on the minimum level of training of seafarers.

2. Marine equipment

Directive 96/98/EC of 20 December 1996 on marine equipment seeks to ensure the uniform application of the SOLAS Convention on equipment for commercial vessels and to make the IMO resolutions deriving from it mandatory.

3. Passenger ship safety

The EU adopted Regulation (EC) No 3051/95 of 8 December 1995 on the safety management of roll-on/roll-off passenger ferries (ro-ro ferries). Safety on ships providing scheduled services between two EU ports is regulated by Directive 2009/45/EC of 6 May 2009, which consolidated and recast the safety rules and standards for passenger ships established by Directive 98/18/EC, repealing it. Directive 98/41/EC of 18 June 1998 on the registration of persons sailing on board passenger ships made it possible for passenger numbers to be monitored and for quicker and more efficient rescue operations in the event of an accident.

4. Port State control

The aim of Directive 95/21/EC of 19 June 1995 was to enforce international safety and environmental protection standards more effectively, by means of regular mandatory inspections at EU ports (port State control), not only by flag States, but also in part by the respective port authorities. The directive has been further developed under the new maritime safety package (see below).

5. Ship inspection and survey organisations (classification societies)

The common rules and standards for ship inspection and survey organisations (classification societies) were laid down in Council Directive 94/57/EC of

22 November 1994. It was also amended under the *Erika* I package (see below).

B. Developments since the *Erika* and *Prestige* disasters

Since the wreck of the *Erika* and *Prestige* oil tankers, in 1999 and 2002 respectively, EU safety standards for maritime transport have once again been strengthened considerably:

1. *Erika* I package

Directive 2001/105/EC of 19 December 2001 strengthened and standardised the legal provisions laid down in the previous directive on ship inspection and survey organisations (classification societies). Directive 2001/106/EC of 19 December 2001 made port State control by Member States mandatory for certain potentially hazardous vessels. The directive also introduced a 'blacklist' of ships on which can be refused access to EU ports. Regulation (EC) No 417/2002 of 18 February 2002 set a fixed timetable for the withdrawal from service of single-hull oil tankers, to be replaced by safer double-hull vessels. Following the *Prestige* oil tanker disaster, a more rigorous timetable was adopted in Regulation (EC) No 1726/2003 of 22 July 2003, until Regulation (EU) No 530/2012 of 13 June 2012 on the accelerated phasing-in of double-hull or equivalent design requirements for single-hull oil tankers repealed Regulation (EC) No 417/2002, and countered certain potential exemptions under IMO rules. It specifies that only double-hull oil tankers carrying heavy grade oil will be allowed to fly the flag of a Member State, and bans all single-hull oil tankers, irrespective of the flag, from ports or offshore terminals or from anchoring in areas under Member States' jurisdiction.

2. *Erika* II package

Directive 2002/59/EC of 27 June 2002 established a Community vessel traffic monitoring and information system (SafeSeaNet). Responsibility lies with the owner of a ship, prior to it entering a Member State port, to supply certain information to the relevant port authorities, particularly for dangerous or polluting cargoes. The directive made it mandatory for ships to be equipped with automatic identification systems (AIS) and voyage data recorders (VDRs) or 'black boxes'. Relevant Member States' authorities have the right to prohibit ships from leaving a port in unfavourable weather conditions. Regulation (EC) No 1406/2002 of 27 June 2002 established a European Maritime Safety Agency (EMSA). EMSA's role is to provide the Member States and Commission with scientific and technical support and to ensure that safety rules in maritime transport are enforced. Its remit has expanded over time to incorporate pollution control (providing operational assistance upon request of affected Member States) and satellite-based vessel monitoring systems. The basic regulation has been amended three times, most recently in 2013. Regulation (EU) No 100/2013 of 15 January 2013 has amended the EMSA regulation, clarifying EMSA's core and ancillary tasks. The Agency's core tasks include (i) preparatory work for updating and developing relevant legal acts, in particular in line with international legislation; (ii) effective implementation of relevant binding legal acts; (iii) providing appropriate information resulting from inspections in order to support the monitoring of the recognised organisations that carry out certification tasks on behalf of Member States; and (iv) supporting pollution response actions in case of pollution caused by ships as well as marine pollution caused by oil and gas installations. The Agency is also tasked with facilitating cooperation between the Member States and the Commission by: (i) developing and operating the EU Long-Range Identification and Tracking of Ships (LRIT) European Data Centre and the Union Maritime Information and Exchange System (SafeSeaNet); (ii) providing relevant vessel positioning and Earth observation data to the competent national authorities and relevant Union bodies; (iii) providing operational support to Member States concerning investigations related to serious or very serious casualties. EMSA's ancillary tasks (if they create substantial added value, avoid the duplication of efforts and do not infringe upon Member States' rights) relate to: (i) achieving good environmental status of marine waters; (ii) greenhouse gas emissions from ships; (iii) development of a Common Information Sharing Environment for the EU maritime domain; (iv) potential threats arising from mobile offshore oil and gas installations; (v) provision of relevant information with regard to classification societies for inland waterway vessels; and (vi) facilitating voluntary exchange of best practices in maritime training and education.

3. The third maritime safety package

Following intense negotiations, Council and Parliament reached agreement in December 2008 on a third legislative package comprising:

- a recast of the directive on port State control (Directive 2009/16/EC of 23 April 2009) to ensure more frequent and more effective inspections under new monitoring mechanisms linked to potential risk;
- Directive 2009/21/EC of 23 April 2009 on flag State requirements, which enables compliance on the part of ships flying a Member State flag to be monitored more effectively;
- Directive 2009/17/EC of 23 April 2009 amending the directive establishing a Community vessel traffic monitoring and information system (SafeSeaNet), aiming to improve the framework legal conditions concerning places of refuge

for ships in distress and to further develop SafeSeaNet;

- Regulation (EC) No 391/2009 and Directive 2009/15/EC of 23 April 2009 establishing common rules and standards for ship inspection and survey organisations, aiming at an independent quality monitoring system to eliminate the outstanding flaws in inspection and certification procedures for the world fleet;
- Directive 2009/18/EC of 23 April 2009 establishing fundamental principles governing investigation of accidents, with standard principles for investigations at sea and a system for pooling findings;
- Regulation (EC) No 392/2009 of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents;
- Directive 2009/20/EC of 23 April 2009 on the insurance of shipowners for maritime claims.

C. Security on ships and in port facilities

The terrorist attacks of 11 September 2001 led to the ISPS Code (International Ship and Port Facility Security) being adopted at an IMO conference in 2002, and amendments to other international agreements. The aim is to ensure that ships and port facilities are better protected, particularly against terrorist attacks. Regulation (EC) No 725/2004 of 31 March 2004 is designed to ensure that decisions adopted by the IMO are interpreted and implemented uniformly.

Role of the European Parliament

The EP has been very supportive of maritime safety initiatives and has contributed to progress in this area through its own proposals. In the wake of the *Erika* oil tanker disaster, in its resolutions of 20 January and 2 March 2000 Parliament invited the Commission to submit practical initiatives to improve maritime traffic safety. The resulting *Erika* I and *Erika* II maritime safety packages received Parliament's support which pressed for the legislative procedure to be concluded swiftly and secured some notable improvements. Following the wreck of the *Prestige* oil tanker off the Spanish coast in 2002, Parliament decided to set up a temporary committee on improving maritime safety (MARE). In the final report adopted by MARE in April 2004, Parliament made numerous recommendations for a future comprehensive and coherent maritime transport policy, based on the following additional measures: a ban on vessels which do not comply with standards, introduction of a civil liability system covering the entire maritime transport chain and improvements to the training, living and working conditions of seafarers. Parliament also called for the creation of a European coastguard service, mandatory piloting in environmentally sensitive and difficult areas and for clear emergency decision-making and leadership in the Member States, also relative to the mandatory allocation of a place of refuge or emergency port. Two of the proposals included in the third maritime safety package (obligations and civil liability of flag states), remained blocked in the Council for a period of time, but continued pressure from Parliament succeeded in securing agreement on all the proposals whilst preserving key elements of the original Commission proposals. In the context of the review of the directive on the Community vessel traffic monitoring and information system, Parliament ensured that Member States are required to designate an appropriate authority to take decisions under its own responsibility on how a shipwreck can be prevented and which port should accommodate the ship in need of assistance. A legal framework for emergency ports, which Parliament had already called for on several occasions, is an essential requirement for improving maritime transport safety. Parliament has thus been the driving force behind the significant improvements made to maritime safety, from the first through the third maritime safety package (particularly via the work of its Temporary Committee on Improving Maritime Safety (MARE) in 2004). In its legislative resolution on the proposal for a regulation amending Regulation (EC) No 1406/2002, adopted on 15 December 2011, Parliament recommended that the EMSA's activities be expanded. It specifically advocated that its traffic monitoring systems could contribute to the creation of a European maritime space without barriers, which would enable goods and passengers to be transported between Member States by sea with no additional formalities than if they were being transported by road.

→ Jakub Semrau

5.6.12. Tourism

Since December 2009 tourism has had its own legal basis. However, it still does not have its own separate budget in the new financial perspective (2014-2020).

Legal basis

Article 6 of the Treaty on the Functioning of the European Union (TFEU) stipulates that tourism falls within the EU's powers to support the Member States. The legal basis can be found in Article 195, Title XXII of the TFEU.

Because of its multifarious nature, tourism concerns also the free movement of people, goods and services, small and medium-sized enterprises (SMEs), consumer protection, the environment and climate change, as well as transport, visa policy and regional policy.

Objectives

The EU's tourism industry in its strictest sense (traditional providers of holidays and tourism services) is made up of 1.8 million companies, primarily small and medium-sized enterprises (SMEs). It contributes 5% to GDP and accounts for 5.2% of the total labour force (which equates to around 9.7 million jobs). When its close links with other economic sectors are taken into account, this figure becomes even higher (10% of GDP and 12% of total employment). It is therefore the third most important socioeconomic activity in the EU.

Statistics on international tourist arrivals (from countries both outside and within the Union) show the EU to be the most popular tourist destination in the world. Because of its economic weight, the tourism sector is an integral part of the EU's economy. Tourism policy is also a means for the EU of pursuing general goals in the fields of employment and growth. Tourism's environmental dimension will also gain in significance over time, and is already present in the context of sustainable, responsible and ethical tourism.

Achievements

A. General policy

Since the European Council of 21 June 1999 on the topic 'tourism and employment', the EU has become increasingly aware of tourism's contribution to employment in Europe. In its communication [COM(2001) 665] on 'Working together for the future of European tourism', the Commission proposed an operational framework and measures to boost the EU tourism industry. The Council Resolution of 21 May 2002 on the future of tourism ratified the Commission's approach and, aiming to make Europe a top tourist destination, swiftly gave rise to increased cooperation between public and private stakeholders in the EU tourism industry.

On this basis the Commission subsequently implemented a plethora of measures and activities. The following are examples of the results of this strategy:

- Tourism Satellite Accounts (TSA) per Member State, aiming at presentation of the first European satellite account;
- the launch of an Internet portal to promote Europe as a tourist destination;
- the annual European Tourism Forum, held since 2002 (in 2012 in Nicosia, Cyprus, on the topics of 'Promoting Europe as a tourist destination' and 'Facilitation of tourism flows to Europe').

Between 2001 and 2012 the Commission published six communications on its policy guidelines for the development of the tourism sector. These included:

- [COM(2007) 621 final] of 19 October 2007 — Agenda for a sustainable and competitive European tourism — which set out the option of sustainable development to ensure the long-term competitiveness of tourism and announced a three-yearly set of preparatory activities;
- [COM(2010) 352 final] of 30 June 2010 — Europe, the world's No 1 tourist destination — a new political framework for tourism in Europe — which analyses the relevant factors and the obstacles to the competitiveness and sustainable development of tourism;
- [COM(2012) 649 final] of 7 November 2012 — Implementation and development of the common visa policy to spur growth in the EU — which aims to increase tourist flows from third countries through the common visa policy.

B. Special measures

1. For tourists — travellers and/or holidaymakers

These include measures to make border-crossing easier and protect both health and safety and the material interests of tourists, such as Council Recommendation 86/666/EEC on fire safety in hotels, Directives 90/314/EEC on package travel, package holidays and package tours (currently being revised) and 2008/122/EEC on timeshare properties. In addition, rules on passenger rights in all areas of transport have been adopted (*5.6.2). A further example of the connection between tourism and another area of EU competence comes from Directive 2006/7/EC of 15 February 2006 on the

quality of bathing water, which will repeal Directive 76/160/EEC on 31 December 2014, for target groups or priority subjects.

At Parliament's request, the Commission has launched several initiatives in the form of five preparatory programmes on targeted topical issues for European tourism (see below the European Parliament resolution of 29 November 2007):

'Eden', which focuses on promoting European tourist destinations of excellence, little-known emerging destinations which respect sustainability principles. The funding for this preparatory programme expired in 2011, but the Commission has continued to implement the programme under the Competitiveness and Innovation Framework Programme (CIP/EIP).

'Calypso', which focuses on social tourism for senior citizens, underprivileged young people, disadvantaged families and people with reduced mobility. The aim is to enable as many people as possible to travel, while at the same time helping to even out seasonal imbalances; again, the Commission has pledged to continue this programme under the Competitiveness and Innovation Framework Programme.

The 'Sustainable tourism' programme, including 'the Green Belt' (6 800 km of paths from the Barents Sea to the Black Sea), the aim of which is to promote the transformation of the former Iron Curtain into a cross-border network of walking and cycle paths; this programme, too, has been continued under the Competitiveness and Innovation Framework Programme.

The 'Transnational cultural tourism products' programme focuses on cultural and industrial tourism and seeks to support cross-border projects for a sustainable thematic tourism. 'Accessible tourism for all' aims to make the tourism supply chain accessible to all, to the benefit of people with disabilities, elderly travellers and people having temporary difficulties. These last two preparatory activities were launched in 2012 and are designed to last for three years.

In addition, many other activities have been launched by the Commission, such as, in 2011, the '50 000 tourists' pilot initiative, the aim of which is to encourage tourist flows between various non-EU countries in low season, starting with Latin America and Europe; on the one hand, the programme aims to encourage South Americans to travel to Europe (October 2012-March 2013) and, on the other, to encourage Europeans to travel to South America (May-October 2013).

2. For the tourist industry and the regions, and for responsible tourism

The regions are the national institutions that are strategically the most important in developing tourism in a sustainable way and boosting the competitiveness of European destinations. The Commission also supports the creation of networks between the main European tourist regions. In July 2009, NECSTouR, an open network of European tourist regions was established to serve as a platform for the exchange of knowledge and innovative solutions on competitive and sustainable tourism. As regards the contribution tourism makes to regional development and employment in the regions concerned, the EU has other sources of funding: the ERDF for sustainable projects linked to tourism, the Interreg programme, the Cohesion Fund for environmental and transport infrastructure, the ESF for employment, the Leonardo da Vinci programme for professional training, the EAFRD for diversification of the rural economy, the EFF for ecotourism restructuring, the Competitiveness and Innovation Framework Programme (CIP) and the Seventh Framework Programme for Research (FP7). In this regard, under the 2014-2020 multiannual financial framework, the COSME programme will take over from the CIP and Horizon 2020 will take over from FP7.

At present, for tourism, the Commission has only a modest budget of between EUR 5 and 6 million per year, not including the preparatory activities and pilot projects proposed by the budgetary authority. Within the framework of the new financial perspective, under the 'Programme for the Competitiveness of Enterprises and SMEs' (COSME), it will be allocated a total of EUR 109.9 million. Harmonised statistical data on tourism have been collected in the EU since 1996. Regulation (EU) No 692/2011 of 6 July 2011 established a common framework for the systematic development, production and dissemination of European statistics on tourism collected in the Member States.

In its communications [COM(96) 547 final] of 27 November 1996 and [COM(99) 262 final] of 26 May 1999, the Commission announced and developed an EU campaign against sex tourism involving children and was encouraged to continue it by the Council conclusions of 21 December 1999.

Role of the European Parliament

In December 1996, Parliament had already supported an EU tourism measure, by approving the first multiannual 'Philoxenia' programme (1997-2000), which was later abandoned due to a lack of unanimity in the Council.

In its resolution of 30 March 2000 on the implementation of measures to combat child sex tourism [COM(99) 262 final], Parliament had demanded that Member States introduce universally binding extraterritorial laws, making it possible to legally pursue and punish people who, whilst abroad, committed illegal acts relating to the

sexual exploitation of children. On 27 October 2011, it adopted a legislative resolution on combating the sexual abuse and sexual exploitation of children. Thanks to Directive 2011/92/EU of 13 December 2011, child sex tourism will, in December 2015, become a criminal offence throughout the EU; Article 21 of that directive, in particular, lays down national measures to prevent or prohibit the organisation of travel for the purpose of committing this type of offence.

Well before the entry into force of the Treaty of Lisbon, Parliament had adopted a series of resolutions on the Commission guidelines and initiatives concerning tourism, the most noteworthy of which are those of 8 September 2005 on 'New prospects and new challenges for sustainable European tourism', of 29 November on 'A renewed EU tourism policy: Towards a stronger partnership for European Tourism' and of 16 December 2008 on the regional development aspects of the impact of tourism on coastal regions. Parliament thus addressed the effect that visa policy has on tourism and supported the promotion of European tourist destinations. It also suggested the creation of a European Heritage label and the establishment of a cross-border cycle route along the former Iron Curtain, and encouraged the sector to diversify its supply of services in order to respond to the seasonal fluctuations of tourism.

Lastly, Parliament adopted resolution P7_TA(2011)0407, on the basis of its own-initiative report (the first since the Lisbon Treaty) entitled 'Europe, the world's No 1 tourist destination'. While supporting the 21-point policy strategy presented by the Commission, Parliament wishes to promote a competitive, modern, high-quality and sustainable tourism that is accessible to all, by focusing on Europe's multiculturalism. Members of Parliament stressed the importance of measures taken in other sectors that could have a decisive impact on tourism, such as employment, taxes or consumer rights. They also called for a review of Directive 90/314/EEC on package travel. Parliament's call for a specific programme for tourism, under the 2014-2020 financial perspective, was not, however, accepted by the Council.

→ Piero Soave

5.7. Energy policy

5.7.1. Energy policy: general principles

Challenges facing Europe in the field of energy include issues such as increasing import dependency, limited diversification, high and volatile energy prices, growing global energy demand, security risks affecting producing and transit countries, the growing threats of climate change, slow progress in energy efficiency, challenges posed by the increasing share of renewables, and the need for increased transparency, further integration and interconnection on energy markets. A variety of measures aiming to achieve an integrated energy market, security of energy supply and sustainability of the energy sector are at the core of the European energy policy.

Legal basis

Article 194 of the Treaty on the Functioning of the European Union (TFEU).

Specific provisions:

- Security of supply: Article 122 TFEU;
- Energy networks: Articles 170-172 TFEU;
- Coal: Protocol 37 clarifies the financial consequences resulting from the expiry of the ECSC Treaty in 2002;
- Nuclear energy: The Treaty establishing the European Atomic Energy Community (Euratom Treaty) serves as the legal basis for most European actions in the field of nuclear energy.

Other provisions affecting energy policy:

- Internal energy market: Article 114 TFEU;
- External energy policy: Articles 216-218 TFEU.

Objectives

According to the Treaty of Lisbon, the main aims of the EU's energy policy are:

- to ensure the functioning of the energy market;
- to ensure security of energy supply in the Union;
- to promote energy efficiency and energy saving and the development of new and renewable forms of energy; and
- to promote the interconnection of energy networks.

Article 194 TFEU makes some areas of energy policy a shared competence, signalling a move towards a common energy policy. Nevertheless, each Member State maintains its right to 'determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply' (Article 194, paragraph 2).

Achievements

A. General policy framework

The current policy agenda is driven by the comprehensive integrated climate and energy policy adopted by the European Council in March 2007, which sets out to achieve the following by 2020:

- a reduction of at least 20% in greenhouse gas emissions compared to 1990 levels;
- an increase to 20% of the share of renewable energies in energy consumption;
- an improvement of 20% in energy efficiency.

A Green Paper entitled 'A 2030 framework for climate and energy policies' (COM(2013) 169), launching discussions on the post-2020 goals and policies, was published by the Commission on 27 March 2013.

Different long-term scenarios are described in the Commission Communication entitled 'Energy Roadmap 2050' (COM(2011) 885/2), which reflects on the challenges and opportunities the EU is facing on its road to long-term decarbonisation.

B. Completing the Internal Energy Market

On 4 February 2011, the European Council agreed upon an ambitious objective to complete the Internal Energy Market by 2014 and to ensure that there are no energy islands in the EU. This objective was reaffirmed by the European Council in May 2013. The Third Energy Package, the Regulation on Guidelines for Trans-European Energy Infrastructure (Regulation (EU) No 347/2013) and the Regulation on Wholesale Energy Market Integrity and Transparency (Regulation (EU) No 1227/2011) are some of the main legislative instruments aiming to contribute to the better functioning of the internal energy market (*5.7.2).

C. Strengthening external energy relations

A The Commission Communication entitled 'On the security of energy supply and international cooperation — EU energy policy: Engaging with partners beyond our borders' (COM(2011) 539) was adopted on 7 September 2011, with the objective of promoting further crossborder cooperation on the part of the EU with its neighbouring countries and creating a wider regulatory area, through regular information exchange on intergovernmental agreements and collaboration in the areas of competition, safety, network access and security of supply. Following on from this, the decision to set up an information exchange mechanism with regard to intergovernmental agreements between Member States and third countries in the field of energy (T7-0343/2012) was adopted on 25 October 2012.

D. Improving security of energy supply

In light of the crucial importance of gas and oil for the security of the EU's energy supply, the EU adopted several measures to ensure that risk assessments are carried out and that adequate preventive action plans and emergency plans are developed. Regulation (EU) No 994/2010 concerning measures to safeguard the security of the gas supply, repealing Council Directive 2004/67/EC, was adopted on 20 October 2010 with the aim of strengthening prevention and crisis response mechanisms. Directive 2009/119/EC requires Member States to maintain a minimum of oil stocks, corresponding to 90 days of average daily net imports or 61 days of average daily inland consumption, whichever of the two quantities is greater.

E. Boosting energy efficiency

The cornerstone of EU energy efficiency policy is the Directive on Energy Efficiency (2012/27/EU) adopted on 25 October 2012, which aims to bring Member States back on track towards meeting the 2020 targets. Some other important policy instruments include product labelling and measures targeting the energy efficiency of buildings (*5.7.3).

F. Making the best use of the EU's indigenous energy resources (including renewables)

One of the agreed priorities of the May 2013 European Council was to intensify the diversification of EU energy supply and to develop local energy resources in order to ensure security of supply and reduce external energy dependency. With regard to renewable energy sources, Directive 2009/28/EC (adopted in April 2009) introduced a 20% target to be reached by 2020 (*5.7.4).

G. Research, development, and demonstration projects

1. The EU's Seventh Framework Programme for Research(FP7)

The FP7 for research, technological development and demonstration activities runs from 2007 to 2013, and is the main EU tool for promoting energy research. It encompasses many, research and development, and demonstration projects to support energy policy objectives, in particular in the fields of energy efficiency and sustainability. Under the FP7 cooperation programme, EUR 2 350 million has been earmarked to support energy projects for the period 2007-2013. The recently proposed financial instrument for boosting EU research, competitiveness and innovation — Horizon 2020 — with a total budget of EUR 80 billion will provide further support for the development of clean, secure and efficient energy and sustainable development.

2. Intelligent Energy — Europe programme (2007-2013)

This programme, under the Competitiveness and Innovation Programme (CIP 2007-2013, Decision 1639/2006/EC), is helping to speed up efforts to achieve objectives in the field of sustainable energy. It supports improvements in energy efficiency, the adoption of new and renewable energy sources, greater market penetration for these sources of energy, energy and fuel diversification, an increase in the share of renewable energy and a reduction in final energy consumption (in particular in the transport sector). The programme is the EU's tool for funding projects in this area and has a total budget of EUR 730 million for the period 2007-2013.

3. European Strategic Energy Technology Plan (SET-Plan)

The SET-Plan, adopted by the Commission on 22 November 2007, was aimed at accelerating the market introduction and take-up of low-carbon and efficient energy technologies. The Plan promoted measures to help the EU position itself to develop the technologies needed for meeting its political objectives and, at the same time, to ensure that its companies could benefit from the opportunities of a new approach to energy. The Commission Communication on 'Investing in the Development of Low Carbon Technologies (SET-Plan)' (COM(2009) 0519) evaluated the implementation of the SET-Plan and concluded that stronger EU-level intervention should be considered if the plans to develop a broad portfolio of technologies were to succeed.

4. Future energy technology strategy

The Commission Communication on 'Energy Technologies and Innovation' (COM(2013) 0253), published on 2 May 2013, sets out the strategy to

enable the EU to have a world-class technology and innovation sector fit for coping with the challenges up to 2020 and beyond.

Role of the European Parliament

Parliament has always expressed its strong support for a common energy policy addressing competitiveness, security and sustainability issues. It has called a number of times for coherence, determination, cooperation and solidarity between Member States in facing current and future challenges in the EU Internal Market and for the political commitment of all EU countries, as well as a strong initiative from the Commission in progressing towards the 2020 objectives.

It has been striving for greater energy market integration and the adoption of ambitious, legally binding targets for renewable energy, energy efficiency and greenhouse gas reductions. In this context, Parliament supports the adoption of stronger commitments to the EU's own targets, underlining that the new energy policy must support the long-term objective of reducing the EU's greenhouse gas emissions by 80-95% by 2050.

It also supports diversification of energy sources and routes of supply, in particular the development of the southern gas corridor, deeper cooperation with countries in the Caspian Sea region and, more generally, the importance of the gas and electricity interconnections through central and south-eastern Europe along a north-south axis, creating more interconnections, diversifying liquefied natural gas terminals and developing pipelines, thereby opening up the internal market.

With a view to Europe's growing dependence on fossil fuels, Parliament welcomed the SET-Plan, convinced that it would make an essential contribution to sustainability and the security of supply, and prove to be absolutely necessary in attaining the EU's energy and climate goals for 2020. Underlining the significant role of research in ensuring a sustainable energy supply, Parliament stressed the need for common efforts in the field of new energy technologies, in both renewable energy sources and sustainable fossil fuel technologies, as well as for additional public and private funding to ensure the successful implementation of the plan.

Recent major resolutions:

- 21 May 2013 on current challenges and opportunities for renewable energy in the European internal energy market (T7-0201/2013);
- 21 May 2013 on the proposal for a Regulation of the European Parliament and of the Council on safety of offshore oil and gas prospection, exploration and production activities (T7-0200/2013);
- 14 March 2013 on the Energy Roadmap 2050, a future with energy (T7-0088/2013);
- 12 March 2013 on the proposal for a Regulation of the European Parliament and of the Council on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC (T7-0061/2013);
- 11 September 2012 on the proposal for a Directive of the European Parliament and of the Council on energy efficiency and repealing Directives 2004/8/EC and 2006/32/EC (T7-0306/2013);
- 12 June 2012 on 'Engaging in energy policy cooperation with partners beyond our borders: A strategic approach to secure, sustainable and competitive energy supply' (T7-0238/2012);
- 14 September 2011 on the proposal for a Regulation on energy market integrity and transparency (2010/0363(COD));
- 25 November 2010 entitled 'Towards a new Energy Strategy for Europe 2011-2020' (T7-0441/2010).

→ Balázs Mellár

5.7.2. Internal energy market

In order to harmonise and liberalise the EU's internal energy market, three consecutive legislative packages of measures were adopted from 1996 to 2009, addressing market access, transparency and regulation, consumer protection, supporting interconnection and adequate levels of supply. As a consequence of these measures, new gas and electricity suppliers can enter Member States' markets, while both industrial and domestic consumers are now free to choose their supplier. Other EU policies related to the internal energy market address the security of the supply of electricity, gas and oil, as well as the development of trans-European networks for transporting electricity and gas.

Legal basis

Article 194 TFEU.

Objectives

In the energy sector, the completion of the EU 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. The objective is to ensure a functioning market with fair market access and a high level of consumer protection as well as adequate levels of interconnection and generation capacity. On 4 February 2011, the European Council agreed upon an ambitious objective to complete the internal energy market by 2014. In light of the slow progress made, this objective was reaffirmed by the European Council in May 2013.

Achievements

A. Liberalisation of gas and electricity markets

The first legislative package (Directives 96/92/EC concerning common rules for the internal market in electricity and 98/30/EC on common rules for the internal market in natural gas) was replaced in 2003 by a second legislative package that enabled new gas and electricity suppliers to enter Member States' markets and consumers (industrial consumers from 1 July 2004 and domestic consumers from 1 July 2007) to choose their gas and electricity supplier. In April 2009, a third legislative package seeking to further liberalise the internal market of electricity and gas was adopted, amending the second package. Directives on electricity (2009/72/EC) repealing Directive 2003/54/EC and gas (2009/73/EC) repealing Directive 2003/55/EC notably:

- regulate transmission network ownership by ensuring a clear separation of supply and production activities from network operation through three models of organisation: the full 'ownership unbundling', the independent system operator (ISO — responsible for the maintenance of the networks, the assets remaining the property of the integrated company) or the independent transmission operator (ITO — a system of detailed rules ensuring the autonomy, independence and necessary investments in the transmission activity);
- ensure more effective regulatory oversight from truly independent national energy regulators, strengthening and harmonising the competences and the independence of national regulators so as to allow an effective and non-discriminatory access to the transmission networks;
- reinforce consumer protection and ensure the protection of vulnerable consumers;
- regulate third-party access to gas storage and LNG facilities, and lay down rules concerning transparency and regular reporting about gas reserves;
- promote regional solidarity by requiring Member States to cooperate in the event of severe disruptions of gas supply, by coordinating national emergency measures and developing gas interconnections.

The Third Energy Package, which entered into force on 3 March 2011, has not yet been transposed and fully implemented in several Member States. The EU is not on track to meet the 2014 deadline for the completion of its internal energy market. In its November 2012 communication setting out an action plan on making the internal energy market work (COM(2012) 663), the European Commission makes the implementation of internal market legislation and the enforcement of competition rules a priority. The Commission commits to pursue infringement proceedings where necessary and to regularly report on the state of completion of the internal market. The document also identifies the need for further action in order to update energy systems and to better protect consumers and enable them to take advantage of price differentials and diversity of services offered by a fully liberalised energy market with deregulated prices. By the end of 2013, the Commission plans to publish a guidance

document on the definition and protection of vulnerable consumers.

B. Energy market regulation

In 2003, the European Regulators Group for Electricity and Gas, responsible for ensuring cooperation between national regulators as well as a coherent application of the internal market directives in the Member States was set up (Decision 2003/796/EC). The European Agency for the Cooperation of Energy Regulators (ACER) was established (Regulation (EC) No 713/2009). It started its work in March 2011. As a supervisory body with an advisory role, the agency makes recommendations to the Commission regarding market regulation and priorities for transmission infrastructure. The agency is mainly responsible for:

- promoting cooperation between national regulatory authorities at regional and European level;
- monitoring progress in the implementation of the 10 year network development plans;
- monitoring the internal markets in electricity and natural gas; in particular, wholesale energy trading, the retail prices of electricity and gas, access to the network including access of electricity produced from renewable energy sources, and compliance with the consumers' rights.

As a further step, two regulations were adopted, creating structures of cooperation for European Network Transmission Systems Operators (ENTSOs); one for electricity (EC) No 714/2009) and one for gas (EC) No 715/2009 amended by Commission Decision 2010/685/EU). The ENTSOs, together with ACER, create detailed network access rules and technical codes, and ensure coordination of grid operation through the exchange of operational information and the development of common safety and emergency standards and procedures. ENTSOs are also responsible for drafting a 10-year investment plan every two years, which are then in turn reviewed by ACER. In 2013, amongst others, network codes on gas cross-border capacity allocation and on electricity capacity allocation and congestion management (with accompanying guidelines) are being prepared.

Directive 2008/92/EC seeks to improve the transparency of gas and electricity prices charged to industrial end-users by obliging Member States to ensure that these prices and the pricing systems used are communicated to Eurostat twice a year. On 10 October 2011, the EU adopted a Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency aiming to guarantee fair trading practices on European energy markets. It gives ACER the competence to gather, review and share data from wholesale energy markets, monitor markets and trading, investigate cases of market abuse and coordinate the application of appropriate penalties with Member States. The responsibility for applying sanctions applicable to infringements lies however in the hands of Member States. The level of energy prices and their impact on the competitiveness of European economies are issues that are gaining in political importance in the context of the economic crisis. The European Council of May 2013 called on the Commission to provide, before the end of 2013, an analysis of the composition and drivers of energy prices and costs in Member States, with a particular focus on the impact on households, SMEs and energy intensive industries.

C. Security of the supply of electricity, natural gas and oil

Blackouts in both the EU and US have highlighted the need to define clear operational standards for electricity transmission networks and for the adequate maintenance and development of networks. Directive 2005/89/EC establishes measures aimed at safeguarding the security of electricity supply, to ensure the proper functioning of the internal market for electricity, an adequate level of interconnection between Member States, an adequate level of generation capacity, and balance between supply and demand. Member States need to require network operators to ensure that an appropriate level of generation reserve capacity is maintained, facilitate the development of new generation capacity, and encourage energy conservation and technology for demand management in real time. In light of the crucial importance of gas for the energy supply of the European Union and as a response to the Russian-Ukrainian gas crisis during the winter of 2008/2009, Regulation (EU) No 994/2010 concerning measures to safeguard the security of gas supply was adopted in 2010. The regulation aims to strengthen prevention and crisis response mechanisms. With the aim to ensure secure oil supply, Directive 2009/119/EC obliges Member States to maintain a minimum of oil stocks, corresponding to 90 days of average daily net imports or 61 days of average daily inland consumption, whichever of the two quantities is greater.

D. Trans-European networks

The interconnection, interoperability and development of trans-European networks for transporting electricity and gas are essential for the effective operation of the internal energy market. Decision 1364/2006/EC lays down guidelines for trans-European energy networks that identify projects of common interest and priority projects among trans-European electricity and gas networks. Projects of common interest have priority for the granting of financial aid provided for pursuant to Regulation (EC) No 2236/95. The budget allocated

to the TEN-E (around EUR 20 million per year) is mainly intended for financing feasibility studies. Other instruments may also step in to part-finance investments, for example the Structural Funds in the convergence regions. The Commission has recently proposed a regulation on the notification of investment projects in energy infrastructure (COM(2013) 153) that will be adopted under ordinary legislative procedure, as the EP succeeded in obtaining the annulment of previous regulations (617/2010 and 833/2010) in that matter for which it would have had only consultation power. The proposed regulation requires Member States to notify to the Commission their investment projects in energy infrastructure.

In a report to the June 2011 Energy Council, the European Commission estimated that about EUR 200 billion of investment would be needed by 2020 in energy infrastructure Europe-wide. In view of this need, the Commission adopted the communication 'A Budget for Europe 2020' within the next multiannual financial framework (2014-2020) on 29 June 2011, proposing the Connecting Europe Facility (CEF) for support of priority projects in the field of energy, transport and critical digital infrastructure. The CEF proposal, launched on 19 October 2011, earmarks EUR 9.1 billion (out of the total EUR 50 billion CEF fund) for the development of trans-European energy infrastructure projects. The amount to be dedicated to CEF is now being discussed by the Council and the European Parliament in the context of the negotiations on the multi-financial framework for 2014-2020. To facilitate the take-up of CEF funds for projects of common interest, the Commission initiated a proposal for a regulation on guidelines for trans-European energy infrastructure repealing Decision No 1364/2006/EC (COM(2011) 658 final)) that was recently adopted by the Council and the Parliament (T7-0061/2013). The regulation identifies 12 priority corridors and areas covering electricity, gas, oil and carbon dioxide transport networks, and provides measures on streamlining and speeding up permit granting and regulatory procedures for projects of common interest. The Commission will propose in 2013 a list of European projects of common interest in line with the procedure and criteria set in the regulation. This list will be reviewed every two years.

Role of the European Parliament

In adopting the legislative package on the internal energy markets, the EP has strongly supported transmission ownership unbundling in the electricity sector as the most effective tool to promote investments in infrastructures in a non-discriminatory way, fair access to the grid for new entrants and transparency in the market. The EP has also stressed the importance of a European common view of mid-term investments (indicative European 10 years' plan focused on interconnections), reinforced cooperation between regulatory authorities, Member States and transmission system operators, and a strong process of harmonisation of network access conditions. On the initiative of the EP, a major place was given to consumer rights which were part of the deal achieved with the Council: the resolutions insisted on increasing consumer rights (change of suppliers, direct information through smart meters and efficient treatment of complaints to an energy 'ombudsman'). The EP also obtained the recognition of the concept of 'energy poverty'. It has strongly supported the establishment of ACER; stressing that it had to be endowed with the necessary powers to overcome those issues which cannot be solved by national regulators and which hamper the integration and good operation of the internal market.

The EP further strengthened the role of the Agency in cross-border issues by entrusting it with binding decision-making powers, ensuring the transparency of its activities and securing its democratic accountability vis-à-vis the EP, as well as its financial independence. The EP believes that if ACER's and ENTSO's competences prove to be insufficient to create a more integrated energy market, it might be necessary to amend their mandates. In addition, the EP sees the need for a more comprehensive exchange of information on the part of operators regarding infrastructure and grid management. In order to strengthen transparency in wholesale energy markets, the EP pushed further for the creation of national registers for wholesale market traders and for the harmonisation of penalty schemes across the EU through minimum standards within the framework of the REMIT Regulation.

In March 2013, when adopting the guidelines for trans-European energy infrastructure (T7-0061/2013), the EP called particular attention to the importance of energy storage facilities and the need to ensure the stability of European electricity networks with the integration of renewable energy resources. The EP approved an amendment improving the transparency of the methodologies used by the ENTSOs in their network development plans. It also introduced an amendment protecting consumers from bearing disproportionate burden of the costs of projects of common interest. The EP is currently preparing an own initiative report to respond to the European Commission's communication on making the internal energy market work (COM(2012) 663).

→ Cécile Kerebel

5.7.3. Energy efficiency

Reducing energy consumption and eliminating energy wastage are goals of growing importance for the EU. In 2007, the EU leaders set the policy target of cutting Europe's annual energy consumption by 20% by 2020 compared to the expected progression in energy use. Energy efficiency measures are increasingly recognised as a means not only to achieving a sustainable energy supply, cutting greenhouse gas emissions, improving security of supply and reducing import bills but also to promoting the competitiveness of European economies. The latest European Council of 22 May 2013 stressed the role of energy efficiency in bringing energy prices and costs down. The EU has set minimum energy efficiency standards and rules on labelling and eco-design for products, services and infrastructure. These measures aim at improving efficiency at all stages of the energy chain, from the supply to the use of energy by consumers.

Legal basis

Article 194 TFEU.

Achievements

A. Action plans for energy efficiency and proposal for a directive on energy efficiency

In 2006, the Commission launched the 'Action Plan for Energy Efficiency, Realising the Potential' (COM(2006) 545) with the purpose of mobilising the general public, policy-makers and market actors, and transforming the internal energy market in a way that will provide EU citizens with the most energy-efficient infrastructure (including buildings), products (including appliances and cars) and energy systems in the world. The objective of the action plan is to control and reduce energy demand and to take targeted action on consumption and supply in order to save 20% of annual consumption of primary energy by 2020 (compared to the energy consumption forecasts for 2020). In reaction to estimates suggesting that the EU is on course to achieving only half of the 20% objective, the Commission developed a comprehensive new Energy Efficiency Plan 2011 (EEP) (COM(2011) 109).

The Commission launched a proposal for a directive on energy efficiency repealing Directives 2004/8/EC and 2006/32/EC/ (COM(2011) 370 final) with the objective to establish a common framework promoting energy efficiency in the EU and to bring the EU back on track towards meeting its 2020 targets. Following its adoption by the Council and the European Parliament, Parliament, the Energy Efficiency Directive (2012/27/EU) entered into force in December 2012. The directive requires that Member States establish indicative national energy efficiency targets for 2020, based on either primary or final energy consumption. It also sets legally binding rules for end-users and energy suppliers. Member States are free to make these minimum requirements more stringent to step up their efforts to save energy. The directive includes, inter alia, the following requirements:

- the renovation of central governments' buildings by at least 3% of the total floor area each year from 2014 and the purchase of buildings, services and products with high energy-efficiency performance; the public sector should have an exemplary role;
- the establishment of national long-term strategies to promote investment in the renovation of residential and commercial buildings and the drawing up of national energy efficiency obligations schemes or equivalent measures to ensure that energy distributors deliver an annual 1.5% energy saving for end-use consumers;
- the assessment by the end of 2015 of the potential for the application of high-efficiency cogeneration and efficient district heating and cooling in all Member States;
- mandatory regular energy audits for large companies to be conducted at least every four years, with the exception of companies with certified energy and environmental systems;
- the roll-out of smart grids and smart meters and the provision of accurate information on the energy bills to empower consumers and to encourage more efficient energy consumption.

By 30 June 2014, the Commission will assess whether the EU can achieve its primary energy savings target by 2020, and, if necessary, it will propose mandatory national energy efficiency targets. Member States will have to report each year on the progress made towards national energy efficiency targets. The Commission intends to issue in 2013 a series of guidance documents on the implementation of various aspects of the energy efficiency Directive.

B. Energy services

The Energy Services Directive 2006/32/EC (repealing Council Directive 93/76/EEC) encouraged Member States to improve energy end-use efficiency and to

exploit potential cost-effective energy savings in an economically viable way. It was repealed with the entry into force of the more recent Energy Efficiency Directive (with the exception of its Articles 4(1) to (4) and Annexes I, III and IV, which will not be repealed until 1 January 2017), as some of their provisions overlap. The provisions that remain in force concern the achievement by 2017 of indicative energy savings targets of 9% of the final energy consumption of each Member State. The Energy Efficiency Directive further simplifies the requirements for energy saving measurement laid-out in the Energy Services Directive, and contributes to streamlining the existing legal framework provisions.

C. Cogeneration

Directive 2004/8/EC on Cogeneration (amending Directive 92/42/EEC) was adopted in 2004 to support the development and use of cogeneration or combined heat and power production (CHP) in the EU. During its adoption process, the directive gave rise to controversial discussions in both the Council and the EP. It established a uniform definition for electricity produced in CHP plants. The Commission established harmonised efficiency reference values for separate production of electricity and heat, which were reviewed in a Commission Implementing Decision on 19 December 2011 to take account of technological developments and changes in the distribution of energy sources. The Cogeneration Directive was repealed when the Energy Efficiency Directive entered into force in December 2012. The Energy Efficiency Directive obliges Member States to assess and notify to the Commission the potential for high-efficiency cogeneration and efficient district heating and cooling on their territory and to conduct cost-benefit analysis based on climate conditions, economic feasibility and technical suitability (with some exemptions).

D. Energy performance of buildings

Directive 2002/91/EC on the energy performance of buildings (in particular insulation, air conditioning and the use of renewable energy sources) provides a method for calculating the energy performance of buildings, minimum requirements for new and existing large buildings and energy certification. The directive was repealed as from 1 February 2012 by the Recast Directive 2010/31/EU, which entered into force in July 2010. The main objective of this Recast Directive was to streamline some provisions of the former directive and to strengthen the energy performance requirements with regard to:

- the common general framework for the methodology to calculate the integrated energy performance of buildings and building units;
- the application of minimum requirements to the energy performance of new buildings and new building units, establishing, for instance, that by 31 December 2020 all new buildings must be nearly zero-energy;
- the application of minimum requirements to the energy performance of, in particular: existing buildings, building elements that are subject to major renovation, and technical building systems whenever they are installed, replaced or upgraded;
- energy certification of buildings or building units, regular inspection of heating and air-conditioning systems in buildings and independent control systems for energy performance certificates and inspection reports.

The Recast Directive lays down minimum requirements but any Member State can uphold or introduce further measures. As a follow-up to the Recast Directive, the Commission published in April 2013 a report assessing the effectiveness of current financial support for energy efficiency in buildings (COM(2013) 225). This report is also meant to help Member States implement an obligation laid down in the Energy Efficiency Directive concerning the establishment, by April 2014, of a long-term strategy to mobilise investment in the renovation of the national building stock. In that regard, the report indicates how the financial support can be improved.

E. Energy efficiency of products

With regard to the energy efficiency of products, several measures have been introduced at EU level, including, inter alia, measures for the:

- indication by labelling and standard product information of the consumption of energy and other resources for all energy-related products which have a significant direct or indirect impact on energy consumption (excluding second-hand products and means of transport) and for some non-energy using products, such as windows (Directive 2010/30/EU and implementing legislation recasting Directive 92/75/EEC);
- labelling of office equipment (Energy Star programme recently adapted to a new agreement between the US and the EU on the coordination of energy-efficiency labelling programmes for office equipment) (Regulation (EU) No 174/2013 amending Regulation (EC) No 106/2008);
- labelling of tyres with respect to fuel efficiency and other essential parameters (Regulation (EC) No 1222/2009);
- eco-design requirements for energy using products (Directive 2009/125/EC recasting Directive 2005/32/EC as amended by Directive 2008/28/EC);
- eco-design requirements for fluorescent lamps without integrated ballast, for high intensity

discharge lamps (Commission Regulation (EU) No 347/2010 amending Commission Regulation (EC) No 245/2009) and for directional lamps, for light emitting diode lamps and related equipment (Commission Regulation (EC) No 1194/2012);

- eco-design requirements for air conditioners and comfort fans (Commission Regulation (EC) No 206/2012);
- efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels (Directive 92/42/EEC and amending acts Directive 93/68/EEC, Directive 2004/8/EC, Directive 2005/32/EC and Directive 2008/28/EC);
- energy efficiency requirements for household electric refrigerators, freezers and combinations (Directive 96/57/EC and amending act Directive 2005/32/EC).

Role of the European Parliament

In its Resolution of 15 December 2010 on the Revision of the Energy Efficiency Action Plan (T7-0485/2010), the EP made it clear that a binding target on energy efficiency of at least 20% by 2020 should be adopted. It also called for a revision of the Energy Services Directive in 2011 that would include an expanded time framework until 2020 and a critical assessment of national energy efficiency action plans and their implementation.

In an earlier resolution on 'Mobilising Information and Communication Technologies to facilitate the transition to an energy-efficient, low-carbon economy' (T7-0153/2010), the EP stressed that significant investments both for research and development (R&D) and the utilisation of existing technologies are needed in order to ensure a successful transition to an energy-efficient, low-carbon economy. It suggested that Member States should provide the incentives for both public and private energy efficiency investments; energy efficiency education in schools would be a promising starting point. It further emphasised that broad information campaigns to explain the benefits of smart metering and ICT to citizens are crucial to cope with the danger of lacking public support.

In the process of adopting the Recast Directive on the energy performance of buildings, the EP was in favour of a stronger and more ambitious regulation. For example, it insisted on the requirement that all buildings should already be at least net zero energy by 31 December 2016 (COD/2008/223).

With regard to the Recast Energy Labelling Directive (COD/2008/222), the EP ensured that the text explicitly refers both to products that actually consume energy (and therefore have a direct impact) and those that do not consume energy themselves, but can have an indirect impact on energy savings. Moreover, the EP strengthened the extent to which energy efficiency-related information has to be included in advertisement and technical promotional material.

In 2012, the EP played a key role in the negotiation of the Energy Efficiency Directive (COD/2011/0172) and ensured that the requirements for national building renovation strategies and mandatory energy audits for large companies were kept in the final compromise agreed with the Council. It also succeeded in keeping an amendment calling for rules on demand response mechanisms, which allow energy consumers to adjust their energy use to supply conditions and thus reduce energy bills.

In its Resolution on the EU Energy Roadmap 2050 adopted in March 2013 (T7-0088/2013), the EP called on the Commission to present a post-2020 strategy which would be consistent with the EU's 2050 decarbonisation agenda. The EP supported the introduction of clear milestones and targets on greenhouse gas emissions, renewable energy and energy efficiency for 2030, with the aim of establishing an ambitious and stable legal and regulatory framework. It asked the Commission to explore a combined high renewables and high energy efficiency scenario.

The EP is currently preparing a report on the implementation and impact of the energy efficiency measures under Cohesion Policy (2013/2038(INI)).

→ Cécile Kerebel

5.7.4. Renewable energy

Renewable sources of energy [wind power, solar power (thermal, photovoltaic and concentrating), hydro-electric power, ocean energies, geothermal energy, biomass and biofuels] are alternatives to fossil fuels that help reduce greenhouse gas emissions, diversify energy supply and reduce dependence on unreliable and volatile fossil fuel markets, in particular oil and gas. The European renewable energy industry currently employs about 1.5 million people and estimates suggest this figure could rise to 4.5 million by 2020. It is also the global leader in the development of new generation renewable energy technologies. The European legislative framework for the promotion of renewables has evolved significantly in recent years, now providing a stable regulatory framework that helps attract investment from the private sector.

Legal basis and objectives

Article 194 TFEU.

Achievements

A. Initial steps

Following the 1997 White Paper on renewable energy sources, the EU-15 set itself the target of generating 12% of gross domestic energy consumption and 22.1% of electricity consumption from renewable sources by 2010. To achieve this aim, Directive 2001/77/EC (on the promotion of electricity from renewable energy sources (RES) in the internal electricity market) set out indicative national targets for the proportion of electricity consumption from renewable energy sources. The Directive constituted an essential part of the package of measures needed to comply with the commitments made by the EU under the Kyoto Protocol on the reduction of greenhouse gas emissions. With enlargement in 2004, the national indicative targets set in the Accession Treaties for the proportion of electricity produced from RES (RES-E) in each new Member State resulted in an overall objective of 21% for the EU-25. Despite these measures, the share of renewables in the EU-27 gross domestic energy consumption in 2006 represented 7.1% (of which: 66.1% from biomass, 20.5% from hydropower, 5.5% from wind power, 4.3% from geothermal energy and 0.8% from solar power), while gross electricity consumption from renewables represented a 14.7% share. In light of this lack of progress towards achieving the 2010 targets, the necessity of a more comprehensive legislative framework became evident.

B. Renewable Energy Road Map

To further enhance the promotion and use of renewable energy, as well as to facilitate the achievement of the twin objectives of increasing security of energy supply and reducing greenhouse gas emissions, the Commission launched a 'Renewable Energy Road Map: Renewable energies in the 21st century: building a more sustainable future' (COM(2006) 848) in January 2007. The Road Map proposed a long-term strategy for renewable energy in the EU by 2020; including setting a mandatory target of 20% for renewable energy's share of energy consumption, a mandatory minimum target of 10% for biofuels and the creation of a new legislative framework. At the 2007 Spring European Council, the EU agreed to raise by 2020 the share of renewable energy to 20% of EU's overall energy consumption and the share of biofuels to at least 10% of total petrol and diesel consumption for transport.

C. Renewable Energy Directive

The new Renewable Energy Directive adopted under co-decision in Spring 2009 (Directive 2009/28/EC, repealing Directives 2001/77/EC and 2003/30/EC) established overall mandatory targets, as well as a mandatory national target for the overall share of energy from renewable sources in gross final consumption of energy, taking account of countries' different starting points. In addition, all Member States have to reach a 10% renewable energy share in the transport sector. Furthermore, the Directive mapped out requirements in terms of the different mechanisms that Member States can apply to achieve their targets: support schemes, guarantees of origin, joint projects, measures of cooperation between Member States and third countries, as well as sustainability criteria for biofuels and bioliquids. As required by the Directive, Member States adopted national renewable energy action plans in 2010. The European Commission assessed Member States' progress towards achieving their 2020 renewable energy targets in 2011 (COM(2011) 31) and in 2013 (COM(2013) 175). The latest report shows that since the adoption of the 2009 Renewable Energy Directive renewable energy consumption has grown strongly. In 2010, the EU renewable energy share was 12.7% and the majority of Member States already reached their respective 2011/2012 interim target set out by the Directive. The EU as a whole and most Member States are on track to meet the 2020 targets. However, as the indicative trajectory to meet the final target grows steeper towards the end,

almost all Member States need to make additional efforts in the forthcoming years in order to reach the 2020 targets. The Commission also stresses in its report some reasons for concern about future progress, notably: some Member States' deviations from their own national renewable energy action plans; the failure to address some administrative and grid-related barriers to the uptake of renewable energy; recent disruptive changes to national support schemes for renewable energy; and finally the slow transposition of the Directive into national law. The Commission has already launched a number of infringement cases for Member States' non-transposition of the 2009 Renewable Energy Directive (notably for Poland and Cyprus).

D. Future steps

In its June 2012 communication on 'Renewable energy: a major player in the European energy market' (COM(2012) 271), the Commission identifies areas where efforts should be stepped up until 2020 for Europe's renewable energy production to continue to grow to 2030 and beyond, in particular for renewable energy technologies to become less costly, more competitive and ultimately market driven (with support schemes dedicated only to less mature technologies) and for investments in renewable energy to be incentivised (with the phasing out of fossil fuel subsidies, a well functioning carbon market and properly designed energy taxes). The Commission intends to provide in 2013 further guidance on renewable energy support schemes as well as on the use of cooperation mechanisms to achieve renewable energy targets at lower cost. It will also work on improved regulatory framework for trade in renewable energy and energy cooperation with third countries. The 2009 Renewable Energy Directive foresees setting a post 2020 roadmap in 2018. However, the Commission has already started preparing for the period beyond 2020 in order to provide early policy clarity on the post 2020 regime for investors. Renewable energy plays a key part in the long-term Commission strategy outlined in its 'Energy Roadmap 2050' (COM(2011) 885/2). The decarbonisation scenarios for the energy sector proposed in the roadmap point to a renewable energy share of at least 30% by 2030. But the roadmap also suggests that the growth of renewable energy will drop after 2020 without further intervention. With the publication in March 2013 of a Green Paper on 'A 2030 framework for climate and energy policies' (COM(2013) 169), the Commission has opened a broad public consultation on which targets the EU should set for 2030 for greenhouse gas emissions, renewable energy and energy efficiency, whether these targets should be binding and at which level (EU, Member States, sectors and sub-sectors) they should apply. An EU climate and energy package is planned for the autumn.

E. Supporting policies

Making electricity infrastructure fit for the large scale deployment of renewables is among the primary goals of the Energy 2020 Strategy (*5.7.1 on energy policy) and is further supported in the Energy Roadmap 2050 and the Energy Infrastructure Package (*5.7.2 on Internal Energy Market). In this context, the following projects are identified as priorities: an offshore grid in the Northern Seas, and interconnections linking directly to consumers in Northern and Central Europe and to hydro-storage facilities in the Alps and the Nordic countries; interconnections in South Western Europe, transporting power generated from wind, solar, hydro to other parts of the continent; better connections in Central Eastern and South Eastern Europe supporting the integration of renewables. The promotion and development of new generation renewable technologies is also one of the key elements of the SET-Plan (*5.7.1 on energy policy).

F. Resource-specific issues

1. Biomass and biofuels

The use of biomass is considered to be one of the key ways to address Europe's increasing dependency on fossil fuels; thereby ensuring security of supply and energy sustainability in Europe. Biomass already contributes more than half of renewable energy consumption in the EU. A Biomass Action Plan (COM(2005) 628), issued by the Commission, set out measures to increase the development of biomass energy from wood, waste and agricultural crops, by creating market-based incentives and removing barriers to market development. The Commission's EU Strategy for Biofuels (COM(2006) 34) aimed to further promote biofuels and prepare for their large-scale use. The Communication set out a co-ordinated programme for Community action, including measures to improve demand for biomass, improve energy supply, overcome technical barriers, and develop and encourage research initiatives. On 10 June 2010, the Commission (IP/10/711) set up a system for certification schemes for all types of biofuels; mapping out the requirements the schemes must meet to be recognised by the Commission. The sustainability criteria aim to ensure that biofuels deliver substantial reductions in greenhouse gas emissions and that they do not come from forests, wetlands or nature protection areas. In July 2011, the EC approved seven voluntary schemes at EU level for prioritising biofuels over regular fossil fuels for transport. A report of the Commission on indirect land-use change related to biofuels and bioliquids, published on 22 December 2010 (COM(2010) 811), acknowledged that — under certain circumstances and in the absence of intervention — indirect land use change can affect the greenhouse gas emissions savings associated with biofuels, thereby reducing their contribution to the climate policy goals. In

October 2012, the Commission made proposals to amend the current legislation on biofuels contained in the Renewable Energy and the Fuel Quality Directives (2012/0288(COD)) with the aim of limiting the contribution of conventional biofuels produced from food crops towards the EU's 10% target for renewable energy in the transport sector and setting up an incentive scheme for biofuels that do not create an additional demand for land. A methodology was also devised for reporting by Member States on indirect land-use change. After the publication of non-binding criteria for biomass in February 2010, the Commission decided to review the measures, in order to evaluate the success of its original recommendations and to decide whether mandatory standards would be necessary in the future. A new proposal on sustainability criteria for biomass is expected from the Commission in 2013.

2. Offshore wind energy

With the second strategic energy review of November 2008, a Communication on 'Offshore Wind Energy: Action needed to deliver on the Energy Policy Objectives for 2020 and beyond' (COM(2008) 768) was published by the Commission, aiming to promote the development of maritime and offshore wind energy in the EU. This type of energy appears to have a number of benefits compared to the production of onshore wind energy: production units at sea are larger than on land; winds are stronger and more stable at sea than on land; and wind farms at sea cause less concern among neighbouring citizens. By 2020, it is estimated that their installed capacity could be 30 to 40 times greater than at present. Measures are, therefore, under consideration to ensure the adequate legislative and political framework is in place to exploit this type of energy.

Role of the European Parliament

The EP has consistently recognised the exceptional importance of renewable energies and the importance of setting mandatory targets for 2020 (T6-0365/2005, T6-0058/2006, T6-0604/2006, T6-0406/2007). In 2004, it sent a clear signal to market actors as well as national policy makers, emphasising that renewable energies are the future of energy in the EU and part of EU environmental and industrial strategy. The EP also stressed that transparent and fair grid access is a vital precondition for the successful integration and promotion of renewable energies. In addition, it calls for a system of EU-wide incentives for renewable sources to be set up in the longer term (T7-0441/2010) and for supporting smart grid technology (T7-0318/2011). It has also frequently invited the Commission to propose a legal framework for renewable heating and cooling, which could increase their share of energy production. In the adoption of the Renewable Energy Directive (COD/2008/16), the EP tightened up and clarified several mechanisms, while setting up a system to guarantee more thoroughly the environmental sustainability of the whole policy. In particular, it played an important role in:

- the conditionality of the renewable transport fuel target, by laying down quantitative and qualitative sustainability criteria for biofuels (social sustainability, land use rights, effects on food security and prices, etc.); pointing in particular to the problems associated with indirect land use-change;
- ensuring the access of renewable energy to electricity grid infrastructure;
- limiting the role of the 2014 review clause, in order to avoid the renegotiation of the binding targets.

In March 2013, the EP endorsed the Energy Roadmap 2050 (T7-0088/2013) and called on the Commission to present as soon as possible a 2030 policy framework including milestones and targets on greenhouse gas emissions, renewable energy and energy efficiency. The resolution highlighted in particular the importance of stable regulatory frameworks to stimulate investments in renewable energy, the need for a more European approach to renewable energy policy taking full advantage of existing cooperation arrangements and the specific role to be played by decentralised generation and microgeneration. The EP invited the Commission to analyse and make proposals on how to deploy renewable energy sources sustainably and with more efficiency in the EU. The EP adopted also in March 2013 the guidelines for trans-European energy infrastructure proposed by the Commission as part of the Energy Infrastructure Package (T7-0061/2013). The EP called particular attention to the importance of energy storage facilities and the need to ensure the stability of European electricity networks with the integration of renewable energy resources. The EP will vote in the coming months on the report prepared by the ITRE Committee in response to the Commission's last June Communication on renewable energy (A7-0135/2013).

→ Cécile Kerebel

5.7.5. Nuclear energy

Nuclear power stations currently produce around one third of the electricity and 14% of the energy consumed in the EU. Nuclear energy is a low-carbon alternative to fossil fuels and represents a critical component of the energy mix of many Member States. However, in the aftermath of the 1986 Chernobyl disaster and the nuclear catastrophe in Fukushima, Japan, in 2011, nuclear energy has become highly controversial. Germany's decision to phase out nuclear energy by 2020 as well as the temporary closure of two Belgian reactors after last year's discovery of cracks in their vessels put further pressure for the abandonment of nuclear power in Europe. However, the choice of nuclear energy remains an exclusive competence belonging to Member States. Greater efforts are being made at EU level to improve the safety standards of nuclear power stations and ensure the safe handling and disposal of nuclear waste.

Legal basis

Treaty establishing the European Atomic Energy Community (Euratom Treaty), Articles 40-52 (investment, joint undertakings and supplies) and 92-99 (nuclear common market).

Objectives

To tackle the general shortage of 'conventional' energy in the 1950s, the six founding Member States looked to nuclear energy as a means of achieving energy independence. Since the costs of investing in nuclear energy could not be met by individual countries, the founding Member States joined together to form the European Atomic Energy Community. The general objective of the Euratom Treaty is to contribute to the formation and development of Europe's nuclear industries, so that all the Member States can benefit from the development of atomic energy, and to ensure security of supply. At the same time, the Treaty guarantees high safety standards for the public and prevents nuclear materials intended principally for civilian use from being diverted to military use. Euratom's powers are limited to peaceful civil uses of nuclear energy.

Achievements

A. Radiation protection

Exposure to ionising radiation represents a significant danger for human health (public, workers of medical, industrial and nuclear sectors) and the environment. The EU has adopted over time a patchwork of legislation in the area of radiation protection, which has lately been updated and simplified. Updating was necessary because legislation in place did not fully reflect scientific progress and lacked consistency. Another reason was that natural radiation sources and the protection of the environment were not fully addressed. Council Directive 96/29/Euratom of 13 May 1996 set out basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation. In May 2012, the European Commission proposed a new directive updating the basic safety standards (COM(2012) 242) which is currently being considered by the Council and the European Parliament. It simplifies European legislation by replacing five directives. Binding requirements are introduced for protection against indoor radon, use of building materials and environmental impact assessment of discharges of radioactive effluents from nuclear installations. A separate Council directive for monitoring radioactive substances in water intended for human consumption, proposed by the Commission in March 2012 (COM(2012) 147), is in the final stage of adoption. It was approved by the Parliament in plenary in March 2013 (T7-0068/2013).

The Council regulation 'laying down maximum permitted levels of radioactive contamination of foodstuffs and of feeding stuffs following a nuclear accident or any other case of radiological emergency' proposed by the Commission in 2010 (COM(2010) 184) is still awaiting final decision. The Parliament approved an amended version of the legislation (T7-0055/2011) based on a compromise reached with the Council.

B. Transport of radioactive substances and waste

Council Regulation (Euratom) No 1493/93 of 8 June 1993 introduced a Community system for the declaration of shipments of radioactive substances between Member States, to ensure that the competent authorities concerned receive the same level of information concerning radiation protection control as before 1993, when border controls were still in place. In 2012, the Commission published a proposal for a regulation establishing a single European system for the registration of carriers of radioactive materials (COM(2012) 561). This regulation replaces the reporting and authorisation systems in Member States put in place to implement Council Directive 96/29/Euratom on basic safety standards.

A system of prior authorisation for shipments of radioactive waste was established in the EU in 1992 and modified significantly in 2006. Council Directive 2006/117/Euratom of 20 November 2006 on the supervision and control of shipments of radioactive waste and spent fuel aims to guarantee an adequate level of protection to the population from such shipments. The directive sets out and lists a number of strict criteria, definitions and procedures that need to be applied when transporting radioactive waste and spent fuel, for intra- and extra-Community shipments. In April 2013, the Commission issued the first report on the application of the 2006 directive in the Member States in the years 2008-2011.

C. Waste management

An EU legal framework for waste management in Europe was set out in 2011 with the adoption of a Council directive on the management of radioactive waste and spent fuel (2011/70/Euratom). A close monitoring of national programmes for the construction and management of final repositories is foreseen, as well as legally-binding safety standards. Member States have to submit the first report on the implementation of their national programmes in 2015. By the end of 2013, the Commission plans to issue recommendations on the collection, storage, reporting and preservation of radioactive waste data.

D. Safeguarding nuclear materials

Several regulations were adopted over time and amended in order to establish a system of safeguards ensuring that nuclear materials are used only for the purposes declared by their users and that international obligations are complied with (Commission Regulation (Euratom) No 302/2005). These safeguards cover the entire nuclear fuel cycle, from the extraction of nuclear materials in the Member States, or their importation from third countries, to exportation outside the EU. The Commission is responsible for controlling civil nuclear material within the EU.

E. Safety of nuclear installations

With the Council directive on nuclear safety (2009/71/Euratom), a common EU legal framework for the safety of nuclear power plants was established. Member States are required to establish national frameworks with regard to nuclear safety requirements, licensing of nuclear power plants, supervision and enforcement. The directive makes the safety standards of the International Atomic Energy Agency (IAEA) partially legally binding and enforceable in the EU. Following the Fukushima nuclear accident, the March 2011 European Council called for a comprehensive risk and safety assessments of all EU nuclear power plants. The Commission was put in charge of carrying out voluntary stress tests for the EU's 143 nuclear power reactors with the aim to assess the safety and robustness of nuclear installations in case of extreme natural events (flood and earthquakes). In October 2012, the Commission released its communication on the results of the stress tests (COM(2012) 571) which gave an overall positive assessment of current European safety standards but highlighted the need for further upgrades in order to ensure better consistency among Member States and catch up with international best practices. The Parliament adopted in March 2013 a resolution assessing the limits of the stress tests (T7-0089/2013). The Commission will present later in the year 2013 two legislative proposals that draw on the stress tests' results: a proposal to revise the nuclear safety directive and a proposal for a directive on nuclear insurance and liability in order to improve victim compensation in case of nuclear accidents. A non-binding communication on nuclear off-site emergency preparedness and response to nuclear disasters in Europe will also be issued in 2013 with the aim to increase the protection of population living near nuclear power plants.

F. Nuclear research and training activities

Funding of nuclear research in Europe is provided through multiannual framework programmes. The Seventh Framework Programme for Euratom (FP7 Euratom) for nuclear research and training activities was adopted by Council Decisions 2006/970/Euratom and 2006/977/Euratom. The amount dedicated to FP7 Euratom during the period 2007-2011 was EUR 2 751 million and divided between two specific programmes: one covering indirect actions in fusion energy research (EUR 1 947 million), as well as nuclear fission and radiation protection (EUR 287 million); the other one covering direct actions undertaken by the Commission's Joint Research Centre (JRC) (EUR 515 million). In the field of nuclear fission energy, a Sustainable Nuclear Energy Technology Platform was established in 2007 in order to better coordinate research and development, as well as demonstration and deployment. In the area of fusion energy, the EU is a founding member and main financial partner of ITER, an international nuclear fusion research and engineering project, which is currently building the world's largest experimental nuclear fusion reactor in Cadarache, France. A Joint Undertaking for ITER and the Development of Fusion Energy was established in order to promote scientific research and technological development in the field of fusion (Council Decision 2007/198/Euratom). Its members are Euratom, represented by the Commission, the EU Member States and certain third countries which have concluded cooperation agreements with Euratom.

Because of its growing costs, future funding of the ITER project has become increasingly controversial

and lead to some tussle between the EU institutions and Member States. In its communication on 'ITER status and possible way forward' (COM(2010) 226), the Commission stressed that the cost of the project had turned out to be much higher than originally estimated and that additional resources were needed and called on the Council and Parliament to take a decision of general principle on the future funding of the project. In its conclusions of 12 July 2010, the Council underlined its strong commitment to ITER, stating that it was willing to bear the estimated financing needs. A revised proposal was tabled by the Commission on 20 April 2011 (COM(2011) 226 final) as the Council and the Parliament could not initially agree on the proposed budget. In December 2011, an agreement was finally reached on the extension of funding for the ITER project with an additional EUR 1 300 million in 2012-2013. Financing the additional costs already foreseen for 2014-2018 is one of the stumbling blocks of current negotiations on the EU multi-financial framework to be decided for 2014-2020. Two alternatives are debated: either to finance ITER via a supplementary research programme under the Euratom Treaty or to fund it within the multi-financial framework and the research programme Horizon 2020.

Role of the European Parliament

The Parliament's role in the decision-making process under the Euratom Treaty is limited since it has only consultation powers. Nevertheless, in its various resolutions on the topic, it has consistently put emphasis on the need to clarify the share of competences between EU institutions and Member States and strengthen the EU common framework, as well as the importance to improve safety and environmental protection requirements.

In its resolution adopting the directive on supervision and control of shipments of radioactive waste and spent fuel, the Parliament included amendments to strengthen and clarify control procedures. It introduced an express provision for each Member State to retain the right to refuse entry onto its territory of spent nuclear fuel and radioactive waste for final processing or disposal (T6-0300/2006). At the occasion of the 50th anniversary of European nuclear energy policy, the Parliament criticised in its resolution of 10 May 2007 (T6-0181/2007) 'the fact that the European Parliament is almost completely excluded from the Euratom legislative process and that it is consulted, and no more, on only one of the ten chapters of the Euratom Treaty'. It stressed that a comprehensive revision of the Euratom Treaty was needed. With its resolution on the Council directive setting up a Community framework for nuclear safety, the Parliament put special emphasis on the fact that nuclear security is a matter of Community interest, which should be taken into consideration when deciding upon licensing new plants or extending the lifetime of existing ones (T6-0254/2009). However, the final directive, which was passed under the consultation procedure, focuses on the national responsibility of Member States and does not follow Parliament's suggestions. In its resolution endorsing the regulation on maximum permitted levels of radioactive contamination of foodstuffs, the Parliament changed the legal basis of the regulation from Article 31 (Euratom Treaty) to Article 168 (TFEU) (T7-0055/2011). In its resolution of July 2011 on energy infrastructure priorities for 2020 and beyond (T7-0318/2011), the Parliament strongly supported the Commission's decision to introduce stress tests for European nuclear power plants. A supplementary resolution was recently adopted in plenary in March 2013 pointing out the limits of the stress tests' exercise carried out by the Commission in 2012 and asking for the inclusion in future tests of additional criteria notably on material deterioration, human errors, and flaws in reactor vessels. The Parliament urged full implementation of safety improvements (T7-0089/2013). In its resolution of 23 June 2011 on the Council directive on the management of spent fuel and radioactive waste (T7-0295/2011), the Parliament supported the Commission's proposal for a complete export ban of radioactive waste, while the Council was in favour of allowing export under very strict conditions. The Parliament also asked to further specify that the directive relates to environmental protection and that sufficient provisions ensure public information and participation in waste management. In its recent resolution of March 2013 on the Council directive for monitoring radioactive substances in water intended for human consumption (T7-0068/2013), the Parliament requested a change of legal basis (from Articles 31 and 32 of the Euratom Treaty to Article 192 of the TFEU) and, as a consequence, the following of the ordinary legislative procedure. The Parliament introduced improved information for consumers, random checks of water quality and a differentiated management of natural radiation levels and contamination from human activities. It also clarified the duties of Member States and the Commission.

→ Cécile Kerebel

5.8. Trans-European Networks in transport, energy and telecommunications

5.8.1. Trans-European Networks — guidelines

The Treaty on the Functioning of the European Union (TFEU) retains the trans-European networks (TENs) in the areas of transport, energy and telecommunications, first mentioned in the Maastricht Treaty, in order to connect all the regions of the EU. These networks are tools intended to contribute to the growth of the internal market and to employment, while pursuing environmental and sustainable development goals.

Legal basis

Articles 170-172 and 194 of the TFEU.

Objectives

The Maastricht Treaty gave the EU the task of establishing and developing trans-European networks (TENs) in the areas of transport, telecommunications and energy, in order to help develop the internal market, reinforce economic and social cohesion, link island, landlocked and peripheral regions with the central regions of the Union, and bring EU territory within closer reach of neighbouring states.

In line with the principle of subsidiarity, the EU does not have exclusive competence for developing, financing or building infrastructure. Responsibility in these areas continues to lie with the Member States. Nevertheless, the Union contributes substantially to the development of infrastructure of common interest.

Articles 170 and 194(1)(d) of the TFEU (the latter with specific reference to energy) provide a solid legal basis for the TENs. Parliament and the Council, acting under the ordinary legislative procedure, lay down guidelines identifying eligible 'projects of common interest' and 'priority projects' (PPs) and covering the objectives, priorities and broad lines of the measures envisaged.

Results

A. General guidelines and ideas

In its 1993 White Paper on Growth, Competitiveness and Employment, the Commission emphasised the fundamental importance of the TENs to the internal market, and in particular to job creation, not only through the actual construction of infrastructure, but also thanks to its subsequent role in economic development. 14 PPs for transport and 10 for the energy sector were approved by the Corfu and Essen European Councils in 1994.

B. Sectoral legislative measures

1. Transport

a. 1996 guidelines

Decision No 1692/96/EC of 23 July 1996 on Community guidelines for the development of the trans-European transport network (TEN-T) set out the general parameters for the overall network. It established the characteristics of the specific network for each mode of transport and identified eligible projects of common interest and PPs. Emphasis was placed on environmentally friendly modes of transport, in particular rail projects. The TEN-T covers all EU territory and may extend to European Free Trade Association, south-east European and Mediterranean countries. Initially, it incorporated the 14 projects of common interest adopted by the Essen European Council. Decision No 1346/2001/EC of 22 May 2001 amending the TEN T guidelines as regards seaports, inland ports and intermodal terminals completed a Community 'transport development plan' for all modes of transport.

b. 2004 revision of the TEN-T guidelines

The 2004 and 2007 enlargements, coupled with serious delays and financing problems — in particular with regard to cross-border sections — led to a thorough revision of the TEN-T guidelines. The number of PPs listed was increased to 30, all required to comply with EU environmental legislation. A new concept of motorways of the sea was introduced with a view to making certain sea routes more efficient and integrating short sea shipping with rail transport.

Six 'European coordinators' for particularly important projects were appointed in 2005 to act as mediators in contacts with national decision-making authorities, transport operators and users, and representatives of civil society. A Trans-European Transport Network Executive Agency (TEN-T EA) was set up in October 2006, tasked with the technical and financial preparation and monitoring of decisions on projects managed by the Commission.

c. 2013 revision: Unified Network, Core/Comprehensive

In December 2011, the Commission presented a proposal for a regulation on Union Guidelines for the Development of the Trans-European Transport Network (COM(2011) 0650). Parliament adopted its position on the revised guidelines on 19 November 2013. Taken as a whole, the new EU infrastructure policy will transform the existing patchwork of European roads, railways, airports and canals into a unified network.

The new policy establishes, for the first time, a core transport network built on nine major corridors: two North–South corridors, three East–West corridors and four diagonal corridors. The core network will transform East–West connections, remove bottlenecks, upgrade infrastructure and streamline cross-border transport operations for passengers and businesses throughout the EU. It will improve connections between different modes of transport and contribute to the EU's climate change objectives. The core network is to be completed by 2030.

The new core transport network will be supported by a comprehensive network of routes, feeding into the core networks at regional and national level. The comprehensive network will ensure full coverage of the EU, and that all regions are accessible. The aim is to ensure that, by 2050, the overwhelming majority of Europe's citizens and businesses are no more than 30 minutes' travel time from this comprehensive network.

Financing for transport infrastructure will triple for 2014–2020 to EUR 26.3 billion, through the Connecting Europe Facility (CEF). This EU funding will be tightly focused on the core transport network, where there is most EU added value. To prioritise East–West connections, almost half the total EU funding for transport infrastructure (EUR 11.3 billion) will be ring fenced for use by cohesion countries only (for more on the financing of the TENs, see *5.8.2).

2. Energy

a. 1996 guidelines

At the 1994 Essen summit, several energy network projects were awarded priority status. Decision No 1254/96/EC of 5 June 1996 laid down a series of guidelines for trans European energy networks (TEN-E), intended to enable the Community to identify eligible projects of common interest and to help create a framework conducive to their implementation, coupled with sectoral objectives for electricity.

b. Current guidelines

Decision No 1364/2006/EC of 6 September 2006 introduced new guidelines for updating the TEN-Es, thereby repealing the previous guidelines of 1996 and 2003. The current objectives are to diversify sources of supply, to increase security of supply by strengthening links with non-EU countries (accession countries and other countries in the Mediterranean Sea, Black Sea and Caspian Sea basins or in the Middle East and Persian Gulf regions), to incorporate energy networks in the new Member States, and to ensure access to the TEN-Es for island, landlocked and peripheral regions.

The EU has identified projects eligible for Union financing and divided them into three categories: projects of common interest relating to electricity and gas networks and displaying potential economic viability; PPs to be given priority when Union funding is granted; and projects of European interest which are also PPs and are of a cross-border nature or have a significant impact on cross-border transmission capacity.

The priorities for action in this area, which must be compatible with sustainable development goals, include: (a) using renewable energies and ensuring better connections between the facilities that produce them; (b) using more effective technologies that limit the environmental losses and risks associated with energy transportation and transmission; (c) establishing energy networks in island and ultra-peripheral regions while promoting the diversification of energy sources; and (d) ensuring the interoperability of EU networks with those of new Member States and non-EU countries. Annex I to the decision identifies 32 projects of European interest for electricity and 10 for gas, while Annexes II and III list 164 projects for electricity and 122 for gas.

In the 2007-2013 financial framework, a total of EUR 155 million was allocated to the TEN Es. Four European coordinators were appointed in 2007.

The new title on energy in the TFEU (Article 194(1)(d)) provides a solid legal basis for promoting energy network interconnections.

3. Telecommunications

Decision No 2717/95/EC of 9 November 1995 established a series of guidelines for the development of the EURO-ISDN (Integrated Services Digital Network) as a TEN. It identified objectives, priorities and projects of common interest for the development of a range of services, based on the EURO-ISDN, with a view to a future European broadband communications network.

Decision No 1336/97/EC of 17 June 1997 laid down guidelines for the trans-European telecommunications networks (TEN-Telecom). It set out the objectives, priorities and broad lines of the measures envisaged. The priorities adopted included applications contributing to economic and social cohesion and the development of basic networks, particularly satellite networks. These guidelines were modified slightly by Decision No 1376/2002/EC of 12 July 2002.

The guidelines identified projects of common interest and specified procedures and criteria for their selection. The Community programme eTEN, a key instrument of the 'eEUROPE 2005: An information society for all' action plan, also built on the EURO-ISDN programme. Completed in 2006, it sought to support the trans-European deployment of services based on telecommunications networks. EU investment is currently focused on modernising existing networks.

Role of the European Parliament

Parliament has strongly supported the TEN policies, and has regularly drawn attention to delays in the implementation of PPs, called for firm timetables and called on the Member States to increase the budgetary resources available, particularly for the TEN-T network. It has ensured that priority is given to promoting projects with clear 'European added value' which have positive and long-term effects on the environment and employment and remove bottlenecks, particularly in rail and combined transport.

With the adoption of its 2007 own-initiative report 'Keeping Europe moving — sustainable mobility for our continent', Parliament took stock of the situation and laid down new objectives, in particular the need to complete the entire TEN in order to make the most of all modes of transport ('co-modality'), and to redistribute the balance between modes ('modal transfer') in order to reduce the environmental impact of transport. Parliament is encouraging a shift towards rail, bus and maritime transport, which still account for only a small share of the market.

Moreover, in its resolution on the 2009 Green Paper, Parliament reiterated its call for priority to be given to rail (notably for freight), ports, sustainable maritime and inland waterways and their hinterland connections, and intermodal nodes in infrastructure links with the new Member States and non-EU countries. In this connection, it is encouraging the extension of the TEN-T to the countries covered by the European Neighbourhood Policy (ENP) and the Mediterranean countries.

Over the past 15 years, Parliament has assisted in the revision of overlapping legislation on the TEN-T. Together with the Council it adopted, under the ordinary legislative procedure, Decision No 661/2010/EU of 7 July 2010 recasting the TEN-T guidelines. This repealed Decisions Nos 1692/96/EC, 1346/2001/EC and 884/2004/EC and included a new annex containing maps of the 27 Member States and stipulating 2020 as the target date for establishing the network in all of them. On 19 November 2013, Parliament approved the new TEN-T Guidelines with precise targets, increased EU financing and set out a clear vision for the establishment of the Core (2030) and Comprehensive (2050) transport network.

→ Jakub Semrau
11/2013

5.8.2. Financing the trans-European networks

The TENs are partly funded by the European Union and partly by the Member States. Financial support from the EU serves as a catalyst, the Member States being required to provide the bulk of the aid. The financing of the TENs can also be complemented by Structural Fund assistance, aid from the EIB or contributions from the private sector.

Legal basis

Title XVI of the TFEU, Article 171 of which sets out that EU aid may be granted to projects of common interest that meet the requirements laid down in the guidelines.

Objectives

To contribute to the establishment of trans-European networks in the fields of transport, energy and telecommunications through targeted EU support (*5.8.1).

Results

A. Direct financing through the EU budget

Generally, EU funding serves as a catalyst for starting up projects. Member States must raise most of the funding, except in the case of Cohesion Fund aid, where the EU makes a substantial contribution.

1. Principles

The principles governing funding are set out in Council Regulation (EC) No 2236/95 of 18 September 1995 laying down general rules for the granting of Community financial aid in the field of trans-European networks.

a. Conditions

EU aid for projects may take one or several of the following forms:

- cofinancing of studies related to projects, including preparatory, feasibility and evaluation studies, and other technical support measures for these studies (in general not exceeding 50% of the total cost);
- contributions towards fees for guarantees for loans from the European Investment Fund or other financial institutions;
- interest subsidies for loans granted by the European Investment Bank or other public or private financial bodies;
- direct grants to investments in duly justified cases;
- EU assistance may be combined. However, regardless of the form of intervention chosen, the total amount of EU aid under the regulation may not exceed 10% of the total investment cost;
- EU aid for the telecommunications and energy networks must not cause distortions of competition between businesses in the sector concerned.

b. Selection criteria

The following project criteria must be applied:

- projects must help to achieve the networks' objectives;
- projects must be potentially economically viable;
- the maturity of the project; the stimulative effect of EU intervention on public and private finance and the soundness of the financial package;
- direct or indirect effects on the environment and employment;
- coordination of the timing of different parts of the project, for example in the case of cross-border projects.

The projects financed must comply with EU law and EU policies, in particular in relation to environmental protection, competition and the award of public contracts. Regulation (EC) No 2236/95 covered the 1995-2000 period and has been amended by, among others, Regulation (EC) No 1159/2005 of 6 July 2005 laying down that the amount of Community aid granted may be as much as 30% of the total investment cost for deployment projects. Regulation (EC) No 680/2007 of 20 June 2007 lays down general rules for the granting of EU financial aid for the 2007-2013 period. The latest regulations introduced a range of new elements, including:

- multiannual and annual programmes in the fields of transport and energy for granting EU financial aid to the selected projects;
- the amount of EU aid granted to studies is 50%, irrespective of the project of common interest concerned, and the amount granted to priority projects is from 10% to 30% in the field of transport (with a maximum of 30% for cross-border sections of priority projects);
- each year, the Commission shall submit a report on the activities undertaken; in the implementation of the regulation, it is assisted by a normative committee, composed of representatives of the Member States, which meets in the appropriate composition for the subject being discussed (transport, energy or telecommunications);

- inclusion of risk capital in EU financial aid;
- the financial contribution to the provisioning and capital allocation for guarantees to be issued by the EIB from its own resources under the loan guarantee instrument;
- the financial framework for 2007 to 2013 allocates EUR 8 168 million to the TENs, EUR 8 013 million of which for transport (TEN-T) and EUR 155 million for energy (TEN-E);
- Taking into account that the estimated TEN-T investment in priority projects far exceeds the amount of financial aid for the fields of transport for the period 2007 to 2013, the Commission should, with the help of European Coordinators, support and coordinate Member States' efforts to finance and complete the TEN-T network in line with the timetable laid down. It should also focus on studying and solving the long-term financial problem, bearing in mind that the TEN-T building period covers at least two seven-year budget periods and the expected life of the new infrastructure is at least a century.

B. Other financing possibilities

1. EU Structural and Cohesion Funds

In the 2000-2006 period, these funds contributed approximately EUR 26 billion to TEN projects — particularly through the Cohesion Fund in Greece, Ireland (until 2003), Portugal and Spain and in the Member States that joined in 2004. These new Member States that joined the EU in 2004 were allocated EUR 2.48 billion in pre-accession aid. In addition, for the 2004-2006 period these countries were allocated EUR 4.24 billion from the Cohesion Fund and EUR 2.53 billion from the other Structural Funds. Of this total, approximately 50% of the pre-accession aid and aid from the Cohesion Fund in 2004-2006, or EUR 3.9 billion, was allocated to TEN-T projects.

2. European Investment Bank (EIB) aid

No territorial restrictions apply to EIB loans. They are granted on the basis of banking criteria, which include the financial (ability to repay), technical and environmental feasibility of the project. Over 1995-2005, the EIB granted loans for TEN projects totalling approximately EUR 65 billion. Regulation (EC) No 680/2004 introduces the loan guarantee instrument as a form of EU financial aid for guarantees to be issued by the EIB on its own resources. The EIB itself manages the EU contribution to the loan guarantee instrument (Article 6.1 and Annex).

3. Private sector contribution

On 30 April 2004, the Commission published a Green Paper on public-private partnerships, which examines PPPs in the light of Community law on public contracts and concessions (COM(2004) 327). In addition, on 7 March 2005, it published a communication on the design of an EU loan guarantee instrument for TEN-Transport projects (COM(2005) 76). The instrument is intended to provide support for specific types of PPPs. The aim is to stimulate private sector investment in priority TEN-T projects by providing credit assistance.

C. The financial framework for 2007-2013

For the financing period of 2007 to 2013, the Commission, with Parliament's support, initially proposed EUR 20.350 billion for TEN-Transport and EUR 0.34 billion for TEN-Energy. However, the Council insisted on a drastic reduction of these funds. The agreement between the Council and the EP on the new TEN financial framework provided for EUR 8.013 billion in the area of transport and EUR 0.155 billion in the area of energy. Thus the amounts laid down in the financial framework represent only 40% of the amount originally proposed in the area of transport and 45% of the amount for energy. The EP and the Council therefore agreed a revision of Regulation (EC) No 2236/95 laying down general rules for the granting of EU financial aid in the field of trans-European transport and energy networks. The new regulation (Regulation (EC) No 680/2007), applicable from 1 January 2007, stipulates that, in order to complement national (public or private) sources of financing, these limited EU resources should be focused on certain categories of projects which will provide the greatest added value for the network as a whole. These include in particular cross-border sections and projects aimed at removing bottlenecks. In addition, the rates of support should be modified for certain categories of projects (e.g. for certain waterways, ERMTS/ETCS or the SESAR programme). In addition, the contribution to TEN-T made by the cohesion policy operational programmes adopted by the Commission was EUR 43 billion, including the contribution for ports and airports (approximately EUR 34 600 million comes from the Cohesion Fund and EUR 8.3 billion from the Structural Fund). The satellite navigation systems (EGNOS and Galileo programmes) are also financed by the EU as trans-European networks. The amount allocated to the deployment phase of the Galileo programme in particular is EUR 3 405 million for the period from 1 January 2007 to 31 December 2013.

D. The financial framework for 2013-2020

For the 2013-2020 financing period, the Commission has proposed a new Connecting Europe Facility (CEF, COM(2011) 665) to finance the TENs, with a significant increase in funding to over EUR 50 billion (including over EUR 31 billion for TEN-Transport). In addition to equity instruments and grants, the proposal includes a new financial instrument to mobilise more private sector funding, namely project bonds.

As of mid-2013, the file (2011/0302(COD)) was under negotiation by Parliament and Council, with Council insisting on a reduction of funding. Conditional on the Institutions reaching agreement on the Multiannual Financial Framework for 2013-2020, a compromise agreement with Council on the CEF can be expected to be approved by Parliament in the second half of 2013.

Role of the European Parliament

The EP has the right of scrutiny over the Commission's financing proposals. In the course of the legislative procedure on the adoption of Regulation (EC) No 2236/95, Parliament requested amendments intended primarily to improve criteria, objectives and procedures in order to provide Member States and businesses with more certainty and transparency and to develop partnership between the public and private sectors. In the subsequent legislative procedure on amendment of this regulation, the EP urged that more environmentally-friendly modes of transport be given priority in terms of funding. Thus the percentage share of funding for transport infrastructure projects was fixed in such a way as to devote at least 55% to railway projects (including combined transport) and a maximum of 25% to road projects. Furthermore, the EP emphasised the need for the Commission to ensure coordination and coherence of projects when they are financed by contributions from the Community budget, the EIB, the Cohesion Fund, the ERDF or other Community financing instruments.

In its resolution of 8 June 2005 on the financial framework for 2007 to 2013, the EP welcomed the Commission proposal on TEN-Energy and on TEN-T priority projects. However, it noted that the resources allocated for 30 transport priority projects constitute a minimum amount which must be regarded as subject to upward revision. It also declared its willingness to examine innovative financing instruments such as loan guarantees, European concessions, European loans and an interest relief fund, or EIB facilities. After the Council had agreed massive reductions to the original Commission proposal at the end of 2005, Parliament, in the subsequent negotiations on the financial perspective, urged that the amount allocated to the TENs be increased. In the final agreement with the Council, Parliament obtained an increase of EUR 500 million as well as extra EIB funding for the realisation of the TENs.

In its resolution of 12 July 2007, the EP called on the Commission to make proposals on the possible extension of new alternative and innovative ways of financing and to provide extra resources for transport and the related research during the review of the financial framework in 2008 (paragraph 6).

In its resolution of 22 April 2009 on the Green Paper on the future of TEN-T, the PE stressed the importance of developing PPPs in order to finance TEN-Ts and to propose flexible solutions to the problems posed in this kind of work. With this aim in mind, it insisted on the need to create a working party in the TEN-T executive agency. The resolution prioritised a recalculation of the TEN-T budget by the Member States as part of the mid-term review of the financial perspectives in 2009-2010 rather than undertaking a drastic reduction of other projects and plans to develop the associated railway and waterway networks. On 7 June 2011, as part of the review of road transport taxation rules (the 'Eurovignette' directive), the EP approved the compromise with the Council according to which at least 15% of the revenue from the external cost charges and infrastructure charge of each Member State will be used to give financial support to TEN-T projects in order to improve transport sustainability. This percentage is set to increase steadily over time (as highlighted by the EP in the resolution of 22 April 2009 on toll revenues).

→ Jakub Semrau

5.9. Industrial policy and research policy

5.9.1. General principles of EU industrial policy

The EU's industrial policy aims to improve the competitiveness of European industry, thereby ensuring that it can maintain its role as a driver of sustainable growth and employment in Europe. Article 173 of the TFEU represents the legal basis for the EU's industrial policy. Various strategies have been adopted in order to ensure better framework conditions for the EU industry; the most recent being the flagship initiative: 'An Industrial Policy for the Globalisation Era', which was included in the 'Europe 2020 Strategy'.

Legal basis

Article 173 of the Treaty on the Functioning of the European Union.

Objectives

Industrial policy is horizontal in nature and aims to secure framework conditions favourable to industrial competitiveness. It is also well integrated into a number of other EU policies such as trade, internal market, research and innovation, employment, environmental protection and public health. EU industrial policy is specifically aimed at: '(1) speeding up the adjustment of industry to structural changes, (2) encouraging an environment favourable to initiative and to the development of undertakings throughout the Union, particularly small and medium-sized undertakings, (3) encouraging an environment favourable to cooperation between undertakings, (4) fostering better exploitation of the industrial potential of policies of innovation, research and technological development'.

Achievements

A. Introduction

The instruments of the EU's industrial policy, which are those of enterprise policy, aim to create the general conditions within which entrepreneurs and businesses can take initiatives and exploit their ideas and opportunities. Nonetheless, industrial policy should take into account the specific needs and characteristics of individual sectors. Annual European competitiveness reports analyse the strengths and weaknesses of the European economy in general and the European industry in particular, and may trigger cross-sectoral or sectoral policy initiatives.

B. Towards an integrated industrial policy

In July 2005, for the first time, a Commission communication on 'Implementing the Community Lisbon Programme: A policy framework to strengthen EU manufacturing — towards a more integrated approach for industrial policy' (COM(2005) 474)) set out an integrated approach to industrial policy based on a concrete work programme of cross-sectoral and sectoral initiatives.

Seven cross-sectoral policy initiatives were outlined, inter alia:

- an Intellectual Property Rights and Counterfeiting Initiative: intellectual property rights (IPR) were perceived as being of key importance for the competitiveness of many industrial sectors;
- a New Legislative Simplification Programme: better regulation at various levels had been identified as a key challenge for several sectors, in particular with regard to the automotive sector, the construction sector and waste legislation;
- an Integrated European approach to Industrial Research and Innovation: help in anticipating opportunities to improve research and innovation investment, and to foster the commercialisation of new technologies within Europe.

In addition, the communication introduced a number of new political sector-specific initiatives in different fields such as pharmaceuticals, aerospace and chemicals.

The 'Mid-term review of industrial policy' (COM(2007) 374) concluded that the actions described in the 2005 communication had benefited Europe's industries, both with regard to large companies and SMEs. It was underlined that the integrated approach had proved successful, and had the support of Parliament and the Member States.

Consequently, it was argued that the framework should be kept in place, as it would allow industry to best respond to the challenges of globalisation and climate change.

C. Other recent initiatives related to EU's industrial policy

The 2008 Commission communication entitled 'Sustainable Consumption and Production and Sustainable Industrial Policy Action Plan' (COM(2008) 397) aims at delivering an integrated package of measures to foster more sustainable consumption and production, while improving the competitiveness of the European economy. In order to achieve this 'virtuous circle', the action plan proposed to make use of a variety of policy instruments. For example, consumer demands are to be channelled towards more sustainable consumption through a simplified labelling framework.

In response to the challenges to ensure a sustainable supply of non-energy raw materials for the EU economy, the Commission initiated 'The raw materials initiative' (COM(2008) 699): seeking to ensure a level playing field in access to resources in third countries, better framework conditions for extracting raw materials within the EU and a reduced consumption of primary raw materials though the increase of resource efficiency and the promotion of recycling. A Commission communication (COM(2011) 21) proposed to reinforce the implementation of the raw materials initiative.

In the communication 'Preparing for our future: Developing a common strategy for key enabling technologies in the EU' (COM(2009) 512), the Commission outlines that the EU will foster the deployment of key enabling technologies (KETs) within its current policy framework and also suggests setting up a High Level Expert Group (HLG) in charge of developing a common long-term strategy. In its final report, the High Level Group proposes 11 policy recommendations for the development and deployment of KETs in Europe.

D. The Europe 2020 Strategy and 'An industrial policy for the globalisation era'

In March 2010, the Lisbon Strategy was replaced by the Europe 2020 Strategy ('Europe 2020 — A Strategy for Smart, Sustainable and Inclusive Growth' (COM(2010) 2020)). 'Europe 2020' puts forward seven flagship initiatives. Four initiatives are especially relevant for the improvement of the competitiveness of EU's industry: 'Innovation Union' (COM(2010) 546), 'A digital agenda for Europe' (COM(2010) 245), 'An industrial policy for the globalisation era' (COM(2010) 614) and 'New Skills for New Jobs' (COM(2008) 868). The flagship initiative 'An industrial policy for the globalisation era' focuses on 10 actions for European industrial competitiveness, thereby placing more emphasis on i.e. the growth of SMEs, and the supply and management of raw materials. Some of the actions are mentioned below:

- support of the creation and growth of SMEs by making it easier for them to access credit and help their internationalisation (see COM(2011) 870 and COM(2011) 702);
- a strategy to strengthen European standardisation to meet the needs of industry (see proposal for a regulation on European standardisation — COM(2011) 315);
- upgrade of European transport, energy and communication infrastructure and services to serve industry more efficiently, taking better into account today's changing competitive environment (see COM(2011) 676);
- a new strategy on raw materials to create the right framework conditions for the sustainable supply and management of domestic primary raw materials (see COM(2011) 25);
- sector-specific innovation performance will be addressed through actions in sectors such as advanced manufacturing technologies, construction, bio-fuels, and road and rail transport; particularly in view of improving resource efficiency;
- the challenges of energy-intensive industries will be addressed through actions to improve framework conditions and support innovation;
- a space policy will be pursued, developed in collaboration with the European Space Agency and Member States, to create a solid industrial base covering the whole supply chain (see COM(2011) 152).

The communication from the European Commission 'Industrial Policy: Reinforcing competitiveness' (COM(2011) 642), adopted on 14 October 2011, calls for deep structural reforms, as well as coherent and coordinated policies across Member States to enhance EU economic and industrial competitiveness and foster long-term sustainable growth. The communication points out several key areas where stronger effort is needed such as structural changes in the economy; the innovativeness of industries; sustainability and resource efficiency; business environment; the single market; and small and medium-sized enterprises.

The Commission proposes measures to strengthen EU competitiveness further by, inter alia:

- increasing cooperation in innovation for large-scale demonstration projects and pilot test facilities;
- favouring energy and raw material efficiency and promoting the deployment of cleaner technologies;
- developing support for innovative services by participating in the Innovation Partnerships;
- implementation of the single market legislation and the Services Directive;
- facilitating the growth of SMEs by establishing adequate regulations, access to funds, and by providing support services for accessing new markets.

On 10 October 2012, the Commission adopted an update of the Industrial Policy flagship initiative — 'A Stronger European Industry for Growth and Economic Recovery' aiming at supporting investments in innovation, with a focus on six priority areas with great potential (advances manufacturing technologies for clean production; key enabling technologies; bio-based products; sustainable industrial and construction policy and raw materials; clean vehicles and vessels; smart grids). The communication highlighted as well the need for better market conditions, access to finance and capital, human capital and skills as means to promote industry's competitiveness.

Role of the European Parliament

The Maastricht changes to the EC Treaty dealt with the question of industrial policy for the first time — an achievement that can be attributed to initiatives by the Parliament, which helped to stimulate the reorganising of the steel sector and called for a more dynamic industrial policy. Since then, Parliament has adopted numerous resolutions which have further strengthened the EU's industrial policy. Some of the most recent are mentioned below**:**

- Resolution of 22 May 2008 on the mid-term review of industrial policy: a contribution to the EU's Growth and Jobs Strategy[1] urged, among other things, both the Commission and Member States to increase their efforts to reduce the administrative burden for enterprises. It also highlights the importance of a transparent, simplified intellectual property rights policy;
- Resolution of 16 June 2010 on the EU 2020 Strategy[2], while strongly supporting an industrial policy, aimed at creating an environment well-suited to maintain and develop a strong, competitive and diversified industrial base in Europe. It further stressed that the Europe 2020 Strategy should disclose the costs and benefits of the conversion to a sustainable, energy-efficient economy;
- Resolution of 9 March 2011 on an Industrial Policy for the Globalised Era[3] underlined the importance of a more comprehensive vision for European industry in 2020 as long-term regulatory predictability and stability were considered essential to attract investments. In particular, the Parliament urged the Commission to place greater emphasis on industrial renewal, competitiveness and sustainability, and to develop an ambitious, eco-efficient and green EU industrial strategy;
- Resolution of 26 October 2011 on the Agenda for New Skills and Jobs[4] underlined the importance of developing closer cooperation between research institutes and industry and to encourage and support industrial companies in investing in research and development. The Parliament called for more investment in education, research and innovation, for promoting centres of excellence and mobility of young people and for supporting the development of conditions stimulating growth of innovative enterprises. The Parliament further called on the Commission to step up promotion of the role of management and labour in each industrial sector across Europe and to cooperate with Member States for the creation of an integrated and competitive risk capital market;
- Resolution of 19 January 2012 on a space strategy for the European Union that benefits its citizens[5], stresses the importance of a research and innovation strategy in the area of space policy which ensures technological progress, industrial development and EU competitiveness and creates jobs in the EU;
- Announced for October 2013, the resolutions on 'Reindustrialising Europe to promote competitiveness and sustainability' 2013/2006(INI) and on 'Promoting the European cultural and creative sectors as sources of economic growth and jobs' 2012/2302(INI) are expected to provide important contributions to the industrial policy field.

→ Frédéric Gouardères

[1] OJ C 279 E, 19.11.2009, p. 57.

[2] OJ C 236 E, 12.8.2011, p. 57.

[3] T7-0093/2011.

[4] T7-0466/2011.

[5] 2011/2148(INI).

5.9.2. Small and medium-sized enterprises

Small and medium-sized enterprises (SMEs) constitute 99% of companies in the EU. They provide two thirds of the private sector jobs and contribute to more than half of the total value-added created by businesses in the EU. Nine out of ten SMEs are actually micro enterprises with less than 10 employees. Various action programmes have been adopted to support SMEs such as the small business act which sums up all these programmes and aims to create a comprehensive policy framework. Recently new proposals have been put forward on Horizon 2020 and COSME aiming at increasing the competitiveness of SMEs through research and innovation, and providing a better access to finance for SMEs.

Legal basis

Small and medium-sized enterprises (SMEs) operate mainly at national level, as relatively few SMEs are engaged in cross-border business within the EU. However, independently of their scope of operations, SMEs are affected by EU legislation in various fields, such as taxation (Articles 110-113 TFEU), competition (Articles 101-109) and company law (right of establishment — Articles 49-54). The Commission's definition of SMEs can be found in Recommendation 2003/361/EC.

Objectives

Micro, small and medium-sized enterprises make up 99% of all businesses in the EU. SMEs are about 21 million in number, employing about 133 million people and are an essential source of entrepreneurial spirit and innovation, which is crucial for the competitiveness of European companies. EU policy for SMEs aims to ensure that Union policies and actions are small-business friendly and contribute to making Europe a more attractive place for setting up a company and doing business.

Achievements

A. General SME policy

Current SME policy in the EU largely falls within the scope of the 'Europe 2020 — A Strategy for Smart, Sustainable and Inclusive Growth' (COM(2010) 2020) which aims to make the EU the most competitive and dynamic knowledge-based economy in the world. Europe 2020 puts forward seven flagship initiatives; four of which pay particular attention to improving the framework conditions and the business environment for SMEs: 'Innovation Union' (COM(2010) 546), 'A digital agenda for Europe' (COM(2010) 245), 'An industrial policy for the globalisation era' (COM(2010) 614) and 'New Skills for New Jobs' (COM(2008) 868).

B. The Small Business Act (SBA)

The most comprehensive and encompassing initiative on SMEs to date was brought forward by the Commission in June 2008 in the form of the small business act (SBA) as a communication (COM(2008) 394). The SBA aims to create a new policy framework integrating the existing instruments and building on the 'European Charter for Small Enterprises' and the 'Modern SME policy for growth and employment'. In this, it takes a 'political partnership approach with Member States' rather than proposing a fully-fledged Community approach. The SBA aims to improve the overall approach to entrepreneurship in the EU by 'thinking small first'.

1. Smart regulation

Cutting red-tape and bureaucracy is a high priority for the Commission in the SBA. Making public administrations more responsive to SMEs' needs can make a major contribution to the growth of SMEs. The ongoing implementation process of the Services Directive (2006/123/EC) should contribute to this goal, reducing regulatory barriers to cross-border service activities.

The amendment of the Late Payments Directive (public authorities are required to pay within 30 days as a security guarantee for SMEs) and the directive on e-invoicing (making e-invoices equal to paper ones) is particularly helpful to small businesses. Furthermore, modernisation of the EU public procurement policy means that SMEs now experience lighter administrative burdens when accessing public procurement and have better opportunities for joint bidding. The same approach is found to simplify financial reporting obligations and to reduce administrative burdens for SME via the modernisation of both public procurement in the European Union and existing Accounting Directives (78/660/EEC and 83/349/EEC), see COM(2011) 684.

2. Access to finance

Financial markets have often failed to provide SMEs with the financing they need. Some progress has been made over the last few years in improving the availability of financing and credit for SMEs through the provision of loans, guarantees and venture capital. The European financial institutions — the European Investment Bank (EIB) and the European

Investment Fund (EIF) — have increased their operations for SMEs.

However, the SBA still identifies access to finance as being the second largest problem faced by individual SMEs. More than EUR 1 billion has been made available between 2007 and 2013 in the CIP programme, which should enable financial institutions to provide a total of EUR 30 billion to an estimated 400 000 SMEs. Moreover, the improved availability of microloans is also provided for.

In November 2011, the Commission furthermore proposed an 'action plan to improve access to finance for SMEs' (see COM(2011) 870). Amongst other things, the action plan includes policy initiatives to ease SMEs' access to venture capital markets. The action plan also aims to present solutions in 2013 to eliminate the tax obstacles to cross-border venture capital investment.

3. SMEs in the single market

Both the Commission communication 'Towards a Single Market Act — For a highly competitive social market economy' (COM(2010) 608) and the SBA stress the need for the continuous improvement of framework conditions for businesses in the single market. Various initiatives and measures exist or are planned to facilitate the establishment and operation of SMEs in the internal market. SMEs have been granted derogations in many areas, for example as regards competition rules, taxation and company law.

4. Competition Policy

The EU's state aid policy has, for a long time, treated SMEs favourably, recognising the special difficulties they face due to their size. In 2008, a new exemption regulation (GBER — General Block Exemption Regulation) on state aid was adopted. Under the new rules, SMEs can receive investment aid of up to EUR 7.5 million for a given project without having to notify the Commission. The initiative also aims to facilitate environmental protection projects and promote female entrepreneurship. Furthermore, a number of state aid guidelines, including on risk capital, will be revised to achieve Europe 2020 objectives and respond to SME needs.

5. Taxation

The open consultations leading to the SBA contained questions on the most common problems SMEs face in the internal market. Taxation was named as being one of the three most important issues. Although the rules on indirect taxation are to some extent harmonised under a Community framework, direct taxation (including company taxation) remains an entirely national competency. This has a considerable impact on the compliance costs and the administrative burden in cross-border business, bearing disproportionately high on SMEs as they tend to have fewer resources than bigger companies.

Furthermore, according to the midterm review of the SBA, the Commission will propose initiatives relating to the functioning of VAT in order to limit the administrative burden on businesses and to promote cross-border activity. The first step in this direction was the Commission communication (COM(2011) 851) on 'The future of VAT. Towards a simpler, more robust and efficient VAT system tailored to the single market' of December 2011.

C. EU programmes and networks for SMEs

Examples of SME policies and networks aimed at SMEs include firstly general support services for SMEs in the EU, for example the 'Enterprise Europe Network', 'Solvit', 'Your Europe — Business', 'SMEs and the environment' and 'Dealing with chemicals: national REACH helpdesks'. Secondly, support for innovation and research includes the 'IPR Help Desk', 'SME Techweb', 'Network of FP7 National Contact Points (NCPs) for SMEs', 'China IPR Helpdesk for SMEs', 'European Business and Innovation Centres (BIC) Network — EBN', 'Innovation networks', 'Gate2Growth', 'CORDIS Incubators Service', 'CORDIS European Innovation Portal' and 'Electronic marketplaces'.

D. SMEs and research

Research and innovation are crucial to the sustainable success and growth of SMEs in the EU. The current, Seventh Research Framework Programme (FP7), running from 2007 through 2013, contains significant support dedicated to SMEs, to the tune of 15% out of its total budget of EUR 54 billion. The new proposal Horizon 2020 (2014-2020) aims at creating a better and more comprehensive support environment for research and innovation activities of SMEs. Major simplification should be achieved through a single set of rules. As part of this approach, SMEs will be encouraged to participate through a new 'specific SME instrument', aiming to fill gaps in funding for early-stage, high-risk research and innovation by SMEs.

Besides FP7, the Eurostars programme, managed by Eureka, also provides support to European SMEs with high R&D intensity.

E. COSME — Programme for the Competitiveness of Enterprises and SMEs

The 'Programme for the Competitiveness of Enterprises and SMEs', COSME, was proposed by the Commission in November 2011 (see COM(2011) 834). COSME is largely continuing the activities under the current CIP programme, thereby having the following general objectives:

- improve access to finance for SMEs in the form of equity and debt: An equity facility for

growth-phase investment as well as a loan facility, which will provide SMEs with direct or other risk-sharing arrangements with financial intermediaries to cover loans;

- improve access to markets inside the Union and globally: Growth-oriented business support services will be provided via the Enterprise Europe Network to facilitate business expansion in the single market as well as outside the EU;
- promote entrepreneurship: Activities will include developing entrepreneurial skills and attitudes, especially among new entrepreneurs, young people and women.

According to the Commission, the programme is expected on a yearly basis to help 39 000 firms to create or save 29 500 jobs and launch 900 new business products, services or processes. The EP is expected to give its final opinion on COSME in the autumn of 2012. After that, the legislative process can move forward with voting at Council level.

Role of the European Parliament

As early as 1983 the European Parliament (EP) declared a 'Year of Small and Medium-sized Enterprises and the Craft Industry' and launched a series of initiatives to encourage their development. Since then the EP has consistently demonstrated its commitment to encouraging the development of European SMEs. A few recent examples:

- In June 2010, the EP adopted a resolution on 'Community innovation policy in a changing world'. In this resolution, it emphasises the need to create conditions whereby risk capital will be more readily available for the SMEs. The EP calls for the development of SME financing tools such as microcredit, venture capital for people seeking to invest in innovative enterprises, or 'business angels' to sponsor business projects by young researchers,. It also calls for Member States and the Commission to create tax, financial, business and administrative incentives for investment.
- In March 2011, the EP adopted a resolution on 'an Industrial Policy for the Globalised Era'. Amongst other things, the EP calls on the Commission to press on with the implementation of the SBA in order to reduce administrative burdens and ensure better access to financing opportunities for the SMEs. It also calls for an update of the definition of SMEs with a view to allowing for a greater flexibility in specific industrial sectors. Furthermore it urges the Commission to increase SMEs' participation in the framework programmes for research and development.
- In May 2011, the EP adopted a resolution on 'the Small Business Act Review'. In it, the EP, amongst other things, calls for Member States to adopt the last remaining proposal on the European Private Company Statute. The EP also stresses its concern that the SME test has not been applied properly and consistently in all new legislative proposals; particularly at national level. In addition, the EP warns Member States about 'gold-plating' by exceeding the requirements of EU legislation when transposing Directives into national law.
- In October 2012, the European Parliament adopted a resolution on Small and Medium Sized Enterprises (SMEs): competitiveness and business opportunities — 2012/2042 (INI). In it, the EP highlights a set of domains such as the reduction of administrative burdens, support to competitiveness and jobs creation, launching of start-ups, access to information and finances.
- Announced for October 2013, two resolutions on 'Reindustrialising Europe to promote competitiveness and sustainability' 2013/2006(INI) and on 'Promoting the European cultural and creative sectors as sources of economic growth and jobs' 2012/2302(INI) should provide important contributions to SME policy field.

→ Frédéric Gouardères

5.9.3. A Digital Agenda for Europe

Since 1995, information and communication technologies (ICTs) have pushed productivity gains and growth in the EU[1]. ICT incorporates a broad spectrum of technologies, ranging from information technology (IT), to telecommunication, broadcast media, all types of audio and video processing and transmission, through to network-based control and monitoring functions. Over the past decades, technological 'convergence' has been blurring the boundaries between telecommunications, broadcasting and IT. Smart-devices and the diffusion of connected TVs are the most telling examples of this phenomenon. While broadcasting still continues to be the principal source of information and entertainment in Europe, more and more audiovisual content is accessed on demand and the 'digital dividend'[2] is boosting wireless Internet access and the emerging 'Internet of Things' (IoT).

[1] http://ec.europa.eu/digital-agenda/en/scoreboard

[2] Via the transition from analogue to digital technology in television broadcasting services, digital compression allows the same amount of spectrum needed for one analogue TV channel to be used for six to eight standard digital TV channels. As a result a significant amount of radio spectrum can be used for new services and technologies, such as mobile broadband services.

Legal basis

Although Article 173 of the Treaty on the Functioning of the European Union (TFEU) provides a legal basis for an EU industrial policy, the treaties do not contain any special provisions for ICT. However, the EU may undertake certain actions within the framework of sectoral and horizontal policies, such as competition policy (Articles 101-109 TFEU); trade policy (Articles 206-207 TFEU); trans-European networks (TENs) (Articles 170-172 TFEU); research and technological development, and space (Articles 179-190 TFEU); and the approximation of laws (Article 114 TFEU). Articles 28, 30, 34-35 (free movement of goods, including audiovisual products); Articles 45-66 (free movement of people, services and capital); Articles 65-166 (education, vocational training, youth and sport) and 167 (culture) TFEU are also key for a digital Europe.

Objectives

Following up the 'Lisbon Strategy'[1], the Digital Agenda for Europe[2] (DAE) was conceived as one of the seven flagship initiatives of the Europe 2020 Strategy adopted by the European Commission (EC). Issued in May 2010, it is set out to define the key enabling role that the use of ICT will have to play if Europe wants to succeed in its ambitions for 2020. The Europe 2020 Strategy underlines the importance of broadband deployment to promote social inclusion and competitiveness in the EU. The DAE sets ambitious broadband targets: (1) basic broadband for all by 2013: basic broadband coverage for 100% of EU citizens; (2) fast broadband by 2020: broadband coverage at 30 Mbps or more for 100% of EU citizens; (3) ultra-fast broadband by 2020: 50% of European households should have subscriptions above 100 Mbps. All in all the DAE aims to reboot Europe's economy and help Europe's citizens and businesses to get the most out of digital technologies. The objective of this agenda is to chart a course to maximise the social and economic potential of ICT and, most particularly, of the Internet, which over two decades has become a vital medium of economic and societal activity for doing business, working, playing, communicating and expressing ourselves freely. Its implementation promises to spur innovation, economic growth and improvements in daily life for both citizens and businesses. The DAE frames its key actions around the need to systematically tackle seven areas: (1) fragmented digital markets, (2) lack of interoperability, (3) rising cybercrime and risk of low trust in networks, (4) lack of investment in networks, (5) insufficient research and innovation efforts, (6) lack of digital literacy and skills, (7) missed opportunities in addressing societal challenges.

Achievements

After the TV Without Frontiers Directive (TVWFD) Directive 89/552/EEC, then updated by the Audiovisual Media Services Directive (AVMSD) (regulating TV broadcasting services, advertising and sponsorship, and protection of minors, but also promoting European works) and the 'Regulatory

[1] Its aim was to make the EU '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'.

[2] http://ec.europa.eu/digital-agenda/

framework for electronic communications networks and services' (Directive 96/19/EC) (which opened up the telecommunications market to full competition on 1 January 1998, and its revisions in April 2002 and November 2009), today the EU has an advanced system of users' rights and protection giving consumers:

- '112' a single European emergency number (2009/136/EC) and '116000' (missing children helplines), '116111' (child help lines) and '116123' (emotional support helplines);
- the right to change in one working day their fixed and/or mobile operator while retaining their old phone number (number portability) (2009/136/EC);
- relatively low pricing for electronic communication;
- an '.eu' top-level domain (TLD);
- strong privacy (2009/136/EC) and data protection (95/46/EC) requiring telecoms providers to inform the authorities and their customers about security breaches affecting their personal data[1].

In order to furthering consistency of national regulatory approaches, the Body of European Regulators for Electronic Communications (BEREC) ensures cooperation between national regulators and the Commission, promoting best practice and common approaches, while to avoid inconsistent regulation that could distort competition in the single telecoms market, the EC has been granted (in close cooperation with BEREC) the power to oversee regulatory remedies proposed by national regulators. As regards spectrum management, the multiannual radio spectrum policy programme sets out policy orientations and objectives for the strategic planning and harmonisation of radio spectrum to ensure the functioning of the internal market in the Union policy areas involving the use of spectrum, such as electronic communications, research, technological development and space, transport, energy and audiovisual policies. With regard to network and information security (NIS) the European Network and Information Security Agency (ENISA) was established via Regulation (EC) No 460/2004 and its mandate was recently strengthened as adopted by the EP on 16 April 2013 (T7-0103/2013). Since 1999, there have been a series of multiannual 'Safer Internet' programmes, with the current one covering the period 2009-2013. The programme funds activities at national and European levels as well as two annual events, 'Safer Internet Day' and 'Safer Internet Forum'. The main objectives are: to promote the safer use of the Internet and other communication technologies (particularly for children and young people); to educate users (in particular children, parents, carers, teachers and educators) and to fight against illegal content and harmful conduct online.

Role of the European Parliament

The EP advocates a robust and advanced ICT policy and has been very active in the adoption of legislative acts in the area. It has also constantly helped to keep focus on the issues of ICT through the adoption of oral and written questions, own-initiative reports, studies[2], workshops[3], opinions and resolutions, and through calls for greater coordination of national efforts for the development of pan-European services, enhanced EU support for ICT R&D and more attention to consumer issues. Several resolutions have been adopted by the EP. The most recent ones on the implementation of TVWFD and AVMSD have systematically stressed the need to take technological developments and structural changes of the audiovisual market into account, especially in light of growing media convergence.

The EP has continuously emphasised that the EU should stimulate the growth and competitiveness of the audiovisual sector, while at the same time recognising its wider significance in safeguarding cultural diversity. The EP also affirms that new audiovisual technologies should allow the broadcasting of pluralist information and quality programmes, accessible to an ever-increasing number of citizens, thereby overcoming the 'digital divide'. In addition, the EP recognises the vital role the European Audiovisual Observatory is playing for the EU's audiovisual industry, and has called for it to be provided with the resources necessary to continue to achieve its objectives (T6-0068/2009).

The EP has also recalled the necessity to use the digital dividend spectrum to achieve broadband for all the European citizens, and underlines that further action is needed to ensure a ubiquitous and high-speed access to broadband as well as digital literacy and competencies for all citizens and consumers (T7-0133/2010). It equally stresses the

[1] These rules will soon be updated with the aim of adapting current EU rules and laws dating from pre-Internet times. The new proposal is now undergoing through Parliamentary scrutiny 2012/0011(COD).

[2] http://www.europarl.europa.eu/aboutparliament/en/0083c7a4db/Think-Tank.html#studies

[3] http://www.europarl.europa.eu/committees/en/events.html?id=workshops#documents

importance of a secure cyberspace (T7-0237/2012) while ensuring robust protection of privacy and other civil liberties in a digital environment. At the same time the EP strongly promotes technological neutrality, 'net neutrality' and 'net freedoms' for European citizens, and also measures regarding access to or use of services and applications though telecoms networks must respect the fundamental rights and freedoms of citizens and ensure that Internet service providers do not degrade users' fruition of content, application or services of their choice (T7-0511/2011). Moreover the EP has played a pivotal role in lowering further roaming tariffs (T7-0197/2012).

With regard to IPR protection: the EP stresses the need for a more comprehensive strategy addressing all aspects of IPRs, including enforcement and promotion, though emphasising that in the cultural area the 'private copy' represents an exception to IPRs (T7-0340/2010), while with the vote on the Anti-Counterfeiting Trade Agreement (ACTA) the EP played a pivotal role by deciding to press ahead with its own scrutiny of the agreement. Five committees came out against the agreement while the petition committee received a petition against ACTA signed by nearly three million people.

→ Fabrizio Porrino

5.9.4. The Ubiquitous Digital Single Market

The Digital Single Market is one of the most promising and challenging areas for progress. It constitutes an important part of current efforts by the European institutions to relaunch the internal market. The Digital Single Market opens up new opportunities to boost the economy through e-commerce, at the same time facilitating administrative and financial compliance for businesses and empowering customers through e-government. Market and government services developed within the Digital Single Market evolve from electronic to mobile and increasingly towards ubiquitous, with access to information and content, anytime, everywhere and on any device. These developments require regulatory framework enabling development of cloud computing, borderless mobile data connectivity and facilitated access to information and content.

Legal basis

Articles 4(2)(a), 26, 27, 114 and 115 of the Treaty on the Functioning of the European Union (TFEU).

Objectives

The Digital Single Market is essentially about removing national barriers to transactions that take place online. The Digital Single Market builds upon the concept of the common market, intended to eliminate trade barriers between Member States with the aim of increasing economic prosperity and contributing to 'an ever closer union among the peoples of Europe', further developed into the notion of the internal market, defined as 'an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured'. Following up the 'Lisbon Strategy'[1], the Europe 2020 Strategy conceived the Digital Agenda for Europe[2] as one of the seven flagship initiative, recognising the key enabling role that the use of information and communication technologies (ICT) will have to play if Europe wants to succeed in its ambitions for 2020 (*5.9.3). More e-commerce should generate tangible benefits for consumers such as lower prices, more choice and better quality of goods and services, thanks to cross-border trade and easier comparison of offers. The overall gain for consumers can reach EUR 204 billion (1.7% of European GDP) if e-commerce reached 15% of retail sales and if the obstacles to the Single Market were removed. As a result of the adoption of cloud computing, 80% of organisations could reduce costs by 10-20%. Other benefits include enhanced mobile working (46%), productivity (41%), standardisation (35%), as well as new business opportunities (33%) and markets (32%)[3]. Vulnerable people (the elderly, those with reduced mobility, those isolated in rural areas, those with low purchasing power) can particularly benefit from the Digital Single Market, and Europe will thus be better placed to meet the demographic challenges of today[4].

Achievements

Relaunching the European economy through the Digital Single Market: Given that the full potential of the internal market remains unexploited, the European Parliament, the Council and the Commission have made fresh efforts to relaunch the internal market, and to put the public, consumers and SMEs at the centre of the single market policy. The Digital Single Market dimension plays a central role in these efforts.

With its communication entitled 'Europe 2020 — A strategy for smart, sustainable and inclusive growth' (COM(2010) 2020), the Commission presented seven flagship initiatives, including the Digital Agenda, in order to 'turn Europe into a smart, sustainable and inclusive economy delivering high levels of employment, productivity and social cohesion'.

In addition to the Europe 2020 strategy, the Commission published a report entitled 'A new strategy for the single market at the service of Europe's economy and society' in May 2010, in order to develop a comprehensive strategy for the single market which covered all the policies concerned, including digital policy. It also set out several initiatives aimed at shoring up the single market by removing the remaining barriers. The communications from the Commission and Parliament's resolution of 20 May 2010 entitled 'Delivering a single market for consumers and

[1] Its aim was to make the EU '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'.

[2] http://ec.europa.eu/digital-agenda/

[3] European Commission's Communication on ‚Unleashing the Potential of Cloud Computing in Europe', COM(2012) 529 final.

[4] European Commission's Communication on ‚A coherent framework for building trust in the Digital Single Market for e-commerce and online services', COM(2011) 942 final.

citizens'[1] prepared the ground for a Commission communication entitled 'Towards a Single Market Act' (COM(2010) 608), in which the Commission presented a series of measures designed to boost the European economy and create jobs,. Following on from the communication of 11 January 2012 entitled 'A Coherent framework for building trust in the Digital Single Market for e-commerce and online services' (COM(2011) 942), in June 2012 the Commission published a communication entitled 'Better Governance for the Single Market' (COM(2012) 259). It proposed that the focus should be placed on those sectors with the highest growth potential, including network industries (e.g. energy and telecommunications).

In September 2012 the Commission published a Communication on 'Unleashing the Potential of Cloud Computing in Europe', indicating the following key actions: (1) cutting through the jungle of standards, (2) safe and fair contract terms and conditions, (3) establishing a European cloud partnership to drive innovation and growth from the public sector, in order to address such issues like fragmentation of the Digital Single Market, complicated contractual environment, and issues (COM(2012) 529 final).

In October 2012 the Commission came forward with a second set of proposals — the Single Market Act II — comprised of 12 key actions concentrated on four main drivers for growth, employment and confidence: integrated networks, cross border mobility of citizens and businesses, the digital economy, and actions that reinforce cohesion and consumer benefits. With respect to the digital economy, as a move towards the completion of the digital single market by 2015, the Commission is proposing that e-commerce should be promoted in the EU by making payment services easier to use, more trustworthy and more competitive; there is also a need to address the key causes of the lack of investment in high-speed broadband connections and to make electronic invoicing standard in public procurement procedures; indicating as well at importance of consumer confidence. The Commission intended to come forward with all of the key legislative proposals connected with the Single Market Act II by spring 2013, and with the non-legislative proposals by the end of 2013. The Parliament and the Council will be called upon to adopt legislative proposals as a matter of priority by spring 2014.

Role of the European Parliament

Parliament plays an active role in the recent relaunch of the internal market and has been a keen promoter of the Digital Single Market.

Parliament's resolution of 20 April 2012 on 'a competitive digital single market — eGovernment as a spearhead'[2] pointed out the need for a clear and coherent legal framework for the mutual recognition of electronic authentication, identification and signatures that is necessary to guarantee that cross-border administrative services can operate throughout the EU. This was followed by two Commission communications entitled 'A strategy for e-procurement' (COM(2012) 179) and 'European Strategy for a Better Internet for Children' (COM(2012) 196).

On 11 December 2012, Parliament adopted two non-legislative resolutions relating to the internal market, one on completing the Digital Single Market[3] and one on a Digital Freedom Strategy in EU Foreign Policy[4], in which Parliament stressed that it strongly supports the principle of net neutrality, namely that internet service providers do not block, discriminate against, impair or degrade, including through price, the ability of any person to use a service to access, use, send, post, receive or offer any content, application or service of their choice, irrespective of source or target. Parliament called on the Commission and the Council to promote and preserve high standards of digital freedom in the EU. The aim of the resolutions was to develop policy and practice with a view to the establishment of a real digital single market in the EU to cope with 27 different sets of rules in key areas including VAT, postal services and intellectual property rights. Connecting SMEs to the digital revolution through genuine, well developed pan-European e-commerce is one of the recommendations made to the Commission and the Council with regard to breaking down digital barriers between Member States.

Parliament's Committee on the Internal Market and Consumer Protection has set up a working group on the Digital Single Market and e-Commerce, which in 2013 started its third round of meetings in order to identify key remaining barriers and priority areas, where further action is needed as a matter of urgency. The working group gathers input on strategic directions that should be taken and is currently preparing a motion for a resolution to wind up the debate on Completing the Digital Single Market (2013/2655(RSP)), as a contribution to a possible Single Market Act III focusing on the Digital Single Market.

→ Mariusz Maciejewski

[1] Texts adopted, P7_TA(2010)0186.

[2] Texts adopted, P7_TA(2012)0140.

[3] Texts adopted, P7_TA(2012)0468.

[4] Texts adopted, P7_TA(2012)0470.

5.9.5. Defence industry

The defence industry is governed by Articles 173 and 352 of the Treaty on the Functioning of the EU and it presents economic and technological components that are important factors in the competitiveness of the European industry. The elimination of the fragmented market by the gradual establishment of a European market for defence equipment would cut red tape, foster innovation and limit the duplication of defence programmes and research. Created in 2004, the European Defence Agency contributes actively to the development of this industry.

Legal basis

EU action in this field must be based on Article 352, 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 173 provides a legal basis for EU industrial policy. However, progress towards applying internal market rules on the defence equipment market have been restrained by Article 346§1 TFEU that states 'any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material'.

Objectives

The defence industry has been important for the EU, because of its technological and economic policy aspects. The competitiveness of the European defence industry is vital to the credibility of the nascent Common Security and Defence Policy (CSDP). It is important that 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 employed around 800 000 people in 2006 and has, over recent years, contributed between 2 and 2.5% of EU GDP. Like all other industrial activities, the defence industry is required to deliver increased efficiency to provide value for money to its customers and, at the same time, to protect its shareholders' interests.

A. Background issues

1. Research and development policy

The EU Research and Development (R&D) Framework Programme is aimed solely at civil objectives. Some of the technological areas covered (e.g. materials or information and communication technologies (ICTs)) 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.

2. 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 relevant guidelines in order to establish an EU framework in this area.

3. Exports

A common regime for the control of exports of dual-use goods and technologies was adopted by the Council (based on Regulation (EC) No 1334/2000, as amended, and Joint Action 401/2000 under the CFSP), concerning the control of technical assistance related to certain military end-users; together, they form an integrated system. This regime reflects the international arrangements to prevent proliferation of weapons of mass destruction. The list of controlled dual-use items is set out in Annex I to Regulation (EC) No 428/2009. Under the EU regime, controlled items may not leave the EU customs territory without an export authorisation. Additional restrictions are also in place concerning the provision of brokering services with regard to dual-use items and concerning the transit of such items through the EU. With regard to conventional arms exports, a major step was achieved in June 1998 with the adoption of an EU Code of Conduct on arms exports. 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 its Resolution of 13 March 2008, the European Parliament criticised the Council for its failure to transform this Code of Conduct into a legally binding instrument. A Green Paper was published on 30 June 2011 by the Commission on the EU dual-use export control system with the objective to make a balance of the current functioning of the EU export control system and to consider possible areas of reforms.

B. EU defence industry policy

1. Towards a European defence equipment market

One of the main objectives of the EU defence industry policy is the development of a competitive European Defence Technologies and Industrial Base (EDTIB). This base would be strengthened if an integrated European defence equipment market was established. In July 2006, the Intergovernmental Regime to 'Encourage Competition in the European Defence Equipment Market' was launched. This voluntary intergovernmental regime is operated on the basis of a Code of Conduct on defence procurement, which is supported by a reporting and monitoring system to help ensure mutual transparency and accountability between Member States. Another important element is the Code of Best Practice in the Supply Chain (May 2005). Standardisation of defence equipment is important for integrating national markets. Steps have been taken with the creation by the Commission of a European handbook on defence procurement which presents up-to-date standards' references and shows public purchasers the best way to specify them in defence contracts. In the future, the handbook will be handled by the European Defence Agency (EDA). The EDA developed a European Defence Standards Information System (EDSIS) which is a portal for wider-ranging European defence materiel standardisation aiming at advertising materiel standards that are to be developed or undergo substantive modification.

The European Commission is preparing a communication (to be published by June 2013) in support of the competitiveness of the defence industry and the internal market.

2. Defence procurement and intra-EU transfers of defence products

In September 2004 the Commission presented a Green Paper on defence procurement (COM(2004) 608), with the objective of contributing to 'the gradual creation of a European defence equipment market' (EDEM) between Member States, which is more transparent and open. The Green Paper forms part of the strategy 'Towards a European Union defence equipment policy' adopted by the Commission at the beginning of 2003. The aim is to achieve more efficient use of resources in the area of defence and to raise the competitiveness of the industry in Europe, as well as to help bring about improvements in military equipment within the context of European security and defence policy. The Green Paper puts forward, for discussion, that the existing derogation pursuant to Article 296 of the EC Treaty (now: Article 346 TFEU) could be clarified by an interpretative communication from the Commission, which could define more precisely contracts covered by the exemption under that article; it also suggests a directive could be drawn up to coordinate the procedures for awarding contracts falling within the scope of rules on exemption set out in Article 346.

Military and security procurement contracts are characterised by their complexity and sensitivity. Therefore, the normal public procurement rules (Directive 2004/18/EC) are ill-suited. Directive 2009/81/EC introduced fair and transparent rules for defence procurement, which should make it easier for defence companies to access other Member States' defence markets. It provides for a negotiated procedure with prior publication as the standard procedure, allowing more flexibility, specific rules on security of sensitive information, clauses on the security of supply and specific rules on subcontracting. However, like Directive 2004/18/EC, Directive 2009/81/EC will only apply subject to Article 346 TFEU. Member States can exempt defence and security contracts if this is necessary for the protection of their essential security interests.

Directive 2009/43/EC on intra-EU transfers of defence-related products simplifies and harmonises the conditions and procedures for transfers of such products throughout the EU. It creates a uniform and transparent system of three types of licences: general, global and individual licences. Another key element of the directive is the certification of companies. Companies which are considered as trustworthy will be entitled to undertake transfers under general licenses. Individual licensing should become an exception and be limited to clearly justifiable cases.

3. A European defence equipment agency

The European Defence Agency (EDA) was established on 12 July 2004. Its main functions were to: develop defence capabilities; promote and enhance European armaments cooperation; strengthen the European defence technological and industrial base (EDTIB) and create an internationally competitive European defence equipment market (EDEM); and enhance the effectiveness of European defence research and technology (R&T).

4. European Security Research Programme

In parallel, the Commission, following on from existing work during the 1990s and under its Green Paper on defence procurement, began to accelerate its work in the field of security research. Since the communication dated 11 March 2003 and entitled 'Towards an EU Defence Equipment Policy' (2004/213/EC), the Commission made progress to establish a security/defence research programme under a new preparatory action (OJ L 67/18 (-22), 5.3.2004). The Commission's work in this area was supported by the establishment of an expert group, the so-called 'Group of Personalities' (GoP) tasked 'with the primary mission [...] to propose principles and priorities of a European Security Research

Programme in line with the EU's foreign, security and defence policy objectives and its ambition to construct an area of freedom, security and justice'. The product of the group's work was a report entitled 'Research for a Secure Europe'. Its key conclusion was that security research is an essential pillar of future European security and, as such, should require substantial appropriate resources to the tune of EUR 1 billion (reaching up to 1.8 billion) per year.

Role of the European Parliament

In a resolution adopted on 10 April 2002 on European defence industries, the EP called for the creation of a European Armaments Agency and for the standardisation in defence. The EP also reminded the need to better pool and coordinate European research in the defence field, to facilitate the establishment of transnational companies and to achieve the integration of the industries in the accession countries.

In a report on the Green Paper on defence procurement (2005/2030(INI)), the EP reiterated its view already expressed in its 2002 Resolution that a strong, efficient and viable European armaments industry and an effective procurement policy were vital to the development of the ESDP. The report also encouraged the Commission's efforts to contribute to the gradual creation of a European defence equipment market (EDEM) which is more transparent and open between Member States. The report pays particular attention to the role of Article 346 and calls for the adoption of an interpretative communication. It also urges the Commission to work closely with the EDA on the establishment, in parallel, of a comprehensive action plan with accompanying measures in related areas, such as security of supply, transfer, exports, state aid and off-sets, which are necessary in order to create a level playing-field for fair intra-European competition. The EP was also able to ensure that its concerns on the so-called 'Defence package' (i.e. Directives 2009/43/EC and 2009/81/EC) were reflected in the directives' final adopted texts (e.g. strengthening transparency, restriction in the use of offsets).

→ Carine Piaguet

5.9.6. Policy for research and technological development

European policy for research and technological development (RTD) has been an important area of European legislation since the establishment of the European Coal and Steel Community (ECSC) in 1952 and of the European Atomic Energy Community (Euratom) in 1957. The multiannual framework programmes for research that we have today were introduced by the Single European Act. In November 2011, the Commission proposed the subsequent framework programme 'Horizon 2020' as the financial instrument to implement the Innovation Union, a Europe 2020 flagship initiative aimed at securing Europe's global competitiveness. The EU's new programme for research and innovation (2014-2020) is part of the drive to create new growth and jobs in Europe.

Legal basis

Articles 179 to 189 of the Treaty on the Functioning of the European Union.

Objectives

Since the Single European Act the aim of the Union's RTD policy has been to strengthen the scientific and technological basis of European industry and to encourage it to become more competitive at international level.

Furthermore, Article 179 of the Treaty on the Functioning of the European Union (TFEU) specifies that 'the Union shall have the objective of strengthening its scientific and technological bases by achieving a European research area in which researchers, scientific knowledge and technology circulate freely'.

A. Achievements

A typical Union-funded project involves legal entities, i.e. universities, research centres, businesses (including small and medium-sized enterprises (SMEs)) and individual researchers from several Member States as well as from associated and third countries. The Framework Programme (FP) is implemented through Specific Programmes. The Community has several means at its disposal to achieve its RTD objectives within these Specific Programmes:

- direct actions carried out by the Joint Research Centre (JRC) and entirely financed by the Union;
- indirect actions, which may be: (i) collaborative research projects carried out by consortia of legal entities in Member States, associated and third countries; (ii) networks of excellence (a Joint Programme of Activities implemented by a number of research organisations, integrating their activities in a given field); (iii) coordination and support actions; (iv) individual projects: support for 'frontier' research; or (v) support for the training and career development of researchers, mainly to be used for the implementation of Marie Curie actions.

Participation

Any legal entity established in a Member State or associated country in accordance with national, international or Union law may respond to calls for proposals and, if a proposal is accepted, receive Union support. Thus universities, research centres, businesses (including SMEs) and international organisations may ask for funding. Entities from third countries may also participate in consortia and even receive support for certain FP activities.

a. (International) coordination and collaboration

The ERA-NET scheme aims to step up the coordination of national and regional research programmes carried out in the Member States and associated countries through networking, including 'mutual opening' of programmes and implementation of joint activities. FP7 also covers the operational costs of COST. COST is an intergovernmental framework for European Cooperation in Science and Technology designed to help coordinate of nationally funded research at European level. It anticipates and complements the activities of the EU Framework Programmes. FP7 furthermore coordinates its activities with the intergovernmental Eureka Initiative to promote international, market-oriented research and innovation. Through Eureka, research organisations and industries are introducing new products, processes and services to market.

b. RTD measures in the European Economic Recovery Plan 2010-2013

As part of the European Economic Recovery Plan 2010-2013, it was decided to set up three Public-Private Partnerships (PPPs), which also deal with RTD and innovation: (a) the 'Factories of the Future' initiative for the manufacturing sector; (b) the 'Energy-efficient Buildings' initiative for the construction sector; and (c) the 'Green Cars' initiative for the automotive sector. EU funding for these PPPs is granted through the FP7.

c. European Institute of Innovation and Technology

The European Institute of Innovation and Technology (EIT) was created in 2008 to stimulate and deliver world-leading innovation through the creation of highly integrated Knowledge and Innovation Communities (KICs). The KICs bring together higher education, research, business and entrepreneurship in order to produce new innovations and new innovation models that can inspire others to follow.

B. The new Framework Programme — Horizon 2020

In November 2011, the Commission brought forward its legislative package for Horizon 2020, a framework programme for 2014-2020. Horizon 2020 will combine all current research and innovation funding — provided by the Seventh Framework Research Programme (FP7), the Competitiveness and Innovation Framework Programme (CIP) and the European Institute of Innovation and Technology (EIT) — into one programme.

By introducing a single set of rules, Horizon 2020 will provide major simplification and will simplify matters significantly and address challenges in society by helping to bridge the gap between research and the market, for example by helping innovative enterprises to develop their technological breakthroughs into viable products with real commercial potential. This market-driven approach will include creating partnerships with the private sector and Member States to harness the resources needed.

The proposal on Horizon 2020 is also focused on clarifying objectives, simplifying proce-dures, and avoiding duplication and fragmentation. In addition, attention is paid to broadening participation in EU programmes on the part of SMEs and industry, female researchers, newer Member States and third countries. Horizon 2020 also aims for a better uptake and use of results by companies, investors, public authorities, other researchers and policymakers.

Horizon 2020 is focused on three main pillars:

- Excellent Science: It will support the EU's position as a world leader in science with a dedicated budget of EUR 24.4 billion, including an increase in funding of 77% for the ERC.
- Industrial Leadership: It will help secure industrial leadership in innovation with a budget of EUR 17.01 billion. This includes an investment of EUR 13.5 billion in key technologies, as well as greater access to capital and support for SMEs.
- Societal Challenges: EUR 29.68 billion is set aside to address six European societal challenges: Health, demographic change and wellbeing; Food security, sustainable agriculture, marine and maritime research and the bioeconomy; Secure, clean and efficient energy; Smart, green and integrated transport; Climate action, resource efficiency and raw materials; and Inclusive, innovative and secure societies.

In order to encourage SMEs to get involved, the Commission proposed a dedicated financial instrument providing grants for R&D and assisting with commercialisation, through access to equity (finance for early and growth stage investment) and debt facilities (e.g. loans and guarantees).

The Commission also proposed to increase the number of new Knowledge and Innovation Communities (KICs) within the EIT. These are long-term partnerships involving organisations from the fields of education, technology, research, business and entrepreneurship working on societal challenges.

These measures will help boost the involvement of industry, SMEs, universities and research centres, as well speeding up the commercialisation of R&D results.

In November 2013, the European Parliament adopted the multiannual financial framework, allocating Horizon 2020 a budget of EUR 77 billion (in 2013 prices).

C. Role of the European Parliament

For more than 20 years the European Parliament (EP) has promoted an increasingly ambitious EU RTD policy and has called for a substantial increase in total research spending in the Member States to maintain and strengthen Europe's international competitiveness. The EP has also advocated more collaboration with non-EU partners, a serious integration of activities between the Structural Funds and the FPs and a targeted approach to optimise the involvement of SMEs and facilitate the participation of promising weaker actors. Parliament has furthermore insisted on simplifying procedures and on building more flexibility into FPs, to make it possible to shift resources to more promising areas and the ability to react to changing circumstances and newly emerging research priorities.

In the trilogue negotiations on the Horizon 2020 package, which resulted in an agreement with the Council in June 2013, MEPs succeeded in securing a number of changes to the proposal in particular the insertion of two new objectives with separate structure and budget lines:

- Step up cooperation and dialogue between the scientific community and society and increase the attractiveness of R&D careers for young people.
- Widen the range of participants in the programme through teaming institutions, twinning research staff and exchange of best practices.

In addition, SMEs will receive at least 20% of the combined budget of the 'industrial leadership' and 'societal challenges' pillars. Furthermore, 7% of the combined budget of these pillars is earmarked for the new dedicated SME instrument intended to increase their involvement in Horizon 2020 funded projects (e.g. by facilitating outsourcing of research for non-research-intensive SMEs and supporting cooperation between them). A new Fast Track to Innovation will be launched in 2015 to cut the time 'from idea to market' and increase the involvement of SMEs and industry. Open access to scientific publications resulting from Horizon 2020 funding will be mandatory.

In order to adjust the balance between small, medium and large projects, 40% of the future and emerging technologies budget (part of pillar 1) is earmarked for light, open and responsive funding of collaborative projects (FET Open). MEPs also earmarked 85% of the energy challenge budget (part of pillar 3) for non-fossil fuel energy research.

To avoid multiplication of public-private partnerships in implementing Horizon 2020, stricter evaluation of the creation and operation of such structures will be introduced. A compromise between the institutions reduced the number of new KICs from six to five.

Here is a list of some of the EP's most recent resolutions and reports on the Horizon 2020 proposal:

- A7-0428/2012, 19.12.2012, Report on the proposal for a regulation of the European Parliament and of the Council laying down the rules for the participation and dissemination in 'Horizon 2020 — the Framework Programme for Research and Innovation (2014-2020)'; (COM(2011) 810 — C7 0465/2011 — 2011/0399(COD)), Committee on Industry, Research and Energy, Rapporteur: Christian Ehler.
- A7-0002/2013, 21.12.2012, Report on the proposal for a Council decision establishing the Specific Programme Implementing Horizon 2020 — The Framework Programme for Research and Innovation (2014-2020); (COM(2011) 811 — C7 0509/2011 — 2011/0402(CNS)), Committee on Industry, Research and Energy, Rapporteur: Maria Da Graça Carvalho.
- A7-0427/2012, 20.12.2012, Report on the proposal for a regulation of the European Parliament and of the Council establishing Horizon 2020 — The Framework Programme for Research and Innovation (2014-2020); COM(2011) 809 — C7 0466/2011 — 2011/0401(COD), Committee on Industry, Research and Energy, Rapporteur: Teresa Riera Madurell.
- European Parliament resolution of 27 September 2011 on the Green Paper: From challenges to opportunities: towards a common strategic framework for EU research and innovation funding (P7_TA(2011)0401).

→ Frédéric Gouardères
11/2013

5.9.7. Innovation Policy

Innovation occupies an increasing role in our economy. It provides benefits for the citizens, consumers, workers. It accelerates and improves the design, the development, production and use of new products, industrial processes and services. It is an essential component for creating better jobs, building a greener society and improving our quality of life, but also to maintaining the EU competitiveness on the global market. Innovation policy is the interface between Research and Technological Development and Industrial policies and aims at creating a conducive framework for bringing ideas to markets. It will occupy a place of growing importance in the European legislation.

Legal Basis

Article 173 of the TFEU represents the legal basis of the EU's general industrial policy and establishes that 'the EU and the Member States shall ensure the conditions necessary for the competitiveness of the Union's industry exist'.

Articles 179 to 189 of the TFEU represent the legal basis of EU's policy for research and technological development (RTD). The main instrument of the Union's RTD policy is the multiannual Framework Programme, which sets objectives, priorities and the financial package of support for a period of several years. The RTD Framework Programmes are adopted by the European Parliament and the Council, acting in accordance with the ordinary legislative procedures, and after consulting the Economic and Social Committee.

Objectives

The importance of Innovation policy is widely recognised, and it is largely connected to other EU policies such as employment, competitiveness, environment, industry, energy. In order to remain competitive on the global marketplace and improve the quality of life in Europe, the role of innovation is to turn research results into new and better services and products.

Europe is spending 0.8% of GDP less than the US and 1.5% less than Japan every year on Research & Development (R&D). In addition, some brain drain effect occurs as our best researchers and innovators have moved to countries where conditions are more favorable. Although the EU market is the largest in the world, it remains fragmented and not enough innovation-friendly.

In order to change the trend, the Innovation Union plan has been proposed with the objectives to:

- make Europe a world-class science performer;
- remove obstacles to innovation — like expensive patenting, market fragmentation, slow standard-setting and skills shortages — which currently prevent ideas getting quickly to market;
- revolutionize the way public and private sectors work together, notably through the implementation of Innovation Partnerships between the European institutions, national and regional authorities and business.

The Innovation Union is a crucial investment for our future. For example, achieving our target of investing 3% of EU GDP on R&D by 2020 could create 3.7 million jobs and increase annual GDP by EUR 795 billion by 2025.

Achievements

The Innovation Union is one of the seven flagship initiatives of the Europe 2020 strategy for a smart, sustainable and inclusive economy. Launched by the European Commission in October 2010, it aims to improve conditions and access to finance for research and innovation in Europe, to ensure that innovative ideas can be turned into products and services that create growth and jobs. The Innovation Union proposes to create a genuine single European market for innovation which would attract innovative companies and businesses. To achieve this, several measures are proposed in the fields of patent protection, standardization, public procurement and smart regulation. The Innovation Union also aims to stimulate private sector investment and proposes among other things to increase European venture capital investments.

Several instruments have been put in place for measuring and monitoring the progress and the situation across the EU:

- A comprehensive Innovation Union Scoreboard based on 25 indicators and a European knowledge market for patents and licensing. The European Innovation Scoreboard (EIS) is an instrument of the European Commission, developed under the Lisbon Strategy to provide a comparative assessment of the innovation performance of EU Member States.
- Regional Innovation Scoreboard classifies European regions into four innovation performance groups, similarly to the Innovation Union Scoreboard: there are 41 regions in the first group of 'innovation leaders', 58 regions belong to the second group of 'innovation followers', 39 regions are 'moderate innovators'

and 52 regions are in the fourth group of 'modest innovators'. It provides a more accurate mapping of innovation at local level.

- The Innobarometer is an annual opinion poll of businesses or general public on attitudes and activities related to innovation policy. The Innobarometer survey provides policy relevant information which is not available from other sources.

Research and Education enable Innovation. Europe would require at least one million more researchers in the next decade to reach the target of investing 3% of EU GDP on R&D by 2020. The Innovation Union proposes measures to complete the European Research Area by 2014. This means more coherence between European and national research policies, and removing obstacles to researchers' mobility. In education, the Commission will support projects to develop new curricula addressing innovation skills gaps.

In 2011, the Commission has proposed to increase investments in Research and Innovation for the period 2014-2020. Horizon 2020, the new EUR 80 billion investment programme for research and innovation will combine all research and innovation funding currently provided through the Framework Programmes for Research and Technical Development, the innovation related activities of the Competitiveness and Innovation Framework Programme (CIP) and the European Institute of Innovation and Technology (EIT). Horizon 2020 will provide major simplification through a single set of rules. Horizon 2020 will tackle societal challenges by helping to bridge the gap between research and the market by, for example, helping innovative enterprise to develop their technological breakthroughs into viable products with real commercial potential. This market-driven approach will include creating partnerships with the private sector and Member States to bring together the resources needed.

Horizon 2020 enacts many of the specific Innovation Union commitments, notably by: focusing on societal challenges, simplifying access, involving SMEs, strengthening financial instruments, supporting public procurement of innovation, facilitating collaboration, and supporting research on public sector and social innovation.

Furthermore, the future Cohesion policy will have an increased focus on research and innovation. In more developed regions, at least 80% of resources from European Regional Development Fund at national level will be allocated to innovation together with the priorities on low-carbon economy and competitive SMEs. This amount will be 50% in less developed regions. In line with a more strategic focus, the support will be conditional on the existence of a national or regional strategy for smart specialisation.

The Innovation Union also aims to stimulate private sector investment and proposes among other things to increase European venture capital investments which are currently a quarter of the level in the US. In addition, in order to improve access to loans for R&D projects, and launch demonstration projects, the Community has proposed the Risk-Sharing Finance Facility (RSFF), consisting in the financial collaboration between the European Commission and the European Investment Bank (EIB). The RSFF aims to improve access to the EIB debt finance for participants of European R&D projects.

In addition, the proposed COSME Programme (Programme for the Competitiveness of Enterprises and SMEs) will focus on financial instruments and support to the internationalisation of enterprises.

The Innovation Union proposes to create a genuine single European market for innovation which would attract innovative companies and businesses. To achieve this, several measures are proposed in the fields of patent protection, standardization, public procurement and smart regulation. Furthermore, in a strategy to strengthen European standardisation [COM(2011) 315] the Commission highlighted the necessity to improve the method of standard setting and the use of standards in Europe to leverage European and international standards for the long-term competitiveness of European industry.

To avoid an 'innovation divide' between the strongest innovating regions and the others, the Commission will assist Member States to use better the remaining part of the EUR 86 billion of structural funds programmed for 2007-2013 for research and innovation projects.

In addition, European Innovation Partnerships (EIP) have been designed to bring together public and private actors at EU, national and regional level to tackle major societal challenges and to contribute to job creation and economic growth by combining supply- and demand-side measures.

Role of the European parliament

Parliament has adopted numerous resolutions which have further strengthened the EU's innovation policy. Some of the most recent are mentioned below:

- Resolution of 22 May 2008 on the mid-term review of industrial policy: a contribution to the EU's Growth and Jobs Strategy (2009/C 279 E/12) urged, among other things, both Commission and Member States to increase their efforts to reduce the administrative burden for enterprises. It also highlights the importance of a transparent, simplified intellectual property rights policy;
- Resolution of 16 June 2010 on the EU 2020 Strategy, while strongly supporting an industrial

policy, aimed at creating an environment well-suited to maintain and develop a strong, competitive and diversified industrial base in Europe. It further stressed that the Europe 2020 Strategy should disclose the costs and benefits of the conversion to a sustainable, energy-efficient economy;

- Resolution of 11 November 2010 on European Innovation Partnerships within the Innovation Union flagship initiative (RSP/2010/2927).
- Resolution of 9 March 2011 on an Industrial Policy for the Globalised Era (T7-0093/2011) underlined the importance of a more comprehensive vision for European industry in 2020 as long-term regulatory predictability and stability were considered essential to attract investments.
- Resolution of 27 September 2011 on the Green Paper: From challenges to opportunities: towards a common strategic framework for EU research and innovation funding (T7-0401/2011).
- Resolution of 12 May 2011 on Innovation Union: transforming Europe for a post-crisis world (T7-0236/2011).
- Resolution of 26 October 2011 on the Agenda for New Skills and Jobs (T7-466/2011) underlined the importance of developing closer cooperation between research institutes and industry and to encourage and support industrial companies in investing in research and development. The Parliament called for more investment in education, research and innovation, for promoting centres of excellence and mobility of young people and for supporting the development of conditions stimulating growth of innovative enterprises.

→ Frédéric Gouardères

5.10. Social and employment policy

5.10.1. Social and employment policy: general principles

The social dimension of European integration has been greatly developed through the years. It is a key aspect of the Europe 2020 Strategy, which aims to ensure 'inclusive growth' with high levels of employment and a reduction in the number of people living in poverty or at risk of social exclusion.

Legal basis

Article 3 of the Treaty on European Union, and Articles 9, 10, 19, 45 to 48, 145 to 150 and 151 to 161 of the Treaty on the Functioning of the European Union.

Objectives

The promotion of employment, improved living and working conditions, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion are the common objectives of the European Union and the Member States in the social and employment fields, as described by Article 151 TFEU.

Achievements

A. From the Treaty of Rome to the Maastricht Treaty

In order to allow workers and their families to fully take advantage of the right to move and seek employment freely throughout the common market, the Treaty of Rome already provided for the coordination of the social security systems of the Member States. Under Articles 151 and 156, Member States expressed the belief that improved working and living conditions would arise from the functioning of the common market and they committed themselves to cooperate in the areas of employment, labour law and working conditions, vocational training, social security, occupational health and safety, and social dialogue. Article 157 enshrined the principle of equal pay for men and women and was recognised by the Court of Justice as being directly applicable. The European Social Fund, provided for in Articles 162 to 164, should be devoted to improving workers' mobility and professional opportunities (*5.10.2).

Concerns about structural imbalances and unevenness of growth in Europe later led to a more proactive social policy at Community level. In 1974, the Council adopted the first Programme of Social Action.

The Single European Act (SEA) introduced Article 153, which provided for the harmonisation of health and safety conditions at work. Acting by qualified majority in cooperation with the European Parliament (EP), the Council adopted some directives laying down minimum requirements in this area. The SEA also introduced the possibility for social partners at European level to negotiate collective agreements and established a Community policy for economic and social cohesion.

Consensus grew around the need to pay more attention to the social aspects connected with the completion of the internal market. After long debates, the Community Charter of the Fundamental Social Rights of Workers (Social Charter) was adopted at the Strasbourg Summit in December 1989 by the Heads of State or Government of 11 Member States, with the United Kingdom opting out. The Charter required the Commission to set out a social action programme to accompany it, which was subsequently implemented at a very slow pace.

With the signature of the Maastricht Treaty, the promotion of a high level of employment and social protection was officially introduced as one of the tasks conferred to the European Community. However, having been unable to reach a unanimous agreement during the intergovernmental conference, 11 Member States decided to move ahead by concluding an Agreement on Social Policy and signing, together with the UK, Protocol No 14 of the Treaty on EU to which the agreement was

annexed and which stated that '11 Member States [...] wish to continue along the path laid down in the 1989 Social Charter', thereby exempting the UK from participation; the directives based on this protocol were then binding on all Member States except the UK.

The agreement contained some significant innovations (*5.10.6 and 5.10.8). The Council was endowed with the power to adopt directives laying down minimum requirements in several new sectors. It was to act in accordance with the cooperation procedure in the areas of: improvements in the working environment to protect employees; working conditions; workers' right to information and consultation; equal opportunities for men and women on the labour market and equal treatment at work; and the occupational integration of people excluded from the labour market. Unanimity was required for deciding on social security and social protection of workers, protection of workers where their employment contract is terminated, representation and collective defence of the interests of workers and employers, conditions of employment for third-countries' nationals legally residing in the Community and financial contributions for promotion of employment and job creation.

B. From the Amsterdam Treaty to the Treaty of Lisbon

The UK opt-out led to the uncomfortable situation of a double legal basis for action in the area of social policy. This situation was finally overcome by the signing of the Amsterdam Treaty, when all Member States, including the UK, following a change in government, agreed upon the integration of the agreement on social policy in the text of the EC Treaty with some slight changes (Articles 151 to 161 TFEU). The codecision procedure replaced cooperation in Article 153. A new paragraph in Article 153 provided for measures designed to encourage cooperation between Member States in order to combat social exclusion. The codecision procedure was also extended to provisions relating to the European Social Fund (*5.10.2), the free movement of workers and social security for Community migrant workers (*5.10.4). The new Article 19 conferred on the Community the competence to 'take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation', requiring the Council to act unanimously after consulting the EP. On this basis, two directives were soon adopted: 2000/43/EC on 'implementing the principle of equal treatment between persons irrespective of racial or ethnic origin' and 2000/78/EC on 'establishing a general framework for equal treatment in employment and occupation'.

The Amsterdam Treaty also included the promotion of a high level of employment among the EU objectives and conferred on the EC the responsibility to support and complement the activities of the Member States in this area, to encourage cooperation between them and to develop a 'coordinated strategy', the 'European employment strategy' (EES, Articles 145 to 150 TFEU), based on an open method of coordination (OMC) (*5.10.3). During the Amsterdam Summit in June 1997 it was decided that the provisions of this new title of the Treaty would be immediately applied.

At the Lisbon extraordinary meeting of the European Council (March 2000) the Heads of State or Government agreed upon a strategy aimed at making the EU the most competitive economy in the world and at achieving full employment by 2010. In addition, they also recognised that economic growth was not in itself sufficient to fight poverty or the danger of social exclusion and committed themselves to improving cooperation in this area based on an open method of coordination (which would later be extended to pensions and health and long-term care in the so-called 'social OMC').

Later that year, at the Nice Summit, a European social policy agenda was adopted up to 2005, with a view to converting the political commitments made at Lisbon into concrete action. Moreover, a Charter of Fundamental Rights of the EU, drafted by a special Convention, was proclaimed by EU leaders, the European Commission and the EP. The signature of the Nice Treaty was, however, quite deceiving for those expecting major progress in the social sector. In fact, a Social Protection Committee was created (Article 160) to promote cooperation on social protection policies between Member States and with the Commission, but all proposals to expand the codecision procedure were rejected. Only a few minor changes were introduced, including the so-called passerelle clause under Article 153. The modernisation of social protection systems was added to the list of sectors where the Community shall encourage cooperation between the Member States.

The mid-term review of the Lisbon Strategy led to the incorporation of the employment guidelines adopted in the framework of the EES within the integrated guidelines for growth and jobs, and to the synchronisation of the Lisbon reform process with the social OMC around three-year cycles.

A new social agenda 2006-2010 was adopted in 2005 in order to accompany the relaunch of the

Lisbon Strategy. A Community programme for employment and social solidarity, called Progress, was established for the period 2007-2013 to support the implementation of the objectives of the EU in the social field (*5.10.9). In 2007, a European Globalisation Adjustment Fund (EGAF) was created to provide support for workers made redundant due to changing global trade patterns.

On 13 December 2007, the Treaty of Lisbon was signed, which allowed for further progress in consolidating the social dimension of European integration. The Treaty on the EU emphasises the key role of human rights and democratic values in the EU (Article 2), as well as its social objectives, among which full employment, solidarity between generations and protection of the rights of the child are mentioned (Article 3); Article 6 recognises the Charter of Fundamental Rights as having the same binding force as the treaties. The Charter itself recognises the so-called 'solidarity rights' such as workers' right to information and consultation, the right to collective bargaining and to fair and just working conditions as well as to social security and social assistance. In the Treaty on the Functioning of the European Union a 'horizontal social clause' was introduced which reads: 'In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health' (Article 9).

C. The latest developments

In July 2008 the Commission published a renewed social agenda, 'Opportunities, access and solidarity in 21st century Europe'. As a response to growing unemployment originated by the financial and economic crisis, the European Union has mobilised significant resources. Measures were introduced to enhance the impact of existing financial instruments (ESF and EGAF). In addition, a new European Progress Microfinance Facility was set up in 2010, providing microcredit to small businesses and unemployed persons wishing to create or further develop their own business. 'Inclusive growth' (fostering a high-employment economy that delivers social and territorial cohesion) is one of the priority areas of the Europe 2020 Strategy, the successor to the Lisbon Strategy. The new EU strategic agenda mentions for the first time a clear target for its 'social' pillar (the objective of lifting 20 million people out of the risk of poverty by 2020), together with a renewed commitment towards an ambitious goal in the employment area (75% employment rate for the 20-64 age group). Of the seven 'flagship initiatives' selected to help achieve Europe 2020's targets, three fall under the areas of employment and social affairs: 'An agenda for new skills and jobs', which aims at revamping flexicurity policies to make the labour market function better, help people develop the skills of tomorrow and improve job quality and working conditions; 'Youth on the move', which will contribute to better education and training, help young people study abroad and make it easier to find a job; and the 'European platform against poverty and social exclusion' which helps disseminate best practices and makes funding available to support social inclusion and combat discrimination.

Role of the European Parliament

Although the EP's role has long been only a consultative and supervisory one, the EP has always been active in the development of EU action in the field of employment and social policy, with a view to strengthening the European capacity to combat unemployment and improving working and living conditions for all. Since the early stages of European integration, the EP has often called for a more active policy in the social field to reflect the increasing Community importance in the economic area and has supported the Commission's different proposals in this direction. The EP had been more closely involved in the preparation of the Treaty of Amsterdam than in previous treaty revisions and some important innovations introduced as a result of this process reflect the EP's recommendations, such as the incorporation of the social agreement and the insertion of an employment chapter.

More recently, the EP has insisted on the role that employment and social considerations should play in the design of growth strategies to be implemented at EU and national level. It recalled that a high level of social protection was central to the Lisbon Strategy, considering it unacceptable that people should be living below the poverty line or in a position of social exclusion and calling for the reinforcement of policies to combat poverty and social exclusion, with a view to renewing the Lisbon joint commitment for the elimination of poverty. The EP also takes the view that the Lisbon Strategy had not set sufficiently binding targets in the social sphere and calls on the Member States to monitor closely the employment and social impact of the reforms implemented within the framework of the Europe 2020 Strategy. Along the same lines, one of the messages conveyed by the EP while debating the economic crisis was a firm call for an EU commitment to preserve European social models and a strong social Europe.

The EP confirmed its attachment to social values in deciding on the use of financial resources from the EU

budget. Among other issues, it insisted on devoting additional funding to Progress. The legislative resolution of 17 June 2008 on the European Year for Combating Poverty and Social Exclusion (2010) welcomed the Commission's proposal and received the highest budget ever devoted to the celebration of a European Year.

The Parliament has strongly supported the idea of introducing a Youth Guarantee Scheme: this instrument aims at ensuring that all young EU citizens and legal residents up to the age of 25 years, and recent graduates under 30, receive a good-quality offer of employment, continued education or apprenticeship within four months of becoming unemployed or leaving formal education.

In its Resolution on the Annual Growth Survey 2012, the Parliament called upon the Commission and the European Council to include all the objectives of the EU 2020 Strategy for smart, sustainable and inclusive growth into the European Semester.

→ Laurence Smajda

5.10.2. The European Social Fund

The European Social Fund (ESF) was set up under the Treaty of Rome with a view to improving workers' mobility and employment opportunities in the common market. Its tasks and operational rules were subsequently revised to reflect developments in the economic and employment situation in the Member States, as well as the evolution of the political priorities defined at EU level.

Legal basis

Articles 162 to 164, 174 and 175, and 177 and 178 of the Treaty on the Functioning of the European Union. Following the entry into force of the Treaty of Lisbon, the adoption of general rules applicable to the Structural Funds is now subject to the ordinary legislative procedure.

Objectives

According to Regulation (EC) No 1081/2006, the ESF is meant to strengthen economic and social cohesion by improving employment opportunities for all, and to encourage a high level of employment and more and better jobs in line with the European Employment Strategy.

In accordance with its priorities, the ESF finances actions which help to:

- increase the adaptability of workers and enterprises to economic change;
- enhance labour market inclusion, especially of jobseekers, inactive people and older people;
- foster social inclusion of disadvantaged people by promoting paths for re-entry into employment and combating discrimination in the labour market;
- promote reforms of education and training systems and encourage networking activities between schools and research institutes or the workplaces.

Achievements

A. Background

The ESF was the first Structural Fund. During the transition period (until 1970), it reimbursed Member States 50% of the costs of vocational training and resettlement allowances for workers affected by economic restructuring. In total, it assisted more than 2 million people during this period. In 1971 a Council decision substantially increased the fund's resources and modified the system by replacing retroactive funding with new rules requiring Member States to submit advance applications for assistance. In 1983 a new reform (under Council Decision 83/516/EEC of 17 October 1983) resulted in greater concentration of the fund's operations, which were to be directed mainly at the fight against youth unemployment and at those regions most in need. By incorporating into the EC Treaty the objective of economic and social cohesion within the Community, the Single European Act (1986) set the scene for a comprehensive reform (under regulations of 24 June and 19 December 1988) aimed essentially at introducing a coordinated approach to the programming and operation of the Structural Funds. The Treaty of Maastricht expanded the scope of ESF support as described in Article 146 to include 'adaptation to industrial changes and to changes in production systems'. For the following programming period 1994-1999), the level of funding allocated for economic and social cohesion was doubled (ECU 141 billion). Following a number of pilot schemes during the previous programming period, Community initiatives were confirmed for 1994-1999 and allocated a more substantial budget (9% of the Structural Funds' total resources). The ESF co-financed two such programmes aimed at supporting innovative transnational projects: 'Adapt', which was meant to help employers and workers to anticipate industrial change and deal with its effects, and 'Employment', whose four strands promoted labour market integration for vulnerable groups.

As part of Agenda 2000, the overall framework of the Structural Funds was simplified for the 2000-2006 programming period. The ESF, now endowed with a EUR 60 billion allocation, was entrusted with the dual responsibility of contributing both to the cohesion policy and to the implementation of the European Employment Strategy (EES) (*4.9.3); the scope of its intervention was redesigned accordingly:

- developing active labour market policies;
- promoting equal opportunities, with particular emphasis on those exposed to social exclusion;
- promoting and improving education and training as part of lifelong learning;
- promoting a skilled and adaptable workforce, and innovation and adaptability in work organisation; developing entrepreneurship and job creation; and boosting human potential in research and technology;
- improving women's access to the labour market.

The Community initiative EQUAL focused on supporting innovative, transnational projects aimed at tackling discrimination and disadvantages in the

labour market. It was the only one co financed by the ESF in the 2000-2006 programming period.

B. Current programming period

1. Three Structural Funds

For the 2007-2013 programming period, only three Structural Funds remain: the ESF, the European Regional Development Fund (ERDF) and the Cohesion Fund (CF). Jointly they are to achieve the objectives of convergence (channelling 81% of resources), regional competitiveness and employment (channelling 16% of resources to non-convergence regions) and European territorial cooperation aimed at promoting harmonious development throughout the EU (2.5% of resources). The Structural Funds' resources are allocated among the Member States according to a formula which takes into account population (and its density), regional prosperity, unemployment and levels of education; it is negotiated by the Member States at the same time as the multiannual financial framework (MFF) for a given period. One main feature of the Structural Funds is the principle of additionality, according to which Member States cannot use the Structural Funds to substitute for domestic spending on activities they had already decided to carry out anyway.

Under the new 'one programme, one fund' rule, an operational programme covered by the Structural Funds is considered to relate to only one of the three objectives and only receives funding from a single fund. To allow more flexibility, however, both the ESF and the ERDF can, to a certain extent, provide complementary financing for activities coming within the scope of assistance of the other fund. Co-financing by the ESF may vary between 50% and 85% of the total cost of the activity. Transnational cooperation is now an integrated feature of the ESF's mainstream programmes.

The ESF, together with the other financial instruments of European cohesion policy, had a key role to play in the European Recovery Action Plan adopted by the European Council in December 2008, and in the coordinated European Economic Recovery Plan presented by the Commission on 26 November of the same year. A series of measures, both legislative and non legislative, were intended to help accelerate investments in order to support the real economy. This was achieved by providing upfront liquidity through the use of unspent funds from the previous programming period, front-loading investments through the doubling of advance payments to Member States, providing flexible funding with co-financing rates of up to 100% and lightening administrative burdens, inter alia through the application of flat-rate reimbursements and lump-sum payments, which were of particular benefit to small-project beneficiaries.

2. European Social Fund

The ESF has an overall allocation of about EUR 76 billion. The legal texts establishing the framework for, and scope of, ESF assistance comprise a general regulation common to the ESF, the ERDF and the CF (Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the ESF and the Cohesion Fund) and an ESF-specific regulation (Regulation (EC) No 1081/2006 of the European Parliament and of the Council of 5 July 2006 on the ESF and repealing Regulation (EC) No 1784/1999). Council Decision 2006/702/EC of 6 October 2006 on Community strategic guidelines on cohesion is the basic programming document guiding the Member States in drafting their national strategic reference frameworks and operational programmes.

The fund co-finances national or regional operational programmes which run for the seven-year duration of the multiannual financial framework, are proposed by the Member States and approved by a Commission decision and aim to promote growth and employment in the least developed Member States (the 'convergence' objective) or to strengthen competitiveness and employment in other regions, thereby anticipating economic and social changes (the 'competitivenes and employment' objective).

The ESF's role has thus changed from being one of primarily helping workers to adapt to labour market changes and restructuring to one of financing concrete projects which help people in difficulty onto the path to labour market reintegration. Similarly, the assistance previously provided to individuals has increasingly been replaced by support for adapting education and training systems to changing labour market needs. Although EQUAL no longer exists, its principles have been taken up in the current priorities.

The new ESF Regulation for the 2014-2020 period is currently being finalised with its final adoption by the European Council and the Council planned for December 2013.

3. Instruments supporting actions under the ESF

The European Globalisation Adjustment Fund (EGF) was created as an instrument of competitiveness — not cohesion — policy for the MFF 2007-2013 in order to provide support for workers made redundant as a result of major structural changes in world trade patterns caused by globalisation. While the EGF responds to specific emergencies, such as mass redundancies resulting from globalisation, for a limited period of time, the ESF supports multiannual programmes aimed at achieving the long-term structural objectives of keeping people in the labour market or reintegrating them into it.

In view of the crisis, the EGF Regulation (Regulation (EC) No 1927/2006) was temporarily amended to cater for the resulting redundancies, providing co-financing rates ranging from 50% to 65%. As these crisis-related derogations expired at the end of 2011, the Commission proposed to extend them until the end of 2013 to coincide with the end of the current MFF, a move strongly supported by Parliament's Committee on Employment and Social Affairs. However, the Council was not able to reach agreement and the derogations expired at the end of 2011.

The new EGF Regulation for the 2014-2020 period is currently being finalised, with its final adoption by the European Council and the Council planned for December 2013.

The Progress programme, which in 2007 brought together all existing funding in the area of employment and social affairs, also covers the 2007-2013 period. It aims to rationalise expenditure and improve the impact of actions supported by the EU through monitoring and evaluation activities as well as the development of statistical tools and common indicators.

Role of the European Parliament

Parliament's influence over the ESF has grown over the years. Under the Treaty of Maastricht it had to give its assent to the general provisions governing the funds, whereas under the Treaty of Amsterdam the adoption of implementing rules for the ESF is subject to the co-decision procedure. Parliament regards the ESF as the EU's most important instrument for combating unemployment. It has therefore always advocated the efficient operation of the fund and called for simpler legislation and procedures, which could improve the effectiveness and quality of ESF assistance.

As co-legislator of a regulation on the ESF for the current programming period, Parliament supplemented the Commission's proposal with amendments which helped to re-design the fund as a major tool aimed at facilitating the implementation of the EES. Parliament amended the text of the draft regulation to expand the scope of ESF assistance to include efforts to combat inequalities between men and women, discrimination and social exclusion by facilitating access to employment for vulnerable groups.

Parliament supported the Commission proposal on the ESF's contribution to tackling the economic crisis and approved the relevant legislation aimed at accelerating access to the fund. In its resolution of 7 October 2010, Parliament called for the ESF to be strengthened as the main driver for implementing the Europe 2020 objectives, for example through greater flexibility and the simplification of checks and procedures.

→ Dr. Marion Schmid-Drüner
11/2013

5.10.3. Employment policy

Creating more and better jobs is one of the main goals of the Europe 2020 Strategy. The European Employment Strategy with its employment guidelines and programmes (such as Progress and EURES) is designed to contribute to growth and jobs.

Legal basis

Article 3(3) of the Treaty on European Union and Articles 8-10, 145-153, 156-159 and 161-164 of the Treaty on the Functioning of the European Union.

Objectives

Important principles, objectives and activities mentioned in the Treaty include the promotion of a high level of employment by developing a coordinated strategy, particularly with regard to the creation of a skilled, trained and adaptable workforce and labour markets responsive to economic change. Furthermore, the objective of a high level of employment shall be taken into consideration in the formulation and implementation of Union policies and activities.

Achievements

A. The early stages

1. The Coal and Steel Community Treaty

Workers have benefited from re-adaptation aid in the European Coal and Steel Community (ECSC) since the 1950s. Aid was granted to workers in the coal and steel sectors whose jobs were threatened by industrial restructuring. The European Social Fund (ESF) (*5.10.2), created in the early 1960s, was the principal weapon in combating unemployment.

2. Actions in the 1980s

In the 1980s and early 1990s, action programmes on employment focused on specific target groups and a number of observatory and documentation systems were established.

3. EURES

To encourage free movement and help workers to find a job in another Member State, the former SEDOC system was improved and renamed EURES (European Employment Service) in 1992. EURES is a cooperation network between the Commission and the public employment services of the EEA Member States and other partner organisations, and Switzerland.

B. Towards a more comprehensive employment policy

1. The White Paper on Growth, Competitiveness and Employment (1993)

The high level of unemployment in most EU countries contributed to the release of the White Paper on Growth, Competitiveness and Employment in 1993. It launched the debate on the European economic and employment strategy by bringing the issue of employment to the top of the European agenda for the first time.

2. The Essen process (1994)

In order to fight unemployment, the European Council of Essen in December 1994 agreed on five key objectives to be pursued by Member States, namely to: (i) invest in vocational training, (ii) increase employment-intensive growth, (iii) reduce non-wage labour costs, (iv) increase active labour market policies, and (v) fight youth and long-term unemployment. Member States were to ensure these recommendations were translated into multiannual programmes monitored by the Commission and the Council. The Essen process contributed to raising awareness of high unemployment in the Member States at EU level.

3. The contribution of the Amsterdam Treaty (1997)

The new Employment Title in the Amsterdam Treaty set up the European Employment Strategy and the permanent, Treaty-based Employment Committee with advisory status to promote the coordination of the Member States' employment and labour market policies. The Treaty has not changed the basic principle of the Member States having the sole competence for employment policy, but the Member States have committed themselves to coordinate their employment policies at Community level. The Treaty entrusts the Council and the Commission with a much stronger role and new tasks and tools. The European Parliament has been involved more closely in the decision-making process, too. The responsibilities of social partners and their possibilities to contribute are also enhanced through the inclusion of the Social Protocol in the Treaty.

4. The European Employment Strategy 1997-2004

The extraordinary Luxembourg Job Summit in November 1997 anticipated the entry into force of

the Amsterdam Treaty in 1998 and launched the European Employment Strategy (EES), the so-called Luxembourg Process. It created the framework for the annual cycle for coordinating and monitoring national employment policies. The coordination of national employment policies at EU level is based on the commitment of the Member States to establish a set of common objectives and targets. The strategy was built around the following components:

- employment guidelines;
- national action plans (NAPs);
- Joint Employment Report;
- recommendations.

The EES committed the Member States and the Community to achieving a high level of employment as one of the key objectives of the EU. In 1997, employment was, for the first time, set on the same footing as the macroeconomic objectives of growth and stability. Member States and the Community were committed to working towards the development of a coordinated strategy for employment at Community level by using the then newly-introduced open method of coordination (OMC) which is based on five key principles, i.e. subsidiarity, convergence, management by objectives, country surveillance and an integrated approach. In 2000, the Lisbon European Council agreed on the new strategic goal of making the EU 'the most competitive and dynamic knowledge-based economy in the world', capable of sustaining economic growth with more and better jobs and greater social cohesion. It embraced full employment as an overarching objective of employment and social policy, and set concrete targets to be achieved in 2010.

5. The renewed European Employment Strategy since 2005

a. The re-launch of the European Employment Strategy in 2005

The EES was reviewed in 2002 and re-launched in 2005 with a focus on growth and jobs, and with the aim to simplify and streamline the Lisbon Strategy. Revisions included the introduction of a multiannual time framework (the first cycle being 2005-2008).

b. The Employment Guidelines 2005-2008 and 2008-2010

The Integrated Guidelines 2005-2008 and 2008-2010 contained a total of 23 guidelines, of which 8 were devoted specifically to employment to boost the Lisbon Strategy. The Employment Guidelines 2008-2010 remain unchanged compared to the previous cycle. They aimed to contribute to fostering full employment, to improve quality and productivity at work and to strengthen social and territorial cohesion.

c. Europe 2020 Strategy and the integrated guidelines

The integrated guidelines represent the main tool of the Europe 2020 Strategy, the new 10-year strategy for jobs and smart, sustainable and inclusive growth. They lay the foundations for structural reforms, which the Member States will have to carry out, and comprise the employment policy guidelines and the broad guidelines for the economic policies of the Member States, which the Council adopted in July 2010. The integrated guidelines contain five EU headline targets[1]. Three of them belong to the guidelines for the employment policies:

- **labour market:** increase the labour market participation of people aged 20-64 to 75% by 2020; through, inter alia, greater participation of young people, older workers and low-skilled workers and better integration of legal migrants;
- **social inclusion and combating poverty:** lift at least 20 million people out of the risk of poverty and exclusion;
- **improving the quality and performance of education and training systems:** reduce drop-out rates to 10% (from 15%), and increase the share of 30-34 year-olds having completed tertiary or equivalent education to at least 40% (instead of 31%).

All five headline targets must be translated by Member States into national targets, taking into account their relative starting positions and national circumstances. Three flagship initiatives fall into the employment and social affairs areas: (i) 'Youth on the move': which aims to improve young people's chances of finding a job by helping students and trainees gain experience in other countries, and improving the quality and attractiveness of education and training in Europe; (ii) 'An agenda for new skills and jobs': aiming to give fresh momentum to labour market reforms to help people gain the right skills for future jobs, to create new jobs and overhaul EU employment legislation; and (iii) the 'European platform against poverty and social exclusion': to support work at all levels to lift at least 20 million people out of poverty and exclusion by 2020.

Role of the European Parliament

The EP considers employment as one of the most important priorities for the EU and believes that the EU and Member States have to coordinate their efforts. The role of the EP in this area has gradually developed and, since the Amsterdam Treaty, it must be consulted on the employment guidelines before they are drawn up annually by the Council, and this despite the multiannual cycle.

[1] http://www.consilium.europa.eu/

In 1994, a special temporary committee on employment was created. The EP stressed in the report in 1995 that the EU and the Member States should adopt an integrated strategy dedicated to job creation, encompassing all policies which have an impact on employment. During the 1996 Intergovernmental Conference, the EP ensured that employment policy got a much higher priority in the Amsterdam Treaty by calling for a specific employment chapter in the Treaty.

In its resolution of June 2003 on the employment guidelines, the EP called for streamlining and better coordination between broad economic policy guidelines, employment guidelines, social inclusion strategy and sustainability strategy. It also stressed the need for better involvement of all relevant actors (e.g. social partners and national parliaments).

The Employment Guidelines 2005-2008 were backed by the EP. The open method of coordination should enhance the role of parliaments; not only that of the EP, but also of national parliaments, which play a full role in setting and achieving national targets.

The Employment Guidelines 2008-2010 needed to be amended to strengthen the social dimension of the Lisbon Strategy and the quality of employment. Parliament also recommended integrating a balanced 'flexicurity' approach in these guidelines. The employment guidelines for 2010 have remained unchanged until now.

Parliament has strongly backed the Europe 2020 Strategy, and has adopted resolutions supporting and reinforcing the different flagship initiatives in the employment and social affairs area. Parliament has asked the European Council to integrate the objectives of the Europe 2020 Strategy, as well as other employment-related aspects, into its policy guidance for the European Semester.

The European Parliament has repeatedly called for the inclusion of the strategy's targets when adopting new policies.

In its resolution of 6 June 2012 on 'Towards a job-rich recovery', the EP namely calls for the necessary investment in job and growth potentials in the green economy, the health and social services sector and ICT, including investment in skills, training and higher wages.

The European Parliament strongly supports the introduction of a Youth Guarantee Scheme aiming to make sure that all young EU citizens and legal residents up to the age of 25 years, and recent graduates under 30, receive a good-quality offer of employment, continued education or apprenticeship within four months of becoming unemployed or leaving formal education.

The Lisbon Treaty raised the employment objective by introducing full employment and social progress as a goal (Article 3(3) of the Treaty on European Union). The social clause contained in Article 9 TFEU also contributes to strengthen the employment policy, asking that social requirements be taken into account in the Union's policies. These requirements are 'linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health'. The Charter of Fundamental Rights became legally binding by respecting the principle of subsidiarity (in accordance with the general provisions of Title VII of the Charter) and contributed to strengthening employment and social policies.

→ Laurence Smajda

5.10.4. Social security cover in other Member States of the Union

The coordination of social security systems is needed to support the free movement of people within the territory of the EU. Until recently, two regulations adopted in 1971 and 1972 governed the regime applicable to employees and other categories of persons residing lawfully on the territory of a Member State. A fundamental reform modernising the whole legislative system is, however, now in force.

Legal basis

Articles 48, 78, 79 and 352 of the Treaty on the Functioning of the European Union (TFEU).

Objectives

The basic principle enshrined in the Treaty of Rome is the removal of obstacles to freedom of movement for persons between the Member States (*3.2.2). To achieve this, it is necessary to adopt social security measures which prevent EU citizens working and residing in a Member State other than their own from losing some or all of their social security rights.

Achievements

In 1958, the Council issued two regulations on social security for migrant workers which were subsequently superseded by Regulation (EEC) No 1408/71, supplemented by the implementing regulation (Regulation (EEC) No 574/72). Nationals from Iceland, Liechtenstein and Norway are also covered by way of the European Economic Area (EEA) Agreement and Switzerland by the EU-Swiss Agreement.[1] In 2004, the coordination regulation (Regulation (EC) No 883/2004) was adopted to replace and extend Regulation (EEC) No 1408/71. It was supplemented by the implementing regulation (Regulation (EC) No 987/2009).

A. The four main principles of Regulation (EEC) No 1408/71

1. Equal treatment

Workers and self-employed persons from other Member States must have the same rights as the host state's own nationals. For the principle of equal treatment to apply, three conditions must be met: equivalence of facts, aggregation of periods and retention of rights. The right to equal treatment applies unconditionally to any worker or self-employed person from another Member State having resided in the host state for a certain period of time.

2. Aggregation

This principle applies where, for example, national legislation requires a worker to have been insured or employed for a certain period of time before he is entitled to certain benefits. The aggregation principle means that the competent Member State must take account of periods of insurance and employment completed under another Member State's legislation in deciding whether a worker satisfies the requirements regarding the duration of the period of insurance or employment.[2]

3. Prevention of overlapping of benefits

This principle is intended to prevent anyone from obtaining undue advantages from the right to freedom of movement. Contributing to social security systems in two or more Member States during the same period of insurance does not confer the right to several benefits of the same kind.

4. Exportability

This principle means that social security benefits can be paid throughout the Union and prohibits Member States from reserving the payment of benefits to people resident in the country, but it does not apply to all social security benefits. Special rules apply to the unemployed, for example.

B. Persons covered

Originally, Regulation (EEC) No 1408/71 only covered workers but, with effect from 1 July 1982, its scope was extended to cover the self-employed too. This regulation also covered members of workers' and self-employed persons' families and their dependants, as well as stateless persons and refugees. Through Council Regulation (EC) No 1606/98 of 29 June 1998, the Council extended the scope of Regulation (EEC) No 1408/71 in order to set civil servants on an equal footing with the rest of the population as regards the general statutory pension rights provided in the Member States. Regulation (EEC) No 307/1999 of 8 February 1999 further extended its scope to include all insured persons, particularly students and persons not in gainful employment. Council Regulation (EC) No 859/2003 of 14 May 2003 again extended the scope of Regulation (EEC) No 1408/71

[1] www.ilo.org

[2] International Social Security Association — www.issa.int

to cover nationals from third countries, provided they are legally resident on Union territory.

The current legislation, Regulation (EC) No 1231/10 in force since January 2011, extended these modernised EU social security coordination rules to third-country nationals legally resident in the EU and in a cross-border situation (who were not already covered by these regulations solely on the ground of their nationality). The coverage now also applies to their family members and survivors if they are in the EU.

C. Benefits covered

Article 3 of Regulation (EC) No 883/2004 lists the social security benefits covered by the regulation:

- sickness, maternity and equivalent paternity benefits;
- old-age benefits and invalidity benefits;
- survivors' benefits;
- benefits in respect of accidents at work and occupational diseases;
- death grants;
- pre-retirement benefits;
- unemployment benefits;
- family benefits.

D. The modernisation of the system

1. The reform of Regulation (EEC) No 1408/71

Since 1971, Regulation (EEC) No 1408/71 has been amended on numerous occasions in order to take into account developments at Community level, changes in legislation at national level and the case law of the Court of Justice.

2. Towards better coordination of social security systems

In April 2004, the European Parliament (EP) and the Council approved Regulation (EC) No 883/2004, replacing Regulation (EEC) No 1408/71. It is based on the same four principles of Regulation (EEC) No 1408/71. However, the aim of the new regulation is to simplify the existing Community rules for the coordination of Member States' social security systems by strengthening cooperation between social security institutions and improving the methods of data exchange between them. The obligation on administrations to cooperate with one another in social security matters should be improved and movement from one Member State to another, whether for professional or private purposes, without any loss of social security entitlements, will be facilitated.

The 'modernisation coordination package' comprising Regulation (EC) No 883/2004, as amended by Regulation (EC) No 988/2009 and the implementing regulation (Regulation (EC) No 987/2009) is the new legislative package in force since May 2010. Completing the modernisation work done by Regulation (EC) No 883/2004, the implementing regulation is intended to clarify the rights and obligations of the various stakeholders as it defines the necessary measures for the persons covered to travel, stay or reside in another Member State without losing their social security entitlements. The following elements are covered by Regulation (EC) No 883/2004 and its implementing regulation:

- Improving the rights of insured persons through the extension of coverage in respect of persons, and of scope in respect of social security areas covered;
- Expanding the fields of social security covered by the regulation to include statutory pre-retirement schemes;
- Amending certain provisions relating to unemployment;
- Strengthening the general principle of equal treatment and the principle of exportability of benefits;
- Introducing the principle of good administration: Member State institutions are obliged to cooperate with one another and to provide mutual assistance for the benefit of citizens.

Since January 2011, Regulation (EC) No 1231/10 has extended the modernised EU social security coordination rules to third-country nationals who are legally resident in the EU and in a cross-border situation.

3. European health insurance card

European citizens who travel within the European Economic Area (EEA) may henceforth use the European health insurance card. This card facilitates access to medical care on a visit to another EEA country for personal or professional reasons.

Role of the European Parliament

The EP has always shown a keen interest in the problems encountered by migrant workers, frontier workers, the self-employed and nationals of third countries working in other Member States, and has adopted various resolutions with a view to improving their lot. The EP has, on several occasions, deplored the persistence of obstacles to full freedom of movement and has called on the Council to adopt pending proposals, such as those intended to bring early retirement pensions within the scope of Regulation (EEC) No 1408/71, to extend the right of unemployed persons to receive unemployment

benefit in another Member State and to widen the scope of legislation to include all insured persons. Some of these demands were met by the final adoption of the revised version of Regulation (EEC) No 1408/71.

Since the entry into force of the Lisbon Treaty, the ordinary legislative procedure applies and social security rights for workers are voted by qualified majority in the Council the first time (Article 48). However, one Member State can ask to refer the draft legislative act to the European Council, if it 'declares the draft legislative act would affect important aspects of its social security systems, including its scope, cost or financial structure, or would affect the financial balance of that system'. In this case, the draft legislative act will thus be suspended. The European Council shall, within four months of this suspension, either (i) refer the draft back to the Council, which shall terminate the suspension of the ordinary legislative procedure, (ii) take no action or (iii) request that the Commission submit a new proposal; in that case, the act originally proposed shall be deemed not to have been adopted.[1]

Another important change is the explicit inclusion of self-employed people as beneficiaries of the provisions on social security in the framework of the freedom of workers' movement.

→ Laurence Smajda

[1] Article 48 of the Treaty on the Functioning of the European Union.

5.10.5. Health and safety at work

Improving health and safety at work has been of major concern to EU authorities since the 1980s. With the introduction of legislation at European level, standards for the minimal protection of workers have been set, but the provisions adopted do not prevent Member States from maintaining or introducing more stringent measures. The Charter of Fundamental Rights, which became legally binding with the Lisbon Treaty, reinforces the importance of this policy in EU legislation.

Legal basis

Articles 91, 114, 115, 151, 153 and 352 of the Treaty on the Functioning of the European Union (TFEU).

Objectives

On the basis of Article 153 TFEU, the EU encourages improvements in the working environment by harmonising working conditions in order to protect workers' health and safety. To this end, minimum requirements are laid down at EU level, allowing Member States to introduce a higher level of protection at national level if they so wish. Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

Achievements

A. Background

1. The early stages

Within the framework of the European Coal and Steel Community (ESCS), created by the Treaty of Paris in 1951, various research programmes were carried out in the field of health and safety at work. The need for a global approach to occupational safety and health became more manifest with the establishment of the EEC by the Treaty of Rome in 1957. The Advisory Committee for Safety, Hygiene and Health Protection at Work was set up in 1974 to assist the Commission in the preparation and implementation of activities in this field. In order to complete the single European market, minimum requirements were needed with regard to occupational health and safety issues. This led to the adoption of a few directives, for example Directive 82/605/EEC (replaced by Directive 98/24/EC) on protection against the risks associated with metallic lead; Directive 83/477/EEC (last amended by Directive 2003/18/EC) on asbestos; and Directive 86/188/EEC (last amended by Directive 2003/10/EC) on noise.

2. The Single European Act

With the adoption of the Single European Act in 1987, health and safety at work was introduced for the first time in the EEC Treaty in an article laying down minimum requirements and allowing the Council to adopt occupational health and safety directives by qualified majority. This article aimed: to improve workers' health and safety at work; to harmonise conditions in the working environment; to prevent 'social dumping' as completion of the internal market progressed; and to prevent companies from moving to areas with a lower level of protection to gain a competitive edge. Although the so-called 'Social Charter' of 1989 ('The Community Charter of the Fundamental Social Rights of Workers') was not legally binding, it affirmed that 'the same importance must be paid to the social aspects as to the economic aspects of the single market'.

3. Contribution of the Treaty of Amsterdam (1997)

The Amsterdam Treaty strengthened the status of employment issues by introducing the Employment Title and the Social Agreement. Minimum directives, in the field of protection of health and safety at work and working conditions, are now for the first time adopted in codecision with the EP.

B. Main steps

1. Framework Directive 89/391/EEC

Since the entry into force of the Treaty of Nice, its Article 137 (now Article 153 TFEU) has formed the basis for the improvement of the working environment to protect workers' health and safety. One of the cornerstones in the development of safety and health of workers was the adoption of Framework Directive 89/391/EEC, with its particular focus on the culture of prevention. The framework directive aims to improve the protection of workers with regard to accidents at work and occupational diseases by ensuring preventive measures, information, consultation, balanced participation and training for both the workers and their representatives. It covers all workers in the EU, whether in the public or private sector. The framework directive forms the basis for 20 'daughter directives' on:

- requirements for working places (89/654/EEC);
- the use of work equipment (89/655/EEC amended by Directive 2001/45/EC);
- the use of personal protective equipment (89/656/EEC);

- work with display screen equipment (90/270/EEC);
- manual handling (90/269/EEC);
- exposure to carcinogens (90/394/EEC);
- temporary or mobile construction sites (92/57/EEC);
- provision of safety and health signs at work (92/58/EEC);
- pregnant workers (92/85/EEC);
- mineral-extracting industries (drilling) (92/91/EEC);
- mineral-extracting industries (92/104/EEC);
- fishing vessels (93/103/EC);
- chemical agents (98/24/EC amended by Directive 2000/39/EC);
- minimum requirements for improving the safety and health protection of workers potentially at risk from explosive atmosphere (99/92/EC);
- the protection of workers from risks related to exposure to biological agents at work (2000/54/EC);
- the protection of workers from the risks related to exposure to carcinogens or mutagens at work (2004/37/EC);
- four directives on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents on vibration (2002/44/EC), noise (2003/10/EC), electromagnetic fields (2004/40/EC), artificial optical radiation (2006/25/EC).

The framework directive has had an impact on other legislative acts, in particular on the Commission's proposal to amend Directive 91/383/EEC on temporary agency workers; the proposal to amend Directive 2003/88/EC on certain aspects of the organisation of working time; Directive 99/95/EC on working time provisions in maritime transport; Directive 2000/34/EC concerning certain aspects of the organisation of working time to cover sectors and activities excluded from that directive (road, air, sea and rail transport, inland waterways, sea fishing, other work at sea and the activities of doctors in training); Directive 94/33/EC on the protection of young people at work; and Council Regulation (EC) No 2062/94/EEC establishing the European Agency for Health and Safety at Work.

2. European Agency for Health and Safety at Work

The Agency, set up in 1996 in Bilbao (Spain), aims to bring actors together to allow them to share knowledge and information, thereby contributing to the promotion of a culture of risk prevention.

C. Community action programmes and strategies on health and safety at work

Between 1951 and 1997, European Coal and Steel Community research programmes were established in the field of safety and health at work. The European Social Agenda was adopted in 2000. It contributed to a more strategic approach on health and safety at work at EU level. Subsequently, the Community strategy 2002-2006 adopted a global approach to well-being in the workplace. The current Community strategy for the period 2007-2012 focuses on prevention. It aims to achieve a continuous, sustainable and homogeneous reduction of occupational accidents and diseases in the EU, in particular by defining and implementing national strategies based on a detailed evaluation of the national situation, and by improving and simplifying existing legislation, as well as enhancing its implementation in practice through non-binding instruments (such as exchange of good practices, awareness-raising campaigns, as well as better information and training). The Commission's target to reduce 25% of work accidents across the EU was welcomed by the EP. The European Commission is currently evaluating this Community strategy.

Role of the European Parliament

The European Parliament has frequently emphasised the need for optimal protection of workers' health and safety. It has called in many resolutions for all aspects directly or indirectly affecting the physical or mental well-being of workers to be covered. Up to now, it has had a significant influence on directives which improve working conditions. It 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 vulnerable workers. The EP urges the Commission to investigate new emerging risks not yet covered by current legislation, e.g. exposure to nanoparticles, stress, burn-out, violence and harassment in the workplace.

The EP called on the Commission to amend the directive on the protection of workers from risks related to exposure to biological agents at work (Directive 2000/54/EC) and to protect health workers from blood-borne infections due to needle-stick injuries (resolution of 6 July 2006, P6_TA(2006)305). Eventually, the social partners decided to negotiate a framework agreement on prevention from sharp injuries in the hospital and healthcare sector, which was signed in July 2009; the EP welcomed this achievement in its resolution of 11 February 2010. The directive was adopted by the Council on 10 May 2010.

The EP also called for improvements in existing legislation relating to the protection of pregnant

workers and workers who have recently given birth or are breastfeeding. The Commission finally decided in July 2008 to propose a review of Directive 92/85/EEC: the first reading vote in the EP took place in October 2010.

The EP has also repeatedly stressed the need to improve EU legislation on the protection of workers from musculoskeletal disorders.

In June 2010, the EP rejected the Commission's proposal for a modified directive on the working time of mobile road transport workers, because it did not accept the exclusion of self-employed workers from the scope of the directive. Given this situation, the Commission announced the withdrawal of its proposal.

The extension of the scope of Framework Directive 89/391/EEC to excluded groups of workers (such as the military, self-employed, domestic workers and home workers) is another key request. It also calls for a directive laying down minimum standards for the recognition of occupational diseases. Other subjects being debated in the Parliament include the safety of offshore oil and gas activities, and the basic safety standards for protection against the dangers arising from exposure to ionising radiation.

In its mid-term review of the European strategy 2007-2012 on health and safety at work, the EP has notably given attention to the health and safety of vulnerable workers and their specific risks.

The proposal for a directive on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields) is currently being debated in the Parliament.

The Parliament has also repeatedly pleaded for better implementation of existing directives.

Since the entry into force of the Lisbon Treaty, the ordinary legislative procedure now applies, but the characteristics of the codecision procedure remain unchanged. A 'social clause' demands that social requirements are taken into account in the Union's policies. Furthermore, the Charter of Fundamental Rights became legally binding; while respecting the principle of subsidiarity according to the general provisions of Title VII of the Charter.

→ Laurence Smajda

5.10.6. Workers' rights to information, consultation and participation

The European Union complements Member States' activities with regard to workers' rights to information and consultation through measures designed to encourage cooperation between the Member States, or by adopting minimum requirements by means of directives.

Legal basis

Articles 5, 114, 115, 151 and 153 of the Treaty on the Functioning of the European Union (TFEU).

Objectives

The EU supports and complements Member States' activities relating to employee involvement with a view to contributing to the achievement of the core objectives of the European social policy set out in Article 151 TFEU, which entail, among others, improved living and working conditions, proper social protection, lasting high employment and the combating of exclusion.

Achievements

A. Background

The right of workers to information, consultation and participation has been a key theme in European debate since the first Social Action Programme was adopted by the Council in 1974. The Social Charter stresses the desirability of promoting employee participation. The Commission's proposals in this area, however, have often encountered resistance. It should be remembered that a proper legal basis for Community legislation in the field of workers' right to information and consultation was not in place until the Amsterdam Treaty integrated the Agreement on Social Policy into the text of the EC Treaty (Article 137, with codecision applying, now Article 153 TFEU). Previously adopted legislation was mainly based on either Article 44 or Articles 94-95 of the EC Treaty, providing for Community measures aimed at attaining freedom of establishment or the approximation of laws in the common or internal market. The first relevant directive in this field on the European Works Council (Council Directive 94/45/EC) was adopted in accordance with the Agreement on Social Policy and extended to the United Kingdom in 1997. As regards employee involvement, Article 153 TFEU entrusts the EP and the Council with the power to adopt:

- measures designed to encourage cooperation between Member States. This is to be achieved through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, but excluding any harmonisation of the laws and regulations of the Member States;
- directives setting out minimum requirements for gradual implementation. These directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

The ordinary legislative procedure applies to this field, with the prior consultation of the European Economic and Social Committee and the Committee of the Regions.

B. Legislation in force

A first group of directives deal with the right of workers to be informed and consulted on a number of important issues relating to a company's economic performance, financial soundness and future development plans which could affect employment. However, these directives do not contain any provision conferring on employees the right to participate in decision-making:

- Council Directive 75/129/EEC of 17 February 1975 on collective redundancies, as amended by Directives 92/56/EEC and 98/59/EC: under this directive, employers must enter into negotiations with workers in the event of mass redundancy, with a view to identifying ways and means of avoiding collective redundancies or reducing the number of workers affected and mitigating the consequences;
- Council Directive 2001/23/EC of 12 March 2001 on the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (consolidating Directives 77/187/EC and 98/50/EC), under which workers must be informed of the reasons for the transfer and its consequences;
- Directive 2011/35/EU of 5 April 2011 on mergers of public limited liability companies (codifying and repealing Directive 78/855/EEC), pursuant to which workers in companies which merge are protected to the same extent as laid down in the Directive on the transfer of undertakings;
- Directive 2002/14/EC of the EP and of the Council of 11 March 2002 establishing a general

framework for informing and consulting employees in the EC: it lays down minimum common requirements for national provisions on protecting the right of workers to be informed and consulted on the economic and employment situation affecting their workplace;

- Directive 2004/25/EC of the EP and of the Council of 21 April 2004 on takeover bids, pursuant to which the employees of the companies concerned, or their representatives, should be given an opportunity to state their views on the foreseeable effects of the bid on employment; besides the usual rules on information and consultation of employees apply. In its draft INI report on the application of this directive (2012/2262 (INI)), which awaits the first reading, the European Parliament insists that the relevant provisions on workers' rights are to be effectively applied and, where necessary, properly enforced.

A second group of directives aims to lay down rules that apply in situations with a transnational component, which partly grant participation rights in decision-making:

- Council Directive 94/45/EC of 22 September 1994, as revised by Directive 2009/38/EC on the introduction of European Works Councils: this directive was adopted in accordance with the Agreement on Social Policy and extended to the United Kingdom in 1997; it contains general rules to ensure that workers in large multinational companies and merging undertakings are informed and consulted. European Works Councils bring together central management and employee representatives across Europe to discuss matters such as a company's performance, its prospects, employment, restructuring and human resources policies. Workers have also been granted certain rights to information and consultation in regard to the working environment. By April 2011, 18 000 employee representatives sitting in European Works Councils represent the interests of 18 million workers;
- Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees: the Statute for a European public limited-liability company, adopted by Council Regulation (EC) No 2157/2001, is complemented by a directive establishing rules on the participation of workers in decisions concerning the strategic development of the company: not only are employees informed and consulted through a body similar to a European Works Council, but board-level employee participation is foreseen where this form of participation was applied in the national founding companies (which is often the case in the national systems of many Member States);
- Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society (Council Regulation (EC) No 1435/2003) with regard to the involvement of employees: this directive sets rules on the mechanisms to be foreseen in European Cooperative Societies (ECS) to ensure that employees' representatives may exercise an influence on the running of the undertaking. Cooperatives have a specific governance model, which is based on joint ownership, democratic participation and members' control. Unfortunately, the ECS is not used as much as had been hoped, and the European Parliament has called upon the Commission to make the ECS more user-friendly and to deploy sufficient resources to develop a framework for the social economy as a whole (2011/2116 (INI));
- Directive 2005/56/EC of the EP and of the Council of 26 October 2005 on cross-border mergers of limited liability companies: it also contains rules on the determination of the employee participation regime to be applied to the merged company.

After having withdrawn its proposals in 2006, in 2012 the European Commission proposed a Statute for European Foundations (FE) and is now also studying the feasibility of another legislative proposal dealing with a Statute for a European Mutual Society. However, this is facing opposition in some EU Member States each of whom could block a proposal drawn up under the currently preferred legal base of Article 352 TFEU (subsidiary powers), which requires unanimity and EP consent. In March 2013, MEPs asked the Commission to present without delay 'one or more proposals allowing mutual societies to act on a European and cross-border scale', either on the basis of Article 352 TFEU or under the internal market harmonisation Article 114 TFEU (2012/2039(INI)).

C. Other initiatives

Companies and workers' representatives have begun concluding transnational company agreements (TCAs), against the background of the growing international dimension of company organisation, and the growing emphasis on corporate social responsibility including new approaches to dialogue between management and employees. TCAs are texts in various forms, which are drawn up jointly for application in more than one Member State by representatives of a company or a group of companies on the one hand, and one or more workers' organisations on the other. In mid-2011, 215 agreements in 138 companies worldwide with over 10 million employees could be identified. However, this kind of practice can raise legal and political questions regarding the interrelationship between the different vertical levels of social dialogue

(international, European, national) and its horizontal spheres of application (cross-sectoral, sector-specific and on company level). Furthermore, discrepancies can arise between the transnational scope of agreed TCAs and national norms and references, and few dispute resolution mechanisms are in place.

The EU aims to accompany and monitor the development of transnational company agreements by supporting exchanges of experience and research. An ad hoc expert group on transnational company agreements has been set up by the European Commission, which met for the sixth time in October 2011 and presented its report in January 2012.

Role of the European Parliament

Parliament has adopted several resolutions calling for workers to have the right to be involved in company decision-making. The EP's position is that workers should not only be entitled to be informed and consulted but that they should also have the right to participate in decision-making. The right to information, consultation and participation in decision-making should apply in both national and transnational companies irrespective of their legal status. The EP believes that workers should be involved in company decision-making concerning the introduction of new technology, changes in the organisation of work, production and economic planning. In a resolution of 5 June 2003 on the Commission communication on a 'Framework for the promotion of employee financial participation' [COM(2002) 364], the EP reaffirmed its support for the participation of employees in profits and enterprise results. In the resolution of 10 May 2007 on strengthening EU legislation in the field of information and consultation of workers, the EP called on the Commission to review and update Community legislation concerning information and consultation of workers, especially on collective redundancies and safeguarding employees' rights in the event of transfers of undertakings and, in particular, it insisted on the need to speed up the long-awaited revision of the European Works Council Directive.

In its resolution of 15 January 2013 with recommendations to the Commission on information and consultation of workers, anticipation and management of restructuring (2012/2061(INI)), the EP calls on the Commission to submit as soon as possible a proposal for a legal act on information and consultation of workers, anticipation and management of restructuring. In such a legal act, provisions should be made that employee representatives are fully informed in time of any proposed restructuring operation, including the reasons for the choice of measures envisaged, and a meaningful timeframe is foreseen for consultation. This timely consultation shall enable the companies concerned and their workers' representatives to negotiate collective agreements to cover the issues arising from the restructuring.

The EP has also asked the Commission to take action to ensure that EU legislation on workers' right to information and consultation is fully implemented in the Member States.

→ Marion Schmid-Drüner

5.10.7. Social dialogue

Social dialogue is a fundamental component of the European social model that has gained full recognition in the Treaty with the Amsterdam reform. Social partners are thus able to contribute actively to designing European social policy.

Legal basis

Articles 151-156 of the Treaty on the Functioning of the European Union.

Objectives

Under Article 151 TFEU, the promotion of dialogue between management and labour is recognised as a common objective of the EU and the Member States. Social dialogue also improves European governance through the involvement of social partners in decision-making and in the implementation process.

Achievements

A. Bipartite social dialogue

According to the original wording of Article 140 TEC as it appeared in the Treaty of Rome (Article 118), one of the Commission's tasks in the social field was to promote close cooperation between Member States in regard to the right of association and collective bargaining between employers and workers. It was only after many years, however, that this provision started to be implemented.

Set up in 1985 at the initiative of the Commission's President Jacques Delors, the Val Duchesse social dialogue process aimed to involve the social partners, represented by the European Trade Union Confederation (ETUC), the Union of Industries of the European Community (UNICE) and the European Centre of Public Enterprises (CEEP), in the internal market process. A number of joint statements on employment, education and training and other social issues resulted from the meetings of the social partners' representatives.

In 1992, the Social Dialogue Committee (SDC) was established as the main forum for bipartite social dialogue at European level; the SDC currently meets three to four times a year and comprises 64 members (32 employers, 32 workers) either from European secretariats or national organisations. In the meanwhile, Article 118B was incorporated into the TEC by the Single European Act, creating a legal basis for the development of a 'Community-wide social dialogue': the promotion of such dialogue became one of the Commission's official tasks and collective agreements at Community level were made possible. In October 1991, UNICE, ETUC and CEEP adopted a joint agreement which called for mandatory consultation of the social partners on the preparation of legislation in the area of social affairs and a possibility for the social partners to negotiate framework agreements at Community level. This request was acknowledged in the Agreement annexed to the Maastricht Protocol on Social Policy, which was signed by all Member States with the exception of the United Kingdom. At national level, the social partners were thereby given the opportunity of implementing directives by way of collective agreement.

At EU level, the Commission must consult the social partners before taking any action in the social policy field. In such occasions, the social partners may express their willingness to negotiate among themselves an agreement on the subject of the consultation and stop the Commission's initiative. The negotiation process may take up to nine months and the social partners have the following possibilities:

- they may conclude an agreement and jointly request the Commission to propose that the Council adopt a decision on implementation, or
- having concluded an agreement between themselves, they may prefer to implement it in accordance with the procedures and practices specific to the social partners and to the Member States (these agreements have been defined as 'voluntary' or, later on, 'autonomous' agreements), or
- they may be unable to reach an agreement.

In the last case, the Commission will resume work on the proposal in question.

The incorporation of the Agreement on Social Policy into the EC Treaty (Articles 137-145) following the Treaty of Amsterdam finally allowed for a unique framework to apply to social dialogue within the EU. Cross-industry results of this process were the adoption of framework agreements on parental leave (1995), on part-time working (1997) and on fixed-term work (1999), which were implemented by Council directives:

- Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, and Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC;
- Council Directive 97/81/EC of 15 December 1997 concerning the framework agreement on part-

time work concluded by UNICE, CEEP and the ETUC;

- Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.

Negotiations between the social partners on a framework agreement on temporary agency work ended in failure in May 2001. Thus, in March 2002 the Commission adopted a proposal for a directive based on the consensus which had emerged among the social partners. Similarly, after the social partners had expressed their unwillingness to engage in negotiations, in 2004 the European Commission put forward a proposal on the revision of Directive 2003/88/EC concerning certain aspects of the organisation of working time, which was however unsuccessful; consultations with the social partners started again in March 2010 with a comprehensive review of the directive in mind, including recent developments such as on-call working and flexible weekly working time. Currently, the Commission is asking workers' and employers' representatives for their views on possible changes to the directive in a second-stage consultation process. Additionally, the Commission has adopted a report on how the 2003 working time rules are being implemented in the Member States.

From 1998, following a Commission decision to establish specific bodies (Commission Decision 98/500/EC of 20 May 1998), sectoral social dialogue was also strongly developed. Several committees were created in the main economic fields and they produced valuable results. Sectoral social dialogue produced three European agreements on the organisation of working time for seafarers (1998), on the organisation of working time of mobile workers in civil aviation (2000) and on certain aspects of the working conditions of mobile workers assigned to interoperable cross-border services in the railway sector (2005). These agreements were implemented by Council decision. The 'Agreement on workers' health protection through the good handling and use of crystalline silica and products containing it', signed in April 2006, was the first multi-sector outcome of the European social partners' negotiations.

The agreement on teleworking concluded in May 2002 was implemented for the first time in accordance with the procedures and practices specific to the social partners and the Member States. 'Autonomous agreements' were also concluded by the social partners on work-related stress and on the European licence for drivers carrying out a cross-border interoperability service in 2004, as well as on harassment and violence at work (April 2007) and on inclusive labour markets (March 2010).

In May 2008, employers' and workers' representatives from the maritime shipping industry signed an agreement on labour standards in the sector, which aims to apply certain provisions of the International Labour Organisation's 2006 Maritime Labour Convention and, upon request, the European Commission proposed in July 2008 that the Council adopt a directive for the implementation of the agreement.

After calling for years on the Commission to propose a revision of Directive 2000/54/EC on the protection of workers from risks related to exposure to biological agents at work with a view to protecting health workers from blood-borne infections due to needle-stick injuries, together with the EP, social partners eventually decided to start negotiations and the framework agreement on prevention from sharp injuries in the hospital and healthcare sector was signed on 17 July 2009 by HOSPEEM (European Hospital and Healthcare Employers' Association) and EPSU (European Federation of Public Services Unions); the Council directive implementing it was adopted on 8 March 2010.

Following the changes introduced by the Treaty of Amsterdam, the consultation process has become even more important, since it covers all the fields now falling under Article 151 TFEU.

With the entry into force of the Lisbon Treaty, a new article (Article 152 TFEU) has been inserted between ex-Articles 137 TEC (151 TFEU) and 138 TEC (153 TFEU), stating that 'The Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy'. Article 153 TFEU also gives Member States the possibility to entrust the social partners with the implementation of a Council decision adopted on ratification of a collective agreement signed at European level.

B. Tripartite social dialogue

From the very start of the European integration process, it was considered important to involve economic and social stakeholders in drawing up Community legislation. The Consultative Committee for Coal and Steel and the European Economic and Social Committee bear witness to this. Since the 1960s a number of advisory committees have existed whose role is to support the European Commission on the formulation of specific policies. In general, these committees, such as the Committee on Social Security for Migrant Workers, the Committee on the European Social Fund and the Committee on Equal Opportunities for Women and Men, are made up of representatives of national employers' and trade unions' organisations, as well as representatives of the Member States. From 1970 the key tripartite social dialogue forum at European level was the Standing Committee on Employment, composed of 20 representatives of the social partners, equally divided between trade

unions and employers' organisations. Reformed in 1999, the Committee was fully integrated into the coordinated European employment strategy. On the basis of a joint contribution of the social partners to the Laeken Summit in December 2001, the Council launched a Tripartite Social Summit for Growth and Employment in March 2003 (2003/174/EC). The Tripartite Social Summit has replaced the Committee on Employment and facilitates ongoing consultation between the Council, the Commission and the social partners on economic, social and employment questions. It meets at least once a year and one of its meetings must be obligatorily held before the Spring European Council.

Formalising a process that had been developing since 1997, the summit now officially consists of the current EU Council presidency and the two subsequent presidencies, the European Commission and the social partners. The three Council presidencies are normally represented by the Heads of Government or State and the ministers in charge of employment and social affairs; equally, the European Commission has two representatives, who are usually its President and the Member responsible for employment and social affairs. The social partners' members are divided into two delegations of equal size: comprising 10 workers' representatives and 10 employers' representatives, with special attention to be paid to the need to ensure a balanced participation between men and women. Each group shall consist of delegates of European cross-industry organisations either representing general interests or more specific interests of supervisory and managerial staff and small and medium-sized businesses at European level. Technical coordination is provided for the workers' delegation by ETUC and for the employers' delegation by UNICE. Following the ratification of the Lisbon Treaty, the role of the Tripartite Social Summit for Growth and Employment is now acknowledged in the TFEU under Article 152.

Role of the European Parliament

The EP has taken the view that social dialogue is an essential element in the traditions of the Member States and has called for a greater role for 'trialogue' at European level. It has always supported the development of the social dialogue and the Committee on Employment and Social Affairs has extended frequent invitations to the social partners at EU level to present their views before a report or opinion on any relevant issues is delivered. It has also often reminded the Commission of the need for a coherent industrial policy at European level, in which the social partners should play a key role. It must be recalled that the Lisbon Treaty has introduced a clear right for the EP to be informed on the implementation of collective agreements concluded at Union level (Article 155 TFEU) and on the initiatives taken by the Commission to encourage cooperation between the Member States under Article 156 TFEU, including matters relating to the right of association and collective bargaining between employers and workers.

In the midst of the crisis, the EP has recalled that social dialogue is vital for achieving the employment targets of the EU2020 Strategy (2009/2220(INI)). In January 2012, it stressed that, in focusing on fiscal consolidation, the Annual Growth Survey's recommendations hamper not only job creation and social welfare, but also social dialogue as such. In its report on industrial relations in Europe 2010, the Commission confirmed that those Member States, where social partnership is strongest, have been the most successful in overcoming the crisis. Furthermore in its resolution on the employment and social aspects of the Annual Growth Survey 2013, the European Parliament has once again stressed the importance of social dialogue and has called for labour market reforms to be based on reinforced coordination of social dialogue at EU level.

→ Laurence Smajda

5.10.8. Equality between men and women

Equality between women and men is one of the objectives of the European Union. Over time, legislation, jurisprudence and modifications to the Treaties have contributed to reinforce this principle and its implementation in the EU. The European Parliament has always been a fervent defender of the principle of equality between men and women.

Legal basis

Since 1957, the principle that men and women should receive equal pay for equal work has been enshrined in the EC Treaties (today Article 157 (ex-141) TFEU). Besides, Article 153 (ex-Article 137) allows the EU to act in the wider area of equal opportunities and treatment in matters of employment and occupation. Within this framework, Article 157 TFEU authorises positive discrimination in favour of women. Furthermore, Article 19 TFEU (ex-Article 13) enables legislation to combat all forms of discrimination, including on the basis of sex, and the Daphne programme which includes measures against violence against women (see below) is based on Article 168 TFEU (ex-Article 152) on public health.

Objectives

The Union is founded on a set of values, among which equality and promotes equality between women and men (Articles 2 and 3(3) TEU). These objectives were introduced by the Treaty of Amsterdam of 1997. Besides, Article 8 TFEU (ex-Article 3(2)) gives the Union the task of integrating equality between men and women into all its activities (also known as 'gender mainstreaming').

Achievements

A. Main legislation

In reference to these articles, the EU aims at equal opportunities and equal treatment for men and women through mainstreaming and positive actions in Union legislation:

- progressive implementation of the principle of equal treatment for men and women in matters of social security: Directive 79/7/EEC of 19 December 1978;
- Directive 96/97/EEC of 20 December 1996 amending Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes;
- application of the principle of equal treatment between men and women engaged in an activity including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood: Directive 86/613/EEC of 11 December 1986 and amended by Directive 2010/41/EC;
- introduction of measures to improve the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding: Directive 92/85/EEC of 19 October 1992;
- Directive 2002/73/EC of 23 September 2002 amending Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. This directive provides a Community definition of direct and indirect discrimination, harassment and sexual harassment. It also encourages employers to take preventive measures to combat sexual harassment, reinforces the sanctions for discrimination and provides for the setting up within the Member States of bodies responsible for promoting equal treatment between women and men;
- Regulation (EC) No 806/2004 of 21 April 2004 which provides for gender mainstreaming in EU cooperation and development policy as a whole and the adoption of specific measures to improve the situation of women;
- Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between women and men in the access to and supply of goods and services; and
- in 2006, former legislative acts were included in a new Directive 2006/54/EC of 26 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) and consequently repealed. Presently, the EP seeks a revision of the directive in relation to the equal pay provisions (see resolution of 24 May 2012)[1].

[1] See: European Parliament resolution of 24 May 2012 with recommendations to the Council on application of the principle of equal pay for male and female workers for equal work or work of equal value — Texts adopted, P7_TA(2012)0225.

B. Progress in case-law of the European Court of Justice (ECJ)

The ECJ has played an important role in the promotion of equality for men and women. The most notable judgments have been:

- ***Defrenne II* judgment of 8 April 1976** (Case 43/75): the Court recognised the direct effect of the principle of equal pay for men and women and ruled that that principle not only applied to the action of public authorities but also extended to all agreements which are intended to regulate paid labour collectively;
- ***Bilka* judgment of 13 May 1986** (Case 170/84): the Court ruled that a measure excluding part-time employees from an occupational pension scheme constituted 'indirect discrimination' and was therefore contrary to former Article 119 if it affected a far greater number of women than men, unless it could be shown that the exclusion was based on objectively justified factors unrelated to any discrimination on grounds of sex;
- ***Barber* judgment of 17 May 1990** (Case 262/88): the Court decided that all forms of occupational pension constituted pay for the purposes of Article 119 and the principle of equal treatment therefore applied to them. The Court ruled that men should be able to exercise their pension rights or survivor's pension rights at the same age as their female colleagues;
- ***Marschall* judgment of 11 November 1997** (Case C-409/95): the Court declared that a national rule which, in a case where there were fewer women than men in a sector, required that priority be given to the promotion of female candidates ('positive discrimination') was not precluded by Community legislation, provided that that advantage were not automatic and that male applicants were guaranteed consideration and not excluded *a priori* from applying;
- ***Test Achats* judgment of 1 March 2011** (Case C-236/09): the Court declared the invalidity of Article 5, paragraph 2, of Directive 2004/113/EC as being contrary to the principle of equal treatment between men and women in the access to and supply of goods and services. Consequently, for men and women, the same system of actuarial calculation has to be applied to determine premiums and benefits for the purposes of insurances.

C. Last developments

The EU's most recent actions in the field of equality between men and women have been:

1. The financial framework

a. The PROGRESS programme (2007-2013)

The EU actions in the field of gender equality are funded under the Community programme for Employment and Social Solidarity (PROGRESS). Gender equality is one of the five fields of activity of this programme. A minimum of 12% of its almost EUR 658 million budget will be devoted to actions in this field over the period 2007-2013.

b. The Daphne III programme (2007-2013)

The Daphne programme is a Community programme aimed to prevent and combat violence against children, young people and women and to protect victims and groups at risk. It has a budget of EUR 116.85 million for the period 2007-2013.

2. The European Institute for Gender Equality (EIGE)

The European Parliament and the Council established in December 2006 a European Institute for Gender Equality with the overall objective to contribute to and strengthen the promotion of gender equality, including gender mainstreaming in all Community and national policies. It also fights against discrimination based on sex and raises awareness on gender equality by providing technical assistance to the European institutions by collecting, analysing and disseminating data and methodological tools. The institute is based in Vilnius, Lithuania.

3. The European Commission's network of women in decision-making in politics and the economy

This network, launched in June 2008, provides a platform at EU level for exchange of good practices and successful strategies to improve gender balance in decision-making positions.

4. The Women's Charter and the Strategy for equality between men and women (2010-2015)

The Commission's Women's Charter of October 2010 and its Strategy for equality between men and women (2010-2015) adopted on 21 September 2010 provide for a comprehensive framework to promote gender equality in all EU policies and set out five key areas for action:

- equality in the labour market and equal economic independence for women and men, namely through the Europe 2020 strategy;
- equal pay for equal work and work of equal value by working with Member States to reduce significantly the gender pay gap over the next five years;
- equality in decision-making through EU incentive measures;

- dignity, integrity and an end to gender-based violence through a comprehensive policy framework;
- gender equality beyond the EU by pursuing the issue in external relations and with international organisations.

The strategy is the follow-up of the roadmap for equality between women and men (2006-2010) which received large support of stakeholders due to its clear strategies and objectives.

Role of the European Parliament

The European Parliament has played a significant role in supporting equal opportunity policies, in particular through its Committee on Women's Rights and Gender Equality (FEMM). Parliament's action has been facilitated by the extension of the application of the codecision procedure, in particular regarding:

- legislation to promote equality between men and women with regard to labour market opportunities and treatment at work (Article 153 TFEU);
- legislation aimed at equal treatment of men and women in matters of employment and occupation (Article 157 TFEU). The Parliament is in favour of a longer and fully-paid maternity leave of 20 weeks, in a resolution voted in October 2010 but the revision of Directive 92/85/EEC is currently blocked in the Council; and
- the adoption of measures in combating trafficking in women and children (Article 83(1) in connection with Article 82(2)), like for Directive 2011/36/EU.

In addition, the Parliament contributes to the overall policy development in the area of gender equality through its own-initiative reports, and by drawing the attention of other institutions to specific problems, among which:

- the increase of women in decision-making in politics[1] and in management boards by refusing a candidate for the Executive Board of the ECB[2] and as a co-legislator for the proposal for a directive on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures (COM(2012) 614) ;
- the fight against violence against women[3] by preparing a legislative own-imitative report in 2013;
- gender equality in times of crisis as highlighted by an interparliamentary conference at the occasion of International Women's Day 2013 and the related resolution on the impact of the economic crisis on gender equality[4];
- gender equality in international relations, in particular regarding the developments since the so called Arab Spring in North Africa[5].

Through FEMM and its High Level Group on Gender Equality, the European Parliament has also developed dialogue and cooperation with national parliaments. An interparliamentary conference was held on 3 October 2012 to discuss what parliaments in the EU do for gender equality.

→ Erika Schulze

[1] See: European Parliament resolution of 13 March 2012 on women in political decision-making — quality and equality — Texts adopted, P7_TA(2012)0070.

[2] See: European Parliament decision of 25 October 2012 on the Council recommendation for appointment of a Member of the Executive Board of the European Central Bank — Texts adopted, P7_TA(2012)0396.

[3] See: European Parliament resolution of 5 April 2011 on priorities and outline of a new EU policy framework to fight violence against women — Texts adopted, P7_TA(2011)0127.

[4] See: European Parliament resolution of 12 March 2013 on the impact of the economic crisis on gender equality and women's rights — Texts adopted, P7_TA(2013)0073.

[5] See: European Parliament resolution of 12 March 2013 on the situation of women in North Africa — Texts adopted, P7_TA(2013)0075.

5.10.9. The fight against poverty, social exclusion and discrimination

By supporting Member States in the fight against poverty, social exclusion and discrimination, the European Union aims to reinforce the inclusiveness and cohesion of European society and to allow all citizens to enjoy equal access to available opportunities and resources.

Legal basis

Articles 19, 145-150 and 151-161 of the Treaty on the Functioning of the European Union (TFEU).

Objectives

Combating poverty and social exclusion is one of the specific goals of the EU and its Member States in the social policy field. Article 19 TFEU allows the EU to take action to fight discrimination both by offering legal protection for potential victims and by establishing incentive measures.

Achievements

A. Fight against poverty and social exclusion

Between 1975 and 1980, as part of its first anti-poverty programme, the European Economic Community conducted an initial set of pilot projects and pilot studies designed to combat poverty and exclusion. This first programme was followed by two others (1985-1989 and 1989 1994). In 1992 the Council adopted two landmark recommendations, one on common criteria concerning sufficient resources and social assistance in social protection systems (92/441/EEC) and the other on the convergence of social protection objectives and policies (92/442/EEC). However, Community action in this area was continually being contested in the absence of a legal basis. This problem was solved with the entry into force of the Treaty of Amsterdam, which enshrined the eradication of social exclusion as an objective of Community social policy.

Following the launch of the Lisbon Strategy at the European Council held in March 2000, the Nice European Council decided that cooperation on policies designed to combat social exclusion should be based on an open method of coordination (OMC), combining national action plans and Commission initiatives in order to promote cooperation. The method is built around: (i) common aims in the fight against poverty and social exclusion, (ii) national action plans for fighting poverty and social exclusion, (iii) joint reports on social inclusion, along with regular monitoring, joint evaluation and peer review, and (iv) common indicators to measure progress and compare good practices. The Member States agreed to submit national action plans against poverty and social exclusion on a regular basis from June 2001. These were to be prepared on the basis of the objectives identified by the Council, namely to: facilitate participation in employment and access by all to resources, rights, goods and services; prevent the risks of exclusion; help the most vulnerable; and mobilise all relevant parties. The OMC was also applied in parallel to other social protection sectors, including the provision of adequate and sustainable pensions and efforts to ensure accessible, high-quality and sustainable healthcare and long-term care. In 2005, the Commission proposed to streamline the ongoing processes into a new framework for the OMC on social protection and inclusion policies (the 'social OMC'). The overarching objectives of the social OMC were to promote: (a) social cohesion, equality between men and women and equal opportunities for all through adequate, accessible, financially sustainable, adaptable and efficient social protection systems and social inclusion policies; (b) effective and mutual interaction between the Lisbon objectives of greater economic growth, more and better jobs and greater social cohesion, and with the EU's sustainable development strategy; and (c) good governance, transparency and the involvement of stakeholders in policy design, implementation and monitoring.

As provided for in Article 160 TFEU, a Social Protection Committee was established in 2000 to promote cooperation between Member States and with the Commission.

With its Recommendation of 6 May 2009 on the active inclusion of people excluded from the labour market (COM(2008) 639), the Commission updated Council Recommendation 92/441/EEC and stated that 'Member States should design and implement an integrated comprehensive strategy for the active inclusion of people excluded from the labour market combining adequate income support, inclusive labour markets and access to quality services'.

One of the major innovations brought about by the Europe 2020 strategy is a new common target in the fight against poverty and social exclusion, i.e. reducing the number of Europeans living below the national poverty line by 25% and lifting more than 20 million people out of poverty. According to the Commission communication entitled 'The European platform against poverty and social exclusion: A European framework for social and territorial cohesion' (COM(2010) 758), the newly established flagship initiative has the aim of

'creating a joint commitment among the Member States, EU Institutions and the key stakeholders to fight poverty and social exclusion', and offers 'the opportunity to move up a gear in the coordination that Member States have long established in the field of social protection and social inclusion, notably within the Social OMC'. From now on, Member States will have to report on the progress made in pursuing the social goal of Europe 2020 in their national reform programmes, with the possibility of the Commission and the Council issuing country-specific recommendations. It should also be recalled that the European Year for combating poverty and social exclusion was celebrated in 2010.

In October 2011, the Commission proposed a 'Programme for Social Change and Innovation bringing together three existing instruments into one integrated programme: Progress (for effective policy coordination between Member States in the area of employment and social policy), EURES (for the cross-border dissemination of job vacancies and the provision of information, support and guidance for a Europe-wide job search) and the European Progress Microfinance Facility. In 2013 Parliament and the Council reached a political agreement on this new EU Programme for Employment and Social Innovation (EaSI), with a proposed budget of EUR 815 million for the 2014-2020 period.

Furthermore, one of the major innovations of the next programming period (2014-2020) is a special focus on the critical situation of youth in the current crisis, thanks to the Youth Employment Initiative (YEI), whereby a specific allocation under cohesion policy will augment the possibilities offered by the European Social Fund (ESF) in support of the fight against youth unemployment in those regions which are most affected.

B. Anti-discrimination legislation

Based on the experience of contrasting sex discrimination, a consensus emerged in the mid-1990s around the need for the European Community to tackle discrimination on a number of additional grounds. The result of this process was the inclusion of a new Article 13 TEC (now Article 19 TFEU) following the entry into force of the 1997 Amsterdam Treaty. Article 13 empowered the Council, acting unanimously, to take action to deal with discrimination on a whole new range of grounds, including racial or ethnic origin, religion or belief, age, disability and sexual orientation. This article was subsequently modified by the Treaty of Nice to allow the adoption of incentive measures by codecision and qualified majority voting in the Council.

In 1999, the Commission took the necessary steps to implement Article 13 and came forward with a package of proposals. This led to the adoption of two directives in 2000. Council Directive 2000/43/EC (the Racial Equality Directive) bans direct and indirect discrimination, as well as harassment and instructions to discriminate, on the grounds of racial or ethnic origin. It covers employment, training, education, social security, healthcare, housing and access to goods and services. Council Directive 2000/78/EC (the Employment Equality Directive) focuses on discrimination in employment and occupation, including vocational training. It deals with direct and indirect discrimination, as well as harassment and instructions to discriminate, on the grounds of religion or belief, disability, age and sexual orientation. It includes important provisions concerning reasonable accommodation, with a view to promoting access to employment and training for people with disabilities.

In July 2008, the Commission adopted a proposal for a Council directive on implementing the principle of equal treatment between persons outside of the field of employment, irrespective of religion or belief, disability, age or sexual orientation. The proposal, which is still pending, covers access to goods and services, social protection, healthcare and education. On 2 April 2009, Parliament adopted a legislative resolution[1] welcoming the initiative.

C. Incentive measures

In December 2002, Parliament and the Council adopted Decision 50/2002/EC establishing a programme of Community action encouraging cooperation between Member States for the purpose of combating social exclusion. A specific Community action programme to combat discrimination had been established on the basis of Article 13(2) TEC (now Article 19(2) TFEU); it covered all of the grounds set out in Article 13 with the exception of sex, which was dealt with separately by the European Community's gender equality programme. In 2007, all existing Community funding programmes in the area of employment and social affairs were integrated into a single framework with the adoption of the Progress programme. Covering a period of seven years, its aim is to rationalise expenditure and improve the impact of actions supported by the European Community (now the European Union). Progress has a total budget of EUR 743.25 million, of which 30% and 23% respectively are allocated to social inclusion and protection, and non-discrimination. The ESF also makes EU funding available to co-finance actions aimed at combating discrimination and helping the most disadvantaged to access the labour market.

D. EU strategies for specific groups

In its fight against social exclusion and discrimination, the EU also designs and implements strategies targeting specific vulnerable groups.

As a follow-up to the European Year of People with Disabilities in 2003, a Disability Action Plan was

[1] OJ C 137 E, 27.5.2010, p. 68.

established, laying down an operational framework for actions to be developed at Community/EU level between 2004 and 2010. The Commission communication on a 'European Disability Strategy 2010-2020' (COM(2010) 636) was published in November 2010.

By 2030, the proportion of people in the EU aged 65 or over is expected to range between 10.4% and 37.3%, depending on the region. Data also show that the elderly are too often hit by poverty and marginalisation. The EU has taken several initiatives in recent years to promote debate on the economic, social and employment implications of demographic change, and to encourage cooperation between Member States in finding ways to secure the well-being of their ageing population.

Faced with a continuously growing number of jobless young people, at the end of December 2011 the Commission called for immediate action, adopting the Youth Opportunities Initiative (COM(2011) 933). In December 2012 the Commission also proposed a Youth Employment Package designed to help the Member States take specific action to tackle youth unemployment and social exclusion by providing young people with offers of employment, education and training. The package included a proposal for a Council recommendation to introduce a Youth Guarantee, which was adopted by the Council in February 2013. In the same month, the European Council also proposed the allocation of specific funds to concentrate efforts to fight youth unemployment in the most affected regions of the EU through the Youth Employment Initiative (YEI), which was supported by Parliament.

Role of the European Parliament

The Treaty of Lisbon endowed Parliament with the power of consent in relation to the adoption of non discrimination legislation under Article 19(1) TFEU, giving it a more prominent role in equal opportunities law-making. Parliament was an active player in the debate that led to the inclusion of Article 19 (formerly Article 13 TEC) in the Treaty and has often called on the Commission and the Member States to ensure the correct, full and timely implementation of the directives of 2000.

Parliament has repeatedly adopted resolutions with the goal of strengthening EU action aimed at improving the conditions and prospects of the socially disadvantaged. Several of its recent reports stress the role of quality employment in preventing poverty and social exclusion, but they also emphasise that in-work poverty is not unknown in European societies and has grown considerably in recent years. Parliament takes the view that minimum income (at a level equivalent to at least 60% of median income in the relevant Member State) and minimum wages set at a decent level (i.e. above the poverty threshold) are effective tools for protecting people from deprivation and marginalisation, and invites the Member States to exchange experiences on this subject with the support of the Commission (resolution of 20 October 2010 on the role of minimum income in combating poverty and promoting an inclusive society in Europe[1]). Parliament takes the view that the Member States should 'ensure access and opportunities for all throughout the lifecycle, thus reducing poverty and social exclusion, through removing barriers to labour market participation', especially for marginalised groups such as older workers, people with disabilities and minorities, and in particular the Roma community. It has asked for the 'social OMC' process to be improved and for the social component of the Lisbon Strategy and the Europe 2020 strategy to be given a prominent role, at both EU and national level. It has called on the Council and the Commission to open negotiations on an interinstitutional agreement providing for Parliament's participation in that process (resolution of 6 May 2009 on the active inclusion of people excluded from the labour market[2]).

Most recently, Parliament's resolution of 15 November 2011 on the European Platform against poverty and social exclusion[3] makes a strong call for poverty reduction and social inclusion to be put at the forefront of national efforts in the coming years, as poverty reduction is the main means of ensuring future economic growth and preventing further social inequality and unrest. Parliament deplores the fact that the gender aspect of poverty and social exclusion is ignored in the Platform, reiterates its call for decent wage levels and minimum income schemes in each Member State, and calls on the Member States to extend the food distribution scheme for the most deprived people in the EU and retain its original level of funding, and swiftly to adopt the proposal for a directive on equal treatment outside of employment (COM(2008) 426). It further calls on the Commission to ensure that austerity measures, as agreed with Member States, do not call into question the attainment of the Europe 2020 target of lifting 20 million people out of poverty. Discussions are currently taking place about a Fund for European Aid to the Most Deprived (FEAD), which would address the most severe forms of poverty and food deprivation, as well as homelessness and material deprivation of children, and support accompanying measures aimed at the social reintegration of the most deprived people. Council has agreed to Parliament's request to increase the FEAD budget from EUR 2.5 billion to a maximum of EUR 3.5 billion.

→ Laurence Smajda 11/2013

[1] OJ C 70 E, 8.3.2012, p. 8.

[2] OJ C 212 E, 5.8.2010, p. 23.

[3] OJ C 153 E, 31.5.2013, p. 57.

5.11. Tax policy

5.11.1. General tax policy

The EU is a relatively high tax area, with tax revenues representing almost 40% of GDP. Some taxes are less harmful to growth than others. Taxes also redistribute income, thus affecting welfare. The power to levy taxes is central to the sovereignty of the Member States, with only limited competences for the EU. At the EU level, tax policy is geared towards the smooth working of the single market. That is why the EU has been called to pursue harmonisation mostly in the field of indirect taxation. The EU is also stepping up efforts in the fight against tax evasion and avoidance as they represent a threat to fair competition and a major shortfall in tax revenues. According to the Treaty, tax measures must be adopted unanimously. The European Parliament has the right merely to be consulted (compulsory on budgetary issues), but tax policy is greatly influenced by the European Court of Justice case-law.

Legal basis

Articles 110 through 115 of the Treaty on the Functioning of the European Union (TFEU).

Objectives

The EU tax policy strategy was explained in the communication (COM(2001) 260 final) 'Tax Policy in the European Union — Priorities for the years ahead' Provided that Member States respect EU rules, they are free to choose the tax systems that they consider most appropriate to their (political) preferences. Within this framework, the main priorities for EU tax policy are the elimination of tax obstacles to cross-border economic activity, the fight against harmful tax competition[1] and the promotion of greater cooperation between tax administrations in assuring control and combating fraud. Increased tax policy coordination would ensure that Member States' tax policy supports the wider EU policy objectives, as set out most recently in the 'Europe 2020' strategy for smart, sustainable and inclusive growth.

Achievements

A. Level of taxes, tax structure and growth

The EU is a relatively high tax area, with the tax burden accounting to almost 40% of GDP (in 2011, latest available data). On the basis of the overall level of tax revenues for the period 2000-2011, EU countries can be divided into roughly three groups: (1) The eastern and some southern European countries tend to have a tax burden lower than the EU average; (2) The larger EU countries all have a tax burden between 38% and 42% of GDP; (3) The Nordic EU countries register the highest overall tax burden, approaching in some cases 50% of GDP. In terms of the structure of taxation, eastern and southern EU countries generate a relatively high share of total revenues through consumption taxes. In northern EU countries as well as in the core euro-area countries, revenues come predominantly from a relatively high burden on the factor labour.

The link between the level of taxation and growth is uncertain, however. At least three factors blur the causal relationship. First, tax levels and growth are interrelated since tax levels affect growth but growth also affects the level of taxes collected. Second, the progressivity[2] of the tax code appears to affect growth more than the level of taxation. Third, the adverse effect of taxes on growth is offset by the positive growth effects of government spending.

While the relationship between the level of taxation level and growth remains uncertain, there is generally a better understanding of how individual taxes affect growth. This section categorises taxes according to key economic functions: taxes on labour, on capital and on consumption.

Taxation on labour: This category mainly includes personal income taxes and social security contributions. There are three key effects of higher labour taxes: they reduce the supply and demand for labour, because with a growing gap between gross and net wages increasingly fewer workers will offer their labour and fewer jobs will be demanded by firms. Second, progressive income tax rates reduce the return on investment in education, which tends

[1] Council (SN4901/99).

[2] A tax system is progressive when the average tax rate increases with the tax base. Hence, the tax rate applied to the top income bracket (the marginal tax rate) is higher than the average tax rate. A tax system is flat (proportional) when the average tax rate does not change with the tax base. A tax system is regressive when the average tax rate decreases when the tax base increases.

to be linked to higher incomes. Third, a progressive tax rate slows down technological progress because the return on entrepreneurial activity is usually subject to higher taxes compared to wages.

Taxation on capital: This category mainly includes taxes on corporate and investment income as well as property and inheritance taxes. Capital taxes and, in particular, corporate income taxes, are believed to be the most detrimental to growth as they affect the volume and location of investment and the location of profits. Higher corporate taxation can lead to pronounced capital outflows. Taxation of capital income also distorts the consumption/saving decisions of households. Taxes on immovable property and inheritance taxes are less harmful to growth as they fall on accumulated assets, that is an inelastic tax base.

Taxation on consumption: This category mainly includes the value added tax (VAT) and excise duties. Consumption taxes distort the decision about work, leisure and savings less strongly than either labour or corporate taxes. And they do not have, in most cases, a progressive tax structure. VAT applies to the value of goods and services that are bought and sold for domestic consumption. Goods and services sold abroad (exports) are not subject to VAT. Conversely, imports are taxed so as to keep the system fair for producers. Excise duties are often levied to improve people's lifestyle (e.g. taxes on tobacco) or to support environmentally-friendly production (e.g. taxes on harmful emissions). To the extent that higher consumption taxes are compensated by lower taxes on labour and capital, the tax structure is growth enhancing. The undesired side effect is that consumer prices or production costs may rise, reducing households' real disposable income or firms' gross operating surplus similarly to labour and capital taxes.

This cursory glance shows that some taxes are more conducive to growth than others. Property taxes are often found to have the least adverse effect on growth. The impact of excise duties is similarly small. By contrast, taxation of labour is seen as less growth-conducive, with strong progressivity of income tax rates regarded as particularly negative. Corporate and capital taxes hamper growth most severely, mainly because these taxes lead to fewer innovations and are levied on a particularly mobile tax base.

B. Taxes and redistribution

The redistributive effects of a tax system can be just as important as its growth effects. There is often a trade-off between efficiency and equity: social welfare is greater when consumption possibilities are more equally distributed, but redistribution may reduce the incentives to work and earn income in the first place. Different types of taxes have different distributive properties. Personal income taxes are in most cases progressive, but the degree of progressivity and, therefore, the redistributive power varies across Member States. Social security contributions are often proportional or even regressive if they are capped. VAT is often thought to be regressive because of the higher propensity to consume at low income levels. In general, excise duties are regressive as they are set as a fixed amount per quantity.

The most efficient policy instrument for redistributing income is progressive taxation of labour income along with income targeted benefits. An argument for taxing also personal capital income at progressive rates, despite stronger distorting effects, is that capital income is more unevenly distributed than labour income. With regard to consumptions taxes, most EU Member States apply different VAT rates (e.g. reduced rates on basic foodstuff, medicine) apparently for redistributive reasons. Direct transfer payments to relieve low-income households would be more cost-efficient as also high-income people benefit from reduced rates on consumption items.

C. Key policy initiatives

Communication COM(2010) 769 outlines the most serious tax problems that EU citizens face in cross-border situations (e.g. discrimination, double taxation, difficulties in claiming tax refunds and difficulties in obtaining information on foreign tax rules). Other key policy initiatives include: a Green Paper on the future of VAT (COM(2010) 695), followed by a communication (COM(2011) 851) on reform of the VAT system; a proposal for a directive (COM(2011) 169), accompanied by a communication (COM(2011) 168), amending Directive 2003/96/EC (the Energy Taxation Directive), with the aim of achieving smarter energy taxation in the EU; a proposal on a common tax base calculation system for companies operating in the EU (COM(2011) 121); this Common Consolidated Corporate Tax Base (CCCTB) lays down uniform rules enabling companies operating in the EU to calculate their taxable profits; and a proposal for a financial transaction tax (COM(2011) 594).

Specific harmonisation measures in the field of indirect taxation to be mentioned: directive concerning the raising of capital (Directive 2008/7/EC), directive on the charging of heavy goods vehicles for the use of certain infrastructures (Directive 1999/62/EC), and the proposal for a directive on passenger car-related taxes (COM(2005) 261)); directive on the common system of VAT (Directive 2006/112/EC); numerous individual arrangements concerning excise duties (e.g. on alcohol, tobacco and energy) and exemptions (various directives on tax exemptions for travellers, small consignments, the import of personal property, and certain means of transport).

Whereas the Court of Justice has handed down many rulings on the direct taxation of EU citizens,

European measures to harmonise direct taxes have focused primarily on business taxation. To date, harmonisation measures have been general: various communications, the Administrative Assistance Directive (Directive 77/799/EEC) and the Recovery of Claims Directive (Directive 76/308/EEC) — new proposals have been submitted on both these subjects (COM(2009) 28 and 0029); also concerned with personal taxation: the Interest Taxation Directive (Directive 2003/48/EC), amendment of which was proposed in COM(2008) 727, and communications on dividend taxation (COM(2003) 810) and on the elimination of tax obstacles to the cross-border provision of occupational pensions (COM(2001) 214); and concerned with corporate taxation: the Mergers Directive (Directive 90/434/EEC), the Parents-Subsidiary Directive (Directive 90/435/EEC), the Arbitration Convention on the elimination of double taxation (90/436/EEC), and the directive on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (Directive 2003/49/EC).

Around one trillion euros is lost to tax evasion and avoidance every year in the EU, a threat to fair competition and a huge loss of tax revenues. To combat tax fraud, the Commission adopted a communication containing an action plan (COM(2012) 722) and two recommendations on aggressive tax planning (C(2012) 8806 final) and promotion of good governance in tax matters (C(2012) 8805 final). This was a follow-up to the June 2012 communication (COM(2012) 351 final) on concrete ways to reinforce the fight against tax fraud and tax evasion.

The Compact for Growth and Jobs agreed at the June 2012 EU Council refers to taxation as an element that should contribute to fiscal consolidation and sustainable growth and therefore asks to carry forward discussions at the Council. As a follow-up, the May 2013 EU Council (Council (9405/13)) adopted conclusions on tax evasion and tax fraud, highlighting the need for a combination of efforts at national, EU and global levels, and confirming support for work within the G8, the G20 and the OECD on the automatic exchange of information. It also discussed revisions to the Saving Taxation Directive aimed at enlarging its scope to include all types of savings income, as well as products that generate interest.

Role of the European Parliament

Parliament has generally endorsed the broad lines of the Commission's programmes in the field of taxation[1]. In 2002 the EP stressed in a report on general tax policy in the EU that tax competition 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 modernisation of the European social model. A need for action at EU level was identified in several areas: e.g. the elimination of discrimination, double taxation and bureaucratic obstacles; the change to a definitive VAT system giving full effect to the origin principle; advocacy of the 'polluter pays' principle in energy taxation, a limited extension of decision-taking by qualified majority vote in matters concerning cooperation among tax authorities, and codecision powers for the European Parliament in the taxation sphere.

On 2 February 2010, the EP adopted a report on promoting good governance in tax matters[2], in which it advocated a responsible tax policy and transparency and exchange of information at all levels — national, European, and global — as well as favouring fair tax competition. A further objective is the adoption of annual reports on taxation.

On 30 April 2013, the EU adopted the Annual Tax Report (EP(A7-0154/2013). While restating that taxation policy remains a competence of national sovereignty and the different tax systems of the Member States have therefore to be respected, the report emphasises that priority has to be given to growth-oriented fiscal measures and to the promotion of taxes levied more on consumption than on labour, since they are better designed to stimulate economic growth and employment in the long term. The report also draws attention to the necessity of finding an urgent solution to the questions of double taxation and tax evasion.

→ Dario Paternoster

[1] OJ C 341, 16.12.2010, p. 29.

[2] EP(2009/2174 INI).

5.11.2. Direct taxation: Personal and company taxation

The field of direct taxation is not specifically regulated by European law. Nevertheless, a number of directives and the case-law of the Court of Justice of the European Union (CJEU) are helping to establish harmonised standards for company taxation and the taxation of private individuals. Moreover, communications have been issued emphasising the importance of preventing tax evasion and double taxation.

Legal basis

The EU Treaty makes no explicit provision for legislative competences in the area of direct taxation. Legislation on the taxation of companies has usually been based on Article 115 TFEU, which authorises the Union to adopt directives on the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the internal market; these require unanimity and the consultation procedure.

Article 65 TFEU restricts the free movement of capital and allows Member States to distinguish between taxpayers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested. In 1995, however, the CJEU ruled (Case C-279/93) that what is now Article 45 TFEU was directly applicable in the area of tax and social security; that article stipulates that freedom of movement for workers entails 'the abolition of any discrimination based on nationality [...] as regards employment, remuneration and other conditions of work and employment'. Articles 110-113 TFEU require Member States to 'enter into negotiations' on the abolition of double taxation within the Community and Article 55 TFEU forbids discrimination between the nationals of Member States 'as regards participation in the capital of companies'. Most of the arrangements in the field of direct taxation, however, lie outside the framework of Community law. An extensive network of bilateral tax treaties involving both Member States and third countries covers the taxation of cross-border income flows.

Objectives

Two specific objectives are the prevention of tax evasion and the elimination of double taxation. In general terms, a degree of harmonisation of company taxation is justified in order to prevent distortions of competition (in particular in connection with investment decisions) and loss of state revenue as a result of tax competition and to reduce the scope for manipulative accounting.

Results

A. Company taxation

Proposals to harmonise corporation tax have been under discussion for more than 30 years (1962: Neumark report; 1970: Van den Tempel report; 1975: proposal for a directive on the alignment of tax rates between 45% and 55%); in 1980 the Commission conceded in a communication that this attempt at harmonisation was probably doomed to failure (COM(80) 139). Instead it decided to concentrate on more limited measures which were important in the context of the completion of the internal market. In the 'Guidelines on corporation tax' of 1990 (SEC(90) 601) three proposals which had already been published were given priority and were adopted, namely the Merger Directive (90/434/EEC), which governs the treatment of the distribution of profits when companies merge; the Parent Companies and Subsidiaries Directive (90/435/EEC), which eliminated 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. The fate of the 1991 proposal for a directive on a common system of taxation applicable to interest and royalty payments made between parent companies and subsidiaries in different Member States illustrates only too well the often protracted nature of the negotiations with the Member States: despite being revised two years later and receiving a favourable opinion from Parliament, it was withdrawn as a result of the failure to reach agreement in the Council. A new version appeared in 1998 as part of the 'Monti package' and was subsequently adopted as Directive 2003/49/EC.

Meanwhile, the Ruding Committee of independent experts was established in 1991. Its report recommended a programme of action to eliminate double taxation, harmonise corporation tax rates within a 30%-40% band and ensure full transparency concerning the various tax concessions offered by Member States to promote investment. The Commission then proposed amendments to the directives on mergers and parent/subsidiaries (COM(93) 293) and drew attention to two proposals

for directives that had already been tabled some time before: that on the carry-over of losses (COM(84) 404) and that on losses of plants and subsidiaries situated in other Member States (COM(90) 595).

In 1996, the Commission launched a new approach to taxation. In the field of company taxation, the main result was the Code of Conduct for Business Taxation, adopted as a Council resolution in 1998. The Council also established a Code of Conduct Group (known as the 'Primarolo Group') to examine cases of unfair business taxation. The group submitted its report in 1999: it identified 66 tax practices to be abolished within five years.

In 1998, the Commission was asked by Member State governments to prepare 'an analytical study of company taxation in the European Community'. The study, drawn up by two groups of experts (SEC(2001) 1681), was published in 2001. The accompanying Commission communication (COM(2001) 582) noted that the main problem faced by companies was that they had to adapt to different national regulations in the internal market. The Commission proposed several approaches to the problem of providing companies with a consolidated tax base for their EU-wide activities, namely home state taxation (HST), an optional common consolidated tax base (CCTB), a European company tax and a compulsory, fully harmonised tax base. The proposals were discussed at a conference held in 2002; in addition, a Working Group was established in 2004, and the results of its work were incorporated into Commission proposal for a directive COM(2011) 121. The proposed 'common consolidated corporate tax base' (CCCTB) would mean that companies would benefit from a system with a central contact point to which they could submit their tax refund claims. They would also be able to consolidate the gains and losses arising from their activities in the EU. The Member States would retain sole power to set their own corporation taxes. The European Parliament's legislative resolution on it (first reading) was adopted in April 2012 (P7_TA(2012)0135).

B. The taxation of SMEs

Proposals have focused in particular on small and medium-sized enterprises (SMEs): in 1994 a Commission communication (COM(94) 206) was followed by a 'first initiative on self-financing' (later Directive 94/390/EC). Since 2001 the Commission has been pursuing the 'home state taxation' scheme (COM(2005) 702) under which SMEs would be allowed to compute their profits (including those generated in other Member States) on the basis of their (familiar) home state rules.

C. Personal 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 always been a source of problems. With bilateral agreements double taxation can generally be avoided, but this has not resolved issues such as the application of different forms of tax relief available in the country of residence to income in the country of employment. In order to ensure equal treatment between residents and non-residents, the Commission put forward a proposal for a directive on the harmonisation of income tax provisions with respect to freedom of movement (COM(79) 737), on the basis of which taxation in the country of residence would have been the rule. Following its rejection by the Council, this proposal was withdrawn in 1993 by the Commission, which merely issued a recommendation on the principles that should apply to the tax treatment of non-residents' income. In addition, infringement proceedings were brought against some Member States for discrimination against non-national employees. In 1993 the CJEU ruled (Case C-112/91) that a Member State cannot treat a non-resident national of another Member State working as an employed person less favourably in terms of the collection of direct taxes than it does its own nationals (see Case C-279/93). In general, integration in the field of personal direct taxation can be said to have been furthered more by CJEU rulings than by proposals dealt with under the ordinary legislative procedure.

2. Taxation of bank and other interest paid to non-residents

In principle, taxpayers are required to declare income from interest. In practice, the free movement of capital and banking secrecy offered scope for tax evasion. 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 collection of the German tax had to be suspended. That same year the Commission published a proposal for a directive for a common system of withholding tax on interest income, levied at the rate of 15%; this was withdrawn and replaced by a new proposal to ensure minimum effective taxation of savings income in the form of interest payments within the Community (with a tax rate of 20%). It also proposed an alternative system of providing information. Following protracted negotiations, in 2000 a compromise was achieved and in 2003 Directive 2003/48/EC on the taxation of interest income was adopted. It came into force on 1 July 2005 and provides for systematic exchanges of information about amounts of interest paid. Since 2008 the Council has been discussing a proposal to

amend the directive (COM(2008) 727), with the latest discussions held on 17 May 2011.

Role of the European Parliament

On tax proposals, Parliament's role is generally confined to the 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. In 1994 Parliament delivered an opinion on the Ruding report. In giving general approval to the Commission's approach to SMEs, Parliament called for a plan of action 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. Of the alternatives under consideration, Parliament was interested in the idea of home state taxation, perhaps as an intermediate stage in the process of moving towards a 'common tax base', understood as 'new harmonised EU rules, existing in parallel to national rules, available to European companies'. On 13 December 2005 Parliament adopted a resolution on corporate taxation in which it reiterated its support for the Commission proposals with regard to the common consolidated tax base and home state taxation for SMEs. Finally, Parliament is working on 'annual tax reports'. The first was prepared during a workshop (on 8 December 2011, Document PE 464.460) and was adopted in February 2012 (2011/2271(INI)); it deals in particular with issues of double taxation. The 2013 report looks at taxation and growth policy as well as tax coordination (2013/2025(INI)).

→ Doris Kolassa

5.11.3. Indirect levying of excise duties on alcohol, tobacco products and energy

In order to ensure the proper functioning of the single market and competition, European law provides for the harmonisation of excise duties on tobacco and alcohol. The applicable rates are mostly minimum rates or target rates which are to be approximated in the long term. In addition, various taxes have been set in the field of energy to protect the environment and public health or to ensure a prudent and rational utilisation of natural resources. This includes regulations and minimum excise duties for mineral oils, diesel, fuels and biofuels.

Legal basis

Article 113 TFEU and, in relation to energy taxation, Article 192 TFEU, which permits measures (including taxation measures) in order to pursue the objectives of Article 191 TFEU: protection of the environment and health, as well as natural resources.

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 produced domestically is discriminatory, and it is forbidden by Article 110 TFEU. Very large discrepancies in the duties levied on a particular product can result in tax-induced movements of goods, loss of revenue and fraud. Attempts have therefore been made since the early 1970s to harmonise both structures and rates, but progress has been insignificant, 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.

In energy taxation, 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 113 TFEU. The key policies in this context are transport policy (competition between different transport types or the transparent distribution of infrastructural costs); environmental policy (less environmental pollution, e.g. through the definition of different minimum tax rates for leaded and unleaded petrol); general energy policy (balance between different energy sources, such as coal, mineral oil, natural gas, nuclear power, etc. and between indigenous and imported fuels); agricultural policy (e.g. the proposal for reduced excise duty on biofuels, withdrawn in 1999); and, finally, common employment policy (taxation strategy, in order to move from the taxation of labour to other sources of income, including taxing the use of raw materials and energy).

Achievements

A. General rules

Directive 2008/118/EC concerning the general arrangements for excise duty lays down general arrangements for products subject to excise duty, with a view to guaranteeing the free movement of goods and, hence, the proper functioning of the European Union's internal market. Excise duties are levied on consumption of energy products and electricity, alcohol and alcoholic beverages, as well as tobacco products, and accrue to the Member States. These goods become subject to excise duty when produced or imported.

B. Alcoholic beverages

A fundamental question in relation to alcohol taxation has been the extent to which different products are in competition with each other. The Commission (COM(79) 261) and the European Court of Justice (Case 170/78, ECR 1985) have traditionally taken the view that all alcoholic drinks are more or less interchangeable and in competition. However, a study carried out for the Commission in 2001 indicated that the degree of competition varies between different products. The Commission's initial proposals to harmonise excise duties on beer, wine and spirits in 1972 and 1985 were blocked. Directive 92/83/EEC was only adopted in 1992, defining the products on which excise is to be levied, and the method of fixing the duty. A standard rate was first proposed (average of national rates: ECU 0.17 per litre for wine/beer and ECU 3.81 per 0.75 litre bottle of spirits). However, only a few national alcohol excise rates are close to the average rate. For this reason, the Commission subsequently proposed a more flexible approach with minimum rates and target rates, which would be approximated in the long term. Directives 92/84/EEC and 92/83/EEC were adopted; subsequent proposals failed.

C. Tobacco products

The basic structure of tobacco excise rates was established from 1972 onwards through directives that have since been brought together

in a consolidated directive (2011/64/EC). The original Commission proposals aimed at absolute harmonisation of the rates. In the end, however, only minimum rates were fixed. Different categories exist for taxable tobacco products (cigars and cigarillos, loose fine-cut tobacco for rolling cigarettes, other smoking tobacco). Taxes on cigarettes must comprise a proportional (ad valorem) rate (based on the weighted average retail selling price), combined with a specific excise duty (per unit of the product). Other tobacco products are subject to either an ad-valorem, a specific or a so-called mixed excise duty. Establishing clear criteria has nevertheless proved an intractable problem. The difficulty in reaching a fixed ratio reflects the structure of the Community tobacco industry. A specific tax — so many euros per thousand cigarettes — benefits the more expensive products of the private companies by narrowing price differences. A proportional tax, particularly when combined with VAT, has the opposite effect, multiplying price differences. Within the broad ratio so far laid down (greater than 5% and less than 75% of the total amount from proportional and specific excise duty and not more than 55% of the total tax burden, i.e. after VAT has been added) some Member States have chosen a minimum specific element, others have chosen a maximum, thus contributing to variations in retail prices.

D. Energy products (mineral oils, gas, electricity, alternative energy, aviation fuel)

The basic structure of mineral oil excise duties within the Community was established in 1992. The duties are specific, i.e. calculated per 1 000 litres or per 1 000 kg of the product. For excise purposes, mineral oil means leaded petrol, unleaded petrol, gas oil, heavy fuel oil, liquid petroleum gas (LPG), methane and kerosene. An absolute harmonisation was originally proposed in 1987 on the basis of average rates. Nevertheless, as for alcohol and tobacco, only minimum rates were fixed. In 1992, the Commission (unsuccessfully) proposed the introduction of a Community-wide tax on carbon dioxide emissions and energy, with the aim of stabilising CO_2 emissions at 1990 levels by 2000, so as to reduce the emission of greenhouse gases and halt global warming. In 1997, the Commission published new proposals that broadened the mineral oil taxation system to cover all energy products and, in particular, products that could replace mineral oils whether directly or indirectly (coal, coke, lignite, bitumen and associated products, natural gas and electricity). An extensively altered version of the proposal was adopted (Directive 2003/96/EC, derogations in Directives 2004/74/EC and 2004/75/EC).

The communication from the Commission published in 2000 on the taxation of aviation fuel (COM(2000) 110) simply meant that Directive 2003/96/EC now provides for a mandatory exemption from excise duty for energy products supplied for use as aviation fuel other than in private pleasure flying. However, it introduced for the first time provisions which allow Member States to tax aviation fuel for domestic flights and, by means of bilateral agreements, fuel used for intra-Community flights. The Council actually reached an outline agreement in 2003 in relation to the 2002 proposal to tax diesel fuel, but the European Parliament rejected this proposal, which was withdrawn by the Commission in 2006.

Biofuels are fuels manufactured from organic and renewable resources, such as bioethanol, biodiesel and biogas. In 2001, measures were proposed to promote the use of biofuels, including the possibility of applying a reduced rate of excise duty, and they were adopted in 2003 as Directive 2003/30/EC (in accordance with the codecision procedure). Article 16 of Directive 2003/96/EC allows a reduced tax rate to be applied to biofuels used as heating or motor fuel.

E. VAT on other fuels

A proposal was presented in 2002 for the levying of VAT on natural gas and electricity, with the domicile of the purchaser being taken as the place for taxation for companies. For final consumers, this would be the place of consumption. This proposal too has since been adopted (Directive 2003/92/EC).

F. More recent initiatives

The Commission's latest initiative is a proposal (COM(2011) 196) which seeks to modernise the rules on taxation of energy products. The taxation of energy products is to be restructured to remove current imbalances and take into account both their CO_2 emissions and energy content. It is proposed that existing energy taxes be split into two components that, taken together, would determine the overall rate at which a product is taxed. This is intended to boost energy efficiency and consumption of more environmentally friendly products while avoiding distortions of competition in the single market. It would enable Member States to redesign their overall tax structures in a way that contributes to growth and employment by shifting taxation from labour to consumption. The directive is in fact intended to enter into force in 2013, but long transitional periods for the full alignment of taxation of the energy content, until 2023, will leave time for industry to adapt to the new taxation structure.

Role of the European Parliament

A. Alcohol and tobacco taxation

Since 1987, the European Parliament has monitored every proposal made very closely, paying attention to the various interests involved. Minimum excise

duty rates and the gradual approximation to uniform target rates have been proposed. In 1997, Parliament reaffirmed that there should be no distortion of competition between different alcoholic beverages, and suggested guidelines for future action. For cigarettes and tobacco products, Parliament called in principle for an 'upward harmonisation' of rates, but also for further studies before any changes were made. In 2002, Parliament rejected the Commission's proposals concerning changes to excise duty rates for tobacco especially because of the predicted impact on the accession countries, whose excise duty rates were significantly lower even than the minimum EU rates in force at the time. In the report on EU taxation policy in 2002, Parliament condemned the Commission's policy with regard to duties on tobacco and alcohol products, and, in particular, rejected upwards harmonisation through the constant raising of minimum taxation levels. In 2009, although Parliament favoured the gradual increasing of taxes on cigarettes and other tobacco products, it did not accept the level of taxes proposed by the Commission. Furthermore, the rise was only to start in 2012 and (as proposed) reach completion by 2014.

B. Taxation of mineral oil/energy

Parliament's initial opinion on mineral oil excise duties was adopted in 1991. It called both for target rates to be set for petrol and for a much higher minimum rate for heavy fuel oil (diesel). The European Parliament adopted its opinion on the Commission's 1997 proposals in 1999. The EP's main amendments sought to abolish the list of systematic tax exemptions but expand the list of optional exemptions, to index the minimum tax rates to inflation and introduce a procedure whereby Member States could refund all or part of the tax if firms could show that it had resulted in a competitive disadvantage. In its resolution of 2002 on EU tax policy in general, Parliament argued that 'the 'polluter pays' principle needs to be applied more widely, particularly in the energy products sector', and that 'it should be implemented not only through taxation but also through regulation'. Parliament gave a favourable opinion on the biofuel proposals in October 2002 and adopted amendments designed to strengthen them. Moreover, the EP held a workshop in October 2011 on the proposal for an energy directive (COM(2011) 169).

→ Doris Kolassa

5.11.4. Indirect taxation: Value added tax (VAT)

VAT (also known as turnover tax) has been applied in the Member States since 1970. EU legislative activities are aimed at coordinating and harmonising VAT law for the purpose of a proper functioning of the internal market. Directive 2006/112/EC seeks a harmonisation of regulations on VAT around two tax bands. The change of system necessary for an internal market — from the taxation of goods in their country of destination, which was intended as a provisional arrangement, to taxation in the country of origin — had been planned for 1997 but in fact did not take place. The common VAT system is applicable to the manufacture and sale of goods, as well as the provision of services, to be bought and sold for consumption within the EU. In order to ensure tax neutrality, traders liable to pay VAT can deduct from their VAT accounts the amount of VAT they have paid to other payers of the tax. Ultimately the VAT is paid by the end consumer in the form of a percentage supplement on the final price.

Legal basis

Article 113 of TFEU.

Development

VAT harmonisation has proceeded by steps with a view to achieving transparency in the 'de-taxing' of exports and 're-taxing' of imports in intra-Community trade. Under the First VAT Directive of 1967, the Member States replaced their general indirect taxes by a common VAT system with deduction of input tax. The Second VAT Directive established a structure and procedures of application but left considerable leeway. 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 uniform basis of assessment. The primary objective of the Sixth VAT Directive was the introduction of a broadly identical 'VAT base'. The VAT Directive (2006/112/EC), adopted in 2007, codifies these amendments in a single piece of legislation.

In 1985 the Commission published the 'Single Market White Paper', Part III of which concerned the removal of fiscal barriers. The need for action in the field of VAT 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. This method necessitated physical frontier controls. As traded goods left one country they were 'de-taxed' (application of a zero rate) and then 're-taxed' on entering another. Complex documentation was necessary for goods in transit. According to the Cecchini Report, frontier controls were giving rise to costs of around EUR 8 billion, or 2% of traders' turnover.

Achievements

A. The VAT system

1. Initial proposals

In 1987 the Commission proposed changing to the 'origin principle', under which, instead of being zero-rated, transactions between Member States 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 that moved between Member States being treated in exactly the same way as those moving within a country. There would have remained, however, one big difference: VAT paid in one country goes into one and the same treasury, but in the case of transactions between Member States, two treasuries are concerned. Estimates showed that there would have been substantial transfers of tax, notably to Germany and the Benelux countries. Accordingly, the Commission proposed the establishment of a clearing system to re-allocate the VAT collected in the countries of origin to the countries of consumption (based on VAT returns, statistics or sampling techniques).

2. The transitional system

However, these proposals were unacceptable to the Member States, who convened a high-level working party in 1989. This outlined, as an alternative, the destination principle for transactions involving VAT-registered traders, thereby establishing the basis of the transitional system, which became operative in 1993 (Directives 91/680/EEC and 92/111/EEC). Although tax controls at frontiers have been abolished, traders are required to continue to keep detailed records of cross-border purchases and sales; the system is policed by administrative cooperation between Member States' tax authorities. However, the origin principle applies to all sales to the end consumer; that is, once VAT has been paid on goods, they can be moved within the EU without further control or liability to tax. In 1993, therefore,

duty-free allowances for travellers were abolished. However, there are still three 'special regimes' where this principle does not apply: for distance sales, tax-exempt legal persons and new means of transport.

The original intention was that the transitional system should apply until the end of 1996. This did not come about, as a proposal for a directive was not submitted until 1997, which was followed in 1998 by new proposals for the introduction of a system of deduction in the country of registration. All the proposals were withdrawn due to the unlikelihood of their being adopted.

3. Viable strategy to improve the existing system

Starting in 2000, the Commission pursued measures to improve the 'transitional rules' then in force, for example by publishing a Communication on a Strategy to Improve the Operation of the VAT System within the Context of the Internal Market, outlining a new list of priorities with a timetable. This was followed by another Communication giving information on the progress achieved by 2003. The core EU legislative text on VAT is now the VAT Directive (2006/112/EC). This was followed in 2008 by Directive 2008/8/EC on the place of supply of services, and Directive 2008/9/EC on the refund of VAT. VAT on services between traders ws now to be levied in the country where services were provided as a matter of principle. Furthermore, VAT refunds would be accelerated and a unified VAT identification number would be introduced.

In 2005 the basis was laid for more uniform application of EU rules (now Implementing Regulation (EU) No 282/2011). As differences in the practical application of common rules were becoming a real obstacle, the regulation gave legal force to a number of agreed approaches to elements of VAT law, ensuring transparency and legal certainty for both traders and administrations. The Member States had previously been able to apply such rules only through individual requests, the right to which remains in force. All Member States now have the option of applying special rules to simplify the application of VAT, as many such rules have proved successful. The administrative system for VAT requires comprehensive cooperation between administrations because the existing mechanisms contain various loopholes whereby tax payments can be avoided. Combating fraud is therefore a priority objective for the Union, and the Directive includes provisions reflecting that.

The Fiscalis programme, the second phase of which is running until 2013, and the computerised VAT Information Exchange System (VIES) to verify VAT numbers are intended to reinforce the functioning of indirect taxation arrangements in the EU in general. The system was improved by the adoption of Regulation (EC) No 37/2009 on administrative cooperation in the field of value added tax in order to combat tax evasion connected with intra-Community transactions. However, work in this area is ongoing.

B. VAT rates

The current structure of VAT rates largely reflects the actual VAT rates prevailing in the Member States at the time when the 1993 VAT harmonisation was undertaken. The aim of the Commission's original proposals was 'approximation' within two tax bands: a standard rate between 14% and 20%; and a reduced rate between 5% and 9%. However, Directive 92/77/EEC provided for a minimum standard rate of 15%, to be reviewed every two years. It was found, however, that there had been no significant changes in cross-border purchasing patterns nor any significant distortions of competition or deflections of trade as the result of disparities in VAT rates. In 1995 and 1998 the Commission therefore proposed (unsuccessfully) that there be no change in the 15% minimum but suggested a new maximum rate of 25%. In December 2005, the Council extended the 15% minimum VAT standard rate until 2010, and it has since been further extended, by Directive 2010/88/EU, until the end of 2015. Certain exceptions are, however, provided for (e.g. for labour-intensive services). However, reduced VAT rates have repeatedly caused controversy between Member States, some of which have divergent preferences with regard to their application (in spite of this, Directive 2009/47/EC concerning reduced rates of value-added tax for certain labour-intensive local services was adopted). The continuing application of a zero VAT rate to certain goods and services has also been the subject of controversy. However, it has been possible, subject to certain conditions, to continue application of the zero rates which were in effect in 1975.

C. Recent developments

In 2010 the Commission published its Green Paper on the future of VAT (COM(2010) 695), which was followed by a Communication (COM(2011) 851). The aim of the Green Paper was to discuss the current VAT system and possible measures to make it more consistent with the single market and its capacity as a revenue raiser, while reducing the cost of compliance. Furthermore, the Commission regularly publishes papers on various aspects of VAT, such as the retrospective evaluation of elements of the EU VAT system (2011), the impact of reducing the time frame for submitting recapitulative statements (2012), and the feasibility and impact of a common EU standard VAT return (2013).

Role of the European Parliament

In accordance with EU legislation in the field of VAT (mostly based on Articles 113 and 115 TFEU), Parliament's role is limited to the Consultation Procedure. In 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 supported moving to a system based on taxation in the country of origin (Resolution of 2002). In recent years, Parliament has also been very committed to improving the working of the transitional arrangements, and to simplification and modernisation, and has adopted numerous resolutions on VAT.

In 1991, Parliament supported a 15% minimum standard rate; in 1997, it voted against the proposed 25% upper limit, but in 1998 it approved a 15-25% standard rate band subject to certain conditions. In 1998 it urged action for uniform application of the reduced VAT rates. In 2005, Parliament then voted for a maximum rate of 25%. It also confirmed its support for reduced rates for certain labour-intensive services. In 2007, Parliament supported the extension of the temporary derogations for some new Member States but urged the Council to find a long-term solution for the structure of rates by the end of 2010. Parliament also emphasised that locally supplied services do not affect the single market and that Member States should therefore be allowed to apply reduced rates, or even zero rates, in this area. Recently, the EP approved by a large majority a resolution on the Commission's Proposal for a Council Directive COM(2012) 428 amending Directive 2006/112/EC as regards a quick reaction mechanism against VAT fraud; the EP is expected to complete the consultation procedure on the proposed amendment of COM(2012) 206 as regards the treatment of vouchers in the first half of 2013.

→ Doris Kolassa

5.12. An area of freedom, security and justice

5.12.1. An area of freedom, security and justice: general aspects

The Lisbon Treaty attaches greater importance to the creation of an area of freedom, security and justice. It introduces several important new features: a more efficient and more democratic decision-making procedure that comes in response to the abolition of the old pillar structure and brings decision-making into line with EU law, increased powers for the Court of Justice of the European Union, and the new role of national parliaments. Basic rights are strengthened by a Charter of Fundamental Rights that is now binding and by the obligation on the EU to sign up to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Legal basis

Article 3(2) TEU reads as follows: 'The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.' It should be noted that this article, which sets out the EU's key objectives, attaches greater importance to the creation of an area of freedom, security and justice (AFSJ) than the preceding Treaty of Nice, as this aim is now mentioned even before that of establishing an internal market.

Title V of the TFEU — Articles 67 to 89 — is devoted to the AFSJ. In addition to the general provisions, this title contains specific chapters on:

- policies on border checks, asylum and immigration;
- judicial cooperation in civil matters;
- judicial cooperation in criminal matters;
- police cooperation[1].

As well as those provisions, mention should also be made of other articles inextricably linked to the creation of an AFSJ. These include Article 6 TEU on the Charter of Fundamental Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 8 TFEU on the elimination of inequalities, Article 15(3) TFEU on access to the institutions' documents, Article 16 TFEU on the protection of personal data, and Articles 18 to 25 TFEU on non-discrimination and citizenship of the Union.

Objectives

The objectives for the AFSJ are laid down in Article 67 TFEU:

- 'The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States.
- It shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals. For the purpose of this Title, stateless persons shall be treated as third-country nationals.
- The Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws.
- The Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters'.

[1] *5.12.2, *5.12.3, *5.12.4, *5.12.6, *5.12.7.

Achievements

A. Main new features introduced by the Lisbon Treaty

1. A more efficient and more democratic decision-making procedure

The Lisbon Treaty abolished the third pillar and brought the AFSJ within the scope of EU law. As a rule, legislative proposals are now adopted under the ordinary legislative procedure set out in Article 293 TFEU. The Council acts by a qualified majority, and the European Parliament, as co-legislator, delivers its opinion by the codecision procedure.

2. A new role for national parliaments

Article 12 TEU and Protocols No 1 and No 2 lay down the role of the national parliaments in the EU. National parliaments now have eight weeks in which to examine any given legislative proposal in the light of the subsidiarity principle; until that period has expired, no decision can be taken at EU level on that proposal. With regard to the AFSJ, if a quarter of the national parliaments so request, a proposal must be reviewed (Article 7(2) of Protocol No 2).

Proceedings for annulment may be brought before the Court of Justice if the principle of subsidiarity is infringed by a legislative act.

National parliaments are involved in the evaluation of Eurojust and Europol (Articles 85 and 88 TFEU).

3. Increased powers for the Court of Justice of the European Union

The Court of Justice may now give preliminary rulings, without restriction, on all aspects of the AFSJ. However, for five years following the entry into force of the Lisbon Treaty, acts in the field of police cooperation and judicial cooperation in criminal matters adopted under the previous Treaty cannot be the subject of such proceedings. The same system applies to proceedings for failure to fulfil an obligation (Protocol No 36).

4. A more prominent role for the Commission

The fact that the Commission may bring proceedings for failure to fulfil an obligation against Member States which do not comply with provisions concerning the AFSJ is an important new feature conferring a new power in terms of monitoring the application of legislation.

5. Potential involvement of Member States in the evaluation of AFSJ policy implementation

Article 70 TFEU states that the Council may, on a proposal from the Commission, adopt measures laying down the arrangements whereby Member States, in collaboration with the Commission, conduct objective and impartial evaluation of the implementation of AFSJ policies by Member States' authorities.

B. The European Council's planning role

Alongside the changes brought about by successive Treaties, the European Council has played a particularly important role in the developments and progress that have taken place in various fields of the AFSJ.

The Tampere European Council in October 1999 included a special meeting to discuss how an area of freedom, security and justice might be established by drawing to the full on the opportunities afforded by the Amsterdam Treaty.

In November 2004 the European Council adopted a new five-year action plan, the Hague Programme.

On 10 and 11 December 2009 the European Council adopted the Stockholm Programme. This new multiannual programme for the period from 2010 to 2014 focuses on the interests and needs of citizens and other people to whom the EU has a responsibility.

The Lisbon Treaty formally recognises the European Council's pre-eminent role of '[defining] the strategic guidelines for legislative and operational planning within the area of freedom, security and justice' (Article 68 TFEU).

C. Establishment of specialist AFSJ management bodies: the agencies

Various agencies have been set up to help oversee policies in a number of important areas of the AFSJ: Europol for police cooperation, Eurojust for judicial cooperation in criminal matters, the EU Fundamental Rights Agency, which deals with fundamental rights and discrimination, Frontex, which is responsible for external border control, and, very recently, the European Asylum Support Office.

Role of the European Parliament

The European Parliament has a range of tools and powers enabling it to perform its role to the full:

- legislative competence to the extent that, even before the Lisbon Treaty, the European Parliament acted as co-legislator under the codecision procedure, with its involvement in third-pillar matters confined to delivering advisory opinions;
- budgetary competence, the European Parliament being jointly responsible, with the Council, for laying down the EU budget;
- the power to bring proceedings for annulment before the Court of Justice, which the European Parliament exercised, for instance, in order to

request and secure the annulment of certain articles of Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status[1];

- the power of political initiative, which the European Parliament exercises by adopting 'own-initiative' reports and resolutions on such subjects as it might choose to address[2];
- the option of sending delegations to the Member States in order to identify problems and to verify how legislation adopted at EU level is being implemented. The European Parliament exercised this option in regard to the admission arrangements for asylum seekers applied in some Member States[3].

The main priorities on which the European Parliament has constantly laid emphasis over the past few years can be summed up as follows:

- recognising and taking account of the growing importance of the AFSJ in the context of the EU's development;
- abolishing the third pillar and bringing the areas of police and judicial cooperation in criminal matters within the scope of EU procedures and legislation so as to enable the European Parliament to play its full democratic role in the legislative process;
- doing away with unanimity in the Council in order to facilitate decision-making;
- maintaining a fair balance between protection of citizens' fundamental rights and security and counterterrorism requirements;
- strengthening the protection and promotion of fundamental rights, in particular through the adoption of a legally binding EU Charter of Fundamental Rights and the establishment of a Fundamental Rights Agency to provide an effective source of support and expertise in the field of fundamental rights.

→ Jean-Louis Antoine-Grégoire

[1] CJEU, Judgment of 6.5.2008, Case C-133/06.

[2] e.g. Resolution on homophobia in Europe, 18.1.2006.

[3] Resolution of 5 February 2009.

5.12.2. Asylum Policy

The aim of EU asylum policy is to harmonise asylum procedures in the Member States by establishing common asylum arrangements. The Lisbon Treaty introduces significant changes. Its implementation is spelled out in the Stockholm Programme.

Legal basis

— Articles 67(2) and 78 TFEU;

— Article 18 of the EU Charter of Fundamental Rights.

Objectives

The objectives are to develop a common policy on asylum, subsidiary protection and temporary protection, with a view to offering an appropriate status to all third-country nationals who need international protection, and to ensure that the principle of non-refoulement is observed. This policy must be consistent with the 1951 Geneva Convention and the 1967 Protocol thereto. Neither the Treaty nor the Charter provides a definition of the terms 'asylum' and 'refugee'. They both refer explicitly to the Geneva Convention of 28 July 1951 and the Protocol thereto of 31 January 1967.

Achievements

A. Advances under the Treaties of Amsterdam and Nice

In 1999 the Treaty of Amsterdam granted the EU institutions new powers to draw up legislation in the area of asylum using a specific institutional mechanism.

In 2001 the Treaty of Nice provided that, within five years of its entry into force, the Council should adopt measures on a number of fronts, in particular criteria and mechanisms for determining which Member State is responsible for considering an application for asylum made by a third-country national within the EU, as well as certain minimum standards (in relation to the reception of asylum seekers, the status of refugees and procedures).

The Treaty stipulated that the Council should act unanimously, after consulting Parliament, when defining the common rules and basic principles governing these issues. It provided that, after this initial phase, the Council might decide that the normal codecision procedure should apply and that it should thus henceforth adopt its decisions by qualified majority. The Council took a decision to that effect at the end of 2004 and the codecision procedure has applied since 2005.

B. The Treaty of Lisbon

The Treaty of Lisbon changed the situation by transforming the measures on asylum into a common policy. Its objective is no longer simply the establishment of minimum standards, but rather the creation of a common system comprising a uniform status and uniform procedures.

This common system must include:

- a uniform status of asylum,
- a uniform status of subsidiary protection,
- a common system of temporary protection,
- common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status,
- criteria and mechanisms for determining which Member State is responsible for considering an application,
- standards concerning reception conditions,
- partnership and cooperation with third countries.

The Treaty did not make any changes to the decision-making procedure within the EU.

However, the arrangements for judicial oversight by the Court of Justice of the European Union have been improved significantly. Preliminary rulings may now be sought by any court in a Member State, rather than just national courts of final instance, as was previously the case. This should enable the Court of Justice to develop a larger body of case law in the field of asylum.

C. The European Council programmes

The series of programmes adopted by the European Council have had a far-reaching impact on the implementation of European asylum policy.

With the adoption of the Tampere Programme, in October 1999, the European Council decided that the common European system should be implemented in two phases. In November 2004, the Hague Programme called for the second-phase instruments and measures to be adopted by the end of 2010.

The European Pact on Migration and Asylum, adopted on 16 October 2008, 'solemnly reiterates that any persecuted foreigner is entitled to obtain aid and protection on the territory of the European Union in application of the Geneva Convention'. It

calls for proposals aimed at establishing 'in 2010 if possible and in 2012 at the latest, a single asylum procedure comprising common guarantees and [...] adopting a uniform status for refugees and the beneficiaries of subsidiary protection'.

The Stockholm Programme, adopted by the European Council on 10 December 2009 for the period 2010-2014, reaffirms 'the objective of establishing a common area of protection and solidarity based on a common asylum procedure and a uniform status for those granted international protection'.

It emphasises, in particular, the need to promote effective solidarity with those Member States facing particular pressures, and the central role to be played by the new European Asylum Support Office.

D. The main existing legal instruments and proposals pending are:

- Council Decision 2000/596/EC of 28 September 2000 establishing a European Refugee Fund, OJ L 252, 6.10.2000, p. 12;
- Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention, OJ L 316, 15.12.2000;
- Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, OJ L 212, 7.8.2001, p. 12;
- Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, OJ L 31, 6.2.2003, p. 18; Recast proposal: COM(2008) 815; Amended proposal: COM(2011) 320;
- Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, OJ L 50, 25.2.2003, p. 1; Recast proposal: COM(2008) 815;
- Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, OJ L 337, 20.12.2011.
- Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status; Recast proposal: COM(2009) 554; Amended proposal: COM(2011) 319;
- Decision No 573/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows' and repealing Council Decision 2004/904/EC, OJ L 144, 6.6.2007;
- Decision No 575/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Return Fund for the period 2008 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows', OJ L 144, 6.6.2007;
- Council Decision 2007/435/EC of 25 June 2007 establishing the European Fund for the Integration of third-country nationals for the period 2007 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows', OJ L 168, 28.6.2007;
- Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals;
- Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office, OJ L 132, 29.5.2010.

Role of the European Parliament

The resolutions of 21 June 2007 on practical cooperation, quality of decision-making in the common European asylum system, of 2 September 2008 on the evaluation of the Dublin system and of 10 March 2009 on the future of the Common European Asylum System provide an overview of Parliament's main positions and concerns.

Parliament has been calling for reliable and fair procedures, implemented effectively and founded on the principle of non-refoulement. It has stressed the need to prevent any reduction in levels of protection or in the quality of reception and to ensure fairer sharing of the burden borne by the Member States at the EU's external borders.

Parliament has emphasised that detention should be possible only in very clearly defined exceptional circumstances and that there should be a right of appeal against it before a court. It has supported the creation of a European Asylum Support Office.

Parliament can also bring an action for annulment before the Court of Justice. This instrument was successfully used to obtain the annulment of the provisions concerning the arrangements for adopting the common list of third countries regarded

as safe countries of origin and safe third countries in Europe provided for in Directive 2005/85/EC (ECJ, judgment of 6 May 2008, Case C-133/06).

Parliament has, moreover, organised a series of visits to reception centres and detention centres in the Member States. Its resolution of 5 February 2009 on the implementation in the European Union of Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers and refugees: visits by the Committee on Civil Liberties 2005-2008 highlights the shortcomings in the Member States' application of the existing legislation.

As part of the presentation of the new 'asylum package' due to lead to the establishment of the Common European Asylum System, the European Parliament, acting in its capacity as co-legislator, gave its opinion at first reading on 7 May 2009 on the first four proposals presented by the Commission: on minimum reception standards, Eurodac, determining the Member State responsible for considering an application, and the European Asylum Support Office. In general, subject to the tabling of a series of amendments, the European Parliament's rapporteurs were satisfied with the Commission's proposals and its overall approach[1]. After more than two years of negotiations and following the adoption in 2010 of Regulation EU No 439/2010 establishing a European Asylum Support Office and in late 2011 of Directive 2011/95/EU on standards for qualification (see above: Achievements, section D), a political agreement was reached in the Council in October 2012, on the basis of the negotiations conducted with Parliament concerning Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers. This text is due to be formally adopted shortly. All that remains to do in order to complete the implementation of the new common European asylum system is to conclude the negotiations on the Dublin and Eurodac rules.

→ Jean-Louis Antoine-Grégoire

[1] Minimum reception standards, A. Masip Hidalgo, 2008/0244, Eurodac, N. Vlad Popa, 2008/0242 , European Asylum Support Office, J. Lambert, 2009/0027, Member State responsible for examining an application, J. Hennis-Plasschaert, 2008/0243, European Refugee Fund, B. Dührkop Dührkop, 2009/0026.

5.12.3. Immigration policy

A forward-looking and comprehensive European migration policy, based on solidarity, is a key objective for the European Union. Migration policy is intended to establish a balanced approach to dealing with both regular and irregular immigration.

Legal basis

Articles 79 and 80 of the Treaty on the Functioning of the European Union (TFEU).

Competences

Legal migration: the EU has the competence to lay down the conditions of entry and residence for third-country nationals entering and residing legally in one Member State for purposes of employment, study or family reunification. Member States still retain the right to determine admission rates for people coming from third countries to seek work.

Integration: the EU may provide incentives and support for measures taken by Member States to promote the integration of legally resident third-country nationals; however, there is no provision for harmonisation of national laws and regulations.

Fight against illegal migration: the EU is required to prevent and reduce irregular immigration, in particular by means of an effective return policy, with due respect for fundamental rights. An irregular migrant is a person who comes to the EU without a proper visa or permit or who overstays after the expiry of their visa.

Readmission agreement: the EU is competent to conclude agreements with third countries for the readmission to their country of origin or transit of third-country nationals who do not or no longer fulfil the conditions for entry, presence or residence in one of the Member States.

Objectives

Defining a balanced approach to immigration: the EU aims to set up a balanced approach to dealing with legal migration and fighting illegal immigration. Proper management of migration flows entails ensuring fair treatment of third-country nationals residing legally in Member States, enhancing measures to combat illegal immigration and promoting closer cooperation with non-member countries in all fields. It is the EU's aim to develop a uniform level of rights and obligations for legal immigrants, comparable with that of EU citizens.

Principle of solidarity: according to the Treaty of Lisbon, immigration policies should be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States (Article 80 TFEU).

Achievements

A. Institutional developments brought about by the Treaty of Lisbon

The Treaty of Lisbon, which entered into force in December 2009 (*1.1.5), introduced codecision and qualified majority voting on legal migration and a new legal basis for integration measures. Now the ordinary legislative procedure applies to both illegal and legal immigration policies, making Parliament a co-legislator on an equal footing with the Council.

The Lisbon Treaty also clarified that the competences of the EU in this field are shared with the Member States, in particular with regard to the number of migrants allowed to legally enter a Member State to seek work (Article 79(5) TFEU). Furthermore, it includes provisions, in the event of a sudden inflow of nationals of third countries into a Member State, for the adoption of measures to help the Member State concerned (Article 78(3) TFEU).

Finally, the Court of Justice now has full competence in the field of immigration and asylum.

B. Recent policy developments

1. The European Pact on Immigration and Asylum

The European Pact on Immigration and Asylum was adopted by the European Council on 15 October 2008 (Presidency Conclusions 14368/08). The Pact represents a comprehensive commitment to achieve a common immigration and asylum policy, based on five pillars, three of which concern immigration: to organise legal immigration in such a way as to take account of the priorities, needs and reception capacities of each Member State and encourage integration, to control illegal immigration, in particular by ensuring that illegal immigrants return to their countries of origin or transit, and to create a partnership with countries of origin and transit in order to encourage synergy between migration and development. For more details on the asylum aspects, see 5.12.2.

2. The Stockholm Programme

The European Council meeting of December 2009 adopted the 'Stockholm Programme — An open and secure Europe serving and protecting citizens'. Continuing on from the Tampere and Hague Programmes, the Stockholm Programme is the new multi-annual programme for measures to be taken in the area of freedom, security and justice in the period 2010-2014. It defines the EU's migration policy priorities.

C. Recent legislative developments

Since 2008 a number of important directives relating to immigration and asylum have been adopted and some other relevant directives are due to be revised in the near future.

1. On legal migration

Following the difficulties encountered in adopting a general provision covering all labour immigration in the EU, the new approach currently consists in adopting sectoral legislation, by category of migrants, in order to establish a legal migration policy at EU level.

Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment introduced the 'EU blue card', a fast-track procedure for issuing a special residence and work permit, under more attractive conditions, for third-country workers to take up highly qualified employment in the Member States. The directive had to be implemented by 19 June 2011; the first report on its implementation is due by June 2014.

The Single Permit Directive (2011/98/EU) sets out a common, simplified procedure for third-country nationals applying for a residence and work permit in a Member State, as well as a common set of rights to be granted to regular immigrants. The directive must be implemented by 25 December 2013; the first report on its implementation is due by December 2016.

Two further legislative instruments were put forward by the Commission on 13 July 2010, namely a proposal for a directive on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (COM(2010) 0378) and a proposal for a directive on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment (COM(2010) 0379). The two proposals are on the EP and Council agendas.

On 25 March 2013, the Commission put forward a new proposal (COM(2013) 0151) for a directive improving the existing legislative instruments applicable to third-country nationals seeking entry to the EU for the purposes of study or research (Directives 2004/114/EC and 2005/71/EC).

Finally, the status of third-country nationals who are long-term residents in the European Union is still regulated by Council Directive 2003/109/EC.

2. On integration

The Commission is considering a revision of Directive 2003/86/EC on the right to family reunification. A green paper was published in 2011, opening a process of public consultations. In 2012, the European Migration Network published a study on misuse of the right to family reunification.

In April 2010, the Commission presented the third edition of the Handbook on Integration for policy-makers and practitioners, and in July 2011 it adopted the European Agenda for the Integration of Third-Country Nationals. Moreover, since 2009 two new instruments have been created to deal with integration, namely the European Integration Forum (organised by the Commission and the European Economic and Social Committee) and the European Website on Integration (http://ec.europa.eu/ewsi/en/).

3. On irregular migration

The EU has adopted two major pieces of legislation to fight against irregular migration:

- The Return Directive (2008/115/EC) sets out common EU standards and procedures for returning irregularly staying third-country nationals. Member States are called to enforce the directive by 24 December 2010; the first report on its implementation is due by December 2013.
- Directive 2009/52/EC specifies sanctions and measures to be applied in Member States against employers who infringe the prohibition on employing illegally staying third-country nationals. Member States are required to enforce the directive by 20 July 2011, and the first report on its implementation is due by July 2014.

The EU is, at the same time, negotiating and concluding readmission agreements with countries of origin and transit for purposes of returning irregular migrants and cooperating in the fight against trafficking in human beings. These agreements include reciprocal cooperation commitments between the EU and its third-country partners. Negotiations have been concluded and agreements have entered into force with Hong Kong, Macao, Sri Lanka, Albania, Russia, Ukraine, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Montenegro, Pakistan, Serbia, Moldova and Georgia. Readmission agreements with Armenia, Cape Verde and Turkey

are currently being debated in the European Parliament.

4. Global approach to migration

In June 2008, the European Council endorsed the 'Global Approach to Migration', which is intended to bring together all migration-relevant policies in a more coherent manner. These include development policy, measures to encourage legal migration and to fight illegal immigration, managing demand for skilled labour in a framework of dialogue, and cooperation and partnership with countries of origin and transit. Although Member States are mainly responsible in terms of visa facilitation and access to legal migration, the Commission's task is to negotiate easier visa regimes and to help the countries concerned to train border guards and immigration officials; on the other hand, push factors have to be reduced by focusing development efforts on poverty alleviation.

The main instrument of the Global Approach is the possibility of concluding 'mobility partnerships' with third countries. Such partnerships include not only readmission agreements, but a whole set of measures ranging from development aid to temporary entry visa facilitation, measures on circular migration, and the fight against illegal migration.

Role of the European Parliament

Parliament actively supports the introduction of a European immigration policy. On the admission of third-country nationals, it has called for the development of legal means, and, in particular, measures to reduce incentives for irregular immigration.

In its resolution on the Stockholm Programme, adopted on 25 November 2009, Parliament urged that integration, immigration and asylum policies be built on full respect for fundamental rights. It once again deplored refoulement and collective expulsions to countries where human rights are not respected. Parliament has always stressed the importance of addressing the needs of the most vulnerable groups, such as refugees and minors.

Since the entry into force of the Lisbon Treaty, Parliament has been actively involved in the adoption of new legislation dealing with immigration. For instance, it has played a pivotal role in the drafting and approval of the Return and Single Permit Directives.

→ Rosa Raffaelli

5.12.4. Management of the external borders

After a period of rapid progress characterised by the development of instruments and agencies like SIS, VIS and Frontex, the Area for Freedom, Security and Justice is now entering a period of consolidation in order to allow the most precious element for the good functioning of the external border management, i.e. trust among the Member States as well as between them and the EU institutions to grow.

Legal basis

Article 77 TFEU (ex Article 62 TEC).

Objectives

Whilst ensuring that persons are allowed to cross its internal borders without any control, the Union will establish common standards with regard to controls at its external borders and put in place an integrated system for the management of these borders.

Achievements

The first step towards a common management of Europe's external borders was made on 14 June 1985 when five of the ten member states of the European Economic Union signed the Schengen Agreement, which five years later was supplemented by the Convention implementing the Schengen Agreement. The Agreement, the Convention, the rules adopted on that basis and the related treaties together form the Schengen *acquis*. The borderless zone created by theses treaties and agreements, the Schengen Area, currently consists of 26 European countries. (For more details on the Schengen Area see 2.1.3)

A. The building of the Schengen external borders *acquis*

The rules that make up today's Schengen external borders *acquis*, which builds on the original *acquis* incorporated in the EU legal order by the Treaty of Amsterdam, are to be found across a broad range of measures, which can be roughly divided in five categories.

One may first identify a Schengen border *acquis* in a narrow sense: the measures that establish the border crossing regime at the Schengen external borders The essence of EU activity in the area of border management is to ensure the respect for and correct application of these measures. The most important piece of legislation in this category is the Schengen Borders Code (SBC) governing the movement of persons across Schengen borders. A second category of legislative measures consists of measures that aim to establish a degree of financial burden-sharing as regards the management of the Schengen external borders. Here the most important instrument is the External Borders Fund (EBF). A third category of measures relates to the establishment of centralised databases for the purpose of migration and border management: the Schengen Information System (SIS), the Visa Information System (VIS) and Eurodac, the European fingerprint database for identifying asylum seekers and illegal immigrants (for more details on this database see 5.12.2). A fourth category is made up of measures that prevent and penalise unauthorised entry, transit and residence. The fifth and last category, institutional measures for the coordination of operational cooperation, is closely linked to the establishment of operational cooperation for the purpose of the management of the external borders. The corner stone of this cooperation is the Community agency for the coordination of operational cooperation at the external borders of the Member States (Frontex).

1. The Schengen Information System (SIS)

The Schengen Information System (SIS) is the backbone of the Schengen Area. At operational level, SIS is the largest shared database on maintaining public security, supporting police and judicial cooperation and managing external border control. Participating States provide 'alerts' on wanted or missing persons, lost or stolen property and entry bans. SIS is directly accessible to all police officers and other law enforcement officials and authorities who need the information processed by the system to carry out their work. The exchange of additional or supplementary information on alerts in the Schengen Information System is assured by a permanent structure on national level called Sirene which stands for 'Supplementary Information Request at the National Entry'. Sirene offices are established in all Schengen States, coordinate measures in relation to alerts in the SIS and ensure that appropriate action is taken if a wanted person is arrested, a person who has been refused entry to the Schengen area tries to re-enter, a missing person is found, a stolen car or ID document is seized, etc. The introduction of the second generation of the Schengen Information System — SIS II — with new functionalities and features such as biometric data and the interlinking of alerts, initially scheduled for 2007, has been considerably delayed because of the system's technical complexity. It has finally become operational on 9 April 2013. It is managed — together with VIS and Eurodac — by the new EU agency for managing large-scale IT systems.

2. The Visa Information System (VIS)

The aim of VIS, which is still in its build-up phase, is to improve the implementation of the common visa policy, consular cooperation and consultations between the central visa authorities. Once it is fully operational, VIS will be connected to all visa-issuing consulates of the Schengen States and to all their external border crossing points. At these border points VIS allows border guards to check if the person holding a biometric visa is the person who applied for it. A first check consists of the verification that the fingerprints scanned at the border crossing point correspond to those associated with the biometric record attached to the visa. A second identification check consists of comparing the fingerprints taken at the border crossing post with the contents of the entire VIS database which is expected to become the biggest biometric database in the world once it will reach its full capacity. High levels of security are being built into the system to ensure that it remains robust and available at all times and that data is only accessed by authorised persons for authorised purposes. VIS did not start operations in all Schengen consulates worldwide at once but will be progressively deployed region by region. It started operations in all Schengen States' visa-issuing consulates in North Africa in October 2011, in the Near East in May 2012 and in the Gulf region in October 2012. The global roll-out of the system will take at least two more years.

3. Frontex

Like the European internal security architecture, which has been gradually developed through everyday Schengen cooperation, legal acts such as the Amsterdam Treaty, and political guidelines from Tampere, Laeken, Seville and Thessaloniki Council conclusions, border security has also undergone evolution starting from nationally focused systems underlying the sovereignty of each state to operational cooperation at the external borders. Although responsibility for the control and surveillance of external borders continue to lay with the Member States, national border security systems are being more and more complemented by a unified set of effective European-wide tools to manage potential risks at the external borders.

One of the key elements of this process is the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex). The agency started to be operational on 3 October 2005 on the basis of Council Regulation (EC) No 2007/2004 which is about to be amended by a proposal submitted by the Commission on 24 February 2010 and currently discussed in the European Parliament. It is staffed with 160 experts and is headquartered in Warsaw.

Frontex promotes a pan-European model of integrated border security which enhances border security by ensuring the coordination of Member States' operational cooperation. The agency is in charge of several areas pointed out by the Frontex regulation with a special focus on carrying out risk analysis, coordinating the operational cooperation between Member States in the field of border management and providing Member States organising return operations with the necessary support. Regulation (EU) No 1168/2011 of 25 October 2011 amending Council Regulation (EC) No 2007/2004 revamped the mandate for Frontex by strengthening its operational capabilities in a number of areas and by ensuring that the agency fulfils its tasks in full compliance with the relevant EU law, including the Charter of Fundamental Rights.

B. The future of the EU's external border management

Despite these first steps towards an integrated management of the external borders, which in recent years led to such highly visible forms of interventions like the state-of-the-art upgrades to the technical infrastructure in particular on the eastern and southern borders, the 60+ joint operations against illegal immigration (including the current operation 'Poseidon' at Greece's border with Turkey) and the creation of a pool of rapid border intervention teams (RABIT) and equipment (CRATE) to help Member States in cases of exceptional and urgent situations, national segments still dominate the picture as a sort of a string of pearls loosely connected. There are no signs that this situation will change in the near future. The Lisbon Treaty with its broad reformulation of the legal bases for the adoption of measures for the management of the external borders arguably leaves the EU legislator with considerable leeway to adopt legislative measures for a truly integrated system of external border management. Practice will, however, need to show whether such measures will indeed be adopted under the legal basis for the management of the external borders or rather under the chapter for police cooperation (for more details on this type of cooperation and its legal basis see 5.12.7). Moreover, it is absolutely unclear how far this new legal competence under the present political circumstances could result in the conferral not just of coordinating powers, but also of executive powers leading, for instance, to the creation of a European Corps of Border Guards or the transformation of the newly created Standing Committee on Internal Security (COSI) into a kind of EU interior ministry. Time is certainly not ripe for such breathtaking breakthroughs. What we will see instead is a long and very much needed period of consolidation of the Area for Freedom, Security and Justice in order to allow the most precious element for the good functioning of the external border management, namely mutual trust among the Member States as

well as between them and the EU institutions, to grow. This does not mean that the management of the external borders is entering a period of stagnation. New trends in this area are already visible. In this respect, the Commission's three communications of February 2008 labelled 'EU Border Package' marked a clear turning point. The package presented a whole series of electronic and other technological features called 'e-borders' including fully automated border checks, comprehensive systems of entry-exit control, air passenger surveillance and electronic travel authorisation, high-tech border installations and virtual fences. In more detail, the threefold package focuses on:

- the next steps in border management, i.e. a combination of control and facilitation measures which include privileges for 'bona fide' travellers thanks to biometric identifiers and automated gates, a full-fledged entry-exit system allowing the border authorities to determine who is inside and who is outside the territory as well as ESTA, an electronic system for travel authorisation, which would require passengers to obtain an advance permit before they may board a plane or other means of transport to Europe;
- the future development of Frontex to allow the agency to obtain more autonomy in carrying out RABIT/CRATE interventions through the purchase of its own equipment and to cooperate with non-EU countries and international organisations;
- a future European border surveillance system (Eurosur) to complement the seamless control at border-crossing points by an equally tight system of surveillance and information exchange at the EU's green and blue borders.

Some months later the Commission's package and especially its proposals for the next steps in border management were echoed first by the 2008 'Future Group' charged with the task of giving more thought on the future development of the Area of Freedom, Security and Justice after the end of the Hague Programme, then by the Stockholm Programme, the successor of the Hague Programme, endorsed by the European Council in December 2009, and finally by the Commission's Action Plan Implementing the Stockholm Programme of 20 April 2010 stressing that 'smart use of modern technologies in border management to complement existing tools as apart of a risk management process can also make Europe more accessible to bona fide travellers and stimulate innovation among EU industries, thus contributing to Europe's prosperity and growth, and ensure the feeling of security of Union's citizens' (for more details on the Stockholm Programme see 5.12.1). On 25 October 2011 the Commission presented a communication on smart borders, which sets out the main options for using new technologies to simplify life for foreigners travelling to the EU and to better monitor third-country nationals crossing the borders. These options would consist of:

- an Entry/Exit System (EES) which would record the time and place of entry and the length of authorised short stays in an electronic database replacing the current system of stamping passports. This data would then be made available to border control and immigration authorities;
- a Registered Travellers Programme (RTP) which would allow certain groups of frequent travellers (i.e. business travellers, family members, etc.) from third countries to enter the EU, subject to appropriate pre-screening, using simplified border checks at automated gates. This would speed up border crossings for 4 to 5 million travellers per year and encourage investments in modern automated border controls (e.g. on the basis of e-passports) at major crossing points.

The Commission presented the legislative proposals for Eurosur on 12 December 2011 and for EES and RTP on 28 February 2013.

Role of the European Parliament

In the European Parliament the reactions to these initiatives were mixed. While the Parliament broadly supported the improved organisational role of Frontex, it expressed considerable doubts with regard to the vast technological build-up and the mass processing of personal data proposed for the external borders. From the EP's point of view, such collection and processing of data not only represent per se a far-reaching intrusion into privacy, but also quantity matters. The more data is used in the transfer patterns and profiling systems, the greater the risk of data leakage, erroneous results and painful consequences for the individuals concerned. Likewise, it is well known from long-term experience in the US, as the world's greatest testing laboratory for border security, that even enormous investments in advanced technology have not been able to render the US borders watertight. Therefore, the European Parliament in its resolution on the Stockholm Programme of 25 November 2009 insisted 'that new border management instruments or large-scale data storage systems should not be launched until existing tools are fully operational, safe and reliable, and calls for a thorough assessment of the necessity and proportionality of new instruments relating to matters such as entry/exit, the registered traveller programme, PNR and the system of prior travel authorisation'. Finally, the Parliament insisted on 'the adoption of a comprehensive blueprint setting out the overall objectives and architecture of the Union's integrated border management strategy, in order genuinely to implement a common policy on asylum, immigration and external border control'.

→ Andreas-Renatus Hartmann

5.12.5. Judicial cooperation in civil matters

In civil matters having cross-border implications, the European Union is developing judicial cooperation, the cornerstone of which is mutual recognition of judgments and of decisions in extrajudicial cases. Its main objectives in the area of judicial cooperation in civil matters are legal certainty and easy and effective access to justice, implying identification of the competent jurisdiction, clear designation of the applicable law and speedy and effective recognition and enforcement procedures.

Legal basis

Article 81.1 of the TFEU.

Objectives

The EU's action in the area of judicial cooperation in civil matters seeks primarily to achieve the following objectives:

- To ensure a high degree of legal certainty for citizens in cross-border relations governed by civil law.
- To guarantee citizens easy and effective access to civil justice in order to settle cross-border disputes.
- To simplify cross-border cooperation instruments between national civil courts.
- To support the training of the judiciary and judicial staff.

Achievements

A. The development of primary law in judicial cooperation in civil matters

Judicial cooperation in civil matters was not one of the objectives of the EC when the founding treaty was adopted. However, Article 220 of the EC Treaty stipulated that Member States were bound to simplify 'formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals and of arbitration awards'. Judicial cooperation in civil matters, in the intergovernmental context of 'Justice and Home Affairs', was officially included within the EU's sphere of activity by the Treaty of Maastricht. The Treaty of Amsterdam brought judicial cooperation in civil matters within the Community sphere, transferring it from the Treaty on European Union to the Treaty establishing the European Community, although it did not make it subject to the Community method. The Treaty of Nice allowed measures relating to judicial cooperation in civil matters — except family law — to be adopted using the legislative codecision procedure.

The Tampere European Council (October 1999) laid the foundations for the European Area of Justice. Following recognition that not enough had been done to implement this, a new action plan for 2005-2010 was launched at the European Council of The Hague (November 2004). The Hague Programme underlined the need to continue the implementation of mutual recognition and to extend it to new areas such as family property, successions and wills. It was followed by the Stockholm Programme, which represents the roadmap for future developments in the area of freedom, security and justice over the five-year period from 2010 to 2014.

The Treaty of Lisbon makes all measures in the field of judicial cooperation in civil matters subject to the ordinary legislative procedure. However, family law remains subject to a special legislative procedure: the Council acts unanimously after consulting Parliament.

B. Main legislation adopted

1. Determination of the competent court, recognition and enforcement of judgments and of decisions in extrajudicial cases

The main instrument in this area is Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ('Brussels I Regulation'). This regulation seeks to harmonise the rules of conflict of jurisdiction within the Member States and to simplify and expedite the recognition and enforcement of decisions in civil and commercial matters. The Brussels I Regulation is supplemented by Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility ('Brussels IIa Regulation').

In order to facilitate international recovery of maintenance obligations in December 2008 the Council adopted Regulation (EC) No 4/2009. This regulation brings together in a single instrument uniform rules on jurisdiction, applicable law, recognition and enforcement, as well as on cooperation between national authorities. With a view to improving the efficiency and effectiveness of cross-border insolvency proceedings, the Council adopted Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, which sets out uniform rules on jurisdiction, recognition and

applicable law in this area (currently under review). In order to abolish exequatur for decisions relating to uncontested claims, Parliament and the Council adopted Regulation (EC) No 805/2004 creating a European Enforcement Order for uncontested claims. With a view to eliminating all obstacles encountered by citizens in the enforcement of their rights in the context of international successions, in July 2012 Parliament and the Council adopted Regulation (EU) No 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession.

Because of the distinctive features of marriage and registered partnerships, and of the different legal consequences resulting from these forms of union, the Commission presented two separate Regulations laying down property regimes for international couples — one for married couples and the other for registered partnerships — on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes.

2. Harmonisation of conflict-of-law rules

Parliament and the Council have adopted Regulation (EC) No 593/2008 on the law applicable to contractual obligations (Rome I Regulation). The adoption of Regulation (EC) No 864/2007 of 11 July 2007 on the law applicable to non-contractual obligations (Rome II Regulation) has enabled the creation of a uniform set of conflict-of-law rules for non-contractual obligations in civil and commercial matters. It thus seeks to improve legal certainty and the predictability of the outcome of litigation. Conflict-of-law rules relating to maintenance obligations are set out in Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. In the area of the law applicable to divorce and legal separation, in December 2010 the Council adopted Regulation (EU) No 1259/2010, It establishes a clear and comprehensive legal framework for divorce and legal separation in the 15 participating Member States. With regard to international successions, Regulation (EU) No 650/2012 determines, among other things, the applicable law in matters of succession.

3. Facilitating access to justice

In order to improve access to justice in cross-border disputes, the Council adopted Directive 2003/8/EC establishing minimum common rules relating to legal aid for such disputes. The purpose of the directive is to guarantee an 'adequate' level of legal aid in cross-border disputes for persons who lack sufficient resources. In order to make access to justice easier and more effective for European citizens and businesses, the European Union has introduced common procedural rules for simplified and accelerated cross-border litigation on small claims and the cross-border recovery of uncontested pecuniary claims throughout the European Union. These are found in Regulation (EC) No 861/2007 establishing a European Small Claims Procedure, and Regulation (EC) No 1896/2006 creating a European order for payment procedure. These procedures are optional and additional to the procedures provided for by national law. Directive 2008/52/EC establishes common rules on certain aspects of mediation in civil and commercial matters in order to increase legal certainty and thereby encourage use of this method of dispute resolution.

4. Instruments for cross-border cooperation between national civil courts

Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 is intended to simplify and expedite the transmission between Member States of judicial and extrajudicial documents for service purposes and thus to increase the efficiency and speed of judicial procedures. In order to simplify and accelerate cooperation between courts in the various Member States in the taking of evidence in civil or commercial matters, the Council adopted Regulation (EC) No 1206/2001. To improve, simplify and expedite judicial cooperation between the Member States and to promote access to justice for citizens engaging in cross-border disputes, a European Judicial Network in civil and commercial matters was established by Council Decision 2001/470/EC of 28 May 2001. The network is composed of contact points designated by the Member States, the central authorities provided for in some EU instruments, liaison magistrates, and any other authority with responsibilities for judicial cooperation between state actors (courts, central authorities). Decision 2001/470/EC was amended by Decision 568/2009/EC of the European Parliament and of the Council of 18 June 2009 aimed at enhancing and reinforcing the role of the European Judicial Network in civil and commercial matters. A major innovation introduced by the new decision consists of opening the network to professional associations representing legal practitioners, in particular lawyers, solicitors, barristers, notaries and bailiffs.

Another tool for simplifying judicial cooperation in civil matters consists of the development of the use of information and communication technologies in the administration of justice. This project was launched in June 2007 and led to a European e-Justice Strategy. The e-Justice tools cover: the

European e-Justice portal, which aims to facilitate access by citizens and enterprises to justice in Europe; the interconnection of criminal records at European level; better use of videoconferencing during judicial proceedings and innovative translation tools such as automated translation, dynamic online forms and a European database of legal translators and interpreters. The Commission has recently published a new EU Justice Scoreboard (COM(2013) 160), which compares the legal systems relating to civil and administrative justice in the Member States and suggests what improvements could be made.

Role of the European Parliament

Following the extension of the ordinary legislative procedure to judicial cooperation in civil matters, with the exception of family law, the European Parliament has played an active role in defining the content of the legislative instruments described above. Parliament has, in the past, noted that a genuine European judicial culture is needed if citizens are to be given all the benefits of their rights under the treaties. One of the most important aspects of this is training, in particular in the legal field. Parliament and the Commission have launched a pilot project covering best practices in judicial training. In June 2013, Parliament adopted (on the basis of an own-initiative report) a resolution on improving access to justice: legal aid in cross-border civil and commercial disputes. The vote on the two proposals concerning property regimes for international couples has been scheduled for autumn 2013.

→ Vesna Naglič

5.12.6. Judicial cooperation in criminal matters

Nowadays more and more people travel, work, study and live abroad, including criminals. Crime has become a sophisticated and international phenomenon. We have to develop a common European criminal justice area, where there is mutual trust and support among national law enforcement authorities. The starting point is respect for one of our most crucial principles: the mutual recognition of judicial decisions in all EU Member States. The Treaty of Lisbon provides a stronger basis for the development of a criminal justice area, while foreseeing new powers for the European Parliament. Also, there are important developments in this area with the implementation of the Stockholm Programme.

Legal basis

Articles 82 to 86 of the Treaty on the Functioning of the European Union (TFEU).

Objectives

The progressive elimination of border controls within the EU has considerably facilitated the free movement of European citizens, but has also made it easier for criminals to operate transnationally. In order to tackle the challenge of international crime, the EU is progressing toward a single area of criminal justice. We need cross-border solutions so that criminals can be brought to justice from anywhere in the EU. The starting point is to uphold the principle of mutual recognition. This means that judiciaries can trust each other's standards of fairness and justice. Mutual trust cannot be enforced by decree; it can only be earned through hard work. Making sure that the rights of victims, suspects and prisoners are protected in the Union, even if they cross national borders, is at the core of true citizenship. In short, it means justice across borders.

Achievements

A. A new institutional framework: the Treaty of Lisbon and the Stockholm Programme

1. The Treaty of Lisbon

Under the former 'third pillar' (police and judicial cooperation in criminal matters), the European Parliament was only consulted. Its role has been enhanced with the Treaty of Lisbon, which has introduced more effectiveness, accountability and legitimacy in the area of freedom, security and justice. The Treaty has generalised (with a few exceptions) the Community method, based on codecision involving Parliament (codecision now becoming the ordinary legislative procedure) and majority voting in Council. The old pillar structure has disappeared. For regards international agreements, a new procedure, 'consent', has been introduced. The abolition of the former 'third pillar' has led to the harmonisation of legislative instruments. Instead of framework decisions, decisions and conventions, the EU will be adopting the normal Community instruments (regulations, directives and decisions).

The role of the Court of Justice is strengthened under the Treaty of Lisbon: the ordinary procedures for preliminary references and infringement proceedings initiated by the Commission apply (transitional arrangements are foreseen for the acts which are already in force in the areas of police cooperation and judicial cooperation in criminal matters).

Member States are still able to propose legislative measures, but now an initiative requires the support of a quarter of the Member States. Special measures are foreseen concerning enhanced cooperation, opt-outs and the so-called 'emergency brake'. The EU Charter of Fundamental Rights is integrated into the Treaty of Lisbon, and is legally binding on the European Union (and its institutions and bodies) and on Member States when they implement EU law.

2. The Stockholm Programme and its Action Plan

Following the Tampere Programme (October 1999) and its successor the Hague Programme (November 2004), a new multiannual programme for the area of freedom, security and justice (AFSJ) for the period 2010-2014, known as the Stockholm Programme, was approved by the European Council in December 2009. Parliament adopted a resolution on this programme on 25 November 2009. In April 2010, the Commission adopted a communication on an Action Plan implementing the Stockholm Programme, with concrete actions and clear timetables to meet current and future challenges. In its Conclusions of June 2010, the Justice and Home Affairs Council took note of the Commission Action Plan. A mid-term review of the implementation of the Stockholm Programme by the Commission, initially foreseen by June 2012, was in the end not carried out. Parliament is currently preparing an own-initiative report on the mid-term review of the Stockholm Programme.

B. Mutual legal assistance in criminal matters

On 29 May 2000 the EU Council of Ministers adopted the Convention on Mutual Assistance in

Criminal Matters. This convention aims to encourage and modernise cooperation between judicial, police and customs authorities within the Union by supplementing provisions in existing legal instruments, while also respecting the European Convention for the Protection of Human Rights of 1950. Also, a number of agreements have been adopted by international organisations, such as the Council of Europe Convention of 1959 on Mutual Assistance in Criminal Matters.

C. Mutual recognition of judicial decisions in criminal matters

The Tampere European Council stated that mutual recognition should become the cornerstone of judicial cooperation in criminal matters. The principle of mutual recognition was confirmed in the Hague and Stockholm Programmes. It is a key concept for the European judicial area, as only through mutual recognition is it possible to overcome difficulties created by differences between national judicial systems. Yet it can only develop if a high level of mutual confidence exists between Member States. Mutual recognition is important both at the pre-trial stage and the final judgment stage; it covers the recognition of evidence, non-custodial pre-trial and post-trial supervision measures, disqualifications, enforcement of criminal penalties, and decisions to take into account convictions issued in the course of new criminal proceedings in other Member States.

D. The European Arrest Warrant (EAW)

The Council Framework Decision of 13 June 2002 on the European Arrest Warrant has revolutionised the classical extradition system by adopting innovative rules: e.g. limited grounds for refusal of execution, decision-making shifting from political to judicial authorities, possibility to surrender nationals of the executing State and clear time-limits for the execution of each EAW. Some difficulties have been encountered in the implementation of the EAW both at EU and national level. Europol, Eurojust and the European Judicial Network can make an important contribution in the field of mutual legal assistance and EAW requests.

E. Approximation of legislation

The functioning of the EU judicial area could be undermined by differences in national criminal law. It should be recalled that approximation of criminal law in the EU means adjustment to a common minimum standard, not full-scale unification. Organised crime, trafficking in human beings, exploitation of children and child pornography, terrorism, financial crime (fraud, money laundering, corruption), cybercrime, environmental crime, counterfeiting and piracy, and racism and xenophobia are all areas where legal texts have been adopted or are being negotiated in order to arrive at common definitions and harmonise the level of penalties. The Treaty of Lisbon foresees that Parliament and the Council, through the ordinary legislative procedure, may 'establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis'.

F. Eurojust, the European Judicial Network and the Joint Investigation Teams

Eurojust is an EU body established in 2002 by a Council Decision amended in December 2008. Eurojust stimulates and improves the coordination of investigations and prosecutions between competent authorities in the Member States, in particular by facilitating the provision of cross-border mutual legal assistance and the implementation of extradition requests and EAWs. The Treaty of Lisbon foresees that 'in order to combat crimes affecting the financial interests of the Union, the Council, by means of regulations adopted in accordance with a special legislative procedure, may establish a European Public Prosecutor's Office from Eurojust', while also providing for the possibility of extending Eurojust's powers to include serious crime having a cross-border dimension.

In June 1998 the EU Council of Ministers created the European Judicial Network (EJN) in criminal matters in order to improve judicial cooperation between Member States. The EJN aims at helping national judges and prosecutors carry out cross-border investigations and prosecutions.

The Tampere European Council called for Joint Investigation Teams (JITs) to be set up with a view to combating trafficking in drugs and human beings, as well as terrorism. The Convention on Mutual Assistance in Criminal Matters of May 2000 also provides for the setting-up of JITs. In June 2002, the Council adopted a Framework Decision on the matter. Two or more Member States may set up a JIT, which may also include representatives of Europol and Eurojust. This is an instrument which has not been fully developed yet and has already encountered implementation difficulties.

G. Procedural rights

The right of suspects and accused persons to a fair trial is recognised as a fundamental right. The initial proposal for a Council Framework Decision on procedural safeguards in criminal proceedings, tabled by the Commission in 2004, was blocked owing to divergent views of national delegations. In November 2009 the Council adopted a Roadmap for strengthening procedural rights of suspected and accused persons in criminal proceedings and invited the Commission to put forward ad hoc proposals. The roadmap identifies six main areas in which legislative or other initiatives are desirable:

translation and interpretation; information on rights and information about charges; legal advice and legal aid; communication with relatives, employers and consular authorities; special safeguards for suspected or accused persons who are vulnerable; and (proposing a Green Paper on) pre-trial detention. In October 2010, Parliament and the Council adopted a Directive on the right to interpretation and translation in criminal proceedings (Directive 2010/64/EU), based on an initiative by 13 Member States. In May 2012, Parliament and the Council adopted Directive 2012/13/EU on the right to information in criminal proceedings (the so-called 'letter of rights'), following a proposal from the Commission. Parliament and the Council are currently negotiating a draft Directive on the right to have access to a lawyer in criminal proceedings and the right to communicate upon arrest, following a Commission proposal of June 2011. In June 2011, the Commission published a Green Paper on the application of EU criminal justice legislation in the field of detention. In December 2011, Parliament adopted a resolution calling for common EU standards for conditions of detention.

H. Towards an EU criminal policy

In September 2011, the Commission published a communication entitled 'Towards an EU criminal policy: ensuring the effective implementation of EU policies through criminal law'. This communication explains how EU-wide minimum rules on criminal law could better protect citizens against criminal behaviour, and sets out principles which will help to ensure that EU legislation on criminal law is consistent and coherent.

Role of the European Parliament

The Treaty of Lisbon has introduced more effectiveness, accountability and legitimacy in the criminal justice area. It has generalised (with a few exceptions, such as the European Public Prosecutor) the Community method, based on codecision (with codecision becoming the ordinary legislative procedure) and majority voting in the Council. The old pillar structure has disappeared. The EU Charter of Fundamental Rights is integrated into the Treaty of Lisbon and is legally binding on the Union (its institutions and bodies) and its Member States when they implement EU law. As regards international agreements, a new procedure, 'consent', is foreseen. The role of Parliament, which had only been consulted under the former 'third pillar' (police and judicial cooperation in criminal matters), is now enhanced with the Treaty of Lisbon. Parliament has already used these powers, in February 2010, when it rejected the provisional application of the Terrorist Finance Tracking Programme, also known as SWIFT.

Parliament has adopted resolutions on various issues in the field of judicial cooperation in criminal matters, such as settlement of conflicts over the exercise of jurisdiction, supervision measures as an alternative to provisional detention, post-trial supervision measures, transfer of proceedings, the European Arrest Warrant and European Evidence Warrant, Eurojust, the European Judicial Network, decisions rendered in the absence of the accused person, environmental crime, terrorism, organised crime, e-Justice, trafficking in human beings, sexual exploitation of children and child pornography, the European protection order, and minimum standards on the rights, support and protection of victims of crime. In May 2009, Parliament adopted a resolution (which also contained a recommendation to the Council) on the development of an EU criminal justice area. In May 2012, it adopted a resolution, based on an own-initiative report, on 'an EU approach on criminal law', which addressed the questions of what criteria can be used in order to establish whether there is a need for EU criminal law legislation and how to ensure the coherence and quality of criminal law.

Parliament is currently involved in the examination of draft directives tabled by the Commission on the freezing and confiscation of the proceeds of crime, insider dealing and market manipulation, fighting fraud against the Union's financial interests by means of the criminal law, protection of the euro against counterfeiting, and prevention of the use of the financial system for the purposes of money laundering and terrorist financing.

Parliament will be involved in evaluation and monitoring in the AFSJ, including criminal justice, as provided for in the Treaty of Lisbon. Article 70 TFEU states that: 'the European Parliament and national Parliaments shall be informed of the content and results of the evaluation' of the 'implementation of the Union policies referred to in this Title by Member States' authorities, in particular on mutual recognition'. Article 85 TFEU provides that the European Parliament and the national parliaments shall be involved in 'the evaluation of Eurojust's activities': such arrangements will be determined by new regulations to be adopted by Parliament and the Council under the ordinary legislative procedure.

→ Alessandro Davoli

5.12.7. Police cooperation

*With the entry into force of the Treaty of Lisbon and the abolition of the 'pillars' (*1.1.5), the European Union now has more resources to promote police cooperation, while the Treaty has increased parliamentary scrutiny over the development of such cooperation.*

The main instrument for cooperation is the European Police Office (Europol). It is complemented by customs cooperation.

*However, in the 'European internal security architecture' which is being established, police and customs cooperation is indissociable from respect for fundamental rights (*2.1.2) and progress made on judicial cooperation in criminal matters (*5.12.6). On the other hand, at a time when concerns over terrorism are growing, the external dimension (*6.1.1) cannot be ignored, in particular the specific issues connected with protection of personal data (*5.12.8).*

Legal basis

Articles 33, 87, 88 and 89 TFEU.

Objectives

The objective of police cooperation is to help make the Union an area of freedom, security and justice which respects fundamental rights, involving all the competent authorities of the Member States, including police, customs and other specialised law enforcement services in relation to the prevention, detection and investigation of criminal offences. In practice, this cooperation mainly concerns serious forms of crime (organised crime, drug trafficking, trafficking in human beings) and terrorist activities.

Achievements

A. Beginnings

Police cooperation between the Member States' representatives began in 1976 through the 'Trevi Group'. The Treaty of Maastricht then set out matters of common interest which gave legitimate grounds for police cooperation (terrorism, drugs and other forms of international crime) and established the principle of creating a 'European police office' (Europol), which initially took concrete shape through the establishment of a Europol Drugs Unit. The Europol Convention was signed on 26 July 1995. The office did not officially begin its work until 1 July 1999, on the basis of the enhanced powers granted by the Treaty of Amsterdam (signed on 2 October 1997).

However, police cooperation had progressed since 1985, at first for a limited number of Member States, in connection with the establishment of the 'Schengen area' of freedom of movement of persons (*2.1.3 and *5.12.4). With the entry into force of the Treaty of Amsterdam, the Schengen *acquis* relating to police cooperation was incorporated into EU law, but under the 'third pillar', i.e. intergovernmental cooperation. The same method was used for police cooperation measures (in particular exchanges of genetic data) adopted by a small group of Member States under the Prüm Treaty, then fully introduced at Union level by Council Decision 2008/615/JHA of 23 June 2008.

B. Current institutional framework

This has been considerably simplified by the Treaty of Lisbon (TFEU): most police cooperation measures are now adopted using the ordinary legislative procedure, i.e. in codecision with the European Parliament and by qualified majority in the Council of the European Union, and are subject to review by the Court of Justice.

Nevertheless, going beyond the specific features of the area of freedom, security and justice (exceptions applying to the United Kingdom, Ireland and Denmark, privileged role for national parliaments; see Protocols No 1, 2, 21 and 22 annexed to the TFEU), police cooperation, together with judicial cooperation in criminal matters, retains some original features:

- the Commission shares its power of initiative with the Member States, provided they represent a quarter of the members of the Council (Article 76 TFEU);
- as regards measures for operational cooperation, the European Parliament is merely consulted; furthermore, in the absence of unanimity in the Council (which is required *a priori*), the possible establishment of enhanced cooperation between the Member States which wish for such cooperation (at least nine) is subject to a suspensory examination by the European Council in order to reach a consensus ('emergency brake' mechanism under Article 87(3) TFEU);
- acts adopted prior to the entry into force of the TFEU cannot be the subject of treaty infringement proceedings or a reference for a preliminary ruling for five years (Protocol No 36 annexed to the TFEU).

C. Police cooperation agencies and other related bodies

1. The European Police Office (Europol)

Europol's role is to help national police authorities and other similar authorities to act more effectively by facilitating cooperation between them on preventing and combating terrorism, drug trafficking and other forms of serious international crime.

Since 1 January 2010, Europol has been a Community agency, financed by the Community's budget, with more than 700 officers (including130 liaison officers) based at its headquarters in The Hague, in the Netherlands.

Europol's main activity is to improve the exchange of information between police authorities. To that end it produces a Serious and Organised Crime Threat Assessment (SOCTA) to serve as a basis for Council decisions, as well as the European Union Terrorism Situation and Trend Report (TE-SAT).

Europol does not have any coercive powers, such as making arrests or conducting searches. Yet, Europol's operational powers have very gradually grown: for example, the Council Act of 28 November 2002 enabled Europol to participate in joint investigation teams. It also allowed Europol to ask the Member States to initiate criminal investigations.

Lastly, Europol is authorised (Council decision of 27 March 2000) to enter into negotiations on agreements with third countries and non-EU-related bodies. Cooperation agreements signed by Europol in this respect include agreements with Interpol and with the United States.

On 27 March 2013, the Commission submitted a legislative proposal to the European Parliament and the Council on amending the current Europol decision. The proposal aims to make Europol's data collection and analysis more effective, to increase Europol's accountability to the European Parliament and the national parliaments, and to strengthen the protection of personal data. It also proposes that the European Police College be merged with Europol.

2. The European Police College (CEPOL)

Training of police officers is an important aspect of police cooperation. To this end, CEPOL was set up in 2000, initially in the form of a network of existing national training institutes, and became a European Union agency in 2005 (Council Decision 2005/681/JAI of 20 September 2005).

3. Standing Committee on Operational Cooperation on Internal Security — COSI

From the very beginning, operational cooperation has been a stumbling block to the development of police cooperation. Aside from the slow progress made with Europol as mentioned above (joint investigation teams), cooperation was initially limited to a biannual meeting from 2000 onwards of the 'Club of Berne', a task force of the heads of national security services of several European countries, which was an informal structure for exchanging information in fields such as counter-espionage, organised crime and terrorism.

The Treaty of Lisbon goes further, with the creation of COSI (Council Decision of 25 February 2010 on setting up the Standing Committee on Operational Cooperation on Internal Security). Its responsibilities are:

- to evaluate the general direction of and shortcomings in operational cooperation;
- to adopt concrete recommendations;
- to assist the Council under the 'solidarity clause' (Article 222 TFEU).

However, it is not a European 'FBI', capable of conducting its own operations and, moreover, it does not participate in the legislative procedure. It operates from the capitals, with a view to guaranteeing the operational character of its role, through representatives from the Member States, and is supported by JHA advisers from the permanent representations in Brussels. Representatives from any other internal security organisation can be involved (in particular Eurojust — see 5.12.6 on judicial cooperation in criminal matters — and Frontex — see 5.12.4 on external border management).

4. EU INTCEN

The European Union Intelligence Analysis Centre (EU INTCEN) is not, strictly speaking, a police cooperation body since it comes under the European External Action Service (EEAS). Nevertheless, it makes a contribution to police cooperation by producing a threat assessment, based on information provided by intelligence services, the military, diplomats and police services. INTCEN is also able to make useful contributions on operational aspects, such as information on the destinations, motives and movements of terrorists, in order to raise awareness in all Member States and to help them each to take appropriate measures.

Role of the European Parliament

In its very comprehensive resolution of 25 November 2009 on the Stockholm Programme, the European Parliament reiterated its main concerns regarding the development of the area of freedom, security and justice in general, and police cooperation in particular:

- absolute need to strike the right balance between freedom and security (section 7): for example, it expresses its concern about the increasingly widespread practice of profiling for

preventive and policing purposes (section 88) and calls for the definition of stricter rules on exchanges of information between Member States and the use of common EU registers (section 93);

- coherence of the approach to security questions (sections 116/124: 'criticises the lack of a comprehensive master plan setting out the overall objectives and architecture of the EU's security and border management strategy ... combining efforts and resources at the disposal of Member States, European institutions, specialised EU agencies and information exchange networks');
- requirement to review the effective implementation of European police cooperation policies ('considers that priority should be given to narrowing the wide gap between the rules and policies approved at European level and their implementation at national level' — section 14); 'an objective evaluation of the added value of the EU agencies, networks and information exchanges; intends to follow closely, together with national parliaments, all the activities carried out by the Council in the context of operational cooperation on EU internal security' (section 138);
- emphasis on certain aspects of crime: while Parliament recognises 'the imperative of protecting citizens against terrorism and organised crime' (section 118), it also underlines the importance of combating crimes inspired by racism and hate (sections 26 and 31), violence against women (section 32) and children (section 76), trafficking in persons (section 126), corruption (section 127) and cybercrime (section 129);
- encouraging the development of more operational cooperation — section 131: 'calls for more effective and results-oriented policies to further implement police and judicial cooperation in criminal matters, by associating Europol and Eurojust more systematically in investigations, particularly in cases of organised crime, fraud, corruption and other serious crimes which gravely endanger the security of the citizens and the financial interests of the EU', through the promotion, at Union level, of mutual knowledge and trust, common training and the creation of joint police cooperation teams and a student exchange programme in cooperation with the European Police College (section 134).

With the entry into force of the Treaty of Lisbon, the European Parliament has been given substantially increased powers to contribute to legislation on police cooperation and also, partly through its budgetary powers, to exercise scrutiny over the bodies operating in that field. It has clearly demonstrated its intention to use these new powers, most recently by refusing to grant discharge to the European Police College (CEPOL) for the 2008 financial year.

It has also announced very clearly its intention to play an effective role in revising the legal framework for Europol (section 148) and the specific monitoring procedures it will carry out, jointly with the national parliaments, not only with regard to scrutiny of Europol, but generally in relation to the evaluation of security policies (section 13). The European Parliament could in future assert its position on more specific aspects of police cooperation, such as the SOCTA and TE-SAT reports produced by Europol.

It should nevertheless be noted that COSI, and its activities, remains out of the reach of the European Parliament which, like the national parliaments, is merely informed about it.

→ Andreas-Renatus Hartmann

5.12.8. Personal data protection

Protection of personal data and respect for private life are important fundamental rights. The European Parliament insists on the need to strike a balance between enhancing security and safeguarding human rights, including data protection and privacy. The Lisbon Treaty provides a strong basis for the development of a clear and effective data protection system, while also stipulating new powers for Parliament. With the implementation of the Stockholm Programme, important developments in this area are under way.

Legal basis

Article 16 of the Treaty on the Functioning of the European Union (TFEU).

Articles 7 and 8 of the EU Charter of Fundamental Rights.

Objectives

The Union must ensure that the fundamental right to data protection, which is enshrined in the EU Charter of Fundamental Rights, is applied in a consistent manner. The EU's stance on the protection of personal data needs to be strengthened in the context of all EU policies, including law enforcement and crime prevention, as well as in international relations. In a global society characterised by rapid technological changes, where information exchange knows no borders, it is important to preserve privacy. Among the challenges facing modern society are the needs to provide privacy protection online and ensure access to the internet, and to prevent the misuse of video surveillance, radio frequency identification tags (smart chips), behavioural advertising, search engines and social networks.

Achievements

A. A new institutional framework: the Lisbon Treaty and the Stockholm Programme

1. The Lisbon Treaty

Before the entry into force of the Lisbon Treaty, legislation concerning data protection in the area of freedom, security and justice (AFSJ) was divided between the first pillar (data protection for private and commercial purposes, with the use of Community method) and the third pillar (data protection for law enforcement purposes, at intergovernmental level). As a consequence, the decision-making processes in the two areas followed different rules. The pillar structure disappeared with the Lisbon Treaty, which provides a stronger basis for the development of a clearer and more effective data protection system while, at the same time, stipulating new powers for Parliament, which has become co-legislator. Article 16 of the TFEU provides that Parliament and the Council shall lay down the rules relating to the protection of individuals with regard to the processing of personal data by Union institutions, bodies, offices and agencies, and by the Member States when carrying out activities that fall within the scope of Union law.

2. The Stockholm Programme and the implementing Action Plan

Following the Tampere and Hague programmes (of October 1999 and November 2004, respectively), the European Council approved in December 2009 a new multi-annual programme regarding the AFSJ for the period 2010-2014: the Stockholm Programme. Parliament passed a resolution on the programme on 25 November 2009. In April 2010 the Commission adopted a Communication on an Action Plan implementing the Stockholm Programme, with concrete actions and clear timetables to meet current and future challenges, including in the field of data protection. In its conclusions of June 2010, the Council took note of the Commission Action Plan. A mid-term review by the Commission of the implementation of the Stockholm Programme, to have been completed by June 2012, was in the end not conducted. Parliament is preparing an own-initiative report on the mid-term review of the Stockholm Programme.

B. Main legislative instruments on data protection

1. The EU Charter of Fundamental Rights

Articles 7 and 8 of the EU Charter of Fundamental Rights recognises respect for private life and protection of personal data as closely related but separate fundamental rights. The Charter is integrated into the Lisbon Treaty and is legally binding on the institutions and bodies of the European Union, and on the Member States when implementing EU law.

2. The Council of Europe

a. Convention 108 of 1981

Council of Europe Convention 108 of 28 January 1981 for the protection of individuals with regard to automatic processing of personal data is the first legally binding international instrument adopted in the field of data protection. Its purpose is 'to secure

[...] for every individual [...] respect for his rights and fundamental freedoms and in particular his right to privacy, with regard to automatic processing of personal data'.

b. The European Convention on Human Rights (ECHR)

Article 8 of the European Convention of 4 November 1950 for the protection of human rights and fundamental freedoms introduces the right to respect for private and family life: 'Everyone has the right to respect for his private and family life, his home and his correspondence'.

3. Current EU legislative instruments on data protection

As a consequence of the old pillar structure, different legislative instruments are currently in force. These include former first-pillar instruments such as Directive 95/46/EC on data protection, Directive 2002/58/EC on e-privacy (modified in 2009), Directive 2006/24/EC on data retention, and Regulation (EC) No 45/2001 on processing of personal data by Community institutions and bodies, as well as former third-pillar instruments such as the Council Framework Decision of November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters. A new comprehensive legal framework on data protection at EU level is currently under discussion (see below under 'Towards a review of EU data protection legislation').

a. Data Protection Directive 95/46/EC

Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data is the central piece of legislation on the protection of personal data in the EU. The directive stipulates general rules on the lawfulness of personal data processing, sets out the rights of the people whose data is being processed and makes provisions for national independent supervisory authorities. The directive stipulates that personal information may only be processed if the person concerned has given his/her explicit consent to, and has been informed in advance of, the data processing. Directive 95/46/EC introduces a number of new concepts, including personal data, processing of personal data, controller, processor, third party, recipient and data subject.

b. Council Framework Decision 2008/977/JHA

Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters regulates data protection in the former third pillar. This is a sector not covered by Directive 95/46/EC, which applies to the processing of personal data in the former first pillar. The Framework Decision only applies to police and judicial data exchanged among Member States, EU authorities and associated systems, and does not include domestic data.

4. The European Data Protection Supervisor and the Article 29 Working Party

The European Data Protection Supervisor (EDPS) is an independent supervisory authority that ensures that the EU institutions and bodies respect their obligations with regard to data protection as they are laid down in the Data Protection Regulation (EC) No 45/2001. The primary duties of the EDPS are supervision, consultation and cooperation. The supervisory competences of the EDPS cover the processing of personal data by the EU institutions and bodies. They do not extend to such processing in the Member States. The EDPS also advises EU institutions and bodies on all matters having an impact on the protection of personal data. The Article 29 Working Party is an independent advisory body on data protection and privacy, set up under Article 29 of the Data Protection Directive. It is composed of representatives from the EU national data protection authorities, the EDPS and the Commission. It issues recommendations, opinions and working documents. The secretariat of the Working Party is provided by the Commission.

5. Towards a review of EU data protection legislation

In the Action Plan of April 2010 implementing the Stockholm Programme, the Commission announced plans for a communication and a legislative proposal concerning data protection. Issued in November 2010, the communication (COM(2010) 0609) paved the way for an overhaul of existing data protection legislation. On 25 January 2012 the Commission published a broad legislative package aimed at safeguarding personal data across the EU, increasing users' control of their data and cutting costs for businesses. Technological progress and globalisation have profoundly changed the way data is collected, accessed and used. In addition, the 27 Member States have implemented the 1995 rules differently, resulting in divergences in enforcement. A single law will do away with the current fragmentation and the costly administrative burdens. This initiative will help reinforce consumer confidence in online services, providing a much-needed boost to growth, jobs and innovation in Europe. The package includes a policy communication on the main political objectives of the reform, a proposal for a general regulation to modernise the principles enshrined in the 1995 Data Protection Directive, a proposal for a specific directive on the processing of personal data in the area of police and judicial cooperation in criminal matters, and a report on the implementation of the 2008 Framework Decision. Parliament and the Council are currently discussing the Commission's

proposals, while taking into account the interests of both citizens and businesses.

Role of the European Parliament

Parliament has always insisted on the need to strike a balance between enhancing security and protecting privacy and personal data. Parliament has adopted various resolutions on these sensitive matters, specifically addressing ethno-racial profiling, the Prüm Council Decision on cross-border cooperation in combating terrorism and cross-border crime, the use of body scanners to enhance aviation security, biometrics in passports and common consular instructions, border management, the internet and data mining. The Lisbon Treaty has introduced more accountability and legitimacy in the AFSJ, thus generalising, with a few exceptions, the Community method, which includes majority voting in the Council and the ordinary legislative procedure (formerly known as co-decision). The former pillar structure has disappeared. The EU Charter of Fundamental Rights is integrated into the Lisbon Treaty and is binding on the institutions and bodies of the EU and on the Member States implementing EU law. As regards international agreements, a new procedure ('consent') has been introduced. The role of Parliament, which was only consulted on matters falling under the former third pillar (that is, police and judicial cooperation in criminal matters), is enhanced with the Lisbon Treaty. Parliament used these powers in February 2010 when it rejected the provisional application of the Terrorist Finance Tracking Programme (TFTP) agreement (previously known as the SWIFT agreement) on transfers of bank data to the US for counter-terrorism purposes. Following the adoption of Parliament's resolution of 8 July 2010, the TFTP agreement entered into force in August 2010. The final wording of the agreement addresses Parliament's key concerns, such as the elimination of 'bulk' data transfers, the prohibition of data mining, the possibility of setting up an EU TFTP mechanism and the definition of a new role for Europol. In July 2011 the Commission adopted a communication on the main options for establishing a European Terrorist Finance Tracking System (TFTS). Parliament has expressed doubts about the proposal, drawing attention to the risks of allowing transfers of data to third countries and of storing the personal data of innocent individuals in bulk.

Another issue of crucial importance for data protection is the Passenger Name Records (PNR) agreement between the EU and the United States on the processing and transfer of PNR data by air carriers to the US Department of Homeland Security. Parliament's action had led to the annulment by the European Court of Justice of an earlier agreement with the US on the transfer of PNR data. To avoid rejection (as happened in the SWIFT case), in May 2010 Parliament decided to postpone its vote so that an acceptable standard PNR model could be devised. Responding to Parliament's request, in September 2010 the Commission adopted a package of proposals on the exchange of PNR data with third countries consisting of an EU external PNR strategy and recommendations for negotiating directives for new PNR agreements with the US, Australia and Canada. Following the consent given by Parliament on 19 April 2012, the Council adopted on 26 April 2012 a decision on the conclusion of the new agreement, which in July 2012 replaced the previous EU-US PNR agreement that had been applied provisionally since 2007.

In February 2011 the Commission tabled a proposal for a directive on the use of PNR data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (EU PNR). One of the main issues at stake is whether the proposed new rules should be limited to the collection of PNR data for flights from and to third countries, or whether PNR data for flights within the EU should also be included. Parliament is currently reviewing the draft directive under the ordinary legislative procedure.

Parliament will be involved in the approval (under the consent procedure) of a legally binding framework agreement with the United States on the exchange of information and data protection. The aim is to ensure a high level of protection of personal information, such as passenger data or financial information, which is transferred in the framework of transatlantic cooperation in the fight against terrorism and organised crime.

On 6 July 2011 Parliament adopted a resolution on a comprehensive approach on personal data protection in the EU in response to a Commission communication of November 2010. In October 2012 Parliament organised an interparliamentary committee meeting with national parliaments on 'the reform of the EU data protection framework'. Parliament is currently reviewing, under the ordinary legislative procedure, the proposals tabled by the Commission in January 2012 on the reform of data protection legislation. Parliament is insisting on a package approach, with parallel activities on the Commission proposals for a general data protection regulation and a directive for the law enforcement sector.

→ Alessandro Davoli

5.13. Culture, education and sport

5.13.1. Culture

The European Union's action in the field of culture supplements Member States' cultural policy in various areas: for example, the preservation of European cultural heritage, cooperation between various countries' cultural institutions, or the promotion of mobility of those working creatively. The cultural sector is also affected by provisions of the treaties which do not explicitly pertain to culture.

Legal basis

EU action for culture is regulated by Article 167 TFEU (ex 151 TEC). It establishes the principles and the current framework concerning policy on culture, including both material content and decision-making procedures. Article 6 TFEU states the EU's competences in the field of culture: 'The Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States'.

The Lisbon Treaty gives greater significance to culture: 'Drawing inspiration from the cultural, religious and humanist inheritance of Europe' is explicitly stated in the preamble to the TEU. One of the EU's key aims, as mentioned in the treaty, is to 'respect its rich cultural and linguistic diversity, and … ensure that Europe's cultural heritage is safeguarded and enhanced' (Article 3 TEU). The Lisbon Treaty introduces an important innovation: the decision-making in the Council will now be treated under qualified majority voting (QMV) as opposed to the former unanimous vote. However, as there is still no possibility of harmonisation of national legislation in the cultural policy area, the QMV rule will apply principally to decisions concerning the format and scope of the funding programmes.

Article 13 of the Charter of Fundamental Rights of the EU stipulates that 'the arts and scientific research shall be free of constraint'. Article 22 lays down that 'the EU shall respect cultural, religious and linguistic diversity'.

Objectives

According to the treaty, the EU shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity, and shall bring the common cultural heritage to the fore. The European Agenda for Culture 2007 acknowledged that culture constitutes an indispensable factor towards achieving the EU's strategic objectives of prosperity, solidarity and security, while ensuring a stronger presence on the international level.

Achievements

A. Policy developments

1. The European Agenda for Culture

In May 2007, the Commission proposed an agenda for culture founded on three common sets of objectives: cultural diversity and intercultural dialogue; culture as a catalyst for creativity; and culture as a key component of international relations. Under the first set of objectives, the EU and all other relevant stakeholders should work together to foster intercultural dialogue to ensure that the EU's cultural diversity is understood, respected and promoted. They should for example seek to enhance the cross-border mobility of artists and workers in the cultural sector and the cross-border dissemination of works of art.

The second set of objectives focuses on the promotion of culture as a catalyst for creativity in the framework of the Lisbon strategy for growth and jobs and its follow-up, EU 2020.

The promotion of culture as a vital element in the Union's international relations is the third set of objectives. As a party to the Unesco Convention on the Protection and the Promotion of the Diversity of Cultural Expressions, the EU is committed to developing a new and more active cultural role for Europe in international relations and to integrating the cultural dimension as a vital element in Europe's dealings with partner countries and regions.

2. Intercultural dialogue

Intercultural dialogue is an ongoing priority of the EU. With the entering into force of the Lisbon Treaty, this dimension becomes even more significant. In the specific area of culture policy, initiatives such as the one on Roma culture, intercultural cities, or the dialogue with the Platform on Intercultural Europe

are in the spotlight in this field. Other EU policies promoting intercultural dialogue: the audiovisual sector, multilingualism, youth, research, integration and external relations, to name but a few.

B. Action programmes

1. Culture Programme (2007-2013)

The EU's Culture Programme (2007-2013) aims to promote the transnational mobility of people working in the cultural sector, encourage the transnational circulation of artistic and cultural works and products and promote intercultural dialogue. It has an overall budget of EUR 400 million for projects and initiatives to celebrate Europe's cultural diversity and enhance our shared cultural heritage through the development of cross-border cooperation between cultural operators and institutions. The future of the EU's next Multiannual Financial Framework (MFF) from 2014 will constitute the next important challenge for cultural policy in the EU. The process of setting up the next generation of EU programmes has already begun.

2. The European Capitals of Culture (ECoC)

The year 2010 marked the 25th anniversary of the European Capitals of Culture (ECoC). The initiative has become one of the most sustained and ambitious cultural initiatives in Europe, both in scope and scale. Over the years, the ECoC have also become a unique opportunity to regenerate cities, to boost their creativity and to improve their image. More than 40 cities have been designated ECoC so far, from Stockholm to Genoa, Athens to Glasgow, and Cracow to Porto. The Council of the EU is the only institution that can award the title of ECoC. From 2011 onwards, two cities — from two different EU countries — are ECoC each year (in 2013 Marseille and Košice). The procedure for choosing a city starts around six years in advance, though the order of Member States entitled to host the event is fixed before then and is organised in two stages. It involves a panel of independent experts in the cultural field responsible for assessing the proposals.

3. The prizes

The Culture Programme supports the awarding of prizes in the fields of cultural heritage, architecture, literature and music. The objective of these EU prizes is to highlight the excellent quality and success of European activities in these sectors. The prizes put the spotlight on artists, music groups, architects, authors and those working in the field of cultural heritage and on their work. In doing so, they showcase Europe's rich cultural diversity and the importance of intercultural dialogue and cross-border cultural activities in Europe and beyond.

4. Artists' mobility

The transnational mobility of artists and cultural professionals is of major importance in helping to make a common 'European cultural area' a reality, and to bring about cultural diversity and intercultural dialogue. Artists and cultural professionals need to travel beyond borders to extend their scope of activities and meet new audiences, to find new and inspiring sources of inspiration to make their creations evolve, and to exchange experiences and learn from each other with a view to developing their careers. The transnational mobility of artists and culture professionals has been a priority of the Culture Programme since 2000. It has been further reinforced as one of the three specific objectives of the Culture Programme for the period 2007-2013, as a means of enhancing the cultural area shared by Europeans and encouraging active European citizenship.

5. Cultural policy for 2014-2020

For the next Multiannual Financial Framework[1] (MFF) for 2014-2020, the Commission has proposed a new Creative Europe Programme[2] which would replace the three EU funding strands: Culture; MEDIA; MEDIA Mundus and CCIs — Cultural and Creative Industries. Proposals for culture and media represent an increase of 37% and a total budget of EUR 1.6 billion, compared with 1.2 billion under the current Multiannual Financial Framework. The programme envisages the creation of 'one-stop-shop' for all cultural and creative industries, with strands for Culture and MEDIA focusing on the respective sectors and their specific needs. A new feature of the programme will be an innovative financial instrument run by the European Investment Bank in order to support access to finance the CCIs.

According to the proposal, this framework programme will provide 'a simple, recognisable and easily accessible gateway for European cultural and creative professionals' and 'enable synergies and cross-fertilisation across the different cultural and creative sectors'.

Role of the European Parliament

With the Lisbon Treaty, the EP saw its powers reinforced and in its resolutions has called for budgetary resources for culture to be increased, for

[1] See related documents: A Budget For Europe 2020 — Part I (http://ec.europa.eu/budget/library/biblio/documents/fin_fwk1420/MFF_COM-2011-500_Part_I_en.pdf); A Budget for Europe 2020 — Part II — Policy Fiches (http://ec.europa.eu/budget/library/biblio/documents/fin_fwk1420/MFF_COM-2011-500_Part_II_en.pdf); Commission Staff Working Paper (http://ec.europa.eu/budget/library/biblio/documents/fin_fwk1420/SEC-868_en.pdf).

[2] Communication on the Creative Europe Programme (http://ec.europa.eu/culture/creative-europe/documents/communication_en.pdf).

the situation of those working in the field of culture to be improved and for Europe's cultural heritage to be more appreciated. With regard to artistic creation, the EP is in favour of giving the Member States the option of applying reduced VAT rates to a wider range of services and goods such as recorded music and films, provided that this does not affect the functioning of the internal market. Within Europe, there are still a lot of obstacles which hinder the free movement of creative people and of cultural products and activities, even within the digital environment. The EP has called for a regulatory framework for mobile artists to deal with tax and social security problems.

The EP has also considered the specific nature of cultural industries on various occasions. In a report of May 2011 on 'unlocking the potential of cultural and creative industries' (T7-240/2011), the EP welcomes the fact that cultural industries have gained stronger recognition at the European level, and made their way into current political agendas. The report stresses, among other things, the role of education in the arts, and the importance of linguistic diversity when it comes to the distribution of cultural works. A noteworthy initiative of the EP in this regard is the LUX prize. It is awarded to European films aiming at strengthening the debate on European integration and facilitating distribution of European films in Europe. The prize finances the subtitling of the winning film into all 23 EU official languages. The EP thus shows its commitment to concrete action in order to promote cultural diversity and mutual understanding among EU citizens.

In January 2013, the CULT Committee adopted a report (A7-0011/2013) on the proposal for a regulation on establishing the Creative Europe Programme. Final agreement on the concrete form of the programme between the Council and EP is still due.

→ Ana Maria Nogueira / Markus J. Prutsch

5.13.2. Audiovisual and media policy

Audiovisual policy in the EU is mainly governed by Articles 167 and 173 of the Treaty on the Functioning of the European Union (TFEU). The key piece of legislation for audiovisual policy is the Audiovisual Media Services Directive, which entered into force in December 2007. The main Community instrument to help the industry (especially the film industry) will be the Creative Europe programme. The Charter of Fundamental Rights of the European Union states that the 'freedom and pluralism of the media shall be respected'.

Legal basis

The legal basis is contained in the TFEU in the form of Articles 28, 30, 34, 35 (free movement of goods); 45–62 (free movement of persons, services and capital); 101–109 (competition policy); 114 (technological harmonisation, or the use of similar technological standards, for instance, in internet productions); 165 (education); 166 (vocational training); 167 (culture); and 173 (industry).

The Treaty of Rome did not provide for any direct powers in the field of audiovisual and media policy, nor does the TFEU. Jurisdiction over media policy is rather drawn from various articles within the TFEU in order to construct policies for the various media and communication technology sectors and to provide direction on basic features that underscore media policy. In recent years, however, direct attention has been given in treaty revisions to shaping audiovisual policy. The legal bases for the construction of audiovisual and media policy are therefore varied and draw on multiple sources. This is a necessity arising from the complex nature of media goods and services, which can be defined neither solely as cultural goods nor simply as economic goods.

Objectives

According to Article 167 TFEU, the EU encourages cooperation between Member States and, if necessary, supports and supplements their action in the area of artistic and literary creation, including the audiovisual sector. The EU's role in the audiovisual field is to create a single European market for audiovisual services. It is also required to take cultural aspects into account in all its policies.

Achievements

EU audiovisual and media policy is implemented in the following ways.

A. Regulatory framework

1. The Audiovisual Media Services Directive (AVMSD)

The revision of the 'Television without frontiers' (TVwF) Directive (89/552/EEC) was launched in 2005 to take account of technological developments in the sector, in particular the convergence between services and technology (in the sense that traditional distinctions between telecommunications and broadcasting are becoming increasingly blurred), as well as the increasing importance of non-linear services such as 'video on demand' (VoD). A common regulatory environment was therefore required to cover all such services and not just broadcasting — now known as 'audiovisual media services' — irrespective of the technology used to carry them or how they are viewed. The main elements are:

- a comprehensive framework that reduces the regulatory burden yet covers all audiovisual media services;
- modernised rules on television advertising that improve the financing of audiovisual content;
- new features such as an obligation to encourage media service providers to improve access for people with visual or hearing impairments.

The European Commission submitted its first report on the application of the AVMS Directive on 4 May 2012. The report showed that while the AVMS Directive is working, internet-driven changes such as Connected TV could blur the boundaries between broadcasting and over-the-top delivery of audiovisual content. As a result, the current regulatory framework set out in the AVMSD may need to be tested against evolving viewing and delivery patterns, taking into account related policy goals such as consumer protection and the level of media literacy.

Consequently, on 24 April 2013 the Commission published a Green Paper, 'Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values', with the aim of stimulating a broad, public discussion on the implications of the ongoing transformation of the audiovisual media landscape, characterised by a steady increase in the convergence of media services, and on the way in which these services are consumed and delivered.

The Directive contains specific rules to protect minors, and protects them from inappropriate on-demand media audiovisual services. These rules are supplemented by the 1998 and 2006 recommendations on the protection of minors and human dignity. The 'Safer Internet' programme

promotes safer use of the internet and new online technologies, particularly for children.

2. European film heritage

The EU aims to encourage its Member States to cooperate in the conservation and safeguarding of cultural heritage of European significance (Article 167 TFEU). The recommendation to Member States relating to film heritage is for Europe's film heritage to be methodically collected, catalogued, preserved and restored so that it can be passed on to future generations. EU Member States are asked to report every two years on what they have done in this connection.

B. Funding programmes such as Creative Europe

From 2014 Creative Europe replaces the MEDIA, MEDIA Mundus and Culture programmes. With a total budget of EUR 1.46 billion (2014–2020), Creative Europe represents a budget increase of 9% compared to the previous programmes.

Creative Europe builds on the successes of the previous programmes. The aim is to further strengthen cross-border cooperation between the creative sectors within the EU and beyond. Through Creative Europe the cultural and creative sectors will contribute to cultural diversity as well as to growth and jobs in Europe in line with the Europe 2020 strategy for smart, sustainable and inclusive growth.

Sub-programmes

Creative Europe continues to address the audiovisual industry, through the MEDIA sub-programme, and the cultural sector, through the Culture sub-programme. As MEDIA, funding will continue for training, development, distribution, sales agents, promotion (markets and festivals) and cinema networks. In addition, Creative Europe features a common cross-sectoral strand that includes a new financial Guarantee Fund for cultural and creative industries that will be initiated after 2014.

Budget

Creative Europe is a part of the Multiannual Financial Framework (MFF) which sets the parameters for the overall budget of the Union for the period 2014–2020. By agreement, at least 56% of the budgetary allocation are to be set aside for the MEDIA sub-programme, at least 31% for the Culture sub-programme and at most 13% for the cross-sectoral strand. The cross-sectoral strand will include the Guarantee Fund as well as support for the Creative Europe Desks (which in 2014 will replace the MEDIA Desks and Cultural Contact points) and for transnational policy cooperation. Gradually, specific cross-sectoral actions will also be introduced.

The MEDIA programme has supported the development and distribution of thousands of films, as well as training activities, festivals and promotional projects, throughout Europe over the past 22 years. The MEDIA 2007 programme (2007–2013) was the fourth multiannual programme since 1991.

The MEDIA Mundus programme was a broad international cooperation programme for the audiovisual industry which is intended to strengthen cultural and commercial relations between Europe's film industry and film-makers from third countries.

MEDIA International (the preparatory action) aimed to explore ways of reinforcing cooperation between European and third-country professionals from the audiovisual industry on a basis of mutual benefit. It also aimed to encourage a two-way flow of cinematographic/audiovisual works.

C. Other measures such as promoting the online distribution of content, media literacy and media pluralism

Media literacy is the ability to access the media, to understand and to critically evaluate different aspects of the media and media content and to communicate in a variety of contexts. It is a fundamental skill not only for the younger generation but also for adults, including the elderly and parents, teachers and media professionals. The EU considers media literacy to be an important factor for active citizenship in today's information society.

Media pluralism calls forrefers to the need for transparency, freedom and diversity in Europe's media landscape. At the beginning of 2012 the EU established the Centre for Media Pluralism and Media Freedom (CMPF) at the Robert Schuman Centre for AdvancesAdvanced Studies, a research initiative within the European University Institute in Florence, with the co-funding from the European Union. This initiative The CMPF is a further step in the European Commission's on-goingCommission's continuing effort to improve the protection of media pluralism and media freedom in Europe, and to establish whatdetermine the actions that need to be taken at European or national levelslevel to foster these objectives.

Action outside the EU, especially defending European cultural interests within the World Trade Organisation.

The audiovisual sector is facing challenges and opportunities brought about by the increasing internationalisation of markets and technological advances in information and communication technologies (ICTs). The international dimension of audiovisual policy has an impact on what happens at EU level and in the Member States. It covers five main areas:

- EU enlargement;
- European Neighbourhood Policy;

- trade relations, the relevant international forums in this area being the World Trade Organisation and the Organisation for Economic Cooperation and Development;
- promotion of cultural diversity (Unesco);
- cooperation in audiovisual policy..

D. Other initiatives

These include Europe Day at Cannes and Film Online. Since 1995, 'Europe Day' at the Cannes Film Festival has focused on promoting European film production. A 'New talent in the EU' award was introduced in 2004 in order to publicise young European directors who have followed MEDIA-sponsored training. 2011 was a special year for MEDIA, as the 20th anniversary of this programme was celebrated in Cannes from 11 to 22 May, and 20 films selected by the festival that year had received support from it. During the Cannes Film Festival, the programme is presented at the Cannes Film Market in a European Pavilion and at a 'European Rendez-vous'.

Role of the European Parliament

The European Parliament has emphasised that the EU should stimulate the growth and competitiveness of the audiovisual sector whilst recognising its wider significance in safeguarding cultural diversity. Its resolutions in the 1980s and early 1990s on television repeatedly called for common technical standards for direct broadcasting by satellite and for HDTV.

1. From the TVwF Directive to the AVMSD

The first attempts to shape an EU audiovisual policy were triggered by the development of satellite broadcasting in the early 1980s. Following the adoption of the TVwF Directive in 1989, technological and market developments made it necessary to amend the audiovisual regulatory framework. This was revised in 1997 and 2007, with the latter revision renaming the directive the Audiovisual Media Services Directive (AVMSD) before it was codified in 2010 (mainly by changing the numbering of the articles and providing a consolidated set of recitals). Parliament has strongly supported the TVwF Directive since its adoption.

2. Audiovisual Media Services Directive (AVMSD)

In November 2007, Parliament approved the AVMSD Directive. The directive on audiovisual media services is considered to be a modernisation of the TVwF Directive and also covers new media services such as web TV and on-demand services. Its approval was the outcome of negotiations between Parliament and the Council that took into account most of the concerns raised in Parliament's first reading. The Member States had two years to transpose the new provisions into national law, and the modernised legal framework for audiovisual business has applied since the end of 2009.

On 22 May 2013 Parliament adopted its report on the implementation of the AVMS Directive. In it, Parliament presents several observations and recommendations, in particularly as regards accessibility, promotion of European audiovisual works, protection of minors, advertising, future challenges and international competition.

In its own-initiative report on Connected TV, adopted on 10 June 2013, Parliament called on the Commission to evaluate the extent to which it is necessary to revise the AVMS Directive, and other current requirements laid down in the network and media regulations (e.g. the telecommunications package), with respect to the rules on findability and non-discriminatory access to platforms for content providers and content developers, as well as for users, expanding the concept of platforms, and to adapt the existing instruments to new constellations, particularly in view of the development of Connected TV.

→ Miklós Györffi
11/2013

5.13.3. Education and vocational training

In education and vocational training policies, decision-making takes place under the ordinary legislative procedure. In accordance with the subsidiarity principle, education and training policies are as such decided by each European Union (EU) Member State. The role of the EU is therefore a supporting one. However, some challenges are common to all Member States — ageing societies, skills deficits in the workforce, and global competition — and thus need joint responses with countries working together and learning from each others[1].

[1] (*5.13.4).

Legal basis

While vocational training was identified as an area of Community action in the Treaty of Rome in 1957, education was formally recognised as an area of EU competency in the Maastricht Treaty in 1992. The treaty states that '[t]he Community shall contribute to the development of quality education by encouraging co-operation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity.'

The Treaty of Lisbon did not change the provisions on the role of the EU in education and training (Title XII, Articles 165 and 166). However, there are new features worthy of mention: for instance the Treaty of Lisbon contains a provision which has been described in the literature as a horizontal 'social clause'. Article 9 of the Treaty on the Functioning of the European Union (TFEU) states that '[i]n defining and implementing its policies and actions, the Union shall take into account requirements linked to the promotion of [...] a high level of education [and] training.'

Moreover, the Charter of Fundamental Rights of the EU, which has the same legal value as the treaties (Article 6 TEU), states that '[e]veryone has the right to education and to have access to continuing and vocational training' (Article 14) and that '[e]veryone has the right to engage in work and to pursue a freely chosen or accepted occupation' (Article 15).

Objectives

A. Objectives pursuant to the Treaty on the Functioning of the European Union

In defining and implementing its policies and actions, the Union must take account of requirements linked to the promotion of a high level of education and training. Thus, the EU's long-term strategic objectives on education and training are:

- making lifelong learning and mobility a reality;
- improving the quality and efficiency of education and training;
- promoting equity, social cohesion and active citizenship;
- enhancing creativity and innovation, including entrepreneurship, at all levels of education and training.

B. Current priorities on education and training

Education and training policy has gained particular momentum with the adoption of the Europe 2020 strategy, the EU's overarching programme focusing on growth and jobs. Recognising that lifelong learning is key to jobs, growth and the participation of everyone in society, Member States and the Commission strengthened their political cooperation in 2009 through the Education and Training 2020 (ET 2020) strategic framework, a follow-up to the earlier Education and Training 2010 work programme launched in 2001. According to the Joint Progress Report of the Council and the Commission on the implementation of the Education and Training 2010 work programme (January 2010), there has been a general improvement in education and training performance in the EU. However, the majority of the benchmarks set for 2010 have not yet been reached. A new set of benchmarks for 2020 has thus been agreed upon by all Member States:

- at least 95% of children between four years and the age for starting compulsory primary education should participate in early childhood education;
- the number of 15-year-olds with insufficient abilities in reading, mathematics and science should be less than 15%;
- the number of early leavers from education and training should be less than 10%;

- the number of 30-34-year-olds with tertiary educational attainment should be at least 40%;
- an average of at least 15% of adults (aged between 25 and 64) should participate in lifelong learning.

The ET 2020 strategic framework includes the Copenhagen Process on cooperation in the area of vocational education and training. And in a wider setting, the EU also supports the priorities of the Bologna Process, which works towards greater coherence in university-level studies and the European Higher Education Area launched in 2010. Finally, the European Institute of Innovation and Technology (EIT) is the first EU initiative to fully integrate the three sides of the 'knowledge triangle' (education, research, innovation) and will seek to stand out as a world-class reference model, inspiring and driving change in existing education and research institutions (for detailed information on Higher Education, please refer to *5.13.4).

Moreover, five of the Europe 2020 flagship initiatives depend on the modernisation of education and training systems: Youth on the Move, Agenda for New Skills and Jobs, Digital Agenda, Innovation Union and Platform Against Poverty.

C. Youth on the Move

In September 2010, the Commission launched a communication entitled 'An initiative to unleash the potential of young people to achieve smart, sustainable and inclusive growth in the EU'. Youth on the Move is a framework agenda which announces 28 key new actions, reinforcing existing activities and ensuring the implementation of others at EU and national level, while respecting the subsidiarity principle. Candidate countries should also be able to benefit from this initiative. It will harness the financial support of the relevant EU programmes on areas such as education, youth and learning mobility. Youth on the Move comprises 28 key actions and concrete measures to increase the education and training of young people through mobility and to ease their transition from education into the labour market. All existing programmes will be reviewed in order to develop a more integrated approach in support of Youth on the Move. This new initiative will be implemented in close cooperation with the flagship initiative

D. Lifelong Learning Programme

Since 2007 the various EU education and training initiatives have been integrated under a single umbrella, the Lifelong Learning Programme (LLP). The objective of the programme is to enable individuals at all stages of their lives to pursue stimulating learning opportunities across Europe. It consists of four sub-programmes: Comenius (for schools), Erasmus (for higher education), Leonardo da Vinci (for vocational education and training) and Grundtvig (for adult education). A transversal programme complements these four sub-programmes, to ensure that they achieve the best results. It supports policy cooperation, languages, information and communication technologies and effective dissemination and exploitation of project results. The Jean Monnet Programme stimulates teaching, reflection and debate on the EU integration process at higher education institutions worldwide. The EU's work on education and training follows a twin-track approach of policy cooperation with EU Member States on the one hand and the implementation of the LPP on the other hand. In practice, policy cooperation means that the Commission supports, develops and implements lifelong learning policies with the aim of enabling countries to work together and to learn from each other, with a major emphasis on mobility. It does so through the 'open method of coordination', while respecting the full competencies of Member States in education and training. There are several related initiatives (mobility and lifelong learning instruments) to help make qualifications, experience and skills better appreciated and easier to recognise throughout the EU. The aim is to give greater access to learning or employment opportunities in different countries and to encourage greater mobility for individuals, businesses and other organisations.

E. The Erasmus+ Programme (2014-2020)

For the period 2014-2020, the Commission has proposed a single programme, entitled Erasmus + (the title originally proposed was Erasmus for All)[1], that will encompass the current Lifelong Learning Programme, Youth in Action and Erasmus Mundus. Compared to the 2007-2013 Multiannual Financial Framework (MFF), the total budget proposed for the education sector is higher. This funding will be complemented by support through the structural funds, mainly the European Social Fund, which constitutes by far the biggest financial contribution from the EU budget to investment in people[2].

The future programme will consolidate the range of individual programmes currently in operation, while maintaining the specific brand identities of the various sectors. The overall budget will

[1] Parliament rejected the title originally proposed, considering it to be misleading in terms of both the content of the programme and the accessibility of mobility assistance.

[2] For example, in the period 2007-2013 some EUR 72.5 billion were invested in education and training across Europe's regions and similar levels of investment can be expected in future.

improve upon the current level of EU support for programmes in the areas of education and training.

Role of the European Parliament

Parliament has always supported close cooperation between Member States in the fields of education and training and enhancing the European dimension in Member States' education policies. It has, therefore, been an advocate for the establishment of a solid legal basis for education and training.

On 11 September 2012 Parliament adopted a resolution on education, training and Europe 2020 in response to the Commission Communication entitled 'Education and training in smart, sustainable and inclusive Europe'. It notes that despite some improvement in education and training, for the majority of the EU population lifelong learning (LLL) is still not a reality. In fact, certain indicators give cause for concern, such as the still alarmingly high rate of early school leavers in some Member States. On the assumption that economic growth must be based, as a matter of priority, on education, knowledge, innovation and appropriate social policies so as to ensure that the EU emerges from the current crisis, it seems all the more important to implement the policies in this sphere properly within the EU 2020 strategy framework, in order to overcome this critical period.

Parliament has worked successfully to secure an increase in the budget resources available for existing programmes in the field of education and training, and has been a keen advocate for shifting the priorities of EU funding in the next MFF to what is regarded as more future-oriented expenditure by, for example, demanding clear budgetary allocations for education and training, youth, sport and Jean Monnet Programme activities. In negotiating the MFF for 2014-2020, the fact that Parliament was for the first time on an equal footing with the Council gave it a strong bargaining position in the debates on the next series of culture and education programmes, in particular the Erasmus+ Programme, for the period 2014-2020[1].

→ Ana Maria Nogueira
11/2013

[1] On the legislative process see http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2011/0371(COD)

5.13.4. Higher education

Following the principle of subsidiarity, higher education policies in Europe are essentially decided at the level of the individual EU Member States. Therefore, the role of the EU — as in education, vocational training, youth and sport policies in general — is mainly in a supporting and partly coordinating capacity. While any harmonisation of laws and regulations of the Member States is explicitly excluded the EU can take action in accordance with the ordinary legislative procedure and by means of incentive measures. In addition, the Council can adopt recommendations on a proposal from the Commission. The main objectives of Union action in the field of higher education include: supporting mobility of students and staff, fostering mutual recognition of diplomas and periods of study, promotion of cooperation between higher-education institutions and the development of distance (university) education.

Legal basis

Education — and in this context also higher education — was formally recognised as an area of EU competency in the Maastricht Treaty of 1992. The Treaty on European Union (TEU) stipulated in Title VIII, Article 126(1) that: 'the Community shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity'[1]. This stipulation was later included verbatim in the Treaty of Nice, which entered into force on 1 January 2003[2], and also forms an integral part of the Lisbon Treaty, serving as the constitutional basis of the EU since 1 January 2009[3].

While the Lisbon Treaty has not changed the role of the EU in (higher) education as such, it has, however, provided for an amplified status of this policy area and a potentially greater role for the EU than before. This is through what has been described as a horizontal 'social clause' in the pertinent literature, with Title II, Article 9 of the Treaty on the Functioning of the European Union (TFEU) stating that 'in defining and implementing its policies and actions, the Union shall take into account requirements linked to the promotion of [...] a high level of education [and] training'. The eminence of (higher) education as a concern for European politics is further corroborated in Title II, Article 14 of the Charter of Fundamental Rights of the EU which enjoys the same legal value as the Treaties, guaranteeing a 'right to education'[4].

Objectives

A. Objectives Pursuant to the Treaties of the European Union

Based on the EU's long-term commitment to making lifelong learning and mobility a reality, improving both quality and efficiency of education and training, and enhancing creativity and innovation, Article 165(2) TFEU specifically enumerates the objectives of Union action in the field of Education, Vocational Training, Youth and Sport. The following aims are of particular relevance to the field of higher education:

- developing a European dimension in education;
- encouraging mobility of students and teachers, by encouraging *inter alia* the academic recognition of diplomas and periods of study;
- promoting cooperation between educational establishments;
- developing exchanges of information and experience on issues common to the education systems of Member States; and
- encouraging the development of distance education.

B. Current Priorities on Education and Training

The Europe2020 strategy has raised European political interest in higher education[5]. Focused on 'smart', 'sustainable' and 'inclusive' growth, the

[1] See OJ C 191, 29.7.1992 (http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html).

[2] See Consolidated Version of the Treaty Establishing the European Community (TEC; OJ C 325, 24.12.2002, pp. 33-184; http://eur-lex.europa.eu/en/treaties/dat/12002E/pdf/12002E_EN.pdf), Chapter 3, Article 149(1).

[3] See Consolidated Version of the Treaty on the Functioning of the European Union (TFEU; OJ C 115, 9.5.2008, p. 47-199; http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:EN:PDF), Title XII, Article 165(1). While otherwise keeping exactly the same wording as the former Article 149(1) TEC, Article 165(1) TFEC solely adds an additional reference to sport in a separate paragraph.

[4] See especially Article 14(1): 'Everyone has the right to education and to have access to continuing and vocational training'.

[5] See the Europe 2020 strategy paper, published in March 2010: COM(2010) 2020 final (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:2020:FIN:EN:PDF). For additional information see the European

goals of Europe 2020 are planned to be achieved through more effective investment in education, research and innovation. Among the key targets is a considerable increase in the number of young people completing third-level education (at least 40% of 30-34 year-olds by 2020)[1]. This ambitious goal had been pre-formulated in the Education and Training 2020 (ET 2020) strategic framework passed by the European Council in May 2009, that builds on its predecessor, the Education and Training 2010 (ET 2010) work programme, and provides common strategic objectives for Member States, including a set of principles for achieving these objectives[2]. In addition to th Member States' own political initiatives, the EU actively supports the priorities of the Bologna Process, which since its inception in 1999 has worked towards more comparable, compatible and coherent systems of higher education in Europe, culminating in the creation of the European Higher Education Area (EHEA) with the Budapest-Vienna Ministerial Conference Declaration of March 2010.

Achievements

A. Erasmus

Within the Lifelong Learning Programme (LLP) 2007-2013 that integrates the EU's educational and training initiatives, Erasmus — supporting exchanges of students and staff, as well as cooperation between institutions — is the sub-programme dedicated to Higher Education[3]. Launched in as early as 1987, Erasmus has not only become the largest student exchange programme in the world, but can also reasonably claim to be one of the most successful EU initiatives and best known European brand name. Termed as a 'European success story' not only by the Commission, the number of those profiting from the Erasmus mobility scheme has consistently increased, reaching around 213 000 students and 43 000 staff coming from no less than 3 174 higher education institutions in the academic year 2010-2011[4]. By the end of the programme period in 2013, close to three million students will have participated since 1987, as well as over 300 000 higher education teachers and staff since 1997. The current annual budget for the programme is in excess of EUR 450 million.

B. International Cooperation in Higher Education

The EU's support of international education and training activities, which is an essential part of the Union's international policies and of increasing importance, is mainly focused on higher education. The four main goals defined by the Commission are:

- to support partner countries outside the EU in their modernisation efforts;
- to promote common values and closer understanding between different peoples and cultures;
- to advance the EU as a centre of excellence in education and training; and
- to improve the quality of services and human resources in the EU through mutual learning, comparison and exchange of good practices[5].

The EU's international cooperation programmes in higher education include:

- Erasmus Mundus, enhancing higher education on a global scale (joint European Masters' and doctoral programmes, including scholarships; partnerships with non-European higher education institutions; and projects to promote European higher education internationally);
- Jean Monnet, promoting teaching and research on European integration;
- Tempus, mainly aimed at capacity-building and the modernisation of higher education in neighbouring countries in South-East Europe, Eastern Europe and the Mediterranean;
- cooperation with industrialised countries, enhancing higher education through joint study programmes;
- Edulink, capacity-building and regional integration in higher education in the ACP (Africa, Caribbean and Pacific) region;
- ALFA, supporting cooperation between higher education institutions in the EU and Latin America.

C. The Erasmus+ Programme (2014-2020)

Originally presented by the Commission on 23 November 2011[6] and designed for the EU's

Commission's website (http://ec.europa.eu/europe2020/index_en.htm).

[1] The second key target in the field of (higher) education is reducing the rates of early school leavers below 10%.

[2] See OJ C 119, 28.5.2009, pp. 2-10 (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:119:0002:0010:EN:PDF). Annex I, outlining the envisaged 'European benchmarks', states with regard to higher education: 'Given the increasing demand for higher education attainment, and whilst acknowledging the equal importance of vocational education and training: By 2020, the share of 30-34 year olds with tertiary educational attainment should be at least 40%.' Ibid., p. 7.

[3] For an overview see http://ec.europa.eu/education/lifelong-learning-programme/erasmus_en.htm

[4] For detailed data see European Commission (2012), The Erasmus Programme 2010-2011: A Statistical Overview (http://ec.europa.eu/education/erasmus/doc/stat/1011/report.pdf). Here: p. 11.

[5] See http://ec.europa.eu/education/external-relation-programmes/overview_en.htm

[6] See COM(2011) 788 final (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0788:FIN:EN:PDF). The proposed regulation is accompanied by

next multiannual financial framework 2014 to 2020, the central aim of Erasmus+ is to invest in Europe's education, training and youth through a single integrated programme. The future programme combines previously separate programmes in the fields of: higher education (Erasmus, Erasmus Mundus, Tempus, bilateral programmes with other countries or continents), school education (Comenius), vocational education and training (Leonardo da Vinci), adult education (Grundtvig), youth (Youth in Action), and European integration studies (Jean Monnet). In addition, grassroots sports are included for the first time. Erasmus+ aims to restructure and streamline activity around three key actions across the targeted sectors:

- learning mobility of individuals;
- cooperation for innovation and good practice; and
- support for policy reform.

Not only does the architecture of the new integrated programme differ considerably from that of its predecessors, but its scope, too, is designed to be significantly wider. According to the Commission's estimates, Erasmus+ will allow approximately 4 million individuals to benefit from mobility opportunities over the period 2014-2020. Of these, about 2 million are expected to be higher education students, and some 200 000 are expected to take advantage of the new loan scheme to complete a full Master's degree abroad. Nearly 800 000 participants are expected to be mobile teachers, trainers and other education/training staff or youth workers[1]. The envisaged scope of Erasmus+ goes hand in hand with a considerable increase in the budget for the programme, with the total agreed on in the negotiations between Parliament, the Council and the Commission amounting to EUR 14.77 billion (in current prices; originally, the Commission had proposed a budget of EUR 17.299 billion)[2]. Despite the overarching architecture of Erasmus+, higher education assumes a central role in the programme. This is reflected not only in its name, but also in the financial resources made available, with a minimum of 33.3% of the total budget being earmarked for higher education. On top of that, 3.5% of the total budget is allocated to the future Student Loan Guarantee Facility and 1.9% to the Jean Monnet Action. Additional funding to promote the international dimension of higher education will be provided under different external instruments (Development Cooperation Instrument, European Neighbourhood Instrument, Partnership Instrument for cooperation with third countries and t Instrument for Pre-accession Assistance)[3]. Thus, higher education has been and continues to be by far the most important education sector funded by the EU.

Role of the European Parliament

Given the limited competences of the EU in the field of (higher) education, Parliament's role has mainly been to foster close cooperation between Member States and increase European dimensions wherever possible. Going hand in hand with its increasing political importance over recent decades and facilitated not least by the general Europeanisation tendencies following on from the Bologna Process, Parliament has managed to exert growing influence on the shaping of higher education policies in Europe.

Parliament has successfully worked for an increase of the budget available for existing programmes in the field of (higher) education, including Erasmus and Erasmus Mundus, and it has been a keen advocate for shifting the priorities of EU funding in the next Multiannual Financial Framework (MFF) to what is considered to be more future-oriented expenditure, such as in the field of higher education. The fact that Parliament was, for the first time, on an equal footing with the Council in negotiating the MFF for 2014 to 2020 provided for a strong bargaining position in the debates on the next series of (culture and education) programmes for the period 2014 to 2020, in particular Erasmus+[4].

→ Markus J. Prutsch 11/2013

a Commission communication, explaining the new programme (see COM(2011) 787 final; http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0787:FIN:EN:PDF) and a Commission Staff Working Paper (5 volumes) dealing with the impact assessment of Erasmus for All on the relevant policy areas (see SEC(2011) 1402 final; http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2011/sec_2011_1402_en.pdf).

[1] See COM(2011) 787 final, Section 3.2, p. 6-9.

[2] See T7-0460/2013. The plenary vote in the European Parliament took place on 19 November 2013.

[3] The allocation of that funding will only be determined in the multiannual indicative programming of these external instruments.

[4] On the legislative process see http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2011/0371(COD)

5.13.5. Youth

Youth is a national policy area. At European level youth policy is one area where the decision-making is done by the ordinary legislative procedure. Several European programmes encourage exchanges of young people within the EU and with third countries.

Legal basis

Articles 165 and 166 TFEU. The inclusion of 'youth' as a concept in European policy is a relatively recent phenomenon; it was mentioned for the first time in 1993 with the Treaty of Maastricht. Article 165 TFEU (former Article 149 TEC) provides for youth exchanges and exchanges between socioeducational instructors. Action to promote vocational training under Article 166 (former Article 150 TEC) also expressly includes young people. Action falling within the scope of Articles 165 and 166 is subject to the ordinary legislative procedure. In the field of youth policy there is no provision for harmonising Member States' legislation. Rather, the Council mostly adopts recommendations here.

The Lisbon Treaty adds to the tasks of the Union in relation to young people that of promoting participation by young people in democracy in Europe (Article 165 TFEU). Attention is also drawn to the Charter of Fundamental Rights of the EU. It includes an article on children's rights (Article 24) and an article forbidding child labour and providing for protection of young people in the workplace (Article 32). With the entry into force of the treaty, the Charter of Fundamental Rights has now the same legal value as the treaties (Article 6 TEU).

Objectives

The treaty article on young people is explicitly aimed at encouraging the development of youth exchanges and exchanges of youth workers. With the TFEU, the promotion of increased participation by young people in democratic life in Europe has been added to the objectives. In addition to this article, children and young people benefit from EU objectives in other fields, such as education and training and health, or in relation to the rights and protection of children and young people.

Achievements

Before 2001, the activities of the European institutions in the youth field mainly focused on the consideration and implementation of specific programmes, such as 'Youth for Europe', launched in 1988. However, a consensus remained that this action and cooperation needed to be built on further and that young people themselves needed to be more involved. The White Paper on Youth adopted in November 2001 contained a proposal to the EU's Member States to increase cooperation in four youth priority areas: participation, information, voluntary activities and a greater understanding and knowledge of youth. The White Paper proposed to take the youth dimension more into account and promote young people's participation when developing other relevant policies, such as education and training, employment and social inclusion, health and anti-discrimination. On the basis of the White Paper, the Council of the European Union in June 2002 established a framework for European cooperation in the field of youth. Later, in November 2005, the framework was updated to take into account the European Youth Pact.

A. Action programmes

1. The EU youth strategy 2010-2018

In April 2009, the Commission presented communication entitled 'An EU Strategy for Youth — Investing and Empowering. A renewed open method of coordination to address youth challenges and opportunities'. The new strategy invites both the Member States and the Commission, in the period 2010-2018, to cooperate in the youth field by means of a renewed open method of coordination. The strategy invites all Member States to organise a permanent and regular dialogue with young people. Furthermore, it encourages a more research and evidence-based youth policy. In November 2009, the EU Council of Youth Ministers, composed of representatives of the 27 Member States, adopted a resolution on a renewed framework for European cooperation in the youth field for the next decade. It is based on the Commission's communication of April 2009 on an 'An EU Strategy for Youth — Investing and Empowering'. The new EU youth strategy defines two overall objectives of the new framework:

- more and equal opportunities for young people in education and in the labour market;
- active citizenship, social inclusion and solidarity of young people.

Within these overall objectives the strategy outlines a range of concrete initiatives to help young people to face opportunities and challenges in: education and training; employment and entrepreneurship; health and well-being; participation; voluntary activities; social inclusion; creativity and culture; and youth and the world.

2. 'Youth in action' programme

On 15 November 2006, the EP and the Council adopted Decision No 1719/2006/EC, establishing the 'Youth in action' programme for the period 2007 to 2013. This document is the legal basis of the programme for its entire duration. The programme concerns young people aged 15-28 (in some cases 13-30). It aims to inspire a sense of active citizenship, solidarity and tolerance among Europeans from adolescence to adulthood and to involve them in shaping the Union's future. The programme promotes mobility within and beyond the EU borders, non-formal learning and intercultural dialogue, and encourages the inclusion of all young people, regardless of their educational, social and cultural background. It helps young people acquire new competences, and provides them with opportunities for non-formal and informal learning with a European dimension. Particular attention has been paid to the access of young people from Roma communities, through an annual priority focus in 2009 and 2010. Within the 'Youth in action' programme, 2011 was designated as the EU-China Year of Youth with a view to 'further promoting and deepening partnership between Europe and China', at the 12th EU-China Summit, held in Nanjing on 30 November 2009. Volunteering is a core part of several community programmes that mainly promote the mobility of volunteers, such as the 'Youth in action' programme — notably through the European Voluntary Service — the Lifelong Learning programme and the Europe for Citizens programme. The emphasis will be placed on funding projects with a volunteering dimension in the EU's action programmes, such as the 'Youth in action' programme.

3. Youth on the move (*5.13.3 — Objectives — C)

B. Other EU initiatives

Protecting the rights of children and young people.

1. An EU agenda for the rights of the child

On 15 February 2011, the Commission adopted the Communication COM(2011) 60 final. The purpose is to reaffirm the strong commitment of all EU institutions and of all Member States to promoting, protecting and fulfilling the rights of the child in all relevant EU policies and to turn this into concrete results. In the future, EU policies that directly or indirectly affect children should be designed, implemented and monitored taking into account the principle of the best interests of the child enshrined in the EU Charter of Fundamental Rights and in the United Nations Convention on the Rights of the Child (UNCRC).

2. Preventing and combating violence against children and young people

Since 2000, the EU has funded projects and actions to combat violence against children, young people and women via the Daphne programme. The target groups are children and young people under 25 years of age, and women. The aim of the programme is 'to contribute to the protection of children, young people and women against all forms of violence and to attain a high level of health protection, well-being and social cohesion' (Decision 779/2007/EC). The programme also extends to the fight against trafficking in human beings and sexual exploitation. Funding totalling EUR 116 million is available for the programme for the period 2007-2013.

3. Youth and media

Children can also be especially vulnerable in relation to modern technology. Online technologies bring unique opportunities to children and young people by providing access to knowledge and allowing them to benefit from digital learning and to participate in the public debate. The protection of children and young people is a key element of audiovisual policy at EU level and has acquired new topicality in connection with the development of non-linear media services. The Commission is closely monitoring the transposition of the Audiovisual Media Services Directive by the Member States into their national law, for which the deadline was 19 December 2009. The directive extends the standards for protection of children from traditional TV programmes to fast-growing on-demand audiovisual media services, particularly on the Internet.

C. The future of youth policy — 2014-2020

For 2014-2020 the European Commission is proposing a single programme that will encompass the current Lifelong Learning programme, Youth in Action, Erasmus Mundus and Sport programmes and will be baptised Erasmus for All. Actions to raise skills and to help tackle the high levels of youth unemployment in many Member States (40% in some countries) will be boosted in the 2014-2020 period. The Commission is also proposing to develop, with the involvement of the European Investment Bank, a programme to provide guarantees for mobile master students ('Erasmus Masters'), as at present there is very little financial support available for those who wish to study at masters' level in another Member State. In 2008, before the start of the current recession, unemployment for 15-24 year-olds in the EU-27 averaged 15.5%; for 25-74 year-olds it was 5.9%[1].

In January 2013, 5.732 million young persons (under 25) were unemployed in the EU-27, of whom

[1] Data taken from Eurostat's Labour Force Survey.

3.642 million were in the euro area. Compared with January 2012, youth unemployment rose by 264 000 in the EU-27 and by 295 000 in the euro area. In January 2013, the youth unemployment rate was 23.6% in the EU-27 and 24.2% in the euro area, compared with 22.4% and 21.9% respectively in January 2012. In January 2013 the lowest rates were observed in Germany (7.9%), Austria (9.9%) and the Netherlands (10.3%), and the highest in Greece (59.4% in November 2012), Spain (55.5%) and Italy (38.7%)[1]. These data clearly show that young people face specific socio-economic problems, indicating that youth policies need a shift of emphasis, a more integrated approach and definitely more action at EU level and support to Member States[2].

In the present challenging social (Indignados[3]) and economic context, young people are confronted with rising levels of knowledge and multiple skills requirements, a need that cannot be satisfied by the formal education sector alone. 'School-based learning and apprenticeship are no longer sufficient to 'last' the whole life-course. Human capital is more than ever before about learning to learn, social skills, adaptability, etc.'[4].

With the overall goal of increasing synergies between the youth sector and formal learning activities, youth activities will be integrated under the new programme, building bridges to formal education through youth exchanges; the European Voluntary Year; training and networking for young workers; and the structure dialogue with youth organisations.

In December 2012, the European Commission issued a proposal on establishing a Youth Guarantee (COM(2012) 729 final), proposing a Council recommendation to ensure that young people receive a quality offer of employment, further education or training within four months of becoming unemployed or leaving formal education. This proposal also sets out how a Youth Guarantee scheme should be set up. The proposal lists guidelines on the basis of six axes: establishing strong partnerships with all stakeholders, ensuring early intervention and activation to avoid young people becoming NEETs (not in employment, education, training), taking supportive measures that will enable labour integration, making full use of EU funding to that end, assessing and continuously improving the Youth Guarantee schemes, and implementing the schemes rapidly.

Role of the European Parliament

The EP has always supported close cooperation between the Member States in the youth field. In the process of adopting the 'Youth in action' programme, the EP called for a significant increase in the budget allocated and simplified access to these actions. It also stressed that young people with disabilities must be included on an equal footing, in order to prevent discrimination. It has also played an important role in relation to children's rights. In a written declaration in 2005, 367 MEPs called on the Commission to create a single telephone number in Europe for children's helplines and emergency hotlines, a step which has now been taken with the adoption of the EU strategy on the rights of the child. To encourage young people to pursue European projects of their own, the EP and the Foundation of the International Charlemagne Prize of Aachen launched the European Charlemagne Youth Prize in 2008. The prize is awarded to projects which promote European and international understanding, foster the development of a shared sense of European identity and integration and offer practical examples of Europeans living together as one community. In January 2013, the EP adopted a resolution (2012/2901(RSP)), strongly supporting the initiative on the Youth Guarantee schemes.

→ Ana Maria Nogueira

[1] http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/3-01032013-BP/EN/3-01032013-BP-EN.PDF

[2] Young people are most affected by poverty, according to Catholic Relief (http://www.lemonde.fr/societe/article/2011/11/08/les-jeunes-sont-les-plus-touches-par-la-pauvrete-selon-le-secours-catholique_1600255_3224.html).

[3] The recent protests should be taken very seriously. There is a feeling that unites young people throughout Europe, namely the belief that they will not be able to attain the same level of prosperity as their parents did. They feel that they have no future. They are well trained, and yet they are not finding any jobs. This feeling has been smouldering for years, affecting this generation, who grew up in a world shaped by economic and other crises, but who never took to the streets to fight for their interests. The political elites tend to become discomfited whenever the people take democracy seriously and decide to start practicing for themselves. The truth is that, if not addressed properly, there is a real danger of manipulation of these genuine movements.

[4] BEPA — Bureau of European Policy Advisers (2007), Investing in youth: an empowering strategy.

5.13.6. Language policy

As part of its efforts to promote mobility and intercultural understanding, the EU has designated language learning as an important priority and funds numerous programmes and projects in this area. Multilingualism, in the EU's view, is an important element of Europe's competitiveness. One of the objectives of the language policy of the EU is therefore that every European citizen should master two other languages in addition to their mother tongue.

Legal basis

Articles 2 and 3 TEU and Articles 6 and 165 TFEU.

In the field of education and vocational training, the EU treaties give the Union the task of supporting and supplementing action by the Member States aimed at developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States (Article 165(2)), while fully respecting cultural and linguistic diversity (Article 165(1)).

The Charter of Fundamental Rights of the EU adopted in 2000, which the Treaty of Lisbon makes legally binding, also places an obligation on the Union to respect linguistic diversity (Article 22) and prohibits discrimination on grounds of language (Article 21). Respect for linguistic diversity is a fundamental value of the EU, in the same way as respect for the person and openness towards other cultures. The EU institutions also take the principle of linguistic diversity into account in their correspondence with citizens. Therefore each citizen of the Union has the right '[to] write to any of the institutions or bodies referred to in this Article (24 TFEU) or in Article 13 of the TEU in one of the languages mentioned in Article 55(1) of the TEU and have an answer in the same language' (Article 24 TFEU).

Objectives

Languages are an important priority for the EU. Language is an integral part of our identity and the most direct expression of culture. In Europe, linguistic diversity is a fact of life. In an EU founded on 'unity in diversity' the ability to communicate in several languages is a must for individuals, organisations and companies alike.

The aim of EU language policy is to promote the teaching and learning of foreign languages in the EU and create an environment that is friendly towards all Member State languages. Foreign language competence is regarded as one of the basic skills which every EU citizen needs to acquire in order to improve his/her educational and employment opportunities within the European learning society, in particular by making use of the right to freedom of movement of persons. Within the framework of education and vocational training policy, the EU's objective is therefore for every citizen to master two other languages in addition to his/her mother tongue. In order to achieve this objective, children are to be taught two foreign languages in school from an early age (COM(2008) 566 final).

The 'Education and training 2020 strategic framework' identifies language learning as a priority. Communication in foreign languages is one of eight key competences to improve the quality and efficiency of education and training. This includes, in addition to the main skill dimensions of communication in the mother tongue, mediation and intercultural understanding.

EU education policies are increasingly driven by the Europe 2020 strategy. In this context, language skills are crucial for the 'Agenda for new skills and jobs' initiative as they enhance employability. They are also a prerequisite for mobility and hence the successful implementation of the new flagship initiative 'Youth on the move'.

In 2008, the Commission adopted the communication 'Multilingualism: an asset for Europe and a shared commitment', which defines a new framework for the EU's policy on multilingualism. The new approach to multilingualism reaches out to new and steadily growing groups of learners who, so far, have only marginally been addressed in this context — school drop-outs, immigrants, students with special learning needs, apprentices and adults.

Achievements

A. Support programmes

1. Lifelong learning programme

The main financial support for foreign language learning is provided under the 'Lifelong learning programme 2007-2013' established by Decision 1720/2006/EC of 15 November 2006. This 'integrated action programme in the field of lifelong learning' provides financial support for education in Europe. The new integrated programme combines current EU education programmes and therefore covers the four sub-programmes referred to below: Comenius (school education); Erasmus (higher education);

Leonardo da Vinci (vocational training); and Grundtvig (adult education).

2. Transversal programme for languages

The key activity 2 (languages) in the programme aims, inter alia, at promoting language learning and linguistic diversity. Complementing the four sub-programmes described above, the transversal programme also supports initiatives which transcend individual programme boundaries and are relevant to several target groups. Eligible measures include, for example, multilateral projects to develop new materials for language learning, the development of instruments and courses to train language teachers, or the preparation of studies on language learning and linguistic diversity.

3. Support under other EU programmes

In addition to educational and training programmes, financial assistance for language projects is available under other EU programmes. For example, support is provided for the translation of books and manuscripts under the EU's Culture programme. The EU's action programme in the field of audiovisual media, MEDIA, makes available funding for dubbing and subtitling of European cinema and TV films.

The EU has adopted various measures for the preservation and promotion of regional and minority languages. They include the provision of financial support to the European Bureau for Lesser-Used Languages (EBLUL) created at the initiative of the EP, an independent non-governmental organisation (NGO) which promotes and disseminates information about regional and minority languages on a network basis, and Mercator, a documentation and information network which aims to improve the accessibility and exchange of information about minority languages and cultures. The EU has also provided project funding for practical initiatives for the promotion and preservation of regional and minority languages.

B. Other EU initiatives

1. Action plan and framework strategy

In response to an EP resolution (T5-0718/2001) and a Council resolution (2002/C 50/01), in July 2003 the Commission adopted an action plan on 'Promoting language learning and linguistic diversity' (COM(2003) 449), setting out three areas in which it would be providing funding for short-term action to support measures taken by Member States under existing Community programmes. The three areas are: lifelong language learning; improving the teaching of foreign languages; and creating a language friendly environment. In 2005, the action plan was supplemented by the new framework strategy for multilingualism (COM(2005) 596, see above). The results of the action plan on national and European levels were summed up by the Commission in a report (COM(2007) 554) in autumn 2007. This report is intended to serve as the basis fur further measures in the field of multilingualism policy. In 2008, the Commission adopted the communication 'Multilingualism: an asset for Europe and a shared commitment', which calls for the mainstreaming of multilingualism throughout all the relevant policy areas, reaches out to a wide range of stakeholders and recommends close cooperation with and amongst them.

2. Raising awareness of the importance of foreign languages

Encouraged by the huge success of the European Year of Languages (2011), the EU and the Council of Europe decided to celebrate the so-called European Day of Languages every year on 26 September, with all sorts of events promoting language learning. Like the earlier European Year of Languages, this action is also aimed at raising awareness among citizens of the many languages spoken in Europe and encouraging them to learn languages.

3. Comparability of data on language competence

In 2005, the Commission proposed to the EP and the Council the introduction of a European indicator of language competence (COM(2005) 356 final). The framework was set out in the Commission communication adopted on 13 April 2007 (COM(2007) 184). This indicator is intended to make a substantial contribution to achieving the objective of 'mother tongue + two' by enabling foreign language competence to be measured in a comparable way in all Member States. The first results of the language survey conducted in 2011 became available in 2012.

4. Online observatory for multilingualism

The EU has an online observatory for multilingualism. Poliglotti4.eu[1] (that is how it is called) is a project promoting multilingualism in Europe — the result of the deliberations of the EU Civil Society Platform on Multilingualism. The project website reports on best practice in language policy and language learning, and provides policymakers, teachers, learners and civil society organisations with a powerful toolkit for benchmarking and enhancing their activities in non-formal and informal education and learning sectors[2].

[1] http://www.poliglotti4.eu/en/index.php

[2] The project is funded through the European Commission's Lifelong Learning Programme.

Role of the European Parliament

The EP has already produced own-initiative reports on a number of occasions to give fresh impetus to the development of language policy in Europe. In particular, the Committee on Culture and Education, in its reports, has identified the need for action in certain areas and called on the Commission to draw up measures aimed at recognising the importance of, and promoting, linguistic diversity in the EU. In the EP, all Community languages are equally important: all parliamentary documents are translated into all the official languages of the EU and every Member of the EP has the right to speak in the official language of his/her choice.

→ Miklós Györffi

5.13.7. Sports

With the entry into force of the Lisbon Treaty in December 2009, the European Union (EU) acquired a specific competence in the field of sport for the first time. Article 165 of the Treaty on the Functioning of the European Union (TFEU) sets out the details of EU sports policy. Moreover, sport is mentioned in Article 6 TFEU as one of the policy fields where the Union has competence to support, coordinate or supplement the actions of its Member States.

Legal basis

Article 165 TFEU sets out the details of sports policy, giving the EU the power to support, coordinate and supplement sport policy measures taken by the Member States. It states that the 'Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function'. More specifically, the objectives of sports policy are described as being to: (1) promote fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and (2) protect the physical and moral integrity of sports practitioners, especially the youngest among them.

The existence of a new specific competence is expected to open up new possibilities for EU action in the field of sport. The EU has now a legal basis to develop a specific EU sports programme, supported by a budget. The competence also allows for better promotion of sport in other EU policy areas and programmes, such as health and education.

The treaty provisions further give the EU the opportunity to speak with one voice in international forums and vis-à-vis third countries. EU sports ministers will now also meet in official Sports Council meetings. The first official EU Sports Council took place on 10 May 2010. On 16 September, the European Council changed the name of the Council in charge of Education, Youth and Culture. Officially the Council is now called the Education, Youth, Culture — including Audiovisual Affairs — and Sport Council.

However, EU competences over the single market have already had a considerable impact on sport and these will remain as important as ever. The European Court of Justice (ECJ) has over the years developed extensive and important case-law that has had major implications for the world of sport (*Bosman* case). At the same time, the EU has already had an influence on sport in exercising its 'soft law' powers in closely related areas such as education, health and social inclusion via its respective funding programmes.

Moreover, the lack of a specific legal competence has not prevented the Commission from building up the beginnings of an EU sports policy, as outlined in the 2007 White Paper on sport and its associated 'Pierre de Coubertin action plan', which began to be implemented in 2008. The Commission has also directly financed certain sporting projects under the sports 'preparatory action' in 2009, 2010 and 2011.

The entry into force of the Lisbon Treaty has spurred the Commission to begin work on a proposal for a fully-fledged EU sports programme and on a policy communication on sport and the Lisbon Treaty.

Objectives

In its action under the treaty provisions and declarations, the EU deals with the economic, social, educational and cultural aspects of sport. It works to attain the objectives of greater fairness and openness in sporting competitions and greater protection of the moral and physical integrity of sports practitioners whilst taking account of the specific nature of sport.

Achievements

The Commission's July 2007 White Paper on sport was the first 'comprehensive initiative' on sport in the EU. Through the implementation of the proposed measures, the Commission has gathered useful evidence regarding themes to be addressed in the future. It paved the way for the January 2011 EU communication on the impact of the Lisbon Treaty on sports, entitled 'Developing the European dimension in sport'.

A. White Paper on sport (2007)

EU-level cooperation and dialogue on sport have been greatly enhanced thanks to the 2007 White Paper on sport. Almost all actions in the accompanying 'Pierre de Coubertin action plan' have been completed or are being implemented.

The document proposed a number of measures to be implemented and supported by the European Union: the societal role of sport: enhancing public health through physical activity; fighting doping; enhancing the role of sport in education; volunteer activities; social inclusion; fighting racism; sport as a tool for development; the economic dimension of sport; the collection of comparable data; ensuring financial support for grassroots sports organisations; the organisation of sport: the specific nature of sport; free movement, player transfers and players'

agents; the protection of minors; corruption and money laundering; the licensing system for clubs; and media rights.

The White Paper also proposed concrete actions in a detailed action plan known as 'Pierre de Coubertin'. The action plan concerns social and economic aspects of sport, such as public health, education, social inclusion and volunteering, external relations and financing. In a number of areas, the White Paper remains an appropriate basis for EU-level activities in the field of sport. These areas include, for example, the promotion of voluntary activity in sport, the protection of minors, and environmental protection.

B. EU sport programme

In its resolution on the White Paper on sport of 14 April 2008, the EP called on the Commission to propose an EU sport programme as well as preparatory actions in the field of sport as of 2009. The EP approved a budget for the first preparatory action in December 2008. Meanwhile, in 2009 and 2010 the Commission adopted an annual work programme on grants and contracts for the preparatory actions in the field of sport and special events. The objective of these preparatory actions is to prepare future EU actions in the field of sport in view of the implementation of the sport provisions in the treaty. The EU sport programme should contribute to the promotion of European values, foster the social and educational role of sport, promote a physically active lifestyle and foster cooperation with third countries and international organisations in the field of sport, to name but a few.

For 2014-2020, sport will for the first time have its own chapter and budget, with a proposed average annual budget of EUR 30 million, allowing the EU to concentrate on issues that cannot be dealt with efficiently at national level.

C. Developing the European dimension of sport

In January 2011, the Commission launched a communication on the impact of the Lisbon Treaty on sports, entitled 'Developing the European dimension in sport'. This is the first policy document adopted by the Commission in the field of sport since the entry into force of the Lisbon Treaty. Building on the 2007 White Paper, the communication emphasises the potential of sport to make significant contributions to the overall goals of the Europe 2020 strategy by improving employability and mobility by means of actions promoting social inclusion in and through sport, education and training among others. It suggests that the EU should sign up to the Anti-Doping Convention of the Council of Europe, develop and implement security arrangements and safety requirements for international sports events, continue making progress towards introducing national targets based on the EU's physical activity guidelines, and develop standards for disabled access to sports events and venues.

On economic matters, the EU calls on sports associations to establish mechanisms for the collective selling of media rights to ensure adequate redistribution of revenue. Other issues addressed deal with sport-related intellectual property rights, promotion of best practices' exchange on transparent and sustainable sports financing, and monitoring the application of state aid law in the field of sport.

Role of the European Parliament

The EP is very much of the view that there is a growing necessity for the EU to deal with sports matters while fully respecting the principle of subsidiarity. Within the EP, the development of a European sports policy falls under the competence of the Committee on Culture and Education. The EP is aware that sport itself constitutes an important social phenomenon and a public good and is working on this topic together with the other EU institutions. During the present legislature the CULT Committee drafted a report on 'The European dimension in sport', based on the communication 'Developing the European dimension in sport'.

The European Parliament has been very active in the fight against match-fixing and corruption in sport. In December 2012, the CULT Committee held a public hearing, focusing on two key subjects: the fight against match-fixing and financial fair play. And in March 2013 it adopted a resolution (P7_TA-PROV(2013)0098) on match-fixing and corruption in sport.

→ Ana Maria Nogueira

5.13.8. Communication policy

Communication policy is not governed by specific provisions in the treaties, but flows naturally from the EU's obligation to explain its functioning and policies, but also the more general meaning of 'European integration', to the citizens. The need for adequate communication has a legal basis in the Charter of Fundamental Rights of the EU, guaranteeing all citizens of the EU the right to be informed about European issues. The new European Citizens' Initiative will allow citizens to become more directly involved in new legislation and European issues.

Legal basis

Although the treaties do not contain any specific chapter or article concerning communication policy, the Charter of Fundamental Rights of the EU (drawn up in 1999-2000 by a Convention) — rendered binding by the Treaty of Lisbon, which gave the Charter the same legal status as the EU treaties — provides all European institutions with a common framework for linking EU achievements to the underlying values of the EU when communicating to the public at large[1]. In the Charter, the main articles dealing with information and communication are: Articles 11 (right to information and freedom of expression, as well as freedom and diversity of the media), 41 (right to be heard and right of access to documents relating to oneself), 42 (right of access to the documents of the European institutions) and 44 (right of petition). For actions for which there is no separate legal basis in the Treaty on the Functioning of the European Union (TFEU), a reference to Article 352 TFEU (ex Article 308 of the Treaty Establishing the European Community) is necessary[2].

Objectives

Communicating with citizens has long been a primary concern of the European institutions, aiming to foster trust in the European project. With the 'no' votes in the referenda on the European Constitution in France and the Netherlands (May 2005), and later the rejection of the Lisbon Treaty in Ireland (June 2008), the EU took a series of measures intended at improving communication between the institutions and the citizens of the Union. This was felt to be necessary not only because members of the public are insufficiently informed on EU policies and on how these have an impact on their everyday lives, but even more importantly in order to enable European citizens to exercise their right to participate in the democratic life of the Union, in which decisions are supposed to be taken as openly as possible and as closely as possible to the citizens, observing the principles of pluralism, participation, openness and transparency. More recently, an innovation contained in the Lisbon Treaty, the European Citizens' Initiative (ECI), will allow citizens to directly suggest new EU legislation for the first time. Moreover, access to information about how the EU works after the Lisbon Treaty is to be guaranteed in all Member States. At the same time, communication must be differentiated, taking into account national sensitivities related to the Lisbon Treaty and European integration overall.

Achievements

Since 2005, the Commission[3] has released a number of policy documents on communication, reflecting the high profile of this policy which is based on three principles:

- listening to the public, taking their views and concerns into account;
- explaining how the European Union policies affect citizens' everyday lives;
- connecting with people locally by addressing them in their national or local settings, through their favourite media.

A. Main initiatives (selection)

- Europe for Citizens Programme;
- Communicating Europe in Partnership;
- Communicating about Europe via the Internet — Engaging the citizens;
- Debate Europe, an online forum where people can voice their concerns to decision-makers;
- Making the Europa website the one-stop site for all EU institutions and information;

[1] See OJ C 83, 30.3.2010, pp. 389-403 (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:en:PDF).

[2] See Consolidated Version of the Treaty on the Functioning of the European Union (OJ C 115, 9.5.2008, pp. 47-199; http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:EN:PDF).

[3] During the first Barroso Commission (2004-2009), the Directorate-General for Communication was under the responsibility of the EU's Commissioner for Institutional Relations and Communication Strategy. In the second Barroso Commission (2010-2014), communication policy and strategy was regrouped with citizenship and placed in the portfolio of the Commissioner for Justice, Fundamental Rights and Citizenship.

- Communicating Europe through Audiovisual Media, European Radio Network (http://www.euranet.eu), and Presseurop (http://www.presseurop.eu), boosting coverage of EU affairs on new and existing audiovisual platforms;
- Closing the communication gap between the EU and its citizens through efficient cooperation and partnerships.

B. The Europe for Citizens Programme (2007-2013) and its proposed successor

Following calls made both at the Tampere (1999) and Nice European Council (2000) for a more open dialogue with civil society, a first Community action programme to promote Active European Citizenship was initiated by the European Council in January 2004 (Council Decision 2004/100/EC). In the wake of the failure of the Constitution for Europe project, Active European Citizenship was succeeded by the programme Europe for Citizens, established by Decision 1904/2006/EC of the European Parliament (EP) and the Council for the period 2007 to 2013 with an overall financial envelope of EUR 215 million[1]. Following the recommendation of the programme's mid-term evaluation in 2010, continuing the Europe for Citizens Programme within the next Multiannual Financial Framework 2014-2020 — even if in a slightly revised form — was formally suggested by the European Commission in December 2011[2]. 'Strengthening remembrance and enhancing capacity for civic participation at the Union level' being declared as the principle objective[3], the future programme's concrete form is currently under discussion in the Council and the European Parliament.

C. Communicating Europe in Partnership

The year 2009 was the first in which interinstitutional communications priorities were agreed between the EP, the Council and the Commission under the joint declaration on Communicating Europe in Partnership[4], signed in December 2008. The four priorities selected were the EP elections, energy and climate change, the 20th anniversary of democratic change in central and eastern Europe, and sustaining growth, jobs and solidarity, with a particular link to the European Year of Creativity and Innovation. The aim in this document is 'to strengthen coherence and synergies between the activities undertaken by the different EU institutions and by Member States, in order to offer citizens better access and a better understanding of the impact of EU policies at European, national and local level'[5].

D. The European Citizen's Initiative

The introduction of the citizens' initiative in the Lisbon Treaty provides — as from 1 April 2012 — a stronger voice to European Union citizens by giving them the right to call directly on the Commission to bring forward new policy initiatives. It is meant to add a new dimension to European democracy, complement the set of rights related to the citizenship of the Union and increase the public debate around European politics, helping to build a genuine European public space. Its implementation will reinforce citizens' and organised civil society's involvement in the shaping of EU policies. As required by the Treaty, on a proposal from the European Commission the European Parliament and the Council adopted a regulation which defines the rules and procedure governing this new instrument[6]. The ECI allows one million citizens from at least one quarter of the EU Member States to invite the European Commission to bring forward proposals for legal acts in areas where the Commission has the power to do so. The organisers of a citizens' initiative, a citizens' committee composed of at least seven EU citizens who are resident in at least seven different Member States, will have one year to collect the necessary statements of support. The number of statements of support has to be certified by the competent authorities in the Member States. This new tool is likely to give a new boost to transnational associations and online networks.

Role of the European Parliament

The Treaty of Lisbon had an almost immediate impact on the work of the EU institutions in 2010, with a stronger focus on delivering results to EU citizens through more streamlined and democratic decision-making. More generally, the Reform Treaty has reinforced the role of the EP in shaping Europe. As the representative of the interests of Europe's citizens, the EP has a clear responsibility to communicate what Europe is about and to articulate and act upon citizens' interests in Europe. In its reports, the EP has therefore repeatedly made detailed proposals for improving the relationship between the EU and its citizens. For instance, in a resolution adopted in September 2010, the EP proposed concrete ways in which EU citizens can be more involved in debates on European issues[7]. The report looked at how communication can initiate, encourage and further

[1] See OJ L 378, 27.12.2006, pp. 32-40 (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:378:0032:0040:EN:PDF).

[2] See COM(2011) 884 final (http://ec.europa.eu/citizenship/pdf/doc1383_en.pdf).

[3] Ibid., p. 3.

[4] See COM(2007) 569 final (http://eur-lex.europa.eu/LexUriServ/site/en/com/2007/com2007_0568en01.pdf).

[5] Ibid., p. 4.

[6] See OJ L 65, 11.3.2011 (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:065:0001:0022:EN:PDF).

[7] See P7_TA(2010)0307 (Journalism and New Media — Creating a Public Sphere in Europe; http://www.

develop the European debate. It stressed that better communication by governments, political parties, universities, public service broadcasters and the EU institutions themselves is vital for constructing a 'European public sphere' of debate. The resolution also addressed the ongoing revolution in so-called 'social media' with platforms like Facebook, Twitter, MySpace and an array of blogs. Despite the EP's increased power, the turnout in EP elections has been falling steadily since the first vote in 1979. In order to reverse this tendency, the EP is increasingly using the Internet to reach out to citizens online. The year of the European elections in 2009 was particularly appealing for the use of social media like social networking and content-sharing web platforms, which will be even more the case for the upcoming elections in 2014.

Current trends of increased indifference or even hostility towards the EU among European citizens — with the current financial crisis and the apparent lack of solutions as well as strong political responses from the EU leaders not helping to shift this tendency — in particular ask for appropriate communication strategies and policies at the European level. To take an active part in shaping such strategies and policies is not only an obligation towards the European citizens actually represented by the EP, but also in its own interest.

→ Markus J. Prutsch

europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P7-TA-2010-0307+0+DOC+PDF+V0//EN).

THE EU'S EXTERNAL RELATIONS

6

The European Union's action on the international scene is guided by the principles that inspired its own creation, development and enlargement, and which are also embedded in the United Nations Charter and international law. Promotion of human rights and democracy is a key aspect. The Union also highlights its strategic interests and objectives through its international action. It will continue to broaden and enhance its political and trade relations with other countries and regions of the world, including by holding regular summits with its strategic partners such as the United States, Japan, Canada, Russia, India and China. It also supports development, cooperation and political dialogue with countries in the Mediterranean, the Middle East, Asia, Latin America, eastern Europe, central Asia and the western Balkans. The European External Action Service (EEAS) entered on the scene with the entry into force of the Lisbon Treaty and will henceforth play a key role in these areas. The EEAS is headed by the High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the European Commission and its personnel includes Member State diplomats.

6 THE EU'S EXTERNAL RELATIONS

6.1. External relations policies

6.1.1. Foreign policy: Aims, instruments and achievements

The European Union's Common Foreign and Security Policy (CFSP) was established in 1993 and has been strengthened by subsequent treaties since, most recently by the Lisbon Treaty. Since the Lisbon Treaty entered into force in 2009, the role of the European Parliament in matters related to the CFSP has also intensified. Today, the Parliament scrutinises the CFSP and contributes to the policy's evolution, particularly by supporting the European External Action Service (EEAS), the EU Special Representatives (EUSRs) and the EU's foreign delegations. The Parliament's budgetary powers shape the scale and scope of the CFSP, as well as the EU financial instruments that sustain the EU's foreign activities. Through its committees and delegations, the Parliament maintains close relations with the other EU institutions, EU Member States (and notably national parliaments), partner countries, global governance structures and non-governmental actors. The Parliament has helped to make the CSFP more coherent and transparent, and to raise the level of public awareness of the policy.

CFSP: Development through treaties

The Common Foreign and Security Policy (CFSP) of the European Union was established by the Treaty on European Union (TEU) in 1993 with the aim of preserving peace, strengthening international security, promoting international cooperation and developing and consolidating democracy, the rule of law, respect for human rights and fundamental freedoms. The Treaty introduced the 'three-pillar system', with the CFSP as the second pillar. While common positions and joint actions framed the common foreign policy responses, the CFSP was principally based on intergovernmental procedures and consensus.

The 1997 Treaty of Amsterdam established a more efficient decision-making process with constructive abstention and qualified majority voting (QMV). In December 1999, the European Council established the function of the High Representative for the CFSP (as well as that of Secretary-General of the Council). The 2003 Treaty of Nice introduced further changes to streamline the decision process and mandated the Political and Security Committee (PSC), which had been established through a Council decision in January 2001, to exercise political control and strategic direction of crisis management operations. Following the failure of the EU Constitution project in 2005, its key institutional provisions were recast in a further Reform Treaty, signed in Lisbon on 19 October 2007.

Entering into force on 1 January 2009, the Treaty of Lisbon provided the Union with a legal personality as well as an institutional incarnation of its external service, in addition to eliminating the EU's pillar structure. The Treaty created a range of new CFSP actors, including the High Representative of the Union for Foreign Affairs and Security Policy (who also serves as Vice-President of the European Commission), the new permanent President of the European Council. Creating the European External Action Service (EEAS), the treaty also upgraded the Common Security and Defence Policy (CSDP), which forms an integral part of CFSP (For details, *6.1.2).

The legal basis for the CFSP was laid out in the Treaty on European Union (TEU), revised in the Lisbon Treaty. Title V, Articles 21 through 46 of the TEU establish 'General Provisions on the Union's External Action and Specific Provisions on the Common Foreign and Security Policy (CFSP)'. In the Treaty on the Functioning of the European Union (TFEU), the Union's external action is covered in Part 5, Articles 205 through 222. Part 7, Articles 346 and 347, also apply.

The European Parliament's foreign policy powers and instruments

Despite its limited formal role in foreign policy decision-making, the European Parliament has supported the concept of the CFSP from its inception and sought to extend its scope. In view of the international challenges arising in the last decade, Parliament has repeatedly pushed for the creation of an EU 'Foreign Minister' and a 'European diplomatic service'. The Parliament has achieved a degree of informal cooperation in practice with the EEAS, the EU Presidency, the Council Secretariat and the Commission in the realm of foreign affairs, as well as with the national parliaments of Member States.

Article 36 of the TEU compels the High Representative to regularly consult the Parliament on the principal aspects and choices of the CFSP and to inform the Parliament on the policies' evolution. The European Parliament holds twice-yearly debates on CFSP progress reports and asks questions and makes recommendations to the Council or the High Representative.

The European Parliament's right to be informed and consulted about the CFSP/CSDP has been further strengthened by the High Representative/Vice President's declaration of political accountability in 2010. The declaration provided, inter alia, for:

- enhancing the status of the 'Joint Consultation Meetings' (JCMs), which allow a designated group of Members of the European Parliament (MEPs) to meet counterparts from the Council's Political and Security Committee (PSC), the EEAS and the Commission to discuss planned and ongoing civilian CSDP missions;
- affirming the right of the Parliament's 'special committee' to have access to confidential information related to CFSP and CSDP. This right is based on a 2002 interinstitutional agreement;
- permitting exchanges of views with the Heads of Missions, Heads of Delegations and other high EU officials during parliamentary committee meetings and hearings;
- mandating the High Representative to appear before the European Parliament at least twice a year to report on the current state of affairs of the CFSP/CSDP and to answer questions.

In addition to this political dialogue, the Parliament exercises its authority through the budgetary procedure. As one half of the EU budgetary authority, the European Parliament must approve the annual CFSP budget. The Parliament also helps to shape the external financial instruments (the European Instrument for Democracy and Human Rights, for example, and the Instrument for Stability) through a process of trilateral negotiations with the Council and the Commission.

The Parliament regularly scrutinises the operations of the EEAS and provides the Agency with suggestions on structural issues, ranging from the service's geographic and gender balance, to its interaction with other EU institutions and the diplomatic services of EU Member States. The Parliament also regularly discusses with the High Representative and the EU Special Representatives (EUSRs) appointed for certain regions or issues. Parliamentary committees, which have helped set up the EEAS, also exchange views with the EEAS's newly appointed Heads of Delegations.

The European Parliament also has a role to play in monitoring the negotiations and implementation of international agreements. Parliamentary consent is required before the Council can conclude these agreements. (For more details, *6.2.1, 6.2.2, 6.2.3)

The internal structures of the European Parliament involved in CFSP

Much of Parliament's work on CFSP is done in specialised committees, and notably in the Committee on Foreign Affairs (AFET) and its two subcommittees (on Security and Defence/SEDE and on Human Rights/DROI), as well as in the Committee on International Trade (INTA) and Committee on Development (DEVE). These committees shape CFSP through reports and opinions. The committees also serve as the Parliament's principal points of contact with global governance structures (including the United Nations), other EU institutions, the Council Presidencies and Member States' national parliaments.

CFSP-related work is also undertaken by parliamentary delegations, whose role is to maintain and develop Parliament's international contacts, especially through inter-parliamentary cooperation, promoting the Union's founding values, including liberty, democracy, human rights, fundamental freedoms and the rule of law. There are currently 34 standing inter-parliamentary delegations, including joint parliamentary committees (JPCs), parliamentary cooperation committees (PCCs), other parliamentary delegations and joint parliamentary assemblies.

Notable examples of these interparliamentary delegations include:

- The ACP-EU Joint Parliamentary Assembly, created to bring together the Members of the European Parliament and the elected representatives of those African, Caribbean and Pacific (ACP) countries that have signed the Cotonou Agreement. This assembly comprises 78 MEPs and 78 parliamentarians from ACP countries and meets bi-annually. A substantial part of its work is dedicated to development cooperation matters and to the promotion of democracy and human rights, resulting in joint commitments.
- EuroLat is a joint multilateral assembly originating in the Bi-regional Strategic Association established in June 1999 between the EU and Latin America and the Caribbean. It is composed of 150 members, 75 from the European Parliament and 75 from Latin American regional parliaments, including Parlatino (the Latin American Parliament), Parlandino (the Andean Parliament), Parlacen (the Central American Parliament), Parlasur (the Mercosur Parliament) and the national congresses of Chile and Mexico.
- The EuroNest parliamentary assembly (PA) is the parliamentary forum of the EU's Eastern

Partnership, bringing together Members of the European Parliament and Members of the national parliaments in Eastern Partnership countries. EuroNest holds an annual plenary session to discuss regional matters of joint interest. EuroNest has four thematic standing committees — political, economic, energy and social — and two working groups — on Belarus and rules of procedure. The membership of EuroNest includes 60 MEPs and 60 parliamentarians from the Eastern Partner countries (10 for each). The 10 seats allocated to Belarus are currently vacant because the EP does not recognise Belarusian Assembly members as representatives of the people.

- The Parliamentary Assembly of the Union of the Mediterranean (PA-UfM) represents the parliamentary dimension of the Union for the Mediterranean (UfM), which replaced the Euro-Mediterranean Partnership (the Barcelona Process). PA-UfM is itself the successor of the Euro-Mediterranean Parliamentary Assembly and was officially launched at the Summit of the Heads of State or Government of 43 countries in 2008. Its 240 members include 120 members from 10 Mediterranean countries, 75 parliamentarians from EU Member States, and 45 MEPs. The Assembly is charged with intensifying the Euro-Mediterranean partnership and raising questions of mutual political, economic and cultural interest. The European Parliament held the presidency of the PA-UfM through March 2013.

(For information on the NATO Parliamentary Assembly, *6.1.2)

The European Parliament's impact on the CFSP

The European Parliament's involvement in CFSP helps to strengthen the policy's democratic accountability. The European Parliament has ardently supported the post-Lisbon institutional landscape, advocating an enhanced role for the EEAS, the EU delegations and the EUSRs, as well as for a more coherent policy and more effective CFSP. The Parliament has pushed for greater coherence among the EU's political and financial instruments for external policies, to avoid duplication and inefficiency.

The European Parliament has provided a platform for exchange among institutional and governmental policy-makers, as well as civil society and epistemic communities (such as think tanks and academics), helping to raise public awareness of CFSP and facilitating the participation of a wide range of partners, within and beyond the EU, both governmental and non-governmental. Through its activities, the Parliament has strengthened the visibility of the EU's foreign policies, and has served as a bridge between the EU institutions and citizens.

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6.1.2. Common Security and Defence Policy

As part of the European Union's Common Foreign and Security Policy (CFSP), the Common Security and Defence Policy (CSDP) covers the Union's military operations and civilian missions. The CSDP includes a number of permanent political and military structures and organises operations abroad. The policy was incorporated into the EU treaties in 1999. Since 2003 the European Security Strategy has laid out the strategy underlying the CSDP, while the Lisbon Treaty provides legal clarity on institutional aspects and strengthens the political and budgetary role of the European Parliament. As one of the most visible and rapidly evolving EU polices, the CSDP has acquired a major strategic orientation with an operational capacity in less than a decade. The CSDP will evolve further, as specified in the Lisbon Treaty.

Legal basis

The Common Security and Defence Policy (CSDP) is an integral part of the Union's Common Foreign and Security Policy (CFSP)[1]. The security and defence policy is framed by the Treaty on European Union (TEU). Article 41 outlines the funding of CFSP and CSDP, and the policy is further described in Articles 42 to 46, Chapter 2, Section 2 of Title V ('Provisions on the Common Security and Defence Policy'), as well as in Protocols 1, 10 and 11 and Declarations 13 and 14. The particular role of the European Parliament in CFSP and CSDP is described in Article 36 of the TEU.

Particularities of the CSDP

Decisions relating to the CSDP are taken by the European Council and the Council of the EU (Article 42 TEU). Such decisions are taken by unanimity, with some notable exceptions relating to the European Defence Agency (Article 45 TEU) and permanent structured cooperation ('PESCO', Article 46 TEU), where majority voting applies. Proposals for decisions are normally made by the EU's High Representative of the Union for Foreign Affairs and Security Policy, who also acts as Vice-President of the European Commission (HR/VP).

The Lisbon Treaty introduced the notion of a European capabilities and armaments policy (Article 42(3) TEU), which has yet to be framed. The Lisbon Treaty also established a link between the CSDP and other Union policies by requiring that the European Defence Agency and the European Commission work in liaison when necessary (Article 45(2) TEU). This concerns notably the Union's research, industrial and space policies, through which the European Parliament could seek developing a much stronger bearing on CSDP than it had ever before.

Role of the European Parliament

The European Parliament has the right to scrutinise the CSDP and to take the initiative of addressing the HR/VP and the Council (Article 36 TEU) on the policy. The Parliament also exercises authority over the policy's budget (Article 41 TEU). The Parliament holds biannual debates on progress in implementing the CFSP and the CSDP and adopts reports: one on the CFSP, drafted in the Foreign Affairs Committee and including elements relating to the CSDP where necessary; and one on the CSDP, drafted in the Security and Defence Sub-Committee.

Since 2012 the European Parliament and the EU's national parliaments organise biannual interparliamentary conferences to debate matters of common foreign and security policy. Interparliamentary cooperation in these fields is foreseen by Protocol 1 to the Lisbon Treaty, which describes the role of national parliaments in the European Union.

Innovations in the Lisbon Treaty have provided an opportunity to improve political coherence in the EU's Common Security and Defence Policy. The HR/VP occupies the central institutional role, chairing the Foreign Affairs Council in 'Defence Ministers configuration' (the EU's CSDP decision-making body) and directing the European Defence Agency. The political framework for consultation and dialogue with the European Parliament is evolving in order to allow the Parliament to play a full role in developing the CSDP. Under the Lisbon Treaty, the European Parliament is a partner shaping the Union's external relations and addressing the challenge described in the 2008 'Report on the Implementation of the European Security Strategy'.

Maintaining public support for our global engagement is fundamental. In modern democracies, where media and public opinion are crucial to shaping policy, popular commitment is essential to sustaining our commitments abroad. We deploy police, judicial experts and soldiers in unstable zones around the world. There is an onus on governments, parliaments and EU institutions

[1] Refer to Title V of the Treaty on European Union (TEU) on the 'General Provisions on the Union's External Action and Specific Provisions on the Common Foreign and Security Policy (CFSP)'; (*6.1.1).

to communicate how this contributes to security at home.

Issues of interest to the European Parliament

The European Parliament examines developments in the CSDP in terms of institutions, capabilities and operations and ensures that security and defence issues respond to concerns expressed by citizens. Deliberations, hearings and workshops are held regularly, devoted to topics including:

- the more than 20 civilian and military CSDP missions in the South Caucasus, Africa, the Middle East and Asia;
- international crises with security and defence implications, and security sector reforms in the aftermath of crises;
- non-EU multilateral security and defence cooperation and structures, in particular regarding NATO;
- international developments on arms control and on the non-proliferation of weapons of mass destruction;
- combating international terrorism, piracy and organised crime and trafficking;
- strengthening the European Parliament's role in the CSDP through EU policies with implications in security and defence (such as the Union's internal and border security, research, industrial and space policies);
- good practices improving the effectiveness of security and defence investments, strengthening the technological and industrial base, and smart defence, pooling and sharing;
- institutional developments in the EU's military structures, the security and defence cooperation within the Union, the European Defence Agency (EDA) and European agencies and structures in the domain[1];
- legislation and political resolutions relating to security and defence, particularly on the abovementioned topics.

The EP participates in Joint Consultation Meetings (JCMs) with the Council, the European External Action Service and the European Commission on a regular basis. The meetings are used to exchange information on CSDP missions and operations, on implementing the CFSP budget, and on regions of interest and concern. The meetings are part of the consultations between the European Parliament and the other institutions involved in CFSP and CSDP that have been implemented since the High Representative/Vice President's declaration on political accountability in 2010 (*6.1.1 on the EU's foreign policy).

Given the key role that the North Atlantic Treaty Organisation (NATO) plays for European security, the European Parliament participates in the NATO Parliamentary Assembly in order to develop the relationship between the EU and NATO, while respecting the independent nature of both organisations. This is particularly important in the theatres of operation in which both the EU and NATO are engaged, such as Afghanistan, Kosovo and the fight against piracy off the Horn of Africa.

CSDP: A policy in evolution

Since the Lisbon Treaty entered into force in 2009, the CSDP has not changed substantially. Yet the policy has a great potential to evolve politically and institutionally.

The principal CSDP achievements to date are the consolidation of related EU structures under the aegis of the European External Action Service (EEAS), and the Council's definition of the European Defence Agency's statute, seat and operational rules, as foreseen by Article 45(2) TEU.

A number of opportunities to advance the CSDP have been missed; attempts to launch operations have either failed (as in Lebanon and Libya) or lagged, as in Mali. As a result, EU battle groups[2] have not been deployed, and the permanent headquarters for EU operations has yet to be instituted.

The European Parliament has taken a lead in scrutinising the advancement of the CSDP and analysing the policy's setbacks. The Parliament is urging the Council and Member States to improve the policy's effectiveness.

The CSDP could be advanced, the related institutional framework developed, and cooperation among Member States and with the Union's structures enhanced in the following ways:

- Developing a strategic approach with a view to exploiting the full potential of the policy, as provided by Lisbon Treaty. This requires understanding where the Union would add value. Such an approach should describe — in a security and defence white paper — the balance to be achieved between the Union and the Member States;

[1] Inter alia the EU Satellite Centre, the EU Institute for Security Studies, the European Security and Defence College, the Organisation for Joint Armaments Cooperation (OCCAR).

[2] Battle groups (BGs) are a CSDP instrument for early and rapid military crisis responses. They have been operational since January 2005. A BG is a force package (composed of about 1 500 personnel — the minimum to be militarily effective — who are normally multinational) capable of stand-alone operations or of conducting the initial phase of larger operations.

- Incorporating defence into the EU's research and innovation, space and industrial policies. This would help harmonise civil and military requirements, and would help build CSDP capabilities;
- Building upon the Union's institutional framework. This involves notably upgrading the EDA to exploit the full range of its mission and tasks as defined by the EU treaties, particularly for the deployment of capabilities and armaments policy under the CSDP (Article 42(3) TEU). Building upon the EU's framework also involves defining the roles of other Union and European agencies[1] working on security and defence;
- Defining permanent structured cooperation, including the Union's support to those Member States committing military capabilities (as provided for by Article 46 TEU);
- Defining the relationship between various elements of the CSDP: a capabilities and armaments policy (Article 42(3) TEU), permanent structured cooperation (Article 46 TEU), the 'mutual assistance' clause (Article 42(7) TEU, which reads like a mutual defence clause), the mutual solidarity clause (Article 222 TFEU), the Union's commitment to progressively framing a common EU defence policy (Article 42(2) TEU), and the EU-NATO relationship.

Political initiative will be required to address this list of enhancements to the Common Security and Defence Policy. The European Parliament has demonstrated its will to act and to pursue political initiatives in this field. Yet to be most effective in the security and defence domain, the Parliament will also need the support of its national counterparts and of other European institutions.

→ Ulrich Karock

[1] These agencies are European intergovernmental agencies outside of EU structures — such as the Organisation for Joint Armament Cooperation (OCCAR), the European Space Agency (ESA), the French-German Research Institute of Saint-Louis (ISL) and the European Organisation for the Safety of Air Navigation (Eurocontrol) — which either already have or could have roles in EU programmes related to security and defence (or to civilian and military 'dual use'), such as those pertaining to space, research and development, standardisation and certification.

6.2. External trade relations

6.2.1. The European Union and its trade partners

As the world's leading exporter of goods and services, and the world's largest source of foreign direct investment, the EU occupies a commanding place in the global marketplace. Yet significant shifts in the distribution of world trade are taking place, and the nature of the Union's contribution to world trade is changing — as is the certainty of its dominance. Since the economic and financial crisis of 2008, the EU has gradually moved away from the production of labour-intensive, low-value products, and is now specialising in higher-value, branded goods. Persistent trade barriers, however, interfere with the efforts of European exporters. To overcome these and level the playing field for its businesses, the Union is negotiating a number of free trade agreements.

Legal basis

Article 207 of the Treaty on the Functioning of the European Union (TFEU) establishes the common commercial policy as an exclusive competence of the European Union.

The EU's central position

In addition to being the world's premier exporter and investor in 2012, the European Union was the principal trading partner for more than 100 countries worldwide. The EU is a very open market with a high level of insertion in the world's economy. More than 10% of the EU workforce depends on external trade.

As a result of the size and openness of its internal market, the EU has played a central role in shaping the global trading system and significantly contributed to the creation of the World Trade Organisation (WTO).

Foreign trade has also significantly contributed to rising living standards in the EU and elsewhere. Economic openness has brought advantages to the Union. The EU is by far the largest and most integrated free trade area in the world, and trade has built employment; today, 36 million jobs in Europe depend, directly or indirectly, on trade. The improvement of Europe's competiveness has made Europe a more attractive place for foreign companies and investors.

However, global trade is shifting. New economic players and technological breakthroughs have significantly changed the structure and patterns of international trade. In particular, the widespread use of information technologies has made it possible to trade goods and services that could not previously be traded. Foreign exchange has grown tremendously during the last 20 years, reaching unprecedented levels. Today's global economy is extremely integrated, and global supply chains have largely replaced the traditional trade in finished goods.

Globalisation and the persistent effects of the global financial crisis have negatively affected the Union's economic performance. Yet in some respects the EU economy has shown a notable resilience when compared to other industrialised countries, and its share of global GDP has declined less rapidly than those of Japan and the US. The EU has also been able to preserve a relatively strong position in trade in goods while reinforcing its leading role in trade in services.

Role of the European Commission and the European Parliament

International trade was one of the first sectors in which EU Member States agreed to pool their sovereignty. These states charged the European Commission with the responsibility of handling trade matters, including negotiating international trade agreements, on their behalf. In other words, the EU, acting as a single entity, negotiates both bilateral and multilateral trade agreements on behalf of all its Member States. As demonstrated by the record in the WTO Dispute Settlement System, the EU has developed a remarkable capacity to defend its own interests in international trade disputes. The EU has also used international trade tools to promote its own values and policies and its regulatory practices in the rest of the world.

The European Union has traditionally favoured an open and fair international trading system. It has worked strenuously to ensure 'the integration of all countries into the world economy, including

through the progressive abolition of restrictions on international trade'.

The 2009 entry into force of the Treaty of Lisbon has extended the EU's exclusive competences in international trade matters, which now include foreign direct investment. The Treaty of Lisbon also enhanced the role of the European Parliament by making it a co-legislator — on an equal footing with the Council — on laws involving trade. It also granted Parliament a more active role in the negotiation and ratification of international trade agreements. Since these changes were introduced, Parliament has adopted a very proactive approach in trade matters. Its early decisions, such as the rejection of the anti-counterfeiting treaty ACTA, have already had a significant impact on the Union's Common Commercial Policy.

Trade policy and orientation

The Commission's 2011 communication 'Trade, Growth and World Affairs' made international trade one of the pillars of the new EU 2020 strategy, aimed at making the EU greener and more competitive. In addition to stressing the need for a coordinated approach to the EU's internal and external policies, the EU 2020 strategy places greater emphasis on the Union's external economic relations as a catalyst for growth and employment.

In the communication, the Commission reiterated the EU's commitment to concluding the Doha Round and strengthening the WTO. However, the text also acknowledged that multilateral negotiations currently play a secondary role to the new generation of bilateral free trade agreements (FTAs) which the EU plans to conclude in the coming years.

The stalemate in multilateral negotiations — and particularly in the Doha round of talks — has led the EU to find alternative ways to guarantee access to third countries' markets. A new generation of FTAs — first introduced in 2006 — go beyond tariff cuts and trade in goods liberalisation. After years of intense negotiations, the FTA with South Korea was ratified in 2011. Negotiations with Ukraine, Colombia, Peru and Central American countries have also been concluded. Negotiations with individual members of the Association of Southeast Asian Nations (ASEAN) — notably Singapore, Vietnam and Malaysia — are under way. The EU has also opened FTA negotiations with India, Japan and Canada, and is about to open official FTA talks with the US. In total the EU has 29 trade agreements in force.

The benefits of these agreements are significant. The average tariffs imposed on EU exports are due to be cut by approximately 50%. Free trade agreements are projected to contribute to the EU's economic growth with an additional 2.2% EU GDP. The finalisation of these agreements may, however, take several years.

Evidence shows that the EU performs particularly well in the higher segments of the market, where its global market share is around 30% (compared to 20% in all non-energy goods). While transition economies are rapidly increasing the quality of the products they produce, their exports are still dominated by low and medium market merchandise.

Trade statistics can be somewhat misleading. While the EU as a whole was better equipped than other traditional players to resist the structural changes that the world trading system has undergone over the past ten years, it is also hampered by shrinking capacities and by a lack of investment in research and innovation. EU business is gradually losing ground as new actors from dynamic emerging countries increase their presence in world markets.

Moreover, EU exports are strong in industrialised countries (such as the US and Switzerland), but less competitive in rapidly growing markets, particularly in Asia. There is a real risk that the underperformance of the EU in some of the world's most dynamic markets could severely undermine the Union's position in international trade in the long run.

Imports and exports

As the table below suggests, the EU was the world's biggest importer and exporter in 2011, followed by the US and China. The EU's trade in goods with the rest of the world reached EUR 3 267 467 million in 2011.

The European Union as a trading power

Country	Imports	Exports
EU27 [1]	1 714	1 554
China [2]	1 252	1 364
United States	1 625	1 063
Japan	522	581
South Korea [3]	321	352
Russia	205	343
Canada	324	324
Singapore	263	294
Mexico	252	251
Switzerland [4]	150	169
India	203	166
Brazil	136	149
Norway	70	124

[1] External trade flows with extra-EU27
[2] Excluding Hong Kong
[3] 2010
[4] Including Liechtenstein

Source: Eurostat

Between 2010 and 2011, EU exports of goods increased, although they failed to return to pre-crisis

levels. The US remained, by far, the most important destination for goods exported from the EU in 2011 (see below), followed by Switzerland, China and Russia.

Destination of EU exports	% EU exports
United States	17
Switzerland	9
China (excl. Hong Kong)	9
Russia	7
Turkey	5
Japan	3
Norway	3
Rest of the world	47

Source: Eurostat

Imports to the EU also increased between 2010 and 2011. China was the EU's leading supplier of goods in 2011. Imports from Russia rose dramatically, which meant that Russia replaced the US as the second biggest supplier of goods into the EU in 2011 (see table).

Origin of EU imports	% EU imports
China (excl. Hong Kong)	17
Russia	12
United States	11
Norway	6
Switzerland	5
Japan	4
Turkey	3
Rest of the world	42

Source: Eurostat

The EU's traditional trade deficit shrank in 2011, due to the economic slowdown and depressed internal demand, when compared to the previous year and to 2006. The EU remains highly dependent on raw materials and fuels. The EU has effectively resisted foreign competition in sectors such as machinery and chemicals (see below).

EU trade, by category	2006		2010		2011	
	(EUR 1 000 million)	%	(EUR 1 000 million)	%	(EUR 1 000 million)	%
Exports						
Total	1 161.9	100.0	1 356.7	100.0	1 553.9	100.0
Food, drinks & tobacco	57.9	5.0	76.4	5.6	88.9	5.7
Raw materials	28.5	2.5	37.9	2.8	44.8	2.9
Mineral fuels, lubricants	59.0	5.1	76.2	5.6	100.0	6.4
Chemicals & related products	184.6	15.9	235.3	17.3	253.1	16.3
Other manufactured goods	294.2	25.3	311.7	23.0	354.3	22.8
Machinery & transport equipment	509.6	43.9	572.6	42.2	649.6	41.8
Imports						
Total	1 363.9	100.0	1 530.8	100.0	1 713.5	100.0
Food, drinks & tobacco	67.9	5.0	80.7	5.3	91.1	5.3
Raw materials	63.2	4.6	71.1	4.6	85.6	5.0
Mineral fuels, lubricants	339.6	24.9	383.2	25.0	488.6	28.5
Chemicals & related products	109.2	8.0	137.4	9.0	153.2	8.9
Other manufactured goods	341.6	25.0	362.4	23.7	399.2	23.3
Machinery & transport equipment	412.5	30.2	446.3	29.2	441.0	25.7
Trade balance						
Total	– 202.0	—	– 174.2	—	– 159.6	—
Food, drinks & tobacco	– 10.0	—	– 4.3	—	– 2.2	—
Raw materials	– 34.7	—	– 33.3	—	– 40.7	—
Mineral fuels, lubricants	– 280.5	—	– 307.0	—	– 388.6	—
Chemicals & related products	75.3	—	97.8	—	99.9	—
Other manufactured goods	– 47.4	—	– 50.7	—	– 44.9	—
Machinery & transport equipment	97.1	—	126.3	—	208.7	—

Source: Eurostat

The EU is the world leader in trade in services. It reported a EUR 109 100 million surplus in service transactions with the rest of the world in 2011, when exports reached EUR 579 500 million and imports EUR 470 400 million. Trade in services accounted for 21.8% of the EU's total imports of goods and services in 2011. The US, Asia and the countries of the European Free Trade Area (EFTA) were among the EU's principal partners in trade in services. More than two thirds of the EU's imports (67.7%) and exports (70.0%) in international trade in services in 2011 fell into three categories: transport, travel and business services.

	Credits (%)	Debits (%)
European Free Trade Association (EFTA)	16.7	14.0
Other European countries (non-EU, non-EFTA)	8.9	9.5
Northern Africa	2.3	3.8
Central and southern Africa	4.8	3.8
North America	26.4	31.4
Central America	4.0	5.9
South America	4.2	2.8
Arabian Gulf countries	4.2	2.6
Other Asian countries	19.5	17.8
Oceania (including Australia) and southern polar regions	3.1	2.0

Source: Eurostat

→ Roberto Bendini

6.2.2. The European Union and the World Trade Organisation

Since it was established in 1995, the World Trade Organisation (WTO) has played a significant role in creating a rule-based international trading system. The WTO is the successor to the 1947 General Agreement on Tariffs and Trade (GATT). Thanks in part to its dispute settlement mechanism, the WTO has made international trade more fair and less prone to unilateral retaliatory measures.

The objective of creating a multilateral trading system based on shared rules has, however, proven difficult to achieve in an increasingly multi-polar world. Efforts to conclude a new round of negotiations, focused on development (the 'Doha Development Round'), have so far proven fruitless. This has frustrated the efforts of many WTO members, including the EU, to find common ground, and has prompted several nations to emphasise bilateral trade agreements.

The European Parliament has traditionally played an important role in monitoring the work of the WTO, both directly and through the Parliamentary Conference on the WTO, which is co-organised with the International Parliamentary Union. The role of the European Parliament in scrutinising trade policy has increased since the Treaty of Lisbon entered into force in 2009.

In the early decades of the 20th century, trade issues forced countries to engage in increasingly complex interactions, creating the need for a platform to facilitate and regulate trade talks. The resulting 1947 General Agreement on Tariffs and Trade (GATT) not only provided an international round table, creating a multilateral approach to trade, but also established a system of internationally recognised rules on trade. The underlying idea was to create a level playing field for all members through the 'substantial reduction of tariffs and other barriers to trade and the elimination of discriminatory treatment in international commerce'[1].

As international trade evolved, moving beyond tangible goods and into the exchange of services and ideas, the GATT was transformed and institutionalised as the World Trade Organisation (WTO). Established in 1995, the WTO integrated early trade agreements — such as the GATT, the Agreement on Agriculture and the Agreement on Textile and Clothing — as well as further general agreements. The most notable are the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Statistics show a clear link between free and fair trade and economic growth. In this context, the creation of the WTO represented a significant step towards a more integrated and thus more dynamic international trading system. By ensuring that countries keep up the momentum of dismantling barriers to trade in subsequent trade talks, the WTO also secured the continuous promotion of free trade. With two thirds of its members composed of developing countries, the organisation also offers transition economies and least developed countries (LDCs) the possibility of employing trade to advance their development efforts.

Trade dispute settlement

One of the major achievements of the WTO has been strengthening the dispute settlement body with the power to rule on trade disputes and to enforce its decisions. The Trade Dispute Settlement Mechanism is a system of pre-defined rules giving WTO members, regardless of their political weight or economic clout, the possibility to lodge complaints about alleged breaches of WTO rules and to seek reparation. This mechanism reduces the unilateral defence mechanisms that countries previously tended to adopt, many of which provoked retaliatory reactions from target countries and sometimes led to fully-fledged trade wars.

The WTO system guarantees that stronger members do not prevail over weaker ones and provides clear rules on retaliatory measures.

Since the inception of the WTO, the EU has been one of the biggest users of the WTO Dispute Settlement System. The Union has been involved in 160 dispute settlement cases; 87 as complainant and 73 as defendant[2]. In 130 cases, the EU has also requested 'third party' status, which allows WTO members to monitor disputes involving other parties. Represented by the European Commission, the EU has also often sought to improve and clarify WTO agreements by requesting rulings from the organisation's panels and Appellate Body.

[1] GATT 1947, introductory paragraph.

[2] Calculated as of 1 March 2013.

The European Parliament closely monitors the evolution of disputes involving the EU. In the past, the European Parliament's Committee on International Trade has aired its views about trade disputes through reports, public hearings and oral questions to the Commission and the Council. This has been the case, for example, with the ongoing Airbus-Boeing dispute between the EU and US.

The Doha Round

Since 2001, WTO members are engaged in a broad round of multilateral trade negotiations — the 'Doha Round'. This ninth round of global trade negotiations is still open and is based on the principle of 'single undertaking', which means essentially 'nothing is agreed until everything is agreed'. Like the previous rounds, this one seeks to further liberalise trade. Negotiators are also charged with reviewing trade rules and adjusting them to the constantly evolving world trading system.

The principal objective is to place development at the heart of the world trade system. The negotiators' conclusions should strengthen developing countries' benefits from gains in international trade and should help them combat poverty. As a result, the latest round has been called the Doha Development Agenda (DDA).

The DDA is built upon three pillars:

1. market access for agriculture products (including tariffs and subsidies), industrial goods (also referred to as 'NAMA' for 'non-agricultural market access'); and services;

2. rules, such as trade facilitation and anti-dumping; and

3. development.

Unfortunately talks have stalled over major issues. The most significant differences are between the often irreconcilable positions of major emerging countries and industrialised countries or blocs concerning the way the international trading system should be reshaped. The Doha talks have assigned an increasing role for developing countries, whose weight in the world trading system has enormously grown over the last decade.

The EU had supported launching a broad and ambitious round because this seemed to be the only way to deliver economic growth and development gains for all participants, and to accept the trade-offs that would ensue. Yet the successful conclusion of negotiations does not seem within reach, despite the best efforts of a number of participants, including the EU. This is a disappointment: concluding the round would speed a recovery from the global economic crisis and keep protectionism at bay.

The European Parliament has been following these talks closely. Various reports assessing the state of the discussions have been produced. The Parliamentary Conference on the WTO, co-organised by the European Parliament and the International Parliamentary Union, regularly offers an opportunity for constructive participation (see below for more information on this conference). On several occasions the European Parliament has called for negotiations to resume, emphasising the round's importance for world trade and economic development.

The European Parliament will also closely follow upcoming negotiations for a more limited agreement and the outcome of the next WTO ministerial meeting, to be held in Bali in December 2013.

The EU and the WTO

Together with the US, the EU has played a central role in developing the international trading system since World War II.

Like the GATT (and later the WTO), the EU was itself originally designed to remove customs barriers and promote trade between its Member States. The EU 'single market' was partly inspired by GATT principles and practices. The Union has always been among the main promoters of effective international trade based on the rule of law. Such a system helps ensure that its businesses enjoy fair market access abroad and thus supports economic growth, both domestically and in third countries, particularly less-developed ones.

The EU's Common Commercial Policy is one of the areas in which the EU has full and direct competency. In other words, when acting in the WTO, the EU works as a single actor and is represented by the European Commission rather than by the EU's Member States. The Commission negotiates trade agreements and defends the EU's interests before the WTO Dispute Settlement Body on behalf of all 27 Member States. The Commission regularly consults and reports to the Council and the European Parliament. Since the entry into force of the Lisbon Treaty, the Council and the European Parliament are co-legislators and have equal say on international trade matters.

Through the WTO, the EU has also sought to promote a multilateral frame for trade negotiations that was intended to complement and possible supplant bilateral negotiations. However, the stalemate in the latest round of negotiations and the fact that other trading partners have turned to bilateral agreements have compelled the EU to partly reconsider its long-standing strategy and return to regional and bilateral negotiations.

The impasse at the WTO is also a sign that the international trading system has changed dramatically in the last 20 years. The old system, largely dominated by the EU and the US, has evolved into a more open and multifaceted one, with new

actors — essentially transition and developing countries — playing a central role. The liberalisation of the international trading system has benefited some developing countries, which have experienced an unprecedented phase of sustained economic growth. The EU is well aware of these dynamics and has called for deep reflection on the evolution of the WTO in the 21st century.

The Parliamentary Conference on the WTO

The Parliamentary Conference on the WTO is jointly organised by the European Parliament and the Inter-Parliamentary Union (IPU) and is intended to strengthen democracy internationally by bringing a parliamentary dimension to multilateral trade cooperation.

The first formal meeting of parliamentarians at the WTO dates back to the December 1999 WTO Ministerial Conference held in Seattle. In 2001, the European Parliament and the Inter-Parliamentary Union agreed to pool their efforts and sponsor a parliamentary meeting during the WTO Conference in Doha. This meeting laid the foundations of what has become the Parliamentary Conference on the WTO.

The conference provides a forum in which members of parliaments from all over the world exchange opinions, information and experiences on international trade issues. Providing the WTO with a parliamentary dimension, participants monitor WTO activities; promote the WTO's effectiveness and fairness; advocate the transparency of WTO procedures; improve the dialogue between governments, parliaments and civil society; influence the direction of discussions within the WTO; and build the capacity of state parliaments in matters of international trade.

The Parliamentary Conference on the WTO is held annually, as well as during WTO Ministerial Conferences.

→ Roberto Bendini

6.2.3. Trade regimes applicable to developing countries

The preferential trade regimes that the EU applies to developing countries have two principal pillars. One is the unilateral 'Generalised System of Preferences' (GSP), an autonomous trade arrangement through which the EU offers certain foreign goods non-reciprocal preferential access to the EU market in the form of reduced or zero tariffs. The second pillar is composed of the EU's economic partnership agreements (EPAs) with regions in Africa, the Caribbean and the Pacific (ACP). EPAs are WTO-compatible free trade agreements with multi-layered development components. EPAs have replaced provisions of the Cotonou and Lomé Conventions.

Legal basis

Article 207 of the Treaty on the Functioning of the European Union (TFEU) defines Parliament's competence in the field of common commercial policy (CCP). Article 188(2) TFEU stipulates that the ordinary legislative procedure — requiring the Parliament's approval — applies to the implementation of CCP. Parliament's legislative power includes adopting or refusing autonomous CCP measures, such as the recent reform of the EU's GSP scheme. However, Parliament is not directly involved in decisions regarding amendments to the list of beneficiaries, as it has agreed that the Commission is empowered to adopt 'delegated' acts in accordance with Articles 290 and 291 TFEU. Under Article 218 TFEU, Parliament's consent is required for the conclusion of international trade agreements such as EPAs.

Objectives of EU preferential market access schemes

The primary objective of the GSP is to facilitate the access of developing countries and territories to the EU market by reducing tariffs on their goods. Tariff preferences on the EU market should enable developing countries to participate more in international trade, thereby generating additional export revenue with which to implement their own sustainable development and poverty reduction policies, and to diversify their economies. The GSP does not include an expectation or requirement that this access be reciprocated.

The GSP scheme

The GSP scheme, which was introduced in 1971, has been implemented through successive Council regulations. The most recent extensions of the scheme were initiated by means of Council Regulation (EC) No 732/2008 of 22 July 2008[1], accompanied by a 'roll-over' regulation of 11 May 2011, covering the period from 1 January 2009 to 31 December 2011. The latter foresees a further extension of the regulation until 31 December 2013 in order to allow sufficient time for a reform of the scheme to be adopted[2]. The GSP scheme foresees duty reductions for around 6 200 tariff lines (out of a total of approximately 7 100), while addressing the different needs of 176 beneficiaries by applying one standard arrangement and two special arrangements:

- The current, standard GSP reduces duties on approximately 66% of all tariff lines to 111 countries and territories. In 2011, eligible countries exported goods worth EUR 72.5 billion under the scheme, corresponding to 83% of all EU imports benefiting from GSP preferences[3].
- The special incentive arrangement for sustainable development and good governance, known as GSP+, provides for zero duties on, more or less, those 66% of all tariff lines that are designated under the standard GSP for developing countries considered to be vulnerable. This is conditional on the countries' ratification and implementation of 27 international conventions relevant to sustainable development, including basic human rights conventions, labour rights conventions, certain conventions relating to environmental protection and conventions relating to the fight against illegal drug production and trafficking. (Failure to comply with these requirements results in the suspension of the tariff concession, as has been the case for Sri Lanka.) In 2011 the 15 countries that qualified (Armenia, Azerbaijan, Bolivia, Colombia, Costa Rica, Ecuador, El Salva-dor, Georgia, Guatemala, Honduras, Mongolia, Nicaragua, Peru, Paraguay and Panama) exported goods worth EUR 4 billion with these preferences, comprising 5% of all GSP preferences.

[1] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:211:0001:0039:EN:PDF

[2] Regulation (EU) No 512/2011 amending Council Regulation (EC) No 732/2008 of 11 May 2011,

[3] European Commission, The EU's new Generalised Scheme of Preferences (GSP), October 2012, http://www.mkma.org/Notice%20Board/2012/NewGSPHighlights.pdf

- The 'Everything But Arms' (EBA) initiative grants duty-free and quota-free access for all products from 49 least developed countries (LDCs)[1]. On 17 September 2012 the Commission proposed reinstating these trade preferences to Myanmar/Burma, which had been suspended from the GSP regime in 1997. If Parliament approves the proposal, exports from Myanmar/Burma would enjoy benefits when entering the EU market.

The reformed GSP scheme

On 13 June 2012 Parliament adopted the Commission's proposal for a reform of the scheme of generalised tariff preferences[2]. As a result of these reforms, which will take effect on 1 January 2014, while the three instruments will remain in place (the GSP and GSP+ for ten years, the EBA for an unlimited time), the application of these instruments will become more focused:

- Narrowed income conditionality should ensure that vulnerable developing countries with low and lower-middle incomes become the main target group. Such countries include Bolivia and the Republic of Congo.
- Eligibility for the GSP scheme will end for countries that have been classified by the World Bank as high-income or upper-middle-income countries for the past three years; these include Argentina, Brazil, Qatar, the Russian Federation and Saudi Arabia. In total, 89 countries will remain eligible.
- The criteria regarding eligibility for the GSP scheme have been relaxed. Today, a country is eligible if its exports represent less than 1% of total EU imports from all GSP beneficiaries. In future, this threshold will rise to 2%, which means that certain countries — such as Pakistan and the Philippines — could become eligible under the GSP+ scheme, provided that they fulfil the additional sustainability criteria.
- Within the GSP, other changes relate to the process of 'graduation', involving calculations to determine the point at which tariff preferences no longer apply to a specific country. Under the current system, European sectors are safeguarded when shipments of a particular product to the EU exceed 15% of all GSP imports; the threshold is lowered to 12.5% for textiles and apparel. Under the revised scheme, the threshold is raised to 17.5% in general and to 14.5% for textiles and apparel.
- Other countries with which the EU has preferential trade agreements — i.e. Mexico, South Africa and Tunisia — will lose their GSP benefits. The list of these countries will be expanded when the multiparty agreement with Columbia and Peru, and the trade chapter of the Association Agreement with Central America, become effective.
- There are 49 least developed countries which will continue to enjoy zero duties under the EBA scheme. Of these, 33 are African countries, 10 are Asian (including Afghanistan, Bangladesh, Bhutan and Cambodia), 5 are Pacific countries (including Samoa, Salomon Island and Vanuatu) and the last is in the Caribbean (Haiti).

Economic partnership agreements

In the past, the EU's preferential trade regime operated through exceptions (waivers) to the WTO's 'most favoured nation' treatment rules. The last waiver under the Lomé Convention was extended to 31 December 2007. Given this deadline, and the obligation to replace the waiver with WTO-consistent regional trade agreements, a Council Decision of 17 June 2002 paved the way for negotiations on economic partnership agreements (EPAs).

These EPAs will govern the economic relationship between the EU and the African, Caribbean and Pacific (ACP) countries in the future. Unlike the Cotonou or Lomé Conventions, which are to be replaced by the EPAs, these agreements are WTO-compliant, covering substantially all trade in goods (at least 80%) and services, investments and trade-related rules. EPAs should foster ACP integration into the world economy and promote the countries' sustainable development (*6.3.1).

State of play

The EU-Caribbean Forum (Cariforum) Economic Partnership Agreement, which is the EU's first full EPA, was signed in October 2008 and has been applied provisionally since December 2008. Parliament approved the Cariforum EPA in March 2009. Ratification procedures in most Caribbean and EU Member States are still ongoing. In addition to ensuring the Cariforum EPA's comprehensive coverage of trade in goods and services, the signatories to the agreement commit to taking other measures to boost trade in areas such as investment, competition, public procurement and intellectual property. The joint oversight bodies of the agreement met at senior official and ministerial level for the second time in September and October 2012 respectively. The Cariforum EPA provides for ongoing monitoring of its implementation and review, with the first review due in 2013.

The process of creating full EPAs with African and Pacific regions has been a gradual one. One of the first steps has been to implement an interim EPA,

[1] http://ec.europa.eu/trade/wider-agenda/development/generalised-system-of-preferences/everything-but-arms/

[2] http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bTA%2bP7-TA-2012-0241%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN

to be followed by a comprehensive or full EPA at a later stage. Another element of the process involves applying the Market Access Regulation (MAR)[1], which ensures that ACP countries continue to benefit from free access to the EU market — thereby preventing trade disruptions — while they are signing and ratifying the EPAs; this was important for the countries whose trade regime under the ACP-EU Cotonou Agreement had expired. To date, 19 countries (14 countries in the Caribbean, in addition to Madagascar, Mauritius, Seychelles, Zimbabwe and Papua New Guinea) have taken the necessary steps to ratify the initialled agreements and will continue to enter the EU market duty-free and quota-free.

Parliament consented to the conclusion of the Interim Agreement establishing a framework for an Economic Partnership Agreement with four Eastern and Southern African states — Mauritius, Madagascar, Seychelles and Zimbabwe (the ESA countries) — on 17 January 2013[2]. With this vote, Parliament endorsed the Council's decision and the Commission's proposal for the first African interim EPA. In fact, this EPA has been applied provisionally since 14 May 2012. The agreement will enter into force as soon as the EU Member States and the ESA countries ratify it.

Given that a number of ACP countries have yet to sign or apply their interim EPAs, in September 2011 the Commission advanced a proposal, supported by a common position of the Council, that extends the application of the MAR until 1 January 2014. Beyond this date, the Commission argues, the MAR's provisional bridging arrangement will no longer provide a solid legal basis for ACP-EU trade relations, as the EU would be impinging on the ACP countries' WTO obligations. At that point, these countries would lose their preferential access to the EU market unless they benefited from the GSP or EBA schemes. Parliament's codecision procedure for extending the MAR is ongoing.

→ Elfriede Bierbrauer

[1] Council Regulation (EC) No 1528/2007 of 20 December 2007 applying the arrangements for products originating in certain states which are part of the African, Caribbean and Pacific (ACP) Group of States provided for in agreements establishing, or leading to the establishment of, Economic Partnership Agreements (OJ L 348, 31.12.2007, p. 1).

[2] http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bTA%2bP7-TA-2013-0025%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN

6.3. Development policy

6.3.1. A general survey of development policy

Development policy lies at the heart of the European Union's external policies. Ever since the EU was established, the Union has supported development in partner regions. The EU has gradually enlarged its original focus on the African, Caribbean and Pacific (ACP) group of states and now works with some 160 countries around the world.

The EU is the world's largest development donor. Together, the Union and its Member States provide more than half of official development assistance (ODA) globally. The primary objective of the EU's development policy is 'the reduction and, in the long term, the eradication of poverty'. Additional targets include defending human rights and democracy, promoting gender equality and — more recently — tackling environmental and climate challenges.

Legal basis

Articles 4(4) and 208 to 211 of the Treaty on the Functioning of the European Union (TFEU); Article 21(1) of the Treaty on European Union (TEU): overall mandate and guiding principles in the field of EU development cooperation.

Cotonou Agreement (for the African, Caribbean and Pacific states) and various bilateral association agreements (as under Article 217 TFEU): specific cooperation agreements.

Articles 312-316 TFEU: budgetary matters.

Policy and financial framework

A. European Consensus on Development Policy

On 20 December 2005, the European Commission (EC), Council of Ministers and European Parliament (EP) jointly adopted the 'European Consensus on EU Development Policy'. This policy statement establishes a uniform set of principles and values for the development cooperation of EU institutions and Member States. The text identifies core targets for European development policy: reducing poverty, in line with the United Nations' Millennium Development Goals (MDGs), and promoting Europe's democratic values across the globe. The Consensus also assigns developing countries clear responsibilities for their own development. Under the heading 'Delivering more and better EU aid', the Union and Member States pledge to increase their ODA spending to 0.7% of gross national income (GNI) by 2015, to allocate at least half the additional funding to Africa and to apply a 'pro-poor' focus in development work.

B. The EU's 'Agenda for Change'

Approved by the EU Council in May 2012, the EU's 'Agenda for Change' policy document builds on the Consensus and makes explicit suggestions for increasing the impact of EU development policy. It establishes 'the promotion of human rights, democracy, the rule of law and good governance' and 'inclusive and sustainable growth' as the two basic pillars of development policy. The text also states that resources should be targeted at 'countries most in need', including fragile states and least developed countries (LDCs). A new principle of 'differentiation' is introduced to tailor aid volumes and instruments to each country's specific needs and governmental performance.

C. Aid effectiveness and policy coherence

European development policy explicitly promotes harmonising policies and better integrating partner countries into financial allocation and planning processes. To do this, the EU adopted a 'Code of Conduct on the Division of Labour in Development Policy' in 2007 and an 'Operational Framework on Aid Effectiveness' in 2011. Efforts to increase aid effectiveness are evermore necessary given the current climate of austerity and the 2015 target date for the MDGs. These efforts are also consistent with actions taken by the international community, such as the OECD's Paris Declaration, which promotes 'ownership, harmonisation, alignment, results and mutual accountability' in development aid (2005). The OECD's policy has been revised twice, in the 'Accra Agenda for Action' (2008) and the 'Busan Partnership for Effective Development Co-operation' (2011), with both revisions strongly supported by Brussels. In 2005 the EU also adopted the 'Policy Coherence for Development' programme, which would apply to 12 different policy areas, including a

number not traditionally focused on development, such as trade, migration and transport.

D. Legislative and financial framework

For its 2007-2013 multiannual financial framework (MFF), the EU simplified and streamlined its development portfolio, replacing the previous framework's 30 programmes and 90 budget lines by eight development instruments (see Table 1 below). These instruments are administered by the European External Action Service (EEAS) and different services of the European Commission. The EEAS, established under the 2009 Lisbon Treaty, defines external policy and provides strategic direction — but without specifying its implementation — for the EU's development cooperation. The Commission's Directorate-General for Development and Cooperation — EuropeAid (DG DEVCO-EuropeAid), established in January 2011, is now the single party in charge of programming and implementing most EU development instruments. Its principal goals are:

- eradicating poverty and hunger in the world,
- promoting sustainable development, and
- supporting democracy, peace and security.

DG DEVCO-EuropeAid has adapted the Union's development policy to current needs in the recent proposal 'A decent life for all by 2030', which is currently under review by the Council and the EP. The Directorate-General for Humanitarian Aid and Civil Protection (DG ECHO) is charged with providing humanitarian aid, civil protection and crisis management — tasks that formally constitute a separate, non-development portfolio. (See the fact sheet on humanitarian aid.) Other Commission bodies that help coordinate the EU's development instruments are DG Regional Policy (REGIO), DG Economic and Financial Affairs (ECFIN) and the Service for Foreign Policy Instruments (FPI).

E. Main development policy instruments

Of the instruments listed in Table 1, the Development Cooperation Instrument (DCI) and the European Development Fund (EDF) are the most politically and financially significant.

Table 1: Overview of the EU's development policy instruments(MFF 2007-2013)

Instrument	Focus	Format	Main contact and budget
Development Cooperation Instrument (DCI)	Latin America, (South-) East Asia, Central Asia, Gulf region, South Africa + global thematic support	Geographic + Thematic	DG DEVCO EUR 16.9 billion
European Neighbourhood and Partnership Instrument (ENPI)	European Neighbourhood, Russia * from 2014: European Neighbourhood Instrument (ENI)	Geographic	DG DEVCO EUR 11.2 billion
Instrument for Pre-Accession (IPA)	Balkans and Turkey	Geographic	DG REGIO EUR 11.5 billion
Cooperation with Industrialised Countries (ICI)	Industrialised countries * from 2014: Partnership Instrument (PI)	Geographic	FPI EUR 172 million
EU-Greenland Partnership	Greenland * new proposal for 2014-2020 MFF	Geographic	—
European Instrument for Democracy and Human Rights (EIDHR)	Democracy and human rights' promotion	Thematic	DG DEVCO EUR 1.1 billion
Instrument for Stability (IfS)	Political stability and peace building	Thematic	DG DEVCO (and others) EUR 2.1 billion
Humanitarian aid	Humanitarian action, crisis response * now covered by DG ECHO	Thematic	DG ECHO EUR 5.6 billion
Macro-Financial Assistance (MFA)	Payment support to third countries * not featured any more	Thematic	DG ECFIN EUR 791 million
Instrument for Nuclear Safety (INS)	Nuclear safety * from 2014: Instrument for Nuclear Safety Cooperation (INSC)	Thematic	DG DEVCO EUR 524 million
Off-budget			
European Development Fund (EDF)	ACP and Overseas Countries and Territories (OCTs)	Geographic	DG DEVCO EUR 22.7 billion

The Development Cooperation Instrument (DCI) is the largest development portfolio within the EU budget, covering development cooperation with Latin America; Central, East and Southeast Asia; the Gulf region; and South Africa. The DCI also offers thematic instruments (e.g. investing in people, the environment and food security) for all developing countries. Funding can take the form of direct budget support for partner countries or for decentralised bodies, non-governmental organisations (NGOs), civil society groups, international organisations and other EU institutions. Current debates on the 2014-2020 MFF are likely to have an important effect on the DCI, both in terms of finances and programming. The proposed application of 'differentiation' will mean that all middle-income-countries (MICs) and those accounting for more than 1% of global GDP will 'graduate' — i.e. no longer be eligible for grant-based bilateral EU funding. As a result, 19 countries may see their direct DCI funding replaced by need-based 'differentiated development partnerships' from 2014 onwards.

The European Development Fund (EDF), which is not included in the EU budget but based on voluntary contributions from the Member States, is the EU's oldest and largest development instrument. Covering cooperation with the African, Caribbean and Pacific (ACP) group of states and the Union's Overseas Countries and Territories (OCTs), the EDF's key areas are:

- economic development,
- social and human development, and
- regional cooperation and integration.

The EDF offers additional funding — called 'incentive amounts' — for countries with improved governance records. Funds are allocated with a 'rolling programming' in which partner countries partake in determining cooperation priorities and projects. While negotiations for the 11th EDF are ongoing, the fund will remain 'extra-budgetary', as Member States have not supported 'budgetisation' in the current climate of austerity. Including the EDF (or its successor) in the EU's budget would lead to greater financial security for recipients and improved policy coherence. It would also make the EDF subject to a different approval process — codecision, necessitating the approval of the European Parliament and thereby improving democratic scrutiny (see below for more information on the role of the Parliament). On the other hand, 'budgetisation' would add administrative steps to the disbursement of funds; it could jeopardise the long-standing ACP-EU co-management, and it might lead to a reduction in Member States' allocations to the EDF.

Role of the European Parliament

- Legal framework. In legal terms, Article 209 of the TFEU states that the EP and the Council, 'acting in accordance with the ordinary legislative procedure, shall adopt the measures necessary for the implementation of development cooperation policy'. This places both institutions on equal footing, rendering development one of the very few foreign policy portfolios for which the Parliament holds such powers.
- Parliamentary scrutiny over policy implementation. The Parliament has historically exercised relatively little control over the implementation of development policy. Yet, the EP has obtained the right to question the Commission whenever it finds that proposals promote causes other than development (i.e. trade, fighting terrorism, etc.) or if it considers the EC is exceeding its legal mandate. The EP also exerts control by regularly deliberating policies with the Commission, both in formal settings and in informal discussions. Concerning the EDF, control is restricted to an indirect role via the ACP-EU Joint Parliamentary Assembly (JPA). Current plans to simplify and streamline the DCI are likely to result in a further reduction of the EP's involvement. Under the changes that are currently envisioned, DCI allocations will be adopted through 'delegated acts'. These foresee consultations with Member States and the EP, but do not require the EP's formal approval.
- Budget authority. The Treaty of Lisbon establishes the EP and Council as the joint budgetary authority of the Union. For the seven-year MFF, the Council retains the prime decision power, but requires parliamentary consent to adopt the framework (Article 312, TFEU). For the annual budget, Article 314 of the TFEU lays out a procedure that includes one reading by both the EP and the Council. Once these are concluded, the EP can approve or reject the budget. In the field of international cooperation, the EP's Development Committee (DEVE) follows budgetary deliberations and can issue complaints if it sees the need to do so. The EP thus holds a de facto final say in this area. Yet the EP also has no formal budgetary powers over the EDF, as the overall amount and distribution are negotiated on an intergovernmental level between the Council and the Commission, with only advisory input from the EP.

→ Manuel Manrique Gil / Nils Tensi

6.3.2. Humanitarian aid

The EU is the world's largest humanitarian donor, providing around 50% of global funding for emergency relief. The central institution for providing and coordinating this assistance is the European Community's Humanitarian Office (ECHO), which does not implement humanitarian assistance itself, but rather funds operations through different partners (including NGOs and UN agencies). In 2011 the EU provided EUR 1 154 million in humanitarian assistance to 117 million people in 91 non-EU countries. In the field of humanitarian aid policy, the European Parliament, together with the Council of the EU, acts as co-legislator. In addition, the EP monitors the delivery of humanitarian aid and ensures that budgetary provisions match humanitarian needs.

Legal basis

Article 214 of the Treaty on the Functioning of the European Union (TFEU): establishes humanitarian aid as a separate policy (formerly within Article 179 of the Treaty of the European Community, or TEC).

Article 214(1) of the TFEU: defines aims and principles of humanitarian aid.

Article 21 of the Treaty on European Union (TEU): principles for all EU foreign activities.

Regulatory and policy framework

Detailed provisions and regulations for the provision of humanitarian aid, including its financing instruments, are laid out in the Humanitarian Aid Council Regulation (EC) No 1257/96 of 20 June 1996. This regulation was not modified when other instruments were overhauled in preparation for the 2007-2013 multiannual financial framework (MFF). For the 2007-2013 period, EUR 5.6 billion were allocated to the humanitarian aid instrument — an amount that has been topped up regularly to deal with emergencies and crises.

The overall policy framework for humanitarian assistance is outlined in the 'European Consensus on Humanitarian Aid' policy (2007), signed by the three EU institutions (the Commission, Council and Parliament). The 'Consensus' defines the EU's common vision, policy objectives and principles for humanitarian aid. The text outlines a vision of the EU responding with a single, more effective voice to humanitarian needs. The policy also defines the role of Member States and common institutions and the need for coordination among them and with the United Nations. It emphasises the need for more resources and for aid to be delivered by professionals.

The European Community's Humanitarian Office (ECHO)

A. Overview and impact

The EU is the world's largest humanitarian donor, providing around 50% of global funding for emergency relief to victims of man-made and natural disasters. Some of these funds come directly from Member States, but an important contribution originates from the common EU budget. The central institution for providing and coordinating European humanitarian assistance for the past two decades has been the European Community's Humanitarian Office (ECHO), created in 1992. In 2004 ECHO became a Directorate-General (DG) within the European Commission (EC), and in 2010 ECHO integrated civil protection within its mandate. Under Kristalina Georgieva, the first European Commissioner for International Cooperation, Humanitarian Aid and Crisis Response, ECHO's renewed mandate included providing better coordination and disaster response within and outside the EU.

Since its creation, ECHO has channelled EUR 14 billion from the common EU budget to nearly 150 million people affected by disasters and conflicts in over 140 countries. ECHO has also grown over the years: it currently has 300 officials working at its Brussels headquarters, as well as 400 staff members in 44 offices in 38 countries. However, ECHO does not itself implement humanitarian assistance programmes; rather, it funds operations through different partners. ECHO's main task is providing funds, verifying that finances are soundly managed and ensuring that its partners' goods and services reach the affected populations effectively and rapidly, responding to real needs.

Usually, following the onset of a natural disaster or other event requiring humanitarian assistance, ECHO's humanitarian aid experts carry out an initial assessment of the situation on the ground. Funds are then rapidly disbursed based on this assessment — a 'needs-based approach' that defines ECHO's work. Thanks to special provisions in its financial regulation, the EC can initiate fast-track budget procedures, injecting up to EUR 3 million in 72 hours and EUR 10 million within 10 days in humanitarian operations. This aid is channelled through more than 200 partners — including United Nations' agencies and the Red Cross — with which ECHO has signed *ex ante* contractual agreements. ECHO's structure ensures that funds are used transparently and that partners remain accountable. In 2011, 50% of ECHO

funds were implemented by non-governmental organisations (NGOs), 36% by UN agencies, and 14% by other international organisations.

In 2011, the EU provided EUR 1 154 million in humanitarian assistance to 117 million people in 91 non-EU countries. An initial EUR 853 million was available from the EU budget, which was supplemented by responses to different crises. Additional funds were mobilised from the EU Emergency Aid Reserve, the European Free Trade Association (EFTA), other budget lines within the EC's 'Heading 4' (External Affairs) and the 10th European Development Fund (EDF) — though this EDF support was limited to the African, Caribbean and Pacific countries that are signatories to the Cotonou Agreement.

In 2011, 42% of humanitarian aid funds were funnelled to 'protracted crises and complex emergencies', including in Sudan, South Sudan, Palestine and the Democratic Republic of Congo (DRC). Another 38% were devoted to natural disasters and providing a rapid response, including humanitarian aid and facilitating Member States' assistance. The countries affected included Japan (following the earthquake, tsunami and nuclear disaster) and a number of states in the Sahel region and the Horn of Africa (following drought). The remaining 20% of EU humanitarian assistance funds responded to 'ad hoc crises and interventions', including the famine in Somalia and the wider food crisis in the Horn of Africa (which received EUR 181 million) and conflict situations in Libya, Côte d'Ivoire and Iraq.

Thematic priorities

Besides emergency response, ECHO also provides aid to countries to strengthen their own capacities to respond to crises and contribute to long-term development. This is done according to a number of selected thematic priorities. One thematic priority is disaster preparedness. ECHO's disaster preparedness programmes (DIPECHO) in Asia, Latin America and the Caribbean support early-warning systems, public awareness campaigns and other preventative measures. Food security is another important thematic priority for ECHO, which works to strengthen global food security governance mechanisms as well as providing assistance in specific cases.

These efforts are underpinned by ECHO's emphases on strengthening resilience and linking relief, rehabilitation and development (LRRD). Increasing resilience is the subject of a recent (October 2012) communication by the European Commission and forms the core of two programmes, one in the Sahel (the AGIR programme) and another in the Horn of Africa (SHARE), which aim to coordinate humanitarian and development aid and break the vicious cycle of drought, hunger and poverty.

B. Other instruments

The EU's humanitarian assistance involves two further structures, both of which are being transformed by new legislative proposals.

- The first is the EU's Civil Protection Mechanism**,** involving 32 states — the 27 members of the Union plus Croatia, the former Yugoslav Republic of Macedonia, Iceland, Liechtenstein and Norway. These countries pool resources that can be offered — usually without cost — to any country hit by disaster. The types of assistance offered under the mechanism include in-kind aid, search and rescue teams and other forms of expertise. Whilst Member States provide the resources, the mechanism is operated by ECHO's Monitoring and Information Centre (MIC). In 2011 the MIC received 18 requests for assistance, 14 of which came from outside the EU. At the end of 2011, the EC put forward a proposal — COM(2011) 934 — for strengthening the mechanism, moving beyond its ad hoc voluntary basis, activated after disaster strikes, to a pre-planned system allowing immediate action. The proposal foresees the creation of an Emergency Response Centre which would replace the MIC, allowing the EU to take a more proactive role. The Council and the European Parliament (EP) are currently reviewing the proposal. After being approved in November 2012 by the EP's Committee on the Environment, Public Health and Food Safety (ENVI) (with the Development Committee as associated committee), the report was tabled to plenary in January 2013 and is now awaiting its first reading.
- A second important element in the EU's humanitarian response is the European Voluntary Humanitarian Aid Corps, which was envisaged in Article 214(5) of the Lisbon Treaty. This Corps would embody the Union's humanitarian values and sense of solidarity and strengthen the EU's capacity to respond to humanitarian crises and build the resilience of vulnerable communities in third countries. The EC legislative proposal to establish the Corps — COM(2012) 514 — was published in September 2012 and is currently under consideration by the Council and the EP. The DEVE Committee is scheduled to vote on the report in April 2013.

Role of the European Parliament

In the field of humanitarian aid policy, the EP, together with the Council of the EU, acts as co-legislator. The legal bases of humanitarian aid policy proposed by the Commission ('regulations') must be negotiated with, and approved by, both the Council and the EP, according to the EU's 'ordinary legislative procedure'. The Commission's implementation measures ('decisions') are also submitted to the

EP, which has oversight powers. Within the EP, humanitarian aid falls within the remit of the Committee on Development (DEVE).

In addition, the EP monitors the delivery of humanitarian aid and seeks to ensure that budgetary provisions match humanitarian needs. The EP has regularly highlighted the need to increase funding levels for humanitarian aid. The DEVE Committee and the EP in general have also sought — through opinions and resolutions, including own-initiative reports — to influence the strategic decisions and policy orientations of the Commission. The EP reviews the Commission's annual work programme and ECHO's operational strategy. Commissioner Georgieva is also invited to regular exchanges of views with the DEVE Committee. The adoption of the European Consensus on Humanitarian Aid in 2007 responded in no small part to the firm positions adopted by the EP. Other policy priorities that the EP has advocated are food security and linking humanitarian and development assistance.

To strengthen the EP's oversight of humanitarian aid, the DEVE Committee has appointed a Standing Rapporteur for Humanitarian Aid every two and a half years since 2006. The Rapporteur is charged with preserving aid budget interests, monitoring humanitarian aid programmes and maintaining close contacts with the humanitarian aid community. Since 2009, the standing Rapporteur is Michèle Striffler (European People's Party), whose mandate was renewed at the end of 2011.

→ Manuel Manrique Gil

6.4. Human rights and democracy

6.4.1. Human rights

The European Union is committed to supporting democracy and human rights in its external relations, in accordance with its founding principles of liberty, democracy and respect for human rights, fundamental freedoms and the rule of law. The EU seeks to mainstream human rights concerns into all its policies and programs, and it has different human rights policy instruments for specific actions — including financing specific projects through the EU financial instruments.

Legal basis

- **Article 2 of the Treaty of the European Union (TEU): EU values.** The EU's founding values are 'human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities'.

- **Article 3 TEU: EU objectives.** In 'its relations with the wider world', the EU contributes to 'eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter'.

- **Article 6 TEU: Fundamental Rights Charter and European Convention.** Although the EU Fundamental Rights Charter (Article 6 I) only explicitly refers to the implementing Union law, the EU's institutions, bodies and Member States must also respect the Charter in the EU's external relations. Countries joining the EU must also comply with the Charter. Article 6 II gives the EU legal competence to accede to the European Human Rights Convention.

- **Article 21 TEU: Principles inspiring the Union's external action.** These principles are democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, equality and solidarity, respect for the principles of the United Nations Charter of 1945 and international law. In Article 21, the EU endorses the principle of 'indivisibility of human rights and fundamental freedoms' committing itself to consider economic and social rights equally important to civil and political rights.

- **Article 205 of the Treaty on the Functioning of the European Union (TFEU): General provisions on the Union's external action.** This article determines that the EU's international actions are to be guided by the principles laid down in Article 21 TEU.

EU Human Rights policy

On 25 June 2012, the European Council adopted a Strategic Framework on Human Rights and Democracy, accompanied by an 'Action Plan' to implement the Framework. The Framework defines the principles, objectives and priorities to improve the effectiveness and consistency of EU policy during the next 10 years. These principles include mainstreaming human rights into all EU policies (as a 'silver thread'), including when internal and external policies overlap, and adopting a better-tailored approach. The Action Plan foresees concrete steps for the period until 31 December 2014.

While not legally binding, the EU Guidelines on Human Rights adopted by the Council of the EU provide practical instructions on:

- action against death penalty,
- dialogues on human rights,
- rights of the child,
- action against torture and other cruel treatment,
- protecting children in armed conflicts,
- protecting human rights defenders,
- complying with international humanitarian law,
- combating violence against women and girls.

The Action Plan foresees guidelines on freedom of religion and belief, the rights of lesbian, gay, bisexual or transsexual (LGBT) people and freedom of expression.

The EU regularly includes human rights within the political dialogues conducted with third countries or regional organisations. Diplomatic demarches (confidential) and declarations (public) concerning third countries' authorities are also a significant means of exercising diplomatic pressure in international relations.

The EU is engaged in human rights dialogues and consultations with some 40 countries. According to the EU Guidelines on Human Rights Dialogues, such dialogues should enhance cooperation on human rights and the human rights situation in that country. The EU's human rights dialogue with Iran is currently suspended.

Bilateral trade agreements and the various association and cooperation agreements between the EU and third countries or regional organisations include a human rights clause as an 'essential element'. In case of non-compliance, different measures — such as reducing or suspending cooperation — are foreseen. A strong conditionality mechanism has been established for the enlargement countries. A 'more for more' approach (more integration and money in exchange for more reforms) has been integrated into the renewed European Neighbourhood Policy. Incentives for reforms are provided in the preferential trade deals granted by the EU to developing countries (GSP+).

Human rights country strategies constitute a new tool in the EU's human rights 'toolkit'. These strategies are based on a bottom-up approach with the aim of integrating EU human rights guidelines or action plans into a single, coherent policy document adapted to a specific country, with concrete goals established for three years.

EU election observation missions are also intended to improve human rights by discouraging intimidation and violence during elections and by strengthening democratic institutions.

The EU also promotes human rights through its participation in multilateral fora such as the UN General Assembly's Third Committee, the UN Human Rights Council, the Organisation for Security and Co-operation in Europe (OSCE) and the Council of Europe. The Union also actively promoted international justice — for example, though the International Criminal Court.

With a budget of EUR 1.1 billion allocated between 2007 and 2013, the European Instrument for Democracy and Human Rights (EIDHR) supports (mainly) civil society actors promoting human rights and democracy. An important feature of this instrument is that the consent of the relevant government is not necessary. Other financial instruments dealing with human rights include the Development Cooperation Instrument (DCI), the Instrument for Stability (IfS), the European Neighbourhood and Partnership Instrument (ENPI) and the European Development Fund (EDF). The European Endowment for Democracy is a private law foundation supported by the EU and its Member States. The 2007-2013 budget for the Union's Common Foreign and Security Policy (CFSP) is EUR 1.74 billion, which covers different activities, particularly crisis management.

An annual report on human rights prepared by the EU's High Representative for Foreign Affairs and Security Policy and adopted by the Council provides an overview of the human rights situation in the world, as well as the EU's actions during the year.

Actors

The European Council defines the EU's strategic interests and general guidelines of the Common Foreign and Security Policy (CFSP).

EU Foreign Affairs Ministers in the Foreign Affairs Council, which meets every month, generally deal with human rights issues arising through the CFSP or through the EU's trade or development policies.

The Foreign Affairs Council is presided by the High Representative for Common Foreign and Security Policy — currently Catherine Ashton — who contributes to the development of the Union's common foreign and security policy, ensures that decisions are implemented and. The High Representative also represents the EU for CFSP matters and oversees the European External Action Service (EEAS) and EU delegations in third countries. A Human Rights and Democracy Department exists within the EEAS, and every delegation has a human rights 'focal point'.

The European Commission negotiates international agreements, oversees the enlargement process and neighbourhood policy and manages development programs and financial instruments (in close cooperation with EEAS).

The Human Rights Working Group (COHOM) is composed of human rights experts of the Member States, the European External Action Service and the European Commission.

The role of the EU Special Representative for Human Rights is to enhance the effectiveness and visibility of EU human rights policy. The Special Representative has a broad, flexible mandate and works closely with the EEAS. The position is currently held by Stavros Lambrinidis, appointed in July 2012, who is the EU's first thematic Special Representative. There are ten geographical Special Representatives.

Role of the European Parliament

The European Parliament (EP) contributes to the Union's policies and monitors the work of other EU institutions.

Under Articles 207 and 218 of the TEU, most international agreements need Parliament's consent to enter into force. In 2011, the European Parliament blocked the textile protocol to the Partnership and Cooperation Agreement (PCA) between the European Union and Uzbekistan due to child labour issues.

Article 36 TEU compels the High Representative to consult the EP on the principal aspects and the basic choices of the CFSP, and to inform the EP on the evolution of those policies. The EP may ask questions or make recommendations to the Council or the High Representative.

Resolutions adopted by Members of the EP help to raise awareness about human rights abuses. Resolutions may be a part of the legislative process, an outcome of Parliamentary committees' own-initiative reports or the result of the urgency debate that usually takes place on the Thursday afternoons of each Strasbourg plenary session to highlight flagrant violations of human rights across the world (Rule 122 of the Rules of Procedure of the EP).

The Foreign Affairs Committee's Subcommittee on Human Rights (which has 30 members and 30 substitutes) organises hearings on a wide range of human rights issues, with the participation of stakeholders, to provide input for resolutions. The Subcommittee also handles the day-to-day management of human rights dossiers, while its delegations regularly visit relevant countries. Other committees dealing with human rights issues in EU's external relations are the Committee on Foreign Affairs (AFET), the Committee on International Trade (INTA), the Committee on Development (DEVE) and the Women's Rights and Gender Equality Committee (FEMM).

Human rights are an essential element of meetings with non-EU parliaments and in regional parliamentary assemblies. To ensure the consistency and credibility of Parliament's activities, 'Guidelines for EP Inter-parliamentary delegations on promoting human rights and democracy in their visits to non-EU countries' were approved in 2011.

Thanks to its budgetary powers (under Article 14 TEU and Article 310 (1) TFEU), the Parliament has a say on the allocation of funds to the EIDHR and other financial instruments used in the promotion of human rights. The EP also approves the budget, ensuring full accountability.

Every year the European Parliament awards Sakharov Prize for Freedom of Thought to human rights activists in the world. Previous laureates include Nelson Mandela and Aung San Suu Kyi. In 2012, the prize was awarded to the Iranian activists Nasrin Sotoudeh and Jafar Panahi. The Parliament has also created the Sakharov Prize Network for Sakharov laureates (to be confirmed by the mission statements end of February).

The Chief Observer of the EU Election Observation Missions is usually a Member of the EP. EP election observation delegations are integrated into EU or international missions and use the missions' facilities and infrastructure. (For more information, please refer to Fact Sheet 6.4.2 on promoting democracy and observing elections.)

The President of the European Parliament actively supports human rights through statements and letters and by discussing the issues when meeting important actors.

The EP's own-initiative annual report includes reflections on the EU's human rights policy and the EU annual report, reviews the EP's activities and sets priorities for the future.

The EP's recently created Human Rights Action Unit monitors the positions and actions taken by the Parliament and maintains contact with the Sakharov Prize laureates.

→ Anete Bandone

6.4.2. Promoting democracy and observing elections

Supporting democracy worldwide is a priority for the European Union. Responding to the political changes of the last years, the EU has outlined new strategies towards democratisation. The European Neighbourhood Policy was adapted and is now based on the principles of 'more for more' and promoting 'deep democracy'. The European Parliament is strongly committed to promoting democracy and has established a new Directorate for Democracy Support.

Legal basis

Articles 2 and 21 of the Treaty on European Union (TEU);

Article 205 of the Treaty on the Functioning of the European Union (TFEU).

Background

Following the European Parliament's October 2009 resolution on 'Democracy building in the EU's external relations', the Council of the European Union adopted conclusions on 'Democracy Support in EU External Relations' and the related 'EU Agenda for Action'. These documents outlined a new strategy to improve the coherence and effectiveness of the EU 'toolbox' for supporting democracy worldwide. The strategy is based on a country-specific approach, on dialogue and partnership with third countries, greater coherence and co-ordination, international co-operation and involvement of all stakeholders, and mainstreaming democracy and human rights across all policy areas. The Council decided on a list of 'pilot countries' from different regions of the world where it would work to implement the strategy.

A Joint Report on the Implementation of the Agenda for Action on Democracy Support was adopted in October 2012 by the European Commission and the High Representative of the European Union for Foreign Affairs and Security Policy. Positive results in various 'pilot countries' included legislative changes, greater confidence in electoral processes, and the increased political participation of women, youth and indigenous groups. Further efforts were made to strengthen parliaments worldwide.

Democracy is also a key element of EU development policy, as stated in the 'Agenda for Change' presented by the Commission in October 2011. The EU is one of the major actors working to reduce poverty and achieve the Millennium Development Goals (MDGs). The Union bases its development policy on the respect of human rights, democracy and good governance, as well as on inclusive and sustainable growth for human development.

Following the 'Arab Spring' events in 2011, joint communications titled 'A Partnership for Democracy and Shared Prosperity with the Southern Mediterranean' and 'New Response to a Changing Neighbourhood' welcomed the transformation process in neighbouring countries and proposed renewing the European Neighbourhood Policy. The new strategy implies, among other things, an altered approach based on the principle of 'more for more' and the desire to establish 'deep democracy'. Incentives — including deeper economic integration and access to the EU internal market, enhanced mobility of people and greater financial assistance — are offered to those countries willing to undertake political reforms. These countries must practice free and fair elections and guarantee the freedoms of association, expression and assembly, as well as an independent judiciary and the right to a fair trial. They should combat corruption and establish democratic control over the armed and security forces. The EU has also focused more on enhancing the role of civil societies by using new policy instruments, such as the Neighbourhood Civil Society Facility.

In June 2012, the Council approved a Strategic Framework and Action Plan on Human Rights, which was welcomed by the EP in its resolution 'The Review of EU's Human Rights Strategy'. The plan strives to make the many EU actions in this area more coherent and effective. A new generation of 'pilot countries' for the 'Agenda for Action' shall be identified. All the staff from the European External Action Service, the Commission, EU Delegations and the Common Security and Defence Policy missions will be trained on human rights and democracy. Recommendations of Election Observation Missions (EOMs) shall be more systematically followed up, and support will cover the whole 'electoral cycle'.

A joint communication of 3 October 2012 titled 'EU support for sustainable change in transition societies' examined how the EU can better help

countries in transition to transform successfully and sustainably, and to build institutions. Its recommendations included using incentives, constraints and conditionalities more coherently and efficiently, involving all relevant stakeholders, adapting country strategies to the needs of partner societies, and enhancing knowledge-sharing platforms. In its conclusions 'The roots of democracy and sustainable development: Europe's engagement with civil society in external relations' adopted in October 2012, the Council emphasised the role of civil society actors. These actors constitute 'a crucial and integral component of any democracy', able to foster pluralism, effective policies and economic and human development.

Financial instruments

Country-based support schemes, which are adopted for each partner of the EU, can be used for democracy support activities. Assisting democratic reforms and improving democratic electoral processes are among the key objectives of several thematic EU policy instruments.

Supporting human rights, democratic reform, political participation and representation is the main task of the European Instrument for Democracy and Human Rights (EIDHR). The Instrument is specifically designed for these goals and finances projects, programmes and EU Election Observation Missions (EOMs), as well as awarding grants for civil society organisations, non-governmental organisations and human rights defenders.

The European Neighbourhood and Partnership Instrument (ENPI) provides financial assistance to promote the rule of law, political dialogue and reforms, democratisation, media pluralism and election observation.

Civil society actors in southern and eastern EU neighbouring countries can also benefit from the funding provided by the Neighbourhood Civil Society Facility for plans, networks, training and exchanges of best practices. The Instrument for Stability can also be used in some cases to support democratic institutions.

In 2012, a European Endowment for Democracy (EED) was established. The EED will operate autonomously as a private law foundation. The EED aims to support political and civil society actors striving for democratic change in the EU's eastern and southern neighbourhood by providing tailored financial assistance in a quick, flexible and non-bureaucratic way. Its governing board and executive committee are chaired by MEPs. The board includes representatives from the EU Member States and Institutions, including nine MEPs.

Role of the European Parliament

The European Parliament, as the only EU institution elected directly by the citizens of the Union, is strongly committed to the promotion of sustainable democracies in the world and has highlighted its engagement in a number of resolutions.

In its July 2011 resolution, 'EU external policies in favour of democratisation', the EP described the need to create a paradigm shift and further develop the political dimension of the EU's democracy support. In parallel, MEPs called for a more vigorous, practical application of the EU's instruments to ensure the consistency of all EU policies and their implementation. This new approach aims to encourage the development of democratic societies more efficiently, on the basis of endogenous, sustainable and comprehensive development that benefits the population and that respects the rule of law, basic human rights and freedoms.

The EP is continuously engaged in election observation activities and working to strengthen the legitimacy of national electoral processes and increase public confidence in elections and human rights protection. In 2012, the EP sent seven delegations to observe elections in Senegal, Armenia, Algeria, East Timor, Georgia, Ukraine and Sierra Leone.

The EP may decide to send delegations of MEPs to observe elections or referendums, on the condition that the elections are held at national level, that the national authorities have invited the EU or the EP, and that a long-term mission is present. EP delegations are always integrated into the EU EOMs or the ODIHR's long-term missions.

Long-term Election Observation Missions not only assess election day, but also the whole electoral process in order to gauge the state of democratic development in a given country at a particular time. Long-term Observers usually begin operating two months before the elections and follow the entire electoral process through the announcement of official results and the appeals procedure. Short-term Observers (STOs) monitor polling day and the tallying of votes. The Chief Observer leading the EU-EOM is, as a rule, an MEP.

Successful democracies require more than free and fair elections. Election observation must therefore be supplemented by support for all actors in the electoral process, such as parliaments, political parties, civil society and media.

The Democracy Support and Election Coordination Group (DEG), established within the EP, gives political guidance for a range of different activities, including promoting parliamentary democracy and observing elections. The Group consists of 15 MEPs and is co-chaired by the Chairpersons of the EP Committees on Foreign Affairs and on Development.

The Group also provides political guidance regarding the activities of the Directorate for Democracy Support, which has been established within the Directorate-General for External Policies of the Parliament's Secretariat. This new Directorate ensures that the different democracy support actions of the EP are coherent. It includes the Office for Promotion of Parliamentary Democracy (OPPD), the Election Observation Unit, the Pre-Accession Actions Unit and the Human Rights Actions Unit.

The OPPD supports parliaments in new and emerging democracies to strengthen their institutional capacity. It also cooperates with trans-border parliaments and joint parliamentary assemblies, builds partnerships, coordinates with other parliamentary development practitioners, advocates a strong EU policy for democracy support policy and fosters basic research on parliamentary practices.

The OPPD organises a variety of activities to share parliamentary experiences and practices with the parliaments in the new and emerging democracies (NED). These include seminars and study visits for foreign parliamentarians and parliamentary staff and the Democracy Fellowship Programme (DFP), which offers civil servants from non-EU parliaments the opportunity to spend several weeks in the EP meeting and working with their counterparts in the EP Secretariat.

A similar initiative, the Pre-Accession Fellowship Programme, is focused on parliaments in the Western Balkans and Turkey.

→ Anete Bandone

6.5. Enlargement and the Union's neighbourhood

6.5.1. The Enlargement of the Union

On 1 July 2013, Croatia became the 28th Member State of the European Union. Croatia's accession, which followed that of Romania and Bulgaria on 1 January 2007, marked the sixth enlargement. Negotiations have also been opened with Iceland, Montenegro, Serbia and Turkey. The former Yugoslav Republic of Macedonia is another official candidate, while Albania, Bosnia and Herzegovina, and Kosovo are potential candidates. Enlargement has proved a successful tool to promote reform, to consolidate peace and democracy across the continent, and to enhance the EU's global presence.

Legal basis

- Article 49 of the Treaty on European Union (Treaty of Lisbon-TEU): establishes which States may apply;
- Article 2 of TEU: describes the EU's founding values.

Objectives

The EU's enlargement policy aims to unite European countries in a common political and economic project. Guided by the Union's values and subject to strict conditions, enlargement has proved one of the most successful tools to promote political, economic and societal reforms, and to consolidate peace, stability and democracy across the continent. Enlargement policy also enhances the EU's presence on the global stage.

Background

A. Conditions for accession

Any European state may apply to become a member of the Union if it respects the values common to Member States and is committed to promoting them (Article 2 TEU). The TEU also states that 'the conditions of eligibility agreed upon by the European Council shall be taken into account', in reference to the 'Copenhagen criteria' and to any future decision the European Council might take in that respect. The Copenhagen criteria are those established by the European Council in 1993 in Copenhagen:

- stability of institutions guaranteeing democracy, rule of law, human rights and respect for and protection of minorities;
- a functioning market economy and the ability to cope with competitive pressure and market forces within the Union;
- the ability to take on the obligations of membership, including by adhering to the aims of political, economic and monetary union and adopting the common rules, standards and policies that make up the body of EU law (the '*acquis communautaire*').

The 1995 Madrid European Council clarified these criteria and included conditions for a 'gradual, harmonious integration of [applicant] countries'. Countries are required to align their legislation to the EU's and to ensure its implementation. In December 2006 the European Council agreed on a 'renewed consensus on enlargement', based on 'consolidation, conditionality and communication' and on the EU's capacity to integrate new members.

B. The Union's integration capacity: Institutional arrangements

The enlargement formed a substantial part of the institutional negotiations that led to the adoption of the Treaty of Lisbon (which entered into force in December 2009). The EU had to adapt its institutions and decision-making processes to the arrival of new Member States and to ensure that enlargement would not come at the expense of efficient, accountable policy-making. The Lisbon Treaty introduced profound changes to the composition and the work of the main EU institutions. Some of these changes reflected the need for a sustainable set of rules that does not require new amendments with every wave of enlargement.

The voting system in the Council was reformed: the system of weighted votes, in which Member States had a number of votes proportional to their population, was replaced by a dual majority system. In the new system, to be implemented from 1 November 2014, each Member State will have one vote, but the qualified majority also takes into account the total population represented (with different thresholds depending on whether the

vote concerns a Commission proposal or not). In addition, the number of Members of the European Parliament, which had continuously increased after every new enlargement, was limited to 751, effective in 2014. Member States have a minimum of 6 seats and a maximum of 96, and the principle of degressive proportionality applies. Finally, the Treaty provided for a reduction in the number of European Commissioners (currently one per Member State) although this change was put off by the European Council. The issue will be reviewed at the end of the next Commission's mandate, or when the 30th Member State joins.

C. Process

A country that satisfies the conditions for enlargement and wishes to join the Union addresses its application to the Council, which requests the Commission to submit an opinion. The European Parliament and the national parliaments must be notified of this application. If the Commission's opinion is favourable, the European Council may decide — by unanimity — to grant candidate status to the country. At that point, the Commission issues a recommendation on whether to open accession negotiations. The Council then decides — by unanimity — if negotiations should be opened. EU legislation (the '*acquis*') is divided into 35 policy chapters. Before negotiations start, the Commission delivers a 'screening' report for each chapter, either recommending the opening of negotiations for the chapter or setting some benchmarks the country must meet first. Based on the Commission's recommendation, the Council decides whether to open each new negotiation chapter. Again, the decision to open must be unanimous. Negotiations (conducted by the Commission) focus on the conditions and timing of the candidate's adoption, implementation and enforcement of all the EU rules. The negotiations also cover financial arrangements. When progress is judged satisfactory, the Commission may recommend 'closing' a negotiation chapter. The Council then decides unanimously. When negotiations on all the chapters are completed, the terms and conditions are incorporated into an accession treaty between the EU Member States and the candidate state(s). The European Parliament's consent and the Council's unanimous approval are necessary for the treaty to be signed. After being signed, the treaty is submitted by all contracting states for ratification according to their constitutional requirements.

Past enlargements

Country	Member since	Particularities
Belgium France Germany Italy Luxembourg The Netherlands	1958	Original signatories of the 1957 Treaty of Rome.
Denmark Ireland United Kingdom	1973	First enlargement.
Greece	1981	Second enlargement.
Portugal Spain	1986	Third enlargement. This and the second enlargement — called the 'Mediterranean enlargements' — consolidated democracy in Greece, Portugal and Spain.
Austria Finland Sweden	1995	Fourth enlargement.
Cyprus Czech Republic Estonia Hungary Latvia Lithuania Malta Poland Slovakia Slovenia	2004	Aimed at reuniting the continent after the fall of the Soviet Union, the fifth enlargement was launched by the European Council meeting of December 1997. This process of unprecedented dimension was based on an 'enhanced' pre-accession strategy. Negotiations were conducted separately with each country, based on a single negotiating framework.

Bulgaria Romania	2007	While Bulgaria's and Romania's pace of reforms did not allow them to join in 2004, they were politically considered to be part of the same wave of enlargement. Accession terms were similar to those of the 10 countries that joined in 2004, with the inclusion of a new, post-accession monitoring mechanism.
Croatia	2013	Sixth enlargement. The first accession negotiations subject to 'stricter' conditionality instituted by the December 2006 European Council's 'renewed consensus on enlargement'.

Future enlargements

Today, enlargement policy is focused on the countries of the Western Balkans, Turkey and Iceland. Accession partnerships (called 'European partnerships' for the Western Balkans) remain the main instrument of the accession process, together with EU aid provided through the Instrument for Pre-accession Assistance (IPA).

A. Western Balkans

Relations with the Western Balkans take place in the framework of the Stabilisation and Association Process, launched in 1999. Based on bilateral stabilisation and association agreements, this process anticipated the EU membership of countries of the region — a perspective that was reaffirmed by the June 2003 European Council in Thessaloniki.

Croatia's accession to the EU on 1 July 2013 constitutes an important incentive for other countries in the region. Its entry demonstrates that the EU delivers on its promises when candidate countries meet their membership requirements. Building on the experience with Croatia, the Commission has proposed further improvements to its negotiating approach in its 2011-2012 'Enlargement Strategy', including a stronger emphasis on rule-of-law issues. This has meant that the Commission addresses the negotiations chapters on judicial reform and fundamental rights (Chapter 23) and on justice, freedom and security (Chapter 24) early in the negotiating process. In the negotiating framework with Montenegro, these chapters have been given priority. The country — which has been independent since 2006 — applied for membership in December 2008 and was granted candidate status in December 2010. Negotiations opened in June 2012 are ongoing. Similarly, Serbia was granted candidate status in 2012, and the European Council decided to open negotiations in June 2013. Other countries of the Western Balkans are making progress on their path to EU integration. The former Yugoslav Republic of Macedonia was granted EU candidate status in 2005. However, negotiations had yet to be opened by mid-2012, despite the Commission's 2009 recommendation — reiterated every year since — to do so. Albania submitted its application in April 2009, but has not yet been granted candidate status. Bosnia and Herzegovina and Kosovo (whose declaration of independence has not been recognised by five EU Member States) are potential candidates.

B. Turkey

Turkey applied for membership in 1987 and was declared eligible in 1997. Negotiations opened in 2005. However, the process quickly stagnated. In December 2006, the Council decided that eight chapters would not be opened and no chapter would be provisionally closed until Turkey opened its ports and airports to the Republic of Cyprus, applying the 'Additional Protocol to the Ankara Association Agreement'. Certain chapters have been 'blocked' by individual EU Member States. In May 2012, the Commission launched a 'positive agenda' with Turkey to revitalise bilateral relations by supporting the country's efforts to align with the EU **acquis**. After three years of deadlock, 2013 has brought new movement. In June, the Council agreed to open the chapter on regional policy, subject to confirmation after the Commission's annual progress report in the autumn.

C. Iceland

Iceland applied for EU membership in July 2009 and negotiations were opened in June 2010. As a well-established democracy and a member of the European Economic Area (*6.5.3), Iceland made rapid progress in its first years of negotiations with the EU. However, the country's April 2013 general elections have led to a policy shift. The country's new government has frozen the accession negotiations, and stated that their resumption would depend on a public referendum.

Role of the European Parliament

According to Article 49 TEU, the European Parliament must consent to any new accession to the EU. Approval is granted once negotiations have been completed and the accession treaty has been drafted. Parliament also has a significant role to play with regard to the financial aspects of accession: under the Lisbon Treaty, Parliament's approval is

required to adopt the EU multiannual financial framework (MFF). The Parliament and the Council also establish the Union's annual budget together. These budgetary powers provide the Parliament with a direct influence on the amounts allocated to the Instrument for Pre-accession Assistance (IPA).

The Parliament follows enlargement policy very closely. The Parliament's Committee on Foreign Affairs, which appoints standing rapporteurs for candidate and potential candidate countries, holds regular exchanges of views with the Commissioner for Enlargement, high-level government representatives, experts and civil society stakeholders. Parliament expresses its positions, which often have a significant influence on the process, in the form of annual resolutions on the countries' progress. It also helps shape policy through resolutions on the EU's enlargement strategy. Finally, the Parliament maintains regular bilateral relations with the parliaments of candidate and potential candidate countries through parliamentary committees (for the countries most advanced on the path to the EU) and through inter-parliamentary meetings (for the others). These discussions take place once or twice per year and cover all matters pertaining to the EU accession process, thereby ensuring a direct link between policy makers in the EU and in applicant countries.

→ Benjamin Rey / Sandro D'Angelo

6.5.2. The Western Balkans

The EU has developed a policy to support the gradual integration of the countries of the Western Balkans with the Union. On 1 July 2013, Croatia became the first of the seven countries to join, and Montenegro, Serbia and the former Yugoslav Republic of Macedonia are official candidates. Accession negotiations are underway with Montenegro, and the European Council decided in June 2013 to open negotiations with Serbia. Albania, Bosnia and Herzegovina and Kosovo are also potential candidate countries.

Legal basis

- Title V of the Treaty on European Union (TEU): EU external action;
- Article 207 of the Treaty on the Functioning of the EU (TFEU): international trade agreements;
- Article 49 TEU: criteria for application and membership.

Objectives

The European Union aims to promote peace, stability and economic development in the Western Balkans and open up the prospect of EU integration.

Background

In the 1990s, EU relations with the region focused on crisis management and reconstruction, reflecting the countries' pressing needs after the break-up of Yugoslavia. However, the need for a longer-term strategy quickly became apparent. In 1999, the EU launched the Stabilisation and Association Process (SAP), a framework for relations between the EU and countries in the region, as well as the Stability Pact, a broader initiative involving all key international players. In 2000, the European Council stated at its summit in Feira that all SAP countries were potential candidates for EU membership, a position reaffirmed at the 2003 European Council in Thessaloniki.

Instruments

A. The Stabilisation and Association Process

Launched in 1999, SAP is the strategic framework supporting the gradual rapprochement of the countries of the Western Balkans with the European Union. This policy is based on bilateral contractual relations, financial assistance, political dialogue, trade relations and regional cooperation.

Contractual relations take the form of Stabilisation and Association Agreements (SAAs). Similar to the former Europe Agreements concluded with Central and Eastern European countries prior to their EU accession, SAAs provide for political and economic cooperation and for the establishment of free trade areas with the countries concerned. Based on common democratic principles, human rights and the rule of law, each SAA establishes permanent cooperation structures. The Stabilisation and Association Council, which meets annually at ministerial level, oversees the application and implementation of the agreement. It is assisted by the Stabilisation and Association Committee, which may create sub-committees. Finally, a Stabilisation and Association Parliamentary Committee ensures cooperation at the parliamentary level (see below for more on the role of the European Parliament).

SAAs are currently in force with the former Yugoslav Republic of Macedonia, Albania, and Montenegro, and the EU-Serbia SAA is expected to enter into force soon. The SAA with Croatia expired when the country joined the Union in July 2013. The EU and Bosnia and Herzegovina have signed an SAA, but its entry into force has been frozen. Finally, the European Council decided on 27-28 June 2013 to open negotiations on an SAA with Kosovo, although its declaration of independence has not been recognised by five Member States.

The period between the signature and the entry into force of an SAA may last several years, since the agreement must be ratified by all EU Member States according to their national requirements. Trade and trade-related aspects of the SAA, however, are included in an interim agreement, which generally enters into force quickly after signature, as trade is an 'exclusive' EU competence.

B. The accession process

While the SAP recognises all Western Balkans countries as potential candidates for EU accession, applicants must meet certain requirements in order to be formally recognised as a candidate by the European Council. In particular, a country must fulfil the Copenhagen political criteria. Once a country is recognised as a candidate, it moves through the various stages of the process at a rate largely dependent on its own progress.

The candidate country must adopt and implement all EU legislation, the '*acquis communautaire*'. Priorities are defined in a European Partnership for the given country, and the Commission reports regularly on progress. Every important decision is taken by the Council, acting by unanimity, from the opening of

negotiations to their closure (*6.5.1). Eventually, the accession treaty is endorsed by Parliament and the Council, before being ratified by all contracting states. Croatia is currently the only country in the Western Balkans to have completed this demanding process.

Candidate and potential candidate countries receive financial assistance to carry out the necessary reforms. Since 2007, EU pre-accession assistance is channelled through a single, unified instrument: the Instrument for Pre-accession Assistance (IPA). The IPA focuses on support for developing institutions, the rule of law, human rights (including the fundamental freedoms, minority rights, gender equality and non-discrimination), administrative and economic reforms, reconciliation and regional cooperation.

Most candidate and potential candidate countries may also participate in EU programmes such as Erasmus and Erasmus Mundus for students, or the Seventh Framework Programme for research.

C. Regional cooperation

European integration and regional cooperation are closely intertwined. One of the key aims of the SAP is to encourage countries of the region to cooperate among themselves across a wide range of policy areas, including trade, transport, energy and the environment, as well as in sensitive areas such as the prosecution of war crimes, border issues, refugees and the fight against organised crime. One of the specific components of the IPA is dedicated to regional cooperation and cross-border programmes.

In 2008, the Stability Pact was replaced by the Regional Cooperation Council (RCC), headquartered in Sarajevo. Operating under the guidance of the South-East European Cooperation Process (SEECP), the RCC aims to support the European and Euro-Atlantic aspirations of its non-EU members, and to develop cooperation in such fields as economic and social development, energy and infrastructure, justice and home affairs, security cooperation, building human capital, and parliamentary relations. The EU and the EU Member States support and participate in the RCC.

Another important regional initiative is the Central European Free Trade Agreement (CEFTA), whose signatories currently include the Western Balkans countries and Moldova. CEFTA not only reduces tariff barriers, including for services; it also includes provisions on government procurement, state aid and intellectual property rights. CEFTA is seen as complementary to the region's economic integration with the EU.

Countries of the Western Balkans also participate in regional frameworks such as the Energy Community, the European Common Aviation Area, the South East Europe Transport Observatory and the Regional School of Public Administration.

D. Visa-free travel

Visa-free travel to the Schengen area was granted to citizens of the former Yugoslav Republic of Macedonia, Montenegro and Serbia as of December 2009, and to citizens of Albania and Bosnia and Herzegovina as of November 2010. In January 2012, a visa liberalisation dialogue was launched with Kosovo to oversee the reforms necessary to reach the relevant EU standards. After some abuses of the visa-free regime were observed, including a rise in the number of illegitimate asylum applications, the Commission established a post-visa liberalisation monitoring mechanism in January 2011 to ensure that necessary checks are carried out.

Current status

A. Albania

A potential candidate country, Albania applied for EU membership on 28 April 2009, a few days after the entry into force of the EU-Albania SAA. In October 2010, the Commission recommended that accession negotiations be opened once the country meets the requirements for 12 'key priorities'. The Commission noted good progress in 2012, and recommended that the country be granted candidate status, subject to the adoption of some pending reforms. The June 2013 parliamentary elections were also closely watched by the EU, as a test of the country's capacity to overcome political divisions.

B. Bosnia and Herzegovina

Bosnia and Herzegovina is a potential candidate country, but has yet to submit its application for EU membership. An SAA was negotiated and signed in June 2008, although its entry into force has been frozen; only the interim agreement on trade and trade-related matters is currently in force. Embroiled in institutional deadlocks and inter-ethnic rivalries, the country clearly lags behind its neighbours on the EU integration path. In June 2012, a high-level dialogue was launched to help it advance and prepare for the submission of its EU application. The EU also provides support for the implementation of the 1995 Dayton peace agreement, notably through the EUFOR Althea mission. Since 2011, the EU's Special Representative in Bosnia and Herzegovina is also Head of the EU Delegation to the country.

C. The former Yugoslav Republic of Macedonia

The former Yugoslav Republic of Macedonia applied for EU membership in March 2004 and was granted EU candidate status in December 2005. In 2009, the Commission recommended opening accession negotiations with the country — a recommendation supported by Parliament and reiterated in every Commission progress report since. The Council,

however, has yet to act on this recommendation, mostly owing to the unresolved dispute with Greece over the name 'Macedonia'.

D. Kosovo

Kosovo is a potential candidate for EU accession. After its unilateral declaration of independence in February 2008, the EU stated that Kosovo had a clear 'European perspective'. All but five Member States (Cyprus, Greece, Romania, Slovakia and Spain) have recognised its independence. The EU has appointed a Special Representative in Kosovo and has established the EULEX Rule of Law Mission. After issuing a Visa Liberalisation Roadmap in June 2012, the European Council decided in June 2013 to open negotiations on an SAA. Kosovo's future EU integration remains closely linked to the results of the EU-facilitated high-level dialogue between Kosovo and Serbia, launched in October 2012.

E. Montenegro

Montenegro applied for EU membership in December 2008, more than two years after declaring its independence (which was recognised by all Member States). The country was given candidate status in December 2010, and accession negotiations were opened in June 2012, after the Council endorsed the Commission's assessment that the country had achieved the necessary degree of compliance with the membership criteria and had met the priorities outlined by the Commission. An SAA with Montenegro has been in force since May 2010.

F. Serbia

Serbia submitted its application for EU membership in December 2009 and was granted candidate status in March 2012 after Belgrade and Pristina reached an agreement on Kosovo's regional representation. Acknowledging Serbia's progress towards normalising relations with Kosovo, the European Council decided in June 2013 to open accession negotiations with Serbia. The EU-Serbia SAA will also soon enter into force. Signed in 2008, its ratification had been blocked until June 2010 because of Serbia's insufficient cooperation with the International Criminal Tribunal for the former Yugoslavia. In June 2013, Lithuania became the last Member State to ratify the SAA.

Role of the European Parliament

Parliament is fully involved in the Stabilisation and Association Process and in enlargement policy. Its consent (formerly called assent) has been required for the conclusion of all SAAs (Article 218/6 TFEU). Parliament must also consent to any new accession to the EU (Article 49 TEU). In addition, through its budgetary powers, it has a direct influence on the amounts allocated to the Instrument for Pre-accession Assistance (IPA). It follows each country's EU integration progress very closely. Parliament's Committee on Foreign Affairs, which appoints standing rapporteurs for candidate and potential candidate countries, holds regular exchanges of views with the Commissioner for Enlargement, high-level government representatives, experts and civil society stakeholders. Parliament expresses its positions — which often have a significant influence on the process — in the form of annual resolutions on the countries' progress. Finally, it maintains regular bilateral relations with the parliaments of Western Balkans countries through Stabilisation and Association Parliamentary Committees (for countries with which an SAA is in force) or through inter-parliamentary meetings (for the others). These discussions cover all matters pertaining to the SAP and the EU accession process, thereby ensuring a direct link between policy makers in the EU and those in applicant countries.

→ Benjamin Rey

6.5.3. The European Economic Area (EEA), Switzerland and the North

The European Economic Area (EEA) was formed in 1994 in order to extend the European Union's provisions on its internal market to countries in the European Free Trade Area (EFTA). EU legislation relating to the internal market becomes a part of the legislation of the EEA countries once they have agreed to incorporate it. Implementation and enforcement is then monitored by specific EFTA bodies and a Joint Parliamentary Committee.

The EU and two of its EEA partners — Norway and Iceland — are also linked by various 'northern policies' and forums which focus on the rapidly evolving northern reaches of Europe and the Arctic region as a whole.

While Switzerland is not part of the EEA, it remains a member of EFTA. More than 120 sectoral bilateral treaties linking the country with the EU incorporate largely the same provisions as those adopted by the other EEA countries in the fields of the free movement of people, goods, services and capital.

Legal basis

For the EEA: Article 217 of the Treaty on the Functioning of the European Union (Association Agreements).

For Switzerland: Insurance Agreement of 1989, Bilateral Agreements I of 1999, Bilateral Agreements II of 2004.

The EEA

A. Objectives

The purpose of the European Economic Area (EEA) is to extend the EU's internal market to countries in the European Free Trade Area (EFTA). These countries either do not wish to join the EU or have not yet done so.

B. Background

In 1992, , the then seven members of EFTA negotiated an agreement to allow them to participate in the ambitious project of the European Community's internal market, launched in 1985 and completed at the end of 1992. The European Economic Area (EEA) agreement was signed on 2 May 1992 and entered into force on 1 January 1994. The EFTA-EEA members, however, soon saw their numbers reduced: Switzerland chose not to ratify the agreement following a negative referendum on the matter, and Austria, Finland and Sweden joined the European Union in 1995. Only Iceland, Norway and Liechtenstein remained in the EEA. The 10 new Member States that joined the EU on 1 May 2004 automatically became part of the EEA, as did Bulgaria and Romania when they acceded to the Union in 2007.

C. Scope of the EEA

The EEA goes beyond classical free trade agreements (FTAs) by extending the full rights and obligations of the EU's internal market to the EFTA countries (with the exception of Switzerland). The EEA incorporates the four freedoms of the internal market (free movement of goods, persons, services and capital) and related policies (competition, transport, energy and economic and monetary cooperation). The agreement includes horizontal policies strictly related to the four freedoms: social policies (including health and safety at work, labour law and the equal treatment of men and women); policies on consumer protection, the environment, statistics and company law; and a number of flanking policies, such as those relating to research and technological development, which are not based on the EU *acquis* or legally binding acts, but are implemented through cooperation activities.

D. The limits of the EEA

The EEA agreement does not establish binding provisions in all sectors of the internal market or in other policies under the EU Treaties. In particular, its binding provisions do not concern:

- the Common Agricultural Policy and the Common Fisheries Policy (although the agreement contains provisions on trade in agricultural and fishery products);
- the Customs Union;
- the Common Trade Policy;
- the Common Foreign and Security Policy;
- the field of justice and home affairs (although all the EFTA countries are part of the Schengen area); or
- the Economic and Monetary Union (EMU).

E. EEA institutions and mechanisms

1. Incorporation of EU legislation

New EU internal market texts are examined by an EEA Joint Committee, composed of representatives of the EU and the three EFTA-EEA states. Meeting once a month, this body decides what legislation — and, more generally, which EU acts (actions, programmes, etc.) — should be incorporated into the EEA. Legislation is formally incorporated by including the relevant acts in lists of protocols and annexes to the EEA Agreement. Several thousand acts have been incorporated into the EEA Agreement in this way. An EEA Council, made up of representatives of the EU Council and the Foreign Ministers of the EFTA-EEA states, meets at least twice a year to provide political guidelines for the Joint Committee.

2. Transposition

Once an EU act has been incorporated into the EEA Agreement, it must be transposed into the national legislation of the EFTA-EEA countries (if this is required under that national legislation). This may simply require a governmental decision, or it may require parliamentary approval. Transposition is a formal task, and the acts can only be technically adjusted at this point. Provisions specify that the EFTA countries should be involved in preparing EU acts.

3. Monitoring

After internal market legislation has been extended to the EFTA EEA countries, transposition and application are monitored by the EFTA Surveillance Authority and the EFTA Court. The EFTA Surveillance Authority maintains an internal market scoreboard that tracks the implementation of legislation in the EEA countries.

4. Role of the parliaments

Both the European Parliament (EP) and the national parliaments of the EFTA-EEA states are closely involved in monitoring the EEA Agreement. Article 95 of the Agreement establishes an EEA Joint Parliamentary Committee (JPC), which meets twice a year. The EP and the EEA national parliaments take turns hosting this committee, whose chair alternates annually between a Member of the European Parliament and an EEA national parliamentarian. Each delegation is composed of 12 members. Parliamentarians from the Swiss Federal Assembly attend the meetings as observers. All EU legislation that applies to the EEA is scrutinised by the EEA JPC, whose members have the right to put oral and written questions to representatives of the EEA Council and the EEA Joint Committee and to express their views in reports or resolutions. The same procedure holds for scrutinising the implementation of legislation.

Iceland's EU accession process

Following the global financial crisis of 2008, the elections in Iceland held in April 2009 demonstrated significant support for parties supporting EU membership. Iceland's application for membership was presented to the Council in July 2009. On the basis of a favourable opinion from the Commission, the Council accepted Iceland's application on 17 June 2010.

The accession process was opened in June 2011. Of the 33 chapters that have to be negotiated, 27 have been opened and 11 provisionally concluded. Six have still to be opened, including a critical one on fishing. Further alignment is required in the chapter on the agricultural sector, which is delicate given Iceland's system of subsidies. The chapters on food safety (which will have to address Iceland's restrictions on imports of EU meat) and the movement of capital also require particular attention. Negotiations to resolve fisheries disputes between the EU and Iceland — the main technical issue that could block accession — are yielding promising results.

However, in April 2013, Iceland's parliamentary elections resulted in a victory of the centre-right Independence and Progressive parties, which adopted a programme blocking the accession process. The Icelandic parliament is expected to debate the issue in 2014 on the basis of an upcoming report on the costs and benefits of accession. The negotiations are currently frozen, but may be resumed if a referendum on the question shows public opinion to be positive.

If Iceland were to join the Union, its accession would probably raise questions about the future of the EEA. Only Norway and Liechtenstein would remain as EFTA-EEA members. That said, the EFTA institutions and the EEA Agreement could continue to function formally without major alterations.

Following the acceptance of Iceland's application for EU membership, bilateral relations between the European Parliament and the Icelandic parliament, the Althing, were upgraded with the creation of an EU-Iceland Joint Parliamentary Committee. The European Parliament's Committee on Foreign Affairs also monitors the process closely with regular reports. An accession agreement would have to be approved by the European Parliament. (*6.5.1).

Switzerland

As a member of EFTA, Switzerland negotiated the EEA agreement with the European Union in 1992. However, after a referendum held on 6 December 1992 yielded a vote against participating in the EEA, the Swiss Federal Council stopped pursuing the country's EU and EEA membership. In order to continue economic integration with

the EU, Switzerland instead negotiated a set of bilateral agreements, which were approved in two instalments. These followed in the wake of another accord, the 'Insurance Agreement', which the European Community and Switzerland had established in 1989.

The first package ('bilateral agreements I', adopted in 2002) included policies on air transport, public procurement, research, agriculture, technical barriers to trade (to be dismantled through the principle of mutual recognition), overland transport and the free establishment/movement of persons. This last item is currently the subject of a dispute because Switzerland has reintroduced quotas for workers from eight EU Member States.

The second package ('bilateral agreements II', adopted in 2005) encompasses the Schengen and Dublin agreements, the taxation of savings interest, the fight against fraud, processed agricultural products, statistics, pensions, the environment, the MEDIA audiovisual programme, education, occupational training and youth.

As a result of these two packages, the number of bilateral agreements exceeds 120. The agreements have required Switzerland to incorporate EU secondary law in its national legislation. However, no supranational body or court has been created to address disputes. Instead, EU-Swiss sectoral bilateral committees meet once a year. In practice, Swiss legislation often follows EU law, even in sectors not covered by the bilateral agreements. Swiss courts also generally follow European Court of Justice case law, although they are not obliged to do so. In 2010, this legal arrangement was deemed too complex by the EU Council and the European Parliament. Both institutions noted the lack of democratic participation by Swiss citizens, who have no say in EU legislation. Another drawback is the lack of predictability of Swiss transposition of internal market legislation, implementation and dispute settlements. To resolve the 'institutional issues', Switzerland made a proposal in 2012 to increase uniformity and surveillance, and to settle disputes, within the current bilateral treaty system. The EU responded in December 2012, and constructive talks in 2013 strove to reach a compromise — at least to establish a dispute settlement system and oblige Switzerland to incorporate the EU *acquis*.

In general, Swiss citizens remain protective of their independence and their ability to participate directly in domestic legislation, and are unlikely to support an arrangement that would limit their country's sovereignty. Switzerland is unlikely to negotiate any agreement pegging the Swiss franc to the euro (a position confirmed by the Swiss National Bank in September 2011) or affecting the structure of the Swiss Confederation's banking sector.

The EU's northern policies

The EU has also been actively involved in a number of policies and forums that focus on the rapidly evolving northern reaches of Europe and the Arctic region as a whole, in particular by contributing to the following:

- The 'Northern Dimension', which has served since 2007 as a common policy for the EU, Russia, Norway and Iceland. This policy complements the EU-Russia dialogue and has led to effective sector partnerships for cooperation in the Baltic and Barents regions. The Northern Dimension includes a parliamentary body — the Northern Dimension Parliamentary Forum — of which the European Parliament is a founding member.
- The Council of the Baltic Sea States (CBSS), launched in 1992 by the EU and the riparian states following the dissolution of the USSR. All CBSS member states participate in the Baltic Sea Parliamentary Conference (BSPC), of which the European Parliament is also a member.
- Cooperation in the Barents region, which groups the northern regions of Finland, Norway and Sweden and north-west Russia. This cooperation is operated through the inter-state Barents Euro-Arctic Council (which includes the European Commission as a member) the interregional Barents Regional Council, and a parliamentary assembly (which includes the European Parliament).
- Circumpolar Arctic affairs. The EU launched its Arctic policy, on the basis of two Commission/EEAS communications (2008 and 2012), Council conclusions (2009) and a European Parliament report and resolution (2011). In 2013 the Arctic Council granted the EU provisional observer status, which is to become permanent after differences between Canada and the EU on the EU's seal ban are resolved. The European Parliament is a founding member of the Conference of Arctic Parliamentarians.

→ Pasquale de Micco / Fernando Garcés de los Fayos 11/2013)

6.5.4. The European Neighbourhood Policy

The European Neighbourhood Policy (ENP) was developed in 2004 to prevent new dividing lines from emerging between the enlarged EU and its neighbours, and to strengthen the prosperity, stability and security of all. The policy is based on the values of democracy, rule of law and respect for human rights and applies to 16 of EU's closest neighbours: Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, Palestine, Syria, Tunisia and Ukraine. The ENP is chiefly a bilateral policy between the EU and each partner country. It is further enriched by regional co-operation initiatives: the Eastern Partnership and the Union for the Mediterranean[1].

[1] For information about the bilateral relations between the EU and the Eastern Partners and Mediterranean partners, please refer to the fact sheets on those topics: 6.5.5 and 6.5.6.

Legal basis

- Article 8 of the Treaty on the European Union;
- Title V of the Treaty on the European Union: the EU's 'external action';
- Articles 206-207 (trade) and 216-219 (international agreements) of the Treaty on the Functioning of the EU (TFEU).

General objectives

Through the European Neighbourhood Policy (ENP), the EU offers its neighbours a privileged relationship, building upon a mutual commitment to common values (democracy and human rights, the rule of law, good governance, market economy principles and sustainable development). The ENP includes political coordination and deeper economic integration, increased mobility and people-to-people contacts. The level of ambition of the relationship depends on the extent to which these values are shared. The ENP remains distinct from the process of enlargement, although it does not prejudge how EU's neighbours' relationships with the Union may develop in future. In 2010-2011, the EU reviewed the ENP and strengthened its focus on promoting deep and sustainable democracy and inclusive economic development. Deep and sustainable democracy includes in particular free and fair elections, efforts to combat corruption judicial independence, democratic control over the armed forces, and the freedoms of expression, of assembly and of association. The EU also stressed the role that civil society plays in the process and unveiled its 'more for more' principle, according to which the Union develops stronger partnerships with those neighbours that make greater progress towards democratic reform. In two separate resolutions issued on 7 April 2012, the European Parliament welcomed the review and provided guidance for the European External Action Service and the European Commission on the implementation of the ENP.

Instruments

Central to the ENP are the 12 bilateral Action Plans that have been drawn up between the EU and each ENP partner. These establish agendas of political and economic reforms with short- and medium-term priorities of three to five years. ENP Action Plans reflect the needs, interests and capacities of the EU and each partner —developing democratic, socially equitable and inclusive societies, promoting economic integration, improving the circulation of people across borders, offering financial assistance and technical cooperation to create approximation with EU standards. Even the names of the Action Plans vary to reflect each partner's particular situation, with some called 'Association Agendas'. The ENP has not yet been fully 'activated' for Algeria, Belarus, Libya and Syria, as these countries have not yet agreed on Action Plans. A plan with Algeria is currently under negotiation.

These plans are generally funded by the European Neighbourhood and Partnership Instrument (ENPI), although the exact amount of ENPI funding in the EU's 2014-2020 budget has yet to be set. The total amount available for partner countries in the period 2011–2013 was EUR 6.5 billion, and the amount for 2014–2020 may be higher. In addition, the European Commission provides financial support in the form of grants to partners, and the European Investment Bank and the European Bank for Reconstruction and Development complement this support through loans. As civil society plays an important role in contributing to democracy and good governance in partner countries, the EU also supports organisations through its Civil Society Facility.

The ENP builds upon the legal agreements in place between the EU and its partners — Partnership and Cooperation Agreements (PCAs) and, more recently, Association Agreements (AAs). Assessments contained in annual ENP Progress Reports form the basis for EU policy, with the 'more for more' principle applying to all incentives proposed by the EU: policy developments as well as to financial assistance

(excluding humanitarian assistance, civil society support and funds for refugees and external border management). Partners embarking on ambitious political reforms may also be offered deep and comprehensive free trade agreements (DCFTAs) and mobility partnerships.

In addition, the EU has set up specific programmes for its eastern and southern neighbours, called EAPIC (EUR 130 million) and SPRING (EUR 540 million) respectively. These programmes allocate extra financial support to those neighbours that adopt political reforms. Again, most of the additional funding is distributed according to the more-for-more principle, i.e. progress in building deep and sustainable democracy and in implementing reform-related objectives. Finally, a new Civil Society Facility was created in September 2011 to strengthen the capacity of civil society to promote and monitor reforms, and increase public accountability.

A. Eastern Partnership (EaP)

The Eastern Partnership (EaP) was formed to 'upgrade' the EU's relations with its most of its eastern neighbours, except Russia. Including Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine, the EaP was agreed in 2008 and inaugurated in 2009 and builds on the European Neighbourhood Policy (ENP).

1. Objectives

The main goal of the EaP is to 'accelerate political association and deepen economic integration' between the EU and the eastern countries. The level of integration and cooperation reflects each partner country's commitment to European values, standards and structures and its progress. The Partnership aims to promote democracy and good governance, strengthen energy security, encourage sectoral reforms (including environmental protection), encourage people-to-people contacts, support economic and social development and offer additional funding for projects to reduce socio-economic imbalances and increase stability[1].

2. Structures

EaP summits are held biannually, with the participation of EU and partner countries' Heads of State and Government and representatives of the European Parliament, the European Commission and the European External Action Service.

Four thematic platforms shape the Eastern Partnership's multilateral track: democracy, good governance and stability; economic integration and convergence with EU policies; energy security; and contacts between people. Senior officials meetings at least twice a year, and Ministers of Foreign Affairs annually. The work of the platforms is sometimes promoted through sector-specific ministerial meetings.

Flagship initiatives have also been launched and include an integrated border management programme; a facility for small and medium-sized enterprises; regional electricity markets; and efforts to improve energy efficiency and increase the use of renewable energy sources; to promote good environmental governance, and to prevent, prepare for and respond to natural and man-made disasters.

The Euronest Parliamentary Assembly[2], the parliamentary component of the EaP, is responsible for the partnership's 'consultation, supervision and monitoring'. It was inaugurated in May 2011 and has held three sessions to date, most recently in May 2013. It is composed of 60 Members of the European Parliament and 10 members from each partner country's parliament. The European Parliament does, however, not recognise the Belarusian National Assembly as democratically elected and these Members are consequently not currently included in Euronest. The Euronest PA has four standing committees: the Committee on Political Affairs, Human Rights and Democracy; the Committee on Economic Integration, Legal Approximation and Convergence with EU Policies, the Committee on Energy Security; and the Committee on Social Affairs, Education, Culture and Civil Society.

In addition, an EaP Civil Society Forum[3] issues recommendations 'to influence EU institutions and EaP national governments'.

B. Union for the Mediterranean (UfM)

The Union for the Mediterranean (UfM) includes the 28 EU Member States, the European Union and 16 Mediterranean countries (Albania, Algeria, Bosnia and Herzegovina, Egypt, Israel, Jordan, Lebanon, Mauritania, Montenegro, Monaco, Morocco, Palestine, Syria [whose membership is suspended due to the civil war], Tunisia and Turkey). Since 2008, the League of Arab States participates in all meetings, and Libya holds observer status.

1. Objectives:

The UfM constitutes a multilateral framework for political, economic and social relations between the European Union and the southern and eastern Mediterranean Countries. It was launched in 2008 at the Paris Summit as a continuation of the Euro-Mediterranean Partnership (Euro-Med), also known as the Barcelona Process. The UfM is inspired by the goals set out in the Barcelona Declaration (1995): creating an area of peace,

[1] For more information, please refer to the EEAS website on the EaP.

[2] For more information about Euronest and its activities, please refer to the Assembly's website.

[3] For more information about the civil society forum, please refer to the CSF website

stability, security and shared economic prosperity, with full respect of democratic principles, human rights and fundamental freedoms, while promoting understanding between cultures and civilisations in the Euro-Mediterranean region.

2. Structures

The UfM is chaired by a co-presidency, highlighting the co-ownership that characterises the group. In 2012, the European Union assumed the northern co-presidency and Jordan the southern co-presidency. Although the Paris Declaration provides for regular summits, the Arab-Israeli conflict and the historic events unfolding in the southern Mediterranean have prevented this from happening. The main governing body of the UfM is the Senior Officials' Meeting, which oversees and coordinates the UfM's work. The Senior Officials' Meeting also approves the budget and the work programme of the Secretariat, prepares meetings of Foreign Ministers and other ministerial configurations, and appoints the Secretary-General and the six Deputy Secretaries-General. The meeting also discusses the project proposals submitted by the Secretariat for approval and endorsement. The mandate of the UfM Secretariat is focused on identifying, processing, promoting and coordinating technical projects in sectors such as transport, energy, water, environmental protection, higher education and mobility, research, social affairs, empowerment of women, employment and business development, all of which enhance cooperation directly affect the livelihoods of citizens. The EU is the largest contributor to the UfM Secretariat's budget.

The Parliamentary Assembly of the UfM builds on the work of the Euro-Mediterranean Parliamentary Assembly and consists of 280 members: 132 EU members (83 members from the 28 EU national parliaments and 49 members from the European Parliament), 8 members from European Mediterranean partner countries (Albania, Bosnia and Herzegovina, Monaco and Montenegro), 130 members from the ten countries on the southern and eastern shores of the Mediterranean (Algeria, Egypt, Jordan, Israel, Lebanon, Morocco, Palestinian Authority, Syria [currently suspended as a result of the civil war in the country], Tunisia and Turkey), and 10 members from Mauritania. The Parliamentary Assembly of the UfM holds at least one plenary session per year; the last was held in Brussels in April 2013. It adopts resolutions or recommendations on all aspects of Euro-Mediterranean cooperation that concern the executive organs of the UfM, the Council of the EU, the European Commission and the national governments of partner countries. The EP held the rotating presidency of the Parliamentary Assembly from March 2012 until April 2013. The presidency is currently held by Jordan (2013-2014). The Assembly has five committees: Political Affairs, Economic Affairs, Culture, Women and Energy.On the initiative of EP's President Martin Schulz a summit of speakers from the parliaments of UfM countries was convened for the first time in April 2013 to underline the importance of implementing UfM projects and the importance of strong and effective parliaments. The Euro-Mediterranean Local and Regional Assembly (ARLEM) was established in 2010 and is a consultative assembly that aims to increase local and regional actors' involvement in the UfM. It gathers 84 members — all representatives of regions or local bodies with a regional or local mandate — from the 43 UfM partners.

→ Julien Crampes / Pekka Hakala / Andreas Kettis / Fernando Garcés de los Fayos

6.5.5. Eastern Partners

Six post-Soviet states are involved in the EU's 'Eastern Partnership', policy, including three immediate EU neighbours — Ukraine, Moldova and Belarus — and the three countries of the South Caucasus — Georgia, Armenia and Azerbaijan. Inaugurated in 2009, the Partnership was created to support the political, social and economic reform efforts in these countries to increase democratisation and good governance, energy security, environmental protection and economic and social development. For those countries that engage deeply with the EU, an Association Agreement may be negotiated, often including a Deep and Comprehensive Free Trade Area. Recent events have demonstrated the difficulties involved in this process, with some countries having grown closer to the EU, while others have not. Strong internal divisions have also appeared, with citizens at odds over their country's European orientation.

1. Ukraine

While the EU and Ukraine have concluded negotiations on an Association Agreement, Ukraine must meet 'key expectations' for this agreement to be signed and ratified. These include adopting electoral reforms, addressing the irregularities noted during the last elections, tackling selective justice and accelerating key reforms defined in the 'Association Agenda', a mutually agreed framework.

Progress has not been steady in these areas. In November 2013, just a few days before the Eastern Partnership summit held in Vilnius, Lithuania, Ukrainian President Viktor Yanukovych announced that his government would postpone its work on the Association Agreement (AA). Despite widespread public protests in Ukraine demanding that President Yanukovych push through the final reforms required by EU leaders, the reforms were stalled and the agreement was not signed at the meeting.

A number of issues concern the EU. The international election observation mission considered the latest parliamentary elections, held in Ukraine on 28 October 2012, to have 'lacked a level playing field'. Another major area of concern, in particular for Parliament, is the 'selective justice' applied to opposition leaders, including, notably, the imprisoned ex-Prime Minister Yulia Tymoshenko, who has been unable to run in the elections. In 2012, EP President Martin Schulz established a monitoring mission composed of former EP President Pat Cox and former Polish President Aleksander Kwasniewski.

Ukraine's international partners have complicated the country's choices. Russia has encouraged Ukraine to join its Customs Union and Eurasian Union projects, along with other countries from the Commonwealth of Independent States (CIS). In exchange for Ukraine's adherence, Russia has offered Ukraine relatively inexpensive gas — an attractive offer given Ukraine's current economic difficulties and reliance on Russian energy resources. However, this would be incompatible with the Deep and Comprehensive Free Trade Area (DCFTA)[1] that Ukraine has negotiated with the EU. In August 2013, Russia switched to more coercive measures, blocking all imports from Ukraine into Russia for over a week.

European Parliament's positions

Parliament has adopted a number of resolutions on Ukraine. Most of these focus on Parliament's support of the EU-Ukraine Association Agreement, whilst expressing strong concerns about cases of selective justice and irregularities during the 2012 elections. In a resolution adopted in October 2013, Parliament continued to endorse the Association Agreement, contingent on Ukraine's reforms.

Inter-parliamentary cooperation

Members of the European Parliament and the Ukrainian Parliament (the *Rada*) meet at the EU-Ukraine Parliamentary Cooperation Committee (PCC) twice per year to exchange views on current issues. In 2012 these meetings addressed the upcoming elections in Ukraine, cases of selective justice, shale gas and regional and local administration reform.

Election observation

Parliament has been invited to observe all the latest national elections in Ukraine. In 2012, the International Election Observation Mission included Parliament observation delegation, the Organisation for Security and Cooperation in Europe's Office for Democratic Institutions and Human Rights (OSCE ODIHR), the OSCE Parliamentary Assembly, the Parliamentary Assembly of the Council of Europe (PACE) and the NATO Parliamentary Assembly.

2. Moldova

After a three-year political deadlock ended in 2012 with the election of a new President, 2013 has brought a new political crisis to Moldova, due to internal fighting within the pro-European majority (made up of three of the four main political parties in Moldova). On 30 May 2013, the parliamentary

[1] The 'Deep and Comprehensive Free Trade Area' (DCFTA) is part of the Association Agreement (see fact sheet on the European Neighbourhood Policy).

majority, the 'Coalition for Pro-European Governance', backed the formation of a new government. Led by Prime Minister Iurie Leancă, the government pledged to pursue a pro-European agenda of structural reforms.

Negotiations on a Deep and Comprehensive Free Trade Area (DCFTA) between the EU and Moldova were concluded in June 2013. An Association Agreement (including the DCFTA) was initialled at the Eastern Partnership summit in Vilnius and is due to be signed by the autumn of 2014. In November 2013, the Commission proposed lifting visa requirements for Moldovans.

In September 2013, Russia imposed a ban on imports of Moldovan wine and threatened to limit access to the Russian labour market for Moldovan citizens.

A major challenge for Moldova remains the issue of Transnistria, which has unilaterally declared independence from Moldova. Official '5+2' talks — including Transnistria, Moldova, Ukraine, Russia and the OSCE, as well as two external observers, the US and the EU — resumed in December 2011, but have not greatly progressed since mid-2012.

European Parliament's positions

Parliament has welcomed the democratic progress made in Moldova and expressed its support of the Association Agreement for a visa-free regime. Parliament has also underscored the Transnistrian impasse and the importance of finding a solution. Parliament has also adopted technical resolutions for trade and amended visa facilitation agreements, all of which require Parliament consent.

Inter-parliamentary cooperation

Members of the European Parliament and the Moldovan Parliament meet at the EU-Moldova Parliamentary Cooperation Committee (PCC) at least once per year to exchange views on current issues. In 2012 two meetings addressed the Association Agreement negotiations, the visa dialogue and internal political developments in Moldova, including progress towards a settlement of the Transnistrian issue. The meeting held in June 2013 also welcomed the end of the political crisis in Moldova.

Election observation

European Parliament has been invited to observe all the latest national (parliamentary) elections in Moldova. In 2010, an international election observation mission included Parliament's observation delegation, as well as the OSCE ODIHR, the OSCE PA and the PACE.

3. Belarus

The Republic of Belarus has been led by its authoritarian President Alexander Lukashenka since 1994. Its political system is characterised by the limited role of the Parliament (National Assembly) and the Cabinet (Council of Ministers), as well as by a weak party system. The situation regarding human rights and political prisoners is of high concern.

In the period 2011-2012 Belarus suffered from an economic crisis induced by relaxed monetary and fiscal policies. Difficulties were exacerbated by Belarus' recent adherence to the Customs Union, together with Russia and Kazakhstan.

Strained relations between the EU and Belarus have deteriorated since the country cracked down on the opposition after the latest presidential election in December 2010. More recently, the 2012 parliamentary elections were also judged incompatible with international standards. While Belarus is not negotiating an Association Agreement with the EU, the Union is committed to a policy of 'critical engagement' with the country. In October 2013, the Council prolonged the targeted sanctions the EU had placed on the country — a travel ban and asset freeze on 232 individuals and 25 companies — until October 2014. Since March 2012, the European Dialogue on Modernisation with Belarusian society has focused on the exchange of views and ideas about necessary reforms for the country's modernisation and for improving EU-Belarus relations.

European Parliament's positions

In recent years, Parliament has adopted a number of resolutions criticising developments in Belarus regarding political prisoners, constraints on media freedom and civil society, the failure to respect human rights, and, most recently, flawed parliamentary elections. In September 2013, Parliament adopted a recommendation on the overall EU strategy on Belarus, calling for the release and rehabilitation of all political prisoners as a condition for the EU to reinitiate political dialogue and consider easing visas restrictions and costs for Belarusian citizens.

Inter-parliamentary cooperation

Due to the manner in which parliamentary elections have been held in Belarus, the European Parliament does not recognise the country's National Assembly as representative of the Belarusian people and, consequently, does not maintain bilateral relations. Instead, the Parliament Delegation for relations with Belarus meets regularly with members of the Belarusian opposition and civil society to discuss political and economic developments in the country, although recent attempts by the Delegation to visit Belarus have failed.

Election observation

Parliament has not been invited by Belarus to observe elections since 2001.

4. South Caucasus

Democratic consolidation and economic reform is slowly taking place in the South Caucasus. Parliament called for an 'EU Strategy for the South Caucasus' in 2010, stressing the strategic and

economic importance of the area. The resolution underlined the benefits to the region of peace and increased EU attention.

Parliament has a South Caucasus Delegation, which oversees the Parliamentary Cooperation Committees for Georgia, Armenia and Azerbaijan and monitors the work of the EU Special Representative for the South Caucasus and Crisis in Georgia. All three countries participate in the Euronest Parliamentary Assembly.

A. Georgia

Georgia has led the changes taking place in the region. The 2012 Parliamentary elections and the 2013 presidential elections confirmed the power of the new 'Georgian Dream' coalition. Prime Minister Bidzina Ivanishvili and President Giorgi Margvelashvili have maintained the country's Euro-Atlantic orientation. Tensions persist between the coalition and the United National Movement led by former President Mikheil Saakashvili.

In November 2013, Georgia initialled an Association Agreement with the EU and agreed to participate in the EU's crisis management operations.

Georgia was for a number of years one of the fastest growing economies in the world, rapidly responding to EU calls for regulatory liberalisation and harmonisation. Georgia has received EU macro-finance assistance.

European Parliament's positions

In 2012 Parliament acknowledged Georgia's parliamentary elections to be free and fair, although imperfect. The EU has also stressed the importance of peacefully resolving the status of South Ossetia and Abkhazia, while ultimately respecting the territorial integrity of Georgia. In October 2013 Parliament encouraged the initialling of an Association Agreement and the completion of the visa liberalisation dialogue, contingent upon the country's progress in maintaining high standards of democracy and the rule of law.

Election observation

Georgia has hosted the OSCE ODIHR (which included Parliament) to monitor its parliamentary, presidential and local elections. While the evaluations have varied, the most recent parliamentary and presidential elections (in 2012 and 2013, respectively) were judged satisfactory.

B. Armenia

Armenia, which chairs the Council of Europe in 2013, holds promise as a future partner for the EU.

Armenia's foreign policy, however, may be an impediment. The country has been involved in a 'protracted conflict' with its neighbour Azerbaijan over the status of the Nagorno-Karabakh region for over 20 years, and relations with Armenia's western neighbour, Turkey, are distant. In September 2013 the Armenian president declared that the country would join the Customs Union with Belarus, Kazakhstan and Russia, despite having completed Association Agreement negotiations with the EU in July. Armenia's Association Agreement with the EU was therefore not initialled at the Eastern Partnership summit in November 2013.

In addition to the EU, Armenia's main trading partners are Russia, Georgia and Iran.

European Parliament's positions

In 2012 Parliament agreed to the negotiations on an Association Agreement with Armenia, contingent upon free and fair elections, efforts to resolve the Nagorno-Karabakh conflict and deeper investigations into 2008 electoral violence. Parliament has recently highlighted the incompatibility of Armenia's move towards the Customs Union with its Association Agreement negotiations.

Election observation

Armenia has hosted the European Parliament five times when Parliament joined the OSCE ODIHR, including during the 2013 presidential elections. The organisation of the ballots has gradually improved with each successive election, but some problems persist, particularly the lack of challengers.

C. Azerbaijan

Azerbaijan possesses oil wealth, pipelines and transit routes. However, it must build democratic institutions and join the World Trade Organisation before a deeper economic integration with the EU is possible. The EU has stated that Azerbaijan must also resolve the conflict with Armenia over Nagorno-Karabakh.

Azerbaijan signed a visa facilitation agreement with the EU in November 2013.

European Parliament's positions

Parliament has expressed concern about a steady deterioration of human rights, increased police brutality and lack of civil liberties. More protection of freedoms would be needed for an Association Agreement to be signed. In 2012 Parliament deplored the pardon and subsequent glorification of Ramil Safarov, an Azerbaijani officer who had been convicted of murdering an Armenian in Hungary before being extradited to Azerbaijan. In October 2013 Parliament called for jailed opposition politicians, journalists and human rights activists to be released.

Election observation

Azerbaijan has hosted the European Parliament as part of the OSCE ODIHR electoral missions. Several elections were considered to fall short of international requirements. In October 2013 Parliament observed the country's presidential elections.

→ Julien Crampes (Ukraine, Moldova, Belarus)
Fernando Garcés de los Fayos (South Caucasus)
11/2013

6.5.6. Southern Partners

The European Neighbourhood Policy (ENP) covers ten of the EU's neighbours on the eastern and southern shores of the Mediterranean: Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestine, Syria and Tunisia. It consists of bilateral policies between the EU and the individual partner countries.

Responding to rapidly evolving events in the EU's southern neighbourhood, the Commission and the High Representative for Foreign Affairs and Security Policy outlined the EU's response to transformations in the region on 8 March 2011 in 'A Partnership for Democracy and Shared Prosperity with the Southern Mediterranean'. This reformulated policy was endorsed by the European Council and welcomed by the European Parliament.

Legal basis:

- Article 8 of the Treaty on European Union;
- Title V of the Treaty on European Union: the EU's 'external action';
- Articles 206-207 (trade) and 216-219 (international agreements) of the Treaty on the Functioning of the European Union (TFEU).

Instruments

The EU's most important bilateral instruments in the region are the association agreements that have come into force with Egypt (2004), Algeria (2005), Israel (2000), Jordan (2002), Lebanon (2006), Morocco (2000), the Palestinian Authority (1997 interim agreement) and Tunisia (1998). An association agreement with Syria had not been signed when the Syrian government's violent crackdown on public protests in 2011 led the EU to respond with a series of progressively restrictive measures. The negotiations for an EU–Libya framework agreement were suspended in February 2011 and have yet to be resumed.

There are currently seven bilateral action plans in place between the EU and its southern partners. These establish agendas for political and economic reform with short- and medium-term priorities of between three and five years. ENP action plans reflect the needs, interests and capacities of the EU and each partner — developing democratic, socially equitable and inclusive societies, promoting economic integration, facilitating the movement of people across borders and providing financial assistance and technical cooperation to allow an alignment with EU standards. The ENP has not yet been fully 'activated' for Algeria, Libya and Syria, as these countries have not yet agreed on action plans. A plan with Algeria is currently under negotiation.

These plans are generally funded by the European Neighbourhood and Partnership Instrument (ENPI). In addition, the Commission provides financial support in the form of grants to partners, and the European Investment Bank and the European Bank for Reconstruction and Development supplement this support through loans. Because civil society plays an important role in contributing to democracy and good governance in partner countries, the EU also supports organisations through its Civil Society Facility, created in 2011.

Assessments contained in annual ENP Progress Reports form the basis for EU policy, with the 'more-for-more' principle applying to all incentives proposed by the EU — policy alterations as well as financial assistance (excluding humanitarian assistance, civil society support and funds for refugees and external border management). Partners embarking on ambitious political reforms may also be offered far-reaching Deep and Comprehensive Free Trade Agreements (DCFTAs) and mobility partnerships.

Morocco

Of the southern partners, Morocco has the most developed relations with the EU. The country was granted 'advanced status' in 2008, and the emphasis is now on bilateral political dialogue and aligning the country's regulatory framework with the acquis communautaire, the body of EU laws. The EU seeks a particularly close relationship with the country and wishes to support Morocco's economic and political reforms. Migration issues are also a priority. The EU-Morocco mobility partnership was signed in June 2013.

Relations between the Moroccan Parliament and the European Parliament were established in 1981 and upgraded with the creation of a joint parliamentary committee in 2010. The most recent meeting was held in Rabat in 2012. All recent EP Presidents have visited Morocco.

Algeria

Algeria is the EU's fifth-largest energy supplier and a strategic partner. Cooperation between the partners focuses on political and socio-economic reforms and the fight against corruption. The EU also supports

Algerian civil society as a key contributor to the country's democratic processes. A stronger role for Algeria in the Maghreb and the Saharo-Sahelian region would be welcomed by the EU.

The first interparliamentary meeting between the European Parliament and the Algerian Parliament was held in 1986, and the last EP visit to Algeria occurred in 2011. The EP participated in the EU Election Observation Mission to Algeria's parliamentary elections in 2012.

Tunisia

Tunisia is heavily oriented towards the EU, which is Tunisia's number one trade partner and accounts for 70% of the country's external trade. The EU-Tunisia Taskforce met in Tunis in September 2011 — the first of its kind to take place within the framework of the EU's reformed neighbourhood policy — and focused on the EU's political and economic support. Although relations are close — as evidenced by a February 2012 joint statement describing a privileged partnership and the headway made in various negotiations — progress has been slow.

Relations between the Tunisian and European parliaments were established in 1983. Since the 2011 Tunisian revolution, representatives of the European Parliament — including Presidents Jerzy Buzek and Martin Schulz and observers from the EU Election Observation Mission — have visited the country. The EP's Office for Promotion of Parliamentary Democracy has cooperated closely with the Tunisian Constituent Assembly by offering its members and staff training and study visits.

Libya

No contractual relations currently exist between Libya and the European Union. During and since the civil war, the EU has played an active role in Libyan affairs. In coordination with other international actors, the EU coordinates assistance on communications, civil society and border management. The Union has deployed a Common Security and Defence Policy mission, including 160 staff members to help build up the country's capacity to manage its borders.

The European Parliament held four interparliamentary meetings with its Libyan counterpart before the fall of the regime of Libyan leader Muammar Gaddafi. Its most recent visit to Libya was organised in 2010. No formal meeting with the country's General National Congress (parliament) has yet taken place.

Egypt

Relations between the European Union and Egypt are governed by an association agreement, which entered into force in 2004. After the Egyptian revolution, the EU committed to supporting the country's democratic transition, and the EU-Egypt Task Force's first meeting took place in Cairo on 13-14 November 2012 to discuss commercial relations, economic cooperation, tourism, political reform, asset recovery, human rights, governance, infrastructure, ICT and science. Since then, the highly unstable political situation in Egypt has prevented relations from making any further progress.

The European Parliament held nine interparliamentary meetings with the Egyptian Parliament before the fall of the regime of Egyptian President Hosni Mubarak. The European Parliament's President Buzek visited the country in 2011, and the last (10th) interparliamentary meeting was organised in 2012.

Israel

EU-Israel relations are extensive, underpinned by strong economic and trade relations and technical cooperation. Based on the 2000 Association Agreement, the relationship developed dynamically in subsequent years, with a substantial expansion across many sectors. In 2009, however, the EU decided that, in order for relations to be upgraded to 'advanced' status, there would have to be progress in the Middle East peace process.

In recent years, the European Parliament has passed several highly critical resolutions on Israel's policies, including on Israeli settlements in Palestine, the treatment of Palestinian prisoners in Israeli jails and the situation of the Bedouin in the Negev desert. The European Parliament and the Knesset have long-established relations, and their most recent meeting — the 38th — was held in Tel Aviv and Jerusalem in 2012.

Palestine

The legal basis for the EU's relations with the Palestinian Authority (PA) is the Interim Association Agreement on Trade and Cooperation.

In 2013 the EU and the Palestinian National Authority (PNA) concluded a new Action Plan. The EU is the most important foreign supporter of the PNA.

From 1994 to the end of 2011, the Union committed approximately EUR 5 billion in assistance to the Palestinians through various geographical and thematic instruments. The overall objective of EU support is to ensure the creation of a viable, independent and democratic Palestinian state that coexists in peace and security with Israel and other neighbours.

The EP has a keen interest in the Palestinian question and supports Palestinian statehood. It participated in the EU Election Observation Mission in 2006. Interparliamentary contacts between the European Parliament and the Palestinian Legislative Council take place on a regular basis, and Parliament's last

visit to East Jerusalem and the West Bank took place in 2013.

Jordan

The EU considers Jordan an important partner exercising a moderating and stabilising role in the Middle East, contributing to the Israeli-Palestinian peace process and enhancing political and economic cooperation. Jordan was the second Mediterranean partner country after Morocco to acquire 'advanced' status in its partnership with the EU.

Six interparliamentary meetings have been held between the Jordanian and European parliaments, the last in Amman in 2012. The European Parliament participated in the EU Election Observation Mission in 2013.

Syria

Since mid-March 2011, when the Syrian government began violently repressing anti-government protests, the EU has taken a number of increasingly restrictive measures. The EU's Foreign Affairs Council announced in May 2011 that all bilateral cooperation programmes between the EU and the Syrian government would be suspended, as would all preparations for new bilateral cooperation. The EU is not pressing on with the association agreement that had been negotiated with Syria.

Interparliamentary relations have also been suspended due to the civil war. Before the start of the Syrian uprising against the regime of President Bashar al-Assad, 11 meetings were held between the Syrian and European parliaments. The last was held in Damascus in 2011.

Lebanon

Relations are based on the EU-Lebanon Association Agreement (2006). The EU supports Lebanon's unity, stability, independence, sovereignty and territorial integrity, particularly given the deteriorating situation in neighbouring Syria. The EU has also expressed its support for the Lebanese government's efforts to maintain stability in the country.

The European Parliament participated in the EU Election Observation Mission in Lebanon in 2009. A total of 12 interparliamentary meetings have been held between the Lebanese and European parliaments, the last one in Beirut in 2013.

→ Pekka Hakala

6.6. Relations with countries outside the European neighbourhood

6.6.1. Transatlantic relations: USA and Canada

The EU and its North American partners, the United States of America and Canada, share common values of democracy, human rights and economic and political liberty, as well as overlapping foreign policy and security concerns. At the moment, both the EU and North America are working to move beyond the economic and financial crisis of 2007-2008, to generate growth and create jobs for their people. With a view to fully exploitin opportunities for commercial relations, negotiations on free trade and investment agreements are advancing. Negotiations on the EU-Canada Comprehensive Economic and Trade Agreement, begun in 2009, are nearly finalised. Negotiations on an EU-US agreement, the Transatlantic Trade and Investment Partnership (TTIP), have recently moved forward as well: on the recommendation of a dedicated High-Level Working Group on Growth and Jobs, charged with investigating the prospects for the agreement, negotiations were launched on 8 July 2013. Members of the European Parliament have actively participated in the EU's dialogue with the US and Canada.

EU-US foreign policy relations

The US is the EU's closest foreign policy ally. The partners cooperate closely, consulting one another on their international priorities and often working to advance their overlapping interests in multilateral forums.

EU-US foreign policy cooperation has traditionally touched on the Middle East. Despite some differences in the partners' respective approaches to Arab-Israeli issues, both advocate a two state solution for Palestine and Israel. The EU and the US have also worked to contain Iran's nuclear programme and to respond to global crises, including those in the Sahel, Syria and the Horn of Africa.

Since the Arab Awakening, the EU and the US have also tried to coordinate their efforts to ensure that post-revolutionary countries in the Middle East and North Africa follow through on their democratic transformations and constitutional reforms. The US has acted as a like-minded partner to the EU in the Eastern Neighbourhood, helping to press for political reforms, particularly in Ukraine and Georgia. Cooperation in the Western Balkans has also been effective, and the US has provided political support for the EU's efforts to improve Serbia's relations with Kosovo.

As the US promotes its engagement in the Asia-Pacific region, the country has expressed a desire for its transatlantic partner to support this effort, particularly when it comes to dissolving regional and maritime tensions and forging closer relations with China.

The US has proven a reliable security partner for a number of EU Member States, as demonstrated by the collaboration among the North Atlantic Treaty Organisation (NATO) allies. Productive synergies have been developed with the missions of the EU's Common Security and Defence Policy (CSDP) — and notably between NATO and the CSDP — in theatres such as Afghanistan, Iraq, Kosovo, Bosnia and Herzegovina and the Horn of Africa.

While the EU and the US do not speak in unison on all foreign policy issues, they remain one another's most important and reliable allies. Their foreign policy bonds have endured over many decades, despite shifting political configurations and geostrategic changes on both sides.

EU-US political relations within the Transatlantic Legislators' Dialogue (TLD) process

Contacts between Parliament and the US Congress date back to 1972. In 1999 their relations were upgraded and institutionalised with the establishment of the Transatlantic Legislators' Dialogue (TLD). The TLD brings together Members of the European Parliament and members of the US House of Representatives, with twice-yearly interparliamentary meetings alternating between the US and Europe. The TLD is currently co-chaired by the Chair of the European Parliament's US

Delegation, MEP Christian Ehler, and by a member of the US Congress's Appropriations Committee and its Subcommittee on State and Foreign Operations, Mario Diaz Balart.

One of the most important economic issues for discussion is the negotiation of a Transatlantic Trade and Investment Partnership (TTIP). Both Parliament and the US Congress have expressed their interest in deepening transatlantic economic engagement by means of such an agreement.

Legislators attending these biannual meetings also exchange views on other key political issues of mutual concern, ranging from the Middle East peace process to the coordination of international punitive sanctions. While transatlantic views converge in a number of areas, the legislators' exchanges have also exposed divergences on key political issues. The importance of this transatlantic political dialogue should not be underestimated, particularly given the power wielded by the US Congress, for example in authorising US intervention in global crises and shaping US participation in global governance institutions.

Global financial challenges are also discussed regularly in the TLD, with exchanges of views on how to ensure the long-term sustainability of public finances and how to strengthen coordination in the field of financial regulation.

Cyber security and internet freedom are also major concerns. In this area, EU-US discussions often focus on three aspects: security-oriented cyber cooperation, the commercial harmonisation of information and communication technologies (ICTs), and greater global governance cooperation in promoting an internet freedom agenda. Harmonisation of ICT standards is likely to occupy much of the discussions regarding the TTIP.

EU-US economic relations

The combined economies of the EU and the US account for almost 50% of global gross domestic product (GDP), and one third of world trade.

In 2012, the EU defended its position as the US's second largest import merchandise trade partner — after China, but before North American Free Trade Agreement (NAFTA) partners Mexico and Canada.

From an EU point of view, the US remained the Union's primary export destination in 2012, absorbing 17.3% of total EU exports (compared with China's 8.5%). The US ranked only third among the EU's import partners, however, supplying 11.5% of the EU's imported goods and lagging behind China and Russia (which supplied 16.2% and 11.9% of the EU's total imports, respectively).

EU service exports to the US represented 24% of all EU service exports in 2011. That same year, services imported by the EU from the US represented 29% of the Union's total service imports. In 2011, the EU enjoyed a EUR 5.3 billion service trade surplus with the US.

EU-US trade 2009-2012 (EUR billion)

Year	EU goods imports from US	EU goods exports to US	EU balance (goods)	EU service imports from US	EU service exports to US	EU balance (services)
2009	206.3	159.2	−47.1	123.9	119.1	−4.8
2010	170.4	242.3	+71.9	130.5	127.1	−3.4
2011	184.2	260.6	+76.3	140.1	145.5	+5.4
2012	205.8	291.7	+85.8	n.a.	n.a.	n.a.

Source: European Commission, DG TRADE

The EU and the US are one another's largest investors. It could be argued that bilateral direct investment — which is by nature a long-term engagement — is the driving force behind transatlantic commercial relations. This is reinforced by the fact that trade between parent companies and affiliates in the EU and the US accounts for more than one third of all transatlantic trade. Estimates indicate that EU and US companies operating on one another's territory provide jobs for more than 14 million people.

EU-US bilateral investment stocks (EUR billion)

Year	US FDI stocks in the EU	EU FDI stocks in the US	Balance
2010	1 201.4	1 194.9	−6.4

Source: European Commission, DG TRADE

EU-Canada political dialogue

The 1976 EU-Canada Framework Agreement for Commercial and Economic Cooperation was the first such agreement that the EU signed with an industrialised country. Negotiations with Canada on an upgraded framework agreement — a 'strategic partnership agreement' or SPA — were launched in

September 2011. The aim of this new agreement is to upgrade EU-Canada foreign policy and sectoral cooperation, and to further liberalise trade and investment relations.

In addition to the dialogue between the EU and Canadian executive branches — which includes yearly summits at President/Prime Minister level and preparations for these summits within the EU-Canada Coordination Group[1] — the partners' foreign ministers meet regularly, as do Members of the European Parliament and their Canadian counterparts. Interparliamentary meetings are held annually, supplemented by other interparliamentary exchanges for working groups and delegations. As well as discussing ongoing negotiations, these meetings allow controversial issues — such as the environmental impact of tar sands and shale gas exploitation, fisheries policies, animal welfare issues (including seal hunting) and the visa requirements that Canada imposes on citizens of some EU Member States — to be aired. These topics of discord do not detract from the excellent overall quality of relations between the two countries.

Parliament's Delegation for relations with Canada meets regularly throughout the year to prepare the interparliamentary meetings. This work involves detailed exchanges with other EU institutions, including the Commission and the European External Action Service (EEAS), as well as with Canada's Mission to the EU and the Canadian Department for Foreign Affairs and International Trade. The Delegation has recently hosted discussions with Canadian ministers and other high level federal and provincial authorities.

EU-Canada economic relations

A. Comprehensive Economic and Trade Agreement (CETA)

Since May 2009, when negotiations on an EU-Canada Comprehensive Economic and Trade Agreement (CETA) were launched, the agreement has dominated both political and economic discussions between the partners.

CETA negotiations were prepared gradually, starting with a joint study which convinced the negotiating partners that both sides would benefit sufficiently from liberalising trade and dismantling non-tariff barriers. The study estimated annual real income gains of approximately EUR 11.6 billion for the EU and EUR 8.2 billion for Canada within seven years following the agreement's implementation. Liberalising trade in services was projected to contribute substantially to the GDP gains (50% of the total gains for the EU, and 45.5% of the gains for Canada).

Following this study, a joint scoping exercise determined the major elements to be included and secured a commitment from the Canadian provinces and territories. The provinces and territories agreed that issues under their jurisdiction could be negotiated and that any agreement on these issues would be implemented.

On 18 October 2013, Canadian Prime Minister Stephan Harper and Commission President José Manuel Barroso announced that the negotiators had reached a political agreement. While a few technical issues remain to be resolved, the agreement is expected to be initialled in the summer of 2014, following the legal revision. Parliament will then vote on whether or not to consent to the CETA.

B. Bilateral trade and investment relations

The EU is Canada's second-largest trading partner, after the US. In 2012, the EU exported goods worth EUR 31.2 billion to Canada and absorbed Canadian goods valued at EUR 30.5 billion. Canada ranks 12th among the EU's international trading partners.

Trade in services between the EU and Canada has progressed greatly. In 2011, EU exports of services to Canada reached EUR 15.9 billion, and the Union's imports of services from Canada were valued at EUR 10.0 billion.

[1] For EEAS documentation on EU-Canada relations (executive branch), see http://eeas.europa.eu/canada/docs/index_en.pdf

EU-Canada trade 2009-2011 (EUR billion)

Year	EU goods imports from Canada	EU goods exports to Canada	EU balance (goods)	EU service imports from Canada	EU service exports to Canada	EU balance (services)
2009	19.3	21.9	+2.6	8.1	11.1	+3.0
2010	24.7	26.7	+2.1	9.3	13.2	+3.8
2011	30.3	29.8	−0.5	10.0	15.9	+5.8
2012	30.5	31.2	+0.7			

Source: European Commission, DG TRADE

In terms of foreign direct investment (FDI), the EU has invested more in Canada than Canada has in the EU. In 2010, the EU's outward FDI stocks in Canada reached EUR 194.7 billion. Canadian stocks in the EU were valued at EUR 143.1 billion.

EU-Canada bilateral investment stocks (EUR billion)

Year	Canadian FDI stocks in the EU	EU FDI stocks in Canada	Balance
2010	143.1	194.7	+54.3

Source: European Commission, DG TRADE Eurostat

→ Elfriede Bierbrauer / Wanda Troszczynska van Genderen / Julien Crampes 11/2013

6.6.2. Latin America and the Caribbean

The EU's relations with Latin America and the Caribbean are multi-faceted and conducted at different levels. The EU interacts with the entire region through summits of the heads of state and government and agreements and political dialogue bind the EU and the Caribbean, Central America, the Andean Community, Mercosur and individual countries.

Legal basis

- Title V (EU external action) of the Treaty on European Union;
- Titles I-III and V (common commercial policy; development cooperation and humanitarian aid; international agreements) of the Treaty on the Functioning of the EU.

Region-to-region relations

A. The summits

The first summit between the EU, Latin America and the Caribbean was held in Rio de Janeiro in June 1999 and established a 'Bi-regional Strategic Partnership'. The most recent biennial summit, held in January 2013 in Santiago de Chile, was the first between the EU and the Community of Latin American and Caribbean States (Comunidad de Estados Latinoamericanos y Caribeños, CELAC). With the 33 states in Latin America and the Caribbean as members of the CELAC, a total of 60 countries participated in the Santiago gathering. The next summit is scheduled to take place in Brussels in 2015. The summits strengthen links between the two regions at the highest level and address issues on the bi-regional and the international agenda. Debates have focused on topics such as democracy and human rights; fighting against poverty; promoting social cohesion, innovation and technology; and the environment and climate change. The Santiago summit addressed social and environmental quality investments and adopted a political declaration and an 'Action Plan 2013-2015', based on a review of the 2010 Action Plan. The plan sets eight priority areas for bi-regional cooperation:

- science, research, innovation and technology;
- sustainable development and the environment, climate change, biodiversity and energy;
- regional integration and interconnectivity to promote social inclusion and cohesion;
- migration;
- education and employment to promote social inclusion and cohesion;
- the global drug problem;
- gender;
- investments and entrepreneurship for sustainable development.

B. The parliamentary dimension

Regular contacts between EP and Latin American parliamentarians started in 1974 with the first of 17 interparliamentary conferences. This was the first — and for many years, the only — forum for institutionalised political dialogue between Europe and Latin America. In 2006, the joint Euro-Latin American Parliamentary Assembly ('EuroLat'), the parliamentary institution of the Bi-regional Strategic Partnership, replaced the interparliamentary conferences. EuroLat serves as a forum to debate, control and review all questions relating to the partnership. It has 150 members: 75 from the EP and 75 from Latin American sub-regional parliaments, including Parlatino (Latin American Parliament), Parlandino (Andean Parliament), Parlacen (Central American Parliament), Parlasur (Mercosur Parliament) and the Congresses of Chile and Mexico. Since 2006, EuroLat has held six ordinary plenary sessions, most recently in January 2013.

Relations with sub-regions

A. Central America (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama)

Relations with Central American countries have developed on the basis of the 'San José Dialogue'. Initiated in 1984, the dialogue has since broadened to issues including economic and social development, migration and security. Following the two first cooperation agreements concluded in 1985 and 1993, a Political Dialogue and Cooperation Agreement was signed in 2003, introducing various new areas of cooperation. Negotiations on an Association Agreement concluded in May 2010. The first region-to-region agreement of this type signed by the EU, it was signed in June 2012 and ratified by the EP in December 2012. The agreement establishes the goal of developing a privileged political partnership based on values, principles and common objectives, reinforcing human rights, reducing poverty, fighting inequality, preventing conflict and encouraging good governance, security, regional integration and sustainable development. The Association Agreement also liberalises trade in

industrial products and fisheries and eliminates most tariffs on agricultural trade. With a specific chapter, the parties confirm their commitment to sustainable development. An Association Parliamentary Committee, composed of MEPs and members of the Parlacen and Costa Rica's and Panama's national parliaments, will monitor the implementation of the agreement.

B. Andean Community (Bolivia, Colombia, Ecuador and Peru)

The EU has maintained regular contacts with the Andean countries since the 1969 founding of the Andean Group (later called the Andean Community). The first Cooperation Agreement was signed in 1983, followed by a broader Framework Cooperation Agreement in 1993. In December 2003, the two regions concluded a Political Dialogue and Cooperation Agreement, which further broadened the scope of the cooperation but has not yet entered into force. Negotiations on an Association Agreement started in June 2007 and finally led to an agreement with Peru and Colombia in March 2010. The trade agreement was signed in June 2012 and ratified by the EP in December 2012. The agreement provides for the total liberalisation of trade in industrial products and fisheries over 10 years (with most tariffs eliminated at its entry into force) and increases market access for agricultural products. The agreement covers public procurement, investment, human rights and labour and environmental standards. The agreement remains open for the adhesion of Bolivia and Ecuador.

C. Mercosur (Argentina, Brazil, Paraguay and Uruguay)

The EU and the Southern Common Market (Mercado Común del Sur, Mercosur), founded in 1991, have maintained institutional relations since 1992. In 1995, they signed an Interregional Framework Agreement, establishing regular political dialogue and setting out objectives and modalities for trade and economic cooperation, including in the areas of investment promotion, transport, the environment, and science and technology.

Negotiations on an Association Agreement, including political dialogue, cooperation and free trade, started in 1999. After being suspended in 2004, negotiations resumed in 2010. In the nine rounds of negotiations that have taken place to date, the political and cooperation chapters and the 'normative' part of the trade chapter (rules of origin, etc.) have advanced. However, the key question of market access has not yet been addressed. At a 2013 EU-Mercosur Ministerial Meeting, the two parties resolved to exchange of market access offers 'no later than the last quarter of 2013'. On various occasions the EP has expressed its support for an ambitious and balanced agreement that takes account of the sensitivities of both regions' economic sectors.

D. The Caribbean

The EU has historically maintained strong relations with the Caribbean. This stems in large from the colonial presence of European countries in the region; many are still present through Overseas Countries and Territories (OCTs). EU-Caribbean relations are shaped by various overlapping institutional frameworks. The most important are the 'Cotonou Agreement', signed in 2000 with 79 African, Caribbean and Pacific countries (ACP), and the EU-Cariforum Economic Partnership Agreement (EPA), signed in 2008. The key partner for the bi-regional dialogue with the EU is Cariforum. Of the organisation's 16 members, 14 — Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, St Kitts and Nevis, St. Lucia, St Vincent and the Grenadines, Suriname, Trinidad and Tobago — are members of the Caribbean Community (Caricom). The Dominican Republic (signatory to the Cotonou Agreement and the EPA) and Cuba, which holds a special status, are also members.

Since November 2012, EU-Caribbean relations are governed by the Joint EU–Caribbean Partnership Strategy (JECS), which provides a structured framework for broader and deeper dialogue and cooperation. The strategy sets out five priority areas: regional cooperation and integration; the reconstruction of Haiti; climate change and natural disasters; crime and security; and joint action in bi-regional and multilateral forums and global issues.

Interparliamentary relations are an important part of EU-Caribbean links. In addition to dedicated regional meetings and the broader ACP-EU Interparliamentary Assembly, the 2008 EPA established a Cariforum-EU Joint Parliamentary Committee to monitor the implementation of the agreement. Its second meeting was held in April 2013 in Trinidad and Tobago.

Relations with individual countries

A. Mexico

Mexico and the EU have maintained diplomatic relations since 1960. Following a 1975 Cooperation Agreement and a broader, 1991 Framework Cooperation Agreement, the EU and Mexico concluded the EU's first partnership agreement with a Latin American country in 1997. The Economic Partnership, Political Coordination and Cooperation Agreement (known as the 'Global Agreement') institutionalised political dialogue and broadened cooperation to different areas, including democracy and human rights. It also created an EU-Mexico free-trade area.

The Strategic Partnership established in 2009 further reinforced links with Mexico — the only country with which the EU has both an Association Agreement and a Strategic Partnership. The partnership, an expression of the EU's recognition of Mexico's increasing global political and economic importance, has a double goal: enhancing EU-Mexico cooperation and coordination at the multilateral level on global issues; and adding political impetus to bilateral relations and initiatives. Two EU-Mexico summits have taken place under the Strategic Partnership, the latest in June 2012. There are regular high-level dialogues between the EU and Mexico on many issues, including human rights, security and law enforcement, economic issues and the environment and climate change. Since 2005, the EU-Mexico Joint Parliamentary Committee monitors the implementation of the Global Agreement.

B. Chile

The first Framework Cooperation Agreement with Chile was signed in 1990 after the country restored democracy. A regular political dialogue was established in 1995. After signing a more comprehensive Framework Cooperation Agreement in 1996, the EU concluded an Association Agreement with Chile in 2002. The agreement comprises three strands: a chapter on political dialogue, including the participation of civil society and the EP and Chile's Congress; a cooperation chapter setting out a variety of areas for cooperation to foster sustainable economic, social and environmental development; and the creation of a free-trade area in goods and services. The Association Agreement has been qualified as the most ambitious and innovative agreement the EU has concluded with a country that is not an applicant for accession.

The EU's relations with Chile were stepped up with the 2009 launch of the 'Association for Development and Innovation', a tool for promoting policy dialogue and cooperation. It focuses on education and energy, environment and climate change. The EU-Chile Joint Parliamentary Committee has monitored the implementation of the Association Agreement since 2003.

C. Brazil

In 1960, Brazil became the first South American state to recognise the EEC and establish a permanent representation in Brussels. Various cooperation agreements were signed in the following years. With the consolidation of democracy in Brazil, bilateral relations took a leap forward, leading to the broader Framework Cooperation Agreement signed in 1992. Relations with Brazil have continued to strengthen since, reflecting Brazil's increasing global economic and political weight. In 2007, the EU and Brazil established a Strategic Partnership. Since 2007, there have been six EU-Brazil summits, the last in January 2013. At the 2011 summit, the partners agreed to further deepen political dialogue to generate greater convergence on key global challenges and in major international conferences and summits. A Joint Action Plan for 2012-2014 sets out a programme of activities to enhance the partnership in five areas: peace and security; the economic, social and environmental partnership to promote sustainable development; regional cooperation; science, technology and innovations; and people-to-people exchanges. The EU-Brazil Strategic Partnership also includes a regular dialogue between Brazil's National Congress and the EP. In July 2011, the EP hosted the first interparliamentary meeting with the Brazilian Congress.

D. Cuba

Cuba is the only country in the region that has not signed a cooperation or association agreement with the EU. Cuba was admitted to the ACP group in 2000, but has not signed the Cotonou Agreement. The EU's relations with Cuba are based on the 'common position' adopted by the Council in 1996, which defines the objective of the EU's relations with Cuba as encouraging a transition to pluralist democracy and respect for human rights and fundamental freedoms, as well as improving the living standards of the Cuban people. In November 2012, the Council of Ministers agreed to start work on negotiating directives with a view to establishing a bilateral agreement with Cuba.

→ Jesper Tvevad / Manuel Manrique Gil

6.6.3. Russian Federation and Central Asia

The EU considers a strategic partnership with Russia and a greater engagement with Central Asia foreign policy priorities. For most of these states, relations with the EU are framed by Partnership and Cooperation Agreements. In recent years, worrying developments within Russia, coupled with Moscow's policies in the neighbourhood that Russia shares with the EU, have presented challenges for EU-Russia relations, impinging on new agreements. In Central Asia, the EU — and the European Parliament in particular — has emphasised human rights, good governance and social development. While certain issues, such as energy and security, are common to all the countries, the states also display quite divergent levels of democratisation and development, and this has led the EU to tailor its approach.

Legal basis

- Title V of the Treaty on the European Union: 'external action';
- Articles 206-207 (trade) and 216-219 (international agreements) of the Treaty on the Functioning of the EU (TFEU);
- Partnership and Cooperation Agreements (bilateral relations), except for Turkmenistan, for which an interim trade agreement is in place.

Russia

A. Situation in the country

Russia, a member of the G8 and the G20, is a 'strategic partner' for the EU. Trade relations, including the EU's energy imports, are considerable. The two also share a common neighbourhood and cooperate on international issues, including counter-terrorism, non-proliferation and the Middle East peace process.

The 2011 parliamentary elections and 2012 presidential elections — which were not considered 'free and fair' by the European Parliament (EP) — renewed the mandates of Russian President Vladimir Putin and his party, United Russia. Protests in Russia following the elections underscored widespread discontent and the regime's loss of legitimacy within politically active segments of Russian society. In response to such protests, Russian legislation passed in 2012 targeted the opposition and civil society with new laws on the registration of non-governmental organisations, demonstrations, internet use, 'libel and slander' and matters of 'high treason'. This legislation has called Russia's commitment to democratic values further into question. Moreover, the EU is concerned about the rule of law — and particularly corruption — in Russia and about the country's respect for human rights, notably in the North Caucasus regions.

Russia joined the World Trade Organisation (WTO) in August 2012 following 18 years of accession negotiations. The country's investment climate is uncertain, however, and economic performance remains dependent on oil prices. While the EU is Russia's first trading partner, and Russia is the EU's third, trade and economic relations are marred by numerous irritants. The EU considers Russia's WTO accession an opportunity, since it offers a multilateral, rule-based framework for trade relations and resolving disputes.

Russia has sought to limit the effectiveness of the Energy Community in Ukraine and Moldova, and the EU's Eastern Partnership with six countries in Eastern Europe and the Southern Caucasus. At the same time, Moscow hopes to develop the Customs Union it formed with Belarus and Kazakhstan in 2010 and to create a 'Eurasian Union' — also including Kyrgyzstan, Tajikistan and possibly Ukraine — by 2015.

B. Agreements in force and under negotiation

The legal basis underpinning current EU-Russia relations is a 1997 Partnership and Cooperation Agreement (PCA). Initially valid for 10 years, the PCA has since been renewed automatically every year. It sets the principal common objectives, establishes the institutional framework for bilateral contacts (including regular consultations on human rights and biannual presidential summits) and calls for activities and dialogue in a number of areas.

At the St. Petersburg Summit in May 2003, the EU and Russia reinforced their cooperation by creating four 'Common Spaces', based on common values and shared interests: 'Economic'; 'Freedom, Security and Justice'; 'External Security'; and 'Research, Education and Culture'. A 'Partnership for Modernisation' was launched in 2010 to boost cooperation in these fields.

Negotiations for a new agreement started in July 2008. The new agreement is to 'include substantive, legally binding commitments' in areas including political dialogue, justice, liberty, security, economic cooperation; research, education, culture, trade, investment and energy.

A plan to liberalise visas will require improvements in document security, border management, the

effective implementation of the readmission agreement, and Russian reforms in the areas of human rights and rule of law. Negotiations on a reviewed visa facilitation agreement to update the 2007 agreement were finalised in 2011, but ratification still requires a political agreement.

C. Role of the European Parliament

According to the Lisbon Treaty, the EP must 'consent' to a new agreement, as it did to the previous PCA. More specific agreements (such as visa facilitation) also require the EP's consent. Though the EP does not directly define strategic needs or action programmes, it co-decides, together with the Council, the objectives and priorities of EU financial assistance, including the European Neighbourhood and Partnership Instrument (ENPI). Furthermore, under an agreement with the Council and the Commission concluded before the adoption of the ENPI regulation, Parliament has the right to scrutinise documents guiding the implementation of the ENPI before they are adopted — a procedure known as 'democratic scrutiny'. The 'Revised Strategy Paper 2007-2013' and 'Indicative Programme 2011-2013' require that certain objectives be re-examined in light of developments in Russia.

Positions adopted (resolutions)

The EP's regular resolutions on Russia are mostly linked to the EU-Russia summits. Recently, Parliament welcomed Russia's accession to the WTO whilst stressing the country's need to fulfil its related commitments. In the long term, the EP favours a new, comprehensive agreement with Russia based on common values and interests. However, in several 'own initiative reports' (particularly in 2012 and 2013), the EP also expressed strong concerns about human rights, the rule of law and the state of democracy in Russia, as evidenced in the latest elections. The most recent resolution, adopted in June 2013, reiterated a call to the Council and the Commission to 'implement an EU-wide visa ban and to freeze the financial assets in the EU of all officials involved in the death of [Sergei] Magnitsky', a Russian lawyer who was arrested and died in prison while investigating public tax fraud.

Cooperation with the Russian Parliament

Members of the European Parliament and the Russian Parliament meet in the EU-Russia Parliamentary Cooperation Committee (PCC) every year in two or three working groups to exchange views on current issues. In 2012 these groups discussed recent Russian legislation and elections, civil society, EU-Russia migration policy, and foreign and security policy, including NATO's ballistic missile defence and the Arab Spring.

The EP's Delegation to the PCC meets regularly to discuss topical issues and prepare the Committee and the working group meetings. The Delegation regularly receives visits from Russian officials, representatives of other institutions (such as the EEAS) and civil society.

Election observation and democracy promotion

The European Parliament has not been invited by Russia to observe elections and has no other related activities in the country.

Central Asia

A. Situation in the region

Central Asia is not a homogeneous region in terms of politics or economics.

While Mongolia is classified by the EP as part of the region, the country is in a number of ways an 'outlier' in terms of history, geography and politics. Mongolia is actively pursuing free market reforms and successfully democratising.

Mongolia and Kazakhstan have demonstrated the highest economic growth rates — among the highest in the world — and are seeking closer relationships with the EU.

Mongolia and Kyrgyzstan stand out politically from the rest, as their democracies are the most developed.

All Central Asian countries are multi-faceted in their foreign policies, balancing ties with Russia China and the West. Turkmenistan's permanent neutrality has even been recognised by the United Nations. With the exception of Kazakhstan and Turkmenistan, all have very limited trade relations with the EU.

With the exception of Kyrgyzstan, all Central Asian ex-Soviet republics — and particularly Turkmenistan and Uzbekistan — suffer from serious human rights shortcomings and lack many fundamental freedoms They also face the risk of expanding Islamic extremist movements, and their relations with one another are generally poor because of border and resources disputes.

B. Agreements in force and under negotiation

The EU's 2007 Central Asia Strategy was reviewed in 2012. Providing basic guidelines on future interactions with the region, the strategy builds upon previous EU agreements, assistance programmes and initiatives. It aims to achieve stability and prosperity, while promoting open societies, the rule of law, democratisation, more cooperative relations on energy security and diversification. Kazakhstan's and Turkmenistan's hydrocarbons may prove important for the EU in the future. A significant issue for a number of states is the withdrawal of NATO forces from Afghanistan, scheduled for 2014. To address the potential consequences, a new high-

level security sector dialogue was held for the first time in June 2013.

All Central Asian states currently receive funds from the Development Cooperation Instrument (guided by a regional strategy paper), with EUR 750 million set for the 2007-2013 term. Assistance focuses on social policy, the rule of law and education. For the coming budgetary period — 2013-2020 — Kazakhstan will likely 'graduate' from its DCI eligibility, while continuing to access to EU regional programmes.

The European Instrument for Democracy and Human Rights functions in all states except for Uzbekistan and Turkmenistan, where civil society organisations are too few, poorly organised and strictly controlled.

C. Role of the European Parliament

Positions adopted (resolutions)

The EP supported the 2007 EU 'Strategy for Central Asia', but expressed its wish that the strategy be more focused. In 2012 the Council's 'Conclusions on Central Asia' reviewed the Strategy and sharpened its focus.

- On Kazakhstan the EP has stressed the importance of a new PCA, as well as the need for the country to join the WTO and address human rights abuses. The EP has also said it will apply the 'more-for-more' principle for political and socio-economic reforms.
- The EP passed a 2010 resolution in solidarity with Kyrgyzstan following violent unrest in the southern region. While agreeing to send humanitarian aid to the region, the EP underscored the need to stabilise and secure the dangerous and important Ferghana Valley.
- On Tajikistan, the EP consented to the conclusion to the PCA agreement in 2009, but called for the country to demonstrate improvements on human rights, corruption, health and education.
- The European Parliament has consistently expressed concern about Turkmenistan's poor human rights record.
- In 2011 the EP condemned the use of child labour in Uzbekistan and called for a human rights monitoring mission to focus on such abuses. The EP stated that its consent to renew the trade provisions would be contingent on such a mission.
- The EP's statements on Mongolia have largely related to economic issues, while also addressing the country's development and humanitarian needs (linked to extreme weather conditions).

Inter-parliamentary cooperation

Parliamentary Cooperation Committees (PCC) with each of the Central Asian countries meet every year. Members oversee the implementation of the PCA and focus on human rights issues, political violence, economic and development cooperation and electoral processes. While there is no PCC with Turkmenistan's parliament because the country has yet to sign a PCA, inter-parliamentary meetings do take place. Mongolia signed a PCA with the EU in May 2013 and will hold its first PCC meeting in 2014.

Election observation and democracy promotion

Due to the differing levels of political development and the extremely variable levels of democratic progress in Central Asia, the EP has not consistently observed elections in the region.

- Mongolia has never hosted an EP electoral observation mission, although the country is developing a solid democracy.
- Four missions sponsored by the Organisation for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE ODHIR), which included EP delegations, have visited Kyrgyzstan and reported only few voting irregularities in recent elections.
- In Tajikistan, the OSCE ODHIR, including an EP delegation, observed the 2010 parliamentary elections, in which the government failed to meet several commitments.
- Kazakhstan has sporadically invited the EP to observe its elections. The OSCE has consistently found significant irregularities.
- The EP has never been invited to an election in Uzbekistan or Turkmenistan.

→ Julien Crampes / Fernando Garcés de los Fayos

6.6.4. The Greater Middle East

The EU has concluded a Cooperation Agreement with the Gulf Cooperation Council (a regional organisation grouping Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates), another with Yemen, and a Partnership and Cooperation Agreement with Iraq. Currently, the EU has no contractual relations with Iran and Afghanistan but recognises that there is great potential for deeper relations with these countries.

Legal basis

- Title V (external action) of the Treaty on the European Union (TEU);
- Articles 206-207 (trade) and 216-219 (international agreements) of the Treaty on the Functioning of the EU (TFEU).

1. The Gulf Cooperation Council (GCC)

The GCC was established in May 1981. Today, the group — still composed of the original members (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates) — serves as the main conduit for the EU's relations with the six countries. On a number of occasions, the EU and the GCC have taken joint positions on problems in the Middle East.

The oil-rich Gulf countries, the source of approximately 20% of the EU's energy needs, are witnessing considerable socio-economic and political changes, although the progress of reforms is uneven. The effect of the Arab uprisings on the monarchies of the Gulf has been subdued by preventive policies — subsidies and an expansion of public sector employment — and by repressive measures, notably in Bahrain and in the eastern province of Saudi Arabia. The GCC countries have maintained active roles in Middle Eastern diplomacy, sometimes in rivalry with each other.

While the EU hopes to develop its political relations in the region, EU-GCC relations have largely been defined by economic and trade ties. Trade volumes between the two sides have increased steadily since the 1980s. In 2012 the GCC was the EU's fifth largest export market, and in 2011 the EU was the GCC's first trading partner.

Bilateral relations were established with the 1988 Cooperation Agreement, intended to strengthen stability in a region of strategic importance, facilitate political and economic relations, broaden economic and technical cooperation, and deepen cooperation on energy, industry, trade and services, agriculture, fisheries, investment, science, technology and the environment. The agreement provides for annual joint councils/ministerial meetings, and for joint cooperation committees at the level of senior officials. The most recent EU-GCC ministerial meeting took place in July 2013 in Bahrain. There is no parliamentary body foreseen in the agreement.

The EU and the GCC agreed on a Joint Action Programme for 2010-13, setting out a roadmap for closer cooperation on issues such as information and communications technology, nuclear safety, clean energy, research and economic dialogue. Negotiations on a Free Trade Agreement were started in 1990 but have stalled, with the question of export duties remaining a source of disagreement. Since 1 January 2007 funds from the instrument for cooperation with industrialised and other high-income countries and territories (ICI) are available to finance measures for implementing the EU-GCC Cooperation Agreement. The GCC countries also benefit from the Erasmus Mundus programme.

Role of the European Parliament

Parliament adopted a resolution on EU relations with the GCC on 24 March 2011. Parliament would like the EU to develop a strategy for the region that strengthens ties with the GCC, supporting the regional integration process and encouraging bilateral relations with GCC member states. The larger objective is a strategic partnership with the GCC and its member states.

Parliament's Delegation for relations with the Arab Peninsula holds regular inter-parliamentary meetings with the parliaments from the region and monitors the development of relations between the EU and the GCC. The most recent Delegation visits were to Bahrain (2013), Kuwait (2010), Oman (2011), Qatar (2010), Saudi Arabia (2011) and the UAE (2012).

Over the past two years, Parliament has adopted a series of resolutions on the region, many focused on Bahrain and condemning the violent repression by security forces of peaceful demonstrators in Bahrain, the GCC country most affected by the Arab uprisings. Parliament has supported the Bahraini people's legitimate democratic aspirations and has also called for the release of all political prisoners and human rights defenders. Parliament has demanded that the government of Bahrain engage in an open and meaningful political dialogue, without preconditions, with all democratic political and civil society forces in the country.

2. Yemen

Yemen, a 'least developed country', is not only the poorest country in the Middle East but also one of the poorest countries in the world. The country faces serious challenges, including high population growth, slow economic development, declining oil resources, inadequate water resources, poor public health and education, poor governance and internal insecurity. Yemen is also experiencing a democratic transition (the 'National Dialogue'), involving drafting a new constitution and preparing for parliamentary and presidential elections.

EU-Yemen relations are based on the 1997 Cooperation Agreement, covering trade, development cooperation, culture, communication and information, the environment and management of natural resources, and political dialogue. Cooperation remains the main focus of the EU's relations with Yemen. Since 1978, the Union has provided Yemen with more than EUR 220 million in development assistance, financing some 115 projects. To address the principal challenges, the EU's 'Yemen Strategy Paper 2007-2013' identifies priorities.

Given that Yemen is affected by humanitarian crises within its borders and in the neighbouring Horn of Africa, humanitarian assistance is another significant feature of EU involvement. For 2012 the European Union allocated EUR 93 million in humanitarian assistance to populations across Yemen facing food insecurity and armed clashes.

Role of the European Parliament

Parliament's Delegation for relations with the Arab Peninsula is also responsible for relations with Yemen. The last visit of a Parliament delegation to Yemen was in 2009. A delegation of the Parliament's Human rights sub-committee visited Sana'a in 2012 to monitor the human rights situation in the country.

3. Iraq

The year 2009 marked the transition from humanitarian assistance and short-term emergency reconstruction projects towards a genuine, long-term development plan for the country. The overall objectives were formulated on the basis of the most urgent Iraqi requirements — good governance, sustainable economic growth and investment in human capital.

In 2010 the EU and Iraq signed a memorandum of understanding on energy cooperation. Two years later the partners concluded a Partnership and Cooperation Agreement, an overarching framework establishing a legal basis for cooperation as well as providing a platform for enhancing ties and cooperation in a wide range of areas, including political matters, such as promoting human rights, and for strengthening trade and investment in key areas, such as energy and services.

The EU has also adopted a Country Strategy Paper (CSP) for Iraq for 2011-2013 which establishes a budget of EUR 60 million for assistance to Iraq. Identified in consultations with the country's government and civil society, the main sectors to be covered are good governance, socio-economic recovery and water management.

Role of the European Parliament

In the course of the current parliamentary term, Parliament has created a Delegation for relations with Iraq to serve as successor to a previous, ad hoc Delegation created in 2008. Four inter-parliamentary meetings have been held to date, with the Delegation's most recent visit — to Baghdad and Erbil — taking place in 2011. In its resolutions, Parliament has expressed concern over the increasing sectarian violence in Iraq and the rights of minorities and vulnerable groups in the country.

4. Iran

Cooperation between the European Union and Iran is currently restricted, owing to the thorny political relationship. The EU has shared the international community's concerns about Iran's nuclear programme and has followed the situation attentively. The EU has no diplomatic representation in Tehran but cooperates closely with the Member States' embassies there.

In addition to implementing the UN sanctions adopted by the Security Council, the EU has adopted its own, stronger sanctions. The Union's 'twin-track approach' couples the sanctions with diplomatic efforts to negotiate.

EU High Representative for Foreign Affairs and Security Policy Catherine Ashton was the chief negotiator in the nuclear talks, representing the 'P5 + 1' group (the five permanent members of the UN Security Council and Germany).

Discussions in Geneva produced an agreement on 24 November 2013. The joint plan of action adopted by all parties includes an affirmation on the part of Iran never to seek or develop nuclear weapons. The 'comprehensive solution' defined in the talks — based on the principle that 'nothing is agreed until everything is agreed' — enables Iran to exploit nuclear energy for peaceful purposes, including with a mutually determined enrichment programme. In return, the parties agreed to a step-by-step process that would lead to the removal of all sanctions adopted by the UN Security Council, multilateral groups and national authorities.

Role of the European Parliament

Iran is regularly the focus of discussions between Parliament and representatives of EU institutions and other interlocutors. In its resolutions, Parliament has expressed its strong support for efforts to find a diplomatic solution to the Iranian nuclear issue and to pursue the EU's 'twin-track' approach. Parliament has emphasised that the nuclear issue should not distract the international community — and in particular the EU Member States — from the problem of human rights violations in Iran.

Parliament's 2012 Sakharov Prize for Freedom of Thought was awarded to two Iranians — Nasrin Sotoudeh, an imprisoned lawyer, and Jafar Panahi, a film director — in recognition of their efforts to advance human rights and fundamental freedoms.

Parliament's Delegation for relations with Iran closely follows developments in the country, including Iran's international relations. The most recent inter-parliamentary meetings between the European Parliament and the *Majlis* (parliament) of Iran were held in Tehran in 2007 and in Brussels in 2008. Attempts in 2010, 2011 and 2012 to hold a fourth inter-parliamentary meeting in Teheran failed. A delegation visit to Iran was scheduled for December 2013.

5. Afghanistan

The 2010 decision of the North Atlantic Treaty Organisation (NATO) to withdraw its combat troops from Afghanistan was confirmed in 2012. The Afghan Government and NATO have agreed to transfer responsibility for the country's security to the Afghan National Security Forces by the end of 2014. In the remaining months, the focus should shift away from the conflict and towards diplomatic and political efforts to secure and stabilise the country and to encourage sustainable development.

The EU has had a presence in Afghanistan since the mid-1980s, but a policy of more active engagement in the country was adopted after the fall of Taliban regime in 2001. At that point the European Council appointed an EU Special Representative (EUSR), and the Union established a Delegation to Afghanistan.

In November 2005 the first EU-Afghanistan joint declaration was signed, establishing a comprehensive framework for the relationship. In October 2009 the EU Action Plan for Afghanistan was adopted, addressing the problem of security by defining a series of goals, including developing effective state institutions, better governance and the rule of law, fighting corruption and enhancing human rights. A Cooperation Agreement on Partnership and Development (CAPD) with Afghanistan is currently being negotiated.

After long years of fierce fighting and insurgency, Afghanistan's economy is in shambles. The enormous potential of the mining sector, which could provide self-sustained economic development, has yet to be exploited. The EU is one of the country's major donors for development and humanitarian assistance and supports the Afghan government's efforts to provide basic services to its population in three focal areas — governance and rule of law, agriculture and rural development, and health and social protection. The EU launched the Police Mission in Afghanistan (EUPOL) in June 2007 as part of an international effort to help the country assume responsibility for law and order. EUPOL contributes to sustainable, effective civilian policing, directed by Afghanistan in accordance with international standards. The EU has confirmed that it will remain committed to Afghanistan after the withdrawal of the NATO-led troops and throughout the 'transformation decade' (2015-2024).

Role of the European Parliament

Parliament established a fully-fledged Delegation for relations with Afghanistan in 2009. The third (and last) inter-parliamentary meeting with Afghanistan's Wolesi Jirga (lower house) was organised in February 2009 in Brussels. Since then, the delicate situation in Kabul has required that inter-parliamentary exchanges take place principally by video -conference.

On 16 December 2010 Parliament adopted a resolution on a new strategy for Afghanistan[1]. The text stressed the need to acknowledge the unremitting deterioration of the country's security and socio-economic situation, despite nearly a decade of international involvement. On 13 June 2013 Parliament adopted a resolution on the prospective EU-Afghanistan CAPD, expressing its support for the negotiation of the agreement and stressing that it should lead to a more strategic approach, with support for the Afghan authorities during and after the withdrawal of international forces.

Notwithstanding its concerns, Parliament has pursued closer links with the Afghan National Assembly. Parliament's Office for the Promotion of Parliamentary Democracy (OPPD) hosted a senior official of the Wolesi Jirga in 2011. In 2012 Parliament also organised a study visit to Brussels for six Afghan parliamentarians.

→ Pekka Hakala
11/2013

[1] OJ C 169 E, 15.6.2012, p. 108.

6.6.5. Africa

EU-Africa relations are governed by partially overlapping policy frameworks. The most important ones are the Cotonou Agreement (2000) and the Joint Africa-EU Strategy (JAES). Both these frameworks include political, economic and development dimensions. The EU is actively working to promote peace and security in Africa and engages with the African Union (AU) in various policy dialogues, including on democracy and human rights. EU development cooperation with Africa is channelled through different financial instruments, of which the European Development Fund (EDF) is the most important. The EU is also negotiating Economic Partnership Agreements (EPAs) with five African regions.

Legal basis

- Article 217 Treaty on the Functioning of the European Union (TFEU);
- Partnership Agreement between the African, Caribbean and Pacific (ACP) group of states and the European Community and its Member States (Cotonou Agreement);
- Trade, Development and Cooperation Agreement (TDCA) between the Republic of South Africa and the European Community and its Member States.

The Cotonou Agreement

A first reference for EU policies on Africa is the Cotonou Agreement, which sets the basis for relations between the EU and 79 countries from the ACP group. While South Sudan and Somalia are not yet signatories, both are in the process of signing and ratifying the agreement.

EU-ACP relations date to the Lomé Conventions I-IV (1975-2000) for development cooperation and trade provisions, which allowed 99.5% of products from ACP countries free access to the European market. Lomé was succeeded by the Cotonou Agreement, signed on 23 June 2000. The agreement has a validity of 20 years and may be revised every five years. Two revisions have taken place, in 2005 and 2010. Among other provisions, the 2005 revision recognised the jurisdiction of the International Criminal Court (ICC), which prompted Sudan to refuse the revision's ratification. The 2010 revision is in the process of being ratified. The European Parliament gave its consent to the ratification in June 2013, but noted 'its strongest reservations about parts of the agreement which do not reflect the position of the European Parliament and the values of the Union'. Parliament notably objected to the absence of an explicit clause for 'non-discrimination on the basis of sexual orientation'. The goal of the Cotonou Agreement is to eradicate poverty by more fully integrating the ACP countries into the world economy. Cotonou employs the term 'partnership', highlighting mutual commitment and responsibility, and emphasises political dialogue, human rights, democracy and good governance. The agreement is implemented by joint ACP-EU institutions, including a Council of Ministers, a Committee of Ambassadors and a Joint Parliamentary Assembly.

The Joint Africa-EU Strategy (JAES)

The overarching EU policy towards the 54 countries member of the African Union (AU) is the Joint Africa-EU Strategy (JAES). The JAES was adopted by European and African leaders at the second EU-Africa summit in Lisbon in December 2007. Its goals are:

- moving beyond development cooperation, opening Africa-EU relations to issues of joint concern such as jobs and trade;
- moving beyond purely African matters, towards effectively addressing global challenges such as migration, climate change, peace and security;
- supporting Africa's aspirations to encourage trans-regional and continental responses to these important challenges;
- working towards a people-centred partnership, ensuring better participation of African and European citizens.

To achieve these objectives the JAES defines eight thematic partnerships for cooperation:

1. **Peace and security**. Aims to strengthen the continental African Peace and Security Architecture, including the development of the African Standby Force. The EU has contributed over EUR 1.1 billion to the African Peace Facility (APF) since 2004. The APF supports the African Union Mission in Somalia (AMISOM). It also funds the African-led International Support Mission to Mali (AMISMA), which deployed 6 000 troops to Mali in the first half of 2013 and makes up the core of the United Nations Mission in Mali (MINUSMA).

2. **Democratic governance and human rights**. Seeks to develop shared governance agendas with a dedicated 'Platform for Dialogue'. An AU-EU human rights dialogue has existed since 2008. The most recent meeting (November 2012) touched upon issues of racism, the right to development, the death

penalty, migrants' and business rights and human rights. The partnership also supports the African Peer Review Mechanism (APRM), which monitors policies to foster stability, economic growth, sustainable development and regional integration.

3. **Trade, regional integration and infrastructure**. Allows the EU and AU to engage in dialogue on economic regional integration based on their experiences. Also important is the EU's Africa Infrastructure Trust Fund (AITF), a financial instrument that blends grants and loans to increase the total resources available to build infrastructure on the continent. The ATIF's EU grant endowment of EUR 746.4 million has generated EUR 6.5 billion in additional loan contributions to over 80 projects.

4. **Millennium Development Goals (MDGs).** A continent-to-continent platform to promote the achievements of the MDGs. In 2010 the EU Commission announced a EUR 1 billion MDG initiative focused on those areas and on those countries — many in Africa — unlikely to meet the goals.

5. **Energy**. Aims to improve access to reliable, secure, affordable, sustainable energy services on both continents. A first high-level meeting in 2010 declared political targets for 2020, including bringing modern and sustainable energy to 100 million African citizens.

6. **Climate change and environment**. Builds a common agenda on climate change policies and addresses desertification. The partnership contributes EUR 8 million to the Climate to Development in Africa initiative supporting environmental policy-making in Africa.

7. **Migration, mobility and employment.** Contributes to the African Institute for Remittances (AIR), which allows African government and non-state actors to make better use of remittances as development tools. Also supports the ACP Observatory on Migration, and the Nyerere Programme contributing to the production and retention of high-level African human resources by enhancing academic mobility.

8. **Science, information society and space.** The first Africa-EU policy dialogue on science, technology and innovation took place in 2011, and a multiannual roadmap on cooperation in this area is also in place. The EU supports the AU Research Grants Programme. Africa is the non-EU region with most participants in the EU's Seventh Framework Programme for Research (FP7).

The implementation of the JAES and its thematic partnerships has been pursued through two successive action plans (2008-2010 and 2011-2013), high-level summits and annual college-to-college meetings between the EU and AU Commissions. The sixth such meeting, held in April 2013, sought concrete ways to address issues like sustainable growth and development. The meeting served also as preparation for the fourth EU-Africa summit, to take place in Brussels in April 2014. Both partners agreed on the need to review and refresh the JAES to make it more efficient.

Development cooperation

The EU remains Africa's most important donor. Development cooperation is channelled through different financial instruments. The most important is the European Development Fund (EDF), which is based on the Cotonou Agreement. Because the EDF is not part of the common EU budget, it is subject to different regulations (see separate fact sheet on development). The financial allocation for the 10th EDF (2008-2013) amounts to EUR 22.7 billion for national, regional and intra-ACP cooperation. National and regional programming for Africa amounts to EUR 13.9 billion.

In June 2013 the ACP-EU Joint Ministerial Council approved an envelope of EUR 31.5 billion for development cooperation for 2014-2020. The 11th EDF will have a budget of EUR 29.1 billion: EUR 24.3 billion for national and regional cooperation programmes, EUR 3.6 billion for intra-ACP cooperation and EUR 1.1 billion for the ACP Investment Facility, run by the European Investment Bank.

The most important exception regarding cooperation instruments with African countries is South Africa, which receives funds from the EU's Development Cooperation Instruments (DCI), part of the common EU budget, rather than the EDF.

An important provision for Africa included in the Commission proposal for the new DCI (2014-2020) is the Pan-African Programme (EU-PAP) envisioned as a dedicated instrument for funding the JAES and continental and trans-continental cooperation frameworks.

Other financial instruments also cover Africa, including the European Neighbourhood Instrument for North Africa and thematic instruments such as the European Instrument for Democracy and Human Rights.

Trade relations

The principal instruments promoting trade between the EU and African regions are the World Trade Organization-compatible trade arrangements called Economic Partnership Agreements (EPAs). EPAs were launched with the Cotonou Agreements and were expected to be concluded by 2008. The negotiation process has been much longer, however, and no full (or comprehensive) EPA has been signed between the EU and any of the five African regions. The current state of play is as follows:

- **West Africa**. Côte d'Ivoire and Ghana adopted bilateral interim EPAs with the EU at the end of 2007. The interim EPA with Côte d'Ivoire was signed in November 2008. The interim EPA with Ghana has not been signed. Neither agreement has been ratified.
- **Central Africa**. Cameroon signed the interim EPA for Central Africa in January 2009 — as the only country in the region to do so. The EP gave its consent to the agreement in June 2013, paving the way for the EU's ratification.
- **Eastern and Southern Africa**. Four countries in the region — Mauritius, Seychelles, Zimbabwe and Madagascar — signed an interim EPA in 2009. This has been provisionally applied since May 2012, and the EP gave its consent for ratification in January 2013.
- **Eastern African Community**. Burundi, Rwanda, Tanzania, Kenya and Uganda installed a framework EPA in 2007. This has not been signed or ratified, but negotiations for a full regional EPA are ongoing, focused on development cooperation, agriculture and rules of origin.
- **Southern Africa Development Community**. Botswana, Lesotho, Swaziland and Mozambique signed an interim EPA in 2009. Namibia has indicated it is not ready to sign. The agreement has not been ratified, but there are ongoing negotiations for a full agreement. Central to this is the position of South Africa, the largest country in the region and also signatory to the 1999 Trade, Development and Cooperation Agreement, through which the EU and South Africa have already eliminated 95% and 85% of their respective tariffs.

EPA negotiations acquired a sense of urgency following the approval of the new EU Market Access Regulations, which set 1 October 2014 as the date by which countries should have signed and begun the implementation of interim EPAs. If the deadline is not met, countries are to lose the preferential access granted by the current framework. Most African states, which are least developed countries, will fall back to an 'Everything But Arms' (EBA) status; this would continue to grant tariff-free, quota-free access to the EU market. (See separate fact sheet on trade regimes applied to developing countries).

Role of the European Parliament

In addition to the Parliament's work in the field of development cooperation, its Committee on Development organises dedicated inter-parliamentary delegations for relations with African countries and institutions. (See separate fact sheet on development.) The principal is the ACP–EU Joint Parliamentary Assembly, which plays a fundamental role in strengthening relations between the EU and its ACP partners and meets twice a year. The second revision of Cotonou strengthens the consultative function of the Assembly in areas such as EPAs, implementing the EDF and building the capacity of national parliaments.

The EU has also developed forms of parliamentary cooperation with the African Union through the delegation for relations with the Pan-African Parliament (PAP), established in 2009. Through regular inter-parliamentary meetings, the EP and PAP provide democratic oversight regarding the implementation of the JAES. EP President Martin Schulz addressed the PAP Plenary in May 2013. The parliamentary dimension is also formally part of EU-Africa summits, which include speeches by both parliaments' Presidents in the opening ceremony. An EP-PAP parliamentary meeting is expected to be held before the 2014 EU-Africa summit.

The EU and South Africa also maintain close bilateral parliamentary relations, which have been strengthened by the EU-South Africa Strategic Partnership (2007) — the only bilateral strategic partnership with an African country.

→ Manuel Manrique Gil

6.6.6. Asia-Pacific

The Asia-Pacific region is home to four of the EU's strategic partners (China, India, Japan and the Republic of Korea), to several of the world's fastest growing economies and to emerging global powers. The region's dynamic societies and markets offer enormous opportunities — as well as colossal challenges — for the EU. The EU interacts with the region on a bilateral basis as well as through regional organisations and forums. Parliamentary relations with Asian countries take place at three levels: bilaterally, between European Parliament (EP) delegations and the national parliaments; regionally, with the Association of Southeast Asian Nations Inter-parliamentary Assembly (AIPA); and through the Asia-Europe Meeting, with the Asia-Europe Parliamentary Partnership (ASEPP). Among the African, Caribbean and Pacific (ACP) countries covered by the EP's ACP Delegation are 15 Pacific nations.

Legal basis

- Title V (EU external action) of the Treaty on European Union (TEU);
- Titles I-III and V (common commercial policy; development cooperation and humanitarian aid; international agreements) of the Treaty on the Functioning of the EU (TFEU).

Evolving policies

The speed of changes taking place in Asia and the region's diversity — including both mature democracies and autocratic regimes — means that the EU must constantly adjust its policies. Owing to mushrooming and often mutually competing regional networks, the EU must also work to identify the most efficient cooperation channels and assert its presence. EU development cooperation involves all the countries in the region except those with industrialised economies.

People's Republic of China

The EU resumed relations with China — which had been suspended after the Tiananmen Square massacre in 1989 — in 1994 with a new framework for a political dialogue. However, the EU's arms embargo, imposed after the events of 1989, remains in place. China's rise as a global power and the growing economic interdependence between the two partners are reflected in the strategic partnership established by the EU in 2003. China also considers the EU to be a 'strategic partner', although China has several dozen of these. Annual summits, held alternatively in Brussels and Beijing, set guidelines for the rapidly evolving relationship. Political dialogue also involves regular ministerial meetings, and more than 60 sector-specific dialogues. A human rights dialogue is held bi-annually, although it has failed to produce perceptible results. China firmly opposes any outside 'interference' in internal affairs related to human rights issues. The EU and China are the world's two largest trading partners. Beijing is the EU's second largest trading partner after the US. The EU is, however, dissatisfied with China's protectionist measures, while Beijing criticises the EU's refusal to grant the country 'market economy' status. Negotiations for an EU-China Partnership and Cooperation Agreement, initiated in 2007, have yet to be concluded. In September 2012, China and the EU agreed to start negotiations for a bilateral investment agreement. The EP's Delegation for relations with the People's Republic of China holds working sessions with counterparts from the National People's Congress twice a year. In resolutions on China, the EP has evoked China's responsibility as an international actor (regarding Syria, North Korea and maritime disputes) and human rights and fundamental freedoms (including arbitrary detention, labour camps, the death penalty, the freedom of expression, forced abortions, repressive policies in Tibet and Xinjiang, and the prosecution of Chinese artist Ai Weiwei). Parliament has also supported Chinese citizens' calls for effective political reforms[1].

Republic of China (Taiwan)

The EU adheres to a 'one-China policy' and does not recognise Taiwan as a sovereign state; however, it has developed a close relationship with Taiwan in a number of sectors. The EP has supported possible negotiations on an EU-Taiwan economic cooperation agreement and has encouraged closer bilateral cooperation in trade, research, culture, education and environmental protection[2].

[1] Resolution of 14 March 2013 on EU-China Relations, P7_TA(2013)0097, http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2013-97

[2] Resolution of 12 September 2012 on the Annual Report from the Council to the European Parliament on the Common Foreign and Security Policy, P7_TA(2012)0034, http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2012-334

The Association of South East Asian Nations (ASEAN)

ASEAN was established in 1967 by five states in one of the fastest growing areas of the world and has since evolved into an organisation with significant regional economic and political clout. ASEAN, which now includes 10 countries (founding members Indonesia, Malaysia, Singapore and Thailand, as well as Brunei Darussalam, Vietnam, Laos, Cambodia and Burma/Myanmar), has been an international legal entity (like the EU) since the entry into force of the ASEAN Charter on 1 January 2009. It follows a strict policy of non-interference in its members' domestic affairs. ASEAN plans to establish its economic community by 2015, based on its current free trade area. ASEAN initially appeared to be an ideal partner for a region-to-region free trade agreement (FTA) with the EU. The EU is ASEAN's second-largest partner, while ASEAN is the EU's third-largest partner outside Europe (after the US and China). However, the varied levels of the ASEAN member countries' ambitions, and their approach to the brutal regime in Burma/Myanmar (an approach consistent with ASEAN's non-interference principle), have posed serious obstacles to negotiations, which started in 2007. The EU now pursues negotiations with individual ASEAN members. An FTA was concluded with Singapore in December 2012, and negotiations continued with Malaysia, Vietnam and Thailand in the second half of 2013. The EU and ASEAN member countries pursue Partnership and Cooperation Agreements (PCAs). Negotiations with Indonesia, the Philippines and Vietnam have been completed; those with Thailand, Singapore, Malaysia and Brunei are ongoing. EU and ASEAN ministers have held summits every other year since 1978. The EP is an observer at the ASEAN Inter-Parliamentary Assembly (AIPA).

A. Burma/Myanmar

Indications that Burma/Myanmar is democratising have led the EU to suspend all sanctions except its arms embargo and to re-engage with the country politically and economically. In 2012, the EP initiated a series of exchanges with the parliament of Burma/Myanmar, some through Parliament's Office for Promotion of Parliamentary Democracy. In its resolutions, Parliament has addressed concern about ethnic violence in the country.

B. Other ASEAN members

EP resolutions have addressed human rights in Cambodia and Laos, freedom of expression in Vietnam, impunity in the Philippines, corporal punishment practices in Malaysia, minority issues in Indonesia and political violence in Thailand.

Japan and the Korean peninsula

EU relations with Japan and with South Korea have evolved similarly, though on different timelines. Relations are based on shared values — human rights, democracy and rule of law — and growing trade and investment ties. Both countries are strategic partners of the EU-Japan since 2003, South Korea since 2010. The three partners' societies face parallel challenges, including ageing populations, challenging interactions with China and Russia and safety on the high seas. Cooperation, which culminates in annual summit meetings, takes place at all levels, including in the United Nations, the World Trade Organisation, the Group of Eight and Group of 20.

A. Japan

During the 20th EU-Japan summit, held in Brussels on 28 May 2011, the partners agreed to begin negotiating an FTA and a broader political Framework Agreement to cover foreign and security policy cooperation, as well as global and sector-specific issues of mutual interest. Negotiations were officially launched on 25 March 2013. The EU and Japan together account for more than one third of the world's GDP. Japan is the EU's seventh-largest trading partner globally and the EU's second-largest trading partner in Asia, after China. The EU is Japan's third-largest trading partner, following China and the US. Yet the level of bilateral trade and investment remains less than what many believe it could be — an issue that is being addressed in the FTA negotiations. Japan's industries — particularly its automobile and electronics sectors — have seen their EU prospects diminish since the EU signed an FTA with South Korea. The EP supports close relations with Japan, an important political ally, and has endorsed the launch of an FTA. However, the EP also insists on conditions to ensure that both partners benefit equally from the deal and that negotiations will be stopped if Japan does not deliver on its commitments to reduce technical trade barriers.

B. South Korea

South Korea's strengthening democratic values and civil society, and its rapid development of a market economy, have fostered close political and economic links with the EU. A Framework Agreement on Trade and Cooperation was put in place in 2001, creating close contacts at all levels and committing the parties to develop trade and investment and to collaborate in the fields of justice, home affairs, science and culture. A new Framework Agreement, signed in May 2010, expands the scope to more international concerns, including the non-proliferation of weapons of mass destruction, human rights, cooperation in the fight against terrorism, climate change, energy security and development assistance. The new Agreement is currently

undergoing national ratification procedures in all EU Member States. Relations with the Republic of Korea also involve an increasing level of economic and commercial integration. The EU and the Republic of Korea share the goal of denuclearising the Korean peninsula and securing stability throughout north-east Asia.

C. North Korea

The EU has no representation in North Korea, and bilateral relations are limited. There are currently no bilateral political or commercial treaties in force. Moreover, excluding humanitarian assistance, the EU's development cooperation is subject to political considerations, UN sanctions and other constraints. The EP keeps a close eye on developments on the Korean peninsula and has adopted several resolutions condemning Pyongyang for its nuclear and missile programmes. The EP has also expressed great concern about the deteriorating human rights situation in North Korea.

The Countries of South Asia and the Indian Subcontinent

The EU maintains relations with the South Asian Association for Regional Cooperation (SAARC) and obtained observer status in 2006. Owing to the very loose nature of the Association, the EU has privileged bilateral relations with the seven SAARC member countries (Afghanistan, Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan and Sri Lanka). Europe is the South Asian countries' premier 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, reducing poverty, sustainable development and labour rights.

India

A 1994 Co-operation Agreement between India and the EU opened the door to a broad political dialogue, which takes place through annual summits and through ministerial and expert meetings. Priorities for the strategic partnership are outlined in a 'Joint Action Plan', adopted in 2005 and revised in 2008. In the last five years, bilateral trade has more than doubled, and investments have multiplied ten-fold. The EU and India have been negotiating an FTA since 2007, but many issues remain unresolved. The country is one of the largest participants in the EU's research and technical development framework. Yet despite India's remarkable development over the past few decades, nearly 30% of the country's population live in poverty. Recently, the EU has suggested that it will limit its development assistance to emerging economies, including India, while creating new partnerships not based on bilateral aid. India has not opposed this development. In its resolutions, the EP has addressed issues of human rights, including violence against women and the persistence of practices that are contrary to India's efforts to eradicate caste discrimination.

Australia and New Zealand

The EU, Australia and New Zealand are like-minded partners with common values and interests. In addition to strong trade relations, the partners' similar outlooks have allowed them to develop close governmental and private sector contacts on issues such as climate change, world trade, security and development, technological research and human rights. Similarities between Australia and New Zealand have led the EP to establish a single delegation for relations with the two countries.

A. Australia

Australia and the EU base their current diplomatic relations on the revised 2008 Australia-European Union Partnership Framework. Negotiations on a new Framework Agreement were launched on 31 October 2011.

B. New Zealand

Since July 2012 the EU and New Zealand have been negotiating a Framework Agreement including a number of economic and trade cooperation provisions and foreseeing greater cooperation in civilian and military crisis management operations. The EP has consented to the amendment of the previous agreement.

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