



## The European Union at a glance

The aim of these Fact Sheets is to provide an overview of the process of European integration and the European Parliament's role in this development.

With access to around 180 fact sheets, readers will find that this is a concise yet comprehensive source of information about the Union's institutions and policies.

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The European Parliament has been steadily gaining power over recent decades and now acts as a co-legislator for nearly all EU law. Together with the Council, the Parliament adopts or amends proposals from the Commission. Parliament also adopts the European Union's budget. It also has a series of powers of supervision and control over the other institutions and the use of the EU budget to ensure that EU law is properly implemented.

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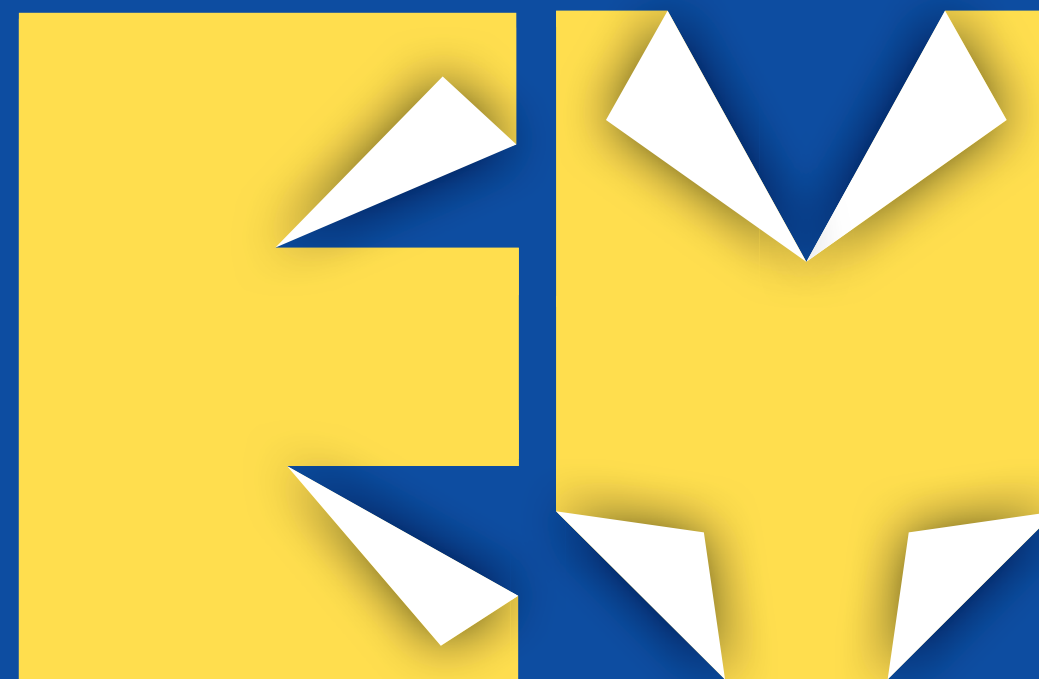
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## FACT SHEETS ON THE EUROPEAN UNION



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**JULY 2014 EDITION**



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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.

The Fact Sheets are updated regularly and published on Parliament's website ([www.europarl.europa.eu/factsheets/en](http://www.europarl.europa.eu/factsheets/en)).

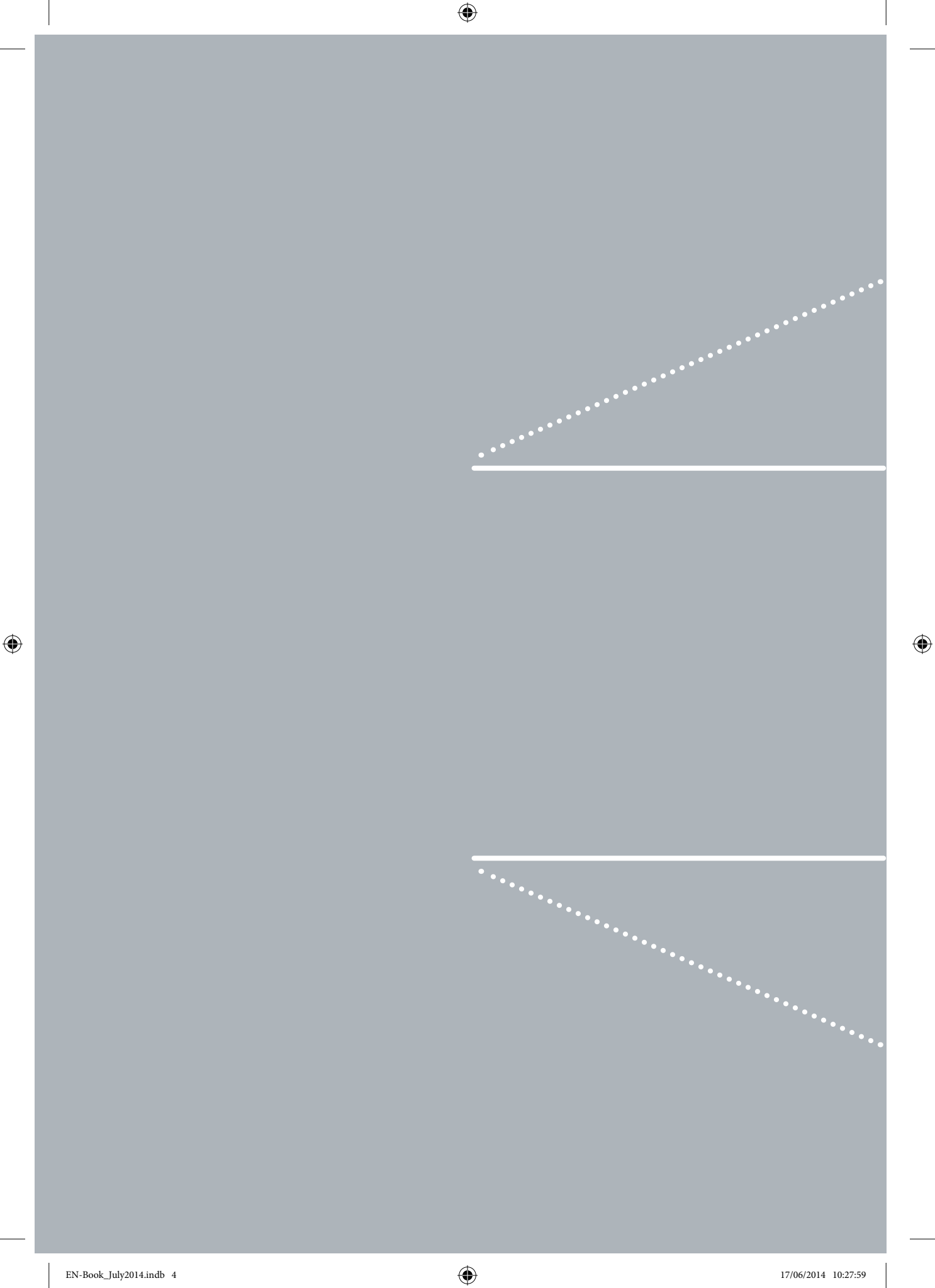
If you wish to go into greater detail, please refer to the more specialised works produced by the European Parliament. Parliament's departments produce factual documentation, briefings and reports, working with experts, think tanks and scientific and academic institutions worldwide to produce top-quality 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, July 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

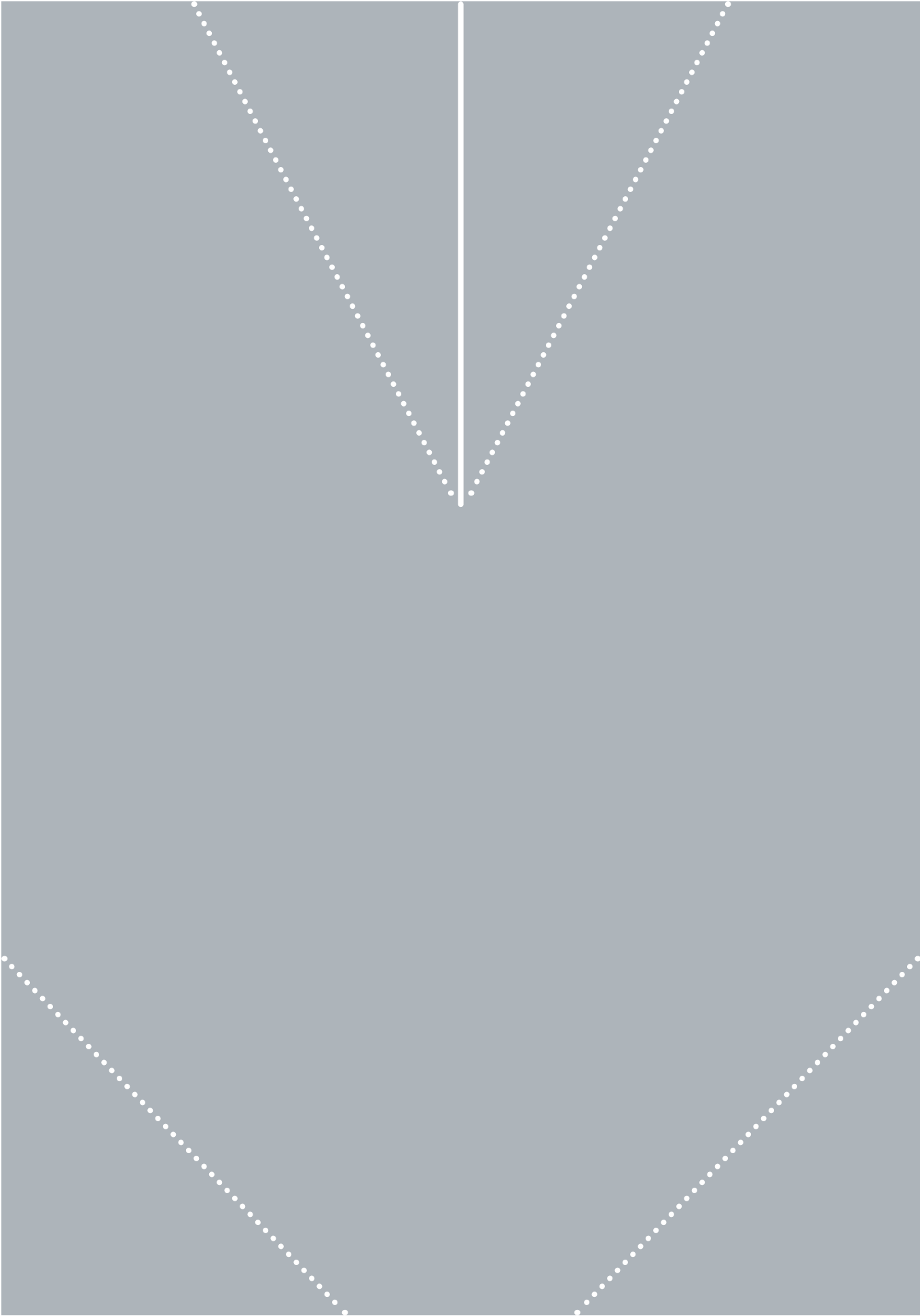
**SECTORAL POLICIES**

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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# HOW THE EUROPEAN UNION WORKS

# 1

**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.**



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# 1.1. Historical evolution of European integration

## 1.1.1. The First Treaties

*The disastrous effects of the Second World War and the constant threat of an East-West confrontation 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 reestablishment 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. Even so, at the end of the transitional period there were still major obstacles to freedom of movement. 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.

### 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 (see fact sheet 1.5.1).

- The Treaty of Luxembourg of 22 April 1970 granted Parliament certain budgetary powers (see fact sheet 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 (see fact sheet 1.3.12).

#### 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 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. In addition, at the Fontainebleau summit in December 1974, major political decisions were taken on direct elections to Parliament and the Council's decision-making procedures. At that summit, the heads of state and government 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 — this procedure applied to about a dozen legal bases at the time and marked a crucial point in Parliament's transformation into a genuine co-legislator.

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→ 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

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

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→ 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, that 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 therefore 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 (which became known as the 'Amsterdam leftovers') had been addressed by the Maastricht and Amsterdam Intergovernmental Conferences (IGCs) (1.1.3) but not satisfactorily resolved: the size and composition of the Commission, the weighting of votes in the 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 institutional questions and on a range of other points, namely a new distribution of seats in the European Parliament, more flexible arrangements for enhanced cooperation, the monitoring of fundamental rights and values in the EU, and a strengthening of the EU judicial system.

##### 1. Weighting of votes in the Council

Taking together the system of voting in the Council, the composition of the Commission and, to some extent, the distribution of seats in the European

Parliament, the IGC realised that the main imperative was to change the relative weight of the Member States, a subject that had been addressed by no other IGC since the Treaty of Rome.

Two methods of defining a qualified majority were considered: a new system of weighting (modified from the existing one) or the application of a dual majority (of votes and of population), the latter solution having been 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 2007. 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 included one commissioner per Member State. The Council has the power to decide, acting unanimously, on the number of commissioners and on 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 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 an operational legal basis for the adoption, under the codecision procedure, of regulations governing political parties at EU level and rules on their funding.

Parliament's legislative powers were increased through a slight broadening of the scope of the codecision procedure and by requiring Parliament's assent for 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 was empowered to sit in a number of different ways: in chambers (where it consists 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 to the Court of First Instance types of matters other than those listed in Article 225 of the EC Treaty.

#### **b. Court of First Instance**

The powers of the Court of First Instance were increased to include certain categories of preliminary ruling, with the possibility of judicial panels being established by unanimous decision of the Council. All these operating provisions, notably on 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 (covered by former Articles 13, 62, 63, 65, 157, 159 and 191 of the EC Treaty); for matters covered by former Article 161 assent was now required.

### **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 further changes: referral to the European Council ceased to be an option, the concept of 'a reasonable period of time' was clarified, and the assent of Parliament was now required in all areas where enhanced cooperation related 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 with 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, involving European and national parliamentarians and the Commission, as well as input from ordinary people, and that its outcome 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. The objectives were to prepare for 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 comprised a chair (Valéry Giscard d'Estaing), two vice-chairs (Giuliano 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, retaining the basic structure of the Convention's draft, albeit with a considerable number of amendments. However, 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 factors, including their experience of negotiating in an international environment and the fact that the Convention was meeting on Parliament's premises, MEPs were able to leave a strong imprint on the debates and on the outcome of the Convention. They were also instrumental in the formation of political families comprising MEPs and national MPs. Parliament thus achieved a considerable number of its original aims, and most of that achievement is now safeguarded in the Treaty of Lisbon.

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→ 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, 1.1.6)

##### 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, which is competent to do so 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 EU law, in accordance with the principle of sincere cooperation established in Article 4(3) TEU.

In principle, directives are not directly applicable. The Court of Justice of the European Union, 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 C-91/92, 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) 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.

→ Rosa Raffaelli

## 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, the first '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'). 12 out of 40 national parliaments or chambers thereof (19 out of 54 votes allocated) considered that the content of the proposal did not conform to the principle of subsidiarity. The Commission eventually withdrew its proposal. In October 2013, another 'yellow card' was issued by 14 chambers of national parliaments in 11 Member States following the proposal for a Regulation on the establishment of the European Public Prosecutor's Office. The Commission, after examining the reasoned opinions received from the national parliaments, decided to maintain the proposal,

stating that it would probably be implemented through enhanced cooperation.

### 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.

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.

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→ Petr Novak



## 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 of the 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 new 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 existing allocation of seats 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, held from 4 to 7 June, 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 2009–2014 term, 18 MEPs were added to those elected in June 2009, following the ratification by the Member States of an amending protocol adopted at the 23 June 2010 Intergovernmental Conference (IGC). With the accession of Croatia on 1 July 2013, the maximum number of seats was 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).

The total number of seats was reduced to 751 for the 2014 elections. The distribution of seats will be reviewed again sufficiently in advance of the elections to be held in 2019. (1.3.3)

### 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 European 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).

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→ 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 has been 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 codecision procedure applied to 46 legal bases in the EC Treaty. 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 of the Economic and Monetary Policy 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.



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 the implementation of the budget (Article 319 TFEU).

Finally, Parliament has to provide its consent to the multiannual financial framework (Article 312 TFEU). The first one under the rules of the Lisbon Treaty was adopted in December 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. Since the Treaty of Nice, Parliament has no longer had 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 on Petitions.

### **Appointing the Ombudsman**

The Treaty of Lisbon provides that Parliament elects the European Ombudsman (Article 228 TFEU) (1.3.16).

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→ 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.*

#### Legal basis

- Articles 223, 224, 226, 229, 231 and 232 TFEU;
- Rules of Procedure of the European Parliament.

#### Membership

On a proposal by Parliament<sup>[1]</sup>, the European Council has adopted Decision 2013/312/EU on the composition of the European Parliament after the elections in 2014. Consequently, the European Parliament now has 751 Members, distributed among the Member States as follows: Germany — 96; France — 74; Italy and the United Kingdom — 73; Spain — 54; Poland — 51; Romania — 32; The Netherlands — 26; Belgium, Greece, Hungary, Portugal and the Czech Republic — 21; Sweden — 20; Austria — 18; Bulgaria — 17; Finland, Denmark and Slovakia — 13; Croatia, Ireland and Lithuania — 11; Latvia and Slovenia — 8; Cyprus, Estonia, Luxembourg and Malta — 6.

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 (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, the Vice-Presidents and the Quaestors, as well as of the committee and delegation chairs, 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)<sup>[2]</sup>. 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<sup>[3]</sup>. Parliament may also establish special committees (Rule 184) or committees of inquiry (Article 226 TFEU and Rule 185).

On the basis of Rule 191, each committee or delegation elects its own Bureau, consisting of a chair and up to four vice-chairs<sup>[4]</sup>.

##### 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 weeks, as well as seminars to determine the main principles of their activity. Certain political groups correspond to supranational political parties operating at EU level.

##### 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 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. Most political parties are founded on the basis of Regulation (EC) No 2004/2003, which was revised in 2007 (Regulation 1524/2007(EC)) to introduce the possibility of funding political foundations supporting their respective parties through educational and research activities. Since funding for election campaigns remains low and continues to be subject to national regulation, the Commission has proposed a new Regulation repealing Regulation

<sup>[1]</sup> European Parliament resolution of 13 March 2013 - Composition of the European Parliament with a view to the 2014 elections — P7\_TA(2013)0082.

<sup>[2]</sup> Numbers of members per committee are laid down in paragraph 1 of European Parliament decision of 14 December 2011 on numerical strength of standing committees (P7\_TA(2011)0570).

<sup>[3]</sup> See revised Cotonou Agreement of 22 June 2010, Article 17.

<sup>[4]</sup> See European Parliament decision of 14 December 2011 on numerical strength of standing committees, paragraph 2, P7\_TA(2011)0570.

2004/2003, which is due to enter into force during the course of 2014 following a first reading agreement between Parliament and Council in April 2014<sup>[1]</sup>.

The European parties now in existence are: the European People's Party, the Party of European Socialists, the Alliance of Liberals and Democrats for Europe, the European Green Party, the Alliance of European Conservatives and Reformists, the Party of the European Left, the Movement for a Europe of Liberties and Democracy, the European Democratic Party, the European Free Alliance, the European Alliance for Freedom, the Alliance of European National Movements, the European Christian Political Movement, and the EU Democrats. These supranational parties work in close cooperation with the corresponding political groups in the European Parliament.

### E. The Secretariat

The Secretariat of the European Parliament comprises the office of the Secretary General, 12 Directorates-General, 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 component members (Article 232 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 for a long time to do so, 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 session at which the decision on the annual EU budget is taken, 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 what is now Article 341 TFEU. The substance of this decision was included in the Treaty of Amsterdam in a protocol annexed to the Treaties.

Although Parliament regretted these decisions, it has been obliged to draw up its annual calendar accordingly 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. Several initiatives have been launched by Members of the European Parliament to avoid meeting in Strasbourg. For 2012, for example, a calendar was adopted which included two two-day part-sessions during the same calendar week in October in Strasbourg, reducing the overall meeting time in Strasbourg by four days. Following a complaint by France, however, the Court of Justice ruled that two full part-sessions are required (Case C-237/11) to comply with the decisions taken.

Pursuant to Article 229 TFEU, Parliament may hold extraordinary part-sessions, 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 European Council of 14 and 15 December 2006. This practice of immediate follow-up of European Council meetings has since then been consolidated.

### Membership of Parliament by group and Member State

Pursuant to the elections of May 2014, political groups will have to be newly established. For details, please see the electronic version of this fact sheet.

→ Erika Schulze

<sup>[1]</sup> See European Parliament resolution of 16 April 2014 on the proposal for a regulation of the European Parliament and of the Council on the statute and funding of European political parties and European political foundations, P7\_TA(2014)0421, in connection with European Parliament resolution of 16 April 2014 on financing of European Political Parties, P7\_TA(2014)0422.

## 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'. 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.

In accordance with Article 6 of Directive 93/109/EC, as amended by Directive 2013/1/EU, 'any citizen of

the Union who resides in a Member State of which he is not a national and who, through an individual judicial decision or an administrative decision provided that the latter can be subject to judicial remedies, has been deprived of his right to stand as a candidate under either the law of the Member State of residence or the law of his home Member State, shall be precluded from exercising that right in the Member State of residence in elections to the European Parliament'.

##### 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 and thresholds

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. Several Member States apply a threshold: this is set at 5% in France (depending on the constituency), Lithuania, Poland, Slovakia, the Czech Republic, Romania and Hungary; at 4% in Austria, Italy and Sweden; at 3% in Greece; and at 1.8% in Cyprus

In two decisions taken in 2011 and 2014, the German constitutional court declared the country's hitherto existing thresholds for European elections (5%, then 3%) to be unconstitutional.

## B. Constituency boundaries

In European elections most of the Member States function as single constituencies. However, five Member States (Belgium, 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 Germany (16, only for the CDU/CSU), the Netherlands (19) and Poland (13).

## C. Entitlement to vote

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

Voting is compulsory in four Member States (Belgium, Luxembourg, Cyprus and Greece): the obligation to vote applies to nationals as well as to registered non-national EU citizens.

### 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). To be eligible to vote in Luxembourg, Cyprus and in the Czech Republic, EU citizens must also satisfy a minimum period of residence.

### 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.

Belgium and Greece grant the right to vote only to those of their non-resident nationals who are living in another Member State, while Denmark and Italy restrict the right to vote of non-resident nationals living in a third country to some specific categories. Germany grants the right to vote in the elections for the European Parliament to citizens who have lived in another country, provided that they are enrolled on the German electoral register. 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 a 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 to stand for election is 18 in most Member States, the exceptions being Belgium, Bulgaria, Cyprus, the Czech Republic, Estonia, Ireland, Latvia, Lithuania, Poland, and Slovakia (21), Romania (23), and Italy and Greece (25).

## E. Nominations

In some Member States (the Czech Republic, Denmark, 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 most Member States, voters may cast preferential votes to change the order of the names on the list. However, in nine Member States (Germany, Spain, France, Greece, Portugal, the United Kingdom, Estonia, Hungary and Romania) the lists are closed (no preferential vote). In Luxembourg, voters may even vote for candidates from different lists, while in Sweden they may add or remove names from



the list. In Malta, Ireland and Northern Ireland, the electors list the candidates in order of preference (single transferable vote).

#### H. Validation of results, and rules on election campaigns

In Denmark and Luxembourg the national parliament validates the election results; in Slovenia, the National Assembly confirms the election of MEPs. In Germany, the final results are published by the Federal Returning Officer one day after the vote. In Austria, Belgium, the Czech Republic, Estonia, Finland, Italy, Ireland, Slovenia and the United Kingdom it is up to the courts to do so, and this is also the case in Germany if the parliamentary ruling is challenged. In Spain the result is validated by the 'Junta Electoral Central'; in the Netherlands, 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.

#### I. Filling seats vacated during the electoral term

In some Member States (Austria, Denmark, Finland, France, Croatia, Italy, Luxembourg, the Netherlands, Portugal and the United Kingdom) 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 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 (e.g. Austria) MEPs have the right to return to 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.

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 the same resolution, Parliament called on Member States to establish appropriate and proportionate minimum thresholds for the allocation of seats in order to safeguard the functionality of Parliament.

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 prejudice 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.

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→ 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 under Article 16 of the Treaty on European Union (TEU) and Articles 237 to 243 of the Treaty on the Functioning of the European Union (TFEU).

#### 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 certain decisions and non-binding recommendations (Article 288 TFEU) and issues resolutions. The Council and Parliament lay down the general rules governing the exercise of the implementing powers conferred on the Commission or 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 November 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 on matters of monetary policy. Special rules apply to 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 six years is as follows: Italy from July 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 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:

- the decision receives at least 260 votes of a 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).

Where a proposal does not come from the Commission or the High Representative of the Union for Foreign Affairs and Security Policy, the qualified majority is defined as at least 72 % of the members of the Council, representing Member States comprising at least 65 % of the population of the Union.

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 it either introduced or extended QMV, mostly in conjunction with the introduction of the ordinary legislative procedure (including many former third-pillar areas). Qualified majority is also applied when appointing the President and the Members of the Commission and 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 for 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 cases 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 when the Ioannina compromise was reached to protect Member States which were close to constituting a blocking minority. Under this arrangement, if



the countries in question stated their intention to oppose the taking of a decision by the Council by qualified majority, the Council would do everything in its power to reach a solution acceptable to a large majority of states within a reasonable space of time.

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). This committee, known as Coreper, 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.

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→ 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 has recently been replaced by new legal instruments, 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 (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

For a long time the number of Commissioners per Member State had to be not less than one and not more than two. 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 stipulated that the membership of the Commission, from 1 November 2014, was to be equivalent to two thirds of the number of Member States. 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). Before the second Irish referendum on the Treaty of Lisbon, in 2009, 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. This candidate is elected by Parliament by a majority of its component members (Article 17(7) TEU).

The Council, acting by a qualified majority and by common accord with the President-elect, adopts the list of the other persons whom it proposes for appointment as members of the Commission, on the basis of the suggestions made by Member States.

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 a qualified majority.

Since the Treaty of Maastricht a Commissioner's term of office has matched the European Parliament's five-year term; 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 gainful or not.

Commissioners may be compulsorily retired by the Court of Justice, at the request of the Council or of the Commission itself, if they breach any of the above obligations or have been 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 Secretariat-General 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. Barring a few exceptions, the Commission acts by a majority of its members (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 proposed acts 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 constrains the decision-making authority to the extent that it cannot take a decision unless there is a proposal and it has to base its decision on the proposal as presented.

The Commission draws up and submits to the Council and Parliament any legislative proposals (for regulations or directives) 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 non-member countries

Where a mandate has been given by the Council, the Commission is responsible for negotiating international agreements under Articles 207 and 218 TFEU, which are then submitted to the Council with a view to their conclusion. This includes negotiations for accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 6(2) TEU). As regards foreign and security policy it is the High Representative who 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 European Monetary Union (EMU). It submits to the Council:

- recommendations for the draft broad guidelines for the Member States' economic policies and warnings if those policies are likely to be incompatible with the guidelines (Article 121(4) TFEU);
- assessment proposals to enable the Council to determine whether a Member State has an excessive deficit (Article 126(6) TFEU);
- recommendations on measures to be taken if a non-euro area Member State is in difficulties as regards its balance of payments, as provided for in Article 143 TFEU;
- recommendations for the exchange rate between the single currency and other currencies and for general orientations for exchange-rate policy, as provided for in Article 219 TFEU;
- assessment of national policy plans and presentation of country-specific draft recommendations falling under 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 any decision to the Council concerning the Common Foreign and Security Policy (Article 30 TEU). The HR is also a Commission Vice-President.

### B. Power to monitor the implementation of Union law

The Commission is required under the Treaties to ensure that the Treaties themselves, and any decisions taken to implement them (secondary legislation), are properly enforced. Therein lies its role as guardian of the Treaties. This role is exercised mainly through the procedure applied to Member States where they have failed to fulfil an obligation under the Treaties, as set out in Article 258 TFEU.

## C. Implementing powers

### 1. Conferred by the Treaties

The main powers vested in the Commission are as follows: implementing the budget (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 competition rules, not least by keeping State aid under review, in accordance with Article 108 TFEU.

In the financial rescue packages dealing with the debt crises 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 alter the voting procedure in the European Stability Mechanism (ESM), enabling the Board of Governors, instead of acting unanimously to act by a special qualified majority (85%), if it decides (in agreement 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) of the ESM Treaty); 4.2.3.

## 2. Delegated by the Council and Parliament

In accordance with 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 arrangements, the advisory procedure and the examination procedure. The right of scrutiny accorded to Parliament and the Council is formally included, as is a provision for an appeal procedure in cases of conflict.

## 3. Delegated acts

The Treaty of Lisbon has also introduced a new category of acts, ranking 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 exception to that rule is Article 106 TFEU, which empowers the Commission to enforce Union rules on public undertakings and undertakings operating services of general economic interest and, where necessary, to address 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, both about the Statute for Members of the European Parliament and about the Statute of 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.

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→ 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 proper, the General Court and the Civil Service Tribunal. It is responsible for the jurisdiction of the European Union. The three courts ensure the correct interpretation and application of primary and secondary Union law in the EU. The Court of Justice reviews the legality of acts of the Union institutions and decides whether Member States have fulfilled their obligations under primary and secondary law. It also provides interpretations of Union law when so requested by national judges and ensures that the law is observed in the interpretation and application of the Treaties.*

### Court of Justice

#### A. Legal basis

- Article 19 TEU, Articles 251 to 281 TFEU, Article 136 Euratom, and Protocol No 3 annexed to the Treaties on the Statute of the Court of Justice of the European Union (hereinafter 'the Statute');
- Certain international agreements;
- The institution is financed from the EU Budget, where it has its own section (Section 4).

#### B. Composition and Statute

##### 1. Membership

###### a. Number of members (Article 19 TEU and Article 252 TFEU)

One judge per Member State. The Court is assisted by 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)

- The judges and Advocates-General must possess the qualifications required for appointment to the highest judicial offices in their respective countries or be jurisconsults of recognised competence.
- Their independence must be beyond doubt.

###### c. Appointment procedure (Article 253 TFEU)

The 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 (swearing independence, impartiality and preservation of secrecy) before taking up their duties;
- may not hold any political or administrative office or engage in any other 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 (15 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 say even 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 is 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 (2.1.2).

## 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 on 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 Union 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, and Title IV of Protocol No 3 annexed to the Treaties on the Statute of the Court of Justice of the European Union.

### 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 (Article 19 TEU).

##### 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 that of 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, Council Decision 2004/752/EC, Euratom of 2 November 2004 established a European Union Civil Service Tribunal. According to its Rules of Procedure (25 July 2007, OJ L 225, 29.8.2007, p. 1),

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. Decisions of the Tribunal are subject to appeals to the General Court.

### **Role of the European Parliament**

Since a 1990 ruling on a case brought by Parliament 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 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 Parliament (Article 255 TFEU). Parliament and the Council, acting in accordance with the ordinary legislative procedure, establish the specialised courts attached to the General Court (Article 257 TFEU).

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→ 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 proper, the General Court and the Civil Service Tribunal — and offers various means of redress, as laid down in Article 19 TEU, Articles 251-281 TFEU, Article 136 Euratom, and Protocol No 3 annexed to the Treaties on the Statute of the Court of Justice of the European Union.*

### Court of Justice

#### A. Direct proceedings against Member States or an institution, body, office or agency of the European Union.

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

##### 1. Proceedings against a Member State 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 submit its observations, reasoned opinion (1.3.8);
- or by a Member State against 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 EU institutions for annulment and for failure to act

Subject: cases where the institutions have adopted acts that are contrary to European Union law (annulment: Article 263) or, in infringement of European Union 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 General Court. 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 General Court 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 say even 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 is 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 (2.1.2).

#### 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 on 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

Union to take measures relating to criminal law where 'necessary' in order to achieve the objective pursued as regards environmental protection).

### General Court

(1.3.9)

#### 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, EU institutions or the European Central Bank, in which case the Court of Justice has sole jurisdiction (Article 51 of the Statute of the Court of Justice of the European Union ('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 or on behalf of the Union, whether that contract be governed by public or private law (Article 272).

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

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 General Court ruling on the decisions of specialised courts (see below), the Court of Justice refers the matter to the General Court, 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 General Court 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 256; Article 62 of the Statute’).

### C. Responsibility for appeals

The rulings made by the General Court may, within two months, be subject to an appeal, limited to points of law, to the Court of Justice.

### European Union Civil Service Tribunal

(1.3.9)

In order to relieve the Court of some of its proceedings, Article 257 has foreseen the possibility of establishing special jurisdictions to hear certain categories of actions ‘in certain specific areas’ at first instance. In accordance with this provision, Council Decision 2004/752/EC, Euratom of 2 November 2004 has established the European Union Civil Service Tribunal, attached to the General Court. The Tribunal has jurisdiction to hear and determine disputes

between the European Union and its servants pursuant to Article 270, for the approximately 35 000 staff of the ‘EU institutions (it hears some 120 cases a year). These disputes concern not only questions to do with working relations in the strict sense (pay, career progress, recruitment, disciplinary measures, etc.), but also the social security system (sickness, old age, invalidity, accidents at work, etc.).

The Tribunal also has jurisdiction in disputes between all bodies or agencies and their staff in respect of which jurisdiction is conferred on the Court of Justice of the European Union (for example, disputes between Europol, the Office for Harmonisation in the Internal Market (OHIM) or the European Investment Bank and their staff).

It may not hear and determine cases between national administrations and their employees.

Decisions given by the Tribunal may, within two months, be subject to an appeal, limited to questions of law, to the General Court.

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→ Udo Bux

### 1.3.11. The European Central Bank (ECB)

*The European Central Bank (ECB) was created to conduct monetary policy in the euro area, with the primary objective of maintaining price stability. Recently, major additional tasks have been conferred upon the ECB within the new Single Supervisory Mechanism (SSM): the ECB will now also take on tasks concerning the prudential supervision of credit institutions in the participating Member States.*

#### Legal basis

- Articles 3 and 13 of the Treaty on European Union (TEU);
- The main provisions are contained in Articles 3(1)(c), 119, 123, 127-134, 138-144, 219 and 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 Provisions 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);
- Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (SSM Regulation).

#### Organisation and operations

The European Central Bank (ECB) was established on 1 June 1998 with its headquarters in Frankfurt am Main, Germany. According to the Treaties, the ECB's main responsibilities include the conduct of monetary policy in the euro area. The SSM Regulation confers upon the ECB certain supervisory functions for credit institutions within the framework of the Single Supervisory Mechanism (SSM) as of November 2014. The guiding organisational principle is the operational separation of the monetary function and the supervisory function within the ECB.

#### A. Monetary function

The ECB and the national central banks of all Member States constitute the European System of Central Banks (ESCB). The ECB together with (only) the national central banks of those Member States whose currency is the euro constitute the Eurosystem (Article 282(1) TFEU). For Member States which have not yet adopted the euro (derogation or opt-out), certain Treaty provisions referring to the ESCB are not applicable, so that the general Treaty reference to the ESCB in practice refers mainly to the Eurosystem.

The ECB's independence is enshrined in Article 130 TFEU: 'When exercising the powers and carrying out the tasks and duties conferred upon them by the Treaties and the Statute of the ESCB and of the ECB, neither the European Central Bank, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from Union institutions, bodies, offices or agencies, from any government of a Member State or from any other body'.

#### 1. Decision-making bodies

The ECB's decision-making bodies are the Governing Council, the Executive Board and the General Council. The ESCB is governed by the decision-making bodies of the ECB.

#### Governing Council

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 those Member States whose currency is the euro (Article 283(1) TFEU and Article 10.1 of the ECB Statute). According to Article 12.1 of the ECB 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 its 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 ECB Statute). The Governing Council might also delegate certain powers to the Executive Board (Article 12.1 of the ECB Statute).

#### Executive Board

The Executive Board comprises the President, the Vice-President and four other members. They are appointed by the European Council by qualified majority on a recommendation from the Council after it has consulted the European Parliament and the Governing Council. The selection must be made from among people 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 and 11.2 of the ECB Statute).

The Executive Board is responsible for the current business of the ECB (Article 11.6 of the ECB 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 Executive Board prepares the Governing Council's meetings

### General Council

The General Council is the third decision-making body of the ECB (Article 141 TFEU; Article 44 of the ECB Statute), but only as long as there are EU Member States with a derogation, i.e. which have not yet adopted the euro. It consists of the President and Vice-President of the ECB and the Governors of the national central banks of all the EU Member States; other Executive Board members may participate (but without voting rights) in meetings of the General Council (Article 44.2 of the ECB Statute). The General Council provides a link between the EU Member States inside and those outside the Eurosystem.

### 2. 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 of 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 ECB Statute) are: 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 official foreign reserves of the Member States; and promoting the smooth operation of payment systems.

### 3. Powers and instruments

The ECB has the exclusive right to authorise the issue of euro banknotes. Member States may issue euro coins subject to the ECB's approval 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 ECB 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 that are the

subject of consultation. The ECB is also consulted on decisions establishing common positions and on measures relating to 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 ECB Statute).

The ECB Statute lists various instruments that the ECB may use in order to fulfil its monetary functions. 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 and require minimum reserves. The Governing Council may also decide by a two-thirds majority on other instruments of monetary control. However, the prohibition of monetary financing (Article 123 TFEU) sets limits on the use of monetary policy instruments. To ensure efficient and sound clearing and payment systems, the ECB may provide facilities and pass regulations. The ECB may also establish relations with central banks and financial institutions in other countries and with international organisations.

### 4. Member States with a derogation or opt-out

Articles 139-144 TFEU lay down special provisions for Member States which have a Treaty obligation to adopt the euro but have not yet fulfilled the conditions to do so ('Member States with a derogation'). Certain Treaty provisions are not applicable to these Member States, e.g. the objectives and tasks of the ESCB (Article 127(1)-(3), (5) TFEU) and the issue of the euro (Article 128 TFEU). Two Member States have been granted an opt-out and are thus not obliged to join the euro area, so special provisions apply to Denmark (Protocol No 16) and the United Kingdom (Protocol No 15).

## B. Supervisory function

The ECB and the national competent authorities of the euro area Member States together constitute the Single Supervisory Mechanism (SSM). Non-euro area Member States' competent authorities may enter into close cooperation with the ECB and participate in the SSM. The SSM Regulation stipulates that the ECB and the national competent authorities acting within the SSM shall act independently.

### 1. Organisational body: the Supervisory Board

The Supervisory Board is composed of a Chair, a Vice-Chair (a member of the Executive Board), four representatives of the ECB (their duties may not be directly related to the monetary function of the ECB) and one representative of the national competent

authority in each Member State participating in the SSM. The European Parliament must approve the ECB's proposal for a Chair and a Vice-Chair. Decisions by the Supervisory Board are taken by simple majority.

The Supervisory Board is an internal body tasked with the planning, preparation and execution of the supervisory functions conferred upon the ECB. It prepares and proposes complete draft supervisory decisions to the Governing Council. These are adopted if the Governing Council does not reject them within a specified time period. If a non-euro area participating Member State disagrees with a draft decision of the Supervisory Board, a special procedure applies and the Member State concerned may even request termination of the close cooperation.

## 2. Objectives and tasks

As of November 2014, the ECB will be responsible for the supervision of all credit institutions (either directly for the largest banks or indirectly for other credit institutions) in the participating SSM Member States and will cooperate closely in this function with the other entities forming the European System of Financial Supervision (ESFS). The tasks include inter alia authorisation and withdrawal of authorisation for credit institutions; ensuring compliance with prudential requirements; conducting supervisory reviews; participation in supplementary supervision of financial conglomerates, etc. It also has to address systemic and macro-prudential risk.

## 3. Powers and instruments

In order to fulfil its supervisory role, the ECB has investigatory powers (information requests, general investigations, on-site inspections) and specific supervisory powers (e.g. authorisation of credit institutions). The ECB also has the power to enact administrative penalties. It may also require credit institutions to hold higher capital buffers.

## C. Other functions

Other legal bases also confer tasks on the ECB. The European Stability Mechanism (ESM) Treaty (in force as of September 2012) established the ESM as an international financial institution and conferred on the ECB tasks — mainly of assessment and analysis — 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 provides the Secretariat for the ESRB which gives analytical, statistical, logistical and administrative support. The President of the ECB also acts as Chair of the ESRB.

Within the Single Resolution Mechanism (SRM), the ECB assesses whether a credit institution is failing or likely to fail, and informs the European Commission and the Single Resolution Board accordingly.

## Role of the European Parliament

The ECB President reports to the European Parliament on monetary issues in a quarterly Monetary Dialogue. The ECB also prepares an annual report on monetary policy which is presented before Parliament. The EP adopts a resolution (under the own-initiative procedure) on this annual report. The new supervisory responsibilities of the ECB are matched with additional accountability requirements as laid down in the SSM Regulation. The practical modalities are governed by an Interinstitutional Agreement (IIA) between Parliament and the ECB. The accountability arrangements include the appearance of the Chair of the Supervisory Board before the competent committee; answering questions asked by Parliament; and confidential oral discussions with the Chair and Vice-Chair of the competent committee upon request. In addition, the ECB prepares an annual supervisory report, which is presented to Parliament by the Chair of the Supervisory Board.

→ Rudolf Maier



## 1.3.12. The Court of Auditors

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

### Legal basis

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

### Structure

#### A. Members

##### 1. Number

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

##### 2. Requirements

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 procedure

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 the European Parliament.

#### B. Term of office

##### 1. Duration

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

##### 2. Status

Members enjoy the same privileges and immunities as 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 organises itself 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. Area of responsibility

The Court's remit covers examination of any revenue or expenditure accounts of the European Union or any EU 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;
- any body which manages revenue or expenditure on the EU's behalf;
- 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 to carry out its task.



### 3. Other prerogatives

Following its audits the Court provides the European Parliament and the Council with a yearly Statement of Assurance (known as 'DAS' from '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 each financial year, including the Statement of Assurance, which it forwards to the EU institutions and publishes 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, in particular on issues of sound financial management,
- specific annual reports concerning EU bodies.

### B. Advisory powers

Based on 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 established in 1977 on the initiative of the European Parliament. It was made a full EU institution in 1993. Since then, it has assisted Parliament and the Council in exercising their role of controlling the implementation of the budget. The annual report and the special reports in particular are the basis for Parliament's yearly discharge exercise. The Court's Members are invited to present their reports in Committee meetings and to reply to questions raised by MEPs. Furthermore, the Court's expertise helps MEPs in drafting legislation on financial matters.

The lack of a positive statement of assurance (i.e. the Court of Auditors' annual Statement of Assurance) for the past 19 years for payments underlying the EU's accounts has been and remains a recurring problem. Mainly due to problems in areas where management of the EU budget is shared (with the Member States), the Statement of Assurance for payments underlying the accounts has been negative since it was first introduced for the financial year 1994. The Commission succeeded nonetheless in improving financial management between 2006 and 2011, bringing an error rate of 7 % in 2006 to down to 3.9 % for the 2011 financial year. However there was a relapse in 2012, when the most likely error rate for payments as a whole was 4.8 %. All areas of operational expenditure contributed to this increase with rural development, environment, fisheries and health (Chapter 4) remaining the most error-prone policy group. It should also be noted that Parliament's Committee on Budgetary Control holds hearings to question Members-designate of the Court.

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→ Jean-Jacques Gay

### 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.

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→ 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 addresses 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.

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→ 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.

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→ Rudolf Maier

## 1.3.16. The European Ombudsman

*The European Ombudsman conducts inquiries into cases of maladministration by European Union institutions or bodies, acting 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 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 219 to 221 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 General Court;
- 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, 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. In addition, the Code acts as a guide and a resource for EU officials, encouraging the highest standards of administration.

At the plenary sitting of 15 January 2009, 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). On 14 March 2013 Mr Diamandouros resigned with effect from 1 October 2013. The former Irish Ombudsman, Emily O'Reilly, following her election by the European Parliament during the July 2013 part-session, took up office as European Ombudsman on 1 October 2013.

### E. Revision of the Ombudsman's Statute

On 11 July 2006, the Ombudsman submitted a proposal to the President of Parliament 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, on the basis of the Rules of Procedure (Rule 215 and Annexes VI and X, No XIX), 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 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.

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→ Udo Bux

## 1.4. Decision-making procedures

### 1.4.1. Supranational decision-making procedures

*The Member States of the European Union have agreed, as a result of their membership of the EU, to transfer some of their powers to the EU institutions in specified policy areas. Thus, EU institutions make supranational binding decisions in their legislative and executive procedures, budgetary procedures, appointment procedures and 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. Furthermore, the Single European Act 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) was applied to almost all new areas where the Council was entitled to decide by qualified majority. On the other hand, Parliament acquired 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, under which the Parliament now decides on legislative acts on equal footing with the Council. Hence, the ordinary legislative procedure, formerly called the codecision procedure, applies to 85 legal bases. The ordinary legislative procedure includes qualified majority voting (QMV) in the Council (Article 294 TFEU). However, it does not apply to several important areas, for example fiscal policy concerning direct taxation or transnational aspects of family law, which require unanimity in the Council.

###### 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 QMV.

In the fields of social security and police and judicial cooperation in criminal matters, the proposal can be submitted to the European Council at the request of one Member State (Articles 48 and 82 TFEU), and this suspends the ordinary legislative procedure until the European Council reassigns the matter to the Council (at the latest after four months). In the case of

Article 82, at least nine Member States may decide to continue deliberations under enhanced cooperation (Article 20 TEU and Article 326-334 TFEU).

If the Council approves Parliament's position, the act is adopted in the wording which corresponds to Parliament's position.

**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 on which the Commission has delivered a 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 positions of Parliament and the Council and has six weeks to agree on a joint text supported by a QMV of Council representatives and a majority of Parliament's representatives.
- The procedure stops and the act is not adopted if the Committee does not reach agreement on a joint text by the deadline.
- If it does so, the joint text is sent 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 the 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.

Over the past few years, the number of first reading agreements based on informal negotiations between the Council and Parliament has significantly increased.

Some bridge clauses allow the European Council to extend the application of the ordinary procedure to areas exempted from it (for example social policy: Article 153(2)).

**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**

As a result of the entry into force of the Lisbon Treaty, the consent procedure applies in particular to the horizontal budgetary flexibility clause, as specified in Article 352 TFEU (former Article 308 TEC). Other examples are action to combat discrimination (Article 19(1) TFEU) and membership of the Union (Articles 49 and 50 TEU). In addition, Parliament's consent is required for association agreements (Article 217 TFEU), accession of the Union to the ECHR (Article 6(2) TEU), and agreements establishing a specific institutional framework entailing major budgetary implications or concerning areas where the ordinary legislative procedure applies (Article 218(6) TFEU).

**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's Rules of Procedure).



### Budgetary procedure (see 1.4.3)

### Appointment procedures

**A. Parliament elects the President of the Commission (Article 14(1) TEU) (see also 1.3.8).**

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

**C. The Council, acting by qualified majority, adopts:**

- the list of the other persons whom it proposes for appointment as Members of the Commission, by common accord with the President-elect (Article 17(7) TEU).

**D. The Council adopts the list of**

- 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;
- members and alternate members of the Committee of the Regions and the European Economic and Social Committee, drawn up in accordance with the proposals made by each Member State (Articles 301, 302 and 305 TFEU).

**E. 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. The European Parliament must be immediately and fully informed at all stages of the procedure (Article 218(10)).

- 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 Intergovernmental Conference (IGC), Parliament made several proposals to extend the areas to which the ordinary legislative (formerly 'codecision') procedure would apply. Parliament also repeatedly voiced its opinion that, if there was a change from unanimity to qualified majority, co-decision should apply automatically. The Treaty of Nice endorsed this position but did not fully align



qualified majority and 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).

With regard to appointments, the Treaty of Lisbon failed to put an end to the wide range of different procedures, although some streamlining was

achieved. Unanimity is still applied in some cases, and tends to cause political disputes and reduces the influence of Parliament. Progress was achieved in particular 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 Parliament. The appointment of the President-elect, after appropriate consultations of Parliament, must take due account of the results of the European elections. This highlights the political legitimacy and accountability of the European Commission.

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→ 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.

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→ 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) between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management approved by Parliament on 19 November 2013 and by Council on 2 December 2013 (OJ C 373, 20.12.2013), following the political agreement reached between the Presidents of Parliament, the Council and the Commission on 27 June 2013.

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.

No substantial modifications were introduced by subsequent Treaties until the major changes brought by the Treaty of Lisbon. The Treaty of Lisbon introduced a simpler and more transparent budgetary procedure (budgetary codecision). The modifications derive mainly from the elimination of the distinction between compulsory expenditure and non-compulsory expenditure, 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.

#### 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. (See 1.5.1 for details on EU revenue and expenditure, 1.5.2 for details on MFF, 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

##### 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. However, the institutions agree a 'pragmatic' calendar each year in due time before the start of the budgetary procedure based on the present practice.

##### 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 <sup>(1)</sup>
		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

<sup>(1)</sup> 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 (in accordance with

Article 41 of the Financial Rules), 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

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 more than 60% 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 (TFEU), 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 genuine (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.

The 2014 Budget was adopted within the deadlines laid down by the Treaty (joint text agreed within 21 days of the Conciliation Committee).

#### **B. The Interinstitutional Agreements on budgetary discipline (IIA) and the Multiannual Financial Frameworks (MFF1.5.2)**

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. These successive agreements have provided an interinstitutional reference framework for the annual budgetary procedures and considerably improved the way the budgetary procedure works.

The current IIA entered into force on 23 December 2013 (OJ C 373, 20.12.2013). It aims at facilitating the annual budgetary procedure and to complement the provisions of the MFF regulation — which has become a binding regulation (with binding ceilings) — notably on the special instruments outside the MFF. Those provisions concern the following special instruments: the Emergency Aid Reserve, the European Union Solidarity Fund, the Flexibility Instrument, the European Globalisation Adjustment Fund and the Contingency Margin.

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.

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→ Judith Lackner / Barbara Hermanowicz



# 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 and 352 of the Treaty on the Functioning of the European Union and Articles 106a, 171-182 and 203 of the Treaty establishing the European Atomic Energy Community; 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) (the revision of this decision, the implementing measures and the regulation for making own resources available is under way on the basis of the Commission's proposals of 2011, the draft legislative acts of the Council of 12 February 2014 and the legislative resolutions of Parliament of 16 April 2013);
- 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);
- Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for the years 2014-2020 (OJ L 347, 20.12.2013, p. 884);
- The Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management (OJ C 373, 20.12.2013, p. 1).

### 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 to cover annual payment appropriations 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 currently consists of the transfer to the Community of a percentage of the estimated VAT collected by the Member States. The VAT resource accounted for almost 11% 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 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 paid by companies that are found in breach of competition laws 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% 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 of 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 benefited from a reduced rate of call of VAT for the period 2007-2013, and the Netherlands and Sweden benefited from a reduction in their GNI contributions for the same period. Following Commission proposals for a new Own Resources Decision in 2011, the European Council of February 2013 called for further work on the reform of the VAT resource, and invited Member States participating in enhanced cooperation in the area of a financial transaction tax to examine whether this could become the base for a new own resource. As regards correction mechanisms, there will be a continuation of the existing correction mechanism for the UK and the financing thereof, as well as reduced rates of call of the VAT-based own resource for the period 2014-2020 for Germany, the Netherlands and Sweden (0,15%) and gross reductions in the annual GNI contribution for the period 2014-2020 for Denmark (EUR 130 million), the Netherlands (EUR 695 million), Sweden (EUR 185 million) and, for the period 2014-2016, for Austria (EUR 30 million in 2014, EUR 20 million in 2015 and EUR 10 million in 2016). As to collection costs for traditional own resources, the percentage that may be retained by Member States will be reduced from 25% to 20%.

## 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 applicable to the general budget of the Union.

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 period covered by the first programming period was 5 years, the length of the subsequent and current periods being 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 provided 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**

In a number of 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, that of 17 May 2006 on the conclusion of an interinstitutional agreement on budgetary discipline and sound financial management and that of 29 March 2007 on the future of the European Union's own resources), Parliament has 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 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. In its legislative resolution of 16 April 2014 on the draft Council decision on the system of own resources, Parliament highlighted the importance of the high-level group on own resources, which was established as a result of the negotiations on the Multiannual Financial Framework for 2014-2020. This high-level group, composed of representatives of Parliament, the Council and the Commission and chaired by Mario Monti, will 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. 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 asked that all expenditure and revenue resulting from decisions taken by or in the name of the EU institutions, including borrowing, lending and loan guarantee operations, 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.

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→ [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<sup>[1]</sup>.

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

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

<sup>[1]</sup> 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<sup>[1]</sup>

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.

<sup>[1]</sup> All figures in this section are in 2011 prices.

#### Multiannual Financial Framework (EUR million, 2011 prices)

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
<b>TOTAL COMMITMENT APPROPRIATIONS</b>	<b>134.318</b>	<b>135.328</b>	<b>136.056</b>	<b>137.100</b>	<b>137.866</b>	<b>139.078</b>	<b>140.242</b>	<b>959.988</b>
as a percentage of GNI	1,03%	1,02%	1,00%	1,00%	0,99%	0,98%	0,98%	1,00%
<b>TOTAL PAYMENT APPROPRIATIONS</b>	<b>128.030</b>	<b>131.095</b>	<b>131.046</b>	<b>126.777</b>	<b>129.778</b>	<b>130.893</b>	<b>130.781</b>	<b>908.400</b>
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;<sup>[1]</sup>
- 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

<sup>[1]</sup> 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) and Article 179 of the Euratom Treaty;
- Financial Regulation, i.e. 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<sup>[1]</sup>;
- Implementing Rules to the Financial Regulation, i.e. Commission Delegated Regulation of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union<sup>[2]</sup>;
- Interinstitutional agreement (IIA) of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management<sup>[3]</sup>.

#### 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

The implementation of the budget involves two main operations: commitments and payments. As regards the commitment of expenditure, a decision is taken to use a particular sum from a specific budgetary line in order to finance a specific activity. Once the corresponding legal commitments (e.g. contracts) have been established, and delivery has been made of the contractual service, work or

supplies, 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 and others.

In practice, some 76 % of the budget is spent under '**shared management**' (with Member States distributing funds and managing expenditure), 22 % under '**direct management**' by the Commission, and the remaining 2 % under '**indirect management**'<sup>[4]</sup>.

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 implementation of EU legislation, Articles 290 and 291 TFEU set the provisions ruling the delegated powers and implementing powers conferred to the Commission and, in particular, the control exercised on the Commission in this regard by the Member States, the Council and the European Parliament.

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**'. 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 on 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 acts, Article 291(2) TFEU provides for these acts to confer implementing powers on the

<sup>[1]</sup> OJ L 298, 26.10.2012, pp. 1-96.

<sup>[2]</sup> OJ L 362, 31.12.2012, pp. 1-111.

<sup>[3]</sup> OJ C 373, 20.12.2013, pp. 1-11.

<sup>[4]</sup> Data provided by the Commission's Directorate-General for Budget.

Commission or, in the cases of Articles 24 and 26 of the Treaty on European Union (TEU), on the Council, where 'uniform conditions for implementing legally binding Union acts are needed'. Pursuant to Article 291(3) TFEU, 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 is supplemented by Regulation No 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<sup>[1]</sup>. This control is exercised through committees composed of representatives of the 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 and eligibility checks, 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. Decisions concerning such corrections are taken by the Commission in accordance with the aforementioned procedures for the exercise of implementing powers (1.5.4).

The 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). The Member States' responsibility in shared

management of the EU budget has been tightened, notably through Article 59 of the new Financial Regulation.

An important aspect of budgetary implementation is compliance with EU legislation applicable to public procurement contracts (supply, works and services, 3.2.2).

### Role of the European Parliament

Firstly, as one of the two arms of the budgetary authority, Parliament has prior influence on the implementation of the EU budget by means of amendments made and decisions taken in the context of the budgetary procedure (1.4.3) to allocate funds. Parliament may decide to make use of the reserve mechanism of the budget whereby, if it has any doubts regarding the justification of expenditure or the Commission's ability to implement it, Parliament may decide to place the funds requested in reserve until the Commission provides appropriate evidence. Such evidence is provided as part of a request to transfer funds from the reserve. Both Parliament and the 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 Parliament to control the implementation of the current budget. Although most questions raised concern the discharge period, many of the questions put to the Commission by Parliament's Committee on Budgetary Control — within the framework of the discharge procedure — refer to the implementation of the current 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 Treaty of Lisbon, Parliament is, along with the Council, 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). The key aims for establishing such rules are to improve the implementation of the budget, increase the visibility and the benefits of Union funding to the citizen, and achieve the right balance between the protection of financial interests, the proportionality of administrative costs and user-friendly procedures.

Furthermore, in almost all policy areas, Parliament 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.

<sup>[1]</sup> OJ L 55, 28.2.2011, pp. 13-18.

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

New tools are being developed to allow for better monitoring of the implementation process and to improve the value for money of EU programmes. For this purpose, Parliament calls for high-quality Activity Statements (prepared by the Commission in preliminary draft general budget working documents) and the regular submission of cost-effectiveness analyses for EU programmes.

The comitology decision<sup>[1]</sup> already strengthened Parliament's power of control through the 'regulatory procedure with scrutiny'. However, Articles 290 and 291 TFEU introduce new rules on the delegating powers and implementing acts that go beyond the 'regulatory procedure with scrutiny'.

According to MEP József Szájer, member of the Committee on Constitutional Affairs, 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, the new Treaty reinforces the democratic character of the Union and rationalises its legal order.

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→ Alexandre Mathis

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<sup>[1]</sup> 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, p. 11.

## 1.5.4. Budgetary control

*Budgetary control is carried out 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 Parliament. Each year the latter examines implementation of the budget with a view to granting discharge to the 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) No 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) 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);
- Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, Part III;
- Parliament's Rules of Procedure, 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 EU budget (economy, efficiency and effectiveness).

### Achievements

#### A. Control at national level

Initial control of revenue and expenditure is carried out to a large extent by national authorities. They have kept their powers, particularly on traditional own resources (1.5.1), an area for which they have the necessary procedures for collecting and verifying the amounts concerned. Member States retain 25% of traditional own resources by way of a collection fee. Collection of traditional own resources is nevertheless a matter of great importance to EU institutions. It was in that connection that Parliament 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 Member States' authorities.

#### B. Control at EU 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 (1.3.12)

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, i.e.:

- 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;
- audit reports and opinions;
- specific reports and position papers;
- specific annual reports relating 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 Parliament:

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

- controlling implementation of the EU budget of the European Development Fund (EDF);
- closing, presenting and auditing the accounts and balance sheets of the EU, its institutions and any bodies financed by it;
- controlling the financial activities of the European Investment Bank (1.3.15);
- monitoring the cost-effectiveness of the various forms of EU funding in the conduct of EU policies;
- looking into fraud and irregularities in connection with implementation of the EU budget, and measures to prevent fraud and irregularities and bring prosecutions in such cases, and protecting the EU's financial interests in general.

It also prepares the decisions on discharge.



### The discharge procedure

Once a year, on the Council's recommendation, Parliament grants discharge to the Commission for 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 Committee on Budgetary Control prepares Parliament's response to ECA special reports, often in the form of working papers to guide the general rapporteur on the discharge. The Commission and the other institutions are required to act on the observations made by Parliament in its discharge resolutions (Article 147 of the Financial Regulation). Parliament grants discharge annually to the other institutions as well as to the agencies. It grants separate discharge to the Commission for implementation of EDF operations, since they have not yet been incorporated into the EU's general budget. Parliament's discharge decision and resolution concerning implementation of the EU general budget, Section I — Parliament, is addressed to the President of Parliament.

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

#### 4. Anti-fraud measures: by OLAF

The Anti-Fraud Office (OLAF) is competent to carry out investigations independently of the Commission. Its role is to protect the EU's financial interests, with responsibility for combating fraud involving EU funds in all institutions and for coordinating the bodies responsible in the Member States. On 25 May 1999, in connection with the regulations on OLAF investigations, Parliament, the Council and the Commission signed an interinstitutional agreement regarding internal investigations. That agreement stipulated that each institution should establish common internal rules to ensure that OLAF's investigations ran smoothly. Some of those rules, now incorporated into the Staff Regulations of Officials, require staff to cooperate with OLAF and provide a degree of protection for staff members who reveal possible fraud or corruption. Reform of OLAF was first mooted in 2003. Finally, after some 10 years of discussions and negotiations, the trilogue stakeholders (Parliament, the Council and the

Commission) agreed on a compromise representing significant progress and ensuring that OLAF is effective and efficient and retains its responsibilities while safeguarding its investigative independence.

In November 2008, Parliament adopted the Gräßle report, drawn up in collaboration with the working group of the Committee on Budgetary Control, by an overwhelming majority. The Commission's original proposal was heavily amended, and the current regulation was introduced some years later.

The new text provides substantial improvements, i.e. a clearer definition of the legal framework for anti-fraud investigations, definitions of 'irregularity' and 'fraud, corruption and any other illegal activity affecting the financial interests of the Union' and the notion of 'economic operator' have been incorporated into the regulation. The regulation also contains clear references to particular investigative measures under other EU regulations (and thus improving coordination between the relevant legal instruments in the area concerned) plus references to the Charter of Fundamental Rights. As regards procedural guarantees, the rights of defence of persons concerned under investigation by OLAF, the rights of witnesses and of whistleblowers, and right of access to records, etc. will be ensured at all times in connection with OLAF investigations.

In addition, there are provisions introducing specific requirements to be met by Member States, such as the requirement to share relevant information with OLAF on cases of fraud involving EU funds.

Lastly, a new interinstitutional procedure has been set up so that all institutions can hold transparent discussions on best practices, outcomes and outstanding issues with a bearing on the effectiveness of anti-fraud operations. That will make it possible, for the first time, for Parliament to discuss combating fraud in Member States with the Council.

It should also be pointed out that Article 325 TFEU requires close and regular cooperation between Member States and the Commission and allows for 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, Parliament was simply kept informed of decisions on discharge given by the Council to the Commission on its implementation of the budget. In 1971, it secured the power to grant discharge together with the Council. Since 1 June 1977, when the Treaty of 22 July 1975 entered into force, it alone has the power to grant discharge after the Council has given its recommendation. It should also be pointed out that Parliament,

through its competent committees, holds hearings for Commissioners-designate, and the Committee on Budgetary Control holds hearings for Members-designate of the Court of Auditors as well as the short-listed candidates for the post of Director-General of OLAF. Those posts cannot be filled without Parliament's hearings being held. It should be noted, lastly, that the Director-General of OLAF is appointed by the Commission, after consultation of Parliament and the Council, and that the members of the OLAF Supervisory Committee are appointed by common accord by Parliament, the Council and the Commission.

### B. Use of the discharge

Parliament may decide to postpone discharge where it is dissatisfied with particular aspects of the Commission's management of the budget. Refusing to grant discharge can be regarded as tantamount to requiring the Commission to resign. 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.

With regard to discharge for implementation of the EU general budget by the Commission, Parliament introduced two new features for the discharge procedure for 2011 and 2012: verification of the lawfulness and regularity of expenditure, which increasingly will go hand in hand with a performance evaluation (Article 318 TFEU; evaluation report on the EU's finances based on the results achieved), but also the fact that a discharge decision may be 'counterbalanced' by reservations concerning particular policy areas.

Although the Treaty only refers to discharge for the Commission, for reasons of transparency and democratic oversight Parliament also grants separate discharge to the other institutions and bodies and to each agency or similar entity (Annex VI to Parliament's Rules of Procedure). At its April 2013 part-session, during the discharge procedure for 2011, Parliament postponed discharge for the Council, *inter alia* because the latter refused

to provide Parliament with relevant information that would have enabled it to grant discharge in full knowledge of the facts. Major difficulties also surrounded the procedure for granting discharge to the Council for 2012. Accordingly, in the discharge report on implementation of the Council's budget for 2012, adopted in plenary in April 2014, Parliament again postponed its decision on granting discharge to the Secretary-General of the Council, and again for the same reason: the Council's refusal to provide the information it had requested.

As stated above, the Commission, the other institutions and the agencies must report on the action taken on the observations made in discharge resolutions. Member States must inform the Commission on the measures they have taken to act on Parliament's observations, and the Commission must take them into account in its own follow-up report (Article 166 of the Financial Regulation).

### C. Other instruments

Parliament's specialised committees are also helping to ensure that EU funds are spent efficiently in the best interests of the EU taxpayer. On a number of occasions, the members of the Committee on Budgetary Control have also held discussions with representatives of the equivalent committees in Member State parliaments, with national audit authorities and with representatives of customs agencies; on-the-spot enquiries have also been carried out by individual members to ascertain the facts underlying particular problems.

In December 1995, for the first time, Parliament exercised its right under the Treaty to set up a committee of inquiry, subsequently reporting on allegations of fraud and maladministration in the Community transit system. The committee's recommendations received wide support at the time.

The Treaty of Lisbon bolsters the control arrangements focusing on the results achieved by EU programmes and requires the Commission, as part of the annual discharge procedure, to submit to Parliament and the Council, taking account of the indications they have given, a comprehensive evaluation report.

→ Jean-Jacques Gay



# CITIZENS' EUROPE 2

**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

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## 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.

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→ 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. Moreover, 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 [...] 12 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 the first of 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 also enshrine specific 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.

### 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 (1.1.6) was proclaimed by the Commission, the Council and Parliament on 7 December 2000 at the Nice European Council, and subsequently reaffirmed and amended in 2007. Since December 2009, it is legally binding and has the same legal value as the Treaties, in accordance with Article 6 TEU.

The rights it sets out are not new: the Charter is 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 to good administration and 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. A protocol sets out a number of derogations for the United Kingdom and Poland, the scope of application of which is, however, unclear.

### 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 supplemented by 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) TEU 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 EU and the Council of Europe. In July 2013, the Commission asked the Court of Justice to rule on the compatibility of the Draft Accession Agreement with the Treaties.

### 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<sup>[1]</sup>. 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 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.

<sup>[1]</sup> Regulation (EC) No 168/2007, 15 February 2007, OJ L 53, 22.2.2007.



## 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. In addition, it has also adopted several resolutions addressing specific issues concerning fundamental rights protection in the Member States.

### 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 Parliament) 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 the now binding Charter. It has called several times for the setting-up of the Agency for Fundamental Rights.

In two resolutions in 2014, Parliament also called for the creation of a 'Copenhagen mechanism', that is, a more efficient tool to ensure that Member States effectively respect the fundamental values of the Union and the requirements of democracy and the rule of law.

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→ Rosa Raffaelelli

## 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<sup>[1]</sup> introduced for every person holding the nationality of a Member State citizenship<sup>[2]</sup> 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).

<sup>[1]</sup> Treaty on European Union, which entered into force on 1 November 1993.

<sup>[2]</sup> 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<sup>[1]</sup>; 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,

<sup>[1]</sup> 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<sup>[1]</sup>. In 2009, it issued a Communication on guidance for better transposition and application of the directive<sup>[2]</sup>. 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.

## Role of the European Parliament

In its resolution of 16 January 2014 on respect for the fundamental right of free movement in the EU<sup>[3]</sup> the European Parliament calls on the Member States to comply with the Treaty provisions on EU rules governing freedom of movement and to ensure that the principles of equality and the fundamental right of freedom of movement are upheld for all Member States. It strongly contests the position taken by some European leaders calling for changes and restrictions of the free movement of citizens after the abolishment of the transitional arrangements for the free movement of workers from Bulgaria and Romania on 1 January 2014 and rejects any proposal to cap numbers of EU migrants as being in contradiction to the EU Treaty principle of the free movement of people. It calls on the Commission and the Member States to ensure the strict enforcement of EU law so as to guarantee that all EU workers are treated equally and not discriminated against as regards access to employment, employment and working conditions, remuneration, dismissal, and social and tax benefits and urges national authorities to combat any unjustified restrictions on or obstacles to worker's right of free movement.

→ Andreas Hartmann

<sup>[1]</sup> COM(2008) 840 final.

<sup>[2]</sup> COM(2009) 313 final.

<sup>[3]</sup> P7 TA-PROV(2014)0037.

## 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), Article 44 of the Charter of Fundamental Rights of the EU.

### 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, and to 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 on 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 2012 was drawn up by Edward McMillan-Scott (ALDE, UK) and adopted in plenary on 10 October 2013.

### Annual number of petitions received by Parliament

Parliamentary year	Total number	Not registered as petition <sup>[1]</sup>	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	0	1 108	816
2010	1 746	91	988	667
2011	2 091	677	998	416
2012	2 322	337	1 406	580

<sup>[1]</sup> Submissions that do not correspond to Article 227 TFEU are not registered as petitions.

### The 10 most common subject areas for registered petitions (2009-2012)

Theme (sorted by share in 2012)	2009		2010		2011		2012	
<b>Fundamental rights</b>	430	22.3 %	338	20.4 %	297	21.0 %	500	25.1 %
Disability	0	0.0 %	0	0.0 %	1	0.1 %	10	0.5 %
Justice	159	8.3 %	125	7.6 %	131	9.3 %	242	12.2 %
Property	106	5.5 %	61	3.7 %	51	3.6 %	47	2.4 %
<b>Environment</b>	229	11.9 %	246	14.9 %	260	18.4 %	279	14.1 %
Impact Assessments	40	2.1 %	43	2.6 %	26	1.8 %	23	1.2 %
Pollution	53	2.8 %	48	2.9 %	49	3.5 %	57	2.9 %
Protection and Preservation	48	2.5 %	62	3.7 %	38	2.7 %	31	1.6 %
Waste	18	0.9 %	25	1.5 %	25	1.8 %	37	1.9 %
Water	11	0.6 %	14	0.8 %	19	1.3 %	24	1.2 %
<b>Internal Market</b>	142	7.4 %	135	8.2 %	116	8.2 %	143	7.2 %
Free movement of goods and services	17	0.9 %	22	1.3 %	19	1.3 %	17	0.9 %
Free movement of persons	71	3.7 %	52	3.1 %	33	2.3 %	53	2.7 %
Recognition of qualifications	20	1.0 %	23	1.4 %	24	1.7 %	31	1.6 %
<b>Health</b>	104	5.4 %	83	5.0 %	74	5.2 %	110	5.5 %
<b>Consumers' Rights</b>	96	5.0 %	84	5.1 %	55	3.9 %	101	5.1 %
<b>Animal Welfare</b>	37	1.9 %	34	2.1 %	36	2.5 %	60	3.0 %
<b>TOTAL REGISTERED</b>	1 924	—	1 655	—	1 414	—	1 986	—

→ Udo Bux



## 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 submitted to the Commission.*

### 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<sup>[1]</sup>, 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

<sup>[1]</sup> A list of the competent national authorities may be found at: <http://ec.europa.eu/citizens-initiative/public/authorities-verification>

signatures. After the ECI Regulation was adopted in 2010, but before it had entered into force, Greenpeace 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 registered, now at the collection phase. Two initiatives, which reached the requisite number of signatures (Right2Water and One of Us), were submitted to the Commission. Right2Water invites 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'. One of Us asks 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'. Parliament organised hearings with the representatives of each initiative, held on 17 February and 10 April 2014 respectively and involving several of its committees (those dealing with the environment, the internal market, research and legal affairs as well as the Committee on Petitions). In the meantime, the Commission provided a reply setting out its legal and political conclusions with regard to the Right2Water initiative<sup>[1]</sup>.

To date, the Commission has refused to register 18 initiatives, in most cases on the grounds that the requested legislative initiative falls outside the scope of its competencies.

### 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<sup>[2]</sup> 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 in the minimum number of Member States from which the statements of support have to come, from one third, as originally proposed, to one quarter; it insisted that the verification of admissibility must be carried out at the pre-registration stage; and it pressed for the provisions allowing all EU citizens and residents, regardless of nationality, to be granted the right to sign an ECI.

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→ Petr Novak

<sup>[1]</sup> COM(2014) 177.

<sup>[2]</sup> OJ C 212 E, 5.8.2010, p. 99.



# THE INTERNAL MARKET

# 3

**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**

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## 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 28 Member States. While the construction of an internal market requires continuous efforts, the further deepening of the single market could yield significant gains for EU consumers and businesses, increasing the GDP (gross domestic product) of the EU28 by EUR 235 billion per year, if the remaining barriers were eliminated. Current debate on the internal market was relaunched by the European institutions with a communication on the Europe 2020 strategy, a report by the Commission entitled 'A new strategy for the single market — At the service of Europe's economy and society', a communication entitled 'Single Market Act — Twelve levers to boost growth and strengthen confidence', a communication entitled 'Single Market Act II — Together for new growth' and a number of European Parliament resolutions (e.g. 'Completing the Digital Single Market'<sup>[1]</sup>, 'Competitive digital single market — eGovernment as a spearhead'<sup>[2]</sup>). One of the most promising and challenging areas for progress is the digital single market. It opens up new opportunities to boost the economy (e.g. through e-commerce), at the same time cutting red tape (e.g. through e-government). It highlights areas in which current regulations and business practices are failing to keep up with the opportunities created by information and communication technologies.*

<sup>[1]</sup> European Parliament resolution of 11 December 2012, P7\_TA(2012)0468.

<sup>[2]</sup> 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 legal framework for the internal market now in place, debate is centred around the effectiveness and impact of EU regulation. It calls for an approach that focuses on complete transposition, implementation and enforcement of internal market rules, 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 achieved through the 1968 customs union, the abolition of quotas, the free movement of citizens and workers, and a degree of tax harmonisation with the general introduction of VAT in 1970. However, the freedom of trade in goods and services and the freedom of establishment were still limited due to continuing anti-competitive practices imposed by public authorities.

##### B. The launch 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 an overly detailed method of legislative harmonisation and to the rule that required unanimity for decisions to be taken in the Council. According to the Cecchini report ('The cost of non-Europe'), presented in March 1988, this was extremely expensive for the economy, costing between 4.25% and 6.5% of GDP. In the mid-1980s political debate on this issue led the EEC to consider

a more thorough approach to the objective of removing trade barriers: the internal market.

The Single European Act entered into force on 1 July 1987, setting a precise deadline of 31 December 1992 for completion of the internal market. It also strengthened the decision-making mechanisms for the internal market by introducing qualified majority voting for common customs tariffs, free provision of services, free movement of capital and approximation of national legislation. By the time the deadline passed, over 90% of the legislative acts listed in the 1985 White Paper had been adopted, largely under the qualified majority rule.

### C. Towards a shared responsibility to complete the internal market

The internal market has made a significant contribution to the prosperity and integration of the European economy. It has increased trade within the EU by about 15% per year over 10 years; it has 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; it has generated additional growth of 1.8% over the last 10 years; and it has 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 movement of goods, integrate the services markets, reduce the impact of tax obstacles and simplify the regulatory environment. Substantial progress was made in opening up transport, telecommunications, electricity, gas and postal services. The 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<sup>[1]</sup> — 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 remained below the agreed target of 1%, some Member States would not be able to overcome the high backlog 'without drastic action'.

In its communication entitled 'Better governance for the Single Market'<sup>[2]</sup>, the Commission called for infringement procedures to be shortened and for compliance with judgments of the Court of Justice to be ensured through penalty payment procedures. The Commission proposed horizontal measures such as an emphasis on clear, easily implementable new regulations, better use of existing IT tools to

facilitate the exercise of single market rights, and setting up national centres to oversee the operation of the single market. Monitoring is an integral part of the annual reports on single market integration in the context of the European Semester process.

### D. The relaunch of the internal market in 2010

Given that the full potential of the internal market remains unexploited and that Europe has been changed by reunification, enlargement and closer integration since the introduction of the single market, Parliament, the Council and the Commission have recently made fresh efforts to relaunch the internal market, in order to boost the European single market once again and to put the public, consumers and SMEs at the centre of the single market policy.

In May 2010 the Commission published a report entitled 'A new strategy for the single market at the service of Europe's economy and society' covering all of the policies concerned (competition, consumer, digital, tax and other policies). It also set out several initiatives aimed at shoring up the single market by removing the remaining barriers. This prepared the ground for a Commission communication entitled 'Towards a Single Market Act'<sup>[3]</sup>, in which the Commission presented a series of measures designed to boost the European economy and create jobs, thereby adopting a more ambitious single market policy. 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'<sup>[4]</sup>, in June 2012 the Commission published a communication entitled 'Better Governance for the Single Market'<sup>[5]</sup>. It proposed that the focus should be placed on those sectors with the highest growth potential in 2012 and 2013, meaning network industries (e.g. energy and telecommunications) and key services sectors (trade, business services, financial intermediation and transport).

In October 2012 the Commission came forward with a second set of proposals — the Single Market Act II — to further develop the single market and exploit its untapped potential as an engine for growth. The Single Market Act II sets out 12 key actions for rapid adoption by the EU institutions. These actions are 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. The Single Market Act II follows in the footsteps of an initial set of measures presented by the Commission — the Single Market

<sup>[1]</sup> European Commission Internal Market Scoreboard No 23, September 2011.

<sup>[2]</sup> COM(2012) 259

<sup>[3]</sup> COM(2010) 608.

<sup>[4]</sup> COM(2011) 942.

<sup>[5]</sup> COM(2012) 259.

Act I — and includes the following actions aiming at a more thoroughgoing, better integrated single market:

- business mobility (e.g. introducing provisions to mobilise long-term investment, modernising insolvency proceedings, and helping to create an environment that offers second chances to failing entrepreneurs);
- 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);
- 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 was due 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. Parliament and the Council will be called upon to adopt legislative proposals as a matter of priority.

### Role of the European Parliament

Parliament is a driving force behind the process that led to the creation of the internal market. Specifically, it backed the idea of changing the internal market into a fully integrated home market by 2002 (resolution of 20 November 1997). In several resolutions adopted in 2006 (e.g. those of 12 February, 14 February, 16 May and 6 July) Parliament supported the idea that the internal market was a common framework and point of reference for many EU policies and asked for a debate which went beyond the common rules on the four freedoms, fundamental rights and competition.

Parliament also played an active role in the recent relaunch of the internal market. In its resolution of 20 May 2010 on delivering a single market to consumers and citizens<sup>[1]</sup>, Parliament emphasised that measures must be taken in order to inform and empower consumers and SMEs more effectively, as well as to increase citizens' confidence. Parliament issued three further responses to the Single Market Act with three resolutions adopted on 6 April 2011: 'Governance and partnership in the single market'<sup>[2]</sup>, 'A single market for Europeans'<sup>[3]</sup> and 'A single market for enterprises and growth'<sup>[4]</sup>. In all its 2010 and 2011 resolutions

relating to the internal market, Parliament called for the governance of the single market to be strengthened and for the transposition and enforcement of single market legislation to be improved. Parliament's resolution of 20 April 2012 on 'a competitive digital single market — eGovernment as a spearhead'<sup>[5]</sup> 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 the resolution of 22 May 2012 on the 'Internal Market Scoreboard'<sup>[6]</sup>.

On 11 December 2012, Parliament also adopted two non-legislative resolutions relating to the internal market, one on completing the Digital Single Market<sup>[7]</sup> and one on a Digital Freedom Strategy in EU Foreign Policy<sup>[8]</sup>, in which it 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. In the same resolution it also 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 different sets of national rules in key areas including VAT, postal services and intellectual property rights. The principles of net neutrality and the open internet, as well as the abolition of roaming charges, are currently being discussed as part of a legislative package laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent<sup>[9]</sup>, and were approved in Parliament's plenary vote of 3 April 2014.

On 7 February 2013, Parliament adopted a resolution with recommendations to the Commission on the governance of the Single Market<sup>[10]</sup>, establishing a single market governance cycle as a specific pillar of the European Semester. Furthermore, on 25 February 2014, Parliament adopted a resolution on Single Market governance within the European Semester 2014<sup>[11]</sup>, followed by its resolution of 27 February 2014 on SOLVIT<sup>[12]</sup>.

→ Mariusz Maciejewski

<sup>[1]</sup> Texts adopted, P7\_TA(2010)0186.

<sup>[2]</sup> Texts adopted, P7\_TA(2011)0144.

<sup>[3]</sup> Texts adopted, P7\_TA(2011)0145.

<sup>[4]</sup> Texts adopted, P7\_TA(2011)0146.

<sup>[5]</sup> Texts adopted, P7\_TA(2012)0140.

<sup>[6]</sup> Texts adopted, P7\_TA(2012)0211.

<sup>[7]</sup> Texts adopted, P7\_TA(2012)0468.

<sup>[8]</sup> Texts adopted, P7\_TA(2012)0470.

<sup>[9]</sup> COM(2013) 627.

<sup>[10]</sup> Texts adopted, P7\_TA(2013)0054.

<sup>[11]</sup> Texts adopted, P7\_TA(2014)0130.

<sup>[12]</sup> Texts adopted, P7\_TA(2014)0164.

### 3.1.2. Free movement of goods

*The free movement of goods, the first of the four fundamental freedoms of the internal market, is secured through the elimination of customs duties and quantitative restrictions, and the prohibition of measures having an equivalent effect. The principles of mutual recognition, elimination of physical and technical barriers, and promotion of standardisation were added in order to continue the completion of the internal market. The adoption of the New Legislative Framework (NLF) in 2008 significantly strengthened product marketing rules, the free movement of goods, the EU's market surveillance system and the CE mark. The mutual recognition principle was also consolidated, and applies to a wide range of products not covered by EU harmonisation.*

#### Legal basis

Articles 26 and 28-37 of the Treaty on the Functioning of the European Union (TFEU).

#### Objectives

The right to free movement of goods originating in Member States, or of 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, 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 of goods with a view to creating the internal market — an area without internal borders, 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 the harmonisation of 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 the aforementioned concept in the Treaty, the case-law has had to provide one. The Court of Justice of the European Union 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 of 14 December 1962, and Case 232/78 of 25 September 1979).

#### B. Prohibition of measures having an effect equivalent to quantitative restrictions: Articles 34 and 35 TFEU

In its Dassonville judgment, the Court of Justice 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 of 11 July 1974 and points 63 to 67 of Case C-320/03 of 15 November 2005). The Court's reasoning was developed further in the Cassis de Dijon (Case 120/78 of 20 February 1979) jurisprudence, which laid down the principle that any product legally manufactured and marketed in a Member State in accordance with its fair and traditional rules, and with the manufacturing processes of that country, must be allowed onto the market of any other Member State. This was the basic reasoning underlying the debate on defining the principle of mutual recognition, including in the absence of harmonisation. As a consequence, even in the absence of European harmonisation measures (secondary EU legislation), Member States are obliged to allow goods that are legally produced and marketed in other Member States to circulate and to be placed on their markets.

Importantly, the field of application of Article 34 TFEU is limited by the Keck jurisprudence, which states that certain selling arrangements fall outside the scope of that article, provided that they are non-discriminatory (i.e. they 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 of 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 exceptions to the general principle must be interpreted strictly, and national measures cannot constitute a means of arbitrary discrimination or disguised restriction on trade between Member States. Exceptions are no longer justified if Union legislation that does not allow them has come into force in the same area. Finally, the measures must have a direct effect on the public interest to be protected, and must not go beyond the necessary level (principle of proportionality).

Furthermore, the Court of Justice has recognised in its jurisprudence (*Cassis de Dijon*) 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, the fairness of commercial transactions, consumer protection and protection of the environment). Member States have to notify national exemption measures to the Commission. Procedures for the exchange of information and a monitoring mechanism were introduced in order to facilitate supervision of such national exemption measures (as provided for in Articles 114 and 117 TFEU, Decision 3052/95/EC of the European Parliament and of the Council of 13 December 1995 and Council Regulation (EC) No 2679/98 of 7 December 1998). This was further formalised in Regulation (EC) No 764/2008 on mutual recognition, which was adopted in 2008 as part of the so-called New Legislative Framework (NLF).

### D. Harmonisation of national legislation

Since the late 1970s, considerable efforts have been made to harmonise national legislation. The adoption of harmonisation laws has made it possible to remove obstacles created by national provisions by making them inapplicable and to establish common rules aimed at guaranteeing both free circulation of goods and products and respect for other EC Treaty objectives, such as protection of the environment and of consumers, competition, etc.

Harmonisation has been further facilitated by the introduction of the qualified majority rule, required for most directives relating to the completion of the single market (Article 95 of the EC Treaty, as modified by the Maastricht Treaty), and by the adoption of a new approach, proposed in a Commission White Paper of June 1985, aimed at avoiding 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. 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 free movement of goods through the technical harmonisation of entire sectors, and 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 necessitated the elimination of all remaining obstacles to free movement of goods. 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 — the key factor in improving the EU's competitiveness on global markets.

### Role of the European Parliament

Parliament 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 1987 report. It has also made a strong legislative contribution to the harmonisation directives. Parliament made a significant contribution to the NLF package adopted in 2008. The key issues for Parliament, in its negotiations with the Council, were to secure agreement that all economic operators involved should increasingly be responsible for assuring the compliance and safety of the products they put on the market, and further to strengthen the CE mark by making consumers more aware of it. Parliament continues to work in this area, with the Alignment Package consisting of nine directives covering different products, including lifts, pyrotechnic articles and explosives.

In its resolution of 8 March 2011<sup>[1]</sup> Parliament called on the Commission to establish a single market surveillance system for all products (harmonised and non-harmonised), based on one legislative act covering both the General Product Safety Directive and Regulation No 765/2008 on market surveillance, in order to attain a high level of product safety and market surveillance, and to clarify the legal basis. On 13 February 2013, at Parliament's request, the Commission presented the Product Safety and

<sup>[1]</sup> OJ C 199 E, 7.7.2012, p. 1.



Market Surveillance Package, which aims to improve market surveillance systems in the Member States. The package consists 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 extensive means of consumer protection. In particular, authorities will be better able to track down unsafe products, while, at the same time, the rules on consumer product safety will be simplified and merged into a 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 take 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 to ensure 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. Aiming to enhance the content of the standardisation reform, Parliament adopted a resolution on 21 October 2010<sup>[1]</sup> in which it called for the standardisation system's many successful elements to be maintained and improved, and for the right balance to be struck between the national, European and international dimensions. Parliament further argued that the addition of the

principle of 'appropriate representation' is 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 Parliament and the Council adopted Regulation (EU) No 1025/2012 on European standardisation, modernising and improving the mechanism for setting European standards.

The seventh legislature also concluded legislative work on: the Regulation laying down harmonised conditions for the marketing of construction products; the labelling and marking of the fibre composition of textile products; the safety and environmental performance of two- and three-wheeled vehicles and quadricycles; and the Directive on recreational craft and personal watercraft (improving safety through better categorisation of watercraft). In addition, Parliament reached provisional agreement with the Council on the final text of the Radio Equipment Directive.

Parliament supports the need for stronger cooperation between EU and national authorities in order to improve the quality of EU legislation and identify legislation in need of simplification or codification, in accordance with the goal of putting more effort into better regulation, prompt transposition and correct implementation. Parliament also calls on the other institutions to support co-regulation and voluntary agreements whenever possible, in accordance with the same principle of better law-making.

→ Mariusz Maciejewski

<sup>[1]</sup> OJ C 70 E, 8.3.2012, p. 56.

### 3.1.3. Free movement of workers

*One of the four freedoms enjoyed by EU citizens is the free movement of workers. This includes the rights of movement and residence for workers, the rights of entry and residence for family members, and the right to work in another Member State. These rights are accompanied by certain restrictions, in particular as regards the rights of entry and residence and the right to take up employment in the public sector. In addition, restrictions apply in some countries for citizens coming from the 'new' Member States.*

#### Legal basis

Article 3(2) of the Treaty on European Union (TEU), Articles 4(2)(a), 20, 26 and 45–48 of the Treaty on the Functioning of the European Union (TFEU).

Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States; Regulation (EU) No 492/2011 on freedom of movement for workers within the Union; Regulation (EC) No 883/2004 on the coordination of social security systems and its implementing Regulation (EC) 987/2009.

Case-law of the Court of Justice of the European Union

#### 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 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

At the end of 2012, according to Eurostat data, 2.8% of EU citizens (14.1 million people) resided in Member States other than those of which they are citizens. According to a 2010 Eurobarometer survey, 10% of people polled in the EU replied that they had lived and worked in another country at some point in the past, while 17% intended to take advantage of the right to free movement in the future.

#### A. Current general arrangements on freedom of movement

Any national of a Member State has the right to seek employment in another Member State in conformity with the relevant regulations applicable to national workers. He or she is entitled to receive the same assistance from the national employment office as nationals of the host Member State, without any discrimination on the grounds of nationality, and

also has 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 applies equally to all workers from other Member States, whether they are on permanent contracts, employed as seasonal or cross-border workers or provide services. Workers may not be discriminated against, e.g. with regard to language requirements, which must only be reasonable and necessary for the job in question.

#### 1. Workers' rights of movement and residence

##### a. Movement

Directive 2004/38/EC introduces EU citizenship as the basic status for nationals of the Member States when they exercise their right to move and reside freely on EU territory. For the first three months, every EU citizen has the right to reside on the territory of another EU country without any conditions or formalities. For longer periods, the host Member State may require a citizen to register his or her presence within a reasonable and non-discriminatory period of time. Depending on the length of the stay, other formalities may also have to be completed.

##### b. Residence

Migrant workers' right to reside for more than three months remains subject to certain conditions, which vary depending on the workers' status (employees, self-employed, pensioners, posted workers or workers who have lost their jobs). Union citizens acquire the right of permanent residence in the host Member State after a period of five years of uninterrupted legal residence.

#### 2. Rights of entry and residence for family members

Directive 2004/38/EC amended Regulation 1612/68/EEC 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 to be the equivalent of a marriage. Irrespective of their nationality, these family members have the right to reside in the same country as the worker.



### 3. Employment

#### a. Recruitment and treatment at work

As regards working and employment conditions in the territory of the host Member State, workers who are nationals of another Member State may not be treated differently to national workers due to their nationality. This applies in particular to matters pertaining to recruitment, dismissal and remuneration, and to occupational training and retraining measures. Nationals of one Member State working in another have the same social and tax benefits and access to housing as national workers, and are entitled to equal treatment in respect of the exercise of 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 now be viewed in the context of Directive 2004/38/EC. Job seekers have the right to reside for a period exceeding six months without having to meet any conditions if they continue to seek employment in the host Member State and have a 'genuine chance' of finding work. After acquiring the right of permanent residence in the host Member State, EU citizens are no longer subject to any conditions (such as sufficient financial means) but can, if necessary, rely on social assistance in the host Member State just like its nationals.

### B. Restrictions on freedom of movement

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

The Treaty allows a Member State to refuse an EU national the right of entry or residence 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, and such conduct must represent a sufficiently serious and present threat to fundamental interests of the state. In any event, a Member State must assess a number of factors before it can take an expulsion decision. Under no circumstances may lifelong exclusion orders be issued. In this regard, Directive 2004/38/EC provides for a series of procedural guarantees.

#### 2. Restrictions on taking up jobs in the public service

According to Article 45(4) TFEU, the free movement of workers does not apply to employment in the public sector. Access to the public service may be restricted to nationals of the host Member State. However, this derogation has been interpreted in a very restrictive way by the Court of Justice, according to which only those posts in which the exercise of public authority and the responsibility for safeguarding the general interest of the state (such as the internal or external security) of the state concerned is involved may be

restricted to its own nationals. These criteria must be evaluated on a case-by-case basis in view of the nature of the tasks and responsibilities covered by the post in question (*Lawrie-Blum v Land Baden-Württemberg*, Case No C-66/85).

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

During a transitional period after the accession of new Member States, certain conditions can be applied that restrict the free movement of workers from, to and between these Member States. These restrictions do not concern travel abroad or self-employed activity, and they may differ from one Member State to another.

The remaining transitional periods applicable to the accession of Bulgaria and Romania in 2007 were lifted on 1 January 2014. There are currently transitional periods for Croatian nationals, which must be lifted by July 2020 at the latest.

### C. Measures to encourage freedom of movement

#### 1. Mutual recognition of training

As a basic principle, any EU citizen should be able to practise his or her profession freely 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 has been reformed to help make labour markets more flexible, and to encourage more automatic recognition of qualifications. Directive 2005/36/EC (as modernised by Directive 2013/55/EU) on the recognition of professional qualifications consolidates and modernises the 15 existing directives covering almost all recognition rules (3.1.5), and provides for innovative features such as the European professional card and the mutual evaluation of regulated professions.

#### 2. The EURES network (European Employment Services)

EURES is a cooperation network involving the Commission, the public employment services of the EEA member states and other partner organisations, and Switzerland (see 5.10.3). From 2014, EURES will improve the self-service tools on its digital platform so as to become a real Europe-wide job mobility portal and develop targeted mobility schemes for concrete shortcomings in the labour market.

#### 3. Other activities to improve workers' mobility

The EU has made major efforts to create an environment conducive to worker mobility. These include:

- a European health insurance card and a directive on cross-border healthcare;

- the coordination of social security schemes with Regulation (EC) 883/2004 and implementing Regulation (EC) 987/2009 (5.10.4);
- a proposal for a directive on the portability of supplementary pension rights, on which Parliament and the Council reached agreement at the end of 2013;
- work placements abroad for young workers: the new Erasmus+ programme for 2014 to 2020 allows internships and traineeships for vocational students in other Member States (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', also part of the Europe 2020 strategy;
- the 2010 Commission communication 'Reaffirming the free movement of workers: rights and major developments' and the 2013 communication 'Free movement of EU citizens and their families: Five actions to make a difference';
- a proposal for a directive on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers, which specifically provides for new means of redress for workers discriminated against, including conciliation and mediation. In March 2014 Parliament particularly stressed the need for a European network of national contact points to improve cooperation among Member States in enforcing the rights of workers from other EU countries.

### Role of the European Parliament

The European Parliament 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 in this regard and promote the free movement of workers as one of the objectives of the completed internal market. Parliament plays a dynamic role in establishing and improving the internal market, and has always energetically supported the efforts of the Commission in this area.

On 25 October 2011, Parliament adopted a resolution on promoting workers' mobility within the European Union, in response to the Commission communication on the same subject, in which it reaffirmed the importance of promoting workers' mobility and addressed topics such as removing obstacles that impede mobility, addressing administrative and legal aspects and linking mobility with other policies. On 15 December 2011, in view of the continuing labour market restrictions on nationals of Romania and Bulgaria, Parliament adopted a resolution on the freedom of movement for workers within the European Union, in which it expressed the view that worker mobility in the EU should never be regarded as a threat to national labour markets.

As regards social security coordination, in its January 2014 resolution on social protection for all, Parliament calls on the Commission to review legislation and monitor the implementation and coordination of social security systems in order to safeguard EU migrant workers' benefit entitlements.

→ [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 businesses 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'). The 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

Parliament 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 Parliament brought before the Court of Justice against the Council for failure to act with regard to transport policy. That case, brought in January 1983, led to a 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 Parliament 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.

Parliament 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. On 15 February 2011 Parliament adopted a resolution on the implementation of the Services Directive 2006/123/EC (2010/2053(INI)), and on 25 October 2011 a resolution on the Mutual Evaluation Process of the Services Directive (2011/2085(INI)). 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) prepared a report on 'Internal Market for services: state of play and next steps' (2012/2144(INI)), which was adopted in plenary on 11 September 2013.

On 7 February 2013 Parliament 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 full implementation of the Services Directive.

Parliament has, as a matter of priority, worked on legislative proposals concerning telecommunications services, such as a regulation on electronic identification and trust services for electronic transactions in the internal market (2012/0146(COD)) and a regulation laying down measures on a European single market for electronic communications and to achieve a connected continent (2013/0309(COD)). Parliament is concerned with financial services in the area of access to basic payment services (2012/2055(INL)) and consumer credit and mortgage credit (2011/0062(COD)), and also with package travel and assisted travel arrangements (2013/0246(COD)). It is also involved in legislating on innovative services such as lifesaving in-vehicle emergency eCall (2013/0165(COD)), and in the verification of implementation of the Universal Service Directive and the 112 emergency number (2010/2274(INI)).

→ [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 different 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.

##### 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 knowledge of national law.

### Role of the European Parliament

On 15 November 2011, Parliament adopted a resolution on the implementation of the Professional Qualifications Directive (2005/36/EC)<sup>[1]</sup> calling for the modernisation and improvement of that directive 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.

In response to Parliament's resolution, on 19 December 2011 the Commission presented a proposal for a revision of the Professional Qualifications Directive. After successful trilogue negotiations, Parliament secured the changes it had called for, including the introduction of a voluntary professional card, the creation of an alert mechanism, clarification of the rules regarding partial access to a regulated profession, rules regarding language skills, and the creation of a mechanism for mutual evaluation of regulated professions to ensure greater transparency. This led to the adoption on 20 November 2013 of Directive 2013/55/EU of the European Parliament and of the Council amending Directive 2005/36/EC on the recognition of professional qualifications<sup>[2]</sup>.

→ Mariusz Maciejewski

<sup>[1]</sup> Texts adopted, P7\_TA(2011)0490.

<sup>[2]</sup> OJ L 354, 28.12.2013, p. 132.



### 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.

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→ 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 adversely affects trade between Member States.*

*Mergers and takeovers with an EU dimension are monitored by the European Commission and may be prevented in certain cases.*

*State aid to given undertakings or products is prohibited when it leads to distortions of competition but can be authorised in specific 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 jeopardise the realisation of the objectives of those services.*

#### Legal basis

- Articles 101 to 109 TFEU and Protocol No 27 on the internal market and competition, which make it clear that fair competition is encompassed within the internal market objective of Article 3(3) TFEU;
- Merger Regulation (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, Protocol No 26 on services of general 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 several 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 subsumed into the term 'internal market' under Protocol No 27. This is not expected to have any practical implications, as no changes have been 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.

#### Outcomes

##### 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 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 under 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, under 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 going through the legislative procedure. Two specific features in particular stand out in cartel cases: damages become an option in addition to fines, and the effectiveness of leniency policy continues to be guaranteed.

## **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 internal market as a whole, 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, product availability, 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 completed in the first phase (25 working days); a more exhaustive investigation takes place during a second phase (90 working days) in more complex cases. Decisions on compatibility may be subject to conditions and obligations (Article 8).

## **D. Prohibition on aid under 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, and loan guarantees, but even state participation in undertakings in so far as preferential treatment of given undertakings or sectors distorts or is likely to distort competition and adversely affects 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 legal framework was established, initially with provisional effect, for decisions under Article 107(3) (c) TFEU. The rules in question were later revised and have in some cases been extended. The Commission has issued a number of communications, the most important being the 'Banking Communication', applicable since 1 August 2013, on the application of State aid rules to support measures in favour of banks in the context of the financial crisis (OJ C 216, 30.7.2013, p. 1). The other communications cover subjects including the recapitalisation of financial institutions, the treatment of impaired assets, and the return to viability and the assessment of restructuring measures.

The subsidies available for all economic sectors were intended to offset the interruption in bank lending and foster investment in sustainable growth. All State aid rules are currently being revised; the new rules are expected to apply from 2014.

## **E. Public services, services of general interest, and services of general economic interest (SGEIs)**

For the first time, the second sentence of Article 14 TFEU 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 Protocol No 26, which refers to Article 14 TFEU and again emphasises the importance of these services, their diverse nature, the wide 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 which European citizens should have to SGELs is recognised with a view to promoting social and territorial cohesion within the Union.

The rules laid down in the current SGEL package have been applied since 31 January 2012; they 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 involved in competition legislation only through the consultation procedure. Its influence is thus limited compared to that of the European Commission and the Council. Parliament has often called for the ordinary legislative procedure to be extended to cover 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 to 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 was applied to the above-mentioned proposal for a directive on claims for damages. This is thus one of the rare cases in which the European Parliament (with the Committee on Economic and Monetary Affairs as its committee responsible) has acted as a co-legislator. The Members were anxious to ensure that consumers could be fully compensated for such damage as they might have suffered, but they also sought to avert the possibility of overcompensation. Again with consumer interests in mind, they managed to ensure that decisions of national competition authorities would be considered *prima facie* evidence of a breach of competition law.

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 points to the powers and the measure of discretion enjoyed by national and local authorities and refers to the new Protocol No 26 annexed to the TFEU.

→ [Stephanie Honnefelder](#)



## 3.2.2. Public procurement contracts

*Public authorities conclude contracts to ensure the supply of works and delivery of services. These contracts, concluded in exchange for remuneration with one or more operators, are called 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 the economies of Member States, estimated at 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. These contracts play a key role in certain sectors (such as construction and public works, energy, telecommunications and heavy industry) and are traditionally characterised by a preference for national suppliers, based on statutory or administrative rules. This lack of open and effective competition was one obstacle to the completion of the single market — pushing up costs for contracting authorities and inhibiting, in certain key industries, the development of competitiveness.

The application of the principles of the internal market (in particular the freedom to provide services and freedom of competition) to these contracts ensures a better allocation of economic resources and a more rational use of public funds, with 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 companies (which are then able to increase in size and develop their markets) and reinforces respect for the principles of transparency, equal treatment, genuine competition and efficiency, thereby reducing the risk of fraud and corruption. A genuinely open single market can only be achieved when all companies are able to compete for these contracts on an equal footing.

### Achievements

The Community equipped itself with legislation aimed at coordinating national rules, imposing obligations on the advertising of invitations to tender and on the objective criteria used to scrutinise tenders. Following the adoption of various normative acts since the 1960s, the Community decided to simplify and coordinate public procurement legislation and adopted four directives to this end (92/50/EEC, 93/36/EEC, 93/37/EEC and 93/38/EEC).

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 amended by Directive 2005/51/EC. Directive 2009/81/EC introduced specific rules for defence procurement, which should make it easier for defence companies to access the defence markets of other Member States.

### Reform

A new public procurement package was adopted in 2014 by Parliament and the Council with the aim of simplifying procedures and making them more flexible in order to encourage access to public procurement for SMEs, and to ensure that greater consideration is given to social and environmental criteria. The legislative framework includes Directive 2014/24/EU of 26 February 2014 on public procurement (repealing Directive 2004/18/EC) and Directive 2014/25/EU of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors (repealing Directive 2004/17/EC). The new public procurement package is completed by a new directive on concessions (Directive 2014/23/EU of 26 February 2014 on the award of concession contracts), which sets up an appropriate legal framework for the award of concessions, ensuring that all EU economic actors have effective and non-discriminatory access to the EU market, and it provides greater certainty as to the law in place.

The external component of public procurement is also taken into account with the Commission proposal for a regulation of 21 March 2012 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.

Finally, in April 2012, the Commission adopted a strategy for e-procurement<sup>[1]</sup> with the aim of reaching full e-procurement by mid-2016, and in its legislative resolution of 11 March 2014, Parliament adopted the proposal for a directive of June 2013 on electronic invoicing in public procurement.

<sup>[1]</sup> COM(2012) 179 final.

### Definitions

‘Public contracts’ are contracts of pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities, and having as their object the execution of works, the supply of products or the provision of services.

‘Contracting authorities’ are the state, regional or local authorities, bodies governed by public law, or associations formed by one or more such authorities or one or more such bodies governed by public law.

‘Concessions’ are contracts of pecuniary interest concluded in writing by means of which one or more contracting authorities or contracting entities entrust the execution of works (in the case of works concessions) or the provision and management of services (in the case of services concessions) to one or more economic operators, the consideration of which consists either solely in the right to exploit the works or the services that are the object of the contract or in that right together with payment. The award of a concession involves the transfer to the concessionaire of an operating risk.

### Public procurement procedure

All procedures must comply with the principles of EU law and, in particular, with the free movement of goods, the freedom of establishment and the freedom to provide services, as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. Competition, confidentiality and efficiency must also be respected.

#### A. Types of procedure

Calls for tender must correspond to different 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 in the directives. 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 ‘competitive procedure with negotiation’, any economic operator may submit a request to participate, but only invited candidates, following the assessment of the information provided, may submit an initial tender which serves as a basis for the subsequent negotiations. In the ‘competitive dialogue’ procedure, any economic operator may submit a request to participate, but only the invited candidates may participate in the dialogue. It is used when contracting authorities are unable to define the means of satisfying their needs or of assessing what solution the market can offer. The contract is awarded on the sole basis of the award criterion of the best price-quality ratio. A new procedure, the ‘innovation partnership’, has

been created for cases in which there is a need for an innovative solution that is not already available on the market. The contracting authority decides to set up the innovation partnership with one or several partners conducting separate research and development activities, in order to negotiate a new innovative solution during the tendering procedure. Finally, in specific cases and circumstances contracting authorities can award public contracts through a negotiated procedure without prior publication.

#### B. Criteria for the award of a contract

Contracting authorities must base the award of public contracts on the most economically advantageous tender. The reform of public procurement rules introduced this new award criterion based on the principle of the ‘most economically advantageous tender’ (the ‘MEAT’ criterion), which aims to ensure the best value for money (rather than the lowest price), i.e. it takes into account the quality, as well as the price or life-cycle costs, of the work, good or service in question. This criterion places greater emphasis on quality, environment and social considerations, as well as innovation.

#### C. Rules on publication and transparency

The procurement procedures must ensure the necessary transparency at all stages. This is achieved in particular through the publication of the essential elements of procurement procedures and through the dissemination of information on candidates and tenderers (e.g. the criteria and arrangements to be applied in the contract award decision, information on the conduct and progress of the procedure, and information on the reasons for rejection), as well as through the provision of sufficient documentation regarding all steps of the procedure.

#### D. Remedies

In order to address cases of breaches of the public procurement rules by contracting authorities, the Remedies Directive (Directive 2007/66/EC) provides for an effective review system covering both public procurement directives and the concessions directive, and it introduces two important elements. The ‘standstill’ period offers — following the award decision — the opportunity for bidders to examine the decision and decide whether to initiate a review procedure. During this period of at least 10 days, the contracting authorities cannot sign the contract. The Remedies Directive also establishes more stringent rules protecting against the illegal direct award of public contracts.

#### E. Other aspects of public procurement

The new rules promote green public procurement through a life-cycle costing approach and the possibility to refer to a specific label or eco-label.

Social aspects are also important, with specific provisions for social inclusion, social criteria, subcontracting, and a simplified regime for services contracts being included in the directives. Cutting red tape and enhancing SMEs' access to public procurement are also central to public procurement. The new rules introduce the 'European single procurement document' and the use of self-declarations. Access by SMEs to public procurement will be enhanced in particular by the possibility of dividing contracts into lots and by the limitation of annual turnover requirements. The new directives make the progressive use of e-procurement mandatory and set specific rules concerning techniques and instruments for electronic and aggregated procurement, such as framework agreements, dynamic purchasing systems, electronic auctions, electronic catalogues, centralised purchasing activities, cross-border joint procurement. The directives include European Court of Justice case-law on in-house relationships, making it possible, under conditions, for contracting authorities to award a contract to an undertaking without applying the procurement procedure. Finally, the new rules strengthen the legislation in force as regards conflicts of interests, favouritism and corruption, providing enhanced guarantees for sound procedures as regards grounds for exclusion, prior consultation, modification of contracts, and transparency.

### Concessions

While the revision of the rules for the utilities sector is more or less in line with the revision of the rules governing general public procurement (although adjusted in order to safeguard the option of greater flexibility in practices for entities engaged in commercial or industrial activity), the new rules on concessions are much more specific.

The directive applies only to concession contracts with a value equal to or greater than EUR 5 million, and certain types of concessions are excluded from

the scope of the directive, including the concessions relating to drinking water. Unlike the general public procurement procedures, contracting authorities are free to structure the procedure for concessions contracts according to national standards or their own preferences, provided that they follow certain basic rules to provide for the following: the publication of a concession notice; the provision of information on minimum requirements and the award criteria; respect for established requirements and the elimination of candidates who do not fulfil them; the exclusion of candidates who have been convicted of certain crimes, such as fraud and money laundering; and the provision of information to participants on how the procedure is to be organised and an indicative timetable. Furthermore, the subject matter of the concession, the award criteria and the minimum requirements cannot be subject to negotiations in concession award procedures. Concession contracts are limited in time and the question of whether or not they can be extended must be assessed under the procedure for contract modifications.

### Role of the European Parliament

Before its adoption of the public procurement package on 15 January 2014, Parliament had adopted several resolutions, including that of 18 May 2010 on new developments in public procurement, that of 12 May 2011 on equal access to public sector markets in the EU and in third countries, and that of 25 October 2011 on modernisation of public procurement. In these resolutions, Parliament supported, in particular, simplification measures (e.g. flexible procedures) and called for enhanced legal certainty. It considered that the cheapest price should not be the only criterion considered when awarding contracts, but rather best value, including criteria on sustainability (such as life-cycle costs, environmental and social criteria) should also be taken into account.

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→ Carine Piaguet

### 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 Society. The European Economic Interest Grouping was also created.*

#### Legal basis

Article 50(1) and (2)(g) TFEU; Article 54 TFEU, second paragraph; 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. Harmonisation of European company law covers the protection of interest of shareholders, public limited-liability companies' capital, takeover bids, branch disclosure, mergers and divisions, minimum rules for single-member private limited-liability companies, financial reporting and accounting.

It also includes different European legal forms such as the European Company (SE), the European Economic Interest Grouping (EEIG) and the European Cooperative Society (SCE).

#### Achievements

##### A. A minimum set of common obligations

###### 1. Setting up a company

The 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/EEC of 23 July 1990 (amended by Directive 2003/123/EC) on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States introduces tax rules which are neutral from the point of view of competition for groups of companies of different Member States. It abolishes the double taxation of dividends distributed by a subsidiary in one Member State to its parent company in another. 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 2011/35/EU of the European Parliament and of the Council 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/EC 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 wish to act or establish themselves beyond their national frontiers the option of being subject to one set of legislation, rather than several as is the case at present.

#### **2. The European Company**

After a long period of stalemate (the negotiations 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 wish 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 Member States can now merge to form an SCE. Finally, a national cooperative with activities in a Member State other than where it has its head office may be converted into a European cooperative without first having to go into liquidation.

Directive 2003/72/EC of 22 July 2003 supplements this statute with regard to the involvement of employees in the SCE in order to ensure that the establishment of an SCE does not entail the disappearance or reduction of practices of employee involvement existing within the companies participating in the establishment of the SCE.

### 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 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 succeeded in having 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 European company statute in order to simplify procedures for the constitution of such companies. Furthermore, following the withdrawal of the two proposals for regulations 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. Its resolution of 14 March 2013 contained 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.

→ Udo Bux



### 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 protecting 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 25 February 2014 the European Parliament voted on the proposal for a regulation amending Council Regulation (EC) No 207/2009 on the Community trade mark, seeking to simplify and update national and Union trademark legislation, making trademark registration in the EU cheaper, quicker, more reliable and more predictable, thus increasing legal certainty for holders. The proposed regulatory package includes: a recast of the Trademark Directive (2008/95/EC), aligning Member States' trademark legislation more closely, a revision of the regulation on the Community trade mark (207/2009), which also contains provisions regarding the Office for Harmonization in the Internal Market, and a revision of the regulation on the fees payable to the Office (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

Directive 2001/29/EC of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society adapts legislation on copyright and related rights to technological developments, and in particular the information society. It 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 balance between the interests of the right-holder and the interests of the other parties.

###### 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;
- Council Directive 93/83/EEC of 27 September 1993 on broadcasting and cable retransmission;
- Directive 2001/84/EC of the European Parliament and of the Council 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).

###### 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. Right-holders entrust their rights to a collecting society which manages rights on their behalf. In July 2012 the Commission put forward a proposal for a directive on collective management of copyright and related rights (COM(2012) 372), 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 with 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 the date of entry into force of the Agreement on the Unified Patent Court, which is currently in the process of being ratified.

#### **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, 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 up 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 Court of Justice of the European Union's judgment annulling the framework decision on the protection of the environment through criminal law (COM(2005) 583).

Recent Court of Justice of the European Union case-law

In May 2012, the 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 of the Agreement on Trade-Related Aspects of Intellectual Property Rights - TRIPS). In July 1999 the 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 trademark in respect of products put on the market in non-member countries.

#### **Role of the European Parliament**

In its various resolutions on intellectual property rights, and particularly on the legal protection of databases, biotechnological inventions and copyright, Parliament has argued for the gradual harmonisation of intellectual property rights. It has also opposed the patenting of parts of the human body. Parliament has similarly opposed the patenting of inventions capable of being

implemented on a computer, its concerns here being to avoid obstructing the spread of innovation and to afford SMEs free access to software created by major international developers. Forthcoming challenges that can be expected during the next legislature include new issues related to as yet unforeseen technological development. An important new challenge could be that of ensuring privacy, safety and security of software – the question arises as to

whether free and open-source software is truly safer than proprietary software. Parliament has recently been voting a highly controversial own-initiative report on payment for private copying (resolution of 27 February 2014). It has also played a very active role in the WIPO draft treaty on copyright exceptions for the visually impaired.

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→ [Udo Bux](#)

### 3.2.5. European System of Financial Supervision (ESFS)

*The European System of Financial Supervision (ESFS) was created as a decentralised, multi-layered system of micro- and macro-prudential authorities in order to ensure consistent and coherent financial supervision in the EU. This supervisory system is currently undergoing major changes further to the introduction of a Banking Union.*

#### Legal basis

Articles 26 and 114 of the Treaty on the Functioning of the European Union (TFEU); Article 290 TFEU (delegated acts); Article 291 TFEU (implementing acts); Article 127(6) TFEU.

#### Background and objectives

In 2009 the de Larosière report recommended the creation of a European System of Financial Supervision (ESFS) as a decentralised network. This ultimately resulted in the creation of a system of micro- and macro-prudential supervision consisting of European and national supervisors. The micro-prudential pillar at European level is formed of 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 performed by the European Systemic Risk Board (ESRB). The respective Member States' competent national supervisory authorities are also part of the ESFS. The objectives of the ESFS include developing a common supervisory culture and facilitating a single European financial market. The ESFS's founding regulations are currently being revised. As part of a legislative initiative procedure, on 11 March 2014 Parliament adopted a resolution on the ESFS review (P7\_TA(2014)0202), making detailed recommendations to the Commission. The Banking Union will also change the shape of the European supervisory framework.

#### 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 authorities. The various 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 institutions at international level has to be ensured.

##### 1. European Supervisory Authorities (ESAs)

At European level, the ESAs are responsible for micro-prudential supervision, whereas day-to-day supervision is conducted at national level. EBA, EIOPA, and ESMA are Union bodies with their own legal personality, which are represented by their respective chairpersons; they are independent and act only in the interests of the Union as a whole.

###### a. European Banking Authority (EBA)

**Legal basis:** Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority) as amended by Regulation (EU) No 1022/2013

The EBA's seat is in London. Its scope includes credit institutions, financial conglomerates, investment firms and payment institutions. A multitude of tasks is conferred on the EBA by the founding regulation: they include ensuring sound, effective and consistent regulation and supervision, contributing to the stability and effectiveness of the financial system, preventing regulatory arbitrage, ensuring an equal level of supervision, consumer protection, strengthening international supervisory coordination, and appropriate regulation of supervision of credit institutions. The EBA contributes to the development of the single rulebook by drafting technical regulatory standards and implementing technical standards, which are adopted by the Commission (as delegated or implementing acts). It issues guidelines and recommendations and has certain powers in relation to breaches of Union law by national supervisory authorities. The EBA's governing bodies are the Board of Supervisors (the main decision-making body composed of the Chairperson, the head of the competent supervisory authority in each Member State and one representative each from the Commission, the ECB, the 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 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority)

The EIOPA's seat is in Frankfurt am Main. 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 establishing a European Supervisory Authority (European Securities and Markets Authority)

The ESMA is located in Paris. Its set-up is similar to the other ESAs, but its scope is directed at securities markets and their participating institutions. In the EU the ESMA has sole responsibility for the registration and supervision of credit rating agencies.

**2. Joint Committee of the European Supervisory Authorities**

The Joint Committee is responsible for overall and cross-sectoral coordination, with the aim of ensuring 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 to combat money laundering, information exchange between ESRB and ESAs and the development of relations between these institutions. The Joint Committee is responsible for the settlement of cross-sectoral disputes between ESFS Authorities.

The Joint Committee is composed of the Chairpersons of the ESAs (and of possible subcommittees) and chaired by one ESA Chairperson for a rotating 12-month term. The Chairperson of the Joint Committee is the Vice-Chair of the ESRB. The Joint Committee must 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 designates its own 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 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board

- Council Regulation (EU) No 1096/2010 conferring specific tasks upon the European Central Bank concerning the functioning of the European Systemic Risk Board

Macro-prudential oversight is carried out at European level by the European Systemic Risk Board (ESRB) established in Frankfurt am Main. Its objective is to prevent and mitigate systemic financial stability risk in the European Union in the light of 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 their follow-up, issuing a confidential warning and providing an assessment to the Council when the ESRB determines that an emergency situation may arise, cooperating with other parties of ESFS, coordinating its actions with international financial organisations such as the IMF and the Financial Stability Board (FSB), and carrying out tasks specified in other Union legislation. The European Central Bank (ECB) provides the Secretariat for the ESRB and the President of the ECB is Chair of the ESRB.

**C. Cooperation at various levels**

The various entities within the ESFS also coordinate at international level with various institutions.

**Further development of the supervisory framework**

The financial crisis showed that simple coordination of financial supervision via the ESFS was not sufficient to prevent fragmentation of the European financial market. In order to overcome this obstacle, in mid-2012 the European Commission proposed a Banking Union, which would adopt a more integrated approach and complement the single currency area and the single market. This framework comprised a Single Supervisory Mechanism (SSM), a Single Resolution Mechanism (SRM), 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.

**A. Single Supervisory Mechanism (SSM)**

The objective of the SSM is to ensure consistent, coherent supervision of credit institutions in order to prevent regulatory arbitrage and fragmentation of the financial services market in the Union. Participating Member States are all euro area Member States and non-euro area Member States which decide to join. The SSM is composed of the ECB and the national competent authorities. The ECB is responsible for the effective and consistent functioning of the mechanism. The ECB and the

national competent authorities cooperate and exchange information. As of November 2014, the SSM Regulation confers specific tasks relating to the prudential supervision of credit institutions in the participating Member States on the ECB. These tasks include authorising credit institutions, ensuring compliance with prudential and other regulatory requirements, carrying out supervisory reviews, etc. Besides these micro-prudential tasks, the ECB also has macro-prudential tasks and tools at its disposal, for example in relation to capital buffers. For this purpose the governance structure of the ECB has been adapted through the establishment of a Supervisory Board.

In order to ensure consistent supervision the ECB cooperates closely with the other authorities forming the ESFS, in particular with the EBA.

### **B. Single Resolution Mechanism (SRM)**

In April 2014 the EP adopted a regulation establishing the Single Resolution Mechanism (SRM) and Single Bank Resolution Fund (SRF). The SRM provides tools and instruments for the recovery and resolution of credit institutions and certain investment firms in the euro area and other participating Member States. The Resolution Board is the decision-making body. The SRF serves as financial backstop. Some aspects of the SRF, such as the transfer and mutualisation of national contributions, are covered by an intergovernmental agreement. The SRM is not the same as the Bank Recovery and Resolution Directive, which ensures harmonised national recovery and resolution mechanisms in all EU countries.

### **C. Deposit Guarantee Schemes (DGSs)**

DGSs are closely linked to the recovery and resolution procedure of credit institutions and provide an important safeguard for financial stability. In 2010, the Commission tabled a proposal for a recast of the (existing) DGS Directive. In April 2014, the European Parliament adopted this recast. In the event of the non-payment of due deposits, up to EUR 100 000 of covered deposits are protected (in some cases a higher level of protection is possible temporarily). Other major achievements include risk-based contributions, shortened repayment

deadlines (from 20 to 7 working days), and voluntary lending between DGSs in different Member States. The Banking Union framework initially included a 'common' DGS, but discussions are ongoing as to whether such a DGS is necessary, and, if it is, how it should look.

### **D. Other elements**

In order to ensure a level playing field, a single rulebook must be developed. A single supervisory handbook will ensure consistent supervision and is to be developed by the relevant competent authorities. Initiatives for structural bank reforms which are currently under discussion (e.g. the Liikanen report) may also have an impact on the supervisory framework. Several Member States, including France and Germany, have already adopted legislative measures in this regard. The Commission published its proposal (COM(2014) 43 final) in January 2014.

### **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 pillars of the Banking Union. It has a role as regards the delegated acts (regulatory technical standards) and implementing acts (implementing technical standards) adopted by the Commission. 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 EP also votes to decide whether to grant discharge to the various authorities each year. The EP and the ECB have also concluded an Interinstitutional Agreement (2013/694/EU) to ensure that there is accountability and oversight over the exercise of the tasks conferred on the ECB within the SSM framework.

→ 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](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.

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→ Doris Kolassa

# **ECONOMIC AND MONETARY UNION**

# **4**

**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

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## 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 Luxembourg, 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.

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→ [Dirk Verbeke](#)

## 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 to 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'<sup>[1]</sup>.

### 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.

<sup>[1]</sup> 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<sup>[1]</sup>. 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'<sup>[2]</sup>.

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

<sup>[1]</sup> 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>

<sup>[2]</sup> See speech by Mr González-Páramo, October 2011.

## 4.1.4. Economic governance

*Economic governance refers to the system of institutions and procedures established with a view to achieving Union objectives in the economic area, namely the coordination of economic policies to promote economic and social progress for the EU and its citizens.*

*The financial, fiscal and economic crises that originated in 2008 showed that the EU needed a model of economic governance that was 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 provisions and the adoption of new ones, establishing reinforced coordination and surveillance of both fiscal and macroeconomic policies, and the setting 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 and 282-284 of the Treaty on the Functioning of the European Union (TFEU);
- Protocols annexed to the TFEU: Protocol No 12 on the excessive deficit procedure, Protocol No 13 on the convergence criteria and Protocol No 14 on the Euro Group.

### Objectives

#### A. Treaty provisions

The preamble to the TEU states that 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 the Member States to view their economic policies as a matter of common concern and to coordinate them closely. The areas and forms of coordination are specified in Article 121, which lays down the procedure related to the general (Broad Economic Policy Guidelines) and specific policy recommendations, and Article 126, which establishes the procedure to be followed in case of excessive government deficits (4.2.1).

Articles 136-138 lays down specific provisions for those Member States whose currency is the euro, requiring them to strengthen their 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 crisis that originated in 2008 showed that financial, fiscal and

macroeconomic 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, macroeconomic issues, crisis management and macrofinancial 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) (4.2.1). 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 a crisis management tool, e.g. the setting-up of the European Financial Stability Mechanism in May 2010;
- The open method of coordination, by which the 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, whereby the entire authority over a policy could be delegated to a single institution (examples include monetary policy (4.1.3) and competition policy (3.2.1), delegated to the European Central Bank (ECB) and the Commission respectively).

## B. Economic governance since 2011

The crisis exposed fundamental problems and unsustainable trends in many European countries, and made it clear that the EU's economies are strictly interdependent. Greater economic policy coordination across the EU was considered necessary to address problems and to boost growth and job creation in future. To this end, 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 'six-pack'), in 2012 (with proposals on the 'banking union' and the setting-up of the European Stability Mechanism (ESM)), and in 2013 (with the adoption of the 'two-pack' and other legislative proposals, which are still in the process of being adopted).

### 1. Reinforced economic and fiscal surveillance, and coordination thereof under the European Semester

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 (4.2.1); new tools to tackle macroeconomic imbalances (4.2.2); and 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 the Member States' budgetary, macroeconomic 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 macroeconomic imbalance and financial issues — are included. The key stages in the European Semester are as follows:

- In late autumn the Commission presents the Annual Growth Survey (AGS), which sets out what it considers to be the EU's priorities for the upcoming year, in terms of economic, budgetary and labour policies and of other reforms needed to boost growth and employment. The Commission also publishes the Alert Mechanism Report (AMR), which identifies those Member States with potential macroeconomic imbalances.
- The spring European Council gives strategic guidance on the priorities to be pursued during the Semester cycle. It explicitly invites the Member States to take account of these priorities in the drafting of their Stability and

Convergence Programmes (SCPs) and National Reform Programmes (NRPs), including their National Job Plans.

- In April the Member States submit their plans for sound public finances (Stability and Convergence Programmes) and for reforms and measures to make progress towards smart, sustainable and inclusive growth (National Reform Programmes). This joint submission allows account to be taken of 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 the Member States towards the targets defined in the Europe 2020 strategy and the correction of macroeconomic imbalances. On the basis of such assessments, 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 in 2011. EU-level discussions on fiscal policy, macroeconomic imbalances, financial sector issues and growth-enhancing structural reforms take place jointly during the European Semester, 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 the Euro Plus Pact, was agreed in March 2011 among euro area Member States, as well as among six non-euro area countries that chose to sign up: Bulgaria, Denmark, Latvia, Lithuania, Poland and Romania. It focuses on four areas: competitiveness, employment, sustainability of public finances and the reinforcement of financial stability. All 23 signatories are committed to implementing the reforms in detail. The remaining five Member States are free to sign up if they wish. The Euro Plus Pact is fully embedded in the new economic governance framework, and the commitments made therein are included in the National Reform Programmes of the Member States concerned.**
3. **By way of action to repair the financial sector, the EU has established new rules, and set up European supervisory authorities (ESAs), to prevent crises and make sure that financial players are properly regulated and supervised. Further work is under way, in particular to ensure that Europe's banks have sufficient capital reserves to enable them to withstand any future**

**shocks to the financial system, so that they can continue to function and provide 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, information exchanges and the implementation of the recommendations and decisions adopted by the Ecofin Council. The Eurogroup (comprising the finance ministers of the Member States that have introduced the euro) discusses matters concerning the European Monetary Union (EMU), usually before the Ecofin Council meeting. The ECB participates in the Group's deliberations in matters pertaining to monetary or exchange rate policy. The Commission is in charge of reporting, preparing and making recommendations, and of following up the implementation of decisions. The Economic and Financial Committee (EFC) gives opinions and prepares the Council's work, as do the Economic Policy Committee (EPC) and the Eurogroup Working Group, which also contribute to the Commission's work.

### Role of the European Parliament

With the entry into force of the Lisbon Treaty, Parliament 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 Parliament, the Council and

the Commission, and to ensure greater transparency and accountability, Parliament's competent committee may invite the President of the Council, the Commission, the President of the European Council or the President of the Eurogroup to discuss their respective decisions or present their activities in the context of the European Semester. In the framework of this dialogue, Parliament may also offer a Member State that is subject to a Council decision under the excessive deficit procedure or excessive imbalance procedure the opportunity to participate in an exchange of views.

Under the European Semester, 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, Parliament 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 the chairs of the national parliaments' competent committees.

Parliament 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 the preparation of stability or convergence programmes and national reform programmes, in order to increase the transparency and ownership of, and accountability on, the decisions taken.

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→ 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 highlights the urgent need for major improvements to the fiscal policy framework. 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), the fiscal component of which is the Fiscal Compact, entered into force on 1 January 2013. The Fiscal Compact complements and reinforces the Six-Pack. In addition, an important regulation (part of the so-called 'Two-Pack') entered into force on 30 May 2013. It aims to further strengthen 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 and 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 showed the need for stricter rules, considering the spillover 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 for 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 the 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 of 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 in 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 for cyclical effects and one-off temporary measures. This objective has to be revised every three years, or when major structural reforms are implemented which impact 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), examines the programmes. In particular, progress made in order to achieve the MTO is 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 consulting the EFC, the Council adopts an opinion on the programme. In its opinion, the Council can ask 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 the MTO, the Commission addresses a warning to the Member State concerned in accordance with Article 121(4) TFEU (Articles 6 and 10 of amended Regulation No 1466/97). This warning is given in the form of a Council recommendation requesting the necessary policy adjustments by the Member State concerned.

**Sanctions:** For euro area Member States, the amended SGP also foresees the possibility of imposing 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 forms 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 criterion or the 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: 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 amended regulation also contains provisions clarifying when, if a deficit is higher than the stated reference value, it will be considered exceptional (resulting from an unusual event or a severe economic downturn, etc.) or temporary (when 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 lay down the procedure for assessing and deciding on an excessive deficit. The Commission prepares a report if a Member State does not comply with, or if there is a risk that it will not comply with, at least one of the two criteria. The EFC formulates an opinion on this report. If the Commission sees an excessive deficit as a given (or as a possible occurrence), it addresses an opinion to the Member State concerned and informs the Council. Based on a Commission proposal, the Council has the final decision on 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, setting 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 cases of non-compliance (Article 126(11) TFEU). For euro area Member States, as a rule, this sanction is a fine, consisting of a fixed component (0.2% of GDP) and a variable component (up to a maximum 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 intergovernmental Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, the fiscal component of which is the Fiscal Compact, was signed by all Member States except the UK and the Czech Republic (Croatia also did not sign the Treaty, either before or after its EU accession on 1 July 2013). However, in March 2014, the Czech Government expressed its interest in adopting the Treaty. The Fiscal Compact provides for an enshrining of the balanced budget 'golden rule', with a lower limit of structural deficit of 0.5% GDP, into national law, preferably at constitutional level (the 'debt brake'). Member States bring proceedings against other Member States before the European Court of Justice in cases where this rule has not been properly implemented. Additional provisions include, inter alia, automatic triggering of the correction mechanism and enforced rules for countries under the excessive deficit procedure. In addition, financial assistance from the European Stability Mechanism will only be 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, for regulations whose purpose is to further strengthen economic governance in the euro area (the 'Two-Pack'):

- the 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

- the 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 are to provide for common budgetary timelines for all euro area Member States, and for rules on the monitoring and assessment by the Commission of Member States' budget plans. In cases of serious non-compliance with the SGP rules, the Commission can request that the plans be revised. Furthermore, it stipulates that euro area Member States which are subject to an excessive deficit procedure must present an Economic Partnership Programme detailing the policy measures and structural reforms needed to ensure an effective and lasting correction of the excessive deficit. The Council, acting on a proposal from the Commission, adopts opinions on the economic partnership programmes.

The second regulation concerns Member States experiencing or threatened with serious difficulties with respect to their financial stability. It sets rules for enhanced surveillance, financial assistance and post-programme surveillance (as long as a minimum of 75% of the financial assistance received has not been repaid).

### 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 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, which gives Parliament a prominent role in the newly-established fiscal policies framework in that it entitles the competent committee of Parliament to invite the President of the Council, the Commission, the President of the European Council or the President of the Eurogroup for discussion. Parliament is also informed, on a regular basis, on the application of the regulations. Furthermore, the Commission's powers to impose extra reporting requirements within the framework of the new regulation on monitoring and assessing draft budgetary plans and ensuring correction of the excessive deficit of the Member States in the euro area will now have to be renewed every three years, with Parliament or the Council 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 in Member States, paying specific attention to those macroeconomic imbalances with potential spill-over effects on other Member States.*

### 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 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 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;

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. 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. In March 2014 the Commission published the country-specific in-depth reviews and, on the basis of its analysis, identified macroeconomic imbalances in 14 of the 17 Member States analysed (Ireland was added, as it had exited its financial assistance programme). Three of the Member States concerned (Croatia, Italy and Slovenia) are experiencing excessive imbalances, and in June 2014, following submission of the national reform programmes, the Commission will decide on what procedural step to take, as provided for under the MIP and/or the EIP.

## Role of the European Parliament

With the entry into force of the Treaty of Lisbon, 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.

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→ Alice Zoppè

### 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.

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→ [Manica Hauptman / Cécile Bourgault](#)



## 4.2.4. Banking Union

*Banking Union is part of an integrated financial framework and a response to multiple financial and economic crises that was conceptualised when it became clear that a robust reform addressing the regulatory and supervisory shortcomings was needed. Members of the euro area are automatically part of the Banking Union, while other Member States may opt in. Banking union rests on three pillars: (i) the Single Supervisory Mechanism (SSM), (ii) the Single Resolution Mechanism (SRM) and (iii) related funding arrangements, including a Single Resolution Fund (SRF), deposit guarantee schemes (DGS) and a common backstop (credit line). The latter remains incomplete and will be discussed further. The three pillars are based upon two horizontal sets of rules that apply to all Member States: capital requirements for banks (CRD IV package) and provisions of the Bank Recovery and Resolution Directive (BRRD).*

### Legal basis

Articles 114 and 127(6) of Treaty on the Functioning of the European Union (TFEU).

### Objectives

Banking Union is an essential complement to the Economic and Monetary Union (EMU) and the internal market, which aligns responsibility for supervision, resolution and funding at EU level and forces banks across the euro area to abide by the same rules. These rules shall ensure, in particular, that banks take measured risks, and that a bank that errs pays for its losses and faces the possibility of closure. The new rules that are currently being put in place through several legislative acts shall ensure that banks and their shareholders, but no longer taxpayers, carry the risks and pay for eventual losses.

### Achievements

In December 2012, the President of the European Council, in close collaboration with the Presidents of the European Commission, the European Central Bank (ECB) and the Eurogroup, drew up a specific and time-bound road map for the achievement of a genuine EMU. One of the vital parts of this road map was the creation of a more integrated financial framework, i.e. the Banking Union.

In March 2013, a political agreement was reached between Parliament and the Council on establishing the first pillar of the Banking Union, the Single Supervisory Mechanism (SSM), covering all banks in the euro area. The SSM has been placed within the ECB and will be responsible for the direct supervision of the 128 largest banks, while national supervisors will continue to carry out the supervision of other banks, but under the ultimate responsibility of the ECB. Non-euro area Member States may participate in the SSM. In order to avoid a potential conflict of interests, clear rules govern the organisational and operational separation of the ECB roles in the area of supervision and of monetary policy. The

SSM is expected to become fully operational in November 2014.

In March 2014, a political agreement was reached between Parliament and the Council on establishing the second pillar of the Banking Union, the Single Resolution Mechanism (SRM). The main objective of the SRM is to ensure that potential future bank failures in the banking union are managed efficiently, with minimal costs to taxpayers and the real economy. The scope of the SRM mirrors that of the SSM, meaning that it holds the ultimate responsibility for the resolution of all banking cases in the euro area, while in practice there will be a distribution of tasks between the SRM and national authorities; the SRM will be directly responsible for the significant banks and cross-border cases.

While the rules governing the Banking Union aim to ensure that any resolution is first financed by a bank and its shareholders, and if necessary also partly by a bank's creditors, there will also be another funding source available that can step in if neither the contributions of shareholders nor those of a bank's creditors are sufficient. The Single Resolution Fund (SRF) was established for this situation through an Inter-Governmental Agreement (IGA), which will also govern the provisions relating to the transfer of contributions and mutualisation of the SRF. The period for both the mutualisation and the pay-in to the SRF is 8 years, with a non-linear mutualisation of 40% the first year and a further 20% the second year.

In March 2014, a political agreement was reached between Parliament and the Council on a Deposit Guarantee Scheme (DGS) directive, contributing together with the SRF and the European Stability Mechanism (ESM) facility to the third pillar of the Banking Union. The DGS basically sets the threshold of EUR 100 000 for depositor protection. It requires higher amounts to be protected if they are temporary high balances arising from, for example, house sales. The deadline for deposits to be paid out in the event of a bank failure has been reduced to just 7 days, which is much quicker than at present, and depositors will be able to access

sufficient amounts for living expenses in just 5 days. The directive recognises the possibility for DGS to be involved in financing measures to avoid bank failure, as well as protecting depositors should failure occur.

The Bank Recovery and Resolution Directive (BRRD) provides for ways in which ailing banks can be resolved without requiring taxpayer bailouts. It provides for recovery and resolution plans ('living wills') and sets out that losses have to be borne first by shareholders and creditors, rather than through recourse to state funds. If external money is needed, Member States have to create a financing arrangement from contributions by the banking sector. Its requirements apply to all banks and investment firms. If covered depositors were to be affected then the DGS would step in. The level of the resolution fund (or levy arrangement) shall reach 1% of covered deposits in 8 years, but those funds can only be used in a resolution scenario after 8% of a bank's liabilities have already been bailed in or written down.

In April 2014, Parliament adopted the CRD IV package composed of the fourth Capital Requirements Directive (CRD) and the Capital Requirements Regulation (CRR). These two legal acts transpose into European law the prudential capital requirements for credit institutions and investment firms which are based on the internationally agreed principles (Basel III). The package entered into force on 1 January 2014 and preserves the level playing field inside the single market by achieving a Single Rule Book for all 8 200 banks in the EU. It

strengthens the bank capital and liquidity standards, and addresses the procyclical nature of Basel II rules, as well as disclosure requirements. The rules for compensation practices (e.g. bonuses) have also been reformed, as well as incentives for lending to the real economy, especially SMEs. During the next legislature (2014-2019) the Commission shall submit further legislative acts to review certain provisions of the CRD IV package and Level 2 measures.

### Role of the European Parliament

As a response to the road map on a genuine EMU, Parliament adopted a resolution 'Towards a genuine Economic and Monetary Union' on 20 November 2012, with recommendations to the Commission to establish a real Banking Union. By adopting legislative acts on the SSM, SRM, DGS, BRRD and CRD IV in 2013 and 2014, Parliament contributed significantly to establishing a real Banking Union.

These legislative acts give Parliament a role in the scrutiny of the newly established institutions. The ECB is, in its supervisory role (i.e. SSM), accountable to Parliament and to the Council. Details of its accountability towards Parliament are laid down in an Interinstitutional Agreement (IIA) between Parliament and the ECB. The same applies to the Single Resolution Board, whose Chair shall participate at least once every calendar year in a hearing by the competent committee of Parliament on the execution of the resolution tasks by the Board.

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→ Manica Hauptman / Marcel Magnus



# SECTORAL POLICIES

# 5

**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.**



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## 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. Structural Funds European Social Fund European Agricultural Guidance and Guarantee Fund European Regional Development Fund Cohesion Fund

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. economic and social cohesion territorial cohesion cohesion policy 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 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 two main goals:

- **investment for growth and jobs** — aiming to strengthen the labour market and regional economies;
- **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.ordinary legislative procedure

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.

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→ Marek Kołodziejski

## 5.1.2. European Regional Development Fund (ERDF)

*The European Regional Development Fund (ERDF) is one of the main financial instruments of the European Cohesion Policy. Its purpose is to contribute to reducing disparities between the levels of development of European regions and to reduce the backwardness of the least favoured regions. Particular attention is to be paid to regions which suffer from severe and permanent natural or demographic handicaps such as the northernmost regions with very low population density as well as island, cross-border and mountain regions.*

### Legal basis

Articles 174 to 178 of the Treaty on the Functioning of the European Union (TFEU).

### Objectives

Article 176 of the TFEU provides that the European Regional Development Fund is intended to help to redress the main regional imbalances in the European Union. It can do that through the support to:

- the development and structural adjustment of regions whose development is lagging behind;
- the conversion of declining industrial regions.

Following several revisions of its governing rules, ERDF, ESF and the Cohesion Fund have two main goals for the period 2014-2020, namely:

- Investments for growth and jobs — aiming to strengthen the labour market and regional economies;
- European territorial cooperation — aiming to strengthen cross-border, transnational and inter-regional cooperation of the European region.

Resources assigned for the first goal will be allocated in three different categories of regions:

- More developed regions with the GDP per capita over 90% of the EU average;
- Transition regions with the GDP per capita between 75% and 90% of the EU average; and
- Less developed regions with the GDP per capita below 75% of the EU average.

The European Regional Development Fund supports also sustainable urban development. At least 5% of the ERDF allocation for each Member State has to be earmarked for the integrated actions for sustainable urban development that will tackle the economic, environmental, climate, demographic and social challenges affecting urban areas.

Details of allocation and the future use of ERDF funds are determined in the Partnership Agreements. These strategic documents are prepared by each EU Member State with participation of regional and social partners.

### Thematic concentration

As ERDF contributes to the Europe 2020 Strategy for smart, sustainable and inclusive growth. Thus it has to focus on the priorities specified in this strategy. The main priorities are:

- a. Research and innovation;
- b. Information and communication technologies (ICT);
- c. Small and medium-sized enterprises (SMEs); and
- d. Promotion of a low-carbon economy.

Depending on which category of regions is supported, different level of the concentration is required. More developed regions shall allocate at least 80% of their ERDF resources to at least two of these priorities and at least 20% to the low-carbon economy. The transition regions shall allocate at least 60% of their ERDF resources to at least two of these priorities and at least 15% to the low-carbon economy. Less developed regions shall allocate at least 50% of their ERDF resources to at least two of these priorities and at least 12% to the low-carbon economy.

### Budget and financial rules

During the period 2014-2020 European Union will allocate over EUR 325 billion (in 2011 prices) for its Cohesion Policy. This will cover almost EUR 256 billion for two structural funds: the European Regional Development Fund and the European Social Fund (ESF). The share of this budget dedicated to the ERDF will be decided on the level of each EU Member State.

ERDF and ESF				ERDF
Investment for growth and jobs				European territorial cooperation
Less developed regions	Transition regions	Special allocation for outermost and sparsely populated regions	More developed regions	
164.279	32.085	1.387	49.271	8.948

Source: European Commission (in billion euro, in 2011 prices)

The level of required co-financing in projects financed by ERDF is adapted to the development of the concerned regions. In the less developed regions (and outermost regions) ERDF can finance up to 85% of the cost of the project. In the transition regions this can be up to 60% and in the more developed regions up to 50% of the cost of the projects.

### Role of the European Parliament

Thanks to the new rules brought in by the Treaty of Lisbon, Parliament is on an equal footing with the Commission and the Council when it comes to

preparing new legislation concerning the Structural Funds. The regulation for ERDF for the period 2014-2020 was subject to the ordinary legislative procedure, where the European Parliament has full rights to propose modifications. During the negotiations on the EU Cohesion Policy for the period 2014-2020, European Parliament has managed to increase the flexibility in applying the thematic concentration and investment priorities rules. In addition it has strengthened the support of ERDF for cities and integrated urban policies.

→ Marek Kołodziejewski

### 5.1.3. Cohesion Fund

*The Cohesion Fund, 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 Cohesion Fund was established for the purpose of strengthening the economic, social and territorial cohesion of the European Union in the interests of promoting sustainable development. It provides a financial contribution to projects in the fields of:

- the environment, including areas related to sustainable development and energy which present environmental benefits;
- trans-European networks in the area of transport infrastructure.

In the context of projects serving the EU's environmental protection objectives, the Cohesion Fund may also contribute in fields relating to sustainable development which will benefit the environment, such as energy efficiency, renewable energy and — in the transport sector outside 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.

As of 2014, the Cohesion Fund also supports transport infrastructure projects under the new Connecting Europe Facility. Such projects focus on infrastructure connecting transport systems in different Member States. EUR 10 billion is allocated under the Cohesion Fund for actions in this field.

#### Eligible countries

The Cohesion Fund is reserved for Member States whose gross national income (GNI) per capita is less than 90% of the EU average. During the 2007-2013 period, it provided funding for Bulgaria, Cyprus, the Czech Republic, Estonia, Greece, Hungary, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovakia, Slovenia and, from 1 July 2013, Croatia. Spain was eligible on a transitional basis.

During the 2014-2020 period, the Cohesion Fund will provide funding for Bulgaria, Croatia, the Czech Republic, Estonia, Greece, Hungary, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovakia and Slovenia. Cyprus will be eligible on a transitional basis.

#### Budget and financial rules

During the 2007-2013 programming period, the EU allocated EUR 61 billion to the Cohesion Fund (EUR 58 billion + EUR 3 billion for specific transitional support).

During the 2014-2020 period, the EU will allocate over EUR 66 billion (in 2011 prices) to the Cohesion Fund. This includes EUR 10 billion for the Connecting Europe Facility.

Member State	Budget
Bulgaria	2 384
Czech Republic	6 562
Estonia	1 123
Greece	3 407
Croatia	2 676
Cyprus	286
Latvia	1 412
Lithuania	2 145
Hungary	6 313
Malta	228
Poland	24 274
Portugal	3 000
Romania	7 251
Slovenia	939
Slovakia	4 361
<b>Total</b>	<b>66 362</b>

Source: European Commission (in EUR million, in 2011 prices)

The level of financing from the Cohesion Fund for a project can amount to up to 85% of its cost.

#### Role of the European Parliament

Thanks to the new rules brought in by the Treaty of Lisbon, Parliament is on an equal footing with the Commission and the Council when it comes to preparing new legislation concerning cohesion policy. The Cohesion Fund Regulation for the 2014-2020 period was subject to the ordinary legislative procedure, in which Parliament has full rights to propose amendments.



During the negotiations on EU cohesion policy for the 2014-2020 period, Parliament managed to make the proposed rules more flexible and better suited to the needs of the Member States. It managed to broaden the scope of Cohesion Fund investment, as compared with the Commission proposal, to include investment in energy efficiency and renewable energy use, in particular in the housing sector.

Parliament supported the idea of introducing common indicators for the Cohesion Fund, which will facilitate future assessment of its use. It successfully insisted that, as compared with the Commission proposal, the regulation include the possibility of amending the list of these indicators, through delegated acts, where adjustments are deemed necessary in order to ensure effective assessment of progress with regard to implementation.

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→ Marek Kołodziejewski

## 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, Article 212(2) of the Treaty on the Functioning of the European Union (TFEU), and Council Regulation (EC) No 1012/2002 of 11 November 2012 establishing the European Union Solidarity Fund.

### 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.

### Budget and achievements

The Solidarity Fund was set up under Regulation (EC) No 1012/2002 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 the EU, 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 Solidarity 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. Commission proposal presented in July 2013 to amend Regulation (EC) No 2012/2002

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 unblock the situation, the Commission proposed, in its communication on the Future of the European Union Solidarity Fund of 6 October 2011, ways to improve the functioning of the Fund, but this did not lead to a reboot of the debate. On 25 July 2013, the

Commission presented a new legislative proposal, including the following proposed modifications:

- speeding-up of payments;
- the introduction of possible advance payments (10% of anticipation, capped at EUR 30 million);
- a clearer definition of the scope for intervention through the Solidarity Fund, both in general terms and in the event of slowly unfolding disasters such as droughts;
- a new and simplified definition of 'regional disasters', introducing a damage threshold of 1.5% of GDP;
- 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 had already welcomed the Commission's stance and proposed the implementation of a new, expanded Solidarity Fund to cover the 2007-2013 period. Unlike the Council, which never issued a common position on the matter, Parliament welcomed the Commission's initiatives to keep the topic on the political agenda.

In its 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, elements taken on board in the new legislative proposal of July 2013. The Commission's proposal also incorporated other suggestions from Parliament, such as the 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.

On the basis of the abovementioned Commission proposal of July 2013, both Parliament and the Council adopted their respective positions, on the basis of which interinstitutional negotiations took place in February 2014, a compromise being reached after three meetings. The proposed agreement is waiting to be endorsed by both Parliament (vote in plenary scheduled for 16 April 2014) and the Council. Should the final agreement be reached, the negotiations under the ordinary legislative procedure can come to an end after the first reading,

and the new rules for the Solidarity Fund (amending the original Regulation) will enter into force on the day following that of their publication in the Official Journal of the European Union.

Parliament's negotiating position included strong support for the advance payment mechanism. Initially deleted by the Council, this new provision is part of the compromise reached (with the threshold foreseen in the Commission proposal, i.e. 10% up to a ceiling of EUR 30 million).

Regarding the threshold for the eligibility of regional disasters, the final agreement maintains the rate of 1.5% of regional GDP, as foreseen in the Commission proposal, but Parliament managed to secure a lower threshold of 1% of GDP for the outermost regions of the European Union. Other achievements include

extending Member States' time-limit for submitting applications to 12 weeks (the Commission and Council position was 10 weeks), introducing a 6-week deadline for the Commission to reply to applicants, and extending the period during which contributions from the Fund are to be used to 18 months (the Commission and Council position was 12 months).

Technical assistance is, in principle, not eligible for support, but Parliament's position introduced a derogation to this provision and it was taken on board in the compromise: technical assistance costs directly linked to preparation and implementation of projects are eligible for funding.

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→ [Diána Haase](#)

## 5.1.5. Support from the European Regional Development Fund for European Territorial Cooperation

*European Territorial Cooperation is the instrument of cohesion policy that aims to solve problems across borders and to jointly develop the potential of diverse territories. Cooperation actions are supported by the European Regional Development Fund through three key components: cross-border cooperation, transnational cooperation and interregional cooperation.*

### Legal basis

Article 178 of the Treaty on the Functioning of the European Union and Regulation (EU) No 299/2013 of 17 December 2013.

### General Provisions

European Territorial Cooperation (ETC) has been a part of cohesion policy since 1990. For the programming period 2014-2020, for the first time in the history of European cohesion policy, a specific regulation has been adopted covering European territorial cooperation actions supported by the European Regional Development Fund (ERDF). ETC is the instrument of cohesion policy that is designed to solve problems which transcend administrative borders and require a common solution, and to jointly develop the potential of diverse territories.

The amount allocated to ETC for the 2014-2020 budgetary period is EUR 8 948 million. These resources are divided as follows:

1. 74.05% for cross-border cooperation. These programmes aim to bring together regions or local authorities having a common border (land or maritime) in order to develop the border areas, exploit their untapped growth potential and to tackle jointly identified common challenges. These common challenges include issues such as: poor accessibility in relation to information and communication technologies (ICTs); poor transport infrastructure; declining local industries; an inappropriate business environment; lack of networks among local and regional administrations; low levels of research and innovation and take-up of ICTs; environmental pollution; risk prevention; negative attitudes towards citizens of neighbouring countries, etc;
2. 20.36% for transnational cooperation. These programmes cover larger transnational territories and aim to strengthen cooperation on the basis of actions that promote integrated territorial development between national, regional and local entities in large European geographical areas. They will also include maritime cross-border cooperation where not covered by cross-border cooperation programmes;
3. 5.59% for interregional cooperation. These programmes aim to reinforce the effectiveness of

cohesion policy on the basis of actions that promote exchanges of experience between regions on issues such as design and implementation of programmes, sustainable urban development, and analysis of development trends in the Union's territory. Exchanges of experience can include the promotion of mutually beneficial cooperation between innovative research-intensive clusters and exchanges between researchers and research institutions.

### Geographical coverage

In principle all internal and external land borders of the EU, as well as maritime borders (regions separated by a maximum of 150 km, or in the case of outermost regions more than 150 km), can be supported through the cross-border cooperation component. The areas covered by transnational cooperation are to be defined by the Commission, taking into account macro-regional and sea-basin strategies, and with the option for Member States of adding adjacent territories. Interregional cooperation will cover the entire territory of the Union. Outermost regions may combine both cross-border and transnational cooperation actions in a single cooperation programme.

Third countries may also participate in cooperation programmes. In such cases, ERDF support may either take the form of financial contribution to programmes under the European Neighbourhood Instrument (ENI) and the Instrument for Pre-Accession Assistance (IPA II), or operate as a separate measure.

### Thematic concentration

In order to maximise the impact of cohesion policy and contribute to the delivery of the Europe 2020 strategy, ERDF support for ETC programmes has to be concentrated on a limited number of thematic objectives<sup>[1]</sup> which are directly linked to that strategy's priorities. Under each thematic objective a list of investment priorities is defined in the Regulation governing the ERDF<sup>[2]</sup>; these are

<sup>[1]</sup> There is a list of thematic objectives in Article 9 of Regulation (EU) No 1303/2013 of 17 December 2013.

<sup>[2]</sup> Article 5 of Regulation (EU) No 1301/2013 of 17 December 2013.

complemented by additional priorities adapted to the specific needs of ETC actions.

Cross-border and transnational programmes have to be concentrated on a maximum of four thematic objectives, whereas for interregional cooperation there is no such limitation. Examples of priority areas of support specific to ETC programmes are as follows:

1. Cross-border cooperation: promotion of sustainable and quality employment and supporting labour mobility by integrating cross-border labour markets, promoting social inclusion and the integration of communities across borders, developing and implementing joint education, vocational training and training schemes, etc;
2. Transnational cooperation: enhancing the institutional capacity of public authorities and stakeholders and efficient public administration by developing and coordinating macro-regional and sea-basin strategies;
3. Interregional cooperation: enhancing the institutional capacity of public authorities and stakeholders and efficient public administration by disseminating good practices and expertise, promoting exchanges of experience, etc.

### Specific provisions for cooperation programmes

Given the involvement of more than one Member State in the design and implementation of cooperation programmes, several specific issues are addressed with the regulatory provisions for ETC, such as allocation of liabilities in the case of financial corrections, procedures for the setting-up of a joint secretariat by the respective Managing Authority, special procedures for the involvement of third countries or territories, requirements for implementation reports, etc.

Member States participating in a cooperation programme have to designate a single managing authority, a single certifying authority and a single audit authority. Moreover, the managing and the audit authority have to be located in the same Member State.

The rule that applies to other programmes under the ERDF that each Member State is to adopt national rules on eligibility of expenditure is not appropriate for ETC. Consequently, a clear hierarchy of rules on eligibility of expenditure has to be established at European level by the Commission.

Also, the involvement of several countries results in higher administrative costs. Thus, the ceiling for technical assistance expenditure has been fixed at a higher level than is the case for other types of programmes.

### Role of the European Parliament

As the ETC Regulation falls under the ordinary legislative procedure, the European Parliament was able to decide on its content on an equal footing with the Council. The EP advocated maintaining the existing ETC structure with its three different types of programmes.

The EP paid attention to the specific challenges of outermost regions, and in order to facilitate cross-border cooperation on maritime borders for those regions, more flexibility was introduced into the 150-km limit rule. Moreover, thanks to an initiative of Parliament the outermost regions may combine in a single programme for territorial cooperation the ERDF allocations for cross-border and transnational cooperation. Finally, specific rules were created to meet the needs of outermost regions cooperating with third countries.

In the case of transnational cooperation, Parliament successfully defended its view that the Commission has to take account of existing and future macro-regional and sea-basin strategies when deciding on the list of areas entitled to receive support.

More flexibility was introduced into the rules by the EP in two ways: by concentrating 80% of the funds on four thematic objectives and leaving the remaining 20% open; and by introducing a flexibility margin of 15% for transferring resources between the cross-border and transnational strands.

Parliament considers that the list of the different investment priorities has been adapted to the specific needs of European Territorial Cooperation. The implementation modalities have been streamlined for cooperation programmes, meaning a reduction in the number of authorities involved in programme implementation along with clarification of their respective responsibilities. Content requirements with regard to cooperation programmes and implementation reports have been fine-tuned with the aim of reducing the administrative burden for programme authorities.

The EP has strongly defended the need to improve European territorial cooperation, particularly in the following aspects:

- Reinforcing European territorial cooperation as a standalone EU cohesion policy goal, underpinned by a sound level of funding for the entire period 2014-2020;
- Striking the right balance for thematic concentration, to make it strong enough to be in line with the 2020 objectives, but also flexible enough to be adapted to the different needs of cross-border and transnational cooperation;
- Improving the management and auditing of programmes, to ensure delivery of good results.

→ Diána Haase (+ Eduardo Inclán Gil)



## 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. This hierarchical system also serves socioeconomic analyses of the regions and the framing of interventions in the context of EU cohesion policy.*

### Legal basis

Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003, which has been amended on several occasions (in 2005, 2008 and 2013) upon accession of new Member States to the EU. The annexes have also been adapted several times through Commission Regulations, and a draft Commission Regulation, proposing to update the NUTS classification, is currently under the scrutiny of the co-legislators (this latest update is to apply from 1 January 2016).

### Objectives

Regional statistics are a cornerstone of the EU statistical system and form the basis for the definition of regional indicators. Their nature was 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 EU. In order to facilitate the collection, transmission and publication of harmonised regional statistics, the EU has established the NUTS classification system.

The single legal framework thus created by Regulation (EC) No 1059/2003 ensures 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), and 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 concerned.

Some of the existing administrative units used for the requirements of the hierarchical NUTS classification are listed in Annex II to Regulation (EC) No 1059/2003, examples being:

1. NUTS 1: 'Gewesten/Régions' in Belgium; 'Länder' in Germany; 'Continente', 'Região dos Açores' and 'Região da Madeira' in Portugal; 'Scotland, Wales, Northern Ireland' and 'Government Office Regions of England' in the United Kingdom.
2. NUTS 2: 'Provinces/Provinces' in Belgium; 'Comunidades y ciudades autónomas' in Spain; 'Régions' in France; 'Länder' in Austria.
3. NUTS 3: 'Amtskommuner' in Denmark; 'départements' in France; 'län' in Sweden; 'megyék' in Hungary; 'kraje' in the Czech Republic; 'oblasti' in Bulgaria.

#### 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 for 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'.

### C. Amendments

Amendments to the NUTS classification may be adopted during 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 for the NUTS 3 level).

Changes to small administrative units will alter the NUTS classification if they involve a population transfer of more than 1% for the NUTS 3 territorial units in question.

For the non-administrative units of a Member State, the NUTS classification may be amended where the change reduces the standard deviation of the size (in terms of population) of all EU territorial units.

### Role of the European Parliament

Further to its role in scrutinising the Commission's proposed changes to the classification, 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 of 21 October 2008 on governance and partnership at national and regional levels and a basis for projects in the sphere of regional policy<sup>(1)</sup>, 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).

→ Diána Haase

<sup>(1)</sup> OJ C 15 E, 21.1.2010, p. 10.

## 5.1.7. Outermost regions (ORs)

*There are specific measures in place to support the development of the most remote regions of the European Union, known as the outermost regions: Guadeloupe, French Guiana, Réunion, Martinique, Mayotte, Saint-Martin (France), the Azores and Madeira (Portugal), and the Canary Islands (Spain). The purpose of this support is to compensate for the constraints arising from 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 EU Member States have part of their territory located in areas of the globe that are remote from Europe. These regions, known as the outermost regions (ORs), have to deal with 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 products or natural resources). These features act as constraints on their future development potential. outermost regions

Currently there are nine outermost regions: eight outermost regions

- 5 French overseas departments — Martinique, Mayotte, Guadeloupe, French Guyana and Réunion;
- 1 French overseas community — Saint-Martin (since 2009);
- 2 Portuguese autonomous regions — Madeira and the Azores;
- 1 Spanish autonomous community — the Canary Islands.

Until the end of 2011, the French overseas community Saint-Barthélemy was also an outermost region of the European Union. However, given its remoteness from metropolitan France, specific legal status, close economic relations with partners in the Americas and focus on tourism, France asked for the status of Saint-Barthélemy to be changed, making it 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, with constitutional ties to one of the following Member States: Denmark, France, the Netherlands and the United Kingdom. overseas countries and territories

Article 355 of the Treaty of Lisbon allows the European Council to transform the status of French, Danish or Netherlands OCTs into that of outermost regions without having to amend the Treaty.

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 great distance separating them from the European continent, the outermost regions are an integral part of the European Union, and the *acquis communautaire* is fully applicable in their territory. However, owing to their specific geographical location and the related difficulties, EU policies have had to be adjusted to their special situation.

The relevant measures concern, in particular, areas such as customs and trade policies, fiscal policy, free zones, agriculture and fisheries policies, and conditions for supply of raw materials and essential consumer goods. Also, the rules on State aid and conditions of access to the 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 from the agricultural and fisheries funds. For the 2007-2013 period, the EU allocated them approximately EUR 5.8 billion under the Structural Funds (4.5 billion under the European Regional Development Fund (ERDF) and EUR 1.3 billion under the European Social Fund), EUR 1.2 billion under the European Agriculture Fund for Rural Development, and EUR 101 million under the European Fisheries Fund. EU Cohesion Policy agricultural funds fisheries fund

To compensate for the high costs related to their difficult geographical situation, outermost regions may access, under EU cohesion policy, an additional allocation of EUR 35 per person per year (EUR 979 million in total). This support is incorporated into the ORs' operational programmes, financed from the ERDF. In the 2014-2020 programming period this additional allocation will amount to EUR 1 387 million. additional allocation

In the area of agriculture, the ORs are supported by additional POSEI programmes (Programmes of Options Specifically Relating to Remoteness and Insularity). Such programmes exist for each of the three EU Member States with outermost regions. In annual terms, the POSEI programmes provide significant financial support amounting to approximately 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 types of measure:

- specific supply arrangements designed to mitigate the additional supply costs relating to essential products for human consumption, for processing or for use as agricultural inputs, and
- measures to support local agricultural production.

### Role of the European Parliament

Despite the fact that all decisions as to which regions are accorded outermost region status are taken by the European Council alone, the European Parliament plays a very active role in support for the ORs.

Parliament has equal powers to those of the Council when it comes to the legislation concerning the most important EU policies, such as regional, agricultural, fisheries and education policy. In its work Parliament takes account of the specific situation of the

outermost regions and supports initiatives aimed at boosting their development, regional, agricultural, fishery or education policies

In 2008, Parliament adopted a resolution on 'Strategy for the outermost regions: achievements and future prospects'. In this resolution, Parliament acknowledged that the Structural Funds as well as the POSEI programmes play a major role in the development of the ORs. It also stressed that stronger partnerships for the ORs and adaptation of EU policies to those regions' specific needs (as well as adaptation of the Economic Partnership Agreements) are crucial to their development.

In 2012, Parliament adopted the resolution on 'The Role of Cohesion Policy in the outermost regions of the European Union in the context of EU 2020'. In this resolution it took the view that cohesion policy must remain one of the main instruments for reducing disparities in the EU's regions in general and in the ORs in particular, stressing that the aim is to enable the ORs to be integrated into the EU internal market and to assert themselves in their respective geographical areas. This resolution also emphasised the need for flexibility for the ORs in terms of concentration on the three main thematic objectives envisaged in the new proposals for the Structural Funds after 2014. Parliament considered that the ORs should be classified as least developed regions regardless of their GDP, and that the cofinancing rate under the Structural Funds should be 85% for all instruments providing aid for outermost regions.

	Distance to the capital (km)	Surface area (km <sup>2</sup> )	Population	Per capita GDP (EU=100) <sup>(1)</sup>
European Union	—	4 406 051	503 633 601	100
France	—	632 833 <sup>(3)</sup>	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 <sup>(2)</sup>	6 700	53	36 979	61.9
Mayotte <sup>(3)</sup>	8 000	374	212 600	26.4

<sup>(1)</sup> Data for 2009.

<sup>(2)</sup> Source: INSEE.

<sup>(3)</sup> The total area of Metropolitan France is 543 965 km<sup>2</sup>.

Source: Eurostat for 2012.

→ Marek Kołodziejewski

## 5.1.8. Regional state aid

*The purpose of regional state aid is to support economic development and job creation in Europe's most disadvantaged regions.*

### Legal basis

Article 107 of the Treaty on the Functioning of the European Union (TFEU), in particular 107(3)(a) and (c) thereof.

### Objectives

State aid, in general terms, means any aid (regardless of its form) granted to certain undertakings (actors carrying out economic activities) by national public authorities. Insofar as this type of aid distorts competition and affects trade, it is not compatible with the internal market, save as otherwise provided in the Treaties. Member States, in accordance with Article 108(3) of the Treaty, are obliged to notify the Commission in advance of any plan to grant such aid. By adopting the 'Enabling Regulation'<sup>[1]</sup>, the Council made it possible for the Commission to define exemptions (through the adoption of block exemption regulations for state aid), and thus to declare specific categories of state aid as being compatible with the common market and exempt from prior notification.

As one of the exemptions provided for, certain forms of aid may be regarded as being compatible with the common market in certain regions under certain conditions. This type of aid is called regional aid, the purpose of which is to support economic development and job creation.

The General Block Exemption Regulation (GBER)<sup>[2]</sup> lays down specific provisions defining the conditions under which regional aid schemes are compatible with the common market and exempt from notification. Further to the GBER, guidance is provided by the Commission on aid measures that are not exempt from notification, including guidance on regional aid. In the context of the State Aid Modernisation (SAM) process, initiated by the Commission in May 2012, the existing guidelines were revised in order to create more streamlined and consistent rules.

The 'Guidelines on regional State aid for 2014-2020' (2013/C 209/01), hereinafter 'the Guidelines', were adopted by the Commission on 19 June 2013 and will enter into force on 1 July 2014. The validity of regional aid rules that were applicable in the 2007-2013 period<sup>[3]</sup> has been extended until 30 June 2014.

The Guidelines will be applied to notified regional aid schemes and individual aid.

### State aid and cohesion policy

Projects supported by cohesion policy (under the European Structural and Investment Funds) have to comply with Union and national law.<sup>[4]</sup> It is the responsibility of Member States to ensure the compliance of their aid schemes with law on state aid, and thereby to analyse interventions planned in the context of their (operational) programmes and fulfil potential obligations on notification. The strategic programming process provided for under cohesion policy and the analysis of aid under state aid rules remain separate, but there is a possibility, in certain cases, to make use of the analysis on which cohesion policy interventions are based as grounds for the justification of state aid.

The legislative framework<sup>[5]</sup> includes explicit references to state aid rules, in particular in the context of financial instruments, revenue-generating operations, public-private partnerships, durability of operations, etc. Moreover, to facilitate the effective application of state aid rules by Member States, the disbursement of funds is made conditional on the fulfilment of obligations (ex-ante conditionalities)<sup>[6]</sup> that include arrangements in Member States to train staff and reinforce administrative capacity in this field.

### Types of aid and eligibility

The rules set out in the Guidelines form the basis for Member States to prepare regional aid maps by which they can identify: (1) the areas in which companies can receive regional state aid; and (2) the intensity of that aid.

#### A. Scope

The Guidelines apply, in principle, to all sectors of economic activity. However, the following activities are excluded from the scope of the Guidelines:

- sectors in which regional aid is not compatible with the internal market: the steel industry and synthetic fibres;

<sup>[1]</sup> Council Regulation (EC) No 994/98 of 7 May 1998.

<sup>[2]</sup> Commission Regulation (EU) No 800/2008 of 6 August 2008.

<sup>[3]</sup> Guidelines on national regional aid for 2007-2013 (2006/C 54/08).

<sup>[4]</sup> Article 6 of Regulation (EU) No 1303/2013 of 17 December 2013.

<sup>[5]</sup> Regulation (EU) No 1303/2013 of 17 December 2013.

<sup>[6]</sup> Part II of Annex XI to Regulation (EU) No 1303/2013 of 17 December 2013.

- sectors in which aid is subject to specific legal instruments and/or other state aid guidelines: fisheries and aquaculture, agriculture (with some specific exceptions), transport, airports, energy;
- activities considered not compatible with the internal market, unless general conditions laid down in the Guidelines and additional specific conditions are met: broadband networks and research infrastructures.

In addition to the above, special consideration is given to aid to large undertakings and to operating aid:

- regional aid to large undertakings is not compatible with the internal market under Article 107(3)(c) of the Treaty, unless it is in support of initial investments that create new economic activity or the diversification of existing establishments into new products or new process innovations;
- aid to undertakings aimed at reducing expenses (operating aid) is not compatible with the internal market, unless its aim is to tackle specific or permanent handicaps in disadvantaged regions (i.e. to reduce difficulties faced by SMEs, to compensate for additional costs in outermost regions or to prevent or reduce depopulation in very sparsely populated areas).

## B. Compatibility assessment of regional aid

Notified regional aid is subject to assessment by the Commission, meaning that it is analysed whether the positive impact of the aid towards an objective of common interest exceeds its negative effect on trade and competition. The analysis touches upon the following elements:

1. contribution to a well-defined objective of common interest in accordance with Article 107(3) of the Treaty;
2. need for state intervention (in situations where the market cannot deliver certain material improvements);
3. appropriateness of the aid measure to address the objective of common interest;
4. incentive effect resulting in a change of behaviour among undertakings (i.e. undertakings engage in additional activities);
5. proportionality of aid (i.e. aid is limited to a minimum to induce additional investment or activity);
6. avoidance of undue negative effects on competition and trade;
7. transparency (ease of access to information about the aid awarded).

Aid schemes that could significantly distort competition may also be subject to ex post

evaluations and the Commission may limit the duration of such schemes. Ex post evaluation may be applied only in the case of aid schemes with large budgets, comprising novel characteristics or entailing significant market, technology or regulatory changes.

## C. Regional aid maps — eligibility

Areas fulfilling the conditions set out under Article 107(3)(a) and (c) (hereinafter 'a' and 'c' areas), together with the levels of maximum aid intensity, must be identified by the Member States in regional aid maps. The Commission is notified of these maps and approves them so that regional aid can be awarded to undertakings located in areas designated in the maps. The ceiling for the overall coverage of 'a' and 'c' areas is set at 47% of the EU-28 population.

### 1. Article 107(3)(a) TFEU

The guidelines stipulate that the following can be designated as 'a' areas<sup>[1]</sup>:

- NUTS 2<sup>[2]</sup> regions with a gross domestic product (GDP) per capita in purchasing power standards (PPS) that is equal to or less than 75% of the EU-27 average;
- Outermost regions.

The ceilings for maximum aid intensity in 'a' areas are as follows:

1. 50% gross grant equivalent (GGE) in NUTS 2 regions with a GDP per capita less than or equal to 45% of the EU-27 average;
2. 35% GGE in NUTS 2 regions with a GDP per capita equal to or between 45% and 60% of the EU-27 average;
3. 25% GGE in NUTS 2 regions with a GDP per capita above 60% of the EU-27 average.

The above ceilings may be increased by a maximum of 20% in less-developed outermost regions and by 10% in other outermost regions. The maximum aid intensity may be increased by up to 20 percentage points for small enterprises or by 10 percentage points for medium-sized enterprises.

### 2. Article 107(3)(c) TFEU

The Guidelines distinguish between two categories of 'c' area:

- predefined 'c' areas<sup>[3]</sup>: areas fulfilling pre-established conditions that can be designated by Member States without any further justification; this category includes NUTS 2 regions that were designated as 'a' areas in the 2011-2013 period

<sup>[1]</sup> Annex I to the Guidelines contains the list of eligible 'a' areas, broken down by Member State.

<sup>[2]</sup> NUTS: Nomenclature of territorial units for statistics.

<sup>[3]</sup> Annex I includes the specific allocation for predefined 'c' coverage, broken down by Member State.



and sparsely populated NUTS 2 and NUTS 3 regions, as well as parts of or areas adjacent to NUTS 3 regions, under certain conditions;

- non-predefined 'c' areas<sup>[1]</sup>: areas that may be designated by a Member State provided that they fulfil certain socio-economic criteria.

In light of the impact of the economic crisis on Member States and of the aim of ensuring continuity in the regional aid maps, the Guidelines provide for a safety net and a minimum threshold for population coverage<sup>[2]</sup>. The Guidelines stipulate five sets of criteria that address socioeconomic (GDP per capita, unemployment), geographical (isolation) or structural (major structural change, decline) problems, and which are to be used by Member States in designating non-predefined 'c' areas.

Ceilings for maximum aid intensity in 'c' areas are as follows:

1. 15% GGE in sparsely populated areas and in areas (NUTS 3 regions or parts of NUTS 3 regions) that share a land border with a country outside the European Economic Area (EEA) or the European Free Trade Association (EFTA);
2. 10% GGE in non-predefined 'c' areas.

These ceilings can be raised in former 'a' areas (from 10% GGE to 15%) and in 'c' areas that are adjacent to an 'a' area. The maximum aid intensity may be increased by up to 20 percentage points for small enterprises or by 10 percentage points for medium-sized enterprises.

#### D. Notification and mid-term review

Based on the provisions of the Guidelines, each Member State must provide the Commission with a single regional aid map to be valid from 1 July 2014 to 31 December 2020. These maps are examined and adopted by the Commission, and also published in the Official Journal of the European Union, thereby constituting an integral part of the Guidelines. An eligibility review of areas for regional aid will take place in 2016, which might lead to amendments to the regional aid maps.

Notifications of regional aid schemes or aid measures that are to be awarded after 30 June 2014 may be considered complete only upon adoption by the Commission of the regional aid map for the Member State concerned.

#### E. Reporting and monitoring

Member States must maintain detailed records on all aid measures for 10 years from the date of award

of the aid and must submit the following to the Commission:

- Annual reports;
- Information on each individual aid exceeding EUR 3 million.

#### Role of the European Parliament

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.

During the SAM process, in which the Commission presented its proposals in accordance with Article 109 TFEU, Parliament was only consulted and had no say in the adoption of the Guidelines. However, in its resolution of 12 June 2013 on regional policy as a part of wider State support schemes (P7\_TA(2013)0267), it backed the Commission's draft guidelines, called for increased consistency with the GBER and other guidelines, and expressed its concerns as to whether state aid rules are consistent with the implementation of cohesion policy instruments (the European Structural and Investment Funds), in particular regarding the equal treatment of areas belonging to the same category of region within the framework of cohesion policy. Parliament called for the overall coverage of regional aid to be maintained or increased beyond the previous ceiling of 45% and supported the creation of a safety net for former 'a' regions and special provisions for sparsely populated, outermost and island regions. The need for specific derogations, in particular in areas severely affected by the economic crisis, was also highlighted.

Finally, Parliament is of the opinion that state aid should primarily be provided to SMEs, but that the exclusion of large enterprises could lead to job losses, and therefore that such undertakings should remain eligible in 'c' areas, subject however to particular scrutiny.

→ Diána Haase

<sup>[1]</sup> Annex II to the Guidelines sets out the method for the allocation of non-predefined 'c' coverage.

<sup>[2]</sup> Non-predefined 'c' coverage including the aforementioned adjustments is set out in Annex I.

## 5.1.9. Northern Ireland Peace programme

*The purpose of the programme for peace and reconciliation in Northern Ireland and the Border Region of Ireland (PEACE III) is to promote economic and social progress in Northern Ireland. It also encourages dialogue and reconciliation between nationalists and unionists and helps to consolidate the peace process.*

### Legal basis

Council Regulation (EC) No 1260/1999 of 21 June 1999 for the 2000-2006 programming period and Council Regulation (EC) No 1083/2006 of 11 July 2006, along with Regulation (EC) No 1080/2006 of 5 July 2006, for 2007-2013 programming period.

The legal basis for the 2014-2020 programming period is Regulation (EU) No 1303/2013 of 17 December 2013 and Regulation (EU) No 1299/2013 of 17 December 2013.

### 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 (IFI). This Fund is an international organisation set up by an agreement between the governments of the United Kingdom and Ireland in 1986.

The PEACE I programme (1995-99) was launched in July 1995. In March 1999, the European Council decided that the special programme should continue until 2004 under the name of PEACE II. In January 2005, this PEACE II programme was extended until 2006 and given additional funding.

The operational programme PEACE III (2007-2013) is carrying on some of the key aspects of the previous programmes, but with a new strategic approach.

### Objectives and priorities

The PEACE III programme is implemented as a cross-border programme under the European territorial cooperation objective<sup>[1]</sup> and has two main aims:

- 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 with the aim of creating a peaceful and stable society. To this end, it builds upon two main priorities (reconciling communities

and contributing to a shared society) and four main themes:

- building positive relations at local level;
- acknowledging the past and developing new opportunities;
- creating shared public spaces, especially at local level;
- developing key institutional capacity for a shared society.

### Financing

For the 2000-2006 period, total expenditure part-financed under PEACE II amounted to EUR 796 million. The Structural Fund contribution to this amount 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 the period 2005-2006.

For the planning period 2007-2013, Northern Ireland benefited from six EU programmes with a combined financial contribution of EUR 1.1 billion. This includes the continued PEACE programme, which receives EUR 225 million in EU funding and national contributions of EUR 108 million.

While PEACE II received funding from all of the Structural Funds, PEACE III depended solely on EU funding under the ERDF.

The financial allocation to be attributed to the PEACE programme for the years 2014-2020 is EUR 150 million, of which EUR 106 500 000 will go to the United Kingdom and EUR 43 500 000 to Ireland<sup>[2]</sup>. The new programme will be implemented under the ERDF as a cross-border cooperation programme involving Northern Ireland and Ireland. Preparation of the new PEACE programme is currently underway and, according to the rules, must be submitted to the Commission for approval by 22 September 2014 at the latest. After this time the Commission will have three months to make observations, and therefore the exact date of approval of the programme will largely depend on the discussion of the text submitted.

<sup>[1]</sup> As defined under Council Regulation (EC) No 1083/2006 of 11 July 2006.

<sup>[2]</sup> Annex VII(20) to Regulation (EU) No 1303/2013 of 17 December 2013.

### Eligibility and management

The area eligible for inclusion in the PEACE III programme consists of Northern Ireland and the Border Region of Ireland (the Border Region comprises counties Louth, Monaghan, Cavan, Leitrim, Sligo and Donegal).

Operations and projects under 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.

In 2007, a new strategic approach was introduced to achieve maximum impact from the funding. Local councils in Northern Ireland have formed eight clusters and play a much more strategic role in the delivery of PEACE III. The six county councils in the Border Region of Ireland play 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 the plan drawn up by their cluster or county council, which may contain a small grants programme or 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 Region 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, and representatives of 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 projects to support victims and survivors, training, childcare and after-school projects, enterprise parks and small business enterprises, infrastructure and urban regeneration projects, as well as projects in support of immigrants and of 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 develop better visions of the future. The range of projects funded under PEACE has helped foster an environment in which political agreements have been given a reasonable chance of succeeding.

Ex-prisoner projects have formed part of local networks of voluntary and public organisations engaged in activities such as regeneration partnerships, business incubation centres and public forums. In some projects, formerly opposing groups, such as traditionally hostile political groups or state agencies, have worked directly with groups with which they would not have had any previous contact.

### Role of the European Parliament

In its legislative resolution 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)<sup>[1]</sup>, Parliament emphasised 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 Region of Ireland. Parliament calls formally on the Commission to ensure this coordination.

Parliament, in its role as co-legislator on the cohesion package (in this context on the Common Provisions Regulation and the Regulation on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal), strongly supported the continuation of the PEACE programme in the 2014-2020 period.

→ [Diána Haase](#)

<sup>[1]</sup> OJ C 236 E, 12.8.2011, p. 173.

## 5.1.10. European Grouping of Territorial Cooperation (EGTC)

*European Groupings of Territorial Cooperation (EGTCs) were set up to facilitate cross-border, transnational and interregional cooperation between Member States or 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, transnational and interregional cooperation between Member States or their regional and local authorities. An EGTC may be given the job of implementing programmes cofinanced 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, 46 European Groupings of Territorial Cooperation have been set up, covering 18 EU Member States. This number is still growing. Seven new EGTCs were created in 2012 and eleven in 2013. 19 additional EGTCs are currently under construction. 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.

At the end of 2013, the regulation on EGTCs was amended by Parliament and the Council. The goal of this amendment was to clarify the existing rules and to make the creation and functioning of EGTCs simpler. The revised EGTC regulation will apply from 22 June 2014. As legislation relating to cohesion policy it was prepared under the ordinary legislative

procedure, with Parliament and the Council thus having an equal say.

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)<sup>(1)</sup>, 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.

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→ Marek Kołodziejewski

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<sup>(1)</sup> 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 Lisbon Treaty 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 produce to be included in the free movement of goods while maintaining State intervention in the agriculture sector, national intervention mechanisms which were incompatible with the common market had to be removed and transferred to Community level; this is the fundamental reason for the creation of the common agricultural policy (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 brings down prices, whereas a reduced supply forces 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 (5.2.10), 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 (5.2.2). It is noteworthy that, as evidenced by existing case law, the objectives of the CAP cannot all be fully achieved at the same time. The Community legislator therefore has considerable room for manoeuvre when it comes to choosing the instruments and scope of the reforms, depending on the 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 add



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

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, 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 (Regulations (EU) No 1308/2013 — OJ L 347 — and No 1370/2013 — OJ L 346) (5.2.4)) and in the fixing of direct aid reductions under the financial rules (Regulation (EU) No 1181/2013 — OJ L 313). 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)492 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 is now governed by the relevant basic legislative act, whereas the adoption of implementing acts is 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, 28.2.11). The majority of the Commission's draft agricultural implementing acts are subject to examination procedures during which the European Parliament and the Council 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 Confederation of Agricultural Cooperatives in the European Union (COGECA), are still 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 has effects on legislative work in the field of agriculture to the extent that the European institutions 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, the national parliaments are 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) is from now on 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 (5.2.3).

### 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) (5.2.8).

In this context, the European Parliament has also indicated that it is in favour of the integration of new objectives within the CAP with a view to responding to the new challenges of agriculture, such as product quality, public health, sustainable development, economic, 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 (resolutions P7\_TA(2010)286 and P7\_TA(2011)297). This new reform of the CAP, the parliamentary procedure for which began in March 2010, with the adoption of negotiating mandates, and was completed on 20 November 2013 with the vote on the statutory texts, 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)490 to 494).

→ Albert Massot

## 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 (EU) Nos 1306/2013 and 1311/2013 (OJ L 347, 20.12.2013).

### Development of the agricultural financial framework

Established in January 1962, the CAP was at that time 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 was by far the larger of the two, had the purpose of funding expenditure resulting from application of the market and price policy. That expenditure was always unpredictable (in that it was 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 intervention measures 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.
- The Guidance Section helped to finance structural policy operations and the development of rural areas. Unlike the EAGGF Guarantee Section, the EAGGF Guidance Section was based on the principle of co-financing.

From 1988, in an effort to curb the increase in CAP spending, the funds available were made 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, under the Delors I Package) (1.5.2).

Following the Treaty of Maastricht and the Edinburgh European Council (December 1992), the financial framework was overhauled (Delors II Package). The 1988 Interinstitutional Agreement was superseded by a new Agreement on budgetary discipline for the

period 1993-1999 (OJ C 331, 7.12.1993). This 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. 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). The financing of the CAP was laid down in the 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 included the heading 'Preservation and management of natural resources', which covered the budget for agriculture and rural development, the environment, and fisheries (EUR 413 billion at current prices, equivalent to 42.3% of total commitment appropriations for the EU-27). Within this, the regulation of agricultural markets and direct payments accounted for 33.8% of total planned commitments, in other words EUR 330 billion at current prices. In addition, rural development measures accounted for 8% thereof, that is to say, EUR 78 billion.

The preparatory discussions on the multiannual financial framework for the period 2007-2013 also included a review of the CAP funding arrangements.

- 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 income support, and the European Agricultural Fund for Rural Development (EAFRD). The EAGF, with an annual budget in the region of EUR 47 billion at current prices for the period 2007-2013, finances, or, with the Member States, occasionally co-finances, 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 non-member 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 (CE) 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 Lisbon Treaty (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. Under 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 the period 2014-2020, the European Parliament, on 20 November 2013 (in resolutions P7\_TA(2013)0455 and 0456), endorsed the regulation on the new multiannual financial framework (Regulation (EU) No 1311/2013, OJ L 347, 20.12.2013) and the Interinstitutional Agreement on sound financial management (OJ C 373, 20.12.13). 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 account 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 projected 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).

Furthermore, Regulations (EC) Nos 1290/2005 and 1698/2005, which were repealed in the 2013 reform, have been replaced by Regulation (EU) No 1306/2013 on the financing, management and monitoring of the common agricultural policy and by Regulation (EU) No 1305/2013 on support for rural development by the EAFRD (OJ L 347, 20.12.2013).

## 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, other than in 1996 and 1997 (as a result of the BSE crisis and the accession of three new Member States). Between 1990 and 2020, therefore, the budgetary cost of the CAP, when set against EU gross national income (GNI), will have decreased from 0.54% to an expected 0.34% (5.2.10, table I, line D).

### B. Allocation by expenditure category and by sector

91% of expenditure under the first pillar (EUR 44.3 billion in 2012) (5.2.10, table V, column 1) consists of direct aid to farmers (EUR 40.8 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 0.3% (EUR 146.79 million) of the total budget and the cost of other intervention measures (storage, measures to restructure the sugar industry, promotion and information actions, and veterinary and phytosanitary measures) amounts to just EUR 3.8 billion (8.5% of the total).

The three sectors which used to receive 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 resulting decoupling of aid from production, the top expenditure item was payments to farms (82.5% of the EAGF total in 2012), followed by direct aid linked to production (8.6%) (5.2.4).

### C. Distribution by country and by type of farm

As shown in Table V, column 1, relating to the financial year 2012 (5.2.10), the largest EAGF recipient is France (16.8%), followed by Spain (12.1%), Germany (11.6%), and Italy (10.6%). As far as the EAFRD is concerned, however, Poland is the top

recipient (12.8%), followed by Germany (9.7%), Spain (9.7%), and Romania (9.3%). It should be noted that new Member States (EU-12) have had little influence on the EAGF (16.3%), given that direct payments are gradually being aligned. However, they are already receiving a significant share of EAFRD funding (37.9%), in accordance with the priority being given to the modernisation of their agricultural facilities and the development of their rural areas.

Table V, column 2 (5.2.10) also illustrates the uneven distribution of CAP direct aid at farm level: 79.73% of CAP beneficiaries in the EU-27 received less than EUR 5 000 in annual payments in 2012, giving an aggregate amount equivalent to 15.5% of the total direct aid paid out under the EAGF. By contrast, a very small percentage of farms (126 460 out of a total of 7.5 million, i.e. 1.68%) each receive more than EUR 50 000, giving an aggregate amount equivalent to EUR 12.87 billion (31.48% of the total direct aid paid out in 2012). 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 1988, 1993, 1999, and 2006 interinstitutional agreements gave the European Parliament a greater say on compulsory expenditure. Following a consultation procedure, Parliament would outline its position on the total volume of EAGGF appropriations and indicate how those appropriations were to be allocated by product and activity, although the final decision rested with

the Council. Parliament's main contributions to the operation of the EAGGF included its firm support for the amendment of Regulation (EC) No 1258/1999 on the funding of the CAP and rural development, the object being to prevent disputes from arising when dialogue was conducted exclusively between the proper authorities of Member States 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 regulation laying down the multiannual financial framework for 2014-2020 resulted in a political agreement at the end of June 2013, and this was adopted by the two arms of the budgetary authority in November 2013. Because its consent was required and it was therefore able to exert pressure, Parliament managed 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 improvements to appropriations allocated under Heading 1 (competitiveness) (resolutions P7\_TA(2013) 0455 and 0456). After the last trialogues in September 2013, the Committee on Agriculture and Rural Development made further improvements to some of the financial aspects of the new direct payment system and the new rural development policy). These changes enabled Parliament, on 20 November 2013, to give the go-ahead to all of the regulatory texts relating to the new CAP (resolutions P7\_TA(2013) 0490 to 0494). The five new regulations were published on 20 December 2013 (OJ L 347).

→ Albert Massot



### 5.2.3. CAP instruments and reforms made to them

*The Common Agricultural Policy has undergone five major reforms, the most recent of which were in 2003 (mid-term review), in 2009 (the 'Health Check') and in 2013 (for the 2014-2020 financial period).*

#### Legal basis

Articles 38 to 44 of the Treaty on the Functioning of the European Union (TFEU). Regulations (EU) Nos 1303 to 1308/2013 (OJ L 347, 20.12.2013).

#### 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 latest reforms also set new objectives for the CAP which are: 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 (ensuring economic and social diversity in rural areas).

#### Achievements

##### A. The 1992 reform: the great turning point

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 order to close the widening gap between supply and demand and bring agricultural expenditure under control, the Council introduced a radical change to the CAP by replacing the 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. In the area of livestock production, the fall in the price of beef was compensated by a headage payment. 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.

##### B. Agenda 2000: a new stage to build on the 1992 reform

The 1997 Luxembourg European Council, which declared that agriculture in Europe had to be multifunctional, sustainable, competitive and located throughout the territory, set the strategic objective for the new reform. The outcome of the agreement reached at the end of the Berlin European Council (24-25 March 1999) was that the 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 by Member States of environmental cross-compliance as a condition for granting aid and the option of reducing this (modulation) to finance rural development measures;
- 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.

##### C. The June 2003 reform: towards a CAP based on decoupled aid

At the 1999 Berlin Summit, the 15 Member States adopted the proposals of Agenda 2000 and asked the Commission to conduct 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); making the CAP more compatible with the demands of third countries.

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 farm payment, based on guaranteeing income stability;

- cross-compliance, which makes the single payments conditional on a whole series of criteria concerning the environment, public health, etc., in response to the expectations of EU citizens;
- compatibility with WTO rules, insofar as the ultimate objective of aid decoupling was to ensure that it was included in the 'green box' (5.2.7);
- public redistribution of payment entitlements allocated to farms on historical bases using two mechanisms: modulation, allowing funding to be transferred between the two pillars of the CAP to reinforce rural development; the potential application of a regional decoupling model to allow harmonisation of payments per hectare allocated according to regional criteria;
- the principle of flexibility, whereby the Member State are able to vary the way in which a set of parameters relating to the new CAP are applied;
- 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].

#### **D. The 2009 'Health Check': consolidation of the 2003 reform framework**

The 'Health Check' launched by the Council on 20 November 2008 revised a long list of measures applied following the CAP reform of 2003. It was designed to:

- reinforce complete decoupling of aid through gradual elimination of the remaining payments coupled to production by moving them into the single farm payment scheme;
- partially reorient first pillar funds towards rural development by increasing the modulation rate for direct aid;
- inject flexibility into the rules for public intervention and control of supply in order not to have an adverse impact on the ability of farmers to react to market signals.

#### **E. The CAP in 2020**

The 2013 reform was the latest stage in this as yet unfinished adaptation process [Regulations (EU) Nos 1303 to 1308/2013, OJ L 347, 20.12.2013]. The broad outlines of the CAP for the period 2014-2020 concern:

- converting decoupled aid into a multifunctional support system. The system of decoupling agricultural aid and providing generic income support instead, which began in 2003, 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 ('targeting'); 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; (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 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 for economic or social reasons; (7) lastly, a simplified system may be set up for small farmers with an income of less than EUR 1 250. Only active farmers will be eligible for the new basic payments per hectare (5.2.5);
- consolidating single CMO tools to provide safety nets for use solely in the event of price crises or market disruption. The abolition of all supply control measures has also been confirmed: the sugar quota regime will expire in 2017 and the system of vine 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 of a 'milk' mini-package [Regulation (EU) No 261/2012, OJ L 94, 30.3.2012]. The new single CMO will also institute a crisis reserve to respond to market disturbances. It will be financed, up to a ceiling of EUR 400 million annually, by reducing direct payments (5.2.4);
- a more integrated, targeted and territorial approach to rural development. Better coordination of rural measures with the other structural funds is also envisaged (5.1.1). The wide range of existing instruments within the second pillar of the CAP 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 (5.2.6).

### Role of the European Parliament

On the whole, the European Parliament has supported all of the CAP reforms. It fell in with most of the Commission guidelines for the 2003 reform while declaring itself in favour of partial decoupling and rejecting the idea of a phased reduction of aid (T5-0256/2003 of 5 June 2003, OJ C 68, 18.3.2004). Parliament also 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).

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]. MEPs set the 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].

The European 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 and Parliament adopted its stance on the new regulations relating to agriculture, on 20 November 2013, immediately after adoption of the financial arrangements for 2014-2020 (resolutions P7-TA(2013)0490 to 0494).

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→ Albert Massot

## 5.2.4. First pillar of the CAP: I — The single common market organisation (CMO)

*The single CMO is the framework for the market measures provided for under the CAP. Following a series of reforms 21 separate CMOs were codified into a single CMO covering all agricultural products in 2007. Reforms to the CAP have also made the policy progressively more market-oriented and diminished the role played by intervention tools, which are now regarded as safety nets to be used only in the event of a crisis.*

### Legal Basis

Article 40 TFEU, Regulation (EU) No 1308/2013 of the European Parliament and of the Council (OJ L 347, 20.12.2013) and Council Regulation (EU) No 1370/2013 (OJ L 346, 20.12.2013).

### Introduction: from 21 CMOs to a single CMO

The CMOs have been a key component of the Common Agricultural Policy (CAP) since its inception, providing the framework for the market support schemes, which took different forms depending on the agricultural sector to which they applied.

In accordance with Article 40 TFEU, the CMOs were set up as a means of meeting the objectives of the CAP, such as stabilising markets and ensuring a fair standard of living for farmers. CMOs cover the products listed in Annex I to the TFEU, and encompass a range of mechanisms governing the production and trade of those products in the EU. The guarantees provided under these mechanisms vary according to the specific characteristics of the individual products. The CMO market measures come under the first pillar of the CAP.

Until the entry into force of the single CMO in 2007 (Council Regulation (EC) No 1234/2007, OJ L 299, 16.11.2007), there were 21 separate CMOs covering specific products, all governed by their own basic regulations. The CMOs were originally based primarily on price guarantees; these were gradually reduced and offset by the granting of direct aid and the establishment of stabilising mechanisms. Following the Luxembourg reform of 2003 (5.2.3) the majority of the direct support schemes that formed part of the various CMOs were gradually decoupled from production (with the establishment of the single payment scheme) and transferred from the regulations governing the CMOs 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).

The intervention tools underwent a series of reforms and are now regarded as 'safety nets', i.e. they are used only in the event of price crises and market disruption. As regards price support measures, only

intervention prices (the guaranteed price below which an intervention body appointed by the Member States purchases the amounts produced and stores them) were retained. The scale of intervention has been considerably reduced.

### New post-2013 single CMO

The single CMO has an internal heading (covering prices, product marketing measures, market support measures, etc.) and an external heading covering trade with third countries (import and export certificates, administration of tariff quotas, export refunds, etc.).

The CMO Regulation sets out the agricultural products covered and detailed provisions on market intervention measures (periods, prices, principles, etc.), aid schemes, the rules governing marketing (standards), the rules governing producer organisations, trade with third countries, the competition rules applicable to agriculture, as well as general provisions (exceptional measures, delegated powers, implementation).

A reserve fund, from which support will be provided to the agricultural sector in the event of production or distribution crises, is fed from the monies saved through annual reductions in direct payments under the financial discipline mechanism (Regulation (EU) No 1306/2013). This applies only to direct payments exceeding EUR 2 000. Any reserve fund monies that are not used in a given year are paid out to farmers. In the period 2014-2020, the reserve will comprise seven equal annual tranches of EUR 400 million (from a total of EUR 2.8 billion).

New rules have also been introduced allowing the Commission to take exceptional measures to address market disruption (including measures to guard against disruption caused by price fluctuations or other events, market support measures to apply in the event of outbreaks of animal diseases or a loss of consumer confidence owing to public, animal or plant health risks, and other specific measures). The crisis reserve fund may be used to finance such measures.

The public intervention and private storage aid systems have been revised to ensure that they

are activated more promptly and effectively. The intervention period for butter and skimmed milk powder has been extended by one month, provision has been made for automatic tendering for milk and skimmed milk powder above certain ceilings, the maximum volume for buying-in at a fixed price has been increased to 50 000 tonnes for butter, and certain PDO/PGI cheeses are now eligible for private storage aid.

As regards measures to control supply:

The sugar quotas scheme will come to an end on 30 September 2017. The framework rules governing agreements between sugar companies and sugar producers will be maintained after that date. White sugar will still be eligible for private storage aid.

In line with the decisions taken during the 2006 reform, under the new CMO planting right schemes in the wine sector will expire at the end of 2015. A scheme governing new planting authorisations will be implemented for the period 2016-2030 (in accordance with the recommendations made by the high-level group on wine in December 2012). Vine planting authorisations may increase by 1% each year.

The dairy sector quotas will expire in 2015. The 'mini milk package' provisions on contractual relations in the milk and milk products sector (Regulation (EU) No 261/2012, OJ L 94, 30.3.2012) have been incorporated into the new regulation. Their aim is to boost milk producers' negotiating power in the supply chain. In particular, they give Member States the power to make written contracts between farmers and dairy processors mandatory. They also make it possible for farmers to negotiate contracts collectively, via producer organisations. The supply of PDO/PGI cheeses may also be regulated by producer organisations.

The programmes to promote consumption of fruit and milk at school have been extended, and the annual budget for the school fruit programme has been increased from EUR 90 million to EUR 150 million. A legislative proposal to improve the functioning of these programmes is currently under discussion (2014/0014(COD)).

The single CMO also provides for programmes to support beekeeping, with the EU supplying up to 50% of the funding.

What is more, the provisions on producer organisations, associations of producer organisations and interbranch organisations have been extended to all sectors with a view to strengthening farmers' negotiating powers. The funding for this will come from the rural development budget. Producer organisations in the olive oil, arable and bovine meat sectors may also, subject to certain conditions,

engage in collective negotiations on behalf of their members.

Farmers will have also the opportunity, subject to certain conditions, to collectively negotiate contracts for the supply of olive oil, bovine meat, cereals and certain other arable crops. The Commission will publish guidelines on potential competition law issues in this area.

In some cases, recognised producer organisations, associations of such organisations and recognised interbranch organisations may be authorised by the Commission to take temporary measures to stabilise markets (such as market withdrawal and storage by private operators).

The Commission is also set to publish guidelines on the application of competition rules to agriculture.

A number of less important or unused schemes have been abolished (support for skimmed milk and skimmed milk powder intended for use as feed or for the production of casein, coupled support for silk worms).

Refunds on exports to third countries have been retained under the new regulation, but only for certain products and only when conditions on the internal market are equivalent to those which trigger exceptional measures. Exports eligible for subsidies will be subject to restrictions.

The process of bringing the CAP into line with the Lisbon Treaty (application of Article 43(3) TFEU, where the power of decision rests with the Council alone) was a contentious issue during the CAP reform negotiations. Under that article, a certain number of measures concerning public intervention and private storage, distribution programmes in schools, export refunds and the sugar sector now come within the exclusive competence of the Council. However, a joint declaration on Article 43(3) adopted by the European Parliament, the Council and the Commission states that 'the outcome of negotiations as concerns recourse to Article 43(3) (...) is without prejudice to each institution's position on the scope of this provision and to any future developments on this question, in particular any new case law from the Court of Justice of the European Union'.

In November 2013 the Commission put forward a legislative proposal seeking to reform the arrangements for promoting agricultural products on the internal market and in third countries (2013/0398(COD)).

## Funding

In 2012 market intervention measures accounted for around 8% of total EAGGF (European Agricultural Guidance and Guarantee Fund) expenditure.

**TABLE 1. Breakdown of EAGGF expenditure on agricultural market intervention (EUR millions)**

	2007	2008	2009	2010	2011	2012
Storage	-106.7	147.9	173.4	93.6	-194.6	17.4
Export refunds	1 444.7	925.4	649.5	385.1	179.4	146.7
Other market measures	3 737	3 539.2	3 517.2	3 891.6	3 807.3	3 701.5

Source: 2012 financial report from the Commission to the European Parliament and the Council on the EAGGF

Unlike direct aid and rural development, market measures are not allocated any advance funding under national budgets. In the period 2014-2020, the funding available for EU market policies is set to decrease significantly, potentially by as much as 40% (with the exception of the crisis reserve fund).

### Role of the European Parliament

During the process of establishing a single CMO, the European Parliament approved the broad lines of the Commission proposal (P6\_TA(2007)0207 of 24.5.2007). It also endorsed the wine sector reform (P6\_TA(2007)0610 of 12.12.2007) and the additional amendments made to the consolidated text of the single CMO Regulation (P6\_TA(2008)0075 of 11.3.2008 and P6\_TA(2008)0092 of 12.3.2008).

The 'mini milk package' (P7\_TA(2012)0044 of 15.2.2012) was one of the first major legislative acts relating to agriculture to be adopted by the European Parliament and the Council under the ordinary legislative procedure, which, since the entry into force of the Lisbon Treaty, is now used for all agriculture-related proposals.

In connection with the CAP reform, in its capacity as co-legislator the European Parliament set out its position on the new single CMO in a specific mandate for the interinstitutional negotiations (P7\_TA(2013)0085 of 13.3.2013). It then adopted at first reading the new single CMO Regulation, which was based on the political compromise reached with the Council (P7\_TA(2013)0492 of 20.11.2013).

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## 5.2.5. First pillar of the CAP: II — Direct payments to farmers

*The 2003 reform and the 2009 Health Check decoupled the majority of direct aid and transferred it to the new single payment scheme (SPS) and the single area payment scheme for new Member States. The new Regulation (EC) No 1307/2013 has replaced Regulation (EC) No 73/2009, defining a new system of direct payments from 1 January 2015.*

### Legal basis

- Articles 38-44 of the Treaty on the Functioning of the European Union (TFEU);
- Regulation (EU) No 1306/2013;<sup>[1]</sup>
- Regulation (EU) No 1307/2013.<sup>[2]</sup>

### Objectives

The new CAP package 2014-2020 maintains the two pillars, but increases the links between them, thus offering a more holistic and integrated approach to policy support. Specifically, it introduces a new architecture for direct payments that is better targeted, more equitable and greener, and an enhanced safety net and strengthened rural development. The new Regulation (EU) No 1307/2013, which is the single basic act and a comprehensive code for direct payments to farmers, has replaced the previous Council Regulation (EC) No 73/2009 and Council Regulation (EC) No 637/2008.

### Content of Regulation (EU) No 1307/2013

#### A. Overview

In terms of direct support mechanisms, there is a shift from 'full decoupling' to 'targeting'. The system of decoupling agricultural aid and providing generic income support, which began in 2003, will now switch to a system whereby each component is linked to specific objectives or functions, and historical reference periods will partly no longer a role, except in certain cases in some Member States. Single farm payments will be replaced by a system of multi-purpose payments, 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; (2) a 'greening' component, as additional support to compensate for the costs of providing environmental public goods not remunerated by the market; (3) an additional payment for five years for young farmers; (4) a redistributive payment whereby farmers may be granted additional support for their first hectares; (5) additional income support in areas

with specific natural constraints; (6) coupled support for production, granted to certain areas or types of farming for economic and/or social reasons; (7) a simplified system available to small farmers, with payments of up to EUR 1 250. The first three components will be compulsory for Member States while the last four are optional. Member States are to 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), additional redistributive payments (up to 30%), payments for young farmers (mandatory, up to 2%), less favoured areas (up to 5%) or 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).

#### B. Measures

##### 1. The Basic Payment Scheme: methods of application

Member States will dedicate 70% of their direct payments national envelope to the new Basic Payment Scheme (BPS), after deduction of any amounts committed for Young Farmer top-ups and for other options such as Less Favoured Area top-ups, the Small Farmers Scheme, the Redistributive Payment and the 'coupled' payments. For the EU-12, the end-date for the simpler, flat-rate Single Area Payments Scheme (SAPS) system will be extended until 2020. About internal convergence, those Member States that currently maintain allocations based on historic references must move towards more similar levels of payment per hectare. To do so they are offered a choice of different options: they may take a national or regional approach (based on administrative or agronomic criteria), achieve a regional/national rate by 2019, or ensure that those farms getting less than 90% of the regional/national average rate see a gradual increase, with the additional guarantee that every farmer reaches a

<sup>[1]</sup> OJ L 347, 20.12.2013, p. 549.

<sup>[2]</sup> OJ L 347, 20.12.2013, p. 608.



minimum payment of 60% of the national/regional average by 2019. The amounts available to farmers receiving more than the regional/national average will be adjusted proportionally, with an option for Member States to limit any 'losses' to 30%.

Member States also have the right to use a redistributive payment for the first hectares whereby they can take up to 30% of the national envelope and redistribute it to farmers on their first 30 hectares (or up to the average farm size if greater than 30 hectares). This will have a significant redistributive effect. A further option is to apply a maximum payment per hectare.

## 2. Young farmer scheme

To encourage generational renewal, the basic payment awarded to young farmers under 40 years of age, newcomers or farms set up in the previous five years, should be topped up by with additional 25% of the value of entitlements for the first five years of installation. This shall be funded by up to 2% of the national envelope and will be compulsory for all Member States. This is in addition to other measures available for young farmers under rural development programmes.

## 3. Greening

In addition to the BPS or SAPS, each holding will receive a payment per hectare for respecting certain agricultural practices beneficial to the climate and the environment. The Member States must use 30% of their national envelopes to pay for this. This is compulsory, and failure to respect the greening requirements will result in penalties over and above the cost of the greening payment: after a transition, offenders will lose up to 125% of their greening payments. The three basic measures foreseen are:

- crop diversification: a farmer must cultivate at least two crops when his arable land exceeds 10 hectares and at least three crops when his arable land exceeds 30 hectares; the main crop may cover at most 75% of arable land, and the two main crops at most 95% of the arable area;
- maintaining permanent grassland;
- maintaining an 'ecological focus area' of at least 5% of the arable area of the holding for farms with arable land larger than 15 hectares (excluding permanent grassland and permanent crops) — i.e. field margins, hedges, trees, fallow land, landscape features, biotopes, buffer strips, afforested areas, nitrogen-fixing crops; this figure could be rise to 7% after a Commission report in 2017 and a legislative proposal.

To avoid penalising farmers that already address environmental and sustainability issues, the text foresees a 'greening equivalency' system whereby the application of environmentally beneficial practices already in place are considered as being in fulfilment of these basic requirements. For

example, no additional requirements are imposed on organic producers as their practices are shown to provide a clear ecological benefit. For others, agri-environment schemes may incorporate measures that are considered equivalent. The new regulation contains a list of such equivalent measures. To avoid 'double funding' of such measures, the payments through rural development programmes must take into account the basic greening requirements.

## 4. Coupled payments

To address the potentially adverse effects of internal convergence for specific sectors in certain regions, and to take account of existing conditions, Member States will have the option of providing limited amounts of 'coupled' payments, i.e. payments linked to specific products. This will be limited to 8% of the national envelope if the Member State currently provides coupled support, or up to 13% if the current level of coupled support is higher than 5%. The Commission has flexibility to approve a higher rate where justified. In addition, there is a possibility of providing a 2% 'coupled' support for protein crops.

## 5. Areas with Natural Constraints/ Less Favoured Areas (ANC/LFA)

Under both pillars, Member States (or regions) may grant an additional payment for areas with natural constraints (as defined under rural development rules) of up to 5% of the national envelope. This is optional and does not affect the ANC/LFA options available under the rules for rural development.

## 6. Active farmers

To solve the problem of the so called 'sofa farmers' and to iron out a number of legal loopholes which have enabled a limited number of companies to claim direct payments, even though their primary business activity is not agricultural, the reform tightens the rule on active farmers. The Member States will be required to abide by a new negative list of activities to be excluded from receiving direct payments, unless the individual businesses concerned can show that they engage in genuine farming activities. The Member States will be able to extend the negative list to include further business activities.

## 7. Eligible hectares

The rules establish 2015 as the new reference year for land area declared, but there will be a link to beneficiaries of the direct payments system in 2013 in order to avoid speculation. Member States that may expect to see a large increase in declared eligible area are allowed to limit the number of payment entitlements to be allocated in 2015 to either 135% or 145% of the number of hectares declared in 2009.

## 8. Small farmers scheme

An optional scheme for the Member States provides that any farmer claiming support may choose to participate in the small farmers scheme, and thereby

receive an annual payment, to be fixed by the Member State, of up to EUR 1 250, regardless of the farm size. Member States may choose from different methods to calculate the annual payment, including an option whereby farmers would simply receive the amount they would otherwise receive. This greatly simplifies the procedure for the farmers concerned and for national administrations. Participants will face less stringent cross-compliance requirements, and be exempt from greening. The total cost of the small farmers scheme may not be more than 10% of the national envelope, except when a Member State chooses to ensure that small farmers receive what they would be due without the scheme.

### 9. Cross-compliance

The provisions on cross-compliance are confirmed and simplified, making direct payments subject to compliance by farmers with: (a) environmental and agricultural condition standards laid down by the Member State and designed to restrict soil erosion, maintain soil structure and soil organic matter levels and ensure a minimum level of maintenance; and (b) community standards in force relating to public health, animal health, the environment and animal welfare. If a farmer does not abide by the cross-compliance rules, the direct payments he can claim will be partially reduced or totally removed. The text confirms that the Water Framework and Sustainable Use of Pesticides directives will be incorporated into the cross-compliance system once they have been shown to have been properly applied in all Member States, and obligations to farmers have been clearly identified.

### 10. New financial instruments: the budgetary and financial discipline mechanism

A budgetary discipline mechanism is applied 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 projections indicate that the total forecast expenditure has been exceeded in a given financial year. Any future financial discipline reduction in annual direct payments (i.e. when payment estimates are higher than the available budget for the first pillar) should apply a threshold of EUR 2 000. In other words, the reduction would not apply to the first EUR 2 000 of each farmer's direct payments. This will also serve to feed the Market Crisis reserve where necessary (5.2.4).

### 11. Integrated administration and control system

The integrated administration and control system is confirmed and reinforced, and now includes at least the following elements: a computerised database, an identification system for agricultural parcels, a system for the identification and registration of basic payment entitlements, an integrated control system and a single system to identify each farmer who submits an aid application.

## Role of the European Parliament

Discussions on the future of the CAP after 2013 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<sup>[1]</sup>. In that resolution, Members 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 21<sup>st</sup> 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<sup>[2]</sup> on the Commission's communication on the CAP towards 2020 (COM(2010) 0672). Parliament has also adopted several resolutions on matters complementary to CAP reform: fair revenues for farmers and a better functioning food chain in Europe<sup>[3]</sup>, recognition of agriculture as a strategic sector in the context of food security<sup>[4]</sup>, EU agriculture and international trade<sup>[5]</sup>, the EU protein deficit<sup>[6]</sup> and farm inputs supply chain<sup>[7]</sup>. Finally, on 13 March 2013 Parliament adopted a series of resolutions amending the CAP legislative proposals<sup>[8]</sup> and the amended text became the mandate for negotiation with the Council. Following more than 40 trilogue meetings, political agreement was reached on this basis on 26 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 adopted a series of resolutions<sup>[9]</sup> expressing again its positive view of the new agricultural regulations.

→ Francesco Tropea

<sup>[1]</sup> European Parliament resolution of 8 July 2010 on the future of the Common Agricultural Policy after 2013, OJ C 351 E, 2.12.2011, p. 103.

<sup>[2]</sup> European Parliament resolution of 23 June 2011 on the CAP towards 2020: meeting the food, natural resources and territorial challenges of the future, OJ C 390 E, 18.12.2012, p. 49.

<sup>[3]</sup> OJ C 308 E, 20.10.2011, p. 22.

<sup>[4]</sup> OJ C 136 E, 11.5.2012, p. 8.

<sup>[5]</sup> OJ C 199 E, 7.7.2012, p. 48.

<sup>[6]</sup> OJ C 199 E, 7.7.2012, p. 58.

<sup>[7]</sup> OJ C 227 E, 6.8.2013, p. 3.

<sup>[8]</sup> P7\_TA(2013)0084, P7\_TA(2013)0085, P7\_TA(2013)0086 and P7\_TA(2013)0087.

<sup>[9]</sup> P7\_TA\_(2013)0490, P7\_TA\_(2013)0491, P7\_TA\_(2013)0492 and P7\_TA\_(2013)0493.

## 5.2.6. Second pillar of the CAP: rural development policy

*Rural development policy is reinforced and confirmed in the second pillar of the Common Agricultural Policy (CAP). This reform is intended to make the agriculture sector and forestry more competitive, strengthen links between the primary activity and the environment, improve the quality of life in rural areas, boost cooperation and innovation and promote diversification of the economy in rural communities.*

### Legal basis

- Articles 38-44 of the Treaty on the Functioning of the European Union (TFEU);
- Regulation (EU) No 1303/2013;<sup>[1]</sup>
- Regulation (EU) No 1305/2013;<sup>[2]</sup>
- Regulation (EU) No 1306/2013.<sup>[3]</sup>

### 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 more than 170 million hectares. Agriculture is also the biggest user of water, as well as the number-one producer of biomass for energy purposes. The European agricultural model is based on the multifunctional nature of farming, and 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.

### Content of Regulation (EU) No 1305/2013

In order to ensure the sustainable development of rural areas, the second pillar of the CAP will have to focus on six priorities relating to: knowledge transfer and innovation in agriculture, forestry and rural areas; farm viability, the competitiveness of all types of agriculture in all regions and the promotion of innovative farm technologies and sustainable management of forests; the organisation of the

food chain, including the processing and marketing of agricultural products, animal welfare and risk management in agriculture; restoring, preserving and enhancing ecosystems that are related to agriculture and forestry; the promotion of resource efficiency and the shift towards a low-carbon economy in the agricultural, food and forestry sectors; and promoting social inclusion, poverty reduction in, and the economic development in, rural areas.

Under the 2014-2020 multiannual financial framework, the European Agricultural Fund for Rural Development (EAFRD) has been allocated a total of EUR 85 billion. Moreover, Member States may decide to shift up to 15% of their direct payments allocation, and the funds generated from the capping or reduction of direct payments, from the first to the second pillar.

The EAFRD is to contribute to the Europe 2020 strategy by promoting sustainable rural development throughout the EU in a way that complements the other instruments of the CAP, the Cohesion Policy and the Common Fisheries Policy. Member States, in doing so, are obliged to sign a Partnership Contract that reflects the EU common strategic approach for each Member State, setting out how they will coordinate the different policies and use the European Structural and Investment (ESI) Funds accordingly (Regulation (EU) No 1303/2013).

In the new programming period, Member States will have to spend at least 30% of the rural development funds they receive from the EU budget on certain measures related to organic farming, areas with natural constraints, land management and the fight against climate change, and at least 5% on the LEADER<sup>[4]</sup> approach.

To meet targets in the six priority areas, the Member States are to define a rural development programme based on a set of measures:

#### A. Innovation and knowledge transfer

This key objective (and more specifically the planned European Innovation Partnership for Agricultural

<sup>[1]</sup> OJ L 347, 20.12.2013, p. 320.

<sup>[2]</sup> OJ L 347, 20.12.2013, p. 487.

<sup>[3]</sup> OJ L 347, 20.12.2013, p. 549.

<sup>[4]</sup> 'Liaison Entre Actions de Développement de l'Économie Rurale', meaning 'Links between the rural economy and development actions'.

Productivity & Sustainability — the 'EIP') is to be met by means of various rural development measures such as 'knowledge transfer', 'cooperation' and 'investments in physical assets'. The EIP is intended to promote resource efficiency, productivity and the low-emission and climate-friendly/-resilient development of agriculture and forestry. This is to be achieved through greater cooperation between agriculture and research in order to accelerate technological transfers to farmers. Strengthened measures are to be introduced in the area of farm advisory services (including measures to promote climate change mitigation and adaptation, address environmental challenges and foster economic development and training).

#### **B. Investment, modernisation, farm restructuring, young farmers and small farmers**

In the area of farm restructuring, investment and modernisation, measures are available, which include higher support rates when linked to the EIP or joint projects. For young farmers, a combination of measures are available that include business start-up grants (up to EUR 70 000), general investments in physical assets, training and advisory services. Small farmers are offered business start-up aid (up to EUR 15 000) or restructuring measures.

#### **C. Agri-environment/climate payments, organic farming and Natura 2000**

A set of agri-environment/climate payments is available to preserve and promote necessary changes to agricultural practices that make a positive contribution to the environment and climate. These measures are to be included in the rural development programmes, with an emphasis on joint contracts, adequate training/information and greater flexibility when extending initial contracts. Moreover, a single separate measure is introduced to support organic farming practices.

#### **D. Quality schemes**

Funds are to be made available in support of farmers' participation in quality schemes such as the Protected Designation of Origin (PDO), Protected Geographical Indication (PGI) and Traditional Speciality Guaranteed (TSG) schemes, as well as schemes for organic labelling, including farm certification schemes recognised by Member States. This support is limited to EUR 3 000 per holding.

#### **E. Risk management toolkit**

Insurance and mutual funds for crop and weather damage and animal disease (currently available under the first pillar in accordance with Article 68 of Regulation 73/2009) are extended to include

a new income stabilisation tool in the form of financial contributions to mutual funds, providing compensation to farmers for a severe drop in income, which would allow a pay-out from a mutual fund (amounting to up to 70% of losses) if income drops by 30%.

#### **F. Producer organisations**

Support is to be provided for setting up producer organisations, on the basis of a business plan and limited to entities defined as SMEs, for the purposes of adapting the production and output of producers to market requirements, jointly placing goods on the market, centralising sales and supply to bulk buyers and improving organisation and innovation processes.

#### **G. Forestry, mountain areas and areas with natural constraints (ANCs)**

Forestry measures are to be strengthened, and streamlined support is to be provided through grants and annual payments. For mountain areas and farmland above 62° N, aid may be granted in amounts of up to EUR 450/hectare (an increase from EUR 250/hectare). New delimitations for ANCs based on eight biophysical criteria are to take effect no later than 2018. In order to preserve or improve the environment in given areas, Member States retain the right to define up to 10% of agricultural areas as ANCs.

#### **H. LEADER, basic services, village renewal and non-agricultural activities**

Greater emphasis is to be placed on the LEADER approach, on awareness-raising and on other preparatory support for strategies promoting flexibility to operate with other funds in local areas, such as rural-urban cooperation. LEADER will now be used as the common approach for community-led local development financed by the following ESI Funds: the European Regional Development Fund (ERDF), the European Social Fund (ESF), the European Maritime and Fisheries Fund (EMFF) and the European Agricultural Fund for Rural Development (EAFRD). Basic services and village renewal, such as investments in broadband infrastructure and renewable energy, can go beyond the small-scale relocation of activities/conversion of buildings that is currently covered. Funds can also be used for non-agricultural activities related to the rural community.

In the new period the Member States and regions will also have the possibility to design thematic sub-programmes addressing in detail specific issues, such as young farmers, small farms, mountain areas, women in rural areas, climate change mitigation/adaptation, biodiversity and short supply chains. Higher support rates will in some cases be available for such sub-programmes.

### Role of the European Parliament

Discussions on the future of the CAP after 2013 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<sup>[1]</sup>. In that resolution, Parliament 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 in 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<sup>[2]</sup> on the Commission's communication entitled 'The CAP towards 2020' (COM(2010) 0672).

Parliament has also adopted several resolutions on matters complementary to CAP reform: fair revenues for farmers and a better functioning food chain in Europe<sup>[3]</sup>, recognition of agriculture as a strategic sector in the context of food security<sup>[4]</sup>, EU agriculture

and international trade<sup>[5]</sup>, the EU protein deficit<sup>[6]</sup> and farm inputs supply chain<sup>[7]</sup>. Finally, on 13 March 2013 Parliament adopted a series of resolutions amending the CAP legislative proposals<sup>[8]</sup>, and the amended text became the mandate for negotiation with the Council. Following more than 40 trilogue meetings, political agreement was reached on this basis on 26 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, Parliament adopted a series of resolutions<sup>[9]</sup> on 20 November 2013, immediately after the adoption of the financial package, expressing again its favourable opinion on the new agricultural regulations. As a result of changes to the second pillar introduced in the final text at the behest of Parliament, Member States are obliged to spend at least 30% of their rural development funding from the EU budget on certain measures related to organic farming, ANC areas, land management and the fight against climate change, and to avoid double funding between these measures and greening payment in the first pillar.

→ Francesco Tropea

<sup>[1]</sup> European Parliament resolution of 8 July 2010 on the future of the Common Agricultural Policy after 2013, OJ C 351 E, 2.12.2011, p. 103.

<sup>[2]</sup> European Parliament resolution of 23 June 2011 on the CAP towards 2020: meeting the food, natural resources and territorial challenges of the future, OJ C 390 E, 18.12.2012, p. 49.

<sup>[3]</sup> OJ C 308 E, 20.10.2011, p. 22.

<sup>[4]</sup> OJ C 136 E, 11.5.2012, p. 8.

<sup>[5]</sup> OJ C 199 E, 7.7.2012, p. 48.

<sup>[6]</sup> OJ C 199 E, 7.7.2012, p. 58.

<sup>[7]</sup> OJ C 227 E, 6.8.2013, p. 3.

<sup>[8]</sup> P7\_TA(2013)0084, P7\_TA(2013)0085, P7\_TA(2013)0086 and P7\_TA(2013)0087.

<sup>[9]</sup> P7\_TA\_(2013)0490, P7-TA\_(2013)0491, P7-TA\_(2013)0492 and P7-TA\_(2013)0493).



## 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 level of EU agricultural imports from developing countries (5.2.10, Table VI).

### WTO Agreement on Agriculture

GATT 1947 did apply to agriculture, but it was incomplete. So much so that in practice signatory states (or 'contracting parties') excluded this sector from the scope of the principles stated in the general agreement. The Uruguay Round, which began in Punta del Este in 1986, included agriculture 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 which were signed in 1994 and 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. The Agreement on the Application of Phytosanitary Measures (SPS) also has provisions affecting

agricultural production and trade, as does the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) with regard to the protection of geographical designations.

These agreements contain a certain degree of flexibility as regards their implementation by 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 the six years 1995-2000, compared with the reference period of 1986-1988);
- the establishment of third country 'minimum access commitments' for specific products not subject to tariffication, 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 coupled to production and not exempt from reduction commitments. This had to 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' covers aid linked to supply control programmes which are exempt from reduction commitments: for example, direct aid based on an area and yield fixed or allocated for a specific number of head of cattle (the case of 'compensatory aid' approved by the CAP in 1992) (5.2.3). However, the amount received in AMS support plus blue box aid ('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 to adjust 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 CAP reform in May 1992 was partly intended, in addition to its domestic objectives, 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

The EU's consolidated rights commitments involved 1764 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), and which involve substantial sums, are not subject to WTO rules. 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 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 0.3% (146.7 million) in 2012, when there were 27 Member States (5.2.2). Commitments on some EU products have been stringent: butter, rape, cheese, fruit and vegetables, eggs, wine, and meat in general have been particularly affected by this.

### C. Domestic support

Most of the support under the amber and blue boxes has been 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. Moreover, 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. resolutions of 18.12.1999 on the Third WTO Ministerial Conference in Seattle; of 25.10.2001 on openness and democracy in international trade; of 13.12.2001 on the WTO meeting in Doha; of 12.2.2003 on WTO agricultural trade negotiations; of 25.9.2003

on the Fifth WTO Ministerial Conference in Cancun; of 12.5.2005 on the assessment of the Doha Round; of 1.12.2005 on preparations for the Sixth WTO Ministerial Conference in Hong Kong; of 4.4.2006 on the assessment of the Doha Round; and of 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 European 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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→ Albert Massot

## 5.2.8. The Doha round and agriculture

*The Doha Ministerial Conference of 14 November 2001 established a new, comprehensive negotiating agenda. In keeping with that agenda, the Bali Ministerial Conference of December 2013 focused on a number of farming issues with a view to achieving partial agreements prior to the ultimate conclusion of the round.*

### Legal basis

Articles 207(3) and 218 TFEU.

The framework for the current agricultural negotiations was set by Article 20 of the Marrakesh Agreement on Agriculture (AAM). Under the terms of that article, World Trade Organisation (WTO) members confirmed that reducing agricultural support and protection was an ongoing and gradual process. 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, marked the beginning of the new agricultural negotiations. The final declaration issued following the conference 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 set a new timetable.

WTO members committed themselves to negotiations designed to secure substantial improvements in market access, reductions in all forms of export subsidies, as a prelude to their being phased out, and substantial cuts in trade-distorting domestic support, with due account being taken of the need for developing countries to be granted special and differential treatment and of the non-trade concerns referred to in the proposals for negotiations submitted by WTO members.

### The current negotiations

#### A. Progress

Thus far, few of the agreed deadlines have been met. 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. While agricultural issues, including the cotton initiative tabled by four African countries, were a major stumbling block, however, the refusal on the part of the developing countries to discuss the 'Singapore issues' also contributed to the failure of the conference.

The process resumed early in 2004. The outcome 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, one that, once again, they failed to meet. The Hong Kong Ministerial Conference of December 2005 went some way towards smoothing out the disagreements between members, but not all could be overcome. Finally, revised sets of draft modalities were tabled in 2008, providing an outline for the final agreement to be reached in Geneva. The 'July 2008 package' (TN/AG/W/4/Rev.3) deals with 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 one of 25% for all other countries.
- The 'amber box' (or AMS) (5.2.7) would be reduced by 70% overall for the EU, by 60% for the United States and Japan and by 45% for other countries. Prices and support for individual products would be capped at a figure equivalent to 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 or resource-poor farmers).

- The 'green box' conditions (5.2.7) would be tightened up.

**b. Market access**

- Tariffs would be cut on the basis of a formula stipulating 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 one of between 33.3% and 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 them to increase customs tariffs temporarily to help them cope when import volumes rose or prices fell.

**c. Export competition**

- Export subsidies (5.2.7) would be abolished by the end of 2013, including subsidies disguised as export credits, for example in the context of the activities of state trading export enterprises and non-emergency food aid.

On 6 December 2008, the chair of the Negotiating Group on Agriculture distributed his latest revised draft 'modalities'. However, disagreements over the SSM for developing countries proved insurmountable. Roughly speaking, the dispute was between those countries (the United States in particular) which wanted additional customs tariffs to be triggered only by a sharp increase in imports (40%), 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 relating to geographical indications and biodiversity; bananas (to be settled by a separate agreement between the EU, Latin American suppliers and the ACP states); sensitive products; and tariff simplification.

In an attempt to break the deadlock, the Eighth Ministerial Conference of 2011 took a different approach and decided that members should choose which issues they could agree on more quickly than

others, on the understanding that an agreement would be reached on the rest of the Doha round package in due course. Using this method, the Ninth Ministerial Conference, which took place in Bali in December 2013, adopted five documents on topics relevant to agriculture:

- Strengthening 'general services' by adding a number of programmes related to land reform and rural livelihood security.
- Introducing a temporary mechanism for 'public stockholding for food security purposes' in developing countries in order to prevent members from making legal challenges on the issue. This interim solution, which is due to be adopted by the Eleventh Ministerial Conference, will remain in force until a permanent solution is found.
- 'Tariff rate quota administration' (duties are lower on quantities within the quotas).
- 'Export subsidies and other measures with similar effects'. The declaration states that members will ensure that progress will be made in eliminating all forms of export subsidies.
- Improving 'market access for cotton products' from the least developed countries and development aid for production in those countries.

Given the lack of consensus, it remains to be seen when the Bali agreements will be formalised and whether the Doha round as a whole can be completed in the medium term. The increased volatility of international farm prices is weakening confidence in trade liberalisation. What is more, the fact that the financial crisis is causing an economic slowdown and increased unemployment, particularly in the United States and the EU, has led to an upsurge in overtly protectionist thinking.

## B. Positions

### 1. The European Union

Relying at times on support from a group of countries (the 'Friends of Multifunctionality'), the EU is essentially seeking a more market-oriented multilateral trading system, but one which takes due account of social, economic and environmental sustainability. It cites efforts made in the areas of domestic support [CAP reforms (5.2.3)] and market access ['Everything but Arms' initiative (6.2.3)], and does not see the proposed reductions in domestic support as posing major problems. In 2009-2010, total EU support in the amber and blue boxes and under the de minimis provision amounted to 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 concerning the abolition of various forms of export support (US food aid and export credits; Australian, New Zealand and Canadian state trading enterprises). The EU also reaffirmed its desire for balance in the ongoing reform of the agricultural trading system, in the form of 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 under the new 2014 Farm Bill. The US's most recent proposal to the WTO aimed 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 chair of the agriculture negotiations asked the United States to bring down its subsidies to between USD 13 and 16.4 billion.

## 3. The Cairns Group

This group, which brings together 17 exporting countries with a common interest in reducing obstacles to trade that are harmful to agriculture, is very critical of the developed countries which maintain a high level of subsidies. It is keen to see export subsidies done away with, and very sceptical about the concept of multifunctional agriculture favoured by Europe.

## 4. The developing countries

Developing countries, which make up three-quarters of the WTO's members, seek to safeguard their own crops and highlight non-trade concerns

(food security, means of subsistence, poverty, rural employment, etc.). They are also calling for special and differential treatment tailored to their specific situation. They have organised themselves into new alliances in order to promote their interests more effectively.

- The alliance of 20 countries (G20) formed in 2006 has grown to 22, led by India and China, and seeks 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 between the African Union, the ACP countries and the least developed countries (G90); it has a set of common negotiating positions on agriculture, market access for non-agricultural products, the Singapore issues and development.
- Lastly, 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. Whilst scrutinising the Commission to ensure that it abides by the negotiating mandate issued to it, 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)].

→ Albert Massot

## 5.2.9. The CAP after 2013

*The fifth major reform of the CAP is nearly completed: the new regulations were published in December 2013 and the first wave of delegated acts has just been given the green light. So the European agricultural framework for 2014-2020, including its financial aspect, is in place. However, 2014 will still be a transitional year during which the Member States will have to make strategic choices, as the new CAP leaves them a considerable margin for manoeuvre. Furthermore, other legislative texts that are important to agriculture are still being negotiated.*

### Legal basis

Articles 38-44 TFEU (Title III).

Basic Acts and Multi-annual Financial Framework: see Fact Sheets 5.2.1, 5.2.2, 5.2.3, 5.2.4, 5.2.5 and 5.2.6.

Transitional measures for 2014: Regulation (EU) No 1310/2013 (OJ L 347, 20.12.2013).

### 2014, a transitional year

2014 will be a transitional year: the Member States will be preparing for the full implementation of the new CAP, which leaves them some significant room for manoeuvre. For example, it will be for the Member States to make certain crucial choices on matters including the internal convergence system for direct aid, the level of coupled payments, and whether to introduce the redistributive payment. Rural development programmes will also have to be devised.

For example, the redistributive payment will be applied in a number of countries including France, Germany and Romania, but not in Spain. France and Poland will allocate 2% of their budget to coupled payments for protein crops. Internal convergence will be applied partially in Ireland and Italy, but fully in the Netherlands. As regards transfers of funds between the two pillars, France, Germany and Wales will transfer funds from the first to the second pillars (3%, 4.5% and 15% respectively), while Poland will transfer 25% from the second to the first pillar (for Slovakia the figure will be 21%), and Spain will not make any transfers.

In addition, to ensure a seamless transition from the old to the new CAP, Regulation (EU) No 1310/2013 provides for some transitional rules on the application of the four basic regulations in 2014. Most of the provisions of the new CAP will enter into force on 1 January 2015, e.g. the greening of direct aid. However, some provisions will already be able to be applied in 2014 (e.g. the redistributive payment or the allocation of a higher level of coupled payments).

Finally, 2014 will be a year of institutional renewal for the EU, particularly for the European Parliament (and thus for its Committee on Agriculture and Rural

Development). The European elections will take place from 22 to 25 May; a total of 751 MEPs will be elected and will hold office from 2014 to 2019.

### Other legislation supplementing CAP reform

The basic regulations underlying the new CAP were published in December 2013. The Commission then had to draw up the delegated acts relating to the CAP, e.g. those supplementing Regulation (EU) No 1307/2013 on the rules for direct payments. Delegated acts are non-legislative acts of general application which supplement or amend certain non-essential elements of a basic act (see Fact Sheets 1.3.8 and 5.2.1). The first wave of delegated acts was adopted by the Commission in March 2014, then forwarded to the Council and the European Parliament for scrutiny. Their entry into force was subject to no objection being received from either Parliament or the Council within a two-month deadline (renewable once). In April 2014, partly in response to requests from Parliament, the Commission adopted a declaration in which it undertook to evaluate the implementation of the obligations on Ecological Focus Areas (EFAs), after the first year of application. This evaluation will relate in particular to administrative burdens. The Commission states that if these obligations result in a noticeable reduction of the production potential of the EU, the relevant delegated act will be revised. The Commission has also undertaken to amend the delegated act on direct payments, increasing the coefficient for areas growing nitrogen-fixing crops such as alfalfa, clover or lupins from 0.3 to 0.7 (such that one hectare of these crops is equivalent to 0.7 ha of EFA). The Commission has also appended to the delegated acts notes on the interpretation of some terms (such as 'active farmers'). The implementing acts for the CAP will also have to be adopted, again by the Commission, in respect of measures requiring uniform implementation in the Member States. Parliament's Committee on Agriculture and Rural Development gave its approval to these delegated acts on 7 April 2014 and no objections were raised in plenary. The Council, for its part, accepted these delegated acts at its meeting on 14 April 2014. The Commission has announced that it proposes to



publish a second wave of delegated acts once the new European Parliament is elected.

Furthermore, in less than five months of negotiations (a record for a legislative text on the CAP), Parliament and the Council reached agreement on the common European information and promotion policy for agricultural products on the internal market and in non-EU countries. The annual budget available for these measures will increase gradually from EUR 61.5 million in 2014 to EUR 200 million in 2020. In particular, producers' organisations will be eligible for support. The EU's contribution to promotion programmes will range between 70% and 90% of eligible expenditure, depending on the type of programme. Parliament approved this text at its April 2014 plenary (P7\_TA-PROV(2014)0362).

In May 2013 the Commission adopted a package of measures seeking to renew EU legislation on every link in the food production chain: animal health, plant health, plant reproductive material (including seed) and official controls. On 15 April 2014, Parliament adopted its position at first reading on animal health (P7\_TA-PROV(2014)0381), protective measures against pests of plants (P7\_TA-PROV(2014)0382) and official controls (P7\_TA-PROV(2014)0380). As regards the negotiations concerning the regulation on plant reproductive material, Parliament adopted in plenary on 11 March 2014 a legislative resolution rejecting the Commission's proposal, and calling on it to withdraw it and submit a new one (P7\_TA(2014)0185). Negotiations on this package will resume during the next Parliament (2014-2019). Parliament also approved the new common financial framework on this legislation in April 2014 (P7\_TA(2014)0271). Some EUR 1.9 billion will be available, 65% for animal health (emergency measures, control and eradication programmes) and 20% for official control programmes (European reference laboratories).

A legislative proposal on programmes promoting the consumption of fruit and milk in schools, seeking to improve the operation of these programmes, was recently adopted by the Commission (2014/0014(COD)). This proposal aims in particular to strengthen the educational dimension of these two programmes, to unify their financial and legal framework and to enhance the effectiveness of the EU expenditure involved. The budget for these programmes should remain the same as under the new CAP (EUR 150 million for fruit and vegetables and EUR 80 million for milk).

In March 2014 the Commission published a report on the implementation of the fruit and vegetables regime (COM(2014) 112), looking in particular at the level of organisation of producers in the EU. The Commission may rely on this report in preparing its legislative proposals aimed at adjusting the fruit and vegetables regime.

In 2014 the Commission is due to present to the Council and Parliament a report on the milk sector and the implementation of the Milk Package which has been in force since 2012.

### The CAP in the EU's 2014 budget

The EU budget for 2014, adopted on 20 November 2013, is the first to be drawn up under the new EU multi-annual financial framework (MFF) for 2014-2020 (see Fact Sheet 5.2.2). The budget assigns a total of EUR 142.6 billion in commitment appropriations (at current prices), which is 6.2% less than the 2013 budget.

The first pillar of the CAP accounts for 30.7% of commitment appropriations for 2014 (EUR 43.77 billion) and the second pillar for 9.8% (EUR 13.99 billion). For the first pillar this amount is stable as compared with the 2013 budget (+0.3%), while for the second pillar it is down by 5.5%. In total, then, the CAP accounts for 40.5% of the EU budget, less than expenditure on economic, social and territorial cohesion and competitiveness for growth and jobs (a total of 44.9%).

### Prospects for CAP reform in 2020

A reform of the CAP will take place no later than the end of the period of the 2014-2020 MFF. The MFF also contains a review clause whereby in 2016 the Commission is to present a re-examination of the functioning of the MFF in the light of the economic situation. This will allow the institutions, including the European Parliament elected in 2014, to reassess the priorities of the MFF. Some impact on the CAP cannot be ruled out.

Will the trends outlined in the recent reform of the CAP be confirmed in 2020? Issues up for discussion may include whether to maintain the financial primacy of direct payments for rural development, and what proportion of the budget should be earmarked for market measures. The role of the crisis reserve may also be questioned in the light of the experience gained from 2014 to 2020. The future of measures to encourage the economic organisation of farmers, particularly in sectors where supply control measures have been eliminated (milk, sugar, wine) will also probably be a central issue.

There is then the question of co-financing direct payments, which could result in the creation of a single support pillar for agriculture and rural areas — a topic which the last reform did not address, mainly because of the economic crisis. The question of how the CAP funds will be coordinated with the rest of the structural funds and European investments will probably be raised, as will that of expenditure on agricultural research and innovation.

Another question will be the future structure of direct payments, in particular the relative importance of their components, such as support for the production of public assets. Will there be plans to transform the basic payment into a flat-rate amount per hectare as part of a grand overall scheme for European agriculture? The future of payments linked to production, and of the redistributive payment, are also sure to provoke discussion. With that in mind, whichever model for the implementation of direct aid prevails between 2014 and 2020 will probably have an influence on the future direct aid model adopted. The definitions of 'active farmers' and 'small farmers' may also be revised.

Finally, the new CAP will be influenced by the outcome of international trade negotiations, both multilateral (in the WTO Doha Cycle following on from the progress made in Bali in December 2013) and bilateral (particularly with the USA, with a view to a Transatlantic Trade and Investment Partnership

(TTIP)). The same will apply to the multilateral environmental agreements (e.g. on combating climate change).

### Role of the European Parliament

The 2014-2020 reform of the CAP is the first in which the European Parliament will be participating as a co-legislator. With this initial experience under its belt, Parliament will certainly play a crucial role in the forthcoming reforms.

The implementation of Article 43(3) (derogations in favour of the Council) will no doubt still be a sensitive issue (see Fact Sheet 5.2.4).

And as we have seen, the end of Parliament's 2009-2014 electoral term means that some items of agricultural legislation will have to be dealt with by the newly-elected Parliament, including programmes to promote the consumption of fruit and milk at school.

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→ Albert Massot / Guillaume Ragonnaud

## 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 in 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. CAP — 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. CAP — 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: Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 (OJ L 347, 20.12.2013, p. 884) based on the political agreement reached in June 2013 by Parliament, the Council and the Commission (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	2012	2012
BE	1 358	42	32.3	64	7 607	0.5	18.0	96.0	2.0
BG	4 476	357	12.5	677	4 349	4.2	2007 24.8	110.9	3.8
CZ	3 484	23	151.5	152	4 834	0.9	49.2	113.4	2.4
DK	2 647	41	64.6	73	10 575	1.2	1.1	58.8	1.4
DE	16 704	298	56.1	658	52 289	0.6	52.0	896.9	2011 1.7
EE	941	19	49.5	26	811	1.9	40.9	14.3	2.0
EL	3 478	717	4.9	513	10 926	2.5	78.1	105.8	2011 3.2
ES	23 753	967	24.6	755	41 375	2.0	81.7	437.5	2011 2.7
FR	27 837	507	54.9	753	72 224	1.4	44.5	625.2	1.9
IE	4 991	140	35.7	83	6 628	1.1	77.5	50.8	4.7
IT	12 856	1 616	8.0	965	47 508	1.6	50.8	422.1	1.9
CY	118	38	3.1	18	706	1.8	60.2	9.6	2.0
LV	1 796	83	21.6	75	1 078	1.3	73.5	29.5	2010 2.4
LT	2 743	200	13.7	116	2 586	2.9	57.1	43.4	4.6
LU	131	2	65.5	—	352	0.2	95.3	1.3	0.7
HU	4 686	534	8.8	291	7 760	2.9	20.7	123.0	2.2
MT	11	12	0.9	5	129	0.9	100.0	4.0	1.7
NL	1 872	71	26.4	226	25 433	1.3	11.9	137.5	2.8
AT	2 878	149	19.3	202	7 154	1.0	64.1	80.7	1.9
PL	14 447	1 499	9.6	2 036	22 570	2.4	62.5	495.9	2011 2.9
PT	3 668	304	12.1	520	6 298	1.3	92.4	103.9	2011 2.2
RO	13 306	3 724	3.6	2 962	18 048	5.9	2008 28.9	209.7	2011 6.1
SI	483	74	6.5	79	1 232	1.3	92.4	17.2	1.5
SK	1 896	24	79.0	71	2 295	0.8	61.3	48.4	1.7
FI	2 291	63	36.4	114	4 633	0.8	95.1	40.5	1.6
SE	3 066	70	43.8	92	5 789	0.4	48.5	48.1	1.3
UK	15 686	183	85.7	408	22 017	0.6	52.8	376.7	1.6
EU-15	123 216	5 170	—	5 426	325 807	—	58.1	3 481.7	1.9
EU-12	48 387	6 587	—	6 509	66 398	—	45.7	1 219.4	3.3
EU-27	171 603	11 757	14.6	11 935	392 205	1.2	54.4	4 701.1	2.0
HR	1 326	177	7.5	186	2 861	2.9	—	—	—
EU-28	172 929	11 934	—	12 121	395 066	—	—	—	—

Sources: Commission, 'EU Agriculture in the Union — Statistical and Economic Information Report 2012', February 2013; Commission, 'Rural Development in the EU — Statistical and Economic Information Report 2013', December 2013.

**Table III: Basic agri-environmental indicators (EU-27)**

	UAA classed as Natura 2000 area (%)	Territory classed as nitrate vulnerable zone (NVZ) (%)	Irrigated UAA (% of total)	UAA under organic farming (%)	Share of agriculture in production of renewable energy (%)	Share of forestry in production of renewable energy (%)	Greenhouse gas emissions from agriculture (1 000 t of CO <sub>2</sub> equivalent)
	2012	2012	2010	2011	2011	2011	2011
BE	7.2	76.2	0.3	4.1	28.2	44.8	9 366
BG	22.2	34.6	2.0	0.5	2.0	72.1	6 149
CZ	6.6	41.6	0.6	13.1	12.2	68.6	8 065
DK	4.6	100.0	12.1	6.1	(+ Sweden) 2.2	49.0	9 672
DE	10.7	100.0	2.2	5.9	23.2	37.4	70 360
EE	5.4	7.2	0.0	14.1	0.0	96.2	1 271
EL	18.9	24.3	29.5	5.8	3.6	46.3	8 966
ES	15.8	16.2	12.8	7.5	6.2	35.0	37 279
FR	8.1	45.5	5.7	3.3	10.9	49.9	91 151
IE	4.1	100.0	0.0	1.1	4.6	26.4	17 691
IT	10.7	12.6	18.7	8.5	6.5	21.9	33 530
CY	6.0	5.3	23.9	2.9	6.6	5.2	730
LV	6.7	12.8	0.0	10.1	3.1	84.1	2 316
LT	4.6	100.0	0.1	5.4	7.0	84.6	4 980
LU	11.3	100.0	n.a.	2.8	13.5	54.8	664
HU	14.6	56.2	2.4	2.3	12.6	77.0	8 759
MT	7.7	100.0	24.7	0.2	n.a.	n.a.	71
NL	4.4	100.0	7.3	2.5	21.4	33.5	16 028
AT	11.4	100.0	0.9	19.6	5.2	53.7	7 577
PL	11.7	4.5	0.3	4.1	5.7	85.2	34 930
PT	18.4	3.7	12.7	6.1	4.9	50.7	7 505
RO	12.6	57.8	1.0	1.6	2.5	69.1	18 941
SL	21.3	100.0	0.3	7.0	2.9	56.7	1 901
SK	16.0	29.8	0.8	8.6	13.4	56.5	3 118
FI	0.7	100.0	0.6	8.2	2.3	83.3	5 867
SE	4.0	19.8	2.1	15.7	(See DK)	51.8	7 772
UK	3.0	43.6	0.4	3.7	5.6	27.9	46 357
EU-15	10.0	48.6	7.7	6.0	10.5	42.9	369 785
EU-12	12.2	35.7	0.9	4.2	6.1	76.1	91 228
EU-27	10.6	45.3	5.8	5.5	9.8	48.1	461 013

Source: Commission, 'Rural Development in the EU — Statistical and Economic Information Report 2013', December 2013.

**Table IV: Basic data on EU forests (2010)**

Member State EU-28	Forests <sup>[1]</sup> (1 000 ha)	Other wooded land <sup>[2]</sup> (1 000 ha)	Other land (1 000 ha)	Public (1 000 ha)	Forest per inhabitant (ha)	Quantity of total roundwood removals (1 000 m <sup>3</sup> )
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
<b>EU-28</b>	<b>159 114</b>	<b>20 364</b>	<b>244 727</b>	<b>63 787</b>	<b>0.32</b>	<b>409 244</b>

<sup>[1]</sup> 'Forest': land spanning more than 0.5 ha with trees higher than 5 metres and a canopy cover of more than 10%, or trees able to reach these thresholds in situ.

<sup>[2]</sup> 'Other wooded land': land not classified as 'forest', spanning more than 0.5 ha; 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: "State of Europe's Forests 2011" (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)**

Member State (EU-27)	1. Distribution by Member State Direct Aids/Markets/Rural Development (Million EUR) (2012)				2. % of farms benefiting from direct aids under the EAGF (2012)		
	(a) Direct payments (1 <sup>st</sup> pillar - EAGF)	(b) Market measures (1 <sup>st</sup> pillar - EAGF)	(c) EAFRD (2 <sup>nd</sup> pillar)	(a)+(b)+(c) % of total EU	(d) With aid ≤ EUR 5 000	(e) With aid ≤ EUR 20 000	(f) With aid ≥ EUR 50 000
BE	569.9	83.6	75.5	1.2	34.47	72.76	5.08
BG	387.9	43.6	397.7	1.4	89.70	96.18	1.99
CZ	743.1	12.9	412.7	2.0	61.66	83.18	9.88
DK	939.1	12.2	98.8	1.8	44.92	73.43	12.24
DE	5 291.1	137.6	1 398.3	11.6	44.93	79.24	5.00
EE	81.8	3.0	108.9	0.3	84.38	94.65	1.95
EL	2 315.2	67.0	669.0	5.2	81.39	98.25	0.14
ES	5 235.8	632.6	1 256.0	12.1	74.25	93.26	1.41
FR	7 923.8	732.5	1 223.9	16.8	29.02	59.26	10.25
IE	1 263.8	28.2	352.3	2.8	41.90	87.32	1.70
IT	4 055.6	758.8	1 422.9	10.6	86.80	97.09	0.85
CY	39.2	6.9	21.8	0.1	95.98	99.41	0.09
LV	119.2	8.2	150.2	0.5	94.17	98.66	0.41
LT	308.0	19.1	250.3	1.0	93.61	98.77	0.34
LU	34.3	0.5	13.3	0.0	29.70	63.86	4.95
HU	1 078.3	87.5	563.3	2.9	83.22	95.02	1.80
MT	4.3	1.0	10.4	0.0	97.33	99.47	0.00
NL	820.0	106.4	96.1	1.7	36.71	70.38	4.60
AT	714.6	29.4	546.0	2.2	59.34	94.72	0.37
PL	2 457.8	377.7	1 857.2	8.0	94.69	99.40	0.19
PT	645.7	128.9	586.7	2.3	87.49	96.72	1.14
RO	906.4	114.3	1 359.2	4.0	98.26	99.42	0.20
SI	116.1	8.8	118.9	0.4	92.16	99.48	0.07
SK	319.3	9.6	275.0	1.0	77.90	87.63	8.04
FI	534.0	18.3	294.4	1.4	45.59	90.30	0.91
SE	689.1	26.7	277.8	1.7	57.67	85.20	3.70
UK	3 286.6	58.5	752.5	6.9	42.47	73.41	8.87
EU-27	40 880.0	3 513.8	14 589.1	100.0	79.73	93.44	1.68

Sources:

Columns (a) and (b): Commission, 'Sixth Financial Report on the European Agricultural Guarantee Fund — EAGF 2012' and annex 24. Market measures (column b) do not include centralised direct payments (359,8 million in 2012).

Column (c): Commission, 'Sixth Financial Report on the European Agricultural Fund for Rural Development — EAFRD 2012', Working Document — Table 10.

Columns (d), (e) and (f): Commission, 'Indicative Figures on the Distribution of Aid, by size-class of aid, received in the context of direct aid paid to the producers in accordance with Council Regulation (EC) No 1782/2003 and Council Regulation (EC) No 73/2009 — Financial Year 2012'.

**Table VI: Trade in agricultural and food products in EU-28 by selected countries (2012)**

	(a)		(b)		
Extra trade EU-28	Imports (Million EUR)	% of row 2	Exports (Million EUR)	% of row 2	Balance (b)–(a)
1. All trade	1 803 112	—	1 694 335	—	– 108 776
2. Agricultural trade	102 192	100	115 160	100	12 967
% agricultural trade (2/1)	5.7	—	6.8	—	—
Country					
Argentina	6 119	6	193	0.2	– 5 925
Brazil	14 446	14	1 460	1.3	– 12 986
Canada	1 841	1.8	2 854	2.5	1 013
China	4 517	4.4	6 066	5.3	1 549
Indonesia	4 079	4.0	638	0.6	– 3 441
Japan	179	0.2	5 206	4.5	5 027
Russia	1 819	1.8	11 369	9.9	9 549
South Korea	94	0.1	1 810	1.6	1 716
Switzerland	4 187	4.1	6 713	5.8	2 526
Turkey	3 636	3.5	3 128	2.7	– 508
Ukraine	4 127	4.0	2 189	1.9	– 1 938
United States of America	8 358	8.2	15 123	13.1	6 764

Source: Trade Statistics 2012 — DG AGRI (Trade picture files by country).

→ Albert Massot

## 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 European Union: valuable multifaceted and multi-purpose 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 European Union. In total, forests cover 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). Moreover, their extent 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 increased by approximately 11 million hectares since 1990, due primarily 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) rather than publically owned (40%).

#### B. Forests are multifunctional, with environmental, economic and social roles

Environmentally, forests provide numerous ecosystem services: they help protect the soil (against erosion), form part of the water cycle, and regulate the local climate (via evapotranspiration mainly) and the global climate (especially by storing

carbon). As the habitat for a great many species, forests also protect biodiversity.

From a socio-economic point of view, working forests generate resources, principally wood. Wood can be obtained from 135 million of the 159 million hectares of forest land (no legal, economic or environmental restrictions to limit use). What is more, felling in these forests only accounts for 64% of the rise in the annual volume of wood. The primary 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 (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, but this can rise to as much as 5% in Finland, and 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); and 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 forested land areas are damaged by at least one of these factors.

Climate change is already 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 European Union 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 in non-EU countries.

#### **A. A new EU reference framework for forestry:**

A new EU Forestry Strategy was adopted by the European Commission in September 2013 (COM(2013) 659). This proposes an EU reference framework to be used when drawing up sectoral policies that will impact forests. The strategy's guiding principles are: sustainable forest management and promotion of their multifunctional role, resource efficiency and the EU's global forest responsibility. It also provides strategic orientations for actions by the European Commission and the Member States. For instance, the Commission is required to develop sustainable forest management criteria by the end of 2014.

The Strategy is accompanied by a blueprint (SWD(2013) 343) identifying measures with which to respond to challenges within the European wood-using sector.

#### **B. A wide range of EU actions affecting forests**

##### **1. The Common Agricultural Policy (CAP), the main source of EU funds for forests**

Approximately 90% of EU funds for forests come from the European Agricultural Fund for Rural Development (EAFRD) (5.2.6). Approximately EUR 5.4 billion was allocated in 2007-2013 to co-financing forestry measures.

The new regulation on support for rural development by the EAFRD was published last December (Regulation (EU) No 1305/2013), following the 2013 CAP reform. The main measures specifically to do with forestry concern investment in developing forest areas and improving the viability of forests (afforestation; creation of agroforestry systems; restoration of forests damaged by fires, natural catastrophes and other catastrophic events, and prevention of said damage; improved resilience and environmental value of forest ecosystems; investment in forestry technologies and processing; mobilisation and marketing of forest products), as well as forestry, environmental and climate control services and forest conservation. Provision has

also been made for other measures not specific to forestry (Natura 2000 and Water Framework Directive payments).

Member States must prepare their new rural development programme in 2014 and decide which forestry measures they will implement.

##### **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, under the cohesion policy, forestry projects can 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) aims to help Member States faced with major natural disasters, such as storms (EUR 82 million for Sweden, 2005) and forest fires (EUR 90 million for Greece, 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, for instance the prevention of forest fires. The EU Biodiversity Strategy (COM(2011) 0244) 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) 0400), which may encourage demand for sustainably produced wood; the European ecolabel has been awarded for wood flooring, furniture and paper. The FLEGT Action Plan provides for 'Voluntary Partnership Agreements' with wood-producing countries and a regulation to ban the marketing of illegally harvested wood 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, with discussions underway there on a legally binding agreement on sustainable forest management and 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 the loss of global forest cover 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, included EUR 37 million for a programme supporting its forestry policy.

### Role of the European Parliament

The European Parliament 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. A large number of reforms have been finalised recently (e.g. cohesion policy) or are underway (e.g. plant reproductive material). In

addition, a pilot project aimed at launching an EU initiative on agroforestry has been included in the EU budget for 2014 at Parliament's request (EUR 1 million). The European Parliament also 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 1998. The European Parliament 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 European Parliament supported amending the Forestry Strategy in order to incorporate the challenges linked to climate change and its sustainable management. The new EU Forestry Strategy will be referred to the European Parliament for consideration during the next legislative term (2014-2019).

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→ 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 21<sup>st</sup> 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 to 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.

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→ Rafael Centenera



### 5.3.3. Fisheries control and enforcement

*Fisheries control and enforcement aims to ensure the correct 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).

Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006.

Commission implementing regulation (EU) No 404/2011 laying down detailed rules for the implementation of the abovementioned Council Regulation.

#### Objectives

The control policy seeks to ensure CFP rules are observed and, where necessary, to enforce compliance with these rules. In broad terms, it is meant to ensure:

- that only the authorised quantities of fish are caught, and that data for managing fisheries are available for use;
- timely execution of the respective roles of Member States and the Commission;
- fair application of the rules to all fisheries, with harmonised sanctions across the EU;
- traceability throughout the supply chain, 'from net to plate'.

Regarding the above, the adoption of the measures is the responsibility of the European Union bodies, while the Member States are by and large responsible for implementing the measures and applying sanctions in cases of infringements in their area of jurisdiction.

#### Achievements

The current system was laid down in the Control Regulation which entered into force on 1 January 2010, thoroughly modernising the EU's approach to fisheries control. In particular, it has brought the system into line with the rigorous measures which

the EU adopted in 2008 to combat illegal fishing. The successive reforms of the CFP (from Regulation (EC) No 2371/2002 to Regulation (EU) No 1380/2013) also brought new changes aiming at overcoming longstanding deficiencies. Measures have included, over time:

- Greater cooperation in enforcement, and creation of a Joint Inspection Structure (JIS), ensuring the pooling of EU and national inspection and monitoring resources through the Community Fisheries Control Agency (CFCA, see below).**
- Progressive 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.
  - The Commission must ensure that the Member States fulfil their obligations equally in terms of equity and effectiveness. It regularly draws up an evaluation report, to be submitted to 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.
- Better compliance and harmonised application of the rules:**

Whereas sanctions within Member States have diverged, putting a constraint on the uniform achievement of a common level of compliance, the Commission has progressively gained more autonomy in the control of Member States' fishing activities, and a CFP Compliance Scoreboard has helped achieve better compliance by raising public awareness of how well Member States are performing in their control and enforcement activities.

A list of serious infringements has emerged as grounds for effective, proportionate and dissuasive sanctions in national legislation: since 2012, Member States have been required to introduce a point system for serious infringements for licences linked to specific vessels, to be extended to masters of vessels.



**d. Checks are now carried out at every point in the chain:**

Fishing vessels cannot leave port without a licence to fish. For every shipment of fish, information must be provided that proves that the fish was caught legally. This system applies to all fishing activities in EU waters, and to all EU fishing vessels and EU nationals, wherever they fish. It also applies to recreational fishing on sensitive fish stocks and aquaculture, in so far as they are covered by rules at EU level — for instance, to fishing for eel or to certain recreational fisheries for bluefin tuna.

**e. Modern technologies applied to monitoring and control have been progressively combined with traditional inspections. They now include the electronic reporting system (ERS or 'e-logbook') used to record data on catches, landings, sales, etc., and to report it within Member States. The vessel monitoring system (VMS) is a satellite-based system providing data at regular intervals on the location, course and speed of vessels (both systems are now compulsory for vessels above 12 m). Non-EU vessels of the same size are obliged to have an operational satellite tracking device installed on board whenever they are in Community waters. The Automatic Identification System (AIS) is an autonomous and continuous vessel identification and monitoring system used for maritime safety and security, gradually extended to all EU fishing vessels above 15 m**

## The European Fisheries Control Agency

This Agency was set up in 2005 as a key element to improve compliance with the CFP rules. It has improved uniform and effective enforcement by pooling EU and national means in the control, inspection and monitoring of fishing activities and their coordination (via Joint Deployment Plans as its main instrument). This operational coordination, as the Agency's core task, has helped to tackle the shortcomings in enforcement which resulted from the disparities in the means and priorities of the control systems in the Member States.

With the adoption of Regulation (EC) No 1224/2009, new powers were assigned to the Agency in order to enhance its effectiveness. Its operations are funded by three sources: the Community budget, payment for services provided to the Member States and income from publications, training and other services that it provides.

In the run-up to the launch of the newly reformed CFP in 2014, the EFCA has focused on new developments to enhance the culture of compliance and level playing field across the fisheries sector. Particular tools that will allow for new impetus towards this objective include:

- Regional Joint Deployment Plans (JDPs): the vehicle through which the Agency organises the

deployment of the national human and material means of control and inspection pooled by the Member States. JDPs promote the cost-effective use of human and material resources of Member States in a coordinated way, and the Agency has started to extend JDPs to cover regional, multispecies joint deployment plans (NEAFC, NAFO and pelagic species in western waters). The EFCA envisages an extension to regional, multispecies and permanent fisheries in the very near future.

- Discard ban control strategies: to be implemented preferably through the regional JDPs, enabling strategic decisions to be taken at steering group level, whereby the EFCA will help monitor them effectively. Depending on the characteristics of the fishery, different methods will be applied and available tools will be used and tested. This is essential to accompany the new CFP.
- Cost-effectiveness and compliance evaluation focus groups: setting up of two focus groups to evaluate compliance and cost effectiveness in control operations.
- Core curriculum: a core curriculum for the training of the fisheries inspectorates of the Member States will for the first time ever contribute to and apply the CFP in a uniform manner.
- EFCA ICT Systems: designed to complement individual national systems. These are unique systems developed by the Agency and made available to Member States to support control of the CFP at EU level. These electronic tools allow for a continuous real time exchange of data and intelligence, thereby restricting the possibilities for the manipulation of information and helping to limit non-compliant behaviour.

## Towards implementation of the new Landing Obligation

The reformed 2014 Common Fisheries Policy will shortly be followed by the obligation to land all catches, putting in place an end to the wasteful practice of discarding marketable fish back into the sea, starting progressively from 2015.

A Commission proposal (COM(2013) 889) seeks to amend a number of regulations dealing with technical conservation measures (how and where fishermen may fish, details on types of fishing gear used, closed areas and other measures to protect the marine environment). Specifically, this proposal will align the current control regulation with the landing obligation by amending provisions governing reporting and storage of catches, as well as establishing rules for the use of remote electronic monitoring systems (REM) and the carrying of observers on board to monitor compliance. This

proposal is presently under consideration in Parliament's Committee on Fisheries.

### **Role of the European Parliament**

Parliament has always supported the adoption of effective control and enforcement measures, considering that effective and non-discriminatory implementation of the rules must be one of the fundamental pillars of the CFP; respect for the rules and a coherent approach to control is the best way to protect the interests of the fishing sector in the long term. In contributing to subsequent reforms, it has made a number of demands, such as improved implementation of the CFP provisions to reduce illegal, unreported and unregulated fishing (IUU), a ban on trade in IUU fish, 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. Parliament has

repeatedly expressed its regret for the poor level of compliance and called for better controls by Member States, harmonised inspection criteria and penalties, transparency of the results of inspections, strengthening of the system of Community inspections, etc. It has underlined that the control regulation and related instruments have in the past proved insufficient, and did not provide the proper legal authority for inspectors to do their jobs, while Member States have been at times reluctant to fulfil their legal obligations to fully implement the rules and allocate sufficient resources to do so.

Crucially, Parliament has led progress as co-legislator within the Ordinary Legislative Procedure (OLP) since the adoption of the Treaty of Lisbon, playing a central role in the comprehensive reform of the CFP — and in the control and enforcement under new rules as from 2014.

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→ 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 is presently funded by the new European Maritime and Fisheries Fund (EMFF), worth EUR 6.5 billion over 2014-2020.*

### Legal basis

Articles 32 to 37 and 158 of the EC Treaty and Articles 38 to 43 of the Lisbon Treaty.

Regulation on the European Maritime and Fisheries Fund [amended proposal (COM(2013) 0245)], as adopted by the European Parliament on 16 April 2014.

### 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 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 1994-1999 period, 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 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 FIFG.

#### B. Structural policy instruments

1. The multiannual 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 for restructuring the fleet proved ineffective, mainly because of the very low level of ambition of the objectives agreed by the Council and the inconsistency of applying both aid to exit and aid to build. It proved exceedingly difficult to measure the engine power of vessels and insufficient account was taken of the impact of technological progress. The introduction of fishing effort reduction 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 over 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 replaced the FIFG as of the 2007-13 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 were responsible for the allocation of financial resources among these five priorities.

## 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 initially modified by the Parliament in 2013, has been further amended, taking its final shape in an agreement

with the Council on 28 January 2014. It is grounded in the following three main axes:

### A. Environmentally sustainable EU fisheries

- Investment in more selective fishing gear to eliminate discards and thus manage the impact of the obligation to land all catches imposed by the CFP reform as of 2015
- Following a specific demand of Parliament, priority for data collection and controls through a substantial increase in the share of the EMFF allocated for this purpose;
- Implementation of measures to preserve stocks such as biological rest periods, as well as temporary stops to compensate the fishermen concerned;
- Freezing subsidies for operators who do not comply with CFP rules.

### B. A competitive EU fisheries sector

- Entry aid (up to EUR 75 000 investment in vessels under 12m) for fishermen under 40 with at least five years' professional experience in the sector;
- Support for diversification of fishermen's income via ancillary activities (e.g., pesca-tourism). Significantly, Parliament has rejected the retraining-out-of-fishing option originally proposed by the Commission;
- On-board investment to better manage catches and improve their quality, as well as investments in port infrastructure to meet the landing obligation;
- Support for innovation, including the development of more modern and environmentally friendly vessels;
- Keeping storage aid as a means to regulate the market;
- Support for production and marketing plans drawn up by producers' organisations;
- Final-exit aid for scrapping of vessels in order to reduce capacity and fishing effort of the fleet (targeted at segments of fleet at overcapacity, to end by 2018);
- Support with engine replacement to reduce power and CO<sub>2</sub> emissions (conditional on decreasing engine power for vessels between 12 and 24 metres);
- Investment in sustainable aquaculture: support for starting operators, development of infrastructure, and promotion of extensive aquaculture and better environmental practices.

### C. Better social conditions:

- Investments to improve health, hygiene and safety on board;

- Vocational training for fishermen;
- Setting up a mutual insurance fund to cover natural disasters and environmental or health-related accidents (covering fishermen, as well as oyster farmers for blight).

### 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 (see section 'EMFF' above), insisting on the importance of sustainable fisheries and calling, first and foremost, for concrete measures to eliminate overfishing, to be combined with good management of fleet capacity while enabling fishermen to make a living from fishing. Detailed negotiations with the Council ensued, and an agreement was reached on 28 January 2014. With Parliament's vote of 16 April 2014 on the revised EMFF, it has concluded its work and achieved ambitious results as full co-legislator in the comprehensive reform of the Common Fisheries Policy.

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→ Jakub Semrau

### 5.3.5. Producer 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 recent crisis in the fisheries sector was seen as limited, given the nature of its intervention mechanisms and the scarce funding allocated to them, leading to a comprehensive reform laying down the new groundwork for the CMO and the entire CFP as of 2014.*

#### Legal basis

Articles 38 to 43 of the Treaty on the Functioning of the European Union (TFEU).

Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000.

#### Objectives

The CMO in fisheries and aquaculture products provides for a price and intervention system with the aim of regulating the Union market for fisheries products. Its objectives have been 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 Union fishing fleet on world markets.

The CMO instruments have been:

- Union withdrawals,
- carry-over operations,
- independent withdrawals and carry-overs by producer organisations, including flat-rate compensation and premiums,
- private storage,
- special arrangements for tuna.

All of these mechanisms are focused on the producer 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 to be found mainly 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. To this end, 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.

Intervention expenditure has been steadily falling, largely due to the decreases in spending on compensation for operational programmes and on Union withdrawals that have been one of the most frequently used intervention mechanisms. Union withdrawals have been overtaken in first place as an item 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 have been 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 — also use CMO interventions, but their expenditure has been substantially lower than that of the first 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 have been only four recognised inter-branch organisations, and they operate at state level: Comité Interprofessionnel des Produits de l'Aquaculture, C.I.P.A. (France), INTERATÚN (Spain), AQUAPISCIS (Spain) and O.I. FILIERA ITTICA (Italy).

Within the 2014 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, a new CMO was outlined in the proposal for a regulation on the common organisation of the markets in fishery and aquaculture products (COM(2011) 416), intended to support:

- the empowerment of 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 and provision of information to consumers;
- additional market measures on discards.

### Role of the European Parliament

In its response to the aforementioned proposal, Parliament emphasised the following elements in its position of 2012:

Strengthening POs 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 to be encouraged and based, where appropriate, on biogeographical regions, and be intended as partnerships that aim to produce common and binding rules, providing a level-playing field for all stakeholders. These must remain subject to competition rules and 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) is to contribute to the launch/development of associations of producer organisations with support also for electronic nationwide databases/markets to better coordinate information between market operators and processors. POs are to encourage measures that contribute 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 fishermen.

Fighting discards and illegal fishing whereby POs should contribute to the elimination of illegal, unreported and unregulated (IUU) fishing practices

by applying such internal controls on members as may be necessary. POs should avoid, minimise and make the best use of unwanted catches of commercial stocks.

The Labelling of previously frozen products sold as fresh goods must include the words 'defrosted products'. 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 (including the flag State of the vessel) and the production method, including the gear type used.

Technology is to be used to safeguard European consumers. Member State authorities are to make full use of available technology, including DNA-testing, in order to deter false labelling of catches. Aquaculture producer organisations should use information and communications technology (ICT) to ensure that the best possible price is established for products.

Market intelligence — Parliament insisted that the Commission devise a Union-wide campaign to make 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. Information campaigns should also be carried out in primary and secondary schools across the Union, making young people and teachers aware of the benefits of fish consumption and of the variety of fish available.

Health and hygiene standards and rigorous controls, including total traceability, are to be exactly the same for imported products in order to avoid unfair competition against EU production.

Negotiations held between Parliament, the Council and the Commission in the first half of 2013 succeeded in overcoming the final obstacle of product marketing and mandatory labelling for the attention of the consumer (more specifically, enlarging the scope of labelling to include the gear types used and a detailed designation of catch areas). Overall, the role of POs has been reformed to focus on their own marketing strategies (as detailed in production and marketing plans), while involving them more closely in the evolution of policy.

In this connection, an initial agreement was reached in May 2013 and Parliament adopted the final text of the regulation on 11 December 2013.

Together with the subsequent adoption of the reformed basic regulation on the Common Fisheries Policy, and the new European Maritime and Fisheries Fund, this represents a cornerstone of the 2014 reform of the European fisheries sector.

→ 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). The Lisbon Treaty provides that international fisheries agreements are to be ratified by the Council after obtaining the consent of 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 fish harvests 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 governs not just 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 (RFO). As a result of this, countries with distant water fishing fleets (DWFF) have had to enter into international agreements and/or other

arrangements to gain access to fisheries resources in either third countries' EEZs or high seas covered by an RFO. The principle of the freedom of the seas is now a thing of the past.

##### 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 have been assigned to fisheries agreements. The budget for 2013 was 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 for 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, the Faroe Islands and Greenland). As regards 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), and also in Greenland. The financial terms are based on a lump sum paid by the EU and fees from ship owners. 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 Organisation (WTO), these arrangements are not considered to be subsidies. The contributions mainly cover expenses linked to management costs, scientific assessment of fish stocks, fisheries management, control and monitoring of fishing activities and expenses for the follow-up and evaluation of a sustainable fishing policy. Unilateral 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 mainly on 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, Gabon, Kiribati, Madagascar, Mauritius, Mozambique, São Tomé and Príncipe, Seychelles and the Solomon Islands). Other agreements for mixed fisheries are in force with Greenland, Morocco and Mauritania. The length of the protocols varies from two to six years, depending on the country. Agreements with other countries remain in force despite them having suspended their protocols for different reasons or having no protocol at all (Equatorial Guinea, Guinea-Bissau, Gambia, Micronesia and Senegal).

#### **b. Reciprocal agreements**

These agreements involve an exchange of fishing opportunities between EU fleets and third countries. The reference 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 largest producer. Germany, the United Kingdom and Sweden share 15% of the volume. There are agreements of this type with Norway (representing more than 70% of the quotas granted to the EU), the Faroe Islands and Iceland.

## **2. Multilateral agreements**

### **a. Agreements with regional fisheries organisations**

The aim of these agreements is to strengthen regional cooperation in order to guarantee conservation and sustainable exploitation of fish resources on high seas and of straddling stocks. Importantly, they are also aimed at deterring illegal, unreported and unregulated fishing. Regional fisheries organisations come in various forms; some were set up under the auspices of the UN Food and Agriculture Organisation (FAO) and others independently; some manage biological resources in a certain zone, while others focus on a stock or groups of stocks. Some apply only to the high seas, or to exclusive economic zones, or to both. When the Commission enters into negotiations with RFOs, its actions are two-fold: seeking membership of the organisation (either as a contracting party or observer) and establishing regulations to transfer into Community law the conservation and management measures adopted by the organisations. RFOs generally set up commissions responsible for scientific research, publication of 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) and CCAMLR (Commission for the Conservation of Antarctic Marine Living Resources). 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 a 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 on several occasions 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. It has also 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.

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→ [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.

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→ Irina Popescu

### 5.3.8. The Integrated Maritime Policy

*The Integrated Maritime Policy (IMP) is a holistic approach to all sea-related EU policies. Based on the idea that the Union can draw higher returns from seas and oceans with less impact on the environment by coordinating 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

The Presidency conclusions on maritime policy of the Brussels European Council, 14 December 2007; Regulation (EC) No 1255/2011 of 30 November 2011 establishing a Programme to support the further development of an Integrated Maritime Policy, to be replaced by the Commission's proposal for a regulation on the European Maritime and Fisheries Fund (COM(2011) 0804).

#### Milestones

- March 2005: the Commission puts 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 tables 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 welcomes the IMP and invites the Commission to report on progress achieved at the end of 2009.
- September 2010: the Commission puts 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: Parliament and the European Council adopt the above-mentioned regulation, forming the present legal basis for the IMP.

#### Objectives

The IMP is a framework to facilitate the development and coordination 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 the 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, and 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 Framework Programme for Research for an integrated approach to maritime affairs,
  - support for 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 the EU's 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' internet application as a means of highlighting the common European maritime heritage,
  - celebrating an annual European Maritime Day on 20 May.
- a 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;
- a Communication of the Commission 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), 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 aiming to cut down on bureaucracy and facilitate maritime transport between EU ports;
- a 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, including a list of 80 flagship projects;

### Achievements

A number of specific actions have been launched in accordance with the Maritime Policy Action Plan:

- a Communication of the Commission on best practices in integrated maritime governance and stakeholder consultation (COM(2008) 395), encouraging the development of national IMPs, the creation of internal coordinating structures for maritime affairs and the definition of responsibilities and competences of coastal regions;
- a Communication of the Commission on European marine and maritime research strategy (COM(2008) 534), proposing concrete measures and mechanisms to improve marine and maritime research;
- a Communication of the Commission on the EU and the Arctic region (COM(2008) 0763), aiming for a more detailed reflection on the role of the EU in the Arctic, and looking for a structured and co-ordinated approach based on the sustainable use of resources;
- a Communication of the Commission 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, the application of EU environmental legislation based on the realistic assessment of wind farms' impact, and improved electricity grids capable of balancing generation and demand, and of transmitting power to the consumption centres;
- a Communication of the Commission 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;
- a Communication of the Commission 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 an EU framework for a global approach to maritime affairs, enhancing the role of the EU in international fora;
- a Communication of the Commission on integrated maritime surveillance (COM(2009) 538), setting out guiding principles for the development of a common information-sharing environment, followed by a 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;
- a Communication of the Commission on 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;

- a Communication of the Commission 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.
- sustainable marine environment, in recognition of the imperative to ensure its conservation and, in many cases, rehabilitation;
- an integrated fisheries policy as a way to protect small-scale fishing interests, put an end to the problems of by-catches and discards, and recognise the increasing socio-economic significance of aquaculture;
- marine research, energy, technology and innovation in order to provide a proper response to the sustainability challenge, properly supported through EU and Member State funding, and through a 'European Marine Science Consortium' and the pooling of knowledge;
- a common maritime policy aiming to create a common European maritime space that will contribute to the integration of the internal market for intra-EU maritime transports and services.

### 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 re-organised in order to ensure better coordination) and in the Council (where the General Affairs and External Relations Council is in charge of the IMP). 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.

Parliament's working group to draft a report on the Green Paper on the IMP included the Committee on Transport and Tourism and associated the Committee on the Environment, Public Health and Food Safety and the Committee on Fisheries (associated committees for opinion), as well as the Committee on Industry, Research and Energy and the Committee on Regional Development (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:

- climate change as the greatest challenge to maritime policy, to be tackled through the reduction of gas emission from ships, an assessment of the feasibility of emission trading for shipping and the promotion of renewable energy;
- better European shipping with better European ships by means of reducing emissions of air-pollutants while improving maritime safety and social legislation for workers;
- better European coastal policy including better European ports through the use of cohesion policy instruments;
- sustainable coastal tourism, in recognition of the vital role the environment plays for the sector's survival;

Parliament's resolution of 20 May 2008 on an integrated maritime policy for the EU (P6\_TA2008-0213), in response to the Commission communication on the subject, was based on a report of the Committee on Transport and Tourism with opinions from the Committees on Fisheries and Regional Development. Parliament criticised the few practical measures, and reiterated the most important demands of its earlier resolution from 2007.

Parliament drafted a report covering the October 2009 Commission package of communications on the IMP (COM(2009) 466), (COM(2009) 536), (COM(2009) 538) and (COM(2009) 540), with the Committee on Transport and Tourism as lead committee and with an opinion from the Committee on Fisheries under the association procedure (Rule 50 of the Rules of Procedure). A resolution of 21 October 2010 on Integrated Maritime Policy — Evaluation of progress made and new challenges (P7\_TA2010-0386) confirmed Parliament's fundamentally positive assessment of the IMP. The resolution 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 the Committee on Transport and Tourism, as lead committee for the report, Parliament adopted its position on the Programme to support the further development of the Integrated Maritime Policy (2010/0257(COD)). In it, Parliament highlighted the fact that the purpose of the proposed funding — 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 maintain them through the period 2011–2013. Parliament welcomed the proposal and contributed to it, in particular by:

- 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.

Accepted by Council, the report, now Regulation No 1255/2011, has served as framework for the IMP to date.

In its plenary vote of 16 April 2014 on the Regulation on the European Maritime and Fisheries Fund (EMFF), Parliament endorsed a budgetary allocation of 5% of the total volume of the EMFF for the IMP for the 2014–2020 period, representing a four-fold increase for the IMP.

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→ 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.

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→ Irina Popescu

## 5.4. Environment policy

### 5.4.1. Environment policy: general principles and basic framework

*European environment policy rests on the principles of precaution, prevention and rectifying pollution at source, and on the 'polluter pays' principle. Multiannual environmental action programmes set the framework for future action in all areas of environment policy. They are embedded in horizontal strategies and taken into account in international environmental negotiations. Last but not least, implementation is crucial.*

#### Legal basis

Articles 11 and 191 to 193 of the Treaty on the Functioning of the European Union (TFEU). The EU is competent to act in all areas of environment policy, such as air and water pollution, waste management and climate change. Its scope for action is limited by the principle of subsidiarity and the requirement for unanimity in Council in the fields of fiscal matters, town and country planning, land use, quantitative water resources management, choice of energy sources and structure of energy supply.

#### Origins and development

European environment policy dates back to the European Council held in Paris in 1972, at which the European Heads of State and Government (in the aftermath of the first UN conference on the environment) declared the need for a Community environment policy flanking economic expansion, and called for an action programme. The Single European Act of 1987 introduced a new 'Environment Title', which provided the first legal basis for a common environment policy with the aims of preserving the quality of the environment, protecting human health and ensuring a rational use of natural resources. Subsequent Treaty revisions strengthened Europe's commitment to environmental protection and the role of the European Parliament in its development. The Treaty of Maastricht (1993) made the environment an official EU policy area, introduced the codecision procedure and made qualified majority voting in Council the general rule. The Treaty of Amsterdam (1999) established the duty to integrate environmental protection into all EU sectorial policies with a view to promoting sustainable development. 'Combating climate change' became a specific goal with the Lisbon Treaty (2009), as did sustainable development in relations with third countries. A new legal personality enabled the EU to conclude international agreements.

#### General principles

EU environment policy rests on the principles of precaution, prevention and rectifying pollution at source, and on the 'polluter pays' principle. The precautionary principle is a risk management tool that may be invoked when there is scientific uncertainty about a suspected risk to human health or the environment emanating from a certain action or policy. For instance, to avoid damage to human health or to the environment in case of doubt about a potential dangerous effect of a product, instructions may be given to stop the distribution of this product or to remove it from the market if uncertainty persists following an objective scientific evaluation. Such measures must be non-discriminatory and proportionate and must be reviewed once more scientific information is available.

The 'polluter pays' principle is implemented by the Environmental Liability Directive (ELD), which aims to prevent or otherwise remedy environmental damage to protected species and to natural habitats, water and soil. Operators of certain occupational activities such as the transport of dangerous substances, or of activities that imply discharges into waters, have to take preventive measures in case of an imminent threat to the environment. If damage has already occurred, they are obliged to take the appropriate measures to remedy it and pay for the costs. The scope of the directive has been broadened three times to include the management of extractive waste, the operation of geological storage sites and the safety of offshore oil and gas operations respectively.

Furthermore, integrating environmental concerns into other EU policy areas has become an important concept in European politics (now enshrined in Article 11 TFEU) since it first arose from an initiative of the European Council held in Cardiff in 1998 (the 'Cardiff process'). In recent years, environmental policy integration has made, for instance, significant progress in the field of energy policy, as reflected

in the parallel development of the EU's climate and energy package or in the Roadmap for moving to a competitive low-carbon economy by 2050 which looks at cost-efficient ways to make the European economy more climate-friendly and less energy-consuming. 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.

## Basic framework

### A. The Environment Action Programmes

Since 1973, the Commission has issued multiannual Environment Action Programmes (EAPs) setting out forthcoming legislative proposals and goals for EU environment policy; the concrete measures are then adopted separately. The 6th EAP, which determined environment policy over the decade 2002-2012, focused on four priorities: climate change; biodiversity; environment and health; and natural resources and waste. Measures for these priorities were detailed in seven 'thematic strategies', focused on cross-cutting environmental themes rather than on specific pollutants or economic activities. In 2013 the Council and Parliament adopted the 7th EAP for the period up to 2020, under the title 'Living well, within the limits of our planet'. Building on a number of recent strategic initiatives (the Resource Efficiency Roadmap, the 2020 Biodiversity Strategy and the Roadmap for moving to a competitive low-carbon economy by 2050), it sets out nine priority objectives, among which the protection of nature, a stronger ecological resilience, sustainable, resource-efficient and low-carbon growth, as well as the fight against environment-related threats to health. The programme also stresses the need for better implementation of EU environment law, state of the art science, investments and integration of environmental aspects into other policies.

### B. Horizontal strategies

In 2000 the Lisbon Strategy was formulated with the aim of making the EU the 'most dynamic and competitive knowledge-based economy in the world'. It focused essentially on promoting growth and jobs through increasing the EU's competitiveness. Only a year later in Gothenburg, this strategy was completed by the environmental dimension, thus leading to the EU Sustainable Development Strategy (SDS) (renewed in 2006 to combine the internal and international dimensions of sustainable development). The EU's newest growth strategy, the Europe 2020 Strategy sets inter alia a headline target for climate and energy. It aims at shaping 'smart, inclusive and sustainable growth'. Under its umbrella, 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.

### C. Environmental impact assessment and public participation

Certain individual projects (private or public) that are likely to have significant effects on the environment, e.g. the construction of a motorway or an airport, are subject to an 'environmental impact assessment' (EIA). Equally, a range of public plans and programmes (e.g. concerning land use, transport, energy, waste or agriculture) are subject to a similar process called a 'strategic environmental assessment' (SEA). Here, environmental considerations are already integrated at the planning phase, and possible consequences are taken into account before a project is approved or authorised so as to ensure a high level of environmental protection. In both cases, consultation with the public is a central aspect. This goes back to the Aarhus Convention. This convention was signed in 1998 by the EU under the auspices of UNECE (the United Nations Economic Commission for Europe) and later ratified by it. Under it, 'public participation in decision-making' is one of three rights guaranteed to the public in the field of the environment. The other two rights are: the right of access to environmental information held by public authorities (e.g. on the state of the environment or human health where affected by the latter), and the right of access to justice where the other two rights have been disregarded.

### D. International environmental cooperation

The EU also plays a key role in international environmental negotiations. For instance, at the 10th Conference of the Parties to the Convention on Biological Diversity, held in Nagoya (Japan) in 2010, the EU made a major contribution to achieving an agreement on a global strategy to halt the loss of biodiversity over the next ten years. Likewise, the Union participated in the decision to develop global Sustainable Development Goals (SDGs) for all countries which emerged from the 'Rio+20' conference on sustainable development held in 2012. Traditionally, the EU also has set standards during international climate negotiations under the United Nations Framework Convention on Climate Change (UNFCCC), for example by making unilateral commitments to reduce GHG emissions. Apart from global negotiations, the EU maintains partnership agreements and cooperation strategies with a number of countries and regions, e.g. within the European Neighbourhood Policy (Eastern and Mediterranean countries), as a means to address issues arising at the EU's external borders, including environmental issues such as water quality, waste management, air pollution or desertification.

### E. Implementation, enforcement and monitoring

EU environmental law has been built up since the 1970s. Several hundred directives, regulations and decisions are in force today in this field. However, the effectiveness of EU environmental policy is largely determined by its implementation at national, regional and local levels. Deficient application and enforcement remain nevertheless an important issue. Also, monitoring is crucial — both of the state of the environment and of the level of implementation of EU environmental law.

To counteract the wide disparity in the level of implementation among Member States, in 2001 the European Parliament and the Council adopted Recommendation 2001/331/EC setting (non-binding) minimum standards for environmental inspections. A revision of the legal framework is foreseen for 2014. In order to improve the enforcement of EU environmental law, Directive 2008/99/EC on the protection of the environment through criminal law requires Member States to provide for effective, proportionate and dissuasive criminal sanctions for the most serious environmental offences. These include, for instance, the illegal emission or discharge of substances into air, water or soil, illegal trade in wildlife, illegal trade in ozone-depleting substances and illegal shipment or dumping of waste. Finally, the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL) is an international network of the environmental authorities of EU Member States, accession and candidate countries, as well as Norway, created to boost enforcement by providing a platform for policymakers, environmental inspectors and enforcement officers to exchange ideas and best practice.

In 1990, the European Environment Agency (EEA) was created in Copenhagen to support the development, implementation and evaluation of environment policy and to inform the general public on the matter. The EU agency (open to non-EU members) is responsible for providing sound and independent information on the state of and outlook for the environment. It therefore collects, manages and analyses data and coordinates the European environment information and observation network (Eionet). To help policymakers take informed decisions and develop environmental legislation and policies, the EU also runs the European Earth Observation Programme (Copernicus), which addresses, among other concerns, land, marine, atmosphere and climate change. With regard to pollutants released into air, water and land as well as off-site transfers of waste and of pollutants in waste water, the European Pollutant Release and Transfer Register (E-PRTR) provides key environmental data from more than 30 000 industrial facilities in the EU, as well as in Iceland, Liechtenstein, Norway, Serbia

and Switzerland. The register implements the UNECE PRTR-Protocol to the Aarhus Convention signed by the then European Community in May 2003. The register is available to the public free of charge on the internet.

### Role of the European Parliament

The European Parliament plays a major role shaping EU environmental law. During its 7th legislative term (2009-2014), Parliament, co-legislating with the Council, adopted, *inter alia*, legislation on vehicle and industrial emissions, electronic waste and plastic carrier bags, illegal waste shipments and scrapping of old ships.

Moreover, Parliament has repeatedly recognised the need for improved implementation as a key priority. In a 2013 resolution on 'improving the delivery of benefits from EU environmental measures: building confidence through better knowledge and responsiveness', it criticised the unsatisfactory level of implementation of environmental law in the Member States and made several recommendations for a more efficient implementation, such as dissemination of best practices between Member States and between regional and local authorities. In its position on the current environmental action programme (running until 2020), Parliament also underlined the need to enforce EU environmental law more rigorously. It insisted that the 7th EAP should 'contribute to a high level of environmental protection and to an improved quality of life and well-being for citizens'. It furthermore called for greater security for investments that support environmental policy and efforts to combat climate change, and for taking more and better account of environmental concerns in other policies.

In a 2010 resolution, Parliament considered the environmental aspects of the EU 2020 strategy as being generally too weak and in need of strengthening, and called for 'clear and measurable environmental goals' to be 'built into the main targets of the strategy, with emphasis on halting the loss of biodiversity'.

Recently, Parliament approved an update of the environmental impact assessments directive in order to clarify the text, include biodiversity and climate change, and ensure that project authorisations are not subject to conflicts of interest. During negotiations with the Council, Parliament succeeded in raising quality standards to protect human health and the environment. Although it had to give in on mandatory environmental impact assessments for the extraction and exploration of shale gas, nevertheless risks to human health or the environment will have to be taken into account for new gas projects.

→ Tina Ohliger

## 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.

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→ 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 important for other areas, such as energy, transport, agriculture 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 final consumption. A key mechanism in meeting this goal is the EU Emissions Trading System (ETS).*

#### Legal basis and objectives

Article 191 of the Treaty on the Functioning of the European Union (TFEU) makes combating climate change an explicit objective of EU environmental policy.

#### General background

##### A. Global warming

Without additional 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. According to the recent 5th IPCC (Intergovernmental Panel on Climate Change) report, it is extremely likely that global warming can be attributed to human influence. Human activities that contribute to climate change include the burning of fossil fuels, deforestation and farming, which lead to the emission of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O) and fluorocarbons. These greenhouse gases (GHGs) trap heat that is radiated from the earth's surface and prevent it from escaping into space, thereby causing global warming.

##### B. Impacts of climate change

Global warming has led and will lead to more extreme weather events (such as floods, droughts, heavy rain, heat waves and forest fires), water availability issues, disappearance of glaciers and rising sea levels, shifts in the distribution of or even extinction of fauna and flora, plant diseases and pests, food and fresh water shortages, intensified photochemical smog causing health problems, and migrations of people fleeing these dangers. Science shows that the risks of irreversible and catastrophic change would greatly increase if global warming exceeded a 2°C rise above pre-industrial levels.

##### C. Cost of action versus cost of inaction

According to the Stern Review, published by the UK Government in 2006, managing global warming would cost 1% of global GDP every year, while inaction could cost at least 5% and up to 20% of global GDP in a worst-case scenario. The Commission suggests that only a small part of total

global GDP would be required to invest in a low-carbon economy, but that fighting climate change would induce health benefits and greater energy security and reduce other damage.

##### D. Adaptation to climate change

Adaptation to climate change 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). In April 2013 an EU adaptation strategy on climate change (COM(2013) 216) was launched to promote greater coordination and information-sharing between Member States and foster the mainstreaming of the considerations at stake into all relevant EU policies.

#### Achievements

##### A. International climate policy — The Kyoto Protocol and beyond

Under the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC) concluded in 1997, the contracting parties committed to reducing emissions of six GHGs: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF<sub>6</sub>). The protocol entered into force in 2005, after being ratified by 55 parties. The EU committed itself to reducing CO<sub>2</sub> emissions over the period 2008-2012 by 8% compared with 1990 levels — an objective that has been redistributed among the Member States by the 'burden-sharing decision' and subsequently accomplished: in 2010 emissions for the EU-15 were already 10.6% below 1990 levels.

In Durban (2011) the parties agreed on the prolongation of the Kyoto Protocol and started working on a new, legally binding international agreement which would limit global warming to 2°C above pre-industrial average temperature levels, which would be adopted in 2015 and would enter into force in 2020 when the second commitment period of the Kyoto Protocol expires.

Key issues for the EU in international climate negotiations are: ambitious and legally binding targets; strong compliance mechanisms; multilateralism; and reliance on scientific evidence.

## B. Efforts within the EU to combat climate change

The EU has set itself a unilateral climate target of a 20% reduction in greenhouse gas emissions by 2020, and of a 80-95% reduction by 2050. It has also declared its willingness to aim for a 30% reduction by 2030 if other developed countries contribute according to their responsibilities and capabilities. To pave the way for the future, the EU has launched a debate on a 2030 framework for climate and energy policies. Likewise a roadmap has been created towards achieving a low-carbon economy by 2050.

In 2007 EU leaders had set three ambitious targets for 2020: a 20% reduction in GHG emissions, a 20% increase in the share of renewable energy in final energy consumption, and a 20% reduction of total EU primary energy consumption (all compared to 1990). This initiative became known as the climate and energy package and was translated into four binding legislative measures: the revised EU Emissions Trading System, the Effort Sharing Decision, the Renewable Energy Directive and the Directive on Carbon Capture and Storage (CCS).

1. The EU Emissions Trading System (ETS) (Directive 2009/29/EC, amending Directive 2003/87/EC) is the first and currently the largest international carbon market, and is also the key EU policy instrument for fighting climate change. Introduced in 2005 to help achieve the EU's commitment under the Kyoto-Protocol, it has undergone major reform since then. It is based on the 'cap and trade' principle: a 'cap' is set on the total amount of GHG emissions that can be emitted by the more than 11 000 installations (factories, power stations, etc.) included in the scheme. Each installation buys or receives 'emission allowances' auctioned by the Member States. These credits — corresponding to one ton of CO<sub>2</sub> each — can be traded with other installations if unused. Over time, the overall amount of allowances is progressively reduced. Given that the carbon price is currently too low to stimulate investment in low-carbon innovation, the EU is taking steps to fix the ETS. Following a 'backloading' (a temporary freeze on auctions of a proportion of CO<sub>2</sub> permits), the Commission proposed a 'market stability reserve' to counter the structural surplus of emission allowances by automatically adjusting the supply of auctioned allowances.

As of 2012, the ETS also applies to aviation. Following massive international opposition, the EU initially 'stopped the clock', suspending the scheme's application to intercontinental flights for one year (until the end of April 2014). The 38th Assembly of

the International Civil Aviation Organization (ICAO) subsequently agreed to develop by 2016 a global market-based mechanism for international aviation that could start in 2020. After difficult negotiations Parliament and the Council agreed on a compromise whereby the 'stop the clock' measure would be prolonged until the end of 2016.

1. Emissions from sectors not covered by the ETS, such as road transport, waste, agriculture and forestry, are subject to the Effort Sharing Decision (406/2009/EC). In order to achieve an average 10% reduction of GHGs from these sectors, binding annual emission reduction targets have been set for each Member State up to 2020.

2. The Renewable Energy Directive (2009/28/EC) seeks to ensure that by 2020 renewable energy such as biomass, wind, hydroelectric power and solar power make up at least 20% of the EU's total energy consumption in terms of electricity generation, transport, heating and cooling. As part of the overall target, a binding minimum target was set for each Member State to bring the share of renewable energy in its transport energy consumption up to at least 10%. However, the binding character of this target is 'subject to production being sustainable' and to 'second-generation biofuels becoming commercially available'.

3. Carbon Capture and Storage technology (Directive 2009/31/EC) separates CO<sub>2</sub> from atmospheric emissions (resulting from industrial processes), compresses the CO<sub>2</sub> and transports it to a location where it can be stored. According to the UN IPCC, CCS could remove 80-90% of CO<sub>2</sub> emissions from fossil fuel-burning power plants. The EU set up a regulatory framework to commercialise and subsidise this new technology. However, the implementation of the envisaged demonstration projects in Europe has proven more difficult than initially foreseen, high costs being one of the main barriers.

4. Regulation (EC) No 443/2009 sets standards for CO<sub>2</sub> emissions of new passenger cars. The target for 2015 is 130g of CO<sub>2</sub>/km, to be reduced to 95g/km as from 2020. A yet-to-be-published amending regulation defines the modalities for reaching the 2020 target. In order to create incentives for industry to invest in new technologies, it also allows so-called 'super-credits', whereby the cleanest cars in each manufacturer's range count as more than one car when calculating the average specific CO<sub>2</sub> emissions. A similar regulation is in place and has recently been reviewed accordingly for light commercial vehicles. Furthermore, the EU is currently working on a future strategy to combat CO<sub>2</sub> emissions from heavy duty vehicles. To support the CO<sub>2</sub> emissions reduction policy, Directive 1999/94/EC ensures that information relating to the fuel economy, and thus information on CO<sub>2</sub> emissions of new passenger cars offered for sale or rental in the EU, is made available

to consumers so that they can make an informed choice when buying a new car.

5. Following bans on chlorofluorocarbons (CFCs) in the 1980s to stop the depletion of the ozone layer, fluorinated gases are today used as substitutes in a range of industrial applications such as air-conditioning and refrigeration, since they do not harm the ozone layer. However, they may have a global warming potential of up to 23 000 times stronger than that of CO<sub>2</sub>. The EU therefore took measures to control the use of fluorinated gases and ban their use in new air-conditioning appliances and refrigerators by 2022-2025, thereby setting the pace for a global phase-out.

### Role of the European Parliament

On 5 February 2014, Parliament gave a strong signal in response to the Commission proposal for a policy framework for 2030 on climate and energy, calling for three binding targets: a reduction of at least 40% in domestic GHG emissions from 1990 levels; 30% for the total share of renewable energy sources in final energy consumption; and a 40% increase in energy efficiency.

1. In its resolution prior to the latest UN climate conference in Warsaw in 2013, Parliament expressed its wish that the still to-be-decided international post-2020 agreement should 'aim at phasing out global carbon emissions by 2050' and 'bring together the current "patchwork" of binding and non-binding arrangements under the UN climate convention and the Kyoto Protocol into a single, comprehensive and coherent regime that binds all Parties', to be based on the principle of 'common but differentiated responsibilities'. In this resolution, the EP was highly critical of 'the development of highly greenhouse-gas-intensive unconventional fossil fuels such as tar sands' and advocated phasing out public subsidies for the development of unconventional fossil fuels in general. It also favoured putting a price on carbon

emissions from international aviation and maritime transport, and reiterated its call for an international instrument that would set global emission reduction targets for maritime transport.

2. As regards GHG emissions from aviation, Parliament managed to shorten the period for temporary exemptions of intercontinental flights from the EU ETS considerably, and defined very clearly the criteria that have to be fulfilled for an international regime to be acceptable (de facto GHG emissions reduction; non-discriminatory approach). Furthermore, for the first time it managed to secure a provision that EU Member States will have to report on how they spend the money coming from ETS allowance auctions.

Within the context of the revision of the Renewables Directive, the EP strove to ensure 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. Parliament called for a limit on first-generation biofuels from traditional food-derived sources of 6% of final transport energy consumption by 2020 (as opposed to the 10% limit currently in force), and also for a rapid switch to advanced biofuels sourced from seaweed or certain types of waste.

During negotiations with the Council on fluorinated gases, Parliament advocated a complete phase out of climate-damaging F-gases in several new sectors where safe, energy-efficient and cost-effective alternatives are available. Among other measures, a ban on the use of F-gases in new commercial refrigeration is foreseen from 2022.

In an update on CO<sub>2</sub> emissions from passenger cars and vans, Parliament insisted on introducing the new UN-defined global test cycle as soon as possible, in order to reflect real-world driving conditions when measuring CO<sub>2</sub> emissions.

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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 thanks to the adoption of the Convention on Biological Diversity. In 2011 the EU committed itself to halting the loss of biodiversity and the degradation of ecosystem services in the EU by 2020. Other objectives set out in the Habitats Directive or the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) remain to be achieved. Since 1992, LIFE has been the most important financial instrument for the protection of biodiversity in the EU.*

### Legal basis

Articles 3, 11 and 191-193 of the Treaty on the Functioning 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 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 of the Biological Diversity Convention (CBD), as well as to the Rio Declaration, a Statement of Forest Principles and the Agenda 21 programme. At the 2001 Gothenburg summit, the EU agreed to halt biodiversity loss by 2010 and to restore habitats and ecosystems. The UN General Assembly declared 2010 the Year of Biodiversity. However, the report entitled 'The Global Biodiversity Outlook 3', published by the CBD's secretariat, shows that the 2010 biodiversity target has not been met. At its meeting held in Nagoya (Japan) in October 2010, the Conference of the Parties (COP) to the CBD adopted a revised Strategic Plan including new biodiversity targets for the post-2010 period. The aim is 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, which defines rules on sharing research results and commercial profit.

### A. Biodiversity action plans

In May 2006 the Commission adopted a communication entitled 'Halting the loss of biodiversity by 2010 — and beyond: Sustaining ecosystem services for human well-being', which included an EU action plan for achieving the necessary protection of biodiversity. In 2008, the Commission published a mid-term report on implementation of the action plan, concluding that the EU was unlikely to meet its 2010 target of

halting biodiversity decline. A new strategy was adopted by the Commission in June 2011 in order to meet the target set by the Environment Council of March 2010 of '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 addition to the 2020 target, the new EU biodiversity strategy to 2020 defines the 2050 vision: 'By 2050, European Union biodiversity and the ecosystem services it provides — its natural capital — are protected, valued and appropriately restored for biodiversity's intrinsic value and for their essential contribution to human wellbeing and economic prosperity, and so that catastrophic changes caused by the loss of biodiversity are avoided.' In December 2011 the Council endorsed the EU biodiversity strategy to 2020, with its six targets: full implementation of EU nature legislation so as to protect biodiversity; better protection of ecosystems and greater use of green infrastructure; more sustainable agriculture and forestry; better management of fish stocks; tighter controls on invasive alien species; and a bigger EU contribution to averting global biodiversity loss.

### 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 data published by the International Union for the Conservation of Nature (IUCN) since 2007, in Europe 23% of amphibians, 19% of reptiles, 15% of mammals and 13% of birds are under threat. The EU is a party to the following conventions: the Ramsar Convention on the Conservation of Wetlands (1971); the CITES convention (3 March 1973); the Bonn Convention on the Protection of Migratory Species of Wild Fauna (23 June 1979); the Bern Convention on the Protection of European Wildlife and Natural Habitats (1982); the 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

Since 1992 the EU's dedicated funding instrument for the environment has been the LIFE programme. Nature conservation and biodiversity have been included among the sub-programmes for the four phases already completed. The Commission manages the LIFE programme, which supports projects in Member States and non-EU countries. The fifth phase (the LIFE 2014-2020 Regulation ((EU) No 1293/2013)) was published in December 2013 and consists of two sub-programmes, on climate change and environment. A budget of EUR 1 155 million will be available for nature and biodiversity, which are part of the environment sub-programme; total funding for LIFE 2014-2020 will amount to EUR 3 456 million. Other funding enabling Member States to support biodiversity targets has been taken up under the common agricultural policy, the common fisheries policy, the Cohesion and Structural Funds, and the Seventh Framework Programme for Research.

## Objectives

### A. Conservation of natural habitats and of wild fauna and flora

The Habitats Directive (Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, amended by Council Directive 97/62/EC) 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 Council Directive 79/409/EEC on the conservation of wild birds. With a total area of over 850 000 km<sup>2</sup>, this is the largest coherent network of protected sites in the world. The Habitats 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. Invasive alien species

Tighter controls on invasive alien species are one of the six targets of the EU biodiversity strategy to 2020. Invasive alien species cause damage amounting to billions of euros every year in the EU, not only to ecosystems but also to crops and livestock, disrupting local ecology and affecting human health. In April 2014 Parliament adopted its first-reading position on the proposal for a regulation on the prevention and management of the introduction and spread of invasive alien species, based on the text agreed with the Council. The regulation seeks — through prevention, early warning and rapid

response — to protect native biodiversity and to minimise and mitigate the impact of such species on human health and the economy. In particular, the Member States will have to establish surveillance systems and action plans.

### C. Access and benefit-sharing

Following the adoption of the Nagoya Protocol on Access and Benefit-sharing, the Commission presented a proposal in October 2012 with a view to laying down binding requirements for access to genetic resources in the country of origin and ensuring that the benefits are fairly and equitably shared. An agreement between Parliament and the Council led to the adoption of a final text in April 2014. Under the regulation adopted, genetic resources and traditional knowledge associated with such resources can only be transferred and utilised in accordance with terms mutually agreed between the users (businesses, private collectors and institutions) and the authorities of the country of origin.

### D. Exploitation and trade of wild fauna and flora

The CITES convention entered into force in 1975, regulating international trade, specifically the (re-) exporting and importing of live and dead animals and plants and of parts and derivatives thereof, on the basis of a system of permits and certificates. The basic Regulation (EC) No 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, while Decision 1999/337/EC concerns the EU's signing-up to the agreement on the International Dolphin Conservation Programme, with a view to helping 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 importing of pelts and manufactured goods from wild species originating in countries which allow such trapping methods. Commission Decision 98/596/EC allows imports of furs into the EU from Canada, Russia and the US on account of the commitments made by those countries to implement humane trapping standards. Rules and guidelines for the sustainable hunting of (wild) birds can be found in the Birds Directive.



### E. 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. The Commission launched the Action Plan on Protection and Welfare of Animals 2006-2010 (COM(2006) 13), in support of the 'three Rs' principle (replacing, reducing and refining 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 that principle, and took effect from 1 January 2013.

### F. Marine biodiversity

Marine biodiversity comes 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 if they are to support biodiversity. Furthermore, the 2002 EU Marine Strategy (COM(2002) 539) proposes an ecosystem-based approach to 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 in accordance with the provisions of the 6<sup>th</sup> Environmental 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 on which marine-related economic and social activities depend.

### G. 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 (EEC) No 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 an EU forestry strategy established a framework for forests in support of sustainable forest management (SFM). A Communication on an EU Forest Action Plan (COM(2006) 302) was adopted in June 2006. 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 Parliament in July 2010 and took effect in 2012.

### Role of the European Parliament

In September 2010, Parliament adopted a resolution on the implementation of legislation aiming at the conservation of biodiversity, in view of the post-2010 target. It expressed deep concern at the absence from the international political agenda of any sense of urgency in relation to halting the loss of biodiversity, and called for improved biodiversity governance in both internal and external relations.

→ Lorenzo Vicario / Marcelo Sosa-Iudicissa

## 5.4.5. Water protection and management

*Water is essential for human, animal and plant life and is an indispensable resource for the economy; its protection and management transcend national boundaries. EU water legislation was transformed by the adoption in 2000 of the Water Framework Directive (WFD), which introduced a holistic approach for the management and protection of surface waters 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)

With the adoption of the WFD (2000/60/EC) European Water Policy has undergone a restructuring process. It 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, good environmental status for all waters is to be achieved through River Basin Management Plans. Three implementation reports published to date (COM(2007) 128, COM(2009) 156 and COM(2012) 670) indicate that while significant progress towards this objective has been made, for a significant proportion of water bodies by the intended 2015 deadline. In 2007 the Commission launched WISE (Water Information System for Europe) — an instrument to collect and exchange data and information at EU level and for the monitoring of pollutants released to surface waters or within the aquatic environment.

However, obstacles still remain, preventing a better protection of Europe's water resources (already identified in the Commission's Communication 'Addressing the challenge of water scarcity and droughts in the EU' (COM(2007) 414). In 2012 the Commission launched the Blueprint to Safeguard Europe's Water Resources, aimed at ensuring that sufficient quality water is available for all legitimate uses by better implementing current EU water policy, integrating water policy objectives into other policy areas, and filling gaps in the current framework. Concerning the last point the Water Blueprint envisages water accounts and water efficiency targets to be set by Member States and the development of EU standards for water reuse.

**Groundwater.** As groundwater supplies 75% of the EU's drinking water, pollution from industry,

waste dumps and agriculture is a serious health risk. The WFD contributes to the protection of groundwater from all contamination, and includes the establishment of groundwater monitoring networks. 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 however, with the exception of nitrates and pesticides for which the limits are set by specific EU legislation, are set by Member States.

**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 its quality by using a 'sampling points' method. Member States can include additional requirements specific to their territory but only if it leads to setting higher standards. The Directive also requires providing regular information to consumers. Additionally, drinking water quality has to be reported to the European Commission every three years. A Directive laying down public health requirements with regard to radioactive substances in water intended for human consumption (Council Directive 2013/51/EURATOM) was adopted in 2013 in order to bring the provisions in line with the Euratom Treaty.

**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. The Directive is integrated into the Water Framework Directive. It also provides for extensive public information, and as a consequence the Commission adopted in 2011 a Decision establishing a symbol for information to the public on bathing water classification and any bathing prohibition (2011/321/EU). A summary report on the quality of bathing water is published yearly by the Commission and EEA.

**Urban waste water treatment (UWWT).** Directive 91/271/EEC (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. The seventh implementation report on the UWWT Directive in 2013 concluded that significant progress towards full implementation was achieved by 2010, but detected substantial differences still in the performance of Member States, between EU-15 average compliance rates and those Member States which joined the EU in 2004 and later. The Seventh Environment Action Programme and the Blueprint to Safeguard Europe's Water Resources underline the importance of collecting and treating urban wastewater.

**Strategies against chemical pollution of surface waters.** Legislation from the 1970s and 80s providing measures against chemical pollution of surface waters expired at the end of 2012 and was replaced by provisions under the WFD. These mainly required the establishment of a list of priority substances presenting a significant risk to or via the aquatic environment at EU level together with a subset of priority hazardous substances. The Environmental Quality Standards Directive (2008/105/EC) replacing Commission's Decision 2455/2001/EC established limits on concentrations of the priority substances in surface waters of 33 priority substances and 8 other pollutants. Amending Directive 2013/39/EU introduced 12 new substances to the current list, as well as the obligation for the Commission to establish an additional list of substances to be monitored in all Member States (watch list) to support future reviews of the priority substances list.

**Nitrates Directive.** 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. The latter is also limited by Regulation (EC) No 648/2004 which restricts phosphates in detergents. Although the latest implementation report (COM(2013) 683) shows that the pressure from agriculture has decreased, the 2012 Blueprint still identifies the Nitrates Directive as one of the key measures to achieve WFD objectives.

**The EU Floods Directive** (2007/60/EC) aims to reduce and manage the risks that floods pose to human health, the environment, infrastructure and property. Member States were required to carry out preliminary assessments to identify the river basins and associated coastal areas at risk by 2011 and then prepare flood risk maps and management plans focused on prevention, protection and preparedness

by 2015. All shall be carried out in coordination with the WFD and its river basin management plans.

## B. EU Coastal and Marine Policy

1. **Marine Directive.** The objective of the Marine Strategy Framework Directive (Directive 2008/56/EC) is to reach Good Environmental Status (GES) of the marine waters by 2020, to continue its protection and preservation, and to prevent subsequent deterioration. It is the first EU legislative instrument related to the protection of marine biodiversity. It enshrines in a legislative framework the ecosystem approach to the management of human activities having an impact on the marine environment, integrating the concepts of environmental protection and sustainable use. The Directive establishes European marine regions and sub-regions within the geographical boundaries of the existing Regional Sea Conventions. In order to achieve GES by 2020, each Member State was required to develop by 2010 a strategy for its marine waters, which should be reviewed every 6 years. The Commission Decision 2010/477/EU on criteria and methodological standards on good environmental status (GES) of marine waters contains a number of criteria and associated indicators for assessing GES.

2. **Marine pollution.** 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 amended by Directive 2009/123/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.

3. **Integrated Maritime Policy.** The Marine Directive is the environmental pillar of the cross-cutting Integrated Maritime Policy (COM(2007) 575) which aims at achieving the full economic potential of the seas without compromising the environment. Blue Growth is one of its recent initiatives (COM(2012) 494) which outlines the Integrated Maritime Policy's contribution to achieving the goals of the Europe 2020 strategy.

4. **Integrated Coastal Zone Management (ICZM).** The EU Recommendation on ICZM (2002/413/EC) defines the principles of sound coastal planning and management to be taken into account by Member States when formulating their national strategies.

## C. International agreements on regional waters

In Europe, protection of marine waters is governed by four cooperation structures (Regional Sea Conventions) between the EU Member States and

neighbouring countries with common waters: the OSPAR Convention of 1992 (based on the earlier Oslo and Paris conventions) for the North-East Atlantic; the Helsinki Convention of 1992 on the Baltic Sea Area (HELCOM); the Barcelona Convention of 1995 for the Mediterranean (UNEP-MAP); and the Bucharest Convention of 1992 for the Black Sea. EU river waters are protected by the 1996 Danube River Protection Convention and the 2009 Convention for the Protection of the Rhine. The interregional environmental cooperation based on the marine or river basins have initiated several so-called macroregional strategies in the European Union: the first Baltic Sea Region Strategy (2009), a Strategy for the Danube Region (2011), and a Strategy for the Adriatic and Ionian Region requested by the Council, to be presented by the Commission before the end of 2014.

### Role of the European Parliament

The EP has regularly 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. Concerning the Marine Policy, 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 June 2008, the EP supported by a large majority new EU water quality rules. Requiring a revision of

the list of priority substances within 2 years after the entry into force, the 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.

Following this, in 2012 the Parliament contributed to the update of the Directive with new priority substances. In the 2012 report on the Implementation of EU water legislation, the EP called for additional emphasis on the regional dimension, urged the need for reliable data, highlighted the mainstreaming of issues concerning water, supported a holistic approach on water protection and promoted research and innovation in this area. Parliament has welcomed and supported the Seventh Environment Action Programme and the Blueprint for Europe's Water initiatives.

In February 2014 the EP ENVI Committee hosted a Public Hearing on the first ever citizens' initiative, 'Right2Water', which calls on the Commission to propose legislation implementing the human right to water and sanitation as recognised by the United Nations. In particular, the initiative urges the EU institutions and Member States to ensure that all inhabitants enjoy the right to water and sanitation and that water supply and management of water resources not be subject to 'internal market rules' and liberalisation.

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→ Dagmara Stoerring

## 5.4.6. Air and noise pollution

*Air pollution harms our health and our environment. It has many sources, but mainly stems from industry, transport, energy production and agriculture. A new EU air quality strategy pursues full compliance with existing air quality legislation by 2020 and sets new long-term objectives for 2030. Moreover, growing traffic and industrial activities often lead to noise pollution, which can also have negative impacts on human health. The Environmental Noise Directive helps to identify noise levels within the EU and to take the necessary measures to bring them down to acceptable levels. Separate legislation regulates noise emission from specific sources.*

### Legal basis

Articles 191 to 193 of the Treaty on the Functioning of the European Union (TFEU).

### General background

Air pollution is bad for our health and for our environment. It can cause cardiovascular and respiratory diseases as well as cancer, and is the leading environmental cause of premature death in the EU. Certain 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. Air pollution also negatively impacts on the quality of water and soil and damages ecosystems through eutrophication (excess nitrogen pollution) and acid rain. Therefore, agriculture and forests are affected, as well as material and buildings. Air pollution has many sources, but mainly stems from industry, transport, energy production and agriculture. While air pollution in Europe has generally decreased in recent decades, the Union's long-term objective, namely 'to achieve levels of air quality that do not have significant negative impacts on human health and the environment', is still at risk. Especially in the urban areas ('hotspots') where the majority of Europeans live, air quality standards are often contravened, and this can cause serious health problems. The most problematic pollutants at this stage are fine particles and ground-level (tropospheric) ozone.

Environmental noise levels are rising in urban areas, mainly as a result of increasing traffic volumes and intensifying industrial and recreational activities. It is estimated that around 20% of the population of the EU suffer from noise levels that are considered unacceptable. This can affect 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.

### Achievements in combating air pollution

Air quality in Europe has much improved since the EU first started to tackle this issue in the 1970s. Substances such as sulphur dioxide (SO<sub>2</sub>), carbon

monoxide (CO), benzene (C<sub>6</sub>H<sub>6</sub>) and lead (Pb) have been significantly reduced since then. The EU has three different legal mechanisms to manage air pollution: defining general air quality standards for ambient concentrations of air pollutants; setting (national) limits on total pollutant emissions; and designing source-specific legislation, for instance controlling industrial emissions or setting standards for vehicle emissions, energy efficiency or fuel quality. This legislation is complemented by strategies and measures to promote environmental protection and its integration into the transport and energy sectors.

### A. Ambient air quality

On the basis of the objectives of the 2005 Thematic Strategy on Air Pollution (to reduce the concentration of fine particles (PM<sub>2.5</sub>) by 75 % and that of ground level ozone (O<sub>3</sub>) by 60%; and to reduce the threat to the natural environment from both acidification and eutrophication by 55% — all by 2020 as from 2000 levels), a revised Directive on ambient air quality was adopted in June 2008, merging most of the existing legislation in this field. Only the fourth 'daughter directive' (2004/107/EC) of the earlier Air Quality Framework Directive is currently still in place, setting target values (less strict than limit values) for arsenic, cadmium, nickel and polycyclic aromatic hydrocarbons.

Directive 2008/50/EC on ambient air quality aims at reducing air pollution to levels that minimise harmful effects on human health or the environment. To that end, it lays down measures to define and establish ambient air quality objectives (i.e. limits not to be exceeded anywhere in the EU) in relation to the main air pollutants (sulphur dioxide, nitrogen dioxide, oxides of nitrogen, particulate matter, lead, benzene, carbon monoxide and ozone). Member States are required to define zones and agglomerations in order to assess and manage ambient air quality, to monitor long-term trends and to make the information available to the public. Where the air quality is good it shall be maintained; where limit values are exceeded, action has to be taken. The Directive introduced for the first time an air quality objective for PM<sub>2.5</sub>.



Directive 2001/81/EC on national emission ceilings (NECs) sets national emission limits for four key air pollutants ( $\text{SO}_2$ ,  $\text{NO}_x$ , VOC and ammonia ( $\text{NH}_3$ )) that are responsible for acidification, ground-level ozone and eutrophication, in order to reduce their harmful effects, taking the years 2010 and 2020 as benchmarks. It requires Member States to annually report emissions and projections for these pollutants and to draw up national reduction programmes to reach their individual emission limits. Member States were supposed to meet these ceilings by 2010; however, many have breached at least one, sometimes over several years. The long-term objectives of the Directive are not to exceed critical levels and loads and to effectively protect everyone against recognised health risks from air pollution. A revision is proposed under the new clean air package.

At the end of 2013 the Commission proposed a new policy package on clean air with two key objectives, namely compliance with existing legislation until 2020 and reduction of long-term impacts of air pollution. The package includes a new Clean Air Programme for Europe, describing the problem and the policy measures necessary to achieve the new interim objectives for reducing health and environmental impacts up to 2030. It proposes the revision of the NEC Directive, with updated national ceilings for 2020 and 2030, for the four currently covered pollutants, as well as for two additional ones, i.e. fine particulate matter and methane ( $\text{CH}_4$ ). Also included in the package are a proposal for a new directive on the limitation of emissions of certain pollutants into the air from medium combustion plants (in addition to the large combustion plants already regulated), and a proposal for ratification of the amended Gothenburg Protocol to the United Nations Economic Commission for Europe (UNECE) Convention on long-range transboundary air pollution to abate acidification, eutrophication and ground-level ozone.

### B. Road transport

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, lorries, buses and motorbikes, and by regulating the quality of fuel (and its sulphur and lead content). The emission standard currently in force for cars and light vans is Euro 5. It sets emission limits for a number of air pollutants, in particular nitrogen oxides ( $\text{NO}_x$ ) and particulate matter (PM). Member States are required to refuse the type approval, registration, sale and introduction of vehicles (and their replacement pollution control devices) that do not comply with these limits. Euro 6, scheduled to enter into force in September 2014 for all new car models (type approval) and a year later for the registration and sale of all new cars and light vans,

sets even lower emission limits, especially for  $\text{NO}_x$  emissions (all deadlines are extended by one year for light commercial vehicles and special needs cars). It also includes a review clause on the driving cycle and the test procedure, to ensure that the testing takes place in real-world driving conditions. Regulation (EC) 715/2007 furthermore lays down rules for in-service conformity, durability of pollution control devices, on-board diagnostic (OBD) systems and measurement of fuel consumption, and regulates access to vehicle repair and maintenance information for independent operators. The same applies to Regulation (EC) 595/2009, which fixes emission limit values for heavy-duty vehicles (buses and trucks). The emission standard currently valid is Euro VI. To further reduce pollution from car emissions, the EU has introduced a ban on the marketing of leaded petrol and the obligation to make sulphur-free fuels available within the Union. Directive 2009/33/EC on the promotion of clean and energy-efficient road transport vehicles requires contracting authorities to take into account lifetime energy and environmental impacts, including energy consumption and emissions of  $\text{CO}_2$  and of certain pollutants, when purchasing road transport vehicles, with the objective of promoting and stimulating the market for clean and energy-efficient vehicles.

### C. Other transport emissions

Further emission performance standards have been set for non-road mobile machinery, such as excavators, bulldozers and chainsaws, as well as for agricultural and forestry tractors or recreational craft. Directive 1999/32/EC regulates sulphur emissions from ships by defining the maximum sulphur content allowed in marine bunker fuels. It was amended by Directive 2005/33/EC, which designated the Baltic Sea, the English Channel and the North Sea as 'Sulphur Emission Control Areas' (SECAs) where the maximum sulphur content allowed is 1.5% by mass. The same standard applies to passenger ships operating on regular service outside these SECAs. A further amending directive (Directive 2012/33/EU) aligns EU standards with the provisions of the International Maritime Organisation (IMO) and the International Convention for the Prevention of Pollution from Ships (Marpol), and introduces a 0.5% fuel standard by 2020 irrespective of a possible postponement by the IMO. In Annex VI to that directive, emission limits are set for sulphur oxides ( $\text{SO}_x$ ), nitrogen oxides ( $\text{NO}_x$ ), ozone ( $\text{O}_3$ )-depleting substances and volatile organic compounds (VOCs) from tankers.

### D. Emissions from industry

The new Industrial Emissions Directive (IED, Directive 2010/75/EU) covers highly polluting industrial activities that account for a significant share of pollution in Europe. Adopted in November 2010, it consolidates and merges all the relevant directives



(on waste incineration, VOCs, large combustion plants, integrated pollution prevention and control, etc.) into one coherent legislative instrument, with the aim of facilitating its implementation and minimising pollution from various industrial sources. 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. Using an integrated approach, it takes into account the total environmental performance of a plant, including the use of raw materials or energy efficiency. The concept of 'best available techniques' (BATs) plays a central role, as do flexibility, environmental inspections and public participation.

### Achievements regarding noise pollution

**Environmental noise:** The Framework Directive on environmental noise (Directive 2002/49/EC) 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.

**Road traffic:** Directives 70/157/EEC and 97/24/EC (both will be superseded in 2016 by new regulations) set limits on the permissible sound level of motor vehicles, mopeds and motorcycles. A new regulation on the sound level of motor vehicles was adopted in April 2014 introducing a new test method for measuring noise emissions, lowering the currently valid noise limit values and including additional sound emission provisions in the type-approval procedure. It will apply as from April 2016. Complementary to this, Directive 2001/43/EC provides for the testing and limiting of tyre rolling noise levels and for their gradual reduction.

**Air traffic:** In 1992, the operation of civil subsonic jet aeroplanes was limited in line with International Civil Aviation Organisation (ICAO) standards. This effectively meant banning the noisiest aircraft from European airports (Directive 92/14/EEC, repealed by Directive 2006/93/EC). Directive 2002/30/EC (currently under revision) establishes 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 aeroplanes 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).

**Rail traffic:** In the context of the railway interoperability directive, a technical specification for interoperability (TSI) on noise sets maximum levels of noise produced by new (conventional) railway vehicles. In 2013, the Commission launched a public consultation on the 'effective reduction of noise generated by rail freight wagons in the European Union' with a view to potential follow-up action.

**Other noise sources:** 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. Noise emitted by construction plants (e.g. noise from excavators, loaders, earth-moving machines and tower cranes), as well as from recreational crafts or equipment for outdoor use, is also regulated.

### Role of the European Parliament

Parliament has played a decisive role in the formulation of a progressive environmental policy to combat air and noise pollution. Noting that each year 50 000 people die prematurely owing to air pollution from ships, MEPs voted to drastically lower the harmful sulphur content of marine fuels. Under the new rules adopted by Parliament in 2012, the general sulphur limit for fuels in European seas would be reduced from 3.5% to 0.5% by 2020. MEPs successfully fought attempts to postpone this deadline by five years. On the instigation of the EP, the legislation adopted also asks the Commission to consider extending the stricter SECA limits to all EU territorial waters.

Concerning noise pollution, Parliament has repeatedly stressed the need for further cuts in limit values and for improved measurement procedures with regard to environmental noise. It has called for the establishment of EU values for noise around airports (including an eventual ban on night flying), and also for the extension of noise reduction measures to cover military subsonic jet aircraft. It furthermore approved the phasing-in of new noise limits for cars with the aim of reducing the limit to 68 decibels (db) from the current 74 db. MEPs also successfully campaigned for the introduction of labels to inform consumers about noise levels, on lines similar to those of the existing schemes for fuel efficiency, tyre noise and CO<sub>2</sub> emissions.

→ Tina Ohliger

### 5.4.7. Resource efficiency and waste

*Past and current patterns of resource use have led to high pollution levels, environmental degradation and the depletion of natural resources. The Roadmap to a Resource Efficient Europe should change this trend, as it outlines how we can transform the EU's economy into a sustainable one by 2050. EU waste policy has a long history and has traditionally focused on more environmentally sustainable waste management. The new resource-efficiency-based agenda will include a review of the key targets set out in EU waste legislation.*

#### Legal basis and objectives

Articles 191-193 of the Treaty on the Functioning of the European Union (TFEU).

#### General background

All products have a natural basis. European economies are highly dependent on natural resources. If current patterns are maintained, the degradation and depletion of natural resources will continue, as will waste generation. The scale of our current resource use is such that it is jeopardising the chances of future generations — and developing countries — of having access to their fair share of scarce resources. At present, approximately 16 tonnes of materials are used per capita each year in the EU, of which 10 tonnes goes into material stock (infrastructure, housing, durable goods) and 6 tonnes leaves the economy as waste. In 2011, 37% of waste was dumped in landfills, 23% was incinerated and less than 40% was recovered, recycled or reused. Rational utilisation of natural resources was one of the earliest environmental concerns underpinning the first European Treaties. The EU's 6th Environment Action Programme (EAP) identified waste prevention and management as one of the top four priorities. The Resource Efficiency Roadmap is among the key initiatives of the 7th EAP. One of its main objectives is to unlock the EU's economic potential so that it can be more productive while using fewer resources and moving towards a circular economy.

#### A. Resource efficiency

The Roadmap to a Resource Efficient Europe (COM(2011) 571) is part of the resource efficiency flagship initiative of the Europe 2020 strategy. It supports the shift towards sustainable growth via a resource-efficient, low-carbon economy. The roadmap takes into account the progress made on the 2005 Thematic Strategy on the Sustainable Use of Natural Resources (COM(2005) 670) and the EU's Sustainable Development Strategy, and sets out a framework for the design and implementation of future action. It also outlines the structural and technological changes needed by 2050, including milestones to be reached by 2020. It proposes ways

to increase resource productivity and decouple economic growth from resource use and its environmental impact. Increased resource efficiency is crucial to securing growth and jobs for Europe. Through technological innovation it generates major economic opportunities, improves productivity, drives down costs and boosts competitiveness. It is expected to increase employment in the fast-developing 'green technology' sector and open up new export markets.

#### B. Waste management and prevention

1. The current Waste Framework Directive (2008/98/EC) follows on from the Thematic Strategy on the Prevention and Recycling of Waste (COM(2005) 666), repealing the previous Waste Framework Directive (75/442/EEC, codified as 2006/12/EC), the Hazardous Waste Directive (91/689/EEC) and the Waste Oil Directive (75/439/EEC). It aims to reform and simplify EU policy by introducing a new framework and setting new targets, with a focus on prevention. It establishes basic concepts and definitions in the area of waste management, including definitions of waste, recycling and recovery. It required the Member States to establish national waste prevention programmes by 2013, and provides for a waste hierarchy.

2. The Waste Shipment Regulation ((EC) No 1013/2006) lays down rules for waste shipments both within the EU and between the EU and non-EU countries, with the specific aim of improving environmental protection. It covers the shipment of practically all types of waste (with the exception of radioactive material) by road, rail, sea and air. In particular, exports of hazardous waste to countries outside the OECD and exports of waste for disposal outside the EU/European Free Trade Association are prohibited. However, illegal waste shipments have remained a serious problem, and the proposal — adopted by Parliament on 17 April 2014 — to amend Regulation (EC) No 1013/2006 aims to help ensure more uniform implementation of the Waste Shipment Regulation. The new regulation will strengthen the inspection provisions of existing legislation, with stronger requirements for national inspections and planning.

### C. Production- and waste-stream-specific law

1. End-of-life vehicles: Directive 2000/53/EC aims to reduce waste from end-of-life vehicles (ELVs) and their components, for example by increasing the rate of reuse and recovery to 95% by 2015, and the rate of reuse and recycling to at least 85%. It also encourages manufacturers and importers to limit the use of hazardous substances and to develop the integration of recycled materials. An implementation report (COM(2009) 635) shows that enforcing the ELV Directive has been problematic in many Member States, owing to gaps between the number of de-registered cars and the number of registered ELVs, and to illegal exports to developing countries.

2. The EU Ship Recycling Regulation ((EU) No 1257/2013) entered into force on 30 December 2013. Its main objective is to prevent, reduce and eliminate accidents, injuries and other adverse effects on human health and the environment resulting from the recycling and treatment of EU ships, in particular with a view to ensuring that hazardous waste from such ship recycling is subject to environmentally sound management. The regulation sets out a number of requirements for European ships, European ship-owners, ship recycling facilities willing to recycle European ships, and the relevant competent authorities or administrations. In order to ensure legal clarity and avoid administrative burden, ships covered by the new legislation will be excluded from the scope of the Waste Shipment Regulation (EC) 1013/2006.

3. Directive 2002/96/EC, as amended by Directive 2008/34/EC, aims to protect soil, water and air through better and reduced disposal of waste electrical and electronic equipment (WEEE). Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS), adopted in parallel to the WEEE Directive, aims to protect the environment and human health by restricting the use of lead, mercury, cadmium, chromium and brominated flame retardants in such equipment. The implementation of the WEEE and RoHS Directives in the Member States has proved difficult, with only one third of all electrical and electronic waste being collected and properly treated. Accordingly, a recast WEEE Directive (2012/19/EU) and RoHS Directive (2012/18/EU) were adopted in 2012 following a lengthy legislative process. The aim was to improve their implementation, reduce the ensuing administrative burden and clarify the relationship between the two directives. The new directives require the Member States to increase their collection of e-waste and to allow consumers to return appliances to any shop selling small electrical goods, without having to purchase new goods. The burden of proof with regard to the shipping of electrical waste now lies

with the exporter, thus impeding illegal shipments of waste to non-EU countries for environmentally harmful disposal.

4. Disposal of spent batteries and accumulators: Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators aims to improve the waste management and environmental performance of such items by establishing rules for their collection, recycling, treatment and disposal. The directive also sets limit values for certain hazardous substances (in particular mercury and cadmium) in batteries and accumulators. Amending Directive 2013/56/EC removed the exemption for button cells with a mercury content of no more than 2% by weight. Wherever appropriate, the producer registration requirements and format should be consistent with the registration rules and format established pursuant to the WEEE Directive.

5. Radioactive waste and substances: in accordance with Directive 96/29/Euratom, each Member State must make it compulsory to report activities which involve a hazard arising from ionising radiation. In view of the possible dangers, in certain cases such activities are subject to prior authorisation, as decided by the Member State concerned. Shipments of radioactive waste are covered by Council Regulation (Euratom) No 1493/93 and Council Directive 2006/117/Euratom.

6. Packaging and packaging waste: Directive 94/62/EC covers all packaging placed on the EU market and all packaging waste, whether it is used or released at industrial, commercial, office, shop, service, household or any other level. The directive requires the Member States to take measures to prevent the formation of packaging waste, and to develop packaging reuse systems. Amending Directive 2004/12/EC establishes criteria and clarifies the definition of 'packaging'. In November 2013 the Commission presented a proposal for a directive to reduce the consumption of lightweight plastic bags in the EU. Parliament adopted its position at first reading on 16 April 2014, and the provisions will be negotiated during the eighth parliamentary term.

7. Waste from extractive industries: the Directive on the management of waste from extractive industries (the Mining Waste Directive, 2006/21/EC) seeks to tackle the significant environmental and health risks associated with the volume and pollution potential of current and historical mining waste.

### 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 the 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.

**2. Polychlorinated biphenyls (PCBs) and polychlorinated terphenyls (PCTs):**

Directive 96/59/EC approximates the Member States' laws on the controlled disposal of PCBs and PCTs, the decontamination or disposal of equipment containing PCBs and/or the disposal of used PCBs in order to eliminate them completely. In addition, Regulation (EC) No 850/2004 on persistent organic pollutants covers PCBs.

**3. Landfill sites:** the Landfill Directive (1999/31/EC) is intended to prevent or reduce the adverse effects of landfill on the environment, in particular on surface water, groundwater, soil and air, as well as on human health. The directive provides for a system of operating permits. The Member States must report to the Commission every three years on the implementation of the directive. Implementation still remains unsatisfactory, as not all of the provisions have been transposed in all the Member States and a large number of illegal landfills still exist.

**4. Incineration of waste:** Directive 2000/76/EC on the incineration of waste 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, it was repealed by Directive 2010/75/EU on industrial emissions and related directives.

### Role of the European Parliament

Parliament has repeatedly called for a new agenda for future European growth with resource efficiency

at its core, which would require some radical changes in our production and consumption patterns. Total life-cycle thinking should improve the use of secondary materials and create the right economic incentives for avoiding and reusing waste.

During the negotiations on the Waste Framework Directive in 2008, Parliament strengthened the provisions relating to reuse, recycling and recovery targets and to the inclusion of the five-step waste hierarchy as a 'priority order', together with the requirements for the Commission to report on EU waste generation and waste prevention. During the negotiations on the recast of the WEEE and RoHS Directives, Parliament called for more ambitious WEEE collection and treatment targets, extended producer responsibility and tougher measures regarding the export of WEEE, with the burden of proof on the exporter. Parliament successfully argued that consumers should be allowed to return small items to any large shop selling electrical goods, without having to purchase a new product.

In the negotiations on the EU Ship Recycling Regulation, Parliament strengthened the requirements for ship recycling facilities to take clear measures to prevent the practice of beaching. In the negotiations on the Waste Shipment Regulation, Parliament strengthened the proposal with a view to improving the knowledge base on illegal shipments through the inclusion of provisions on conducting a risk assessment in order to identify the minimum number of inspections required and of provisions giving inspection authorities more powers.

→ Dagmara Stoerring

## 5.4.8. Sustainable consumption and production

*Sustainable growth is one of the main objectives of the European Union. Faced with a global scarcity of natural resources, 'doing more with less' has become the main challenge for producers and consumers. To address this challenge, the EU has introduced a whole range of policies and initiatives aimed at sustainable consumption and production. These should improve the overall environmental performance of products throughout their life cycle, stimulate demand for better products and production technologies, and help consumers make informed choices.*

### Legal basis

Articles 191 to 193 of the Treaty on the Functioning of the European Union.

### Achievements

#### A. Sustainable Consumption and Production Action Plan

In July 2008, the Commission proposed a package of actions and proposals on Sustainable Consumption and Production (SCP) and Sustainable Industrial Policy (SIP) (COM(2008) 397), which aimed to improve the environmental performance of products throughout their life cycle, to increase consumer awareness and demand for sustainable goods and production technologies, to promote innovation in EU industry and to address international aspects. These proposals build on and complement existing EU policies such as the Integrated Product Policy (IPP), which was the first to officially introduce Life Cycle Thinking (LCT) into European policies. The aim of LCT is to identify potential improvements to goods and services which would lower environmental impacts and reduce the use of resources across all stages of the life cycle of a product or service (raw materials/supply chains/product use/end-of-life: the effects of disposal and possibilities for re-use or recycling). The Sustainable Consumption and Production Action Plan led to initiatives in the following areas: extension of the Eco-design Directive, revision of the Ecolabel Regulation, revision of the EMAS Regulation, legislation on green public procurement, the Resource Efficiency Roadmap, and the Eco-Innovation Action Plan (see below).

These instruments are an integral part of the EU's renewed Sustainable Development Strategy (EU SDS), the 2009 review of which reinforced the EU's long-standing commitment to meeting the challenges of sustainable development, while recognising the importance of strengthening cooperation with partners outside the EU, for instance through the UN's Marrakech Process.

#### B. Roadmap to a Resource Efficient Europe

Following on from the Europe 2020 flagship initiative on resource efficiency, which calls for a strategy to define medium- and long-term objectives for resource efficiency and the means of achieving them, the Roadmap to a Resource Efficient Europe was launched in 2011. It proposes ways to increase resource productivity and decouple economic growth from resource use and its environmental impact (5.4.7 on Resource efficiency and waste).

#### C. Ecolabelling and energy labelling

Labelling provides crucial information that enables consumers to make informed choices. 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 Ecolabelling Board (EUEB), which is also responsible for the associated assessment and verification requirements. 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 cleaning products, appliances, paper products, clothing, home and garden products, lubricants and services such as tourist accommodation. 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. The 2008 revision of the Ecolabel Regulation ((EC) No 66/2010) aimed to promote the use of the voluntary Ecolabel scheme by making the rules less costly and less bureaucratic to apply.

Directive 92/75/EEC introduced an EU-wide energy labelling scheme for household appliances (white goods), under which labels and information in product brochures provide potential consumers with energy consumption rates for all models available. Since its introduction in 1995, the EU Energy Label has become a widely recognised and respected guide for manufacturers and consumers. In June 2010, the Energy Labelling Directive (2010/30/EC) was revised in order to extend its scope to a wider



range of products, including energy-using and other energy-related products. The Commission is required to evaluate the effectiveness of the Energy Labelling Directive and present a report to Parliament and the Council by the end of 2014.

#### D. Eco-design

The Eco-design Directive ensures the technical improvement of products. 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 and televisions. Several implementing measures for the 2005 directive have meanwhile been adopted by the Commission under a comitology procedure. The 2009 revision (Directive 2009/125/EC) of the 2005 directive extended its scope to energy-related products other than energy-using products; these are products that do not consume energy during use but which have an indirect impact on energy consumption, such as water-using devices, windows and insulation material. In 2012, the Commission published a review of Directive 2009/125/EC which concluded that there was no need for an immediate revision of the Eco-design Directive or for its scope to be extended to non-energy related products. The Commission did, however, propose that specific aspects of the Eco-design Directive which may be considered outdated be included in the forthcoming review of the Energy Labelling Directive in 2014.

#### E. Eco-management and audit (EMAS)

The EU Eco-Management and Audit Scheme (EMAS) is a management tool enabling 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 those in industrial sectors. Since 2001, however, EMAS has been open to all economic sectors, including public and private services. In 2009, the EMAS Regulation ((EC) No 1221/2009) was revised and modified with the aim of further encouraging organisations to register with EMAS. This revision of the EMAS Regulation has improved the scheme's applicability and credibility and strengthened its visibility and outreach. In 2007, Parliament obtained ISO 14001:2004 certification and received EMAS registration.

#### F. Green public procurement (GPP)

Green public procurement (GPP) is a voluntary policy supporting public authorities in the purchase of products, services and works with a reduced environmental impact. The concept of GPP has been widely recognised in recent years as a useful tool for driving the market for greener products and services and reducing the environmental impacts of public

authorities' activities. National Action Plans (NAPs) are the means by which Member States implement GPP. Two public procurement directives adopted in 2004 (Directives 2004/18/EC and 2004/17/EC) were the first to contain specific references to the possibility of incorporating environmental considerations into the contract award process, for instance through the inclusion of environmental requirements in technical specifications, the use of ecolabels or the application of award criteria based on environmental characteristics. The three directives adopted in February 2014 as part of the reform of public procurement under the Single Market Act — Directives 2014/24/EU (the Classic Directive), 2014/25/EU (the Utilities Directive) and 2014/23/EU (the Concessions Directive) — will simplify the relevant procedures by improving the conditions for business to innovate and encouraging wider use of green public procurement, thus supporting the shift towards a resource-efficient and low-carbon economy.

In 2008, the Commission published a communication entitled 'Public procurement for a better environment' (COM(2008) 0400), which set out a number of measures to be taken to support the implementation of GPP by Member States and individual contracting authorities. As a result, EU GPP criteria have been developed as part of the voluntary approach to GPP. To date, 21 sets of GPP criteria have been published for selected sectors such as transport, office IT equipment, cleaning products and services, construction, thermal insulation, gardening products and services.

#### G. Eco-innovation Action Plan

The Eco-innovation Action Plan launched by the Commission in December 2011 is the successor to the Environmental Technologies Action Plan (ETAP) (COM(2004) 38), and builds on the experience of the latter. The ETAP was aimed at boosting the development and use of environmental technologies and improving European competitiveness in this area.

The Eco-innovation Action Plan is mainly linked to the Innovation Union flagship initiative of the Europe 2020 strategy. It is intended to expand the focus of innovation policies towards green technologies and eco-innovation, and to highlight the role of environmental policy as a factor for economic growth. It also targets specific eco-innovation barriers and opportunities — especially those not covered by more general innovation policies.

The Eco-innovation Action Plan is a broad policy framework that can be financed from different sources. From 2014 to 2020, the main source of support will be Horizon 2020. Other sources include European Structural and Investment Funds such as the European Regional Development Fund, the LIFE programme for the environment and climate



action, COSME and the common agricultural policy. A significant proportion of the financing available to eco-innovative businesses will come from new financial instruments developed by the Commission to offer them debt and equity facilities.

### Role of the European Parliament

Parliament has expressed its support for the Sustainable Consumption and Production Action Plan and its components on many occasions. During the 2009 revision of the Eco-design Directive, Parliament successfully strengthened the concept of life-cycle analysis, and in particular the notion of resource and material efficiency. Parliament also succeeded in inserting detailed provisions on small and medium-sized enterprises and on consumer information. The extension of the scope of the directive to include energy-related products has also been strongly supported by Parliament.

Parliament has played a significant role in the successive introduction of provisions allowing greener procurement in public procurement directives. In the last revision of the public procurement directives adopted in 2014, Parliament supported, *inter alia*, the introduction of the new 'most economically advantageous tender' (MEAT) criterion in the award procedure. This will enable public authorities to put more emphasis on quality, environmental considerations, social aspects and innovation, while still taking into account the price and life-cycle cost of what is procured.

On 24 January 2006, Parliament signed an EMAS Statement, pledging itself to ensure that its activities are consistent with current best practices

in environmental management. In 2007, it obtained ISO 14001:2004 certification and received EMAS registration. Parliament also applies green public procurement, and in 2014 an administrative working group is expected to make further proposals for improving such procurement, in close cooperation with Parliament's Public Procurement Forum.

The Eco-Innovation Action Plan was welcomed by Parliament in its resolution of 17 October 2013. Parliament emphasised the potential synergy effects of eco-innovation for sustainable job creation, environmental protection and the reduction of economic dependency. Furthermore, the resolution emphasised the cross-cutting policy character of eco-innovation and the need to mainstream eco-innovation in all policy areas. In this context, Parliament welcomed the eco-innovation funding possibilities under Horizon 2020, COSME, LIFE and the Common Agriculture Policy, and emphasised the role of emerging EU financial instruments as vehicles for the Innovation Union and Resource-Efficient Europe flagship initiatives under the Europe 2020 strategy.

During the negotiations on the multiannual financial framework for 2014 to 2020, Parliament called for an increase in the EU's next long-term budget for the 2014-2020 period in the light of the ambitious targets set in the Europe 2020 strategy for sustainable growth and jobs. During the negotiations on specific programmes, Parliament managed to have eco-innovation added to the investment priorities eligible for financing from the European Regional Development Fund.

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→ Dagmara Stoerring

## 5.4.9. Chemicals

*EU chemicals legislation aims to protect human health and the environment and to prevent barriers to trade. It consists of rules governing the marketing and use of particular categories of chemical product, a set of harmonised restrictions on the placing on the market and use of specific hazardous substances and preparations, and rules governing major accidents and exports of dangerous substances. The most important 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 to 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 in 2006 of Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (the REACH regulation). 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 use of chemicals and replacing around 40 previous legislative acts. The aim of the REACH regulation is to provide better protection for 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. REACH introduced a single system for all chemicals and abolished the distinction between 'new' chemicals (those introduced on the market as from 1981) and 'existing' chemicals (those listed before 1981). It transferred the burden of proof concerning the risk assessment of substances from public authorities to companies. In addition, it calls for the most dangerous chemicals to be substituted by suitable alternatives.

The European Chemicals Agency (ECHA), established under this regulation and based in Helsinki, is responsible for managing the technical, scientific and administrative aspects of REACH, and for ensuring consistency in its application. The Helsinki agency's initial job was to manage a six-month pre-registration exercise requiring firms to submit their company details as well as information on the basic substances used in production, including expected registration dates. The resulting list, published by ECHA, contains approximately 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) all substances at volumes of 1 000 tonnes or more per year; (ii) substances that are very toxic to the aquatic environment, at volumes of 100 tonnes or more per year; and (iii) the most hazardous substances, whether carcinogenic, mutagenic or reprotoxic (CMRs), produced or imported at volumes of 1 tonne or more per year.

June 2013 was the deadline for registering all substances manufactured or imported at volumes of 100 to 1000 tonnes per year. The process will conclude in June 2018 with the registration of substances introduced on the market in quantities between 1 and 100 tonnes per year.

In February 2013 the Commission published a review of the REACH regulation in which it concluded that REACH does not require any changes to its enacting terms, even though progress could be made in reducing the financial and administrative burden on industries and finding alternative methods to animal testing.

#### B. Classification, packaging and labelling

In order to enhance the level of protection of human health and the environment, the same criteria for identifying, and labels for describing, chemical hazards should be used throughout the EU and the world. Adopted in 2008, Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures (CLP) was introduced to align the EU system to the UN Global Harmonised System (GHS). The earlier directives on dangerous substances and preparations will be repealed in June 2015.

#### C. Export and import of dangerous substances

The 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 on the export and import of dangerous chemicals were finally defined in

Regulation (EU) No 649/2012, which aimed to promote shared responsibility and cooperative efforts in the international movement of hazardous chemicals, and to implement the Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. The PIC procedure consists in sharing information on toxic chemicals and awaiting a country's explicit agreement before exporting the product in question.

#### D. Major accidents

Named after an Italian municipality which was contaminated by an accidental release of dioxin from a nearby industrial site in 1976, the Seveso Directive (82/501/EEC) aimed to prevent major accidents such as fires and explosions and to limit the consequences of those that do occur by requiring safety reports, emergency plans and the provision of 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 transposed the Community's obligations under the Espoo Convention on the Transboundary Effects of Industrial Accidents. In the light of a number of serious industrial accidents (in Toulouse, France; Baia Mare, Romania; and Enschede, the Netherlands), and on the basis of studies on carcinogens and substances dangerous for the environment, the scope of the Seveso II Directive was extended by Directive 2003/105/EC. This directive requires the Member States to provide a detailed risk assessment of possible accident scenarios and to cover risks arising from storage and processing activities in mining and from the storage of pyrotechnic and explosive substances and of ammonium nitrate and ammonium-nitrate-based fertilisers. The Seveso III Directive (2012/18/EU) was published in July 2012 after being approved by Parliament and the Council. It takes account of new UN-agreed international classifications of substances that allow better risk evaluation and handling of substances.

#### E. Sustainable use of pesticides

In 2009 a Pesticides Package was adopted, consisting of: Directive 2009/128/EC on the sustainable use of pesticides, aimed at reducing environmental and health risks while maintaining crop productivity and improving controls on the use and distribution of pesticides; Regulation (EC) No 1107/2009 on the placing on the market of plant protection products; and Regulation (EC) No 1185/2009 concerning statistics on pesticides, which sets out rules for collecting information on the annual quantities of pesticides placed on the market and used in each Member State.

Directive 2009/128/EC required the Member States to adopt national action plans for the establishment of quantitative objectives, targets, measures and timetables in order to reduce the risks and impact of pesticide use on human health and the environment. Aerial crop spraying is banned as a general rule, and no spraying at all is allowed in close proximity to residential areas.

The regulation 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 are then licensed at national level on the basis of this list. The EU is divided into three zones (north, centre and south), with compulsory mutual recognition within each zone as the basic rule. This makes it easier for manufacturers to gain approval for their products across borders within a given zone and thus to make more pesticides available to users more quickly.

#### F. Biocidal products

A new regulation (Regulation (EU) No 528/2012) entered into force in 2013 in order to simplify the authorisation mechanisms and enhance the role of the European Chemicals Agency in reviewing approval dossiers on the basis of stricter conditions. Besides these aspects, the content of the legislation reflects what was established under the previous regime, with controls over the marketing and use of biocides (i.e. non-agricultural pesticides such as antibacterial 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, while a ban applies to the most toxic chemicals — especially those that are carcinogenic or harmful to fertility, or interfere with genes or hormones (endocrine disrupters). Pursuant to the mutual recognition principle, a substance authorised in one Member State may be used throughout the EU.

#### G. Persistent organic pollutants (POPs)

POPs are chemical substances that persist in the environment because of their resistance to different forms of degradation (chemical, biological, etc.). They bioaccumulate through the food chain and can provoke adverse effects on human health and the environment. This group of priority pollutants consists of pesticides (such as DDT), industrial chemicals (such as polychlorinated biphenyls or PCBs) and unintentional by-products of industrial processes (such as dioxins and furans). The EU has committed itself at international level to controlling the handling, exportation and importation of POPs (through prohibition or restriction), under the Aarhus POP Protocol to the Geneva Convention on long-range transboundary air pollution (in force since 2003) and the Stockholm Convention on

POPs (in force since 2004). The EU made additional progress with Regulation (EC) No 850/2004, which complements earlier EU legislation on POPs and aligns it with the provisions of the international agreements. To a certain extent, this regulation goes further than the international agreements, emphasising the aim of eliminating the production and use of the internationally recognised POPs.

## H. Asbestos

Asbestos is a mineral with a fibrous structure, which is dangerous when inhaled. It was widely used in the past for insulation and other purposes, owing to its resistance to fire and heat. 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. Workers are particularly exposed, and specific legislation to protect them was introduced in 1983 (Directive 83/477/EEC) and has been substantially amended several times. Directive 2009/148/EC rationalises and clarifies the legislation on protection of workers. Thanks to Directive 1999/77/EC, a ban on the use of asbestos has been in place in the EU since 1 January 2005. Furthermore, the extraction, manufacturing and processing of asbestos products is prohibited under Directive 2003/18/EC, which also lays down removal programme strategies to be implemented by the Member States. The same directive commits the EU to taking action towards a global ban on asbestos.

## I. Detergents

Regulation (EC) No 648/2004 harmonises the rules on the biodegradability of surfactants, the restrictions and bans on surfactants, the information that manufacturers must provide, and the labelling of detergent ingredients. It was subsequently amended in 2006 (Regulation (EC) No 907/2006), 2009 (Regulation (EC) No 551/2009) and 2012 (Regulation (EU) No 259/2012), in order to introduce new biodegradability tests to provide an enhanced level of protection for the aquatic environment. In addition, the scope of the tests has been extended to include all classes of surfactant, thereby including the 10 % of surfactants that hitherto had not been covered by legislation. As regards labelling, Regulation (EC) No 907/2006 also extends the rules to include fragrance ingredients that could cause allergies, requiring manufacturers to disclose a full list of ingredients to medical practitioners treating patients suffering from allergies. As of 30 June 2013, the use of phosphates in laundry detergents is banned and the content of other phosphorus-containing compounds is limited.

## Role of the European Parliament

Parliament played a key role in the development of the REACH regulation. It secured the insertion of certain provisions at first reading — notably, in the registration chapter, a targeted approach with regard to data requirements for existing substances produced at lower tonnages (1-10 tonnes), and the ‘one substance, one registration’ (OSOR) approach intended to minimise costs, introducing an opt-out under specific conditions. In order to limit animal testing as much as possible, Parliament secured a requirement for companies to share data from tests conducted on animals (in return for reasonable compensation), thereby avoiding the need to duplicate experiments. As regards the authorisation chapter, Parliament endorsed a stronger approach whereby all substances of very high concern may only be authorised if a suitable alternative or technology does not exist. Through its amendments, Parliament sought to favour both innovation (through time-limited authorisations of five years) and certainty (through a list of the most hazardous substances). At the end of the legislative procedure, the agreement reached between Parliament and the Council on the controversial issue of ‘authorisation/substitution’ included the requirement that a substitution plan must always be presented if suitable safer alternatives exist.

During the long discussion on the Pesticides Package in 2008, amendments by Parliament ensured the establishment of appropriately sized buffer zones for the protection of aquatic organisms, along with the introduction of protection measures for the most vulnerable groups, including the prohibition of 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, following the publication of a report by the European Food Safety Authority (EFSA) on the damaging effects of certain neonicotinoid insecticides, Parliament called on the Commission to take determined action to preserve bee populations. A similar commitment applies to asbestos. In March 2013, Parliament adopted a resolution on asbestos related to occupational health threats and prospects for eliminating all existing asbestos. It called for the EU to develop, implement and support a model for screening and registration, advocating an impact assessment and cost-benefit analysis with regard to the possibility of establishing action plans for the safe removal of asbestos by 2028 from public buildings and buildings providing services which require regular public access. Parliament also condemned European financial investment in global asbestos industries.

→ Lorenzo Vicario

## 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 guaranteeing their everyday rights as consumers. 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 full 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 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 measures shall not prevent any Member State from maintaining or introducing more stringent protective 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 508 million citizens in the EU, with a 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.

In accordance with 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 Union 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 initiated by the Council Resolution of 14 April 1975. Following the completion of the single market, consumer policy objectives must now be considered as one of the EU's major policy areas. The programme of EU action in the field of consumer policy is based on two measures: the European Consumer Agenda, which is the new strategy for EU consumer policy in line with the EU's growth strategy, Europe 2020, and the consumer programme 2014-2020<sup>[1]</sup>, the financial framework complementing the strategy. The consumer agenda has four main objectives:

- improving consumer safety (the two specific objectives being: improving the regulatory

<sup>[1]</sup> Regulation (EU) No 254/2014 of the European Parliament and of the Council of 26 February 2014 on a multiannual consumer programme for the years 2014-20 and repealing Decision No 1926/2006/EC.



framework on product and service safety and enhancing the market surveillance framework; and reinforcing safety in the food chain);

- enhancing knowledge (improving information and raising awareness of consumer rights and interests among both consumers and traders; and building knowledge and capacity for more effective consumer participation in the market);
- improving implementation, stepping up enforcement and securing redress (effectively enforcing consumer law, focusing on key sectors; and providing consumers with efficient ways to solve disputes);
- aligning rights and key policies to economic and societal changes (adapting consumer law to the digital age; and promoting sustainable growth and supporting consumer interests in key sectors).

The consumer agenda also identifies challenges, such as moving towards more sustainable consumption and addressing the specific needs of vulnerable consumers.

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*<sup>[1]</sup>, covering eight directives in this field. The modernisation and simplification of existing rules, where possible, could help consumers by providing access to a greater choice of products at better prices, and also reduce the burden on businesses.

In order to strengthen consumer confidence in the single market, the Single Market Act of April 2011 proposed a set of measures that included proposals on alternative dispute resolution, collective redress and passengers' rights. A new set of measures for adoption (the Single Market Act II) was presented by the Commission in October 2012. It focuses on a revision of the general product safety and market surveillance rules and includes a bank account initiative. The latter would ensure increased transparency and comparability regarding bank account fees and make switching bank accounts easy for consumers.

## B. Sectoral measures (5.5.2)

### 1. Consumer groups

The involvement of groups representing EU consumers' interests is a priority for the European institutions. The European Consumer Consultative Group (ECCG) is the Commission's main forum for

consultation with national and European consumer organisations. Set up by 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 consumer education actions at various stages, such as the gradual inclusion of consumer education in primary and secondary school syllabuses. 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 Commission has also piloted teacher training schemes and supported the creation of Master's degree courses on consumer policy. The interactive and online consumer education tool 'Dolceta' ([www.dolceta.eu](http://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, inter alia, 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 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 (the ECC-Network) to provide cross-border information and advice on cross-border shopping problems and to 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 just as important as the existence of consumer rights. The responsibility for their enforcement lies mainly with the national public authorities. Regulation (EC) No 2006/2004 on consumer protection cooperation links up these national authorities in an EU-wide 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 advertising, package holidays or distance selling). The network also carries out joint market surveillance and enforcement activities (e.g. in the form of internet sweeps during which the authorities check websites to see whether they comply with the law).

<sup>[1]</sup> COM(2006) 744.



A Commission communication of 2 July 2009<sup>[1]</sup> 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 RAPEX warning system 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

Parliament 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 Parliament the power to be actively involved in developing and strengthening EU consumer protection legislation, balancing the interests of the market with those of consumers. Parliament also plays an important role in the definition of the consumer protection policy by adopting own-initiative reports<sup>[2]</sup>. Parliament has been particularly active in ensuring higher budgetary provisions for measures in areas such as the information and (financial) education of consumers and the development of consumer representation in the Member States, with the emphasis on Member States that acceded after 2004.

→ Carine Piaguet

<sup>[1]</sup> COM(2009) 330.

<sup>[2]</sup> 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, safety and economic and legal interests of European consumers, wherever they live, travel or shop in the EU. Several areas are subject to EU regulation in this regard, including drugs, genetically modified organisms, tobacco products, cosmetics, toys and 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 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 (5.5.2)**
3. **Medicinal products (5.5.4)**
4. **General Product Safety System and market surveillance**

Directive 2001/95/EC provides for a General Product Safety System whereby any consumer product put on the market, even if is not covered by specific sector legislation, must respect certain standards relating to the provision of information to consumers, measures to avoid threats to safety, monitoring of product safety, and traceability. If a product poses a serious threat necessitating 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. In February 2013 the Commission published new legislative proposals<sup>[1]</sup> on consumer product safety and market surveillance with the objective of reviewing the current system. Parliament adopted both proposals in plenary on 15 April 2014, without prior trilogue negotiations.

#### 5. Safety of cosmetic products, explosives for civilian use and toys

The Cosmetics Directive (Council Directive 76/768/EEC), together with all its amendments and adaptations, has been replaced by the

Cosmetics Products Regulation (Regulation (EC) No 1223/2009). The regulation ensures the safety of cosmetic products, as well as the protection of consumers, by providing for ingredient inventories and informative labelling. Most provisions of the new regulation will be applicable by 11 July 2013. Safety requirements for explosives for civilian use and similar products (such as pyrotechnic articles) are set out in Directives 93/15/EEC, 2008/43/EC and 2004/57/EC, and in Decision 2004/388/EC. These acts do not apply to explosives for military or police use or to munitions. Toy safety requirements (e.g. mechanical danger, toxicity and flammability, toys in food) are laid down in Directive 2009/48/EC; the European Committee for Standardisation (CEN) revises and develops the relevant standards.

#### 6. European surveillance and information exchange systems

Decisions 93/683 and 93/580 established the European Home and Leisure Accident Surveillance System (EHLASS) for the collection of data on accidents occurring in the home or during leisure activities, and the Community system for the exchange of information in respect of certain products which may jeopardise consumers' health or safety (excluding pharmaceuticals and products for trade use).

#### B. Protection of consumers' economic interests

##### 1. Information society services, electronic commerce and electronic and cross-border payments

Directive 2000/31/EC (the E-Commerce Directive) covers the liability of providers (established in the EU) of online 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, in particular, online purchasing centres), and other online activities, such as the provision of news, database and financial services, professional services (e.g. those of solicitors, doctors, accountants and estate agents), entertainment services (video on demand), direct marketing and advertising services and internet access. Directive 97/5/EC on cross-border credit transfers and Regulation (EC) 2560/2001 on cross-border payments ensure that charges for cross-border

<sup>[1]</sup> COM(2013) 75 and COM(2013) 78.

payments in euros (cross-border credit transfers, cross-border electronic payment transactions and cross-border cheques) are the same as those for payments made 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 while preserving certain public-interest objectives, such as cultural diversity, the right of reply, consumer protection and the protection of minors. Its provisions relate to, for example, advertisements for alcoholic beverages, tobacco and medicines, teleshopping, and programmes involving pornography or extreme violence. Events of major importance for society are to be broadcast freely in unencoded form, even if exclusive rights have been purchased by pay-TV channels.

## 3. Distance selling contracts and contracts negotiated away from business premises, the sale of goods and guarantees, and unfair terms in contracts

As of 13 June 2014, the Consumer Rights Directive (2011/83/EU) of 25 October 2011 replaces Council Directive 85/577/EEC and Directive 97/7/EC laying down standard rules for the common aspects of distance and off-premises contracts. It also amends Council Directive 93/13/EEC on unfair contract terms and Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees. The new directive establishes rules on information to be provided to consumers, regulates the right of withdrawal and harmonises certain provisions dealing with the performance and some other aspects of business-to-consumer contracts.

Directive 2002/65/EC regulates the distance marketing of consumer financial services.

## 4. Unfair commercial practices, and 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 for determining aggressive commercial practices (harassment, coercion and undue influence) and a 'blacklist' of unfair commercial practices. Directive 2006/114/EC concerning misleading and comparative advertising prohibits misleading advertisements. It also lays down the conditions under which comparative advertising is permitted. A Commission communication of 27 November 2012 (COM(2012) 702) proposes to review Directive 2006/114/EC in order to tackle the loopholes in

the text and to 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 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 the 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 relevant information about the contract, including the cost of credit and the annual percentage rate charged. Consumers are allowed to withdraw from a credit agreement without giving any reason within a period of 14 days after the conclusion of the contract. They also have the possibility of repaying their credit early at any time, while the creditor can ask for 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 trader's obligation to provide information on the constituent parts of the contract, and the consumer's right to withdraw without any costs and without giving any reason, within 14 calendar days. The directive also contains a checklist of pre-contractual information, involving the use of standard forms available in all EU languages. On 12 March 2014 Parliament adopted the proposal for a directive on package travel and assisted travel arrangements, which will repeal Directive 90/314/EEC.

## 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 accident. Regulation (EEC) No 2299/89 (as amended) on computerised reservation systems (CRS) for air transport products

established obligations for system vendors (to allow all carriers to participate on an equal basis) and for carriers (to communicate with equal care and timely information to all systems). Regulation (EEC) No 2409/92 introduced common criteria and procedures for establishing 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 terrorist attacks of 11 September 2001.

#### **9. European Consumer Centres Network (ECC-Network or 'Euroguichets')**

The ECC-Network provides consumers with information and assistance in respect of cross-border transactions. This network also works 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 procedures 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 Council Resolution 2000/C 155/01 of 25 May 2000 lay down the principles to be followed in ADR proceedings, aimed at guaranteeing the individual consumer cheaper and faster remedies. Directive 98/27 on injunctions for the protection of consumers' interests (as amended) 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 court level against infringements by commercial operators from other countries. Directive 2013/11/EU of 21 May 2013 on alternative dispute resolution for consumer disputes gives consumers the possibility of turning to quality alternative dispute resolution entities for all kinds of contractual dispute

with businesses over an online or offline, domestic or cross-border purchase. Regulation (EU) No 524/2013 of 21 May 2013 on online dispute resolution enables EU consumers and traders to submit disputes arising from online purchases for ADR online, thanks to the EU-wide dispute resolution platform which will link all the national ADR entities and serve as a single entry point.

#### **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 litigation by improving the mechanisms for judicial cooperation between Member States in civil and commercial matters and providing them with practical information to facilitate their access to justice. Regulation (EC) 2006/2004 established a network of national authorities responsible for the effective enforcement of EC consumer protection law and, since 29 December 2005, has obliged them to cooperate in guaranteeing the enforcement of EC law and, in the case of intra-Community infringements, to stop any infringement by means of appropriate legal instruments such as injunctions.

### **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 Parliament the power to be actively involved in developing and strengthening EU consumer protection legislation while balancing the interests of the markets with those of consumers. As well as adopting legislation, Parliament regularly debates consumer protection issues, leading to non-legislative resolutions such as that of 4 February 2014 on the implementation of the Unfair Commercial Practices Directive, and that of 23 October 2012 on passenger rights in all transport modes.

→ Carine Piaguet

### 5.5.3. Public health

*The Treaty of Lisbon has enhanced the importance of health policy, stipulating 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 continues to lie with the Member States. 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), as well as specialised agencies, notably the European Centre for Disease Prevention and Control (ECDC) and the European Medicines Agency (EMA). In 2013 the final negotiating rounds took place for the adoption of the new plan 'Health for Growth' 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 issues 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 respond to the challenges of ageing populations, rising citizens' expectations, and 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 the twentieth century, put health and consumer protection high on the political agenda. In response, the Commission's Directorate-General

for Health and Consumer Protection (DG SANCO) assumed the coordination of all health-related areas, 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) exemplify 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 Europe's 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 ensure high standards of research into and manufacturing of medicines and the harmonisation of national drug licensing procedures, and to introduce rules on advertising, labelling and distribution. Recent developments include the 'Pharmaceutical Package', which was approved by the European Parliament (EP) in early 2011.
- Research: Medical and public health research programmes date back to 1978, and have covered subjects such as ageing, environment- and lifestyle-related health problems, radiation risks and human genome analysis, with a special focus on major diseases. These health issues and other emerging topics were tackled in the 7th EU Framework Programme. The results will



certainly influence the preparation of the new programme.

- **Mutual assistance:** Member States agreed to offer mutual assistance in the event of disaster or 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), swine flu and, most recently, H1N1 influenza.
- More recently (2012-2013), the EP has also defined its position in the adoption of legislation on crossborder 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 have taken stock of several focused initiatives. The emergence of drug addiction, cancer and AIDS (among others) as major health issues coupled with the constant increase in the free movement of patients and health professionals within the EU have meant that public health now occupies an ever more prominent position on the EU agenda. Major initiatives launched have included the 'Europe against Cancer' and 'Europe against AIDS' programmes (1987 and 1991 respectively). In addition, several key resolutions have been adopted by health ministers meeting in Council, on health policy, health and the environment, and the 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 multiannual public health programme:

- **Health promotion:** healthy lifestyle; nutrition; alcohol, tobacco and drugs; and medication.
- **Health monitoring:** programme based on cooperation, including a centre for data collection.
- **'Europe against Cancer':** epidemiological studies and research.
- **Drugs:** EU centre in Lisbon; UN Convention; bilateral contacts with producer countries.
- **AIDS and communicable diseases:** information, education and preventive measures.
- **Injury prevention:** leisure accidents; focus on children, adolescents and older people.
- **Pollution-related diseases:** improving data; risk perception; focus on respiratory conditions and allergies.
- **Rare diseases:** EU database; information exchange; early detection.

The above eight programmes were implemented between 1996 and 2002. In the evaluation made of them, it was found that the overall design of the programmes could have resulted in their effectiveness being limited owing to the dilution

effect of the 'disease-by-disease approach' taken. It was felt that a more horizontal, interdisciplinary approach was needed, by means of which 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 following a codecision procedure. This resulted in the most recent phase of these endeavours, in the form of the Programme of Community Action in the field of Health and Consumer Protection 2007-2013, which has a budget of EUR 312 million.

## B. Recent developments

In recent years, the institutions have focused on three key dimensions having direct implications for public health policies:

### 1. Consolidation of the institutional framework

The role of the EP as a decision-making body (in codecision with the Council) has been reinforced with regard to health, environment and consumer protection issues. The way in which the Commission launches 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 in 2005 of the Executive Agency for Health and Consumers (EAHC), 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 enable it 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 in which rapid global transport makes it easier for diseases to spread.

### 3. The need for improved coordination of health promotion and disease prevention

The aim here is to tackle the key underlying causes of ill-health related to personal lifestyles and to economic and environmental factors. This entails, in particular, close coordination 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 a wide range of 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 the field of 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; the 'European health card' (carrying 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; crossborder healthcare; Alzheimer's disease and other dementias; alternative medicines and herbal remedies; H1N1 pandemic influenza preparedness; and advanced therapies.

Work started in 2005 leading to the adoption 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 Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions entitled 'Healthier, safer, more confident citizens: a health and consumer protection strategy' (SEC(2005) 425) and (COM(2005) 115). This programme was adopted in 2007 (OJ L 301, 20.11.2007, p. 3) and is based on four principles. These are: 'A strategy based on shared health values'; 'Health is the greatest wealth'; 'Health

in all policies (HIAP)'; and 'Strengthening the EU's voice in global health'. Its objectives are: to foster good health in an ageing Europe; to protect citizens from health threats; and to support dynamic health systems and new technologies. This programme was allocated a budget of EUR 321.5 million, which clearly shows the importance attributed to this area (despite the fact that the final figure represented a considerable reduction on the amounts proposed by the EP). The Committee for Environment, Public Health, and Food Safety (ENVI) (as its official title is for the legislative term 2009-2014) is the EP's main actor on health matters. It is responsible for over one-third of Parliament's total legislative activity. The Health Working Group within ENVI has, since the beginning of the present legislative term, played an extremely active role in promoting exchanges between MEPs and professional experts on the most topical health issues, through the organisation of workshops and briefings.

In 2013 Parliament approved the revision of the EU framework in the field of clinical trials, which had been shown over time not to favour the development of new treatments owing to unduly stringent rules.

Regulation (EU) No 282/2014 of the European Parliament and of the Council of 11 March 2014 on the establishment of a third Programme for the Union's action in the field of health (2014-2020) follows on from the previous programme. It is the result of successful negotiations in the final stages of its preparation between the Commission, Parliament and the Council on three main issues, i.e.: the budget envelope, the modalities for the adoption of annual work programmes, and cofinancing for joint actions aimed at creating incentives for improving the participation of the less affluent Member States.

→ Marcelo Sosa Iudicissa / Purificación Tejedor del Real

## 5.5.4. Medicines and Medical Devices

*Medicines and medical devices are products subject to the rules of the single market, and therefore the EU holds competency for their authorisation through evaluation and supervision. In order to protect public health, before being placed on the market new pharmaceuticals for human use must be authorised either under a centralised procedure by the European Medicines Agency (EMA) and/or in a decentralised manner by national agencies. Medical devices require a detailed regulatory framework regarding market access through private sector organisations called notified bodies.*

### 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. Furthermore, the EU Health strategy proposes three objectives: fostering good health in an ageing Europe; protecting citizens from health threats; and supporting dynamic health systems and new technologies. In economic terms, the pharmaceutical sector, being one of the most resilient industries, makes an important contribution to European well-being through the availability of medicines, economic growth and sustainable employment.

### Achievements and current developments

A medicinal product or a medicine is any substance or combination of substances presented for the treatment or prevention of diseases in human beings. With the aim of safeguarding public health, the market authorisation, classification and labelling of medicines has been regulated in the EU since 1965. The great disparities between Member States' legislation have hindered the trade of medicines on the internal market. The EMA has been responsible for the evaluation of medicines since creation in 1993. A centralised authorisation procedure was put in place in 1995 to guarantee the highest level of public health and to secure the availability of medicinal products. The main pieces of legislation in this area are Directive 2001/83/EC and Regulation (EC) No 726/2004, which lay down the rules for establishing the centralised and decentralised procedures. In 2008 the Commission proposed the 'Pharmaceutical Package', a renewed vision for the pharmaceutical sector focused on 'safe, innovative and accessible medicines', and three legislative proposals aimed at providing information to the public, monitoring safety and combating falsified medicines. A specific regulation has been adopted for orphan medicinal products, medicines for children and advanced therapies.

Once medicines are placed in the market, they are monitored throughout their entire lifespan by the EMA under the Pharmacovigilance System, which records any adverse drug effects in daily clinical practice. The first legal framework for pharmacovigilance entered into force with Directive 2001/83/EC and Regulation (EC) No 726/2004. In 2012 new requirements and procedures were laid down in the new Regulation 1027/2012 and Directive (2012/26/EU).

Clinical trials are systematic investigations of medicines in humans that are intended to study the efficacy and safety of a given medicine. In order for a product to be placed on the market, it must be accompanied by documents indicating the results of the tests that it has undergone. Standards have been developing progressively — both in the EU and internationally — since 1990 and are codified in EU legislation, a process which is mandatory for the pharmaceutical industry. The basis establishing acceptable conduct for clinical trials in humans is founded in the protection of human rights and the dignity of the human being, as reflected in the 1996 Helsinki Declaration. Directive 2001/20/EC (the Clinical Trials Directive) deals with the implementation of good clinical practice, which is reinforced in Directive 2005/28/EC. In 2012 the Commission sent Parliament a proposal for a regulation on the matter (COM(2012) 0369). Parliament approved this revised legislation in plenary in April 2014.

Advanced-therapy medicinal products are a relatively new kind of product or pharmaceutical based on advances in cellular and molecular biotechnology and novel treatments, including gene therapy, cell therapy and tissue engineering. These complex products, which involve pharmacological, immunological or metabolic actions, cannot be considered as conventional drugs and they require specific legislation as laid down in Regulation (EC) 1394/2007 and Directive 2009/120/EC. Due to the risk of disease transmission that they pose, tissues and cells must be subject to strict safety and quality requirements. Directive 2004/23/EC on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells is therefore of great relevance to these products. A

committee for advanced therapies was created at the EMA with responsibility for assessing the quality, safety and efficacy of advanced-therapy medicinal products and following scientific developments in the field. In 2012 the Commission launched a public consultation to engage with interested parties (i.e. stakeholders, including small and medium-sized enterprises) in order to establish their views on advanced-therapy medicinal products. This emerging field in biomedicine has enormous potential for patients and industry.

Paediatric medicinal products have also been specifically regulated (under Regulation (EC) No 1902/2006 amending Regulation (EC) No 1901/2006) to ensure that medicinal products meet the needs of children, a legislative gap previously having existed in this field whereby children were treated with the same medicines and doses as adults. Following on from an earlier consultation, in 2013 the Commission sent Parliament a progress report on the Paediatric Regulation covering the first five years of its application.

In the EU rare diseases affect no more than 5 in every 10 000 people and orphan medicinal drugs have been designed specifically to treat these illnesses. Regulation (EC) No 141/2000 lays down the centralised procedure for the designation of orphan drugs. To date, the EU has authorised few orphan medicines, and owing to the low number of people who are affected by rare diseases, research in this field has been neglected. With this in mind, different initiatives, such as the Innovative Medicine Initiative (IMI), have been established to encourage industry to develop orphan drugs.

The fight against antimicrobial resistance is part of the 'protection against health threats' objective of the EU 'Together for Health' strategy. Antimicrobial agents are substances that kill or inhibit microorganisms, including bacteria, viruses, fungi and parasites. The use (and misuse) of antimicrobial agents is linked to an increasing prevalence of microorganisms that have developed resistance to such agents, thereby posing a threat to public health. The Antimicrobial Resistance Surveillance System was established under Decision 2119/98/EC, and in 2001 the Commission adopted a strategy against antimicrobial resistance (COM(2001) 333). In response, the Council adopted a recommendation on the prudent use of antimicrobial agents in human medicine (2002/77/EC). Current objectives aim to prevent the spread of resistant strains and ensure that antibiotics are used only when needed. EU policy in the area has four pillars: surveillance; research and product development; prevention; and international cooperation. Antimicrobial resistance is still growing in Europe and represents a global health problem. On 11 December 2012 Parliament adopted a new resolution on the Microbial Challenge

— Rising threats from Antimicrobial Resistance (P7\_TA(2012)0483).

A new directive on falsified medicines (Directive 2011/62/EU), addressing the alarming increase in the use thereof in the EU, was issued in 2011 and transposed by the Member States in January 2013. Falsification can refer to identity, history or source, the presence of sub-standard, falsified or non-relevant ingredients, or wrong dosage, etc. In an effort to combat falsified medicines, the Commission has taken steps to promote reflection on ways to improve market access and develop initiatives to boost pharmaceutical research in the EU, to tackle counterfeiting and the illegal distribution of medicines, to provide for access to high-quality information on prescription-only medicines, and to improve patient protection by strengthening pharmacovigilance.

A body of EU legislation has been adopted to specify the essential requirements that medical devices must 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 packaging and labelling. Relevant pieces of legislation include Directive 2007/47/EC on medical devices, and in 2012 the Commission launched proposals for two new regulations: on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 (COM(2012) 0542), and on in vitro diagnostic medical devices (COM(2012) 541). Parliament approved both regulation revisions in plenary in April 2014.

### Additional challenges

The Commission recognises the role that pharmaceutical research and development plays and it is currently implementing initiatives to foster innovation. In 2006 the Seventh Research Framework Programme (FP7) and the Competitiveness and Innovation Programme (CIP) were adopted to support new technologies and the expedited commercialisation thereof. The Third Health Programme was provided for under Regulation (EU) No 282/2014 of the European Parliament and of the Council of 11 March 2014 on the establishment of a third Programme for the Union's action in the field of health 2014-2020, and it will support actions in the fields of communicable diseases and other health threats, human tissues and cells, blood, human organs, medical devices and medicinal products.

Creating incentives for the development of pharmaceuticals is a relevant measure for combating diseases, especially in the developing world. The EU has been losing ground in pharmaceutical innovation, with research and development investment gradually being relocated from Europe to the USA and Asia. Furthermore, the sector is becoming more and more globalised, which, while

bringing opportunities with access to new markets, also gives rise to a global division of labour. In this context, the IMI was created as a key measure for the strengthening of competitiveness in biopharmaceutical research and development.

### Role of the European Parliament

Parliament 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 industrial aspects. It has also actively sought to strengthen and promote health policy through opinions, questions to the Commission and own-initiative reports on issues including antimicrobial resistance, patient safety and protection against hospital infections, medicines, medical devices and alternative therapies.

At present the EU is still considering draft legislation on 'Medicinal products for human use: information on products subject to medical prescription' (2008/0255(COD)). Parliament 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 easy access to a summary of product characteristics and the package leaflet in electronic and printed form. The leaflet should include a short paragraph setting out the benefits and potential risks of a given medicinal product, as well as a short description of further information aimed at the safe and effective use of the medicinal product at hand. A clear distinction must be made between the interpretation of information and advertising, and the ban on advertising to the general public

for prescription-only medicinal products should be maintained.

The European pharmacovigilance system was reinforced by Parliament's amendments to the latest proposals by the Commission on various technical levels.

On the issue of falsified medicines, together with the Council, Parliament 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 property. Given that the distribution network for medicinal products is increasingly complex, the new legislation addresses all actors, including wholesale distributors and 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. 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 poses a significant threat to public health, as falsified medicinal products may reach the public through such a method of sale.

In summary, with respect to the various pieces of legislation related to medicines, Parliament made significant improvements to the proposals presented by the Commission, contributing to the creation of a safer context for the use of pharmaceutical products for the health and well-being of EU citizens.

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→ Purificación Tejedor del Real / Marcelo Sosa Iudicissa

## 5.5.5. Food safety

*European food safety policy aims are twofold: to protect human health and consumers' interests and to foster the smooth operation of the single European market. The EU thus ensures that control standards are established and adhered to in the areas of feed and food-product hygiene, animal health, plant health and the prevention of food contamination from external substances. The Union also regulates labelling for 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. the BSE outbreak and the dioxin scare), EU food safety policy underwent deep reform in the early 2000s. The 'Farm to Fork' approach was defined, guaranteeing a high level of safety at all stages of the production and distribution process for all food products marketed within the EU, whether produced within the EU or imported from third countries.

### 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), tasked with assessing and informing on all risks related to the food chain. The regulation takes into account the 'precautionary principle' (5.4.1), sets out a risk assessment approach and establishes general provisions for imposing traceability of food and feed. The regulation also establishes the Rapid Alert System for Food and Feed (RASFF), allowing Member States and the Commission to exchange information rapidly and to coordinate their responses to health threats caused by food or feed.

#### 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. The package places the responsibility for foodstuffs hygiene directly with the various players in the food chain through a self-regulating system using the HACCP method (hazard analysis and critical control points). In 2006 the Commission adopted two decisions (Decision 2006/696/EC and Decision 2006/766/EC) with the aim of improving the application of Hygiene Package rules regarding trade with third countries in animals and in 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), and requiring their regular review.

#### 2. Maximum residue limits

Residues in foodstuffs could originate in pesticides or veterinary medical treatments and biocidal products used. Residues of pesticides are regulated by Regulation (EC) No 396/2005, which, replacing previous legislative acts, sets the rules for all agricultural products. Maximum residue limits and regulated substances are updated periodically by specific Commission regulations. As far as residues in animals are concerned, the authorised substances and their corresponding maximum residue limits are listed in Regulation (EC) No 37/2010 on pharmacologically active substances and their classification regarding maximum residue limits in foodstuffs of animal origin.

#### 3. Contamination caused by materials in contact with food

The rules on materials in contact with food are set out in Regulation (EC) No 1935/2004. This regulation lays down the general requirements for all relevant materials and articles, while other legislation in the form of specific directives contain detailed provisions for each material. Regulation (EC) No 321/2011 introduced restrictions on Bisphenol A, used in plastic infant feeding bottles.

### D. Food labelling

#### 1. Current legislation on food labelling (applicable until 12 December 2014)

The legal framework concerning foodstuff labelling is designed to guarantee consumers access to complete information on the content and composition of products in order that they may protect their health and best interests. Council Directive 2000/13/EC includes general provisions



on the labelling of foodstuffs to be delivered to the consumer and on certain aspects relating to presentation and advertising. Directive 2003/89/EC, amending Directive 2000/13/EC, regulates how ingredients present in foodstuffs are to be indicated. The labelling of energy value and of the presence of nutrients (such as proteins, carbohydrate, fats, fibres, sodium, and vitamins and minerals) are governed by Council Directive 90/496/EC on nutrition labelling of foodstuffs, as amended by Commission Directive 2003/120/EC.

## 2. New regulation on food information to consumers

With a second-reading vote in July 2011, Parliament passed a new Regulation (EC/1169/2011) that changed existing legislation on food labelling and nutrition labelling. The main novelty is the requirement for producers to indicate the presence of allergens in non-packaged foods, e.g. in restaurants and canteens, the origin of unprocessed meat (currently only compulsory for beef), and the presence of food imitations, such as vegetable products replacing cheese or meat. The new legislation also regulates the size of labels so as to ensure greater legibility. All these measures should enter into force on 13 December 2014. Specific dispositions on nutrition information on processed foods will enter into force in 2016.

## 3. Health and nutritional claims, and food for specific groups

Regulation (EC) No 1924/2006 governs nutrition and health claims made on food. Directive 2009/39/EC establishes a framework with general rules for 'dietetic foods', including food for infants and young children, and sets out requirements for their composition, marketing and labelling to ensure product safety. In June 2013, Parliament adopted a new Regulation on 'Food for Specific Groups' (FSG) (609/2013) abolishing the concept of a broad category of 'dietetic' food in favour of rules for specific groups: food for infants and young children, food for special medical purposes, and total diet replacement for weight control. This legislation, which will enter into force in 2016, requires strict labelling for infant and follow-on milk formula, restrictions on pesticides and a double evaluation for engineered nanomaterials.

## 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 of four regulations ((EC) Nos 1331/2008, 1332/2008, 1333/2008 and 1334/2008) was adopted

concerning the authorisation procedure, conditions of use and labelling of food additives, food enzymes and food flavourings.

## 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 and plant 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 legislative package that includes proposals on animal health, plant health, plant reproductive material and official controls. The package of measures provides a more risk-based approach to the protection of health, aiming to increase the efficiency of official controls in order to avoid food crises and frauds as much as possible. The package will be voted on by Parliament at first reading in April 2014. The final texts will be adopted once an agreement with the Council is found.

## G. Animal nutrition

Legislation on animal feed and feed labelling

Regulation (EC) No 1831/2003 governs animal feed hygiene. Regulation (EC) No 767/2009, adopted in July 2009, brings together most legislation on the labelling and marketing of feed. 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. 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. In 2008 the Commission presented a proposal to update the legislation on novel foods but, owing to an unresolved disagreement between Parliament and the Council over the way to regulate food from cloned animals, no new legislation entered into



force. In December 2013 the Commission presented a new proposal for a regulation on novel foods, to be debated in Parliament in the eighth legislative term.

### I. Genetically modified organisms (GMOs)

A GMO is 'an organism, with the exception of human beings, in which the genetic material has been altered in a way that does not occur naturally by mating and/or natural recombination'. Directive 2001/18/EC (on the deliberate release into the environment of GMOs) regulates their cultivation and commercialisation and, along with Regulations (EC) No 1829/2003 and (EC) No 1830/2003, defines the Community's regulatory framework in this area and introduces the mandatory labelling of food made from or containing GMOs. With the authorisation of the cultivation of the Amflora potato in March 2010, the Commission ended the embargo on new cultivation of GMOs that had been in force since 1998. In order to help Member States develop national (legislative) strategies for coexistence, Recommendation 2003/556/EC sets out guidelines for the development of national strategies and best practices to ensure the coexistence of GMOs with conventional and organic farming. In July 2011 Parliament adopted a first-reading position on a draft amendment to Directive 2001/18/EC that would give Member States and regions the right to restrict or prohibit GMOs on the grounds of environmental concerns. The legislative procedure is currently blocked, as the Council has been unable to agree on the text approved by Parliament.

### 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.

Parliament is particularly vigilant with regard to threats to consumer health pertaining to cloned animals and nanomaterials. In 2011 Parliament refused to agree to a Council proposal that would ban food made with cloned animals but not food made with their offspring. In addition to the new proposal on novel foods, in December 2013 the Commission presented a directive on the cloning of animals of various species kept and reproduced for farming purposes, as well as a directive on the placing on the market of food from animal clones. Parliament will debate the three legislative proposals in the eighth legislative term.

As far as nanomaterials in food are concerned, the new labelling regulation ((EU) No 1169/2011) obliges manufacturers to identify such ingredients on labels by adding 'nano' to their names, so that they can easily be identified by consumers. In order to implement this labelling provision, the Commission was asked to provide a definition of nanomaterials added to food. In March 2014 Parliament rejected the definition proposed by the Commission, arguing that it is confusing to the consumer as it exempts food containing 'nano' additives already on the market.

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→ 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<sub>2</sub> 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<sub>2</sub>, SO<sub>2</sub> 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 (SUMP) 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<sub>2</sub> exhaust emissions from road passenger and freight traffic, and a 30% reduction in CO<sub>2</sub> 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.

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→ 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<sup>[1]</sup> and package holidays<sup>[2]</sup> and on the applicable international conventions<sup>[3]</sup>, 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<sup>[4]</sup>, 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<sup>[5]</sup>.

#### 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:

<sup>[1]</sup> 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.

<sup>[2]</sup> Directive 90/314/EEC on package travel, package holidays and package tours. In 2013, the Commission proposed that the rules be changed to take account of market trends (COM(2013) 512). The proposal is currently under discussion. See in particular: A7-0124/2014.

<sup>[3]</sup> Rules on 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).

<sup>[4]</sup> 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.

<sup>[5]</sup> In March 2013, the Commission proposed that these rules should be clarified (and the definition of 'extraordinary circumstances' in particular should be improved) to facilitate application of the rules both by carriers and on behalf of passengers (COM(2013) 130). The proposal is currently under discussion. See in particular: P7\_TA(2014)0092.

Flights ≤ 1 500 km	Flights 1 500-3 500 km Flights EU ≥ 1 500 km	Flights ≥ 3 500 km
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)<sup>[1]</sup>;
- 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<sup>[2]</sup> or there are extraordinary circumstances<sup>[3]</sup>.

**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<sup>[4]</sup>.

### 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) 75% for flights of over 3 500 km.

### Reduced-mobility passengers

Reduced-mobility passengers and those accompanying them should always 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 and 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;

<sup>[1]</sup> 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.

<sup>[2]</sup> At least two weeks before the flight date. This deadline may be shortened in the event of rerouting.

<sup>[3]</sup> CJEU case-law has restricted this to cases of force majeure.

<sup>[4]</sup> The CJEU acknowledged that passengers whose flights have been delayed by over three hours are comparable to passengers whose flights have been cancelled. Regulation (EC) No 261/2004 provided only for the possibility of reimbursement for delays of over five hours.

- 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 ≥ 1 hour	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 in full only on regular services of over 250 km where passengers board or alight in the territory of a Member State<sup>[1]</sup>. Until March 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) should be offered. 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.

#### 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 now to ensure that the texts adopted in recent years are properly applied. Parliament has therefore 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 rules which are such as 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;

<sup>[1]</sup> 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).

- 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.
  - legislative resolution of 5 February 2014 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air, P7\_TA(2014)0092.
- 
- [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.

### Achievements

#### 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 an almost completely free market 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 the European 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 layout for the Community Licence (for the new criteria concerning establishment, see 1a above);
- 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 above).

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) No 881/92 and No 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, the detailed rules for their use and the layout 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, the European 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 European Parliament 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 European Parliament 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 European Parliament 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.

Finally, the Commission published a report on 14 April 2014 on the 'State of the Union Road Transport Market'. This was the report requested by the European Parliament in its resolution P7\_TA(2011)0584 du 15 December 2011 (see above). The Commission announced in the report that Regulations (EC) No 1071/2009 and (EC) No 1072/2009 would be revised under the REFIT programme (Communication of December 2012 on Regulatory Fitness). The aim would be to make legislation in force simpler and clearer, rather than to open up the market further. The Commission highlighted in particular the need to 'clarify ... the definition of stable and effective establishment in Regulation (EC) No 1071/2009 and of cabotage in Regulation (EC) No 1072/2009'. Furthermore, it laid stress on these two Regulations being enforced through more prescriptive provisions on the frequency and modalities of checks and also by means of the new generation of digital tachographs (point 4.3 of the Commission Communication).

The new Parliament will, in its turn, have a say through its co-decision powers in the revision announced by the Commission with the aim of arriving at a balanced economic and social reform of the road haulage market in the EU.

→ 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 (1).*

### Legal basis

Title VI of the Lisbon Treaty, and in particular Article 91 of the Treaty on the Functioning of the European Union (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 (see fact sheet 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 Directive 2002/7/EC of 18 February 2002, which aim 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 (see also the role of the European Parliament).

## **B. Administrative harmonisation**

### **1. Legal obligations for drivers**

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.

## **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. The European Parliament on the other hand opposed their exclusion.

### **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 (see fact sheet 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) provided that it is an international transport occasional service (and the service includes at least one 24-hour period in a country other than that in which the journey 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, 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 application of the "polluter pays" principle', was achieved thanks to the unwavering determination of the Committee on Transport.
- Despite securing more stringent checks on driving time and breaks, Parliament has consistently argued for effective social harmonisation in the EU. To this end Parliament 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. The report (COM(2014) 0222 final), adopted on 14 April 2014, sets out the development of the road haulage market and describes the social dimension of the road haulage sector. The report's recommendations include more effective checks and improved working conditions so as to counteract the effects of major long-term changes, starting with the shortage of drivers (see also Parliament's role in fact sheet 5.7.3). Parliament also secured agreement that the provisions of Directive 2002/15/EC would apply to self-employed drivers (approximately 20% of road haulage drivers) as from 2009.
- Finally, on 15 April 2014, Parliament rejected the changes that the Commission wanted to make to the maximum weights and measures authorised under Directive 96/53/EC. It also asked the Commission to carry out an adequate impact assessment on mega trucks so it could report to Parliament by 2016.

→ Piero Soave

## 5.6.5. Road traffic and safety provisions

*The EU is aiming to create a European road safety area by 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).

### Objectives

The aim is to improve road safety and contribute to sustainable mobility. According to statistics, there were 27 700 deaths and 313 000 people seriously injured on the roads in the European Union in 2012. This represents a reduction of 9% which, compared with 2011's modest fall of 2%, provides hope that the aim of halving the number of road deaths by 2020 is achievable, 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 by 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 in 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:

- periodic roadworthiness tests for motor vehicles and their trailers (Directive 2000/30/EC of 6 June 2000 on the 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, inspector qualifications, 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 aimed to extend roadworthiness tests to motorcycles; Parliament, however, ultimately ruled that they should be excluded, 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, in 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 (see also 'Role of the European Parliament');



- 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 enabling collisions with cyclists and pedestrians to be avoided. It also laid down that type-approved brake assist systems (BAS) should be fitted;
- lastly, the 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 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 to ensure 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 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 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 m, 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 those tunnels, having regard to 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 (black spots).

#### **F. Drink-driving accident statistics and prevention**

The CARE database on road accidents resulting in death or injury was created as a result of Council Decision 93/704/EC in order 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 that 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 quantitative 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 that 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.

On 11 March 2014, Parliament adopted the package of minimum common standards for periodic roadworthiness tests for vehicles, vehicle registration documents and roadside inspections of commercial vehicles. The deal with the Member States, which will be formally approved by the Council, will help to improve road safety and cross-border recognition of valid roadworthiness certificates.

→ Piero Soave

## 5.6.6. Rail transport

*EU rail transport policy is geared towards the creation of a single European railway area. Three packages and a recast were adopted in the space of 10 years following the opening-up of the sector to competition in 1991. A fourth package, designed to liberalise rail services, was recently adopted at first reading by the EP.*

### Legal basis

Article 100(1) of the Treaty on the Functioning of the European Union.

### Objectives

A common transport policy which safeguards both competition and the freedom to provide services necessitates the harmonisation of technical, administrative and safety rules. Gradual harmonisation of these requirements is essential if there is to be interoperability between national rail systems. Environmental and consumer protection measures may also have to be harmonised to some extent in order to prevent distortions of competition and make it easier for new companies to enter the market.

In its Transport 2050 roadmap the Commission sets the following goals: in the long term, completing a European high-speed rail network; in the medium term (by 2030), tripling the length of the existing high-speed network and maintaining a dense rail network in all Member States; lastly, by 2050 ensuring that the majority of medium-haul passenger transport is carried out by rail.

### Achievements

#### A. Interoperability

Through 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 emissions.

The two directives were amended and updated by Directive 2004/50/EC of 29 April 2004. 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 created by the full opening-up of the rail network to national

and international freight transport services (in January 2007) and international passenger transport services (in January 2010). Directive 2008/57/EC of 17 June 2008 — amended by Directives 2009/131/EC and 2011/18/EU — recast the earlier directives into a single text. At the heart of the directive is the principle of mutual recognition. Where vehicles have already been checked and authorised by one Member State, other Member States may subsequently verify only the parameters specifically relating to technical compatibility with their networks. The fourth railway package should do away with mutual recognition if it is adopted as proposed in order to strengthen the role of the European Railway Agency (ERA) (see B below).

In order to reduce technical barriers to interoperability, in 2005, 2008 and 2012 representatives of the rail industry and the Commission signed memorandums of understanding on the deployment and development of the European Rail Traffic Management System (ERTMS/ETCS), which 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 gradual deployment of the ERTMS along the main European rail routes within a decade (for further details see the 2013 report by coordinator K. Vinck).

National and international freight transport has been entirely open to competition since 1 January 2007. In an attempt to make better use of the international freight network and improve its interoperability and, hence, make the railways more competitive with other modes of transport, the EU has mapped out nine competitive European freight corridors (Regulation (EU) No 913/2010 of 22 September 2010) for goods that have to cross several Member States.

#### B. European Railway Agency

The European Railway Agency — with headquarters in Lille and Valenciennes (France) — was set up by means of Regulation (EC) No 881/2004 of 29 April 2004 with the aim of improving the interoperability and safety of the European rail network. The agency's main task is to harmonise, register and monitor technical specifications for interoperability (TSIs) across the entire European rail network and set common safety targets for European railways. The agency itself has no decision-making powers,

but it helps the Commission to draw up proposals for decisions. Regulation (EC) No 1335/2008 of 16 December 2008 assigned new tasks to the agency in response to the changes made to the Railway Safety Directive (2004/49/EC) and to the Directive on the interoperability of the rail system (2008/57/EC). Once the fourth railway package has been adopted, the agency will have greater scope for conducting surveys and audits. Thus, rather than there being 28 different train approval systems, the agency will become a one-stop shop with responsibility for issuing authorisations for the cross-border use of vehicles and safety certificates to multinational rail companies.

### 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 of 23 October 2007 aims to harmonise the minimum qualification requirements and the certification of locomotive and train drivers in the EU. It stipulates that all train drivers must hold a licence (declaring that they have met the minimum health, basic training and general professional knowledge requirements) and a harmonised further training certificate. Specifically, train drivers must be in possession of a certificate stating that they have undergone specific training on the sections of track in question, the equipment they are using and the operation and safety procedures employed by a particular company. On that basis, the directive provides for mutual recognition of documents.

Since October 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.

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. Railway undertakings holding a safety certificate are required to keep a register of all additional certificates issued.

### 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, provided that certain common conditions (good repute, financial fitness and professional

competence) are met. The directive was amended by Directive 2001/13/EC of 26 February 2001, which laid down rail sector operating conditions (safety, technical, economic and financial) applicable throughout the EU and established a freight service authorisation procedure for the European cross-border network.

Directive 2012/34/EU of 21 November 2012 establishing a single European railway area, which recast the first railway package, replaced and repealed Directives 2001/12/CE, 2001/13/CE and 2001/14/CE of 26 February 2001 (see F).

### 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 designed to reduce noise emissions from rail vehicles and infrastructure. Accordingly, in 2003 guidelines were adopted 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 railway system rolling stock.

On 8 July 2008 the Commission published a communication entitled 'Rail noise abatement measures addressing the existing fleet' [COM(2008) 0432], in which it sets the goal of retrofitting all freight wagons by 2015. Directive 2012/34/EU also provides for a new, noise-differentiated charge collection system in the areas in question, in an attempt to encourage rail companies to retrofit their wagons with low-noise brakes (the European Train Control System (ETCS)). As a priority, the noise-differentiated infrastructure charges are intended to target freight wagons that do not meet the requirements of the TSI relating to 'rolling stock — noise' of the trans-European conventional rail system.

### F. The recast of the first railway package (already adopted) and the fourth package (still under consideration).

Directive 2012/34/EU establishing a single European railway area, which must be transposed by mid-2015, brings together in a single text the main principles governing rail development (focusing, inter alia, on the separation of infrastructure management and transport activities), granting licences to railway undertakings and the levying of charges for the use of infrastructure. Generally speaking, the directive increases competition by making market access conditions more transparent, providing for clear separation of accounts and strengthening national regulatory bodies. It lays down in greater detail network and service access conditions and the rules governing the levying of charges.

In addition, in January 2013 the Commission presented a package of six legislative proposals, the 'fourth railway package', which is designed to complete the single European rail area and improve interoperability. The aim is to open up domestic public rail service contracts to competition by December 2019 at the latest with a view to improving the quality and efficiency of national passenger transport services. Specifically, the fourth package, which the EP has already adopted at first reading, seeks to amend the following instruments:

- Regulation (EC) No 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency (see B above);
- Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on interoperability (see A and B above);
- Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 requiring all railway undertakings to obtain the safety certificate in order to gain access to infrastructure;
- Regulation (EEC) No 1192/69 of the Council of 26 June 1969 on common rules for the normalisation of the accounts of railway undertakings;
- Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public service obligations for passenger rail transport;
- Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (see D and E above).
- in its resolutions of 15 June 2006 and 11 March 2008 on sustainable transport policy, the EP explicitly supported the introduction of the ERTMS/ETCS rail safety, control and signalling system with a view to eliminating technical obstacles, and called for moves to be made towards establishing a single European railway area;
- in its resolution of March 2009 on the greening of transport and the internalisation of external costs, 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 retrofit their fleets rapidly with low-noise vehicles.
- as regards the separation of network management and operation, the text adopted by the EP on 26 February 2014 (on the fourth package) gives the Member States a degree of flexibility to choose between splitting up undertakings and keeping them whole, while not losing sight of the goal of keeping infrastructure management and rail operation activities separate. The national authorities could either open up service contracts to competition or award them to a single operator. In the latter case, all contracts must have a maximum length and be justified against criteria such as the punctuality and frequency of services, their cost-efficiency ratio and user satisfaction. Although they approved the initiative to open up national commercial passenger transport services to tender, MEPs decided that the deadline of 2019 set by the Commission was too short, as existing contracts would not yet have expired.

### Role of the European Parliament

The EP has used its legislative powers to support most of the Commission's proposals for harmonisation, whilst at the same time emphasising certain specific aspects:

→ Piero Soave

## 5.6.7. Air transport: Market Rules

*The setting up of the Single Aviation Market in the late 90s has profoundly transformed the air transport industry and greatly contributed to the strong growth in air transport in Europe over the past twenty years.*

### Legal basis

Article 100(2) of the Treaty on the Functioning of the European Union.

### Objectives

To set up a single air transport market in Europe, ensure its proper functioning, and extend it to certain third countries as far as possible.

### Achievements

Historically, air transport has developed under the auspices and control of national authorities. In Europe, this largely meant monopolistic national carriers and publicly owned/managed airports. International air transport, which is based on inter-state bilateral agreements, has expanded accordingly — with strict control of, in particular, market access and ownership regimes of carriers. This fragmentation into national markets and the absence of real competition were less and less at one with increasing standards of living and the resulting growing demand for air transport. From the mid-70s, civil aviation had to switch from an administered economy to a market economy. Thus, the 1978 Airline Deregulation Act completely liberalised the US market.

The same occurred in Europe in a decade-long process, in the wake of the Single European Act of 1986 and the completion of the internal market: several sets of EU regulatory measures have gradually turned protected national aviation markets into a competitive single market for air transport (de facto, aviation has become the first mode of transport — and to a large extent still the only one — to benefit from a fully integrated single market). Notably, the first (1987) and the second (1990) 'packages' started to relax the rules governing fares and capacities. In 1992 the 'third package' (namely Council Regulations (EEC) Nos 2407/92, 2408/92 and 2409/92, now replaced by Regulation (EC) No 1008/2008 of the European Parliament and of the Council) removed all remaining commercial restrictions for European airlines operating within the EU, thus setting up the 'European Single Aviation Market'. The latter was subsequently extended to Norway, Iceland and Switzerland. It could and should be further extended to seven Balkan states through the European Common Aviation Area Agreement of 2006, provided those countries progressively

implement all relevant EU rules — which is not yet the case<sup>[1]</sup>.

The 'third package' substituted 'Community air carriers' for the national air carriers, and set as the basic principle that any Community air carrier can freely set fares for passengers and cargo and can access any intra-EU route without any permit or authorisation (with the exception of some very particular routes on which Member States can impose public service obligations, subject to conditions and for a limited period of time).

The 'third package' also laid down the requirements that Community air carriers must comply with in order to start or continue operations, principally:

1. They shall be owned and effectively controlled by Member States and/or nationals of Member States, and their principal place of business shall be located in a Member State.
2. Their financial situation shall be good. They shall be appropriately insured to cover liability in case of accidents.
3. They shall have the professional ability and organisation to ensure the safety of operations in accordance with the regulations in force. This ability is evidenced by the issue of an 'air operator certificate'.

In parallel with the setting-up of the Single Aviation Market, common rules have been adopted to ensure its proper functioning, which requires, notably, a level playing field and a high and uniform level of protection for passengers.

In order to ensure a level playing field, the legislation on state aid and competition (mergers, alliances, price-fixing, etc) applies to the air transport sector. This was not obvious since major public recapitalisations of airlines were rather common until the mid-90s. However, over the years the Commission guidelines serving to assess public funding of the sector came no longer to match the current market environment since they dated back to, respectively, 1994 (airlines) and 2005 (airports and start-up aid for airlines departing from regional airports). They were therefore replaced in spring 2014.

Fair access to airports and airport services is ensured through Regulation (EEC) No 95/93, which provides

<sup>[1]</sup> An Overview of the air services agreement concluded by the EU (European Parliament, 2013) provides an analysis of the contents and outcome of these agreements.



that at congested airports 'slots' (i.e. permission to land or take off on a specific date and at a specific time) shall be allocated to airlines in an equitable, non-discriminatory and transparent way by an independent 'slot coordinator' (however, this slot allocation system prevents the optimal use of airport capacity,<sup>[1]</sup> and a number of amendments to Regulation 95/93 aimed at achieving a degree of improvement in its efficiency are currently under discussion). Directive 96/67/EC has gradually opened up to competition the market for groundhandling services (i.e. the services provided to airlines at airports such as passenger and baggage handling, fuelling and cleaning of aircraft, etc). A Commission proposal from 2011 to further open up this market at the biggest European airports is also under discussion. In addition, Directive 2009/12/EC lays down the basic principles for the levying of airport charges paid by air carriers for the use of airport facilities and services. This, however, has not prevented disputes between airports and airlines from multiplying.

To ensure fair access to the distribution networks and prevent them from influencing consumer choice, common rules have been in force since 1989. They provide that the Computerised Reservation Systems (the CRSs are the 'technical intermediaries' between the airlines and the travel agents) shall display air services of all airlines in a non-discriminatory way on the travel agencies' computer screens (Regulation (EC) 80/2009). However, the role of CRSs is decreasing since online distribution is more and more in general use, including by the carriers' websites.

To protect passengers and aircraft and ensure a high and uniform level of safety throughout the EU, national safety rules have been replaced by common safety rules which have been progressively extended to the entire air transport chain. In addition, a European Aviation Safety Agency has been established which, *inter alia*, prepares the rules<sup>[2]</sup>. Security requirements at all EU airports have also been harmonised to better prevent malicious acts against aircraft and their passengers and crew (it is worth noting, however, that Member States retain the right to apply more stringent security measures<sup>[3]</sup>). Furthermore, common rules to protect air passengers' rights aim at ensuring that passengers receive at least a minimum level of assistance in the event of serious delays or cancellation. These

rules also provide for compensation schemes. However, they are proving difficult to apply, leading to frequent court cases<sup>[4]</sup>. In March 2013, the Commission therefore proposed to clarify the rules in order to facilitate their implementation by both carriers and passengers. This proposal is currently under discussion.

More than twenty years after the entry into force of the 'third package', the functioning of the Single Aviation Market is, of course, still perfectible, as is illustrated by such factors as: the flaws in the slot allocation system; the fact that the vast majority (80%) of routes departing from EU airports are still served by only one (60%) or two carriers (20%); the financial difficulties that several airlines and secondary airports are facing; or the complicated oversight of air carriers now operating in several Member States.

Nevertheless, the primary objective has been fully reached: from 1995 to 2011, while the number of passenger kilometres within the EU-27 increased by around 22%, for air transport it jumped by more than 66%. Over the same period, aviation's share of total passenger transport increased from 6.5% to 8.8%, which is by far the strongest growth in all modes of transport in the EU.

### Role of the European Parliament

In numerous reports, and also particularly in its resolution of 14 February 1995 entitled 'The way forward for civil aviation in Europe', Parliament has emphasised the need for a common policy on air transport providing for greater and fairer competition among airlines. Parliament's support for the establishment and proper functioning of the Single Aviation Market has therefore been constant.

In so doing, however, Parliament has continuously stressed that the liberalisation of air transport must be implemented cautiously and gradually and must balance the interests of both consumers and the industry.

Thus, over the last quarter of a century Parliament has always argued for fair competition, aviation safety, quality of service and passengers' rights, while also defending the working conditions of airline personnel, as well as environmental protection. For instance, it is Parliament that, right from the start of the liberalisation process, has requested criteria governing state aids to airports and airlines and the adoption of common rules on groundhandling, airport charges or passengers' rights.

This 'balanced attitude' towards the liberalisation of air transport was recently illustrated again when Parliament, at first reading, profoundly amended

<sup>[1]</sup> Airlines can 'underuse' their slots to avoid returning them to the 'slot pool' for reallocation to competitors. It is worth noting that while the EU has about one hundred 'coordinated' airports (i.e. 'with slots'), there are only two such airports in the US.

<sup>[2]</sup> Fact Sheet 5.6.10 deals with civil aviation safety.

<sup>[3]</sup> Fact Sheet 5.6.8 deals with civil aviation security. 'The EU regulatory framework applicable to civil aviation security' (European Parliament, 2013) is a comprehensive digest of the EU legislation on aviation security.

<sup>[4]</sup> Fact Sheet 5.6.2 deals with passengers' rights.



the Commission's proposals of 2011 on slots and on groundhandling services at EU airports.

Related decisions of the European Parliament:

- Resolution of 14 February 1995 on the Commission communication on the way forward for civil aviation in Europe (OJ C 56, 6.3.1995, p. 28).
- Legislative resolution of 11 July 2007 on the proposal for a regulation of the European Parliament and of the Council on common rules for the operation of air transport services in the Community (P6\_TA(2007)0337).
- Legislative resolution of 12 December 2012 on the proposal for a regulation of the European Parliament and of the Council on common rules for the allocation of slots at EU airports (P7\_TA(2012)0495).
- Legislative resolution of 16 April 2013 on the proposal for a regulation of the European Parliament and of the Council on groundhandling services at Union airports and repealing Council Directive 96/67/EC (P7\_TA(2013)0116).

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→ [Marc Thomas](#)

## 5.6.8. Air transport: Civil aviation security

*Aviation security (not to be confused with aviation safety<sup>[1]</sup>) 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.*

<sup>[1]</sup> Aviation safety relates to the design, manufacture, maintenance and operation of aircraft (5.6.10).

### 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<sup>[1]</sup> (ICAO) and Annex 17 to the Chicago Convention and the related Universal Security Audit Programme<sup>[2]</sup> (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<sup>[3]</sup> 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<sup>[4]</sup>.

Regulation 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 security law, and also draws up and implements a

<sup>[1]</sup> 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 191 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.

<sup>[2]</sup> 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.

<sup>[3]</sup> OJ L 355, 30.12.2002, p. 1.

<sup>[4]</sup> OJ L 97, 9.4.2008, p. 72.

'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<sup>[1]</sup>. 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 mid-2014, 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, 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<sup>[2]</sup> 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<sup>[3]</sup>;
- Legislative resolution of 5 May 2010 on the proposal for a directive of the European Parliament and of the Council on aviation security charges<sup>[4]</sup>;
- Report of 1 June 2011 on aviation security, with a special focus on security scanners<sup>[5]</sup>.

→ Marc Thomas

<sup>[1]</sup> COM(2009) 217.

<sup>[2]</sup> Commission Regulations (EU) Nos 1141/2011 (OJ L 293, 11.11.2011) and 1147/2011 (OJ L 294, 12.11.2011).

<sup>[3]</sup> Texts adopted, P6\_TA(2008)0521.

<sup>[4]</sup> Texts adopted, P7\_TA(2010)0123.

<sup>[5]</sup> A7-0216/2011.

## 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<sup>[1]</sup>) and air navigation services (ANS<sup>[2]</sup>) through better integration of European airspace. The expected benefits of the SES are huge, in that compared with 2004, the SES (once completed around 2030) could triple airspace capacity, halve the costs of ATM, improve safety tenfold, and reduce by 10% the impact of aviation on the environment<sup>[3]</sup>.

### Achievements

The Single European Sky initiative was launched in response to delays incurred as a result of 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 usage, and technologies) of 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<sup>[4]</sup> in its implementation. In practice, the SES 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 SES was adopted in 2004 (SES 1), and these included framework Regulation (EC) No 549/2004 laying down the framework for the creation of the single European sky, Regulation (EC) No 550/2004 on the provision of air navigation services, Regulation (EC) No 551/2004 on the organisation and use of the airspace in the single European sky<sup>[5]</sup>, and Regulation (EC) No 552/2004 on the interoperability of the European Air Traffic Management network. This framework was amended in 2009 (SES 2) in order to include performance-based mechanisms (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<sup>[6]</sup>. In parallel, a number of implementing rules and technical standards have been adopted either by the Commission through the comitology procedure or, less frequently, by the legislator<sup>[7]</sup>.

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, much greater flexibility in the civil and military use of airspace, the interoperability of equipment, the harmonised classification of upper airspace<sup>[8]</sup>; a common charging scheme for ANS, and 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'<sup>[9]</sup>, binding performance targets key areas, such as safety<sup>[10]</sup>,

<sup>[1]</sup> Air traffic management (ATM) ensures the safe and efficient movement of aircraft during all phases of operations (including air traffic services, airspace management, and air traffic flow management).

<sup>[2]</sup> Air navigation services (ANS) means all the services provided to air navigation, including air traffic services, communication, navigation and surveillance services, meteorological services, and aeronautical information services.

<sup>[3]</sup> Please note that these official SES objectives are also those set out by the Single European Sky ATM Research (SESAR) project, which is somewhat confusing.

<sup>[4]</sup> 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 Commission has designated Eurocontrol as a 'performance review body' and 'network manager' of the SES.

<sup>[5]</sup> From airport to airport, as airports serve as entry and exit points to airspace. This is referred to as the 'gate to gate' approach.

<sup>[6]</sup> By means of Regulation 1108/2009.

<sup>[7]</sup> As is the case with Directive 2006/23/EC of the European Parliament and the Council on a Community air traffic controller licence.

<sup>[8]</sup> Airspace is classified in accordance with 'classes' defined by the Chicago Convention on International Civil Aviation, which are given a designation ranging from 'Class A' to 'Class G'. Flight rules and the services provided differ from one class to another.

<sup>[9]</sup> Set up by Regulation (EC) No 691/2010.

<sup>[10]</sup> As of 2015.

the environment, capacity and cost-efficiency, and incentives aim at improving the overall efficiency of ATM and ANS. The performance targets are adopted by the Commission through the comitology procedure<sup>[1]</sup>. The 'Performance Review Body' (currently Eurocontrol) helps in the preparation of these targets and monitors the implementation of the Performance Scheme.

- The 'Network Manager' (currently Eurocontrol) deals with the 'network function', 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) will remedy the fragmentation of European airspace by restructuring it according to traffic flows rather than national boundaries. This is to allow for enhanced cooperation (i.e. better management of airspace and optimisation of the network of roads and economy of scale through the integration of services) or even mergers between service providers across national borders, thereby lowering the costs of ANS. In each FAB, the Member States concerned shall jointly designate one or more air traffic service (ATS)<sup>[2]</sup> providers. So far, nine FABs covering 31 countries<sup>[3]</sup> have been agreed.
- 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 (for the period 2008-2013, but most likely to be completed in 2017) is EUR 2.1 billion, to be distributed equally between the EU, Eurocontrol and industry. The deployment phase (i.e. the large-scale installation of the new system between 2014 and 2020, but most likely to be completed in 2030) could require more than EUR 30 billion.

Therefore, it seems that the efficiency of ATM in Europe is improving, with average en-route and airport ATFM delays decreasing from 5.4 minutes per flight in 1999 to 1.8 minutes in 2011, and

around one minute in 2012. Also, since 2008 the average horizontal direct en-route extension<sup>[4]</sup> has decreasing continuously, from 4.6% to 4.3% in 2011 and around 4.2% in 2012, with the routes flown being on average 4.2% longer than 'the most direct route'. In total, the cost of ANS is expected to have decreased by EUR 3.5 billion in the period 2009-2014 (i.e. overall costs should amount to EUR 37.2 billion for the period, as opposed to EUR 40.7 billion based on 2009 prices<sup>[5]</sup>).

However, the current improvements will probably not be enough to achieve the (very ambitious) SES objectives<sup>[6]</sup>. In spite of the progress made over the last ten 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 June 2013 the Commission proposed a new set of rules to address the issues of efficiency and performance, as well as the present sub-optimal institutional set-up. These proposals are still under discussion at the end of the current legislative term.

### Role of the European Parliament

Parliament has always endeavoured to remove obstacles to the implementation of the Single European Sky by adopting a pragmatic approach. In this connection, it has insisted strongly and successfully on the need for close cooperation between the 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 Parliament that proposed the creation of an industry consultation body, so as to enable stakeholders to advise the Commission on the technical aspects of the SES. Parliament has also always advocated the crucial role that Eurocontrol has to play in the implementation of the Single European Sky and the need to foster cooperation with neighbouring countries, in order to extend the initiative beyond EU borders.

Considering that the major objectives of the Single European Sky are still to be achieved, Parliament is now calling on the Commission to switch from a 'bottom-up' to a 'top-down' approach, in order to overcome remaining reticence and to speed up the implementation of the initiative, notably with respect to the SESAR programme and the functional airspace blocks.

<sup>[1]</sup> The first reference period for the performance scheme covers the calendar years 2012 to 2014. The following reference periods will cover five calendar years.

<sup>[2]</sup> Air traffic services (ATS) refers to the various flight information services, alerting services, air traffic advisory services, and air traffic control services.

<sup>[3]</sup> All EU Member States plus Bosnia Herzegovina, Norway and Switzerland. However, these FABs (which are set up by mutual agreement between states pursuant to the so called 'bottom-up approach') are still largely bound by national boundaries and do not necessarily mirror traffic flows.

<sup>[4]</sup> This is the difference between the actual route flown (between the departure and arrival terminal areas, with a radius of 30 Nautical miles around airports) and the direct route. This is the distance 'flown in excess'.

<sup>[5]</sup> It should, however, be noted that the 2009 cost per service unit was particularly high.

<sup>[6]</sup> For instance, the airlines and the European Commission intend to halve the cost of ANS by 2020.

Major related decisions taken by Parliament include:

- the legislative resolution of 29 January 2004 on the regulation laying down the framework for the creation of the Single European Sky <sup>[1]</sup>;
- the legislative resolution of 25 March 2009 on the proposal for a regulation amending Regulation (EC) No 549/2004, Regulation (EC) No 550/2004, Regulation (EC) No 551/2004, and Regulation (EC) No 552/2004, in order to improve the performance and sustainability of the European aviation system <sup>[2]</sup>.
- the resolution of 23 October 2012 on the implementation of the Single European Sky Legislation (P7\_TA(2012)0370) <sup>[3]</sup>.

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→ Marc Thomas

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<sup>[1]</sup> OJ C 96 E, 21.4.2004, p. 99.

<sup>[2]</sup> OJ C 117 E, 6.5.2010, p. 23.

<sup>[3]</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0370+0+DOC+XML+V0//EN>



## 5.6.10. Aviation safety

*Common rules, which have gradually been extended to cover the entire aviation sector, guarantee a uniform, high level of safety<sup>[1]</sup> throughout the internal market in air transport measures.*

<sup>[1]</sup> Aviation safety covers the design, manufacture, maintenance and use of aircraft, and should not be confused with aviation security, the purpose of which is to prevent malicious acts against aircraft and their passengers and crew (5.6.8).

### Legal basis

Article 100(2) of the Treaty on the Functioning of the European Union (TFEU).

### Objectives

The completion of the internal market in air transport towards the mid-1990s<sup>[1]</sup> required that common rules be adopted to ensure a uniform, high level of safety in the sector.

### Results

Safety is an integral part of aviation. Without stringent rules to guarantee a high level of safety, the air transport sector would not have been able to develop in the way that it has, since no-one would have been willing to fly (either as passengers or crew). Given that air travel makes it possible to travel long distances in a relatively short space of time, at least some measure of international cooperation is essential to aviation safety.

At international level, the International Civil Aviation Organization (ICAO<sup>[2]</sup>) is responsible for setting minimum aviation safety standards, but these are not binding and so compliance is mainly dependent on the States parties' goodwill.

The creation of a European internal market in aviation has meant that all passengers should benefit from the same, high level of safety wherever they fly in the Union. National rules have thus given way to common binding rules at EU level. In the same way, national regulatory authorities, and their voluntary cooperation bodies (in particular, in Western Europe,

the former 'Joint Aviation Authorities'<sup>[3]</sup>), have been replaced by an EU-level mechanism linking national civil aviation authorities, the European Commission and the European Aviation Safety Agency (EASA)<sup>[4]</sup>. Since 2003 EASA has been responsible, in particular, for drafting regulatory provisions in this field (which are then adopted by the Commission or the legislative authority). The Commission, EASA and the competent national authorities monitor the application of these rules, within their respective spheres of competence but also on the basis of mutual support.

The common civil aviation safety rules are based on the standards and recommendations adopted by the ICAO, but are often more stringent. They have been gradually extended to cover the entire air transport sector. The overall purpose of the rules is to prevent accidents from happening in the first place and they seek to do so as much by fostering a culture of responsibility in the industry as through outside supervision<sup>[5]</sup>.

Since 1994, the ICAO principles relating to the investigation of civil aviation accidents have been part of EU law (in Directive 94/56/EEC, which was then superseded by Regulation (EU) No 996/2010).

<sup>[1]</sup> The 'third package' on liberalisation of the aviation sector — Regulations (EEC) No 2407/92 and No 2408/92 (which have since been superseded by Regulation (EC) No 1008/2008) — gave EU air carriers free access to intra-Community routes (5.6.7).

<sup>[2]</sup> The International Civil Aviation Organization (ICAO) is a specialised agency of the United Nations which was established under the Convention on International Civil Aviation of December 1944 (also known as the Chicago Convention), to which 191 countries have now acceded. The ICAO adopts standards and 'recommended practices' which are mandatory for the States parties, but there is no binding mechanism with which to verify compliance.

<sup>[3]</sup> The Joint Aviation Authorities (JAA) was an informal body established to facilitate cooperation between the various civil aviation regulatory authorities throughout Europe, and was responsible for developing safety standards and procedures (which each State party was then free to apply in its own way). The JAA, which had 43 member countries at its peak, began its work in 1970 (when Airbus was launched) and was disbanded in 2009. The adoption of binding and directly applicable common civil aviation safety rules meant that the JAA was no longer needed by EU Member States.

<sup>[4]</sup> Technical regulations in the area of air traffic and air navigation services management are also drawn up by Eurocontrol, or by other standardisation bodies such as EUROCAE. The extension of the common aviation safety rules and of EASA's competences to this area has gone hand-in-hand with clarification of their respective responsibilities: EASA will now be responsible for drawing up technical regulations and Eurocontrol will carry out operational tasks relating to the 'Single European Sky' (5.6.9. See also the proposal for a regulation COM(2013) 409 final of 11 June 2013.)

<sup>[5]</sup> The Design Organisational Approval granted by EASA is a good example of a way in which this culture of responsibility is being fostered in the sector.

Investigations must be fully independent, and must aim only to determine the causes of accidents, and to prevent future accidents, rather than to apportion blame or responsibility (an approach which is not always in keeping with that employed under national civil and criminal law, the purpose of which is to identify and punish transgressors). The same preventive and 'non-punitive' logic underpins the rules governing occurrence reporting in civil aviation (Directive 2003/42/EC and Regulations (EC) No 1321/2007 and No 1330/2007). Since 2005, any problems identified in the air transport system must be declared to the competent national authorities, and the relevant reports stored and disseminated (by means of a central repository managed by the Commission) for the purpose of analysis. However, the system needs to be improved – not all the relevant data is collected, and the quality of the data which is collected is not always good enough for any useful conclusions to be drawn. At the end of 2012 the Commission proposed that the relevant legislation be amended to rectify these problems, in particular by conferring a greater role on the EASA (COM(2012) 776 final). The proposal is still under discussion as the current parliamentary term draws to a close.

Since 2003<sup>[1]</sup>, common rules have also governed airworthiness, i.e. how aircraft must be designed, constructed and maintained. In 2008, the rules were extended to air operations and aircrew training, i.e. governing how aircraft must be operated. In 2009, they were extended to cover the safety of airport operations, air traffic management and the provision of air navigation services. All the rules apply equally to aircraft and aircraft parts and to organisations and personnel with responsibility for designing, constructing, maintaining and operating them, including third countries' aircraft and carriers operating in the EU.

The SAFA (safety assessment of foreign aircraft) programme, launched in 1996 by the European Civil Aviation Conference (ECACC<sup>[2]</sup>), laid the foundations for the harmonisation of inspections of foreign aircraft, both European and non-European, at the airports of the states parties in order to verify compliance with the minimum safety requirements laid down by the ICAO<sup>[3]</sup>. Forty-three European

countries, including the 28 EU Member States, now take part in the programme. The SAFA programme was made mandatory for Member States, as from 2006, by Directive 2004/36/EC (which was superseded by Regulation (EC) No 216/2008); and accordingly, each year, inspections are carried out in the EU on over 6 000 aircraft (with EU and non-EU operators accounting for an almost equal number of those aircraft). EASA keeps a centralised record of inspection reports. Any deficiencies found may lead to restrictions on operations; where necessary, the operators concerned will be placed on a 'blacklist' of air carriers banned on safety grounds from operating in the EU. The 'blacklist' was introduced in 2005; it is regularly updated and published so as to keep passengers, air ticket sellers and the competent authorities permanently informed (Regulation (EC) No 2111/2005). The list is published — the 22nd update was issued in December 2013 — as an annex to legislation amending Regulation (EC) No 474/2006.

The content of the 'blacklist' demonstrates the need to improve civil aviation safety in particular regions of the world. To do so, the EU has set up collaborative arrangements with the ICAO and assists countries which have the greatest difficulties in establishing effective air safety systems. In tandem with this, the EU has proposed that its neighbouring countries — potential air travel destinations for large numbers of European citizens — join the internal air transport market, meaning that all common air safety rules must be applied (European Economic Area countries, Switzerland and the Balkan countries, which are parties to the European Common Aviation Area agreement).

A further aim of international cooperation on air safety is to facilitate trade in products and services, which may be hampered by the proliferation of national technical standards. Accordingly, the EU has concluded mutual recognition agreements on safety levels with its main aviation partners (US, Canada and Brazil). The EASA, for its part, has concluded working arrangements, for specific projects, with industrial partners from countries not coming under such mutual recognition agreements. The products and services covered by those agreements and arrangements can therefore be freely traded by the countries concerned.

### Role of the European Parliament

Parliament's proactive support for the establishment of an effective European system for civil aviation safety has always placed particular emphasis on air passenger rights to information and the effectiveness of the European Aviation Safety Agency.

Parliament has therefore always been of the opinion that one function of the SAFA Directive is to publicly shame airlines which flout international safety

<sup>[1]</sup> 'Technical requirements' were minimally harmonised in 1991, by means of Regulation (EC) No 3922/91, on the basis of the 'arrangements' adopted (with difficulty) by the Joint Aviation Authorities.

<sup>[2]</sup> The European Civil Aviation Conference (ECAC) is an informal grouping of 44 European countries' civil aviation authorities which seeks to harmonise their policies and practices and promote their relations with other regions of the world. CEAC has no regulatory powers, of course, but is a useful discussion forum.

<sup>[3]</sup> That is to say: the requirements set out in Annexes 1 (Personnel Licensing), 6 (Operation of Aircraft) and 8 (Airworthiness of Aircraft) to the Chicago Convention.

standards. Parliament has also taken the view that the European Commission should have the power to extend any measures imposed by one Member State subsequent to a SAFA inspection to cover the entire EU. In so doing, MEPs laid the foundations for what would become, one year after the Directive took effect, the so-called 'black list.' It was also Parliament that made the publication of the black list compulsory, and ruled that passengers are entitled to reimbursement or re-routing in the event of a flight cancellation subsequent to an airline being placed on this list. Parliament furthermore required from the outset that the EASA should be independent in the performance of its technical tasks and be given a broader remit: thus, in 2002, Parliament asked that the common safety rules and EASA powers be extended to cover aircraft operations and flight crew licensing; this extension was duly accorded in 2008. Finally, it was Parliament that vested the Agency with effective powers of compulsion and deterrence by allowing it to impose financial penalties proportionate to violations.

Key European Parliament texts in this domain:

- Recommendation of 21 March 2002 on the Council common position for adopting a European Parliament and Council regulation on

common rules in the field of civil aviation and establishing a European Aviation Safety Agency (A5-0093/2002)<sup>[1]</sup>;

- Report of 9 March 2004 on the joint text approved by the Conciliation Committee for a European Parliament and Council directive on safety of third countries aircraft using community airports (A5-0125/2004)<sup>[2]</sup>;
- Report of 19 October 2005 on the proposal for a regulation of the European Parliament and of the Council on the information of air transport passengers on the identity of the operating carrier and on communication of safety information by Member States (A6-0310/2005)<sup>[3]</sup>;
- Legislative resolution of 12 December 2007 on the Council common position for adopting a Regulation of the European Parliament and of the Council on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC (P6\_TA(2007)0607)<sup>[4]</sup>.

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→ Marc Thomas

<sup>[1]</sup> Recommendation of 21.3.2002.

<sup>[2]</sup> Report of 9.3.2004.

<sup>[3]</sup> Report of 19.10.2005.

<sup>[4]</sup> Legislative resolution of 12.12.2007.

## 5.6.11. 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.

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→ Jakub Semrau



## 5.6.12. 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

### 5.6.13. Tourism

*Since December 2009, tourism policy has had its own legal basis. However, it still does not have its own budget under the new multiannual financial framework (2014-2020).*

#### Legal basis

Article 6(d) and Title XXII, Article 195, TFEU.

#### Objectives

The EU's tourism industry in the strict sense of the term (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 EU GDP and accounts for 5.2% of the total labour force (which equates to some 9.7 million jobs). When its close links with other economic sectors are taken into account, these figures become even higher (10% of GDP and 12% of total employment). It is, therefore, the EU's third-largest industry.

Statistics on international tourist arrivals (from countries both outside and inside the Union) show the EU to be the most popular tourist destination in the world. Because of the jobs it provides and the revenue it generates, the tourism sector is an integral part of the EU's economy. Tourism policy is also a means which the EU can use to pursue broader employment and growth objectives. Tourism's environmental dimension will also gain in significance over time, and is already reflected in projects involving sustainable, responsible and ethical tourism.

#### Results

##### A. General policy

Since the European Council of 21 June 1999 on the topic of '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, having set the goal of making Europe a top tourist destination, quickly led to closer cooperation between public and private stakeholders in the EU tourism industry.

On that basis the Commission then implemented a wide range of measures. The following are examples of the fruits of this strategy:

- Tourism Satellite Accounts (TSA) for each Member State, with the ultimate aim of presenting the first European satellite account;

- the launch of an internet portal to promote Europe as a tourist destination;
- the holding, since 2002, of an annual European Tourism Forum (in 2013 the 12th forum was held in Vilnius, Lithuania, on the topic of 'Tourism as a force for economic growth, social change and well-being').

Between 2001 and February 2014 the Commission published seven communications setting out 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 sets out how sustainable development could 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 factors which make the European tourism industry competitive and the obstacles to its sustainable development.
- [COM(2012) 649 final], of 7 November 2012, — Implementation and development of the common visa policy to spur growth in the EU — which seeks to bring about an increase in the number of tourists from third countries visiting the EU by establishing a common visa policy.
- [COM(2014) 86 final], of 20 February 2014, A European Strategy for More Growth and Jobs in Coastal and Maritime Tourism — which seeks to promote sustainable growth and competitiveness in coastal and maritime tourism.

##### B. Special measures

###### 1. In the interests of tourists — travellers and/or holidaymakers

These measures include steps to make border-crossing easier and protect both the health and safety and the material interests of tourists, such as Council Recommendation 86/666/EEC on fire safety in hotels and 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 is provided by 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, in the interest of target groups or priority subjects.

At Parliament's request, the Commission has launched 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 comply with 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 persons 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 sustainable thematic tourism. 'Accessible tourism for all' aims to make the tourism supply chain accessible to all, for the benefit of persons with disabilities, elderly travellers and people having temporary difficulties. These last two preparatory activities were launched in 2012 and are intended to last three years.

In addition, many other measures have been launched by the Commission, such as, in 2011, the '50 000 tourists' pilot initiative, the aim of which is to boost low-season tourism between various non-EU countries, starting with those in Latin America, and Europe; the programme aims to encourage South Americans to travel to Europe (October 2012-March 2013) and Europeans to travel to South America (May-October 2013).

## **2. In the interests of the tourist industry and the regions, and for responsible tourism**

The regions are ideally placed to develop tourism in a sustainable way and make European destinations more attractive. 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 exchanges of knowledge and innovative solutions in the area of competitive and sustainable tourism. The EU offers a range of sources of funding to help tourism make a contribution to regional development and employment in the regions concerned: 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 conversion to ecotourism, the Competitiveness and Innovation Framework Programme (CIP) and the 7th Framework Programme for Research (FP7). In that connection, under the multiannual financial framework (MFF) for the period 2014-2020 the COSME programme will take over from the CIP and Horizon 2020 will take over from FP7.

Under the new MFF it may be allocated a total of EUR 105.5 million as part of the Programme for the Competitiveness of Enterprises and SMEs (COSME). For 2014 the COSME management committee has set a modest budget of EUR 8.7 million.

Harmonised statistics on tourism have been compiled 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) 0547 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**

As long ago as in December 1996, Parliament lent its backing to an EU tourism measure by approving the first multiannual 'Philoxenia' programme (1997-2000), which was later abandoned as a result of the Council's failure to reach a unanimous decision.

In its resolution of 30 March 2000 on the implementation of measures to combat child sex tourism [COM(99) 262 final], Parliament called on Member States to introduce universally binding extraterritorial laws which would make it possible to investigate, bring legal proceedings against and punish people who, whilst abroad, commit illegal acts involving the sexual exploitation of children. On 27 October 2011, it adopted a legislative resolution on combating the sexual abuse and sexual exploitation of children. Under the terms of Directive 2011/92/EU of 13 December 2011, child sex tourism



will, in December 2015, become a criminal offence throughout the EU; in particular, Article 21 of that directive makes provision for 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 2007 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 impact that visa policy has on tourism and supported the promotion of European tourist destinations.

It also proposed 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 seasonal fluctuations in tourist numbers.

Lastly, Parliament adopted resolution P7\_TA(2011)0407, on the basis of its own-initiative report (the first following the entry into force of 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. MEPs stressed the importance of measures taken in other sectors, such as employment, taxes or consumer rights, that could have a decisive impact on tourism. Moreover, they have already adopted at first reading, on 12 March 2014, a legislative resolution (P7\_TA-PROV(2014)0222) which seeks to enhance the protection of travellers undertaking package tours and repeals Directive 90/314/EEC. The text adopted will serve as the basis for the negotiations with the Council which are due to start after the European elections.

Parliament's call for a specific programme for tourism, under the 2014-2020 multiannual financial framework, was rejected by the Council, however. What is more, in February 2014 the Commission opted not to put forward a proposal for a regulation creating a European tourism quality label and instead asked the Council to adopt a recommendation on a set of non-binding European principles on the quality of tourism services (COM(2014) 85 final). These principles are designed to make Europe more competitive against emerging destinations.

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→ 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;
- ensure security of energy supply in the Union;
- promote energy efficiency and energy saving and the development of new and renewable forms of energy; and
- 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(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. The European Council plans to take a final decision on the new policy framework no later than October 2014.

Different long-term scenarios are described in the Commission Communication entitled 'Energy Roadmap 2050' (COM(2011) 885), 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 March 2014. 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 on the internal energy market).

### C. Strengthening external energy relations

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.

In response to the crisis in Ukraine, the March 2014 European Council called on the Commission to present by June 2014 a comprehensive plan to reduce EU energy dependence.

### E. Boosting energy efficiency

The cornerstone of EU energy efficiency policy is Directive 2012/27/EU of 25 October 2012 on energy efficiency, 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 on energy efficiency).

### 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 of 23 April 2009 introduced a 20% target to be reached by 2020 (5.7.4 on renewable energy).

### G. Research, development and demonstration projects

#### 1. Horizon 2020 (H2020)

The Horizon 2020 programme runs from 2014 to 2020, and is the main EU tool for promoting energy research. Funds amounting to EUR 5 931 million has been earmarked to support the development of clean, secure and efficient energy and sustainable development.

#### 2. European Strategic Energy Technology Plan (SET-Plan)

The SET-Plan, adopted by the Commission on 22 November 2007, is aimed at accelerating the market introduction and take-up of low-carbon and efficient energy technologies. The Plan promotes 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) 519) 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.

#### 3. Future energy technology strategy

The Commission Communication on 'Energy Technologies and Innovation' (COM(2013) 253), 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 internal market and for the political commitment of all Member States, 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 connection, 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 the 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:

- 5 February 2014 on a 2030 framework for climate and energy policies (T7-0094/2014);
- 10 September 2013 on making the internal energy market work (T7-0344/2013);
- 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 (T7-0306/2012);
- 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);

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→ 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 between 1996 and 2009, addressing market access, transparency and regulation, consumer protection, supporting interconnection, and adequate levels of supply. As a result 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 own suppliers. 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, completion of the EU's 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. In February 2011, the European Council set the objective of completing the internal energy market by 2014 and developing interconnections so as to put an end to any isolation of Member States from the European gas and electricity grids by 2015.

### 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 enabled consumers (industrial consumers from 1 July 2004 and domestic consumers from 1 July 2007) to choose their own gas and electricity suppliers. In April 2009, a third legislative package seeking to further liberalise the internal electricity and gas market 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: full

'ownership unbundling', independent system operator (ISO — responsible for the maintenance of the networks, while the assets remain the property of the integrated company) and independent transmission operator (ITO — a system of detailed rules ensuring the autonomy, independence and investments necessary 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 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 liquefied natural gas (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 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 Commission identifies hurdles that still hinder the completion of the internal market and a need for further action in order to update energy systems and to better protect consumers and enable them to take advantage of the price differentials and diversity of services offered by a fully liberalised energy market with deregulated prices. The Commission plans to publish in 2014 a report on progress in implementing the internal energy market, as well as a retail market initiative aimed at facilitating consumer engagement.

## B. Energy market regulation

In 2003, the European Regulators' Group for Electricity and Gas was set up, responsible for ensuring cooperation between national regulators and coherent application of the internal market directives in the Member States (Decision 2003/796/EC). In 2010, the European Agency for the Cooperation of Energy Regulators (ACER) was also 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 to electricity from renewable energy sources, and compliance with consumer 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 October 2013, the Commission adopted the first EU-wide gas network code on cross-border capacity allocation (Commission Regulation (EU) No 984/2013). In November 2013, the Commission also issued a guidance document on public intervention in the internal electricity market with, notably, a checklist that Member States are to use in designing adequate generation capacities (C(2013) 7243).

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. In October 2011, the EU adopted 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 the Member States. The responsibility for applying sanctions applicable to infringements lies, however, in the hands of the Member States. The European Council meeting of 22 May 2013 called on the Commission to provide an analysis of the composition and drivers of energy prices and costs in the Member States, which the Commission issued in January 2014 (COM(2014) 21 and SWD(2014)0020).

## C. Security of the supply of electricity, natural gas and oil

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. 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 of ensuring secure oil supply, Directive 2009/119/EC obliges Member States to maintain minimum 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. Following the recent Russian-Ukrainian crisis and Russia's annexation of Crimea, the European Council of March 2014 called on the Commission to draw up a comprehensive plan for the reduction of EU energy dependence by June 2014.

## D. Trans-European Networks

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 under Regulation No 2236/95/EC. The budget allocated to the TEN-E 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. A Commission proposal for a regulation to establish a common framework for the notification of investment projects in energy infrastructure in the EU (COM(2013) 153) was adopted by the Council and Parliament in February 2014 (T7-0058/2014). The regulation requires Member States to notify the Commission of their investment projects in energy infrastructure.

In a report to the June 2011 Energy Council, the 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, in its communication entitled 'A Budget for Europe 2020', put forward a new mechanism, the Connecting Europe Facility (CEF), for funding priority projects in the field of energy, transport and critical digital infrastructure from 2014 to 2020. In November 2013, Parliament endorsed the deal reached with the Council on the budget for the CEF, with EUR 5.12 billion earmarked for the development of trans-European energy infrastructure projects (T7-0463/2013). Several projects of common interest were selected for EU support, based on the energy infrastructure guidelines endorsed in March 2013 by the Council and Parliament (T7-0061/2013). The Regulation on energy infrastructure guidelines 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. In 2013 the Commission proposed a list of 248 European projects of common interest in line with the procedure and criteria set out in the regulation. This list will be reviewed every two years. In March 2014, the European Council asked the Commission to put forward by June specific interconnection objectives to be attained by 2030.

### Role of the European Parliament

In adopting the legislative package on internal energy markets, Parliament 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. Parliament has also stressed the importance of a European common view of mid-term investments (indicative European 10-year plan focused on interconnections); greater cooperation between regulatory authorities, Member States and transmission system operators; and a strong process of harmonisation of network access conditions. On the initiative of Parliament, special importance was placed on consumer rights, which was 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 made to an energy 'ombudsman'). Parliament also obtained recognition of the concept of 'energy poverty'. It has strongly supported the establishment of ACER, stressing that it had to be granted the necessary powers to overcome those issues that cannot be solved by national regulators and which hamper the integration and proper functioning of the internal market.

Parliament 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 Parliament, as well as its financial independence. In addition, Parliament 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, it 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 under the REMIT Regulation.

More recently, in March 2013, when adopting the guidelines for trans-European energy infrastructure (T7-0061/2013), Parliament 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. It 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 a disproportionate burden of the costs of common interest projects.

In September 2013 Parliament adopted a resolution on making the internal energy market work (T7-0344/2013), endorsing the Commission's 2012 communication on the subject (COM(2012) 663) and its accompanying action plan aimed at overcoming some hurdles that still hinder the completion of the internal market. Parliament expressed its support for a European Energy Community between the Member States and stressed the importance of improving the coordination of infrastructure projects and exploring new funding approaches for investment in energy networks.

In its resolution endorsing the Connecting Europe Facility in November 2013 (T7-0463/2013), Parliament stressed the importance of synergies between the transport, telecommunications and energy sectors and of leveraging funding from both the public and private sectors.

With regard to the regulation on the notification of investment projects in energy infrastructure, Parliament succeeded in securing the adoption of the proposal under the ordinary legislative procedure. It obtained the annulment of previous regulations (617/2010 and 833/2010) on the matter, under which it would only have been consulted. Parliament approved the regulation at first reading in February 2014 (T7-0058/2014). In its legislative resolution, it clarified the notification requirements in terms of content, confidentiality, monitoring and reporting.

→ Cécile Kerebel



## 5.7.3. Energy efficiency

*Reducing energy consumption and eliminating energy wastage is of growing importance to the EU. EU leaders decided in 2007 a target for 2020 of cutting the annual energy consumption of the Union by 20%. Energy efficiency measures are increasingly recognised as a means not only of achieving a sustainable energy supply, cutting greenhouse gas emissions, improving security of supply and reducing import bills, but also of promoting the competitiveness of European economies. The European Council of 20 and 21 March 2014 stressed the effectiveness of energy efficiency in bringing energy costs down and reducing energy dependency. The EU has set minimum energy efficiency standards and rules on labelling and ecodesign for products, services and infrastructure. These measures aim to improve efficiency at all stages of the energy chain, from energy supply to the use of energy by consumers.*

### Legal basis

Article 194 TFEU.

### Achievements

#### A. General framework

The Commission launched its 'Action Plan for Energy Efficiency: Realising the Potential' (COM(2006) 545) in 2006. It was intended to mobilise the general public, policymakers and market actors, and transform the internal energy market in a way that would 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). Nonetheless, when recent estimates suggested that the EU was on course to achieving only half of the 20% objective, the Commission responded by developing a new and comprehensive Energy Efficiency Plan 2011 (EEP) (COM(2011) 109).

The Energy Efficiency Directive (2012/27/EU) entered into force in December 2012. Under it, the Member States are required to establish indicative national energy efficiency targets for 2020, based on either primary or final energy consumption. The directive also sets legally binding rules for end-users and energy suppliers. Member States are free to make these minimum requirements more stringent as they strive to save energy. The directive includes, inter alia, the following requirements:

- the renovation of at least 3% of the total floor area of buildings owned by central governments each year from 2014, and the purchase of buildings, services and products with high energy-efficiency performance, with the public sector thus leading the way;

- 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 obligation schemes or equivalent measures to ensure 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 rollout of smart grids and smart meters and the provision of accurate information on energy bills, to empower consumers and encourage more efficient energy consumption.

By 30 June 2014, the Commission will assess whether the EU is likely to achieve its primary energy savings target by 2020, and, if necessary, propose mandatory national energy efficiency targets. Member States will have to report each year on the progress made towards achieving national energy efficiency targets. In November 2013 the Commission issued a communication and seven guidance notes on the implementation of various aspects of the Energy Efficiency Directive.

A public consultation on the progress towards the 2020 energy efficiency objective and a 2030 energy efficiency policy framework is currently ongoing, and the deadline for submitting comments is 28 April 2014.

#### 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 efficient 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 the promotion of 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 was the subject of heated debate in both the Council and Parliament. It established a uniform definition for electricity produced in CHP plants. The Commission established harmonised efficiency reference values for the separate production of electricity and heat, which were reviewed in a Commission implementing decision of 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 requires Member States to assess and notify the Commission of the potential for high-efficiency cogeneration and 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 of 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 certain provisions of the former directive and to strengthen the energy performance requirements with regard to:

- the common general framework for a methodology for calculating 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 advocate or introduce further measures. As a follow-up to the recast directive, the Commission published in April 2013 a report assessing the effectiveness of the current financial support for energy efficiency in buildings (COM(2013) 225). This report is also meant to help Member States implement a requirement laid down in the Energy Efficiency Directive concerning the establishment, by April 2014, of a long-term strategy for mobilising investment in the renovation of the national building stock. Another report published in February 2014 provides technical guidance on financing the energy renovation of buildings with Cohesion Policy funding.

### 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 by energy-related products which have a significant direct or indirect impact on energy consumption, which is governed by Framework Directive 2010/30/EU. A report on the effectiveness of this directive is to be published by the Commission before the end of 2014. Specific directives and regulations set out requirements for various household appliances. The labelling of office equipment and the labelling of tyres are covered by separate regulations;
- ecodesign requirements for energy-using products governed by Framework Directive 2009/125/EC, recasting Directive 2005/32/EC as amended by Directive 2008/28/EC. Implementing regulations cover a wide range of products, including heaters, vacuum cleaners, computers, air conditioners, dishwashers, lighting products, refrigerators and freezers, televisions, electric motors.

### Role of the European Parliament

In its resolution of 15 December 2010 on the Revision of the Energy Efficiency Action Plan (T7-0485/2010), Parliament 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 of 6 May 2010 on mobilising information and communication technologies to facilitate the transition to an energy-efficient, low-carbon economy (T7-0153/2010), Parliament 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; education in schools on energy efficiency would be a starting point. It further emphasised that widespread information campaigns explaining the benefits of smart metering and ICT to citizens are crucial for gaining public support.

During the adoption of the recast directive on the energy performance of buildings, Parliament was in favour of a stronger and more ambitious regulation. For example, it insisted that all buildings should be at least net zero energy by 31 December 2016 (COD/2008/223).

With regard to the recast Energy Labelling Directive (COD/2008/222), Parliament 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, Parliament strengthened the extent to which energy efficiency-related information has to be included in advertising and technical promotional material.

In 2012, Parliament 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 their energy bills.

Parliament recently adopted a resolution on the implementation and impact of the energy efficiency measures under Cohesion Policy (2013/2038(INI)) welcoming new opportunities offered by the European Structural and Investment Funds and the Cohesion Fund, especially in the building sector. Parliament called for awareness-raising measures and information dissemination, and stressed the need for capacity building and technical assistance in this area.

In its resolution on a 2030 framework for climate and energy policies (2013/2135(INI)), Parliament called for a binding EU 2030 energy efficiency target of 40%, with accompanying individual national targets. It also reiterated its earlier call for a binding target for 2020.

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→ Balázs Mellár

## 5.7.4. Renewable energy

*Renewable sources of energy (wind power, solar power, hydroelectric power, ocean energy, geothermal energy, biomass and biofuels) are alternatives to fossil fuels that contribute to reducing greenhouse gas emissions, diversifying energy supply and reducing dependence on unreliable and volatile fossil fuel markets, in particular oil and gas. The EU is a leader in renewable energy technologies. It holds 40% of the world's renewable energy patents, and in 2012 almost half (44%) of the world's renewable electricity capacity (excluding hydropower) was located in the EU. The renewable energy industry in the EU currently employs about 1.2 million people. EU legislation on the promotion of renewables has evolved significantly in recent years. The future policy framework for the post-2020 period is under discussion.*

### Legal basis and objectives

Article 194 of the Treaty on the Functioning of the European Union: EU energy policy is aimed at promoting the development of new and renewable forms of energy.

### Achievements

#### A. Initial steps

Following the 1997 White Paper on renewable energy sources, the EU set itself the targets of generating 12% of energy consumption and 22.1% of electricity consumption from renewable energy sources by 2010. Directive 2001/77/EC on the promotion of electricity from renewable energy sources in the internal electricity market set out indicative targets for each Member State. After the enlargement of the EU in 2004, a new objective was set for the EU-25 to generate 21% of electricity from renewable energy sources. The lack of progress towards achieving the 2010 targets led to the adoption of a more comprehensive legislative framework.

#### B. Renewable Energy Road Map

In its communication of 10 January 2007 entitled 'Renewable Energy Road Map — Renewable energies in the 21st century: building a more sustainable future' (COM(2006) 0848), which set out a long-term strategy for renewable energy in the EU until 2020, the Commission proposed a mandatory target of generating 20% of EU energy consumption from renewable energy sources by 2020, a mandatory target for biofuels of 10% of transport fuel consumption by 2020, and the creation of a new legislative framework. At the 2007 spring European Council, the EU political leaders endorsed the 2020 targets.

#### C. Renewable Energy Directive

The new Renewable Energy Directive, adopted by codecision on 23 April 2009 (Directive 2009/28/EC, repealing Directives 2001/77/EC and 2003/30/EC), established that a mandatory 20% share of EU

energy consumption must come from renewable energy sources by 2020, broken down into nationally binding sub-targets taking account of the Member States' different starting points. In addition, all Member States are required to obtain 10% of their transport fuels from renewable sources by 2020. The directive also mapped out various mechanisms that Member States can apply in order to reach their targets (support schemes, guarantees of origin, joint projects, cooperation between Member States and third countries), as well as sustainability criteria for biofuels.

The Member States adopted national renewable energy action plans in 2010. The 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 growth in renewable energy has increased significantly and that most Member States have reached their interim targets as set out in the 2009 directive. However, as the indicative trajectory to meet the final target grows steeper towards the end, almost all Member States will need to make additional efforts to reach the 2020 targets. The latest available figures from Eurostat indicate that renewable energy accounted for 14% of energy consumption in the EU-28 in 2012. In its report, the Commission also draws attention to a number of factors of concern regarding future progress: some Member States' deviations from their own national renewable energy action plans; the failure to address certain 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 taken out infringement proceedings over some Member States' non-transposition of the directive (notably in the cases of Poland and Cyprus).

#### D. Future steps

The Commission, in its communication of 6 June 2012 entitled 'Renewable energy: a major player in the European energy market' (COM(2012) 271), identified the areas in which efforts should

be stepped up between now and 2020 for the EU's renewable energy production to continue to increase up to 2030 and beyond, and in particular for renewable energy technologies to become less costly, more competitive and, ultimately, market-driven (with support schemes being dedicated only to less mature technologies), and also 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). In November 2013, the Commission provided further guidance on renewable energy support schemes as well as on the use of cooperation mechanisms to achieve renewable energy targets at a lower cost (C(2013) 7243). It announced a complete overhaul of the subsidies that Member States are allowed to offer the renewable energy sector, preferring tendering, feed-in premiums and quota obligations to commonly used feed-in tariffs. New guidelines on environmental and energy state aid, due to be published in July 2014, will further shape the new framework for renewable energy support schemes.

The EU has 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 Commission's long-term strategy as outlined in its 'Energy Roadmap 2050' (COM(2011) 885). The decarbonisation scenarios for the energy sector proposed in the roadmap point to a renewable energy share of at least 30% by 2030. However, the roadmap also suggests that the growth of renewable energy will slacken after 2020 unless there is further intervention. Following the publication in March 2013 of a Green Paper entitled 'A 2030 framework for climate and energy policies' (COM(2013) 169), the Commission, in its communication of 22 January 2014 entitled 'A policy framework for climate and energy in the period from 2020 to 2030' (COM(2014) 15), proposed not to renew binding national targets for renewable energy after 2020. A mandatory target — 27% of energy consumption to come from renewable sources — is provided for only at EU level. The Commission expects nationally binding greenhouse gas emission targets to spur growth in the energy sector. This change of direction has led to intense discussions with the Council and Parliament.

## E. Supporting policies

Making electricity infrastructure fit for the large-scale deployment of renewables is among the primary goals of the Energy 2020 strategy (see also: 5.7.1 — Energy Policy), and is further supported in the Energy Roadmap 2050 and the Energy Infrastructure Package (see also: 5.7.2 — Internal Energy Market). The promotion and development of new-generation renewable technologies is also one of the key elements of the Strategic Energy Technology Plan or SET-Plan (see also: 5.7.1 — Energy Policy).

## F. Resource-specific issues

### 1. Biomass and biofuels

The EU currently has two targets for biofuels, namely to source 10% of transport fuels from renewable energy by 2020 (the Renewable Energy Directive (2009/28/EC)) and to oblige fuel providers to reduce the greenhouse gas intensity of their fuels by 6% by 2020 (the Fuel Quality Directive (2009/30/EC)). In its communication of 22 January 2014 entitled 'A policy framework for climate and energy in the period from 2020 to 2030' (COM(2014) 15), the Commission proposed to scrap these two targets after 2020. This change is linked to the uncertainty about how to minimise the indirect emissions effect of land-use change associated with biofuels. In October 2012, the Commission put forward proposals for the amendment of the current legislation on biofuels so as to reduce land-use change emissions by limiting the contribution of biofuels produced from food crops to the EU's 10% target for renewable energy in the transport sector and setting up an incentive scheme for biofuels that do not create additional demand for land. However, the procedure for adopting the new legislation has been blocked owing to divisions in the Council and Parliament. The Commission is expected to present a proposal to revise the Fuel Quality Directive in the coming months.

After the publication of non-binding criteria for biomass in February 2010 (COM(2010) 11), the Commission decided to review the measures, to evaluate the success of its original recommendations and to establish whether mandatory standards would be necessary in the future. A new proposal on sustainability criteria for biomass was expected from the Commission in 2013 but has been delayed.

### 2. Offshore wind and ocean energy

In the context of the second strategic energy review carried out in November 2008, the Commission issued a communication on 13 November 2013 entitled 'Offshore Wind Energy: Action needed to deliver on the Energy Policy Objectives for 2020 and beyond'<sup>(1)</sup>, with the aim of promoting the development of maritime and offshore wind energy in the EU.

On 20 January 2014, the Commission set out an action plan to support the development of ocean energy, including that generated by waves, tidal power, thermal energy conversion and salinity gradient power (in its communication entitled 'Blue Energy: Action needed to deliver on the potential of ocean energy in European seas and oceans by 2020 and beyond' (COM(2014) 8)).

<sup>(1)</sup> COM(2008) 768.



### Role of the European Parliament

The Parliament has consistently advocated for renewable energy sources and highlighted the importance of setting mandatory targets for 2020<sup>[1]</sup> and, more recently, for 2030. In February 2014 it adopted a resolution<sup>[2]</sup> criticising the proposals made by the Commission for the 2030 climate and energy framework as short-sighted and unambitious. It called for a binding 30% share of renewables in energy consumption at EU level, to be implemented through individual nationally binding targets, and for an extension of transport fuel targets after 2020.

In addition, Parliament has called in the past for a system of EU-wide incentives for renewable sources to be set up in the longer term<sup>[3]</sup>, while also advocating support for smart grid technology<sup>[4]</sup>. It has also frequently invited the Commission to propose a legal framework for renewable heating and cooling with a view to increasing their share of energy production.

When it adopted the Renewable Energy Directive, Parliament tightened up and clarified several mechanisms, while also instituting a system to guarantee more thoroughly the environmental sustainability of the whole policy. In particular, Parliament played an important role in:

- defining 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 access for renewable energy to electricity grid infrastructure;
- limiting the role of the 2014 review clause, in order to avoid renegotiation of the binding targets.

In March 2013, the EP endorsed the Energy Roadmap 2050<sup>[5]</sup> and called on the Commission to present as soon as possible a 2030 policy framework including milestones and targets for greenhouse gas emissions, renewable energy and energy efficiency. Its resolution highlighted, in particular, the importance of stable regulatory frameworks in order to stimulate investment 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. Parliament invited the Commission to submit an analysis and proposals as to how to deploy renewable energy sources sustainably and with greater efficiency in the EU.

Also in March 2013, it adopted the guidelines for trans-European energy infrastructure proposed by the Commission as part of the Energy Infrastructure Package<sup>[6]</sup>. Parliament drew particular attention to the importance of energy storage facilities and the need to ensure the stability of European electricity networks through the integration of renewable energy resources.

In May 2013, Parliament adopted a resolution<sup>[7]</sup>, on the Commission communication of 6 June 2012 entitled 'Renewable energy: a major player in the European energy market' (COM(2012) 271). It advocated setting targets and milestones for the period up to 2050 to ensure that renewable energy sources have a credible future in the EU, and a target of at least a 30% share of renewables in the EU energy mix in 2030. It also stressed the need for a long-term integrated strategy to promote renewable energy at EU level.

In its resolution of 12 September 2013 on 'microgeneration — small-scale electricity and heat generation'<sup>[8]</sup>, Parliament stressed the great potential for citizens to produce their own energy and the need for incentives to stimulate small-scale energy generation. It also called on the Commission to make proposals in that area.

<sup>[1]</sup> Parliament resolutions of 29 September 2005 on the share of renewable energy in the EU and proposals for concrete actions (OJ C 277 E, 21.9.2006, p. 599), of 14 February 2006 on heating and cooling from renewable sources of energy (OJ C 290 E, 29.11.2006, p. 115), of 14 December 2006 on a strategy for biomass and biofuels (OJ C 317 E, 23.12.2006, p. 890), and of 25 September 2007 on the Road Map for Renewable Energy in Europe (OJ C 219 E, 28.8.2008, p. 82).

<sup>[2]</sup> Parliament resolution of 5 February 2014 on a 2030 framework for climate and energy policies (Texts adopted, P7\_TA(2014)0094).

<sup>[3]</sup> Parliament resolution of 25 November 2010 entitled 'Towards a new Energy Strategy for Europe 2011-2020' (OJ C 99 E, 3.4.2012, p. 64).

<sup>[4]</sup> Parliament resolution of 5 July 2011 on energy infrastructure priorities for 2020 or beyond (OJ C 33 E, 5.2.2013, p. 46).

<sup>[5]</sup> Parliament resolution of 14 March 2013 on the Energy Roadmap 2050, a future with energy (Texts adopted, P7\_TA(2013)0088).

<sup>[6]</sup> Parliament's position adopted at first reading on 12 March 2013 with a view to the adoption of Regulation (EU) No .../2013 of the European Parliament and of the Council on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC (Texts adopted, P7\_TA(2013)0061).

<sup>[7]</sup> Parliament resolution of 21 May 2013 on current challenges and opportunities for renewable energy in the European internal energy market (Texts adopted, P7\_TA(2013)0201).

<sup>[8]</sup> Texts adopted, P7\_TA(2013)0374.



Regarding indirect emissions from land-use change associated with biofuels, in September 2013 Parliament called for traditional first-generation biofuels to be capped at 6% of energy consumption in transport by 2020<sup>[1]</sup>, as opposed to the current 10% target under existing legislation. The Commission had initially proposed a limit of 5%. Parliament stressed the importance of a speedy

switchover to new biofuels from alternative sources, such as seaweed and waste, which should represent at least 2.5% of energy consumption in transport by 2020. However, Parliament was unable to agree on a negotiating mandate for concluding the adoption of the legislative text jointly with the Council.

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<sup>[1]</sup> Parliament's legislative resolution of 11 September 2013 on the proposal for a directive of the European Parliament and of the Council amending Directive 98/70/EC relating to the quality of petrol and diesel fuels and amending Directive 2009/28/EC on the promotion of the use of energy from renewable sources (Texts adopted, P7\_TA(2013)0357).

## 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 in the energy mix of many Member States. However, in the aftermath of the 1986 Chernobyl disaster and the 2011 nuclear catastrophe in Fukushima, Japan, 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 the discovery of cracks in their vessels, has stepped up pressure for the abandonment of nuclear power in Europe. But it is the Member States themselves that have sole responsibility for choosing whether or not to use nuclear power. Nevertheless, at EU level greater efforts are being made to improve the safety standards of nuclear power stations and to ensure that nuclear waste is safely handled and disposed of.*

### 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 objectives of the Euratom Treaty are to contribute to the formation and development of Europe's nuclear industries, so that all 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 (both for the general public and for workers in the medical, industrial and nuclear sectors) and for the environment. The EU has adopted over time a patchwork of legislation in the area of radiation protection, which has recently been updated and simplified. Updating was necessary because the legislation in place did not fully reflect scientific progress and lacked consistency. Another reason was that the issues of natural radiation sources and the protection of the environment were not fully addressed. Council Directive 96/29/Euratom of 13 May 1996 laid down basic safety

standards for protecting workers and the general public against the dangers of ionising radiation. In May 2012, the Commission published a proposal for a new directive updating the basic safety standards (COM(2012) 242), which was adopted by the Council at the end of 2013 after consulting Parliament<sup>[1]</sup>. It simplifies European legislation by replacing five directives, and introduces binding requirements for protection against indoor radon, use of building materials and environmental impact assessment of discharges of radioactive effluents from nuclear installations. A separate directive on monitoring radioactive substances in water intended for human consumption, proposed by the Commission in March 2012 (COM(2012) 147), was also adopted by the Council in 2013 after being approved by Parliament<sup>[2]</sup>.

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 a final decision. Parliament has approved an amended version of the legislation<sup>[3]</sup>, based on a compromise reached with the Council.

#### B. Transport of radioactive substances and waste

Council Regulation (Euratom) 1493/93 of 8 June 1993 introduced a Community system for declaring shipments of radioactive substances between Member States, to ensure that the relevant authorities receive the same level of information concerning radiation protection as they did 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

<sup>[1]</sup> Texts adopted, P7\_TA(2013)0564.

<sup>[2]</sup> Texts adopted, P7\_TA(2013)0068.

<sup>[3]</sup> OJ C 188 E, 28.6.2012, p. 79.

(COM(2012) 561). This regulation replaces the reporting and authorisation systems put in place by the Member States 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 public protection from such shipments. It lays down 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 published its first report on the application of the 2006 directive in the Member States in the 2008-2011 period.

### C. Waste management

An EU legal framework for waste management in Europe was created in 2011 with the adoption of the Council Directive on the management of radioactive waste and spent fuel (2011/70/Euratom). It provides for close monitoring of national programmes for the construction and management of final repositories, as well as legally binding safety standards. Member States have to submit their first report on the implementation of their national programmes in 2015.

### D. Safeguarding nuclear materials

A number of regulations have been 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 assessment 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 of assessing the safety and robustness of nuclear installations in the event of extreme natural events (floods or earthquakes). In October 2012, the Commission released a 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. In March 2013, Parliament adopted a resolution pointing out the limits of the stress tests<sup>[1]</sup>. In June 2013, the Commission presented a legislative proposal, drawing on the results of the stress tests, to revise and strengthen the provisions of the current nuclear safety directive. It proposed to reinforce the role and independence of national regulatory authorities, to increase transparency, to enhance on-site emergency preparedness and response, and to introduce a European system of peer reviews of nuclear installations, along with specific safety reviews of older nuclear power plants.

### F. Nuclear research and training activities

Nuclear research in Europe is funded through multiannual framework programmes. The Euratom programme for nuclear research and training activities complements, but remains separate from, Horizon 2020, the EU framework programme for research and innovation. The amount dedicated to the Euratom programme for the 2014-2018 period is EUR 1 608 million, divided among three specific programmes: one covering indirect actions in fusion energy research (EUR 728 million), one on nuclear fission and radiation protection (EUR 315 million), and one covering direct actions undertaken by the Commission's Joint Research Centre (JRC) (EUR 559 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 has been 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 has led to some tussles between the EU institutions and Member States. In its communication

<sup>[1]</sup> Texts adopted, P7\_TA(2013)0089.

entitled 'ITER status and possible way forward' (COM(2010) 0226), the Commission stressed that the cost of the project had turned out to be much higher than originally estimated. 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 costs. A revised proposal was tabled by the Commission on 20 April 2011 (COM(2011) 226), 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, involving an additional EUR 1 300 million in 2012 and 2013. Financing the additional costs already foreseen for 2014 to 2018 was one of the stumbling blocks in the negotiations on the EU multiannual financial framework for 2014 to 2020. It was finally decided to fund ITER within a ring-fenced area of the multiannual financial framework and hence to avoid financing it directly under Horizon 2020 or the Euratom programme.

### Role of the European Parliament

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 distribution of responsibilities between EU institutions and Member States and strengthen the EU common framework, as well as on the importance of improving safety and environmental protection requirements.

With its first-reading position of 2009 on the proposal for a Council directive setting up a Community framework for nuclear safety, Parliament put special emphasis on the fact that nuclear security is a matter of Community interest, which should be taken into consideration when deciding on licensing new plants or extending the lifetime of existing ones<sup>[1]</sup>. However, the final directive, which was adopted under the consultation procedure, focuses on the national responsibility of Member States and does not follow Parliament's suggestions. In April 2014, Parliament is scheduled to adopt in plenary its position on the revised nuclear safety directive, following the endorsement by the ITRE Committee, in March 2014, of the report by Romana Jordan on the Commission's legislative proposal (A7-0252/2014). The report sets out further requirements for the transparent provision of information to the public in the event of an accident, clearer definitions of nuclear safety and more detailed rules on safety implementation measures.

In its first-reading position endorsing the proposal for a regulation on maximum permitted levels of radioactive contamination of foodstuffs, Parliament changed the legal basis of the regulation from Article

31 (Euratom Treaty) to Article 168 of the Treaty on the Functioning of the European Union (TFEU)<sup>[2]</sup>.

In its resolution of July 2011 on energy infrastructure priorities for 2020 and beyond<sup>[3]</sup>, Parliament strongly supported the Commission's decision to introduce stress tests for European nuclear power plants. A supplementary resolution was 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 in relation to material deterioration, human error, and flaws in reactor vessels. Parliament urged full implementation of the safety improvements<sup>[4]</sup>.

In its first-reading position of June 2011 on the proposed Council directive on the management of spent fuel and radioactive waste<sup>[5]</sup>, Parliament supported the Commission's proposal for a complete ban on the export of radioactive waste, while the Council was in favour of allowing exports under very strict conditions. Parliament also asked for it to be further specified that the directive relates to environmental protection and for sufficient provisions to ensure public information on and participation in waste management.

In its first-reading position of March 2013 on the proposal for a Council directive on monitoring radioactive substances in water intended for human consumption<sup>[6]</sup>, Parliament requested a change of legal basis (from Article 31 and 32 of the Euratom Treaty to Article 192 TFEU) and, as a consequence, the following of the ordinary legislative procedure. Parliament proposed additional provisions on improved information for consumers, random water quality checks, and differentiated management of natural radiation levels and contamination from human activities. It also clarified the duties of Member States and of the Commission.

In its first-reading position of October 2013 on the proposal for a Council directive updating the basic safety standards for protection against ionising radiation<sup>[7]</sup>, Parliament again called for a change of legal basis, from the Euratom Treaty to the TFEU. It extended the scope of the directive to any planned, existing, accidental or emergency radiation exposure, made stricter the dosage limits for which exposure is allowed, and strengthened penalties and reparation for damages. It also improved the system for informing the public.

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<sup>[1]</sup> OJ C 184 E, 8.7.2010, p. 216.

<sup>[2]</sup> OJ C 188 E, 28.6.2012, p. 80.

<sup>[3]</sup> OJ C 33 E, 5.2.2013, p. 46.

<sup>[4]</sup> Texts adopted, P7\_TA(2013)0089.

<sup>[5]</sup> OJ C 390 E, 18.12.2012, p. 147.

<sup>[6]</sup> Texts adopted, P7\_TA(2013)0068.

<sup>[7]</sup> Texts adopted, P7\_TA(2013)0452.

## 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. The end of 2013 saw a fundamental reform of the trans-European transport network.*

#### Legal basis

Articles 170-172 and 194(1)(d) of the Treaty on the Functioning of the European Union (the latter with specific reference to energy).

Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU.

#### 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.

#### 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 their subsequent role in economic development. 14 priority projects (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 the 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.

'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**

The new EU infrastructure policy will transform the existing patchwork of European roads, railways, airports and canals into a unified network. Its 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.

Priorities for the entire network include: the removal of bottlenecks and bridging of missing links; interconnection and interoperability of regional and national transport networks for both passenger and freight traffic; and environmentally sustainable, low-carbon and energy-efficient transport to help reduce CO<sub>2</sub> emissions from the Union's transport sector by 60% below 1990 levels by 2050; a reduction of all forms of pollution is to be sought in parallel. Benefits for all users of the network will include high-quality passenger transport services, which are affordable for and accessible to all citizens, including accessibility for elderly people, persons with reduced mobility and disabled passengers. Stricter criteria for the selection of projects are now in effect following the adoption of the new 2013 Guidelines, which insist, as objectives supported by specific measures, on efficiency, environmental sustainability, increasing the benefits for all users, and cohesion for the whole of the EU.

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. It has encouraged 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 target dates 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 and comprehensive transport networks, with target dates of 2030 and 2050 respectively. Parliament insisted, inter alia, that the selection of projects be based on the idea of EU added value (resulting from policy choices and/or financial intervention leading to significant and measurable improvement in transport connections and transport flows), defining 'socio-economic cost-benefit analysis' as a quantified ex-ante evaluation on the basis of a harmonised methodology of the value of a project or programme, taking into account all social, economic and environmental benefits and costs, and serving as an indicator of contribution to welfare.

→ Jakub Semrau

## 5.8.2. Financing the Trans-European Networks

*The Trans-European Networks (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 financing. The financing of the TENs can also be complemented by Structural Fund assistance, aid from the European Investment Bank or contributions from the private sector. A major reform was introduced across the TENs with the establishment of the Connecting Europe Facility in 2013.*

### Legal basis

Title XVI of the TFEU, Article 171 of which provides that EU aid may be granted to projects of common interest that meet the requirements laid down in the guidelines.

Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010.

### 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)

### Achievements

#### A. Defining general conditions for project funding

Generally, EU funding has served 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 has traditionally made a more substantial contribution.

The first principles governing funding were laid down 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.

##### 1. EU aid for projects has taken one or several of the following forms:

- cofinancing of project-related studies and other technical support measures (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 (EIB) or other public or private financial bodies;

- direct grants for investments in duly justified cases.

##### 2. The following project criteria have been progressively laid down:

- EU aid to telecommunications and energy networks must not cause distortions of competition between businesses in the sector concerned;
- projects must help to achieve the networks' objectives;
- projects must be potentially economically viable;
- the maturity of the project, and the stimulative effect of EU intervention;
- direct or indirect effects on the environment and employment, progressively including increasingly complete cost-benefit analyses (CBAs), environmental impact analyses (AIAs), etc.;
- coordination of the timing of different parts of the project, for example in the case of cross-border projects.

The projects financed had to comply with EU law and EU policies, in particular in relation to environmental protection, competition, and the award of public contracts. Successive regulations laying down general rules for the granting of EU financial aid introduced a range of new elements, including the following:

- multiannual and annual programmes in the fields of transport and energy for granting EU financial aid to selected projects;
- EU aid for studies was capped at 50% irrespective of the project, and aid for priority projects at 10% to 30% in the field of transport (with a maximum of 30% for cross-border sections of priority projects);
- risk capital was included and interlinked as part of EU financial aid;
- the financial framework for the 2007-2013 period allocated EUR 8 168 million to the TENs, of which EUR 8 013 million to transport (TEN-T) and EUR 155 million to energy (TEN-E).

## B. Additional funding 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, Spain and the EU-10 Member States. The latter were allocated EUR 2.48 billion in pre-accession aid, as well as EUR 4.24 billion from the Cohesion Fund and EUR 2.53 billion from other Structural Funds. Of the aggregate pre-accession and cohesion funding in question, approximately 50%, or EUR 3.9 billion, was allocated to TEN-T projects.

### 2. European Investment Bank aid

No territorial restrictions apply to EIB loans, as they are granted on the basis of banking criteria, which include the financial (ability to repay), technical and environmental feasibility of the project. For example, over the decade from 1995 to 2005, the EIB granted loans for TEN projects totalling approximately EUR 65 billion.

## C. 2007-2013 financial framework

For the 2007-2013 financing period, the Commission, with Parliament's support, initially proposed EUR 20.35 billion for TEN-Transport and EUR 0.34 billion for TEN-Energy. However, the Council insisted on a drastic reduction, and ultimately the TEN financial framework provided for EUR 8.01 billion in the area of transport and EUR 0.16 billion in the area of energy (i.e. only 40% of the amount originally proposed in the area of transport and 45% of the proposed amount for energy). Given the scarcity of resources, Regulation (EC) No 680/2007 stipulated that, in order to complement national (public or private) sources of financing, EU resources were to be focused on certain categories of projects with the greatest added value for the network as a whole (such as cross-border sections and projects aimed at removing bottlenecks). In addition, the contribution to TEN-T from the general cohesion policy operational programmes adopted by the Commission was EUR 43 billion.

## Connecting Europe Facility

As of January 2014, the EU has a dedicated new TEN infrastructure policy, with a budget of over EUR 33 billion up to 2020: the Connecting Europe Facility (CEF) aims to achieve synergies in the transport, telecommunications and energy sectors, enhancing the effectiveness of Union action and enabling implementing costs to be optimised. It aims to accelerate investment in the field of trans-European networks and to leverage funding from both the public and private sectors, while increasing legal certainty and respecting the principle of technological neutrality.

## A. General objectives

The CEF aims to:

- support the implementation of projects of common interest which seek to develop and construct new infrastructure and services, or to upgrade existing infrastructure and services, in the transport, telecommunications and energy sectors;
- give priority to missing links in the transport sector;
- help support projects with European added value and significant societal benefits which do not receive adequate financing from the market;
- contribute to the Europe 2020 strategy by developing trans-European networks which take into account expected future traffic flows and creating an environment more conducive to private, public or public-private investment;
- enable the Union to achieve its sustainable development targets, thus contributing to its mid-and long-term decarbonisation objectives.

### 1. In the transport sector, support will be reserved for projects of common interest aimed at:

- removing bottlenecks, bridging missing links and, in particular, improving cross-border sections;
- ensuring sustainable and efficient transport systems in the long run, with a view to preparing for expected future transport flows, as well as enabling all modes of transport to be decarbonised; and
- optimising the integration and interconnection of transport modes and enhancing the interoperability of transport services, while ensuring the accessibility of transport infrastructure.

### 2. In the energy sector, support will aim to:

- boost competitiveness by promoting further integration of the internal energy market and interoperability of electricity and gas networks across borders;
- enhance the security of EU energy supply; and
- contribute to sustainable development by integrating energy from renewable sources into the transmission network and developing smart energy networks and carbon dioxide networks.

### 3. In the telecommunications sector, the CEF will support:

- generic services, core service platforms and programme support actions to be financed through grants and/or procurement;
- actions in the field of broadband networks to be financed through financial instruments.

## B. CEF budget

The financial envelope for the implementation of the CEF for the 2014-2020 period was set at over EUR 33.24 billion in current prices. That amount is distributed as follows:

1. transport sector: EUR 26 250 582 000, of which EUR 11 305 500 000 has been transferred from the Cohesion Fund to be spent, in line with the CEF Regulation, exclusively in those Member States eligible for funding from the Cohesion Fund;
2. telecommunications sector: EUR 1 141 602 000;
3. energy sector: EUR 5 850 075 000.

Some 80% to 85% of the overall CEF budget will be allocated to projects based on multiannual programmes (along core network corridors and reflecting horizontal priorities), while 15% to 20% will serve objectives within annual programmes (i.e. of a shorter-term nature, with the possibility of being adjusted on an annual basis).

Following a mid-term evaluation, Parliament and the Council will be able, on a Commission proposal, to transfer allocated appropriations between the transport, telecommunications and energy sectors, with the exception of the EUR 11 305 500 000 transferred from the Cohesion Fund to finance transport sector projects in those Member States eligible for funding from the Cohesion Fund.

In general, the financial instruments used must address specific market needs for actions that have a clear European added value, and should not crowd out private financing. They must improve the leverage effect of Union budget spending and achieve a higher multiplier effect in terms of attracting private-sector financing.

## Role of the European Parliament

In support of the TENs, Parliament has consistently urged that more environment-friendly modes of transport be given priority in terms of funding, setting the percentage share of funding for infrastructure projects so as to allocate over 50% to rail projects (including combined transport), and set a maximum not exceeding 25% for road projects. Furthermore, Parliament has consistently emphasised the need for the Commission to ensure the coordination and coherence of projects where they are financed by contributions from the Union budget, the EIB, the Cohesion Fund, the European Regional Development Fund or other Union financing instruments.

After the Council agreed massive reductions to the original Commission proposal at the end of 2005, Parliament, in 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, and extra EIB funding, for the realisation of the TENs.

On 7 June 2011, as part of the review of road transport taxation rules (the 'Eurovignette' directive), Parliament 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 would 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.

With Parliament's involvement in shaping the CEF Regulation (a collaborative effort by three rapporteurs, across two parliamentary committees and all political groups), it has taken on a major role in securing sizeable EU funds for the TENs over the 2014-2020 period.

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## 5.9. Industrial policy and research policy

### 5.9.1. General principles of EU industrial policy

*The EU's industrial policy aims to make European industry more competitive so that it can maintain its role as a driver of sustainable growth and employment in Europe. Various strategies have been adopted in order to ensure better framework conditions for EU industry, the most recent being described in the communication 'For a European Industrial Renaissance', of January 2014.*

#### Legal basis

Article 173 TFEU.

#### 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 those relating to trade, the 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'; and (4) 'fostering better exploitation of the industrial potential of policies of innovation, research and technological development' (Article 173 TFEU).

#### Achievements

##### A. Introduction

The instruments of the EU's industrial policy, which are also those of enterprise policy, aim to create the general conditions in 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. The annual European Competitiveness Reports analyse the strengths and weaknesses of the EU's economy in general and its 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.

The 'mid-term review of industrial policy' (COM(2007) 374) concluded that the actions described in the 2005 communication had benefited Europe's industries, with regard to both large companies and SMEs. It emphasised that the integrated approach had proved successful and had the support of Parliament and of the Member States. Consequently, it 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.

The 2008 Commission communication entitled 'Sustainable Consumption and Production and Sustainable Industrial Policy Action Plan' (COM(2008) 397) was aimed at delivering an integrated package of measures to foster more sustainable consumption and production, while making the European economy more competitive. In order to achieve this 'virtuous circle', the Action Plan proposed making use of a variety of policy instruments. For example, consumer demands were to be channelled towards more sustainable consumption through a simplified labelling framework.

In response to the challenges involved in securing a sustainable supply of non-energy raw materials for the EU economy, the Commission launched the 'raw materials initiative' (COM(2008) 0699), which seeks to ensure a level playing field in access to resources in third countries, better framework conditions for extracting raw materials within the EU, and reduced consumption of primary raw materials through increased resource efficiency and the promotion of recycling. A subsequent Commission communication (COM(2011) 21) proposed reinforcing the implementation of this initiative.



In its communication 'Preparing for our future: Developing a common strategy for key enabling technologies in the EU' (COM(2009) 512), the Commission stated that the EU would foster the deployment of key enabling technologies (KETs) within its current policy framework, and also suggested setting up a High Level Group of experts (HLG) which would be responsible for developing a common long-term strategy. In its final report, the High Level Group proposed 11 policy recommendations for the development and deployment of KETs in Europe.

### C. 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). The new strategy put forward seven flagship initiatives, four of which are especially relevant to making the EU's industry more competitive: '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 to promote European industrial competitiveness, thus placing more emphasis on factors such as the growth of SMEs and the supply and management of raw materials.

The Commission communication 'Industrial Policy: Reinforcing competitiveness' (COM(2011) 642), adopted on 14 October 2011, called for deep structural reforms as well as coherent and coordinated policies across the Member States to enhance the EU's economic and industrial competitiveness and foster long-term sustainable growth. This communication pointed out several key areas in which greater effort is needed: structural change in the economy; the innovativeness of industries; sustainability and resource efficiency; the business environment; the single market; and SMEs.

On 10 October 2012, the Commission issued a communication (COM(2012) 582) entitled 'A Stronger European Industry for Growth and Economic Recovery — Industrial Policy Communication Update', aiming at supporting investment in innovation, with a focus on six priority areas with great potential (advanced manufacturing technologies for clean production; key enabling technologies; bio-based products; sustainable industrial and construction policy and raw materials; clean vehicles and vessels; and smart grids). This communication also highlighted the need for better market conditions, access to finance and capital, and human capital and skills, as means of promoting industrial competitiveness.

In January 2014 the Commission launched the communication 'For a European Industrial Renaissance' (COM(2014) 14). This communication focuses on reversing industrial decline and reaching the target of 20% of GDP for manufacturing activities by 2020. The Commission states that in order to attract new investments and create a better business environment, the EU needs more coherent politics in the field of the internal market, including European infrastructure such as energy, transport and information networks, as well as for goods and services. The importance of improved cooperation in the areas of good quality public administration, trade, research and raw materials is also mentioned.

### Role of the European Parliament

The Maastricht changes to the EC Treaty incorporated issues of industrial policy for the first time — an achievement that can be attributed to initiatives by Parliament, which helped stimulate the reorganisation 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 more recent ones are listed below:

- its resolution of 16 June 2010 on the Europe 2020 strategy<sup>[1]</sup> expressed strong support for industrial policy, and proposed creating an environment conducive to maintaining and developing a strong, competitive and diversified industrial base in Europe. It further stressed that the Europe 2020 strategy should disclose the costs and benefits of conversion to a sustainable, energy-efficient economy;
- its resolution of 9 March 2011 on an Industrial Policy for the Globalised Era<sup>[2]</sup> underlined the importance of a more comprehensive vision for European industry by 2020, considering long-term regulatory predictability and stability to be essential for attracting investment. In particular, 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;
- its resolution of 26 October 2011 on the Agenda for New Skills and Jobs<sup>[3]</sup> underlined the importance of developing closer cooperation between research institutes and industry and encouraging and supporting investment by industrial companies in research and development. Parliament called for more investment in education, research and innovation, the promotion of centres of

<sup>[1]</sup> OJ C 236 E, 12.8.2011, p. 57.

<sup>[2]</sup> OJ C 199 E, 7.7.2012, p. 131.

<sup>[3]</sup> OJ C 131 E, 8.5.2013, p. 87.



excellence and mobility among young people, and support for the development of conditions stimulating the growth of innovative enterprises;

- its resolution of 19 January 2012 on a space strategy for the European Union that benefits its citizens<sup>[1]</sup> stressed the importance of a research and innovation strategy in the area of space policy which would ensure technological progress, industrial development and the Union's competitiveness and would create jobs in the EU;
- its resolution of 15 January 2014<sup>[2]</sup> on reindustrialising Europe to promote competitiveness and sustainability evaluated the current situation of the industry in Europe and proposed a variety of measures to tackle the

current challenges. This resolution supported a 'Renaissance of Industry for a Sustainable Europe' (RISE) to pursue innovation towards a new industrial revolution;

- its resolution of 4 February 2014<sup>[3]</sup> on the Action Plan for a competitive and sustainable steel industry in Europe stressed the important place of the steel industry in industrial value chains such as those of the automotive and construction industries and mechanical and electrical engineering. It also called for the preservation of a competitive European steel production ensuring economic growth and jobs in Europe.

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<sup>[1]</sup> Texts adopted, P7\_TA(2012)0013.

<sup>[2]</sup> Texts adopted, P7\_TA(2014)0032.

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<sup>[3]</sup> Texts adopted, P7\_TA(2014)0069.

## 5.9.2. Small and medium-sized enterprises

*Micro, small and medium-sized enterprises (SMEs) constitute 99% of companies in the EU. They provide two thirds of private sector jobs and contribute to more than half of the total added value created by businesses in the EU. Nine out of ten SMEs are actually micro enterprises with fewer than 10 employees. Various action programmes have been adopted to support SMEs, such as the Small Business Act, which encompasses all of these programmes and aims to create a comprehensive policy framework. The Horizon 2020 and COSME programmes have also been adopted with the aim of increasing the competitiveness of SMEs through research and innovation, and providing 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 to 113 of the Treaty on the Functioning of the European Union (TFEU)), competition (Articles 101 to 109 TFEU) and company law (right of establishment — Articles 49 to 54 TFEU). 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. There are about 21 million SMEs, employing about 33 million people and constituting an essential source of entrepreneurial spirit and innovation, which are crucial for the competitiveness of EU 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. 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 a communication on the Small Business Act (SBA) (COM(2008) 394). The SBA aims at creating 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'. 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 the needs of SMEs can make a major contribution to their growth. The ongoing implementation process for the Services Directive (Directive 2006/123/EC) should contribute to this goal, reducing regulatory barriers to cross-border service activities.

The amendment to the Late Payments Directive (requiring public authorities to make payment within 30 days, which serves as a security guarantee for SMEs) and the Directive on e-invoicing (giving e-invoices equal status to paper ones) are particularly helpful to small businesses. Furthermore, the modernisation of 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 has been found to simplify financial reporting obligations and to reduce administrative burdens for SMEs through the modernisation of both public procurement in the EU and the existing Accounting Directives (Directive 78/660/EEC and Directive 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 in respect of SMEs.

However, the SBA still identifies access to finance as being the second-largest problem faced by individual SMEs. More than EUR 1 billion was made available in the 2007-2013 period under the Competitiveness and Innovation Framework Programme (CIP), enabling financial institutions

to provide a total of EUR 30 billion to an estimated 400 000 SMEs. Provision was also made for improved availability of microloans.

Furthermore, in November 2011 the Commission proposed an 'action plan to improve access to finance for SMEs' (see COM(2011) 870). Among other things, the action plan includes policy initiatives to ease access to venture capital markets for SMEs. It also aims to present solutions in 2013 with a view to eliminating tax obstacles to cross-border venture capital investment.

### 3. SMEs in the single market

The SBA, the Commission communication entitled 'Towards a Single Market Act — For a highly competitive social market economy' (COM(2010) 608), and the Single Market Act II (COM(2012) 573) stress the need for the continuous improvement of framework conditions for businesses in the single market. Various initiatives and measures exist or have been planned in order to facilitate the establishment and operation of SMEs in the internal market. SMEs have been granted derogations in many areas, such as 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 on account of their size. In 2008, a new exemption regulation (the General Block Exemption Regulation (GBER)) 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 those on risk capital, will be revised in order to achieve the Europe 2020 objectives and respond to SME needs.

### B. 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, such as 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', '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'.

### C. SMEs and research

Research and innovation are crucial to the sustainable success and growth of SMEs in the EU. The Horizon

2020 programme for the 2014-2020 period aims at creating a better and more comprehensive support environment for the 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.

The Eurostars programme, managed by EUREKA, also provides support to European SMEs having a strong focus on research and development.

### D. Programme for the Competitiveness of Enterprises and SMEs (COSME)

The Programme for the Competitiveness of Enterprises and SMEs (COSME) was proposed by the Commission in November 2011 (see COM(2011) 834). In November 2013 Parliament approved the multiannual financial framework, allocating a budget of EUR 2.3 billion (in 2013 prices) to COSME.

COSME carries out its activities to a large extent under the current CIP programme, thereby pursuing the following general objectives:

- to improve access to finance for SMEs in the form of equity and debt: an equity facility for growth-phase investment, and a loan guarantee facility which will provide SMEs with direct or other risk-sharing arrangements with financial intermediaries to cover loans; EUR 1.4 billion of the COSME budget is allocated to financial instruments;
- to improve access to markets both inside the Union and globally: growth-oriented business support services will be provided via the Enterprise Europe Network in order to facilitate business expansion both within the single market and outside the EU;
- to 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 an annual basis, to help 39 000 companies to create or save 29 500 jobs and launch 900 new business products, services or processes.

### Role of the European Parliament

As early as 1983, Parliament 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, Parliament has consistently demonstrated its commitment to encouraging the development of European SMEs. For example:

- In June 2010, Parliament adopted a resolution on Community innovation policy in a changing world<sup>[1]</sup>. In this resolution, it emphasises the need to create conditions whereby risk capital will be more readily available for SMEs. It calls for the development of SME financing tools, such as microcredit, venture capital for people seeking to invest in innovative enterprises, and '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, Parliament adopted a resolution on an industrial policy for the globalised era<sup>[2]</sup>. Among other things, it calls on the Commission to proceed with the implementation of the SBA so as to reduce administrative burdens and ensure better access to financing opportunities for SMEs. It also calls for an updating of the definition of SMEs, with a view to allowing greater flexibility in specific industrial sectors. Furthermore, it urges the Commission to increase the participation of SMEs in the framework programmes for research and development.
- In May 2011, Parliament adopted a resolution on the Small Business Act review<sup>[3]</sup>. In this resolution Parliament, among other things, calls on the Member States to adopt the last remaining proposal on the European Private Company Statute. It 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, it warns Member States about 'gold-plating' in exceeding the requirements of EU legislation when transposing directives into national law.
- In October 2012, Parliament adopted a resolution on 'small and medium-sized enterprises (SMEs): competitiveness and business opportunities'<sup>[4]</sup>. In this resolution, it highlights a number of domains, including the reduction of administrative burdens, support for competitiveness and job creation, the launching of start-ups, and access to information and financing.
- In January 2014, Parliament adopted a resolution on reindustrialising Europe to promote competitiveness and sustainability<sup>[5]</sup>, stressing the importance of SMEs in the EU economy and calling for specific support and assistance for SMEs.
- In 2014 Parliament is expected to adopt a resolution on the Commission communication entitled 'Commission follow-up to the "Top TEN" Consultation of SMEs on EU Regulation' (COM(2013) 446), welcoming initiatives that ease the administrative burden on SMEs at EU level. It will stress that disproportionate and inefficient national implementation and a lack of simplification efforts at national level represent an increased burden for SMEs. Furthermore, it will voice concern that the large majority of European SMEs have not yet been able to take advantage of the single market, and that those which export outside the EU represent a very small minority. The resolution will be accompanied by an oral question to the Commission.

→ Frédéric Gouardères

<sup>[1]</sup> OJ C 236 E, 12.8.2011, p. 41.

<sup>[2]</sup> OJ C 199 E, 7.7.2012, p. 131.

<sup>[3]</sup> OJ C 377 E, 7.12.2012, p. 102.

<sup>[4]</sup> Texts adopted, P7\_TA(2012)0387.

<sup>[5]</sup> Texts adopted, P7\_TA(2014)0032.

### 5.9.3. A Digital Agenda for Europe

*Since 1995, information and communication technologies (ICTs) have driven productivity gains and growth in the EU<sup>[1]</sup>. The concept of ICTs covers a broad spectrum of technologies, ranging from information technology (IT) through telecommunications, broadcast media and all types of audio and video processing and transmission to network-based control and monitoring functions. Over the past three decades, technological 'convergence' has been blurring the boundaries between telecommunications, broadcasting and IT. Smartphones, tablets and connected TV are the clearest examples of this phenomenon. Although linear broadcasting continues to be the principal medium of information distribution and entertainment in Europe, more and more audiovisual content is available on demand, while exponential growth in 4G internet connectivity and the 'Internet of things' (IoT), involving connected cars, wearable devices and sensors, gives the internet an increasingly ubiquitous dimension.*

<sup>[1]</sup> <http://ec.europa.eu/digital-agenda/en/scoreboard>

#### Legal basis

While the Treaties do not contain any special provisions for ICT, the EU may take relevant actions within the framework of sectoral and horizontal policies, such as: industrial policy (Article 173 TFEU); 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); the approximation of laws (Article 114 TFEU); Articles 28, 30, and 34–35 TFEU (free movement of goods); Articles 45–66 TFEU (free movement of people, services and capital); Articles 165–166 TFEU (education, vocational training, youth and sport); and Article 167 TFEU (culture). These are all key elements for a Digital Europe.

#### Objectives

Following up on the Lisbon Strategy<sup>[1]</sup>, the Digital Agenda for Europe<sup>[2]</sup> (DAE) was conceived as one of the seven flagship initiatives of the Europe 2020 Strategy adopted by the Commission. Issued in May 2010, it sets out to define the key enabling role that the use of ICTs will have to play if Europe wants to succeed in its ambitions for 2020. The Europe 2020 Strategy underlines the importance of broadband deployment in the promotion of social inclusion and competitiveness in the EU. The DAE sets broadband targets: (1) 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. At these speeds the internet evolves into a genuine tool for global communication composed of highly interactive, constantly connected and easily expandable sensors, processors and storage units, although if such connectivity targets are to be achieved a greater focus will be required on the mobile dimension.<sup>[3]</sup> The DAE aims to reboot Europe's economy and help EU citizens and businesses to get the most out of digital technologies. Its implementation promises to spur innovation, economic growth, and improvements in daily life for both citizens and businesses. The DAE centres its key actions on the need to tackle: (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; and (7) missed opportunities in addressing societal challenges. The mid-term review of the Europe 2020 strategy, including the DAE, will be fuelled by public consultations leading to adjustments of the strategy for the period 2015–2020.<sup>[4]</sup>

#### Achievements

As a result of Directive 89/552/EEC (the 'TV Without Frontiers Directive' (TVWFD)), updated by Directive 2007/65/EC (the 'Audiovisual Media Services Directive' (AVMSD)) on the regulation of TV broadcasting services, advertising and

<sup>[1]</sup> 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' (See [http://circa.europa.eu/irc/opoce/fact\\_sheets/info/data/policies/lisbon/article\\_7207\\_en.htm](http://circa.europa.eu/irc/opoce/fact_sheets/info/data/policies/lisbon/article_7207_en.htm)).

<sup>[2]</sup> <http://ec.europa.eu/digital-agenda/>

<sup>[3]</sup> See: Streaming and Online Access to Content and Services, study prepared for the European Parliament's Committee on the Internal Market and Consumer Protection, 2014, [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/492435/IPOL-IMCO\\_ET\(2014\)492435\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/492435/IPOL-IMCO_ET(2014)492435_EN.pdf) p. 31.

<sup>[4]</sup> Commission communication entitled 'Taking stock of the Europe 2020 strategy for smart, sustainable and inclusive growth', COM(2014) 0130.

sponsorship, the protection of minors, and the promotion of European works, and the 'Regulatory framework for electronic communications networks and services' (Directive 96/19/EC), as well as its revisions of April 2002 and November 2009), which opened up the telecommunications market to full competition on 1 January 1998, the EU now has an advanced system of users' rights and protections for consumers, namely:

- the 112 single European emergency number (Directive 2009/136/EC), the 116000 missing children helpline, the 116111 child helpline, and the 116123 emotional support helpline;
- the right to change fixed-line or mobile operator within one working day while still retaining the original phone number, i.e. number portability (Directive 2009/136/EC);
- relatively low pricing for electronic communications (e.g. roaming — see Regulation (EU) No 531/2012);
- comprehensive basic broadband coverage, mainly owing to developments in mobile and satellite broadband;
- an EU top-level domain (TLD) (Regulation (EC) No 733/2002);
- privacy (Directive 2009/136/EC) and data protection (Directive 95/46/EC), further improved by the forthcoming regulatory reform of data protection (2012/0011(COD)).

In order to improve the consistency of national regulatory procedures, the Body of European Regulators for Electronic Communications (BEREC) (see Regulation (EC) No 1211/2009) provides for cooperation between national regulators and the Commission, promoting best practice and common approaches, while at the same time avoiding inconsistent regulation that could risk distorting competition in the single market in telecommunications. As regards spectrum management, the multiannual radio spectrum policy programme sets out policy direction and objectives for the strategic planning and harmonisation of radio spectrum, in order to ensure that the internal market functions in 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 under Regulation (EC) No 460/2004, and its mandate was recently strengthened by the adoption of Parliament's resolution of 16 April 2013<sup>[1]</sup>. Since 1999, there has been a series of multiannual safer internet programmes. The current programme funds activities at national and EU level,

as well as two annual events — 'Safer Internet Day' and the 'Safer Internet Forum'. The main objectives of the programme 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

Parliament advocates a robust and advanced ICT policy and has been very active in the adoption of legislative acts in the area. It has also continuously helped to keep the focus on ICT issues, through the adoption of own-initiative reports, oral and written questions, studies<sup>[2]</sup>, workshops<sup>[3]</sup>, opinions and resolutions, as well as through calls for greater coordination of national efforts for the development of pan-European services and EU support for ICT research and development<sup>[4]</sup>.

Parliament has recalled the need to use the 'digital dividend' spectrum to achieve broadband for all EU citizens, and has stressed that further action is needed to ensure ubiquitous and high-speed access to broadband, as well as digital literacy and competencies for all citizens and consumers (OJ C 81 E, 15.3.2011, p. 45). It likewise stresses the importance of security in cyberspace (OJ C 332 E, 15.11.2013, p. 22) in order to ensure robust protection for privacy and other civil liberties in a digital environment. At the same time Parliament strongly promotes technological neutrality, 'net neutrality' and 'net freedoms' for European citizens, as well as measures regarding access to or use of services and applications through telecommunications networks, on a basis of respect for the fundamental rights and freedoms of citizens; such measures must also ensure that internet service providers do not degrade users' ability to access content and applications and/or run services of their own choice (OJ C 153 E, 31.5.2013, p. 128). Moreover, Parliament has been at the forefront in further lowering roaming tariffs (OJ C 261 E, 10.9.2013, p. 54) and also played a pivotal role in efforts to tackle counterfeiting by deciding to proceed with its own scrutiny of the Anti-Counterfeiting Trade Agreement (ACTA) and subsequently declining to give its consent to conclusion of the agreement in its legislative resolution of 4 July 2012 (OJ C 349 E, 29.11.2013, p. 552).

<sup>[2]</sup> <http://www.europarl.europa.eu/aboutparliament/en/0083c7a4db/Think-Tank.html#studies>

<sup>[3]</sup> <http://www.europarl.europa.eu/committees/en/events.html?id=workshops#documents>

<sup>[4]</sup> See: Ubiquitous Development of the Digital Single Market, study prepared for the European Parliament's Committee on the Internal Market and Consumer Protection, 2013, [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507481/IPOL-IMCO\\_ET\(2013\)507481\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507481/IPOL-IMCO_ET(2013)507481_EN.pdf)

<sup>[1]</sup> Texts adopted, P7\_TA(2013)0103.



This orientation of policy led to the initiation of legislative procedures on important proposals such as: a regulation on measures to reduce the cost of deploying high-speed electronic communications networks (2013/0080(COD)); a directive concerning measures to ensure a high common level of network and information security across the Union (2013/0027(COD)); a general data protection regulation (2012/0011(COD)); and a regulation on electronic identification and trust services for electronic communications (2012/0146(COD)).

Following the introduction of substantial and repeated reductions in roaming charges, on 3 April 2014 Parliament voted to end roaming charges in Europe as from 15 December 2015 and to assert the principles of net neutrality and an open internet, thus making a significant contribution to the Commission's proposal for a regulation laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent (COM(2013) 627).

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→ Fabrizio Porrino / Mariusz Maciejewski

## 5.9.4. The ubiquitous digital single market

*The digital single market is one of the most promising and challenging areas of progress, creating potential efficiency gains of EUR 260 billion per year. It opens up new opportunities to boost the economy through e-commerce, while 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 are evolving from electronic to mobile platforms and becoming increasingly ubiquitous, offering access to information and content at anytime, anywhere and on any device. These advances call for a regulatory framework that is conducive to the development of cloud computing, borderless mobile data connectivity and simplified access to information and content, while safeguarding privacy, personal data, cybersecurity and net neutrality.*

### 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. It builds on 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' and further developed into the concept 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 on from the Lisbon Strategy<sup>[1]</sup>, the Europe 2020 strategy introduced the Digital Agenda for Europe<sup>[2]</sup> as one of seven flagship initiatives, recognising the key enabling role that the use of information and communication technologies (ICT) will have to play if the EU wants to succeed in its ambitions for 2020 (5.10.3).

The digital single market has the potential to improve access to information, to bring efficiency gains in terms of reduced transaction costs, dematerialised consumption and reduced environmental footprint, and to introduce improved business and administrative models<sup>[3][4]</sup>. More e-commerce generates tangible benefits for consumers, such as rapidly evolving new products, lower prices, more

choice and better quality of goods and services, thanks to cross-border trade and easier comparison of offers<sup>[5]</sup>. More e-government facilitates online compliance and access to jobs and business opportunities for both citizens and businesses<sup>[6]</sup>.

Recent mapping of the costs of non-Europe has indicated that while in the longer run the digital single market could contribute around EUR 520 billion to the GDP of the EU-28, around half of this benefit can be achieved in the coming years with the right blend of policies in place<sup>[7]</sup>. This makes the digital single market the most important EU policy area in terms of potential benefits. In specific policy areas, e.g. as a result of the adoption of cloud computing, 80% of organisations could reduce costs by 10% to 20%. Other benefits include enhanced mobile working (46%), productivity (41%) and standardisation (35%), as well as new business opportunities (33%) and new markets (32%)<sup>[8]</sup>. Vulnerable people (the elderly, those with reduced mobility, those isolated in rural areas, those with low purchasing power) can derive particular benefit from the digital single market, and the EU will thus be better placed to meet the demographic challenges of today<sup>[9]</sup>.

<sup>[5]</sup> For a calculation of the benefits of recent initiatives, see: 'Roadmap to Digital Single Market', briefing note prepared for the European Parliament Committee on the Internal Market and Consumer Protection (2012), <http://www.europarl.europa.eu/document/activities/cont/201209/20120914ATT51402/20120914ATT51402EN.pdf>

<sup>[6]</sup> See European Single Point of Contact, study prepared for Parliament's Committee on the Internal Market and Consumer Protection, 2013, [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507453/IPOL-IMCO\\_ET\(2013\)507453\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507453/IPOL-IMCO_ET(2013)507453_EN.pdf)

<sup>[7]</sup> See Mapping the Cost of Non-Europe, 2014-2019, study prepared for Parliament, 2014, [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/510983/IPOL-EAVA\\_ET\(2014\)510983\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/510983/IPOL-EAVA_ET(2014)510983_EN.pdf)

<sup>[8]</sup> Commission communication on 'Unleashing the Potential of Cloud Computing in Europe' (COM(2012) 529).

<sup>[9]</sup> Commission communication on 'A coherent framework for building trust in the Digital Single Market for e-commerce and online services' (COM(2011) 0942).

<sup>[1]</sup> The Lisbon Strategy aimed 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'.

<sup>[2]</sup> <http://ec.europa.eu/digital-agenda/>

<sup>[3]</sup> See Streaming and Online Access to Content and Services, study prepared for Parliament's Committee on the Internal Market and Consumer Protection, 2014, [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/492435/IPOL-IMCO\\_ET\(2014\)492435\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/492435/IPOL-IMCO_ET(2014)492435_EN.pdf)

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## Achievements

Relaunching the European economy through the digital single market: given that the full potential of the internal market remains unexploited, Parliament, the Council and the Commission have made fresh efforts to relaunch it and to put the public, consumers and small and medium-sized enterprises (SMEs) at the centre of the single-market policy<sup>[1]</sup>. The digital single market has a central role to play in these efforts.

In 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 — intended 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 in May 2010 entitled 'A new strategy for the single market at the service of Europe's economy and society', with the aim of developing 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 barriers. These Commission communications, and Parliament's resolution of 20 May 2010 on delivering a single market to consumers and citizens<sup>[2]</sup>, prepared the ground for a communication entitled 'Towards a Single Market Act' (COM(2010) 608) in which the Commission presented a series of measures designed to boost the EU economy and create jobs. Following on from its 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) 0259). It proposed that the focus 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', proposing as key actions: (1) cutting through the jungle of standards, (2) guaranteeing safe and fair contract terms and

conditions, and (3) establishing a European cloud partnership to drive innovation and growth from the public sector; it thereby sought to address issues such as fragmentation of the digital single market, complicated contractual environments, and issues (COM(2012) 529).

In October 2012 the Commission came forward with a second set of proposals — the Single Market Act II (COM(2012) 573) — comprising 12 key actions focused on four main drivers for growth, employment and confidence: integrated networks, cross-border mobility of citizens and businesses, the digital economy, and actions that strengthen 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 to promote e-commerce 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, to make electronic invoicing standard in public procurement procedures and to highlight the importance of consumer confidence. The Commission stated its intention to come forward with all of the key legislative proposals connected with the Single Market Act II by spring 2013, and with non-legislative proposals by the end of 2013. Numerous legislative proposals, including abolishing roaming charges in Europe and improving cybersecurity, are currently being debated by Parliament as a matter of priority, while the Commission is taking stock of the Europe 2020 strategy as part of its mid-term review<sup>[3]</sup>.

## Role of the European Parliament

Parliament has played a leading role in the relaunch of the internal market and is a keen promoter of the digital single market.

Its resolution of 20 April 2012 on 'a competitive digital single market — eGovernment as a spearhead'<sup>[4]</sup> pointed out the need for a clear and coherent legal framework for the mutual recognition of electronic authentication, identification and signatures, which is necessary in order to enable cross-border administrative services to operate throughout the EU.

On 11 December 2012 Parliament adopted two non-legislative resolutions relating to the internal market, one on completing the Digital Single Market<sup>[5]</sup> and the other on a Digital Freedom Strategy in EU Foreign

<sup>[1]</sup> Earlier efforts sought to improve the operation of the internal market and ensure consumer protection through e.g.: the Data Protection Directive (95/46/EC; a 2012 proposal for a General Data Protection Regulation is currently being discussed by Parliament), the e-Commerce Directive (2000/31/EC), the Telecommunication Package including the e-Privacy Directive (2002/58/EC), the Payment Services Directive (2007/64/EC), the Consumer Rights Directive (2011/83/EU) and the Roaming Regulation (531/2012).

<sup>[2]</sup> OJ C 161 E, 31.5.2011, p. 84.

<sup>[3]</sup> Commission communication entitled 'Taking stock of the Europe 2020 strategy for smart, sustainable and inclusive growth', COM(2014) 130.

<sup>[4]</sup> Texts adopted, P7\_TA(2012)0140.

<sup>[5]</sup> Texts adopted, P7\_TA(2012)0468.

Policy<sup>[1]</sup>. The aim of the resolutions was to develop policy and practice with a view to establishing a real digital single market in the EU in order 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 a view to breaking down digital barriers between Member States.

On 4 July 2013 Parliament adopted a further resolution on completing the digital single market<sup>[2]</sup>, focusing on tapping the full potential of the digital single market, addressing the skills gap, building trust, security and consumer confidence, creating an attractive legal supply of digital content, building mobility services and the international dimension, as a contribution to a possible Single Market Act III focusing on the digital single market.

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→ [Mariusz Maciejewski](#)

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<sup>[1]</sup> Texts adopted, P7\_TA(2012)0470.

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<sup>[2]</sup> Texts adopted, P7\_TA(2013)0327.

## 5.9.5. Defence industry

*With a turnover of EUR 96 billion in 2012, 400 000 people directly employed and 960 000 indirect jobs, the European defence industry is a major industrial sector. The defence industry is characterised by economic and technological components which are important factors for Europe's industrial competitiveness. The elimination of market fragmentation via the gradual establishment of a European market in defence equipment would cut red tape, foster innovation and limit duplication of defence programmes and research. Created in 2004, the European Defence Agency contributes actively to the development of this industry. The sector is currently facing challenges: the decrease in EU defence spending affecting investment in Research and Innovation, the increasing competition on the global market, the implementation of the regulatory framework of the internal market for defence, and support for defence-related SMEs in a time of austerity.*

### Legal basis

EU action in this field must be based on Article 352 of the Treaty on the Functioning of the European Union (TFEU), which provides for cases in which the EU Treaties do not make explicit provision for the action needed to attain one of the Union's objectives. Article 173 TFEU provides a legal basis for EU industrial policy. However, progress towards applying internal market rules on the defence equipment market has been restrained by Article 346(1) TFEU, which states that '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 put an end to 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. Like all other industrial activities, it is required to deliver increased efficiency in order to provide value for money for its customers and, at the same time, 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 civilian objectives.

However, 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 the industry. Where possible, defence industry needs should therefore be reflected in the implementation of EU research policy. At its December 2013 meeting, the European Council invited the Member States to increase investment in cooperative research programmes, also calling on the Commission together with the European Defence Agency to develop proposals to further stimulate dual-use research.

#### 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 the EU rules on 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 Common Foreign and Security Policy (CFSP)), concerning the control of technical assistance related to certain military end-users; together, they form an integrated system. This regime reflects international arrangements to prevent the 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 in place concerning the provision of brokering services with regard to dual-use items and 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, 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 aim of taking stock of the current functioning of the EU export control system and considering possible areas for reform.

## **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. July 2006 saw the launch of the Intergovernmental Regime to Encourage Competition in the European Defence Equipment Market. 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). The 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 has 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 are to undergo substantive modification. A roadmap will be prepared by the Commission and the EDA for the development of defence industrial standards as well as of options for lowering the costs of military certification, including by increasing mutual recognition between Member States.

The Commission adopted, on 24 July 2013, a communication which contains an action plan to enhance the efficiency and competitiveness of the European defence industry. The initiatives cover the following areas: Internal Market, Industrial Policy, Research and Innovation, Capabilities, Space, Energy and International Trade. With respect to defence procurement, the communication announces the

establishment of a market monitoring mechanism. On 19 December 2013 the European Council discussed the communication and adopted conclusions on CSDP identifying a number of priority actions.

### **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, on a more transparent and open basis. 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 the position that the existing derogation pursuant to the former 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 the nature of the contracts covered by the exemption under that article. It also suggests that a directive could be drawn up to coordinate the procedures for awarding contracts falling within the scope of the 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. 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 work done in the 1990s and on the basis of its Green Paper on defence procurement, began to accelerate its work in the field of security research. Starting with the communication of 11 March 2003 entitled 'Towards an EU Defence Equipment Policy' (2004/213/EC), the Commission made progress towards establishing a security/defence research programme under a new preparatory action<sup>[1]</sup>. The new EU programme for research and innovation, Horizon 2020 (2014-2020), is part of the drive to create new growth and jobs in Europe. One of its challenges is to foster research for protecting the freedom and security of Europe and its citizens. It aims to bring together all security stakeholders: industry, including SMEs, research organisations and universities, as well as public authorities, non-governmental organisations and public and private organisations in the security domain. The active involvement of end-users is of high importance. The budget allocated to Secure Societies for the period 2014-2020 is EUR 1 700 million, representing 2.2% of Horizon 2020 funds.

### Role of the European Parliament

Parliament has adopted various resolutions touching on the defence industry. In a resolution adopted on 10 April 2002, Parliament called for the creation of a European Armaments Agency and for standardisation in defence. Parliament also recalled 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)), Parliament reiterated the view, expressed earlier in its 2002 resolution, that a strong, efficient and viable European armaments industry and an effective procurement policy are vital to the development of the European Security and Defence Policy. The report also encouraged the Commission's efforts to contribute to the gradual creation of a European defence equipment market (EDEM) which would be more transparent and open between Member States. It 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 offsets, which are necessary in order to create a level playing field for fair intra-European competition. Parliament was also able to ensure that its concerns regarding 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 and restriction of the use of offsets).

In its resolution of 22 November 2012 on the implementation of the CSDP, Parliament insisted on the fact that the building-up of European capabilities should also result in the consolidation of the industrial and technological base of Europe's defence industry, and called on Member States to implement fully Directive 2009/81/EC in order to achieve greater interoperability of equipment and combat market fragmentation.

Parliament's latest intervention (resolution of 21 November 2013) insists on the need for a strong European defence technological and industrial base, harmonisation of requirements and consolidation of demand, and a common approach to standardisation and certification. Parliament also calls for the reinforcement of European industrial cooperation, and stresses the need to support CSDP missions through European research and development using the Horizon 2020 research programme. It also invites Member States to improve the transparency and increase the openness of their defence markets, while stressing the specific nature of defence procurement.

→ Carine Piaguet / Frédéric Gouardères

<sup>[1]</sup> OJ L 67, 5.3.2004, p. 18.

## 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 procedures, 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 as 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).

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## 5.9.7. Innovation Policy

*Innovation plays an increasing role in our economy. It provides benefits for citizens as both consumers and workers. It accelerates and improves the design, development, production and use of new products, industrial processes and services. It is essential to creating better jobs, building a greener society and improving our quality of life, but also to maintaining EU competitiveness in the global market. Innovation policy is the interface between research and technological development policy and industrial policy and aims to create a conducive framework for bringing ideas to market. It will occupy a place of growing importance in European legislation.*

### Legal Basis

The legal basis for the EU's general industrial policy is Article 173 of the Treaty on the Functioning of the European Union (TFEU), which states that 'the Union and the Member States shall ensure that the conditions necessary for the competitiveness of the Union's industry exist'.

The legal basis for EU policy on research and technological development (RTD) is provided by Articles 179 to 189 of the TFEU. 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 European Economic and Social Committee.

### Objectives

The importance of innovation policy is widely recognised. It is also strongly linked to other EU policies, such as those on employment, competitiveness, environment, industry and energy. The role of innovation is to turn research results into new and better services and products in order to remain competitive in the global marketplace and improve the quality of life of Europe's citizens.

Europe spends 0.8% of GDP less than the US and 1.5% less than Japan every year on research and development (R&D). In addition, some brain drain effect occurs as our best researchers and innovators move to countries where conditions are more favourable. Although the EU market is the largest in the world, it remains fragmented and is not sufficiently innovation-friendly.

With a view to changing these trends, the EU has developed the concept of an 'Innovation Union', which aims 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;

- revolutionise the way the 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 in 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 so that innovative ideas can be turned into products and services that create growth and jobs. The Innovation Union aims to create a genuine single European market for innovation, which would attract innovative companies and businesses. To achieve this, several measures have been proposed in the fields of patent protection, standardisation, 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 introduced to measure and monitor the situation across the EU and the progress being made:

- A comprehensive Innovation Union Scoreboard based on 25 indicators and a European knowledge market for patents and licensing. The European Innovation Scoreboard (EIS) is a European Commission instrument developed under the Lisbon Strategy to provide a comparative assessment of the innovation performance of EU Member States.
- A Regional Innovation Scoreboard (RIS), which 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 in



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 conducted among businesses and the general public on attitudes and activities relating to innovation policy. The Innobarometer survey provides policy-relevant information which is not available from other sources.

Innovation is made possible by research and education. Europe would require at least one million more researchers in the next decade to reach the target of investing 3% of EU GDP in 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 November 2013, Parliament approved the Multiannual Financial Framework, allocating a budget of EUR 77 billion (in 2013 prices) to Horizon 2020 for the period 2014-2020. As a Europe 2020 flagship initiative aimed at securing Europe's global competitiveness, Horizon 2020 is the financial instrument which provides for the implementation of the Innovation Union. This new programme for research and innovation is part of the drive to create new growth and jobs in Europe, and combines all the 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). By introducing a single set of rules, Horizon 2020 will provide major simplification and will 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. The Fast Track to Innovation (FTI) will significantly speed up the time from idea to placement on the market and is expected to increase participation in Horizon 2020 and the number of first-time applicants.

Horizon 2020 enacts many of the specific Innovation Union commitments, notably by focusing on real challenges facing society, simplifying access, involving SMEs, strengthening financial instruments, supporting public procurement of innovation, facilitating collaboration, and supporting research on public sector and social innovation.

Furthermore, in future cohesion policy will focus more on research and innovation. In more developed

regions at least 80% of resources from the European Regional Development Fund at national level will be allocated to innovation, with the priorities being a low-carbon economy and competitive SMEs. The corresponding share in less developed regions will be 50%. 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 United States. In addition, in order to improve access to loans for R&D projects and launch demonstration projects, the EU has proposed a Risk-Sharing Finance Facility (RSFF), based on financial collaboration between the European Commission and the European Investment Bank (EIB). The RSFF aims to improve access to EIB debt finance for participants in European R&D projects.

A Programme for the Competitiveness of Enterprises and SMEs (COSME) has also been proposed, to focus on financial instruments and provide support for the internationalisation of enterprises.

The Innovation Union aims 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, standardisation, public procurement and smart regulation. Furthermore, the Commission has drawn up a strategy to strengthen European standardisation (COM(2011) 315), in which it highlights the need to improve the method for setting standards and the use of standards in Europe in order to leverage European and international standards in the interests of the long-term competitiveness of European industry.

To avoid creating an 'innovation divide' between the strongest innovating regions and the rest, the Commission will help Member States make better use of the remaining part of the EUR 86 billion structural funds earmarked for research and innovation projects in the 2007-2013 period.

In addition, European Innovation Partnerships (EIP) have been designed to bring together public and private stakeholders at EU, national and regional levels in order to tackle major challenges in society and to help create jobs 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:

- 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). This urged both the Commission and the Member States to increase their efforts to reduce the administrative burden for enterprises. It also highlighted the importance of a transparent and simplified intellectual property rights policy.

- Resolution of 16 June 2010 on the EU 2020 strategy. While strongly supporting an industrial policy aimed at creating the best environment to maintain and develop a strong, competitive and diversified industrial base in Europe, this resolution also stressed that the Europe 2020 strategy should disclose the costs and benefits of converting 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). This underlined the importance of a more comprehensive vision for European industry in 2020 as long-term regulatory predictability and stability are considered essential to attracting investment.
- 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). This resolution underlined the importance of developing closer cooperation between research institutes and industry and encouraging and providing support for industrial companies to invest in research and development. Parliament called for more investment in education, research and innovation, for centres of excellence and mobility for young people to be promoted, and for the development of conditions to stimulate the growth of innovative enterprises.
- Resolution of 21 November 2013 on the Decision establishing the Specific Programme implementing Horizon 2020 — The Framework Programme for Research and Innovation (2014-2020) (T7-0504/2013).

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## 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 at ensuring '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 (TEU), and Articles 9, 10, 19, 45-48, 145-150 and 151-161 of the Treaty on the Functioning of the European Union (TFEU).

#### 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 EU and its Member States in the social and employment fields, as described in Article 151 TFEU.

#### Achievements

##### A. From the Treaty of Rome to the Maastricht Treaty

In order to allow workers and their families to take full advantage of the right to move and seek employment freely throughout the common market, the Treaty of Rome provided for the coordination of the Member States' social security systems. It enshrined the principle of equal pay for men and women, which was recognised by the Court of Justice as being directly applicable, and provided for the establishment of the European Social Fund (5.10.2).

Concerns about structural imbalances and uneven 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 provisions for the harmonisation of health and safety conditions at work. Acting by qualified majority in cooperation with Parliament, the Council adopted a number of directives laying down minimum requirements in

this area. The SEA also made it possible for the 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. Following 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.

With the signing of the Maastricht Treaty, the promotion of a high level of employment and social protection was officially introduced as one of the tasks conferred on the European Community (EC). 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, which contained some significant innovations (5.10.6 to 5.10.8). Protocol No 14 to the Treaty, to which the agreement was annexed, 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 Council was endowed with the power to adopt directives laying down minimum requirements in several new sectors, which would then be binding on all Member States except the UK.

##### B. From the Amsterdam Treaty to the Treaty of Lisbon

The uncomfortable situation of a double legal basis, created by the UK opt-out, was finally overcome with the signing of the Amsterdam Treaty, when all the Member States, including the UK (following a change in government), agreed to incorporate the Agreement on Social Policy into the text of the EC Treaty with some slight changes (Articles 151-161 TFEU). In Article 153, the co-decision procedure

replaced cooperation and 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). A new paragraph provided for measures designed to encourage cooperation between Member States in order to combat social exclusion. The new Article 19 conferred on the EC the ability to 'take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation'. On this basis, two directives were soon adopted: Directive 2000/43/EC on equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78/EC on 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 a 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', namely the European Employment Strategy (EES) (Articles 145-150 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 applied immediately.

When launching the Lisbon Strategy in March 2000, aimed at making the EU the most competitive economy in the world, the heads of state 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, health and long-term care as part of the so-called 'social OMC').

The year 2000 also saw the adoption, at the Nice Summit, of a European social policy agenda up to 2005, as well as a Charter of Fundamental Rights of the EU, drafted by a special Convention. However, the signing of the Nice Treaty was rather disappointing for those expecting major progress in the social sector. A Social Protection Committee was created to promote cooperation between Member States and the Commission on social protection policies, but all proposals to expand the co-decision procedure were rejected.

In the light of the mid-term review of the Lisbon Strategy in 2005, the employment guidelines adopted as part of the EES were incorporated into the integrated guidelines for growth and jobs, and the Lisbon reform process was synchronised with the social OMC on the basis of three-year cycles.

A new social agenda for the period 2006-2010 was adopted in 2005 to accompany the relaunch of the Lisbon Strategy. An EU programme for

employment and social solidarity, called Progress, was established for the period 2007-2013 to support the implementation of the EU's objectives in the social field (5.10.9). In 2007, a European Globalisation Adjustment Fund (EGF) was created to provide support for workers made redundant as a result of changing global trade patterns (5.10.2).

The Treaty of Lisbon was signed on 13 December 2007, allowing for further progress in consolidating the social dimension of European integration. The Treaty on European Union now emphasises the EU's social objectives, including full employment and solidarity between generations (Article 3); Article 6 recognises the Charter of Fundamental Rights as having the same binding force as the Treaties. The Charter itself recognises so-called 'solidarity rights', such as workers' right to information and consultation, as well as the rights to collective bargaining, fair and just working conditions, social security and social assistance. A **horizontal social clause** was introduced into the TFEU, reading as follows: '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. Developments since the Lisbon Treaty

In July 2008 the Commission published a renewed social agenda entitled 'Opportunities, access and solidarity in 21st century Europe' in response to growing unemployment due to the financial and economic crisis. Measures were introduced to enhance the impact of existing financial instruments (the ESF and the EGF). In addition, a new European Progress Microfinance Facility was set up in 2010 to provide microcredit to small businesses and unemployed people 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 area of employment (75% employment for the 20-64 age group). Of the seven flagship initiatives selected to help achieve the Europe 2020 targets, three fall within the areas of employment and social affairs: the Agenda for New Skills and Jobs aims at revamping flexicurity policies to make the labour market function better, helping people develop the skills of tomorrow and improving job quality and working conditions; Youth on the Move will contribute to better education and

training, help young people to study abroad and make it easier for them to find a job; and the European Platform against Poverty and Social Exclusion helps to disseminate best practices and makes funding available in order to support social inclusion and combat discrimination. Since 2010, the headline employment and social targets of the Europe 2020 Strategy have served as goals for the benchmarking of the European Employment Strategy (EES). This has been included in the context of the European Semester, which is a procedural tool to improve the time consistency of EU policy coordination on macroeconomic, fiscal, employment and social issues in recurring yearly cycles.

In addition, three existing EU programmes (including the Progress and Progress Microfinance Facility programmes) aimed at testing ideas for reform on the ground, with a view to upscaling the best ones across the Member States, have been merged into a single programme called the Employment and Social Innovation Programme (EaSI).

### Role of the European Parliament

Although Parliament's role has long been a purely consultative and supervisory one, it has always been active in the development of EU action in the field of employment and social policy, with a view to strengthening the EU's capacity to combat unemployment and improving working and living conditions for all. Since the early stages of European integration, Parliament has often called for a more active policy in the social field so as to reflect the increasing importance of the Union in the economic area, and has supported the Commission's different proposals in this area. Parliament was more closely involved in the preparation of the Treaty of Amsterdam than in previous Treaty revisions, and some important innovations reflect its recommendations, such as the incorporation of the Social Agreement and the insertion of an employment chapter.

At the time of the Lisbon Strategy, Parliament 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. Parliament also took the view that the Lisbon

Strategy did not set sufficiently binding targets in the social sphere, and called on the Member States to monitor closely the employment and social impact of the reforms implemented as part of the Europe 2020 Strategy. Along the same lines, one of the messages conveyed by Parliament while debating the economic crisis was a firm call for an EU commitment to preserving European social models and a strong social Europe.

Since the headline goals of the Europe 2020 Strategy are monitored and implemented as part of the European Semester process, Parliament has repeatedly insisted on incorporating the employment and social goals more effectively into the European Semester, inter alia through making social indicators binding and extending indicators to cover child poverty and decent work, for example. It also deeply regrets that its role in the European Semester is of a limited nature, and calls for an interinstitutional agreement enabling it to become more involved in the process.

Finally, Parliament has been highly critical as regards measures such as economic adjustment programmes, taken outside the supranational framework. In March 2014 Parliament stated that only genuinely democratically accountable institutions should steer the political process of designing and implementing the adjustment programmes for countries in severe financial difficulties.

Parliament has also confirmed its attachment to social values in deciding on the use of financial resources from the EU budget. Most recently, Parliament managed to ensure that the European Social Fund (ESF), Europe's main tool in the fight against unemployment and social exclusion, accounts for 23.1% of global EU cohesion funding, and that 20% of each Member State's ESF allocation will have to be spent on social inclusion.

Since 2010, Parliament has strongly supported the idea of introducing a Youth Guarantee Scheme. This programme was finally adopted by the Council in April 2013 and aims to ensure that all young EU citizens and legal residents up to the age of 25, as well as recent graduates under the age of 30, receive a good-quality offer of employment, continued education or an apprenticeship within four months of becoming unemployed or leaving formal education.

→ Marion Schmid-Drüner

## 5.10.2. 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 162-164, 174, 175, 177 and 178 of the Treaty on the Functioning of the European Union.

Following the entry into force of the Lisbon Treaty, the adoption of general rules applicable to the Structural Funds is now subject to the ordinary legislative procedure.

### Objectives

According to Regulation (EU) No 1304/2013, the ESF is meant to improve employment opportunities, strengthen social inclusion, fight poverty, promote education, skills and lifelong learning, and develop active, comprehensive and sustainable inclusion policies.

In accordance with its priorities, the ESF aims to:

- promote high levels of employment and job quality, improve access to the labour market, support the geographical and occupational mobility of workers and facilitate their adaptation to industrial change;
- encourage a high level of education and training for all and support the transition between education and employment for young people;
- combat poverty, enhance social inclusion and promote gender equality, non-discrimination and equal opportunities.

### 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, then endowed with a EUR 60 billion allocation, was entrusted with the dual responsibility of contributing both to cohesion policy and to the implementation of the European Employment Strategy (EES) (5.10.3); the scope of its intervention was redesigned accordingly. 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.

For the 2007-2013 programming period, only three Structural Funds remained: the ESF, the European Regional Development Fund (ERDF) and the Cohesion Fund. Jointly they were 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 in accordance with 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.

In the 2007-2013 period, 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 in 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.

## B. Current programming period

### 1. Five Structural Funds

The five European Structural and Investment Funds for the 2014-2020 period, i.e. the ERDF, the ESF, the Cohesion Fund, the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF), are now governed by a set of common rules. In addition, fund-specific regulations define areas of intervention and other particularities. Regulation (EU) No 1303/2013 of 17 December 2013 defines common principles, rules and standards for the implementation of the five European Structural and Investment Funds. Regulation (EU) No 1304/2013 of 17 December 2013 establishes the missions of the European Social Fund (ESF), including the Youth Employment Initiative (YEI), the scope of its support, specific provisions and the types of expenditure eligible for assistance.

### 2. European Social Fund

The role of the ESF has been reinforced for the 2014-2020 period. With an overall allocation of EUR 74 billion, the ESF co-finances national or regional operational programmes which run for the seven-year duration of the multiannual financial framework and are proposed by the Member States and approved by a Commission decision.

The new ESF Regulation for the 2014-2020 period was adopted in December 2013. It will focus on the following thematic objectives:

- promoting sustainable and quality employment and supporting labour mobility;
- promoting social inclusion, combating poverty and any discrimination;
- investing in education, training and vocational training for skills and lifelong learning;

- enhancing the institutional capacity of public authorities and stakeholders and efficient public administration.

The ESF thus benefits people, including young people, women and people from disadvantaged groups, with a view to fostering social inclusion. The ESF also supports workers, enterprises and entrepreneurs. Finally, the ESF helps Member States improve the quality of their public administration and governance.

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.

### 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 was adopted by Parliament and the Council in December 2013, with a budget of up to EUR 150 million.

The Progress programme has been integrated into the new EU Employment and Social Innovation (EaSI) programme as one of its three axes. With a budget of EUR 550 million, it aims to promote a high level of quality and sustainable employment, guaranteeing adequate and decent social protection, combating social exclusion and poverty and improving working conditions.



### 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 codecision 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 2007-2013 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.

Thanks to Parliament, in the new programming period (2014-2020) the ESF will account for 23.1% of global EU cohesion funding, and 20% of each Member State's ESF allocation will have to be spent on social inclusion. Parliament also insisted that the EGF be made available to new categories of beneficiaries such as self-employed people.

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→ Laurence Smajda

### 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 EaSI, is designed to contribute to growth and jobs, labour mobility and social progress.*

#### Legal basis

Article 3(3) of the Treaty on the European Union (TEU) and Articles 8-10, 145-150, 156-159 and 162-164 of the Treaty on the Functioning of the European Union (TFEU).

#### 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. According to the horizontal clause in Article 9 TFEU, the objective of a high level of employment shall be taken into consideration in the definition and implementation of Union policies and activities.

#### Achievements

##### A. The early stages (1950s to 1990s)

As long ago as the 1950s, workers were benefiting from 're-adaptation aid' in the European Coal and Steel Community (ECSC). 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.

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.

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 network for cooperation between the Commission and the public employment services of the EEA Member States and other partner organisations. Switzerland also takes part.

##### B. Towards a more comprehensive employment policy

###### 1. The White Paper on Growth, Competitiveness and Employment (1993)

High unemployment in most EU countries prompted the drafting of a White Paper on Growth,

Competitiveness and Employment in 1993. This launched a debate on Europe's economic and employment strategy by bringing the issue of employment to the top of the European agenda for the first time.

###### 2. The contribution of the Amsterdam Treaty (1997)

The new Employment Title in the Amsterdam Treaty provided the basis for setting 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 coordinating their employment policies at EU level. The responsibilities of the social partners and their opportunities to contribute are also enhanced through the inclusion in the Treaty of a 'Social Protocol'.

###### 3. European Employment Strategy 1997-2004

Ahead of the entry into force of the Amsterdam Treaty in 1998, the extraordinary Luxembourg Job Summit in November 1997 launched the European Employment Strategy (EES) — the so-called Luxembourg Process. This created the framework for an annual coordinating and monitoring cycle for national employment policies. The coordination of national employment policies at EU level is based on the Member States' commitment 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 undertook to work towards the development of a coordinated strategy for employment at Community level by using the then newly-introduced 'open method of coordination' (OMC). 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', embracing full employment as an overarching objective of employment and social policy, and concrete targets to be achieved by 2010.

#### 4. The renewed European Employment Strategy since 2005

The EES was reviewed in 2002 and relaunched in 2005, with the focus on growth and jobs and with the aim of simplifying and streamlining the Lisbon Strategy. Revisions included the introduction of a multiannual time framework (the first cycle being 2005-2008). Since 2005, the EES has been integrated with the Broad Economic Policy Guidelines.

The Integrated Guidelines 2005-2008 and 2008-2010 contained a total of 23 guidelines, of which eight were devoted specifically to employment in order to give a boost to the Lisbon Strategy. They aimed to help foster full employment, improve quality and productivity at work and strengthen social and territorial cohesion.

#### 5. Europe 2020 Strategy and the integrated guidelines

The integrated guidelines take into account the headline targets of the Europe 2020 Strategy, the new 10-year strategy for jobs and smart, sustainable and inclusive growth. These headline targets include:

- **labour market:** increase the labour market participation of people aged 20 to 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 dropout rates to 10% (from 15%), and increase the share of 30 to 34 year-olds having completed tertiary or equivalent education to at least 40% (instead of 31%).

These headline targets lay the foundations for structural reforms, which the Member States will have to carry out. All five headline targets must be translated by Member States into national targets, taking into account their relative starting positions and national circumstances. The integrated guidelines which the Council adopted in October 2010, and which have remained unchanged since, provide for:

- Increasing labour market participation of women and men, reducing structural unemployment and promoting job quality;
- Developing a skilled workforce responding to labour market needs and promoting lifelong learning;

- Improving the quality and performance of education and training systems at all levels and increasing participation in tertiary or equivalent education;
- Promoting social inclusion and combating poverty.

The next revision of the integrated guidelines is planned for 2014.

In addition to the Europe 2020 headline targets, three flagship initiatives fall into the areas of employment and social affairs: (i) Youth on the move: aiming 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 to overhaul EU employment legislation; and (iii) the European platform against poverty and social exclusion, which establishes a structured dialogue between the EU and European stakeholders such as NGOs, trade unions, academics, regional authorities and foundations to carry out EU-level actions which cut across the diverse facets of poverty and social exclusion, such as ensuring access to basic banking services, combating child poverty and ensuring participation of Roma people in society.

#### 6. Changes through the Lisbon Treaty

The Lisbon Treaty, which entered into force in December 2009, raised the employment objective by introducing full employment and social progress as a goal (Article 3(3) TEU). The horizontal social clause contained in Article 9 TFEU also contributes to strengthening the employment policy, asking that social requirements be taken into account in the Union's policies. The Charter of Fundamental Rights became legally binding and contributed to strengthening employment and social policies.

#### 7. Further policy instruments

Besides these benchmarking exercises, the EU has a new programme in place which runs from 2014 to 2020. The EU programme for employment and social innovation (EaSI) brings together three existing programmes which support employment, social policy and labour mobility across the EU, namely:

- PROGRESS (Programme for Employment and Social Solidarity), which provides for generation of analytical knowledge, supports information sharing and mutual learning, and financially assists Member States in developing their policies as well as assisting NGOs in order to promote social inclusion and poverty reduction;
- EURES (European Employment Services), which is a job mobility network that provides

information, guidance and recruitment/ placement services EU-wide;

- Microfinance and Social Entrepreneurship, which will continue to facilitate access to microfinance for individuals and micro-enterprises, but also add capacity-building for micro-credit providers and invest in developing and expanding social enterprises, i.e. businesses which do not intend to maximise profit but whose main purpose is social.

Apart from this programme, the Commission issues policy guidance in the form of 'packages'.

Thus, the Employment Package of April 2012 proposes policy measures focusing on the demand side of job creation, setting out ways for Member States to encourage hiring by reducing taxes on labour or supporting business start-ups more. The policy communication underlines the need for a stronger employment and social dimension to EU governance and lays down ways to involve employers' and workers' representatives more in setting EU priorities.

The worrying situation of youth unemployment has led the EU to adopt a range of measures to tackle the situation of young people in all its facets, especially regarding education and access to the labour market.

In December 2012, the Commission proposed the Youth Employment Package, a series of measures to help Member States specifically tackle youth unemployment and social exclusion. In the wake of this package, the European Alliance for Apprenticeships was launched in July 2013, and the Commission proposed a Quality Framework for Traineeships in December 2013.

In February 2013, the European Council proposed to allocate specific funds to concentrate efforts to fight youth unemployment on the most affected regions of the European Union through the Youth Employment Initiative. With a budget of up to EUR 8 billion for the period 2014-2020, it targets individual young people aged 15-24 who are neither in employment nor in education or training (NEETs) exclusively in the regions which have youth unemployment rates above 25%, helping to integrate them into the labour market.

### Role of the European Parliament

Parliament considers employment to be one of the EU's most important priorities, and believes that the EU and the Member States need to coordinate their efforts. Parliament's role in this area has developed

gradually; since the Amsterdam Treaty came into force it must be consulted on the Employment Guidelines before they are drawn up annually by the Council.

During the 1996 Intergovernmental Conference, Parliament ensured that employment policy received much higher priority in the Amsterdam Treaty by calling for a specific employment chapter in the Treaty.

The Employment Guidelines 2005-2008 were backed by Parliament. The open method of coordination should enhance the role of parliaments, not only of the European Parliament, but also of national parliaments, which play a full role in the setting and achieving of 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 incorporating a balanced 'flexicurity' approach into these guidelines.

Parliament has given its strong backing to the Europe 2020 Strategy, and has adopted resolutions supporting and reinforcing the various flagship initiatives in the areas of employment and social affairs. Parliament has asked the European Council to incorporate the objectives of the Europe 2020 Strategy, as well as other employment-related aspects, into its policy guidance for the European Semester.

Parliament has repeatedly called for the inclusion of the strategy's targets when adopting new policies.

In its resolution of 6 June 2012, 'Towards a job-rich recovery', Parliament called for the necessary investment in job and growth potentials in the green economy, the health and social services sector and ICTs, including investment in skills, training and higher wages.

Many of the initiatives combating youth unemployment go back to Parliament proposing concrete, practical actions, namely the EU Youth Guarantee and minimum standards on internships. Parliament has since 2010 strongly supported the establishment of the Youth Guarantee Scheme, which aims to ensure 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. This scheme was agreed on in April 2013.

→ Marion Schmid-Drüner

## 5.10.4. Social security cover in other EU Member States

*The coordination of social security systems is necessary 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 the free movement of persons between the Member States (2.1.3 to 3.1.3). To achieve this, it is necessary to adopt social security measures which prevent EU citizens who are 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 (Council 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.<sup>[1]</sup> 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/she 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.<sup>[2]</sup>

#### 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. Council Regulation (EC) 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

<sup>[1]</sup> [www.ilo.org](http://www.ilo.org)

<sup>[2]</sup> International Social Security Association — [www.issa.int](http://www.issa.int)



of Regulation (EEC) No 1408/71 to cover nationals from third countries, provided they are legally resident on EU territory.

The current legislation, Regulation (EU) No 1231/2010, which has been 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 rules solely on the grounds 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 EU 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. The new regulation is based on the same four principles of Regulation (EEC) No 1408/71, but its aim is to simplify the existing EU 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 that administrations 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 social security fields 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 (EU) No 1231/2010 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

Parliament has always shown a keen interest in the problems encountered by migrant workers, frontier workers, the self-employed and nationals of third countries working in other Member States, and has adopted various resolutions with a view to improving their lot. Parliament has, on several occasions, deplored the persistence of obstacles to full freedom of movement and has called on the Council to adopt pending proposals, such as those intended to bring early retirement pensions within the scope of Regulation (EEC) No 1408/71, to extend the right of unemployed persons to receive unemployment benefit in another Member State, and to widen the scope of 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 a qualified majority in the Council (Article 48). However, a Member State can ask for a draft legislative act to be referred to the European Council if it 'declares that the draft legislative act would affect important aspects of its social security system, 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.<sup>[1]</sup>

Another important change is the explicit inclusion of self-employed people as beneficiaries of the social security provisions in the framework of the free movement of workers.

In its resolution of 14 January 2014 on social protection for all, including self-employed workers, Parliament called on the Commission to review legislation and monitor the implementation and coordination of social security systems so as to safeguard EU migrant workers' entitlements to benefits.

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→ Laurence Smajda

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<sup>[1]</sup> 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 an important issue for the EU since the 1980s. The introduction of legislation at European level set minimum standards for the protection of workers, but that legislation does not prevent Member States from maintaining or introducing more stringent measures. When the Lisbon Treaty entered into force, the Charter of Fundamental Rights of the European Union became legally binding, making health and safety policy an even more important area of 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. The Treaty stipulates that directives adopted with a view to introducing such minimum requirements must not impose administrative, financial or legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

### Achievements

#### A. Background

##### 1. Early stages

Under the auspices of the European Coal and Steel Community (ECSC) 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 that field. Minimum occupational health and safety requirements were needed in order to complete the single European market. This led to the adoption of a number of 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. Single European Act

The adoption of the Single European Act in 1987 brought health and safety at work into the EEC

Treaty for the first time in an article laying down minimum requirements and allowing the Council to adopt occupational health and safety directives by qualified majority. The aims of the article were: 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 in order to gain a competitive edge. Although the 'Social Charter' (the Community Charter of the Fundamental Social Rights of Workers) of 1989 was not legally binding, it affirmed that 'the same importance must be attached 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 title on employment and the Social Agreement. For the first time, directives setting out minimum requirements in the field of health and safety at work and working conditions were adopted by both Parliament and the Council by means of the codecision procedure.

#### B. Milestones

##### 1. Framework Directive 89/391/EEC

Article 137 of the Treaty of Nice (now Article 153 TFEU) formed the basis for EU efforts to improve the working environment with a view to protecting workers' health and safety. The adoption of Framework Directive 89/391/EEC, with its specific focus on the culture of prevention, was a milestone in the development of policy relating to workers' health and safety. The framework directive aims to improve the protection of workers with regard to accidents at work and occupational diseases by means of preventive measures, information, consultation, balanced participation and training for both workers and their representatives. It covers all public and private sector workers in the EU. The framework directive also forms the basis for 20 'daughter directives' on:

- health and safety requirements for the workplace (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);
- the provision of safety and/or 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 atmospheres (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);
- the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (vibration) (2002/44/EC), noise (2003/10/EC), electromagnetic fields (2004/40/EC) and artificial optical radiation (2006/25/EC).

The framework directive has had an impact on other legislative acts, in particular: 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 establishing a European Agency for Safety and Health at Work.

## 2. European Agency for Safety and Health at Work

The European Agency for Safety and Health at Work was set up in 1996 and is based in Bilbao (Spain).

Its aim is to foster the sharing of knowledge and information in order to help promote 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 health and safety at work. The European Social Agenda was adopted in 2000, contributing to a more strategic approach to health and safety at work at EU level. Subsequently, the Community strategy on health and safety at work for 2002 to 2006 adopted a global approach to wellbeing in the workplace. The Community strategy for 2007 to 2012 focused on prevention. Its aim was to achieve a continuous, sustainable and homogeneous reduction in occupational accidents and diseases in the EU, in particular through the definition and implementation of national strategies based on a detailed evaluation of the national situation, and through the improvement and simplification of existing legislation, including by enhancing the implementation of that legislation in practice by means of non-binding instruments (such as the exchange of good practices, awareness-raising campaigns and improved information and training). Parliament welcomed the Commission's target of reducing accidents at work by 25% across the EU. In May 2013, the Commission published the results of the evaluation of the Community strategy for 2007 to 2012 and launched public consultations on a new strategy for 2013 to 2020.

## Role of the European Parliament

Parliament has frequently emphasised the need for optimal protection of workers' health and safety. It has adopted many resolutions in which it calls for all aspects directly or indirectly affecting the physical or mental wellbeing of workers to be covered by EU legislation. Parliament has had a significant influence on directives which improve working conditions. It supports the Commission in its efforts to step up the provision of information to SMEs. It takes the view that work must be adapted to people's abilities and needs, and not vice versa, and that working environments should be developed in such a way as to take greater account of the special needs of vulnerable workers. Parliament has urged the Commission to investigate emerging risks that are not covered by current legislation, e.g. exposure to nanoparticles, stress, burnout, violence and harassment in the workplace.

It has 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<sup>[1]</sup>. The social partners eventually concluded a Framework Agreement on prevention from sharp injuries in the hospital and healthcare sector, which was signed in July 2009. Parliament welcomed this achievement in its resolution of 11 February 2010<sup>[2]</sup>. Council Directive 2010/32/EU implementing the Framework Agreement was adopted on 10 May 2010.

Parliament has also called for improvements to be made to the existing legislation on the protection of pregnant workers and workers who have recently given birth or are breastfeeding. In July 2008, the Commission finally decided to propose a review of Directive 92/85/EEC. Parliament's first-reading vote on the Commission's proposal took place in October 2010.

Parliament has also repeatedly stressed the need to improve EU legislation on the protection of workers from musculoskeletal disorders.

In June 2010, Parliament rejected the Commission's proposal to amend the directive on the working time of mobile road transport workers, because it did not agree that self-employed workers should be excluded from the scope of the directive. As a result, the Commission withdrew its proposal.

The extension of the scope of Framework Directive 89/391/EEC to include certain groups of workers (such as the armed forces, self-employed people, domestic workers and home workers) is another key request. Parliament has also called for the establishment of a directive laying down minimum standards for the recognition of occupational diseases. Other subjects being debated in 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 Community strategy on health and safety at work for 2007 to 2012, Parliament focused on the health and safety of vulnerable workers and the specific risks to which they are exposed.

In September 2013, Parliament adopted a resolution reiterating its call on the Commission to present the new European strategy on health and safety at work for 2013 to 2020.

Parliament has also made repeated calls for the implementation of existing directives to be improved.

In 2013, Directive 2013/35/EU on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields) was adopted by Parliament and the Council.

Although it has been known as the 'ordinary legislative procedure' since the entry into force of the Lisbon Treaty, the characteristics of the codecision procedure remain unchanged. The Lisbon Treaty contains a 'social clause' under which social requirements must be taken into account in the Union's policies. Upon the entry into force of the Lisbon Treaty, the Charter of Fundamental Rights of the European Union became legally binding, with due regard for the principle of subsidiarity pursuant to the general provisions of Chapter VII of the Charter.

→ Laurence Smajda

<sup>[1]</sup> European Parliament resolution of 6 July 2006, Texts adopted, P6\_TA(2006)0305.

<sup>[2]</sup> Texts adopted, P7\_TA(2010)0030.

## 5.10.6. Workers' right to information, consultation and participation

*The European Union complements the Member States' activities with regard to workers' right 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 the Member States' activities relating to employee involvement with a view to contributing to the achievement of the core objectives of European social policy as set out in Article 151 TFEU, which include 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 1989 Community Charter of the Fundamental Social Rights of Workers (Social Charter) stresses the desirability of promoting employee participation. The Commission's proposals in this area have often encountered resistance, however. A proper legal basis for Community legislation in the field of workers' right to information and consultation was not in place until the Treaty of Amsterdam incorporated the Agreement on Social Policy into the text of the EC Treaty. Previously adopted legislation was based mainly on Treaty articles 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; it was subsequently extended to the United Kingdom in 1997. As regards employee involvement, Article 153 TFEU entrusts Parliament 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 practice, promoting innovative approaches and evaluating

experience, but excluding any harmonisation of the laws and regulations of the Member States;

- directives setting out minimum requirements for gradual implementation. These directives must 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 is applicable in this field, with prior consultation of the European Economic and Social Committee and the Committee of the Regions.

#### B. Legislation in force

A first group of directives deals 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 Council Directives 92/56/EEC and 98/59/EC, under which 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 Council Directives 77/187/EEC and 98/50/EC), under which workers must be informed of the reasons for such a transfer and its consequences;
- Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community, which lays down minimum common requirements for national provisions 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 European Parliament 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 such a bid on employment; the usual rules on informing and consulting employees also apply. In its own-initiative report on the application of this directive adopted on 21 May 2013<sup>[1]</sup>, Parliament insists that the relevant provisions on workers' rights must be effectively applied and, where necessary, properly enforced, and that further consideration must urgently be given to protecting and strengthening workers' rights;
- Directive 2011/35/EU of the European Parliament and of the Council of 5 April 2011 on mergers of public limited liability companies (codifying and repealing Directive 78/855/EEC), pursuant to which workers in companies that merge are protected to the same extent as that laid down in the directive on the transfer of undertakings.

The first three directives have undergone a fitness check by the Commission, following which it concluded in July 2013 that they are broadly fit for purpose and that their benefits outweigh the costs, but that some areas, such as extending the scope of the directives to public service workers and SMEs, as well as certain definitions in the legal acts, need further examination and discussion, which may lead to a consolidation of the three directives following consultation of the European social partners (SWD(2013)0293).

In addition, a Commission proposal on seafarers is currently going through Parliament (COM(2013) 0798). The proposal recognises an unconditional right to information and consultation for seagoing workers in all directives which previously allowed for exceptions and derogations from this right.

A second group of directives aims to lay down rules applicable to situations with a transnational component, granting partial rights to participation in decision-making:

- Council Directive 94/45/EC of 22 September 1994, as revised by Directive 2009/38/EC of the European Parliament and of the Council on the introduction of European Works Councils: this directive contains general rules aimed at ensuring 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, prospects and 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 represented 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 provision is made for board-level employee participation where this form of participation was applied in the national founding companies (as is 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 provided for in European Cooperative Societies (ECSs) in order to ensure that employees' representatives can exercise influence on the running of the undertaking. Cooperatives have a specific governance model based on joint ownership, democratic participation and control by members. Unfortunately, the ECS model is not being used as much as had been hoped, and Parliament has called upon the Commission to make it more user-friendly and to deploy sufficient resources to develop a framework for the social economy as a whole<sup>[2]</sup>;
- Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies also contains rules on determining the employee participation regime to be applied to the merged company.

Having withdrawn its proposals in 2006, in 2012 the Commission proposed a Statute for a European Foundation (FE) and is now also studying the feasibility of another legislative proposal dealing with a Statute for a European Mutual Society. This is meeting with opposition from some Member States, however, any of which could block a proposal drawn up under the currently preferred legal basis of Article 352 TFEU (subsidiary powers), which requires unanimity and the consent of Parliament. In March 2013, MEPs asked the Commission to present

<sup>[1]</sup> Texts adopted, 21.5.2013, P7\_TA(2013)0198.

<sup>[2]</sup> Texts adopted, 13.3.2012, P7\_TA(2012)0071.



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 provided for under Article 114 TFEU<sup>[1]</sup>; the Commission is currently preparing an impact assessment of a Statute for a European Mutual Society as part of a proposal for such a statute.

### 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. The texts of TCAs take various forms and 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, there were 215 such agreements in 138 companies worldwide, covering more than 10 million employees. However, this kind of practice can raise legal and political issues regarding the relationship between the different vertical levels of social dialogue (international, European, national) and its horizontal spheres of application (cross-sectoral, sector-specific and 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. The Commission has set up an ad hoc expert group on transnational company agreements, which met for the sixth time in October 2011 and presented its report in January 2012.

In its resolution of 12 September 2013 on cross-border collective bargaining and transnational social dialogue<sup>[2]</sup>, Parliament proposes that the Commission give consideration to the need for an optional European legal framework for European TCAs for greater legal security and transparency,

which would include clauses designed to ensure that the conclusion of a TCA does not result in an evasion of national collective agreements.

### 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 right to information, consultation and participation in decision-making should apply in both national and transnational companies irrespective of their legal status. Parliament's position is that workers should not only be entitled to be informed and consulted, but should also have the right to participate in decision-making on issues such as the introduction of new technologies, changes in the organisation of work, production and economic planning. In its resolution of 14 January 2014 on financial participation of employees in companies' proceeds<sup>[3]</sup>, Parliament reaffirmed its support for the participation of employees in profits and enterprise results, calling on the Commission and the Member States to consider appropriate measures to encourage companies, acting voluntarily, to develop and offer employee financial participation schemes to all employees.

In its resolution of 15 January 2013 with recommendations to the Commission on 'information and consultation of workers, anticipation and management of restructuring'<sup>[4]</sup>, Parliament 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'. Such a legal act should make provision for employee representatives to be fully informed in good time of any proposed restructuring operation, including the reasons for the choice of measures envisaged, and stipulate a meaningful timeframe for consultation. This timely consultation should enable the companies concerned and their workers' representatives to negotiate collective agreements covering the issues arising from the restructuring. Parliament calls on the Commission to ensure that dismissals are seen as a last resort after all possible alternatives have been considered, without this diminishing the competitiveness of enterprises.

→ Marion Schmid-Drüner

<sup>[1]</sup> Texts adopted, 14.3.2013, P7\_TA(2013)0094.

<sup>[2]</sup> Texts adopted, 12.9.2013, P7\_TA(2013)0386.

<sup>[3]</sup> Texts adopted, 14.1.2014, P7\_TA(2014)0013.

<sup>[4]</sup> Texts adopted, 15.1.2013, P7\_TA(2013)0005.

## 5.10.7. Social dialogue

*Social dialogue is a fundamental component of the European social model that gained full recognition in the Treaty with the Amsterdam reform. The social partners (representatives of management and labour) 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 (TFEU).

### 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. The aim of social dialogue is to improve European governance through the involvement of the social partners in decision-making and in the implementation process.

### Achievements

#### A. Bipartite social dialogue

According to the original wording in the Treaty of Rome, one of the Commission's tasks in the social field was to promote close cooperation between Member States with 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 Commission 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, training and other social issues resulted from the meetings of these social partners.

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 or four times a year and comprises 64 members (32 representing employers and 32 representing workers) either from European secretariats or national organisations. Meanwhile, the Single European Act created a legal basis for the development of a 'Community-wide social dialogue'. 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 to implement directives by way of collective agreement.

At EU level, according to Article 154 TFEU, the Commission must consult the social partners before taking any action in the social policy field. The social partners may then choose to negotiate among themselves an agreement on the subject of the consultation and stop the Commission's initiative. The negotiation process can take up to nine months and the social partners have the following possibilities:

- they may conclude an agreement and jointly ask 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 their own specific procedures and practices and those of the Member States ('voluntary' or, later on, 'autonomous' agreements), or
- they may be unable to reach an agreement, in which case the Commission will resume work on the proposal in question. The incorporation of the Agreement on Social Policy into the EC Treaty following the Treaty of Amsterdam finally allowed for a single 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.

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 Commission put forward a proposal on the revision of Directive 2003/88/EC concerning certain aspects of the organisation of working time, including recent developments such as on-call work and flexible weekly working time. Furthermore, the Commission has adopted a report on how the 2003 working time rules are being

implemented in the Member States. Parliament, the Commission and the Council were subsequently unable to agree on the issue, and the European social partners tried to find an agreement during a year-long negotiation process, which also broke down in December 2012 due to major differences on the treatment of on-call time as working time. It is therefore now up to the Commission to put forward a new proposal.

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 for 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 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, the social partners eventually decided to start negotiations, which led to the signing on 17 July 2009 of the Framework Agreement on prevention from sharp injuries in the hospital and healthcare sector by HOSPEEM (the European Hospital and Healthcare Employers' Association) and EPSU (the 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, 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, the role of which is to support the Commission in formulating 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' organisations and trade unions, 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 from the social partners to the Laeken Summit in December 2001, the Council launched a Tripartite Social Summit for Growth and Employment in March 2003 (Council Decision 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 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 Commission and the social partners. The three Council presidencies are normally represented by the heads of state

or government and the ministers in charge of employment and social affairs; equally, the 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 being paid to the need to ensure a balanced participation between men and women. Each group consists 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 under Article 152 TFEU.

### Role of the European Parliament

Parliament 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 the 'trialogue' at European level. Its 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. The Lisbon Treaty has introduced a clear right for Parliament to be informed

about the implementation of collective agreements concluded at Union level (Article 155 TFEU) and about 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 economic crisis, Parliament has reiterated the fact that social dialogue is vital in order to achieve the employment targets set out in the EU2020 Strategy (2009/2220(INI)). In January 2012, it stressed that, in focusing on fiscal consolidation, the Annual Growth Survey's recommendations would hamper not only job creation and social welfare, but also social dialogue as such. In its report on industrial relations in Europe 2012, the Commission reiterated its earlier finding that the Member States in which the 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 2014, Parliament once again stressed the importance of social dialogue and called for a reinforcement of the role of social partners in the new economic governance process. Regarding the economic adjustment programmes in the countries most affected by the crisis, Parliament, in its resolution of 13 March 2014 on employment and social aspects of the role and operations of the Troika (ECB, the Commission, IMF) with regard to euro area programme countries (P7\_TA(2014)0240), stressed that the social partners at national level should have been consulted or involved in the initial design of programmes.

→ Marion Schmid-Drüner

## 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, case-law and changes to the Treaties have helped shore up 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

The principle that men and women should receive equal pay for equal work has been enshrined in the European Treaties since 1957 (today: Article 157 TFEU). Besides, Article 153 TFEU allows the EU to act in the wider area of equal opportunities and equal treatment in matters of employment and occupation. Within this framework, Article 157 TFEU furthermore authorises positive action to empower women. In addition, Article 19 TFEU enables legislation to combat all forms of discrimination, including on the basis of sex. Legislation against trafficking in human beings, in particular women and children, has been adopted on the basis of Articles 79 and 83 TFEU, and the Rights, Equality and Citizenship programme finances, among others, measures contributing to the eradication of violence against women based on Article 168 TFEU.

### Objectives

The European Union is founded on a set of values, including equality, and promotes equality between men and women (Articles 2 and 3(3) TEU). These objectives are also enshrined in Article 21 of the Charter of Fundamental Rights. Besides, Article 8 TFEU gives the Union the task of eliminating inequalities and promoting equality between men and women through all its activities (this concept is also known as 'gender mainstreaming'). The Union and the Member States have committed themselves, in Declaration No 19 annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, 'to combat all kinds of domestic violence ..., to prevent and punish these criminal acts and to support and protect the victims'.

### Achievements

#### A. Main legislation

Union legislation, mostly adopted by the ordinary legislative procedure, includes:

- Directive 79/7/EEC of 19 December 1978 obliging Member States to progressively implement the principle of equal treatment for men and women in matters of social security;
- Directive 92/85/EEC of 19 October 1992 introducing measures to improve the safety and health at work of pregnant workers and workers who have recently given birth or are

breastfeeding; the Commission has proposed a revision of this directive (see below);

- 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;
- in 2006, a number of former legislative acts were repealed and replaced by Directive 2006/54/EC of 5 July 2006<sup>[1]</sup> on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast). This Directive defines 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. At present, Parliament is seeking the revision of this directive as regards provisions on equal pay<sup>[2]</sup>;
- 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;
- Directive 2010/41/EC of 7 July 2010 laying down objectives for the 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, and repealing Council Directive 86/613/EEC;
- Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims. This directive replaces Council Framework Decision 2002/629/JHA and provides for the approximation of sanctions for trafficking in human beings across Member States and of support measures for

<sup>[1]</sup> The recast directive also repeals Directive 76/207/EEC, which had been amended by Directive 2002/73/EC.

<sup>[2]</sup> 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.



victims, and calls upon the Member States to 'consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation with the knowledge that the person is a victim [of trafficking]' in order to discourage demand; it also establishes the office of European anti-trafficking coordinator;

- Directive 2011/99/EU of 13 December 2011 establishing the European Protection Order with the aim of protecting a person 'against a criminal act by another person which may endanger his/her life, physical or psychological integrity, dignity, personal liberty or sexual integrity' and enabling a competent authority in another Member State to continue the protection of the person in the territory of that other Member State; this directive is reinforced by Regulation (EU) No 606/2013 of 12 June 2013 on mutual recognition of protection measures in civil matters, which ensures that civil protection measures are recognised all over the EU;
- Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

### 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 the 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 the advantage was 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(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 insurance.

### C. Latest developments

Below is an overview of the most recent action taken by the EU in the field of equality between men and women.

#### 1. The multiannual financial framework (MFF 2014-2020) and the Rights, Equality and Citizenship programme

The new programme Rights, Equality and Citizenship has been established to finance projects aimed at achieving gender equality and ending violence against women (Article 4). Together with the Justice programme (Regulation 2013/1382), it has been attributed EUR 15 686 million until 2020 (MFF Regulation 1311/2013) and consolidates six programmes of the 2007-2013 funding period, among them the Daphne III Programme (Decision 779/2007) and both the 'Anti-discrimination and Diversity' and 'Gender Equality' sections of the Programme for Employment and Social Solidarity (PROGRESS) (Decision 1672/2006/EC).

The Annex specifies that the promotion of gender equality will be funded together with other anti-discrimination measures under Group 1, to which a share of 57% of the financial allocations is attributed. Combating violence against women is included in Group 2, with 43% of the overall financial envelope of the programme.

For 2014, budget line 33 02 02 (promoting non-discrimination and equality) has been increased by Parliament to EUR 31 151 000 in commitment appropriations in order to mitigate the abrupt drop in funding compared to previous years. In addition, budget line 33 02 01 has been allocated EUR 23 007 000 to contribute, among other objectives, to protecting against and combating all forms of violence against women.



## 2. The European Institute for Gender Equality (EIGE)

In December 2006 the European Parliament and the Council established a European Institute for Gender Equality, based in Vilnius, Lithuania, with the overall objective of contributing to and boosting the promotion of gender equality, including gender mainstreaming in all EU and national policies. It also combats discrimination based on sex and raises awareness on gender equality by providing technical assistance to the European institutions through collecting, analysing and disseminating data and methodological tools (see the EIGE's online Resource and Documentation Centre: <http://eige.europa.eu/content/rdc>).

## 3. 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, to be achieved by working with Member States for a significant reduction in 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;
- achieving gender equality beyond the EU by pursuing the issue in external relations and with international organisations.

## 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). In the area of equal treatment on the labour market, Parliament acts on the basis of the ordinary legislative procedure (codecision), for example regarding:

- 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) 0614) (see Parliament's position at first reading, adopted at the end of 2013)<sup>[1]</sup>.

- the revision of Directive 92/85/EEC (see above); at first reading<sup>[2]</sup> Parliament advocated a longer period of fully-paid maternity leave, namely 20 weeks, but the proposal is currently blocked in Council.

In addition, Parliament contributes to overall policy development in the area of gender equality through its own-initiative reports, and by drawing the attention of other institutions to specific issues, including:

- combating violence against women by adopting a legislative own-initiative report requesting a legislative initiative on the part of the Commission and calling on it to 'submit, by the end of 2014, on the basis of Article 84 TFEU, a proposal for an act establishing measures to promote and support the action of Member States in the field of prevention of violence against women and girls (VAWG)'; this resolution includes a number of recommendations<sup>[3]</sup>;
- gender equality in times of crisis as highlighted by an interparliamentary conference on the occasion of International Women's Day 2013 and in the related resolution on the impact of the economic crisis on gender equality<sup>[4]</sup>;
- gender equality in international relations, in particular regarding the developments since the so called Arab Spring in North Africa<sup>[5]</sup>.

Through the FEMM committee and its High Level Group on Gender Equality, 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 are doing for gender equality.

→ Erika Schulze

<sup>[1]</sup> See: European Parliament resolution of 20 November 2013 on Gender balance among non-executive directors of companies listed on stock exchanges — Texts adopted, P7\_TA(2013)0488.

<sup>[2]</sup> See: European Parliament resolution of 20 October 2010 on Improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding — Texts adopted, P7\_TA(2010)0373.

<sup>[3]</sup> See: European Parliament resolution of 25 February 2014 on combating violence against women — Texts adopted, P7\_TA(2014)0126

<sup>[4]</sup> 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.

<sup>[5]</sup> 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 1994, the European Economic Community conducted a number of pilot projects and programmes designed to combat poverty and exclusion. 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 Member States agreed to submit national action plans against poverty and social exclusion on a regular basis from June 2001. 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 by 25% the number of Europeans living below the national poverty line 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.

In October 2011, the Commission proposed a Programme for Social Change and Innovation bringing together three existing instruments into one integrated programme. In 2013 Parliament and the Council reached an agreement on this

new Employment and Social Innovation (EaSI) programme, with a budget of EUR 920 million for the 2014-2020 period.

One of the major innovations of the next programming period (2014-2020) is a special focus on the critical situation of young people in the current crisis, thanks to the Youth Employment Initiative (YEI), whereby a specific allocation under cohesion policy augments 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 gender 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) and Council Directive 2000/78/EC (the Employment Equality Directive).

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<sup>[1]</sup> 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 was to rationalise expenditure and improve the impact of actions supported by the European Community (now the European Union). Under the new Employment and Social Innovation (EaSI) programme, the Progress axis has been allocated EUR 550 million (61% of the total EaSI budget) for measures promoting a high level of quality and sustainable employment, guaranteeing adequate and decent social protection, combating social exclusion and poverty, and improving working conditions.

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

As a follow-up to the European Year of People with Disabilities in 2003, a Disability Action Plan was 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.

The EU has also 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.

### 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

<sup>[1]</sup> OJ C 137 E, 27.5.2010, p. 68.

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<sup>[1]</sup>). 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<sup>[2]</sup>).

Most recently, Parliament's resolution of 15 November 2011 on the European Platform against poverty and social exclusion<sup>[3]</sup> 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 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.

As the EU's food distribution programme was to be discontinued in 2013, Parliament called on the Commission to maintain a food programme. In October 2012, the Commission put forward a proposal for a new Fund for European Aid to the Most Deprived (FEAD) for the 2014-2020 period, with a proposed budget of EUR 2.5 billion. Following negotiations in 2013, the Council agreed to Parliament's request to increase the FEAD budget from EUR 2.5 billion to EUR 3.5 billion. The aim of the fund is to provide food, clothing and other essential goods to the most deprived, and to finance social inclusion measures for the poorest in society.

→ [Laurence Smajda](#)

<sup>[1]</sup> OJ C 70 E, 8.3.2012, p. 8.

<sup>[2]</sup> OJ C 212 E, 5.8.2010, p. 23.

<sup>[3]</sup> 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<sup>[1]</sup> 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<sup>[2]</sup> 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 to be linked to higher incomes. Third, a progressive tax rate slows down technological progress because

<sup>[1]</sup> See the report of 23 November 1999 of the Council's Code of Conduct Group to the ECOFIN Council on 'Code of Conduct (Business Taxation)' (SN 4901/99).

<sup>[2]</sup> Council document 9405/13.



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 consumption 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 29); 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<sup>[1]</sup>. 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<sup>[2]</sup>, 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

<sup>[1]</sup> OJ C 341, 16.12.2010, p. 29.

<sup>[2]</sup> Texts adopted, P7\_TA(2013)0206.

## 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)).

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→ 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<sub>2</sub> 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<sub>2</sub> 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).

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→ 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 was 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.

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→ 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, bringing more accountability and legitimacy; increased powers for the Court of Justice of the European Union; and a new role for national parliaments. Basic rights are strengthened by a Charter of Fundamental Rights that is now legally binding on the EU 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<sup>[1]</sup>.

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’.

<sup>[1]</sup> See Fact Sheets 5.12.2, 5.12.3, 5.12.4, 5.12.6 and 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, which was based on intergovernmental cooperation, thus generalising the Community method in the AFSJ. As a rule, legislative proposals are now adopted under the ordinary legislative procedure set out in Article 294 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; the European Police College CEPOL; Eurojust, for judicial cooperation in criminal matters; the EU Fundamental Rights Agency, which deals with fundamental rights and discrimination; the European Monitoring Centre for Drugs and Drug Addiction; Frontex, which is responsible for coordinating external border control; the European Asylum Support Office; and very recently, the EU Agency for the management of large-scale IT systems in the AFSJ (eu-LISA).

## Role of the European Parliament

The European Parliament has a range of tools and powers that enable 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<sup>[1]</sup>;
- 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<sup>[2]</sup>;
- 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<sup>[3]</sup>.

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.

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→ Sarah Sy

<sup>[1]</sup> CJEU, Judgment of 6.5.2008, Case C-133/06.

<sup>[2]</sup> e.g. Resolution on homophobia in Europe, 18.1.2006.

<sup>[3]</sup> Resolution of 5.2.2009.

## 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;
- Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, OJ L 180, 29.6.2013 (Regulation (EU) No 603/2013 will start applying two years after its entry into force and repeal the previous Council Regulation (EC) No 2725/2000 and its implementing Regulation (EC) No 407/2002);
- 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;
- Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, OJ L 180, 29.6.2013 (Directive 2013/33/EU will repeal Council Directive 2003/9/EC with effect from 21 July 2015);
- Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, OJ L 180, 29.6.2013 (Regulation (EU) No 604/2013 will start applying six months after its entry into force and repeal the previous Council Regulation (EC) No 343/2003);
- 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. (Directive 2011/95/EU will repeal the previous Council Directive 2004/83/EC with effect from 21 December 2013.);
- Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, OJ L 180, 29.6.2013 (Directive 2013/32/EU will repeal the previous Council Directive 2005/85/EC with effect from 21 July 2015);
- 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;
- Proposal for a regulation of the European Parliament and of the Council laying down general provisions on the Asylum and Migration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management (COM(2011) 0752 — 2011/0367 (COD));
- Proposal for a regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund (COM(2011) 751 — 2011/0366 (COD)).

### Role of the European Parliament

The resolutions of 11 September 2012 on 'enhanced intra-EU solidarity in the field of asylum', of 21 June 2007 on 'asylum: 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<sup>[1]</sup>. 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 between the Council and Parliament on Directive 2013/33/EU laying down minimum standards for the reception of asylum seekers and Directive 2013/32/EU on common procedures for granting and withdrawing international protection. The establishment of the new common European asylum system was completed with the adoption of the amended Dublin Regulation EU No 604/2013 and Regulation EU No 603/2013 on the establishment of Eurodac in June 2013.

→ Sarah Sy

<sup>[1]</sup> 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. Global approach to migration and mobility

In November 2011, the Commission adopted its Communication on the 'Global Approach to Migration and Mobility' to bring together all migration-relevant policies in a more coherent manner. The Approach includes four pillars: legal migration and mobility; irregular migration and trafficking in human beings; international protection and asylum policy; and maximising the development impact of migration and mobility. The human rights of migrants are a cross-cutting issue in this approach.

The Global Approach focuses on regional and bilateral dialogue between countries of origin, transit and destination. One of the main instruments 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.

###### 2. The Stockholm Programme and its successor

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 a multi-annual programme for measures to be taken in the area of freedom, security and justice, including the EU's migration policy priorities, in the period 2010-2014.

The Stockholm Programme will come to an end in December 2014. In March 2014, the Commission adopted a new communication presenting its vision on the future agenda for Home Affairs, entitled 'An open and secure Europe: making it happen'. The new communication will contribute to the strategic guidelines to be discussed by the European Council and Parliament in June 2014.

### 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 current approach 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.

Directive 2014/36/EU, adopted in February 2014, regulates the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers. Migrant seasonal workers are allowed to stay legally and temporarily in the EU for a maximum period of between five and nine months (depending on the Member State) to carry out an activity dependent on the passing of seasons, while retaining their principal place of residence in a third country. The directive also clarifies the set of rights to which such migrant workers are entitled.

In April 2014, Parliament voted on a resolution adopting the proposed directive on conditions

of entry and residence of third-country nationals in the framework of an intra-corporate transfer. The new directive, once adopted by Council, will make it easier for businesses and multinational corporations to temporarily relocate their managers, specialists and trainee employees to their branches or subsidiaries located in the European Union.

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, as amended in 2011 to extend its scope to refugees and other beneficiaries of international protection.

#### 2. On integration

Directive 2003/86/EC sets out provisions on the right to family reunification. The 2008 report on its application concluded that it was not fully and correctly applied in the Member States: as a consequence, a green paper was published in 2011, opening a process of public consultations. In April 2014, the Commission published a communication providing guidance to the Member States on how to apply the directive.

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 were called to enforce the directive by 24 December 2010. The first report on its implementation was adopted in March 2014 and highlighted positive developments as well as existing challenges. The main areas for further action include ensuring its proper implementation, promoting consistent and fundamental rights-compatible practices, improving cooperation between Member States and enhancing the role of Frontex.



- 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, Georgia, Armenia, Azerbaijan and Cape Verde. In February 2014, Parliament gave its consent to the conclusion of a readmission agreement with Turkey.

### 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.

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→ Rosa Raffaele

## 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 these 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 (Eurosir) 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 part 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 Eurosir 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.

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→ 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.*

### 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. The starting point is to uphold the principle of mutual recognition. 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.

### 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. As 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, with transitional arrangements — valid until 1 December

2014 — 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. Provision is made for special measures 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

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 2010-2014 period, 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. A mid-term review of the implementation of the Stockholm Programme by the Commission, initially due by June 2012, was in the end not carried out. On 11 March 2014, the Commission adopted two communications setting out political priorities for the post-Stockholm programme. On 2 April 2014, Parliament adopted a resolution on the mid-term review of the Stockholm Programme. The European Council is expected to hold a discussion at its June 2014 meeting to define strategic guidelines for legislative and operational planning in the AFSJ, pursuant to Article 68 TFEU.

##### 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 complying with 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 at both the pre-trial and final judgment stages.

### 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 at both 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. On 27 February 2014, Parliament adopted a resolution containing recommendations to the Commission on the review of the EAW.

### 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 provides 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 provides 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, at a later stage, of extending the EPPO's powers to include serious crime having a cross-border dimension. On 17 July 2013, the Commission tabled legislative proposals to set up the European Public Prosecutor's Office and to reform Eurojust, which will become the EU Agency for Criminal Justice Cooperation.

In June 1998 the European Judicial Network (EJN) in criminal matters was created 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.

### 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 identified 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 Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings. 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'). In October 2013, Parliament and the Council adopted Directive 2013/48/EU on the right to have access to a lawyer in criminal proceedings and the right to communicate upon arrest. 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. On 27 November 2013, the Commission presented a package of legislative proposals in order to complete the roadmap on procedural safeguards. The three proposals for directives (currently being examined within Parliament and the Council) concern reinforced provisions on the presumption of innocence and the right to be present at trial, special safeguards for children suspected or accused in criminal proceedings, and provisional legal aid for suspects and accused persons.

#### 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, provision is made for a new procedure, 'consent'.

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.

In the first half of 2014, Parliament has approved draft directives 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. On 12 March 2014, Parliament voted a resolution adopting an interim report on the Commission proposal for a Council regulation setting up the European Public Prosecutor's Office.

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 for the involvement of the European Parliament and the national parliaments 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 competent authorities in the Member States, including police, customs and other law enforcement services specialised in 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 on external border management). 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 Member States which desire 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 (including 130 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 to make arrests or conduct searches, but its operational powers have grown very gradually: for example, the Council Act of 28 November 2002 enabled Europol to participate in joint investigation teams, and allowed Europol to ask the Member States to initiate criminal investigations.

Lastly, Europol is authorised (by a 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. In its final position on the proposal adopted on 25 February 2014, the European Parliament rejects the merger of Europol and Cepol advocated by the Commission. It proposes strengthening the data protection regime for the agency, improving its governance by seeking increased efficiency and increasing its accountability to the European Parliament and the national parliaments by setting up a Joint Parliamentary Scrutiny Group.

### 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 it became a European Union agency in 2005 (Council Decision 2005/681/JAI of 20 September 2005). Following notification by the UK that it no longer wished to host CEPOL on its territory, and in order to maintain CEPOL's independence as a separate agency, arrangements have been made for CEPOL to be hosted temporarily in Budapest until a long-term solution for the future of the Agency can be found.

### 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, nor does it participate in the legislative procedure. It operates from the national capitals, with a view to guaranteeing the operational nature 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 (paragraph 7): for example, it expresses its concern about the increasingly widespread practice of profiling for preventive and policing purposes (paragraph 88) and calls for the definition of stricter rules on exchanges of information between Member States and the use of common EU registers (paragraph 93);
- coherence of the approach to security questions (paragraphs 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' (paragraph 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' (paragraph 138);
- emphasis on certain aspects of crime while Parliament recognises 'the imperative of protecting citizens against terrorism and organised crime' (paragraph 118), it also underlines the importance of combating crimes inspired by racism and hate (paragraphs 26 and 31), violence against women (paragraph 32) and children (paragraph 76), trafficking in persons (paragraph 126), corruption (paragraph 127) and cybercrime (paragraph 129);
- encouraging the development of more operational cooperation (paragraph 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 (paragraph 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 (paragraph 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 (paragraph 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 remains out of the reach of the European Parliament which, like the national parliaments, is merely informed about its activities.

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→ 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.*

### 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, information exchange knows no borders. 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

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 adopted a resolution on this programme on 25 November 2009. A mid-term review of the implementation of the Stockholm Programme by the Commission, initially foreseen to be completed by June 2012, was in the end not carried out. On 11 March 2014, the Commission adopted two communications to set out political priorities for the post-Stockholm Programme. On 2 April 2014, Parliament adopted a resolution on the mid-term review of the Stockholm Programme. The European Council is expected to hold a discussion at its June 2014 meeting to define strategic guidelines for legislative and operational planning in the AFSJ, pursuant to Article 68 TFEU.

#### 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 recognise 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 (declared invalid by the Court of Justice of the European Union on 8 April 2014 owing to its serious interference with private life and data protection), 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 data subjects 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.

**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 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***

On 25 January 2012, the Commission published a broad legislative package to reform EU legislation on data protection. The proposed reform aims 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 28 Member States have implemented the 1995 rules differently. 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 reviewing the Commission's proposals.

**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). As regards international agreements, a new procedure ('consent') has been introduced. 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. In July 2011 the Commission adopted a communication on the main options for establishing a European Terrorist Finance Tracking System (EU TFTS), on which Parliament expressed doubts. In November 2013, the Commission announced its intention not to present at this stage a proposal for an EU TFTS.

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. 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'.

On 12 March 2014, Parliament adopted a resolution on the US NSA surveillance programme, surveillance bodies in various Member States and their impact on EU citizens' fundamental rights and on transatlantic cooperation in Justice and Home Affairs. This resolution concluded a six-month Parliament inquiry on electronic mass surveillance of EU citizens, following the revelations made in June 2013 on alleged spying by the US and some EU countries. In its resolution, Parliament called for the suspension of the Safe Harbour privacy principles (voluntary data protection standards for non-EU companies transferring EU citizens' personal data to the US) and of the Terrorist Finance Tracking Programme.

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. On 12 March 2014, Parliament voted on its first reading of the reform to offer better safeguards for individuals, improve business opportunities and create a strong compliance system. Negotiations between the newly elected Parliament and the Council will start as soon as Member States agree their own position. Parliament's aim is to reach an agreement before the end of 2014.

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→ 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 the European cultural heritage, cooperation between various countries' cultural institutions, and the promotion of mobility among 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 in the field of culture is regulated by Article 167 of the Treaty on the Functioning of the European Union (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 Treaty of Lisbon gives greater importance to culture: the preamble to the Treaty on European Union (TEU) explicitly refers to 'drawing inspiration from the cultural, religious and humanist inheritance of Europe'. One of the EU's key aims, as specified 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 Treaty of Lisbon introduces an important innovation: decision-making on cultural matters in the Council henceforth takes place on the basis of qualified majority voting (QMV), as opposed to the former unanimity requirement. 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 European Union stipulates that 'the arts and scientific research shall be free of constraint'. Article 22 of the same Charter lays down the requirement that 'the EU shall respect cultural, religious and linguistic diversity'.

#### Objectives

The Treaty states that 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. 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 aimed at ensuring 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 strategy, Europe 2020.

The promotion of culture as a vital element in the Union's international relations forms the third set of objectives. As a party to the UNESCO Convention on the Protection and 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, as well as 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 entry into force of the Treaty of Lisbon,



this dimension has become even more significant. In the specific area of culture policy, initiatives such as those on Roma culture, intercultural cities, and dialogue with the Platform on Intercultural Europe are in the spotlight in this field. Other EU policies promoting intercultural dialogue include, to name but a few, those relating to the audiovisual sector, multilingualism, youth, research, integration and external relations.

## B. Action programmes

### 1. European Capitals of Culture (ECoCs)

The European Capitals of Culture are one of the EU's most successful and best-known cultural initiatives. The cities are selected by an independent panel on the basis of a cultural programme that must have a strong European dimension, involve local people of all ages and contribute to the long-term development of the city. Over the years, the ECoCs have also become a unique opportunity to regenerate cities, boost their creativity and improve their image. More than 40 cities have been designated as ECoCs so far, from Stockholm to Genoa, Athens to Glasgow, and Kraków to Porto. As of 2011, two cities — in two different EU countries — have ECoC status each year (in 2014 Riga (Latvia) and Umeå (Sweden)). The procedure for choosing a city starts around six years in advance, although the order of the Member States entitled to host the event is established before then, and is organised in two stages. A panel of independent experts in the cultural field is responsible for assessing the proposals. The rules and conditions for holding the title are set out in a 2006 decision (1622/2006/EC) of the European Parliament and of the Council, and are currently (April 2014) in the process of being revised<sup>[1]</sup>.

### 2. Prizes

The EU's cultural policy 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, musicians, architects, writers 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.

### 3. 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 reinforce cultural diversity and intercultural

dialogue. Artists and cultural professionals need to cross borders in order to extend the scope of their activities and meet new audiences, find new and stimulating sources of inspiration to help their creations evolve, and 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 in the new framework for the 2014-2020 period, by supporting capacity-building to help artists develop international careers and foster international networks to create professional opportunities, enhancing the cultural area shared by Europeans and encouraging active European citizenship.

### 4. Creative Europe — the EU's culture programme for 2014-2020

Culture is a powerful tool for communicating values and promoting public-interest objectives that are broader than wealth creation. Positioned on the cusp between the economic and political spheres, which are considered to be the main strands of European integration, culture embodies an additional key dimension. It not only creates wealth but also contributes to social inclusion, better education, self-confidence and pride in belonging to an historic community.

Against this background, the EU has launched a new programme for the cultural and audiovisual fields for the 2014-2020 period: Creative Europe. It builds on earlier Union programmes: the MEDIA programmes (1991-2013), the MEDIA Mundus programme (2011-2013), and the Culture programmes (2000-2013). In addition, Creative Europe will include a cross-sectoral sub-programme consisting of two parts:

- a. *financial guarantee, managed by the European Investment Fund, to make it easier for small operators to access bank loans;*
- b. *funding to support studies, analysis and better data collection with a view to improving the evidence base for policymaking.*

Creative Europe will support European cinema and the cultural and creative sectors, enabling them to increase their contribution to jobs and growth. Artists, cultural and audiovisual professionals and organisations in the performing arts, fine arts, publishing, film, TV, music, interdisciplinary arts, heritage and video games industries will be among the main beneficiaries. With a budget of EUR 1.46 billion over the next seven years (9 % higher than the current level), the programme is expected to provide a boost for the cultural and creative sectors.

This framework programme will provide a 'simple, recognisable and easily accessible gateway for European cultural and creative professionals', and

<sup>[1]</sup> For more information see <http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2012/0199%28COD%29&l=en#tab-0>



will 'enable synergies and cross-fertilisation across the different cultural and creative sectors'.

### Role of the European Parliament

With the Treaty of Lisbon, Parliament saw its powers reinforced. In its resolutions, it has called for budgetary resources for culture to be increased, for the situation of those working in the field of culture to be improved, and for Europe's cultural heritage to be more widely appreciated. With regard to artistic creation, Parliament is in favour of giving the Member States the option of applying reduced VAT rates to a wider range of services and goods, such as recorded music and films, provided this does not affect the functioning of the internal market. Within Europe, there are still numerous obstacles which hinder the free movement of creative people and of cultural products and activities, even within the digital environment. Parliament has called for a regulatory framework for mobile artists to deal with tax and social security problems.

Parliament has also considered the specific nature of cultural industries on various occasions. In a resolution of May 2011 on unlocking the potential of cultural and creative industries<sup>[1]</sup>, Parliament

welcomes the fact that cultural industries have gained stronger recognition at the European level and have made their way into current political agendas. The resolution 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 Parliament in this regard is the LUX prize. It is awarded to European films, with the aim of strengthening the debate on European integration and facilitating the distribution of European films in Europe. The prize finances the subtitling of the winning film into all 23 EU official languages. Parliament is thus showing its commitment to concrete action in order to promote cultural diversity and mutual understanding among EU citizens.

Parliament's most recent actions in this field include the adoption in September 2013 of a resolution on promoting the European cultural and creative sectors as sources of economic growth and jobs<sup>[2]</sup> and the adoption in April 2014 of its first-reading position on the proposal for a directive of the European Parliament and of the Council on the return of cultural objects unlawfully removed from the territory of a Member State (recast)<sup>[3]</sup>.

→ Ana Maria Nogueira / Markus J. Prutsch

<sup>[1]</sup> OJ C 377 E, 7.12.2012, p. 142.

<sup>[2]</sup> Texts adopted, P7\_TA(2013)0368.

<sup>[3]</sup> P7\_TA(2014)0416.

## 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 EU 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 were supplemented by the 1998 and 2006 recommendations on the protection of minors and human dignity and by the 'Safer Internet' programme

promoting 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 context.

## B. Funding programmes such as Creative Europe

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.

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 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.

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.

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 allocations 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.

## 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 for 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 Advanced Studies, a research initiative within the European University Institute in Florence, with co-funding from the European Union. The CMPF is a further step in the Commission's continuing effort to improve the protection of media pluralism and media freedom in Europe, and to determine the actions that need to be taken at European or national level to foster these objectives.

Actions 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

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.

#### Role of the European Parliament

The EP 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. The TVwF Directive was adopted in 1989 and the EP has strongly supported it ever since. However, later technological and market developments made it necessary to amend the audiovisual regulatory framework. The TVwF Directive was revised in 1997 and 2007. With the last revision, the directive was renamed the Audiovisual Media Services Directive (AVMSD).

##### 2. Audiovisual Media Services Directive (AVMSD)

The AVMSD Directive 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 the EP and the Council that took into account most of the concerns raised in the EP'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 the EP adopted its report on the implementation of the AVMS Directive. In it, the EP presents several observations and recommendations, in particular 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, the EP 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.

Recently, the EP's CULT Committee voted a motion for an EP resolution on Preparing for a Fully Converged Audiovisual World (in response to the Commission's Green Paper on the same issue). In this, the EP takes note of the convergence of markets, stresses the need to preserve access and findability and to safeguard diversity and funding models, and analyses infrastructure and frequencies, values, and the regulatory framework.

→ Miklós Györfi

### 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 other<sup>[1]</sup>.*

<sup>[1]</sup> (See also 5.13.4 on Higher Education).

#### 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. 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. While the responsibility for education and training systems lies with the Member States, the EU plays a key role in supporting and supplementing efforts to improve and modernise their education systems. The objectives, instruments and arrangements for joint work at EU-level are outlined in the strategic framework, referred to as Education and Training (ET) 2020. This framework is valid until 2020 and also includes the Copenhagen Process on cooperation in the area of vocational education and training. Within ET 2020, priority areas are identified to plan activities over work cycles of three years.

Progress is monitored with the help of indicators and against a set of benchmarks (see below), designed to contribute to evidence-based policy making and identify challenges. Core indicators are also used to monitor progress in a number of additional priority areas currently not covered by benchmarks, such as languages, adult skills, investment in education and training, ICT in education, entrepreneurship in education, and vocational education and training (VET).

Under the Europe 2020 strategy, Member States are given specific guidance on priority reforms each year in the form of country-specific recommendations.

The specific objectives pursued by the Erasmus+ programme in the field of education and training are to:

- improve the level of key competences and skills, with particular regard to their relevance for

the labour market<sup>[1]</sup> and their contribution to a cohesive society;

- foster quality improvements, excellence in innovation and internationalisation at the level of education and training institutions;
- promote the emergence of and raise awareness on a European lifelong learning area designed to complement policy reforms at national level, and to support the modernisation of education and training systems;
- enhance the international dimension of education and training;
- improve the teaching and learning of languages and to promote the EU's broad linguistic diversity and intercultural awareness.

Indicators and benchmarks are important means of measuring progress in education and training. As part of ET 2020, the following EU benchmarks for 2020 have been set:

- at least 95% of children between 4 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 to 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;
- at least 20% of higher education graduates and 6% of 18 to 34-year-olds with an initial vocational qualification should have spent some time studying or training abroad;
- the share of employed graduates (20 to 34-year-olds having successfully completed upper secondary or tertiary education) having left education 1 to 3 years ago should be at least 82%<sup>[2]</sup>.

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).

### C. Youth on the Move

Youth on the Move is a comprehensive package of policy initiatives on education and employment for young people in Europe. Launched in 2010, it is part of the Europe 2020 strategy. The initiative aims to improve young people's education and employability, to reduce high youth unemployment and to increase the youth employment rate, in line with the wider EU target of achieving a 75% employment rate for the working-age population (20-64 years).

### D. The Erasmus+ programme (2014-2020)

The fields of education, training and sport have been recognised as key drivers within the EU's growth strategy for the coming decade to overcome the socio-economic crisis affecting European countries, to boost growth and jobs and to foster social equity and inclusion.

Against this background, Erasmus+ is the EU programme for the fields of education, training, youth and sport for the period 2014-2020. It builds upon earlier Union initiatives promoting exchanges and the development of education and training systems and youth work.

Erasmus+ is designed to support countries' efforts to efficiently use the potential of Europe's human and social capital, while affirming the principle of lifelong learning by linking support to formal, non-formal and informal learning throughout the fields of education, training and youth. Erasmus+ is the result of the integration of the following EU programmes implemented during the 2007-2013 period:

- The Lifelong Learning programme;
- The Youth in Action programme;
- The Erasmus Mundus programme;
- Tempus;
- Alfa;
- Edulink;
- Cooperation programmes with industrialised countries in the field of higher education.

The ambitious goal of the new Erasmus+ is to go beyond these programmes by promoting synergies and cross-fertilisation throughout the different fields of education, training and youth, removing artificial boundaries between the various actions

<sup>[1]</sup> According to business people, European education and training systems continue to fall short in providing the right skills for employability, and are not working adequately with business or employers to bring the learning experience closer to the reality of the working environment.

<sup>[2]</sup> See Europe 2020 strategy: [http://ec.europa.eu/europe2020/index\\_en.htm](http://ec.europa.eu/europe2020/index_en.htm). Five of the Europe 2020 flagship initiatives depend on the modernisation of education and training systems: Youth on the Move, the Agenda for New Skills and Jobs, the Digital Agenda, the Innovation Union and the Platform against Poverty.



and project formats, fostering new ideas, attracting new actors from the world of work and civil society, and stimulating new forms of cooperation.

Erasmus+ will represent a sensible consolidation of the former separated programmes, while maintaining the well-established individual brand identities thereof through the following lines:

- Erasmus+: Comenius — school education;
- Erasmus+: Erasmus — higher education;
- Erasmus+: Erasmus Mundus — joint Master's degrees;
- Erasmus+: Leonardo da Vinci — vocational education and training;
- Erasmus+: Grundtvig — adult learning;
- Erasmus+: Youth in Action — youth non-formal and informal learning (e.g. volunteering).

### 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<sup>[1]</sup>.

→ Ana Maria Nogueira

<sup>[1]</sup> [http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2011/0371\(COD\)&l=EN](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2011/0371(COD)&l=EN)

### 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’<sup>[1]</sup>. This stipulation was later included verbatim in the Treaty of Nice, which entered into force on 1 January 2003<sup>[2]</sup>, and also forms an integral part of the Lisbon Treaty, serving as the constitutional basis of the EU since 1 January 2009<sup>[3]</sup>.

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’<sup>[4]</sup>.

#### 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 in education and training

The Europe 2020 strategy has raised European political interest in higher education<sup>[5]</sup>. Focused

<sup>[1]</sup> See OJ C 191, 29.7.1992 (<http://old.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:11992M/TXT:EN:HTML>).

<sup>[2]</sup> See Consolidated Version of the Treaty Establishing the European Community (TEC; OJ C 325, 24.12.2002, pp. 33-184; <http://old.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12002M/TXT:EN:HTML>), Chapter 3, Article 149(1).

<sup>[3]</sup> See Consolidated Version of the Treaty on the Functioning of the European Union (TFEU; OJ C 115, 9.5.2008, pp. 47-199; <http://old.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E/TXT:EN:HTML>), Title XII, Article 165(1). While otherwise keeping exactly the same wording as the former Article 149(1) TEC, Article 165(1) TFEU solely adds an additional reference to sport in a separate paragraph.

<sup>[4]</sup> See especially Article 14(1): ‘Everyone has the right to education and to have access to continuing and vocational training’.

<sup>[5]</sup> See the Europe 2020 strategy paper, published in March 2010 (COM(2010) 2020) (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:2020:FIN:EN:PDF>). For additional information see the Commission’s website: [http://ec.europa.eu/europe2020/index\\_en.htm](http://ec.europa.eu/europe2020/index_en.htm)

on 'smart', 'sustainable' and 'inclusive' growth, the goals of Europe2020 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)<sup>[1]</sup>. 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<sup>[2]</sup>. In addition to the 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 integrated the EU's educational and training initiatives, Erasmus — supporting exchanges of students and staff, as well as cooperation between institutions — was the sub-programme dedicated to Higher Education<sup>[3]</sup>. Launched as early as 1987, Erasmus became not only the largest student exchange programme in the world, but also one of the most successful EU initiatives and best known European brand names. 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<sup>[4]</sup>.

<sup>[1]</sup> The second key target in the field of (higher) education is reducing the rates of early school leavers to below 10%.

<sup>[2]</sup> See OJ C 119, 28.5.2009, pp. 2-10 (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:119:0002:010: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.

<sup>[3]</sup> For an overview see [http://ec.europa.eu/education/lifelong-learning-programme/erasmus\\_en.htm](http://ec.europa.eu/education/lifelong-learning-programme/erasmus_en.htm).

<sup>[4]</sup> For detailed data see European Commission (2012). The Erasmus Programme 2010-2011: A Statistical Overview ([http://ec.europa.eu/education/library/statistics/ay-10-11/report\\_en.pdf](http://ec.europa.eu/education/library/statistics/ay-10-11/report_en.pdf)). Here: p. 11.

### 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 which is of increasing importance, is mainly focused on higher education. The five main goals defined by the Commission are:

- to support Member States and higher education institutions in the EU and beyond in their internationalisation efforts;
- 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<sup>[5]</sup>.

The EU's international cooperation programmes in higher education include:

- Erasmus Mundus, enhancing higher education on a global scale (joint European Master's 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<sup>[6]</sup> and designed for the EU's next multiannual financial framework (2014-2020), the central aim of Erasmus+ is to invest in Europe's education, training and youth through a

<sup>[5]</sup> See [http://ec.europa.eu/education/policy/international-cooperation/index\\_en.htm](http://ec.europa.eu/education/policy/international-cooperation/index_en.htm).

<sup>[6]</sup> See COM (2011) 788 final

single integrated programme. Formally adopted in December 2013 and in application since 1 January 2014, the new programme<sup>[1]</sup> 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:

1. learning mobility of individuals;
2. cooperation for innovation and good practice; and
3. 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 2014-2020 period. 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<sup>[2]</sup>. 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). 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 (the Development Cooperation Instrument, the European Neighbourhood Instrument, the Partnership Instrument for cooperation with third countries and the Instrument for Pre-accession Assistance)<sup>[3]</sup>. Thus higher education has been and continues to be 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 provided for a strong bargaining position in the debates on the next series of (culture and education) programmes for the 2014-2020 period, in particular Erasmus+<sup>[4]</sup>.

→ Markus J. Prutsch

<sup>[1]</sup> Regulation (EU) No 1288/2013 of the European Parliament and of the Council of 11 December 2013 establishing 'Erasmus+: the Union programme for education, training, youth and sport and repealing Decisions No 1719/2006/EC, No 1720/2006/EC and No 1298/2008/EC (OJ L 347, 20.12.2013, pp. 50-73; <http://old.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:347:0050:0050:EN:PDF>).

<sup>[2]</sup> See [http://ec.europa.eu/programmes/erasmus-plus/documents/erasmus-plus-at-a-glance\\_en.pdf](http://ec.europa.eu/programmes/erasmus-plus/documents/erasmus-plus-at-a-glance_en.pdf).

<sup>[3]</sup> The allocation of that funding will only be determined in the multiannual indicative programming of these external instruments.

<sup>[4]</sup> On the legislative process see [http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2011/0371\(COD\)](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, being 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 socio-educational 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, which 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 now has 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 focused mainly 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 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 greater account of the youth dimension 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, in June 2002, the Council of the European Union 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. EU Youth Strategy 2010-2018

In April 2009, the Commission presented a 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, during the period 2010 to 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 Council of Youth Ministers 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. 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, Parliament and the Council adopted Decision No 1719/2006/EC, establishing the Youth in Action programme for the period 2007 to 2013. This document forms the legal basis of the programme for its entire duration. The programme concerns young people aged between 15 and 28 (in some cases between 13 and 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 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 skills, 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. Volunteering is a core part of several EU programmes that mainly promote the mobility of volunteers, such as the Youth in Action programme (notably through the European Voluntary Service), Erasmus+ 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' (see 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 a communication entitled 'An EU Agenda for the Rights of the Child' (COM(2011) 0060). Its 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, as 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, as well as 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 of human beings and sexual exploitation. Funding totalling EUR 116 million is available to the programme for the period 2007–13.

### 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 public debate. The protection of children and young people is a key element of audiovisual policy at EU-level and it 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 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 to 2020

Integrating and keeping young people in education and the labour market is becoming a huge challenge and a huge priority for European societies, leading many observers to fear that young people, by the combined effects of educational failure and unemployment, are seeing their chances of a fulfilling and productive life seriously diminished.

Erasmus+ is the European Union programme for education, training, youth and sport for 2014–2020. It is designed to support Member States' efforts to efficiently use the potential of Europe's human and social capital, while confirming the principle of lifelong learning by linking support to formal, non-formal and informal learning. More than 5.5 million young people are unemployed in the EU-28 area today. This represents an unemployment rate of 23.4% (40% in some countries), meaning that more than one in five young Europeans on the labour market cannot find a job.

The statistics show that young people are facing 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<sup>[1]</sup>.

<sup>[1]</sup> 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-touchees-par-la-pauvrete-selon-le-secours-catholique\\_1600255\\_3224.html](http://www.lemonde.fr/societe/article/2011/11/08/les-jeunes-sont-les-plus-touchees-par-la-pauvrete-selon-le-secours-catholique_1600255_3224.html)).



In the present challenging social<sup>[1]</sup> 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.'<sup>[2]</sup>

Erasmus+ contains a specific chapter on youth, with a series of specific objectives and well-defined types of actions designed to raise skills and to help tackle the high levels of youth unemployment in many Member States (40% in some countries).

Specific objectives:

- improve the level of key competences and skills of young people, including those with fewer opportunities, and promote participation in democratic life in Europe and the labour market, active citizenship, intercultural dialogue, social inclusion and solidarity;
- foster quality improvements in youth work, in particular through enhanced cooperation between organisations in the youth field and/or other stakeholders;
- complement policy reforms at local, regional and national level and support the development of knowledge and evidence-based youth policy;
- enhance the international dimension of youth activities and the role of youth workers and organisations as support structures for young people.

These objectives will be pursued through the following types of actions:

- learning mobility of individuals;
- cooperation for innovation and the exchange of good practices;
- support for policy reform.

Erasmus+ includes the Student Loan Guarantee Facility, which is aimed at students who want to study abroad for a full Master's degree. Loans ranging from EUR 12 000 for a one-year Master's to EUR 18 000 for a two-year Master's will be available.

In April 2013, the Council adopted a recommendation on establishing a Youth Guarantee 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. The good-quality offer should be for a job, apprenticeship, traineeship or continued education and be adapted to each individual and situation.

### Role of the European Parliament

Parliament has always supported close cooperation between Member States in the youth field. In the process of adopting the Youth in Action programme, Parliament called for a significant increase in the budget allocated along with 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. To encourage young people to pursue European projects of their own, Parliament and the Foundation of the International Charlemagne Prize of Aachen launched the European Charlemagne Youth Prize in 2008. The prize is awarded to projects which promote European and international understanding, foster the development of a shared sense of European identity and integration, and offer practical examples of Europeans living together as one community. On 16 January 2013, Parliament adopted a resolution (P7\_TA(2013)0016) strongly supporting the initiative of the youth guarantee schemes, and stressing that the effective implementation of the schemes requires close cooperation between the Commission and Member States and, at national level, among social partners, local and regional authorities, public and private employment services and local and regional education and training institutes.

→ Ana Maria Nogueira

<sup>[1]</sup> 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.

<sup>[2]</sup> 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 in Europe's competitiveness. One of the objectives of the EU's language policy 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, as are 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: every 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 to create an environment that is friendly towards all Member State languages. Foreign language competence is regarded as one of the basic skills that all EU citizens need to acquire in order to improve their 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, therefore, the EU's objective is for every citizen to master two

languages in addition to his or her mother tongue. In order to achieve this objective, children are to be taught two foreign languages at school from an early age (COM(2008) 0566).

The 'Education and Training 2020' strategic framework identifies language learning as a priority. Communication in foreign languages is one of eight key competences needed to improve the quality and efficiency of education and training. In addition to the main skill dimensions of communication in the mother tongue, this includes mediation and intercultural understanding.

EU education policies are increasingly driven by the Europe 2020 strategy. In this context, language skills are crucial to the 'Agenda for new skills and jobs' initiative, enhancing employability as they do. They are also a prerequisite for mobility, hence the successful implementation of the new flagship initiative 'Youth on the move'.

### Achievements

#### A. Support programmes

##### 1. Erasmus+ Programme

Erasmus+, which started in January 2014, is the new EU programme for Education, Training, Youth and Sport for 2014-2020. The promotion of language learning and linguistic diversity is one of the programme's specific objectives. The Erasmus+ Programme Guide states:

'The opportunities put in place to offer linguistic support are aimed to make mobility more efficient and effective, to improve learning performance and therefore contribute to the specific objective of the Programme.'

Linguistic support is available for the language used by participants for studying, carrying out a traineeship or volunteering abroad in the framework of long-term mobility activities supported under Key Action 1. Linguistic support is mainly offered online, as e-learning offers advantages for language learning in terms of access and flexibility.'

The Erasmus+ Programme Guide also states: 'Under Key Action 2, Strategic Partnerships in the area of language teaching and learning will be encouraged. Innovation and good practice aiming

to promote language skills can include for example teaching and assessment methods, development of pedagogical material, research, computer assisted language learning and entrepreneurial ventures using foreign languages. Furthermore, funding for linguistic support can be provided when necessary to beneficiaries of Strategic Partnerships who organise long-term training and teaching activities for staff, youth workers and learners.'

## 2. Creative Europe Programme

In addition to educational and training programmes, financial assistance for language projects is available under the Creative Europe programme, in which support is provided for the translation of books and manuscripts under the Culture sub-programme.

## 3. Other support

The EU supports the European Centre for Modern Languages (ECML), whose mission is to encourage excellence and innovation in language teaching, and to help Europeans learn languages more efficiently. The ECML's main aims are to help Member States implement effective language teaching policies by:

- focusing on the learning and teaching of languages;
- promoting dialogue and exchange among those active in the field;
- supporting programme-related networks and research projects.

The ECML runs four-year programmes to promote excellence in European language education.

The EU has adopted various measures for the preservation and promotion of regional and minority languages. They include the Mercator European Research Centre on Multilingualism and Language Learning which is part of a network of five research and documentation centres specialising in regional and minority languages within the European Union. Activities for which support was provided also include:

- other projects for regional and minority languages such as ADUM (a project offering information on EU programmes relevant for the funding of minority language promotion projects), the Celtic, Regional and Minority Languages Abroad Project (CRAMLAP) and the Network to Promote Linguistic Diversity (NPLD);
- sign languages (Dicta-Sign and SignSpeak);
- bilingual education (E-content and language-integrated learning (ECLIL)).

## B. Other EU initiatives

### 1. Action plan and framework strategy

In response to an EP resolution of 13 December 2001 on regional and lesser-used European languages

and to a relevant Council resolution (2002/C 50/01), in July 2003 the Commission adopted an action plan on 'Promoting language learning and linguistic diversity' (COM(2003) 0449), 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 at national and European level were summed up by the Commission in a report (COM(2007) 0554) in autumn 2007. This report is intended to serve as the basis for further measures in the field of multilingualism policy.

In 2008 the Commission adopted a communication entitled 'Multilingualism: an asset for Europe and a shared commitment', which laid down a framework for the EU's policy on multilingualism. The communication called for the mainstreaming of multilingualism throughout all relevant policy areas, reached out to a wide range of stakeholders, and recommended close cooperation with, and among, them. The 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).

### 2. Raising awareness of the importance of foreign languages

Encouraged by the huge success of the European Year of Languages (2001), the EU and the Council of Europe decided to celebrate the European Day of Languages every year on 26 September, with all sorts of events to promote language learning. Like the earlier European Year of Languages, this action is designed to raise awareness among citizens of the many languages spoken in Europe and to encourage 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). The framework was set out in a Commission communication adopted on 13 April 2007 (COM(2007) 184). This indicator is intended to make a substantial contribution to achieving the 'mother tongue + two' objective 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 called Poliglotti4.eu<sup>[1]</sup>. This is a project to promote multilingualism in Europe that resulted from 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.

#### Role of the European Parliament

The EP has drawn up own-initiative reports on a number of occasions to give fresh impetus to the development of language policy in Europe. In particular, reports by the Committee on Culture and Education have 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 EU languages are equally important: all parliamentary documents are translated into all

the official languages of the EU and every Member of the European Parliament has the right to speak in the official language of his or her choice. On 19 November 2013 the EP adopted the 'Erasmus+' and 'Creative Europe' programmes. Films, video and multimedia games, documentaries and short films will be eligible for 'Creative Europe' support in the audiovisual field. The EP added a specific provision on funding for the subtitling, dubbing and audio description of European films, which should facilitate access to, and the circulation of, European works across borders.

On 11 September 2013 the EP adopted a resolution on endangered European languages and linguistic diversity in the European Union (P7\_TA(2013)0350), calling on the European Union and the Member States to be more attentive to the extreme threat that many European languages, classified as endangered, are experiencing, and to commit wholeheartedly to the protection and promotion of the unique diversity of the Union's linguistic and cultural heritage.

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→ Miklós Györffi

<sup>[1]</sup> <http://www.poliglotti4.eu/en/index.php>

## 5.13.7. Sport

*With the entry into force of the Treaty of Lisbon in December 2009, the European Union (EU) acquired, for the first time, a specific competence in the field of sport. 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 policy for sport, giving the EU the power to support, coordinate and supplement sport policy measures taken by 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 sport policy are described as being: (1) to promote fairness and openness in sporting competitions and cooperation between bodies responsible for sports; and (2) to 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 now has a legal basis to develop a specific EU programme for sport, 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 ministers for sport will now also meet in official Sport Council meetings. The first official EU Sport Council took place on 10 May 2010. On 16 September 2010, the European Council changed the name of the Education, Youth and Culture Council: it is now officially 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 has over the years developed extensive and important case-law that has had major implications for the world of sport (such as the 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 policy for sport, as outlined in the 2007 White Paper on sport and its associated 'Pierre de Coubertin action plan', with

implementation of the latter beginning 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 Treaty of Lisbon has spurred the Commission to begin work on a proposal for a fully-fledged EU programme for sport 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 by the EU. Through the implementation of the proposed measures, the Commission has gathered useful evidence regarding themes to be addressed in the future. The White Paper paved the way for the Commission communication of January 2011 on the impact of the Treaty of Lisbon on sport, 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 EU, including: 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; fighting 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 the 'Pierre de Coubertin' action plan. 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 programme for sport

In its resolution on the Commission's White Paper on sport of 14 April 2008, Parliament called on the Commission to propose an EU programme for sport and preparatory actions in the field of sport as of 2009. Parliament 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 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 with a view to the implementation of the treaty provisions on sport. The EU programme for sport 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 objectives.

Sport is an integral part of Erasmus+, the new EU programme for education, training, youth and sport for 2014-2020, with a specific chapter and budget, which will allow the EU to concentrate on issues that cannot be dealt with efficiently at national level.

Erasmus+ activities in the field of sport aim to support actions that increase capacity and professionalism, improve management competence, and increase the quality of EU project implementation, as well as creating links between sport sector organisations. The EP was extremely keen for these actions to be focused on grass-roots sports as well as on support for projects designed to combat intolerance and discrimination.

### C. Developing the European dimension in sport

In January 2011, the Commission launched a communication on the impact of the Treaty of Lisbon on sport, entitled 'Developing the European dimension in sport'. This is the first policy document adopted by the Commission in the field of sport since the treaty came into force. Building on the 2007 White Paper, this 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 Commission calls on sports associations to establish mechanisms for the collective selling of media rights in order to ensure adequate redistribution of revenue. Other issues addressed deal with sport-related intellectual property rights, promotion of exchanges of best practice on transparent and sustainable sports financing, and monitoring the application of state aid law in the field of sport.

### Role of the European Parliament

Parliament is very much of the view that there is a growing need for the EU to deal with sports matters while at the same time fully respecting the principle of subsidiarity. Within Parliament, the development of a European sport policy falls under the competence of the Committee on Culture and Education (CULT). Parliament 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 legislative term, the CULT Committee drafted a report on the European dimension in sport, based on the communication 'Developing the European dimension in sport'.

The EP 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, namely the fight against match-fixing and financial fair play. In March 2013 the EP 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 stems naturally from the EU's obligation to explain its functioning and policies, as well as 'European integration' more generally, to the public. The need for effective communication has a legal basis in the Charter of Fundamental Rights of the EU, which guarantees the right of all citizens to be informed about European issues. Since its formal launch in 2012, the new European Citizens' Initiative has allowed 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 and 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<sup>[1]</sup>. The main articles in the Charter that deal with information and communication are Article 11 (right to information and freedom of expression, as well as freedom and diversity of the media), Article 41 (right to be heard and right of access to documents relating to oneself), Article 42 (right of access to the documents of the European institutions) and Article 44 (right of petition). For actions for which there is no separate legal basis in the 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<sup>[2]</sup>.

### Objectives

Communicating with citizens has long been a primary concern of the European institutions, with the aim of fostering trust in the European project. With the 'no' votes in the referenda on the European Constitution in France and the Netherlands (May 2005), followed by the rejection of the Lisbon Treaty in Ireland (June 2008), the EU took a series of measures intended to improve 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 also, 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. Since 2012, the European Citizens' Initiative (ECI), an innovation in the Lisbon Treaty, has allowed citizens to directly suggest new EU legislation.

### Achievements

Since 2005, the Commission<sup>[3]</sup> has released a number of policy documents on communication. These reflect the high profile of this policy, which is based on three principles:

- listening to the public, and taking their views and concerns into account;
- explaining how 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 (a selection):

- the Europe for Citizens Programme (see also below);
- Communicating Europe in Partnership (see also below);
- Communicating about Europe via the Internet — Engaging the Citizens;
- Debating 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;
- Communicating Europe through Audiovisual Media, the European Radio Network (<http://www.euranet.eu>), and Presseurop (<http://www.presseurop.eu>), and boosting coverage of EU affairs on new and existing audiovisual platforms;

<sup>[1]</sup> See OJ C 83, 30.3.2010, p. 389.

<sup>[2]</sup> See Consolidated Version of the Treaty on the Functioning of the European Union (OJ C 115, 9.5.2008, p. 199;

<sup>[3]</sup> 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.

- 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 successor**

Following calls made at both the Tampere (1999) and Nice (2000) European Council meetings 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 and of the Council for the period 2007 to 2013 with an overall financial envelope of EUR 215 million<sup>[1]</sup>. Based on the recommendation made following the Programme's mid-term evaluation in 2010, the Commission formally suggested, in December 2011, continuing the Europe for Citizens Programme — albeit in a slightly revised form — within the next Multiannual Financial Framework 2014-2020<sup>[2]</sup>. The principal objectives are stated as 'strengthening remembrance and enhancing capacity for civic participation at the Union level'<sup>[3]</sup>, and the new programme was formally adopted by the Council of the European Union on 14 April 2014 (Council Regulation (EU) No 390/2014)<sup>[4]</sup>. Entrusted with a total budget of EUR 185.5 million, thus representing a reduction in comparison with both its predecessor programme and the original Commission proposal, Europe for Citizens 2014-2020 will offer funding in two thematic areas: (1) European Remembrance, focusing on the historical coming into being of the European project; and (2) Democratic Engagement and Civic Participation, aimed at strengthening citizens' understanding of EU policies and, in particular, securing the active involvement of civil society in European policymaking.

### **C. Communicating Europe in Partnership**

The year 2009 was the first in which interinstitutional communication priorities were agreed between Parliament, the Council and the Commission under the joint declaration on Communicating Europe in Partnership<sup>[5]</sup>, signed in December 2008. The four priorities selected were the European 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 stated in the 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'<sup>[6]</sup>.

### **D. The European Citizens' Initiative**

The introduction of the European Citizens' Initiative (ECI) under 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 relating to the citizenship of the Union and increase the public debate around European policies, helping to build a genuine European public space. It is hoped that its implementation will essentially reinforce citizens' and organised civil society's involvement in the shaping of EU policies. As required by the Treaty, on a proposal from the Commission, in 2011 Parliament and the Council adopted a regulation defining the rules and procedure governing this new instrument<sup>[7]</sup>. The ECI allows one million citizens from at least one quarter of the EU Member States to invite the Commission to bring forward proposals for legal acts in areas in which the Commission has the power to do so. The organisers of a citizens' initiative — a citizens' committee composed of at least seven EU citizens resident in at least seven different Member States — have one year to collect the necessary statements of support, the number of which has to be certified by the competent authorities in the respective Member States<sup>[8]</sup>.

### **Role of the European Parliament**

The entry into force of the Treaty of Lisbon had an almost immediate impact on the work of the EU institutions, with a stronger focus on delivering results to EU citizens through more streamlined and democratic decision-making. In particular, the Reform Treaty has reinforced the role of Parliament in shaping Europe. As the directly elected representative of the body of European citizens, Parliament has a clear responsibility to communicate what Europe is about and to articulate and act upon citizens' interests in Europe. In its reports, Parliament

<sup>[1]</sup> See OJ L 378, 27.12.2006, p. 32.

<sup>[2]</sup> See COM(2011) 884 ([http://ec.europa.eu/citizenship/pdf/doc1383\\_en.pdf](http://ec.europa.eu/citizenship/pdf/doc1383_en.pdf)).

<sup>[3]</sup> Ibid., p. 3.

<sup>[4]</sup> See OJ L 115, 17.04.2014, p. 3 (<http://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=OJ:L:2014:115:FULL&from=EN>).

<sup>[5]</sup> See COM(2007) 569.

<sup>[6]</sup> Ibid., p. 4.

<sup>[7]</sup> See OJ L 65, 11.3.2011 (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:065:0001:0022:EN:PDF>).

<sup>[8]</sup> For more information on the European Citizens' Initiative and an overview of open and closed initiatives, see <http://ec.europa.eu/citizens-initiative/public/welcome>

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, it proposed concrete ways in which EU citizens can be more involved in debates on European issues<sup>[1]</sup>. The report looked at how communication can initiate, encourage and further 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 Parliament's increasing power, the turnout in European elections has been falling steadily since the first direct vote in 1979. In order to reverse this tendency, Parliament

is increasingly using the internet to reach out to citizens online. This goes in particular for election years, which prove especially appealing for the use of social media and content-sharing web platforms.

Current trends of increased indifference or even hostility towards the EU among European citizens — along with the current financial crisis and the apparent lack of solutions, as well as strong political responses from EU leaders — call in particular for appropriate communication strategies and policies at European level. Taking an active part in shaping such strategies and policies is not only one of Parliament's obligations towards the European citizens it actually represents, but is also in its own interests.

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→ Markus J. Prutsch

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<sup>[1]</sup> See Parliament resolution of 7 September 2010 on 'journalism and new media – creating a public sphere in Europe' (P7\_TA(2010)0307;

# 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

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## 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.

→ Wanda Troszczyńska-van Genderen

## 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 provides the policy framework for a number of permanent political and military structures and for 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 policies, the CSDP has acquired a major strategic orientation — and 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)<sup>[1]</sup>. The CSDP is framed by the Treaty on the European Union (TEU). Article 41 outlines the funding of the CFSP and CSDP, and the policy is further described in Articles 42-46, in 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 the 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 European Union (Article 42 TEU). They are taken by unanimity, with some notable exceptions relating to the European Defence Agency (EDA, Article 45 TEU) and permanent structured cooperation (PESCO, Article 46 TEU), where majority voting applies. Proposals for decisions are normally made by the High Representative of the Union for Foreign Affairs and Security Policy, who also acts as Vice-President of the European Commission (VP/HR).

The Lisbon Treaty introduced the notion of a European capabilities and armaments policy (Article 42(3) TEU), though this has yet to be framed. It also established a link between the CSDP and other Union policies by requiring that the EDA and the Commission work in liaison when necessary (Article 45(2) TEU). This concerns in particular the Union's research, industrial and space policies, through which Parliament was empowered to seek to develop a much stronger bearing on CSDP than it has had in the past.

### Role of the European Parliament

Parliament has the right to scrutinise the CSDP and to take the initiative of addressing the VP/HR and the Council on it (Article 36 TEU). It also exercises authority over the policy's budget (Article 41 TEU). Twice a year, Parliament holds debates on progress in implementing the CFSP and the CSDP, and adopts reports: one on the CFSP, drafted by the Committee on Foreign Affairs and including elements relating to the CSDP where necessary; and one on the CSDP, drafted by the Subcommittee on Security and Defence.

Since 2012 the European Parliament and the Member States' national parliaments have organised two interparliamentary conferences every year to debate matters of common foreign and security policy. Interparliamentary cooperation in these areas is foreseen by Protocol 1 to the Lisbon Treaty, which describes the role of the national parliaments in the EU.

Innovations in the Lisbon Treaty have provided an opportunity to improve the political coherence of the CSDP. The VP/HR occupies the central institutional role, chairing the Foreign Affairs Council in its 'Defence Ministers configuration' (the EU's CSDP decision-making body) and directing the EDA. The political framework for consultation and dialogue with Parliament is evolving in order to allow Parliament to play a full role in developing the CSDP. Under the Lisbon Treaty, 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 to communicate how this contributes to security at home.'

<sup>[1]</sup> See Title V ('General Provisions on the Union's External Action and Specific Provisions on the Common Foreign and Security Policy (CFSP)') of the Treaty on European Union (TEU); see also 6.1.1 on the EU's foreign policy.

### Issues of interest to the European Parliament

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 the EU's citizens. Deliberations, hearings and workshops are held regularly, devoted to topics including:

- the more than 20 civilian and military CSDP missions in the southern Caucasus region, 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 with regard to arms control and the non-proliferation of weapons of mass destruction;
- combating international terrorism, piracy, organised crime and trafficking;
- strengthening Parliament's role in the CSDP through EU policies with implications for security and defence (such as internal and border security, research, and industrial and space policies);
- good practices to improve the effectiveness of security and defence investments and to strengthen the technological and industrial base, 'smart defence' and 'pooling and sharing';
- institutional developments with regard to: EU military structures; security and defence cooperation within the Union; the EDA; and other EU agencies and structures in the domain of security and defence<sup>[1]</sup>;
- legislation and political resolutions relating to security and defence, particularly as they pertain to the above-mentioned topics.

Parliament participates in Joint Consultation Meetings (JCMs) held on a regular basis with the Council, the European External Action Service (EEAS) and the Commission. These meetings permit the exchange of information on CSDP missions and operations, on implementing the CFSP budget, and on regions of interest and concern. They are part of the consultations between Parliament and other EU institutions involved in the CFSP and CSDP that have been implemented since the VP/HR's declaration on political accountability in 2010 (6.1.1).

<sup>[1]</sup> Inter alia, the EU Satellite Centre (EU SatCen), the EU Institute for Security Studies (EUISS), the European Security and Defence College (ESDC) and the Organisation for Joint Armaments Cooperation (OCCAR).

Given the key role that the North Atlantic Treaty Organisation (NATO) plays in underwriting European security, Parliament participates in the NATO Parliamentary Assembly with a view to developing the EU-NATO relationship 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

While the CSDP has not changed substantially since the Lisbon Treaty entered into force in 2009, it has great potential to evolve, both politically and institutionally.

The principal achievements of the CSDP to date are the consolidation of related EU structures under the aegis of the EEAS, and the Council's definition of the EDA's statute, seat and operational rules, as foreseen in 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 Battlegroups<sup>[2]</sup> have not been deployed, and the permanent headquarters for EU operations has yet to be instituted.

Parliament has taken the lead in scrutinising the advancement of the CSDP and analysing the policy's setbacks. Parliament is urging the Council and the Member States to improve the policy's effectiveness.

Recognising the need to provide a strategic impetus for heads of state and government, the European Council set a number of initial targets in December 2013 to advance the CSDP.

Deliverables expected in 2014 include:

- a maritime security strategy (to be produced by June 2014);
- recommendations on equipment support;
- a report on financing CSDP missions and operations;
- implementation proposals on rapid response including EU Battlegroups;
- an options paper with proposals to support Sahel/Saharan border management;
- a roadmap to develop defence industrial standards;
- an EU cyberdefence policy framework;

<sup>[2]</sup> The EU Battlegroup Concept provides a CSDP instrument for early and rapid military crisis responses. A Battlegroup is a force package — composed of about 1 500 (normally multinational) personnel (a minimum to ensure militarily effectiveness) — capable of standalone operations or of conducting the initial phase of larger operations. EU Battlegroups have been operational since January 2005.

- a policy framework for defence cooperation;
- EDA reports on Member States' effective and efficient cooperation in pooled procurement projects;
- a review of the Athena Mechanism.

To maintain momentum on these issues, the European Council has fixed the deadline for the related progress review for June 2015.

The CSDP could be advanced, the related institutional framework developed, and cooperation among Member States and with the Union's structures enhanced by:

- developing a strategic approach with a view to exploiting the full potential of the policy, as provided by the Lisbon Treaty and on the basis of an understanding of where the Union would add value; in such an approach a security and defence white paper should describe the balance to be achieved between the Union and the Member States;
- incorporating defence into the EU's research and innovation, space and industrial policies, as this would help harmonise civil and military requirements, and would help build CSDP capabilities;

- building on the Union's institutional framework — in the first instance by 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) — and by defining the roles of other Union and European agencies operating in the area of security and defence<sup>[1]</sup>;
- defining permanent structured cooperation, including EU support to Member States committing military capabilities (as provided for by Article 46 TEU);
- defining the relationship between the 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. Parliament has demonstrated its will to act and to pursue political initiatives in this field. To be more effective in the security and defence domain, however, Parliament will need the support of its national counterparts and of other European institutions.

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→ Ulrich Karock

<sup>[1]</sup> In particular 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 of security and defence (or 'dual use') relevance, inter alia in areas 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 competitiveness 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. They charged the 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 Europe 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 Europe 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, Singapore and Central American countries have also been concluded. Negotiations with individual members of the Association of Southeast Asian Nations (ASEAN) — notably Thailand, Vietnam and Malaysia — are under way. The EU has also opened FTA negotiations with the US, India, Japan and Canada. 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% of 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 those 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 2012, followed by the US and China. The EU's trade in goods with the rest of the world reached EUR 3 481 400 million in 2012.

#### The European Union as a trading power

##### Trade in goods

Country	Imports	Exports	Total
EU28 <sup>(1)</sup>	1 798.3	1 683.1	3 481.4
United States	1 817.8	1 203.1	3 020.9
China <sup>(2)</sup>	1 415.3	1 594.6	3 009.9
Japan	689.5	621.6	1 311.1
South Korea <sup>(3)</sup>	404.4	426.4	830.8
Canada	369.6	354.0	723.6
Russia	261.1	411.9	673.0
India	381.1	229.0	610.1
Mexico	296.1	288.6	584.7
Saudi Arabia	121.1	302.3	423.4
Australia	203.1	199.8	402.9
Brazil	181.6	188.8	370.4
Turkey	184.1	118.7	302.8

<sup>(1)</sup> External trade flows with extra-EU27.

<sup>(2)</sup> Excluding Hong Kong.

<sup>(3)</sup> 2010.

Source: European Commission, DG TRADE

Between 2011 and 2012, EU exports of goods increased. The US remained, by far, the most important destination for goods exported from the

EU in 2012 (see below), followed by Switzerland, China and Russia.

Destination of EU exports	% EU exports
United States	16.5
Switzerland	10
China (excl. Hong Kong)	8.5
Russia	7
Turkey	4.5
Japan	3
Norway	3
Rest of the world	47.5

Source: European Commission, DG TRADE

Imports to the EU also increased between 2011 and 2012. China was the EU's leading supplier of goods in 2012. Imports from Russia remained high, which meant that Russia remained the second-largest supplier of goods into the EU, as it had been in 2011 (see table).

Origin of EU imports	% EU imports
China (excl. Hong Kong)	16.5
Russia	12.5
United States	11.5
Switzerland	5.5
Norway	5.5
Japan	3.5
Turkey	3
Rest of the world	42

Source: European Commission, DG TRADE

The EU's traditional trade deficit shrank in 2012, due to the economic slowdown and depressed internal demand, when compared to the previous years and to 2006. This was also due to export growth; the EU's exports in 2012 grew nearly twice as much as its imports. The EU remains highly dependent on raw materials and fuels, but has effectively resisted foreign competition in sectors such as machinery and chemicals (see below).

EU trade, by category	2006		2010		2012	
	(EUR 1 000 million)	%	(EUR 1 000 million)	%	(EUR 1 000 million)	%
<b>Exports</b>						
Total	1 161.9	100.0	1 356.7	100.0	1 683.1	100.0
Food, drinks & tobacco	57.9	5.0	76.4	5.6	103.6	6.2
Raw materials	28.5	2.5	37.9	2.8	42.9	2.5
Mineral fuels, lubricants	59.0	5.1	76.2	5.6	125.6	7.5
Chemicals & related products	184.6	15.9	235.3	17.3	275.4	16.4
Other manufactured goods	294.2	25.3	311.7	23.0	379.4	22.5
Machinery & transport equipment	509.6	43.9	572.6	42.2	705.2	41.9
<b>Imports</b>						
Total	1 363.9	100.0	1 530.8	100.0	1 798.3	100.0
Food, drinks & tobacco	67.9	5.0	80.7	5.3	102.2	5.7
Raw materials	63.2	4.6	71.1	4.6	71.5	4.0
Mineral fuels, lubricants	339.6	24.9	383.2	25.0	548.2	30.5
Chemicals & related products	109.2	8.0	137.4	9.0	163.3	9.1
Other manufactured goods	341.6	25.0	362.4	23.7	387.8	21.6
Machinery & transport equipment	412.5	30.2	446.3	29.2	452.3	25.2
<b>Trade balance</b>						
Total	-202.0	—	-174.2	—	-115.2	—
Food, drinks & tobacco	-10.0	—	-4.3	—	1.4	—
Raw materials	-34.7	—	-33.3	—	-28.6	—
Mineral fuels, lubricants	-280.5	—	-307.0	—	-422.6	—
Chemicals & related products	75.3	—	97.8	—	112.1	—
Other manufactured goods	-47.4	—	-50.7	—	-8.4	—
Machinery & transport equipment	97.1	—	126.3	—	252.9	—

Source: European Commission, DG TRADE and Eurostat

The EU is the world leader in trade in services. It reported a EUR 152 200 million surplus in service transactions with the rest of the world in 2012, when exports reached EUR 654 600 million and imports EUR 502 400 million. Trade in services accounted for 24.9% of the EU's total imports of goods and services in 2012. 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 (70.2%) and exports (68.3%) in international trade in services in 2012 fell into three categories: transport, travel and business services.

#### EU Foreign Direct Investment

	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: European Commission, DG TRADE

→ 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 fairer and less prone to unilateral retaliatory measures.*

*The objective of creating a multilateral trading system based on common rules has, however, proved difficult to achieve in an increasingly multipolar world. Efforts to conclude a new round of negotiations focused on development (the 'Doha Development Round') have so far proved fruitless. This has frustrated the efforts of many WTO members, among them the EU, to find common ground, and has prompted several countries 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 Inter-Parliamentary Union (IPU). The role of the EP in scrutinising trade policy has increased since the Treaty of Lisbon entered into force in 2009.*

In the early decades of the twentieth 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'<sup>[1]</sup>.

With the evolution of international trade as it moved 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 earlier trade agreements — such as the GATT itself, the Agreement on Agriculture and the Agreement on Textile and Clothing — as well as additional general agreements. The most notable of the latter 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 has also secured the continuous promotion of free trade. With two thirds of its membership consisting

of developing countries, it also offers transition economies and least developed countries (LDCs) the possibility of employing trade to advance their development efforts.

### The trade dispute settlement mechanism

One of the major achievements of the WTO has been the consolidation of its Dispute Settlement Body, which has the power to rule on trade disputes and to enforce its decisions. The trade dispute settlement mechanism is a system of predefined rules giving WTO members, regardless of their political weight or economic clout, the possibility to lodge complaints over alleged breaches of WTO rules and to seek reparation. This mechanism reduces the unilateral defence mechanisms that countries had previously tended to adopt, many of which provoked retaliatory reactions by the targeted 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's dispute settlement system. The Union has been involved in 167 dispute settlement cases, 90 as complainant and 77 as defendant<sup>[2]</sup>. In a further 141 cases it has 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 its panels and its Appellate Body.

<sup>[1]</sup> GATT agreement (1947), introductory paragraph.

<sup>[2]</sup> Figures as at 1 April 2014.

The European Parliament closely monitors the evolution of disputes involving the EU. In the past, Parliament's Committee on International Trade has aired its views on 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 the US.

### The Doha Round

Since 2001 the WTO's members have been engaged in a broad round of multilateral trade negotiations known as 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 that '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' capacity to benefit from gains in international trade, and should help them to combat poverty. Consequently, the latest round has been given the name of the Doha Development Agenda (DDA).

The DDA is built on 3 pillars:

1. market access for agriculture products (including tariffs and subsidies), for industrial goods (also referred to as 'NAMA' or 'non-agricultural market access'), and for services;
2. rules, e.g. on 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 to developing countries, so that the weight of this group in the world trading system has grown enormously 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 tradeoffs that would ensue. Yet the successful conclusion of negotiations does not seem to be within reach, despite the best efforts of a number of participants, including the EU. This is a disappointment: concluding the round would help speed recovery from the global economic crisis and would 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 EP and the Inter-Parliamentary Union, regularly offers an opportunity for constructive participation (see below for more information on this conference). On several occasions, Parliament has called for negotiations to resume, emphasising the importance of the Doha Round for world trade and economic development.

Parliament has also been closely associated with negotiations for a more limited agreement. It sent a delegation to Bali in December 2003 to attend a parliamentary conference held in tandem with the WTO ministerial meeting.

### 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 Union as such 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 Commission rather than by the Member States. The Commission negotiates trade agreements and defends the EU's interests before the WTO Dispute Settlement Body on behalf of all 28 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 Parliament have been co-legislators and thus have equal say on international trade matters.

Through the WTO, the EU has also sought to promote a multilateral framework for trade negotiations, intended to complement, and possibly 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 one that is more open and multifaceted, 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 a 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 EP and the IPU 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.

This Conference provides a forum in which parliamentarians from all over the world can exchange opinions, information and experiences on international trade issues. It provides the WTO with a parliamentary dimension. Thus, among their activities, participants: monitor WTO activities; promote the effectiveness and fairness of the WTO; advocate transparency in WTO procedures; work to improve the dialogue between governments, parliaments and civil society; influence the direction of discussions within the WTO; and build up national parliaments' capacity in international trade matters.

The Parliamentary Conference on the WTO meets annually, as well as during WTO Ministerial Conferences.

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## 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 in the EU market should enable developing countries to participate more in international trade, thereby generating additional export revenue they can use 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 European Parliament and Council Regulation (EC) No 978/2012 of 25 October 2012<sup>[1]</sup>. This regulation implemented a

comprehensive reform of the scheme, effective from 1 January 2014.

Until 31 December 2013, the GSP scheme foresaw duty reductions for around 6 200 tariff lines (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 'standard' GSP, applied until the end of 2013, reduced duties on approximately 66% of all tariff lines to 111 countries and territories. In 2012, eligible countries exported goods worth EUR 40.7 billion under the scheme, corresponding to 70.2% of all EU imports benefiting from GSP preferences<sup>[2]</sup>.
- The special incentive arrangement for sustainable development and good governance, known as GSP+, has provided for zero duties on the approximately 66% of all tariff lines designated under the standard GSP for developing countries considered to be vulnerable. This has been 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 2012 the 15 countries that qualified (Armenia, Azerbaijan, Bolivia, Colombia, Costa Rica, Ecuador, El Salvador, Georgia, Guatemala, Honduras, Mongolia, Nicaragua, Peru, Paraguay and Panama) exported goods worth EUR 4.9 billion with these preferences; this represented 8.5% of all GSP preferences.

[europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:303:001:0082:EN:PDF](http://europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:303:001:0082:EN:PDF)

<sup>[1]</sup> Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012, <http://eur-lex>.

<sup>[2]</sup> European Commission, [http://trade.ec.europa.eu/doclib/docs/2013/december/tradoc\\_152015.pdf](http://trade.ec.europa.eu/doclib/docs/2013/december/tradoc_152015.pdf)

- The 'Everything But Arms' (EBA) initiative has granted duty-free and quota-free access for all products except arms and ammunition from least-developed countries (LDCs)<sup>[1]</sup>. Among the beneficiaries, the case of Myanmar/Burma has been of particular interest. EBA preferences for Myanmar/Burma had been suspended in 1997, but were reinstated on 19 July 2013, with retroactive application from 13 June 2012.
- Other countries with which the EU has preferential trade agreements — i.e. Mexico, South Africa and Tunisia — lost their GSP benefits. The list of these countries expanded when the multiparty agreement with Columbia and Peru, and the trade chapter of the Association Agreement with Central America became effective.
- There are 49 least developed countries which 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).

### The reformed GSP scheme

On 13 June 2012 Parliament adopted the Commission's proposal for a reform of the scheme of generalised tariff preferences<sup>[2]</sup>. As a result of these reforms, which took 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 became more focused:

- Narrowed income conditionality should ensure that vulnerable developing countries with low and lower-middle incomes become the main target group. This group encompasses 41 countries, including Bolivia, the Republic of Congo and Ukraine.
- 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, 90 countries will remain eligible.
- The criteria regarding eligibility for the GSP scheme have been relaxed. Previously, a country was eligible if its exports represented less than 1% of total EU imports from all GSP beneficiaries. Since 1 January 2014, this threshold has risen to 2%, which means that certain countries — including Pakistan and the Philippines — became eligible for the GSP+ scheme.
- 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 old system, European sectors were safeguarded when shipments of a particular product to the EU exceed 15% of all GSP imports; this threshold was lowered to 12.5% for textiles and apparel. Under the revised scheme, the threshold was raised to 17.5% in general and to 14.5% for textiles and apparel.

### 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 meet regularly at senior official and ministerial level.

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, to be followed by a comprehensive or full EPA at a

<sup>[1]</sup> <http://ec.europa.eu/trade/wider-agenda/development/generalised-system-of-preferences/everything-but-arms/>

<sup>[2]</sup> <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>

later stage. Another element of the process involves applying the Market Access Regulation (MAR)<sup>[1]</sup>, 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<sup>[2]</sup>. 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, to extend the application of the MAR until 1 January 2014. Beyond this date, the Commission argued, the MAR's provisional bridging arrangement would no longer provide a solid legal basis for ACP-EU trade relations, as the EU would be impinging on the ACP countries' WTO obligations. Under the proposal, Botswana, Cameroon, Fiji, Ghana, Ivory Coast, Kenya, Namibia and Swaziland would have lost their preferential access to the EU market, as they do not benefit from the GSP or EBA schemes. The European Parliament, however, argued that the withdrawal of preferential market access would represent a deep blow to some of those countries. On 15 April 2013 Parliament voted to extend the MAR until 1 October 2014.

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<sup>[1]</sup> 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.

<sup>[2]</sup> <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, it 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

- Article 21(1) of the Treaty on European Union (TEU): overall mandate and guiding principles in the field of EU development cooperation;
- Articles 4(4) and 208 to 211 of the Treaty on the Functioning of the European Union (TFEU);
- Articles 312 to 316 TFEU: budgetary matters;
- Cotonou Agreement (as regards the African, Caribbean and Pacific (ACP) group of states) and various bilateral association agreements (under Article 217 TFEU): specific cooperation agreements.

#### Policy and financial framework

##### A. European Consensus on Development Policy

On 20 December 2005, the Commission, the Council and Parliament jointly adopted the 'European Consensus on EU Development Policy'. This policy statement establishes a uniform set of principles and values for development cooperation by EU institutions and Member States. The text identifies core targets for European development policy, such as 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. On 3 April 2014 the High Representative of the European Union for Foreign Affairs and Security Policy and

Vice-President of the Commission signed the European Consensus, completing its adoption by all the EU institutions and giving renewed impetus to the Union's engagement with developing countries.

##### 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 on '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. These efforts are consistent with international actions responding to the OECD's Paris Declaration of 2005, which promotes 'ownership, harmonisation, alignment, results and mutual accountability' in development aid. The OECD's policy has been revised twice, in the Accra Agenda for Action (2008) and the Busan Partnership for Effective Development Cooperation (2011). Both revisions were strongly supported by the EU. The first high-level meeting of the Global Partnership for Effective Development Cooperation

took place in Mexico in April 2014 with the aim of placing development effectiveness at the centre of the post-2015 agenda. In 2005 the EU also adopted the 'Policy Coherence for Development' (PCD) programme, which applied to 12 different policy areas, including trade, migration and transport. A biennial Commission report tracks the EU's progress in the area of PCD; the most recent was published in October 2013. Parliament frequently deliberates on this topic and has a dedicated standing rapporteur for PCD.

#### D. Legislative and financial framework

The EU's financing instruments for external action have been substantially revised and streamlined in recent years. For its 2007-2013 multiannual financial framework (MFF), the EU replaced 30 programmes and 90 budget lines with 8 development instruments. For the 2014-2020 MFF, these instruments have been only slightly modified in terms of structure — a new Partnership Instrument (PI) has been created (see Table 1 below) — but there have been changes to make cooperation more differentiated and more effective, simple and flexible. These instruments are administered by the European

External Action Service (EEAS) and by different services of the Commission. The EEAS defines the strategic direction of the EU's development cooperation. The Commission's Directorate-General for Development and Cooperation — EuropeAid (DG DEVCO-EuropeAid — is now the single body 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.

In addition, the Directorate-General for Humanitarian Aid and Civil Protection (DG ECHO) is charged with providing humanitarian aid, civil protection and crisis management; this constitutes a separate portfolio (see the fact sheet on humanitarian aid). Other Commission bodies helping to 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 financing instruments for external action

**Table 1: Overview of the EU's external action financing instruments (MFF 2014-2020)**

Instrument	Focus	Format	Main contact and budget
Development Cooperation Instrument (DCI)	Latin America, Asia, Central Asia, Gulf region, South Africa + global thematic support	Geographic + Thematic	DG DEVCO EUR 19.7 billion
European Neighbourhood Instrument (ENI)	Sixteen European Neighbourhood countries, Russia (regional and cross-border cooperation)	Geographic	DG DEVCO EUR 15.4 billion
Instrument for Pre-Accession (IPA)	Balkans and Turkey	Geographic	DG REGIO EUR 11.7 billion
Partnership Instrument (PI)	Industrialised countries	Geographic	FPI EUR 955 million
Instrument for Greenland	Greenland	Geographic	DG DEVCO EUR 184 million
European Instrument for Democracy and Human Rights (EIDHR)	Democracy and human rights promotion	Thematic	DG DEVCO EUR 1.3 billion
Instrument contributing to Stability and Peace (IfSP)	Political stability and peace-building	Thematic	DG DEVCO (and others) EUR 2.3 billion
Instrument for Nuclear Safety Cooperation (INSC)	Nuclear safety	Thematic	DG DEVCO EUR 225 million
<b>Off-budget</b>			
European Development Fund (EDF)	ACP and Overseas Countries and Territories (OCTs)	Geographic	DG DEVCO EUR 29.1 billion

Of these instruments, two are particularly important for development cooperation in terms of their size and focus:

The Development Cooperation Instrument (DCI) is the largest development funding source within the EU budget, covering development cooperation



with Latin America, the Gulf region, South Africa and Central, East and South-East Asia. The new DCI also has two thematic programmes covering all developing countries: the EUR 5.1 billion Global Public Goods and Challenges (GPGC) programme, and the EUR 1.9 billion Civil Society Organisations and Local Authorities (CSO-LA) programme. Funding takes the form of direct budget support for partner countries or for decentralised bodies, non-governmental organisations (NGOs), civil society groups, international organisations or other EU institutions. One of the most important innovations of the DCI for 2014-2020 has been the introduction of a 'differentiation' principle. A total of 16 middle-income countries (MICs) are no longer eligible for grant-based bilateral EU funding, although they may continue to be covered by regional and thematic cooperation. As a result of negotiations between the Commission, the Council and Parliament, five MICs (Cuba, Colombia, Ecuador, Peru and South Africa) are considered 'exceptional cases' and remain eligible for cooperation.

The European Development Fund (EDF) — not part of the EU budget — is the EU's oldest and largest development instrument. It covers cooperation with the ACP states and the Union's Overseas Countries and Territories (OCTs); its key areas are economic development, social and human development, and regional cooperation and integration. The financial envelope approved in June 2013 for cooperation with ACP countries in 2014-2020 amounts to EUR 31.5 billion. The 11th EDF will have a budget of EUR 29.1 billion, including EUR 24.3 billion for national and regional cooperation, EUR 3.6 billion for intra-ACP cooperation and EUR 1.1 billion for the ACP Investment Facility. The EDF offers additional funding — called 'incentive amounts' — for countries with improved governance records. Funds are allocated on the basis of a 'rolling programming' system, in which partner countries are involved in determining cooperation priorities and projects.

Including the EDF (or its successor) in the EU 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, namely codecision, requiring the approval of Parliament and thereby improving democratic scrutiny (see below for more information on the role of Parliament). On the other hand, such 'budgetisation' would add administrative steps to the disbursement of funds, possibly jeopardising the long-standing ACP-EU co-management arrangements for development funds and leading to a reduction in Member States' allocations to the EDF.

### Role of the European Parliament

- **Legal framework.** In legal terms, Article 209 TFEU states that Parliament 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 an equal footing, making development one of the very few foreign policy areas in which Parliament holds such powers. The negotiation of the regulation of the EU's external financing instruments, notably the DCI, has underscored the importance of Parliament's work as co-legislator. For the first time, the Commission and Parliament's Development Committee have held a strategic dialogue, allowing Parliament to participate in the decision-making process for DCI programming documents. Parliament's approval (granted by a vote of April 2014) was also required for the legislative proposal making 2015 the 'European Year for Development'.
- **Parliamentary scrutiny over policy implementation.** Parliament has historically exercised relatively little control over the implementation of development policy. However, it has obtained the right to question the Commission whenever it finds that proposals promote causes other than development (e.g. trade, fighting terrorism, etc.) or if it considers that the Commission is exceeding its jurisdiction. Parliament also exerts control by regularly discussing policies with the Commission, in both formal and informal settings. Control over the EDF is exercised indirectly, via the ACP-EU Joint Parliamentary Assembly (JPA).
- **Budgetary authority.** The Treaty of Lisbon establishes Parliament and the Council as the joint budgetary authority of the Union. For the seven-year MFF, the Council retains the primary power of decision, but requires parliamentary consent to adopt the framework (Article 312 TFEU). For the annual budget, Article 314 TFEU lays down a procedure that includes one reading each by Parliament and the Council. Once these readings are concluded, Parliament can approve or reject the budget. In the field of international cooperation, Parliament's Development Committee follows budgetary deliberations and can issue complaints if it sees the need to do so. Parliament thus has *de facto* the final say in this area. However, it has no formal budgetary powers over the EDF, as the overall amount and distribution are negotiated at intergovernmental level between the Council and the Commission, with only advisory input from Parliament.

→ Manuel Manrique Gil



## 6.3.2. Humanitarian aid

*The EU is one of the world's top humanitarian donors: together, the European Commission and the Member States provide around 50% of global funding for emergency relief. The Directorate-General for Humanitarian Aid and Civil Protection (ECHO) is the EU's principal actor in the field, funding relief operations implemented through different partners (non-governmental organisations, UN agencies and international organisations) and coordinating Member States' policies and activities. ECHO also supports effective humanitarian work across the globe.*

*In 2012 the Commission provided EUR 1.344 billion in humanitarian assistance to 122 million people in more than 90 non-EU countries. The European Parliament and the Council of the European Union act as co-legislators in shaping the EU's humanitarian aid policy. In addition, Parliament monitors the delivery of humanitarian aid and advocates establishing budgetary provisions that match humanitarian needs.*

### Legal basis

Article 214 of the Treaty on the Functioning of the European Union (TFEU) is the legal basis for humanitarian aid. Prior to the Lisbon Treaty, the legal basis was Article 179 of the Treaty of the European Community.

Article 214(5) forms the legal basis for the creation of a European Voluntary Humanitarian Aid Corps.

Article 21 of the Treaty on European Union (TEU) sets out the principles for all EU external action (Article 21(2)(g) covers humanitarian action).

### 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 amended when other instruments were overhauled in preparation for the 2007-2013 multiannual financial framework. 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' (2007), signed by the three EU institutions (the Commission, the 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 Consensus also defines the role of the Member States and the common institutions, and affirms 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.

### ECHO

#### A. Overview and impact

The EU is one of the world's largest humanitarian donors, providing around 50% of global funding for emergency relief to victims of man-made and natural disasters. A part of these funds comes directly from Member States, but a large share originates from the common EU budget. The European Community Humanitarian Office (ECHO) was created in 1992 as the central body providing and coordinating European humanitarian assistance. In 2004, ECHO became a Directorate-General (DG) within the European Commission, although its old, abbreviated name was maintained. Since 2010, civil protection has been included in its mandate. Under Kristalina Georgieva, the first European Commissioner for International Cooperation, Humanitarian Aid and Crisis Response, ECHO's renewed mandate also came to include the provision of better coordination and disaster response within and outside the EU.

Since its creation, ECHO has channelled more than 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: around 300 staff work at its headquarters in Brussels, complemented by an extensive network of more than 400 experts and local staff in 38 countries. ECHO does not implement humanitarian assistance programmes itself; rather, it funds operations implemented by its partners. ECHO's main tasks are to provide funds, verify that finances are soundly managed and ensure that its partners' goods and services reach the affected populations effectively and rapidly to respond to real needs.

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 on the basis of this assessment — this is the 'needs-based approach'

that defines ECHO's work. Thanks to special provisions in its financial regulation, the Commission can initiate fast-track budget procedures, injecting up to EUR 3 million in 72 hours and EUR 10 million within 10 days to finance humanitarian operations. This aid is channelled through more than 200 partners — including United Nations agencies, non-governmental organisations (NGOs) and international organisations such as the International Red Cross/Red Crescent — 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 NGOs, 36% by UN agencies, and 14% by other international organisations.

In 2012, ECHO provided EUR 1.344 billion in humanitarian assistance to 122 million people in more than 90 non-EU countries; this amount significantly exceeded its initial commitments of EUR 874 million. In 2013 initial commitments were EUR 865 million; for 2014, commitments are set at EUR 920 million. Despite the increase, the EU humanitarian budget has been considered very tight for years; needs have reached the highest levels since the mid-1990s, while budgets have been restricted. As a result, a widening payment gap has required additional transfers for years, with money coming primarily from the EU Emergency Aid Reserve, other budget lines within the Commission's 'Heading 4' for external aid, contributions from the European Free Trade Association (EFTA) and, for African, Caribbean and Pacific countries, the 10th European Development Fund (EDF). In 2014 transfers were approved as early as April to keep operations running.

In 2012, 51% of ECHO funds were allocated to Africa, 20% to the Middle East and the Mediterranean, 15% to Asia and the Pacific, 5% to Latin America and the Caribbean, 1% to worldwide disasters, 2% to civil protection and 6% to worldwide assistance and support. Most funding went to food assistance (40%), health and medical support (13%), water and sanitation (12%), protection (7%), nutrition and feeding (5%) and disaster preparedness (5%). Humanitarian aid interventions included responses to natural disasters (earthquakes, droughts, floods, epidemics and cyclones/hurricanes/tropical storms), man-made crises (in Colombia, Mali, Myanmar, Syria and its neighbouring countries) and protracted and complex emergencies (Sudan and South Sudan, Palestine, the Democratic Republic of the Congo and the Central African Republic).

In 2014 the distribution of funds has followed a similar pattern, with crises in three countries standing out in terms of complexity: Syria, the Central African Republic and South Sudan. ECHO's annual strategy also prioritises operations in the

Democratic Republic of the Congo, the Sahel region, the Horn of Africa, the Middle East and a number of other forgotten humanitarian crises.

### Policy priorities

ECHO's foremost priority is to enhance its response to emergencies. In addition, ECHO also provides countries with assistance to strengthen their own capacities to respond to crises and contribute to long-term development. The 'resilience agenda' set out in the Commission's communication of 3 October 2012 — 'The EU approach to resilience: Learning from food crises' — and the Resilience Action Plan of 2013 are integrated into ECHO's programming, as is the goal of better linking relief, rehabilitation and development (LRRD). Increasing resilience is at the heart of two flagship 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 to break the vicious cycle of drought, hunger and poverty.

Disaster risk reduction (DRR) activities are also part of ECHO's emphasis on resilience. ECHO's disaster preparedness programmes (DIPECHO) in Asia, Latin America and the Caribbean support early-warning systems, public awareness campaigns and other preventative measures. The EU is a significant actor in shaping the international community's disaster risk management efforts. The Union's ambitious vision for the future is set out in an April 2014 communication, 'The post 2015 Hyogo Framework for Action: Managing risks to achieve resilience', issued in preparation for the UN's World Conference on DRR scheduled for March 2015 in Sendai, Japan.

### B. Other instruments

EU assistance involves two further structures: the Union Civil Protection Mechanism and the European Voluntary Humanitarian Aid Corps.

- Originally created in 2001, the Union Civil Protection Mechanism now involves 32 states — the 28 Member States plus the former Yugoslav Republic of Macedonia, Iceland, Liechtenstein and Norway. Decision No 1313/2013/EU adopted on 17 December 2013 sets Article 196 TFEU on civil protection as the legal basis and ensures financing for the Mechanism until 2020. The Union Mechanism builds on several tools: (1) The European Emergency Response Capacity (EERC) provides a voluntary pool of pre-committed response assets from the 32 Member States and a structured process to identify potential capacity gaps. (2) The Emergency Response Coordination Centre (ERCC), which replaced the Monitoring and Information Centre on 1 January 2014, functions as the operational core, facilitating coordination in protection interventions 24/7. (3) The Common Emergency Communication and Information System (CECIS)

seeks to improve emergency communication through a web-based alert and notification application. (4) A network of trained experts available at short notice was also foreseen in the 2013 decision.

- The European Voluntary Humanitarian Aid Corps was envisaged in Article 214(5) of the Lisbon Treaty and was established as the EU Aid Volunteers initiative in March 2014. Strengthening the EU's capacity to respond to humanitarian crises, the initiative is intended to enhance the resilience of vulnerable communities in third countries. Its EUR 147.9 million budget will allow about 4 000 volunteers to be trained and deployed, and the capacity of the same number of local staff to be developed between 2014 and 2020.

### Role of the European Parliament

In the field of humanitarian aid policy, Parliament acts as co-legislator with the Council of the EU. The legal basis of the humanitarian aid policy proposed by the Commission ('regulations') is negotiated with — and approved (or not) by — both the Council and Parliament, in accordance with the EU's 'ordinary legislative procedure'. The Commission's implementation measures ('decisions') are also submitted to Parliament, which has oversight powers. Within Parliament, humanitarian aid falls within the remit of the Committee on Development (DEVE).

In addition, Parliament monitors the delivery of humanitarian aid and seeks to ensure that budgetary provisions match humanitarian needs. Parliament has regularly highlighted the need to increase

funding for humanitarian aid. Several exchanges were held with Commissioners Georgieva and Janusz Lewandowski (Commissioner for Financial Programming and Budget) about possible solutions to close the widening gap between commitments and payments; this gap could lead to situations in which the EU is unable to pay its implementing partners even after committing to certain operations. The DEVE Committee, and Parliament in general, have also sought — through opinions and resolutions, including 'own-initiative reports' — to influence the strategic decisions and policy orientations of the Commission. Parliament reviews the Commission's annual work programme and ECHO's operational strategy. Commissioner Georgieva is also regularly invited to exchange views with the DEVE Committee. The adoption of the 'European Consensus on Humanitarian Aid' in 2007 responded in no small part to firm positions adopted by Parliament. Parliament has also been an active advocate on other policy issues, such as resilience, food security and linking humanitarian and development assistance.

To strengthen Parliament'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's mandate includes defending humanitarian aid budget interests, monitoring humanitarian aid programmes and maintaining close contacts with the humanitarian aid community. Since 2009, the standing rapporteur has been Michèle Striffler (European People's Party), whose mandate was renewed at the end of 2011.

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→ Judit Barna

## 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 programmes, 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: the Charter of Fundamental Rights and the European Convention on Human Rights. Although the Charter of Fundamental Rights of the European Union (Article 6(1)) 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(2) gives the EU legal competence to accede to the European Convention on Human Rights;
- 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 the 'indivisibility of human rights and fundamental freedoms', committing itself to considering economic and social rights as important as 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 over 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 sets out specific 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 the death penalty,
- dialogues on human rights,
- the 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 provides for 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 the country concerned. 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'. Different measures — such as reducing or suspending cooperation — are foreseen in cases of non-compliance. 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 over a period of three years.

EU election observation missions are also intended to improve human rights by discouraging intimidation and violence during elections and strengthening democratic institutions.

The EU also promotes human rights through its participation in multilateral forums such as the UN General Assembly's Third Committee, the UN Human Rights Council, the Organisation for Security and Cooperation in Europe (OSCE) and the Council of Europe. The Union also actively promotes international justice, for example through the International Criminal Court.

With a budget of EUR 1.3 billion allocated between 2014 and 2020, 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 2014-2020 budget for the Union's Common Foreign and Security Policy (CFSP) of EUR 2.3 billion 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 of the EU's actions during the year.

## Actors

The European Council defines the EU's strategic interests and the 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 chaired 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 and ensures that decisions are implemented. The High Representative also represents the EU on CFSP matters and oversees the European External Action Service (EEAS) and the 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 programmes and financial instruments (in close cooperation with the EEAS).

The Human Rights Working Group (COHOM) is composed of human rights experts from 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, and there are ten geographical Special Representatives.

## Role of the European Parliament

Parliament contributes to the EU's policies and monitors the work of its other institutions.

Under Articles 207 and 218 TEU, most international agreements need Parliament's consent to enter into force. In 2011, Parliament blocked the textile

protocol to the Partnership and Cooperation Agreement (PCA) between the EU and Uzbekistan, on grounds of child labour issues.

Article 36 TEU compels the High Representative to consult Parliament on the main aspects and the basic choices of the CFSP, and to inform it on the evolution of those policies. Parliament may ask questions or make recommendations to the Council or the High Representative.

Parliament's resolutions 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 debates that usually take place on the Thursday afternoons of each Strasbourg plenary session to highlight flagrant violations of human rights across the world (Rule 122 of Parliament's Rules of Procedure).

Parliament's Subcommittee on Human Rights, attached to its Committee on Foreign Affairs, has 30 members and 30 substitutes. It 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 the EU's external relations are the Committee on Foreign Affairs (AFET), the Committee on International Trade (INTA), the Committee on Development (DEVE) and the Committee on Women's Rights and Gender Equality (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, the

'Guidelines for EP Interparliamentary 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), Parliament has a say in the allocation of funds to the EIDHR and other financial instruments used in the promotion of human rights. It also approves the budget, thus ensuring full accountability.

Every year, the European Parliament awards the Sakharov Prize for Freedom of Thought to human rights activists around the world. Previous laureates include Nelson Mandela and Aung San Suu Kyi. In 2013, the prize was awarded to Malala Yousafzai, a young Pakistani campaigner for girls' education. Parliament has also created the Sakharov Prize Network to support Sakharov laureates, develop contacts between them and encourage joint activities.

The chief observer of the EU's election observation missions is usually an MEP. EP election observation delegations are integrated into EU or international missions and use their 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 human rights issues when meeting important actors.

Parliament's own-initiative annual report includes reflections on the EU's human rights policy and the EU annual report, reviews Parliament's own activities, and sets priorities for the future.

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→ 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 the 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 entitled '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 Parliament in its resolution on the Review of the 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 entitled '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 on '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 operates 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 on EU external policies in favour of democratisation, Parliament 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.

Parliament 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 2013, Parliament sent 12 delegations to observe elections in Jordan, Armenia, Kenya, Paraguay, Pakistan, Mali, Azerbaijan, Madagascar, Georgia, Tajikistan, Nepal and Honduras.

Parliament 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 European Parliament, and that a long-term mission is present. Parliament 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 Parliament, 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 chairs of Parliament's Committees on Foreign Affairs and on Development.

The Group also provides political guidance regarding the activities of the Directorate for Democracy Support, which was established within the Directorate-General for External Policies of the Parliament's Secretariat. This new directorate ensures that Parliament's different democracy

support actions 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 European Parliament meeting and working with their counterparts in Parliament's secretariat.

A similar initiative, the Pre-Accession Fellowship Programme, is focused on parliaments in the Western Balkans and Turkey.

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→ 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 candidate country, while Albania, Bosnia and Herzegovina and Kosovo are potential candidate countries.*

#### Legal basis

- Article 49 of the Treaty on European Union (Treaty of Lisbon — TEU) establishes which states may apply;
- Article 2 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 in promoting political, economic and societal reforms, and in consolidating 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 common values of the Member States and is committed to their promotion (Article 49 TEU). The Copenhagen criteria, established by the European Council in 1993 in Copenhagen, are essential in any candidate or potential candidate country's EU integration process. They include:

- the stability of institutions guaranteeing democracy, the 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 EU;
- 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 incorporated the conditions for a 'gradual, harmonious integration of [applicant] countries'. Countries are required to align their legislation to that of the EU 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 EU's integration capacity: institutional arrangements

Successive enlargements formed a substantial part of the institutional negotiations that led to the adoption of the Treaty of Lisbon. 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 policymaking. The Treaty of Lisbon introduced profound changes to the composition and 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 under which Member States had a number of votes proportional to their population was replaced by a dual majority system, to be implemented as of 1 November 2014. In addition, the number of Members of the European Parliament, which had increased after every new enlargement, was limited to 751. After the eighth legislature is elected in May 2014, individual Member States will have no fewer than 6 seats and no more than 96, and the principle of degressive proportionality will apply. While the Treaty also reduced the number of European Commissioners (currently one per Member State), this change was

delayed. The issue will be reviewed at the end of the next Commission's mandate, or when the number of Member States reaches 30.

### C. Process

A country that satisfies the conditions for enlargement and wishes to join the EU addresses its application to the Council, which requests the Commission to submit an opinion. The European Parliament must be notified of this application. If the Commission's opinion is favourable, the European Council may decide — by unanimity — to grant the country candidate status. At that point, the Commission issues a recommendation on whether or not to open accession negotiations. The Council then decides — by unanimity — whether negotiations should be opened. The sum of EU legislation (the **acquis communautaire**) is divided into 35 policy chapters. Before actual negotiations start, the Commission delivers a 'screening' report for

each chapter, either recommending the opening of negotiations for the chapter or setting benchmarks which the country must first meet. On the basis of the Commission's recommendation, the Council decides by unanimity whether or not to open each new negotiation chapter. Whenever progress is judged satisfactory, the Commission may recommend 'provisionally closing' a chapter. The Council again decides by unanimity. When negotiations on all the chapters are completed, the terms and conditions — including possible safeguard clauses and transitional arrangements — are incorporated into an accession treaty between the Member States and the candidate state. Parliament's consent and the Council's unanimous approval are necessary in order for the treaty to be signed. After being signed, the treaty is submitted by all contracting states for ratification, in accordance with their constitutional requirements (i.e. ratification by parliament or referendum).

### 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	
Greece	1981	Greece's accession consolidated democracy in the country.
Portugal Spain	1986	This enlargement consolidated democracy in Portugal and Spain.
Austria Finland Sweden	1995	
Cyprus Czech Republic Estonia Hungary Latvia Lithuania Malta Poland Slovakia Slovenia	2004	Aimed at reuniting the continent after the Berlin Wall and the collapse of the Soviet Union, this enlargement was launched by the European Council meeting of December 1997. Negotiations were conducted separately with each country, based on a single negotiating framework.
Bulgaria Romania	2007	The pace of reforms in Bulgaria and Romania did not allow those countries to join in 2004. Accession terms were similar to those of the 10 countries that joined in 2004. However, a 'cooperation and verification mechanism' in key areas (judicial reform, the fight against corruption and — in the case of Bulgaria — against organised crime) was set up to continue monitoring progress in these areas after accession. The Commission issued its latest report on the countries' progress in January 2014.
Croatia	2013	The accession negotiations were the first to be subject to the stricter conditionality instituted by the December 2006 European Council's 'renewed consensus on enlargement'.

### Future enlargements

Today, enlargement policy is focused on the six countries of the Western Balkans and on 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 come within 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 in 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 a significant incentive for other countries in the region. Building on the experience with Croatia, the Commission proposed further improvements to its negotiating approach in its 2011-2012 'Enlargement Strategy', including a stronger emphasis on rule of law issues. This means that the Commission addresses the negotiation chapters on judicial reform and fundamental rights (chapter 23) and on justice, freedom and security (chapter 24) at an early stage in all future negotiations.

In line with this 'new approach', opening chapters 23 and 24 has been a top priority in the negotiations with Montenegro. Both chapters — along with three others — were opened on 18 December 2013. Negotiations with Serbia were officially opened on 21 January 2014, but no chapters were opened at that stage. The EU integration progress for other countries of the Western Balkans is uneven. The former Yugoslav Republic of Macedonia was granted EU candidate status in 2005, but negotiations have not yet been opened, mainly due to the dispute with Greece over the country's use of the name 'Macedonia' and — more recently — to tensions with Bulgaria. Since 2009 the Commission has consistently recommended that negotiations be opened. As a potential candidate country Albania is making good progress and hopes to be granted candidate status in June 2014. The two other potential candidate countries are Bosnia and Herzegovina and Kosovo. For Bosnia and Herzegovina, which has hardly made any progress over the last years, the EU is designing a new approach. Kosovo, which is not recognised as an independent country by five EU Member States, is negotiating a Stability and Association Agreement with the EU and conducting a dialogue with Serbia aimed at normalising relations.

#### B. Turkey

Turkey applied for membership in 1987 and was declared a candidate country in 1999. Negotiations were opened in 2005. Eight chapters are blocked,

and no chapter will be provisionally closed until Turkey applies the 'Additional Protocol to the Ankara Association Agreement' to Cyprus. Opening other chapters has been opposed 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 a standstill of more than three years, a new negotiating chapter — on regional policy and coordinating structural instruments — was opened in November 2013. In December 2013 the EU signed a readmission agreement with Turkey. In light of recent developments, particularly the deterioration of the rule of law in Turkey, opinions are divided over whether to work towards opening key Chapters 23 and 24.

#### 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 (EEA), Iceland made rapid progress in its negotiations with the EU. However, general elections in 2013 ushered in a new government, which has frozen accession negotiations.

### Role of the European Parliament

According to Article 49 TEU, Parliament must give its consent to any new accession to the EU. Parliament also has a significant say over the financial aspects of accession: under the Treaty of Lisbon, Parliament's approval is required for adoption of the multiannual financial framework (MFF). Parliament and the Council also establish the EU's annual budget together. These budgetary powers give Parliament a direct influence on the amounts allocated to the Instrument for Pre-accession Assistance (IPA).

Parliament's Committee on Foreign Affairs, which appoints standing rapporteurs for all candidate and potential candidate countries, holds regular exchanges of views with the Commissioner for Enlargement, high-level government officials, experts and civil society representatives. Parliament expresses its positions, which often have a significant influence on the process, in the form of annual resolutions responding to the Commission's latest progress reports on candidate and potential candidate countries. Parliament's resolutions on the EU's enlargement strategy also shape policy. Last but not least, Parliament maintains regular bilateral relations with the parliaments of candidate and potential candidate countries through its delegations, which meet their counterparts once or twice each year to discuss issues that are relevant to the EU accession process.

→ André De Munter / Benjamin Rey



## 6.5.2. The Western Balkans

*The EU has developed a policy to support the gradual integration of the Western Balkans countries 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 under way with Montenegro and 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 EU aims to promote peace, stability and economic development in the Western Balkans and open up the prospect of EU integration.

### Background

In 1999, the EU launched the Stabilisation and Association Process (SAP), a framework for relations between the EU and countries in the region, and the Stability Pact, a broader initiative involving all key international players. The Stability Pact was replaced by the Regional Cooperation Council in 2008. The 2003 European Council in Thessaloniki reaffirmed that all SAP countries were potential candidates for EU membership.

### Instruments

#### A. The Stabilisation and Association Process (SAP)

Launched in 1999, the SAP is the strategic framework supporting the gradual rapprochement of the Western Balkans countries with the EU. 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). These 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 concerned. It is assisted by the Stabilisation and Association Committee, which may create subcommittees. Finally, a Stabilisation and Association Parliamentary Committee ensures cooperation between the Western Balkans countries' parliaments and the European Parliament.

SAAs are currently in force with the former Yugoslav Republic of Macedonia, Albania, Montenegro and Serbia. 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. The EU and Kosovo started negotiations on an SAA in October 2013; this SAA will be an EU-only agreement, which Member States do not need to ratify (five Member States do not recognise Kosovo as an independent state). Because the other SAAs must be ratified by all EU Member States, the period between their signature and their entry into force may last several years. Trade and trade-related aspects of SAAs are included in interim agreements: these generally enter into force quickly after signature, as trade is an 'exclusive' EU competence.

#### B. The accession process

Applicants for EU membership 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. Eventually, the accession treaty has to be endorsed by Parliament and the Council before being ratified by all contracting states.

Candidate and potential candidate countries receive financial assistance to carry out the necessary reforms. Since 2007, EU pre-accession assistance has been channelled through a single, unified instrument: the Instrument for Pre-accession Assistance (IPA).

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 areas, including 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.

The Regional Cooperation Council (RCC), which has its headquarters in Sarajevo, operates 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 many individual 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.

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. Responding to abuses of the visa-free regime, including many false asylum applications, the Commission established a post-visa liberalisation monitoring mechanism in January 2011. In September 2013 Parliament adopted a resolution on a 'visa suspension mechanism'. In December 2013 the Council introduced this mechanism by amending the relevant regulation.

## Current status

### A. Albania

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 pending reforms. These conditions were largely met prior to the country's June 2013 parliamentary elections, which were positively assessed by international observers. In October 2013, the Commission therefore unequivocally recommended granting Albania the status of candidate for EU membership. The Council took note of this recommendation in December 2013, but postponed a decision on the matter to June 2014.

### B. Bosnia and Herzegovina

Like Albania, Bosnia and Herzegovina is a potential candidate country. However, it has yet to submit its application for EU membership. An SAA was negotiated and signed in June 2008, but its entry into force has been frozen, mainly due to the country's failure to implement a key ruling of the European Court of Human Rights. So far, only the interim agreement on trade and trade-related matters is in force, and its implementation is problematic. In June 2012, a high-level dialogue was launched to help the country advance and prepare for the submission of its application for EU membership. The EU also provides support for the implementation of the 1995 Dayton peace agreement, notably through the EUFOR Althea mission. Since 2011, a single person fulfils the mandates of the EU Special Representative in Bosnia and Herzegovina and the Head of the EU Delegation. In February 2014 the Commission decided to recalibrate its approach to the country, inter alia by increasing its focus on economic governance.

### C. 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 and EP resolution since. The Council, however, has yet to act on this recommendation. The unresolved, long-standing dispute with Greece over the country's use of the name 'Macedonia' and — more recently — tensions with Bulgaria are important obstacles.

### D. Kosovo

Kosovo is the region's third 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. In the region, Serbia and Bosnia and Herzegovina have not recognised Kosovo. The EU has appointed a Special Representative in Kosovo, who is also the Head of the EU Office, and has established the EULEX Rule of Law Mission. A Visa Liberalisation Roadmap was issued in June 2012. After a landmark agreement on normalising relations was reached in April 2013 by Belgrade and Pristina, the European Council decided in June 2013 to open negotiations on an SAA. Kosovo's future EU integration — like Serbia's — remains closely linked to the outcome and implementation of the EU-facilitated high-level dialogue between Kosovo and Serbia.

### E. Montenegro

Montenegro applied for EU membership in December 2008, more than two years after declaring its independence (which was recognised by all the 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, in particular through the ongoing EU-facilitated Belgrade-Pristina dialogue, the June 2013 meeting of the European Council endorsed the Commission's recommendation to open accession negotiations with Serbia. The EU-Serbia SAA entered into force in September 2013. Accession negotiations with Serbia were formally opened on 21 January 2014.

### Role of the European Parliament

Parliament is fully involved in the Stabilisation and Association Process, and its consent 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). Parliament's Committee on Foreign Affairs, which appoints standing rapporteurs for all 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 responding to the Commission's latest progress reports on candidate and potential candidate countries. Last but not least, Parliament maintains regular bilateral relations with the parliaments of the Western Balkans countries through its delegations, which meet their counterparts once or twice each year to discuss issues relevant to the SAP and the EU accession process.

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→ André De Munter / 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 part of the legislation of the EEA countries once they have agreed to incorporate it. Implementation and enforcement are 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. The free movement of persons in Switzerland will, however, be limited as a result of the referendum on immigration held in the country on 9 February 2014.*

#### 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. On 25 February 2014 the government proposed a resolution to withdraw the country's EU application. A debate in the parliament is taking place at present, fuelled by a recent report on the costs and benefits of accession. Pressure on the parliament has also been applied through popular petitions and street demonstrations in support of continuing negotiations.

Whatever the outcome, the EFTA institutions and the EEA Agreement can 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 meetings of this committee are likely to become less frequent while accession negotiations are frozen. The European Parliament's Committee on Foreign Affairs also monitors the process closely with regular reports.



## 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, as a referendum about annual quotas for foreign workers and further regulations on immigration was held in Switzerland in February 2014. The approval of the referendum by a narrow margin places the bilateral agreements in jeopardy and may lead to the termination of the entire package unless a diplomatic or institutional solution is found.

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 interstate 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



## 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, the rule of law and respect for human rights and applies to 16 of the 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 cooperation initiatives — the Eastern Partnership and the Union for the Mediterranean<sup>[1]</sup>.*

<sup>[1]</sup> 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 European Union;
- Title V of the Treaty on European Union (external action);
- Articles 206-207 (trade) and 216-219 (international agreements) of the Treaty on the Functioning of the European Union (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 prejudice how relations between neighbouring countries and the Union may develop in the 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 adopted on 7 April 2012, Parliament welcomed the review and provided guidance for the European External Action Service and the 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 political and economic reform agendas with short- and medium-term priorities (three to five years). ENP action plans reflect the needs, interests and capacities of the EU and each partner, seeking to develop democratic, socially equitable and inclusive societies, to promote economic integration, to improve the movement of people across borders, and to provide financial assistance and technical cooperation for efforts to come into line with EU standards. Even the names of the action plans vary to reflect each partner's particular situation, with some being 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.

From 2007 to 2013, these plans were principally funded by the European Neighbourhood and Partnership Instrument (ENPI), with an allocation for this period of EUR 11.181 billion. For the period 2014-2020, funding will be available under a new European Neighbourhood Instrument (ENI), whose exact budget remains to be set.

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 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 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 the Eastern Partnership Integration and Cooperation Programme (EAPIC — EUR 130 million) and Support for Partnership, Reforms and Inclusive Growth (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. subject to 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 most of its eastern neighbours, 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 its eastern neighbours. 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<sup>[1]</sup>.

#### 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.

The Eastern Partnership's multilateral track is based on four thematic platforms: democracy, good

governance and stability; economic integration and convergence with EU policies; energy security; and contacts between people. Senior officials meet 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, increase the use of renewable energy sources, promote good environmental governance and prevent, prepare for and respond to natural and man-made disasters.

The Euronest Parliamentary Assembly<sup>[2]</sup>, 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. However, as the European Parliament does not recognise the Belarusian National Assembly as a democratically elected institution, no Belarusian 'parliamentarians' currently form part of Euronest. The Euronest PA has four standing committees, namely 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<sup>[3]</sup> 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 15 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). The League of Arab States has participated in all meetings since 2008 and Libya has 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

<sup>[1]</sup> For more information, please refer to the section of the EEAS website on the EaP.

<sup>[2]</sup> For more information about Euronest and its activities, please refer to the Assembly's website.

<sup>[3]</sup> For more information about the civil society forum, please refer to the CSF website.

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), namely to create an area of peace, 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 UfM Secretariat's role consists, above all, in 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 and 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 comprises 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, Palestine, 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 the EP President Martin Schulz a summit of the presidents of the parliaments of the UfM countries was convened for the first time in April 2013 to underline the importance of implementing UfM projects and 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 the involvement of local and regional actors in the UfM. It comprises 84 members — all representatives of regions or local bodies with a regional or local mandate — from the 43 UfM partners.

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→ Fernando Garcés de los Fayos / Pekka Hakala /  
Valérie Ramet

## 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, and others not. Strong internal divisions have also appeared, with citizens at odds over their country's European orientation.*

### 1. EU neighbours to the east

#### A. Ukraine

The dramatic events that have wracked Ukraine since November 2013 began as a pro-EU protest against the government's failure to advance with the Association Agreement with the EU. The two partners had concluded negotiations on the agreement in December 2011, although its signature had been conditional on political reforms.

In November 2013, just a few days before the Eastern Partnership summit held in Vilnius, Lithuania, the then Ukrainian President, Viktor Yanukovich, announced that his government would postpone its work on the Association Agreement (AA). Despite strong public protests, the agreement was not signed at the meeting, as had been the plan. Demonstrations in Ukraine grew stronger, propelling the country into a deep political crisis that led to the fall of Yanukovich's regime and to a process of political transition.

The consolidation of Ukraine's new government has been challenged by Russia's effective annexation of Crimea to the Russian Federation. The situation in the south and the east of Ukraine also remains uncertain, as are Russia's intentions there. Under Yanukovich, Ukraine had been pressured by Russia to join its Customs Union and Eurasian Union projects; Moscow had adopted coercive measures, as well as offering much-needed assistance.

Since the arrival of the new Ukrainian Government, the EU has pledged a package of EUR 11 billion to help stabilise the country's economic and financial situation. On 21 March 2014, the EU and Ukraine signed the political provisions of the Association Agreement.

#### European Parliament's positions

In the two years between the launch of negotiations on the Association Agreement and the Vilnius summit, Parliament paid particular attention to 'selective justice' in Ukraine. This issue — in particular

as regards the treatment of opposition leaders, including former Prime Minister Yulia Tymoshenko — was a principal concern for the EU. In 2012, Parliament President Martin Schulz established a monitoring mission for Ukraine composed of former European Parliament President Pat Cox and former Polish President Aleksander Kwasniewski.

Parliament recently adopted a series of resolutions focusing on Russia's invasion of Crimea and the recent political crisis. Previous resolutions expressed Parliament's support of the EU-Ukraine Association Agreement.

#### Inter-parliamentary cooperation

Members of the European Parliament and the Ukrainian Parliament (the Rada) meet in the EU-Ukraine Parliamentary Cooperation Committee (PCC) twice per year to exchange views on current issues. The last PCC meeting took place in Kyiv on 27 March 2014 and addressed the crisis in Crimea and the numerous internal challenges facing the new Ukrainian leadership.

#### Election observation

Parliament has been invited to observe all the latest national elections in Ukraine. In 2012 the International Election Observation Mission included the 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. Parliament has been invited to observe the upcoming presidential elections in May 2014.

#### B. Moldova

The election of a new president in 2012 appeared to end a three-year political deadlock, but 2013 brought a fresh political crisis to the country, 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 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 June 2014. In November 2013, the Commission proposed lifting visa requirements for Moldovans, and the proposal was endorsed by Parliament in February 2014 and by the Council the following month. Moldovan citizens will be able to enter the EU without visas as from 28 April 2014. In September 2013, Russia imposed a ban on imports of Moldovan wine and restrictive measures on Moldovan citizens' access to Russia's labour market.

A major challenge for Moldova remains the issue of the breakaway region of Transnistria, which has unilaterally declared independence from Moldova. Official '5+2' talks — including the unrecognised Transnistrian Republic in Moldova, Moldova, Ukraine, Russia and the OSCE, as well as two observers, the US and the EU — resumed in December 2011, but have not greatly progressed since mid-2012. The situation has been further destabilised by the crisis in Crimea and by THE Transnistrian authorities' recent calls to join the Russian Federation.

### European Parliament's positions

Parliament has welcomed the democratic progress made in Moldova and expressed its support of the Association Agreement and for a visa-free regime. Parliament has also noted the stalemate on the Transnistrian issue and highlighted the importance of finding a political solution. Parliament has also adopted technical resolutions for trade and amended visa facilitation agreements, all of which require Parliament's 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. A meeting held in June 2013 also welcomed the end of the political crisis in Moldova. The latest PCC meeting took place in Chisinau in March 2014 and addressed current issues.

### Election observation

The 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.

### C. Belarus

The Republic of Belarus has been led by its authoritarian President, Alexander Lukashenka, since 1994. The role of the country's parliament (National Assembly) and cabinet (Council of Ministers) is limited, and the party system weak. Human rights and political prisoners are issues of significant concern.

In the 2011-2012 period Belarus suffered 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.

After the latest presidential elections were held in December 2010, the authorities cracked down on the opposition, further straining relations between the EU and Belarus. 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. An agreement was reached at the Vilnius summit to launch negotiations on visa facilitation and readmission agreements, and the first bilateral talks were held in late January 2014. Over the last two years, the European Dialogue on Modernisation with Belarusian society has provided a platform to exchange views and ideas about reforms to modernise the country and improve 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 reinstate 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, 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's 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. Recent attempts by the delegation to visit Belarus have failed.

#### **Election observation**

Parliament has not been invited by Belarus to observe elections since 2001.

## **2. South Caucasus**

The pace of democratic consolidation and economic reform is uneven 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. Parliamentary elections in 2012 and the presidential elections in 2013 confirmed the power of the new 'Georgian Dream Coalition'. Prime Minister Irakli Garibashvili 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, and certain judicial cases may reflect the application of 'selective justice'.

In November 2013, Georgia initialled an Association Agreement with the EU and agreed to participate in the EU's crisis management operations.

For several years Georgia was 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 the regions of South Ossetia and Abkhazia, while 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, including Members of the European Parliament, to monitor its parliamentary, presidential and local elections. The most recent parliamentary and presidential elections were judged satisfactory.

### **B. Armenia**

Armenia 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 the 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, in particular the lack of challengers.

### **C. Azerbaijan**

Azerbaijan possesses oil and gas, 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 the 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 transferred 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.

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## 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 and education, developing small and medium-sized enterprises and agriculture, 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.

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 a priority, and a new fisheries agreement has recently taken effect. The EU–Morocco mobility partnership was signed in June 2013. Morocco is the first country in the region to have started negotiations on a visa facilitation scheme and a deep and comprehensive free trade area (DCFTA) with the EU.

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 2014. 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 2013. 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.

The consensual adoption of a new constitution in Tunisia in January 2014 represented a major step for the country's democracy, and relations with the EU are expected to develop positively. As the EU's second most important southern partner (after Morocco), Tunisia signed a mobility partnership with the EU in early March 2014.

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 EU is Libya's largest donor.

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 latest (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 39th — was held in Tel Aviv and Jerusalem in 2013.

## 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 2014.

### **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 supports inclusive peace talks between the warring parties. Since the onset of the conflict, the EU, together with its Member States, has contributed more than EUR 2.6 billion in humanitarian aid; this has gone both to Syria and to the region.

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. Of the EU's extensive humanitarian aid in response to the Syrian civil war, more than 26% has been allocated to Lebanon. 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.

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→ 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 the 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 and 2008 to generate growth and create jobs for their people. With a view to fully exploiting 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), 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. Transatlantic political and military cooperation has grown stronger following the dramatic events in Ukraine, including, most notably, Russia's unlawful annexation of Crimea in March 2014. 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).

The EU's service exports to the US increased between 2011 and 2012, as did its service imports from the US. In 2012 the EU enjoyed a EUR 11.2 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	292.2	+87.0	145.6	156.8	+11.2

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
2011	1 344.3	1 421.3	+77.0

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 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<sup>[1]</sup>, the partners'

<sup>[1]</sup> For EEAS documentation on EU-Canada relations (executive branch), see: [http://eeas.europa.eu/canada/docs/index\\_en.pdf](http://eeas.europa.eu/canada/docs/index_en.pdf)



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 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 31.3 billion to Canada and absorbed Canadian goods valued at EUR 30.2 billion. Canada ranks 12th among the EU's international trading partners. Trade in services between the EU and Canada has progressed greatly. In 2012, EU exports of services to Canada reached EUR 16.8 billion, and the Union's imports of services from Canada were valued at EUR 10.0 billion.

#### 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	31.3	+1.1	10.1	16.8	+6.7

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 2011, the EU's outward FDI stocks in Canada reached EUR 221.6 billion. Canadian stocks in the EU were valued at EUR 137.6 billion.

#### EU-Canada bilateral investment stocks (EUR billion)

Year	Canadian FDI stocks in the EU	EU FDI stocks in Canada	Balance
2011	137.6	221.6	+84.1

Source: European Commission, DG TRADE Eurostat

→ Elfriede Bierbrauer / Wanda Troszczyńska van Genderen / Valérie Ramet

## 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 European Union.

### 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 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 European Parliament (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, monitor 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 the Parlatino (Latin American Parliament), the Parlandino (Andean Parliament), the Parlacen (Central American Parliament), the Parlasur (Mercosur Parliament) and the Congresses of Chile and Mexico. Since 2006, EuroLat has held seven ordinary plenary sessions, most recently in March 2014. The next plenary session will take place in Brussels in 2015.

### 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. An Association Agreement, the first region-to-region agreement of this type concluded by the EU, was signed in June 2012 and ratified by the EP in December 2012. It 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. The agreement's trade chapter provisionally entered into force during 2013 (on different dates for different countries). An Association Parliamentary Committee, composed of MEPs and members of the Parlaten 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 a multi-party trade agreement with Peru and Colombia in March 2010. The trade agreement, signed in June 2012 and ratified by the EP in December 2012, entered into force with Peru on 1 March 2013 and with Colombia on 1 August. 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. Negotiations with Ecuador on joining the multi-party trade agreement began in January 2014.

#### **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 arrangements 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 since, the political and cooperation chapters and the 'normative' part of the trade chapter (rules of origin, etc.) have advanced. The key question of market access, on the other hand, has not yet been addressed. Despite an agreement to exchange market access offers before the end of 2013, this has

not yet happened. 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 part 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 (a signatory to the Cotonou Agreement and the EPA) and Cuba, which holds a special status, are also members.

Since November 2012, EU-Caribbean relations have been 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, and the third is scheduled for late 2014 in Europe.

### **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 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. The EU-Mexico Joint Parliamentary Committee has monitored the implementation of the Global Agreement since 2005.

### 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, 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,

the 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 seven EU-Brazil summits, the last in February 2014. 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 innovation; and people-to-people exchanges. The EU-Brazil Strategic Partnership also includes a regular dialogue between Brazil's National Congress and the EP.

### 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 currently 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 February 2014, the Council of Ministers adopted negotiating directives with a view to establishing a bilateral political dialogue and cooperation agreement with Cuba.

→ Jesper Tvevad / Manuel Manrique Gil

### 6.6.3. Russia and Central Asia

*The EU considers a strategic partnership with Russia a foreign policy priority, while also pursuing greater engagement with Central Asia. 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 within 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 of the countries in the region, the states also display quite divergent levels of democratisation and development, which has led the EU to tailor its approach accordingly.*

#### Legal basis

- Title V of the Treaty on European Union: 'external action';
- Articles 206-207 (trade) and Articles 216-219 (international agreements) of the Treaty on the Functioning of the European Union (TFEU);
- Partnership and Cooperation Agreements (bilateral relations), with the exception of 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 generally considered a 'strategic partner' of the EU. Trade relations, including the EU's energy imports, are considerable. The two partners also share a common neighbourhood and cooperate on international issues, including counter-terrorism, non-proliferation and the Middle East peace process. However, Russia's annexation of Crimea in March 2014, which triggered a major international crisis, may lead the EU to fundamentally reappraise its approach towards Russia.

The 2011 parliamentary elections and 2012 presidential elections — which were not considered to be 'free and fair' by Parliament — renewed the mandates of Russian President Vladimir Putin and his party, United Russia. Protests in Russia following the elections highlighted widespread discontent and were indicative of the regime's loss of legitimacy within politically active segments of Russian society. In response to such protests, Russian legislation passed in 2012 and 2013 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 Northern 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 to be a positive opportunity, since it offers a multilateral, rule-based framework for trade relations and resolving disputes.

Russia has sought to limit the effectiveness of the EU's Energy Community in Ukraine and Moldova, as well as that of the EU's Eastern Partnership with six countries in Eastern Europe and the Southern Caucasus. Moscow has also exerted considerable pressure on its neighbours to encourage them to join the Russian-led Customs Union formed with Belarus and Kazakhstan.

In recent months, Russia has refused to recognise the legitimacy of the new Ukrainian authorities replacing former Ukrainian President Viktor Yanukovich. Russia's military intervention in Crimea, a Ukrainian region of strategic importance for Russia, was justified on the pretext that the Russian-speaking community was at risk there. Following an illegal referendum, Crimea was swiftly integrated into the Russian Federation, leading to strong condemnation by the international community and Russia's isolation on the international scene.

##### B. Agreements in force and under negotiation

The legal basis underpinning current EU-Russia relations is the 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: an economic, security, and justice space; an external security space; and a research, education and culture space. A 'Partnership for Modernisation' was launched in 2010 to boost cooperation in these fields.

Negotiations for a new agreement were initiated in July 2008. The new agreement was to include 'substantive, legally binding commitments' in areas including political dialogue, justice, liberty, security, economic cooperation, research, education, culture, trade, investment and energy. However, Russia's intervention in Crimea has led to the suspension of talks on the new agreement.

Similarly, Russia's intervention in Ukraine has upended efforts to sign an updated visa facilitation agreement, which had required a political agreement following the conclusion of negotiations in 2011. Liberalising visas would require improvements in document security, border management, the effective implementation of the readmission agreement, and Russian reforms in the areas of human rights and the rule of law.

### C. Role of the European Parliament

According to the Treaty of Lisbon, Parliament must 'consent' to a new agreement, as it did to the previous PCA. More specific agreements (such as visa facilitation) also require Parliament's consent. Though Parliament 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, in accordance with 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'.

#### Positions adopted (resolutions)

Parliament's resolution of 13 March 2014 on Russia strongly condemned Russia's aggression in Ukraine. In September 2013, Parliament also adopted a resolution condemning Russia's pressure on the Eastern Partnership countries.

Parliament's regular resolutions on Russia have generally been linked to EU-Russia summits. Before the current crisis, Parliament favoured a new, comprehensive agreement with Russia based on common values and interests. However, in several own-initiative reports (particularly in 2012 and 2013), Parliament has 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 deterioration of human rights in Russia has been particularly worrying. A resolution adopted by Parliament in April 2014 advocated establishing common visa restrictions for Russian officials involved in the case of Sergei Magnitsky, a Russian lawyer investigating public tax fraud who was arrested and subsequently died in prison. In March 2014, Parliament also adopted a resolution on the prison sentences handed to demonstrators involved in the Bolotnaya Square case, following political protests in May 2012.

### 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.

Parliament's Delegation to the EU-Russia PCC meets regularly to discuss topical issues and to prepare the committee and working group meetings. The delegation regularly receives visits from Russian officials, representatives of other institutions (such as the European External Action Service) and civil society.

### Election observation and democracy promotion

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.

Kazakhstan and Mongolia have demonstrated the highest economic growth rates — among the highest in the world — and are seeking closer relationships with the EU.

Kyrgyzstan and Mongolia stand out politically from the rest, as their democracies are the most developed.

In general, while Mongolia is classified by Parliament as part of the region, the country is in a number of ways an 'outlier' in terms of history, geography and politics.



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 UN. With the exception of Kazakhstan and Turkmenistan, all have very limited trade relations with the EU.

With the exception of Kyrgyzstan, all the Central Asian ex-Soviet republics — in particular 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 due to 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, and 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, which is scheduled for 2014. To address the potential consequences of the withdrawal, a new high-level security sector dialogue was held for the first time in June 2013. Mongolia signed a PCA with the EU in May 2013, while negotiations between Kazakhstan and the EU on a new and updated PCA may be completed in 2014.

All Central Asian states currently receive funding from the Development Cooperation Instrument (DCI), which is guided by a regional strategy paper, with EUR 750 million set aside for the 2007-2013 term. Assistance focuses on social policy, the rule of law and education. For the coming budgetary period (2013-2020), Kazakhstan is likely to 'graduate' from its DCI eligibility, while continuing to have access to EU regional programmes.

The European Instrument for Democracy and Human Rights functions in all states with the exceptions of Uzbekistan and Turkmenistan, where civil society organisations are too few in number, poorly organised and strictly controlled.

## **C. Role of the European Parliament**

### **Positions adopted (resolutions)**

Parliament supported the EU's 2007 Central Asia Strategy, but expressed its wish that it be more focused. In 2012 the Council's 'Conclusions on

Central Asia' reviewed the strategy and sharpened its focus.

- On Kazakhstan, Parliament has stressed the importance of a new PCA, as well as the need for the country to join the WTO, and to address human rights abuses. Parliament has also said it will apply the 'more for more' principle for political and socio-economic reforms.
- Parliament adopted a resolution in 2010 in solidarity with Kyrgyzstan following violent unrest in the country's southern region. While agreeing to send humanitarian aid to the region, Parliament highlighted the need to stabilise and secure the Ferghana Valley.
- On Tajikistan, Parliament consented to the conclusion of the PCA Agreement in 2009, but called for the country to demonstrate improvements on human rights, corruption, health and education.
- Parliament has consistently expressed concern about Turkmenistan's poor human rights record.
- In 2011 Parliament condemned the use of child labour in Uzbekistan and called for a human rights monitoring mission to focus on such abuses. Parliament stated that its consent to renew the trade provisions would be contingent on such a mission.
- Parliament'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).

### **Interparliamentary cooperation**

Parliamentary Cooperation Committees (PCCs) with each of the Central Asian countries meet every year. Members oversee the implementation of the PCAs and focus on human rights issues, political violence, economic and development cooperation, and electoral processes. While there is no PCC with Turkmenistan's parliament — owing to the fact that the country has yet to sign a PCA — inter-parliamentary meetings do take place.

### **Election observation and democracy promotion**

Due to the differing levels of political development and the extremely variable levels of democratic progress in Central Asia, Parliament has not consistently observed elections in the region.

- Four missions sponsored by the Organisation for Security and Cooperation in Europe's Office for Democratic Institutions and Human Rights (OSCE ODHIR), which included Parliament delegations, have visited Kyrgyzstan and reported only few voting irregularities in recent elections.

- In Tajikistan, the OSCE ODIHR, including a European Parliament delegation, observed the 2010 parliamentary elections, in which the government failed to meet several commitments.
  - Kazakhstan has sporadically invited Parliament to observe its elections. The OSCE ODIHR has consistently found significant irregularities.
  - Mongolia has never hosted a European Parliament electoral observation mission, although the country is developing a solid democracy.
  - Parliament has never been invited to an election in Uzbekistan or Turkmenistan.
- 
- Fernando Garcés de los Fayos / Valerie Ramet

## 6.6.4. 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. 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 (UAE)) — 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 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. The agreement makes no provision for a parliamentary body.

The EU and the GCC agreed on a Joint Action Programme for 2010-2013, 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) have been 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 wider objective is a strategic partnership with the GCC and its member states.

Parliament's Delegation for relations with the Arab Peninsula holds regular interparliamentary meetings with the parliaments in the region and monitors the development of relations between the EU and the GCC. The most recent Delegation visits were to Bahrain (2013), Kuwait (2014), Oman (2011), Qatar (2014), 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 — the GCC country most affected by the Arab uprisings — and condemning the violent repression by its security forces of peaceful demonstrators. 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, involving drafting a new constitution and preparing for parliamentary and presidential elections. The EU has applauded the positive conclusion of the National Dialogue Conference, an important milestone in the transition process.

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 2013, the EU allocated EUR 53 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 Parliament's standing delegation to Yemen was in 2009. A delegation of the Parliament's Subcommittee on Human Rights 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 and 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 interparliamentary 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 EU 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.

The High Representative of the Union for Foreign Affairs and Security Policy, Catherine Ashton, is the chief negotiator in the nuclear talks, representing the 'E3/EU+3' group (the EU, Germany, France and the United Kingdom together with the US, China and the Russian Federation).

The joint plan of action adopted in Geneva on 24 November 2013 by all parties includes an affirmation on the part of Iran never to seek or develop nuclear weapons. The 'comprehensive agreement' 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 Delegation visited Iran in December 2013. On 3 April 2014, Parliament adopted a resolution on the EU strategy towards Iran, in which it proposes opening an EU delegation in Tehran and calls for cooperation in a number of areas.

## 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. The EU has been present in Afghanistan since the mid-1980s, but a policy of more active engagement in the country was adopted after the fall of the Taliban regime in 2001. At that point, the European Council appointed an EU Special Representative (EUSR), and the Union opened a delegation in Kabul.

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.

Today, Afghanistan's economy is in a shambles, yet the country has enormous potential thanks to its young population and rich natural resources, in particular in the mining sector. The EU is one of the country's major donors of development and humanitarian assistance and supports the Afghan Government's efforts to provide basic services to its population in three focal areas — governance and the rule of law, agriculture and rural development, and health and social protection. Since 2007, the EU Police Mission in Afghanistan (EUPOL) has

contributed to the international effort to help the country assume responsibility for law and order by providing training and mentoring to the Afghan National Police. 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).

An EU Election Assessment Team (EU EAT) headed by the Chair of the Delegation for relations with Afghanistan was sent to the country to evaluate the presidential and Provincial Council elections of April 2014. Inclusive, transparent and credible elections are crucial in order to lend legitimacy to the first democratic transfer of power in Afghan history. Most political parties are united in fighting the Taliban.

## Role of the European Parliament

Parliament established a fully-fledged Delegation for relations with Afghanistan in 2009. The fourth and last interparliamentary meeting took place in October 2013, when a joint delegation with Parliament's Subcommittee on Security and Defence visited Kabul and Mazar-e Sharif. This was Parliament's first official visit. The delegation met with a wide range of international and Afghan stakeholders, including parliamentarians and the interior and defence ministers. In Mazar-e Sharif, the MEPs observed EUPOL training activities with the Afghan police. While emphasising the need to advance in the fight against corruption and narcotics, and to improve governance and human rights, the delegation reiterated the EU's firm commitment to continuing its support for the Afghan people in 2014 and beyond.

On 16 December 2010 Parliament adopted a resolution on a new strategy for Afghanistan<sup>[1]</sup>. 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. In November 2011 Parliament participated, as an observer, in the International Conference on Afghanistan held in Bonn. 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.

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 / Laurence Vandewalle

<sup>[1]</sup> 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 of the 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. South Sudan and Somalia are in process of signing and ratifying the agreement.

EU-ACP relations date back to the Lomé Conventions I-IV (1975-2000) laying down 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 and valid for 20 years. Two revisions have taken place, in 2005 and 2010, but none will take place in 2015. The 2005 revision recognised the jurisdiction of the International Criminal Court (ICC), which prompted Sudan to refuse to ratify the revision. The 2010 revision is in the process of being ratified. Parliament gave its consent to the ratification in June 2013, but expressed '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 objected, in particular, to the absence of an explicit clause on '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 vis-à-vis the 54 African states 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:

- to move beyond development cooperation, opening Africa-EU relations to issues of joint concern such as jobs and trade;
- to move beyond purely African matters, towards effectively addressing global challenges such as migration, climate change, peace and security;
- to support Africa's aspirations to encourage trans-regional and continental responses to these important challenges;
- to work towards a people-centred partnership, ensuring better participation of African and European citizens.

To achieve these objectives, the JAES establishes eight thematic partnerships for cooperation:

1. Peace and security — aims to strengthen the continental African Peace and Security Architecture (APSA). The EU has contributed over EUR 1.1 billion to the African Peace Facility (APF) since 2004. The APF has supported different peace support operations in Africa, including the African Union Mission in Somalia (AMISOM) and the African-led International Support Mission to Mali (AFISMA), deployed in the first half of 2013.
2. Democratic governance and human rights — seeks to develop shared governance agendas with a dedicated 'Platform for Dialogue', established in 2008. The 10th AU-EU human rights dialogue took place in November 2013 and touched upon issues of peace and security, women and children in conflicts, election observation, the death penalty, migrants' rights, business rights, human rights and fighting impunity. The last issue is tied up with the divisive question of the International Criminal Court (ICC).



3. Trade, regional integration and infrastructure — allows the EU and AU to engage in dialogue on regional economic 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 AITF'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) — In 2010 the European Commission announced a EUR 1 billion MDG initiative focused on those areas and on those countries — many of them in Africa — that are unlikely to meet their MDG targets. Debate on this issue has increasingly shifted to the post-2015 development framework.

5. Energy — aims to improve access to reliable, secure, affordable and 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. This partnership also supports 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 for cooperation in this area is also in place. The EU supports the AU Research Grants Programme. Africa is the non-EU region with the 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), as well as high-level summits and annual college-to-college meetings between the EU and AU Commissions. The fourth EU-Africa summit, held in Brussels in April 2014, resulted in the adoption of a political declaration by heads of state and government, and a results-oriented roadmap for 2014-2017 focused on five priority areas: (i) peace and security; (ii) democracy, good governance and human rights; (iii) human development;

(iv) sustainable and inclusive development and growth and continental integration; (v) global and emerging issues. In addition, a separate declaration on migration and mobility contained a detailed action plan to fight irregular migration and human trafficking, as well as to enhance international protection, better organise legal migration and strengthen the migration-development nexus.

### 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) amounted to EUR 22.7 billion. In June 2013 the ACP-EU Joint Council of Ministers 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, i.e. 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 EDF covers all African countries that are parties to the Cotonou Agreement except South Africa, whose cooperation funds come from the EU's Development Cooperation Instrument (DCI), part of the common EU budget. The new DCI for 2014-2020 also allocates EUR 845 million to the Pan-African Programme (PANAF), which was created to fund the JAES and continental and transcontinental activities.

Other financial instruments which cover Africa include the European Neighbourhood Instrument for North Africa, DCI thematic instruments (Global Public Goods and Challenges and Civil Society and Local Authorities), and the European Instrument for Democracy and Human Rights (EIDHR).

### Trade relations

The principal instruments promoting trade between the EU and African regions are the World Trade Organisation-compatible trade arrangements called 'Economic Partnership Agreements' (EPAs). EPAs were launched with the Cotonou Agreement 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 — Technical-level negotiations were closed in February 2014. On 30 March 2014 West African leaders endorsed the agreement

'in principle', but asked for outstanding technical issues to be solved within two months.

- **Central Africa** — Cameroon is the only country in the region to have signed up to the interim Central Africa EPA in January 2009. While the EPA has not been ratified by the country, the EP gave its consent to the agreement in June 2013. Negotiations are currently delayed because of the situation in the Central African Republic, but are expected to resume in the first half of 2014.
- **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 Parliament gave its consent for ratification in January 2013.
- **Eastern African Community** — Burundi, Rwanda, Tanzania, Kenya and Uganda drew up a framework EPA in 2007. This serves as the basis for ongoing negotiations for a full regional EPA. A ministerial meeting took place in January 2014 to provide guidance for the negotiators, who met in late March.
- **Southern Africa Development Community** — Botswana, Lesotho, Swaziland and Mozambique signed an interim EPA in 2009. Namibia has indicated that it is not ready to sign. Negotiations are continuing for a full agreement, and a technical meeting in March 2014 narrowed down the main outstanding issues. Central to this is the position of South Africa, the largest country in the region and also a signatory to the 1999 Trade, Development and Cooperation Agreement, through which the EU and South Africa have already abolished 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 the interim EPAs and begun their implementation. After this

date, negotiations can continue, but countries will lose the preferential access granted by the current framework. Even if this were to happen, because most African states are least developed countries they will benefit from an 'Everything But Arms' (EBA) status that provides duty-free and 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 Parliament's work in the field of development cooperation, it has standing interparliamentary delegations for relations with African countries and institutions. The principal body in which Parliament cooperates on such matters 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 the Cotonou Agreement seeks to strengthen 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. The EP and the PAP provide democratic oversight of the implementation of the JAES. On the eve of the fourth EU-Africa summit, a parliamentary meeting was organised. The meeting concluded with the adoption of a joint declaration, which was transmitted to heads of state during the opening ceremony by PAP President Bethel Amadi and EP Vice-President Miguel Ángel Martínez Martínez.

The EU and South Africa also maintain close bilateral parliamentary relations, which have been strengthened by the EU-South Africa Strategic Partnership (2007) — the EU's 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, through regional organisations and forums and within the G20. Parliamentary relations with Asian countries take place at three levels: bilaterally, between European Parliament delegations and the national parliaments; regionally, with the Association of Southeast Asian Nations Inter-parliamentary Assembly (AIPA); and through the Asia-Europe Meeting (ASEM), with the Asia-Europe Parliamentary Partnership (ASEPP). The African, Caribbean and Pacific (ACP) countries covered by Parliament's ACP Delegation include 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 countries in the region that are not yet 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 alternately 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 biannually, 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. China 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. Since September 2012, when China and the EU agreed to start negotiations for a bilateral investment agreement, two rounds of negotiations have taken place, the last in March 2014. Parliament'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, Parliament 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, death penalty, freedom of expression, forced abortions and repressive policies in Tibet and Xinjiang). Parliament has also supported Chinese citizens' calls for effective political reforms<sup>[1]</sup>.

### 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. Parliament 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<sup>[2]</sup>.

<sup>[1]</sup> 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>

<sup>[2]</sup> 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>

### Association of South East Asian Nations (ASEAN)

ASEAN, established in 1967 by five states in one of the fastest-growing areas of the world, has since evolved into an organisation with significant regional economic and political clout. Now including 10 countries (founding members Indonesia, Malaysia, the Philippines, Singapore and Thailand, as well as Brunei Darussalam, Vietnam, Laos, Cambodia and Burma/Myanmar), ASEAN 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 (AFTA). 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, and ASEAN is the EU's third-largest partner outside Europe (after the US and China). However, negotiations on the FTA, which started in 2007, are now stalled, and the EU is instead pursuing trade negotiations with individual ASEAN members; an FTA was concluded with Singapore in December 2012 (negotiations on an investment chapter are still ongoing), and negotiations with Malaysia, Vietnam and Thailand are continuing in 2014. The EU and ASEAN member countries pursue Partnership and Cooperation Agreements (PCAs). Negotiations with Indonesia, the Philippines, Singapore and Vietnam have been completed; those with Thailand, Malaysia and Brunei are ongoing. EU and ASEAN ministers have held summits every other year since 1978. Parliament is an observer at the ASEAN Inter-Parliamentary Assembly (AIPA).

#### A. Indonesia

Indonesia, the largest democracy with a Muslim majority, is a key partner for the EU. The Comprehensive Partnership Agreement, signed in November 2009, is currently in the process of being ratified. Preparatory talks for a Comprehensive Economic Partnership agreement were launched in 2012. Numerous cultures and minorities coexist in the Indonesian archipelago — a situation that in some regions has occasionally led to tensions, which Parliament has addressed in resolutions.

#### B. 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, including by launching negotiations for an investment agreement. In 2012, Parliament initiated a series of exchanges with the parliament of Burma/Myanmar. In its resolutions, Parliament has addressed concern about ethnic violence in the country.

#### C. Other ASEAN members

Parliament resolutions have addressed human rights and freedom of expression in Cambodia, Laos and Vietnam, impunity in the Philippines, corporal punishment practices in Malaysia and the political crisis 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 the 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.

#### 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. Japan is the EU's seventh-largest trading partner globally, while 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. Parliament supports close relations with Japan and has endorsed the launch of an FTA. However, Parliament 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. 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 northeast 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. Parliament has adopted several resolutions condemning Pyongyang for its nuclear and missile programmes and has expressed great concern about the deteriorating human rights situation in the country.

### Countries of South Asia and the Indian subcontinent

The EU maintains relations with the South Asian Association for Regional Cooperation (SAARC). Owing to the very loose nature of the Association, the EU has privileged bilateral relations with the eight 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, poverty alleviation, human rights, sustainable development and labour rights. Pakistani education activist Malala Yousafzai was awarded Parliament's 2013 Sakharov Prize.

### India

A 1994 Cooperation 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 tenfold. 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 development framework. Yet despite India's remarkable development over the past few decades, nearly 30% of the population lives in poverty. Under the EU's current financial framework for 2014 to 2020, EU development assistance is limited to emerging economies, including India. Parliament resolutions have addressed issues of human rights, in particular 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. Parliament has one delegation for relations with the two countries.

#### A. Australia

Australia and the EU base their current diplomatic relations on the revised 2008 Australia-EU 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 providing for greater cooperation in civilian and military crisis management operations. Parliament has consented to the amendment of the previous agreement.

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