Course notes on Managerial Aspects of European Integration

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1 Session 1: EC-Institutions, Decision making processes, Legislation, Lobbying

1.1 Background and history

The historical roots of the European Union lie in the Second World War. The idea of European integration was conceived to prevent such killing and destruction from ever happening again. It was first proposed by the French Foreign Minister Robert Schuman in a speech on 9 May 1950. This date, the "birthday" of what is now the EU, is celebrated annually as Europe Day.

European integration is based on four founding treaties:

1. The Treaty establishing the European Coal and Steel Community (**ECSC**), which was signed on 18 April 1951 in Paris, entered into force on 23 July 1952 and expired on 23 July 2002;
2. The Treaty establishing the European Economic Community (**EEC**);
3. The Treaty establishing the European Atomic Energy Community (**Euratom**), which was signed (along with the EEC Treaty) in Rome on 25 March 1957, and entered into force on 1 January 1958. These Treaties are often referred to as the "Treaties of Rome". When the term "Treaty of Rome" is used, only the EEC Treaty is meant;
4. The Treaty on European Union, which was signed in Maastricht on 7 February 1992, entered into force on 1 November 1993. The Maastricht Treaty changed the name of the European Economic Community to simply "the European Community". It also introduced new forms of co-operation between the Member State governments - for example on defence, and in the area of "justice and home affairs". By adding this inter-governmental co-operation to the existing "Community" system, the Maastricht Treaty created a new structure with three "pillars" which is political as well economic. This is the European Union (EU).

Moreover, the founding treaties have been amended on several occasions, in particular when new Member States acceded in 1973 (Denmark, Ireland, United Kingdom), 1981 (Greece), 1986 (Spain, Portugal) and 1995 (Austria, Finland, Sweden). There have also been more far-reaching reforms bringing major institutional changes and introducing new areas of responsibility for the European institutions:

- The Merger Treaty, signed in Brussels on 8 April 1965 and in force since 1 July 1967, provided for a Single Commission and a Single Council of the then three European Communities;
- The Single European Act (SEA), signed in Luxembourg and the Hague, and entered into force on 1 July 1987, provided for the adaptations required for the achievement of the Internal Market;
- The Treaty of Amsterdam, signed on 2 October 1997, entered into force on 1 May 1999: it amended and renumbered the EU and EC Treaties. Consolidated versions of the EU and EC Treaties are attached to it. The Treaty of Amsterdam changed the articles of the Treaty on European Union, identified by letters A to S, into numerical form;
- The Treaty of Nice, signed on 26 February 2001, entered into force on 1 February 2003. The Treaty of Nice, the former Treaty of the EU and the Treaty of the EC have been merged into one consolidated version.

Further changes will probably be made to the Treaties as a result of the Convention on the Future of Europe and of the Treaty on the Accession of 10 new Member States, which was signed on 16 April 2003 to enter into force on 1 May 2004.

1.1.1 Treaty of Paris (1951)

Establishing the European Coal and Steel Community (ECSC).

With this treaty, 6 countries (France, Germany, Italy, Netherlands, Belgium & Luxembourg) built on the Benelux organization to create one economic block. This ECSC had directly a similar decision organ structure:

- Parliament with member state representatives (gave unbinding advice)
- High Authority Council (= European Commission now) (made proposals)
- Council of Ministers (made binding laws via simple majority)

1.1.2 Treaty of Rome (1957)

Established the European Economic Community (EEC) and the European Atomic Energy Community (Euratom).

Built around the free movement of workers, goods and services. Customs duties on manufactured goods were duly abolished on 1 July of that year and common policies, notably an agricultural policy and a commercial policy, were in place by the end of the decade.

The other countries in Europe reacted with the creation of “European Free Trade Organization”.

During the following years the discussion began around the majority voting. The system of veto right for items of “vital national importance” was deployed so that unanimity was needed for important decisions (Compromise of Luxembourg, 1966). This slowed the integration process.

The success of the Six led **Denmark**, **Ireland** and the **United Kingdom** to apply for Community membership. They were finally admitted in 1972 following difficult negotiations during which France, under General de Gaulle, used its veto twice, once in 1961 and again in 1967. This first enlargement, which increased the number of Members from six to nine in **1973**, was matched by a **deepening** of the Community's **tasks**; it was given responsibility for **social, regional and environmental matters**.

The launch of a European Monetary System in 1979 helped stabilise exchange rates.

The Community expanded southwards with the accession of **Greece** in **1981** and **Spain** and **Portugal** in **1986**.

On the basis of a **White paper**, drawn up in 1985 by the Commission chaired by Jacques Delors (280 proposals), the Community set itself the task of creating a single market by 1 January 1993.

1.1.3 Single Act (1987)

The Single Act, signed in February 1986, confirmed this ambitious target and introduced new procedures for adopting associated legislation. It came into force on 1 July 1987.

The compromise of Luxembourg (veto right for items of “vital national importance”) was annulled for certain decisions. A system of weighted voting was installed, the **qualified majority**. The parliament got the right to amend the proposals of the Commission (cooperation procedure).

1.1.4 Maastricht Treaty (1992)

The collapse of the Berlin Wall, followed by German unification on 3 October 1990, liberation from Soviet control and subsequent democratisation of the countries of central and eastern Europe and the disintegration of the Soviet Union in December 1991, transformed the political structure of Europe. The Member States determined to strengthen their ties and negotiated a new Treaty, the main features of which were agreed at the Maastricht European Council on 9-10 December 1991.

The Treaty on European Union, which entered into force on 1 November 1993, sets the Member States an ambitious programme: monetary union by 1999, new common policies, European citizenship, a common foreign and security policy and internal security. All 280 (except 6) of the White book proposals were ratified in the new Treaty.

Maastricht Treaty Pillars

1/ **European Community**:

Provides democratic legitimacy:

- Empowers Parliament
- Commission & Council
- Empowers European Court of Justice

Defines European Citizenship

Enlargement of Community competences, but based on **subsidiarity** (only allow EU law if local laws are insufficient to handle a problem).

Enlargement of existing competences

- Cohesion
- R&D
- Environment

Defines new competences

- Industrial Policy
- Trans-European Networks
- Consumer protection
- Education, vocational training, health & culture

Defines a “Social Europe”

Economic and Monetary Union

2/ **Common Foreign & Security Policy** (no permanent decision making organ or process).

3/ **Common Justice & Interior Affairs** (no permanent decision making organ or process).

On 1 January **1995**, three further countries joined the European Union: **Austria**, **Finland** and **Sweden**.

Concept of re-enforced cooperation is introduced.

1.1.5 Intergovernmental Conference of 1996

This conference was needed because the different member states had a lot of problems to ratify the Maastricht treaty. Furthermore the pillars 2 & 3 never did function effectively. Finally the way the EU decided on important items was becoming more and more difficult with the enlargement.

For every treaty you will see an IGC being organized.

1.1.6 Amsterdam Treaty (1997)

Applying the review clause in the Maastricht Treaty, the Member States negotiated a further treaty, signed in Amsterdam on 2 October 1997, which adapted and strengthened the Union's policies and powers, particularly in judicial cooperation, the free movement of persons, foreign policy and public health. The European Parliament, the Union's immediate democratic voice, was granted new powers, confirming its role as joint legislator. This is called co-decision.

This treaty did not have much effect.

- The decision making mechanism was not ready for more then 6 members (already 15 now).
- Maastricht did not solve the problem of the Balkan countries joining the EU (negotiations for enlargement with 10 more countries started in 1997).
- No intergovernmental organizations existed for pillars 2 & 3, but they were needed.
- In ’95-’96 we had high unemployment.
- Closer involvement of EU citizens needed.

1.1.7 Nice Treaty(2000)

Changed the voting system from the “qualified majority vote” system of before to one where a vote better represents the size of the population.

- Protected power of large member states
- Increased the number of barriers
- Not to the liking of smaller states

1.1.8 Laken Summit and Declaration

How to involve people ?
What do we do with the relation between EU Parliament and National Parliaments ?
How do we define competences of the EU and of its member states (where to draw the line ?)
How can we make the Institutions more effective ?
=> draft Constitution which answers those questions. We now know this work is not done yet …
Re-enforced Cooperation is a likely way out of a lethargic decision system. Maastricht/Nice allow this so that a subset of the EU work out agreements which are not followed by all members. E.g. the Euro.

1.2 Institutions

The European Union (EU) is not a federation like the United States. Nor is it simply an organisation for co-operation between governments, like the United Nations. It is, in fact, unique. The countries that make up the EU (its "member states") pool their sovereignty in order to gain a strength and world influence none of them could have on its own.

Pooling sovereignty means, in practice, that the member states delegate some of their decision-making powers to shared institutions they have created, so that decisions on specific matters of joint interest can be made democratically at European level.

The EU's decision-making process in general, and the co-decision procedure in particular, involve three main institutions:

- the European Parliament, which represents the EU's citizens and is directly elected by them;
- the Council of the European Union, which represents the individual member states;
- the European Commission, which seeks to uphold the interests of the Union as a whole (driving force and executive body).

This "institutional triangle" produces the policies and laws (directives, regulations and decisions) that apply throughout the EU. In principle, it is the Commission that proposes new EU laws but it is the Parliament and Council that adopt them.

Two other institutions have a vital part to play: the Court of Justice upholds the rule of European law, and the Court of Auditors checks the financing of the Union's activities.

These are flanked by five other important bodies:

- European Economic and Social Committee (ECOSOC) expresses the opinions of organised civil society on economic and social issues.
- Committee of the Regions expresses the opinions of regional and local authorities.
- European Ombudsman deals with citizens' complaints about misadministration by any EU institution or body.
- European Central Bank (ECB) responsible for monetary policy and managing the euro.
- European Investment Bank (EIB) helps achieve EU objectives by financing investment projects.

A number of agencies and other bodies complete the system.

1.2.1 <u>Parliament</u>

The members of the European Parliament (MEPs) sit, not in national blocks, but in Europe-wide political groups that bring together all the main political parties operating in the EU member states.

The Parliament's origins go back to the 1950s and the founding treaties. Since 1979, MEPs have been directly elected by the citizens they represent.

Parliamentary elections are held every five years, and every EU citizen who is registered as a voter is entitled to vote. So Parliament expresses the democratic will of the Union's 374 million citizens, and it represents their interests in discussions with the other EU institutions.

In 2002, Pat Cox was elected President of the European Parliament.

Where is Parliament based?

The European Parliament works in France, Belgium and Luxembourg.

The monthly plenary sessions, which all MEPs attend, are held in Strasbourg (France) - the Parliament's "seat". Parliamentary committee meetings and any additional plenary sessions are held in Brussels (Belgium), whilst Luxembourg is home to the administrative offices (the "General Secretariat").

Parliament has three main roles:

- It shares with the Council the power to legislate. The fact that is a directly-elected body helps guarantee the democratic legitimacy of European law.
- It exercises democratic supervision over all EU institutions, and in particular the Commission. It has the power to approve or reject the nomination of Commissioners, and it has the right to censure the Commission as a whole.
- It shares with the Council authority over the EU budget and can therefore influence EU spending. At the end of the procedure, it adopts or rejects the budget in its entirety.

How is the Parliament's work organised?

Parliament's work is divided into two main stages:

- Preparing for the plenary session. This is done by the MEPs in the various parliamentary committees that specialise in particular areas of EU activity. The issues for debate are also discussed by the political groups.
- The plenary session itself. Plenary sessions, attended by all MEPs, are normally held in Strasbourg (one week per month) and sometimes in Brussels (two days). At these sessions, Parliament examines proposed legislation and votes on amendments before coming to a decision on the text as a whole.

Other items on the agenda may include Council or Commission "communications" or questions about what is going on in the European Union or the wider world.

1.2.2 <u>The Council of the European Union</u>

The Council is the EU's main decision-making body. It was formerly known as the “Council of Ministers”. It represents the member states, and its meetings are attended by one minister from each of the EU's national governments. Each EU country in turn presides over the Council for a six-month period.

It should not be confused with the European Council, which brings together the presidents and prime ministers of all the EU countries plus the President of the European Commission. The President of the European Parliament also addresses every European Council.

Which ministers attend which meeting depends on what subjects are on the agenda. If, for example, the Council is to discuss environmental issues, the meeting will be attended by the Environment Minister from each EU country and it will be known as the "Environment Council".

The EU's relations with the rest of the world are dealt with by the "General Affairs and External Relations Council". But this Council configuration also has wider responsibility for general policy issues, so its meetings are attended by whichever Minister or State Secretary each government chooses.

Altogether there are nine different Council configurations:

- General Affairs and External Relations
- Economic and Financial Affairs ("ECOFIN")
- Justice and Home Affairs
- Employment, Social Policy, Health and Consumer Affairs
- Competitiveness (Internal Market, Industry and Research)
- Transport, Telecommunications and Energy
- Agriculture and Fisheries
- Environment
- Education, Youth and Culture
- Nevertheless, the Council remains one single institution.

The preparatory work for Council meetings is done by the Permanent Representatives Committee (**Coreper**), made up of the member states' ambassadors to the EU, assisted by officials from the national ministries. The Council's administrative work is handled by its General Secretariat, based in Brussels.

Each minister in the Council is empowered to commit his or her government. In other words, the minister's signature is the signature of the whole government. Moreover, each minister in the Council is answerable to his or her national parliament and to the citizens that parliament represents. This ensures the democratic legitimacy of the Council's decisions.

1.2.3 Commission

The Commission is the politically independent institution that represents and upholds the interests of the EU as a whole. It is the driving force within the EU's institutional system: it proposes legislation, policies and programmes of action and it is responsible for implementing the decisions of Parliament and the Council.

Like the Parliament and Council, the European Commission was set up in the 1950s under the EU's founding treaties.

Who are the Commission?

The term "Commission" is used in two senses. First, it refers to the "Members of the Commission" - i.e. the team of 20 men and women appointed by the member states and Parliament to run the institution and take its decisions. Secondly, the term "Commission" refers to the institution itself and to its staff.

Informally, the Members of the Commission are known as "commissioners". They have all held political positions in their countries of origin, and many have been government ministers, but as Members of the Commission they are committed to acting in the interests of the Union as a whole and not taking instructions from national governments.

A new Commission is appointed every five years, within six months of the elections to the European Parliament. The procedure is as follows:

- The member state governments agree together on who to designate as the new Commission President.
- The Commission President-designate, in discussion with the member state governments, chooses the other 19 Members of the Commission.
- The new Parliament then interviews all 20 members and gives its opinion on the entire "college". If approved, the new Commission can officially start work the following January.

The present Commission's term of office runs until 31 October 2004. Its President is Romano Prodi.

The Commission remains politically answerable to Parliament, which has the power to dismiss it by adopting a motion of censure. The Commission attends all the sessions of Parliament, where it must clarify and justify its policies. It also replies regularly to written and oral questions posed by MEPs.

The day-to-day work of the Commission is done by its administrative officials, experts, translators, interpreters and secretarial staff. There are approximately 24 000 of these European civil servants. That may sound a lot, but in fact it is fewer than the number of staff employed by most medium-sized city councils in Europe.

Far from being faceless bureaucrats, these people are ordinary citizens from every EU country, selected through competitive examinations and working together to build a strong and successful European Union.

Where is the Commission based?

The "seat" of the Commission is in Brussels (Belgium), but it also has offices in Luxembourg, representations in all EU countries and delegations in many capital cities around the world.

What does the Commission do?

The European Commission has four main roles:

1. to propose legislation to Parliament and the Council;
2. to manage and implement EU policies and the budget;
3. to enforce European law (jointly with the Court of Justice);
4. to represent the European Union on the international stage, for example by negotiating agreements between the EU and other countries.

1. Proposing new legislation

Under the Treaty, the Commission has the "right of initiative". In other words, the Commission alone is responsible for drawing up proposals for new European legislation, which it presents to Parliament and the Council. These proposals must aim to defend the interests of the Union and its citizens, not those of specific countries or industries.

Before making any proposals, the Commission must be aware of new situations and problems developing in Europe and it must consider whether EU legislation is the best way to deal with them. That is why the Commission is in constant touch with a wide range of interest groups and with two advisory bodies - the Economic and Social Committee (made up of employers' and trade unions' representatives) and the Committee of the Regions (made up of representatives of local and regional authorities). It also seeks the opinions of national parliaments and governments.

The Commission will propose action at EU level only if it considers that a problem cannot be solved more efficiently by national, regional or local action. This principle of dealing with things at the lowest possible level is called the "**subsidiarity principle**".

If, however, the Commission concludes that EU legislation is needed, then it drafts a proposal that it believes will deal with the problem effectively and satisfies the widest possible range of interests. To get the technical details right, the Commission consults the experts who make up its various committees and working groups.

2. Implementing EU policies and the budget

As the European Union's executive body, the Commission is responsible for managing and implementing the EU budget and the policies and programmes adopted by Parliament and the Council. Most of the actual work and spending is done by national and local authorities, but the Commission is responsible for supervising it.

One example of a policy actively managed by the Commission is competition policy: the Commission monitors cartels and mergers, and makes sure that EU countries do not subsidise their industries in such a way as to distort competition.

Examples of EU programmes managed by the Commission range from the "Interreg" and "Urban" programmes (creating cross-border partnerships between regions and helping regenerate declining urban areas) to the "Erasmus" programme of Europe-wide student exchanges.

The Commission handles the budget under the watchful eye of the Court of Auditors. Both institutions aim to ensure good financial management. Only if it satisfied with the Court of Auditors' annual report does the European Parliament grant the Commission discharge for implementing the budget.

3. Enforcing European law

The Commission acts as "guardian of the Treaties". This means that the Commission, together with the Court of Justice, is responsible for making sure EU law is properly applied in all the member states.

If it finds that an EU country is not applying an EU law, and therefore not meeting its legal obligations, the Commission takes steps to put the situation right.

First it launches a legal process called the "infringement procedure". This involves sending the government an official letter, saying why the Commission considers this country is infringing EU law and setting it a deadline for sending the Commission a detailed reply.

If this procedure fails to put things right, the Commission must then refer the matter to the Court of Justice, which has the power to impose penalties. The Court's judgments are binding on the member states and the EU institutions.

4. Representing the EU on the international stage

The European Commission is an important mouthpiece for the European Union on the international stage. It enables the 15 member states to speak "with one voice" in international forums such as the World Trade Organisation.

The Commission also has the responsibility of negotiating international agreements on behalf of the EU. One example is the Cotonou Agreement, which sets out the terms of an important aid and trade partnership between the EU and developing countries in Africa, the Caribbean and the Pacific.

How is the Commission's work organised?

It is up to the Commission President to decide which commissioner will be responsible for which policy area, and to reshuffle these responsibilities (if necessary) during the Commission's term of office. The President, with the Commission's approval, is also entitled to demand a commissioner's resignation.

The team of 20 commissioners (also known as "the College") meets once a week, usually on Wednesdays in Brussels. Each item on the agenda is presented by the commissioner responsible for that policy area, and the College takes a collective decision on it.

The Commission's staff is organised into 36 departments, known as "Directorates-General" (DGs) and "services" (such as the Legal Service).

Each DG is responsible for a particular policy area and is headed by a Director-General who is answerable to one of the commissioners.

It is the DGs that actually devise and draft the Commission's legislative proposals, but these proposals become official only when "adopted" by the College at its weekly meeting. The procedure is roughly as follows.

Suppose, for example, that the Commission sees a need for EU legislation to prevent pollution of Europe's rivers. The Directorate-General for the Environment will draw up a proposal, based on extensive consultations with European industry and farmers, with environment ministries in the member states and with environmental organisations.

The proposed legislation will then be discussed with all relevant Commission departments and amended if necessary. It will then be checked by the Legal Service and by the commissioners' "cabinets" (personal political staff).

Once the proposal is fully ready, the Secretary-General will put it on the agenda for a forthcoming Commission meeting. At this meeting, the Environment Commissioner will explain to his or her colleagues why this legislation is being proposed, and they will then discuss it. If there is agreement, the College will "adopt" the proposal and the document will be sent to Council and the European Parliament for their consideration.

If there is disagreement among the commissioners, the President will ask them to vote on it. If 11 or more are in favour, the proposal will be adopted. Thereafter it will have the unconditional support of all the Commission.

Future size of the Commission

There have always been **two** commissioners from each of the **most heavily populated** member states and **one** commissioner from each of the **other** EU countries. However, if this system were maintained after EU enlargement, the Commission would become too large to be workable. There will already be ten new commissioners (bringing the total to 30) on 1 May 2004, when ten new member states join the EU.

So, from the date when the 2004-2009 Commission takes office (1 November 2004), there will be only one commissioner per country. Once the Union has 27 member states, the Council - by a unanimous decision - will fix the maximum number of commissioners. There must be fewer than 27 of them, and their nationality will be determined by a system of rotation that is absolutely fair to all countries.

1.2.4 Court of Justice

The Court of Justice of the European Communities (often referred to simply as "the Court") was set up in 1952 under the Treaty of Paris (establishing the European Coal and Steel Community).

Its job is to ensure that EU legislation (technically known as "Community law") is interpreted and applied in the same way in each member state. In other words, that it is always identical for all parties and in all circumstances. The Court has the power to settle legal disputes between member states, EU institutions, businesses and individuals.

The Court is composed of one judge per member state, so that all the EU's national legal systems are represented. Even after enlargement there will still be one judge per member state, but for the sake of efficiency the Court will be able to sit as a "Grand Chamber" of just 13 judges instead of always having to meet in a plenary session attended by all the judges.

The Court is assisted by eight "advocates-general". Their role is to present reasoned opinions on the cases brought before the Court. They must do so publicly and impartially.

The judges and advocates-general are either former members of the highest national courts or highly competent lawyers who can be relied on to show impartiality. They are appointed by joint agreement of the governments of the member states. Each is appointed for a term of six years, after which they may be reappointed for one or two further periods of three years.

To help the Court of Justice cope with the thousands of cases brought before it, and to offer citizens better legal protection, a "Court of First Instance" was created in 1989. This Court (which is attached to the Court of Justice) is responsible for giving rulings on certain kinds of case, particularly actions brought by private individuals and cases relating to unfair competition between businesses.

The Court of Justice and the Court of First Instance (CFI) each have a President, chosen by their fellow-judges to serve for a term of three years.

What does the Court do?

The Court gives rulings on cases brought before it. The four most common types of case are:

- requests for a preliminary ruling;
- proceedings for failure to fulfil an obligation;
- proceedings for annulment;
- proceedings for failure to act.

They are each described in greater detail below.

1. The preliminary ruling

The courts in each EU country are responsible for ensuring that EU law is properly applied in that country. But there is a risk that courts in different countries might interpret EU law in different ways.

To prevent this happening, there is a "preliminary ruling procedure". This means that if a national court is in any doubt about the interpretation or validity of an EU law it may, and sometimes must, ask the Court of Justice for advice. This advice is given in the form of a "preliminary ruling".

2. Proceedings for failure to fulfil an obligation

The Commission can initiate these proceedings if it has reason to believe that a member state is failing to fulfil its obligations under EU law. These proceedings may also be initiated by another member state.

In either case, the Court investigates the allegations and gives its judgment. The accused member state, if it is indeed found to be at fault, must set things right at once.

3. Proceedings for annulment

If any of the member states, the Council, Commission or (under certain conditions) Parliament believes that a particular EU law is illegal they may ask the Court to annul it.

These "proceedings for annulment" can also be used by private individuals who want the Court to cancel a particular law because it directly and adversely affects them as individuals.

If the Court finds that the law in question was not correctly adopted or is not correctly based on the Treaties, it may declare the law null and void.

4. Proceedings for failure to act

The Treaty requires the European Parliament, the Council and the Commission to make certain decisions under certain circumstances. If they fail to do so, the member states, the other Community institutions and (under certain conditions) individuals or companies can lodge a complaint with the Court so as to have this violation officially recorded.

How is the Court's work organised?

Cases are submitted to the registry and a specific judge and advocate-general are assigned to each case.

The procedure that follows is in two stages: first a written and then an oral phase.

At **the first stage**, all the parties involved submit **written statements** and the judge assigned to the case draws up a **report** summarising these statements and the legal background to the case. From this report, the advocate-general assigned to the case draws his or her **conclusions**. In the light of these conclusions, the judge draws up a **draft ruling** which is submitted to the other members of the Court for examination.

Then comes the **second stage - the public hearing**. In principle, this takes place before the whole Court (in "plenary session"), but hearings can also take place before chambers of three or five judges, depending on the importance or complexity of the case. At the hearing, the parties' lawyers put their case before the judges and the advocate-general, who can question them. The advocate-general then gives his or her conclusions, after which the judges deliberate and deliver their judgment.

Judgments of the Court are decided by a majority and pronounced at a public hearing. Dissenting opinions are not expressed.

1.2.5 Court of Auditors

Set up by Treaty on 22 July 1975, has 15 members appointed for a six-year term by agreement between the Member States after consultation with the European Parliament. Its role is to check that revenue is received and expenditure incurred "in a lawful and regular manner" and that the Community's financial affairs are properly managed. Its findings are set out in annual reports, drawn up at the end of each year.

The Maastricht Treaty on European Union gave the Court of Auditors the status of a Community institution, making it the fifth.

The Amsterdam Treaty acknowledges its right to bring actions in the Court of Justice to defend its prerogatives and widens its powers to control Community funds managed by outside organisations.

1.2.6 Economic and Social Committee

In EC and Euratom matters, the Council and Commission are assisted by the Economic and Social Committee. This consists of 222 members, representing the various relevant categories of economic and social activity. It must be consulted before decisions are taken on a large number of subjects (jobs, social fund, vocational training, etc.), and is also free to submit opinions on its own initiative.

Through the Economic and Social Committee, trade and industry and the unions are actively involved in the development of the Community.

The Amsterdam Treaty widens the areas in which this committee is to be consulted and opens the door for the European Parliament to consult it.

1.2.7 Committee of the Regions

Set up in 1994 under the Treaty on European Union (Maastricht), the Committee of the Regions is an advisory body composed of representatives of Europe's regional and local authorities. It ensures that these authorities have a say in European Union policymaking and that regional and local identities and prerogatives are respected. It does so by issuing opinions on Commission proposals. The Committee can adopt opinions on its own initiative and present them to the Commission, Council and Parliament.

The Amsterdam Treaty widens the areas in which this committee is to be consulted and opens the door for the European Parliament to consult it.

The Committee has to be consulted on matters that concern local and regional government, such as regional policy, the environment, education and transport.

The Committee now has 222 members, after enlargement in 2004 this number will grow to 344 members.

The members of the Committee are elected municipal or regional politicians, representing the entire range of local and regional government activities in the European Union. They may be regional presidents, regional parliamentarians, town councillors, mayors of large cities, etc.

They are nominated by the EU governments but they work in complete political independence. The Council of the European Union appoints them for four years, and they may be reappointed. Under the Treaty of Nice, they must also have a mandate from the authorities they represent, or must be politically accountable to them

The Committee of the Regions appoints a President from among its members, for a term of two years.

1.2.8 European Ombudsman

The position of European Ombudsman was created by the Treaty on European Union (Maastricht, 1992).

The Ombudsman acts as an intermediary between the citizen and the EU authorities. He is entitled to receive and investigate complaints from EU citizens, businesses and institutions, and from anyone residing or having their legal domicile in an EU country.

The Ombudsman is elected by the European Parliament for a renewable term of five years, which corresponds to Parliament's legislative term.

Every year, the Ombudsman gives the European Parliament a report on all his investigations.

What does the Ombudsman do?

He helps to uncover "misadministration" in the European institutions and other EU bodies. "Misadministration" means poor or failed administration - in other words, an EU institution fails to do something it should have done, or does it the wrong way, or does something that ought not to be done. Examples of misadministration are:

- unfairness,
- discrimination,
- abuse of power,
- lack or refusal of information,
- unnecessary delay,
- incorrect procedures.

The Ombudsman can make recommendations to the EU institutions and may refer a matter to the European Parliament so that it can take whatever political action is necessary.

The Ombudsman operates completely independently and impartially. He does not request or accept instructions from any government or organisation. Moreover, during his term of office, he may not exercise any other professional activity, either paid or unpaid.

Mr Nikiforos Diamandouros took over the post of Ombudsman in April 2003.

1.2.9 European Central Bank (ECB)

Twelve of the EU's 15 member states now share a single currency, the euro. Euro bank notes and coins came into circulation on 1 January 2002.

The European Central Bank (ECB) was set up in 1998, under the Treaty on European Union (Maastricht), to introduce and manage this new currency - conducting foreign exchange operations and ensuring the smooth operation of payment systems. The ECB is also responsible for framing and implementing the EU's economic and monetary policy.

To carry out its role, the ECB works with the "European System of Central Banks" (ESCB), which covers all 15 EU countries. However, only 12 of these countries have so far adopted the euro. The 12 collectively make up the "euro area" and their central banks, together with the European Central Bank, make up what is called the "Eurosystem".

The ECB works in complete independence. Neither the ECB, the national central banks of the Eurosystem, nor any member of their decision-making bodies can ask for or accept instructions from any other body. The EU institutions and member state governments must respect this principle and must not seek to influence the ECB or the national central banks.

The ECB, working closely with the national central banks, prepares and implements the decisions taken by the Eurosystem's decision-making bodies - the Governing Council, the Executive Board and the General Council.

What does the bank do?

One of the ECB's main tasks is to maintain **price stability in the euro area**, preserving the euro's purchasing power.

That means keeping inflation under strict control: the ECB aims to ensure that the year-on-year increase in consumer prices is less than 2%. The ECB goes about this in two ways:

- First, by controlling the money supply. If the money supply is excessive compared to the supply of goods and services, inflation will result.
- Second, by monitoring price trends and assessing the risk they pose to price stability in the euro area.

Controlling the money supply involves, amongst other things, setting interest rates throughout the euro area. This is perhaps the bank's best-known activity.

How is the bank's work organised?

The European Central Bank's work is organised via the following decision-making bodies.

The Executive Board
This comprises the President of the ECB, the Vice-President and four other members, all appointed by common agreement of the presidents or prime ministers of the euro area countries. The Executive Board members are appointed for a non-renewable term of eight years.

The Executive Board is responsible for implementing monetary policy, as defined by the Governing Council (see below), and for giving instructions to the national central banks. It also prepares the Governing Council meetings and is responsible for the day-to-day management of the ECB.

The Governing Council -> Euro
The Governing Council is the European Central Bank's highest decision-making body. It comprises the six members of the Executive Board and the governors of the 12 central banks of the euro area. It is chaired by the President of the ECB. Its primary mission is to define the monetary policy of the euro zone, and, in particular, to fix the interest rates at which the commercial banks can obtain money from the Central Bank.

The General Council -> Non-Euro
The General Council is the ECB's third decision-making body. It comprises the ECB's President and the Vice-President and the governors of the national central banks of all 15 EU member states. The General Council contributes to the ECB's advisory and coordination work and helps prepare for the future enlargement of the euro area.

1.2.10 European Investment Bank (EIB)

The European Investment Bank (EIB) was set up in 1958 by the Treaty of Rome. It helps achieve the Union's objectives by financing certain types of investment project.

The projects selected are ones that promote European integration, balanced development, economic and social cohesion and an innovative knowledge-based economy.

What does the bank do?

The EIB's mission is to invest in projects that promote the objectives of the European Union. It is non-profit-making and gets no money from savings or current accounts. Nor does it use any funds from the EU budget. Instead, the EIB is financed through borrowing on the financial markets and by the bank's shareholders - the member states of the European Union. They subscribe jointly to its capital, each country's contribution reflecting its economic weight within the Union.

This backing by the member states gives the EIB the highest possible credit rating (AAA) on the money markets, where it can therefore raise very large amounts of capital on very competitive terms. This in turn enables the bank to invest in projects of public interest that would otherwise not get the money - or would have to borrow it more expensively.

The projects the bank invests in are carefully selected according to the following criteria:

- they must help achieve EU objectives such as making European industries and small businesses more competitive; creating trans-European networks (transport, telecommunications and energy); boosting the information technology sector; protecting the natural and urban environments; improving health and education services;
- they must chiefly benefit the most disadvantaged regions;
- they must help attract other sources of funding.

These criteria apply to activities both within and outside the European Union. Nearly 90% of the EIB's activities take place within the European Union, but a significant proportion of the funding goes to the future member states.

The EIB also supports sustainable development in the Mediterranean countries, Africa, the Caribbean and the Pacific, as well as projects in Latin America and Asia.

Finally, the EIB is the majority shareholder in the European Investment Fund. This fund was set up in 1994, to finance investment in small and medium-sized enterprises (SMEs).

How is the bank's work organised?

The Bank deals directly with the promoters of large-scale projects (at least 25 million euro), while for smaller projects (SMEs or local authorities) it works with some 180 banks and specialist financial intermediaries in Europe.

The EIB is an autonomous institution. It makes its own borrowing and lending decisions purely on the merits of each project and the opportunities offered by the financial markets. Each year, it presents a report on all its activities.

The Bank co-operates with the EU institutions. For example, its representatives may take part in committees of the European Parliament, and the President of the EIB may attend Council meetings.

The Bank's decisions are taken by the following bodies.

- The **Board of Governors** consists of ministers (normally the Finance Ministers) from all the member states. It defines the Bank's general lending policy, approves the balance sheet and annual report, authorises the Bank to fund projects outside the EU and decides on capital increases.
- The **Board of Directors**, chaired by the President of the Bank, comprises 24 members appointed by the member states and one by the European Commission. It approves lending and borrowing operations and it makes sure that the EIB is properly managed.
- The **Management Committee** is the Bank's full-time executive. It handles the EIB's day-to-day business.

1.3 Decision making procedures

Decision-making at EU level involves a number of institutions, in particular:

- the European Commission;
- the European Parliament;
- the Council of the European Union.

The European Commission proposes new legislation, but it is the Council and Parliament that pass the laws. Other institutions and bodies also have roles to play.

The rules and procedures for EU decision-making are laid down in the treaties. Every European law is based on a specific treaty article, referred to as the "legal basis" of the legislation.

There are three main procedures for enacting new EU laws (listed according to increasing influence by EU Parliament):

- consultation (being phased out)
- cooperation (installed with the Single Act)
- co-decision (mostly used now)
- assent

The main difference between them is the way Parliament interacts with the Council. Under the consultation procedure, Parliament merely gives its opinion (non-binding) but in the cooperation procedure it is taken into account. Under the co-decision procedure, Parliament genuinely shares power with the Council. The European Commission, when proposing a new law, must choose which procedure to follow. The choice will, in principle, depend on the "legal basis" of the proposal.

In greater detail, the three procedures are as follows.

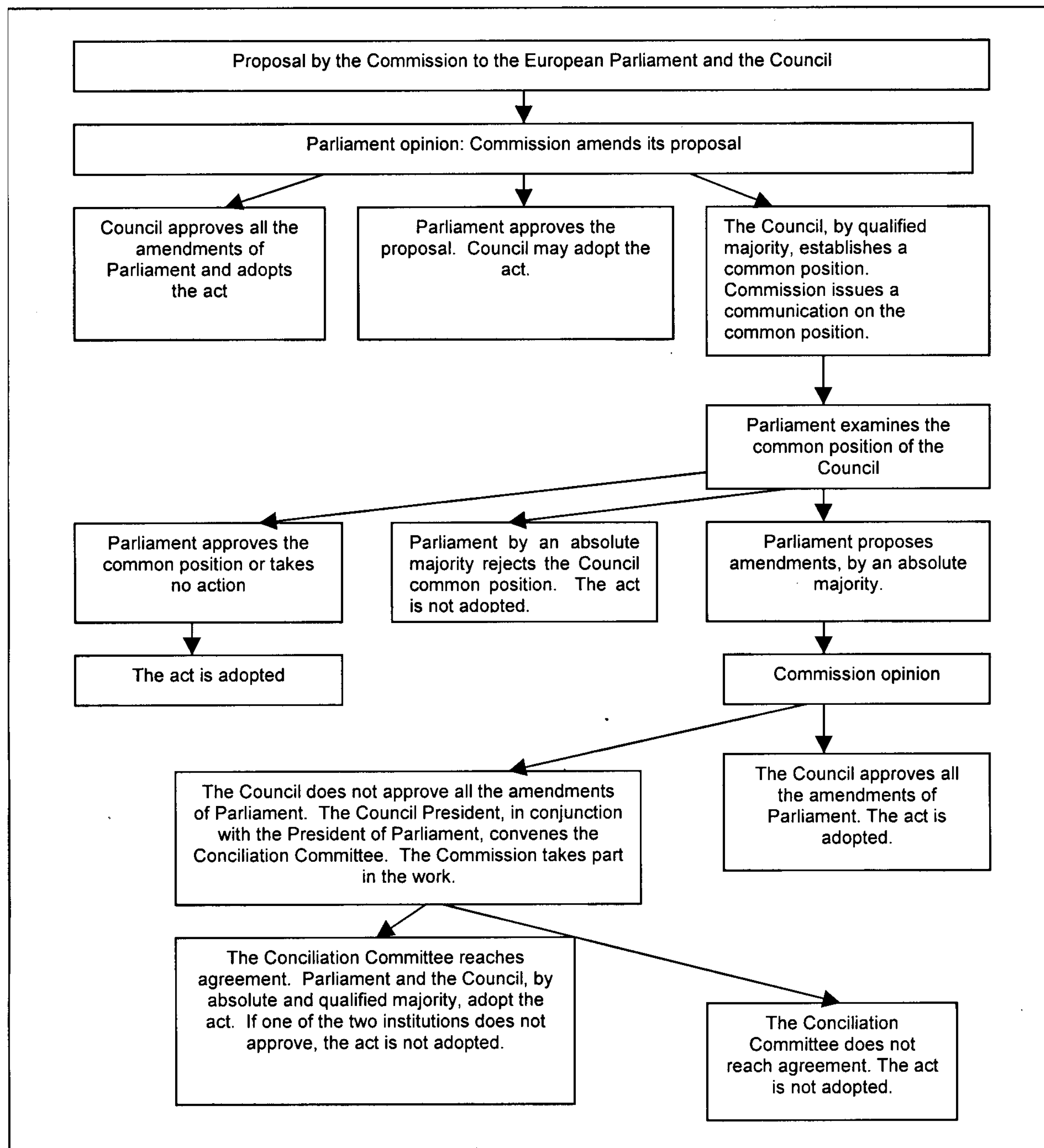
1.3.1.1 Co-decision procedure (Art 251)

In the co-decision procedure (introduced by the Treaty of Maastricht in 1992), Parliament and the Council share legislative power. The Commission sends its proposal to both institutions. They each read and discuss it twice in succession. If they cannot agree on it, it is put before a "conciliation committee", composed of equal numbers of Council and Parliament representatives. Commission representatives also attend the committee meetings and contribute to the discussion. Once the committee has reached an agreement, the agreed text is then sent to Parliament and the Council for a third reading, so that they can finally adopt it as law.

The areas covered by the co-decision procedure are:

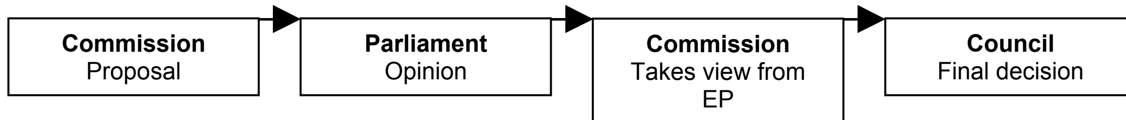
- non-discrimination on the basis of nationality
- the right to move and reside
- the free movement of workers
- social security for migrant workers
- the right of establishment
- transport
- the internal market
- employment
- customs co-operation
- the fight against social exclusion
- equal opportunities and equal treatment
- implementing decisions regarding the European Social Fund
- education
- vocational training
- culture
- health

- consumer protection
- trans-European networks
- implementing decisions regarding the European Regional Development Fund
- research
- the environment
- transparency
- preventing and combating fraud
- statistics
- setting up a data protection advisory body



1.3.1.2 Consultation procedure

Under the consultation procedure it is the Council which consults Parliament and other bodies. However the Council can proceed without taking into account these comments/recommendations. This is in contrast with the cooperation procedure. This procedure is being phased out in favour of the co-decision procedure.



1.3.1.3 Cooperation procedure (Art 249)

Under the cooperation procedure (introduced by the Single European Act in 1986), the Commission sends its proposal to both the Council and Parliament but it is the Council that officially consults Parliament and other bodies such as the Economic and Social Committee and the Committee of the Regions, **whose opinions** are an **integral part** of the EU's **decision-making process**. The procedure will take about 12 months.

In some cases, consultation is compulsory because the legal basis requires it and the proposal cannot become law unless Parliament has given its opinion. In other cases consultation is optional and the Commission will simply suggest that the Council consult Parliament.

In comparison to the consultation method the 2nd reading is added to the procedure. After the 2nd reading the EP can approve, reject or amend the council's common position. If the EP amends the common position, the commission can revise the proposal. In all cases the Council takes a final decision.

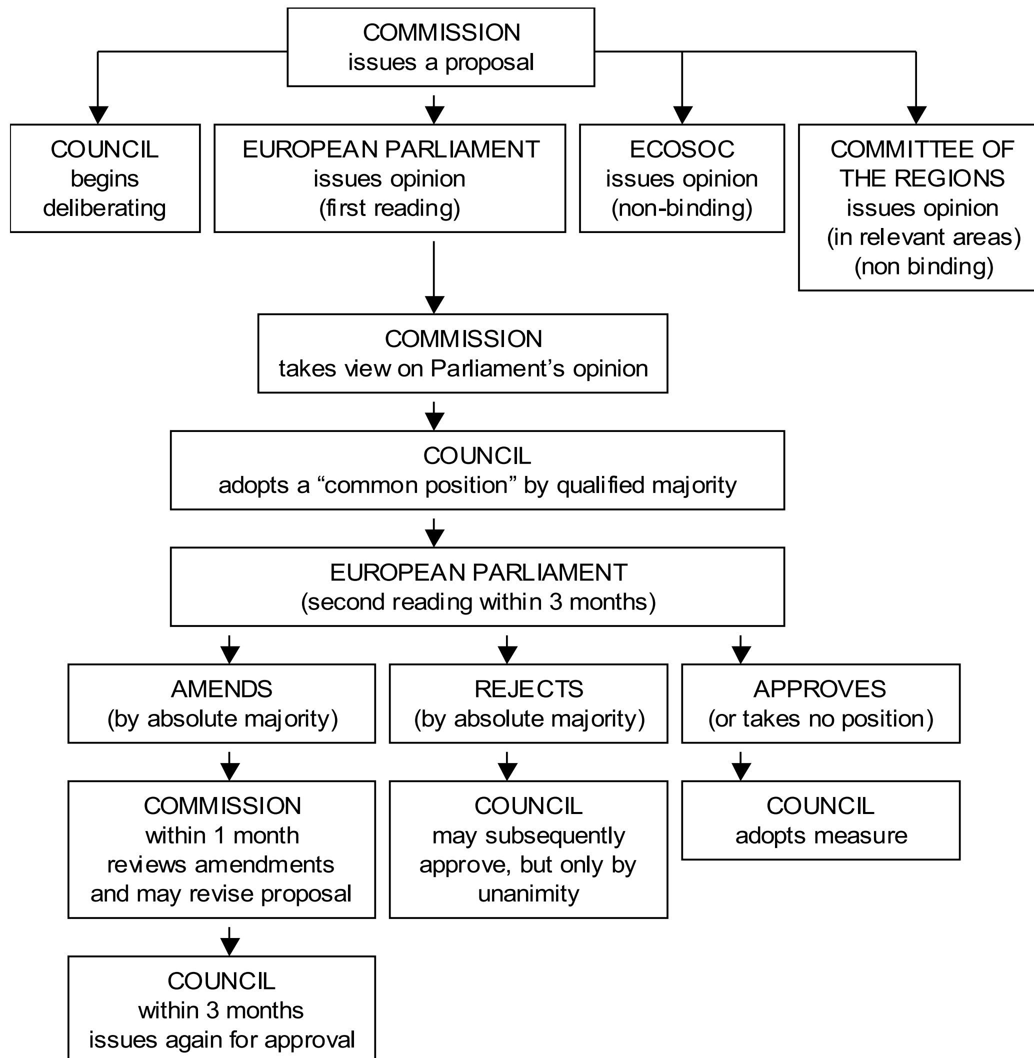
If Parliament asks for amendments, the Commission will consider all the changes Parliament suggests. If it accepts any of these suggestions it will send the Council an amended proposal.

The Council examines the amended proposal and either adopts it as it is or amends it further. In this procedure, as in all others, if the Council amends a Commission proposal it must do so unanimously.

The areas covered by the consultation procedure are:

- Police and judicial cooperation in criminal matters
- Revision of the Treaties
- Discrimination on grounds of sex, race or ethnic origin, religion or political conviction, disability, age or sexual orientation
- EU citizenship
- Agriculture
- Visas, asylum, immigration and other policies associated with the free movement of persons
- Transport (where it is likely to have a significant impact on certain regions)
- Competition rules
- Tax arrangements
- Economic policy
- "Enhanced co-operation" - i.e. the arrangement allowing a group of member states to work together in a particular field even if the others do not wish to join in yet.

In some areas, such as taxation, the Council's decision has to be unanimous.



1.3.1.4 Assent procedure

The assent procedure (introduced by the Single European Act in 1986) means that the Council has to obtain the European Parliament's assent before certain very important decisions are taken. The procedure will take about 24 - 48 months.

The procedure is the same as in the case of cooperation, except that Parliament cannot amend a proposal: it must either accept or reject it. Acceptance ("assent") requires an **absolute majority** of the vote cast.

The areas covered by the assent procedure are:

- specific tasks of the European Central Bank;
- amending the statutes of the European System of Central Banks/ European Central Bank;
- the Structural Funds and Cohesion Funds;
- the uniform electoral procedure for the European Parliament;
- certain international agreements;
- the accession of new member states.

1.4 EC Legislation

Article (formerly Article 148) of the EC Treaty distinguishes between decisions adopted

- Unanimously
- by a simple majority
- by a qualified majority

Qualified majority means 62 votes out of a total of 87 today, from 1 November 2004 this will change to 232 out of 321. In addition,

- a majority of member states (in some cases two thirds) must approve the decision, and
- any member state can ask for confirmation that the votes cast in favour represent at least 62% of the EU's total population.

The Amsterdam Treaty extends the scope of qualified majority voting to new areas. The qualified majority will thus apply to most of the EC Treaty's new provisions: initiatives on jobs, equal opportunities for men and women, fight against social exclusion, public health, anti-fraud measures, transparency, customs cooperation, statistics, regions on the extreme periphery, and the framework research programme for which unanimity was required until now.

Unanimity is only required on issues of "constitutional" importance (amendments to the Treaties or the accession of a new Member State), or certain sensitive areas such as taxation.

1.4.1 Types

1. **Primary legislation:** Treaties (Rome, Single Act and Maastricht)
   This legislation overrides national legislation.

2. **Secondary legislation:** Regulations, Directives and Decisions
   Only necessary if the objectives cannot be achieved at Member State level

- Regulations: Council, joint Council-parliament or in specific areas Commission regulations. In case of conflict with national law, regulations prevail. Regulations are directly and generally applicable in the Member States.

- Directives: Not directly applicable in the Member States. Member States decide themselves within a certain timeframe how to implement the new legislation within their national laws. The Commission controls this implementation. Directives are binding as to the result to be achieved. They can be enforced against state bodies if not implemented in time or not sufficiently.

- Decisions: Issued by Council and Commission. Specific issues are addressed to Member States, companies or even individuals. They are binding.

- Recommendations and Opinions: not binding.

- Negotiated agreements.

1.4.2 EC Budget

History comes from 1952 - > 4.6 million € / in 1997 -> 89000 million € but will never be higher than 1.27% of GNP of all members

This is where the money goes to:

- 50% agriculture: 44000 million €
- 33% structural operations: 34000 million €
- Internal policies
- External action
- Administration
- Pre-accession aid
- Reserves

This is where the money comes from:

- 40% VAT (1.4% of national VAT goes in here, e.g. if we pay 21% on car, 1.4 goes here)
- 40% Fourth resource (GNP of each member state determines contribution)
- 15% import charges (agricultural & custom duties)
- 5% Miscellaneous

1.4.3 Relation with Member States' legislation

New Legislation is made according to the **"subsidiarity"** principle. This means that it is only made if the Commission feels that national, regional ro local laws/rules do not handle an issue properly. This means that EU law is only made if it would be better then local/national law.

1.5 Influencing EC-policy (lobbying)

See below in the Readings

1.6 Readings

1.6.1 "The European Union – Understanding and Influencing policy making and lawmaking"

1.6.2 "The European Parliament and the Sweeteners Directive"

Final outcome: A small footnote in a directive on sweeteners led to only the second rejection by the European Parliament (EP) of a Council's "common position" and demonstrates the potential for the European Parliament to exert policy influence.

The sweeteners proposal
The Commission proposed in Sept. 1990 a directive on sweeteners for use in foodstuffs. The proposal incorporated:

- A list of approved food additives.
- Maximum levels for ready-for-consumption foodstuffs.
- A requirement that Member States would allow only the use of, and trade in, products conforming with the directive.

First reading
In October 1990, Council consulted EP on the sweeteners proposal. The EP referred the proposal to its appropriate committees (Committee on environment, public and health + Committee on economic and monetary affairs and industrial policy). Both committees proposed amendments on 2 areas:

- Which sweeteners were to be permitted and in what quantities.

- How the directive was to be amended once it was adopted -> the Committee proposed that the directive be modified by means of the advisory committee procedure through the Scientific Committee for Food (SCF), which is not the normal (but slow) legislative process.

In April 1991, the Commission accepted 14 of Parliament's 39 amendments, including the amendment for an accelerated procedure for the approval of the new sweeteners via the SCF.

Council's common position
Council did accept some amendments but did not accept Parliament's request (accepted by the Commission) that future amendments to the permitted list of sweeteners be made by the SCF.

The most important element of Council's common position was the addition of a new footnote, which applied to alcohol-free and low alcohol beer and allowed Member States to prohibit the use of sweeteners for manufacture on their territory of alcohol-free and low alcohol beers.

The footnote was there to provide commercial protection for over 1000 small brewers in Germany and to add legislative credibility to the Rheinheitsgebot.

Under the Cassis de Dijon judgment, Member states may impose restrictions on trade which are intended to protect consumers and which are proportional, so long as Community rules have not been adopted. The intention of this footnote was hardly to protect consumers.

Second reading
Council's common position was referred to Parliament's Environment Committee in March 1992, who voted not to delete the footnote. In the Parliament's plenary session of April 1992, Commissioner Bangemann conceded that the Commission (and Council) had created the footnote in order to avoid re-consultation of the Parliament which would be required for a completely new text. This transformed the debate from one of policy content to one of institutional significance.

Rejection of the common position
In May 1992, Parliament's plenary session rejected the Council's common position for primarily constitutional reasons.

Commission's withdrawal
The Commission did not withdraw immediately the proposal because the Parliament's rejection of common position is not sufficient grounds for withdrawal. Finally, in June 1992, the Commission submitted 3 new proposals to supersede the original disputed proposal.

1.6.3 "The legislative powers and impact of the European Parliament"

- Particular focus on the co-decision procedure
- To what extent the different procedures have been used
- Possible areas of further reform of the EP's role.

Maastricht introduces the EP in the decision making process. Co-decision is the most important and controversial power. Amsterdam treaty extends areas where co-decision and assent applies. Simplifies co-decision in four ways – (1) adoption after the first reading (2) elimination of the third reading (3) so a proposal may fail -> Parliament on equal footage of the Council. Balanced set of veto powers.

1.6.4 "Corporate lobbying in the European Community"

Summary see below

1.6.5 "Case study: Legislative process and Lobbying"

MEANS:

a) Direct lobbying: own lobbyist/own office in Brussels (e.g. Philips)

Large companies often open a Brussels office in order to:
- Monitor the EC policy agenda and developments affecting their business
- Develop personal links with Commission officials
- Monitor national and EC assistance to competitors

b) Euro-groups = European (industrial) federations

Although groups can be outflanked by their members in Brussels, they have nevertheless assumed an important role in the policy process at the European level.

- OK if it is an authoritative and representative business group
  => collective approach can be very effective
- Often they have great difficulty reconciling the divergent interests of national member organisations
  => rather ineffective
- The ad hoc committees dealing with the technical matters of proposals are dominated by Euro-groups. These Euro-groups often give them the information upon which proposals and policies are constructed which will have community application .
- While officials often consult individual companies, they do appear to prefer to speak to groups were the issue may involve competitive advantages for individual companies.

c) Professional lobbyists = Brussels-based lawyers and political consultants (e.g. PwC)

These professional lobbyists are often viewed with some scepticism by:
- Companies: wary of delegating their interests to independents.
- Commission officials: prefer to avoid speaking to 'hired hands'

Large companies often prefer to adopt multiple strategies, being member of several Euro-groups, running their only lobbying facilities and hiring professional lobbyists when necessary.

TO WHOM AND WHEN:
As soon as possible.

1) Developing of a formal proposal by the Commission.
- Comments, to be most effective, should be submitted at an early stage in the life of a proposal and this formative time is the best time to do so.
- Proposals are drafted in relative secrecy and drafts can be difficult to get hold of. They are however circulated to interested parties (often Euro-groups) for consultation purposes.
- Contact with officials of COREPER is important at this stage as they generally sit on the advisory committees consulted by the Commission.

2) Referral to ECOSOC
Contact with members is important as they can be very helpful and influential

3) Reading by the EP
Contact with an MEP or a member of the Parliamentary committee which considers the proposal can be very helpful before the final Parliamentary debate.

4) Common position adopted by the Council
Time to contact national ministers and/or Coreper members.

EFFICACY:

Community Lobbying proved to be efficient instrument in order to improve the EU legislation. Many useful decisions might not have be implemented if companies would not participate in the EU decision-making process.

MODELS:

US/Anglo-Saxon
The Anglo-Saxon style is focused direct lobbying of the European Commission. This style is typically represented by German or UK firms. For instance, the size of Germany's largest firms, their more diversified portfolios and increasing international merger activity means they often achieve 'insider status' at the European forums and exert a large influence at different European levels.

French/Italian
Due to some economical and political reasons French and Italian companies use more the new European business alliances. For instance, Italian firms are some of the most active firms in the Brussels 'high politics' forums: Agnelli and FIAT in the European Round Table (ERT), Olivetti in the creation of Bangemann superhighway initiatives and etc. France's largest firms, such as Rhone and Alcatel-Alsthom, have been actually at the forefront of a European company statue.

1.6.6 "State power and institutional influence in European integration: Lessons from the Packaging Waste Directive" (optional)

2 Session 2: Industrial Policy 1: Competition

Objective of the Competition Policy is to increase the competitive environment by:

- Speeding up the adjustment of industry to structural changes.
- Encouraging an environment favourable to initiative and undertakings (SME's).
- Encouraging an environment favourable to cooperation between undertakings.
- Fostering better exploitation of industrial potential of policies of innovation, research and technological development.

In accordance with a system of open and competitive markets.

The main elements of the European Competition Policy are:

- Competition between private companies: trade practices
  - Art 81 (formerly Art 85): Restrictive agreements and concerted practices
  - Art 82 (formerly Art 86): Abuse of dominant position
  - Merger Regulation
- State Aid (Article 87 to 89)
- State Monopolies and monopoly rights

The Merger Regulation relates to policy on "Abuse of dominant position" (Article 82): the Article 82 refers to "abusive" practices, such as the acquisition of competing undertakings thereby affecting the structure of the common market.

2.1 Trade Practices (Art 81, Art 82, Merger Regulation)

SUMMARY:

The main objective is the completion of the internal market in order to allow firms to compete on a level playing field in all the Member States, by encouraging economic efficiency. In the end it protects the interest of consumers by allowing them to buy goods and services under the best conditions.

OBJECTIVES:

- Guarantee the unity of the internal market
- Avoid monopolisation

2.1.1 Article 81: Restrictive agreements and concerted practices

Art 81.1: Prohibits agreements and concerted practices between firms which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market.

Applies to horizontal and vertical agreements.

Restrictive agreement: agreement between two or more firms which requires one or more of the parties to the agreement to adopt a certain conduct

Concerted practice: co-ordination among firms which falls short of a proper agreement.

Since this is vague, the Commission simply distinguishes between agreements falling within the scope of Article 81, and parallel conduct not meeting the criteria of Article 81.

Prohibited agreements (examples given in Art. 81):

- Price fixing
- Limiting or controlling production, markets, technical development, or investment
- Sharing markets or sources of supply
- Applying dissimilar conditions to equivalent transactions with other trading parties
- Conditions of sale

In practice, certain types of agreement are prohibited almost without exception ("black list"):

- **Horizontal**: Price fixing, Joint sales offices, Production or delivery quotas, Sharing of markets or supply sources (ex. Fortis KBC, GM-Ford)
- **Vertical**: Fixing resale price, Absolute territorial protection clause.

Activities outside the scope of Article 81:

- Agreements of minor importance or the **"de minimis" rule,** where market share <10% for horizontal agreements, <15% for vertical agreements (supplier market).
    - Conditions: market share <10% for horizontal agreements
    - market share <15% for vertical agreements
    - Agreements between SME's (250<=staff; turnover <=40 mil Euro; balance total <=27 Mi Euro)
- Agreements with commercial agents, parent company/subsidiary relations, cooperation agreements, subcontracting

Consequences (Art 81.2)

- If an agreement falls within the prohibition of Article 81 then:
    - the agreement is null and void
    - the Commission has the power to order the parties to terminate the illegal conduct. And it may impose fines of up to 10% of the annual turnover of the undertakings concerned.
- Commission investigates cases on application by a Member State or on its own initiative.
- The 1991 case against Tetra Pak is exemplary. ECU 75 million fine imposed for discriminatory practices relating to pricing, partitioning of national markets, loyalty payments and exclusivity clauses…

Exemptions (Art 81.3)

Agreements that help to improve the production or distribution of goods or to promote technical or economic progress may be exempted, provided that:

- Consumers are allowed a fair share of the resulting benefit, and
- The agreement does not impose unnecessary restrictions, or aim to eliminate competition for a substantial part of the products concerned.

Block Exemptions

Certain types of action are given a general prior exemption on the basis of Article 81 - designed to simplify the Commission's administrative tasks and make it easier for companies to fulfil their obligations. Over the years the Commission has made wide use of such block exemptions. Exceptions are the **black list** clauses (which are never exempted). Main beneficiaries have been the following agreements:

Horizontal:

- Specialisation agreements
- Research and development agreements
- Technology transfer agreements
- Insurance sector (e.g. underwriting large risks, sharing customer data to enhance policy setting)

Vertical:

- exclusive distribution agreements (as long as it does **not** prohibit parallel trade)
- exclusive purchasing agreements (particularly brewery and service stations)
  motor vehicle selective distribution agreements
- franchise agreements

Block exemptions example: Car industry exemptions

Commission and car industry have a special agreement which exempts car-makers from certain aspects of Article 81 (this is a block exemption agreement). Car makers are allowed to sign exclusive or restricted distribution arrangements with dealers, thereby giving them strong control over prices. There are some strict conditions to this agreement, however, including condition that car dealers have to be allowed to sell vehicles to customers from outside their territories (in keeping with spirit of the single market). Hence VW was fined

90M€, for ordering its Italian dealers not to sell models to Germans and Austrians. This case is raising questions about the continued validity of the block exemption.

From May 2004 the monopoly position of the Commission will be shared with national competition authorities and will be decentralised. The Commission will get more investigative powers (e.g. drawn aids).

2.1.2 <u>Article 82: Abuse of dominant position</u>

Article 82 (formerly 86) of the Treaty states that: “any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States” (was defined by ECJ in United Brands case - 1978).

Elements for application of Art. 82:

- undertaking in a dominant position.
- dominant position in common market or substantial part of it.
- must be an abuse of dominant position.

Dominant position = economic power (quasi-monopoly) which allows a firm to hinder effective competition in the market dominant position (position is not prohibited as such, the abuse of the position is).

Abuse of dominant position = when the structure of that market or its competition, is influenced by the economic conduct of the firm, even if favoured by national law.

Examples of abuse:

- imposing unfair prices or trading conditions,
- limiting production, markets or technical development to the detriment of consumers,
- applying dissimilar conditions to equivalent transactions with other traders,
- imposing supplementary obligations without connection to the purpose of contracts.

(was defined by ECJ in United Brands case - 1978).

Dominant position = economic power (quasi-monopoly) which allows a firm to hinder effective competition in the market dominant position (position is not prohibited as such, the abuse of the position is).

Abuse of dominant position = when the structure of that market or its competition, is influenced by the economic conduct of the firm, even if favoured by national law.

Article 82 has **no** individual derogations or block exemptions (unlike Article 81).

Critical issue is ‘the relevant market’!

- Product market: interchangeable by consumer in same price category and intentional use. Hypothetical price increase (5-10%) – if consumers switch, they have found a product in the relevant market.
- Geographical market: where conditions of competition are sufficiently homogeneous

As a defence, a company can contest the definition of relevant market.

Commission is empowered to undertake investigations into companies and associations of companies, to impose fines by decision and to address those companies the decisions to bring any infringements of the Article to an end.

Practical examples

- charging unfair purchase and selling prices
- discriminatory prices,
- refusal to sell to customer without reasons,
- attempts to hold on to customers,
- acquisition of competing undertakings.
- low pricing tactics in order to eliminate competition with less financial strength.

2.1.3 Merger Regulation (Regulation 4064/89)

Merger: a firm acquires exclusive control of another firm or of a firm it controls jointly with another firm or where several firms take control of a firm or create a new one. Council decision of 24.4.97 specified the merger Regulation has to apply where combined aggregate worldwide turnover of all the undertakings concerned is more than 5M Euro.

Regulation 4064/89: Commission has the power to examine mergers before they take place, in order to decide whether they are compatible with the internal market.

Process involves:
- definition of the relevant product market
- definition of the relevant geographic market
- assessment of the compatibility of the merger with the internal market on the basis of the principle of dominant position in the relevant market.

Industry prefers to use the Merger Regulation (Art. 81 has no fixed timing !) since it is seen as a “one stop shop”. If the Commission authorises the merger after a decision period of 1 month (or 4 in case of further investigations), the merger is possible for always.

Out of the over 300 cases per year, over 90% of them are approved after 1 month (e.g. KBC, GB-Carrefour), 5-7% required further investigations and were allowed under certain conditions (e.g. Crown Cork Case, Dupont-ICI, McDonald Douglas-Boeing) and the remaining never go through (General Electric-Honeywell, Aérospatiale-Alenia/De Havilland, Bertelsman)

Criteria for a company to go to the commission for approval of merger:
- large company: > 5 billion Euro
- 250 million in Euro ?
- not more than 2/3 of market

If you meet these thresholds you need to go to the commission for approval

2.2 State Aid (Art 87 to Art 89)

2.2.1 Definition:

State Aid: any aid granted by a Member State of trough State resources in any form whatsoever, which distorts of threatens to distort competition. State Aid can consist of:

Direct subsidies.
Tax-breaks (e.g. reduction on export taxes, delayed taxes on profits).
Free use of state infrastructure.
Selling of land below market price.
Grants
Loans
Etc.

2.2.2 State Aid: why/why not ?

Why ?

Ensure employment in companies with difficulties.
To stimulate development of new economic activities.

Why not ?

Keep a level playing field
Keeping unviable companies alive is costly to society.

2.2.3 Article 87

One is considered to receive State Aid if it:

Conditions (Art 87.1):
- confers an economic advantage on the recipient
- is granted selectively to certain firm or the production of certain goods
- could affect competition.
- affects trade between the Member States

Commission: very broad interpretation: any form by anyone

Exemptions (Art 87.2: automatic & Art 87.3: possible)

a) compatible with the internal market (automatic exemptions)
- social character
- natural disasters or exceptional occurrences
- Germany (reunification)

b) MAY be compatible (possible exemptions)
- promotion of the development of certain activities or regions
- promotion important project with a European interest or remedy serious disturbance in the economy of a Member State
- promotion of culture and heritage conservation
- other categories of state aid specified by the Council

2.2.4 Procedure (Art 88)

Prior notification obligation of and approval by the Commission (with some exceptions on SME's, training and 'de minimis')

- Review of existing aid: Art 88.1 (eg Aid to ex-DDR)
- Infringement procedures: Art 88.2
- Treatment of new Aid: Art 88.3

2.2.5 Implementation

EC treaty:
- Commission has wide scope for judgement in applying treaty's provisions w.r.t.:
  - Basic rules (e.g. Exemptions of Art 87.3)
  - Procedure (e.g. Art 88)
- Possibility of Council Regulation to implement provisions

State Aid can **never** be used to increase structural capacity, only to reduce overcapacity.

Until mid 80's: piecemeal approach, however:
Need to preserve internal market
- Growing number of cases
- Need for legal certainty

Therefor:
- Council Regulation on ground rules (see next paragraph)
- Council Regulation for procedural rules (See procedure and transparency)

Application of ground rules (Art 87.3)

- Regional Aid: when is state aid to region allowed?
- Sectoral Aid:
    - Steel, Shipbuilding, Automobiles, Synthetic Fibers, Transport, Agriculture
    - Common characteristics
- Horizontal Aid:
    - Research & Development
    - SMEs
    - Environmental protection
    - Rescue and Restructuring of companies
        - For example: Boel Scheepswerf, Alstom, Sabena, Air France
        - Conditions:
            - Amount State Aid <= amount investedby private investor
            - Decrease (over)capacity
            - Plan on how the money will be spent (long term)
            - Annual report to the Commission
    - Employment (e.g. pre-pension plan)

Transparency

- State Aid Register
- State Aid Scoreboard

2.3 <u>Public Undertakings/Monopoly rights (Art 86)</u>

Prohibition for these enterprises to act against the Treaty (in particular regarding competition)

Exemptions: services of general economic interest are only subject to competition rules if the rules don't obstruct the performance of the particular tasks assigned to them.

Commission: liberalisation policy for

- gas and electricity: legal framework is in place: large users first, then evaluate, then go further.
- telecommunications: done
- postal services: full liberalisation planned 2009
- water (production and distribution)
- transport
- other network industries (infrastructure versus services)

Commission has the power to address directives and decisions to the Member States

PROCEDURE

The Commission has the task of ensuring that the EU competition rules are respected. It may act:

- on its own initiative
- following complaints from Member States, firms or individuals
- following notifications of agreements by firms / planned state aid by Member States

The Commission had wide investigative powers.

Other example: liberalisation of status of Antwerp Dock workers. Status today: postponed.

2.4 Readings

2.4.1 Restraints of trade

Case outline
Restrictive contracts between manufacturers and retailers look like obvious targets for trust busters. But they can benefit customers as well as firms.

Summary
Article deals with SEDs (Selective and Exclusive Dealerships)

SEDs are examples of vertical restraints – limits that manufacturers put on what retailers sell and how they sell it.

- Car dealers offer only a single make.
- Car dealers are geographically spread (exclusive territories).
- Price fixing.

Potential advantages of vertical restraints
Most efficient.

Conclusion
Suspicions remain that car manufacturers are using their distribution system to exploit customers.

2.4.2 EC Notifications an decisions: The Soda Ash Case

Keywords: Competition policy (Article 81, 82), anti dumping

Subject: competition investigation in the soda ash market

Summary

Commission decisions

1. Solvay and ICI do not operate in each other's market (agreement of non-interference). This agreement is an infringement and must be terminated – fine 7MECU/7MECU.
2. Solvay/Chemische Fabrik (CFK) required to terminate agreement (guaranteed minimum sales) and fined 3MECU/1MECU.
3. Abuse of dominant position (uncompetitive rebates to preferred customers) has damaged the market: fine: 20MECU.
4. ICI anti dumping duties imposed on US undertakings: fine 10MECU.

Conclusions
The actions of the commission in relation to the soda market demonstrate a more aggressive stance against anti-competitive practices.

2.4.3 Anti-trust rules: Netherlands: commission imposes fine on crane-hire cartel

Keywords: Competition policy (Article 81, 82), price fixing

Subject: price fixing

Case outline
EC imposes 11.5MECU fine on FNK for 12 years of price fixing. And 300000ECU on SCK (certification)

Summary
FNK market share crane hiring = 75%

Combined turnover 230MECU.
Recommended prices 10% higher than market price.

Conclusions
SCK did not meet criteria on openness and transparency.
However. certification systems which meet such criteria and accept equivalent guarantees from other systems may in future qualify for exemption under Article 81 of the Treaty.

2.4.4 Commission imposes fine on Bayer AG for impeding exports of the pharmaceutical product Adalat within the European Union (1996)

Keywords: Competition policy (Article 81, 82), anti trust

Subject: anti trust

Summary
Bayer since end of 1980s parallel exports of Adalat (cardio vascular) to the UK
Prices vary widely in member states
Largest market share in the UK (and more expensive there)
France/Spain export surplus to the UK => Bayer did not want to supply them any longer with excessive amounts. (continuous threat)
Since France/Spain comply => this is an agreement in breach of Art 81.

Conclusion
Commision has imposed fine of 3MECU for infringement of Article 81, taking into account that practices are serious infringement of Community Law

2.4.5 Parallel imports of pharmaceutical products: Organon (1995)

Keywords: Competition policy (Article 81, 82)

Summary
British subsidiary of AKZO (Dutch)
Substantial market share in the union
1994: Change price regime to Mercilon and Marvelon
Before – 12.5% discount irrespective to final destination
Now no longer applies to export
UK wholesalers could only receive rebate if they could prove that the orders were for the local market
Commission sends Statement of Objections in Aug 1995
Agreement under article 81
Infringement to competition rules – discrimination based on geographical destination
Social security reimbursement
Partially in Netherlands
Fully in UK (given lower price)
Sep 1995: Organon complies – benefits of parallel trade restored.

2.4.6 Yves Saint-Laurent Distribution Network (1990)

Keywords: Competition policy (Article 81, 82)
Subject: selective distribution

Summary
Selective distribution for perfume – authorized dealers in France directly supplied by YSL, in member states through exclusive agents
Commission adopts favourable attitude, but amendments
OK with quality criteria
But wo waiting lists
Not subject to economic feasibility of the region

No resale price imposed
May sell competing products

2.4.7 The Vichi Distribution Network (1991)

Keywords: Competition policy (Article 81, 82)
Subject: exclusive distribution

Summary
Distribution contracts found to be contrary to Art 81
Vichi cosmetics = exclusive sales by chemists except France = open, only seller has to have diploma in pharmacy.
Commission cannot accept exclusive in memberstates, next to non-exclusive in France

2.4.8 Selective distribution systems – luxury cosmetic products (1991)

Keywords: Competition policy (Article 81, 82)
Subject: selective distribution

Summary
- Concerns YSL cosmetic products
- Dec 1991: Commission decision standard form selective distribution contract
  - Refuce negative clearance Art 81(1) - some motivations not caught by Art 81(1) like quallified staff requirements, but there were minimum annual purchase requirement, restrictions wrt cross sales, etc… which did.

Grants exemption Art 81(3) – because the measures found to improve production and distribution and to the consumers' benefit.
- Process
  - Bi-yearly review
  - Exemption period 1991-1997

2.4.9 Exclusive rights to supply 1990 world cup package tours (1993)

Keywords: Competition policy (Article 81, 82)
Subject:

Summary
- Case: World cup organizers conferred world exclusive rights to one company that bundled those in a package tour -> complaint by Belgian travel agency.
- Commission rules: infringement of Art 81. and could not be exempted under 81(3) since this here is a service and not a good.

Safety requirements argument found to be insufficient to justify the measures.
- But no fines
  - Since precedent
  - Safety aspects

Infringement would come to an end with the end of the world cup.

2.4.10State Monopolies, Liberalization (19??)

Keywords: Monopolies

Summary
- Public authorities may grant monopoly rights to undertakings to perform services of general economic interest.
- Typical industries are transport, energy and telecommunications

- Distinction must be made between infrastructure and services supplied over that infrastructure.

Infrastructure is the vehicle for competition – monopolies allowed

- Community law (Article 86) – means for opening up the monopoly markets

Commission checks if exclusive rights comply with coompetition rules (not beyond what is strictly necessary)
Commission may initiate opening markets (European liberalization directive)
Examples are telecommunications, transport, postal, gaz, electricity

- Commission checks that rules are complied by undertakings
- Example 1: Mobile telephones in Spain

1996 community directive
Imbalance between Telefonica and Airtel Movil (needed to pay 510MEUR to Spanish government)
Commission required Spanish government to reimburse

- Example 2: Television advertising in Belgium

Commission prohibited exclusive right to broadcast television advertising to VTM by Flemish community authorities

2.4.11 Telecommunications (1994)

Keywords: Monopoly rights
Subject: liberalization

Summary

- Precondition: ligitimate public service objectives must continue to be met
- Liberalization in several steps
  - Step 1: 1988 – telecommunications terminal equipment Directive opens the market for telephones modems and fax machines
  - Step 2: 1990 – abolition of monopoly rights for the provision of all telecommunications services

2.4.12 1992 review paper: universal service obligation shall not be engangered. + toward full liberalization of telephony voice service by 1998.

  - Directive on satellite communications
  - Draft Directive to lift restrictions on the use of cable television networks for the carriage of liberalized telecommunication services.
  - Consultation to lift exclusive rights wrt mobile services and underlying infrastructure by 1996
  - Work started on draft for full liberalization of telco services by 1998.

2.4.13 Directive on common rules for the internal market in electricity (1995)

Keywords: Monopoly rights
Subject: liberalization

Summary (article unreadable)

- Gradual opening of the electricity market over the period of 6 years
- First opening effective at beginning 1999 (large customers)
- Then gradually smaller customers

2.4.14 Proposal for a Directive on common rules on the internal market in gas (1995)

Keywords: Monopoly rights
Subject: liberalization

Summary (article unreadable)
Discussions in the energy council

2.4.15 Third of EU natural gas market to be liberalized (1997)

Keywords: Monopoly rights
Subject: liberalization

Summary

- $100B market
- Each state to open at least 20% of its market to competition within 2 years of adoption

2.4.16 EU set to delay open post markets (1996)

Keywords: Monopoly rights
Subject: liberalization

Summary

- 70B market – proposal to delay opening to at least 2003 (victory for France)
- original proposal was liberalization by 2001 with review in 2008
- Decided by qualified majority

2.4.17 Brussels attacks Deutsche Post over pricing (1997)

Summarised by Serge Audenaert:

Keywords: Monopoly rights
Subject: liberalization

Summary

- DP had been acquiring competitors in light of liberalization
- Sued for predatory pricing and abuse of dominant position (complaint from UPS)

2.4.18 Courier Operators want EU to Deliver the Goods (1997)

Keywords: Monopoly rights
Subject: liberalization

Summary

- Express courier services are preparing to lobby to ensure fair competition due to recent events
  - EU under pressure of France decided to put off liberalization until 2003
  - EU approves acquisition of Australia TNT by Koninklijke PTT Netherlands (KPN)

2.4.19 The C-word strikes back (1996)

Keywords: Competitivity

Summary

- Two bodies with joint report
  - World Economic Forum
  - International institute for management development (IMD)
- World Competitiveness report

Has published rankings

- Issues
  - Competitiveness is meaningless when applied to national economies
  - At worst encourages protectionism
  - Countries do not compete the same way as companies
- Redefine competitiveness as the ability of a country to achieve sustained high rates of growth in GDP per capita.
- Agreed drivers for growth

- Open market
- Low tax
- High savings
- Human capital
- The rule of law

2.4.20 Variables (indicators) that the forum has excluded (unlike IMD) – since they are consequences of a country's competitiveness

- GDP growth
- Export growth
- Inflows of foreign direct investment

- Indicators with the biggest weight
  - Openness of an economy to trade and investment
  - Role of the government
  - Efficiency of the financial sector
  - Flexibility of the labor market
- Both organizations agree on
  - EU lags behind America and Japan
  - Italy is the least competitive of the G7 economies
  - Russia ranks bottom overall

2.4.21 "Steering Mergers through the EU's Regulatory Rocks"

2.4.22 "The Liberalisation of the energy sector in the European Union"

2.5 Cases

2.5.1 "Tetrapak"

Abuse of dominant position in the market for semi-liquid packaging machinery and cartons as a result of a complaint by Elopak, one of Tetra Pak's main competitors.

Highest fine (75 m ECU –1991) ever imposed by Brussels competition policy authority for abuse of market power and restraint of competition.

2.5.2 "Michelin – Continental"

2.5.3 CoJ judgement on predatory pricing (AKZO) (1991)

Keywords: Competition policy (Article 82)
Subject: dominant position

- AKZO case on organic peroxides; formal threat to ECS that it would force them off the market through low pricing if they did not withdraw from the market. (1979)
- 1980 – low pricing starts
- 1985 – Commission decision and fine of 10MECU -> appeal
- recent ruling
  - confirmation of previous judgement
  - NEW: precise criteria for assessing validity of dominant pricing policy
    - Pricing below variable cost == abuse
    - Pricing above average variable cost, but below avg total cost MAY BE abuse if intentional (this was the AKZO case)
  - Fine reduced to 7.5MECU

2.5.4 CoJ judgement on dominant position - definition of markets (Hilti) (1991)

Keywords: Competition policy (Article 82)

Summary

- Case: Hilti nail guns. Hilti refuses to supply cartridges to nail manufacturers
- Hilti market definition = wide

Court rules that actual market is narrower
E.g. specific adaptation requirements to nail guns
=> dominant position in 70-80% market share + patent rights!

  - Other legal ways to address the safety argument

2.5.5 The commission's new kingdom (1990)

Keywords: Competition policy
Subject: Merger regulation

Summary

- original = treaty of Rome (vague powers)
- New law clarifies responsibilities (50 EC officials one-stop shop) – within competition directorate
- New process
  - Merger Notification form
  - Task force answers 3 questions
    - Concentration

Community dimension (5B/250M)

    - Dominant position (relevant market)

- Two messy compromises
  - France – R&D argument + economics of scale to be considered next to competition
  - Germany – government can still take over case if there is a danger of dominant position

2.5.6 "Van den Bergh Foods"

Abuse of dominant position (Art 82). Inclusive pricing scheme applied by VDB for ice-cream and freezer cabinets. VDB proposes exclusive freezer arrangement combined with differential pricing. The Commission takes a favourable position with respect to the arrangements proposed by VDB.

2.5.7 Merger regulation decision – Aerospatiale – Alenia/De Havilland (1991)

Keywords: Competition policy
Subject: Merger regulation, dominant position, relevant market

Summary

- Britain = EC commissioner on competition
- First decision to **block a merger**; Aerospatiale wanting to acquire De Havilland (Boeing subsidiary)
- 1mo inquiry -> 4mo inquiry
    - would create dominant position in turboprop market (number 1 buying number 2).
    - Crux = analysis of product market (turboprop versus more expensive jet) – defined by commission as 20-70 seat commuter planes.
    - ATR/De Havilland would have 50% of world market and 67% of EC market.

Political row on 3 issues

    - Accusation of nationalism (Britain British and Fokker Dutch)
    - Technical arguments – market definition wrong and too small anyhow (not including Far East and Asia).

- Decision is counter to EC industrial interests (industry policy and art 81(3) where benefits of the merger, including 'technical and economic progress' could overweigh its anti competitive effects.

2.5.8 Negotiating with the merger task force: Nestle/Perrier and ICI/Dupont (19??)

Keywords: Competition policy
Subject: merger regulation

Summary
Discusses the problems with such negotiations, and nature of the undertakings it may require.

Nestle/Perrier

- Decision in 1992; now practical difficulties
- 1993: Nestle wants to take over Source Perrier SA
    - Offers to sell Volvic to BSN: not accepted. 4 mo examination
    - Agreed to certain undertakings (facilitate entry to French bottled water market)
        - Sell number of water sources
        - Postpone Volvic brand change to BSN
        - No repurchase of assets
        - Not expose sales data of less than 1 year
    - In implementing this, new issues showed up (the water sources to be sold appeared not to be part of the assets of Perrier/Nestle)

Du Pont/ICI
How much can the commission interfere in a company's internal organization in the negitiation of undertakings? More interference than negotiation.

- Undertakings so that independent 3d party has access to a sizeable portion of ICI's nylon fibre production capacity.
    - Reserve 12000 tons of ICI's carpet fibre production capacity
    - Dupont to manufacture under contract and according to 3d party specs for 5 years
    - Dupont obliged to transfer installation of R&D of carpets
    - Dupont to provide incentives for competent sales staff to accompany transfer of activities to third parties.
    - Transfer or licence of trademark

3 Session 3: Industrial Policy 2: The Single Market

3.1 Why the Single Market ?

The fundamental notion behind the creation of the European Union is achievement of Single Market. Single Market is necessary to enable European companies to compete successfully on the global scale, allowing them all the benefits of a single market space as they are available to the US and Japanese companies.

3.2 Barriers to achieving the Single Market

The barriers to the "fee movement" which existed at the moment of creation of the Union can be broadly classified into Physical, Technical and Fiscal. Some barriers have been completely dismantled (physical and technical barriers against free movement of goods), but others have been dismantled only to a limited extent - limited by either missing legislation, incomplete transposition of existing Commission's Directives into national legislation by Member States, by poor execution by local administrations, or by some actions of Member States.

Which brings two important notions:

- Ill effects of incomplete development of EU legislation, of limited transposition of existing legislation, and poor implementation of well-transposed legislation by local authorities add up to prevent Single Market from completion (reaching European Home Market)
- As most of the barriers become dismantled and freedom of movement for goods, services, persons and capital increases, negative effects of the remaining barriers become more obvious—and more salient

3.2.1 Physical

Physical barriers typically are:

- paper work (import/export documents)
- waiting at borders for necessary stamps and approvals from customs, immigration controls.F

Freedom of movement of individuals has not been made into law by all Member States.

Costs:

- 2% of trade value
- especially for SME's (<250 persons): 30-45%
- 13 to 24 billion €

3.2.2 Technical

Barriers as a result of law, norms or practices which inhibit or prevent intra-community trade in

Goods

- different technical regulations or standards
- duplication of testing and certification procedures
- reluctance to open public procurement to nationals of other Member States.

Professions

- Non recognition of their qualifications

Services

- Inability to provide services across frontiers without setting up a branch (banking & insurance sectors)

Capital Movements

- Exchange controls

Other

- Relating to company law, intellectual property, …

3.2.3 Fiscal

We are in a TRANSITIONAL system, no true internal market because different VAT systems for individuals and companies

- VAT systems for COMPANIES : pay VAT at DESTINATION. This means that the company that imports pays the VAT and Excise duties, exporter is tax free.
- VAT systems for INDIVIDUALS : pay VAT at ORIGIN

Why is it so difficult to complete the true border free internal market ?

- No political will to move to true internal market.
- No pressure from business to move to really unified single market because they perceive this transitional system as not so bad. They are happy with the current system.
- Difficult because the origin system changes the flow of revenues (from VAT) to the different member states. Therefore adjustments afterwards are needed which was supposed to be done by a 'central clearing house' (an EU institution). The impact of these changes on the revenue is also very difficult to forecast, because of the different rates of VAT applicable within the EU.

3.3 Principal measures to do away with physical, technical and fiscal barriers

3.3.1 Physical

Proposal to remove physical barrier for free movement of goods: done

- One single administrative document (1 January 1998)
- Abolition of road transport quota

Proposal to remove physical barrier for free movement of individuals: in process

- Coordinate national rules on control of drugs, status of third country nationals, visa policy, extradition policy

3.3.2 Technical

3.3.2.1 Proposals to remove technical barriers for goods

There are 2 methods:

The **Mutual Recognition** (Cassis De Dijon) approach:

- If a product is lawfully manufactured in 1 Member State, it should be able to sold without restriction throughout the Community.
- Exceptions: limited cases of public interest:
  - Health
  - Safety
  - Consumer & environmental protection.

Cassis de Dijon : Germany tried to ban out this liqueur lawfully made and marketed in France because Germany required a minimum amount of alcohol in such liqueurs (which was higher then the one in Cassis de Dijon). But Court of Justice held that Germany could not ban out sales of CdD because a minimum alcohol requirement was not a necessary provisions for the protection of public health.

The **Harmonization** approach:

- In case of Incompatible technical standards (Television or telecommunication) or if mutual recognition approach is not sufficient
- Problem: harmonization normally requires unanimity vote -> impossible or duration of 15 years

- Commission wants to reduce harmonization legislation: only were it is essential in the interests of health, consumer & environmental protection. For all other cases: mutual recognition approach applies.

3.3.2.2 Proposals to remove technical barriers for services

- Before '92: host country rules: company (e.g. bank & assurance) should meet the rules of the country in which they wish to set up a business
- After '92: home country rules: rules in which the company was originally based apply (based on mutual recognition).

3.3.2.3 Proposals to remove technical barriers for professions (in relation to free movement of individuals)

Commission wants to follow harmonization approach in a number of sectors of minimum requirements for qualification, experience and supervised training and, subject to that, the principal of mutual recognition will apply.

- Harmonization of minimum requirements for qualification, experience and supervised training budget to
  - TWO DIRECTIVES
    - '89: if you have a university degree of at least 3 years, then with that university degree, you can practice the profession of your diploma (lawyer, architect,…) everywhere in the EC
      - IF you pass on an attitude test (=> SO NOT REALLY A SINGLE EUROPEAN MARKET !)
      - OR IF You have a minimum (specified) number of years experience in that profession
    - '92: same directive of the '89-one but now for degrees of less than 3 years
  - EXCEPTION : lawyer degree : then you can practice the profession as lawyer everywhere in the EU.
- Principle of MUTUAL RECOGNITION

3.3.3 Fiscal

VAT

Approximate indirect taxes so differences sufficiently small to avoid distortion of trade

Proposals:
- System for collecting VAT for sales across frontiers = system for collection of VAT in member states
- Approximation of rates :
  - Reduced rate: 4-9%
  - Standard rate: 14-19%

Council decision was to use a reduced rate (4-9%) and a standard rate (>15%). The proposal to collect VAT in member states was not accepted.

We now use a hybrid system, see also earlier in chapter 3.2.3 Fiscal.

EXCISE DUTIES

Proposals:
- Harmonization of rates of tax on cigarettes, other tobacco products, alcohol and mineral oils
- Abolition of duty free concessions

No decision yet.

3.4 Evaluation

'De Facto' ('In principle') there is a single market, regulations are there **but** in reality there are still a lot of barriers and few implementations of the single market directives in all European countries:

- VAT
- 297 directives have been adopted but not necessary implemented
- Even if member states implement directives correctly, administration still continues own habits.

Commission tries to lower the barriers **<>** Member states try to increase the barriers

3.4.1 Free movement of persons

A lot of proposals were done to coordinate national rules BUT many European countries (eg UK) have NOT made this into a law (only 'Shengen' countries did (for a part)).

Because you still need to pass an aptitude test (or have x years of experience) before you can practice the profession you have a degree in, in other European countries, one is limited in the movement as a worker.

3.4.2 Free movement of goods

There is a significant simplification in administration, so this is working within the EU borders.

3.4.3 Free movement of Services

Mostly OK since adoption of the "home country rules apply" principle. However for Insurance industry there are still exemptions.

3.4.4 Free movement of Capital

Since 1990, Art 56 is fully operational, but there are some cases that form the exception which Member States may apply:

- Measures to prevent infringements of national law, particularly in the field of taxation and the prudential supervision of financial services.
- Procedures for the declaration of capital movements for administrative or statistical purposes.
- Measures justified on the grounds of public policy or public security.

The free movement of capital between the EU members and the outside world is more restricted.

3.5 Readings

3.5.1 "3.2.1 Free movement of goods"

3.5.2 "3.2.2 Free movement of workers"

3.5.3 "3.2.3 Freedom of establishment and provision of services and mutual recognition of diplomas"

3.5.4 "3.2.4 Free movement of capital"

3.5.5 "V.A.T. in the European Community" (optional)

How does Valued Added Tax (VAT) work:

- VAT is a tax on consumer spending
- VAT is a percentage tax, levied on prices companies charge for goods or services
- There is no distinction between goods for consumer or business purposes

There are 2 major systems to charge VAT: **Cascade** tax and **Value Added** Tax.

Cascade tax is a simple and efficient way to levy tax on the previous purchasing price of a product plus the added value each time the product is being sold.

Value added tax is based on the net difference of the total tax calculation (with the exclusion of the previous tax in the total amount) and the previous value added tax. The result is each time a net tax level.

Cascade tax:
Disadvantages of cascade tax:

- It is impossible to quantify how much tax the good has borne.
- The tax amount is not only depending on the number of times the product changed hands, but also includes all tax on capital equipment and overhead.
- A supplier of equipment and overhead will pass on their tax.

Impact of Cascade taxes on import and export:

- Tax rates chosen by the local governments are often to promote exports and penalize imports.
- Tax with a special claim in the common market should make it possible for goods to compete on equal terms regardless of the origin of the member state.

Exemption:

- All financial goods and transactions (banks, insurance…) are exempted from cascade tax.
- Most of the EC member states refuse to refund private expenditure for businesses (cars, entertainment, hotels…).

COMPLEXITY OF VAT
VAT systems are extremely complex, but it often gives the government the possibility to control the VAT paid on the good purchased and the good sold.

VAT IN THE INTERNATIONAL ENVIRONMENT
VAT on international level among member states or even non-EC members, is brought back to a national or local level. There is no VAT on exports, but only on imports and this at the national rate.

THE CHANGES IN 1992

The main reason for changes in the VAT system was to lower the fiscal barrier for a single European market. Before, the whole VAT system was an enormous formality burden.

THE NEW OUTLINE OF THE VAT CONCEPT

- Removing border control on goods between member states.
- No VAT discrimination between imported goods and goods bought on the local market.
- The VAT reclaim on imported goods is not different from inland goods.
- The exporter must provide the evidence that he must not pay VAT on those goods, because the VAT has to be paid by the buyer.

Quarterly reviews are made to get a good listing of exporting/importing goods among EC countries. The exporter must list all the goods sold including all the customer VAT numbers.

In case of a 3-country transaction, tax will be due in the 3rd country but the whole mechanism of VAT control is less obvious and liable in such cases.

The system is similar if goods are exported or imported between EC and non-EC states.

The Singe Administration Document (SAD) is recorded when goods leave or enter an EC-country. This document was a first approach to formalize the fiscal barrier. In the future, this SAD will become obsolete between EC member states.

HOW DOES THE VAT SYSTEM IN THE EC COMMUNITY AFFECT THE PRIVATE INDIVIDUALS?

The customer will experience that he can buy freely abroad in the single European market; he pays only the taxes in his own country for the imported goods.

If he buys goods abroad (inside the EC) he will not have to repay VAT for entering his own country (only for goods below the 500 USD level). There is a special arrangement for duty free shipping up to 50 USD.

AFTER 1992

Proposal was made to limit the variations in VAT rates in the different member states. On a recommended list of necessities, the rate will be between 4 and 9%. Other tax levels will be at least 14%. (table 3.5.1, p13). There are exceptional cases where the difference could create vast amounts between low tax and high tax rated member states. An example is the car sales business; the conclusion is that VAT is now paid in the country where the car is registered for the first time.

The difference between high and low VAT countries can stimulate citizens to buy in those countries where there is an advantage. Therefore, borders should only be dismantled after full regularization of the VAT levels among member states of the EC.

3.5.6 “Does Europe have a single market ten years on”

4 Session 4: Industrial Policy 3: Single Market (continued)

4.1 Public Procurement

The EU wants more competition and an improvement of the quality of the services , supplies and works provided to the institutions that can benefit from public procurement (public organizations, army, authorities, suppliers of the government, …) A real open single market will be achieved only when all firms can compete for contracts on an equal footing (opening up of the national procedures).

4 directives covering:

- works contracts (1989)
- supply contracts (1989)
- service contracts (1992)
- procurement by utilities (= enterprises operating in the water, energy, transport and telecom sectors)

And a review procedures directive to ensure that there is a proper remedy for any infringement committed during contract-award procedures (result from the "Alcatel" ECJ case).

Means to improve the opening up of the market :

- **SIMAP**: public procurement information system = use of IT within public procurement + website
- **TED:** Tenders Electronic Daily = database informing the potential suppliers of the tenders
- **CPV:** Common Procurement Vocabulary = description of the subject-matter of contracts
- **S-supplement** to the Official Journal

Government Procurement Agreement (GPA): necessary amendments to the existing directives to avoid reverse discrimination against EU supplier firms.

Procedures

- **Open procedure:** all interested suppliers may submit tenders (transparency: publication in Official Journal, best or cheapest supplier is taken). Process:
  1. Notice
  2. Specification
  3. Wait 52 days, this is the time to enter bids
  4. Opening
  5. Evaluation selection criteria OK ?
     attribution criteria OK ?
     check if the company can handle the job.
  6. Selection
  7. Publish selection
  8. Wait 15 days
  9. Sign contract (if selection is not contested)

- **Restricted procedure:** only those suppliers so invited by the contracting authority may submit tenders (when less than 10 suppliers in EU but you MUST address all of them); no publication in the Official Journal. Waiting time is 21 days iso. 52.
- **Negociated procedure:** only 1 supplier – the price is negotiated between the authority and the supplier; applicable in time of crisis, cannot be used in cases where no time is left due to bad planning or circumstances which could have been foreseen.

General rule: the technical specifications have to be public. Criteria have to do with good repute and technical capability/written report by contracting authority = reasons for rejection or success.

Review procedures

Definition: to ensure greater transparency and non-discrimination in the award of public supply, public works and public service contracts in the Community.

Green Paper: Public procurement in the European Union: Exploring the way forward.
Purposes = fight against corruption in EU/job creation/economic growth/competitiveness. Important element to have more bidders = make public procurement more accessible to SME

Reasons why public procurement **does not work well**:
- often local suppliers
- habits
- too long EU procedures (too many different Directives: 6)
- not many people read the Official Journal
- EU offers can be split up in different lots (no public procurement anymore!), “**salami tactics**”

Thresholds:

Works:	5M€
Services:	200K€
Supplies:	200K€
Under GATT rule:	130K€
Utilities:	400K€
Telecom supplies:	600K€

4.2 Company Law (including EEIG)

The objectives of the EU Company Law are:
- Co-ordination directives/measures: provide minimum organization & protection for stakeholders so they know what to expect
- Legal vehicles/instruments to facilitate trans-national and cross-border operations:
  - EEIG
  - European Company (SE)
  - European Co-operative society: provide co-operatives with legal instruments to facilitate their cross-border and trans-national activities.

4.2.1 Coordination measures

Measures in force:
- 1st directive (1968): system of public disclosure/information to all companies, such as registration, VAT, address, annual publication of profits/losses.
- 2nd directive (1976): deals with raising, maintenance and alteration of capital of public “limited companies”.
- 3rd directive (1978): common procedure for company mergers within the same member state
- 6th directive (1982): common procedure for division of public limited company into several undertakings. Not in Germany, Denmark and The Netherlands where such divisions are not permitted.
- 4th directive (1978): layout of balance sheets, valuation rules for assets (how to value goodwill, inventories and works in process)
- 7th directive (1983): consolidated accounts of groups of undertakings
- 8th directive (1984): defines qualifications of auditors (university degree or 15 years of experience)
- 11th directive (1990) disclosure requirements for branches established in other member states
- 12th directive (1990): permits formation of single member limited companies.

New developments:
- “fair-value” directive for non-publicly listed companies -> financial valuation of price point.
- International Accounting Standards (IAS): consolidated accounts for publicly listed companies

Proposal development:
- Take over bids

4.2.2 European Economic Interest Group (EEIG)

Creation of the EEIG: in Regulation No 2137/85 of the Council adopted on 25/7/1985.

Brief: A highly flexible legal formula, based on community law, available to all economic agents which is meant to develop economic activities on a EU-scale by facilitating cross-frontier cooperation and pooling of resources, activities or skills.

Description of the main aspects:

- An instrument for collaboration:
  - Its role is not to manage the activities of the members, nor to integrate those activities, but to coordinate **some** of their activities.
  - An EEIG is not meant to make profit on itself. Profits are distributed amongst the members.
  - The aim of the EEIG's activities must arise from the activities of its members. However in order to be able to do large jobs otherwise too large for each of the members, the EEIG may act as coordinating center.
  - The EEIG itself cannot employ more than 500 people. The workforces of the members are not included in that figure.

- A tool for a wide range of activities:
  - Natural persons, companies and all other "legal bodies" governed by public or private law may be member of an EEIG.
  - The interpretation of the "economic activity" that has to be carried out by its members before the creation of the EEIG is interpreted so broadly that public bodies, foundations, universities and liberal professions can be members.
  - In all sectors, and for all sizes of companies.

- The legal format:
  - The official address of the EEIG has to be in a Community Member State. Activities however can be carried out everywhere, even outside the Community.
  - Members of the EEIG have to carry out activities in the Community before the creation of the EEIG.
  - Companies and other "legal entities" should be incorporated according legislation of a Member State and have their statutory and real address in the EU.
  - Natural persons can be members if they work in the EU.
  - At least 2 members should have their principal activity (natural persons) or central administration (legal entities) in different member states of the EU.
  - High degree of contractual freedom and in financing the EEIG.
  - An EEIG is part of the Community legal order. If something is not covered by that community law, the national law of the country where the EEIG has its official address will apply.
  - An EEIG has to be registered in the Member state of its official address, and has to file certain documents at that registry. From the moment of registration it has full legal capacity throughout the EU.
  - In the event of default by the EEIG its members have unlimited joint and seperate liability for the grouping's debts.
  - The main documentation of the EEIG has to be published in a journal which carries legal notices.
  - An EEIG can **not** invite investment by the public.

- Organisation and operation:
  - An EEIG has to have at least 2 organs:
    - The college of members: is the sovereign organ that takes all decisions about achieving the objectives of the EEIG. No one member may have a majority of votes. Fundamental decisions about the existence and operation must be taken unanimously.
    - The management: In dealings with third parties the management binds the EEIG in an unlimited way.
  - An EEIG may be formed without capital or even without assets.

- Examples of EEIG
  - **Savings go international** – medium sized savings banks have set up an EEIG to collaborate at an international level -> broader representation; may even set up European Company as soon as this is legally allowed.
  - **European cooperation in full color** – 4 private companies in the industrial paint market -> strengthen their position in the EC while staying independent financially and wrt. decision making
  - **EEIG clearing tracks for a cross-border ski area** – partnership with the objectives of improving safety, facilitate rescue operations and guarantee effective commercial promotion
  - **Cooperation spreads in the world of white goods in the form of an EEIG** – with French, British and Spanish enterprises -> savings on the purchase of raw materials
  - **Cooperation is more than words on paper** – processing of sorghum: common R&D
  - **Building a grouping to build further away** – 12 consultant construction engineers exchange know how and representation during tenders
  - **Far-sighted partners** – HDTV; common promotion of a new technology

4.2.3 European Company (SE)

Council regulation: SE statute
Registration published in EC Official Journal.

The European Company can be set up in four ways:

1. By the merger of two or more existing public limited companies from at least two different EU member states;
2. by the formation of a holding company promoted by public or private limited companies from at least two different member states;
3. by the formation of a subsidiary of companies from at least two different member states;
4. by the transformation of a public limited company which has, for at least two years, had a subsidiary in another member state.

Provisions for worker involvement in European Company are: under the directive on worker involvement, the creation of a European company will require negotiations on the involvement of employees with a body representing all employees of the companies concerned.

It took 30 years to approve the proposal on European Company mainly because it has required finding common ground between those member states with a tradition of worker involvement and those member states where worker involvement is not imposed (anxious that European Companies should not be used to introduce worker involvement obligations). It has required a compromise at the EU's highest political level, the European Council (at Nice). Because the SE needs to be vested in EU law, a Regulation needed to be agreed (unanimity needed), a Directive was not sufficient.

To set up a SE, the negotiation on workers involvement can go two ways:

An agreement is made: no problem SE can exist.

No agreement, then 2 possibilities:
- No previous workers participation: annex to the Regulation applies. This means that the SE managers **must** provide regular reports towards the representative body of the workers, on status of the company, future plans etc. Regular consultative and informational rounds needs to be organised together with workers representation.
- There was previous workers participation: standard principles apply and SE must allow participation (otherwise nose can be formed).

The principle is that earlier participation continues as it was.

Advantages

- Single set of rules; unified management and reporting
- Subsidiaries no longer required (cost savings on legal, administration)
- Can transfer its main place of business anywhere within the EU (where it has activities).

There is no central register: Must be registered in the member state where it has its administrative head-office.

Tax: Just like any other multinational company

Minimum capital for an SE: 120K€. So also SME's can handle this.

Employment rules and pension is **not** regulated by the SE statute. But one could set up a common pension fund for all employees of a SE.

4.2.4 European Co-operative society

Statute for a European Co-operative Society (July 2003): first and only European company form which can be established from scratch and with limited liability.

Provide legal instruments to facilitate their cross-border and trans-national activities for:

- Co-operatives
- Companies of all types wishing to group together for their common benefit, for example: to access markets, achieve economies of scale, undertake research or development activities.
- 5 or more European citizens (physical persons) from more than one member state

4.3 Corporate Taxation

4.3.1 VAT and Excise duties

see Single Market

4.3.2 Business Taxation

1. Convergence of corporation tax during the eighties; yet differences within European community remain. For example: France corporate tax rate = 40, Sweden, Ireland and Finland rate = 28.
2. Harmonization; but serious obstacles remain:
   - Variety of accounting method and procedures. In the future, IAS will allow similar taxation.
   - Importance of direct taxes on government income
   - Unanimity in EC-decision making is needed for decisions on taxation.
   - Personal income tax: widely varying and no EC interference

4.3.3 European Legislation

1. Common system of taxation for parent companies and subsidiaries (1990)
   -> imposing that Member States can not double tax capital gains/dividends of companies with subsidiaries in different Member States.
2. Common system of taxation of mergers, divisions and contributions of assets (1990)
   -> no taxation on capital gains of merged companies.
3. Elimination of double taxation (arbitration procedure, 1990)
   -> resolution in maximum 3 years time (in cases of conflict)
4. The 1997-tax package (adopted in March 2003): alignment for the Euro.
   - Code of Conduct for business taxation: eliminate harmful taxation; for example: the Belgian co-ordination centres of companies need to disappear. This is to eliminate the discrimination in favour of expatriate companies.
   - Effective taxation of interest income from cross-border investment of savings which is paid to individuals within the EU (from 2005 on, there will be full exchange of banking information).
   - Common system of taxation applicable to interest and royalty payments made between associated companies of different member states.

4.4 Readings

4.4.1 "Public procurement in the European Union: Commission Communication"

4.4.2 "Pan-European Groupings: A case study in paint manufacture"

The case gives an example of a European Economic Interest Grouping. Four local paint manufacturers cooperate in this EEIG to be able to compete in the automobile painting industry on a European scale rather that on a Member State scale.

A Spanish paint manufacturer is Number 2 in Spain prior to Spain becoming member of the European Union. In 1986 Spain became member of the EU and the market for the Spanish paint manufacturer changes from Spain to the complete EU. This together with the fact that the consolidation of the EU automobile market leads to rationalization in the selection of paint manufacturers would put our Spanish paint manufacturer from Number 2 in the Spanish market to Number 50 in the European market. This would cost him 30 percent of his current revenues.

The same story applies to three other paint manufacturers (a German, English and French one). Although as separate entities they would never be competitive in a consolidated European automobile paint market, as a joint entity they would be able to offer their products in a competitive way to the European market.

To give a legal framework to the interest grouping, they choose to group their shared European activities in an EEIG.

The first activity of the EEIG is the joint purchasing of raw material for the four members. This results sometimes in price reductions of 30 percent compared to the PRE EEIG period.

Euphoric with this result, the members plan to group more activities in the EEIG. The four partners agree that ALL activities in a certain country will be done by the member from that country. These activities include the manning of the paint shops in the automobile plants to which the EEIG delivers paint. This ensures they can provide one offering to an automobile manufacturer having plants in Germany, France, Spain and UK, a clear competitive advantage that was unattainable for the members as separate entities.

The EEIG makes sure that the grouping of the members has a legal framework.

Reflections:

At the end of the case, the CEO of the Spanish paint manufacturer reflects upon the possible future of the EEIG. Some points remain a question mark:

- How to distribute the profit/loss amongst the members if a business opportunity comes up?
- Is the EEIG a sufficient legal framework when the companies need a closer cooperation in areas that are not ancillary to each of the members' existing economic activities?
- How to arrange the activities of the EEIG so as to achieve consolidation? Even though some activities are done together, the four different companies remain as separate entities. The EEIG is clearly only a good vehicle for specific opportunities that are specified in advance during creation of the EEIG. Using the EEIG as a vehicle for long time business seems to be difficult.

4.4.3 "A European perspective on corporate governance" (optional)

4.4.4 "Towards tax coordination in the European Union"

5 Session 5: Economic & Monetary Union: The Euro

5.1 Costs and benefits of EMU

This part was quickly passed over during the 16 DEC 2003 class.

EURO creates a stable economic environment.

What the ECB does:

- keeps prices stable & low in order to avoid competitive devaluation. This devaluation would be needed because countries with higher inflation would see prices for their products become higher (over time) then in countries with lower inflation. Competitive devaluation could compensate this, but is not a good option.
- Keeps interest rates low

Results:

- investments up
- unemployment down

Without price stability we would go into an African situation: unstable situation, not inviting for investments, more problems, less inviting etc.

Benefits:

Micro-economic:

- Lower transaction costs
- Price transparency
- New financial products (eg lower car insurance)
- No exchange rate uncertainty
- No competitive devaluations

Macro-economic:

- Price stability
- Higher investments
- Attention on structural problems
- No risk premium in interest rates

International:

- European Capital Market
- Euro vs Dollar

Drawbacks:

- Exchange rate is no longer an instrument
- No more national monetary policy.

Institutional framework:

- Maastricht Treaty:
    - ECB and SCEB (price stability)
    - Convergence Criteria
- Growth and stability pact
- ERM II

5.2 Institutions controlling the EURO

System of European central Banks. ECB is the control or decision point, the national banks execute the policy.

Still to be expanded

5.3 Managerial implication of the EURO

Still to be expanded

5.4 Readings

5.4.1 "Financial services strategies in the Euro-zone"

5.4.2 "Scale versus specialisation: Banking strategies after the Euro"

5.4.3 Restructuring of the European Banking sector"

5.4.4 "The Euro: Operational Hype or Strategic Relevance"

Is the Euro Strategic?

Most companies tend to consider the Euro as a technical and operational issue in the first place, and will hence devote their attention and effort to these aspects, rather than to the strategic implications.
We should ask ourselves following key strategic questions:
- What pressure for market convergence do we see in our industry & competitive landscape?
- What opportunities for increased efficiency and cross-border segmentation can be expected in 'Euroland'?
- What is the differential effect of the Euro on the different types of players in our industry?

1) The Euro and the Market Convergence
On one hand companies feel the pressure to internationalise and/or integrate their international operations, because of converging customer preferences and potential cost advantages or opportunities to follow their customers internationally and serve them in international networks.
In your analyses it is important to go to the lowest level of detail possible; as it might be that different functions or tasks in your company will be differently affected by the global-local forces. In addition you should be dynamic as globalisation pressures are changing while barriers of localization drivers might fall. As a consequence of these continuous evolutions, timing issues play a key role. It is all about monitoring the business, understanding what is going on, and adapting the international strategy accordingly.

2) Overextended Expectations
The European Internal Market program aimed to eliminate some of the barriers for market convergence in Europe: European companies had often been found lagging behind their worldwide competitors in terms of competitiveness and profitability. Market convergence has not started with the Euro (which means that companies should have thought about this and acted on it long before the Euro was implemented), nor will it end with the Euro (Europe is not one market, a lot of barriers, some of them more important than currency remain). There are plenty of other forces at work in industries, on cost and market side; globalisation of economy, evolutions in technology, deregulation, regionalisation of economies, demographic evolutions to name only the most important ones. The net effect of introducing a single currency, amidst all these other evolutions should therefore not be overestimated for non-financial companies.

3) The Euro and Price Convergence
Will the Euro on is own lead to increased price convergence across borders? It is an often-heard claim is that the Euro will speed up price convergence across Europe. The expectations (or fear) is that the price differences within Euroland will gradually disappear, and worse still, that prices will converge to the lowest level.

Should one really expect to see homogeneous prices all over Europe?

Consumer products:
Price differences exist because of the demand of certain products depend on local conditions (e.g. the weather), tax systems, customer preferences and competition. Research in this domain has indicated that the price differential will only be reduced or eliminated once the trade barriers, of which the importance is different from one industry to another, are really removed. The assumption of price homogenisation for consumer products grossly underestimated the sophistication of consumers and the existence of various differences across Europe beyond currency differences. Transparency is only one tiny element responsible for price differences. The main reasons are different cost and market structure and thus will not change significantly just because of the Euro. Take reference of the US market were with the $, a single currency for years, price differentials still hold.

Business-to-Business products:
Professional buyers have probably got to the point where they understand how many of the price differentials are really due to the different currencies (and have consequently squeezed producers to eliminate these differences) and how much flexibility producers have for lowering prices within the economic rational. Of course, from a public policy standpoint, we could not agree more that is the Euro introduction acts as a catalyst to force other substantial changes in integration (tax, social, legal, …) the real underlying differences responsible for some of the cross-border price differences could start to disappear. Again a Single Currency might increase the transparency of the prices in Europe and may make price differences less acceptable from a social and political point of view. Nevertheless even with a fully integrated market, regional price differentials will continue to exist. Companies should not rush into price homogenisation, because of a switch to the Euro. Companies that do so might price sub-optimally and lose opportunities for price discrimination, and thereby jeopardize their own profitability. If companies set homogeneous prices or are forced to lower the price differentials, the danger is that they might even go against the economic rationale, which says that the price differences that are explained by economically relevant factors are justifiable and should therefore be maintained.

4) The Euro as Opportunity for New Value Creation
If the Euro speeds up the market convergence it is only because the increased transparency forced company's to do what they should have been doing. The Euro only acts as a catalyst in this process. It should not be forgotten that market integration should not eliminate discrimination or segmentation, on the contrary, it might unleash opportunities for more segmentation or discrimination rather than less but on economic relevant criteria, rather than geographic ones. The Euro might hence have some strategic consequences because it makes companies aware of rather than less chances for customer responsiveness. By the implementation of these new customized strategies market convergence will allow companies to better serve cross-border customer segments. We should prepare for more complexity because that is why a lot of value creation can take place.

5) Is the Euro really Strategic? The Euro as a Catalyst?
For non-financial companies, the chances are high that the Euro effect is negligible and, as such, is not going to make a significant difference on the strategy side. Except of course, if the Euro is probably used as a catalyst. The Euro can be made strategic if it is used:
- To re-evaluate your overall strategic position and reconsider your European strategy and organization
- Or to get overdue or slow moving integration process moving again

In that way the Euro is 'strategic' by using it as a catalyst for European strategy and organizational enhancement.

6) Managing the process?
For some companies it took more than 20 years to set-up an integrated strategy and organization, and they have done so by a strong vision combined with persistent effort and a willingness to learn from trial and error. They finally succeeded because they realized how important it was to pay attention to the management of the process. Company integration is a long process which should be carefully managed. Even when the benefits of integration are conceptually rather obvious in many cases management failed to (fully) reap these benefits, because they mismanaged this process.

7) Conclusion
Convergence is certainly taking place in the European market, but it seems to take much longer than anticipated. That is because differences across borders and barriers for integration are far more complex than those resulting from different currencies. Managing the complex strategic and organizational challenges

implied are much more time-consuming. So plead for realism in managing the process and the expected outcomes. What one need to do, in any event, is to constantly re-evaluate one's industry and position in it!

8) For your culture / business only.

The Euro as a Strategic Project?

If the Euro is turned into a strategic project, it should also be conducted at the right level in the company organization. The top management should make sure that:

- The expectations are well managed and realistic formulated.
- The different trade-offs that will undoubtedly be required, are made.
- The required resources are dedicated to make the integration happen.
- The process of integration is constantly monitored, energized and followed up by the top management.
- A long-term perspective is taken. The longer term follow-up on the company position in the market remains key.

How to Manage the Integration Process?

Here are 10 key aspects of critical importance for success:

1. You need a shared vision and top commitment.
2. Pace the integration process properly; go slow if:
   - you need the time and are prepared to experiment and learn.
   - you have secured and shared a long-term vision and sustained commitment but do not expect too much too soon, build critical mass and do not get stuck in the middle.
3. Go quickly if:
   - the result is more urgent than the process or the path has been cleared long beforehand.
   - you are sure you do not want to go back to your starting point anyhow but be sure to include in the change all critical dimensions at once.
4. Identify the integration dimension(s) crucial for long-term success for the business of industry (these might change over time).
5. Lead integration initiatives on many dimensions of the business to build spillovers and critical mass.
6. Include initiatives with quantifiable and short-term integration benefits.
7. Build the required culture, support (incl. reward systems, …) for the integration function.
8. Involve and provide demonstrable benefit to the local management.
9. Keep options open and maximize learning potential but be decisive and make clear choices when conflicts arise.
10. The best vision is rooted in sound analysis:
    - adapt the integration to the appropriate degree of market convergence.
    - continuously ask: where is the economic benefit? And are we getting it?

How to Analyze Your Business?

Here are 5 key aspects for a good industry and market analysis:

1. Be biased; question standardization and pan-European integration.
2. Distinguish between level of convergence and rate of change.
3. Timing is key; avoid 'too many too soon' or 'too little too late'.
4. You need systems for continuous monitoring and scanning of the environment.
5. Once you can see the benefits it might be too late; you need a 'market vision' as well.

6 Session 6: Other horizontal policies

6.1 Regional Policy

Aim: To reduce the development gaps between the regions and to promote economic and social cohesion within the Union.

3 Objectives and 4 Community Initiatives from 2000; Identified by the Regulation No. 1260/99:

- **Objective 1** promotes the development and structural adjustment of regions whose development is lagging behind, i.e whose average per capita GDP is below 75% of the EU average and also the most remote regions as well as the areas eligible pursuant to the Accession of Austria, Finland and Sweden. 69.7 % of total allocation (135.9 billion Euro). Almost 20% of EU's total population should benefit from the measures taken under this objective.
- **Objective 2** contributes to the economic and social conversion of regions in structural difficulties (erstwhile heavy industry areas like coal, steel which are closed down and unemployment is high). This objective also covers areas undergoing economic change, declining rural areas, depressed areas dependent on fisheries and urban areas in difficulty. Covers 18% of population and has 11.5% of allocation (22.5 billion Euro).
- **Objective 3** gathers together all the measures for HR development outside the regions eligible for Objective 1. 12.3% of allocation (24.05 billion euro)

The **4 Community Initiatives** are **INTERREG** (inter-regional cooperation), **LEADER** (local action groups), **EQUAL** (combating inequality in labour market) and **URBAN** (regeneration of urban areas in crisis).

There are 4 types of Structural Funds for assistance for development

- **ERDF** (European Regional Development Fund)
- **ESF** (European Social Fund)
- **EAGGF** (European Agricultural Guidance and Guarantee Fund)
- **FIFG** (Financial Instrument for Fisheries Guidance)

The principles underpinning the operation of the Structural Funds are:

- **Programming** – involves the preparation of multi annual development and conversion plans and is undertaken through a partnership-based decision-making process, in several stages, until the measures are taken over by the public or private bodies entrusted with carrying them out. The programmes are then produced, either in the form of "Single Programming Documents"(SPDs) or "Community Support Frameworks"(CSFs).
- **Partnership** – provides for input from national, regional or local partners, the economic or social partners and other competent bodies at all programming stages.
- **Additionality** – requires Community assistance to be additional to the national aids and not replace them.

Management, monitoring and evaluation: Member states appoint a managing authority for each programme to cover the implementation, correct management and effectiveness of the programme. Monitoring Committees, chaired by a representative of the managing authority, ensure the efficiency and quality of implementation of structural measures.
Three types of evaluation identified:

- Ex-ante – competent authorities in the Member States
- Mid-term – authority managing the programme in collaboration with the Commission
- Ex-post – European Commission with Member State and the managing authority

ASSESMENTS:

Example of **success** of Regional Policy: Ireland, has grown from a poor region in 10 years to EU-average, due to a combination of factors: European money, but also opened its economy in the early 60's, sorted out public finances after a recession in early 80's, social contracts to control inflation, has attracted successfully a modern capital intensive economy owned by foreigners (computer, telecom, banking, pharma), migration, English language, ...

Example of **failure** (so far) of Regional Policy: Greece, Portugal, South-Italy, Eastern-Germany due to too bureaucratic governments, market forces that act not freely enough, cultural background, (no) information flow, disincentives to migration, unemployment policy, trade unions, ...

So it is clear that money alone will not be sufficient, the strength of the EU is not in the money it can spend, but in the legislation it implements.

6.2 Social Policy

6.2.1 Why – Milestones

Aim: 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.

Milestones:

- Treaty of Rome (1957): Contained scattered provisions on social and labour market including, freedom of movement of migrant workers, right of establishment, establishment of social security arrangements and establishment of the European Social Fund.

- The Single European Act (1986), mainly adopted to facilitate implementation of the single market, made it essential to bring in rules to prevent 'Social Dumping'. Harmonisation of health and safety of workers, promote dialogue between employers and employees and Economic and Social cohesion. This last part was benefiting large enterprises of Central Europe, so compensation was provided for the South.

- Social Charter (1989): Drafted by the ECOSOC. Deals with social rights in 12 main areas that are to be guaranteed in the European labour market. It is a political declaration of intent and not legally binding, never became law. The 12 fundamental rights of EU workers are:

  Free movement
  Employment and remuneration
  Improvement of living and working conditions
  Social protection
  Freedom of association and collective bargaining
  Vocational training
  Equal treatment of men and women
  Information, consultation and participation
  Health protection and safety at the workplace
  Protection of children and adolescents
  Protection of elderly persons
  Protection of disabled persons

  The first six are still part of main Social Law.

- The Treaty on European Union – Maastricht Treaty(1992): The community was supposed to work towards raising living standards ensuring a high level of social protection. The Social Fund's remit was widened and new section on education and vocational training added. UK opted out of the Agreement set out in Protocol No. 14 on social policy. This protocol gave a major boost to the role for management and labour and extension of qualified majority voting in Council in the following areas:

  - Health and safety of workers
  - Working conditions
  - Information and consultation of workers
  - Equal opportunities in the labour market and equal treatment at work between men and women

- Occupational integration of persons excluded from the labour market.

Requiring unanimity vote:

- Financial contributions for promotion of employment and job creation.
- Social Security and social protection of workers.
- Protection of workers where employment contracts terminates.
- Representation of workers and co-determination.
- Conditions for employment for third-country nationals legally residing in Community territory.

Excluded from vote (or from the competence of the Union if you will):

- Matters related to pay.
- The right of association.
- The right to strike.
- The right to impose lock-outs.

On the basis of this Agreement, the 14 member states (EU without UK) adopted 4 Council Directives:

- Introduction of European Works Councils
- A framework agreement on parental leave.
- Defined burden of proof in cases of discrimination based on sex.
- Framework agreement on part-time work.

- The Amsterdam Treaty(1997) - The Agreement on Social Policy was integrated in the treaty with amendments. No more UK opt out (Blair government). Introduction of a new Chapter on employment, for promotion throughout the Community of a high level of employment by developing a co-ordinated strategy for employment and particularly with regard to creation of a skilled, trained and adaptable workforce and of labour markets responsive to economic change.

- The Luxembourg Summit – Employment Guidelines for 1998: The European Council in Amsterdam agreed to make certain provisions regarding employment immediately effective without waiting for the Amsterdam treaty to enter into force. These employment guidelines were to be incorporated into national employment action plans and become national objectives, adapted to national situations.

  There are four pillars:

  - Improving employability
  - Developing entrepreneurship
  - Encouraging adaptability in businesses
  - Strengthening policies for equal opportunities

  The Luxembourg Summit also supported the following job creation initiatives:

  - European Parliament's Growth and Employment Initiative (450 million Euro between 1998-2000 for financing small and medium-sized enterprises)
  - Action plan for the European Investment Bank (up to 10 billion Euro for new loans for SME enterprises, new technologies and trans European networks)

Encouraging high labour standards as part of a competitive Europe (Working conditions):

- Transfer of undertakings – safeguarding of employees' rights: the former employer and the new employer are required to inform the representatives of their respective employees in good time of the reasons for the transfer, the legal, economic and social implications and the measures envisaged in relation to the employees
- Insolvency of the employer: if company goes bankrupt, all workers have to be paid for work that is done. (this part include a follow-up of the implementation in the Member States of the directive)

- Organization of working time: applies only to real workers; minimum daily rest of 11 consecutive hours per period of 24 hours; not less than 4 weeks of annual paid holiday; not more than 48 hours per week.
- Collective redundancies: (Renault) Any employer contemplating collective redundancies must hold consultations with the workers' representatives, with the view to reaching an agreement. Procedure for collective redundancies: employer notifies the competent public authority in writing and must contain all the relevant information. A copy must be send to the workers' representatives.
- European Works Council (EWC): to improve the right to information and to consultation of employees in Community-scale undertakings. 3 years to come to an agreement otherwise directive implementation. Scope: undertaking > 1000 people and located in at least 2 Member States

6.2.2 Social security for migrant workers

Regulations 1408/71 and 574/72

Coordinate, not harmonise. Assumes the "competent state", so allows interpretation by member states.

Main principles:
- Equal treatment (as compared to local workers)
- Aggregation (e.g. Time worked in other member states counts as experience)
- Prevention of overlapping benefits (e.g. child allowance only in 1 country)
- Exportability (e.g. Belgians should be able to get pensions when living in Spain).

Persons covered: the workers, the self-employed and their families

Benefits covered:
- Sickness and maternity benefits.
- Invalidity benefits.
- Old-benefits.
- Survivors benefits.
- Accidents at work and occupational diseases.
- Unemployment benefit.
- Family benefits.

A migrant worker should have equal treatment to a local worker if the migrant is staying in the country for some time.

6.2.3 Health and safety at work

Art 137

Achievements:

Up to 1987
- Ionising radiation in extraction industries.
- Exposure to vinyl chloride momer.
- Protection against metallic lead.
- Exposure to asbestos.
- Noise.
- Protection against certain agents.
- Electrical equipment for use in explosive atmosphere in mines susceptible to fire dangers.

From 1987 to 1989
- New power: Art 138.
- Qualified majority.
- Same conditions for all workers.
- Prevention of social dumping in the internal market.

After 1989

- Minimum health and safety requirements.
- Organisation of working hours [(1)].
- Work equipment.
- Use of personal protective equipment.
- Manual handling of goods.
- Working on VDU's.
- Exposure to carcinogenic substances.
- Exposure to biological agents at work.
- Temporary or mobile building site.
- Health and safety signs at work.
- Protection of pregnant women.
- Extraction industries and drilling.
- Work in mines and quarries.
- Fishing vessels.
- Temporary workers: health and safety.
  Medical assistance on board ships.
- Young people at the working place.

(1) On average a worker should not work more then 48 hours a week. Have at least 11 hours between shifts, and at least 4 weeks holiday a year.

6.2.4 Social Dialogue, information , consultation and participation of workers

6.2.4.1 Industrial relations

Bodies at Community level

The Economic and Social Committee (ECOSOC)
The European Centre for Industrial Relations (CERI)
The Social Dialogue Committee, this once contains:
European Trade Union Confederation (ETUC)
Union des Industries de la Communauté Européen (UNICE)
Communauté Européen de Emplois Public (CEEP)

The agreement on Social Policy

- Management and Labour get a prominent role in the process of Community action.
    - Agreement on parental leave (Dir. 96/34)
    - Agreement on part-time work (Dir. 97/81)

- Areas of competence: see 6.2.1 Why – Milestones

6.2.4.2 Information, Consultation and participation of workers

Present legislation

- Directive on the approximation of laws of the Member States on collective redundancies (e.g. "The Renault wet"): ***information phase:*** towards local authorities and workers associations, ***discussion phase:*** re-conversion planning, outsourcing, re-employment, ***execution phase:*** layoffs.
- Directive on the approximation of laws of the Member States on the safeguarding of workers' rights in conjunction with the transfer of undertakings. "Off the record: not worth the paper it was written on"
- Directive on Mergers of limited companies.
- Directive on European Works Council. Workers have the right to be consulted.
- Directive on the approximation of laws of the Member States on the protection fo employees in the event of the insolvency of their employer. E.g. SABENA case. Member state should make provisions

(a fund ?) to cover payments of wages of employees for the last months (notice of solvency problems) until dissolution of company. There is no ceiling specified. This is a pro-employee directive.

Future outlook

- Fifth Directive on Company Law
- A European Company statute.

Both are now replaced by the EU Company Law (Societas Europeas)

6.3 Readings

6.3.1 "4.8.4 Social Security for migrant workers"

6.3.2 "4.8.6 Social Dialogue, information, consultation and participation of workers"

7 Session 7: Impact of Industrial Policies on Business & Corporate Response – European & Non-European Firms

Impact on European business:

- Lower input costs:
  - Removal of barriers
  - Economies of scale
  - Learning effects
- Improved efficiency:
  - Profits squeezed
  - Reorganization/ concentration
  - Cost controls: overheads, 'best practice' production, quality of management
- Increased innovation
  - Market liberalization and growth
  - Removal of market entry barriers (e.g. standards)
  - Creation of new companies
- New patterns of competition based on real comparative advantages

This results in:

- Improved competitivity
- Substantial consumer surplus: lower prices and greater choice

7.1 Analysis of general threats and opportunities for industrial sectors and businesses in Europe

7.2 Analysis of impact on specific sectors (possible presentations).

7.3 Readings

7.3.1 Eurobrands take hold across borders (1995)

- Lower costs by simplifying production and centralizing advertizing.
- Example: Delacre: vision is to focus on similarities rather than differences.
- Limits to the success of Eurobrands
  - National tastes
  - Trade barriers
  - Different advertizing restrictions
  - Time – development can take decades
- European wide television plays an important role

7.3.2 Brand names retain regional appeal (1994)

- Euro consumer has yet to arrive
- Still very big national brands
- National tastes (food)

7.3.3 “The nature and extent of corporate restructuring within Europe’s Single Market”

7.3.4 “Restructuring in the domestic appliances industry: implications for Maytag and its European operations”

In May 1993 Maytag Corporation, the parent Hoover company, decided to close the Hoover plant in Dijon and transfer production to Cambuslang Scotland. Maytag faces difficulties in competing with industry leaders and is unsure of its future European Strategy.

This article mainly demonstrates the acquisition strategy of Maytag since 1980 as an attempt to emerge as major international player in large domestic appliance industry. It also shows the lack of resources to compete head-on with industry leaders.

Maytag strategic options:

1. Mergers with other white good producers (EU or Asian partner).
2. Strategic alliance to achieve complimentarity.
3. A fundamental strategic change (abandon international markets).

In the eighties Maytag (mainly active in laundry appliances ; premium price products) chose for diversification in order to obtain a full line product range. Strengths of Maytag were the production of high quality products , weaknesses were the narrow product range. To cope with these Maytag took the strategic choice for “related product diversification”.

This was done via consecutive acquisitions: e.g. 1981 Hardwick Stove Co (cooking appliances); 1986 acquisition of Magic Chef (preservation acquisition because of mid-price profile of Magic Chef). The acquisition policy seemed to be a success until the end of the eighties recession in the US. Maytag didn’t have a large geographical presence resulting in downturn when the US-market went down.

Maytag had to enter the nineties using internationalisation or geographical diversification as the first strategy. Again 2 acquisitions (Philips large domestic appliances & CPC, owning Hoover in US/UK) were done. This is in line with leading competitors, who were developing global expansion plans, trying to be strong in each of the Triad regions (EU / US / Fareast).

The world of large domestic appliances is controlled by large players like Whirlpool (US producer gaining importance in EU) and Electrolux (leading EU producer gaining importance in US). Electrolux’s strategy was indicative for the strategy of other leading companies: establishing a complete product line and achieving a (worldwide) multi-regional strong market position.

Also further industry concentration took place on a transatlantic basis (e.g.Whirlpool acquiring Philips)

Maytag was strong in US in production operations and product positioning. The alliance with Bosh Siemens Hausgeräte (BSH) group should reinforce the European position of Maytag. Like Maytag’s products, BSH products are also positioned in the top-end market. Maytag’s core business is large domestic appliances and via the BSH deal they wanted to enlarge their EU presence.

Since the Cambuslang manufacturing unit only produces vacuum cleaners – a low margin product line – the strategic importance to Maytag is very low. The future of a similar production plant can be improved by extending the plant’s product range or assigning the plant a distinct role inside the BSH alliance. Without this, the future of similar plants, whether domestic or foreign, stay rather uncertain, and their future (induced by e.g. weak market prospects, bad group performance) can be reviewed at all times (strategy change).

7.3.5 "Pan-Europeanisation: Myth or Reality – CMB packaging"

Note:
- This is an academic article
- Time period: 1989: at the "eve" of the removal of Europe's internal trade barriers (in 1992), there was a wave of cross-border mergers, acquisitions and strategic alliances in the EC.
- General belief: Companies who will gain most from market liberalisation are those with
  - strong products (market share)
  - geographical market coverage

Statement:
3 critical success factors for acquisitions:
- strategic fit: between acquirer and target
- organisational fit: between acquirer and target w.r.t. administration, corporate culture and personnel
- post-merger integration (or more exactly: the management of the acquisition process from the initial development to post-merger integration)

CMB = merger of Carnaud and MB in Feb 1989:

MB Group (UK): (food and beverage cans) financially strong after rationalisation in early 1980s, but strategic change is needed:
- greater delegation of decision making -> individual business units
- strengthening and refocusing of product and geographical market portfolio
- For that 3 options: 1/ acquire/merge with US company 2/ expand in Europe through acquisitions 3/merge with European packaging company

Carnaud (F): on a wave of mergers and acquisitions (more then 28 during 1985-1989)

Statement applied to the case of CMB
Aim of the merger: create a world-class packaging company providing a pan-European service to its customers and to attack on other international markets

Strategic fit:
- Similar size of Carnaud and MB
- Complementary technology
- Economies of scale
- Strength in research
- European coverage
- Management style: emphasis on growth and decentralised control
- Territorial complementarity of Carnaud and MB.
- Complementary products
- Both are competitive after rationalisation

Organisational fit:
not relevant for this summary, except: CMB packaging owned by: New MB group: 25.55%, CGIP (Carnaud's ultimate parent company): 25.55%, other Carnaud shareholders: 32.37%, MB shareholders: 16.53%

Post-merger integration
- Major economies in procurement through placing large contracts with suppliers
- A new stream-lined, customer-oriented management structure was launched
- Major cultural problems arose when trying to weld together British and French managers
- French PDG (Pres. Dir. Gen.)'s divide-and-rule strategy: 29 profit centres increased to 50
- unstable relationships between the 2 main equity partners (MB and CGIP): rumours that MB wants to pull out

Problem-solving attempt:
- PDG replaced with a neutral national
- New equity partner's committee and a supervisory board

Conclusion: do not underestimate post-merger integration

7.3.6 “Seagram’s Single Market Solution”

Market:
Seagram, a Canadian drinks multinational, operates in international market that varies widely from country to country. Tendencies, with which this market is confronted, are the growth of consumer mobility, growth of international media and strengthening competition. Martell has been bought and its market share should be increased.

Challenge:
Get the most out of global opportunities and still maintain the diversity that gives competitive advantage at regional level and brings in profits.
Therefore, Seagram had to shift from a local market focus and short-tem strategy towards a long-term continental / global view.

How:
Exploit corporate strengths and minimize weaknesses by concentrating on areas of real opportunity and by making fundamental changes in structure and procedure, possibly with tighter central control.
Although there are arguments for centralization, Seagram has chosen for regional structures as 40% of the revenue comes from local brands, some of which are very strong in their market. Seagram faced a situation with disparate brands, disparate territories and close national associations of many brands.

Organization:
The new organization had to reflect:

- both global and local interests
- both large and small operations
- innovation and new sources of growth, as well as preservation of existing traditions and brand shares

To provide international perspective:

- Set up two brand groups, one in London, other in Paris.
- Establish a strategic planning team, with
- representatives from each operating country.

Aims:

- Invest in brands with potential
- Brands lacking potential or overlapping with other products: slated for disposal
- Middle brands: maintenance only.

Crucial: Responsibility for profit on all brands was left with national operating companies, who were combined into regions. The regional offices gradually took over most administrational and accounting work.

Cultural shift:

- Executives had to take a wider view of the company’s business
- Career structures and incentive plans have been adjusted accordingly.

Actual Status within Seagram:

- There is still a tension between global and local outlooks
- It will take more time before common goals are accepted, but now there are common assumptions for discussions
- Networks of executives have replaced formal hierarchies.
- New product development is being done in brand groups as well as in local countries; practice shows that sales and customer service are local issues, but gradually some larger organizations like Carrefour take a cross-border view on their ordering requirement.

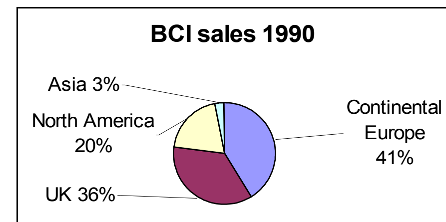
Result of ‘re-inventing the organization’:

- Seagram has outperformed the market + created small profit increase.
- Martell raised market share in some countries.
- Proportion of sales in premium-brand category has risen from 41 to 50%

7.3.7 “Europeanising a medium size company”

Brent Chemicals International (BCI) business profile
World-wide applications know-how and industrial services
Provide speciality chemical processes specific to customers production/maintenance needs
Selective customer groups targeted (% sales 1990):

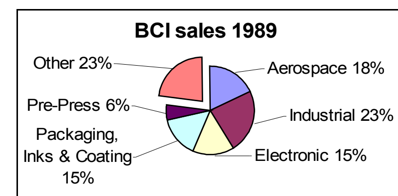
1. Aerospace (18%): Non-destructive testing for aerospace components maintenance
2. Electronics (14%): manufacturing of printed circuits & semiconductors
3. Industrial (28%): Metal surface treatment
4. Packaging, Inks & Coatings (23%)
5. Pre-press services (13%)
6. Other (4%)



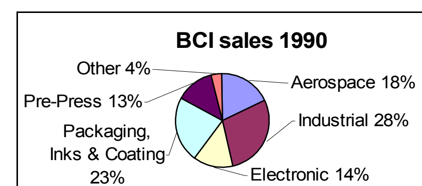
Small company, £100m sales

Recent history of BCI
BCI had developed a maintenance & testing (Ardox) procedure for Rolls Royce (RR) jet engines during World War II. After the war, Ardox spread with the engines throughout the world. The European BCI organizations issued from extraction of Ardox sales & technical people from various partners.

Lesson learned:
US jets replaced RR powered jets early ’70. Ardox, not being approved by US manufacturers, was nearly abandoned. A US organization was set up to obtain Ardox approval. Thus to operate in a global niche, one must operate globally.



Prepare the single market (1990)
Global management experience of Aerospace used to graft other activities upon.
Strategy changed from forward extrapolation of financial result to envision the customer’s future needs and prepare how to serve these, make SWOT & gap analysis.
Divest smaller parts of BCI that operated in the UK only (nr 6 above), maintain 5 core businesses that operate global (1 & 2) or Pan-European (3 – 5).



Pan-European
Changed from country based structure to pan-European business groups for 1 to 3.
Management is UK based, consists almost only of Brits, forced to think European (although sales still show predominant UK position).
Country based structures reduced to serve legal and fiscal goals.
Cultural & language differences are handled within the organization so the customer is helped as in a local organization (language skills become more important in selection).
Aerospace (the oldest unit) was more or less used to work together as a team.
Electronics (the youngest & smallest group) was happy to work as a team under specialists, no longer needing to report to outsiders.
The Industrial group was most dispersed, the products pallet was huge and the different products sold were geographically very different. It took a year to have the buy-in of the group on the product portfolio rationalisation and align the specialists throughout Europe.

Half-way house
The two remaining divisions are grouped in Packaging & Graphical Arts (PGA) and work either from 2 or 3 centralised offices spread in Europe (UK, Germany & Switzerland) or with regional offices and satellites close to customer clusters
The groups are split per customer type and technical specificity.
All are focused on their competence and strive to cover all Europe (grow or acquire)

To be done

Creation of multinational managers team (not only Brits) and board of directors.
Create a pan-European IS.
Creation of world-wide groups (North American & Asian structure mirrors yet the European).
Focus on European Single Market!

8 Session 8: Common Commercial Policy (Art 133)

Several aspects of position of ECC in the world:
- External relations (political)
- Development policy
- Trade: commercial policy (see further paragraph 8.2 Common Commercial policy)
- Enlargement (see further Session 9: Enlargement).

8.1 Introduction and background

Uniform principles with regard to (article 133):
- Changes in tariff rates
- Conclusion of tariff and trade agreements
- Achievement of uniformity in measure of liberalisation, export policy
- Measures to protect trade, for example: in case of dumping

8.2 Common Commercial policy

This policy has been decided and now implemented from Brussels' institutions:

- EC's import regime (most important regime)
- EC's export regime
- EC and international trade organisations
- EC and third country or trading bloc relations

The 133 Committee: every week all matters are discussed.

8.2.1 EC's import regime

1. The customs systems:
   - No import tariffs between member states = free trade area
   - Common external tariff: all member states raise same tariff when importing goods

2. Rules of origin: a product, manufactured in different countries, is considered originating from country where the last substantial/significant operation was performed.

3. Surveillance, safeguards, quotas:
   - Install surveillance systems to measure import
   - Safeguards = quotas when specific industry in EC is threatened

4. Unfair trade practices:
   - Anti-Subsidy: similar to Anti-Dumping
   - Anti-Dumping (import price is lower then in producers home market)
     a. Concept
     b. Procedure: provisional anti-dumping for 6 months, more detailed investigation, definite anti-dumping duties for 5 years if passed by the Council.
     c. Screwdriver regulation: defines that there needs to be at least 40 to 60% "local content" of the imported goods. If not, then the anti-dumping measure applies. Local content = made/assembled in the EC
        Examples: suppose Japan wants to dump photocopiers to the EC, where an anti-dumping measure is valid for 5 years. To avoid this anti-dumping measure:
        - Japan ships photocopier to USA, repackages goods in the USA, ships from the USA to EC.
        - Japan ships components/sub-assemblies to the UK, parts are assembled in the UK (you only need a "screwdriver" to do this)
     d. Reasons for dumping: to gain market share, dominate EU market or ruin EU-market

5. Generalized system of preferences: import tariffs different for "poor" countries (African, Caribbean and Pacific – ACP countries)

8.2.2 EC's Export instruments

1. Trade barriers regulation: if the community export encounters barriers from 3rd countries, then the Commission will investigate, take measures. In case no agreement is reached, talk to the WTO.
2. Market access strategy: database with all information
3. EC's export regime: harmonization between export insurance regulations

8.3 World Trade Organisation (WTO)

Key principles:

1. Established in 1995, is permanent organization, comparable to UNO for trade
2. Objectives: raising standards of living, full employment, growing volume of real income, expanding the production and trade in goods and services, development and protection of the environment, taking accounts of the needs of developing countries.
3. Has real power – basic regulation
4. Efficient vehicle
5. All members of its predecessor (the GATT) became members of the WTO
6. Accept regulation on anti-dumping

WTO's dispute settlement system:

- Covers all of the multilateral trade agreements
- This process is launched when one member submits to another a request for consultation on a specific issue. These consultations must begin within 30 days.
- If consultation fail to settle the dispute, a member may call on the Dispute Settlement Board (typical 3 independent experts) to deal with the issue. A report should be finished with 6 months or 3 months in case of urgency. 20 days after the report has been circulated to the members, the report is considered for adoption.
- If the Dispute Settlement Board makes a decision and someone does not agree: appeals at a group of 7 experts. They have another 6 months to investigate.
- If the decision of the DSB is confirmed (meaning there is indeed a trade problem), then the country can take retaliatory measures.

8.4 EC and Third Country or trading bloc relations

Trading blocks: EFTA, NAFTA, MERCOSUR, ASEAN,…

8.5 Readings

8.5.1 "Commission Regulation of 27 September 1994 imposing a provisional anti dumping duty of imports of colour television receivers"

8.5.2 "Council Regulation no 710/97 of 27 March 1995 imposing a definitive anti-dumping duty on imports of colour television receivers"

8.5.3 Banana Split and Bid to end banana deadlock

The Commision proposed introducing a tariff-only system for import of bananas in 2006 as a part of a two-stage reform to comply with the WTO rules.

France, Spain and Portugal opposed the Commission's original plan because of its impact on growers in their former colonies. The European Commission now plans to give banana growers in former EU colonies more time to adjust to a competitive market, delaying the abolition of import quotas until after 2006.

8.5.4 EU puts steep duties on range of computer disks, Asian bicycles (1995)

- Resulting from anti-dumping investigations
    - European producers suffering from price undercutting
    - US, Mexico, Malaysia market size of about 25%

8.5.5 Dumping cement

- America's cement producers threatened by Venezuelan cement
    - Same price, but still dumping in Florida
- Appeals to the GATT have been made

8.5.6 Report counts cost of anti-dumping

- Remark, accusers and accused are the same
- Draft report by OECD (Organization for Economic Co-operation and Development)
    - Effects of anti-dumping on competition
        - Category 1: low export prices -> can benefit the economies of importing countries
        - Category 2: monopolizing dumping -> are damaging, but rarely occur
    - Anti-dumping measures have limited effect on monopolizing practices as they do not open the closed market and ecourage the growth of other trade restrictions

8.5.7 The trouble with regionalism

- US trade policy choice
    - Free trade agreement with Canada
    - GATT is too slow
- Claimed advantages of regional FTAs
    - They make economic sense
    - They are a good way to spread free trade worldwide (and faster unlike GATT)
- Critical note to the previous advantages
    - FTA can divert trade (unequal tariffs)
    - Protectionist lobbies "our market is already big enough" syndrome

8.5.8 Building blocks or stumbling blocks (1992)

- Main issues
    - Does regional integration increase or decrease global economic welfare?
    - Will regional blocks lead to global free trade faster than the multilateral process?
- 105 current participants into 3 regional blocks
    - would move faster
    - but temptation to protect their markets with restrictions on imports from outside the block.
- How to prevent blocks from damaging global trade
    - FTAs set common external tariff at the lowest of any member before union

Strengthen rules on anti-dumping and voluntary export restraints (VERS) – they have proliferated as tariffs fell

9 Session 9: Enlargement

Why join the EU?

- Willing to enlarge (political promise)
- Part of EC because country complies with accession criteria

9.1 The enlargement process

9.1.1 The candidates: characteristics

- Size/GDP:
  - Poland is largest country of candidates (39 million people), compared to Estonia (1.45 million people)
  - Czech Republic has largest GDP/capita (65) compared to Lithuania (29). Germany, France and UK have GDP/capita around 100.
- Rich/Poor

The new states joining in 2004:
- Czech Republic
- Estonia
- Cyprus
- Latvia
- Lithuania
- Hungary
- Malta
- Poland
- Slovenia
- Slovakia

9.1.2 Accession

= Copenhagen criteria
- Stable democratic institutions to guarantee democracy and human rights
- Functioning market economy and capable of handling competitive pressure in EC, keep inflation rates low
- Membership of political, economical and financial nature

9.1.3 The enlargement negotiations

All regulations and treaties (= the “**acquis communautaire**”) that the candidates have to apply to are gathered in set of 31 chapters.

In 1992, the status of candidates on each of these chapters is assessed and identified on what is still needed to comply with these chapters.

In 1999, if the candidate makes significant progress so that criteria will be met in 2004-2005 (progress is tracked in yearly reports) it’s ascension is to be approved by Parliament. In order to comply, plan and transition period is agreed. With enlargement from 2004 on, these candidates take fully part in decision process but with a transition period of up to 7 years.

If candidate does not comply after the transition period (according to the original plan), then candidate countries can be excluded by safeguard measures.

Chapter 22 on environment: Not all of the work has been done. E.g. to be on a EU level, this would mean an investment of 120 billion €, which means 2% of GDP of Poland, so they get a transition period if they follow their planning. There are safeguard to make sure they make sure they follow their transition plans. But the

transition period also works in the opposite direction, so there is also a transition period on free movement of goods, otherwise the competition would not be fair to adjacent Member States

9.2 Benefits, costs and Issues of Enlargement

9.2.1 Benefits

- For the candidates
  - Gradual increase of wealth because of foreign investment, new technology, new methods and manufacturing skills
  - +50 billion EUR
- For the member states
  - The larger the internal market, the higher competitiveness
  - Investments in those countries generates extra business
  - Opportunities for de-localization
  - Estimates of +300.000 jobs and 8 billion EUR (cfr. European Round Table ERT)
  - Stimulus for EU companies to be more competitive

9.2.2 Cost and Issues

- Half of the community budget goes to agriculture, representing 2% of the EU. In case you keep the same policy on agriculture, with enlargement you cannot continue this budget.
- Wealth: income of person in France/UK = 22.000$ compared to 1.800$ for Czech Republic. 30% of budget goes to regional support to bring wealth up to level. All candidate countries are Objective-1 regions, so this will have a significant impact on budget if the same policy is kept.
- After 2006, new financial perspective 2007-2013 will have to be determined. For 2004-2006: additional 44 billion EUR for agriculture is planned and additional 7 billion EUR for regional policy.
- Unanimity (25 countries…) required for new financial perspective 2007-2013:
  - New members will require same treatment in agriculture and regional policy
  - Existing members do not want to increase their contribution
  - Spain, Ireland and Portugal require similar treatment as all previous years
- Vision on the Union:
  - Large countries look at the Union as the Union is there to serve their interests as they represent together 75% of the population in Europe and 72.9% of GDP.
  - Small and middle-large countries, such as Spain, believe that the Union is there for all equally. If they have identical voting system, the power of the larger countries decreases.
- Agriculture: After the Enlargement, The former 15 member states have 2% of community farmers and they receive 50% of EU-budget.
- Regional policy: After the Enlargement, the former 15 member states have 5 times more income than the newcomers but still they receive 30% of EU budget.

9.3 Decision making in an Enlarged Union

- Commission: number of commissioners per country
- Parliament: currently 626 MEP; max. 700 MEPs
- Council:
  - unanimity versus (qualified) majority
  - balance large versus smaller member states
- Languages: 15 member states/11 languages: EU interpretation requires 110 possible linguistic combinations; adding 5 new languages results in 240 possible linguistic combinations.
- Re-inforced co-operation (as defined in the Amsterdam Treaty): if 8 countries agree, they can move forward with specific measures. This brings a Europe with different speeds, for example: EURO zone and internal market.

9.4 Readings

9.4.1 "Foreign Direct Investment in Central Europe: Experiences of major western investors"

9.4.2 "Investor Strategy Development and Adaption: The case of Interbrew"

Foreign direct investment (FDI) from developed market economies into Central and Eastern-European (CEE) countries in recent years has met with varying success. This paper sets out to explore the strategy of a single foreign investor – Interbrew Group SA, Belgium, in two CEE countries: Hungary and Bulgaria.

The writers first describe their methodology of their investigation. They also offer a theoretical background of their study. After analysing the viewpoints of well-known economic theorists they suggest an investment strategy development and adaptation framework for acquisitions in CEE: a flexible strategy is a strong requirement in the volatile environment of CEE countries.

The writers successively discuss motives for acquisition in a CEE country, goals and objectives, development of investor strategy for a CEE country, investor strategy implementation, investor strategy evaluation and investor strategy adaptation.

The aim of the paper is to study the relationship between all these parameters.

The Case of Interbrew

Interbrew is the fourth largest brewing company in the world. In order to expand internationally it has mostly applied the acquisition FDI mode. It has always aimed at full decision control and already has a lot of experience in international markets (End of 1996: Western Europe, North America, CEE)

Hungary: Relatively high average consumption, though reduced purchasing power. Interbrew is the first mover (1991). Positive perspectives and relatively good investment legislation. Potential for quality improvement. A number of macroeconomic characteristics, however, were negative.

Bulgaria: In the nineties: decrease in beer consumption. First mover (1995). Potential for quality improvement.

Investment Strategy and its Implementation

Hungary
Main motive: gain access to the local market. Its goal: long-term positioning in the market. Interbrew offered all managerial support and professional know-how necessary to implement their objectives.
Things did not fully turn out as expected. Causes: diminishing beer consumption; stiffer competition than anticipated; inadequate strategic moves (cf. premium beer). The company showed inadequate strategic flexibility for adaptation to the changing environment.

Bulgaria
Major motive: access to local and adjacent markets. After a series of privatisations, Interbrew became leader with 27% of the market. 52% of the beer brewing companies remained in the hands of the state. It resulted in some degree of government control over the market structure and pricing. For competitive reasons, foreign owned breweries had to keep low prices.

Interbrew Strategic Challenges

On the Hungarian beer market, Interbrew failed to foresee the trends and dynamics in the changes of the society, the consumer needs and wants, as well as the more appropriate and aggressive strategies of its foreign competitors. In the end it had to focus on the cheap lower end of the market beer for profit maximisation.

In Bulgaria, Interbrew could greatly benefit from its experiences in Hungary. It gained market share with a widespread product portfolio and developing new segments with the long-term intention the Bulgarian beer market. It implemented a proactive strategy evaluation and adaptation.

Conclusion

Hungary: limited success due to lack of experience and underestimated turbulence of environmental changes.

Bulgaria: enriched experience and understanding of the CEE markets; high commitment to penetrating the local markets; more realistic expectations and more flexibility by proactively adapting its initial strategy.
What investors should do: careful setting of strategic goals and objectives; creative differentiation; long-term vision and timely proactive grasp of opportunities; broad product/brand approach; careful pricing strategy; active involvement of local managers under guidance of expatriates.

10 Document History

VERSION	DATE	AUTHOR	COMMENTS
1	JAN 2004	Gert Sanders	Compilation of lecturenotes and course given by Prof. Dr. Janssens, based on original course outline.
2	JAN 2004	Lut De Maertelaere	Added notes taken during lectures.
3	JAN 2004	Serge Audenaert	Added summaries of readings and cases.
4	JAN 2004	Gert Sanders	Added notes from William De Ridder and Jasmine Raes.